

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 238 OF 2013

Dated: 24th March, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF :

1. MAHENDRA GUPTA,
s/o Sh A. N. Gupta
DU-131, Pitampura, Delhi-110034
2. RAJENDER KUMAR VERMA,
s/o Sh.Ghanshyam Dass,
133-134 GF, pocket 9, Sector 23,
Rohini Delhi-110085
3. PRITAM LAL GROVER,
S/o Late Sh. G. R. Grover, Flat No 460 Pocket C-8,
Sector-8 Rohini Delhi-110085
4. ANIL KUMAR SHARMA,
S/o late sh B R Sharma
Flat No. D-21, Delhi Citizen Society,
Sector-13, Rohini, Delhi, 110085
5. ASHWANI KUMAR,
s/o Sh Madan Lal Kumar
113, Minakshi Garden,
Near Subhash Nagar Metro station,
New delhi-110018
6. JAGESH KISHORE,
s/o Sh Pooran chand Aggarwal
C-3/108, Sector-11, Rohini,
Delhi-110085
7. KULDEEP KUMAR JAIN,
s/o Sh R C Jain, C-9,Ahinsha vihar, Sector-9, Rohini,
Delhi-110085.
8. MAHESH CHANDRA GURANI
s/o Sh Jiva Nand Gurani
170, Pocket – C, Block – 9,
Sector – 7, Rohini, Delhi-110 085

9. VIJENDER SINGH,
S/o Sh. Dalpat singh
B-56, Sunder Apartments, Sector 14 Rohini,
Delhi-110085
10. D. K. GUPTA,
s/o Sh B. N. Gupta Through his son Sh. Saurebh,
H. No. 2, Pocket 11, Rajiv Enclave, Sect-5
Rohini, Delhi-110085
11. Mrs. SNEH LATA RATHI,
Wife of Late Sh. Randhir Singh Rathi,
BW-39B , Shalimar Bagh,
Delhi 110088
12. SURESH KUMAR,
S/o Sh Girdhari Lal
2286, Hudson lane, Kingsway camp
Delhi—110009
- Appellants

VERSUS

1. DELHI ELECTRICITY REGULATORY COMMISSION,
Viniyamak Bhawan, 'C' Block, Shivalik,
Malviya Nagar, New Delhi 110 017
2. DELHI TRANSCO LTD.,
Shakti Sadan, Kotla Marg,
New Delhi 110002
3. DVB PENSION TRUST,
Through its Chairman,
Shakti Sadan, Kotla Marg,
New Delhi 110002
4. TATA POWER DELHI DISTRIBUTION LTD.,
Through its CEO
Hudson Lines, Kingsway Camp,
Delhi 110009
- Respondents

- Counsel for the Appellant(s) ... Mr. Sudhir Nandrajog, Sr. Adv.
Mr. V.K. Goel
Mr. O.P. Madan
- Counsel for the Respondent(s) ... Mr. Sumeet Pushkarana with
Ms. Sara
Mr. Vijay Kasna and
Mr. Navayan for R-3
Mr. S.K. Chaturvedi for R-5
Mr. Vishal Anand
Mr. R.K. Mehta with
Mr. Antaryami Upadhyay

JUDGMENT

PER HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The present Appeal has been filed by the Appellants under Section 111 of the Electricity Act, 2003 against the Tariff Order dated 31.7.2013 passed by the learned Delhi Electricity Regulatory Commission (hereinafter called the '**State Commission**') in the Petition No. 3 of 2013 filed by Tata Power Delhi Distribution Ltd. (in short, TPDDL) for True-up of Rate of Capital Equity (RoCE) for the MYT Control Period; True up of FY 2011-12 and Annual Revenue Requirement (**ARR**) for FY 2013-14. The impugned order dated 31.7.2013 has been challenged by the Appellants on the ground that the State Commission has not dealt with the objections of the Appellants in the impugned order despite recording the objections raised by them and since the State Commission has not given any specific direction addressing the problems of the Appellants, DTL/Pension Trust is blatantly discriminating against the retirees who took voluntary retirement under Rule 48A of the Central Civil Services (Pension) Rules, 1972 (in short, **Pension Rules, 1972**). The State Commission has even provided funds to the Pension Trust to the tune of Rs.150 crores and Rs.160 crores in ARR of 2011-12 and 2012-13 and now providing Rs.400 crores in the present ARR.

