



2024:DHC:6516



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

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Date of Decision: 20th August, 2024

+ W.P.(C) 13096/2022

DR VIJAY KUMAR SHARMA

.....Petitioner

Through: Mr. Meet Malhotra, Senior Advocate
with Mr. Abhey Narula, Advocate

versus

UNITED INDIA INSURANCE CO LTD.

.....Respondent

Through: Mr. A.K. De, Advocate

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking quashing of order dated 08.05.2020 by which the Respondent has rejected the claim of the Petitioner for compassionate allowance under Rule 32 of the General Insurance (Employees') Pension Scheme, 1995 (hereinafter referred to as the '1995 Scheme'). Direction is sought to the Respondent to award maximum compassionate allowance as permissible under the 1995 Scheme as also to release the other dues payable to the Petitioner as enumerated in the writ petition.

2. Factual matrix to the extent necessary, shorn of unnecessary details is that Petitioner joined the Respondent in August, 1985 and served for 26 years. According to the Petitioner, he had an exemplary and unblemished service and his exceptional performance was recorded and recognized from

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time to time. In 2006, during his tenure as Divisional Manager, Panipat, Petitioner was served with a charge-sheet dated 31.05.2006 levelling allegations relating to 05 motor claims and 01 marine claim. Services of the Petitioner were terminated vide order dated 13.05.2011 and the appeal was dismissed by the Appellate Authority by an order dated 05.01.2012. Aggrieved with the said orders, Petitioner filed W.P.(C) 11323/2015 in this Court and vide judgment dated 01.02.2018, the impugned orders were quashed with a direction to the Disciplinary Authority to inflict penalty at par with penalty inflicted on other officers who were party to disbursal of accident claims as in the Court's opinion, the penalty of 'removal from service' was grossly disproportionate and shocked the conscience of the Court. The judgment was assailed by the Respondent before the Division Bench in LPA No.113/2018 and vide order dated 12.11.2018, the Division Bench converted the penalty of removal from service to compulsory retirement with all consequential benefits, in accordance with the Rules of the Respondent on the ground that Petitioner had served the Respondent for over two decades and this was the first instance of misconduct in his entire career.

3. Petitioner avers that during the service, he was diagnosed with a serious heart ailment and had undergone multiple surgeries and 04 stents were placed. His request for reimbursement of medical expenses was also pending. Having no option, Petitioner filed an application being CM APPL. No.42708/2019 in LPA No.113/2018 seeking directions for release of his outstanding dues. When the application came up for hearing before the Division Bench on 10.01.2020, Respondent undertook to pay the dues within 10 days and the Court permitted the Petitioner to make a



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representation which would be considered in terms of parameters set out in the decision of the Supreme Court in *Mahinder Dutt Sharma v. Union of India and Others, (2014) 11 SCC 684*. If the representation was made, the Respondent was directed to take a decision thereon and communicate the same to the Petitioner.

4. Petitioner thereafter received a total sum of Rs.11,10,503/- but without any break up and according to the Petitioner, full payment was not released and the deductions, which the Petitioner later learnt, were illegal. At the same time, Petitioner's request for compassionate allowance was rejected vide order dated 08.05.2020.

5. Learned Senior Counsel for the Petitioner assails the impugned order dated 31.01.2020 on multiple grounds. It is argued that the impugned decision is in the teeth of the judgment of the Division Bench in LPA No.113/2018 wherein the Division Bench observed that Petitioner had served for over 02 decades and this was the first instance of misconduct in his entire career and therefore, interest of justice will be served if the penalty of termination was converted to one of compulsory retirement with all consequential benefits in accordance with law and disposed of the appeal converting the penalty to one of compulsory retirement. This implies that the Division Bench recognized that the alleged misconduct of the Petitioner was not deserving of a harsh punishment of removal but this observation has been totally ignored by the Respondent and in rejecting the claim for compassionate allowance, Respondent has completely gone by the allegations levelled in the Articles of Charge, which is an erroneous approach while considering the claim of compassionate allowance. It is obvious that an employee seeks compassionate allowance only when he is



dismissed or removed or compulsorily retired from service and therefore, the conduct which is the subject matter of a disciplinary inquiry is bound to be of a kind which led to imposition of a penalty but if this conduct is taken as a singular factor to deny compassionate allowance, a provision such as Rule 32 of 1995 Scheme which requires a compassionate approach by an employer, will be rendered nugatory.

