

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: November 10, 2021

+ W.P.(C) 5063/2020

**RURAL ELECTRIFICATION CORPORATION OFFICERS
ASSOCIATION**

..... Petitioner

Through: Mr. Rakesh K. Khanna Sr. Adv.
with Mr. Pramod Gupta with
Ms. Pragya Agarwal, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Bharathi Raju, CGSC for
R-1 & R-3
Mr. Anand Varma and
Mr. Apoorva Pandey, Advs.
for R-2

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed with the following prayers:-

*“It is, therefore, most respectfully prayed that this
Hon’ble Court may kindly be pleased to:*

*a) issue writ, order or direction in the nature of
Certiorari Quashing setting aside the impugned
Order issued by respondent No.1, Ministry of Power
(MOP), Government of India dated 27.12.2013 qua
Respondent no.2;*

*b) issue writ, order or direction in the nature of
Mandamus for regularization of Pay Scales of below*

Board level executives of REC w.e.f. 01.01.1997 drawn between 1.1.1997 to 21.12.2006, as has been done for the other seven public sector undertakings under the same Ministry Power w.e.f. 01.01.1997 and ensure that employees of REC are not in disadvantageous position in comparison to their counterparts in other Power Sector CPSEs; and
c) pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

2. The instant petition has been filed by an association of officers, called REC Officer's Association, through its General Secretary, representing officers from technical and non-technical cadres of REC Ltd. (formerly Rural Electrification Corporation Ltd., 'REC', for short and respondent No. 2 herein), a Central Public Sector Undertaking ('CPSU', for short) under the Ministry of Power, Government of India (respondent No. 1 herein). The petition challenges the disparity in the pay scales between the employees of respondent No.2/REC vis-à-vis seven other PSUs under the same Ministry, viz.-

- (a) NHPC Ltd. ('NHPC', for short)
- (b) NTPC Ltd. ('NTPC', for short)
- (c) THDC India Ltd. ('THDC', for short)
- (d) SJVN Ltd. ('SJVN', for short)
- (e) POWER GRID Corporation of India Ltd.
('POWER GRID', for short)
- (f) Power Finance Corporation Ltd. ('PFC', for short)
- (g) North Eastern Electric Power Corporation Ltd.
('NEEPCO', for short).

3. It contended by Mr. Rakesh K Khanna, learned Senior Counsel appearing on behalf of the petitioner/Association, that

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4. Mr. Khanna would submit that some oil companies under the Ministry of Petroleum and Natural Gas, Government of India, adopted higher pay scales and a 4% rate of annual increment. On July 06, 2000, NTPC issued an Office Order bearing No. 444/2000 whereby higher pay scales with 4% rate of increment for Executives were formulated and implemented w.e.f. January 01, 1997, as was done by oil sector companies like Oil and Natural Gas Corporation Ltd. ('ONGC', for short), in deviation to DPE scales. It is submitted that the Ministry of Power vide letter bearing No. 8/10/98-Th. I dated July 03, 2000 approved of the revision and increment. Relevant portion of the letter is reproduced as under:-

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Letter bearing No. 32024/21/99-PFC dated August 28,
2000 sent to PFC:

Letter bearing No. 11/11/99-PG dated August 30, 2000
sent to POWER GRID:

6. Mr. Khanna submitted that such deviation from DPE pay scales was permitted for NTPC in view of the historical parity maintained with oil sector companies and for PFC and POWER GRID, to maintain the said parity with NTPC. He further stated that the said parity was not on the basis of guidelines of 'equal pay for equal work', as NTPC was in power generation business where as POWER GRID was in power transmission line business and PFC was in power finance business. This parity for revision of pay scales w.e.f. January 01, 1997 by PFC and POWER GRID was sought for on historical

basis, as is evident from their letter addressed to the Ministry of Power and the subsequent approval note of the Ministry.

7. It is also submitted that DPE and Department of Expenditure had concurred with the proposal to adopt the NTPC pay scales in multiple PSUs between the years 2000 and 2002. At that time, DPE had concurred with the proposals of REC, NHPC and NEEPCO while the Department of Expenditure had agreed with the proposals of NHPC, NEEPCO, THDC and SJVNL.

