

\$~1

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

+ W.P.(C) 4532/2010

%

9th July, 2013

ROSY JAIN

..... Petitioner

Through Mr. Amol Kokane, Advocate

Versus

GNCT OF NCT OF DELHI & ORS.

..... Respondents

Through Mrs. Avnish Ahlawat, Advocate for
respondent No. 1.

Mr. Sumeet Pushkarna, Advocate for respondent
No. 2/Pension Trust with Mr. P. Narayan,
Manager, Pension Trust.

Mr. Sudhir Nandrajog, Sr. Advocate with Mr.
Anupam Varma, Mr. Nikhil Sharma, Advocates
for respondent No. 3/NDPL.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner Smt. Rosy Jain seeks release of pension and other terminal benefits through this writ petition. Petitioner was the employee of the erstwhile Delhi Vidyut Board (DVB) and after unbundling of DVB, her services were transferred to respondent No.3/ North Delhi Power Limited

(NDPL) with whom she worked till she took voluntary retirement as per Rule 48(A) of the CCS (Pension) Rules, 1972 w.e.f 01.04.2009. The issue is that who is liable to pay the terminal benefits of the petitioner i. e whether the respondent No. 3 which is the private DISCOM or the concerned Pension Trust.

2. This issue is no longer *res integra* as has been decided by me in various judgments being ***Iqbal Chand vs. Govt. of NCT of Delhi and Ors. (W.P.(C) 13834/2009 decided on 31.01.2013)***, ***Tulsi Ram Arya vs. Chairman D.V.B. & Ors. (W.P.(C) 618/2001 decided on 31.01.2013)*** and ***Smt. Pawan Vohra vs. The Chairman, DVB Pension Trust and Anr. (W.P. (C) 1680/2012 decided on 17.05.2013)***.

3. In the case of ***Iqbal Chand*** (supra) this issue was squarely decided against the DISCOM/respondent No. 3 and it was held that all pensionary benefits and terminal benefits of erstwhile employees of DVB have to be necessarily paid by the private DISCOMS. Paras 3 to 6 of the said judgment read as under:

“3. The judgment of the Division Bench in the case of ***Govt. of NCT of Delhi & Ors Vs. K.R.Jain & Ors (supra)*** was taken in challenge before the Supreme Court and the judgment of the Supreme Court is reported as ***North Delhi Power Limited Vs. Govt. of National Capital Territory of Delhi & Ors. (2010) 6 SCC 278***. The Supreme Court has upheld the judgment of the

Division Bench of this Court and held that all service related benefits, including terminal benefits of the employees, are the liability of the DISCOMS. Paras 52, 60 and 61 of the said judgment are relevant and which read as under:-

“52. A glance at these sub-rules is sufficient to come to the conclusion that the liabilities have undoubtedly been transferred to the DISCOMs which include both NDPL as well as BSES. A feeble argument was raised that sub-rule (8) does not contemplate pension or any liability on account of the revised pay scale or interpretation of respective scheme of promotion so far as existing pensioners or the erstwhile DVB are concerned to the DISCOMS. Considering the board language of the Rule, we do not think that such contention is possible.”

60. The transfer of personnel and all the principles, therefore, are governed by Rule 6 alone. As provided in Rule 6(2), there are lists wherein the personnel have been classified into five groups based on the principle of “as is where is”, where a specific reference is to be found to GENCO, TRANSCO and the three DISCOMS. Very significantly, there is no reference to DPCL. Thus, no employee was transferred to DPCL. This is in case of the existing employees. Sub-rule (8), however, takes into sweep not only the existing employees, who find the reference in the lists prepared under Rule 6(2), but also makes a reference to the employment related matters including provident fund, gratuity fund, pension and any superannuation fund or special fund created or existing for the benefit of personnel and the existing pensioners. There was no question of existing pensioners being covered under the lists prepared under Rule 6(2).

