

# **SUPREME COURT OF INDIA**

Rajasthan Rajya Vidyut Vitran Nigam Ltd.

Vs.

Dwarka Prasad Koolwal

C.A.No.7483 of 2014

(Madan B. Lokur and Kurian Joseph JJ.)

07.08.2014

## **JUDGMENT**

**MADAN B. LOKUR, J.**

1. Leave granted.
2. The primary question for consideration in all these appeals is whether the respondents were entitled, as of right, to one more opportunity to switch-over from the Contributory Provident Fund Scheme of which they were members, to the Pension Scheme and the General Provident Fund Scheme implemented by the appellant with effect from 28th November, 1988? Broadly speaking, the contention of the respondents is that they were unaware of the switch-over option since they were posted in remote areas of Rajasthan, while the contention of the appellant is that a large number of opportunities extending over 8 years were given to the respondents to exercise the switch-over option and that they could not claim any right to any further opportunity to make the switch over.
3. In our opinion, the contention of the appellant must be accepted and the impugned judgment and order dated 17th May, 2012 accepting the contention of the respondents has to be set aside.

The facts

4. The Rajasthan State Electricity Board (for short ~the RSEB) had introduced a Contributory Provident Fund Scheme in 1972 (for short ~the CPF Scheme) for the benefit of its employees. This was in exercise of powers conferred by the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

5. On 28th November, 1988 the RSEB, in exercise of powers conferred by Section 79 of the Electricity (Supply) Act, 1948 made the Employees Pension Regulations, 1988 (for short ~the Pension Regulations) and the Employees General Provident Fund Regulations, 1988 (for short ~the GPF Regulations).

6. Both the set of regulations came into effect on 28th November, 1988 and the existing employees of the RSEB on the cut-off date were entitled to exercise an option of either continuing as members of the existing CPF Scheme or switching to the Pension Scheme and the GPF Scheme under the Pension Regulations and the GPF Regulations respectively within a period of 90 days from the date of commencement of the GPF Scheme. Such of the employees of the RSEB, who joined after 28th November, 1988 were automatically governed by the Pension Regulations and the GPF Regulations. The switch-over option was, therefore, available to only those employees who were on the rolls of the RSEB on the cut-off date.

7. On 6th January, 1989 the RSEB issued a notice giving an option to the existing employees (including the respondents) to switch over from the existing CPF Scheme to the Pension and GPF Regulations.

8. The notice stated, inter alia, that the switch-over option should be exercised by the employee in writing within a period of 90 days from the date of its issue and that no request for extension of time, seeking clarification or review would be entertained. Significantly, it was stated in the notice that if an employee does not exercise his clear option within the specified time limit, he shall be deemed to have retained the benefits available to him under the CPF Scheme to which he was already entitled. The notice set out the procedure for exercising the option, which is forwarding it to the concerned officers.

9. The notice also stated that it should be given wide publicity by pasting it on the notice board of various offices under the RSEB. It was stated in the notice that pasting

would be treated as sufficient notice for all the Board employees for whom it was intended.

10. The respondents did not exercise their option in terms of the notice dated 6th January, 1989 although as many as 2741 employees exercised their switch-over option.

11. The RSEB issued a second notice dated 4th April, 1989 extending the period for exercising the switch-over option for another 45 days after the expiry of the period of the first option of 90 days given in the first notice dated 6th January, 1989. The second notice was issued since the first notice was not published in Hindi which inhibited the employees of the RSEB in exercising the switch-over option within the prescribed time limit.

12. The second notice did not mention anything about giving it wide publicity but it appears that in keeping with the mandate mentioned in the first notice dated 6th January, 1989 this notice too was given wide publicity since it resulted in as many as 31,217 employees exercising their switch-over option within the period of 45 days.

13. A third notice dated 19th May, 1990 was issued by the RSEB extending the period of the switch-over option up to 30th June, 1990 that is for a period of about 40 days. The occasion for issuing the third notice was that references were received by the RSEB from various corners to extend the period of exercising the option for a further period of 45 days.

14. In terms of the Pension Regulations daily rated/work charge employees were excluded from the scope of the Pension Regulations and even though some of them were given a regular pay scale with effect from 1st April, 1989 they could not exercise the switch-over option since they were not on a regular pay scale/service on the cut-off date that is 28th November, 1988. The third notice was issued to give the benefit of the Pension and GPF Regulations to such daily rated/work charge employees as well as to the regular employees covered by the CPF Scheme. It was mentioned in the notice that this would be the last and final opportunity for exercising the switch-over option and that the employees, both regular as well as daily rated/work charge employees should ensure that their option forms were received by the concerned authority within the prescribed time limit that is 30th June, 1990 positively. As many

as 3972 employees of the RSEB exercised their switch-over option in response to the third notice.