8. Since some PSUs were deviating from the DPE scales, the proposals were considered by a Group of Ministers on the advice of the Cabinet and recommendations of the Group of Ministers were put up for approval of the Cabinet. A DPE Note for Cabinet dated May 01, 2001 was prepared, relevant part of which is reproduced as under:-

“6. With a view to rationalising the issue a note was submitted for consideration of the Cabinet, seeking approval on the following:-

(a) All enterprises should get express and explicit concurrence of DPE for their pay revision proposals which involve any departure from or interpretation of guidelines of 25.06.1999. To that extent, Para 2 of the DPE guidelines on pay revision vide O.M. dated 25.06.1999 needs to be suitably amended.

(b) Government Directors in the Boards of PSUs should ensure that in the matter of pay revision, Government guidelines are implemented in ‘letter and spirit’ irrespective of the enterprises in question being profit making Navratna/ Miniratna enterprises and the expenditure on account of pay revision is met out of the internal resource generation.

(c) Ex-post facto approval for the revised scales that have been adopted by the PSU as set out in the preceding paragraphs BHEL may be permitted to revise the scales of its executives in like manner and as

detailed in Para 12 and 13 above.

7. The Cabinet in its meeting held on 30.11.2000 decided that “the proposals may, in the first instance be considered by a Group of Ministers....and the recommendations brought up thereafter.

8. xxxxxx

9. The GOM deliberated upon the matter at length in its meeting held on 19th March, 2001. The minutes of the meeting of GOM are at Annexure-I. GOM recommended the following:-

i) Cabinet should take note of the revised scales adopted by some of Navratna PSU which are departures from the Government directives.

ii) CPSU’s should get explicit concurrence of DPE and administrative ministry for their pay revision proposals whenever there is any departure from or interpretation of DPE guidelines of 25.06.1999. To this extent Para 2 of the DPE guidelines needs to be suitably amended.

iii) Government Directors on the Boards of CPSUs should ensure that in the matter of pay revision, Government guidelines are implemented in letter and spirit.

iv) The issue of separate guidelines in respect of Navratna CPSUs may be considered at the time of appointment of next Pay Commission for CPSUs.

10. Approval of the Cabinet is now solicited on the recommendations of the GOM, as referred to in Para 9 above.”

9. It is stated by Mr. Khanna that historical parity also exists between NTPC and REC, and on the same lines, employees of REC are entitled for the pay scales prevalent in NTPC, PFC and POWER GRID.

10. It is stated that the deviated pay scales of NTPC, POWER GRID and PFC were approved by the Cabinet in its meeting held on May 17, 2001. The DPE vide OM dated June 06, 2001 specified that any departures made by PSUs from Government

Guidelines thereafter shall require explicit concurrence of the DPE.

11. Mr. Khanna submitted that the REC not only has historical parity with PFC, but also parity with regard to the nature of the business, as both are engaged in power sector financing. He stated that in fact, PFC has acquired a majority stake in REC and has become its holding company.

12. He further stated that the presence of different pay scales among different PSUs in the same Ministry cannot be justified on account of the Navratna Companies being granted higher pay scales, as PFC and POWER GRID as well as several oil sector companies (ISP, MRL, CCL, BNC and NRL etc.) were not Navratna Companies, at the time of being allowed higher pay scales.

13. The main criterion mentioned in the Pay Revision Commission report for allowing different pay scales was the capacity of the Company to pay. Mr. Khanna submitted that the respondent No.2 / REC has been consistently making profits and there has been an increasing trend in sales turn over and therefore, it does not require budgetary support from the Government.

14. On April 30, 2009, Ministry of Power allowed implementation of revised pay scales strictly as per guidelines contained in OM's dated November 26, 2008, February 09, 2009, and directed to ignore all benefits which did not have approval of DPE for the purpose of fitment/pay revision vide two OM's dated April 02, 2009. This resulted in disparity between pay scales of different PSUs under the same Ministry.

