

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

Reserved on : 02.12.2015/29.02.2016

Pronounced on: 17.03.2016

+ **LPA 562/2013, C.M. APPL.11925/2013, 17087/2014 & 17089/2014**
TATA POWER DELHI DISTRIBUTION POWER LIMITED

.....Appellant

Through: Sh. Sandeep Sethi, Sr. Advocate with Sh. Anupam Varma, Sh. Nikhil Sharma, Sh. Rahul Kinra and Sh. Devashish Marwaha and Sh. Raghav Chadha, Advocates.

Versus

SMT. ROSY JAIN AND ORS.Respondents

Through: Sh. Shailendra Bhardwaj with Ms. Aroma. S. Bhardwaj, Advocates, for Respondent No.1.
Sh. H.S. Phoolka, Sr. Advocate with Sh. Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.
Sh. Surendra Babbar, Advocates.
Sh. P. Narayanan, Manager.

+ **LPA 650/2013, C.M. APPL.13775/2013**
BSES RAJDHANI POWER LIMITEDAppellant

Through: Sh. Sandeep Sethi, Sr. Advocate with Sh. Anupam Varma, Sh. Nikhil Sharma, Sh. Rahul Kinra and Sh. Devashish Marwaha and Sh. Raghav Chadha, Advocates.

Versus

SH. RAJIV LOCHAN AND ORS.Respondents

Through: Sh. H.S. Phoolka, Sr. Advocate with Sh. Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.
Sh. Surendra Babbar, Advocates.

Sh. P. Narayanan, Manager.

+ **LPA 366/2015**

TATA POWER DELHI DISTRIBUTION POWER LIMITED

.....Appellant

Through: Sh. Sandeep Sethi, Sr. Advocate with Ms. Supriya Juneja, Sh. Parinay. D. Shah and Sh. Saransh Shaw, Advocates.

Sh. Raghav Chadha, Advocate.

Versus

MAHESH CHANDRA GURANI AND ORS.Respondents

Through: Sh. H.S. Phoolka, Sr. Advocate with Sh. Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.

Sh. P. Narayanan, Manager.

Sh. Shailendra Bhardwaj with Ms. Aroma. S. Bhardwaj, Advocates.

Sh. Surendra Babbar, Advocates.

Sh. Gautam Narayan, ASC, for Respondent No.2.

+ **LPA 368/2015**

TATA POWER DELHI DISTRIBUTION POWER LIMITED

.....Appellant

Through: Sh. Sandeep Sethi, Sr. Advocate with Ms. Supriya Juneja, Sh. Parinay. D. Shah and Sh. Saransh Shaw, Advocates.

Versus

ASHOK KUMAR ABBI AND ANR.Respondents

Through: Sh. H.S. Phoolka, Sr. Advocate with Sh. Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.

Sh. P. Narayanan, Manager.

Sh. Shailendra Bhardwaj with Ms. Aroma. S. Bhardwaj,

Advocates.
Sh. Surendra Babbar, Advocates.

+ **LPA 370/2015**

TATA POWER DELHI DISTRIBUTION POWER LIMITED

.....Appellant

Through: Sh. Sandeep Sethi, Sr. Advocate with Ms. Supriya Juneja, Sh. Parinay. D. Shah and Sh. Saransh Shaw, Advocates.

Versus

MAHENDRA GUPTA AND ORS.

.....Respondents

Through: Sh. H.S. Phoolka, Sr. Advocate with Sh. Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.

Sh. P. Narayanan, Manager.

Sh. Shailendra Bhardwaj with Ms. Aroma. S. Bhardwaj, Advocates.

Sh. Vaibhav Vats, Advocate.

Sh. Surendra Babbar, Advocates.

Sh. Prashant Mehta with Ms. Abhinandana Kain, Advocates.

Sh. Gautam Narayan, ASC, for GNCTD.

+ **LPA 371/2015**

TATA POWER DELHI DISTRIBUTION POWER LIMITED

.....Appellant

Through: Sh. Sandeep Sethi, Sr. Advocate with Ms. Supriya Juneja, Sh. Parinay. D. Shah and Sh. Saransh Shaw, Advocates.

Versus

ASHWANI KUMAR AND ORS.

.....Respondents

Through: Sh. H.S. Phoolka, Sr. Advocate with Sh.

Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.

Sh. P. Narayanan, Manager.

Sh. Anuj Aggarwal, Addl. Standing Counsel, for GNCTD.

Sh. Shailendra Bhardwaj with Ms. Aroma. S. Bhardwaj, Advocates.

Sh. Surendra Babbar, Advocates.

Sh. Gautam Narayan, ASC, for GNCTD.

+ **LPA 375/2015**

TATA POWER DELHI DISTRIBUTION POWER LIMITED

.....Appellant

Through: Sh. Sandeep Sethi, Sr. Advocate with Ms. Supriya Juneja, Sh. Parinay. D. Shah and Sh. Saransh Shaw, Advocates.

Versus

KULDEEP KUMAR JAIN AND ORS.

.....Respondents

Through: Sh. H.S. Phoolka, Sr. Advocate with Sh. Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.

Sh. P. Narayanan, Manager.

Sh. Vaibhav Vats, Advocate.

Sh. Surendra Babbar, Advocates.

Sh. Prashant Mehta with Ms. Abhinandana Kain, Advocates.

Sh. Gautam Narayan, ASC, for GNCTD.

+ **LPA 376/2015**

TATA POWER DELHI DISTRIBUTION POWER LIMITED

.....Appellant

Through: Sh. Sandeep Sethi, Sr. Advocate with Ms.

Supriya Juneja, Sh. Parinay. D. Shah and Sh. Saransh Shaw, Advocates.

