

**Central Administrative Tribunal
Principal Bench**

OA No.1040/2012
MA No.877/2012
MA No.2884/2012

Order Reserved on: 27.07.2017

Pronounced on: 25.10.2017

***HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

1. B.P. Maity
RITES Limited
R/o 23/A, Anand Vihar, Delhi-92.
2. K.V.V. Ramanamurty
S/o Subba Rao
Sr. Dy. General Manager
RITES Limited
Bangalore
3. Ch. M. Raju
S/o Veer Raju
Sr. Dy. General Manager
RITES Limited
Bangalore
4. R. Balasubramanian
S/o SRD Balasubramanian
Sr. Dy. General Manager
RITES/GC to BMRCL
Bangalore
5. K.K. Sharma
S/o Late J.D. Sharma
Sr. Dy. General Manager
R/o D-IV/3, RITES Flats
Ashok Vihar-III
Delhi.
6. Pradeep Kumar Khattar
S/o Hardayal Khattar
Sr. Dy. General Manager
RITES Limited
R/o Flat No. 43

SFS DDA Flats
Dwarka NDLS

7. D.K. Gupta
S/o Late S.S. Gupta
Sr. Dy. General Manager
RITES Limited
R/o D-2/12 Rail Vihar
Indirapuram
Ghaziabad
8. R.K. Sisodia
S/o Late Genda Singh
Sr. Dy. General Manager
RITES Limited
R/o C-205 Rail Vihar
Sector-3 Vasundhra
Ghaziabad
9. Sushil Parashar
S/o Late Kapil Dev Parashar
Sr. Dy. General Manager
RITES Limited
R/o 19/35 B GF, Tilak Nagar
New Delhi-18.
10. A. Khare
S/o S.P. Khare
Sr. Dy. General Manager
RITES Limited
R/o A 1/28
South City-II Gurgaon
11. R.K. Sharma
S/o Late V.P. Sharma
Sr. Dy. General Manager
RITES Limited
R/o 131, Subham Apartments
I.P. Extension
Delhi
12. Surender Madan
S/o Dewan Chand Madan
Sr. Dy. General Manager
RITES Limited
R/o H. No. 68 Sector-19
Faridabad

13. Vinay Gupta
S/o Prem Chand Gupta
Sr. Dy. General Manager
RITES Limited
R/o 1A-3C Ashok Vihar Phase-1
Delhi.
14. S.B. Gupta
S/o Late D.B. Gupta
Sr. Dy. General Manager
RITES Limited
R/o 137-H/A-2
Mayur Vihar Phase-3
Delhi
15. S. Izhar Hussain
S/o Late S.Z. Hussain
Sr. Dy. General Manager
RITES Limited
R/o 1001/C, Rail Vihar,
Sector-57, Gurgaon

-Applicants

(By Advocate: Ms. Meenu Mainee)

Versus

Union of India: Through

1. Secretary, Railway Board
Ministry of Railways,
Rail Bhawan, New Delhi
2. Member, Mechanical
Railway Board
(Chairman, RITES Ltd.)
Rail Bhawan, New Delhi.
3. Managing Director
RITES Ltd., Registered Office:
Scope Minar, Laxmi Nagar
Delhi.
4. Executive Director (CS)
RITES Ltd., Corporate Office:
Block No. 1, Sector 29
Gurgaon.

5. Secretary, Public Enterprises
 Public Enterprises
 Block-14, CGO Complex
 Lodi Road, New Delhi.

-Respondents

(By Advocate: Shri V.S.R. Krishna)

O R D E R

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

MA No. 877/2012 filed by the applicants under Rule 4 (5) (a) of Central Administrative Tribunal (Procedure) Rules, 1987 for joining together, is allowed in the interest of justice and to avoid multiplicity of litigation.

2. Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following reliefs:

“i) In the circumstances it is therefore most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to allow the O.A. and quashed the impugned orders;

ii) That this Hon'ble Tribunal may further be pleased to direct the Respondents that in the event of promotion of the applicants they will fix their salary in the next higher CDA pay scale and thereafter the applicants will exercise the option for switching over to IDA pay scale on voluntary basis”.

