

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

O.A.No.3590/2013  
M.A.No.2726/2013

Order reserved on 23<sup>rd</sup> September 2016

Order pronounced on 07<sup>th</sup> October 2016

**Hon'ble Mr. Raj Vir Sharma, Member (J)**  
**Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. N.D. Agrawal s/o Mr. Ram Das  
r/o 85-C Bharat Nagar  
New Friends Colony  
New Delhi – 65
2. Om Ratan Goel s/o Mr. Parma Nand Goel  
r/o H.No.100 Housing Board Colony  
Jharsa Road, Gurgaon
3. R Sridharan s/o K. Rama Krishnan  
r/o Flat No.S-I  
IInd Floor Plot No.277  
Sector-I, Vaishali  
Ghaziabad – 201010
4. Manghal Singh s/o Mr. Matrumal  
r/o Gali No.-7 Surya Colony  
Sehatpur (Near Saraswati Siksha Niketan)  
Faridabad (Haryana)
5. K.N. Kutty s/o Late A S Nair  
r/o S-2, Plot No.23  
Sector 5 Vaishali Ghaziabad – 201010
6. Banwari Lal Sharma  
s/o Satya Dev Sharma  
r/o F-54 A, Pandav Nagar  
Gali No.4A, Delhi – 91
7. Mohammad Hashim s/o late Syed Ahmad  
r/o A-188/2, Saheen Bagh Okhla  
Jamia Nagar, New Delhi – 25
8. Maroof Ahmad s/o Mr. Maqbool Ahmad  
r/o F-51, 3<sup>rd</sup> Floor, Muradi Road  
Batla House, Okhla  
New Delhi – 25

9. Suhas Mukherji s/o late S B Mukherji  
r/o 12/1, Shyama Prasad Road  
PO Nabagram  
Pin Code 712246  
DSH Hooghly West Bengal
10. Arun Kumar Bhatnagar s/o late Mr. K S Bhatnagar  
r/o B-133, Jangpura B  
New Delhi – 14
11. Shyam Digamber Naskar s/o Mr. Digamber Naskar  
r/o Aster 605, Omaxe Green Valley  
Sec-41/42, Faridabad  
Haryana – 121010
12. N P Nanda  
s/o Mr. Narinder Pal Nanda  
r/o H.No.1787 Sec 23  
Gurgaon – 122017
13. K K Naidu s/o late Mr. Kona Ramayya  
r/o S-2, Plot No.-23  
Sec 5, Vaishali,  
Ghaziabad – 201010
14. Alok Kumar Datta s/o late Mr. Ananta Kumar Datta  
r/o 176-D Pocket C  
Mayur Vihar Phase II  
Delhi – 91
15. Masroor A. Neyazi s/o late Mr. H A Neyazi  
r/o 113-B, Pocket C, Mayur Vihar, Phase II  
Delhi – 91
16. Purshottam Bulkunde  
s/o late Mr. Nilkanthrao Bulkunde  
r/o Pushpanjeli Apartment  
B-8/8, Dilshad Colony, Delhi  
Delhi – 95
17. Manoj Kumar Gupta s/o late Mr. Onkar Nath Gupta  
r/o Flat No.59, Pocket 11 B Sec 23  
Shri Vinayak Apt., Delhi – 85
18. Rehan Zaheer Khan s/o Zaheer-ul-Haq  
r/o 15-D, Lane V, 4<sup>th</sup> Floor  
Opposite Ajmal Park, Noor Nagar  
Okhla, New Delhi – 25
19. Lalit Kumar Shishodia s/o late Mr. R S S Shishodia  
r/o A-117, Shankar Garden  
New Delhi – 18

20. R K Grover s/o Mr. B R Grover  
r/o 22-B New R Block  
Anand Vihar Uttam Nagar  
New Delhi – 59
21. Irshad Ahmed s/o Md. Moid  
r/o F-12/35, Aleena Apartment  
2<sup>nd</sup> Floor Jogabai Ext. Okhla  
Jamianagar, New Delhi – 25
22. Anil Kumar Chadha s/o Mr. Jaswant Rai Chadha  
r/o B-451, Meera Bagh  
Paschim Vihar, New Delhi – 63
23. Ram Nath Prasad s/o late Mr. Babu Lal Prasad  
r/o E-2/6 Group 6 Sector 11  
Rohini, Delhi - 85

..Applicants

(Mr. R.K. Jain, Advocate)

Versus

1. Union of India through Secretary  
Ministry of Housing and Poverty Alleviation  
Nirman Bhawan, New Delhi
2. The Chairman cum Managing Director  
Hindustan Prefab Limited  
Jangpura, New Delhi

..Respondents

(Nemo for respondent No.1 –

Mr. Parveen Kumar Mehdiratta, Advocate for respondent No.2)

## O R D E R

**Mr. K.N. Shrivastava:**

M.A. No.2726/2013

M.A. seeking joining together in a single petition is allowed.

O.A. No.3590/2013

The applicants have filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the main relief:-

“I. To quash and set aside the resolution dated 27.12.2012 and direct the respondents to make the payment of arrears of pay, w.e.f.