61. By using the words “existing pensioners” and by providing that the relevant transferee would stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and

all such matters, the legislative intention is very clearly displayed to the effect that the existing pensioners on the day of transfer were also covered and stood transferred to the DISCOMS and not to DPCL and it is only the transferee DISCOM who would substitute for the Board. Once these Rules are read in proper perspective, there is hardly any doubt about the liability of DISCOMs in respect of existing pensioners on the day of transfer. There can be no dispute that those who retired and those who were serving with the Board would stand transferred in respect of their liabilities, etc. to the successor company i.e DISCOM 3. The High Court has correctly appreciated this position.”

(underlining is added)

4. In view of the above, there can really be no dispute that the liability with respect to monetary benefits which are claimed in these writ petitions by those employees who retired prior to issuance of the circulars in the year 1997 and 1999 have to necessarily fall upon DISCOMS or the relevant transferee company including M/s Delhi Transco Ltd., M/s BSES Rajdhani Power Limited, BSES Yamuna Power Company Limited (BYPL) and NDPL Limited are the DISCOMS and reference in this judgment to DISCOMS will include reference to the DISCOMS and the transferee companies.

5. On behalf of the DISCOMS and the transferee companies, two main arguments were urged for dismissal of the writ petitions as under:-

(i) The petitioners have approached this Court with considerable delay and laches inasmuch as the benefits of the circulars dated 23.7.1997 and 21.12.1999 are being claimed in the year 2009 onwards.

(ii) The second argument is that the liability for all monetary benefits payable to the employees of erstwhile DVB in the nature of gratuity and terminable benefits is not the liability of the DISCOMS or the transferee companies but of the concerned Pension Fund of 2002.

6. So far as the second argument that the liability is not of the DISCOMS or the transferee companies, and in fact of the relevant Pension Fund of 2002, I need not adjudicate upon this issue in the present petitions, inasmuch as, the Supreme Court in the judgment of *North Delhi Power Limited (supra)* has specifically in paras 60 and 61 held that the liability will be of the DISCOMS, and therefore, the liability in the present writ petitions have to be fastened on the DISCOMS or the transferee companies. However, I may add that if the DISCOMS feel that by virtue of the transfer scheme they are entitled to seek reimbursement of its claim from the relevant Pension Fund of 2002, then, if permissible in law, the DISCOMS and the relevant transferee company can take appropriate action for recovery of those amounts from the concerned Pension Fund towards seeking that such trust fund may directly make payment to the petitioners. This will however strictly be between the DISCOMS and the transferee companies on the one hand and the concerned Pension Fund of 2002 on the other, however, for that reason, there cannot be delay in clearing of any liability to the petitioners in this case. Accordingly, I reject the argument raised by the DISCOMS and the transferee companies with the aforesaid observations that against the DISCOMs and the transferee companies the petitioners are not entitled to the reliefs claimed in these writ petitions of terminal benefits pursuant to the circulars dated 23.7.1997 and 21.12.1999. For the sake of completion of narration I must refer to the fact that the counsel for the Pension Fund has referred before me a judgment of a learned Single Judge of this court in the case titled as ***Babu Ram Jain Vs. BSES Yamuna Power Ltd*** in W.P.(C) 1597/1998 decided on 4.8.2011 and first para of this judgment directs deletion of Delhi Vidyut Board Employees Provident Terminal Fund 2002 and substitutes in its place BSES Yamuna Power Ltd. (BYPL) ie holding the liabilities for the terminal benefits etc to be of the DISCOMS/transferee companies and not of the Pension Fund. While disposing of the W.P.(C) 1597/1998, the learned Single Judge also in para 11 specifically directs the DISCOMS ie M/sBYPL to pay to the petitioners all consequential benefits by way of arrears of salary and other

retiral benefits.”

