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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No. 350/00324/2014

Date of Order: 23.09.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....
JITENDRA KISHORE GUPTA RAY & ORS
V/S
STEEL AUTHORITY OF INDIA LTD & ORS
.....

For the Applicants : Mr. M.Maitra & Mr.S.K.Datta, Counsel
For the Respondents : Mr.L.K.Pal, Counsel

ORDER

JUSTICE G.RAJASURIA, JM:

Heard both.

2. This OA has been filed seeking the following reliefs:
 - (a) To grant leave under Rule 4 (5) (a) of CAT (Procedure) Rules, 1987 to move this application;
 - (b) To direct the Respondents Authority to grant the benefits of revision of pay scale to the Applicants along with due arrears with effect from 01.01.1997 till their respective dates of retirement in single instalment considering the poor health and advanced ages of the Petitioners;
 - (c) To direct the respondent authority to pay interest to the applicants for delayed payment at the rate 24% per annum;
 - (d) To direct the Respondent Authority to produce entire records of the case."
3. This case is having a chequered career of its own. Earlier, TA No. 14 of 2001 was filed by 132 applicants as against the same respondent authorities



herein seeking various reliefs. This Bench passed the order and the operative portion of it would run thus:

"3. The Ld. Counsel for the respondents drew attention of the Tribunal to the D.O. Letter No. 8(8)/2011-SAIL-RS/312119 dated February 2, 2010 where the Minister of Steel Govt. Of India has written to Shri Tapan Sen, MP to the effect that the issue of payment of arrears to the employees of Indian Steel Plant for the period from 1.1.1997 to 31.3.2005 has been examined in the Ministry and in line with SAIL Board's decision it has been decided that payment of arrears of wage revision will be made in three instalments after the integrated commissioning of new plant at Burnpur.

4. In view of the commitment given by the Minister of Steel to the Member of Parliament by letter February 2, 2012 there is nothing left to adjudicate the matter in the present application. It is sincerely hoped that the respondents will carry out the directions given by the Minister of Steel vide letter dated February 2, 2012 at an early date keeping in view also the fact that budgetary provision of Rs. 317. 29 crores has been made in the SAIL as per Annual Report of 2004-05 mentioned above. It is also observed that six years have elapsed since the provision having been made in the budget of SAIL as per Annual Report of 2004-05 and the Minister of Steel's commitment in 2012."

According to the Learned Counsel for the Applicants, the earlier cited order itself is sufficient for being executed in favour of the applicants. Even then for the purpose of getting extended the earlier order, this fresh OA has been filed. According to him, the Respondent authorities concerned have been delaying the payment of dues payable to the applicants. They retired between 1.1.1997 and 31.3.2005 and the persons who retired anterior to 1997 and subsequent to 2005 got their dues as per the Hon'ble Justice Mohan's Committee recommendation regarding pay revision.

The Learned Counsel for the Applicants drawing our attention to Annexure-A/2, the D.O. Letter dated 2nd May, 2012 issued by the Hon'ble Minister of Steel, Government of India, New Delhi (Sh. Beni Prasad Verma) would develop his argument that the applicants would be paid the arrears of wage revision in three instalments after the integrated commissioning of the new plant at Burnpur.



The Learned Counsel for the Applicants would further submit that it is known to everyone that the said Plant at Burnpur was inaugurated recently and in such a case, absolutely there is no rhyme or reason on the part of the respondent authorities concerned not paying the dues payable to the applicants.

Accordingly, he would pray for allowing this OA.

4. Per contra, placing reliance on the reply as well as supplementary affidavit filed by the respondents, the learned counsel for the Respondents would pyramid his arguments which could succinctly and briefly be set out thus:

The financial condition of the Company has to be taken note of. The financial stability of SAIL as such, cannot be considered for responding to the prayer of the applicants. In fact the basic Oxygen Furnace Converter-1, RH Degasser, Electrostatic Precipitator-2 Gas Holder etc are still to be commissioned and only by January, 2016 the entire commissioning is expected to be completed and thereafter alone probability of generating income and paying the applicants would arise.

The Learned Counsel for the Respondents would cite the decision of the Hon'ble Apex Court in **Mineral Exploration Corporation Limited Vs Arvind Kumar Dixit and Another**, (2015) 2 Supreme Court Cases 53. An excerpt from it would run thus:

“6. The contesting respondents are the persons, who opted for voluntary retirement before 1-4-2003 (but subsequent to 1997). They claimed wage revision by making representations to the appellant Corporation, and filed various writ petitions. The said writ petitions were transferred to the Central Administrative Tribunal, Mumbai, which were registered as transferred applications, as mentioned in the first paragraph of this judgment. The Tribunal divided the applications into two categories—first, petitions of those employees who were superannuated or voluntarily retired prior to 1-4-2003 and second, petitions of those employees who retired on 1-4-2003 or afterwards but prior to the date of implementation (1-4-2006). By a common judgment dated 4-8-2010, the Tribunal held that the employees who retired on or after 1-4-2003 shall be entitled to the actual benefits of the wage revision, and the employees who retired on or before 1-4-2003 would be given similar treatment by revision in notional pay (with actual pensionary benefits).

