

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.414/2016

Order reserved on 15th May 2017

Order pronounced on 30th May 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

Chattar Pal, 60 years
s/o Mr. Prabhu Dayal
Ex. ATI, Token No.27876
Unit : SND
r/o 16/530-E, Bapa Nagar
Karol Bagh, New Delhi – 110 005

..Applicant

(Mr. Jagdish Chandra Kundlia, Advocate)

Versus

1. Delhi Transport Corporation
Through its Chairman-cum-M.D
I P Estate, New Delhi – 110 002
2. The Chief Secretary
Govt. of NCT of Delhi
3rd Level
Delhi Secretariat
New Delhi – 110 002

..Respondents

(Ms. Swati Jain for Ms. Ruchira Gupta, Advocate)

O R D E R

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“i) The respondent may be directed to grant the pension from the next date of retirement i.e. w.e.f. 1.8.2015 along with its arrears of pension with compound interest @ 12% p.a. to the applicant under DTC Pension Scheme.

(ii) The respondent may be directed to grant the commutation value of pension, which becomes absolute on the next date of retirement, along with compound interest @ 12% p.a.”

2. Brief facts of the case are under:-

2.1 The applicant joined Delhi Transport Corporation (DTC) – respondent No.1 as a Conductor w.e.f. 07.03.1981. On attaining the age of superannuation, he retired from the service of DTC w.e.f. 30.07.2015.

2.2 The DTC had introduced a Pension Scheme vide Office Order No.16 dated 27.11.1992 (Annexure A-2). The Scheme was to be operated by the Life Insurance Corporation (LIC) on behalf of the DTC. The Scheme was given retrospective effect from 03.08.1981 and was made compulsory applicable to all the employees who had joined the DTC on or after 23.11.1992. The Scheme envisaged that the employees share in the EPF account of the DTC employees would be transferred to the LIC for operating the Pension Scheme on behalf of DTC and the amount deposited in the Central Government/State Government/ Guaranteed Securities would be encashed on maturity.

2.3 Apparently, the LIC declined to operate the Scheme and hence the DTC Board, vide Resolution No.116/93, resolved that the Scheme would be operated by DTC itself.

2.4 The Scheme got the ascent of Ministry of Surface Transport, Government of India vide Annexure A-4 letter dated 31.10.1995.

2.5 The grievance of the applicant is that although he had opted for the *ibid* Pension Scheme but has not been sanctioned pension and commutation of pension on his retirement. It is alleged that in a meeting held under the chairmanship of Minister of Transport, Government of National Capital Territory of Delhi (GNCTD), it was decided that pension would not be granted to those employees, who retired from service of DTC after May 2015, irrespective of the fact whether they were covered under the DTC Pension Scheme or not.

2.6 It is contended that a Constitution Bench of Hon'ble Supreme Court in the case of **Deokinandan Prasad v. State of Bihar & others** [(1971) 2 SCC 330] has held that “the payment of pension does not depend upon the discretion of the State; but, on the other hand, payment of pension is governed by the Rules and a Government servant coming within the Rules is entitled to claim pension”. It was further held that “the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules.”

Aggrieved by the denial of pensionary benefits to him, the applicant has filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. The important grounds pleaded in support of the claim for the reliefs are as under:-

3.1 The applicant is an optee of the DTC Pension Scheme and continued to remain so till the date of his superannuation. The Pension Scheme is a self-sustaining Scheme without any budgetary support from the Government.

3.2 As per the understanding with the respondents, any deficit in the pension funds was required to be augmented in future by enhancing management share of provident fund and/or from the contribution of the employees.

3.3 Payment of pension is not bounty. The claim of an employee for pension is a recurring cause.

3.4 Although a decision was taken in a meeting held under the chairmanship of Transport Minister of GNCTD on 05.06.2015 (Annexure A-7) regarding freezing of the pension but no order to that effect has been issued by the DTC, as informed by the DTC to the applicant vide letter dated 31.08.2015 (Annexure A-8)

3.5 The DTC employees, who had opted for pension in accordance with Office Order No.16 dated 27.11.1992, have got all the retiral benefits but the applicant has been discriminated against and as such the equality principles enshrined under Article 14 of the Constitution of India have been violated.