4. An issue of similar nature arose in the case of *Pawan Vohra (supra)* wherein the private DISCOM M/s. BSES Rajdhani Power Limited sought to deny its liability by referring to a judgment of the learned Single Judge of this Court in the case of *North Delhi Power Ltd. vs. Govt. of NCT of Delhi, 142 (2007) DLT 65*. On the basis of the judgment of the learned Single Judge in *North Delhi Power Ltd.(supra)* it was sought to be argued that liability will not be of the DISCOMS but of Govt. of NCT of Delhi or the Pension Trust. This was negated by me and relevant paras of the judgment in the case of *Smt. Pawan Vohra (supra)* are paras 6 to 10 which read as under:

“6. The next issue which arises is who is liable to pay the pensionary benefits to the petitioner i.e whether it is the liability of the respondent No.1- Pension Trust Fund or the liability of the respondent No.2/DISCOM/employer. This would indeed have been a vexed question, however, I have to take no trouble on this aspect because this issue is no longer res integra and decided by the learned Single Judge of this Court in the case of *North Delhi Power Ltd. Vs.Govt. of NCT of Delhi. 142 (2007) DLT 65*. In this judgment, it has been held that the liability towards the pensionary benefits of the employees will be of the DISCOM i.e respondent No.2 herein. The relevant para of the judgment is para 86 and which reads as under:-
“86. For the above reasons, I find that the schemes of DISCOMS cannot be equated with voluntary retirement in exercise of the conditions of service which existed at the time

of transfer; they are in any case outside the purview of Rule 48A. Therefore, the optees do not fall within the description of those voluntarily retiring as per conditions of service existing as on 1.7.2002; they were induced to contractually depart from employment. The Trust is not geared to bear this sudden and substantial, unilaterally created burden; the GNCT, too, is not liable in terms of the Act or Rule 6(9) to fund the payment of terminal benefits, of such VRS/SVSS optees. The severance being achieved through contract between the DISCOMS and the employees, the liability for payment of terminal benefits, as well as commutation of pension and monthly residual pension, is that of the DISCOMS.”

7. Though the counsel for the respondent No.2 sought to argue that till the mechanism provided in para 93 of the judgment is not completed, the respondent No.2 cannot be held liable inasmuch as the DISCOM/respondent No.2 has not adopted the IPGCL model, but this argument I find to be without any substance. This argument is raised by the respondent No.2 for liability for the period post the ordinary date of superannuation of the employees. For the period up to the normal age of superannuation the employer/respondent No.2 does not deny its liability. The denial is only for the period after the ordinary date of superannuation and which is said to be either of the respondent No.1 or of the Government of NCT of Delhi.

8. At this stage, I must put on record my distress on concealment of facts by respondent No.2. During the course of arguments of the respondent No.2, it came out that learned Single Judge who passed the judgment in the case of **North Delhi Power Ltd. (supra)** subsequently had passed a judgment dated 20.4.2011 in review petitions which were filed by the DISCOMS including the respondent No.2 herein. The learned Single Judge has once again clarified that in the judgment dated 20.4.2011 what is stated of liability of the DISCOMS in para 86 of the main judgment dated 2.7.2007 will prevail in the interregnum period till modalities in terms of para 93 of the

judgment dated 2.7.2007 are not finalized. Paras 14 and 15 of the judgment dated 20.4.2011 are relevant and the same read as under:-

“14. The electricity companies were given the option to apply for the IPGCL model of paying out pension (direction in para 93(i)). In the event of their not opting for it, the mechanism of arbitral tribunal which was to determine the extent of payment to be made by the Pension Trust by the concerned electrical companies, to be paid to the optees of SVRS who would have otherwise have to wait for orders to come and get the terminal benefits (not necessarily only residual pension). In other words, the need for such adjudication to ensure that the employees were not put to extreme hardship on account of further litigation and delay, either individually with the Pension Trust or with the concerned electricity companies. The Arbitration Tribunal was to consider all the facts and data and after appraising it, fasten the extent of liability upon individual electricity companies, which was to be paid to the Pension Fund that was to ultimately take-over the responsibility to disbursement of manner of payments to pensioners. The principle or reasoning underlying these directions was that premature severance or termination of the employee on his accepting the SVRS should not have otherwise robbed him of his entitlement that would be ultimately enforceable.

