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

***Reserved on : 24 January 2025***
***Pronounced on : 18 March 2025***

\+ W.P.(C) 2966/2016

DELHI TRANSPORT CORPORATION .....Petitioner
Through: Mrs. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Adv.

versus

ANIL LUTHRA .....Respondent
Through: Mr. Yudhvir Singh Chauhan and Mr. Aditya Sharma, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE C. HARI SHANKAR**
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT**

**% 18.03.2025**

**C. HARI SHANKAR, J.**

**The Issue**

**1.** The Delhi Transport Corporation[1], by this writ petition, challenges orders dated 23 December 2015 in OA 31/2015[2] and order dated 8 February 2016 in RA 32/2016[3], passed by the Central Administrative Tribunal[4].

[1] "DTC", hereinafter
[2] **Anil Luthra v DTC**
[3] **DTC v Anil Luthra**
[4] "the Tribunal", hereinafter

**2.** The issue in controversy is short, but recurring. Till 27 November 1992, all employees of the DTC were covered by the Contributory Provident Fund Scheme[5]. *Vide* Office Order dated 27 November 1992[6], the DTC introduced the GPF[7]-cum-Pension Scheme[8]. The respondent claims that, by virtue of para 9 of the 1992 Office Order, he is deemed to have switched over from the CPF to the Pension Scheme. The DTC does not dispute this argument on principle, but submits that, as the respondent continued to pay his contribution towards CPF, and the DTC, too, paid its share of the CPF contribution, the benefits of which have been reaped by the respondent on his retirement, he cannot now claim the benefit of the Pension Scheme.

**3.** The Tribunal has allowed the respondent's claim. The DTC is aggrieved thereby.

**4.** This Court is, therefore, only required to decide whether the respondent is entitled to the benefit of the Pension Scheme or would continue to be governed by the CPF Scheme.

**5.** The Tribunal has held the respondent to be entitled to the benefit of the Pension Scheme on the basis of para 9 of the 1992 Office Order issued by the DTC which stipulated that, if an employee did not exercise his option for continuing under the CPF Scheme

[5] "CPF Scheme", hereinafter
[6] "the 1992 Office Order" hereinafter
[7] General Provident Fund
[8] "the Pension Scheme" hereinafter

within 30 days of the Office Order, he would be deemed to have switched over to the Pension Scheme. The contention of the DTC is that even in the case of such a non-optee, if the employee continued to contribute to the CPF and, on his retirement, availed CPF benefits, he could not claim to be a deemed pension-optee thereafter. The plea, therefore, is essentially one of acquiescence and estoppel.

**Our View**

**6.** To our mind, though there was some amount of flux in the legal position as on the date of rendition by the Tribunal of the impugned orders, the legal position now stands crystalized by the judgment of the Supreme Court in ***University of Delhi v Shashi Kiran***[9]. The Supreme Court has, in clear and unequivocal terms, held that *failure, on the part of the employee, to exercise his option to continue under the CPF Scheme within the period stipulated in the Office Order/Notification would result, ipso facto, in his being deemed to have switched over to the Pension Scheme. This being an express legal consequence envisaged by para 9 of the 1992 Office Order of the DTC, the fact that such a non-optee availed CPF benefits thereafter, would make no difference. At the highest, the establishment – in the present case, the DTC – could require the employee to return the CPF benefits availed by him.* The mandate of para 9 of the 1992 Office Order has been held to be clear and inexorable.

**7.** With this brief prefatory recital, we may turn to the controversy in issue.

[9] **(2022) 15 SCC 325**

**Facts**

**8.** The respondent Anil Luthra joined the services of the DTC on 2 June 1969 and retired on 30 September 2011, after rendering 42 years of service.

**9.** At the time when the respondent joined service, there was no Pension Scheme applicable in the DTC. All employees were covered by the CPF Scheme, which was in operation and whereunder contributions were made to the CPF account of the employee by the employee and the organization (i.e. the DTC), which would enure to the benefit of the employee at the time of his superannuation. There is no dispute about the fact that the respondent and the DTC were paying their respective contributions to the CPF account of the respondent during his entire service career.

**10.** While the respondent was in service with the DTC, the DTC issued the 1992 Office Order, introducing the Pension Scheme for its employees, as had already been introduced in respect of Central Government Employees. The Office Order deserves to be reproduced in *extenso* thus :

> "No.Adm-I-5(4)/92 Dated 27.11.92
>
> **Sub: Introduction of Pension Scheme in DTC as applicable to the Central Govt. Employees**
>
> The introduction of Pension Scheme for the employees of the DTC has been sanctioned by the Central Govt. and conveyed by the M.O.S.T. vide letter No.RT-12019/21/88-TAG dated 23.11.92 as the same pattern as for the Central Govt. employees

subject to the following conditions:

1. The Pension Scheme would be operated by the LIC on behalf of DTC.

2. The date of effect of Pension Scheme would be 3.8.1981.

3. *All the existing employees including those retired w.e.f. 3.8.1981 onwards would have the option to opt for the Pension Scheme or the Employees Contributory Provident Fund as at present, within 30 days from the date of issue of this O.O. for the implementation of the Pension Scheme as approved by the Govt. of India.*

4. The Pension Scheme would be compulsory for all the new employees joining DTC w.e.f. 23.11.92, the date of sanction of the Scheme.

5. The Pension Scheme would be operated by the LIC on behalf of DTC. The employees share in the EPF A/c of the DTC employees, who opt for Pension Scheme would be transferred to the LIC, for operating.

6. The employees who have retired on or after 3rd August 1981 and the existing employees, who have drawn the employer's share, under the EPF Act, partly or wholly shall have to refund the same with interest in the event of their opting for the Pension Scheme. The total amount to be refunded by the retired employees/existing employees would be the amount that would have accrued, had they not withdrawn the employer's share.

7. Excess amount of gratuity, if already paid to ex-employees and which is not admissible under the Pension Scheme, will have to be refunded by them before any benefit under the Scheme, is granted to them.

8. A due and drawn statement would be prepared in respect of retired employees opting for Pension Scheme and the amount to be paid/refunded, would be worked out by the concerned unit, wherefrom the employee had retired from service.

9. *If any of the employee of DTC. who does not exercise any option within the prescribed period of 30 days or quits service or dies without exercising an option or whose option is incomplete or conditional or ambiguous, he*

*shall be deemed to have opted the Pension Scheme Benefits.*

Application forms for exercising option would be available with the Unit Officers and all employees including retired employees wishing to exercise option, should do so with the Unit of their present working/where from they retired, within a period of 30 days from the date of issue of this Office Order.

The Unit Officers, after receiving the options from the ex-employees, will take further necessary action for getting the necessary forms completed, which will be supplied to them by the LIC for pension, etc. They will also ensure the recovery of EPF and Gratuity from the ex-employees before forwarding their applications as mentioned above. The cases of all officers will be dealt with at Headquarters.

The options received from the existing employees for not opting Pension may be kept in their Personal file and entry made in their Service Book."

(Emphasis supplied)

**11.** Admittedly, the respondent did not exercise any option, one way or the other, that is, to continue under the CPF Scheme or to switch over to the Pension Scheme, within the period of 30 days, envisaged in the 1992 Office Order.

**12.** Ms. Ahlawat, learned Counsel for the DTC, pointed out that the implementation of the Pension Scheme in the DTC was undertaken by the Life Insurance Corporation[10] and that, as there was some hiccup on that front, the date for exercising option in terms of para 9 of the 1992 Office Order was extended till 1995. It is not in dispute, however, that, even till 1995, the respondent did not exercise any option in terms of the 1992 Office Order.

[10] "the LIC", hereinafter

**13.** On 28 October 2002[11], the DTC, once again, invited options from persons who wished to switch over from the CPF Scheme to the Pension Scheme. The Office Order read thus :

DELHI TRANSPORT CORPORATION
GOVT. OF N.C.T. OF DELHI
I.P. ESTATE: NEW DELHI

No./Pen.Cell/Option/2002/440 Dated: 28.10.2002

OFFICE ORDER

In compliance of the orders conveyed by Sh. Abhijit Sarkar, Secretary to Minister (Transport), Tourism and Power, Govt. of N.C.T. of Delhi vide letter No. PA/MOTTP/2002/11117 dated 4.10.2002, it has been decided that the option from all the existing employees including those who are covered under the RPFC Scheme may obtain in the following conditions:

i) All the existing employees who are not covered under the existing DTC Pension Scheme may exercise their option in writing in case desire to opt DTC Pension Scheme.

ii) The employees who have drawn the employer's share under the EPF Act, partly or wholly shall have to refund the same with interest in the event of their opting for the DTC Pension Scheme. The total amount to be refunded by the employees would be the amount that would have accrued, had they not withdrawn the employer's share.

iii) Inviting/exercising option shall be provisional and subject to exemption from the RPFC and refund the amount held with them. In case, no exemption is received from RPFC, this option shall become redundant, and the status of an employee shall be the same as is before the issue of these orders.

iv) The Unit Officers / Depot Managers after receiving the Options, shall send the list of existing employees who exercised their option in favour of DTC Pension Scheme to the Pension Cell within a week of closing the date of option.