3. The factual matrix of this case is as under:

3.1 The applicants are working in RITES Ltd.-respondent organization against the posts of Deputy General Manager (DGM) and Senior Deputy General Manager (Sr. DGM). The employees of RITES are having two types of pay scales, namely, the Central DA (CDA pay scales) and Industrial DA (IDA pay scales).

3.2 As per the promotion policy of 2003, the next promotional post for officers working as DGM used to be Joint General Manager (JGM). The respondents vide letter dated 22.09.2008 modified the said promotion policy and introduced an intermediary grade of Senior DGM in between DGM and JGM for which IDA pay scale of Rs.16000-20800 was prescribed but no such CDA pay scale was prescribed. The respondents issued an office order dated 15.06.2009 (Annexure A-1) clarifying that an employees of RITES who was not willing to move to IDA scales on promotion would only be re-designated by retaining his/her existing CDA scale on promotion, on giving written undertaking for such acceptance. The Annexure A-1 office order was followed by Annexure A-2 office order dated 30.09.2009 wherein it was stated that in terms of Department of Public Enterprises (DPE) OM dated 10.08.2009, it has been settled that henceforth, all appointments on promotion in RITES shall be in IDA scales only. The DPE OM dated 10.08.2009 was annexed with the office order.

3.3 Thereafter, the respondents sent Annexure A-3 communication to some of the senior DGMs, few of them are applicants in this OA, stating therein, *inter alia*, that the office order dated 30.09.2009 (Annexure A-2) holds 'good' and all appointments on promotion in RITES shall be made in IDA scales only.

3.4 Aggrieved by Annexures A-1, A-2 orders and A-3 communication, the applicants have filed the present OA, seeking the reliefs as indicated in para-2 above.

4. The applicants have raised the following grounds in support of the reliefs claimed:

4.1 The impugned orders are arbitrary, discriminatory and unjustified. The applicants are being forced to switch over from CDA pay scales to IDA pay scales after having worked for more than 20 years in CDA pay scales.

4.2 The DGMs who have been promoted as Sr. DGMs are being pressurised to accept CDA pay scales of the lower post.

4.3 The Hon'ble Supreme Court in the case of **Jute Corporation Officers' Association and others v. Jute Corporation of India Ltd.**, [Writ Petition no.13044/1984] has directed that the petitioners therein shall continue to enjoy the option to switch over to the IDA pattern of scale of pay on a voluntary basis.

4.4 The DPE's OM dated 12.06.1990 clearly states that only the employees appointed on or after 01.01.1989, would be deemed to have been governed in IDA pay scales and not those employees who were appointed prior to that.

4.5 The interpretation of expression 'appointment' by the respondents that it includes promotion as well is not correct. The Hon'ble Supreme Court's judgment in the case of **Jute Corporation Officers' Association and others** (supra) is being wrongly interpreted.

5. Pursuant to the notices issued, the respondents entered appearance. The reply, however, was filed on behalf of the respondents 3&4 only. The respondents have made the following important averments in their reply:

5.1 The applicant no.1 is the Secretary of CONCERT (Consultative Council for Enhancement of Report and Team Work) and has endorsed the principle of granting promotions against regular posts as well as on placement basis in the IDA pay scales only as per the DPE's guidelines dated 10.08.2009.

5.2 The Annexure A-1 office order dated 15.06.2009 was issued in terms of the decision of the Board of Directors (BoD) of RITES. This decision was taken with a view to minimise/eliminate the complexities arising due to mix of employees in CDA and IDA scales in RITES. The decision was in tune with similar steps taken by other CPSUs.

5.3 This Hon'ble Tribunal in OA No.2421/2009 – **Shri T.C. Joy & others v. Union of India & others**, vide order dated 12.07.2011 issued the following directions:

“3. During the course of hearing, Shri Krishna says that even after promotion of the Applicants, if they wish to switch over to IDA pattern scale of pay on voluntary basis, they will be allowed to do so. Learned counsel for the applicants accepts the above statement of Shri Krishna and states that applicants would opt for IDA pattern scales of pay.