15. On September 04, 2009, the Ministry of Power affirmed the need to revise pay scales of all PSUs under it, on the same lines as has been done for oil sector PSUs. The Ministry vide its letters dated September 08, 2009 and September 14, 2009 treated the revision of pay scales etc. prior to DPE OM dated June 06, 2001 as settled and 4% rate of increment was allowed for fixation of the pay scales of NTPC and PFC w.e.f. January 01, 2007. Mr. Khanna contended that this is a case of discrimination as some PSUs in Ministry of Power have been allowed fixation of pay scales on deviated scales and 4% rate of increment, whereas other PSUs under the same Ministry have been denied fixation of higher pay scales despite having approval of the Ministry and timely intimation to DPE. This aspect has also been brought out in the noting of the file of the Finance Division of the Ministry of Power. It is further contended that it is the responsibility of DPE/respondent No. 3 to ensure parity in employment including revision of pay scales (Basic+DA) for all CPSUs/CPSEs.

16. The Ministry of Power submitted a Note for the Committee of Secretaries bearing No. 11/17/2009-NHPC(Vol-II) dated November 21, 2011 regarding a proposal for regularisation of pay scales of below Board Level Executives in REC, NHPC, NEEPCO, THDC and SJVN w.e.f. January 01, 1997. Relevant portions of the Note as submitted in the writ petition are reproduced as under:-

“(a) The anomalies in Pay-scales, particularly on Promotion from higher pay-scale to lower pay-scale, needs to be avoided. The anomaly is seen during promotion of Supervisors to Executive Cadre, whereby the Supervisors move from a post carrying higher pay

scale to a post carrying lower pay scale which is against the rule of promotion which states that, "Promotion means movement of an employee from a post in the lower grade to the post in the next higher grade along the line of promotion.

(b) Moreover, parity in pay scales of all CPSEs under Ministry of Power needs to be maintained in the large interest of growth of the Power Sector and morale of the executives. There is no justification for grant of different pay scales for different CPSEs under the same Ministry, as there is specific provision for Performance Related Pay which is based on performance of the individual company and individual employee.

(c) Due to unwarranted movement of young Engineers from PSUs having lower pay scales to PSUs having higher pay scale within the power sector, the work of individual company suffers adversely. It is very difficult to retain an Engineer of Hydel CPSE at extremely tough locations like Leh, Kargil, North-eastern region and other remote parts of the country with lower pay scales than those of NTPC, PGCIL and PFC.

(d) DPE guidelines inter-alia provides that revision of pay-scales would depend upon the capacity of enterprise to pay and the resources for meeting the increased obligations for salary and wages which must be internally generated and must come from improved performance and terms of productivity and profitability and not from Govt. subvention. It may therefore be seen that revision of pay-scales have no linkages to the category (viz. Navaratna/Mini navaratna etc.) to which the CPSEs belongs but depends upon the paying capacity of the enterprise."

17. Mr. Khanna further stated that the matter was also referred to the Ministry of Law and Justice (Department of Legal Affairs) which, vide letter dated December 24, 2012, opined that equality must be established by bringing about parity in pay scales.

18. However, the Ministry of Power vide Order dated

December 27, 2013 directed the remaining five PSUs including respondent no. 2/REC to implement the decision of the Competent Authority. The Order reads as under:-

“(i) The deviant pay scales fixed w.e.f. 01.01.1997 shall not be regularized.

(ii) However, no recovery shall be made for the excess pay drawn from 01.01.1997 onwards considering the difficulties in effecting recovery and also considering that such a recovery may de-motivate the staff.

(iii) The pay scales shall be fitted w.e.f. 01.01.2007 after correcting the aberrations in pay scales fixed w.e.f. 01.01.1997.”

19. Respondent No. 2/REC issued an Office Order dated November 03, 2014 stating that pursuant to the decision of the Cabinet not to regularise REC pay scales and disposal of an SL Writ regarding pay scales filed by a retired employee, the scales provisionally implemented vide Office Order Part III No. 31 dated July 22, 2010 would stand confirmed. It was also stated in the Order that, in case similarly affected PSUs of hydro sector were to get a better deal, REC would pursue its case for parity with concerned authorities.

20. It is the case of the petitioner/Association that the very existence of different pay scales for similar posts under administrative control of the same Ministry is in violation of Article 14 and Article 16 of the Constitution of India. It is also stated that as no reasonable classification existed between the two categories of PSUs i.e., NTPC, POWER GRID and PFC on one hand and REC, NHPC, NEEPCO, THDC and SJVN on the other hand, the Order dated December 27, 2013 issued by respondent No. 1 is arbitrary and discriminatory.

