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**(2013) 05 DEL CK 0362**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 1680 of 2012**

Smt. Pawan Vohra

APPELLANT

Vs

The Chairman, DVB Pension Trust and Another

RESPONDENT

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**Date of Decision : 17-05-2013**

**Acts Referred:**

**Citation : (2013) 05 DEL CK 0362**

**Hon'ble Judges : Valmiki J Mehta, J**

**Bench : Single Bench**

**Advocate :** Vinay Sabharwal and Ms. Neha Sabharwal, for the Appellant;  
Sumeet Pushkarna and Mr. Gourav Sharma, Advocates for Respondent No. 1 and  
Mr. Nikhil Sharma and Mr. Anupam Verma, Advocates, for the Respondent

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## **Judgement**

Valmiki J Mehta, J.—This writ petition is filed by the petitioner-Smt. Pawan Vohra, an employee of erstwhile Delhi Vidyut Board (DVB) and thereafter of the successor M/s. BSES Rajdhani Power Limited/respondent No. 2/DISCOM. Petitioner took voluntary retirement in terms of Special Voluntary Retirement Scheme (SVRS), 2003 introduced by the respondent No. 2. There are two issues which arise in this writ petition. First is whether the petitioner has the necessary qualifying service so as to get the pension in terms of Rule 48-A of the CCS (Pension) Rules, and which admittedly applies to the parties by virtue of the Tripartite Agreement entered into between the DVB, Government of NCT of Delhi and the DISCOM. The second issue is that if the petitioner is entitled to pension payment, which is the entity which will bear the liability i.e. whether the DISCOM/respondent No. 2 or the pension trust/respondent No. 1.

2. Let me at the outset reproduce the relevant pension rules namely Rules 48-A, 48-B and 49. For the completion of narration I may state that though Rule 48-B as of date stands deleted, however, at the relevant point of time it was applicable. Therefore, vested rights which existed in favour of the petitioner by virtue of this applicable Rule 48-B, cannot be taken away by the subsequent deletion of said Rule 48-B. These aforesaid rules read as under:-

#### 48-A. Retirement on completion of 20 years" qualifying service

(1) At any time after a Government servant has completed twenty years" qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) - Deleted

(3-A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and [retirement gratuity] of the Government servant retiring

under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who -

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in an autonomous body of a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION. - For the purpose of this rule the expression "Appointing Authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.

Rule 48-B. Addition to qualifying service on voluntary retirement

(1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48(1)(a) or Rule 48-A of Clause (k) of Rule 56 of the Fundamental Rules of Clause (i) of Article 459 of the Civil Service Regulations, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(2) The weightage of five years under sub-rule (1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48(1)(b) or FR 56(j).

Rule 49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2)(a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem;

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than [Rupee three

hundred and seventy-five] per mensem;

(c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

(5) & (6) Deleted.

3. It is not an issue that the petitioner had completed service of 19 years, 10 months and 20 days. As per Rule 48-A, the entitlement to voluntary retirement comes into effect after 20 years of service and the petitioner has not served for 20 years. The issue is that can the provisions of Rule 48-B and 49(3) help the petitioner. In my opinion, the provision of Rule 49(3) is absolutely clear for being read in favour of the petitioner. This provision specifically states that for calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed half-year and reckoned accordingly for qualifying service. Since the petitioner has completed more than 19 years and 3 months of service, by virtue of Rule 49(3) the position will be that the petitioner will be taken to have completed 20 years of service. Once petitioner is held to have completed 20 years of service the petitioner will have the qualifying service of 20 years to bring into application entitlement of voluntary retirement in terms of Rule 48-A. I therefore hold that the petitioner had completed qualifying service of 20 years and was entitled to voluntary retirement in terms of Rule 48-A. I may at this stage add that it is not disputed before me that on completion of qualifying service of 20 years, pension liability will accrue in terms of SVRS 2003. Accordingly, for the aforesaid reasons and conclusions I hold that the petitioner will be entitled to benefits of pension under SVRS 2003 and it is not open to the respondent No. 2 to contend that the petitioner has not completed 20 years of service as required under Rule 48-A.

4. Another reason for me to hold that 20 years of qualifying service stand completed is because of the provision of Rule 48-B. The provision of Rule 48-B has been interpreted by a Division Bench of this Court in the case of Retd. Major A.S. Dahiya E.C. No. 59676 Vs. Union of India and Ors. 2003 (108) DLT 740. The Division Bench has held in this judgment that for determining the qualifying service, benefit of Rule 48-B has to be given by adding of five years of service to the normal period of service. Accordingly, following the ratio in the case of A.S. Dahiya (supra) for this second additional reason also, I hold that the petitioner would have completed 20 years of qualifying service for being entitled to voluntary retirement in terms of Rule 48-A.

5. The next issue which arises is who is liable to pay the pensionary benefits to the petitioner i.e. whether it is the liability of the respondent No. 1-Pension Trust Fund or the liability of the respondent No. 2/DISCOM/employer. This would indeed have been a vexed question, however, I have to take no trouble on this aspect because this issue is no longer res integra and decided by the learned Single Judge of this Court in the case of North Delhi Power Ltd. Vs. Govt. of NCT of Delhi, . In this judgment, it has been held that the liability towards the pensionary benefits of the employees will be of the DISCOM i.e. respondent No. 2 herein. The relevant para of the judgment is para 86 and which reads as under:-

86. For the above reasons, I find that the schemes of DISCOMS cannot be equated with voluntary retirement in exercise of the conditions of service which existed at the time of transfer; they are in any case outside the purview of Rule 48A. Therefore, the optees do not fall within the description of those voluntarily retiring as per conditions of service existing as on 1.7.2002; they were induced to contractually depart from employment. The Trust is not geared to bear this sudden and substantial, unilaterally created burden; the GNCT, too, is not liable in terms of the Act or Rule 6(9) to fund the payment of terminal benefits, of such VRS/SVSS optees. The severance being achieved through contract between the DISCOMS and the employees, the liability for payment of terminal benefits, as well as commutation of pension and monthly residual pension, is that of the DISCOMS.

