

**(2007) 07 DEL CK 0268**

**Delhi High Court**

**Case No:** Writ Petition (C) 4827 and 23460 of 2005

North Delhi Power Ltd.

APPELLANT

Vs

Govt. of NCT of Delhi <BR>

Erstwhile Dvb Vrs 2003

Employees Vs Bses Rajdhani

Power Ltd and Others

RESPONDENT

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**Date of Decision:** July 2, 2007

**Acts Referred:**

- Actuaries Act, 2006 - Section 3
- Central Civil Services (Pension) Rules, 1972 - Rule 14, 24, 26, 29, 3
- Constitution of India, 1950 - Article 12, 226, 309
- Delhi Electricity Reform (Transfer Scheme) Rules, 2001 - Rule 5
- Delhi Electricity Reform Act, 2000 - Section 14, 15, 15(1), 15(2), 15(6)
- Electricity (Supply) Act, 1948 - Section 5

**Citation:** (2007) 142 DLT 65

**Hon'ble Judges:** S. Ravindra Bhat, J

**Bench:** Single Bench

**Advocate:** Harish Salve, Amit Kapur, Amar Gupta, Anupam Varma and Minu Rani, A.S. Chandhiok and Sandeep Sethi, Amit Kapur, Amar Gupta and Anupam Varma, in WP C 5198-99/2005, Rajeev Sharma and Nitin Kant Setia, in WP C 23460/2005, Rajeev Sharma and Nitin Kant Setia, for the Appellant; Abhishek Manu Singhvi Avnish Ahlawat, Simran for GNCT, DPC/DTL, Sumeet Pushkarna and Shaista Siddiqui, Advs.for Pension Trust, Abhishek Manu Singhvi Avnish Ahlawat and Simran for GNCT, DPC/DTL, Sumeet Pushkarna, for Pension Trust, Rajeev Sharma and Nitin Kant Setia, in WP (C) 5198-99/2005, Abhishek Manu Singhvi, Avnish Ahlawat and Simran for GNCT, DPC/DTL, Sumeet Pushkarna and Dhiraj Kumar for Pension Trust, Amar Gupta and Anupam Varma for BSES in WP (C) 23460/2005, Abhishek Manu Singhvi Avnish Ahlawat, Simran for GNCT, DPC/DTL, Sumeet Pushkarna, Amar Gupta and Anupam Varma for BSES, for the Respondent

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S. Ravindra Bhat, J.

These batch of writ petitions involve determination of common questions of fact and law; they were bunched with consent of counsel for the parties and heard together. WP 5198-99/05 and WP 4827/05 have been filed by the electricity companies (hereafter called "DISCOMS"). The other petitions were preferred by employees who sought severance on the basis of the schemes formulated by the petitioner DISCOMS.

2. The question requiring decision by the Court in these proceedings is the liability for payment of pension and terminal benefits on the basis of the Special Voluntary Separation Scheme (hereafter called "the Scheme") formulated in almost identical terms by the DISCOMS, namely, the New Delhi Power Limited ("NDPL"); BSES Rajdhani Ltd ("BSES") and BSES Yamuna Power Ltd ("BYPL") on 29.11.03 and 18.12.2003. The DISCOMS allege that the liability to pay such pension under the Schemes, falls on the DVB Employees Terminal Benefit Fund, a Trust incorporated under provisions of the Indian Trusts Act, 1882(hereafter referred to as "the Pension Trust") to the extent it has resources for the purpose and the liabilities to the extent it is unfounded, are of the Government of National Capital Territory of Delhi (hereafter called "the GNCT"). The claim in the petitions filed by employees is that the DISCOMS are liable to pay pension and terminal dues which have not been disbursed to them despite acceptance of their offers and their voluntary retirement from the service.

