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Date of Order: April 27, 2018

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MUKUL AGARWAL

SH. NAVEEN KUMAR GUPTA

..... Petitioners

Through: Mr. Harpreet Singh, Advocate

versus

BHARAT HEAVY ELECTRICALS LTD. NEW DELHI

.....Respondent

Through: Mr. A.K. Roy, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL)

1. In the above-captioned first petition, petitioner-*Mukul Agarwal* has resigned as Manager (Finance) from Bharat Heavy Electrical Ltd. (*hereinafter referred to as 'BHEL'*) and his resignation was accepted by the Competent Authority w.e.f. 28th March, 2015. It is so evident from respondent's Communication of 28th March, 2015 (*Annexure P-5 colly.*).

2. In the above-captioned second petition, petitioner-*Naveen Kumar Gupta* had resigned as DGM (Finance) from BHEL on 17th October, 2015 and his resignation was accepted w.e.f. aforesaid date by respondent-BHEL vide Communication of 30th October, 2015 (*Annexure P-10*). Both petitioners had sought transfer of leave balance and pension contribution

from respondent-BHEL to Rural Electrification Corporation Limited (*hereinafter referred to as 'REC'*) and National Pension Scheme (*hereinafter referred to as 'NPS'*) respectively.

3. Two applications of petitioner-*Mukul Agarwal* for transfer of leave balance and pension contribution stand declined vide impugned Communication of 7th May, 2016 and 1st June, 2017 by respondent-BHEL while observing that transfer of leave is not permissible in case of resignation and pension scheme in BHEL and REC are not similar and so, it is not possible to transfer the pension contributions. It is the case of petitioner-*Naveen Kumar Gupta* that Representation made on 27th September, 2016 has not been responded to despite reminder of 10th November, 2017.

4. Since the relief sought in the above-captioned two petitions is identical, therefore, these petitions have been heard together and are being disposed of by this common order.

5. Learned counsel for petitioners draws attention of this Court to Office Memorandum of 1st February, 2017 (*Annexure P-4 in W.P.(C) 4303/2018*), which clarifies that if the Competent Authority has not forwarded the resignation through proper channel, then the benefit of past service will not be admissible. Attention of this Court is also drawn to O.M. of 25th January, 1988 (*Annexure P-3 in W.P.(C) 4303/2018*) to submit that carry forward of leave and the movement of an employee from one enterprise to another is permissible.

6. The concise submission of petitioners' counsel is that as per Chapter-II of the Personnel Manual of which relevant portion is extracted

as *Annexure P-11* in W.P.(C) 4303/2018, carry forward of leave is permissible in case of employees moving from one public enterprise to the other with the consent of both the Managements.

7. At this stage, learned counsel for respondent-BHEL clarifies that the O.Ms. are amended from time to time and it needs to be clarified as to what were the prevalent O.Ms. when the resignations of petitioners were accepted. He also submits that in case Representation of petitioner- *Naveen Kumar Gupta* has not been responded to, then it would be so done expeditiously.

8. To enable respondent-BHEL to do so, three weeks' time is granted to petitioners to now file a concise Representation to seek the relief as sought in these petitions. Such a course is adopted because impugned Communications of 7th May, 2016 and 1st June, 2017 in W.P.(C) 4303/2018 do not take note of the afore-referred O.Ms. and the Personnel Manual. It is made clear that if the pension scheme of the two organizations is not comparable, then pension has to be transferred to NPS or has to be released to the concerned employee. Upon receipt of such Representations, respondent-BHEL shall reconsider the impugned Communications of 7th May, 2016 and 1st June, 2017 within a period of six weeks, by passing a speaking order, in case the relief sought is not granted to petitioners. The fate of Representations so made, be conveyed to petitioners within two weeks thereafter, so that petitioners may avail of the remedies as available in law, if need be.

9. With aforesaid directions, these petitions are accordingly disposed of.

Copy of this order be given *dasti* to counsel for the parties.

(SUNIL GAUR)
JUDGE

APRIL 27, 2018

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