2. For the purpose of clarity and the points involved in this Appeal, we deem it proper to reproduce the relevant part of the impugned order dated 31.7.2013 passed by the State Commission. The same is reproduced as under:

"Pension Trust Fund

(a) Ensuring of parity and equality among retirees

Stakeholders' view:

2.5 The stakeholders have stated that the management of the Pension Trust is discriminating against the retirees who took voluntary retirement under the relevant rules and therefore requested the Commission to direct DTL to ensure parity and equality among the retirees irrespective of the fact whether they took voluntary retirement or retired on superannuation.

Petitioner's Submission:

2.6 The Commission may consider the concerns shown by Voluntary retirement optees and take a decision.

(b) Payment of retirement dues to those who seek voluntary retirement under Rule 48A of CCS (Pension) Rules, 1972.

Stakeholders' View:

2.7 The stakeholders have suggested that:

(a) The Commission may issue directive to DTL to provide about Rs.5 crore to pay the retirement dues to employees who sought Voluntary Retirement under Rule 48 A of CCS (Pension) Rules, 1972.

(b) The amount allowed should be disbursed to retirees including VR holders under section 48 A of CCS (Pension) Rules, 1972 without discrimination and harassment.

(c) Directions may be given to GoNCTD to make up shortfall in the DVB Pension Trust as per rules.

Petitioner's Submission:

(a) The share of contribution of the DISCOMs has been remitted to the Pension Trust, through DTL's ARR, as directed by the Commission in the last two tariff orders. There is no objection if Rule 48 A optees are paid their benefits from the contributions made. The liability to pay is that of Pension Trust and few employees who opted for Rule 48 A were indeed paid by the Pension Trust few years ago.

(b) The Commission may direct/clarify the Pension Trust to address the concerns of the retirees i.e., Rule 48A optees for release of their payments from the share of contributions for FY 2013-14 without discrimination or prejudice.

(c) As per the Transfer Scheme, Reforms Act and Tripartite Agreements, the GoNCTD is the guarantor for any shortfall of funds in the Trust. The Commission may issue statutory advice under EA 2003, if deemed fit.

Petitioner's Submission:

2.18 Any sum paid by the Pension Trust cannot be fastened on the Petitioner to be its liability. The Stakeholders' Association should seek financial assistance from the GoNCTD as well since the Commission has already been allowing adhoc contribution to the Pension Trust through ARR of DTL. As per the statutory advice issued by the Commission to GoNCTD, such adhoc allowances cannot continue in tariff year on year.

Commission's view on the above issues pertaining to "Pension Trust" raised by the stakeholder's and Petitioner's Submission on the same:

The Commission has, as an exception made provision of Rs.150 crore and Rs.160 crore in the DTL Tariff order of FY 2011-12 and FY 2012-13 respectively for passing on to the pension trust to avoid undue hardship to the pensioners.

Under the provisions of DERA 2000, Transfer Schemes Rules, 2001 & the Tripartite Agreement, it is obligatory on part of the GoNCTD (which is one of the signatory of the Pension Trust Agreement) to put in place an appropriate system of governance of the DVB Pension Trust and to ensure that an equitable system of funding, the liabilities of the trust is put in place. The Commission vide letter no. F.17(44)/Engg./DERC/2012-13/C.F. No. 3481/3320 dated 11.09.2012 has already issued Statutory Advice under Section 86(2) to Govt. of NCT of Delhi, wherein GoNCTD has been advised to constitute an Oversight Committee to look into the issues related to pensioners of erstwhile DVB. **The Commission is of the view that ad-hoc provisions of this nature cannot continue in long term and the parties to the dispute before the Hon'ble High Court of Delhi should expedite the proceedings before the court and explore other avenues for settlement of dispute.**

The legitimate pension needs of the pensioner must be met. The Govt. of NCT of Delhi has written to the Commission vide letter no. F.11(33)/2013-14/1750 dated 18.07.2013 requesting that the legitimate needs of pensioners may be met by allocating Rs.460 Crore in the ARR of DTL. The Commission has accordingly decided to allow Rs.400 Crore for pensioners needs during FY 2013-14. The GoNCTD would have to take a decision on the proposal of LIC for funding of Pension Trust and consider appropriate other options."

