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

% Reserved on: 29th August, 2012
Decided on: 20th December, 2012

\+ **W.P.(C) 4599/1995**

SK GUPTA ..... Petitioner
Through: Dr. Ashwani Bhardwaj and Mr. Romil Pathak, Advocates

versus

AIRPORT AUTHORITY OF INDIA ..... Respondent
Through: Mr. K.K. Rai, Sr. Advocate with Ms. Anjana Gosain, Advocate.

AND

\+ **W.P.(C) 8789/2007**

SANJIVE CHAMOLI & ORS ..... Petitioners
Through: Mr. Arvind Kumar Sharma, Advocate.

versus

UOI & ORS ..... Respondents
Through: Ms. Anjana Gosain, Advocate for Respondent No. 1.
Mr. K.K. Rai, Sr. Advocate with Ms. Anjana Gosain, Advocate for Respondent No.2.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Both these petitions can be disposed of by a common judgment as the Petitioners herein are aggrieved by the inaction of the Respondents in not implementing the Office Memorandum dated 5th July, 1989 (in short 'the OM') and granting them pensionary benefits in terms thereof.

2. Learned counsel for the Petitioner contends that in terms of this Office Memorandum the Petitioners were entitled to be given an option to retain the pensionary benefits available to them under the Govt. Rules or be governed by the rules of the Public Sector Undertaking/Autonomous Body, that is, avail the Provident Fund Contribution Scheme or the Pension Scheme. In view of the inaction of the Respondents in not offering the options, the Petitioners made representations which were rejected vide letters dated 14th August, 1995 and 23rd August, 1995 Annexures P-8 and P-9 in Writ Petition (C) No. 4599 of 1995 and vide impugned letter dated 3rd October, 2007 Annexure P-11 in WP(C) No. 8789/2007 the Employees Provident Fund Scheme was extended to the Petitioners w.e.f. 1st April, 1995. The Petitioners seek a direction to the Respondents to give the Petitioners an option to either choose the government pension rules or the rules, if any, framed by the Airport Authority of India or the Contributory Provident Fund Regulations of the Authority.

3. Learned counsel for the Petitioners in Writ Petition (Civil) No. 4599 of 1995 contends that the right to retain the government pensionary benefits as envisaged under Clause (a) of the OM was meant to protect the pensionable service rendered under the Government. The Office Memorandum did not prescribe a pre-condition of completing ten years on the date of absorption. Such a condition divides a homogenous class and defeats the very object of clause (a) of the OM. The date of absorption has no nexus with retaining pensionary benefits as pension is payable on combined service rendered under the Government and the PSU. Section 18 of the Airport Authority of India Act, 1994 (in short 'AAI Act') provided for the constitution of two divisions namely International Airports Division and

National Airports Division. However their service conditions remain the same as applicable to them before the formation of the Airports Authority of India. The Respondents were required to frame service regulations within one year, further extendable to another one year of the Petitioners becoming members of the National Airports Division. However, till date no rules and regulations have been framed by the Respondents as per the Clause 'b' read with sub-section 4 of the Section 42 of the AAI Act, 1994. Thus even today the Petitioners are governed by the rules and regulations applicable to the employees of the Government of India. The request of the Petitioners regarding the option being rejected by the Respondents on the ground that they had not completed ten years of service is illegal and arbitrary. The OM dated 5th July, 1989 has to be read together and its clauses cannot be bifurcated. As per Clause 'a' of the OM dated 5th July, 1989 option has to be given to all permanent government servants regarding pensionary benefits. Only Clauses (b) and (c) talk about the employees having opted for government benefits or Public Sector Undertakings benefits. Though the Petitioners were given option to be absorbed in National Airports Authority however, no option was given to them in terms of the OM whether they want to retain the pensionary benefits of the government or be governed by the rules of PSU/autonomous body. Clause 4 of the OM dated 5th July, 1989 clearly provides that until exercise of the option, the Petitioners would be governed by the pay scale, leave entitlement and terminal benefits under the Government. The Respondents having failed to give the option to the Petitioners and also failing to frame the rules and regulations under Section 38 of the National Airports Authority of India Act, 1985, the Petitioners cannot be put to disadvantage. There is no delay in filing the writ petition as

immediately on the rejection of the request of the Petitioners in 1995 the Petitioners filed the present writ petition.