3. The facts necessary to decide these proceedings are as follows. The GNCT decided to reorganize electricity generation, transmission and distribution in the territory of Delhi. In the wake of the policy announcement by GNCT to so reorganize electricity generation and distribution, employees of the existing service provider, namely, the Delhi Vidyut Board, a statutory corporation (hereafter referred to as "DVB") voiced grave apprehensions about their fate and the likelihood of their being prejudiced, even thrown out of the employment. The employees through their representatives contended that in the event of re-organization and introduction of private participation, their accumulated service benefits, right to pension and terminal benefits would be jeopardized. To allay these fears, tripartite agreements were entered into between the DVB, the GNCT and representatives of the employees through their unions/associations. The tripartite agreements were executed on 28.10.2000. The relevant terms of the two tripartite agreements entered into (which are in identical terms between different sections of the employees, the GNCT and DVB) are extracted below:

3. Now Therefore in consideration of the promises and mutual conditions set forth herein, it is agreed that in the event of reorganization of DVB into two or more corporate entities and disinvestments of any such entities of GNCT of Delhi and the DVB hereby guarantee as follows:

- (a) There will be no retrenchment of present employees on account of being declared surplus or on account of restructuring of DVB and their status/service conditions will not change.
- (b) The terms and conditions of service upon transfer to the corporate entities, such as promotions, transfers, leave and other allowances, etc regulated by existing regulations/service rules e.g. FR/SR will be guaranteed to continue the same and any modifications shall be by mutual negotiations and settlement with recognized unions/associations without detriment to the existing benefits.
- (c) With regard to wage negotiations, the present system of bipartite negotiation shall continue.
- (d) The Government shall create a Pension Fund in the form of a Trust and the pensionary benefits of absorbed employees shall be paid out of such Pension Fund.
- (1) The principal Secretary (Power) of the GNCT of Delhi shall be the Chairperson of the Board of Trustees, which shall include representatives of the Departments of Finance, Personnel, Labour the employees and experts in the relevant field to be nominated by the Government.
- (2) The procedure and the manner in which pensionary benefits are to be sanctioned and disbursed from the pension, fund shall be determined by the Government on recommendation of the Board of Trustees.
- (3) The Government/DVB shall discharge their pensionary liability by paying in lump sum a one time payment to the Pension Fund Trust the pension or service gratuity and retirement gratuity for the service rendered till the date of transfer of the DVB employees in the successor entities.
- (4) The manner of sharing the financial liability on account of payment of pensionary benefits by the successor entities shall be determined by the Government.
- (5) The arrangements hereunder shall be applicable to the existing pensioners and to the existing employees on their superannuation in the new entities and shall not apply to the employees directly recruited by the new entities for whom it shall devise its own pension scheme and make arrangements for funding and disbursing the pensionary benefits.
- (6) The balance of provident fund standing at the credit of the absorbed employees on the date of their absorption in the new entities, shall be transferred to the new Provident Fund Account of the employees to be maintained and operated by the Trust.
- (e) All the existing welfare measures like the scheme for compassionate appointment and medical reimbursement etc. shall be continued.

(f) All benefits of the service rendered by the employees in the Board as on the date of restructuring i.e. the effective date shall be protected and shall be given full effect.

(g) The period of the service of the employees under the Board and under the Corporate entity shall be treated as continuous service for the purposes of all service benefits and terminal benefits payable to the personnel.

(h) The existing welfare benefits to the retired employees shall continue. All obligations in respect of payment of pension, retirement benefits including provident fund, superannuation pension, encashment of leave, gratuity, LTC, Electricity Concession, Medical benefits DA and benefits available to the present SC, ST, OBC and all other employees who have retired and who are going to retire from the services of the Board before the date of restructuring of DVB shall be the responsibility of the corporate entities and the Trust and guaranteed by the Government of NCT of Delhi.