3. The relief claimed by the Appellants in the instant Appeal is that the impugned order dated 31.7.2013 passed by the State Commission may kindly be modified and direction be issued to the respondents for disbursement of pension

and retirement benefits to retirees including optees of voluntary retirement under Rule 48 A of the CCS (Pension) Rules, 1972.

4. The relevant facts for deciding this Appeal are as under:

- (a) that the Appellants joined initially erstwhile Delhi Electricity Supply Undertaking (DESU)/Delhi Vidyut Board (DVB) and, thereafter, on reform of Delhi Vidyut Board, their services were transferred to North Delhi Power Limited (NDPL) w.e.f. 01.07.2002. NDPL is renamed as TATA Power Delhi distribution limited (TPDDL).
- (b) that the service conditions of the Appellants remained same as specified in Delhi Electricity Reforms Act (DERA), 2000 (Section 16), Transfer Scheme and Tripartite Agreements.
- (c) that the appellants opted for Voluntary Retirement Scheme (VRS) under Rule 48A of CCS (Pension) Rules 1972 from NDPL/ TPDDL in the months of June to December 2006.
- (d) that the NDPL/TPDDL paid the contributions towards pension, leave salary etc every month for each appellant to the Pension Trust, as per provisions of Trust Deed, up to their respective retirement.
- (e) that on relinquishing the services from the department which were governed under Govt Civil Services Rules (Fundamental Rules and Subsidiary Rules (FR-SR), the Appellants were reappointed in NDPL/ TPDDL on contractual basis.
- (f) that the requests of the Appellants for voluntary retirement under Rule 48-A of CCS (Pension) Rules, 1972, were accepted but their pension and terminal benefits in the form of Gratuity, Leave Salary, Commutation etc. have not been paid to them till date without any justified reasons.
- (g) that the Govt. of Delhi also issued order No. F.11 (01)/2009/Power/2901 dated 03.11.2009 directing the Pension Trust to entertain all cases of Rule 48 (A), CCS (Pension) Rule, 1972 w.e.f. 01.07.2002 treating them at par with regular retirement by

paying terminal benefits and pension as per CCS (Pension) Rules, 1972.

- (h) that in response to one RTI application in file no CIC/AD/A/2011/002540 dt 19.01.2012, it was intimated by Govt. of Delhi that DVB Pension Trust is the final disbursing authority.
- (i) that the Pension Trust is acting arbitrarily in a pick and choose manner in violation of the provision of CCS (Pension) Rules, DERA, Transfer Scheme and Trust Deed because in many of the cases such as S/s R.C. Kher, Suresh Kumar Choudhary, Arjun Lal Mittal, Satish Kumar, R.C. Mangal, Ashok Chandok and B.S. Sehgal etc. who were working in erstwhile DVB, all pensionary benefits have been released by the pension trust, whereas in the case of appellants the same has been denied. Hence the Pension Trust is acting arbitrarily. Ulterior motives and malafide in such cases cannot be ruled out.
- (j) that the State Commission had made a payment of Rs. 150 crores to Pension Trust in FY 2011-12 and further Rs. 160 crores in FY 2012-13 for making payment towards pension etc. so that there should not be undue hardship to the retired employees (Pensioners). Despite receipt of such amounts the pension trust did not pay the pension etc to appellants.
- (k) that in the process of reforms of electricity boards in the country, the voluntary retirement is not a bar and in fact hundreds of employees of other electricity boards e.g. RSEB, UPSEB, MSEB, WBSEB etc. are reappointed in Delhi Discoms on their voluntary retirement and getting pension from their previous deptt./trust of that state.
- (l) that the DVB pension trust is not fulfilling its purpose and also not complying the directions of its order dated 03.11.2009
- (m) that the State Commission invited objections from various stake holders on ARR petitions for FY 2013-14 and staff paper on TPDDL petition for true up for FY 2011-12. The appellants also submitted their written submissions and also attended the hearings on 29.04.2013.