6. It is urged that the claim for compassionate allowance ought to have been judged on 'compassion' taking into account special circumstances such as the 26 years long and exemplary service of the Petitioner with no misdemeanour, save and except, the charge-sheet leading to compulsory retirement, a fact recognized by the Division Bench also. Respondent ought to have also taken into account the medical condition of the Petitioner, who suffers from serious cardiac ailments. At this age and stage of life, Petitioner has no other source of income and the compassionate allowance will aid as a succour to him and his family. In ***Mahinder Dutt Sharma (supra)***, heavily relied upon by the Respondent in the impugned order, the Supreme Court has while delineating the distinct considerations through which determination of a claim for compassionate allowance must be sieved, observed that Rule 41 of the CCS (Pension) Rules, 1972, which is *para materia* to the present Rule 32, postulates a window for hope if the case is deserving of special consideration. Respondent has misread the judgment and the observations of the Supreme Court even on the aspect of the 05 factors referred to in paragraph 14, which must be evaluated while considering the claim, inasmuch as in the later part of the judgment, the Supreme Court has clarified that even where the delinquency leading to punishment falls in 01 of the 05 classifications, it would '*ordinarily*'



disentitle an employee which implies that exceptions can be carved out in a given case and there is no absolute bar or embargo in granting compassionate allowance, even if the case of the Petitioner is covered under the 05 parameters laid down by the Supreme Court.

7. Mr. Malhotra, learned Senior Counsel has laboured hard to take the Court through the Articles of Charge with an endeavour to show that even otherwise the case of the Petitioner falls outside the 05 factors delineated by the Supreme Court in paragraph 14 of the judgment in ***Mahinder Dutt Sharma (supra)***. It is argued that Article-I to Article-V pertain to allegations of approving bogus motor OD claims in a wilful and grossly negligent manner although the claims bristled with discrepancies/inconsistencies/irregularities causing financial loss to the Respondent. Article-VI was with respect to approval of an inadmissible marine transit claim in a wilful and grossly negligent manner, which was found paid causing undue financial loss to the Respondent with undue financial gain to the insured. None of these allegations can even remotely be stated to be covered under: (a) act of moral turpitude; (b) act of dishonesty; (c) act designed for personal gains from the employer; (d) act aimed at deliberately harming a third party interest; and (e) an act otherwise unacceptable for conferment of benefits flowing out of Rule 41 of CCS (Pension) Rules. At the highest, the conduct of the Petitioner was of wilful negligence but did not involve any element of dishonesty, moral turpitude or aimed at personal gain.

8. Learned counsel for the Respondent, *per contra*, defends the impugned order dated 08.05.2020. It is argued that the order of the Division Bench cannot aid the Petitioner as it does not exonerate him but the Court only converted the penalty to compulsory retirement and this in fact, is an



endorsement and recognition that Petitioner was guilty of the allegations levelled. It is incorrect for the Petitioner to argue that his conduct does not fall within the 05 parameters laid down by the Supreme Court in ***Mahinder Dutt Sharma (supra)***, inasmuch as the Articles of Charge would reflect that the acts of the Petitioner in approving bogus motor claims and inadmissible marine claim leading to financial loss to the Respondent amounted to acts of dishonesty and moral turpitude. Petitioner was not involved in a single act of delinquency but there were repeated acts of omission and commission for different periods of time. While the charges may not directly contain allegations of personal gain but the fact that third parties stood to gain shows that Petitioner had a motive of personal gain.

9. It is true that Rule 32 of 1995 Scheme is invoked by an employee, who is dismissed or removed or compulsorily retired or terminated from service but while considering a *para materia* provision, the Supreme Court has consciously laid down 05 factors, which cannot be overlooked while determining the claim for compassionate allowance. It cannot be overlooked that an employee of a Public Sector Insurance Company is a custodian of public fund by virtue of his employment and Petitioner as a Divisional Officer heading an operating office ought to have maintained the highest standards of morals, integrity and trustworthiness so as to set an example for his juniors.

10. Heard learned Senior Counsel for the Petitioner and learned counsel for the Respondent and examined their rival contentions.