4. Learned counsel for the Petitioners in Writ Petition (C) No. 8789/2007 in addition to above contends that the Respondent No.1 being the administrative ministry, fixed the date of absorption as 2nd October, 1989 however, the Respondent No. 2 failed to formulate its own service conditions in terms of Para 4 of the OM prior to seeking permanent absorption of the Petitioners. The OM dated 5th July, 1989 contemplates the constitutional guarantee for protection of pensionary benefits on absorption. The Respondents made an artificial classification and absorbees having more then ten years of service were given the following four options:

a. Monthly pension admissible on pro-rata basis for the service rendered in Government till the date of permanent absorption
b. Option to commute one third pro-rata pension and draw a sliced monthly pension reduced to the extent of commuted amount.
c. Option to commute full pension and thus no monthly pension.
d. Superannuation pension at the time of retirement from PSU on the basis of combined service rendered in Government and PSU.

5. However, no such option was given to absorbees less than ten years. The Respondent No. 2 arbitrarily notified its Contributory Fund Regulation on 24th January, 1995 and arbitrarily applied the same on less than ten years absorbees. The clarification dated 14th August, 1995 was arbitrary and unlawful and challenged in the Writ Petition (C) No. 4599/1995. No further classification of the absorbees is permitted as is being done by the Respondents. In the absence of option being given to the Petitioners, government pensionary benefits will apply mutatis mutandis to less than ten

years absorbees. The Respondents in reply to Right to Information Act application clearly admitted that option has not been extended to those employees who have not completed ten years of service on the date of absorption and the Respondents in its own volition prescribed/applied condition 2(c) of the OM. Employees Provident Fund and Miscellaneous Provisions Act (in short the 'EPF and MP Act, 1952') was not part of the absorption and the Airport Authority is exempted from the applicability of EPF and MP Act, 1952 under Section 16(1)(c) of the said Act. The Employees Pension Scheme, 1995 framed under the provisions of EPF and MP Act and CPF Scheme framed under the NAA Act are delegated legislations and one cannot have overriding effect on the other. Thus the letter dated 3rd October, 2007 be quashed and the Respondents be given direction to give option to the Petitioners to chose the Government Pension Rules or Airport Authority Provident Fund Regulations.

6. Learned counsel for the Respondents on the other hand contends that the OM consists of two computations, one relating to option for absorption and second for pensionary benefits. Though it was a case of compulsory deputation however, the option for permanent absorption in the Respondent No. 2 i.e. Airports Authority of India (AAI) was given to all the employees. Thus clause (a) of the OM related to the option for absorption. However, with regard to the pensionary benefits the government servants with less than ten years service were entitled to a equal amount of provident fund contribution for the period of government service upto the date of absorption. The Petitions are hit by delay and barred by laches as the option was exercised in the year 1989 and the same is challenged belatedly in the year 1995 and 2007. Vide option exercised on 2nd October, 1989 all the

Petitioners opted for regular service of NAA and accepted the terms and conditions enclosed therewith. The Respondents in accordance with the OM provided the employees on deputation to the NAA with the right to exercise the option to either continue on the same terms and conditions as are applicable to the government servants or to switch over to the terms and conditions of NAA. The Petitioners individually accepted the terms and conditions and were thereafter absorbed as permanent employees. On 2nd October, 1989 the petitioners having exercised the said option, they were governed by NAA (Employees Provident Fund and Family Pension Fund) Regulations. In terms of the said regulations, the employees are required to fill in their nomination forms as per the terms and conditions of their option and the Petitioners have duly filled in their respective nomination forms in accordance with the same. Having accepted and acted upon the said terms and conditions, the Petitioners cannot have best of both the worlds. Clause (c) of the Office Memorandum dated 5th July, 1989 clearly lays a condition that the absorbees with less than ten years of qualifying service are only eligible to amount equal to their provident fund contribution for the period of their respective service under the government upto the date of permanent absorption in the authority with simple interest @ 6% p.a. as their opening balance in the CPF account with NAA. Thus the Petitioners are not entitled to full pensionary benefits under the government rules after having enjoyed the benefit of PSU salaries which are higher and also the benefit of dearness allowance which is higher in the government pay scales and pensions.