15. If the judgment and the operative directions are analyzed, it is apparent that the respective rights and liabilities of the parties were clearly delineated. The provision for the interregnum liability i.e payments to be made to individual employees during the pendency of the determination before the Tribunal was also envisioned; the electricity companies were to bear this liability and if necessary, seek adjustment in the final determination by the Tribunal. The subsequent orders of 08.10.2007 and 25.01.2008, therefore, are a mere effectuation and extensions of the reasoning embodied in the judgment dated 02.07.2007. The DISCOMS’ clarifications enabling the electricity companies/DISCOMS to make payments through a

specified Trust, therefore, have to be viewed in the light of the partition directions casting a liability to pay the interregnum amounts to the optees. Therefore, the interpretation placed by the Govt. of NCT of Delhi, and adopted by the Pension Trust is untenable. Their pension is also enable for the simple reason that it amounts to stating that by two unreasoned and clarificatory orders, a hotly contested litigation resulting in accrual of rights and liabilities and necessitating directions, was virtually set aside. That was in the purport of the said two orders of 08.10.2007 and 25.01.2008.” (underlining added)

9. I was handed over a copy of this judgment dated 20.4.2011 by the counsel for the respondent No.2 during the course of hearing of arguments in the present case. Paras 14 and 15 reproduced above make it quite clear that the Court had observed that there was a need to avoid hardship to the employees on account of further litigation and delay either individually with the Pension Trust or with the concerned electricity companies and therefore in the interregnum period payments of the pensionary liability had necessarily to be only of the electricity companies i.e DISCOMS. I fail to understand that how in the face of paras 14 and 15 it can be argued by the respondent No.2 that liability is not of the respondent No.2. For the sake of completion it is put on record that though the judgment of learned Single Judge in the case of ***North Delhi Power Ltd. (supra)*** is the subject matter of an appeal, however it is not disputed before me that there is no stay of operation of the judgment dated 2.7.2007.

10. In view of the above, writ petition is allowed. It is directed that the petitioner after her attaining the age of superannuation i.e 31.10.2010 will be paid pensionary benefits by the respondent No.2. Whatever rights the respondent No.2 may thereafter have as against the respondent No.1 or the Government of NCT of Delhi is an issue which the respondent No.2 will sort it out with the respondent No.1 or the Government of NCT of Delhi, however the petitioner cannot be deprived in the meanwhile the pensionary benefits in view of

the clarifications given in paras 14 and 15 of the judgment dated 20.4.2011 which have been reproduced above. Petitioner will also be entitled to interest @ 9% per annum simple for the period of delay in paying the pensionary benefits from 31.10.2010 within a period of three months from today. If the arrears due and payable are not paid within three months from today, rate of interest thereafter will become 12% per annum simple. In the facts of the present case and more so in view of the fact that at the time of filing of this petition the issue of liability of the respondent No.2/DISCOM was no longer res integra in terms of the judgments dated 2.7.2007 and 20.4.2011 of a learned Single Judge of this Court in W.P.(C) No.4827/2005, petitioner is also awarded costs of ₹25,000/-.”

5. The relevant paras in the case of *Tulsi Ram Arya (supra)* are paras 6 to 8 and the same read as under:

“6. I may for the sake of completion of narration state that the Supreme Court in the case of *North Delhi Power Ltd. Vs. BSES Rajdhani Power Ltd., AIR 2010 SCC 2302* has held that whatever is the liability of the Delhi Vidyut Board for the service benefits including pensionary benefits, payable to an employee, liability for clearing such dues will be of the DISCOM or the transferee company. In the present case respondent No.3/BYPL is the DISCOM in question who will have to pay the dues.

7. I may finally note that the Supreme Court in a catena of judgments has held that grant of pensionary benefits to an employee is not an act of bounty, but a bounden duty put upon the employer. The Supreme Court has consistently held that where there is delay in payment of pensionary benefits, and which is not on account of default on the part of the employee, then, interest is liable to be paid by the employer to the employee.

8. In view of the above, writ petition is allowed. The respondent No.3 is directed to release all the service dues of the petitioner including dues towards terminal benefits payable to the petitioner. Service benefits to the petitioner including the pensionary benefits will include necessary amounts which would be payable to the petitioner in accordance with law and the petitioner would be entitled to any enhancement in scale of pay or enhancement on account of promotions or any other consequential service benefits due to the services rendered by the petitioner with the erstwhile DVB. The petitioner will also be entitled to interest at the rate of 9% per annum simple from the date of filing of this petition till the entire monetary benefits in terms of today's judgment are paid to the petitioner. The monetary dues as payable in terms of the present judgment be calculated by the respondent No.3 and be paid to the petitioner within a period of three and a half months from today. In case the benefits under today's judgment are not paid within a period of four months from today, then, the petitioner will be entitled thereafter to an interest at 12% per annum simple till payment. Writ petition is allowed and disposed of in terms of the aforesaid observations. Let the petitioner supply copy of today's judgment to the competent authority of respondent No.3 within 15 days so that the monetary benefits in terms of today's judgment can be paid to the petitioner."