[11] "the 2002 Office Order" hereinafter

v) All employees who are roll of the Corporation on the date of issue of this Office Order shall be eligible to opt DTC Pension Scheme and to exercise their option within 30 days from the date of issue of this Circular.

After receiving the list of employees exercising their option in favour of DTC Pension Scheme, the matter would be examined. The decision of management shall be final.

Sd/-

(Ramesh Chander)
Addl. Chief Accounts Officer"

**14.** Within the time provided in the 2002 Office Order, the respondent exercised his option to switch over to the Pension Scheme. One of the issues that would arise for consideration is whether the exercise of this option has any meaning at all, if the respondent was already a deemed pension optee by virtue of para 9 of the 1992 Office Order.

**15.** DTC, however, contends, as would be noted hereinafter, that the 2002 Office Order remained in an inchoate stage, and was never implemented.

**16.** As already noted, the respondent superannuated on 30 September 2011.

**17.** Prior thereto, on 1 August 2011, the respondent addressed the following communication to the Senior Manager (PLD), DTC:

"Sr. Manager (PLD)
DTC, I.P. Estate,
New Delhi

Sub: Application for the grant of withdrawal of 90% from the C.P.

Fund under para 68NN.

Madam,

You are requested to sanction 90% of C.P.F. contribution as per the notification issued by the Admn. Deptt. vide No. AdmI-5(41)/96 dated 2.12.1996. May particulars are given hereunder:

1. Name : Anil Luthra
2. Father Name : Shri J.R. Luthra
3. Designation : Deputy Manager (Pers.)
4. Token No. : 290
5. Date of Birth : 07.09.1951
6. Date of Appointment : 02.06.1969
7. Date of Retirement : 30.09.2011
8. *Pension Opted/Not Opted* *: Not Opted*
9. Date of last non-refundable advance drawn : 08.10.2010
10. Date of last refundable advance drawn: ----

I declare that the above particulars are true to be best of my knowledge and I will abide by the conditions governing to the grant of withdrawal under DTC EPF Amendment Scheme 1996.

Encl: Photocopies of Pay Slip & Cheque

Sd/-

Signature of the applicant"

(Emphasis supplied)

**18.** In these circumstances, the respondent approached the Tribunal by way of OA 31/2015, praying for a direction to DTC to release, to the respondent, pensionary entitlements under the Pension Scheme, along with commutation of pension from the date of his superannuation, and interest. It was contended, in the said OA, that, as the respondent had never opted out of the Pension Scheme, and had exercised his option for being extended the benefit of the Pension Scheme within the period envisaged in the 2002 Office Order, the respondent was entitled to pension. It was further submitted that, on his superannuation, the respondent had requested the DTC not to

release the Management's share of the CPF, but that the DTC had nonetheless credited the amount to the respondent's account. In any event, submitted the respondent, the 1992 and 2002 Office Orders provided that, if the employee had withdrawn, wholly or in part, the management's share of the CPF, he would have to deposit the amount with interest, in the event of pension being granted to him.

The Impugned Orders dated 23 December 2015 in OA 31/2015 and dated 8 February 2016 in RA 32/2016

**19.** Before the Tribunal, the DTC submitted that, as the respondent had not opted for the Pension Scheme pursuant to the 1992 Office Order, he was not entitled to its benefit. On his superannuation, the DTC had paid, to the respondent, the DTC's share of CPF.

**20.** The Tribunal holds, in the impugned order dated 23 December 2015 in OA 31/2015 that, as the respondent had not exercised the option to continue under the CPF Scheme within the period envisaged in the 1992 Office Order, the respondent, by operation of para 9 thereof, was deemed to have switched over to the Pension Scheme. Prior to his retirement, the respondent, on 19 September 2011, represented to the DTC, requesting that pension be released to him. Without deciding this representation, the DTC deposited, in the respondent's account, the DTC's share of the repsondent's CPF. In these circumstances, the Tribunal held that the respondent could not be denied the benefit of the Pension Scheme. Following these conclusions, the Tribunal has directed the DTC to pay, to the respondent, pension in accordance with the Pension Scheme, from the

date following his retirement, with arrears, and has directed the respondent to refund, to the DTC, DTC's share in the respondent's CPF, which stands credited to the respondent's account, within two months.

**21.** The DTC filed RA 32/2016 seeking review of the order dated 23 December 2015 passed in OA 31/2015. By order dated 8 February 2016, the Tribunal dismissed RA 32/2016, holding that no case for review was made out.

**22.** Aggrieved thereby, the DTC has approached this Court by means of the present writ petition.

**Rival Contentions**

**23.** We have heard Ms. Avnish Ahlawat, learned Counsel for the DTC and Mr. Yudhvir Singh Chauhan, learned Counsel for the respondent at length.

**24.** Mrs. Ahlawat has made following submissions, in support of the writ petition:

(i) The Tribunal erred in adjudicating on the respondent's OA on the basis of the 1992 Office Order, whereas the OA was entirely predicated on the subsequent 2002 Office Order. The respondent never set up a case, in his OA, of being entitled to be treated as a deemed pension optee under the 1992 Office Order.

(ii) Reliance was placed, in this context, on the letter dated 1

August 2011, addressed by the respondent to the Senior Manager (PLD), DTC, reproduced *supra*. Mrs. Ahlawat points out that, in the said letter, the respondent had admitted that he had not opted for pension. He could not, therefore, now seek to contend that he was a deemed pension optee. In fact, according to Mrs. Ahlawat, this letter indicated that the respondent had opted out of the Pension Scheme.

(iii) Reliance is also placed, by Mrs. Ahlawat, in this context, on an entry made in the respondent's service book, reading "not opted". Though she is unable to inform the Court regarding the person who made the said entry, she submits that the entry would also indicate that the respondent was not a pension optee.

(iv) There was no averment, in the OA filed by the respondent, asserting that he was a deemed pension optee under the 1992 Office Order. He, in fact, claimed to be a pension optee in terms of the 2002 Office Order, which itself belies his case that he was a deemed pension optee under the 1992 Office Order. The 2002 Office Order was merely provisional and was never implemented. As such, the respondent had no enforceable right in law to be treated as a deemed pension optee.

(v) If the respondent was, in fact, a deemed pension optee under the 1992 Office Order, there was no cause for him again opting for the Pension Scheme in terms of the 2002 Office Order.

(vi) In support of her submissions, Mrs. Ahlawat places reliance on the judgment of the Full Bench of this Court in ***RD Gupta v DTC***[12], para 10 of the judgment of the Division Bench of this Court in ***DTC v Madhu Bhushan Anand***[13]**,** the judgment of this Court ***Rati Bhan v DTC***[14] and the judgment of this Court in ***Tungal Giri v UOI***[15]. She also points out that the SLP preferred against the decision in ***Rati Bhan*** was also dismissed by the Supreme Court.

(vii) Mr. Chauhan submits, *per contra*, that the case of the respondent is fully covered by the judgment of the Division Bench of this Court in ***B.R. Khokha v DTC***[16]. He points out that the SLP preferred against this judgment was also dismissed by the Supreme Court. Mr. Chauhan further submits that the respondent had never opted for continuing in the CPF scheme and, therefore, was a deemed pension optee in terms of the 1992 Office Order.

**Analysis**

**25.** To adjudicate on the present *lis*, one need refer only to three judgments – the judgment of the Full Bench of this Court in ***R.D. Gupta*** and the judgments of the Supreme Court in ***UOI v S.L. Verma***[17] and ***Shashi Kiran***.

[12] **2011 SCC OnLine Del 4008**
[13] **172 (2010) DLT 668 (DB)**
[14] **2011 SCC OnLine Del 4394**
[15] Judgement dated 29 November 2022 in **WP (C) 1871/2019**
[16] **MANU/DE/3455/2016**
[17] **(2006) 12 SCC 53**

**26. *R.D. Gupta***

**26.1** ***R.D. Gupta*** was a judgment of the Full Bench of this Court, authored by Dipak Misra, Chief Justice (as he then was). The reference to the Full Bench arose because of the view, held by a Division Bench of this Court, that there was an irreconcilable conflict between the judgments of Division Benches of this Court in ***DTC v Kishan Lal Sehgal***[18] and ***Madhu Bhushan Anand***. The Division Bench referred the following question for the determination by a Full Bench of this Court:

> "What is the effect of receipt of payment including higher ex-gratia amount and employer's share of provident fund to employees who had applied and opted for voluntary retirement under the VRS 1993, though the said employees were entitled to pension as per officer order No. 16 dated 27th November, 1992?"

**26.2** There is no wishing away the fact that ***R.D. Gupta*** specifically dealt with the 1992 Office Order of the DTC. The Full Bench notes the fact that, owing to reasons with which it was not concerned, the 1992 Office Order could not be implemented till 1995.