7. Learned counsel for the Respondent further contends that admittedly vide notice dated 15th September, 1989 an option was given to all deputationists to exercise an option under Section 13 (3) of the 1985 Act to

get themselves absorbed with National Airport Authority by 29th September, 1989. A copy of the said notice is annexed as Annexure-P3 in W.P. (C) No. 8789/2009. Admittedly no notice was given to the Petitioners and similarly other placed persons with less than 10 years of service with regard to an option under Clause-(c) of the OM. Admittedly out of the 1400 deputationists with less than 10 years of service only 101 Petitioners in both the present petitions have come up before this Court. In fact both the Petitioners and the Respondents were clear regarding the interpretation of the OM to the fact that the permanent government servants with less than 10 years service coming to the PSU would get a refund of Provident Fund Contribution with 6% interest per annum as opening balance in their CPF account from the date of absorption with PSU as envisaged in Para (c) of the OM. As such the Petitioners and the other similarly placed persons were not entitled to pension. Thus the refund was made by the Respondent No. 1 which was accepted by the Petitioners without demure. The CPF has also been deducted and accepted by them. Both the parties having acted on the circular in the manner indicated above, it is not open to the Petitioners to now question the OM belatedly. The doctrine of laches and acquiescence debar the Petitioners from asking for the pensionary beneficiary scheme. Reliance in this regard is placed on *U.P. Jal Nigam and another vs. Jaswant Singh and another, 2006 (11) SCC 464* and *Union of India and others vs. M.K. Sarkar, 2010 (2) SCC 59*.

8. It is further stated that even if two views are possible for interpreting the above OM then this court will hold in favour of the interpretation given to it by the department as a long standing practice. An isolated case of Sher Singh would not justify the stand of the Petitioners as the same has not been

acted upon and the correspondence is on with the DoPT. Reliance is placed on *Union of India and others vs. M.K. Sarkar* (Supra) to contend that there cannot be any parity in error. The Petitioners cannot take the double benefit i.e. under the CDA pattern for better pension though they are receiving the salary under the IDA pattern of PSU which is more lucrative. The Petitioners cannot claim double benefits of pay scales, that is, PSU and the Government. They have enjoyed the higher pay scale of PSU during employment and now they wish to enjoy the pensionary/retirement benefits under the Government which is higher. The Respondent No.2 has filed an additional affidavit stating that the CPF @8.33% of salary (basic and dearness allowance) has been deducted regularly from the salaries of the Petitioners and remitted to the Petitioners' accounts along with the matching contribution by the employer to fortify the ground of acquiescence. In this regard photocopies of the records of all seven Petitioners have been placed on record. It is further stated that the Petitioners are given their individual statement of account of Employees Contributory Provident Fund indicating their deduction of statutory contribution as well as employer's contribution. The Employees Contributory Provident Fund members were also required to indicate the discrepancy, if any, within 15 days from the date of receipt of the CPF statement.

9. I have heard learned counsel for the parties.

10. Briefly the facts giving rise to the filing of the present petitions are that the Petitioners were working with the Directorate General of Civil Aviation (in short 'DGCA') and were sent on compulsory deputation en masse to National Airport Authority (in short 'NAA') on 1st June, 1986. The Petitioners were all permanent employees however, had less than ten years

of service in the parent cadre at DGCA. On 5th July, 1989 an Office Memorandum was issued, which is the bone of contention and reads as under:

"No.4/18/87-P&PW (D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Pension & Pensioners' Welfare)
….

6th Floor, Nirvachan Sadan,
New Delhi, dated the 5th July, 1989

OFFICE MEMORANDUM

Subject: Settlement of pensionary terms etc., in respect of Government employees transferred en masse to Central Public Sector Undertakings/Central Autonomous Bodies.

The undersigned is directed to refer to this Department's Office Memorandum No. 4(8)/85- P&PW dated 13th January 1986 and Office Memorandum of even number dated 30th October, 1986 on the above subject. The question of settlement of pensionary terms on conversion of a Government Department or a segment thereof or a Government office into a Central Public Sector Undertaking/autonomous body has been reviewed in the light of the recommendations of the Committee of the National Council (JCM). The President is now please to decide that, in a partial modification of above mentioned Office Memoranda, the following terms and conditions will be applicable in the case of en masse transfer of employees:

a) The permanent Government servants shall have an option to retain the pensionary benefits available to them under the Government rules or be governed by the rules of the Public Sector Undertaking/Autonomous Body. This option shall also be available to quasi-permanent and

temporary employees after they have been confirmed in the Public Sector Undertaking/Autonomous Body.

b) The Government servants who opt to be governed by the pensionary benefits available under the Government, shall at the time of their retirement, be entitled to pension etc. in accordance with the Central Government rules in force at that time.

c) The permanent Government servants with less than 10 years service, quasi permanent employees and temporary employees who opt for the rules of the PSU/Autonomous Body shall be entitled to an amount equal to Provident Fund contribution for the period of their service under the Government upto the date of permanent absorption in the PSU/Autonomous Body with simple interest at 6% per annum as opening balance in their CPF account with the Public Sector Undertaking/Autonomous Body.