4. Pursuant to the notice, the respondents entered appearance and filed their reply. The important averments in the reply are as under:-

4.1 The applicant joined DTC as a Retainer Crew on 07.03.1981 and was brought under the monthly rates w.e.f. 06.09.1981. He is a member of DTC Pension Scheme. There was huge financial crunch in the Pension Trust due to various factors, including the financial impact of implementation of the recommendations of 6th Central Pay Commission (CPC).

4.2 The DTC had taken up the matter with GNCTD, who constituted a High Power Committee. The Committee was duly apprised of the balance available in the Pension Corpus Fund. It was noted that the Pension Corpus Fund had exhausted in November 2014. Budgetary support was sought by the DTC from the GNCTD from time to time and with the subvention of GNCTD, the pensions were being released to the retiring employees. Between January – March 2015, financial support amounting to Rs. 40 crores was released by the GNCTD to the DTC for this purpose.

4.3 The financial crisis afflicting the DTC Pension Corpus Fund was reviewed in a meeting held on 19.02.2016 under the chairmanship of Transport Minister of GNCTD wherein it had been decided to call the pension cases from the Units of retirees, who are pension optees and retired/expired after 31.05.2015 as per the following schedule:

1. Employees retired/expired in the month Up to 31st March 16 of June & July 2015
2. Employees retired/expired in the month From 1st Apr. to 15th Aug. & Sep. 2015
3. Employees retired/expired in the month From 16th Apr. to 30th Apr. 16 Oct. & Nov. 2015
4. Employees retired/expired in the month From 1st May to 15th May Dec & Jan. 2016
5. Employees retired/expired from Feb. From 16 May 2016 2016 onwards Onwards

4.4 A circular/direction to that effect was issued by the DTC on 10.03.2016 (Annexure R-2). Accordingly, the applicant's case was reviewed and his pension has been released.

5. The applicant has filed rejoinder to the reply filed on behalf of the respondents. It is stated that the applicant has not been paid complete amount of pension. The applicant had retired on 30.07.2015. He ought to have been paid gratuity by taking into consideration dearness allowance @ 119%, whereas he has been paid gratuity considering dearness allowance @ 100% only (Annexure A-13). The pension has been released to him much

belatedly and the dearness allowance on the pension has been freezed and he has also not been paid the commutation of pension amount.

6. With the completion of pleadings, the matter was taken up for hearing the arguments of learned counsel for the parties on 15.05.2017. Arguments of Mr. Jagdish Chandra Kundlia, learned counsel for applicant and that of Ms. Swati Jain for Ms. Ruchira Gupta, learned counsel, were heard.

7. Besides reiterating the averments made in the O.A. and rejoinder, Mr. Jagdish Chandra Kundlia, learned counsel for applicant drew my attention to paragraph 7 of the Pension Scheme (Annexure A-5), which reads as under:-

“7. Payment of Claim of Pension, Family Pension and Operation of the Fund

The claims of Pension, family pension, Death-cum-Retirement Gratuity and Commutation of pension shall be assessed, calculated and disposed of strictly in accordance with the provisions of the CCS (Pension) Rules, 1972, Liberalised Pension Rules, 1950 and Family Pension Scheme, 1964, as amended from time to time, as applicable to the Central Government Employees.

Pension papers will be received and processed by the Pension Cell. The same will be placed before the DTC Superannuation Pension Trust. After the pension papers are cleared by the Trust, the Manager (A/cs.) will arrange, payment of pension to the eligible pensioners on the basis of the Pension Payment Order.

The employees who have drawn the employer's share of Provident Fund partly or wholly shall have to refund the same with interest in the event of their drawing pension. The total amount to be refunded by the retired employees/existing employees would be the

amount that would have accrued had they not withdrawn the employer's share.