21. Various writ petitions challenging the said Order dated W.P.(C) 5063/2020

December 27, 2013, were filed by employees of other PSUs under the Ministry of Power. In this regard, Mr. Khanna has drawn my attention to the Judgment of the High Court of Uttarakhand in ***THDC Diploma Engineers Association v. Union of India, 2016 SCC OnLine Utt 1020***, wherein the Court, while allowing a writ petition, quashed the Order dated December 27, 2013 insofar as it relates to the respondent Corporation therein, i.e., THDC. A Special Leave Petition bearing No. 9188/2017 preferred in appeal against the said Judgment, was disposed of by the Supreme Court vide Order dated May 08, 2017, finding no ground for interference.

22. He further stated that the employees of NEEPCO had filed *Writ Petition No. 185 of 2014* before the High Court of Meghalaya seeking *inter alia*, to quash/set aside the Order dated December 27, 2013. The Court in its Judgment titled ***Joint Action Committee v. Union of India, 2016 SCC OnLine Megh 196***, took a view similar to that taken by the High Court of Uttarakhand in ***THDC Diploma Engineers Association (supra)*** and allowed the petition, quashing the Order dated December 27, 2013 insofar as it relates to the respondent Corporation therein, i.e., NEEPCO.

23. Further reference is made by Mr. Khanna to the Judgment of a Co-ordinate Bench of this Court in ***National Hydro Electricity Power Corporation Officers Association v. Union of India, W.P.(C) 1377/2014*** rendered on December 15, 2017, wherein a writ petition filed by the employees of NHPC challenging the Order dated December 27, 2013, was disposed of. A Letters Patent Appeal bearing No. 44/2018 was preferred
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by NHPC Officers Association against the Order of the Single Judge. The appeal was allowed by a Division Bench of this Court, and the Order dated December 27, 2013 issued by the Ministry of Power was quashed insofar as it relates to NHPC.

24. It is contended that in view of the fact that the Special Leave Petition preferred by the Union of India against the decision in *THDC Diploma Engineers Association (supra)* has been dismissed by the Supreme Court, the Order passed by the High Court of Uttarakhand has attained finality and has to be implemented in respect of the petitioner/Association.

25. It is stated that Union Cabinet on January 16, 2019 had given its approval for regularisation of pay scales of below Board Level Executives in NHPC, NEEPCO, THDC and SJVN, w.e.f. January 01, 1997 adopted by them consequent upon the orders of Ministry of Power dated April 04, 2006 and September 01, 2006.

26. Pursuant thereto, the petitioner/Association made a representation dated January 21, 2019 to respondent No. 2/REC wherein the petitioner expressed grievance in not treating its members in parity with the employees of other PSUs under Ministry of Power who had already been given benefit of revised pay scales w.e.f. January 01, 1997, and sought for regularisation of pay scales in line with the Cabinet approval granted to other hydro sector PSUs. On February 28, 2019, respondent No. 2/REC sent a letter to respondent No. 1 seeking regularisation of pay scales and expressing their concern, as it was only the employees of REC that were denied the revised pay scales out of all eight PSUs under the Ministry of Power. Another
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representation was made by respondent No. 2/REC to respondent No. 1 on May 01, 2019.

27. In response to the representations made by the respondent No. 2/REC, respondent No. 1 sent a letter dated June 11, 2019 seeking clarification on two points:-

- i. Whether REC had obtained the approval of the Ministry at the time of adopting the pay scales and percentage rate of increment with effect from January 01, 1997; and
- ii. If so, the date of adoption of pay scales by REC and the approval sought from the Ministry

In reply thereto dated June 26, 2019, it was intimated by respondent No. 2/REC that the pay scales with percentage rate of increment w.e.f. January 01, 1997 was approved by the Board of Directors of REC in its 267th meeting held on April 27, 2001 and the same was referred to the Ministry of Power for approval vide letter dated June 08, 2001.