11. The only issue that this Court is called upon to decide is whether Petitioner is entitled to compassionate allowance under Rule 32 of the 1995 Scheme. Rule 32 is extracted hereunder for ease of reference :



“32. Compassionate Allowance-

(1) An employee who is dismissed or removed or compulsorily retired or terminated from service shall forfeit his pension:

Provided that the authority competent to dismiss or remove or compulsorily retire or terminate him from service may, if-

- (i) Such dismissal, removal, compulsory retirement or termination is on or after the 1st day of November, 1993 and*
- (ii) the case is deserving a special consideration, sanction a compassionate allowance not exceeding two-thirds of pension which would have been admissible to him on the basis of qualifying service rendered upto the date of his dismissal, removal, compulsory retirement or termination.”*

12. From a bare reading of the provision, it is luminously clear that Rule 32 is invoked by an employee, who is either dismissed or removed or compulsorily retired or terminated from service and whose pension is forfeited. The expression ‘*compassionate*’ itself indicates that the allowance, not exceeding two-thirds of pension based on the qualifying service rendered upto the date of penalty, is granted in cases deserving of special consideration, on compassionate grounds

13. In the present case, Petitioner served for 26 years with the Respondent before the penalty of ‘removal from service’ was inflicted on him consequent to a disciplinary inquiry. On a challenge being laid to the removal order in W.P.(C) No.11323/2015, learned Single Judge was of the view that penalty of removal from service was disproportionate, considering the gravity of financial loss and the role played by the Petitioner and shocked the conscience of the Court. Quashing the penalty of removal from service, Court directed the disciplinary authority to consider inflicting a penalty at par with the others who were party to the disbursal of the claims in question. The judgment was carried in appeal in LPA No.113/2018 by the Respondent and the Division Bench agreeing with the observations of the



learned Single Judge, converted the penalty of removal into compulsory retirement with all consequential benefits. Representation made to the Respondent for grant of compassionate allowance was, however, rejected compelling the Petitioner to file the present writ petition.

14. Perusal of the impugned order dated 08.05.2020 leaves no trace of doubt that the vision of the competent authority was totally blurred by the allegations levelled in the Articles of Charge in the disciplinary proceedings. Holding that the act of the Petitioner, approving the bogus motor claims and inadmissible marine claim and causing financial loss to the company and gain to third parties, amounted to misuse and betrayal of responsibility bestowed on him and was an act of dishonesty and moral turpitude, the representation was rejected relying on the observations of the Supreme Court in paragraph 14 of the judgment in ***Mahinder Dutt Sharma (supra)***.

15. There can be no debate that in paragraph 14 of the judgment in ***Mahinder Dutt Sharma (supra)***, the Supreme Court has enumerated the following 05 questions, which must be posed and answered while considering the claim of compassionate allowance :

“14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972 will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

14.1. (i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

14.2. (ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a



behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party to the prejudice of the employer.

14.3. (iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include acts of double-dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent could be at the peril and prejudice of a third party.

14.4. (iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third-party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

14.5. (v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.”

16. However, a reading of the impugned order shows that Respondent was completely oblivious of the observations of the Supreme Court in paragraph 15 of the judgment wherein the Supreme Court observed that: (a) for grant of compassionate allowance, Rule 41 of Pension Rules postulates a ‘window of hope’ if the case is deserving of special consideration; (b) where the delinquency leading to punishment falls in one of the five classifications delineated in paragraph 14, it would ‘ordinarily’ disentitle an employee from such compassionate consideration; and (c) deserving special consideration will have to be momentous and it is not possible to effectively



define the term ‘deserving special consideration’ used in Rule 41 of the Pension Rules. From these observations, it is explicit that the embargo on grant of compassionate allowance to an employee whose delinquency falls in one of the five classifications, delineated in paragraph 14 of the judgment, is not absolute. The expression in paragraph 15 of the judgment is ‘*ordinarily*’, which in common parlance means and connotes ‘*usually*’ and ‘*in a normal way*’, and leaves a ‘window of hope’ so that in cases deserving special consideration, compassionate allowance can be granted. Therefore, assuming that the delinquency of the Petitioner fell under any one of the five classifications, it was imperative for the Respondent to have accorded consideration to the facts and circumstances put forth by the Petitioner in his representation to at least analyze if they were deserving of special consideration, instead of going purely by the delinquency which was formed the basis of imposition of penalty and resultant forfeiture of pension. To this extent, the impugned order is wholly flawed and cannot be sustained. Paragraph 15 of the judgment is extracted hereunder:

“15. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, “... if the case is deserving of special consideration...”. Where the delinquency leading to punishment falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term “deserving special consideration” used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency levelled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorised in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to



availability of factors of compassionate consideration.”