Versus

SNEH LATA RATHI AND ORS.Respondents
Through: Sh. H.S. Phoolka, Sr. Advocate with Sh. Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.
Sh. P. Narayanan, Manager.
Sh. Anuj Aggarwal, ASC, for Respondent No.2.
Sh. Shailendra Bhardwaj with Ms. Aroma. S. Bhardwaj, Advocates.
Sh. Surendra Babbar, Advocates.
Sh. Gautam Narayan, ASC, for GNCTD.

+ **LPA 405/2015**
TATA POWER DELHI DISTRIBUTION POWER LIMITED
.....Appellant
Through: Sh. Sandeep Sethi, Sr. Advocate with Ms. Supriya Juneja, Sh. Parinay. D. Shah and Sh. Saransh Shaw, Advocates.

Versus

NEERAJ GUPTA AND ORS.Respondents
Through: Sh. H.S. Phoolka, Sr. Advocate with Sh. Sumeet Pushkarna, Sh. Siddhartha Nagpal and Ms. Shilpa, Advocates.
Sh. P. Narayanan, Manager.
Sh. Shailendra Bhardwaj with Ms. Aroma. S. Bhardwaj, Advocates.
Sh. Surendra Babbar, Advocates.
Sh. Gautam Narayan, ASC, for GNCTD.

+ **LPA 839/2015, C.M. APPL.27773-27774/2015**
TATA POWER DELHI DISTRIBUTION POWER LIMITED
.....Appellant

Through: Sh. Saransh Shaw, Advocate.

Versus

KIRAN SAMRAT AND ORS.Respondents
Through: Sh. Manjunatha. M.T., for Sh. Peeyosh Kalra,
ASC, for GNCTD.
Sh. Sumeet Pushkarna, Advocate, for Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. This judgment would cover common issues that arise for consideration in several appeals. The main judgment arises in LPA 562/2013 (*Tata Power Delhi Distribution Limited v. Rosy Jain and Ors.*). The writ petitioners/respondents had complained that the appellant [hereafter "Tata Power" also known as "NDPL"] wrongly refused to release the amounts towards terminal dues upon the employees electing to opt for voluntary retirement.

2. The learned Single Judge, by the impugned judgment, held that Tata Power and not the Delhi Vidyut Board Employees Terminal Fund (hereafter called "the Pension Trust") was liable to make the payment. In all the other appeals, the learned Single Judge followed the ruling in *Rosy Jain (supra)* and held similarly that employees who opted for voluntary retirement under Rule 48A of the Civil Services Pension Rules, 1972 [hereafter "CCS (Pension) Rules, 1972"] - as applicable to the erstwhile Delhi Vidyut Board (DVB) employees and where the liabilities devolved upon Tata Power - were

payable by the appellant. The decision in *Rosy Jain (supra)* was followed in later writ petitions filed by employees of the electricity distribution companies, i.e. Tata Power Ltd, BSES Rajdhani Ltd, etc (hereafter "DISCOMS"). The DISCOMS are successors in interest of the erstwhile Delhi Vidyut Board ("DVB").

3. The brief facts of the case are that the Govt. of NCT of Delhi (GNCTD) decided to organize electricity generation, transmission and distribution activity in the territory of Delhi by what is now commonly known as "unbundling" of the sector. The existing corporation, i.e. DVB was then discharging all these functions. Its employees were apprehensive with respect to their terms and conditions and the continuity of their service, particularly the liability towards their pension and terminal benefits payable to them in view of the impending unbundling. To allay these apprehensions, certain Tripartite agreements were executed between DVB employees and the private entities. These provided *inter alia* that existing terms and conditions of service which governed the employees would continue to regulate the employer/employee relationship and that the services of the existing employees would be transferred to the newly created entities to whom the electricity distribution functions would be entrusted. Clause 3.3(d) of the Tripartite agreement, particularly stated as follows:

"3. Now, therefore, in consideration of the promises and mutual conditions set forth herein, it is agreed that in the event of reorganization of DVB into two or more corporate entities and disinvestments of any such entities of GNCT of Delhi and the DVB hereby guarantee as follows:

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(d) The Government shall create a Pension Fund in the form of a Trust and the pensionary benefits of absorbed employees shall be paid out of such Pension Fund-

(1) The principal Secretary (Power) of the GNCT of Delhi shall be the Chairperson of the Board of Trustees, which shall include representatives of the Departments of Finance, Personnel, Labour the employees and experts in the relevant field to be nominated by the Government.

(2) The procedure and the manner in which pensionary benefits are to be sanctioned and disbursed from the pension, fund shall be determined by the Government on recommendation of the Board of Trustees.

(3) The Government/DVB shall discharge their pensionary liability by paying in lump sum a one time payment to the Pension Fund Trust the pension or service gratuity and retirement gratuity for the service rendered till the date of transfer of the DVB employees in the successor entities.

(4) The manner of sharing the financial liability on account of payment of pensionary benefits by the successor entities shall be determined by the Government.

(5) The arrangements hereunder shall be applicable to the existing pensioners and to the existing employees on their superannuation in the new entities and shall not apply to the employees directly recruited by the new entities for whom it shall devise its own pension scheme and make arrangements for funding and disbursing the pensionary benefits.

(6) The balance of provident fund standing at the credit of the absorbed employees on the date of their absorption in the new entities, shall be transferred to the new Provident Fund Account of the employees to be maintained and operated by the Trust."