28. It is stated that the matter was pursued continuously by the respondent No. 2/REC and a meeting was held under the Chairmanship of the then Secretary (Power) who advised respondent No.2/REC to prepare a proposal for adopting NHPC pay scales. However, the same could not be implemented in REC as it would amount to moving from one deviant structure to another. Respondent No. 2/REC again requested respondent No. 1 to consider PFC pay scales (which were duly approved by Ministry of Power) as both organisations are working in a similar space. The respondent No. 1 included the matter in the Cabinet Note proposed for consideration of the Cabinet in the W.P.(C) 5063/2020

year 2013. Based on the decision of the Cabinet, all PSUs including hydro sector PSUs were advised to align the pay scales as per DPE guidelines w.e.f. January 01, 2007 after correcting aberrations w.e.f. January 01, 1997 without effecting recoveries on the payments made till December 31, 2006. It is contended that therefore, it may be inferred that the stand of respondent No. 2/REC was conceded to by Ministry of Power by way of submission of a proposal to the Cabinet and hence the same may now be agreed to.

29. That apart, it is averred that respondent No. 2/REC was not included in the Cabinet Note of 2018 which proposed and subsequently received regularisation of pay scales in hydro sector PSUs only because it had not approached the Courts as the other PSUs did.

30. It is stated that the respondent no. 2/REC submitted further representations on the same matter on August 14, 2019, September 24, 2019, October 22, 2019 and January 21, 2020. It is the case of the petitioner/Association that despite frequent and multiple representations detailing the grievance of its members, there has been no inclination from respondent No. 1 to end the discrimination made between the employees of REC and the other seven PSUs under the Ministry of Power.

31. An Affidavit has been filed on behalf of respondent No. 2/REC in reply to the writ petition wherein it is stated that the REC is merely the recommending authority and respondent No. 1/Ministry of Power is the approving authority regarding the regularisation of pay scales of below Board Level Executives whom the petitioner/Association represents.

32. It is submitted by Mr. Anand Varma, learned counsel appearing on behalf of respondent No. 2, that pursuant to the impugned Order dated December 27, 2013, the respondent No.2 issued an Office Order dated November 03, 2014 stating that as a result of the decision of the Cabinet to not regularise REC pay scales, the scales provisionally implemented vide Office Order dated July 22, 2010 stood confirmed as final. However, respondent No. 2 extended the co-operation to their employees by stating that should any similarly affected hydro sector PSUs find a better deal, they would pursue the case for parity in pay scales with the concerned authorities.

33. Mr. Varma stated that as is evident from the Annexures to the Writ Petition, respondent No. 2 has been seeking regularisation of pay scales of the employees in line with the other seven PSUs under the Ministry of Power. Multiple representations dated February 28, 2019, May 01, 2019, June 26, 2019, August 14, 2019, September 24, 2019, October 22, 2019 and January 21, 2020 were submitted by the respondent No. 2 to respondent No. 1, requesting regularisation of the pay scales of REC employees in line with those of the other seven PSUs under administrative control of the Ministry. It is also submitted that in view of these representations, respondent No. 2 has made every effort to recommend the regularisation of its below Board Level Executives with effect from January 01, 1997.

34. A short affidavit has been filed by Ms. Bharathi Raju, learned CGSC appearing for the respondent Nos.1 and 3, wherein it is stated that pursuant to the Order of this Court dated April 15, 2021, it has initiated engagement with various
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Ministries/Departments and has drafted a Note for the Cabinet regarding the issues raised in the instant petition, which has been forwarded to other Ministries for inter-ministerial consultations.

35. Paragraphs 3 to 5 of the short affidavit reads as under:

“3. That thereafter, the present Respondent has started engagement with various Ministries and Departments and has drafted a Note for the Cabinet regarding the issues raised in the writ petition. The present Respondent has forwarded the said Cabinet note to other Ministries to seek their views and for inter-ministerial consultations with a view that aspects relevant to the subject case from other perspectives are also considered.

4. That the present Respondent is thus actively considering and pursuing the issues. The Respondent is awaiting the views of other Ministries before finalising the Cabinet note.

5. That in order to finalise the decision based on inter-ministerial consultations, the present Respondent requests a further time period of six months from the Hon'ble Court.”