- (n) that the Appellants stated before the State Commission that the management of the Pension Trust is discriminating against the retirees who took voluntary retirement under Rule 48 A of CCS (Pension) Rules, 1972 and they requested the State Commission to direct Delhi Transco Ltd. (DTL)/Pension Trust to ensure parity and equality among the retirees irrespective of the fact whether they took voluntary retirement or retired on superannuation.
- (o) that the learned State Commission passed the impugned order dated 31.7.2013 making mention of the Appellants submissions with regard to the need for ensuring a parity and equality among retirees and Payment of retirement dues to those who seek voluntary retirement under Rule 48A of CCS (Pension) Rule, 1972.
- (p) that the State Commission, despite having taken specific cognizance of the aforesaid issues, has not given any specific directions on the same. The result is that the grievance of the Appellants still continues. In absence of any specific directions from the State Commission, Pension Trust is blatantly discriminating against the retirees who took voluntary retirement under Rule 48A of CCS (Pension) Rules, 1972.
- (q) that the State Commission has not called the details of expenditure in the True-up of FY 2011-12 for the amount of Rs 150 crores allowed to Pension Trust through DTL. Pension Trust has not properly utilized the said fund and certain members are being harassed causing great hardship to the Appellants and other similarly situated employees.

5. The Appellants have raised the following questions of law for adjudication before this Hon'ble Tribunal:

- (I) Whether the appellants are entitled for grant of pension and retirement benefits on voluntary retirement?
- (II) Whether the pension trust is the disbursing authority for payment of pension and retirement benefits on voluntary retirement?
- (III) Whether pension trust is bound to obey the author of the Trust i.e. Govt. of Delhi?

- (IV) Whether the TPDDL have contributed towards pension and leave salary with respect to the appellants as per provisions of the Trust Deed?

6. Before coming to our conclusion, we deem it proper to mention the objections raised on behalf of the Respondent No. 1, 2, 3 & 4 regarding maintainability of the instant Appeal and even on merits before this Tribunal, which are as follows:

- (a) that the Appellants have wrongly invoked the appellate jurisdiction of this Tribunal because the learned State Commission has specifically mentioned in the impugned order that the issue of determination of liability of the respondents or the Pension Trust to bear the liability of terminal and pensionary benefits to Rule 48A of the CCS (Pension) Rules, 1972 optees is subjudice before the Hon'ble High Court of Delhi in LPA No. 562 of 2013 titled as 'Tata Power Delhi Distribution Ltd v/s Rosy Jain & Ors' in which the Government of NCT (in short **GoNCTD**) of Delhi and the Pension Trust are also arrayed as Respondents.
- (b) that the Government of NCT of Delhi is necessary and proper party to the present proceedings and under the Electricity Act, 2003 directions cannot be issued to the Government of NCT of Delhi which are sought for by the Appellants.
- (c) that Single Judge Bench of the Hon'ble High Court of Delhi in Writ Petition (Civil) No. 4532 of 2010 titled as Rosy Jain v/s Government of NCT of Delhi & Ors. has passed an order dated 9.7.2013 whereby the Writ Petition has been allowed with cost of Rs.50,000/- directing the respondent no.3 to the Writ Petition to pay to the petitioner Rosy Jain all her terminal benefits including pension within three months along with 9% p.a. simple interest from the date of retirement till payment. The petitioner Smt. Rosy Jain sought relief of pension and other terminal benefits through the aforesaid writ petition.
- (d) that the aforesaid order dated 9.7.2013 passed by the Hon'ble High Court of Delhi in WP (C) No. 4532 of 2010 is now under challenge in the aforesaid LPA No. 562 of 2013 TPDDL v/s Rosy Jain & ors, which is pending before the Division bench of Delhi High Court, after issuance of notice vide order dated 5.8.2013 and vide order dated

20.9.2013, the matter was adjourned by the Division Bench on the request for the learned counsel for the Government of NCT of Delhi to 20.11.2013. Several other Civil Miscellaneous Applications and LPAs of the same nature have been tagged with LPA No. 562 of 2013.

