

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

TA No.1150/2009
(Civil Writ Petition No.1766/2001)

Order reserved on :31.07.2018
Order pronounced on:03.08.2018

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)

1. Shri Surendra Pratap Singh
S/o late Shri Hari Sharan Singh
Ex-Vice President (Security), ITDC, 708,
Mahavir Prasad Block, Asiad Village, New Delhi.
2. Mrs. Deepti Bhagat
Ex-Vice President, ITDC
W/o late Shri D.D. Mehra, 670,
Kanwaljit Sadhu Block, Asiad Village, New Delhi-110049.
3. Shri Lekh Raj Pahwa
S/o late Shir B.S. Pahwa,
Ex- Sr. Vice President (Engg.),
ITDC, A-4, DDA Bangalow,
Old Rajinder Nagar, Opp. Ganga Ram Hospital,
New Delhi-110060.
4. Shri Ashok Trikha
S/o Shri S.L. Trikha
Ex-Vice President (ATT), ITDC,
B-24, Nizamuddin East, New Delhi.
5. Shri Sudesh Kumar Anand
Ex-DGM (E&M), ITDC
S/o late Shri B.R. Anand, AC-III/23D,
Shalimar Bagh, Delhi-110088.
6. Shri R.P. Sharma
Ex-Sr. Manager (Accounts)
ITDC, C-2/75, West Enclave,

Pitam Pura, Delhi-110034.

7. Shri S.P. Bhatia
Ex-Vice-President (Personnel)
ITDC, R/o C-3/272, Janak Puri,
New Delhi-110058.
8. Shri Nabendu Bhattacharjee
Ex-Vice-President, ITDC
(Mrktg & Hotel Sales),
A-13, First Floor (Rear Wing), Chittaranjan Park,
New Delhi-110019. ...Applicants

(By Advocate Shri Rakesh Kumar Singh)

Versus

1. India Tourism Development Corporation
Ltd. through its Chairman, Core-8, Floor 6,
Scope Complex, 7, Lodhi Road, New Delhi.
2. Mrs. Asha Murthy,
Jt. Secretary, C&MD, ITDC,
Scope Complex, Core 8, Floor 6, 7, Lodhi Road,
New Delhi-110003.
3. Union of India
through its Secretary,
Tourism Govt. of India, Transport Bhawan,
Sansad Marg, New Delhi. ..Respondents

(By Advocate: Shri Vikalp Mudgal with Shri Jasbir Bidhuri)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (A)

The applicants, 8 in number, and the retired employees of the first respondent-India Tourism Development Corporation Ltd.

(ITDC) originally filed Civil Writ Petition No.1766/2001 seeking the following prayer:-

- (a) This Hon'ble Court may be pleased to declare that the Petitioners are entitled to be given all benefits in the form of retention of houses, encashment of LTC, payment of leave encashment (privilege leave as well as half pay leave) etc and direct the Respondent ITDC to award all the consequential benefits of retirement at the age of 58 years with 18% interest as described and claimed in paras No. 3, 6 and 7 to the entitled petitioners.
- (b) This Hon'ble Court may be pleased to declare unauthorised declaration by ITDC in regard to petitioners as declared in their letters dated 21.12.2000 (Petitioner No. 1) 12.1.2001 (Petitioner No. 2) , and 29.1.2001 (Both to Petitioners No. 1 & 2) as irrational, illegal, unreasonable, unfair and unlawful, arbitrary, discriminatory being violative of Art 14 & 21 of the Constitution of India and rule of law and declared public policy of the Government.
- (c) This Hon'ble Court may be pleased to declare charging of rent between 25000-30000 for first two months and thereafter 50% increase by ITDC vide their letters dated 29.1.2001 as illegal, unlawful, unfair treatment, improper, unjust, discriminatory, victimisation by the ITDC.
- (d) This Hon'ble Court may be pleased to declare that in view of procedure prescribed under O.O. dt. 27.11.2000 by the R-1 the petitioners were deemed to be in service upto 28.2.2001 for all the practical purposes except actually physically holding the office and thus entitled for housing benefits etc accordingly.
- (e) This Hon'ble Court may be pleased to direct the ITDC management to allow the petitioners to remain in their presently occupied accommodation for a period, according to their entitlement upto the age of 60 years under the peculiar facts and circumstances of this case or till the disposal of writ petition No. 6193/2000 whichever is earlier.
- (f) This Hon'ble court may be pleased to declare illegal the withholding of outstanding retirement dues in lieu of occupation of official residence etc. in the peculiar facts, situation and circumstances of this case.
- (g) This Hon'ble Court may be pleased to direct the respondent ITDC management to release the post retirement benefits to the entitled Petitioner withheld by the respondent after their retirement on the ground of occupation of the official residential accommodation.