36. Having heard the learned counsels for the parties and perused the record, the issue which arises for consideration is whether the respondent No.1 is justified in issuing the Order dated December 27, 2013. It is noted that the DPE issued an OM dated June 25, 1999 to all Administrative Ministries / Departments of Government of India for revision of pay scales w.e.f. January 01, 1997 for Board Level Posts and below Board

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Level Posts including non-unionised supervisors in CPSEs.

Relevant part of the OM reads as under:

***“PROCEDURES FOR APPROVAL AND
ADOPTION OF NEW SCALES OF PAY ON
IDA PATTERN BY PSEs***

(a) PSEs which have been making profit consistently for the last 3 years viz., 1996- 97, 1997-98 and 1998-99 would be allowed to adopt the scales of pay for the executives holding posts at and below the Board level and nonunionised supervisors strictly in accordance with these guidelines.

(b) PSEs which did not make profit during the last 3 years viz., 1996-97, 1997-98 and 1998-99 or had incurred net loss during any of these financial years would also be allowed to adopt these scales of pay of their executives holding posts at and below the Board level and non-unionised supervisors with the approval of the Government i.e. the administrative Ministry acting in consultation with the DPE, provided they give an estimate as to how resources would be generated by them to meet the extra expenditure.

(c) In respect of sick enterprises referred to BIFR, revision of pay scales for all employees following IDA pattern would be strictly in accordance with the rehabilitation packages approved or to be approved by the BIFR and after providing for the

additional expenditure on account of pay revision in these packages.

(d) PSEs under construction or new PSEs should submit their proposals for adoption of revised scales of pay and DA pattern for their executives holding posts at the Board level, below Board level and non-unionized supervisors, to their administrative Ministries for appropriate approval in consultation with the DPE, giving details of their likely date of going on commercial production, etc.

(e) The conditions prescribed for Sixth Wage negotiations of unionized workers in DPE's OM No. 2(11)/96-DPE(WC) dated 14.1.1999 shall be applicable for the above pay revision.

(f) DPE will issue detailed instructions, wherever necessary regarding the matters dealt with in the Note.”

37. The ONGC, a PSU, instead of following the aforesaid OM adopted higher pay scales with 4% rate of annual increment. Similarly, the NTPC which is also a PSU under the respondent No.1 issued an Office Order dated July 06, 2000, adopting higher pay scales with 4% rate of increment for its Executives and implemented the same w.e.f. January 01, 1997, subsequent to a letter of no objection dated July 03, 2000 sent by the Ministry of Power. Similar letters of no objection were sent by the Ministry of Power to PFC and POWER GRID dated August 28, 2000 and August 30, 2000 respectively, subsequent to which

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they adopted higher pay scales.

38. It appears that the Department of Expenditure agreed with the proposals of NHPC, NEEPCO, THDC and SJVN to adopt NTPC pay scales with 4% annual increment while the DPE concurred with the proposals of REC, NHPC and NEEPCO. I may state here that the Board of Directors of the respondent No.2/REC had on April 27, 2001 adopted a higher pay scale with 4 % rate of increment, in similar manner as was done by NTPC, PFC and POWER GRID. Similarly, higher pay scales were adopted by NHPC in May 2006, NEEPCO in September 2006, THDC in March 2008 and SJVN in May 2008.

39. However, the Ministry of Power, Government of India vide impugned letter dated December 27, 2013 directed the five PSUs, namely REC, NHPC, NEEPCO, THDC and SJVN not to regularise the deviated pay scales adopted in respect of below Board Level Executives w.e.f. January 01, 1997. The directions of the Ministry of Power, respondent No.1 are as under:

“(i) The deviant pay scales fixed w.e.f. 01.01.1997 shall not be regularized.

(ii) However, no recovery shall be made for the excess pay drawn from 01.01.1997 onwards considering the difficulties in effecting recovery and also considering that such a recovery may demotivate the staff.

(iii) The pay scales shall be fitted w.e.f. 01.01.2007 after correcting the aberrations in pay scales fixed w.e.f. 01.01.1997.”