15. The RSEB issued a fourth notice dated 17th September, 1991 extending the time limit for exercising the switch-over option by a further period of 90 days. This was on the basis of references having been made to the RSEB from various corners to allow one more opportunity to exercise the option for obtaining the benefits under the Pension and GPF Regulations. The fourth notice mentioned that in case an employee did not exercise the option within the period of 90 days it would be deemed that he had retained the benefits available to him under the CPF Scheme. In response to the fourth notice, as many as 2741 employees of the RSEB exercised their option.

16. A fifth notice was issued by the RSEB on 27th January, 1993 which was in the form of an order. This related to counting of the period of service for pension purposes of work charge employees who were absorbed or appointed to regular posts under the RSEB.

17. It was stated that the work charge employees of the RSEB who were absorbed/appointed on a regular basis would be allowed to exercise the switch-over option subject to certain conditions. The option to switch over was to be exercised in writing up to 15th March, 1993 that is within a period of about 45 days. It was specifically stated in the order that those employees who do not exercise the option within the aforesaid period would be deemed to have retained the benefits under the CPF Scheme. The benefit of the order dated 27th January, 1993 was also extended to those work charge employees who were brought on a regular post on or after 28th November, 1988 but had died before exercising their option. In respect of these persons, the order stated that they would be deemed to have opted for pension unless the members of the family of the deceased specifically make a request that they may be paid CPF benefits due to the deceased. This order also conferred a benefit on those employees of the RSEB who had retired after 28th November, 1988 but prior to the issue of the order and had received the retirement benefits admissible under the CPF Scheme. They too were made entitled to exercise the switch-over option subject to certain conditions. As many as 2749 employees exercised their option in response to the fifth notice.

18. A sixth notice was issued by the RSEB on 8th May, 1995 extending the benefit of

the switch-over option to the existing employees till 31st March, 1996 that is for an extended period of about 320 days. It was mentioned that in case the switch-over option was not exercised, it shall be deemed that the employee has retained the existing CPF benefits. The number of options exercised in response to the sixth notice was 4460.

19. A seventh notice was issued by the RSEB on 22nd August, 1995 as a result of representations received from retired employees who desired to switch to the Pension and GPF Regulations but had failed to avail of the opportunity despite the notice dated 17th September, 1991 either because of ignorance or some erroneous understanding. The period for exercising the option was available till 30th November, 1995. The notice mentioned that pasting the seventh notice on the notice boards of the various offices of the RSEB would be treated as sufficient notice to all the retired employees of the RSEB.

20. The eighth and final notice was issued by the RSEB on 4th February, 1997 in which it was stated that all employees in regular pay scales on the cut-off date of 28th November, 1988 who could not avail the opportunity of exercising the switch-over option but who were still in the services of the RSEB could now exercise their option by 30th June, 1997. It was reiterated that those employees who could not exercise their option before the final date would be deemed to have retained the CPF benefits available to them. The RSEB received the options of 5076 employees in response to the eighth notice.

21. Eventually, on 12th March, 1999 the RSEB communicated a decision to the effect that several opportunities had been given to the employees to switch over to the Pension and GPF Regulations but despite this, representations were pouring in to allow one more opportunity to switch to the pension benefits. It was felt that it would not be desirable to provide any more such opportunities otherwise it would become a never ending exercise. Therefore, it was made clear that any request for allowing an opportunity to exercise the switch-over option would not be entertained under any circumstances.

22. In the meanwhile, a meeting of the Whole-Time Members of the RSEB and the Heads of Department was held on 4th January, 1995 in which it was decided, inter alia, that although the last date for exercising the switch-over option had expired in

1991, representations were being received to extend the date. Therefore, looking into the difficulty faced by the employees, it was decided that the facility of exercising the switch-over option would be available to the existing employees up to six months prior to the date of retirement, that is, the employee could opt for Pension and GPF Regulations while in service. According to the respondents, by virtue of this decision, such of the employees who are still in service can yet accept the switch-over option. But according to the RSEB, the decision taken on 4th January, 1995 stands obliterated by the sixth notice given on 8th May, 1995, the seventh notice given on 22nd August, 1995 and the eighth notice given on 4th February, 1997 read with the final decision taken on 12th March, 1999 closing the receipt of switch-over options.