- (h) That, this Hon'ble Court may be pleased to fix the responsibility of the official concerned for delaying/stopping the release of the post retirement benefits even in the peculiar facts and circumstances of this case and issue strictures or any other appropriate order as it may deem fit under the fact, situation and circumstances of this case.

This Hon'ble Court may be pleased to pass such any or further order as this Hon'ble Court may deem fit and proper under the peculiar facts and circumstances of this case".

The said Writ Petition was later transferred to this Tribunal and numbered as TA 1150/2009.

2. After hearing both sides, a Co-ordinate Bench of this Tribunal disposed of the TA No.1150/2009, by its order dated 18.02.2010 as under:-

"22. In the result, for the foregoing reasons, we dispose of the present TA with the following directions:

i) Respondents shall re-calculate the damages for unauthorized occupation of applicants beyond two months on the basis of double the licence fee and refund the amount in excess.

ii) Respondents should also apply medical benefits to the applicants with consideration of their claim for medical reimbursement.

iii) Respondents shall also pay leave encashment to the applicants.

The respondents shall comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order. No costs".

3. The respondent-ITDC filed RA No.198/2010 against the aforesaid order and the said RA was dismissed by this Tribunal by its order dated 28.07.2010 as under:-

"This RA is directed against an order passed by us in TA-1150/2009, whereby directions have been issued to the respondents/review applicants to recalculate the damages for unauthorized occupation and apply medical benefits as well as leave encashment. The same has been assailed by the review applicants on the ground that medical benefit

scheme was suspended and the incentive was performance based and as there was no scheme of retirement benefits, medical should not be allowed.

2. We have carefully considered the grounds raised by the review applicants. The contentions now put-forth by the review applicants have already been dealt with in the OA and it appears that an attempt is being made to re-agitate the issue, which is not the scope and ambit of review defined under Section 22 (3) (f) of the Administrative Tribunals Act, 1985. Accordingly RA is dismissed, in circulation, in view of the decision of the Apex Court in *State of West Bengal v. Kamal Sen Gupta*, (2008 (9) SCALE 509".

4. Aggrieved with the same, the respondent-ITDC filed W.P. (C) No.6249/2010 and the Hon'ble High Court of Delhi by its order dated 21.01.2013, disposed of the said Writ Petition by quashing the order in the review and by restoring the same for fresh adjudication only on two issues and the said order reads as under:-

"8. Accordingly, we dispose of the writ petition quashing the order dated July 28, 2010 dismissing the Review Application No. 198/2010.

9. We restore Review Application No. 198/2010 for fresh adjudication with a direction to the Tribunal that review Application would be decided on merits with reference to the pleadings before the Tribunal on the subject of half pay leave reimbursement and with respect to the pleadings in the Review Application on the subject of medical claim reimbursement for retired ITDC employees.

10. Parties shall appear before the Registrar of Tribunal on February 25, 2013, who shall list the matter before an appropriate Bench of the Tribunal for adjudication on merits as per the law applicable".

5. In terms of the aforesaid order of the Hon'ble High Court of Delhi, the Review Application No.198/2010 in TA No.1510/2009 was restored and after hearing both sides, again the said RA was disposed of by an order dated 08.11.2016 as under:-

"7. In view of the above, we find in this Review Application and allow the same. Our order dated 18.02.2010

is recalled and TA is restored to its original number for fresh hearing. List the TA for hearing on 08.12.2016”.

6. In view of the allowing of the review, the TA No.1150/2009 is restored and was heard again.

7. Heard Shri Rakesh Kumar Singh, learned counsel for the applicant and Shri Vikalp Mudgil with Shri Jasbir Biduri, learned counsel for the respondents and perused the pleadings on record.

8. Though the order of this Tribunal in RA No.198/2010 dated 08.11.2016 indicates that this Tribunal while allowing the review, recalled the entire order dated 18.02.2010 in TA No.1150/2009 under which it was disposed of in respect of various issues, but both counsels appearing on both sides while drawing our attention to the orders of the Hon’ble High Court in **W.P. (C) No.6249/2010** dated 21.01.2013, jointly submitted that allowing of the review should be considered to the limited extent of recalling the order in the TA, in respect of the issues of :-

- (i) Restoration of medical claim benefits, for the retired ITDC employees.
- (ii) Reimbursement/encashment of half pay leave; and

9. The learned counsel for the respondents further submits that, in fact, they have complied with the directions dated 18.02.2010 in TA No.1150/2009 in respect of the issues other than the issues

referred by the Hon'ble High Court of Delhi. Accordingly, the TA is now considered only in respect of the said two issues.