- (e) that the Doctrine of Comity of jurisdiction or Amity requires this Tribunal not to pass any order which would be in conflict with another order passed by a competent court of law namely, the Hon'ble High Court of Delhi. It has also been stated on behalf of the respondent that any adjudication of the issue or issuance of any directions for payment of terminal and retirement benefits to the Appellants by this Tribunal would not affect obfuscate the determination of the issue of liability which is pending before the Hon'ble High Court of Delhi in the aforesaid LPA No. 562 of 2013. Since the Hon'ble High Court of Delhi under Article 215 of the Constitution of India is a Court of record and has all the powers of such court including the power of punish for contempt of Court and under Article 226 has a plenary powers to issue orders or writs for the enforcement of fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. The plea of Article 227 of the Constitution of India available with the Hon'ble High Court of Delhi has also been taken.
- (f) that this Tribunal as well as the learned State Commission cannot adjudicate upon whether any of the Respondents or the Pension Trust is liable to bear the liability of terminal and pensionary benefits to Rule 48A of the CCS (Pension) Rules, 1972 optees, such as the Appellants herein and the State Commission has rightly passed the impugned order which requires no interference at this stage by this Tribunal.
- (g) that the issue of under-funding of the corpus of the Pension Trust and the obligations of the Government of NCT of Delhi to make good the deficit and inherent shortfall in the corpus of the Pension Trust on the date of unbundling of the erstwhile DVB and privatization of distribution on the Transfer Date of 1.7.2002 is also the subject

matter of the pending Writ Petition being WP(C) No. 1698 of 2010 filed by Delhi State Electricity Workers Union v/s GoNCTD & Anr.

- (h) that the Pension Trust is not even part of transmission business and by the same analogy DTL and the Pension Trust had no locus to approach the learned State Commission to seek funding of an entity such as the Pension Trust, which is not part of the Transmission Business, being a separate entity, constituted by the Government of NCT of Delhi under the Indian Trusts Act for a specific purpose to be the trustee of the corpus in respect of the past employees and disburse pension and terminal benefits. Since the aforesaid dispute was already pending/subjudice before the Hon'ble High Court of Delhi in WP(C) No. 1698 of 2010, the Pension Trust through DTL had no locus to approach the learned State Commission.
- (i) that the Hon'ble High Court of Delhi vide its judgment dated 2.7.2007 in North Delhi Power Ltd. v/s Government of NCT of Delhi reported in 142 (2007) Delhi Law Times 65 in para 72 held that the Government of NCT of Delhi has to the extent of Pension Trust being unfunded, to bear the liability wherever recourse is made by the transferred employees to Rule 48A of the CCS (Pension) Rules, 1972. After the judgment dated 2.7.2007, the Government of NCT of Delhi held a follow up meeting on 10.2.2009 and, thereafter, vide its letter dated 3.11.2009 issued to the Pension Trust directed the Pension Trust to entertain all cases of Rule 48A of CCS (Pension) Rules, 1972 w.e.f. 1.7.2002, treating them at par with regular retirement, by paying the retirement benefits and pension as per CCS (Pension) Rules, 1972 and consequently raise demand on the successor entities for subsequent funding of the trust on this account for meeting the future liabilities accordingly.
- (j) that the last objection against the maintainability of the instant Appeal is that in case of failure or denial of the Pension Trust to bear the liability arising in the present case on account of under-funding/un-funding of the Pension Trust, the said un-funding or under-funding portion of the liability has to be borne by the Government of NCT of Delhi and directions as sought by the Appellants cannot be issued to the Government of NCT of Delhi.