23. At this stage, it may be mentioned that the Rajasthan Legislature enacted the Rajasthan Power Sector Reforms Act, 1999 which resulted in the Rajasthan Power Sector Reforms Transfer Scheme 2000, which in turn resulted in the unbundling of the RSEB into five companies. The five companies are owned and controlled by the Government of Rajasthan and their employees have been absorbed on the same terms and conditions governing them while they were employees of the RSEB. The unbundling of the RSEB does not have any consequence so far as the decision in these appeals is concerned but this fact is mentioned only to complete the record. For convenience, the expression RSEB refers to both the erstwhile RSEB as well as the entities post the unbundling of the RSEB.

#### Proceedings in the High Court

24. Consequent to the decision communicated on 12th March, 1999 whereby the option of switching over from the CPF Scheme to the Pension and GPF Regulations was not extended, a large number of aggrieved employees of the RSEB filed Writ Petitions in the Rajasthan High Court. In these Writ Petitions the challenge was to the closure of the switch-over option. The writ petitioners also claimed a declaration of being entitled to all the pension benefits available under the Pension and GPF Regulations upon their retirement. These Writ Petitions came to be disposed of by a learned Single Judge of the Rajasthan High Court by an order dated 28th February, 2008 with a direction that the writ petitioners may submit a representation to the RSEB voicing their grievances and the RSEB should decide the representation within a month.





represent) were not aware of the Pension and GPF Regulations and therefore, they were unable to exercise their option to switch over before its closure by the decision dated 12th March, 1999.

31. To repel this prima facie view, some of the reasons given by the respondents for not exercising the switch-over option are as follows and they form the backbone of their submissions:

They were not aware of the various notices issued from time to time since wide publicity was not given to all the notices. By way of an example, it has been mentioned that in response to a query under the Right to Information Act, 2005 it was admitted by the RSEB that the notice dated 4th February, 1997 was not received or circulated in Suratgarh. Many of the respondents were posted in remote areas of Rajasthan such as Jaisalmer, Barmer, Sirohi, Banswara etc. There were no communication facilities in these remote places and therefore they could not become aware of the notices issued by the RSEB from time to time. Many of the respondents belong to junior/technical cadres like peons, vehicle drivers, helpers, pump operators, electricians, crane operators, chowkidars etc. Given their status, it is difficult to assume that they were aware of the switch-over option.

The option letters required the respondents to specifically indicate whether they opt for continuing to remain with the CPF Scheme or they opt to switch to the Pension and GPF Regulations. This necessarily means that each employee of the RSEB was required to be individually informed of the switch-over option. Admittedly, individual notices were not sent to all the employees of the RSEB.

Issue of awareness

32. As far as the awareness of the respondents of the switch-over option is concerned, we have already mentioned that out of about 50,000 employees of the RSEB about 46,000 of them had opted to switch over from the CPF Scheme to the Pension and GPF Regulations. In other words, less than 10% of the employees did not opt to make a switch-over. These 10% employees were working with the RSEB at the relevant time and it is generally unlikely that they would have been unaware of the sea change for their monetary benefit in their terms of service with the RSEB. We can appreciate

that retired employees of the RSEB who may have shifted out of the State may possibly be unaware of the availability of the switch-over option (although that is also unlikely over a prolonged period of 8 years) but it is difficult to appreciate how a working employee of the RSEB who is in day to day touch with the organization would be unaware of the switch- over option for such a long period.

33. As regards the contention of the respondents that their lack of awareness was due to the absence of adequate publicity being given to the switch-over option, we need only mention that the chart given above indicates that even though the notice dated 4th April, 1989 did not mention anything about giving wide publicity to the switch-over option, yet more than 31,000 employees gave their option pursuant to that notice. Even thereafter, between 2,000 and 5,000+ employees exercised their option whenever the notice for exercising the switch-over option was issued. This clearly suggests to us that wide and adequate publicity was given to the various notices issued by the RBEB from time to time, even if it was not specifically mentioned in each individual notice, otherwise there could not have been such an overwhelming response to every notice resulting in as many as about 46,000 employees out of 50,000 employees of the RSEB opting to switch-over from the CPF Scheme to the Pension and GPF Regulations.