17. The impugned order suffers from another flaw. The competent authority, while passing the order has made some serious observations on the conduct of the Petitioner in approving the bogus motor claims and inadmissible marine claim and termed the same as a dishonest conduct involving moral turpitude along with levelling allegation of financial gain for himself, which are even beyond the Articles of charge, wherein the allegations were of willful and gross negligence. Starting on a wrong path, based on an assumption that Petitioner was guilty of a misconduct involving moral turpitude, the authority concerned reached a wrong destination and resultantly concluded that Petitioner's case fell under paragraph 14 of the judgment of the Supreme Court in ***Mahinder Dutt Sharma (supra)***. This is the error which the Respondent committed while imposing the penalty of removal from service and the learned Single Judge in W.P.(C) No.11323/2015 had observed as under:

“9. Be that as it may. After having heard both the sides and on perusal of material on record and the decisions cited, I find that petitioner cannot be differently treated than the officers/officials who were instrumental in disbursal of accident claims in question. Fundamental flaw in the case set up against petitioner, is that he was tried on the charge of wilful and gross negligence, but has been indicted for grave acts of misconduct i.e., approval and payment of fraudulent motor claims causing financial loss to company, irregularities in settlement of marine claim and issuing endorsements after the loss having been established in the inquiry. So, the grave penalty of removal from service deserves to be modified to bring petitioner at par with other officers/ officials who were involved in disbursal of accident claims in question.

10. Considering the gravity of financial loss and the role played by petitioner, I find that the penalty imposed upon petitioner is grossly disproportionate. The disparity in awarding penalty shocks the conscience of this Court. In the facts and circumstances of this case, the penalty order is quashed with direction to the disciplinary authority of respondent-Insurance Company to inflict penalty upon petitioner at par with the penalty inflicted on other officers/ officials, who were party to disbursal of



accident claims in question. Let it be so done within a period of four weeks.”

18. In my considered view, Respondent has *prima facie* erred on both counts: (a) that the conduct of the Petitioner was for personal financial gain and involved moral turpitude; and (b) while considering the claim of compassionate allowance the competent authority is wholly precluded from considering special circumstances deserving special consideration in a given case, if the delinquency of the employee falls in any of the five classifications in paragraph 14 of the judgement in ***Mahinder Dutt Sharma (supra)***. No doubt ordinarily if the case falls in paragraph 14 a delinquent employee will not be entitled but the Supreme Court has in the judgement left a window in exceptionally deserving cases.

19. A Division Bench of this Court has recently in the case of ***Ex. HC Dharam Singh v. Union of India and Others, W.P.(C) 12775/2021*** decided on 11.07.2024, set aside the impugned order rejecting the grant of compassionate allowance to the Petitioner on the ground that the impugned order was based solely on allegations of corruption leading to the penalty of dismissal. Relevant paragraphs are as follows:

*“5. Learned counsel for the petitioner submits that the impugned order is liable to be set aside as the respondents have failed to consider the ratio of the decision of this Court in ***Ex. ASI Shadi Ram vs. Government of NCT of Delhi & Ors. [W.P.(C) 5544/2007]***. He contends that the respondents have rejected the petitioner’s prayer for compassionate allowance only on the basis of the very same grounds on which he was dismissed without appreciating that this Court has consistently held that the parameters for examination of a request for grant of compassionate allowance are different than those which form the basis of dismissal. Despite the petitioner mentioning in his representation that he has a large family to support and does not have any source of income, the respondents have neither examined this aspect nor considered that the petitioner had already served for 31 years before being dismissed from service. He, therefore, prays that the impugned order be set aside and the respondents be directed to grant compassionate allowance to the petitioner.*



6. *Per contra*, learned counsel for the respondents seeks to support the impugned order and submits that taking into account the reasons due to which the petitioner was dismissed; the respondents were justified in rejecting his request for compassionate allowance. Furthermore, she contends that the petitioner has not even made any specific averment in his representation regarding the purported financial difficulties being faced by him and has merely stated that he has a large family to support. She, therefore, prays that the writ petition be dismissed.