**26.3** During the said period, the DTC introduced a Voluntary Retirement Scheme[19] on 3 March 1993. This was followed by two more VRSs in 1994 and 1995. The VRSs of 1994 and 1995 incorporated the following stipulation:

> "It is also notified for information of all such employees who opt for VRS that they would not be entitled to join Pension Scheme if they are allowed retirement under VRS. Other salient features of the proposed VRS will remain the same as announced earlier vide

[18] **145 (2007) DLT 99 (DB)**
[19] "VRS" hereinafter

this officer circular dated 03.03.1993."

**26.4** The Full Bench noted, therefore, that, while the 1993 VRS stipulated that pensionary benefits would be available to the person seeking voluntary retirement under the said Scheme in terms of the 1992 Office Order, the 1994 and 1995 VRSs contained an express stipulation to the effect that employees who opted for voluntary retirement would not be entitled to join the Pension Scheme. The Full Bench noted, however, that it was concerned only with the 1993 VRS and not with the 1994 or 1995 VRSs. At this juncture, it becomes necessary to reproduce para 8 of the judgment of the Full Bench, thus:

> "The present intra-Court appeal is concerned with the VRS 1993 and not with the VRSs 1994 and 1995 and, therefore, we shall restrict our advertence to the VRS 1993. As noticed, Clause 4(g) of the VRS 1993 had stipulated that the pensionary benefits as per the Office Order No. 16 dated 27th November, 1992 would apply. There was a stipulation that all amounts due to the Corporation would be adjusted against the payments under sub-clause (d) & (e) of the Clause 4 and the employee concerned should clear any outstanding dues/advances taken before the date of effect of voluntary retirement. If the said clause is appositely understood in the context of the Office Order dated 27th November, 1992 which we have reproduced hereinbefore, it would convey that the employees who had opted for VRS under the 1993 scheme would be entitled to pension benefits except in cases where an employee had specifically opted under the office order dated 27th November, 1992 to remain outside the Pension Scheme. However, another aspect which luminously arises to the forefront requiring consideration is that the said scheme became operational only in 1995. The appellants in the present appeal, as the factual matrix would reveal, were offered retirement with effect from 31st May, 1993. They were not paid any pensionary benefits as the Pension Scheme had not become operational till 1995 and was in an inchoate stage. The appellants were paid retiral benefits under the Contributory Provident Fund Scheme. It needs special emphasis to state that the retirement benefits included higher amount of gratuity, payment made ex-gratia and the employer's share of provident fund. Be it noted, even after 1995, the appellants were not extended the benefit of pension."

**26.5** The appellants before the Full Bench, R.D. Gupta etc. contended that they were entitled to be treated as deemed pension optees, as they had not exercised any option to continue under the CPF scheme in terms of Clause 3 of the 1992 Office Order. By operation of Clause 9 of the said Office Order, therefore, it was contended that R.D. Gupta etc were deemed pension optees.

**26.6** The Full Bench decided the issue thus, in para 19 of the report:

> "19. From the aforesaid pronouncement of law in the field by various Division Benches, it is noticed that the decision rendered in ***Kishan Lal Sehgal (supra)*** did not take note of the earlier decision rendered in ***DTC Retired Employees Association (supra)***[20]. The said decision was rendered prior in point of time. It is well settled principle of law that earlier Division Bench decision is a binding precedent on the later Division Bench. As is evincible, the decisions rendered in ***Kishan Lal Sehgal (supra)*** and ***Vir Bhan (supra)*** have laid emphasis on Clause 9 of the Office Order dated 27th November, 1992. The concept of 'deemed to have opted the Pension Scheme benefits' has been accepted on the foundation that the same is binding on the DTC. *If the language of Clause 9 is appositely understood, it would convey that if an employee does not exercise any option or quits service or dies without exercising an option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted the Pension Scheme benefits. It does not lay down that if an employee deliberately applies for getting the benefit under the Contributory Provident Fund scheme and avails the benefits, then it would come under the realm of opting out of the Pension Scheme. It is an affirmative act to opt for the Contributory Provident Fund Scheme and to avail other benefits attached to it.* The said benefits are higher ex gratia amount and the employer's provident fund contribution. There is subtle distinction between deemed inclusion to be under the pension benefit scheme but *it would be an anathema to hold that even if an employee has voluntarily opted out and availed the benefits still he can take a somersault and claim to be brought within the Pension Scheme.* As has been in the case of ***Madhu Bhushan Anand (supra)*** the same amounts to novation of contract

[20] **DTC Retired Employees Association v DTC**, judgment dated 17 April 2002 in **LPA 330/2002**

> of volition. *To hold that who had applied and opted for the voluntary retirement under VRS 1993 and received all payments would still be entitled to pension regard being had to Clause 9 of the Office Order dated 27.11.1992 would result in placing a farfetched interpretation on Clause 9*. In the case of ***DTC Retired Employees Association (supra)*** the Division Bench has clearly opined that *such employees have no right to switch back to the Pension Scheme after they have opted out of the Pension Scheme.* As we have indicated earlier, the decision in ***Madhu Bhushan Anand (supra)*** and ***DTC Retired Employees Association (supra)*** have not been interfered with by their Lordships of the Apex Court. In our considered opinion, Clause 9 of the scheme cannot be carried so far as to have an absurd impact on the scheme. *Once the said benefits are availed of, the principle of opting out has to be made applicable. The concept of switch on and switch off has to be ostracized. When an employee accepts the benefits out of his own volition without any coercion, he cannot take a somersault and claim to have the benefits taking recourse to Clause 9 that he is deemed to be within the Pension Scheme.* Thus analyzed, we are of the considered opinion that the decision in ***Madhu Bhushan Anand (supra)*** lays down the law correctly. The law laid down in ***Kishan Lal Sehgal (supra)*** and ***Vir Bhan (supra)*** is not correct and, accordingly, the said decisions and the decisions on the said lines are overruled."
>
> (Emphasis supplied)

**26.7** When one reads para 19 of the judgment of the Full Bench, it becomes apparent that ,in the initial part of the said paragraph, the Full Bench has held that Clause 9 of the 1992 Office Order, "appositely understood", would indicate that, if an employee did not exercise any option, i.e. to continue under the CPF scheme or switch over to the Pension Scheme, he would be a deemed pension optee. However, if the employee "*deliberately applies for getting the benefit under the contributory provident fund scheme* and avails the benefits, then it would come under the realm of opting out of the Pension Scheme". This is further clarified in the very next sentence which reads such an act of the employee as "*an affirmative act to opt for the contributory provident fund scheme* and to avail other benefits attached to it". The

passage further goes on to observe that there was "subtle distinction between deemed inclusion to be under the pension benefit scheme but it would be an anathema to hold that *even if an employee has voluntarily opted out* and availed the benefits still he can take a somersault and came to be brought within the Pension Scheme". The Full Bench further relies, in the same paragraph, on the judgment of the Division Bench of this Court in ***DTC Retired Employees Association***, in which it was held that once an employee had opted out of the Pension Scheme, he had no right to switch back to the Pension Scheme. These observations, as contained in para 19 of the judgment of the Full Bench in ***R.D. Gupta***, would indicate that the Full Bench was addressing a situation in which the concerned employee either voluntarily opted out of the Pension Scheme or affirmatively opted for continuing with the CPF scheme and, thereafter, attempted a *volte face* and sought to be included in the Pension Scheme. The Full Bench has held that, *once an employee thus affirmatively opts out of the Pension Scheme or positively opts to continue under the CPF scheme*, he cannot switch back to the Pension Scheme.

**26.8** This position of law, we may respectfully observe, is unexceptionable. *If there is an affirmative "opting out", of the Pension Scheme*, or *an affirmative exercise of option to continue under the CPF Scheme by the employee*, he cannot later resile from this stand and seek the benefit of the Pension Scheme.

**26.9** Mrs. Avnish Ahlawat, however, relies on the following words which follow in the same paragraph from the judgment of the Full Bench:

> "In our considered opinion, Clause 9 of the scheme cannot be carried so far as to have an absurd impact on the scheme. Once the said benefits are availed of, the principle of opting out has to be made applicable. The concept of switch on and switch off has to be ostracized. When an employee accepts the benefits out of his own volition without any coercion, he cannot take a somersault and claim to have the benefits taking recourse to Clause 9 that he is deemed to be within the Pension Scheme"

If the afore-extracted words from para 19 of the judgment of the Full Bench are to be read in isolation, they would seem to support Mrs. Ahlawat's contention that the very act of acceptance of the CPF scheme benefits *ipso facto* disentitles the employee from claiming to be a deemed pension optee. We have our doubts, however, whether para 19 of the judgment of the Full Bench, holistically read, actually elucidates such an absolute proposition.