40. It is a conceded case of the parties that the impugned
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Order dated December 27, 2013 was subject matter of a writ petition before the High Court of Uttarakhand at Nainital in ***Writ Petition (SB) No. 11/2014, THDC Diploma Engineers Association v. Union of India***. The High Court vide its Judgment dated July 22, 2016 quashed the impugned order, in so far as the THDC is concerned, by holding as under:

“15. As already noticed, by the Ministry of Law & Justice in the Draft Note, which we have adverted to, there are seven Public Sector Units dealing in the power sector coming under the Ministry of Power. The respondent Corporation is one of them. NTPC is the other. There is a definite case for the petitioner that they are doing the same work, with which we are concerned, as is being done by their counterparts in NTPC, but they are being paid differently. As already noted, the stand appears to have been that NTPC and two other Companies have been allowed to deviate from the guidelines being issued by the Department of Public Enterprises historically and they have been paying more than what is provided by the department. The other units apparently were either falling in line or they have also been, as in the case of the respondent Corporation, adopting similar pay scale as was being paid by NTPC. Following the resolution passed by the Board of Directors in its 74th Meeting, the proposal was mooted and sent to the Department of Power for allowing payments to be made in lines of the amount being paid to the employees of NTPC.

Thereafter, they were served with Annexure No. 16, which we have extracted by which respondent Corporation was asked to fall in line with the payments being made to NHPC. Apparently, the Board, which according to the learned counsel for the respondent Corporation is bound to follow the guidelines being issued, passed a resolution in the 129th Meeting of the Board dated 31.03.2007 and it decided also to implement the pay scales being paid in NHPC provisionally. So, according to the respondent Corporation, there are two proposals, which are actually pending.

16. The curtain has been wrung down on this controversy, as it were, by issuance of Annexure No. 1 dated 27.12.2013, by which the payments, which were made in deviation, were directed not to be recovered, but at the same time, the claim for regularization was turned down.

17. We have noticed the anomaly, which is prevalent in the respondent Corporation, pointedly with reference to the employees forming part of the Executives below the Board of Directors, namely, E-1 category. They are, in fact, being paid less than what the persons in the supervisory category (S-4) are getting. The promotions are being effected from S-4 to E-1. This indeed appears to us to be an anomalous position producing heartburn and injustice. It is apparently to rectify the same that the Board was

laboring to pay E-1 pay scale, which is being paid to their counterparts in NTPC. There were two aspects to the case of the petitioner. On the one hand, DPE has issued the Guidelines dated 25.06.1999 providing for certain pay-scales; those making profits for years in question, they were free to adopt these pay scale; whereas Corporations coming under the second category have to get approval of the Government of India and also to give reasons.

18. The other aspect is that NTPC is paying to its employees in excess of the amount which is stipulated by the Department of the Public Enterprises. The result of both is that the employees in E-1 category end up getting less than the employees in S-4 category. Both NTPC and the respondent Corporation are operating under the aegis of Ministry of Power, namely, the Administrative Ministry. Equals must be treated equally, as much as unequals must not be treated equally. This great mandate of the Constitution of India, which is recognized as the basic feature of the Constitution, would lose all its meaning if indeed the claim of the petitioners is that they are doing similar work as their counterparts in NTPC are doing and are treated differently. No doubt, the argument, which is raised by the learned Asst. Solicitor General, centers around the word 'Navratna', an adjective added to NTPC.

According to Mr. Shobhit Saharia, the respondent

Corporation is a Mini Ratna and is making profits now.”

41. I may state here that an additional issue was raised by the petitioner before the High Court of Uttarakhand, which is not an issue herein, inasmuch as their juniors who were working in supervisory grade were drawing a higher pay scale. I say nothing on this as there is no plea of such anomaly raised by the petitioner in this case. Suffice to state that the common issue in this case well as in the writ petition filed before the High Court of Uttarakhand is with regard to parity with respect to NTPC which is also a PSU under the Ministry of Power. In paragraphs 15 to 18 which I have reproduced above, the High Court of Uttarakhand has clearly held that both NTPC and the respondent / Corporation therein, i.e., THDC are operating under the aegis of Ministry of Power. Equals must be treated equally, inasmuch as unequals must not be treated equally. In other words, the High Court of Uttarakhand has granted parity to the petitioner in the writ petition before it on the basis of the scales being drawn by below Board Level Executives of NTPC.