d) The permanent Central Government servants who have completed 10 years or more of service and who opt for the retirement benefits of a PSU/Autonomous Body will receive pro-rata retirement benefits for the service rendered under the Government. These will be regulated as follows:-

    i) Employees who have an option either to draw pro-rata pension monthly or to draw a lump sum amount in lieu of 100% pro-rata pension.

    ii) Where the employees opt in favor of monthly payment of pro-rata pension, the same shall be allowed to be drawn with effect from the date of permanent absorption in a PSU/Autonomous Body. No part of pro-rata pension will be allowed to be commuted either at the time of permanent absorption or any time thereafter.

iii) In the case of employees who opt in favor of a lumpsum amount in lieu of 100% prorata pension, the lumpsum value shall be worked out on the basis of table prescribed under the CCS (Commutation of Pension) Rules, 1981.

iv) In the case of employees covered by clause (ii), the retirement gratuity and for those covered by clause (iii) above, both retirement gratuity as well as lumpsum commuted value shall be paid on the expiry of a period of 7 years from the date of permanent absorption. The amounts, however, can be paid earlier in the event of death/retirement/resignation/discharge from service.

v) The amounts of retirement gratuity and lump sum value in lieu of pension mentioned in clause (iv) above shall remain with the Government, and earn interest at the rate prescribed for General provident Fund deposits from time to time for the period they remain with the Government.

2. The family pension entitlements will be regulated in accordance with the instructions being issued separately.

3. As soon as a Central Government Department, Office or segment of a Government Department is converted into a PSU/Autonomous Body, the concerned Government servants will be transferred to such new organization on foreign service terms in the initial period. The Government servants will be permanently absorbed in the PSU/Autonomous Body with effect from prospective date to be fixed by the concerned administrative Ministry/Department and from that date they will cease to be Government servants. Such of the Government servants who are not willing to be absorbed will have an option to revert back to Govt. service. In that event, if

no suitable vacancies are available in the Office/Department/Ministry for such employees, their names will be transferred to Surplus Staff Cell.

4. The Public Sector Undertaking/Autonomous Body will formulate the terms and conditions of service in the new body at the earliest possible date. The employees will however have an option to retain Government pay scales till their promotion or retirement (whichever is earlier) or to come over to the service conditions of the PSU/Autonomous Body. However, until the exercise of this option, they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the Government.

5. Dismissal/removal from the service of a PSU/Autonomous Body after absorption for any subsequent misconduct shall not amount to forfeiture of his retirement benefits for the service rendered in the Central Government. Also in the event of dismissal/removal of a transferred employees from the PSU/autonomous body, the employee concerned will be allowed protection to the extent that the administrative Ministry/Department will review order before taking a final decision.

6. The other terms and conditions stipulated in Department's Office Memoranda dated 13th January, 1986 and 30th October, 1986 referred above, which have not been specifically modified, will continue to remain operative.

7. These orders will also be applicable to those Government servants who would be absorbed in the Mahanagar Telephone Nigam Ltd., Videsh Sanchar Nigam Ltd., National Airports Authority of India etc.

8. In their application to the employees serving in the Indian Audit & Accounts Department, these orders issue in consultation with the Comptroller & Auditor General of India.

9. Hindi version will follow.

Sd/-
(Ashish Kumar)
Deputy Secretary to the Government of India

To
All Ministries/Departments of the Govt. of India etc."

11. The case of the Petitioners and the Respondents hinges only on the interpretation of clause (a) of the above-mentioned Office Memorandum dated 5th July, 1989. The case of the Petitioners is that the option mentioned therein was to retain the pensionary benefits and not the option to be absorbed whereas the learned counsel for the Respondents strenuously contends that the option in clause (a) was for absorption and with regard to pensionary benefits etc. clauses (c) and (d) of the Office Memorandum provided for the pensionary benefits/Provident Fund Contribution. It may be noted that on 15th September, 1989 a notice was given to all the deputationists, which is annexed as Annexure-P3 to the Writ Petition (C) No. 8789 of 2007. The said notice was to exercise option in the enclosed performa for being absorbed in the regular services of the NAA and it was stated that once option was exercised the same shall be final. The terms and conditions were given in Annexure-1 and the applicants were required to furnish their option in the enclosed performa at Annexure-2. Admittedly, in the terms and conditions and the performa provided, no option was given to employees who had less than 10 years of service for pensionary benefits.