No interest whatsoever will be payable on arrears of pension amount to the employees/pensioners."

8. Mr. Kundlia vehemently argued that the applicant has not been paid his pensionary benefits in accordance with the Rules. He thus prayed for granting the reliefs.

9. *Per contra*, learned proxy counsel for respondents stated that undoubtedly the applicant was a pension optee. Unfortunately, the pension funds ran into severe financial crises. Consequently, financial support was sought from GNCTD. Accordingly, a meeting was held under the chairmanship of Transport Minister of GNCTD on 05.06.2015, the minutes of which are at Annexure A-7. The meeting took the following decisions:-

"a) DTC may provide the total number of existing pensioners as on 31.5.2015 specifically indicating the pension optees, non-pension optees and the employees covered under EPS' 95.

b) It was, further, decided that pension payable in each case to the pensioners may be freezed as being paid on 31.5.2015 at the quantum paid as under:

- i) Withholding of commutation of pension of the pensioners, retirees on or after Oct., 2013 onwards.
- ii) Non release of Dearness Relief to pensioners w.e.f. July, 2014 i.e. DA before July, 2014 will continue.

c) It was decided that existing optees who are yet to be retired after 31.5.2015 may be brought under EPS' 95. The Govt. of NCT of Delhi will recoup the employer's share of such employees up to 31.5.2015 and, thereafter, DTC would remit their employer's share to PF trust like as is being done in respect of non-pension optees.

d) Non-pension optee whether existing or retired will not be considered for pension.

e) Total financial implication in respect of existing pensioners i.e. about 12,200 pensioners up to 31.5.2015 may be quantified through actuarial valuation to enable DTC to get funds released on this account from the Government.”

10. The learned counsel further submitted that another meeting was held on 19.02.2016 under the chairmanship of Transport Minister, GNCTD. In terms of the decision taken in the said meeting, the employees retired between June 2015 to February 2016 were to be granted pensionary benefits as per the schedules indicated in circular dated 10.03.2016 (Annexure R-2). Accordingly, the applicant has been granted the pensionary benefits. It was submitted that in view of the fact that the applicant has already been granted the reliefs, the O.A. has become infructuous.

11. The learned counsel relied upon the following decisions of the Hon'ble Apex Court:

(i) **Officers & Supervisors of IDPL v. Chairman & M.D., IDPL & others, [(2003) 6 SCC 490]**, wherein it has been held as under:-

“8. We have carefully gone through the pleadings, the Annexures filed by both sides and the orders passed by the BIFR and the judgments cited by the counsel appearing on either side. Learned counsel for the contesting respondent drew our attention to a recent judgment of this Court in A.K. Bindal and Anr. v. Union of India and Ors., [2003] 5 SCC 163 in support of her contention. We have perused the said judgment. In our opinion, since the employees of government companies are not government servants, they have absolutely no legal

right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay-scales should be met by the Government, Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay-scale, the petitioners, in our view, cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay-scales. We are unable to countenance the submission made by Mr. Sanghi that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay-scales of the employees.

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11. In our view, the economic capability of the employers also plays a crucial part in it, as also its capacity to expand business or earn more profits. The contention of Mr. Sanghi, if accepted that granting higher remuneration and emoluments and revision of pay to workers in the other governmental undertakings and, therefore, the petitioners are also entitled for the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly show that the first respondent had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay-scales should necessarily be revised and enhanced even though the organization in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter affidavit, the first respondent company which is engaged in the manufacture of medicines became sick industrial company for various reasons and was declared as such by the BIFP. and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not dispute that the production activities had to be stopped in the major two units of the company at Rishikesh and Hyderabad w.e.f. October, 1996 and the losses and liabilities are increasing every month and that the payment of three instalment of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1999 which has also not been sanctioned by the Government of India.