4. The Delhi Electricity Reforms Act, 2000 (hereafter "the 2000 Act") was brought into force with effect from 23.11.2000. The Scheme laid out by the 2000 Act envisioned creation of a parent body or holding company - the

Delhi Power Company Limited, and formation of separate companies for the purpose of generation, transmission and for distribution. The present controversy involves the distribution companies, DISCOMS. Section 15(1) stated that interest in the property, and rights and liabilities immediately before the effective date, of the DVB, vested in the GNCTD. Section 15(2) enabled GNCTD to transfer the property or interests in properties, rights and liabilities to any company or companies established for this purpose in Section 14. Section 15 prescribed various matters through which the transferred Scheme could be formulated. Section 16 enacted as follows:

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“Section 16- Provisions relating to personnel-(1) The Government may, by a transfer scheme, provide for the transfer of the personnel from the Board to a company or companies established as the case may be, under Section 14 and distribution companies (hereinafter referred to as “transferee company or companies”) on the vesting of properties, rights and liabilities in a company or companies established as the case may be, under Section 14 or the distribution companies.

(2) Upon such transfers the personnel shall hold office in the transferee company on terms and conditions that may be specified in the transfer scheme subject, however, to the following, namely:-

(a) that the terms and conditions of the service applicable to them in the transferee company shall not in any way, be less favourable than or inferior to those applicable to them immediately before the transfer;

(b) that the personnel shall have continuity of service in all respects; and

(c) that the benefits of service accrued before the transfer shall be fully recognized and taken in account for all purposes

including the payment of any and all terminal benefits”."

5. The assets, liabilities and various activities of DVB devolved upon the newly created successor companies in terms of the 2000 Act, the transfer scheme as well as the rules framed for this purpose. The legal effect of these were that the services of employees of the erstwhile DVB were statutorily transferred to various successor companies - including Tata Power. In this background, the DISCOMS - including the Tata Power/NDPL formulated a Special Voluntary Retirement Scheme ("SVRS") or voluntary separation scheme on different dates, i.e. 18.09.2003 and 29.11.2003. This was done with a view to incentivize the transferred employees to opt for severance in employment - to that end, a lump sum pay out was envisioned. Several employees had opted at that stage for the SVRS. The DISCOMS- including the Tata Power at that stage took the position that they were not bound to pay anything towards monthly pension or retirement dues over and above what had been offered by the SVRS. The Pension Trust's (set up by a separate Trust Deed, with the purpose of administering the pension fund accruals till date of unbundling and managing such pension funds from contributions) position was that it was not liable to make any pay outs. This led to filing of several writ petitions by the DISCOMS. Those writ petitions were decided by a learned Single Judge [reported as *North Delhi Power Ltd. v. Govt of NCT* 142 (2007) DLT 65 hereafter called "SVRS judgment"]. It is not disputed that this decision became final.

6. All the writ petitioners in the present case, i.e. the respondents were working in the DISCOMS - in most cases, Tata Power. On various dates, they opted and were allowed to superannuate on voluntary retirement basis.

This option was exercised by them in tune with the pre-existing conditions of service that were protected; they had invoked Rule 48A of the CCS(Pension) Rules, 1972. Upon exercise of option, Tata Power/the concerned DISCOM employer disclaimed liability to pay the terminal benefits and other dues as these were not a special scheme but an option exercised in terms of the normal terms and conditions applicable to employees. In other words, the DISCOMS' argument was that the terminal dues and pension liabilities had to be borne by the Pension Trust and not by it because the right to opt for voluntary retirement was a normal condition of service. The employee/writ petitioners approached this Court in various writ petitions.

7. For the sake of convenience, the relevant dates on which each of the writ petitioners approached the Court for relief and the relative particulars of the appeal etc. are set out in a table below:

<i>Sl. No.</i>	<i>Letter Patents Appeal</i>	<i>Name of Petitioner and concerned employee</i>	<i>Date on which VRS was sought</i>	<i>Reason</i>
<i>1.</i>	<i>562/2013</i>	<i>Rosy Jain</i>	<i>01.04.2009</i>	
<i>2.</i>	<i>839/2015</i>	<i>Kiran Samrat</i>	<i>07.08.2014</i>	
<i>3.</i>	<i>368/2015</i>	<i>Ashok Kumar Abbi</i>	<i>30.11.2006</i>	
<i>4.</i>	<i>376/2015</i>	<i>Sneh Lata Rathi w/o late R.S. Rathi (Shri Rathi was AGM at the time of</i>	<i>01.10.2006</i>	<i>Reappointed as Sr. Manager on 08.09.2006</i>

		VRS)		
5.	366/2015	M.C. Gurani	30.09.2006	To join NDPL "under NDPL structure"
6.	370/2015	(a) Mahendra Gupta	30.10.2006	
		(b) Suresh Kamra	01.12.2006	
		(c) Pritam Grover	02.06.2006	
		(d) Rajender Kumar Verma	01.12.2006	
7.	371/2015	Ashwini Kumar	02.06.2006	To join NDPL "under NDPL structure"
8.	375/2015	(a) K.K. Jain	01.07.2006	
		(b) Vijender Singh	30.11.2006	
		(c) Anil. K. Sharma	01.12.2006	
		(d) Jagesh Kishore	01.12.2006	
9.	405/2015	Ms. Neeraj Gupta (P)	30.11.2006	
		Devender Kumar Gupta		

		(employee)		
10.	650/2015	Rajiv Lochan	18.10.2009	employer is BSES

8. The claim of the respondent employees was that upon acceptance of the offer for VRS, it was an obligation of their employer, i.e. Tata Power/DISCOMS, to disburse the terminal benefits. Since they were denied this, they approached the Court by filing writ petitions. Earlier, certain writ petitions were allowed on 31.01.2013 in *Iqbal Chand v. GNCTD*, [W.P.(C) 13834/2009 and connected cases]. The learned Single Judge had in *Iqbal Chand (supra)* - relied upon a Division Bench ruling of this Court in *GNCTD & Ors. v. K.R. Jain and Ors.*¹ The judgment in *K.R. Jain (supra)* was upheld by the Supreme Court in *NDPL v. GNCTD and Ors*².