34. To rebut the presumption of their awareness, it is submitted by the respondents that all of them were posted in remote areas of Rajasthan such as Jaisalmer, Barmer, Sirohi, Banswara etc. and it is for this reason that they were not aware of the switch-over option. There is nothing to support this claim by the respondents except a bald statement. Even otherwise, the respondents were admittedly in transferable jobs and it is unlikely that each one of them continued to remain in one or the other remote area of Rajasthan for as long as 8 years from 1989 to 1997. On the contrary, it was not denied during the hearing of these appeals that the respondents had been transferred at least once during the period of 8 years when the switch- over option was available. Where they were posted from time to time “ whether in a remote area or in a not so remote area “ has not been disclosed. It is difficult to accept that the respondents were always posted in remote areas of Rajasthan We, therefore, cannot accept such a bald statement by the respondents.

35. That apart, from the rejoinder affidavit filed by the RSEB it is clear that quite a few of the respondents were posted in Jaisalmer and Barmer which are certainly not

remote parts of Rajasthan. As regards Sirohi and Banswara, it has been stated in the rejoinder affidavit filed by the RSEB that as many as 1476 employees from these (and other remote places) had exercised their option to switch-over from the CPF Scheme to the Pension and GPF Regulations. Given these facts, it is doubtful that the respondents were blissfully unaware of the existence of the Pension and GPF Regulations.

36. It was submitted by the respondents that apart from the notice dated 6th January, 1989 none of the other notices were given wide publicity and in fact the subsequent notices do not even mention that wide publicity was required to be given. It is for this reason that the respondents, located in remote areas of Rajasthan were unaware of the Pension and GPF Regulations. To support their contention that wide publicity was not given to subsequent notices, the respondents relied upon the response dated 26th November, 2007 to a query raised under the Right to Information Act, 2005 which states that the notice dated 4th February, 1997 was not received in the office of the Executive Engineer (Prot.) Ratangarh nor was it dispatched to the Assistant Engineer (Prot.) Suratgarh.

37. Reliance was also placed upon a similar letter dated 5th December, 2007 which is again with reference to the notice dated 4th February, 1997 and its receipt in Ratangarh and dispatch to Suratgarh.

38. Apart from the fact that the reference pertains to only one notice, it cannot be said that this would conclusively demonstrate or conclusively suggest that the notice dated 4th February, 1997 was not received in other parts of Rajasthan or other places close to Suratgarh. It has been stated by the RSEB in their rejoinder affidavit that so far as the office in Suratgarh is concerned, there were 4 employees who had joined service in Suratgarh post-1988 and who were automatically entitled to the benefit of the Pension and GPF Regulations and 2 persons who were similarly placed as the respondents had in fact exercised their switch-over option. Therefore, it is not that the employees in Suratgarh were completely unaware of the Pension and GPF Regulations.

39. It also cannot be assumed on the basis of the above that the employees in Suratgarh who were allegedly unaware of the Pension and GPF Regulations through the notice dated 4th February, 1997 were also not aware of the half a dozen previous notices. Additionally, these allegedly unaware persons have not been identified by the

respondents and the submission made in this regard is quite vague.

40. We have mentioned above that the reason why some employees did not switch over from the CPF Scheme to the Pension and GPF Regulations is perhaps because of reasons personal to them. But at the same time, it must be pointed out that the respondents have virtually let the cat out of the bag by an averment made by them in their writ petition filed before the High Court. The background to the averment is given below.

41. The RSEB passed an order on 23rd August, 1997 in which it was stated that the Government of Rajasthan had recently promulgated the Rajasthan Civil Services (Pension) Rules, 1996 as amended from time to time. In view of this, the RSEB decided that the pension, family pension and commutation of pension in respect of its employees would be computed under the specific provisions of the Rajasthan Civil Services (Pension) Rules, 1996.

42. In their writ petition filed in the High Court the respondents stated that by virtue of this order dated 23rd August, 1997, the calculation of pension, family pension and commutation of pension under the Pension and GPF Regulations, became more beneficial to the employees as against the provisions in the CPF Scheme. It is perhaps this computation benefit made available to the employees of the RSEB with the adoption of the Rajasthan Civil Services (Pension) Rules, 1996 that prompted the respondents to switch-over from the CPF Scheme to the Pension and GPF Regulations. Unfortunately, by that time the period for making the switch-over had expired in terms of the 8th notice dated 4th February, 1997. Therefore, since the respondents were unable to take advantage of the beneficial computation under the Pension and GPF Regulations read with the Rajasthan Civil Services (Pension) Rules, 1996 they seem to have set up a case of being unaware of the various notices issued by the RSEB from time to time over a period of 8 years.