6. It is, therefore, clear that the liability of every nature on account of service of an employee with the erstwhile DVB and which was thereafter transferred to private DISCOMS is of the private DISCOMS. The monetary liability includes liability to pay the terminal benefits including the pensionary benefits payable on retirement of an employee and which retirement takes place either on account of an employee retiring on the

ordinary date of the superannuation or taking benefit of one or the other contractual retirement schemes or the employee taking a statutory voluntary retirement in terms of Rule 48 (A) of the CCS (Pension) Rules, 1972. It makes no difference as to what is the type of retirement i. e an ordinary retirement on reaching age of superannuation or a contractual voluntary retirement or a statutory voluntary retirement, because, whatever dues which arise for payment to an employee of erstwhile DVB has necessarily to be paid by the private DISCOMS such as the respondent No. 3 in the present case.

7. No doubt remains as to the liability being of respondent No. 3 in this case in view of the ratio of the judgments in the cases of *Iqbal Chand (supra)*, *Tulsi Ram Arya (supra)* and *Smt. Pawan Vohra (supra)*.

8. Learned senior counsel for the respondent No. 3 sought to distinguish the aforesaid three judgments passed by this Court by referring to paras 71, 72, 80 and 93-I(i) of the judgment of the learned Single Judge in the case of *North Delhi Power Ltd. vs. Govt. of NCT of Delhi, 142 (2007) DLT 65* and which paras read as under :

“71. There is, in my opinion, another detail which lends support to the view that the right to apply under Rule 48-A was considered an integral part of the service conditions of the erstwhile DVB employees. In its letter of 29-12- 2003, the Trust

clarified that the benefit of five years' weightage could be given to those retiring, in terms of Rule 48-B of the CCS Pension Rules. That rule applies to employees who seek and are permitted to retire under Rule 48-A.

72. The above analysis would show that at material times when the functions of the erstwhile DVB were carried out by its predecessor in interest, i.e DESU, Regulations had been framed which extended the terms and conditions of service applicable to the Government Servants. Those conditions were protected and they became part of the conditions of service of employees of DESU upon its creation. No material has been brought to the notice of the court by way of a conditional circular or resolution, restricting applicability of the CCS Pension Rules to exclude the right to apply for voluntary retirement under Rule 48-A. In these circumstances, the logical inference is that such a right to apply for voluntary retirement under Rule 48-A (of the CCS Pension Rules) existed and was a protected condition of service in terms of the tripartite agreements, Section [16\(2\)](#) and Rule 6. Though the terms of the Trust Deed undoubtedly support the plea that superannuation is the incident on which pension is payable, yet Rule 6(9) in my opinion was framed to cater to the eventuality of the Trust not being liable to pay, but the GNCT being obliged to make arrangements to the extent the Trust is unfounded, if there is a shortfalls in the event of exercise of option by an employee under Rule 48-A CCS Pension Rules. In this context, it has to be held that the tripartite agreements cannot be read as a charter to restrict existing rights 'their tenor and purpose was to grant continuity. Such being the case the defect if any of the GNCT in Constituting the Trust and the restrictive definition in the Trust rules entitling only superannuated employees to pension cannot rob or divest those applying, and becoming eligible to pension, in terms of rule 48-A of Pension Rules to the terminal and pension benefits. In such an eventuality, the GNCT has to the extent of Trust being unfounded bear the liability wherever recourse is made by the transferred employees to Rule 48-A of the Pension Rules. Regarding Question No. 2.