12. In the instant case, it is also not in dispute that the units of the companies have already suspended their operations and as on date no units is functioning. It is also observed in the order dated 23.01.1996 that the company's sales were of the order of Rs. 215 crore against the projected sales of Rs. 305.65 crore for the year ended 31.03.1995 and the company incurred a net loss of Rs. 69.80 crore against the projected profit of Rs. 0.08 crore, The major reasons for the poor performance of the company was stated to be constrained in working capital, power supply problems, reduction of custom tariff on import on bulk drugs, highly competitive marketing in formulation and high wage bills besides withdrawal of price preference. The progress period ended on 30.09.1995 and as per the company's balance sheet were Rs. 77 crore against the envisaged sales of Rs. 177.47 crores for the period ended 30.09.1995 and the company incurred a net loss of Rs. 47 crores against the projected net profit of Rs. 7.69 crores. The accumulated loss stood at Rs. 577.10 crores against the projected accumulated loss of Rs. 499 .30 crores as on 31.03.1995 and Rs. 624.10 crores against Rs. 478.66 crores as on 30.09.1995.

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19. Since this Court has already decided the very issue in question and the petitioners have opted for the VRS nothing survives in this petition and the same is liable to be dismissed. The petitioners having applied for VKS it is not open to them to contend that they are entitled for pay revision.”

(ii) **State of U.P. & others v. Dr. Om Prakash Singh [(2004) 7 SCC 750]**. In this case, the respondent was appointed in U.P. State Horticultural Produce, Marketing & Processing Corporation Ltd. (HORTICO). The said Corporation was closed and consequently the respondent was given temporary appointment and posted as Deputy Jailor in the U.P. Jail Services. He was placed in the pay scale of '1400-2300' and his pay was

fixed at '2250/-' in the said pay scale. He represented to the State Government of U.P. that he should be covered by the revised pay scale of '2200-4000' w.e.f. 01.01.1986 in HORTICO and pursuant to the decision of the State Government, his last pay should be protected in that scale. It was noted that the revised pay scale was not adopted by HORTICO. In any event, HORTICO having been closed, the question of accepting the prayer of the respondent did not arise. The Tribunal as well as the Hon'ble High Court had allowed the prayer of the respondent but the Hon'ble Apex Court had held as follows:-

“8. In the aforesaid background, the inevitable conclusion is that both the Tribunal and the High Court had not considered the controversy in the proper perspective and their conclusions cannot be sustained. The orders of the Tribunal and the High Court are set aside. The appeal is allowed with no order as to costs.”

(iii) **Chairman & M.D., Kerala SRTC v. K.O. Varghese & others**, [(2007) 8 SCC 231]. In this case, on the question of granting benefits of 5th CPC, the Kerala State Government had advised KSRTC that the decision may be deferred for better times. The State Government had noted that as the financial position of KSRTC was not sound, it has been decided to defer grant benefits of 5th CPC to the employees for better times. The petitioner therein moved Kerala High Court against the said decision and got the relief. The judgment of Kerala High Court was challenged before the Hon'ble Supreme Court in Civil Appeal No.2916/2007. The Civil Appeal

filed by KSRTC was allowed by the Apex Court, who, in its judgment, held as under:-

“16. As we understand this communication in the context in which it was issued, we are of the view that this amounts to a direction in terms of Section 34 of the Act. It must be remembered that this communication was issued when the Government was directed by the High Court to take a policy decision on the question of implementing the recommendations of the Fifth Pay Commission in respect of the employees of KSRTC. Such a policy decision in the absence of a regulation, could obviously be only in terms of Section 34 of the Act. Therefore, when in compliance with the direction of the High Court, the Government took a policy decision and communicated the same to KSRTC to defer the implementation of the recommendations of the Fifth Pay Commission, it could be understood only as a direction in terms of Section 34 of the Act. The context in which the communication dated 16.5.1995 was issued, according to us, clearly shows that it was intended to be a direction in terms of Section 34 of the Act and the argument that formalities had not been complied with or that the same had not been notified, does not enable the court to hold that the communication dated 16.5.1995 must be understood only as a mere letter in reply and nothing more. The power to issue such a direction is clearly traceable to Section 34 of the Act and the High Court had obviously directed the Government to take that decision having in mind Section 34 of the Act. It is therefore clear that the direction dated 16.5.1995 is a direction in terms of Section 34 of the Act. The High Court, in our opinion, has not considered the effect of the direction issued in O.P. No. 13233 of 1992-A and connected cases, and the decision taken by the Government pursuant to that direction and the status of the communication dated 16.5.1995.