10. The brief facts required for the purpose of consideration of the above two issues are that all the 8 applicants were retired from the ITDC with effect from 30.11.2000. The respondent-ITDC vide the Office Order dated 18.07.2000 introduced the ITDC (Retired Employees) Medical Benefits Scheme, but the respondent-ITDC has not given effect to this Scheme for about one year. On 21.08.2001, the respondent-ITDC by stating that the Corporation is undergoing financial crisis, suspended the Scheme for a period of one year effective from 20.07.2001. Again, by Circular dated 20.03.2003, the respondent-ITDC passed orders keeping the Scheme under suspension until further orders. Again, by Notification dated 16.04.2004, the ITDC by stating that in view of the severe financial crunch faced by the Corporation, it is not possible to continue with the existing ITDC Employees Welfare-cum-Performance Incentive Scheme and accordingly scrapped the same from the financial year 2003-04. Since the applicants' representations requesting to restore/continue the Scheme are not considered, they filed the instant TA with the reliefs as described above.

11. Shri Rakesh Kumar Singh, the learned counsel appearing for the applicants submits that the respondents introduced two Welfare Schemes for the retired ITDC employees one is the ITDC (Retired Employees) Medical Benefits Scheme and the other is ITDC

Employees Welfare-cum-Performance Incentive Scheme and the Scheme which was kept in abeyance initially and later scrapped finally vide Notification dated 16.04.2004, was the ITDC Employees Welfare-cum-Performance Incentive Scheme, and hence the ITDC (Retired Employees) Medical Benefits Scheme is still in force. Accordingly, the learned counsel submits that the respondents should be directed to give effect to the ITDC (Retired Employees) Medical Benefit Scheme which was introduced vide Office Order dated 18.07.2000. Further, even scrapping of the ITDC Employees Welfare-cum-Performance Incentive Scheme vide Notification dated 16.04.2004 is also illegal.

12. The learned counsel further submits that the applicants, who are the retired employees of ITDC, are entitled for the constitutional protection of right to health. Since the medical scheme for the retired employees was in force as on the date of retirement of the applicants, i.e., 30.11.2000, the respondents are estopped from denying the said benefits to them. The learned counsel placed reliance on various decisions in support of the said submissions.

13. On the other hand, Mr. Vikalp Mudgil, the learned counsel for the respondents would submit that either the ITDC (Retired Employees) Medical Benefits Scheme or the ITDC Employees Welfare-cum-Performance Incentive Scheme was never given effect to at any point of time in respect of any retired employees of the ITDC and hence both the Schemes automatically came to an end by

virtue of non-operation and not giving effect to, for all these about 18 years. Moreover, the Medical Schemes were scrapped by a specific Notification dated 16.04.2004 and that the applicants have not questioned the said action even till date. Further, in pursuance of a Memorandum of Settlement signed between the Management and the Unions Representatives on 08.10.2007, two new Schemes were introduced.

14. The learned counsel further submits that introduction or withdrawal of any beneficial Scheme to the employees or to the retired employees is a policy decision of the ITDC and this Tribunal in exercise of its power of judicial review, cannot issue a mandamus to ITDC to introduce or to restore any specific policy including any medical benefit Scheme. The learned counsel placed reliance on various judgments in support of his submissions.

15. Admittedly, though the ITDC have introduced the ITDC (Retired Employees) Medical Benefits Scheme and the ITDC Employees Welfare-cum-Performance Incentive Scheme but were never given effect to at any point of time. The reason for not giving effect is financial crunch in the ITDC. After scrapping of earlier benefit Schemes, in pursuance of a Memorandum of Settlement signed between the Management and the Union Representatives, two new Schemes were introduced, namely, (i) the ITDC Employees Welfare-cum-Profit Linked Incentive Scheme and (ii) the ITDC Employees Welfare-cum-Performance Incentive Scheme, and the

said Schemes are now said to be in operation and hence it cannot be said that the respondent-ITDC is not taking care of the health of its employees.

16. The Hon'ble Apex Court in **P.U. Joshi & Others Vs. Accountant General, Ahmedabad and Others, 2003(2) SCC 632**

has observed as under:-

“10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service”.

17. Introducing a Scheme or to withdrawing the same is a policy decision of the respondent-ITDC. After the scrapping of the earlier Scheme, the ITDC and its Unions have entered into agreement, for certain new schemes. Hence, in this view of the matter and in view

of the observations in **P.U. Joshi** (supra), we cannot accept the contention of the applicants with regard to medical schemes.

18. Insofar as the issue of reimbursement/encashment of half pay leave is concerned, admittedly, the applicants were governed by the ITDC Officers Encashment of Leave Rules, 1980, as modified from time to time, wherein there was no provision for encashment of half pay leave. The contention of the applicants that CCS (Leave) Rules, 1972 should be made applicable to them for the purpose of encashment of half pay leave is unsustainable, in view of the settled principle of law that where special rules are in existence, the general rules have no application.

19. In the circumstances and for the aforesaid reasons, we do not find any merit in the TA and accordingly the same is dismissed. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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