**26.10** *Even if para 19 of the judgment of the Full Bench in* ***RD Gupta*** *is to be read as holding that the very act of availing the benefits under the CPF scheme ipso facto disentitles an employee to be considered as a deemed pension optee in terms of para 9 of the 1992 Office Order*, that position, in our view, cannot sustain any more, in view of the judgments of the Supreme Court in ***S.L. Verma*** and ***Shashi Kiran***, which clearly hold to the contrary, and to which we proceed to presently allude.

## 27. *S.L. Verma*

**27.1** This is a short judgment and may, therefore, be reproduced *in extenso*, thus:

"1. Respondents 1 to 13 were employees of the Bureau of Indian Standards. The said authority was created under the Bureau of Indian Standards Act, 1986. Although a statutory authority, it is said to be under the administrative control of Ministry of Consumer Affairs. Respondents 1 to 13 were members of Contributory Provident Fund Scheme (CPF Scheme). Respondent 14 i.e. the Bureau of Indian Standards, which is an autonomous body, pursuant to and in furtherance of an office memorandum dated 1-5-1987 issued by the Government of India asked its employees to give their option whether to continue under the Provident Fund Scheme or not. The said office memorandum dated 1-5-1987 assumes importance in view of the language used therein to which we intend to immediately advert to. The office memorandum is prefaced with calling for repeated options in the past asking the employees to switch over to the Pension Scheme. It was mentioned that such option had been asked for on 6-6-1985. The Central Government notices that despite the same, some of the employees still continued in the CPF Scheme. It further notices the recommendations of the Fourth Central Pay Commission to the effect that CPF beneficiaries in service on 1-1-1986 would be deemed to have switched over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme. It is not in dispute that the said recommendations of the Fourth Central Pay Commission had been accepted by the Central Government and the same is applicable to the employees of Respondent 14, Bureau of Indian Standards. Para 3 and para 3.2 of the said office memorandum read as under:

> "3. All CPF beneficiaries, who were in service on 1-1-1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme.
>
> *****
>
> 3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the Head of the Office concerned by 30-9-1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of the Office by the above date the employees will be deemed to have come over to the Pension Scheme."

2. Pursuant to and in furtherance of the said Scheme of the Central Government, Respondent 14 made regulations known as

"Bureau of Indian Standards (Terms and Conditions of Service of Employees) Regulations, 1988". Regulation 16 thereof reads as under:

> "16. *Pension.*—The employees shall be governed by the Central Civil Services (Pension) Rules, 1972:
>
> Provided that the employees who had specifically elected to be governed by the Contributory Provident Fund Rules (India), 1962, immediately before the date of commencement of these Regulations shall continue to be governed under the Contributory Provident Fund Scheme."

3. Despite the clear intent and purport of the said office memorandum dated 1-5-1987, Respondents 1 to 13 herein continued to be treated as if they had still been continuing under the CPF Scheme.

4. The Central Government as also Respondent 14 Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2-2-1999, Respondent 14 requested the Union of India for grant of another chance to the respondents to switch over to Pension Scheme stating that they purported to have exercised their option for CPF Scheme on the cut-off date.

5. The said request of Respondent 14 was not acceded to by the Ministry of Finance. It was, however, accepted by Respondent 14 that only 19 employees were left out and the total financial implication therefor would come to about Rs 7.20 lakhs per annum, if all the employees were allowed to switch over to the Pension Scheme. It was made clear that for the said purpose Respondent 14 would not depend upon the government grants. Although the Ministry of Consumer Affairs, Food and Public Distribution agreed with the aforesaid suggestion of Respondent 14, it appears that the Ministry of Finance did not agree thereto stating:

> "… In view of the above, we have been advising autonomous bodies under various Ministries/Departments of the Government of India to continue to follow the CPF Scheme or the autonomous bodies, if they so desire, may work out an annuity scheme through Life Insurance Corporation of India based on voluntary contributions by the employees and without any contribution from the Government or the employees may join the Pension Scheme introduced by the Ministry of Labour for the PF

> subscribers. It may please be noted that introduction of Pension Scheme on GOI pattern to the employees of autonomous bodies should not be agreed to as a rule, any exception in this regard should be referred to this Department."

6. At that juncture, Respondents 1 to 13 approached the High Court. Whereas the learned Single Judge allowed the writ petition directing that the same would not be subject to any liability on the part of the Union of India, but on an appeal preferred by the Union of India, by reason of the impugned judgment, the Division Bench modified the said order directing as follows:

> "Impugned writ court order dated 22-10-2003 shall stand modified to the extent that the appellants shall consider passing of a conditional approval stipulating that they shall not incur any liability in case Respondent 14 fails to satisfy the pension liability of Respondents 1 to 13 and pass appropriate orders within two months from today. These respondents on their part shall remain bound by all other terms of the writ court order including the undertaking to be executed by them."

7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said office memorandum dated 1-5-1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30-9-1987. In that view of the matter Respondents 1 to 13 in view of the legal fiction created, became the members of the Pension Scheme. Once they became the members of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. Respondent 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of Respondents 1 to 13 was illegal when a request was made by Respondent 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth

> Central Pay Commission with effect from 1-1-1986. In terms of such legal fictions, it will bear repetition to state, Respondents 1 to 13 would be deemed to have switched over to the Pension Scheme, which a fortiori would mean that they no longer remained in the CPF scheme.
>
> 8. In that view of the matter the Single Judge was correct in allowing the writ petition filed by the private respondents herein with a rider that thereby the Union of India would not be liable to financial liability but the Division Bench could not have modified the same, as was sought to be done, by its order dated 16-9-2004.
>
> 9. Subject to the aforementioned observations, the appeal is dismissed. There shall be no order as to costs."

**27.2** ***S.L. Verma*** is clear and categorical in its import. In the first place, it has to be noted that the Office Memorandum dated 1 May 1987[21] issued by the Government was, to all intents and purposes, *pari materia* with the 1992 Office Order of the DTC. Clause 3.2 of the 1987 OM provided employees an option to continue under the CPF scheme, despite the introduction of the Pension Scheme. It required the option to be exercised on or before 30 September 1987 *and further stipulated that, if no option, to continue under CPF scheme, was received by the employee by that date, the employee would be deemed to have switched over to the Pension Scheme.* In a sense, therefore, Clause 3.2 of the 1987 OM was a conflation of paras 3 and 9 of the 1992 Office Order of the DTC.

**27.3** The Supreme Court has, in para 7 of the decision in ***S.L. Verma***, held, in clear, unambiguous and unmistakable terms, that *the only circumstance in which an employee would not become a member of the Pension Scheme was where he consciously opted to continue with the CPF scheme on or before the cut off date of 30 September*

*1987.* Like the present respondent, the respondents before the Supreme Court in ***S.L. Verma*** did not exercise any such option on or before 30 September 1987. The Supreme Court holds that, in that view of the matter, they *ipso facto* became members of the Pension Scheme.

**27.4** Most significantly, the Supreme Court further notes that, at a later stage, the employees opted to continue with the CPF scheme. However, as they had, by operation of the legal fiction engrafted in para 3.2 of the 1987 OM – and, in our case, to be found in para 9 of the 1992 Office Order of the DTC – become members of the Pension Scheme, they would continue in that capacity, and could not later seek to revert to the CPF scheme.

**27.5** Thus, ***S.L. Verma*** is a clear authority for the proposition that, *if the employee exercises no option to continue with the CPF scheme on or before the stipulated cut off date, he ipso facto switches to the Pension Scheme, and there is no comeback.*

**27.6** We may note that this directly answers to Mrs. Ahlawat's contention predicated on the letter dated 1 August 2011 addressed by the respondent to the Senior Manager (PLD), DTC. The issue of whether the respondent switched over or did not switch over to the Pension Scheme, has to be determined on the basis of para 9 of the 1992 Office Order of the DTC. If he did, he would *ipso facto* be a deemed pension optee, and even if he were to declare from the roof tops that he was not a deemed pension optee, or that he was a CPF

the 1987 OM" hereinafter

beneficiary, it would make no difference. There is no estoppel against the law.

**28.** ***Shashi Kiran***

**28.1** Prior to the introduction of the Pension Scheme in the DTC by Office Order dated 27 November 1992, the Pension Scheme had been introduced in respect of other Central Government employees, who were earlier covered by the CPF Scheme, by Notification dated 1 May 1987.

**28.2** Paras 3.1 and 3.2 of the OM dated 1 May 1987[22] read thus :

> 3.1. All CPF beneficiaries, who were in service on 1-1-1986, and who are still in service on the date of issue of these orders viz. 1-5-1987 will be deemed to have come over to the Pension Scheme.
>
> 3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the Head of Office concerned by 30-9-1987, in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

**28.3** It is immediately apparent that paras 3.1 and 3.2 of the OM dated 1 May 1987 are, to all intents and purposes, *pari materia* with para 9 and 3 of the OM dated 27 November 1992 of the DTC.

