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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6807/2021

DEBASIS DAS GUPTA AND ORS. .....Petitioners

Through: Mr. S.P. Saxena, Advocate.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Ms. Archana Gaur, CGSC with Ms. Ridhima Gaur, Mr. Deepu Kumar, Advocates for R-1 to 3.
Mr. L.R Khatana, Advocate for R-4, 5.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 13.03.2026

1. The case, notwithstanding the volume of pleadings and documents, reveals a dispute that is not difficult to identify. It is, in fact, simple in outline, though not in consequence.

2. A group of former employees, and in some cases the legal heirs of former employees, of the Export Inspection Council ["*EIC*"] and its Export Inspection Agencies ["*EIAs*"], contend that they were denied pension under the Central Civil Services (Pension) Rules, 1972 ["*CCS (Pension) Rules*"], despite serving in an establishment to which, according to them, that regime had been extended.

3. The Petitioners' case rests on one central proposition. They assert that with the framing of the Export Inspection Council Pension and General Provident Fund Rules, 1981 ("*1981 Rules*"), read with the Office

Memorandum dated 1st May, 1987, employees in service on the relevant date stood brought under the pension regime unless they consciously elected to remain under the Contributory Provident Fund ("*CPF*") scheme. The 1981 Rules are said to incorporate and extend the CCS (Pension) Rules within the organisational framework. It is further contended that, following the statutory changes of the mid-1980s, the CPF regime itself stood replaced and did not survive except to the extent of past accruals. On this basis, the Petitioners plead, in categorical terms, that none of them exercised any option to continue under CPF and that they must therefore be treated as having been governed by the pension regime.

4. The Respondents resist the claims on multiple grounds. They submit that the employees of the EIC and EIAs were not government servants as such, and that their service conditions were governed by a distinct framework under the CPF scheme. The question, according to them, must be determined strictly in accordance with the rules applicable to the organisation. In particular, reliance is placed on option forms of 1987 indicating that the Petitioners elected to continue under the CPF scheme, as well as on the retiral or terminal benefits accepted by them at the time of exit. It is further contended that the present writ petition, instituted in 2021, suffers from considerable delay.

5. The real dispute, therefore, concerns the service regime applicable to these employees and the legal effect of the choices attributed to them. The EIC is a statutory body constituted under the Export (Quality Control and Inspection) Act, 1963, and the EIAs function within the same statutory framework. The controversy ultimately turns on whether the Petitioners stood governed by the pension regime by default, as claimed, or whether

they elected to continue under CPF, as asserted by the Respondents.

6. At this stage, it must also be noted that the petition proceeds as though all eleven Petitioners stand on one common footing and seek a common relief. The record does not bear this out. Some Petitioners were retrenched in 1991; some continued in service and retired later on superannuation; at least one claim arises out of an exit under a Special Voluntary Retirement Scheme; and some claims are now pursued by legal heirs. What appears, at first sight, to be a common pension dispute is, on closer scrutiny, a cluster of claims resting on distinct service histories and modes of exit. The case must, therefore, be approached with that distinction in mind.

7. It is in this backdrop that the petition encounters its first difficulty. The Respondents have placed on record option forms in respect of the cases of the first ten Petitioners, each purporting to record an election to continue under the CPF scheme in terms of the Office Memorandum dated 1st May, 1987. These are not stray or general references; they are Petitioner-specific documents bearing names, designations, dates, and signatures.

8. The petition, however, proceeds on an unqualified plea that no such option was ever exercised by any of the Petitioners. That pleading does not withstand the record in its present form.

9. Once the Respondents produced the option forms, it became necessary for the Petitioners to meet them directly, whether by disputing their authenticity, attribution, legal validity, or the circumstances of their execution. A general denial is insufficient. The Court cannot proceed as though these documents do not exist.

10. One feature in the petition itself makes the position even more difficult for the Petitioners. Petitioner No. 2 is shown to have sought a

changeover from CPF to GPF and pension, which request was rejected by EIA by memorandum dated 9th October, 1991. This sits uneasily with the sweeping plea that none of the Petitioners ever remained under the CPF scheme after 1987. A request for changeover in 1991 assumes that, at least until then, the employee stood treated under the CPF scheme.

11. Once this position emerges, much of the argument based on the principle of deemed conversion loses force. The principle itself is not in dispute. Where the governing scheme deems an employee to have come under pension regime unless he opts to remain under CPF, the legal fiction must be given due effect. However, that principle applies only to those who did not exercise a valid option. It cannot be invoked to negate an option that has, in fact, been exercised. On the present record, the Petitioners have not crossed that threshold.