80. There are some important differences between the nature and character of the DISCOM's schemes and the conditions spelt out in Rule 48/ 48-A. They are:

(1) In terms of the said rules the condition for cessation of service, indeed the making of an application, i.e eligibility, is upon the completion of a fairly long tenure of service (30 years in the case of Rule 48; 20 years for Rule 48-A.) However, the period is far less in the two schemes. It is 10 years or the employee being 40 years of age.

(2) Rules 48 and 48-A are devoid of any element of inducement. However, the schemes of DISCOMS contain inducement of ex gratia up to 60 months pay. Besides, other inducements such as early bird incentives, etc were held out.

93. In the light of the above discussion it is hereby declared and directed as follows:

I(i) The Pension Trust and GNCT are not liable to make payment towards terminal benefits and residual pension arising to those who opted VRS/VSS, formulated by the petitioners DISCOMS namely, BSES Rajdhani Power Ltd., BYPL and the NDPL employees of the above (referred to as 'DISCOMS'). The employees of the DISCOMS who opted by VRS/VSS or the Scheme by whatever name called and were relieved from employment are entitled to payment of terminal dues (which expression would include all accrued benefits such as gratuity, provident fund, leave travel concession, leave encashment, payment towards medical facilities, commutation of pension and residual pension and such other payments as they are entitled to in terms of the protected terms and conditions of service under the Act and Rules) from the date of their respective severance from employment. Such date of severance shall be hereafter referred to be called 'entitlement date'."

9. I have really failed to understand this argument urged on behalf of the respondent No. 3 because it makes no difference as to the liability of the

private DISCOMS whatever be the nature of voluntary retirement i. e. a contractual voluntary retirement or under a statutory entitlement to seek voluntary retirement vide Rule 48(A) of the CCS (Pension) Rules, 1972. What is relevant to note is that the Supreme Court in the case of ***North Delhi Power Limited Vs. Govt. of National Capital Territory of Delhi & Ors. (2010) 6 SCC 278*** has made it crystal clear that all monetary liabilities of the employees of the erstwhile DVB would be of the private DISCOMS and which liabilities include liabilities towards provident fund, gratuity, pension or any other monetary liability. The relevant paras of the Supreme Court judgment are reproduced above in above quoted paras of the judgment in the case of ***Iqbal Chand (supra)***. In fact, I may note that the learned Single Judge who passed the judgment in the case of ***North Delhi Power Ltd. vs. Govt. of NCT of Delhi, 142 (2007) DLT 65*** has already clarified the position when confusion was sought to be created by the private DISCOMS that its liability cannot arise till there is decision as per the mechanism which was laid down in the judgment, and the learned Single Judge of this Court who passed the judgment in the ***North Delhi Power Ltd. vs. Govt. of NCT of Delhi*** thereafter clarified the position subsequently in his judgment dated 20.04.2011 and relevant portions of which have again been reproduced by

me in the judgment of *Smt. Pawan Vohra(supra)* as quoted above. Para 15 of the said judgment dated 20.04.2011 of the learned Single Judge clearly stated that the electricity companies were to bear the liability of the employees and if necessary, seek adjustment in the final determination by the Tribunal which was referred to in the judgment *North Delhi Power Ltd. vs. Govt. of NCT of Delhi, 142 (2007) DLT 65.*

10. The writ petition is accordingly allowed with costs of ₹ 50,000/-. Costs are imposed not only because petitioner has been unnecessarily dragged to Courts and has had to incur expenses, but also because I am finding that private DISCOMS including present respondent No. 3/ The North Delhi Power Limited in spite of repeated judgments of Single Judges of this Court, clarifications given qua those judgments, judgment of Supreme Court and even judgments passed by me specifically time and again is seeking to avoid payment of liability towards its employees on one frivolous ground or the other. Unnecessary wastage of judicial time, in my opinion, is also not appreciated.

11. Petitioner be paid all her terminal benefits including pension by the respondent No. 3 within three months from today. Petitioner will also be entitled to interest @ 9% per annum simple from the date of the retirement

i.e 01.04.2009 till payment. If the amount due is not paid within three months from today interest thereafter will be paid @ 12% per annum simple.

JULY 08, 2013
godara

VALMIKI J. MEHTA, J