

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

+ **W.P.(C) No. 3125/2003**

% **17th March, 2017**

A.P. VERMA & ORS. Petitioners

Through: None.

versus

ENGINEERS INDIA LIMITED & ORS. Respondents

Through: Ms. Raavi Birbal, Adv. for R-1 to 4.
Mr. Vikram Jetley, CGSC for R-5.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Twenty two petitioners have filed this writ petition under Article 226 of the Constitution of India, seeking directions for allowing these petitioners to have the benefit of Industrial Dearness Allowance (IDA) pattern of pay-scales and allowances w.e.f 1.7.1991 and/or from 1.4.1996 with notional fixation from 1.7.1991. The orders of the respondent no. 1/employer dated 28.4.2000, 26.5.2000, 12.9.2000, 5.10.2000 and 27.10.2000 which denied the petitioners the relief of grant of IDA pattern of pay-scales retrospectively are impugned.

2. A reading of the pleadings of the parties shows that employees of the respondent no. 1/employer, including the petitioners, were having pay-scales as per Central Dearness Allowance (CDA) pattern. Pursuant to a Supreme Court judgment, the respondent no. 1/employer in accordance with the directions from the Parent Ministry being the Ministry of Petroleum and Natural Gas came out with a scheme of shifting of the employees from CDA pattern to IDA pattern on such employees exercising the option to switch over from CDA pattern to IDA pattern. This policy came out on 11.5.1992. Petitioners, however, in terms of the scheme were to exercise option to migrate from CDA to IDA but the petitioners did not exercise the option to convert from CDA pattern to IDA pattern. By a circular dated 21.5.1993 of the respondent no. 1/employer last date for exercising option so as to switch to IDA pattern was extended up to 28.6.1993 but even then the petitioners once again did not exercise such option to convert into IDA pay-scale pattern. The right to exercise option to switch over from CDA to IDA was then given again in terms of a circular dated 29.1.1996 of the respondent no. 1/employer but yet once again the twenty two petitioners did not exercise the option. Petitioners however subsequently and beyond the last date exercised their option for shifting to the IDA pattern of pay-scales. Petitioners even after submitting their switchover option did so

conditionally stating that they be given retrospective benefit of IDA pattern from the year 1991 or at least from 1996. This request was denied by the respondent no. 1/employer and hence the present writ petition has been filed by the petitioners.

3. The respondent no. 1/employer in its supplementary affidavit dated 7.2.2006 has given the following valid reasons for denying the entitlement of the petitioners to be granted IDA pattern of pay-scales retrospectively from 1991 or 1996. These valid defences contained in para 13 of the supplementary affidavit dated 7.2.2006 read as under:-

- “13. It is submitted that request of the petitioners to shift from CDA to IDA pattern of pay scales w.e.f 1.1.1997 instead of 1.4.2000 is not feasible for consideration on the following grounds:
- (i) On more than 6 occasions, opportunity to extend the benefit extended to all CDA employees spanning over 1991 to 2000.
 - (ii) The petitioners have already availed the benefit of revised pay under CDA pay scales w.e.f. 1.1.1996 and revision of IDA pay scales of pay w.e.f. 1.1.1997 was parallel to CDA revision. Thus, the petitioner's claim of availing two benefits at a time is not tenable.
 - (ii) Though revision of IDA pay scales was effective 1.1.1997, guidelines to implement the revised pay scales was issued by DPE on 28.4.2000. Therefore, cut-off date of 1.4.2000 for exercising the option is most reasonable and justified and giving the benefit from 1.1.1997 would be retrospective which is contrary to the norms laid down by DPE and also per-se unjustified.
 - (iv) At every stage of pay revision of IDA i.e. 1992 and thereafter on more than 6 occasions, all employees were given opportunity to exercise the option but despite giving such a long rope, they failed to exercise option. Therefore, denial of opportunity is false and unfounded.
 - (v) Giving retrospective effect to the pay fixation from 1.1.1997 to CDA employees will create disparity in pay between same group of employees in IDA pay scales.
 - (vi) The petitioner's complaint of giving retrospective effect of switching over from CDA to IDA pay scales to 25 employees as alleged in para 6

of the Rejoinder is false. It is denied that the Respondent no. 1 treated any employee selectively to entertain option of any employee later than the stipulated date of option. The petitioners have specifically opted to switchover from CDA to IDA pay scales retrospectively from 1.1.1997 in the year 2000 (Page 98 to 105 of the Writ Petition)

- (vii) The petitioners have cited judgment of Gauhati High Court to reiterate their stand of switching retrospective benefit of exercising option. This case of BRPL is on different footing in as much as right to the Writ Petitioners at least to get conversion prospectively from January or July of the year in which they had opted was not taken away by any circular or office order. Page 42 of the Rejoinder i.e. judgment of Gauhati High Court refers in this regard. Whereas, in the case of Respondent no. 1, such right to opt retrospectively/prospectively was explicitly mentioned in all its circulars/communications.
- (viii) Respondent No. 1 in utmost regard to the judgment of the Apex Court has at no point of time forced the petitioners to shift to IDA pay scales as alleged in para 4 of the Rejoinder. The right of petitioners to shift to IDA pay scales of pay still remains voluntary however Respondent No. 1 cannot accept retrospective effect of shifting to IDA pay scales on the grounds cited above.” (underlining added)

4. I completely agree with the defences of the respondent no. 1/employer as stated in para 13 of its supplementary affidavit dated 7.2.2006 and which defences are supported by the Parent Ministry of the respondent no. 1/employer being the Ministry of Petroleum and Natural Gas as also the Department of Public Enterprises, Government of India, and which are respondent nos. 5 and 6 of this writ petition.

5. In my opinion, petitioners cannot raise a lame grievance that they did not know what would be the IDA pay-scale pattern or CDA pay-scale pattern, inasmuch as, various other employees had in any case exercised the option before the cut-off date for switching over from CDA to

IDA pattern. Also, respondent nos. 1, 5 and 6 rightly contend on the basis of para 13 of the supplementary affidavit that if petitioners are allowed retrospective benefits from 1991 or 1996 they will get two benefits because they have already got higher pay-scales in the CDA pattern with effect from 1.1.1996. Obviously, the respondents are therefore justified in arguing that petitioners cannot seek double benefits more so when benefit claimed will be against the norms prescribed by DPE. Respondents are also correct in arguing that in case petitioners are given retrospective benefit of IDA pattern there will result two separate categories whereby persons in same group will get disparity in pay-scales and the petitioners will get more benefit than the similarly placed persons, and which position in the opinion of this Court, of the respondent no.1, is correct for denying the benefit of IDA pattern of pay-scale retrospectively from 1991 or 1996. Also, in case prayers as made in the writ petition are allowed it would mean that there will be no sanctity to repeated cut-off dates of a scheme which is made by respondent no. 1/employer, and of failure to exercise option not on one occasion but on three occasions when the petitioners failed to exercise the option to switchover from CDA pattern to IDA pattern. I also agree with the other defences of respondent no. 1/employer as stated in para 13 of the supplementary affidavit.

6. In view of the above, this writ petition does not have merits,
and is therefore dismissed.

MARCH 17, 2017
AK/ib

VALMIKI J. MEHTA, J