Thereafter the Petitioners were absorbed in NAA from 2nd October, 1989. In terms of the clause (a) the Government servants with less than 10 years of service who opted for rules of PSU/autonomous body were to get a refund of Provident Fund Contribution with 6% per annum interest as opening balance in their CPF account from the date of absorption with the PSU. The Petitioners have accepted the said refund without any demure. Further CPF at the rate of 8.33% of salary (Basic + DA) has been deducted regularly from the salaries of the Petitioners and remitted to the individual accounts along with matching contributions from the employer. The Petitioners are also given their individual statement of account of Employees Contributory Provident Fund indicating their deduction of statutory contribution as well as Employer's contribution. Thus, even if there is some ambiguity in clause (a) of the Office Memorandum dated 5th July, 1989 however, the Petitioners by their conduct have acquiesced the interpretation given to clause (a) by the Respondents.

12. In *U.P. Jal Nigam vs. Jaswant Singh* (supra) their Lordships held:

> "12. The statement of law has also been summarised in *Halsbury's Laws of England*, para 911, p. 395 as follows:
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> "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
>
> (*i*) acquiescence on the claimant's part; and
>
> (*ii*) any change of position that has occurred on the defendant's part.
>
> Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the

violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

13. In *Union of India vs. M.K. Sarkar* (supra) their lordships held:

"22. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he was

not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further when notice or knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option.

23. This Court considered the meaning of "notice" in *Nilkantha Sidramappa Ningashetti* v. *Kashinath Somanna Ningashetti* [AIR 1962 SC 666] . This Court held: (AIR p. 669, para 10)

> "*10*. We see no ground to construe the expression 'date of service of notice' in Column 3 of Article 158 of the Limitation Act to mean only a notice in writing served in a formal manner. When the legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words 'notice' and 'service' it would have said so explicitly."

24. Learned counsel for the respondent lastly submitted that one K.V. Kasturi who had retired in 1973, was granted the benefit of exercising the option by an order dated 19-9-1994, and therefore, principles of equality and equal opportunity required that the Railways should give him the option. The Chairman of Railway Board, while rejecting the respondents' representation by order dated 15-5-2004 has clarified that K.V. Kasturi's case was similar to that of *D.R.R. Shastri* [(1997) 1 SCC 514 : 1997 SCC (L&S) 555] as he had also not been informed of the availability of option.

> 25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to others. (See *Chandigarh Admn*. v. *Jagjit Singh* [(1995) 1 SCC 745] , *Gursharan Singh* v. *NDMC* [(1996) 2 SCC 459] , *Faridabad CT Scan Centre* v. *D.G. Health Services* [(1997) 7 SCC 752] , *State of Haryana* v. *Ram Kumar Mann* [(1997) 3 SCC 321 : 1997 SCC (L&S) 801] , *State of Bihar* v. *Kameshwar Prasad Singh* [(2000) 9 SCC 94 : 2000 SCC (L&S) 845] and *Union of India* v. *International Trading Co.* [(2003) 5 SCC 437])
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> 26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief."

14. It is well settled that the Petitioners cannot claim the benefits of both the PSU and the government. Since the Petitioners exercised the option of

absorption with the terms and conditions of pay scale of a PSU they cannot now revert back and ask for pensionary benefits under the Government. Clause (a) of the OM is further clarified by clauses (c) and (d). In case the option as being canvassed by the Petitioners was to be given under clause (a) of the Office Memorandum dated 5th July, 1989 then the clauses (c) and (d) of the Office Memorandum would become redundant. Moreover, clause (a) clearly states that the government servants will have option to retain the pensionary benefits available to them under the government rules or be governed by the rules of PSU/Autonomous Body. Having opted for absorption vide the option given on 15th September, 1989 for being absorbed in the PSU/Autonomous body thus adhering to its rules, the Petitioners cannot now fall back and claim the retention of pensionary benefits. A reading of clause (a) clearly shows that a person was not entitled to both the benefits and he could claim only one benefit. Clause (a) of the OM was further qualified by clauses (c) and (d) which created the two categories, that is, category of the government servants with less than 10 years of service and the other category of government servants with 10 years or more service. Thus clause (a) of the Office Memorandum carves out an exception for the government servants with less than 10 years of service to be entitled to an amount equal to Provident Fund Contribution for the service under the government upto the date of absorption in the PSU/autonomous body with simple interest @ 6% per annum as the opening balance in their CPF account with the PSU/autonomous body. The contention of the Petitioners is that there was an option for pensionary benefits which option was never given to them itself shows that the clause (a) did not intent to give that benefit to workers with less than 10 years of service. This is further clarified with the

annexures to the notice of absorptions dated 29th September, 1989. The same enclosed the form for option for pensionary benefits. Admittedly the said form has not been given to any person with less than 10 years of service.

14. In view of the aforesaid discussion, I find no merit in the present petitions. Petitions are dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 20, 2012
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