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18. We are not in a position to endorse this reasoning or conclusion of the High Court. KSRTC is an autonomous Corporation established under the Road Transport Corporation Act, 1950. It can regulate the service of its employees by making appropriate regulations in that behalf. Until such regulations are framed, it is entitled to take note of its financial health in considering whether a particular recommendation for enhanced pay or pension in respect of Government employees should be adopted by it and if it is to be adopted by it, from what point of time. This, of course, would be subject to any direction that may be issued by the State Government in terms of Section 34 of the Act.

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21. The High Court, in our view, is not correct in thinking that there is any compulsion on KSRTC on the mere adoption of Part III of KSR, to automatically give all enhancements in pension and other benefits given by the State Government to its employees. There is no provision in Part III of KSR containing such a stipulation. It only provides for payment of pension. The question of revision or enhancement of pension to its employees is left to KSRTC, an autonomous Corporation, subject of course to any direction that may be issued by the State Government under Section 34 of the Act. The mere adopting of Part III of KSR does not therefore shackle or control the power of KSRTC to take a decision in the absence of any regulation already framed, that the enhanced pensionary benefits as recommended by the Fifth Pay Commission need not be paid commencing on the same date as the State Government employees but the question of enhancing pension could be considered at a later point of time. There is nothing in Part III of KSR to control the power of KSRTC to decide that the recommendations of the Fifth Pay Commission may be implemented with effect from a particular date or that it need not be implemented at all in view of the precarious financial condition of KSRTC. The reasoning therefore that the direction to adopt Part III of KSR and the order adopting it by KSRTC would denude KSRTC of its power to fix a cut-off date for adopting and implementing the recommendations of the Fifth Pay Commission is found to be not sustainable.

22. Learned counsel for the respondents argued that what the Government has directed is only to defer the payment of pension and that meant that pension as recommended by the Fifth Pay Commission had become payable but only the actual payment stood deferred to a future point of time. In the context of what has happened here, this argument cannot be accepted. Obviously, the issue was whether the recommendations of the Fifth Pay Commission regarding enhanced payment of pension and other allowances to retired employees should be implemented by KSRTC in the situation in which it was placed and the direction of the Government was that since the financial position was not sound, the question had to be deferred. The letter dated 16.5.1995 uses the expression:

"It has been decided that grant of benefits of the Fifth Pay Commission to the pensioners of KSRTC may be deferred for better times."

As we understand it, this communication means that the very question of adopting the recommendations of the Fifth Pay Commission stood postponed for better times and it is not possible to

read and understand it as directing that pension had to be paid in terms of the recommendations of the Fifth Pay Commission but its actual payment may be postponed. The grant itself was put off to a later point of time by the said communication. We, therefore, overrule this submission on behalf of the respondents.

23. Even before us, also, it has been clearly pleaded by KSRTC that its financial position is unsound. In fact, the High Court has also noticed it. This Court has held that the financial position of a Corporation like KSRTC is certainly relevant when the Corporation takes a decision as to whether it should implement a recommendation for enhanced emoluments and pension. Since we find from the relevant aspects brought out that the financial position of KSRTC is not sound, we are of the view that the decision taken by the State Government not to implement, here and now, the recommendations of the Fifth Pay Commission for KSRTC and the decision based on it by KSRTC are fully justified. Certainly, the decision cannot be said to be vitiated by any extraneous consideration or perverse appreciation of the circumstances obtaining.”