4. In these circumstances, we dispose of this Original Application directing that if such options are made by the applicants respondent would permit them to shift to IDA pattern scale pay.”

5.4 The review application No.316/2011 was filed against the order of the Tribunal in OA No.2421/2009 dated 12.07.2011, seeking replacement of the word ‘would’ with ‘may’. The review petition was allowed by the Tribunal vide order dated 22.09.2011 and the word ‘would’ was replaced with ‘may’. The relevant portion of the said order is extracted below:

“3. Shri VSR Krishna, learned counsel for the Respondent, stated that if the applicant may not opt for the scale of pay they shall not be entitled to any promotion. Mrs. Meenu Mainee, learned counsel for the applicant states that whether the applicants may opt or not they will be entitled to promotion. We substitute the word “would” with “may” and leave the question open with regard to the entitlement of promotion of the applicants.”

5.5 The Tribunal did not interfere with the Annexures A-1 order dated 15.06.2009 and Annexure A-2 order dated 30.09.2009 while adjudicating OA No.2421/2009. Hence, the prayers made in the OA by the applicants to quash these orders, is not maintainable.

5.6 The Hon'ble Supreme Court in **Jute Corporation Officers' Association and others** (supra) had directed that "...the employees appointed on or after January 1, 1989 will be governed by such pay scales and allowances as may be decided by the Government in its discretion". The DPE in its guidelines dated 12.06.1990, in pursuance of the *ibid* directions of Hon'ble Supreme Court, has directed all the CPSEs that all appointments made on or after 01.10.1989 in respect of all categories of employees would be deemed to have been governed by the IDA pay scales. The DPE in consultation with the Department of Legal Affairs has clarified vide OM dated 10.08.2009 that the Hon'ble Supreme Court's judgment in **Jute Corporation Officers' Association and others** (supra) provides that employees appointed on or after 01.01.1989 will be governed by such pay scales and allowances as may be decided by the Government in its discretion. The Government has already issued orders that all employees appointed on or after 01.01.1989 shall be governed in IDA pay scales.

5.7 The Department of Personnel and Training (DoPT) vide OM dated 19.06.1986 (Annexure R-9) has mentioned that "appointment to a post includes, (i) Promotion, (ii) Direct Recruitment, (iii) Deputation, (iv) Absorption, (v) Re-employed and (vi) Short term contract." This interpretation of appointment has been upheld by the Hon'ble Apex Court in the case of **Dr. Harikishan Singh v.**

State of Punjab, [1971 (2) SLR] 373] as well as by various High Courts.

5.8 The applicants in OA No.2421/2009 (supra) had specifically prayed for quashment of order dated 15.06.2009 (Annexure A-1) and 30.09.2009 (Annexure A-2). The Tribunal had not granted such reliefs to them. Hence, the present applicants are debarred from making the same prayers in this OA. If the contention of the applicants is accepted, then for all time to come, the duality of pay scales in CDA and IDA would continue in CPSEs, which would be against the recommendations of the Second Pay Revision Committee headed by Mr. Justice M. Jagannatha Rao, retired Judge of the Hon'ble Supreme Court.

5.9 It is settled position of law that the respondent-organization has a right to change/re-change the promotion policy, adjust/re-adjust it according to the compulsions of the prevailing circumstances.

5.10. Granting of pay scales and allowances is an exclusive executive function and this position has been upheld by the Hon'ble Apex Court in the case of **P.U. Joshi & Others v. Accountant General, Hyderabad and Others**, [AIR 2013 SC 2156].

6. The applicants have filed rejoinder to the reply filed by the respondents in which they have, by and large, reiterated their averments in the OA.

7. On completion of the pleadings, the case was taken up for hearing the arguments of the parties on 27.07.2017. Arguments of the learned counsel for the parties were heard.