9. In *Iqbal Chand (supra)*, the issue was disbursement of pay benefits to those who had retired whilst in the service of DVB in view of its circulars dated 23.07.1997 and 21.12.1999. Learned Single Judge in *Iqbal Chand (supra)* noticed the scope of the controversy as follows:

"1. The limited issue which is urged for seeking the reliefs prayed by the petitioners in these writ petitions is of the entitlement of employees of erstwhile Delhi Vidhyut Board (DVB) who retired before the circulars dated 23.7.1997 and 21.12.1999 for grant of benefit as per these circulars. By these circulars the Delhi Vidhyut Board had granted enhancement in scale of pay to its employees with effect from a retrospective date i.e. 1.4.1994. The issue is whether the employees who have retired in the

¹ 2006 (4) AD Del 529

² 2010 (6) SCC 278

period from 1.4.1994 to 1997/1999 when the circulars were issued are or are not entitled to the monetary benefits given by these circulars."

Impugned judgment and orders that followed it

10. In the appeals, which have arisen before this Court and are the subject matter of this judgment, the learned Single Judge noticed the controversy as follows in *Rosy Jain's* petition [W.P.(C) 4532/2010; decided on 09.07.2013] - this is challenged in LPA 562/2013:

"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."

11. In view of the declaration of law in *Iqbal Chand (supra)*, learned Single Judge held that pension liability was that of the concerned successor-in-interest or DISCOM. Relying on a previous decision [*Smt. Pawan Vohra v. The Chairman, DVB Pension Trust and Anr.* [W.P.(C) 1680/2012; decided on 17.05.2013], the Single Judge held that the Supreme Court's judgment in *NDPL (supra)* held the field. As a result, he allowed the writ petition preferred by Ms. Rosy Jain. This was the basis for subsequent orders all of which have been challenged in the appeals before us.

Contention of parties

12. The DISCOMS contend in their appeals that the learned Single Judge

fell into error in ignoring the judgments of the learned Single Judge in the SVRS judgment. 13. Learned counsel relied upon the decision in the SVRS judgment and submitted that the said decision attained finality. In fact, the Division Bench in the appeal filed before it substantially affirmed the judgment of the learned Single Judge. The said appeal was confined to the question of the benefit of extra five years' service to be added by virtue of Rule 48B of the CCS Rules. The Division Bench concluded that such benefit was not available to the retiring employees. However, the Division Bench affirmed the finding that voluntary retirement stood on par with normal superannuation under Rules in terms of the existing conditions of service which included Rule 48A of the Pension Rules.

14. The DISCOMS also argue that pursuant to the SVRS judgment, the GNCTD initiated steps to amend the charter of the trust deed and relied upon minutes of meetings dated 15.01.2009 and 10.02.2009. As a result of these deliberations, the GNCTD issued a circular on 03.11.2009, which stated that all cases of voluntary retirement under Rule 48 were to be entertained by the Trust with effect from 01.07.2002 treating them at par with regular retirement. It was submitted that this circular clarified that Pension Trust had to bear the liability to pay terminal benefit and all the consequential dues and not the DISCOM in this case. It was argued in this context that the communication dated 03.11.2009 read with the SVRS judgment recognized that voluntary retirement under Rule 48A was protected as an existing term of service by virtue of Section 16 of the Act and rules applicable under the transfer scheme. Learned counsel submits that the decision relied upon by the learned Single Judge, i.e. in *Iqbal Chand (supra)*; *Tulsi Ram Arya v.*

Chairman, DVB and Ors. (W.P.(C) 618/2001); *Smt. Pawan Vohra (supra)*; *Babu Ram Jain v. BSES Yamuna Power Limited* (W.P.(C) 1597/1998) and the Division Bench ruling in *K.R. Jain (supra)* were all in the context of other claims - mostly on account of pending disciplinary proceedings or enhancement of pay benefits etc. for the period prior to 01.07.2002.

15. Learned counsel for the GNCTD and the Pension Trust urged that the only three contingencies visualized by the rules governing the Pension Trust where terminal benefits and pay outs were to be made are: superannuation of the employee; death of the employee and permanent incapacitation of the employee. In the second case, upon death, the terminal benefits would be paid to the family members. Other than these, Pension Trust being constrained by the payments made into it through contribution of its subscribers, i.e. the existing employees of the DISCOMS, would not be able to cater to unforeseen eventualities, such as those contemplated by voluntary cessation of employment as in the case of an option under Rule 48A.

16. It is contended that in the present case, the employees were induced to apply for voluntary retirement and consequently, the liability to make pay outs cannot be considered as normal. In other words, it is submitted that the Pension Trust has specifically declined its liability, contending that voluntary retirement under Rule 48-A of the Central Civil Services (Pension) Rules (hereafter "Pension Rules"), which was a pre-existing condition protected by terms of the Act, was not "normal" retirement and consequently, the liability to make pay outs towards terminal benefits and other benefits was that of the concerned DISCOM/employer in this case. It is submitted that more importantly, the Supreme Court ruling in *NDPL (supra)* governs the field

inasmuch as all liabilities arising out of the past service of the employee as well as the duration of service with the DISCOM are to be reckoned and taken care of by the employer rather than the Pension Trust. Such being the clear mandate of the law declared in *NDPL (supra)* it cannot be said that the learned Single Judge fell into error in holding that the DISCOMS were liable to make payments.