4. The Delhi Electricity Reforms Act, 2000 (hereinafter "the Act" or the "DERA") was enacted on 23.11.2000. The process of re-organization/ un-bundling of DVB commenced after that. The Act and the policy directives envisioned creation of successor companies to the DVB as well as clear demarcation between different activities such as electricity generation, transmission and distribution. The scheme of the Act was the creation of a parent body (which came to be known as the Delhi Power Company Limited) and formation of a company for purposes of generation, another for the purpose of transmission and corporate entities/ companies (known as DISCOMS, who are the petitioners in this case) for the purpose of electricity distribution activity. The task of distribution was demarcated on the basis of territoriality. Bids were invited from interested parties and the process of finalizing the re-organization and structure was completed sometime in June, 2002. On 01.07.02, the Rules known as Delhi Electricity Reform (Transfer Scheme) Rules, 2001 (hereafter called "the Rules") were framed and brought into force.

5. At this stage, it would be necessary to advert to some provisions of the Act and the Rules. Part-II of the Act deals with the establishment of the Delhi Electricity Regulatory Commission, its composition, terms and conditions of service of its members etc; Part-III relates to the powers and functioning of the Commission and Part-IV relates to powers of the GNCT under the Act. Part-V deals with reorganization of the electricity industry. Section 14 enabled the GNCT to incorporate such number of companies for the purpose of generation, transmission or distribution of electricity as it deemed appropriate; it also empowers the GNCT to create a holding company and divide responsibilities of such corporate entities. Section 15(1) provides that with effect from the date when the transfer scheme prepared by the Government to give effect to the provisions of the Act, came into effect, interest in property rights and liabilities immediately before the effective (date which belonged to the DVB) vested with the GNCT; Section 15(2) enables the

GNCT to transfer property or interest in property rights and liabilities to any company or companies established u/s 14. Section 15(6) prescribes several things, that a transfer scheme can provide for. Section 16 which is material for the purposes of these proceedings reads as follows:

Section 16- Provisions relating to personnel-(1) The Government may, by a transfer scheme, provide for the transfer of the personnel from the Board to a company or companies established as the case may be, u/s 14 and distribution companies ( hereinafter referred to as "transferee company or companies") on the vesting of properties, rights and liabilities in a company or companies established as the case may be, u/s 14 or the distribution companies.

(2) Upon such transfers the personnel shall hold office in the transferee company on terms and conditions that may be specified in the transfer scheme subject, however, to the following, namely:

(a) that the terms and conditions of the service applicable to them in the transferee company shall not in any way, be less favorable than or inferior to those applicable to them immediately before the transfer;

(b) that the personnel shall have continuity of service in all respects; and

(c) that the benefits of service accrued before the transfer shall be fully recognized and taken in account for all purposes including the payment of any and all terminal benefits.

6. Section 60 of the Act empowers the GNCT to frame rules to carry out the purposes of the Act; Section 61 empowers the DERC to frame regulations. The Rules, to the extent they are material for deciding the controversy involved in this case, read as follows:

Definitions-

2 (c) "Board" means the Delhi Vidyut Board constituted u/s 5 of the Electricity (Supply) Act, 1948

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(j) holding company" means Delhi Power Company Limited", a company incorporated under the Companies Act, 1956 (1 of 1956) with the principal object of holding shares in GENCO, TRANSCO and DISCOMS and liabilities of the Board;

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(k) "liabilities" include all liabilities, debts, duties, obligations and other outgoing including contingent liabilities, statutory liabilities and government levies of whatever nature, which may arise in regard to dealings before the date of the transfer in respect of the specified undertakings;

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(l) "personnel" means workmen, employees, staff and officers of the Board by whatever name called, and includes trainees and those on deputation from the Board to other organization and institutions;

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(n) "proceedings" include all proceedings of whatever nature, suits, appeals, complaints, petitions, applications, conciliatory, arbitration-whether civil or criminal or otherwise;

7. Rule 5 provides for devolution of rights and interests to various successor companies. It is extracted below:

5 (1) Subject to the terms and conditions contained in these rules-

(a) the rights and interests in the Pragati Power Project forming part of Schedule "A" shall stand transferred to, and vest in, the PPCL, on and from the date of the transfer appointed for the purpose;

(b) the undertaking forming part of the Generation Undertaking as set out in Schedule "B", shall stand transferred to, and vest in, the GENCO, on and from the date of the transfer appointed for the purpose