8. We have considered the arguments of the learned counsel for the parties as well as the pleadings. The DPE is the nodal agency of the Central Government who formulates policy guidelines for CPSEs in the matters of pay & allowances and remunerations for their employees. The DPE vide its OM dated 12.06.1990 had clearly directed the CPSEs that all appointments made on or after 01.01.1989 in respect of all categories of employees by the CPSEs would be deemed to have been governed in IDA pay scales only. This O.M. was issued by the DPE in pursuance of the judgment of the Hon'ble Supreme Court in **Jute Corporation Officers' Association and others** (supra), in which certain directions were issued by the Hon'ble Supreme Court. The directions relevant for this case are extracted below:-

“(i) The scales of pay and dearness allowance as recommended in the Report will be extended to those employees who have been appointed with specific terms and conditions for grant of Central D.A. This will be equally applicable to the employees who by rules laid down by the public sector enterprises are being paid Central dearness allowance.

(ii) The employees appointed on or after January 1, 1989, will be governed by such pay-scales and allowances as may be decided by the Government in its discretion. Those appointed earlier 1010 with IDA pattern will continue to be governed in accordance with the terms and conditions of their appointment.

(iii) The pay revision for those employees in respect of whom the recommendations are hereby being directed to be implemented hereafter, will take place only as and when similar changes are effected for the Central Government employees. These employees will, however, continue to enjoy the option to switch over to the IDA pattern of the scales of pay etc. on a voluntary basis.”

9. The word ‘appointment’ in the judgment of the Hon’ble Apex Court cannot be interpreted in a narrow sense. The DoP&T and Ministry of Legal Affairs have correctly interpreted that appointments shall also include promotion as well. This position has been clarified by the DPE in its OM dated 10.08.2009 (page-32). The Hon’ble Apex Court in **Dr. Harikishan Singh** (supra) has clearly held that the word ‘appointment’ cannot mean only promotion, and it means appointment both by promotion and direct recruitment. Hence the narrow interpretation of this word by the applicants with reference to the DPE’s OM dated 12.06.1990 that only the appointees in CPSEs on or after 01.01.1989 would be deemed to have been governed in the IDA pay scales is not correct. As a matter of fact, all promotions made on or after 01.01.1989 will also be governed in terms of the DPEs OM dated 12.06.1990 even in respect of the employees who were appointed prior to 01.01.1989.

10. We have also perused OA No.2421/2009 (**T.C. Joy & Ors. vs. Union of India & Ors.**). The applicants therein had prayed for the following reliefs:-

- “(i) allow this application and quash the impugned order;
- (ii) direct the respondents to act in accordance with the judgment of the Hon’ble Supreme Court giving option to the staff working in CDA Pay Scales to accept the IDA Pay Scales on voluntarily basis if they so desire, otherwise they should continue to be promoted in the CDA Pay Scales”.

11. The prayer made for quashment of office orders dated 15.06.2009 and 30.09.2009 which are at Annexures A-1 & A-2 of the OA had not been considered. The Hon’ble Supreme Court in **State Bank of India Vs. Ram Chandra Dubey & Ors.**, [(2001) 1 SCC 73] has held as under:-

“.....It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding.”

Hence, in terms of the above dictum of Hon’ble Apex Court, the prayer seeking quashment of Annexures A-1 and A-2 orders having not been considered, is deemed to have been rejected.

12. In this view of the matter, we are in agreement with the contention of the respondents that the applicants cannot be allowed to question Annexures A-1 & A-2 orders in this OA.

13. It is well understood that purpose of introduction of IDA pay scale in CPSEs was to incentivise the employees of the CPSEs for better performance so that they could meet the challenges emerging from the private sectors. Continuation of CDA & IDA pay scales for all time to come in the CPSEs would not have been in their interest. Furthermore, as observed earlier, the DPE's OM dated 12.06.1990 is, in fact, in compliance of the order of the Hon'ble Apex Court in **Jute Corporation Officers' Association and others** (supra). We would like to reiterate that appointment includes promotion as held by the Hon'ble Apex Court in **Dr. Harikishan Singh** (supra).

14. In the conspectus of the discussions in the foregoing paragraphs, we do not find any merit in this OA. Accordingly it is dismissed. No order as to costs.

15. In view of the above, no separate orders are required to be passed in MA No.2884/2012.

(K.N. Srivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’