$~4

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

\+ **LPA 730/2017**

AP VERMA AND ORS .... Appellants

Through: Ms. Aprajita Mukherjee, Advocate

versus

ENGINEERS INDIA LTD AND ORS ..... Respondents

Through: Mr. Raj Birbal, Sr.Advocate with Ms. Raavi Birbal, Advocates.
Mr. Vikram Jetly, CGSC for Respondent Nos. 5 & 6
Mr. Samarth Khanna, Advocate for Respondent Nos.13 & 19

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE SANJEEV NARULA**

**ORDER**

% **30.10.2018**

**CM Appl.No. 41386/2017 (delay)**

1. For the reasons stated in the application, the delay in filing the appeal is condoned and the application is disposed of.

**LPA 730/2017**

2. Learned counsel for the Appellant makes a statement that Respondent Nos.7 to 22, who were along with the present Appellants in the writ petition, have not chosen to join him and have therefore been arrayed as proforma parties. Consequently, there is no clash of interest vis-a-vis the Appellants on one hand and the Respondent Nos. 7 to 22 on the other hand.

3. This appeal is directed against the order dated 17th March, 2017 passed by the learned Single Judge dismissing the Writ Petition (C) No. 3125/2003 and against the order dated 4th August, 2017 dismissing Review Application No. 311/2017.

4. Originally in the writ petition, apart from the present six Appellants there were other similarly placed Petitioners, who have be arrayed as Respondents No.7 to 22 in the present appeal. All of them were employees of the Respondent/ Engineers India Limited ('EIL'). The issue involved in the writ petition concerns the option given by EIL to its employees, as a result of the judgment of the Supreme Court in ***Jute Corporation of India Officers Association vs. Jute Corporation India Limited (1993) 3 SCC 436*** to switch over from the Central Dearness Allowance ('CDA') to Industrial Dearness Allowance ('IDA') pattern and related pay scales, on voluntary basis. A series of office memoranda ('OMs') were issued by the EIL from time to time beginning 12th June, 1990 giving its employees an option to switch over to an IDA pattern and related pay scales on voluntary basis.

5. The second such office circular was issued on 11th May, 1992, where it was stated that it had been decided to adopt the IDA pattern and related scales of pay with respect to employees who volunteered to switch over and would take effect retrospectively from 1st January, 1989. The date for exercising the option was extended up to 28th June, 1993 by a circular dated 21st May, 1993. As a result in 1993, many executives working in the EIL exercised their option to switch over from CDA to IDA pattern. However, some of the employees, including the present six Appellants, did not exercise their option as, according to them, they did not want to switch

without the revised IDA pattern pay scales having been disclosed, as they were unclear whether it was more advantageous for them to switch over to the IDA pattern or not.

6. On 29th January, 1996 another circular was issued by EIL deciding to give the benefit retrospective from 1st July, 1991 and extending the last date for exercising the option from CDA to IDA pattern after 29th February, 1996. A further circular was issued on 15th March, 1996 extending the time up to 31st March, 1996 for exercising the option. Admittedly none of the six Appellants exercised the option before 31st March, 1996.

7. On 2nd April, 1996 Appellant No.2 wrote to the EIL asking to know the complete details of both pay structures i.e. both under the CDA pattern and the IDA pattern. He accordingly prayed that his option should be kept open at least till the recommendations of the 5th Commission were known and accepted by the Government for implementation. On 15th January, 1997 some of the proforma Respondents wrote to the EIL stating that they were now exercising their options to move to the IDA pattern with effect from 1st July, 1991. On 4th February, 1997 Appellant No.1 exercised his option.

8. On 28th April, 2000 EIL issued another circular stating that the employees have option to switch over from CDA to IDA with effect from 1st January, 1997. It is stated that Appellant No.1 wrote a letter on 8th May, 2000 indicating his option to switch over to the IDA pattern. He stated that in case the benefit could not be given to him from 1st July, 1991 then the revision should be considered with effect from 1st January, 1997. It is stated that other Appellants also wrote similar letters.

9. On 26th May, 2000 EIL issued another memorandum giving one more opportunity to the Employees to switch over to IDA with effect from 1st April, 2000. the time for exercising the option was extended up to 30th June, 2000. On 12th September, 2000 another circular was issued extending the time up to 15th October, 2000.

10. The grievance was that in respect of those who exercised their options after 31st March, 1996, the benefit of conversion to IDA was implemented only prospective.

11. In 2003 the Appellants and the proforma Respondents filed WP(C) No. 3125/2003 seeking retrospective effect to be given in their cases of the benefit of conversion from CDA to IDA.

12. Learned counsel for the Appellants placed considerable reliance on an order dated 17th March, 2017 passed by learned Single Judge of the Gauhati High Court where similarly placed employees of the Bongaigaon Refinery and Petrochemicals Limited (BRPL), Assam were granted the benefit retrospectively after exercising the option to switch over from CDA to IDA. However, Ms. Birbal, learned counsel appearing for the Respondents/EIL in the present appeal has placed before the Court a judgment dated 28th February, 2002 of a Division Bench of the Gauhati High Court in Writ Appeal No. 380/2001 (*BRPL vs. Praveen Choudhury*) whereby the Division Bench has clarified that such benefit would be given only prospectively.

13. Be that as it may, the Court finds that in the present case a large number of opportunities have been granted to the Appellants to exercise their option

from CDA to IDA and for some reason the Appellants did not exercise such option on or before 31st March, 1996. It is plain that those who exercised the option within the aforementioned time limit did get the benefit retrospectively. It is not in dispute that the Appellants, after their exercise of such option, have got the benefit prospectively.

14. The question therefore really is whether EIL has acted unfairly in denying them the retrospective benefit from either 1st July, 1991 or 1st January, 1997? The Court is unable to be persuaded that, in the facts and circumstances of the case, EIL acted unreasonably in denying the Appellants that benefit. The Court is also unable to find any error committed by the learned Single Judge in dismissing the writ petition and review petition.

15. The appeal is accordingly dismissed.

**S. MURALIDHAR, J.**

**SANJEEV NARULA, J.**

**OCTOBER 30, 2018**
mw