7. Having considered the submissions of learned counsel for the parties and perused the record, especially the impugned order dated 06.03.2021 vide which the petitioner's representation for grant of compassionate allowance has been rejected, we find that there is merit in the petitioner's plea that the rejection of his representation is not based on relevant criteria. The petitioner is justified in urging that his prayer for grant of compassionate allowance has been rejected only on the basis of his dismissal from service on the charges of corruption and without appreciating the effect of the decision in **Ex. ASI Shadi Ram (supra)**, wherein it was held that the mere rejection of the challenge to the dismissal order passed on account of misconduct cannot be a ground to reject the claim for compassionate allowance. In this regard, we may refer to the observations made by this Court in paragraph 17 of its decision in **Ex. ASI Shadi Ram (supra)**, which reads as under:-

“17. The learned Tribunal was impressed by the fact that all the courts have rejected the petitioner's challenge to his dismissal. It appears to have felt that in this way, the order of dismissal of the petitioner has been confirmed, and that this somehow disqualifies the petitioner for the grant of Compassionate Allowance. This is apparent from its acceptance of the respondent's submissions noted in paragraph 10 of its judgment to the effect that, “the dismissal of the applicant has attained finality”, as well as its observations in para 13 of its judgment where it has sought to distinguish the decision of the High Court of Delhi in the case of **Ex. CT. Daya Nand v Union of India & Ors. [2000 (1) ATJ 136]** on the ground that in that case, there was no court order confirming the petitioner's dismissal. Similarly, a reading of paragraph 15 shows that the learned Tribunal has unwittingly evolved a new ground for dismissing an application for grant of Compassionate Allowance, which is affirmation of the applicant's incident of misconduct by the Tribunal as well as by the High Court. Besides the fact that it was not within the province of the Tribunal to substitute its own conclusions on the merits of the petitioner's application for that of the Competent Authority; I feel that such a consideration is not even germane to the issue for the reason that no such factor is provided under Rule 41 of the CCS (Pension) Rules read with the aforesaid Guidelines.”



8. For the aforesaid reasons, we are of the view that since the respondents have overlooked the relevant parameters as laid down under Rule 41 of the CCS Pension Rules, the impugned order is liable to be set aside. The same is, accordingly, set aside and the matter is remanded back to the respondents for re-consideration of the petitioner's request for grant of compassionate allowance.

9. However, since we find that the petitioner's earlier representation for compassionate allowance was not a very detailed representation, we grant the petitioner liberty to file a fresh representation within a period of four weeks which will be disposed of by the respondents within a period of 12 weeks thereafter by passing a reasoned and speaking order. Needless to state, while considering the petitioner's claim, the respondents will take into account the decision of this Court in **Ex. ASI Shadi Ram (supra)**. It is further made clear that in case the petitioner is still aggrieved by any orders passed by the respondents, it will be open to the petitioner to seek legal recourse as permissible in law."

20. Therefore, in my view, the competent authority of the Respondent ought to have accorded consideration to the special circumstances brought forth by the Petitioner before deciding his claim for compassionate allowance, viz. 26 long years of dedicated and exemplary service; serious medical ailments; charges in the disciplinary inquiry being confined to wilful negligence not amounting to dishonesty or involving moral turpitude; observations of the learned Single Judge that '*Fundamental flaw in the case set up against the Petitioner is that he was tried on the charge of wilful and gross negligence, but has been indicted for grave acts of misconduct...*' '*So the grave penalty of removal from service deserves to be modified to bring Petitioner at par with other officers/officials who were involved in disbursal of accident claims in question*' '*.....I find that the penalty imposed upon petitioner is grossly disproportionate. The disparity in awarding penalty shocks the conscience of this Court.....*'; and the order of the Division Bench reducing the penalty to compulsory retirement with all consequential benefits. This writ petition thus deserves to be allowed to the extent of directing the competent authority to revisit the case of the Petitioner.



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21. Accordingly, the impugned order dated 08.05.2020 is quashed and set aside, directing the Respondent to re-consider the case of the Petitioner for grant of compassionate allowance, keeping in backdrop the special circumstances aforementioned and the observations in the judgements. The decision shall be taken within a period of 04 weeks from today and uninfluenced by the impugned order. Needless to state, the order shall be a reasoned and speaking order and will be communicated to the Petitioner within 01 week from the date of the decision and Petitioner will be at liberty to take recourse to legal remedies in case of any surviving grievance.

22. At this stage, learned Senior Counsel for the Petitioner presses the second relief for grant of the amounts outstanding towards the Petitioner under different heads as enumerated in the petition in paragraph 16. It is thus directed that Respondent shall examine the outstanding dues of the Petitioner as enumerated in paragraph 16 of the writ petition and whatever amounts are due and payable to the Petitioner shall be released within 06 weeks from today along with the break up and supporting calculations. If any outstanding amounts remain due after payment, it would be open to the Petitioner to bring the same to the notice of the Respondent and if any grievance survives thereafter, recourse can be taken to legal remedies, if so advised.

23. Writ petition is allowed and disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 20, 2024/kks