43. All that we can infer from the conduct of the respondents is that they went along with the CPF Scheme so long as it was beneficial to them, but when the calculation of pension, family pension and commutation of pension underwent an alteration pursuant to the order dated 23rd August, 1997 the respondents had a change of heart and sought to take advantage of the revised manner of computation provided for in the Rajasthan Civil Services (Pension) Rules, 1996. We can only say that the argument of a lack of

awareness of the switch-over option appears to be nothing but a self-serving argument.

44. Another facet of this argument (which was feebly urged) is to found in Issue No.5 dealt with by the RSEB in its order dated 26th June, 2008 in the following words:

#### Issue raised

5. That the erstwhile RSEB adopted R.C.S. (Pension) Rules, 1996 of the Govt. of Rajasthan vide its order no. RSEB/F & R/F.3 (10)/D-42 dated 23.8.1997 but did not provide any opportunity to its employees for exercising option under RSEB Employees Pension Regulation, 1988.

#### Findings

##### Issue 5:

That the erstwhile RSEB through RSEB Regulations “ 1988 issued separate pension rules for their employees. But in the year 1996, Finance Department, GoR issued new Pension Rules in which computation of pension, family pension, and commutation as well as amount of pensions etc. was amended or revised. RSEB vide order No.42/23.8.1997 opted only computation for the amount of pension, family pension and commutation, other provisions of RSEB Pension Regulations, 1988 remaining unchanged. It has no relation to the option. Thus the applicants were not entitled for any re-option for pension even after the order dt. 23.8.1997. There were already given 8 opportunities to switch over to pension but they retained CPF benefits only.

45. We are in agreement with the view expressed by the RSEB that any and every change in the computation of pension or in the Pension Regulations (either of the RSEB or the Rajasthan Government) does not warrant a fresh option being offered to the respondents.

46. With regard to the submission that the respondents belong to the junior or technical cadre consisting of low paid staff such as peons, vehicle drivers, helpers etc. we need only say that, as pointed out in the rejoinder affidavit of the RSEB, about 100 of the respondents are senior level officers holding posts of Head of Office and Head

of Department with the RSEB. As per the Pension and GPF Regulations, they receive the option forms from the employees, countersign them and then forward them to the Controller of Accounts. It is extremely difficult to accept their contention that they were unaware of the switch-over option.

47. As regards the junior technical and non-technical staff, one can assume that the RSEB has a pyramidal structure of staff, with the greater strength of staff being junior technical and non-technical. If that is presumably so, then of the about 46,000 employees who have exercised their option, the majority would consist of junior technical and non-technical staff. Under the circumstances, it is difficult to believe that while such an extremely large number of employees were aware of the switch-over option, despite their lower hierarchical status, the remaining junior technical and non-technical were unaware of the availability of the switch-over option, and that too over a prolonged period of 8 years.

48. Interestingly, the issues framed in the order dated 26th June, 2008 passed by the RSEB (impugned in the High Court) does not include the alleged lack of awareness of the availability of the switch-over option on the part of the employees who made the 30 representations. This argument seems to have been raised for the first time in the writ petitions filed by the respondents. But that is not really material for a decision in these appeals.

49. Ultimately the issue boils down to the overall assessment of the awareness level of the employees of the RSEB based on the available data. Based on the facts presented before us, on a composite consideration of the facts and taking a pragmatic view of the situation, a reasonable and legitimate inference can be drawn that the respondents were aware of the notices issued for the exercise of the switch-over option but they chose not to exercise that option either for personal reasons or perhaps because it did not suit them. The position changed in the second half of 1997, by which time it was too late for them to do a rethink.

50. One of the contentions urged by the respondents as writ petitioners in the High Court was that each employee should have been individually served with each notice inviting the switch-over option. That contention was accepted by the High Court by relying upon *Dakshin Haryana Bijli Vitran Nigam and Others v. Bachan Singh*[1] but was not directly canvassed before us. In any event the decision relied upon by the

High Court was considered and distinguished in PEPSU Road Transport Corporation, Patiala v. Mangal Singh and Others.[2]

51. The contention in this regard is a bit collateral, and it is this: the switch-over option form was required to be filled up by each employee clearly indicating the option exercised “ either to continue with the CPF Scheme or to switch to the Pension and GPF Regulations. This could be done only if the option form was made available to each employee.