12. The Petitioners' further submission, however, is that the CPF regime itself stood extinguished upon the statutory changes of the mid-1980s. This does not carry the matter further. Even if it is assumed that the governing framework shifted in favour of pension regime, the scheme as it emerged still preserved the element of choice for employees then in service. The question, therefore, remains one of election. Where an employee is shown to have exercised an option to continue under the CPF scheme, that election cannot be ignored by invoking a generalised theory of automatic transition.

13. The Petitioners then turn to the contemporaneous material of 1991, including the EIC internal note dated 5th April, 1991 and, in particular, the EIC letter dated 20th August, 1991, and seek to build upon it a broader submission that the Respondents themselves had approved pensionary benefits even for employees then being rendered surplus. This part of the

case has been overstated. The documents, read as a whole, do not support such a general proposition. The letter dated 20th August, 1991, on which principal reliance is placed, for sake of convenience, is extracted below:

> *"The surplus employees of EIA-Calcutta who have been reverted to the lower posts, whether transferred to out-station vide this office order dated 06-08-199l or not and also the employees who have been posted to out-station vide order dated 06.08.1991, may, if they so desire, avail of the following terminal benefits by quitting EIA service:*
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> *(i) Lump-sum retrenchment compensation @ one and half month emoluments for each completed year of service and Gratuity @ half months emoluments for each completed year of service in lieu of gratuity, if admissible under Export Inspection Death-cum Retirement Gratuity Rules,1981, subject to the condition that the amount shall not exceed the amount which employee would have drawn for the period of his service in his existing post from the date of issue of reversion/termination order till he retires on attaining the age of superannuation, as emoluments: (ii) Encashment of earned leave at his credit subject to a ceiling of 240 days;* ***(iii) Full matching CPF contribution from EIA side, if governed by EIC Contributory Provident Fund (CPF) Rules,1986; and (iv) Pension as per rules if he is governed by Export Inspection Council, Pension and General Provident Fund Rules, 1981, Commutation of pension up-to 1/3rd of the prorate pension will be admissible.****"*
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> [Emphasis Supplied]

14. The above extract makes the position clear. The contemporaneous record preserves the distinction between the two regimes: it provides for full matching CPF contribution in the case of those governed by the CPF scheme, and pension as per rules in the case of those governed by the 1981 Rules. Thus, both regimes continued to be recognised, with benefits structured according to the governing scheme applicable to each employee.

15. A further difficulty arises from the nature of part of the material on which the Petitioners rely. The notes dated 13th November, 1991 and 27th November, 1991 are in the nature of internal file notings and administrative observations made at different levels. Such material may explain the

movement of a proposal within the department; it does not, by itself, constitute a binding or enforceable decision. Unless a noting culminates in an operative order issued by the competent authority, no legal right can be founded upon it. The Petitioners, therefore, cannot treat these internal documents as though they were conclusive governmental determinations.

16. It is also necessary to separate out the case of Petitioner No. 11. The record placed by the Respondents contains the office order dated 19th July, 1994, accepting the request of Subrata Sanyal for voluntary retirement under the Voluntary Retirement Scheme, with retirement taking effect from that date. The further order dated 2nd December, 1994 sanctions the benefits under that scheme as a one-time full and final settlement. The components are clearly spelt out. They include gratuity, encashment of leave, *ex gratia* pay, notice pay, and 100% commutation of pension. This is not a case of retirement followed by an unexplained denial of pension in the usual course. It is a structured exit under a special package, followed by quantified settlement of all dues thereunder.

17. The decisions relied upon by the Respondents assume significance in that context. This Court, in ***Shiv Prakash Saxena & Ors. v. Union of India & Ors.***[1], declined to reopen claims arising from the special voluntary retirement scheme once the concerned employees had accepted its benefits and acted on that footing. The said decision has not been interfered with by the Supreme Court in Civil Appeal No. 8226/2016, though the question of law urged was left open. The same line of reasoning has been applied by this Court in the recent decision of ***Himansu Biswas & Ors. v. Union of India &***

[1] W.P.(C) 10212/2015, decision dated 2nd November, 2015.

Ors.[2]. In the present case, Petitioner No. 11 exited under a special scheme, accepted the package, and allowed years to elapse thereafter. Such a claim cannot now be reopened as though the original position continued unaffected.