6. Though the counsel for the respondent No. 2 sought to argue that till the mechanism provided in para 93 of the judgment is not completed, the respondent No. 2 cannot be held liable inasmuch as the DISCOM/respondent No. 2 has not adopted the IPGCL model, but this argument I find to be without any substance. This argument is raised by the respondent No. 2 for liability for the period post the ordinary date of superannuation of the employees. For the period up to the normal age of superannuation the employer/respondent No. 2 does not deny its liability. The denial is only for the period after the ordinary date of superannuation and which is said to be either of the respondent No. 1 or of the Government of NCT of Delhi.

7. At this stage, I must put on record my distress on concealment of facts by respondent No. 2. During the course of arguments of the respondent No. 2, it came out that learned Single Judge who passed the judgment in the case of North Delhi Power Ltd. (supra) subsequently had passed a judgment dated 20.4.2011 in review petitions which were filed by the DISCOMS including the respondent No. 2 herein. The learned Single Judge has once again clarified that in the judgment dated 20.4.2011 what is stated of liability of the DISCOMS in para 86 of the main judgment dated 2.7.2007 will prevail in the interregnum period till modalities in terms of para 93 of the judgment dated 2.7.2007 are not finalized. Paras 14 and 15 of the judgment dated 20.4.2011 are relevant and the same read as under:-

14. The electricity companies were given the option to apply for the IPGCL model of paying out pension (direction in para 93(i)). In the event of their not opting for it, the mechanism of arbitral tribunal which was to determine the extent of payment to be made by the Pension Trust by the concerned electrical companies, to be paid to the optees of SVRS who would have otherwise have to wait for orders to come and get the terminal benefits (not necessarily only residual pension). In other words, the need for such adjudication to ensure that the employees were not put to extreme hardship on account of further litigation and delay, either individually with the Pension Trust or with the concerned electricity companies. The Arbitration Tribunal was to consider all the facts and data and after appraising it, fasten the extent of liability upon individual electricity companies, which was to be paid to the Pension Fund that was to ultimately take-over the responsibility to disbursement of manner of payments to pensioners. The principle or reasoning underlying these directions was that pre-mature severance or termination of the employee on his accepting the SVRS should not have otherwise robbed him of his entitlement that would be ultimately enforceable.

15. If the judgment and the operative directions are analyzed, it is apparent that the respective rights and liabilities of the parties were clearly delineated. The provision for the interregnum liability i.e. payments to be made to individual employees during the pendency of the determination before the Tribunal was also envisioned; the electricity companies were to bear this liability and if necessary, seek adjustment in the final determination by the Tribunal. The subsequent orders of 08.10.2007 and 25.01.2008, therefore, are a mere effectuation and extensions of the reasoning embodied in the judgment dated 02.07.2007. The DISCOMS" clarifications enabling the electricity companies/ DISCOMS to make payments through a specified Trust, therefore, have to be viewed in the light of the partition directions casting a liability to pay the interregnum amounts to the optees. Therefore, the interpretation placed by the Govt. of NCT of Delhi, and adopted by the Pension Trust is untenable. Their pension is also enable for the simple reason that it amounts to stating that by two unreasoned and clarificatory orders, a hotly contested litigation resulting in accrual of rights and liabilities and necessitating directions, was virtually set aside. That was in the purport of the said two orders of 08.10.2007 and 25.01.2008.

(Underlining added)

8. I was handed over a copy of this judgment dated 20.4.2011 by the counsel for the respondent No. 2 during the course of hearing of arguments in the present case. Paras 14 and 15 reproduced above make it quite clear that the Court had observed that there was a need to avoid hardship to the employees on account of further litigation and delay either individually with the Pension Trust or with the concerned electricity companies and therefore in the interregnum period payments of the pensionary liability had necessarily to be only of the electricity

companies i.e. DISCOMS. I fail to understand that how in the face of paras 14 and 15 it can be argued by the respondent No. 2 that liability is not of the respondent No. 2. For the sake of completion it is put on record that though the judgment of learned Single Judge in the case of North Delhi Power Ltd. (supra) is the subject matter of an appeal, however it is not disputed before me that there is no stay of operation of the judgment dated 2.7.2007.

9. In view of the above, writ petition is allowed. It is directed that the petitioner after her attaining the age of superannuation i.e. 31.10.2010 will be paid pensionary benefits by the respondent No. 2. Whatever rights the respondent No. 2 may thereafter have as against the respondent No. 1 or the Government of NCT of Delhi is an issue which the respondent No. 2 will sort it out with the respondent No. 1 or the Government of NCT of Delhi, however the petitioner cannot be deprived in the meanwhile the pensionary benefits in view of the clarifications given in paras 14 and 15 of the judgment dated 20.4.2011 which have been reproduced above. Petitioner will also be entitled to interest @ 9% per annum simple for the period of delay in paying the pensionary benefits from 31.10.2010 within a period of three months from today. If the arrears due and payable are not paid within three months from today, rate of interest thereafter will become 12% per annum simple. In the facts of the present case and more so in view of the fact that at the time of filing of this petition the issue of liability of the respondent No. 2/DISCOM was no longer res integra in terms of the judgments dated 2.7.2007 and 20.4.2011 of a learned Single Judge of this Court in W.P.(C) No. 4827/2005, petitioner is also awarded costs of Rs. 25,000/-. Writ petition is accordingly allowed and disposed of in terms of aforesaid observations.