52. In Dakshin Haryana Bijli Vitran Nigam the instructions relating to the exercise of the switch-over option specifically mentioned that These instructions may please be got noted from all the employees and acknowledge the receipt of the letter. The appellants therein were unable to show that the instructions were actually got noted in writing by the respondent. It is under these circumstances that it was inferred that the respondent had no knowledge about the options called by the appellants. Consequently, the denial of pension benefits to the respondent was held bad.

53. In PEPSU RTC v. Mangal Singh the decision rendered in Dakshin Haryana Bijli Vitran Nigam was distinguished on facts since in the PEPSU appeal there was no condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. This Court went on to say: Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eye of the law.

54. The fact situation in the present appeals is somewhat similar. In this context, we may infer that under such circumstances, it was equally the responsibility of the respondents to collect the option forms from the concerned authority, fill them up and submit them to the competent authority. It is too much to expect that even though it was not necessary for each individual employee to be served with each notice, yet there was a duty cast on the RSEB to ensure that each employee is furnished a copy of the option form. If such a contention is accepted, it will amount to circuitously accepting that, though the employees need not individually be served the notices, yet they would have to be individually served with a copy of the option form.

55. The second substantive contention urged by learned counsel for the respondents

was that the Whole-Time Members of the RSEB had taken a decision on 4th January, 1995 to the following effect: It was brought to notice that the last date for giving option for Pension Scheme by the employees under CPF scheme had expired in 1991 and many representations were being received to extend this date. Looking to the difficulty of the employees, it was decided that the facility of opting for Pension Scheme will also be available upto 6 months before retirement to the serving employees only i.e., the employee can opt for GPF Pension Scheme while in service.

56. This decision was communicated by a letter dated 2nd February, 1995 to all concerned and according to the respondents they were now given an option to switch from the CPF Scheme to the Pension and GPF Regulations at any time upto six months prior to their retirement from service. Consequently, it was submitted that the closure of the switch-over option by the decision dated 12th March, 1999 was not justified.

57. This contention is also liable for rejection. Subsequent to the decision taken by the Whole-Time Members on 4th January, 1995 the RBEB issued a notice dated 8th May, 1995 which effectively superseded the decision taken on 4th January, 1995. In terms of the notice dated 8th May, 1995 the Chairman of the RSEB in consultation with other Whole-Time Members extended the period of exercising the switch-over option till 31st March, 1996, that is, for a period of more than 320 days. Consequently, the decision taken on 4th January, 1995 was given a go-bye or overridden and adequate time was given by the notice dated 8th May, 1995 to the employees of the RSEB to make a switch-over, in modification of the decision dated 4th January, 1995.

58. To further benefit the employees of the RSEB (and effectively confirm the demise of the decision dated 4th January, 1995) another notice was issued on 4th February, 1997 by which the Chairman of the RSEB in consultation with other Whole-Time Members extended the period of exercise of the switch-over option till 30th June, 1997. In view of these facts which demonstrate that the decision dated 4th January 1995 was no longer extant, the respondents cannot bank upon that decision in support of their contention that they can exercise the switch-over option upto six months prior to the date of retirement. The final nail in the coffin (if it was at all necessary) came through the decision dated 12th March, 1999.

59. This issue was also considered by the RSEB in its order dated 26th June, 2008 in

the following words, and we endorse that view: Issue raised 3. That all doubts and worries for submitting option for pension by the employees came to rest in the year 1995 when the WTMS and HODs of the erstwhile RSEB took a decision that the facility of opting for pension scheme will also be available upto 6 months before retirement of the serving employees only i.e. the employee can opt GPF Pension Scheme while in service. The employee will himself be allowed to give option and not his nominee after death and reliance has been placed on circular/letter no. RSEB/S/1/F.4(122)/D-155 dated 2-2-1995.

## Findings

### Issue 3:

That it is true that in a meeting of WTM, such decision was taken but it was simply minutes of discussions and was not a decision of competent Board of RSEB. In pursuance of minutes of WTM meeting it was never placed before Board for approval and no order/amendment was ever issued of the nature of WTM minutes. Therefore, it has never been implemented. The applicants have no right to raise it after lapse of long period of 13 years. However, even after this decision, general decision was taken by Board of RSEB to further give opportunity mentioned hereinunder to opt for pension and GPF, thus, the WTM decision was superseded.

No. RSEB/F&R/F.(Pen)/D.35 dated 8.5.1995

No. RSEB/F&R/F.(Pen)/D.61 dated 22.8.1995

No. RSEB/F&R/F.(Pen)/D.9 dated 4.2.1997

Thus, the decision of WTM required approval of competent Board on such policy matters. Further Management vide letter/notice/order dated March 12, 1999 clarified that the date of option has been closed and no requests will not be considered. Therefore, the applicants cannot now take the excuse of WTM decision of the year 1995 after lapse of a long period of 13 years as sufficient opportunities have already been given.