**28.4** The University of Delhi[23], with which the Supreme Court was concerned in ***Shashi Kiran***, issued Notification dated 25 May 1987 by

[22] Also referred to as "the 1987 OM" hereinafter, though there is a slight difference between the Clause in this OM and that which was under consideration in **S.L. Verma**

[23] "the University", hereinafter

way of extension, to the University, of the Pension Scheme as introduced in the case of Central Government employees by the 1987 OM. Para 5 of the Notification dated 25 May 1987 of the University read thus:

> "5. **Pensionary benefits to temporary employees**. – Temporary employees, who retire on superannuation or on being declared permanently incapacitated for further service by the appropriate medical authority after having rendered temporary service of not less than 10 years, shall be eligible for grant of superannuation/invalid pension, retirement gratuity and family pension on the same scale as admissible to permanent employees.
>
> Further it has also been decided by the Government of India that pensioners who have commuted a portion of their pension and on 1-4-1985 or thereafter have completed or will complete 15 years from their respective dates of retirement will have their commuted portion of pension restored.
>
> It was also recommended by the Pay Commission that all CPF beneficiaries who are in service on 1-1-1986 should be deemed to have come over to the pension scheme on that dates unless they specifically opt out to continue under the CPF Scheme. This recommendation has also been accepted by the Government of India.
>
> Keeping in view the revised pensionary benefits, it has been approved by the Vice-Chancellor that the above decision of the Government of India regarding option also be adopted in the University. It has, therefore, been decided that all Contributory Provident Fund beneficiaries who are in service on 1-1-1986 in the University should be deemed to have come over to the pension scheme under Statute 28-A Appendix 'A' unless they specifically opt out to continue under CPF Scheme (Statute 28-A, Appendix 'B').
>
> It has further been decided that in respect of Categories B, C & D beneficiaries for whom the revised grades have been announced and implemented, they be given three months' time from the date of this notification for opting out to continue under CPF Scheme (Statute 28-A Appendix 'B'). For Category A — CPF beneficiaries the period of three months' time for the same purpose will be reckoned from the date of adoption by the University of the revised pay scales based on the IVth Pay Commission's recommendations, UGC committee's Report. Employees who have already opted for the scheme under Statute

> 28-A Appendix 'A' will not be eligible for any further option. These orders 'would also be applicable to the employees of the colleges affiliated to the University of Delhi and receiving maintenance grant from 'the 'University Grants Commission. The contents of this notification shall be brought to the notice of each employee and his/her acknowledgment for having noted these orders obtained and opt in the office record."

**28.5** 11 extensions were granted by the University for its employees to exercise the option in terms of para 5 of the Notification dated 25 May 1987, with the last cut-off date for exercise of such option being fixed as 31 January 1999. This provoked the University Grants Commission[24] to issue a communication to the University on 25 May 1999, stating that the option for remaining in the CPF scheme, provided by the OM dated 1 May 1987, could be exercised only till 30 September 1987 and that if no option was exercised on or before 30 September 1987, the employee was deemed to have switched over to the pension Scheme. The UGC, therefore, opined that the University could not, of its own accord, extend the time available for exercise of option and that the 11 extensions granted by the University were illegal.

**28.6** Various employees approached this Court by means of writ petitions, claiming varied reliefs. This Court, by order dated 21 May 2012, divided the employees before it into three categories, as is noticed in paras 14 and 14.1 to 14.3 of the judgment of the Supreme Court thus:

> 14. In these circumstances, writ petitions were filed in the High Court claiming diverse reliefs. These petitions, by order dated 21-

[24] "UGC" hereinafter

5-2012 in ***N.C. Bakshi v Union of India***[25] passed by the learned Single Judge of the High Court, were categorised into three categories:

> 14.1. Employees who had not exercised any option at all and thus by virtue of the deeming provisions contemplated in the Notification dated 1-5-1987, were deemed to have "come over" to GPF; but having continued to make contributions under the old CPF scheme were being treated to be under CPF. This batch was subsequently referred to as "*R.N. Virmani batch of cases*" in the decisions rendered by the High Court.
>
> 14.2. Employees who had not exercised the option by the cut-off date contemplated under the Notification dated 1-5-1987 and were thus deemed to have "come over" to GPF; however, such employees had exercised the option to remain under CPF scheme during first two extensions granted by the University between 1-10-1987 to 29-2-1988; and were now praying that they be allowed to be under GPF. This batch of cases was described to be "*N.C. Bakshi batch of cases*" in the decisions rendered by the High Court.
>
> 14.3. Employees who had exercised positive option by 30-9-1987 i.e. by the original cut-off date contemplated under Notification dated 1-5-1987 and had chosen to remain under CPF Scheme; but were now demanding that they be given further option and were therefore praying for extension of the cut-off date to enable them to "come over" to GPF. This group of matters was referred to as "*Shashi Kiran batch of cases*" in the decisions rendered by the High Court."

**28.7** We may note even at this juncture, that the facts of the present case, would fall within the "R.N. Virmani batch of cases" as segregated by the High Court. The R.N. Virmani batch dealt with employees who never exercised their option, one way or the other, as is the case with the respondent before us. The N.C. Bakshi batch of cases dealt with the employees who exercised their options, but beyond the stipulated cut-off date. The Shashi Kiran batch covered employees who opted, prior to the cut-off date, to remain in the CPF

[25] **2012 SCC OnLine Del 6512**

Scheme.

**28.8** There is no commonality between the employees in the Shashi Kiran batch and the present respondent before us, as the present respondent did not exercise any option in terms of para 3 of the 1992 DTC Office Order. He was, therefore, a "non-optee" within the meaning of para 9 of the said Office Order. His case is, therefore, identical to that of the employees constituting R.N. Virmani batch of cases before the High Court and the Supreme Court in ***Shashi Kiran***.

**28.9** With respect to the R.N. Virmani batch of cases, the Supreme Court has observed thus, apropos the decisions of the learned Single Judge of this Court and of the Division Bench:

> With respect to the judgment of the learned Single Judge
>
> "17. The reasoning that weighed with the learned Single Judge was:
>
> > "14. In my view, the answer to the question : as to whether employees, who had not issued any overt communication with regard to his/her desire to continue with the CPF Scheme, stood covered by the Pension Scheme; would largely depend upon the provisions of OM dated 1-5-1987, itself.
> >
> > 14.1. It is not in dispute before me that OM dated 1-5-1987 was adopted by the University of Delhi vide Notification dated 25-5-1987 read with Notification dated 4-6-1987, pursuant to an approval received in that behalf from its Vice-Chancellor. Therefore, much would depend, in my opinion, upon the language of the relevant clause of OM dated 1-5-1987. The said OM clearly applies to all employees who were CPF beneficiaries on 1-1-1986. Clause 3.1 read with Clause 3.2 is plainly indicative of the fact that all such employees, who are CPF beneficiaries, shall be deemed, to have, come over to Pension Scheme unless the employee(s) concerned submitted his or her

option to continue with the CPF Scheme. This option had to be submitted in the prescribed form to the Head of Office concerned by 30-9-1987. In case, no option was received by the Head of Office by 30-9-1987, employees were deemed to have come over to the Pension Scheme. Therefore, by legal fiction once, the deeming clause kicked-in, those who did not submit their option form for continuation under the CPF Scheme stood covered by the Pension Scheme."

18. To arrive at the conclusion as mentioned above, the learned Single Judge relied inter alia upon the following passages from the decision of this Court in ***Union of India v S.L. Verma***:

> "4. *The Central Government as also Respondent 14 Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose*. For the first time on 2-2-1999, Respondent 14 requested the Union of India for grant of another chance to the respondents to switch over to pension scheme stating that they purported to have exercised their option for CPF Scheme on the cut-off date.
>
> *****
>
> 7. *The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1-5-1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30-9-1987. In that view of the matter Respondents 1 to 13 in view of the legal fiction created, became members of the Pension Scheme*. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso facto applicable in their case also. *It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise*. Respondent 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of Respondents 1 to 13 was illegal when a request was made by Respondent 14 to the Union of India for grant of approval so that all those

employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1-1-1986. In terms of such legal fictions, it will bear repetition to state, Respondents 1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme."

(emphasis supplied by the learned Single Judge)

19. The argument made by the respondents was dealt with as under:

"16. The argument raised before me by the respondents, which veered towards approbation, was based on the fact that petitioners had continued to contribute under the CPF Scheme. This submission would not cut much ice with me, having regard to the plain terms of OM dated 1-5-1987. If, the cover under the Pension Scheme, gets triggered with effect from 30-9-1987, the contribution by an employee and its receipt by the employer clearly proceeds on a misconception of the provisions of OM dated 1-5-1987.

As a matter of fact, this very argument was repelled by the Supreme Court, in ***S.L. Verma***, and I think, for good reason. Consequently, there is no room for entertaining such an argument. The relevant observations made in para 7, specific to this aspect, are, once again, extracted hereinafter :

'7. … It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise.' "

20. It was, therefore, directed:

"20. Having regard to the above discussion, the respondent University of Delhi/Colleges concerned will be entitled to recoup their contribution under the CPF Scheme, if not already recouped, with simple interest @ 8% p.a."

The petitions were thus allowed."