7. The following submissions have been made by the learned counsel for the Respondent State Commission:

- (a) that the State Commission has no jurisdiction to go into the dispute between the Appellants and the Pension Trust with regard to the release of terminal benefits in their favour and the Appellants should approach the appropriate Forum.
- (b) that in order to avoid any undue hardship to the retired employees of the Delhi Vidyut Board (DVB Pensioners) the Commission has been making provision of a lump sum amount in the ARR of Delhi Transco Limited during FY 2011-12, 2012-13 and 2013-14 for payment to the Pension Trust Fund.
- (c) that in the course of ARR proceedings for FY 2011-12, Pension Trust made a representation regarding short fall as the Successor Entities of the erstwhile DVB are liable to make payment to the Pension Trust. Accordingly, the State Commission passed certain directions vide its order dated 26.8.2011.
- (d) that during FY 2012-13, the Pension Trust again made a representation for retirement liabilities of DVB retirees and operation of DVB Pension Trust before the State Commission with the following prayer:
 - (i) to allow the expenditure/liability assumed by DTL & IPGCL/PPCL in their accounts for the financial year 2010-11 & 2011-12 as per the demands raised by the Pension Trust on account of actual payments released by the Pension Trust, on account of medical reimbursement, LTC & arrears of revised pension & direct both the utilities to release the same consequent thereto.
 - (ii) to direct DISCOMs/Distribution Utilities to pay the demands of Pension Trust as stated above during the financial years 2010-11 & 2011-12 and allow the same in their ARR for MYT 2012-15/True up petitions.

- (iii) to allow the additional amount toward the deficit in the corpus of Pension Trust in order to release the terminal benefits & regular pension on provisional basis (similar to the allowance of Rs.150 crores made in the Tariff order for the financial year 2011-12) as in any case the same shall be, subject to the adjustment with the amount of liability, as may be determined on the basis of Actuarial valuations.
- (e) that the learned State Commission vide impugned order dated 31.7.2013 simply observed that the matter is sub-judice before the Hon'ble High Court of Delhi and the Commission is of the view that the ad-hoc provisions of this nature cannot continue in future and the parties to the dispute before the Hon'ble High Court of Delhi should expedite the proceedings and explore other avenues for settlement of the dispute.

8. We have heard the learned counsel for the parties and perused the impugned order including material on record. The Appellants before us are the employees who opted for voluntary retirement under Rule 48-A of the CCS (Pension) Rules, 1972 in the year 2006. The Appellants on relinquishing the services from the Department were reappointed in NDPL/TPDDL on contractual basis. The Appellants requests for voluntary retirement under Rule 48-A of the CCS (Pension) Rules, 1972 were accepted but their pension and other terminal benefits in the form of gratuity, leave salary, commutation, etc. have not paid to them till date. The controversy regarding distinction between the employees who opted for voluntary retirement under Rule 48-A of the CCS (Pension) Rules, 1972 and who retired on attaining the age of superannuation was set at rest by the order dated 3.11.2009 issued by Government of Delhi which directed the Pension Trust to treat the employees who opted voluntary retirement under Rule 48-A of the CCS (Pension) Rules, 1972 at par with the regular retirement by paying their terminal benefits and pension as per CCS (Pension) Rules, 1972. It was intimated by the Government of Delhi in response to RTI query vide letter dated 19.1.2012 issued by the Government of Delhi that DVB Pension Trust is the final disbursing authority in this case.

9. The Tata Power Delhi Distribution Ltd. (TPDDL) filed a petition no. 3/2013 before the learned State Commission for approval of True-up of Rate of Capital Equity (RoCE) for the MYT Control Period; True up of FY 2011-12 and ARR for FY 2013-14. It was during the hearing of petition no. 3/2013, the Pension Trust made a representation for retirement liabilities of DVB retirees and for the operation of DVB Pension Trust requesting to allow the expenditure/liability assumed by DTL etc in their accounts for the FY 2010-11 and 2011-12 as per demands made by the Pension Trust and to direct the DISCOMs/Distribution utilities to pay the said demands of Pension Trust during the FY 2010-11 and 2011-12 and to allow the same in their ARR for MYT 2012-15/true-up petitions. The learned State Commission after hearing all concerned and going through the written submissions/grievances of the Appellants, vide impugned order dated 31.7.2013, simply observed that since the matter is sub-judice before the Hon'ble High Court of Delhi in LPA No. 562/2013 TPDDL vs Rosy Jain & Ors, the parties to the dispute should expedite the proceedings before the Hon'ble High Court of Delhi. In the result, the learned State Commission has not accepted the submissions of the Appellants leaving the parties to get the issues decided from the Hon'ble High Court of Delhi.

