

GAHC010224542016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4450/2016

MD. SHAKIR ALAM
RECORD KEEPER, CENTRAL INLAND WATER TRANSPORT CORPORATION
LTD. CIWTC LTD., P.O.- JOGIGHOPA, DIST.- BONGAIGAON, PIN- 783382,
ASSAM.

VERSUS

THE UNION OF INDIA and 2 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF SHIPPING, NEW
DELHI- 110001.

2:THE CENTRAL INLAND WATER TRANSPORT CORPORATION LTD. CIWTC
REP. BY THE CHAIRMAN-CUM-MANAGING DIRECTOR
4-FAIRLIE PLACE
KOLKATA- 700001.

3:THE ADVISOR ACCOUNTS
CENTRAL INLAND WATER TRANSPORT CORPORATION LTD. CIWTC
4-FAIRLIE PLACE
KOLKATA- 700001

Advocate for the Petitioner : MR. S CHOUDHURY

Advocate for the Respondent : C.G.C.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 19-05-2023

Heard Mr. S.Choudhury, the learned counsel appearing on behalf of the petitioner. Mr. S.K.Medhi, the learned counsel appears on behalf of the Central Government and Mr. A. Khanikar, the learned counsel appears for the respondent Nos. 2 and 3.

2. The case of the petitioner herein is that the petitioner was initially appointed as a Record Keeper w.e.f. 1/10/1990 in the respondent No. 2- Organisation. Thereupon the petitioner vide an order dated 6/4/2015 was transferred to Jogighopa in Bongaigaon district wherein he had joined on 9/4/2015. Pursuant to the recommendation of the 6th Central Pay Commission, the revised pay structure was implemented for the Central Government employees w.e.f. 1/1/2006. It is the case of the petitioner that the respondent No. 2 though had adopted the revised pay structure in the terms with the recommendation of the 6th Central Pay Commission but did not implement the same until 2007. However, subsequently the revised pay structure with Industrial Dearness Allowance(IDA) pattern was implemented partially in the respondent No. 2- Organisation w.e.f. 1/1/2007 but the benefit of the revised pay was not granted to the petitioner and the petitioner was continued in the Old Revised Scale of Pay with IDA which is evident from his salary statement enclosed to the instant writ petition. It is the further case of the petitioner that the respondent No.2- Organisation had introduced a Voluntary Retirement Scheme for its employees. However, as the Voluntary Retirement Scheme was not attractive, the respondent No. 2-Organisation introduced an Improved Voluntary Retirement Scheme(IVRS) for its employees vide Notice No. 02/2015 bearing Secy/53/(1)/123 dated 5/2/2015. In terms with the IVRS package, it was provided that the employees covered under the Central Dearness Allowance (CDA) Pay Scale would be entitled to get ex-gratia and other retiral benefits

equivalent to the pay scale of the CDA Pay Scale,2006 in the event of opting for the IVRS. It was further mentioned that the employees covered under the Industrial Dearness Allowance (IDA) Pay Scale and other pay scale would be entitled to get ex-gratia and other retiral benefits equivalent to IDA Pay Scale,2007 in the event of opting for IVRS which is evident from the notification dated 5/2/2015.

3. At this stage, before further proceeding, this Court deems it proper to take note of the notification dated 5/2/2015 issued by the Chairman cum Managing Director of the respondent No. 2-Organisation. In Clause 4 of the said notification, it has been categorically mentioned that other terminal dues i.e. leave encashment and gratuity would be calculated as per the Revised CDA Pay Scale 2006 for employees covered under the CDA Pay Scale and Revised IDA Pay Scale, 2007 for other categories of employees. Further to that, in Clause No.1 of the said notice dated 5/2/2015, it has been mentioned that under the improved Voluntary Retirement Scheme,2015 the calculation of the basic pay and the DA would be as per the revised CDA Pay Scale, 2006 for employees covered under the CDA Pay Scale and Revised IDA Pay Scale, 2007 for other categories of employees. It is therefore the case of the petitioner that the petitioner is entitled to the IDA pay scale of 2007 w.e.f. 1/1/2007 for which the instant writ petition has been filed.