(c) the undertaking forming part of the Transmission Undertaking, as set out in Schedule "C" shall stand transferred to, and vest in, the TRANSCO on and from the date of the transfer appointed for the purpose;

(d) the undertaking forming part of Distribution Undertaking as set out in Schedule "D", shall stand transferred to, and vest in, DISCOM 1, on and from the date of the transfer appointed for the purpose;

(e) the undertaking forming part of Distribution Undertaking as set out in Schedule "E", shall stand transferred to, and vest in, DISCOM 2, on and from the date of the transfer appointed for the purpose;

(f) the undertaking forming part of Distribution Undertaking as set out in Schedule "F", shall stand transferred to, and vest in, DISCOM 3, on and from the date of the transfer appointed for the purpose;

(g) the assets and liabilities as set out in Schedule "G", shall vest in the holding company, on and from the date of the transfer appointed for the purpose

(2) On such transfer and vesting of the undertakings in terms of Sub-rule (1) the respective transferee shall be responsible for all contracts, rights, Deeds, schemes, bonds, agreements and other instruments of whatever nature, relating to the respective undertaking and assets and liabilities transferred to it, to which the Board was party, subsisting or having effect on the date of the transfer, in the same

manner as the Board was liable immediately before the date of the transfer, and the same shall be in force and effect against or in favor of the respective transferee and maybe enforced effectively as if the respective transferee had been a party thereto instead of the Board.

Rule 6 deals with transfer of personnel; it reads as follows:

6. Transfer of Personnel- (1) The transfer of personnel to the transferee shall be subject to the terms and conditions contained in Section 16 of the Act.

(2) By order No. F. 11/99/2001-Power/PF-III/2849 dated the 15th November, 2001 of the government hereinafter referred to as "the said order", the personnel have been classified into five groups based on the principle of "as is where is" basis, the place of work, suitability, experience and other relevant consideration as under:

a) Personnel to be transferred to the services of GENCO, as detailed in Appendix "A" to the said Order.

b) Personnel to be transferred to the services to TRANSCO, as detailed in Appendix "B" to the said Order.

c) Personnel to be transferred to the services of DISCOM 1, as detailed in Appendix "C" to the said Order.

d) Personnel to be transferred to the services of DISCOM 2, as detailed in Appendix "D" to the said Order.

e) Personnel to be transferred to the services of DISCOM 3, as detailed in Appendix "E" to the said Order.

3) With effect from the date of the transfer to be appointed for the purpose, the personnel shall stand transferred to, and absorbed in, the GENCO, TRANSCO and DISCOMS, as the case may be, in accordance with the said Order made by the Government without any further Act, Deed or thing to be done by the Board, the Government, the transferee's or the personnel, as the case may be.

4) The Government shall constitute a committee within two months from the date of the transfer to receive representations from the personnel if any, in regard to any grievance on the permanent absorption in the transferee's and make recommendations in regard to such matters. The government shall be entitled to pass such orders as it may consider appropriate based on the recommendations of the committee including the transfer of the personnel to another transferee and to provide that any personnel transferred to a transferee under Sub-rule (3) shall be deemed to have been transferred to, and absorbed in, another transferee specified by the Government from the date of the transfer appointed for the purpose.

5) The transfer of personnel to the transferees shall be subject to any orders that may be passed by the Courts or Tribunals in any of the proceedings pending on the

date of the transfer.

6) Subject to the provisions of these rules, the personnel transferred to a transferee shall cease to be in the service of the Board and shall not assert or claim any benefit of service under the Board.

7) Subject to the provisions of the Act and these rules, the transferees may frame regulations governing the conditions of service of the personnel transferred to the transferee's under these rules which shall not in any way be less favorable or inferior to those applicable to them immediately before the transfer and till such time, the existing service conditions of the Board shall mutates mutants apply.

8) Subject to Sub-rule (9) below, in respect of all statutory and other schemes and employment-related matters including the provident fund, gratuity fund, pension and any superannuation fund or special fund created or existing for the benefit of the personnel and the existing pensioners, the relevant transferee shall stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall become those of such transferee and the services of the personnel shall be treated as having been continuous for the purpose of the application of this sub-rule.