60. The final question that arises for consideration relates to the right, if any, of the respondents to exercise the switch-over option at any point of time or to have it kept alive by the RSEB for an indefinite period or at least till the superannuation of the respondents.

61. In this regard, the definition of ~option occurring in Regulation 2(o) of the Employees General Provident Fund Regulations, 1988 is important. An ~option requires a written consent of the existing employee to either continue with the CPF Scheme or to opt for the GPF Scheme within a period of 90 days from the commencement of the GPF Regulations. The period of 90 days commences with the GPF Regulations coming into force with effect from 28th November, 1988. The definition also provides that an employee who does not exercise the option within the period of 90 days shall be deemed to have exercised his option in favour of the existing CPF Scheme. It is also provided that it will be the personal responsibility of the concerned employee/officer to ensure that his option reaches timely in the office of the COA (P&F), RSEB, Jaipur. In other words, not only is a time limit statutorily prescribed by the GPF Regulations for exercising the option, but a responsibility has been cast on the employee to ensure that his option reaches the concerned authorities within the time prescribed.

62. Regulation 2(o) of the Employees General Provident Fund Regulations, 1988 reads as follows:-

Option means a written consent of the existing employee to become either member of the Employees General Provident Fund Scheme, 1988 or to continue as member of the existing CPF/FPF scheme covered under the EPF Act, 1952 within a period of 90 days from the date of commencement of Employees General Provident Fund Scheme, 1988 by the RSEB. Any existing employee who does not exercise the option within specified period of 90 days shall be deemed to have exercised option in favour of the existing CPF/FPF Schemes covered under the provisions of Employees Provident Fund Act, 1952. The option once exercised or deemed to have been exercised shall be considered as final and no representation in this respect shall be considered valid for any revision. It will be the personal responsibility of the concerned employee/officer to ensure that his option reaches timely in the office of the COA (P &F), RSEB, Jaipur. Provided that a Board employee who is on that day out of India/within

India on leave or deputation or foreign service or under suspension, may exercise option within one month from the date he takes over the charge of the post, in case he does not get any intimation for exercising option, within one month from the date he is required to exercise it.

63. Notwithstanding the aforesaid Regulation providing for a time limit of 90 days for exercising the switch-over option, the appellant administratively continued to give one opportunity after another to the employees of the RSEB to exercise their switch-over option. This continued for a period of 8 years and during that period if an employee chose not to exercise his option, it was deemed that he would continue to avail the benefits under the CPF Scheme. Consequently, if this had any adverse financial impact on the employee in the long run (and realized by him in 1997-98), he had no one else but himself to blame.

64. As regards the Pension Scheme, the admitted position is that an employee could not continue with the CPF Scheme and also avail the benefits of the Pension Scheme under the Employees Pension Regulations, 1988. However, an employee could avail of both the GPF Scheme as well as the Pension Scheme.

65. The Employees Pension Regulations, 1988 also defines ~option in Regulation 3(1) thereof. ~Option means a written consent of the existing employee for either availing the pension and gratuity benefits or to continue to be a member of the CPF Scheme. In other words, a switch-over option was made available to the employee under the Pension Regulations as well.

66. Regulation 3(1) of the Employees Pension Regulation, 1988 reads as follows:

Option means a written consent of the existing regular employee for Pensionary and Gratuity benefits on the same lines/Rules as are being allowed to the employees of erstwhile employees of the E & M Department opted Board service with Pensionary benefits or to continue to be the member of the CPF/EPF with benefits of RSEB Gratuity Rules, 1972 or Jodhpur CPF Scheme with benefit of gratuity under the Gratuity Act, 1972. Note :- Any person who is not covered under the definition of employee shall not be entitled to opt for pensionary and gratuity benefits as per Board/Govt. rules/regulations.

67. When the Pension Regulations and the GPF Regulations are read together, the necessary conclusion is that an employee must give his option for either continuing to be a member of the CPF Scheme or to switch over to the Pension and GPF Regulations. This option has to be exercised within a period of 90 days from the cut-off date, that is, 28th November, 1988. But the RSEB, in its wisdom, chose to extend the time for exercising the switch-over option over a period of 8 years by giving several opportunities to the employees through its notices.