01.01.1997 along with compound interest @ 18% pa till the date of payment along with other benefits of pay revision.

2. The brief facts of the case are as under:-

2.1 The applicants are ex-employees of Hindustan Prefab Limited (HPL), which is a Public Sector Unit (PSU) working under respondent No.1.

2.2 HPL had two categories of employees; the first category was getting Government pay scales with the Central DA (CDA), whereas the second category of employees was getting the pay scales with Industrial DA (IDA).

2.3 W.e.f. 01.01.1997, CDA pay scales were revised, whereas the IDA pay scales were not revised. Consequently, the employees of HPL started getting the revised pay, whereas their colleagues in HPL getting the IDA pay scales were deprived of the pay revision.

2.4 The Ministry of Industry, Department of Public Enterprises, Government of India appointed a Committee under the Chairmanship of Justice S. Mohan (retired Judge of Supreme Court) to recommend revision of pay and allowances for Executives who were in IDA pay scales.

2.5 Based on Justice S. Mohan Committee's recommendations, the Department of Public Enterprises, Ministry of Industry, vide Annexure A-2 O.M. dated 25.06.1999 announced the revised IDA pay scales for all cadres of employees to be effective from 01.01.1997.

2.6 As there was delay taking place at the level of respondent No.1 in according approval to HPL for the introduction of revised IDA pay scales w.e.f. 01.04.2009, the concerned employees of HPL filed Writ Petition (C)

No.2999/2000 in Hon'ble High Court of Delhi, which was disposed of vide order dated 23.01.2004 with the following observations:-

“30. Learned counsel for the Union of India did not dispute that to meet the increased wage bill for CDA pattern employees of Hindustan Prefab Ltd., the Government had sanctioned the wage increase notwithstanding that it was a loss making company and further that the Government was footing the increased wage burden.

31. Now, if the Government does not have an obligation to meet the additional wage bill for the employees of Hindustan Prefab Ltd., the Government could well refuse to sanction pay revision for all category of employees. But it cannot discriminate. The Government cannot say that it sanctions the wage revision for CDA pattern employees and then proceed to issue the 'gift cheque' and the IDA pattern employees say 'thumbs up'. Decision of the Government has to apply across the board.

32. Though para/clause 11 of the O.M. dated 19.7.1995 and para/ clause 7 of the O.M. dated 25.6.1999 are salutary and indeed have been upheld by the Supreme Court, but as noted in paras 29 and 31 above, the problem at hand is different. There is discrimination within the employees of Hindustan Prefab Ltd. Discrimination is a consequence of governmental action. It is the action which is bad in law and not the clause. Nexus of the criteria with the object sought to be achieved is the requirement of Article 14.

33. Basis of every pay revision is to neutralise the increased cost of living. This would be common and underlying to all categories of employees. Predicated on this basis, all employees under same employer form one homogeneous category. In N.T.C's case, in para 10, the Supreme Court held:

“Discrimination between the two categories of staff cannot be justified on the basis of applicability of the CDA pattern and the IDA pattern to the respective categories of staff. The IDA pattern cannot be taken to debar any revision of pay scales.”

34. Directions are accordingly issued to Hindustan Prefab Ltd. to forthwith start negotiations with the representatives of the employees governed by I.D.A. pay pattern pertaining to their wage revision. Agreed revised wages be paid w.e.f. 1.1.1997. Prayers (ii) to (iv) in CW. No.5093/2001 are granted.”

2.7 HPL vide its resolution dated on 22.02.2005 (Annexure A-3) resolved to implement the revised IDA pay scales in HPL after obtaining the approval of the Government, i.e., respondent No.1. Accordingly, a proposal

was sent by HPL to respondent No.1 on 17.09.2009, who, after considering the proposal, vide letter dated 13.10.2009 (Annexure A-6), accorded the requisite approval with certain conditions. The relevant extract from Annexure A-6 is reproduced below:

“Revision of pay scales of HPL employees and payment of salaries in the revised scales from 01.04.2009 to them without any financial assistance from the Government will be subject to all the conditions stipulated by the HPL Board at its 363<sup>rd</sup> meeting held on 14.09.2009. Before disbursing salary in the revised pay scales with effect from 01.04.2009, HPL should invariably take an undertaking from all the HPL employees to the effect that they will not insist for the arrears up to 31.03.2009 which will be decided by HPL on a year to year basis based on profitability of the Company and without any financial assistance from the Government and within a ceiling of 20% of the pre-tax profit.”

2.8 Finally, based on the approval of respondent No.1, HPL issued Annexure A-7 circular dated 14.10.2009. The relevant extract from the said circular is reproduced hereinbelow:-

- “1. Revision of pay scales of HPL employees and payment of salaries in the revised scales from 01-04-2009 to them will be without any financial assistance from the Government.
2. Employees concerned will be required to give an undertaking to the effect that (i) they will not insist for the arrears upto 31-03-2009 which will be decided by the HPL on year to year basis based on profitability of the company and without any financial assistance from the Government and within a ceiling of 20% of the pre-tax profit and; (ii) the excess/wrong payments, if any, made on account of clerical and arithmetical errors may be recovered/adjusted from their salary in the future.”