12. Learned counsel for applicant, rebutting the arguments of learned proxy counsel for respondents, has filed written submissions on 18.05.2017 wherein it is submitted that the issue in **Chairman & M.D., Kerala SRTC v. K.O. Varghese & others** case (supra) was that the reliefs regarding revision of pensionary benefits, as recommended, was not immediately implemented in case of the pensioners of KSRTC. There was no case that the benefits were completely denied forever, rather they were only deferred. The decision taken was “as the financial position of KSRTC is not sound, it has been decided that grant of benefits of the 5th CPC to the pensioners of KSRTC may be deferred for better times”. Hence there are two clear distinctions between the aforementioned matter and the matter in hand.

13. With regard to the decision of Hon'ble Apex Court in **Officers & Supervisors of IDPL** (supra), the learned counsel submitted that the issue in the said case relates to a declared sick company – Indian Drugs and Pharmaceuticals Ltd. (IDPL). In the said case, the revision of pay scales etc. as recommended by the BPE was not implemented because (i) all the employees had voluntarily submitted their undertaking that they will sacrifice their future enhancement of salary and allowances for four years; and (ii) IDPL was declared as a sick company and also Government had decided to initiate action for winding up of the IDPL. The Government also introduced voluntary retirement scheme (VRS) for IDPL employees to make winding up possible and all the employees of the IDPL had taken VRS. It was further submitted that the respondents are not honest in denying the dearness allowance enhancement to their pensioners on a false ground of the financial constraint. As a matter of fact, the respondents dishonestly are trying to get rid of their responsibilities and illegally forcing the retired employees to accept inferior Pension Scheme called Employees Pension Scheme, 1995, introduced by the Regional Provident Commissionerate under Employees Provident Fund and Miscellaneous Provisions (EPF&MP) Act, 1952., which is not at all applicable to the establishment of the respondents.

14. I have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

15. Admittedly, the applicant is an optee of the Pension Scheme introduced by the DTC vide Annexure A-2 order dated 27.11.1992. It was a contributory Scheme, to which contributions were made by the employees and employer. It was a self-sustaining Scheme. Unfortunately, the Scheme ran into severe financial crisis and consequently, the DTC had to seek assistance of GNCTD for discharging its pension liabilities towards the retired employees. Some intermittent subvention was provided by GNCTD but that was not adequate. Finally, in two meetings held between DTC and GNCTD under the chairmanship of Transport Minister, GNCTD on 05.06.2015 and 19.02.2016, certain decisions were taken. The gist of these decisions is at paragraph (9) of this order. It is seen from these decisions that due to the financial crunch, the respondents have tried to indulge into some balancing act. While on one side they have decided not to deprive the pensionary benefits to the retired DTC employees but on the other hand have applied some restrictions, so as to manage the financial implications within the available funds. The decisions taken have been implemented in respect of all the retired/retiring employees of DTC. The applicant is a beneficiary of these decisions and has received the pensionary benefits. The restrictions imposed on the ground of pensionary benefits have been applied to all the retired/retiring employees of DTC. As such, the applicant cannot complain of discrimination.

16. As observed earlier, the applicant is an optee of the DTC Pension Scheme, which operates with contributions from employees and employer.

Thus, he has to conform to the financial vicissitudes of the Scheme. The applicant is not covered under the CCS (Pension) Rules, 1972, under which an employee is entitled for his pension as per the prescribed scale, irrespective of the financial implications involved. Under CCS (Pension) Rules, the entire burden of pension is borne by the employer.

17. Learned proxy counsel for respondents has cited three judgments of Hon'ble Supreme Court mentioned in paragraph (11) *supra*, wherein the Apex Court has held that the employer is well within its rights to impose restrictions on the remunerations of the employees in the event of the organization facing financial crises. Obviously, the DTC Pension Corpus Fund had been facing financial crises. Taking into consideration the availability of funds, the respondents, in their best judgment, have worked out a middle path whereby interests of both the sides are balanced. Hence, I do not find any illegality or infirmity in the action of the respondents.

18. In the conspectus of discussions in the foregoing paragraphs, I do not find any merit in the O.A. It is accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

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