(Italics in original; underscoring supplied)

With respect to the judgment of the Division Bench

"28. *R.N. Virmani batch of cases* :

"19. This Court is of opinion that the submissions of the University, the appellant, in regard to the Virmani's order, have no force. There is no denial and there can be none — that the nature of the scheme contemplated by 1-5-1987 notification was to ensure that only those wishing to continue in the CPF scheme had to opt to do so. A default in that regard, meant that the employee not filling his option (to continue in CPF) was deemed to have "come over" or migrated to the Pension Scheme. The University and the official respondents (UGC, Central Government, etc.) had urged that the petitioners in the Virmani group are deemed to have accepted the CPF benefits, because they allowed deductions from their monthly salaries during the interregnum and permitting Pension Scheme benefits would not be fair; in the same breath it was urged that there was delay. This Court is of opinion that the University — and the respondents are relying on contradictory pleas. If they urge that the true interpretation of the 1987 circular meant that anyone not furnishing an option to continue in the CPF scheme is deemed to have opted for the Pension Scheme (as the Virmani group undoubtedly did) there is no way they can succeed on the ground of laches or estoppel. If plain grammatical meaning of the language of the May 1987 OM were to be given, all those who *do not opt* would automatically be borne in the Pension Scheme. Such being the position, the argument that the petitioners in Virmani allowed deduction of CPF amounts from their salary, cannot be argued against them. CPF schemes typically require employees to commit greater amounts than in GPF scheme, on a monthly basis. That these staff members allowed higher amounts, which were held under a scheme (and which earned interest), the benefit of which had not accrued and was not available to them till the date of superannuation, cannot be urged against them. Likewise, the question of laches would not arise, because at the most, pension would not be allowed for the entire period, given that in matters of pension (see ***Union of India v Tarsem***

***Singh***[26]), there is a continuing cause of action. Therefore, we find no infirmity with the learned Single Judge's order, in *Virmani case* ."

(emphasis in original)

The appeals were thus dismissed."

(Underscoring supplied)

**28.10** Thus, the learned Single Judge as well as the Division Bench of this Court held that an employee who did not opt, one way or the other, and was, therefore, a "non-optee" would, by virtue of para 3.1 of the OM dated 1 May 1987, be deemed to have switched over to the Pension Scheme. Once the employee was thus deemed to have switched over to the Pension Scheme, he could not revert to the CPF Scheme, and the fact that the employee and the establishment may have been contributing to the CPF, the benefits of which the employee may even have reaped at the time of his retirement, could make no difference.

**28.11** Similarly, in respect of the N.C. Bakshi batch of cases, too the learned Single Judge of this Court, as well as the Division Bench, held that exercise of option beyond the cut-off date was as good as exercise of no option, and, therefore, the employees who exercised their option after the cut-off date had to be treated at par with employees who never exercised the option at all. The N.C. Bakshi batch was, therefore, held to be entitled to the same treatment as the R.N. Virmani batch and, inasmuch as the employees forming subject matter of the N.C. Bakshi batch had also exercised their option after the cut-off date, they would also be deemed to have irrevocably switched over

[26] **(2008) 8 SCC 648**

to the Pension Scheme.

**28.12** In the case of the Shashi Kiran batch, however, as the employees had exercised their option to continue in the CPF Scheme, prior to the cut-off date, the learned Single Judge and the Division Bench of this Court held that they could not later seek the benefit of the Pension Scheme. By exercising their option to continue under the CPF Scheme prior to the cut-off date, they remained CPF-optees and could not regard themselves as pension-optees.

**28.13** The Supreme Court found the view of the learned Single Judge and the Division Bench of this Court to be unexceptionable. Paras 34.4 and 35 of the judgment of the Supreme Court merit reproduction:

> "34.4. The Division Bench was, therefore, justified in setting aside the view taken by the learned Single Judge of the High Court in Shashi Kiran batch of cases but affirming the view in other two batches.
>
> 35. The common thread which ran through the decisions of the learned Single Judge pertaining to three batches of cases, was that *the text of the Notification dated 1-5-1987 was clear that if no option was exercised by the employees concerned before the cut-off date, they would be deemed to have "come over" to GPF. It was only a positive option exercised by the employees to continue to be under CPF which could have departed from such deeming provision. Once exercised, the option was final and as such, there could be no switch over from those who had consciously opted to be under CPF*. Further, relying on the decision in ***S.L. Verma***, it was observed that any exercise of option after the deadline or the cut-off would be inconsequential. It was on this premise that the cases in R.N. Virmani batch of cases and N.C. Bakshi batch of cases were allowed by the learned Single Judge. As regards Shashi Kiran batch of cases, the learned Single Judge observed, that once the conscious decision was taken and option was exercised to continue to be under CPF, there was "*no room for any come back situation*". The cases in the third batch were therefore, rejected."

(Emphasis supplied)

**28.14** As we have already noted, we are basically concerned with the R.N. Virmani batch and to a lesser extent, the N.C. Bakshi batch of cases before the Supreme Court in ***Shashi Kiran***. The conclusion of the Supreme Court with respect to these two batches are to be found in paras 38 and 39 of the judgment of the Supreme Court, which read as under:

> "38. According to the Notification dated 1-5-1987 two situations were contemplated. First, the deeming provision in terms of which the employee concerned was taken to have "come over" to GPF. The second situation being where a conscious option was exercised before the cut-off date to continue to be under CPF. *R.N. Virmani batch of cases was therefore rightly allowed by the learned Single Judge and the Division Bench of the High Court, as no conscious option was exercised by the cut-off date. Consequently, the employees concerned must be deemed to have "come over" to GPF. Logically, it would be immaterial whether the employee concerned continued to make contribution assuming himself to be covered under CPF, even though contributions were made by the authorities concerned*. The benefit was therefore rightly granted in favour of the employees and the entire contribution was directed to be refunded. The University has chosen not to appeal against that decision and thus the matter has attained finality.
>
> 39. Theoretically, extension of the same principle would be that if no option was exercised before the cut-off date, but an option was exercised after the cut-off date was extended; and if no switch over could be allowed after the cut-off date, the decisions rendered by the learned Single Judge and the Division Bench in N.C. Bakshi batch of cases were also quite correct. Consequently, *irrespective of the fact that the employees concerned had exercised the option to continue to be under CPF, such exercise of option would be non est in the eye of the law.* That in fact is the ratio of the decision in ***S.L. Verma***. Thus, both these batches of cases were rightly decided by the learned Single Judge and the Division Bench. We, therefore, dismiss the appeal in N.C. Bakshi batch of cases."
>
> (Emphasis supplied)

**28.15** It is apparent that the dispute in the present petition is squarely covered by ***Shashi Kiran.*** Inasmuch as ***Shashi Kiran*** is a judgment rendered by the Supreme Court in 2022, all prior enunciations of law, whether it be by the Division Bench or by the Full Bench of this Court, have to cede place to ***Shashi Kiran***. While the Full Bench in ***R.D. Gupta*** may seem to have expressed the view that, after having contributed to CPF and, at the time of his retirement, also availed the benefits of his own as well as the establishment's contributions, the employee could not seek to contend that he should be treated as a pension-optee, we are unable to follow that view, in the light of ***Shashi Kiran***. The judgement of the Supreme Court has to prevail over the decision of the Full Bench of this Court. ***Shashi Kiran*** makes it clear, beyond any shadow of doubt, that the mere drawing of CPF benefits cannot efface the effect of the failure on the part of the employee to exercise his option within the time stipulated in the OM/Office Order. In the case of the 1987 OM which was under consideration before the Supreme Court, the consequence of non-option was contained in Clause 3.1, whereas, in the case of the 1992 DTC Office, the consequence is to be found in para 9. The clauses are, to all intents and purposes, identical.

**28.16** Ms. Ahlawat valiantly sought to contend that ***Shashi Kiran*** dealt with the Delhi University whereas ***Madhu Bhushan Anand*** and ***R.D. Gupta*** specifically dealt with the DTC. The law that applies in the DTC would, therefore, according to her, be that declared by the Full Bench in ***R.D. Gupta***. Moreover, she submits that ***Shashi Kiran*** was a case in which 11 extensions for exercise of option had been provided by the University and declared illegal by the UGC. This,

according to her, is a factor which distinguishes ***Shashi Kiran*** from the present case.

**28.17** We are unable to agree with either of these submissions. The law cannot change, organization to organization, where the applicable legal provisions are identical. The parent Notification introducing the Pension Scheme for Central Government employees in place of the earlier CPF Scheme was the 1987 OM. Various autonomous organizations only went on to extend the benefit of the said Scheme in their respective establishments. The Delhi University was one such organization and the DTC is another. ***Shashi Kiran*** dealt with the employees of the University and the present case deals with the employees of the DTC. In either case, the relevant clauses of the applicable Notifications are, to all intents and purposes, identical to Clauses 3.1 and 3.2 of the Notification dated 1 May 1987 with which ***Shashi Kiran*** was concerned. The principle laid down by the Supreme Court that a person who failed to exercise his option, one way or the other, within the period stipulated in the Notification, would be deemed to have switched over to the Pension Scheme and that subsequent contributions to the CPF or reaping of the benefits of such contributions would not alter this position, would apply across the board to all organizations, the Office Orders/Circulars issued by which contained similar clauses while introducing the Pension Scheme.