68. The right of an employee to switch over was, therefore, limited in time by the Pension and GPF Regulations. However, administrative orders issued by the RSEB from time to time extended the period for exercising the option. No employee had any inherent right to either demand an extension of the period for exercising the switch-over option or claim a right to exercise the switch-over option at any time prior to his retirement, and no such right has been shown to us.

69. But, learned counsel for the respondents finally submitted that pension is not a charity or a bounty and an employee is entitled to earn his pension. There can be no doubt about this proposition but when two schemes are available to an employee, one being the CPF Scheme and the other being the Pension Scheme, it is for the employee to choose the scheme that he feels more comfortable with and appropriate for his purposes. No employee can switch over back and forth from one scheme to another as per his convenience. Once an employee has chosen to be a part of a particular scheme, he continues to remain a member of that scheme unless an option to switch over to another scheme is given to him.

70. Insofar as the present appeals are concerned, the respondents who are members of the CPF Scheme were given several opportunities of switching over to the Pension Scheme and the GPF Scheme under the Pension Regulations and the GPF Regulations respectively but they chose not to do so. The question whether under these circumstances pension is a bounty or a charity becomes completely irrelevant. The entitlement to pension was available to the respondents but they chose not to avail the entitlement for reasons personal to them. Having taken a decision in this regard the respondents cannot now raise an argument of pension not being a bounty and therefore requiring the RSEB to give them another option to switch over to the Pension and GPF Regulations.

71. Under the circumstances, we find no merit in the contentions urged by the respondents and consequently, the appeals of the RSEB deserve to be allowed.

Civil Appeal No.7503/2014 (Arising out of SLP (C) No.30577 of 2012 (from Civil Special Appeal (Writ) No.248 of 2012 in CWP No.13401 of 2008)

72. In this appeal, it is submitted by learned counsel that the facts are slightly different from the rest of the appeals. It was submitted that the writ petitioner had submitted his option on 20th February, 1996 and that was forwarded to the concerned authorities on 6th March, 1996.

73. By a letter dated 10th April, 1996, the writ petitioner was informed that since his option was conditional, it could not be accepted. The writ petitioner responded to this by making a representation dated 20th April, 1996 to the effect that there was no condition attached to the exercise of option. Nevertheless, he clarified that the alleged condition may be treated as deleted and his option form may be considered. However, it appears that the option form of the writ petitioner was not considered by the concerned authorities and that led him to file a writ petition in the Rajasthan High Court.

Civil Appeal No.7570/2014 (Arising out of SLP (C) No. 9990 of 2013 (from Civil Special Appeal (Writ) No. 237 of 2012 in CWP No. 1079 of 2008)

74. Learned counsel submitted that the writ petitioner gave his switch- over option well in time and in fact deductions from his salary had been made under the GPF Scheme for several months thereafter.

75. It appears that the reason for not accepting the option given by the writ petitioner was that he had taken a housing loan under the CPF Scheme and was requested by a letter dated 18th March, 2000 to return the amount so that his switch-over option could be considered. Since he failed to do so, his option was not accepted. The writ petitioner denied receipt of the letter dated 18th March, 2000 and reiterated that deductions had been made from his salary under the GPF Scheme.

Civil Appeal No.7564/2014 (Arising out of SLP (C) No. 9983 of 2013 (from Civil Special Appeal (Writ) No.257 of 2012 in CWP No. 12230 of 2009)

76. It is submitted that the writ petitioner exercised his option in 1996 and that was forwarded to the competent authority by his controlling officer (Executive Engineer at Bhilwara) by a letter dated 30th March, 1996. Though the option form was received well within time, it was not accepted.

77. The entire facts of these cases are not before us nor has the learned Single Judge of the High Court specifically discussed these cases.

78. Consequently, we are not in a position to give any decision in these cases in view of the absence of full facts. We are of the view that the more appropriate course of action to adopt in these matters would be to remand them to a Single Judge of the High Court for fresh consideration on merits after hearing the writ petitioners and the RSEB.

79. No other distinct or partially dissimilar case was pointed out to us by any learned counsel although the learned Single Judge has made a reference to a few of them.

#### Conclusion

80. All the appeals are allowed but with no order as to costs. Insofar as Civil Appeals arising out of SLP (C) No.30577 of 2012, SLP (C) No.9990 of 2013 and SLP (C) No.9983 of 2013 are concerned they are remitted to a Single Judge of the High Court for a fresh consideration on merits.

[1]

[2] (2009) 14 SCC 793

[3]

[4] (2011) 11 SCC 702