Analysis and conclusions:

17. This Court has already extracted the relevant provisions of the Act and the Scheme. As to who is to bear the liability for terminal benefits in the case of voluntary retirement, the appellants have placed reliance on the SVRS judgment. In the said SVRS judgment, the argument of the Pension Trust was noticed and the first question framed for decision was, "*whether the liability of the respondents to pay or ensure payments of terminal dues is confined to cases of superannuation, death or incapacitation of the employees of the discoms or it extends to cases of voluntary retirement.*" The SVRS judgment noticed a previous ruling in *Ashwani Kumar v. Oriental Bank of Commerce*³. The SVRS judgment thereafter held as follows:

"68. As discussed in the preceding paragraph, the right to apply for a voluntary retirement and the entitlement to pension in the eventuality of such severance is not an implied condition of service unlike resignation but has to be expressly provided for. It would, therefore, be necessary to examine firstly whether the Pension Rules were applicable and further whether the right to apply for voluntary retirement under Rule 48-A existed as a condition of service for the employees of DVB.

³ 103 (2003) DLT 738

69. *The Division Bench of This Court in Ashok Kumar v GNCT of Delhi (in CWP 1864/2002, decided on 16th September, 2002) had to decide whether Rule 37 of the CCS Pension Rules applied to the employees of the erstwhile DVB. That petition too was filed in the wake of the unbundling process of DVB. The court noticed, in para 11 of the judgment that the predecessor of the DVB i.e. DESU was a department of the Municipal Corporation of Delhi. The Corporation (MCD) had framed Regulations in 1973 granting benefits to employees of DESU. Subsequently, in 1977 the DESU (DMC) Service Regulations were approved. They stipulated that service rules applicable to Government Servants would also apply to DESU employees. Regulation 4 indicated that unless provided in the Act or the Regulation, the rules applicable to Government Servants in the service of the Central Government, were to, so far as may be, regulate the service of Municipal employees except in regard to the matters relating to provident fund. The Division Bench noticed that upon incorporation of the DVB the assets and liabilities of the DESU and its undertaking devolved on it. The DVB later issued a circular protecting existing service conditions and expressly mandating 'there must be no retrenchment or change in service conditions to the detriment of the staff. Pension and all terminal benefits must be safeguarded by the Delhi Government.*

70. *The Division Bench after considering the assurances held out by the DVB and analysing the provisions of Section 16, rules and the tripartite agreement, held that Rule 37 of the Pension Rules could not be applied as there was no question of deemed retirement. The Court held that Rule 37 could apply where by legal fiction a person superannuated but not otherwise. Accordingly where there was no retirement in terms of legal fiction, the question of payment of pro-rata pension did not arise. As far as the decision of the court in O.P Gupta's case is concerned, the contention raised was that in terms of Rule 9 of the CCS Pension Rules, the authority and jurisdiction to effect a cut in pension was with the President of India and not DVB. This was negated; the court held that Pension Rules are not automatically applicable to employees of DVB and they were*

adopted mutates mutants. The President of India is not the employer of the employees of DVB nor were the employees holders of civil posts. They were not governed by Articles 309 of the Constitution of India. DVB was held to be a body constituted and being an autonomous body, required to act according to its own rules etc. As the Board of the DVB was the supreme authority, it was entitled to pass necessary orders under Rule 9 of CCS Pension Rules in the case of employees of DVB. The court did not rule out applicability of the CCS Pension Rules, but held them to be applicable, in so far as exercise of powers under Rule 9 were concerned.

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 unfunded, if there is a shortfall 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 unfunded bear the liability wherever recourse is made by the transferred employees to Rule 48-A of the Pension Rules."

18. The Court had, in the SVRS judgment, in para 93 issued elaborate directions for the constitution of a Tribunal and disbursement of amounts since the issue was pending for considerable period of time. These directions were sought to be modified/clarified by separate applications which were disposed of on 20.04.2011. That order was challenged in LPA 677/2011, 680/2011, 738/2011 and 739/2011. The Division Bench, in its common judgment (*GNCT and Ors. v. NDPL and Ors.*, LPA 677/2011, decided on 31.08.2015) rejected those appeals and held as follows:

"15. Notwithstanding the prolix pleadings in the appeals filed by the Government of Delhi and the Pension Trust, the only argument advanced at the hearing of the four appeals which laid a challenge to the order dated April 20, 2011 was that since most of the VRS optees had even otherwise attained the age of superannuation there was no necessity to constitute the Tribunal as directed by the main judgment dated July 02, 2007.

16. The said contention of the Government of NCT of Delhi and the Pension Trust has simply to be noted and rejected for the

reason neither challenged the main judgment dated July 02, 2007 and thus the mandate of the said judgment had to be complied with. We have already noted hereinabove the reasons given by the learned Single Judge for constitution of the Tribunal if the DISCOMS exercised the option as per para 93II(i) of the decision dated July 02, 2007. The reasons given by the learned Single Judge are even otherwise sound. Besides, since the decision dated July 02, 2007 has not been challenged by either party it has attained finality. We see no logic in the argument, and therefore concur with the view taken by the learned Single Judge in the decision dated April 20, 2011 culled out in paragraphs 14 and 15 of the said order, contents whereof have been noted by us in paragraph 14 above."