**28.18** There is no justification whatsoever, in law, to insulate the DTC from the effect of the judgment in ***Shashi Kiran***, which dealt with an identical dispensation in the Central Government, as adopted by the Delhi University.

**28.19** The reliance by Ms. Ahlawat on the fact that the University had granted 11 extensions for employees to exercise their options, as a distinguishing factor, is obviously misplaced. The judgment in ***Shashi Kiran*** did not turn one way or the other on the 11 extensions granted by the University. The law declared in ***Shashi Kiran*** is not affected, in any way, by the said extensions.

**29.** Cumulative impact of ***S.L. Verma*** and ***Shashi Kiran***

**29.1** Thus, after ***S.L. Verma*** and ***Shashi Kiran***, there can be no doubt about the legal position that, if an employee does not exercise any option to continue under the CPF scheme within the time stipulated in that regard, whether it was under the 1987 OM or the 1992 Office Order of the DTC, he would *ipso facto* be a deemed pension optee. The availment of CPF benefits by him, thereafter, is irrelevant and he can, at the highest, be directed to return the CPF benefits, if necessary with interest. Further, even if he were to refer to himself as a CPF beneficiary thereafter, or even if he were to state, in a written communication, that he was not a pension optee, it would make no difference, as the character of the employee as a deemed pension optee is by operation of law, in terms of para 9 of the 1992 DTC Office Order. A consequence which arises by inexorable operation of law cannot be wished away by assertions to the contrary.

**29.2** In view of this position, even if it were to be presumed that para 19 of the judgment of the Full Bench of this Court in ***R.D. Gupta*** treats the acceptance, by the employee, of CPF benefits, as sufficient

to disentitle him to the benefits of the Pension Scheme, that position can no longer be said to hold good in view of the decisions in ***S.L. Verma*** and ***Shashi Kiran***. ***Shashi Kiran***, we may note, is a recent decision, rendered as late as in 2022, and there was no occasion, therefore, for the position of law enunciated in ***Shashi Kiran*** to have been within the knowledge of the Full Bench when it decided ***R.D. Gupta,*** or the Division Bench of this Court when it decided ***Madhu Bhushan***.

**30.** In that view of the matter, it is not necessary for us to refer to ***B.R. Khokha*** or any of the other decisions cited at the Bar.

**31.** ***Tungal Giri***

**31.1** We may, however, briefly advert to the decision of this Court in ***Tungal Giri,*** as it is also a comparatively recent decision of this Court, rendered on 29 November 2022, and has been cited by Ms. Ahlawat. Paras 3, 7 and 8 of the said decision, on which Ms. Ahlawat places emphasis, read thus (omitting the reference to judicial authorities in para 8):

> "3. The case of the respondent before the Tribunal was, the petitioner retired from DTC on October 31, 2012. He was issued retirement memo on April 17, 2012 in which it was clearly stated that he is not a pension optee. Thereafter, his entire contributory fund was released on October 26, 2012 and all his unpaid dues, such as, salary, LTC claim, Medical claim, leave salary, bonus, DA arrear, HRA difference and over time allowance etc. were released on June 19, 2013. In other words, all the dues were accepted by the petitioner without any demur.
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> *****

7. On the other hand, the learned counsel for the respondents has drawn our attention to the scheme issued by the DTC on November 27, 1992. He has also drawn our attention to the relevant page of the service book wherein it has been clearly noted that the petitioner had not opted for pension.

8. That apart, he has also drawn our attention to Annexure R-6 which is the salary slip wherein an amount ₹541 was deducted from the salary of the petitioner as a contribution to the provident fund. It is his submission that the Pension Scheme clearly contemplated that for an employee to be governed by the Pension Scheme, has to necessarily opt for the same. That apart, the petitioner having been issued the salary slip every month was aware of the fact that he was making contribution to the provident fund. At no point of time the petitioner had agitated the fact that he has not been covered under the Pension Scheme."

**31.2** Significantly, on merits, the Division Bench *did not accept* the submissions of the DTC. After reproducing the 1992 Office Order in para 10, the Division Bench goes on to observe, thus, in paras 11 to 14 of its judgment:

"11. The office order also contemplated that for the purpose of getting pension, the application forms for exercising option were made available with the unit officers and the same was required to be opted within a period of 30 days from the date of issue of the office order.

12. It is the case of the petitioner that he had not opted for the pension at all. On this plea of the petitioner, the conclusion of the Tribunal is that, this stand of the petitioner was immediately after the petitioner had made an RTI application seeking from the respondents his application exercising option. On this, the case of the respondents was that no such application is on record.

13. Be that as it may, there is one issue which needs to be dealt with, which issue has not been looked into by the Tribunal, i.e., the effect of clause 9 of the order dated November 27, 1992 which we have reproduced above. The said clause came up for consideration before the Supreme Court in the case of ***DTC Retired Employees' Association v. DTC &Ors.***[27], wherein the Supreme Court in paragraph 14 held that as regards the employees as of November

[27] **(2001) 6 SCC 61**

> 27, 1992, the employer can always ask them to exercise their option within the stipulated period and *if they fail to exercise their option, the deeming provision can be invoked and it can be said that they are covered by the scheme*.
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> 14. *On the strength of the aforesaid conclusion, it can be argued that the deeming provision shall come into play in the case of the petitioner herein.* But what is to be seen is, as stated above, the petitioner who continued to be governed by the CPF Scheme was making contribution under the said Scheme every month from 1992 till his retirement. The first representation laying a claim on the pension was made in the year 2007 and thereafter in the years 2009-2010."
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> (Emphasis supplied)

Thus, it is clear from a reading of the afore-extracted paragraphs from ***Tungal Giri*** that, on merits, the Division Bench was clearly of the view that, as Tungal Giri, the employee before it, had not exercised any option in terms of para 3 of the 1992 Office Order, he would be deemed to have switched over to the Pension Scheme in terms of para 9 thereof. On merits, therefore, this decision is clearly against Mrs. Ahlawat.

**31.3** Having so observed, the Division Bench proceeds to uphold the judgment of the Tribunal on the ground that the OA filed by the Tungal Giri before the Tribunal was barred by delay and laches.

**31.4** We have seriously deliberated on the effect of the judgment of ***Tungal Giri*** on the *lis* before us. Quite clearly, the decision does not make out any case for interference, by us, with the impugned judgment of the Tribunal on merits, as the Division Bench in ***Tungal Giri*** has also held that the failure to exercise any option in terms of para 3 of the 1992 Office Order would result in the employee being a deemed pension optee, in view of para 9 thereof. The only question

that we have to address is whether ***Tungal Giri*** would require us to reverse the impugned judgment of the Tribunal on the ground that the OA filed by the respondent was barred by delay and laches.

**31.5** There are several reasons why we cannot reject the respondent's OA before the Tribunal on the ground of delay and laches.

**31.6** The first, and most obvious, reason, is that the learned Single Judge of this Court who decided the R.K. Virmani batch of cases rejected the plea of delay and laches on the ground that the right to pension is a continuing cause of action, relying on ***Tarsem Singh***, *and the view of the learned Single Judge stands expressly approved by the Supreme Court in* ***Shashi Kiran***. ***Tarsem Singh*** is clear on the point. Para 7 of the decision reads thus:

> "**7.** To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. *Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury*. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, *if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties*. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. *Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to*

*arrears normally to a period of three years prior to the date of filing of the writ petition*."

(Emphasis supplied)

Once, following ***Tarsem Singh***, the Supreme Court has, in ***Shashi Kiran***, approved the decision of the learned Single Judge of this Court, in respect of the R.K. Virmani batch of cases, not to reject the claims of the employees on the ground of delay and laches, Article 141 of the Constitution of India obligates us to follow suit. ***Tungal Giri***, we may note, does not consider either ***Tarsem Singh*** or ***Shashi Kiran***.

**31.7** Secondly, in ***Tungal Giri***, the Division Bench has noted, in para 15 thus:

> "Even after his retirement he got legal notices issued but had never approached the Tribunal till the year 2016, i.e., after four years of his retirement. In fact, on retirement, in the year 2012, the petitioner had been paid all the benefits, like entire contributory fund, salary, medical claim, LTC claim, DA Arrears, HRA difference etc., which suggests that he knowingly accepted those benefits and enjoyed the same for four years till 2016, when he approached the Tribunal. He continued to enjoy the said benefits for a further period of six years, till date."