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14. We have considered the rival submissions of the parties. It is relevant to discuss here what is the law laid down by this Court in such



matters. In *A.K. Bindal v. Union of India*², this Court has observed as under: (SCC pp. 175-76, para 17)

"17. The legal position is that identity of the government company remains distinct from the Government. The government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (*Pyare Lal Sharma v. J&K Industries Ltd.*³). Since 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 scale 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 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. It appears that prior to issuance of the office memorandum dated 12-4-1993 the Government had been providing the necessary funds ~~542~~⁵⁴² for the management of public sector enterprises which had been incurring losses. After the change in economic policy introduced in the early nineties, the Government took a decision that the public sector undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the Government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the office memorandum dated 19-7-1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions."

15. In *Officers & Supervisors of I.D.P.L. v. I.D.P.L.*⁴, this Court has held as under: (SCC p. 497, para 11)

"11. In our view, the economic capability of the employer 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 other governmental undertakings and, therefore, the petitioners are



also entitled to 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 shows 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 organisation in which they are working are making continuous losses and are deeply in the red."

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20. For the reasons, as discussed above, we hold that the employees, who were superannuated or voluntarily retired prior to 1-4-2003 from the appellant Corporation, are not entitled to notional wage revision as directed by the Central Administrative Tribunal, and the High Court. Therefore, we allow these appeals, and the impugned judgment¹ of the High Court and that of the Central Administrative Tribunal are hereby set aside. There shall be no order as to costs."

Placing reliance on the aforesaid decision, the learned counsel for the respondents would develop his argument that the applicants oblivious of financial crunch faced by the Company cannot simply insist for paying them arrears. The Hon'ble Supreme Court recognised the concept that the workers could demand amelioration of their pay as well as service conditions etc subject to progress of the Company. Here, the applicants throwing to the winds those salient features and insisting for payment of the dues to them which cannot be countenanced by this Tribunal.

Accordingly he would pray for the dismissal of this O.A.

5. The point for consideration is as to whether the prayers of the applicants in the OA could be denied on the grounds that the respondents' company is not financially sound and that some of the units are in the offing and that the company could generate income only after January, 2016.

6. At the outset itself we would like to fumigate our mind with the decision rendered in TA No. 14 of 2001. To the risk of repetition and pleonasm but without being tautalogous we would like to point out that the issue has already been decided in the previous TA and as against it no challenge was made before the Hon'ble High Court, Calcutta by filing any WPCT.



7. The communication dated 2nd May, 2012, referred to supra, would clearly and palpably highlight and spot light the fact that there was categorical admission on the part of the Respondents concerned to pay the arrears of wage revision, however, that was subject to the condition that after the inauguration of the new plant at Burnpur in three instalments the amount would be paid.

8. The core question arises is as to whether citing the condition stipulated in communication dated 2nd May, 2012 the applicants who were held to have been entitled to arrears of pay, could be deprived of their dues, our answer is in the negative.

The next question arises is as to who is liable to pay the arrears of wage revision. In the cited judgment of the Hon'ble Apex Court it has been made clear that the Government is different from Govt. Company. The dues payable by the Government Company cannot be compelled to be paid by the Govt. The Applicants happened to be the employees of ISCO and the same got merged with SAIL India. The SAIL India accepted all liabilities and rights of the ISCO. In such a case, the next question is as to whether the SAIL India can plead insolvency in meeting its liability. To the query raised by this Bench as to whether the SAIL India, as of now, can go for liquidation, the answer is in the negative.

9. In such a case we are having no hesitation in holding that SAIL India should necessarily honour its commitment in paying the wage revision. Over and above that the learned counsel for the applicants has drawn our attention to the fact that in the balance sheet of SAIL India (2013-2014) the liability to pay the wage revision is found contemplated also under the caption 'short term provision'. The Learned counsel for the respondents would draw the attention of this court to the balance sheet of ISCO for the year 2014-15 and point out that ISCO incurred huge loss and as per the Companies Act, even after merger with the SAIL such balance sheet should be maintained.



10. The core question arises as to whether by showing the balance sheet of ^{ISCO TPA} SAIL India which is now responsible for making payment of the dues of the applicants could wriggle out of its liability. In our considered view such plea is not well founded, because the ISCO incurred loss and that there had been merger of ISCO with SAIL, and the SAIL cannot place reliance on the loss of ISCO and try to wriggle out of its liability to pay their dues. Hence, we are of the considered view that the plea taken by the respondents is untenable and SAIL India is liable to pay the dues of the applicants.

11. Then the question arises as to whether any indulgence can be shown to the SAIL India for paying arrears in instalments. As has been pointed out earlier, there was commitment on the part of the Respondents concerned that the arrears could be paid in three instalments. The learned counsel for the Applicants would submit that tentatively the entire liability would come between 30 to 32 crores. In such a case, we are of the opinion that in three instalments the dues can be discharged by the SAIL India and that by way of first instalment, a sum of Rs. 10 (TEN) crores should be paid by the SAIL India to the applicants **BY THE END OF OCTOBER, 2015** and thereafter, the remaining two instalments should be paid at the interval of two months each.

12. In view of the delay in making payment, simple interest at the rate of 6% per annum is payable, ever since one year after the date of retirement of the individual applicant concerned till all the payments are made to them.

13. Accordingly, we dispose of this OA. No costs.

(Jaya Das Gupta)
Admn. Member

(Justice G.Rajasuria)
Judicial Member