19. Thus, the question as to whether voluntary retirement under Rule 48A was a normal condition of service amounting to superannuation and as to the location of liability for making payouts stood settled. In *NDPL (supra)*, the Supreme Court had to decide two appeals. An appeal, which arose from the judgment and order, dated 30.03.2006 of a Division Bench of this Court in *K.R. Jain (supra)*. The facts in *K.R. Jain (supra)*, which led to the discussion and conclusions of the Supreme Court, are noticed as follows:

"23. The Letters Patent Appeal filed by the appellant before the High Court was dismissed. It so happened, that respondent No.3 herein Shri K. R. Jain, who was an erstwhile employee of the Delhi Electric Supply Undertaking (DESU), superannuated from service on 31.07.1996. Eventually, Delhi Vidyut Board (DVB) became successor of Delhi Electricity Supply Undertaking (DESU). NDPL was incorporated on 04.07.2001 and inherited the distribution undertaking on 01.07.2002 along with the assets, liabilities, personnel and proceedings in pursuance of statutory transfer scheme notified by the Government pursuant to Sections 14-16 and 60 of the Delhi Electricity Reforms Act, 2000.

24. It was much before that, that respondent No. 3 was superannuated. His pension was paid from the Terminal Benefit

Fund, 2002 of DVB. The DVB had floated Time Bound Terminal Scale Scheme by its Office Order dated 23.07.1997 and Resolution No. 216 dated 16.07.1997. Claiming that though he had superannuated on 31.07.96, still he was covered by the scheme, respondent No.3 filed a Writ Petition No. 2337 of 2004 seeking appropriate direction against Delhi Government, Delhi Power Co. Ltd. and Delhi Power Supply Company and claimed benefits arising out of the Scheme. Significantly enough, NDPL was not made a party nor was there any claim against it.

25. This Writ Petition was allowed by the Learned Single Judge, holding that respondent No.3 was entitled to avail the benefits under Time Bound Promotional Scale Scheme (TBPS) and that DVB had unjustly denied him his dues. Holding the present appellant as a successor, Mandamus was issued against the appellant who was not a party and was not given an opportunity of hearing. This was based on the statement of an advocate appearing for respondent Nos. 1 and 2 herein to the effect that it was the appellant-petitioner who was the successor and was as such responsible to implement the judgment dated 23.03.2004."

20. The Supreme Court thereafter analyzed the provisions of the 2000 Act and rules under the Transfer Scheme and held as follows:

"49. Rule 6(8) which we have already quoted but would repeat again for the ready reference is as under:

"6(8) Subject to sub-rule (9) below, in respect of all statutory and other schemes and employment related matters, including the provident fund, gratuity fund, pension and any superannuation fund or special fund created or existing for the benefit of the personnel and the existing pensioners, the relevant transferee shall 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 shall become those of such transferee and the services of the personnel shall be treated as having been continuous for the purpose of the

application of this sub-rule."

50. The language is extremely clear. It not only specifies the employment related matters but also clarifies what those matters would be which include pension and any superannuation fund or special fund created or existing for the benefit of the personnel and the existing pensioners. The words 'existing pensioners' are extremely important. A plain reading of this Rule would leave no manner of doubt in respect of the liability having been transferred to transferee company and the NDPL is certainly the one. The language is broad enough to include all dismissed, dead, retired and compulsorily retired employees. As if that was not sufficient, sub-Rule (9) requires the Government to make appropriate arrangements in terms of the Tripartite Agreements in regard to the fund of terminal benefits to the extent it is unfunded on the date of transfer from the Board. Rule 9(a) and (b) are also very significant and are as under:

"6.9(a). The Government shall make appropriate arrangements as provided in the tri-partite agreements in regard to the funding of the terminal benefits to the extent it is unfunded on the date of transfer from the Board. Till such arrangements are made, the payment falling due to the existing pensioners shall be made by the TRANSCO, subject to appropriate adjustments with other transferees.

"For the purpose of this sub-rule, the term-

(a) "existing pensioners" mean all the persons eligible for the pension as on the date of the transfer from the Board and shall include family members of the personnel as per the applicable scheme; and

(b) "terminal benefits" mean the gratuity, pension, dearness and other terminal benefits to the personnel and existing pensioners."

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 the 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 broad language of the Rule, we do not think that such contention is possible.

53. Again relying on Rule 2 (r) it was feebly tried to be suggested that the DISCOMS were not the only transferees but it was also the holding company, namely, the Delhi Power Company Ltd (DPCL). The argument is obviously incorrect as no employees were ever transferred to the DPCL. All transferees came only to the DISCOMS like the NDPL under the transfer scheme. The High Court has correctly interpreted these Rules and has correctly come to the conclusions that the liabilities would rest with the DISCOMS including NDPL and BSES.”

21. It is thus clear that the question that arose for decision and was considered by the Supreme Court was not in relation to pension liability; it was whether the DISCOM was liable to make payouts towards service conditions, which had been denied, to the employee, by the DVB when it was in existence. In *NDPL* itself, the issue was denial of pay benefits on an interpretation of circulars issued in 1997, when DVB was in existence. The employee had retired. The question of bearing liability by any entity other than the DISCOM did not arise.