4. It appears from the records that this Court vide an order dated 29/7/2016 had issued notice, making it returnable by 6 weeks. It further appears from the records that the respondent No. 1 through the Deputy Director,CIWTC had filed an affidavit on 6th of April, 2018. From a perusal of the said affidavit and more particularly at paragraph No. 5, it transpires that vide the Departmental Public Enterprise Guidelines dated 14/10/2008, it was made clear at paragraph No. 2 that the benefit of pay revision will be allowed only to employees of those CPSE that are not loss making and are in the position to absorb the additional expenditure on account of pay revision from their own resources without any budgetary support from the Government. It was further mentioned that the Respondent No 2 Organisation was a loss making

Organisation since inception and was not in a position to absorb the additional expenditure on account of pay revision from its own source. In paragraph 9 of the said affidavit, it was further mentioned that the employees who opted for IVRS, 2015 only got the benefits for fixation for the purpose of formulating IVRS benefits only and in case of employees under the CDA pay scale who opted for IVRS also got the benefits for the purpose of calculation of the IVRS benefits in terms with the CDA pay scale 2006. It was further mentioned that in case of employees under the IDA pay scale, who opted for IVRS got the benefits for the purpose of calculation of the IVRS benefits in terms with IDA pay scale, 2007, but actual revision of pay scale was not implemented in the respondent No. 2 -Organisation and no arrear was paid. In paragraph No. 10 of the said affidavit, it was further mentioned that the prayer for the petitioner for IDA pay scale cannot be considered in view of the fact that the respondent No. 2-organisation did not implement the IDA pay scale, 2007. It was further mentioned in paragraph No. 13 of the said affidavit that after the implementation of the IVRS, the respondent No. 2 Organisation during 12/1/2015 to 10/4/2015 out of 272 number of employees, 267 were released under IVRS and only 5 numbers of employees remained on the roll since 10/4/2015. In paragraph No. 15, it was mentioned that the upgradation of the petitioner has been considered w.e.f 4/10/2000 in lieu of 1/1/2014 and arrear amount has been paid to him vide Cheque No.192104 dated 4/3/2015.

5. To the said affidavit, the petitioner had submitted a reply. To the said reply, an Office memorandum dated 26/11/2008 was enclosed which was issued by the Ministry of Heavy Industries and Public Enterprises. In terms of clause 3 of the said Office Memorandum, it was mentioned that the revised pay scale would be adopted subject to the condition that the additional outgo by such revision for a period of 12 months should not result in more than 20% dip in profit before the tax(PBT) for the year 2007-08 of the CPSE in respect of the executive as well the non-unionised supervisory staff taken together in the CPSE.

6. It further appears from the records that the respondent Nos. 2 and 3 had also filed an affidavit-in-opposition. The stand so taken by the respondent Nos. 2 and 3 is similar to the affidavit in opposition filed by the respondent No. 1. It is relevant herein to take note that in paragraph No. 10 the respondent Nos. 2 and 3 have categorically stated that the application of the petitioner praying for new pay scale of 2007 could not be considered since IDA Pay Scale, 2007 was not implemented in the company. The DPE Office Memorandum dated 14th of October, 2008 was enclosed as Annexure-A to the said affidavit filed by the respondent Nos. 2 and 3. Further to that, a Notice No. 1 dated 12th of January 2015 was enclosed as Annexure-B which pertains to the implementation of the Improved Voluntary Retirement Scheme, 2015 for employees of the respondent No. 2 -Organisation. Relevant to take note of that in the said notice dated 12th of January 2015, it was categorically mentioned that the Improved Voluntary Retirement Scheme, 2015 would be in accordance with the 6th Central Pay Commission recommendation equivalent of pay scale of the Central Government employees w.e.f 1/1/2006 CDA pay scale and the Industrial Dearness Allowance (IDA) pattern of pay scale with effect from 1/1/2007 for employees covered under the IDA and other pay scale i.e. Bipartite Settlement for floating staff (Crews) and Tripartite Engineering Wage Settlement covered under TEWS. Further to that the respondent No. 2 and 3 had also filed an additional affidavit on 1st of September,2020 wherein there was a mention that similar writ petitions were also filed before the Calcutta High Court which were however dismissed vide the judgment and order dated 10/12/2019 pertaining to the same issue.