9) The government shall make appropriate arrangements as provided in the tripartite agreements in regard to the funding of the terminal benefits to the extent it is unfounded on the date of the transfer from the Board. Till such arrangements are made, the payment falling due to the existing pensioners shall be made by the TRANSCO, subject to appropriate adjustments with other transferees.

For the purpose of this sub-rule, the term-

a) "existing pensioners" means all the persons eligible for the pensions on the date of the transfer from the Board and shall include family members of the personnel as per the applicable scheme; and

b) "terminal benefits" means the gratuity, pension, dearness and other terminal benefits to the personnel and existing pensioners.

10) On the effective date of transfer all the existing welfare schemes, like the scheme for Death Relief Fund, DESLU Engineers benevolent Fund Scheme, or similar schemes which are in operation in the Board shall be continued by the transferees on the same terms and conditions and shall be given full effect and shall not be discontinued on account of deficiency in funds to maintain such schemes.

11) All proceedings including disciplinary proceedings pending against the personnel prior to the date of the transfer from the Board to the transferees, or which may relate to misconduct, lapses or acts of commission or omission committed before the date of the transfer, shall not abate and may be continued by the relevant transferee.



12) The personnel transferred to the transferees, shall be deemed to have entered into agreements with the respective transferee's to repay loans, advances and other sums due or otherwise perform obligations undertaken by them to the Board which remain outstanding as on the date of the transfer, on the same terms and conditions as contained in the agreements or arrangements with the Board.

13) The employees of the Government or the Central Government working under the Board, who are assigned to electricity generation, transmission, sub-transmission, distribution and supply-related or any other activities of the Board shall not be governed by these rules except that such employees shall continue to work on deputation in the transferee to whom they have been assigned under the said Order of the Government on the same terms and conditions as were in the Board till such time the services are required by the transferee or till the expiry of the period of deputation whichever is earlier.

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8. The assets and liabilities as well as the various activities of the erstwhile DVB devolved upon the newly created successor companies, with effect from 01.07.2002. The services of employees of the erstwhile DVB stood transferred to the various successor companies including the DISCOMS in the present case, with effect from that date. Thereafter, in November 2003, they framed what were termed as Special Voluntary Retirement Scheme or Voluntary Separation Schemes on 29.11.03 and 18.09.03. The DISCOMS spelt out a common eligibility for the application of the Schemes i.e completion of 10 years of service or the concerned employee having attained the age of 40 years. The 10 year service was reckonable from the date of the concerned employee joined the DVB.

9. The Voluntary Separation Scheme of the NDPL reads as follows:

NDPL/HR/03-04/VSS/01 November 29, 2003 OFFICE ORDER VOLUNTARY SEPARATION SCHEME 2003

It has been decided to introduce Voluntary Separation Schemes 2003 for all such employees working in NDPL who have completed 10 years of service or have attained the age of 40 years as per details mentioned in the following paras:- I SCOPE

The Scheme shall apply to all the regular employees of NDPL who have completed 10 years of service from the date of joining DVB or have attainment the age of 40 years on the date of introduction of this scheme.

## II. ELIGIBILITY

Any regular employees of North Delhi Power Limited who has completed 10 years of service or reached the age of 40 years on the date of introduction of this scheme may seek Voluntary Separation under this Scheme, by making a request in writing to

the Competent Authority in the standard format enclosed herewith within the time limit prescribed.

### III. INELIGIBILITY CLAUSE

a. Specialist employees who have executed service bonds and have not completed the obligation under it, employees serving abroad under Special arrangement/Bonds will not be eligible for Voluntary Separation Scheme.

b. Persons appointed on contractual, casual, ad hoc, Daily rated basis, and as work change basis since the scheme is only for regular employees.