42. There is no dispute that the REC / respondent No.2, where the members of the petitioner association are working, is also a PSU operating under the administrative control of the respondent No.1, i.e. Ministry of Power and as such, the petitioners are also entitled to parity in respect of the judgment given by the High Court of Uttarakhand. That apart, I find that a similar issue was also raised by the employees working in NEEPCO and also NHPC who had approached the High Court of Meghalaya and this Court respectively. The High Court of

Meghalaya in the writ petition filed by NEEPCO had quashed the impugned Order dated December 27, 2013 on similar lines as was done by the High Court of Uttarakhand and directed the respondent therein to consider the matter and take a decision within three months.

43. That apart, the Officers of NHPC had approached this Court challenging the same Order dated December 27, 2013 by way of W.P.(C) 1377/2014 wherein this Court had disposed of the writ petition by holding as under:

“5. Upon hearing and on perusal of record of this case, I find that challenge to the Office Order of 27th December, 2013, no longer survives, as it has been superseded by Office Order of 11th August, 2017 in pursuance to orders passed in case of THDC Diploma Engineers Association (Supra). First respondent has passed an order on 28th June, 2017 (Annexure R-2A) and this Court is of the opinion that the fresh Office Order of 11th August, 2017 has to be implemented by second respondent in the light of observations made in Paragraphs No. 4.2 & 4.3 of order of 28th June, 2017 (Annexure R-2A).”

44. The NHPC Officers Association challenged the order of the learned Single Judge of this Court dated December 15, 2017 in Letters Patent Appeal bearing No. 44/2018 wherein the Division Bench held as under:

“It is further directed that in view of the circumstance that the subsequent Letter No. 2/1/2014-H.I-Vol-III (Pt) dated 28th June, 2017,

Office Order No. 2/2/2014-H.I (Pt) dated 30th June, 2017 & Letter No. 6/3/2015-NHPC (PLI) dated 11th August, 2017, issued by the Ministry of Power, Government of India, were not the subject matter of challenge before the learned Single Judge, the observations and directions contained in the impugned order dated 15th December, 2017, in this behalf, shall not come in the way of the appellants assailing their correctness, in accordance with law. The impugned order dated 15th December, 2017, is accordingly set aside and quashed qua the respondent No.2/Corporation, in similar terms. With the above directions, the appeal is disposed of. Pending applications also stand disposed of.”

45. Suffice to state, subsequent thereto, the Cabinet in its decision dated January 16, 2019 approved the regularisation of pay scales of below Board Level Executives in NHPC, NEEPCO, THDC and SJVN w.e.f. January 01, 1997. The same reads as under:

“Cabinet approves regularisation of Pay Scales of below Board Level Executives in NHPC Ltd., North East Electric Power Corporation, THDC India Ltd. and SJVN Ltd. w.e.f. 1.1.97

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, has given its approval for regularization of Pay scales of below Board Level Executives in National Hydroelectric Power Corporation Ltd. (NHPC), North East Electric

Power Corporation (NEEPCO), THDC India Ltd. (formerly Tehri Hydro Development Corporation Ltd.) and Satluj Jal Vidhyut Nigam Ltd. (SJVN), w.e.f. 01.01.1997 adopted by them consequent upon the orders of Ministry of Power dated 04.04.2006 and 01.09.2006.”

46. The aforesaid approval note states that out of five PSUs with regard to whom the Order dated December 27, 2013 was issued, decision has been taken by the Cabinet in respect of four PSUs to approve the regularisation of pay scales of below Board Level Executives.

47. I may state here that on December 08, 2020, learned counsel for the respondent No.1 had stated that the issue raised in the petition is under active consideration of the Ministry and as soon as the proposal is ready, the same shall be placed before the Cabinet for approval. But I find that the position remained the same, even thereafter till October 04, 2021 when I reserved the matter for judgment.

48. If that be so, in respect of the respondent No.2 / REC, the impugned Order dated December 27, 2013 needs to be set aside. It is ordered accordingly. The respondent No.1 in consultation with the respondent No.2 shall consider the matter afresh and take a decision within a period of three months from today.

49. The writ petition is disposed of. No costs.

V. KAMESWAR RAO, J

NOVEMBER 10, 2021/aky