This indicates that, in ***Tungal Giri***, the Division Bench was persuaded by the fact that Tungal Giri had knowingly accepted and enjoyed the benefits available to him under the CPF scheme for four years after retirement, and it was only thereafter that he approached the Tribunal. As against that, in the present case, it is specifically pleaded by the respondent Anil Luthra, thus, in Ground 6 in the OA:

> "6. Because on his superannuation, the applicant has requested for not to release the management share of provident fund', but the management of DTC deliberately and intentionally

> released the same and credited to his account without intimating to him, ignoring that the matter is pending before the Court of Law. However, there is provision in the circulars dated 27.11.1992 and 28.10.20Snhat if any of the employee who have withdrawn party or wholly the management share of provident fund, will have to deposit the same with interest in the event of granting pension to him."

In the counter-affidavit filed by way of response to the OA, there is no specific denial of the aforesaid assertion in Ground 6. More specifically, there is no specific denial of the respondent's contention that he had requested, on his retirement, that the CPF benefits be not credited to his account and, despite this request, the DTC, of its own volition, did so. In response to paras 6 and 7 of the Grounds, the DTC merely states that the contents thereof are "untenable in law and facts". This cannot be regarded as refuting the assertion of the respondent, in Ground 6, that the crediting of his CPF benefits to his account by the DTC was contrary to his own request and that it was done by the DTC of its own volition. The facts in the present case are, therefore, to that extent, distinguishable from those which presented themselves before the Division Bench in ***Tungal Giri***.

**31.8** The third reason is that the Division Bench was, in ***Tungal Giri***, deciding a writ petition, under Article 226 of the Constitution of India, directed against the judgment of the Tribunal *rejecting the claim of Tungal Giri*. We, on the other hand, are deciding a writ petition which has allowed the claim of the respondent Anil Luthra. Article 226 jurisdiction is fundamentally discretionary in nature. The High Court, under Article 226, while dealing with a judgment of the Tribunal exercises *certiorari* jurisdiction. The limits of *certiorari* jurisdiction stand delineated by the following passages from the judgment of the

Supreme Court in ***Syed Yakoob v K.S. Radhakrishnan***[28].

> "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. *A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.* In regard to finding of fact recorded by the Tribunal, *a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.*
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> 8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is*

[28] **AIR 1964 SC 477**

*apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened*."

(Emphasis supplied)

Thus, even if the Tribunal in ***Tungal Giri*** did not deem it fit to interfere with the judgment of the Tribunal, regarding the aspect of delay and laches, we cannot read that judgment as an authority for the proposition that, in every case, even where the Tribunal has not dismissed the application of the applicant on the ground of delay and laches, the High Court should reverse the decision and do so. Expressed otherwise, the High Court was, in ***Tungal Giri***, concerned with whether a case for reversal of the judgment of the Tribunal, to the extent it held the OA filed by Tungal Giri to be barred by delay and laches, was made out, whereas we, in the present case, are concerned

with whether we should reverse the judgment of the Tribunal, which holds in favour of the respondent, on the ground of delay and laches, when the Tribunal itself has not done so.

**31.9** The fourth significant reason why we are not persuaded to reject the respondent's case on the ground of delay and laches in approaching the Tribunal is because, in ***Shashi Kiran*** itself, the Supreme Court has held that, even if the employee had availed the CPF benefits, that cannot be a reason to deny him the benefits of the Pension Scheme, if he was so entitled as a deemed pension optee in view of para 9 of the 1992 Office Order of the DTC. All that the DTC would require of the employee would be to return the CPF benefits availed by him, with interest. The Tribunal has, in the presently impugned order, specifically directed the respondent to do so. Once such a direction has been issued, which is in terms of the decision in ***Shashi Kiran***, we are of the opinion that no case for reversing the impugned judgment of the Tribunal can be said to exist, on the ground of delay and laches.

**32.** Re. submission that the Tribunal decided a case not pleaded by the respondent before it

**32.1** Before parting, we may also address Ms Ahlawat's argument that the Tribunal erred in deciding the respondent's claim to the benefits of the Pension Scheme on the basis of the 1992 Office Order, as the respondent had based his claim, in the OA, on the 2002 Office Order.

**32.2** The submission merely requires submission to merit rejection. In the first place, the respondent had specifically pleaded, in para 4.4 of the OA, that the 1992 Office Order had been issued, *and that he had not exercised any option in terms of para 3 thereof. This was admitted by the DTC by its assertion, in the correspondent paragraph of its counter-affidavit before the Tribunal, that the contents of para 4.4 were a matter of record, and did not need any reply.* There is, therefore, no dispute about the fact that the respondent had not exercised any option pursuant to the 1992 Office Order. Once this fact stood pleaded, the legal consequence, in terms of para 9 of the Office Order, inexorably followed. Facts are required to be pleaded, not the law. Once the fact that the respondent had not submitted any option following the 1992 Office Order was admitted, para 9 straightaway applied, and the respondent became, *ipso facto*, a deemed pension optee. He did not have to plead so, and his status as a deemed pension optee being a consequence of application of the law, was not dependent on any pleading. The facts, which gave rise to the legal consequence, were not only specifically pleaded by the respondent, but also admitted by the DTC. Ms Ahlawat is not correct in her submission, therefore, that the Tribunal decided the OA beyond the case pleaded by the respondent.

**33.** Re. note in service book of respondent

This also answers Ms Ahlawat's reliance on the purported noting, in the respondent's service book, that he was a "non optee". Besides the fact that any such noting cannot affect the application of the 1992 Office Order, the author of the noting has also remained undisclosed.

Besides, the noting is as vague as it could be. The reference to the respondent as a "non optee" could as well be a reference to the fact that he had not exercised any option pursuant to the 1992 Office Order. One does not know. In any case, it does not matter.

**34.** As the respondent was, therefore, a deemed pension optee under the 1992 Office Order, the exercise, or non-exercise, of option pursuant to the 2002 Office Order makes no difference. In any case, it is the respondent's case, in the writ petition, that the 2002 Office Order was never implemented.

The Sequitur

**35.** The sequitur is obvious. Following ***S.L. Verma*** and ***Shashi Kiran***, the law is that, if the employee does not exercise any option for continuing with the CPF scheme, he *ipso facto* switches over to the Pension Scheme. No amount of insistence, by him that he is not a pension optee or that he continues to be a CPF beneficiary, would make any difference. Nor is it permissible for the employee, once he has thus become a deemed pension optee, to switch back to the CPF scheme. Equally, it is not permissible for the establishment – the DTC in the present case – to deny, to the employee, the benefits of being a deemed pension optee. The availment, by the employee, of CPF benefits, is also irrelevant. All that can be required of the employee, in such a situation, would be to return the benefits obtained by him under the CPF scheme, with interest.

**Conclusion**

**36.** We, therefore, are of the firm opinion that after the judgment of the Supreme Court in ***Shashi Kiran***, no scope remains for debate on the issue in controversy in the present case. An employee who fails to exercise the option, as envisaged in Clause 3 of the DTC Office Order dated 27 November 1992, on or before 1995, *ipso facto*, switches over to the Pension Scheme, by operation of para 9 of the said Notification. There is no possible comeback. The mere fact that the employee as well as the DTC continue to contribute to the CPF and the employee may have even earned the benefits of such contribution at the time of his retirement would make no difference. The employee would, nonetheless, be entitled to claim to be a deemed pension-optee in terms of para 9 of the DTC Office Order dated 27 November 1992. The employee would, however, not be entitled to retain the CPF benefits drawn by him at the time of his retirement, but would have to return the said amount to the DTC, with interest. Further, the employee would be entitled to arrears only for a period of 3 years prior to his moving the Tribunal.

**37.** We, therefore, sustain the impugned judgement of the Tribunal, subject to the modification that the arrears to which the respondent would be entitled would be restricted to a period of 3 years prior to his moving the Tribunal.

**38.** To avoid confusion, we clarify that the operative directions would be as under:

(i) The decision of the Tribunal to treat the respondent as a deemed pension optee, in view of his not having exercised any option in terms of the 1992 Office Order, is affirmed and upheld.

(ii) The respondent would, therefore, be entitled to receive, and to continue to receive, pension, in accordance with the Pension Scheme put in place by the 1992 DTC Office Order, from the date of his superannuation, with interest thereon @ 6% p.a. till the date of payment.

(iii) Arrears of pension, with interest, would, however, be paid to the respondent only for a period of 3 years prior to his instituting OA 31/2015 before the Tribunal.

(iv) The respondent would also have to return to the DTC, the entire CPF benefits credited to his account at the time of his superannuation, with interest thereon @ 6% p.a., till the date of payment. The entitlement of the respondent to the amount envisaged in (i) to (iii) *supra* would be subject to the said payment being made by him to the DTC.

(v) Payments, by DTC to the respondent and by the respondent to DTC, in accordance with the above directions, would positively be made within a period of 3 months from the date of pronouncement of this judgment.

**39.** The writ petition stands disposed of, in the above terms, with no orders as to costs.

**C. HARI SHANKAR, J**

**AJAY DIGPAUL, J**

**MARCH 18, 2025***/yg/*ar

*Click here to check corrigendum, if any*