18. The same considerations also bear upon the plea of delay in the present case. This is not a petition brought within a reasonable period after the impugned action. The service relationship of the Petitioners ended at different points between 1991 and 2015. Those who were retrenched accepted the compensation and terminal payments then offered. Those who retired on superannuation did so years ago. Those who exited under the special scheme accepted that package. This petition was instituted in 2021. The intervening representations of 2020 and 2021 do not alter that position. Repeated representations do not revive a dead or stale claim, nor do they furnish a fresh cause of action where the underlying grievance had long since crystallised.[3]

19. It is true that a claim to pension may, in a proper case, be presented as a continuing claim. But that principle assists only where the claimant first establishes the underlying entitlement. It does not come to the rescue of the Petitioners since the foundational claim itself is in serious doubt. Clearly, the Petitioners elected a different regime, accepted terminal settlement under that regime, and allowed decades to pass before approaching the Court.

20. The Petitioners have also sought support from the judgment of the Bombay High Court in ***Amita Ajit Desai & Ors. v. Union of India & Ors.***[4]. That judgment undoubtedly proceeds on the footing that employees who

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[2] W.P.(C) 13801/2021, decision dated 16th October, 2025.
[3] See: ***Union of India & Ors. v. M.K. Sarkar*** (2010) 2 SCC 59.

were in service on the relevant date and had not validly remained under CPF scheme would be governed by the pension scheme, with adjustment of the employer's CPF contribution. The difficulty for the present Petitioners is more elementary. They cannot claim the benefit of that ruling without establishing factual parity. On the record before this Court, that parity is not shown. The Respondents have produced option forms in respect of ten Petitioners. Petitioner No. 11 stands on an altogether different footing under the 1994 scheme. In ***Amita Ajit Desai***, the option exercised by the employees pertained to the earlier regime, and no option was exercised pursuant to the Office Memorandum dated 1st May, 1987, thereby attracting the deeming fiction under that Memorandum. In the present case, however, the material on record indicates that the Petitioners exercised options in terms of the very Office Memorandum of 1987. Thus, the decision in ***Amita Ajit Desai*** is not applicable in the facts of the present case.

21. There is another aspect of the matter, namely, whether the employees of the EIC and its agencies are to be equated with government servants. The Respondents assert that the organisation is an autonomous statutory body and that Central Government rules do not apply *proprio vigore* merely because the body functions under the administrative control of the Union. The Petitioners, on the other hand, are right to the extent they point to service conditions and the CCS (Pension) Rules having been adopted within the organisation's governing framework. The Court, however, does not consider it necessary, for the purposes of the present case, to enter into a wider doctrinal debate on this issue. Even assuming, in the Petitioners' favour, that the pension regime stood extended in principle to employees of

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[4] WP No. 1331/2017, decision dated 17th January, 2019.

EIC/EIAs, the Petitioners must still establish that they were governed by that regime and did not elect to remain outside it. On the record, they have failed to do so.

22. For those Petitioners who were retrenched in 1991, the matter is even more difficult. They accepted the terminal benefits then offered, including retrenchment compensation and related dues, and allowed the position to stand for decades. The present attempt is to reopen that chapter by reading the 1991 documents as though they conferred an unqualified right to pension regardless of the governing regime of the employee concerned. The documents do not bear that meaning.

23. For those who later retired on superannuation, the difficulty lies elsewhere. Their claim is not defeated merely because they retired in the ordinary course. It fails, on the present record, because the Respondents have produced option forms showing continuance under the CPF scheme, and the Petitioners have not furnished a satisfactory answer to those forms. Without first displacing those documents, the claim to automatic migration into pension cannot be accepted.

24. For those who left under the special voluntary retirement route, the claim is weaker still. The scheme was a one-time special package. The benefits thereunder were quantified and released. In the case of Petitioner No. 11, the record also shows full (100%) commutation of pension. Such a case cannot be recast, decades later, as though the employee had simply retired under the ordinary pension rules and was then denied what was otherwise due.

25. Once the case is seen in that light, the Petitioners' reliance on the principles of equality under the Constitution also loses force. There can be

no parity between persons who are not similarly placed in fact or in law. An employee who continued under the CPF scheme cannot claim parity with one who did not. An employee who took a special voluntary retirement package cannot claim parity with one who retired on superannuation in the ordinary course.

26. The Petitioners have therefore failed to establish any enforceable right to the mandamus claimed.

27. Accordingly, the petition is dismissed.

SANJEEV NARULA, J

MARCH 13, 2026
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