22. In the present case, what is apparent is that all the employee-respondents sought and were readily granted voluntary retirement. The Pension Trust had earlier denied its liability on account of voluntary retirement provisions under Rule 48-A; that issue was decided against it in the *SVRS* judgment. The Pension Trust never appealed that decision; rather the appeals preferred by it and the GNCTD related to the correctness of a later clarification- which had no connection with, or was unrelated to the issue of its liability to make payouts in respect of retirements under Rule 48A. Those appeals were disposed of; the Pension Trust succeeded only in

respect of its contention *vis-à-vis* inapplicability of Rule 48-B. The tenor of that provision itself indicates that it applies when Rule 48A applies,⁴ thus showing that pension liability upon voluntary retirement was payable by the Pension Trust. The SVRS judgment clearly discussed this issue as is evident from the following extracts:

“53. Before proceeding to consider the rival submissions, it would be necessary to extract the relevant provisions of the Trust Deed and the pension rules. As noticed earlier, the Trust Deed was executed on 26.03.02. Part (b) of the preamble indicates that the Government of NCT decided to establish a superannuation fund for the benefit of those entitled to pension in accordance with the pension scheme of DVB, as detailed in the rules of the fund (annexed to the Trust Deed which are referred to hereafter as the 'Trust Rules'). Clause (3) of the Deed enjoins the Trustees to pay pension and other terminal benefits in accordance with the Trust Rules. The Trust Rules, inter alia, define actual service by referring to Rule 30 of the CCS (Pension) Rules; the duration of pension payable, by Clause 2 (x) is provided by Rule 54 (6) of the CCS (Pension) Rules; 'eligible members' under Clause 2 (xi) is defined as those covered by the CCS (Pension) Rules. The term 'qualifying service' has been defined as what is contained in Rule 3 (q) of the CCS (Pension) Rules. The expression 'retirement' and 'normal retirement date' have been defined as follows:

(xxvi) 'RETIREMENT' as defined under Rule 35 Central Civil Services (Pension) Rules, 1972, as amended from time to time.

(xxvii) 'NORMAL RETIREMENT DATE' shall mean the date of retirement as defined in Fundamental Rules, 1956.

54. Rule 4 deals with contributions to the fund by the corporation

⁴ **“48-B Addition to qualifying service on voluntary retirement** (1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48(1)(a) or Rule 48-A...”

and the members. It refers to the fund being a superannuation fund. Rule 4 (b) (c) empowers the Trustees with the authority to fix additional contribution amounts to be paid by the 'new entity' i.e. DISCOM S and other successors, from time to time in consultation with the Government. Part V of the Trust Rules outlines the benefits. Rule 6.1 provides that a member, on superannuation would be entitled to pension and other terminal benefits as available to the existing employees on the retirement commencing from the month following superannuation, as per the Fundamental Rules. Rule 6.2 states that to qualify for benefit on superannuation, employees should have completed a minimum reckonable service as defined by Rule 14 of the CCS (Pension) Rules. The relevant parts of Rule 6 are extracted below:

6.1. A member on superannuation will be entitled to pension and other terminal benefits as available to the existing employees on the retirement commencing from the month following superannuation as per Fundamental Rules, 1956 as amended from time to time. A member would be entitled to pension life time.

6.2. TO QUALIFY FOR BENEFIT ON SUPERANNUATION: Employees must have completed a minimum reckonable service as per Rule 14 of the Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

xxxxx xxxx xxx 6.6. MINIMUM PENSION: In no case pension shall be less than the amount of pension payable as per Rule 40 (3) of Central civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

6.7. On separation from service of a member by his resignation before completion of the qualifying service as specified in Rule 14 of Central Civil Services (Pension) Rules, 1972, shall be dealt with as per Rule 26 of Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

6.8. On separation of a member who is dismissed/removed from the services of the Corporation and/or has otherwise lost his lien on his employment with the Corporation, the member shall be dealt with as per Rule 24 of Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

55. From the above, it is apparent that the concepts such as the retirement, terminal benefits, qualifying service and superannuation have been borrowed from the CCS (Pension) Rules. Indeed the Trust's rules have incorporated those provisions. The relevant provisions of CCS (Pension) Rules are extracted below:

“3. DEFINITIONS 3 (q) 'Qualifying Service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;

xxxx xxxxx xxxx

CHAPTER V CLASSES OF PENSIONS AND CONDITIONS GOVERNING THEIR GRANT

35. Superannuation pensions A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.

36. Retiring pension pension shall be granted-

(a) to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rule 48 or 48A of these rules, or Rules 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations; and

(b) to a Government servant who, on being declared surplus, opts for voluntary retirement in accordance with

the provisions of Rule 29 of these rules.

xxxx xxxxx xxxxx

37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body or a Public Sector Undertaking:

(1)On conversion of a department of the Central Government into a Public Sector Undertaking or an Autonomous Body, all Government servants of that Department shall be transferred en masse to that Public Sector Undertaking or Autonomous Body, as the case may be, on terms of foreign service without any deputation allowance till, such time as they get absorbed in the said undertaking or body, as the case may be, and such transferred Government servants shall be absorbed in the Public Sector Undertaking or Autonomous Body, as the case may be, with effect from such date as may be notified by the Government.

xxx xxx xxx xxx

(25)In case the Government disinvests its equity in any Public Sector Undertaking or Autonomous Body to the extent of fifty-one per cent or more, it shall specify adequate safeguards for protecting the interests of the absorbed employee of such Public Sector Undertaking or Autonomous Body.

(26)The safeguards specified under Sub-rule (25) shall include option for voluntary retirement or continued service in the undertaking or body, as the case may be, or voluntary retirement benefits on terms applicable to Government employees or employees of the Public Sector Undertaking or Autonomous Body as per option of the employees, assured payment of earned pensionary benefits with relaxation in period of qualifying, as may be decided by the

Government.

xxxx xxxxx xxxx

48-A. Retirement on completion of 20 years' qualifying service (1)At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

xxx xxxx xx

(2) The notice of voluntary retirement given under Sub-rule (1) shall require acceptance by the Appointing Authority: Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3)Deleted.”