Since the applicants have not been paid arrears of pay w.e.f. 01.01.1997, they filed the instant O.A. praying for the relief as mentioned above.

3. Pursuant to the notices issued, the respondents entered appearance. Though no reply has been filed by respondent No.1 (Union of India), HPL filed its reply on 23.03.2015, which is followed by a supplementary affidavit dated 17.04.2016. The applicants filed their rejoinder on 29.04.2015 followed by a reply/response to the supplementary affidavit on 22.04.2016. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 23.09.2016. Mr. R.K. Jain, learned counsel for applicants and Mr. Parveen Kumar Mehdiratta, learned counsel for respondent No.2 were heard.

4. The learned counsel for applicants reiterated the grounds mentioned in the O.A. and submitted as under:-

- (i) HPL has been making profits since the year 2008-09; the total pre-tax profit (PBT) of HPL from 2008-09 to 2011-12 was ` 21.60 crores, whereas the arrears of pay to the applicants, who were the employees of HPL, have not been paid.
- (ii) Annexure A-6 approval of respondent No.1 for revision of pay scales to HPL employees and payment of arrears, clearly mandates the HPL Board to release the arrears of pay to the applicants based on profitability of the company within the ceiling of 20% of PBT. The said mandate is not being executed by the HPL.
- (iii) The HPL employees with CDA pay scales have already been given the benefits of pay revision and arrears, whereas those with IDA pay scales have not been given the arrears of pay, and as such they have been discriminating against, despite Hon'ble High Court of Delhi judgment dated 23.01.2004 in Writ Petition (C) No.2999/2000.

- (iv) The applicants are retired and, therefore, facing financial hardship, and the release of arrears of pay to them would provide them much needed succor.

5. The learned counsel for respondent No.2 submitted as follows:

- (i) The financial position of HPL continues to be precarious. The company is laden with an accumulated loss of `125.38 crores as at the end of financial year 2013-14.

- (ii) HPL Remuneration Committee, in its meeting held on 01.11.2012, had recommended that “the payment of arrears of pay revision to HPL employees both in IDA and CDA pay pattern for the period prior to 1-4-2009 may be considered after future results”.

- (iii) HPL has issued an office order No.529/2015 dated 23.10.2015 (paper 166 of the paper book), which reads as under:-

“The Management is pleased to disburse part payment towards pending pay revision arrears due to the employees of HPL both in CDA and IDA prior 01.04.2009 amounting to Rs.98.33 lacs subject to it being within 20% of pre-tax profit as per audited accounts for the financial year 2014-15 in terms of decision taken by HPL Board in its 399<sup>th</sup> meeting held on 27 Aug 2015.

As per audited results for the financial year 2014-15, the amount of Rs.98.33 lacs is within the limit of 20% of pre-tax profit. Therefore, it has been decided to disburse the arrears to all eligible employees in proportion to the total arrears calculated for them.

It is made clear here that the release of part payment of pending arrears is being made keeping in view of HPL’s present paying capacity in terms of the conditions stipulated by the Ministry of HUPA in its letter No. 15028/36/2008-AA dated 13 October 2009.”



(iv) Many HPL employees had resigned or taken voluntary retirement from service (VRS) and such employees cannot claim any arrears of pay. Applicant Nos. 3, 7, 15 and 22 took VRS in the year 2005-06.

(v) The Hon'ble Supreme Court in the case of **A.K. Bindal & another v. Union of India & others** [(2003) 5 SCC 163] on the point of ineligibility of employees having taken VRS for getting any further benefit from the company, has observed as under:-

“34. This shows that a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as 'Golden Handshake'. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.”

6. Concluding his arguments, learned counsel for respondent No.2 stated that the HPL is not withdrawing from its commitment from paying arrears of salary to the eligible employees with its financial position improving in the years ahead.

7. We have considered the arguments of learned counsel for the parties and perused the pleadings and documents annexed thereto.

8. It is quite apparent from the records that the HPL has not been able to pay arrears of pay to its employees on account of its precarious financial situation. Respondent No.1 has already given a mandate to HPL to release 20% of its PBT every year towards settling the past arrears. The HPL is not getting any financial assistance from the Government for discharging this liability. Under these circumstances, issuance of any directive to HPL for the disbursement of salary arrears to its employees, including those who have already retired, would be meaningless. It has been submitted on behalf of respondent No.2 that HPL is not backtracking from its commitment to pay salary arrears, which, of course, will be done out of the future profits of the company and in accordance with Annexure A-6 mandate of respondent No.1. We agree with the learned counsel for respondent No.2 that those employees of the HPL, who had already resigned or had taken VRS, would not be eligible for any such financial benefits from the company, as observed by the Apex Court in **A.K. Bindal's** case (supra).

In view of the observations made in the previous paragraphs, we do not find any merit in the present O.A.

9. The O.A. is accordingly dismissed. No order as to costs.

( **K.N. Shrivastava** )  
**Member (A)**

( **Raj Vir Sharma** )  
**Member (J)**

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