10. The main submission of the Appellants before us in the instant Appeal is that the impugned order dated 31.7.2013 passed by the learned State Commission be modified and direction be issued to the respondents for disbursement of pension and retirement benefits to the retirees including the optees of the voluntary retirement under Rule 48-A of the CCS (Pension) Rules, 1972. The factually admitted position for our purpose is as under:

- (a) that the Single Judge Bench of the Hon'ble High Court of Delhi in Writ Petition (C) No. 4532 of 2010 titled as Rosy Jain vs GoNCT of Delhi & ors. Vide judgment and order dated 9.7.2013 has allowed the Writ Petition (in which the Petitioner Rosy Jain sought the relief of pension and other terminal benefits) and directed the respondent no.3 to the Writ Petition to pay her all her terminal benefits including pension, etc.
- (b) that the judgment and order dated 9.7.2013 has been challenged before the Division Bench of Hon'ble High Court of Delhi through LPA No. 562 of 2013 – TPDDL vs Rosy Jain & Ors. and after issuance of notice, the same is pending before the Division Bench.

11. The issues arising for our consideration are as under:-

- (I) whether the learned State Commission has committed any illegality in not allowing the demand of the Appellants while passing the impugned order dated 31.7.2013.
- (II) whether the learned State Commission has jurisdiction to decide the identical issues which are pending before the Division Bench of the Hon'ble High Court of Delhi in LPA No. 562 of 2013 – Tata Power Delhi Distribution Ltd. Vs Rosy Jain & Ors., particularly, when the judgment and order dated 9.7.2013 passed by the Single Judge Bench of the Hon'ble High Court of Delhi in Writ Petition (C) No. 4532 of 2010, by which the writ petition of Smt. Rosy Jain seeking relief of pension and terminal benefits was allowed, is under challenge in the aforesaid LPA No. 562 of 2013 which after issuance of notice, is pending before the Hon'ble High Court of Delhi.

12. After considering the aforesaid submissions, we observe that the learned State Commission has not committed any illegality in passing the impugned order dated 31.7.2013 and the claim of the Appellants has rightly not been allowed. The impugned order is perfect, just and legal one and does not suffer from any perversity, infirmity or illegality. Since, the same issue relating to the payment of retirement benefits including pension of the Appellants who had taken voluntary retirement under Rule 48-A of the CCS (Pension) Rules, 1972 is pending before the Hon'ble High Court of Delhi in the aforesaid LPA No. 562 of 2013, the State Commission as well as this Tribunal has no jurisdiction to entertain the same because the High Court is a Writ Court and also a Court of Record having inherent powers under Article 226 and 227 of the Constitution of India.

13. The learned State Commission by the impugned order has simply observed that since the same issue is pending before the Hon'ble High Court of Delhi, the parties should expedite the proceedings before the court and explore the proper form for redressal of their grievances. Both the issues no. (I) and II) are accordingly decided against the Appellants. This Appeal merits dismissal and the impugned order dated 31.7.2013 is liable to be affirmed.

SUMMARY OF FINDINGS

14. Any State Commission or this Appellate Tribunal has got no jurisdiction to decide the identical issues which are pending consideration before the Hon'ble High Court because the Hon'ble High Court being a Writ Court as well as the Court of Record has inherent powers under Article 226 and 227 of the Constitution of India. The learned State Commission has no jurisdiction to go into the dispute between the Appellants and the Pension Trust with regard to release of terminal benefits in their favour. The grievances of individual employees/appellants relating to service matters relating to the terminal benefits including pension are not under the jurisdiction of the State Commission. Since the same issue is pending before the Division Bench of the Hon'ble High Court of Delhi at the instance of the identical category of the employees as that of the Appellants, the parties should get the same decided from the Hon'ble High Court.

15. It is not open to any State Commission or to this Appellate Tribunal to entertain and decide the issue pending before the Hon'ble High Court because the Doctrine of Comity of jurisdiction requires that this Tribunal should restrain from passing any order which may be in conflict with any order passed by any Competent Court namely; the Hon'ble High Court of Delhi in the instant matter.

16. In view of the above discussions, this Appeal is dismissed since it has no merits and the impugned order dated 31.7.2013 passed by the learned State Commission is hereby upheld. No order as to costs.

Pronounced in open Court on this 24th day of March, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ REPORTABLE/NON-REPORTABLE

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