It was after noticing these provisions of the Trust Deed that the SVRS judgment held, in the portions quoted previously, that voluntary retirement was covered under the Trust Deed and that the Pension Trust could not shrug its liability to those who opt for such benefit. Furthermore, the reference in the Trust Deed in Para 6.9 is also explicit in this regard, when it refers to “the gratuity, pension, dearness and other terminal benefits to the personnel and existing pensioners.” Clearly, those who might opt for voluntary retirement, like the employees in this case, were “personnel”. This judgment became final, so far as applicability of Rule 48-A and liability of the Pension Trust was concerned; the appeal (LPA 677/2011) was disposed of on 31.08.2015.

23. A conjoint reading of Paras 50-52 of the Supreme Court judgment in *NDPL (supra)* clarifies that the fact situation the court was concerned with was where the liabilities which arose on account of disputes decided after 01.07.2002, i.e the date of transfer, had to be considered. Here, the Court clearly stated that any liability that arose on account of pay revision, or interpretation of conditions of service, promotional benefits, payments to reinstated employees, was that of DISCOMS, who were successor entities of the DVB:

“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 the 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 broad language of the Rule, we do not think that such contention is possible.”

24. It is a well-settled proposition that judgments are not to be read as statutes⁵. The context of the *NDPL* judgment was whether the DISCOM concerned had any liability towards the past employment of an erstwhile DVB employee. As a successor, it had; the provisions of the Transfer Scheme and the Act clearly stated that such liabilities- which had not yet crystallized, were those of the DISCOMs. The question of whether the Pension Trust - specifically set up to take care of pension liabilities of the former DVB employees (later absorbed by DISCOMs) was never in issue.

⁵ *Haryana Finance Corporation v Jagdamba Oil Mills* 2002 (1) SCC 404 “Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes.”;

(Though the *NDPL* judgment talked of DISCOMS' liabilities towards compulsory retirement, those observations contextually would mean the liabilities, if any, that would arise after a compulsory retirement order is set aside). Likewise, wherever a dismissal or removal order is set aside, the reinstatement of the employee would be to the concerned DISCOM. Therefore, it is held that the *NDPL* judgment did not disturb the interpretation of this Court in the *SVRS* decision – as endorsed by the Division Bench. As a matter of detail, in the Division Bench, the Pension Trust never contended that the *NDPL* judgment of the Supreme Court disturbed or overruled the *SVRS* judgment, expressly or impliedly.

25. The appellant DISCOMS also rely on the GNCTD's order/letter/circular dated 03.11.2009. The said letter reads as follows:

***"GOVERNMENT OF NCT OF DELHI
(DEPARTMENT OF POWER)
DELHI SECRETARIAT, 8TH LEVEL, B-WING
NEW DELHI-110 002***

*No.F.11(01)/2009/Power/2909
03.11.2009*

Dated: the

To,

The Secretary

Pension Trust,

Rajghat Power House,

Delhi-110002

Fax No.23245619

Sub: Applicability of voluntary retirement under Rule 48(A), CCS Pension Rules, 1972

Sir,

I am directed to advise you to entertain all cases of Rule 48(A), CCS Pension Rules, 1972 w.e.f. 01.07.2002 treating them at par with regular retirement by paying the terminal benefits and pension as per CCS (Pension) Rules and consequently raise demand on the successor entitles for subsequent funding of the trust on this account for meeting the future liabilities accordingly.

This issues with the approval of competent authority.

Yours faithfully,

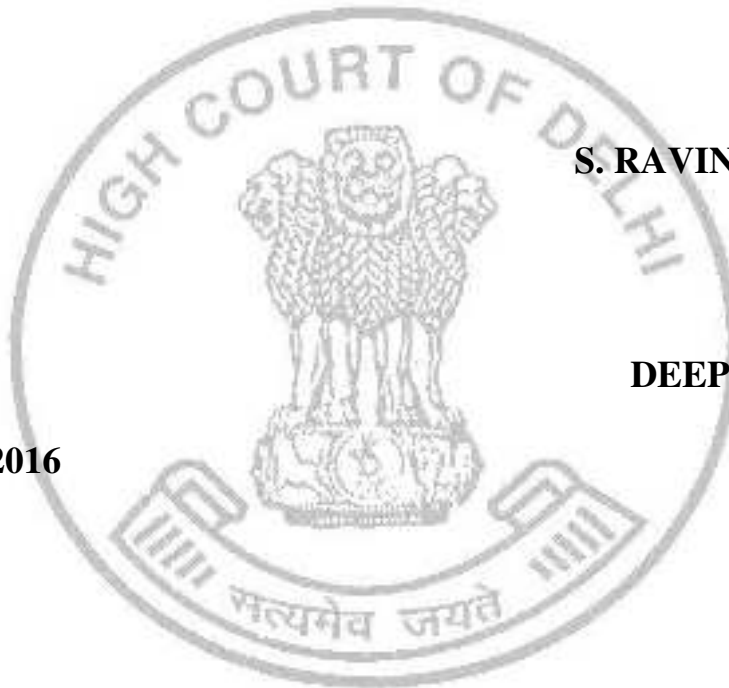
Sd/-

(S.M. Ali)

Dy. Secretary (Power)"

26. The above circular also shows that the GNCTD was alive to the fact that those opting for voluntary retirement were to be equated with those superannuating in the normal course and the Pension Trust was to entertain the claim for fixation of pension.

27. For the foregoing reasons, this Court is of opinion that the impugned judgment in *Rosy Jain (supra)* and the judgments in all other writ petitions that were allowed by the learned Single Judges cannot be sustained; they are set aside. The Pension Trust shall process and disburse the payments – if not already made; if made by the Appellants, they would be able to claim and recover the amounts paid out by them to the Pension Trust. The latter shall reimburse the amounts within 8 weeks. The appeals are allowed in the above terms; there shall be no order on costs.



**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

MARCH 17, 2016