7. I have heard the learned counsels for the parties and perused the materials on record.

8. It appears from a perusal of the orders so passed by this Court that the instant writ petition was tagged with another Writ Petition (C) No. 6258/2016. However from a perusal of the pleadings as well as the reliefs claimed, the subject matter of both the

writ petitions are distinct and different although the petitioner may be the same. It may be relevant to mention that as stated in the affidavit filed by the Respondent No. 1 herein that out of 272 employees, 267 employees accepted the IVRS and remaining 5 employees did not. It is pertinent to note that W.P. (C) No. 6258/2016 was filed by the petitioner along with two others who were the five employees who did not accept the IVRS and accordingly the petitioner herein along with 4 others were retrenched. The said writ petition being W.P. (C) No. 6258/2016 is a challenge to the action of retrenchment of the petitioner and two others.

9. In the backdrop of the above, therefore this Court takes up the present writ petition for disposal. From a perusal of the writ petition, it transpires that the claim of the petitioner is based upon the IDA Pay Scale, 2007. The writ petitioner had not challenged the DPE Office Memorandum dated 14th of October, 2008 which categorically mandates that the benefit of pay revision may be allowed only to employees of those CPSEs that are not loss making and are in a position to absorb the additional expenditure on account of the pay revision from their own resources without any budgetary support from the Government. The petitioner had also not challenged the Notice No. 1/2015 dated 12th of January, 2015 wherein it has also been categorically mandated that those who are enjoying the CDA pay scale would be entitled to the benefits in terms with the CDA pay scale ; and those who were enjoying the benefits under the Industrial Dearness Allowance pattern of pay w.e.f. 1/1/2007 would be entitled to the IVRS benefits in terms with the IDA pay pattern. The petitioner has also not challenged the Notice No. 2/2015 dated 5th of February, 2015 wherein also it has been categorically mentioned that the Improved Voluntary Retirement Scheme, 2015, the calculation of the basis pay and DA would be as per the Revised CDA Pay Scale, 2006 for employees covered under the CDA Pay Scale and the Revised IDA Pay Scale, 2007 for other categories of employees. The petitioner further has also not challenged Annexure VIII of the writ petition which was issued to the petitioner whereby it was informed that the IDA Pay Scale, 2007 was not implemented

in terms with the DPE guidelines since the respondent No. 2-Organisation was a loss making company.

10. Be that as it may, the petitioner has not been able to show in any manner that the petitioner was covered at any point of time under the IDA Pay Scale of 2007. The fact that the respondent No. 2-Organisation was a loss making unit have been specifically stated in the affidavits filed by the Central Government as well as respondent Nos. 2 and 3. The fact that the IDA Pay Scale, 2007 was not implemented in the Respondent No. 2-Corporation is a specific and categorical stand taken by the respondents herein.

11. The learned counsel appearing on behalf of the Central Government, Mr. S.K. Medhi further drawing the attention to the judgment of the Calcutta High Court in **Manik Chakraborty & Ors. Vs. Union of India & Ors.(W.P.(C) No. 30774(w)/2017)** had referred to paragraph No. 29 of the said judgment which shows the state of affairs as regards the Respondent No. 2-Organisation to the effect that the Respondent No. 2-Organisation being a loss making unit, the funds of the Respondent No. 2 has been deposited in a Escrow Fund Fixed Deposit upon the directions of the Union Cabinet after the disposal of the surplus assets and properties of the Corporation.

12. In that view of the matter, as the IDA Pattern of Pay, 2007 was not implemented in the Respondent No. 2-Corporation, the petitioner having failed to show that the IDA Pattern of Pay, 2007 was implemented in the Respondent No. 2-Organisation and the petitioner was enjoying the IDA pattern pay scale 2007 at any point of time, this Court does not find any merit in the instant writ petition, thereby to direct for grant of benefit in terms with the IDA Pay Scale, 2007 to the petitioner.

13. Accordingly, the petition stands dismissed.

JUDGE

Comparing Assistant