IV. BENEFITS UNDER THE SCHEME An employee whose application for Voluntary separation under this Scheme is accepted, will be entitled to the following benefits:

An amount equal to Basic pay plus dearness allowances as applicable on the date of separation (i.e. date when his request is accepted by NDPL) for the number of months worked out, on the basis of two months for each completed year in NDPL/DVB or the monthly emoluments i.e. Basic Pay + DA on the date of separation multiplied by the balance months of service left before normal date of retirement, whichever is less.

### V. OTHER USUAL BENEFITS ON RETIREMENT

Depending on age of the employee and other facts as applicable.

a. Encashment of Earned Leave accumulated on the date of relieving as per CCS (Leave) Rules, 1972 payable by DVB Pension Trust.

b. Payment of savings clement with interest in the North Delhi Power Limited Employees Group Insurance Scheme as per Rules.

c. TA/DA on separation for self and family for setting anywhere in India as per traveling Allowance Rules for retirement payable by NDPL.

d. Gratuity as per Rules payable by DVB Pension Trust.

e. Pension as per rules payable by DVB Pension Trust.

f. Any other benefit as applicable as in the case of retirement as per the rules as applicable to the separating employee.

All above terminal benefits as per V above except (b) and (c) shall be paid by the Pension Trust, which the employee will have to directly claim from the Trust. The payment under (b) and (c) shall be paid by NDPL.

### VI OTHER FEATURES

Three months notice will be given by the employee seeking voluntary separation. Notice period of three months would be reckoned from the date of receipt of the application in North Delhi Power Limited North Delhi Power Limited will have the

right to relieve the employee before the expiry of three months, without any additional liability.

The payment as mentioned in Clause " (IV) above will be paid by North Delhi Power Limited in lump-sum subject to exemption deduction of applicable taxes as per tax laws, upon acceptance of the request Voluntary Separation and actual relieving from the services of the North Delhi Power Limited. The amount received under voluntary separation scheme up to Rs. 5 lacs is non-taxable. The actual Basic pay and DA "drawn" by the employee just before the date of Voluntary Separation (irrespective of the fact whether the employee is on probation or ad-hoc basis on a higher post) shall be taken into account for calculating the compensation.

Vacancies caused by Voluntary separation would not be filled up.

10. The Scheme formulated by BSES Power Ltd., namely, the SVRS, dated 18.12.03 reads as follows:

No. HR/BRPL/2003-04/6VRS-001 Dated 18 Dec. 2003 OFFICE ORDER SPECIAL VOLUNTARY RETIREMENT SCHEME - 2003

The Management has decided to introduce Special Voluntary Retirement Scheme (SVRS) - 2003 for all regular employees working in BSES Rajdhani Power Limited (BRPL) as per the details mentioned below:

## 1. SCOPE and ELIGIBILITY

1.1 The Scheme shall apply to all the regular employees of BRPL, who have completed 10 years of service from the date of joining Delhi Vidyut Board (DVB) or have attained the age of 40 years as on the date of this Office Order.

1.2 Any eligible employees of BRPL as at Clause 1.1 above may seek special voluntary retirement under this SVRS, by making a request in writing to the Competent Authority in the standard format enclosed herewith, within the time limit prescribed.

1.3 However, following are not eligible are not eligible to apply for this SVR:03:

1.3.1 The employees who have executed service bonds and have not completed the obligation under it and employees serving abroad under Special arrangement/Bonds will not be eligible for SVRS.

1.3.2 Any other person, who is not a regular employee like those appointed on contractual, casual, ad hoc, Daily rated basis, work change basis and trainees, since the scheme is only for regular employees.

## 2. SPECIAL BENEFITS UNER THE SCHEME

2.1 An employee, whose application for special voluntary retirement under this SVRS.03 is accepted, will be entitled to compensation as under:

2.1.1 60 days salary (Basic Pay plus Dearness Allowance as applicable on 31.12.2003) for each completed year of service OR 2.1.2 The monthly salary (Basic Pay plus Dearness Allowance as applicable on 31.12.2003) multiplied by balance months of service left before normal date of retirement. Whichever is lower of Clause 2.1.1 or 2.1.2

2.1.3 The special benefit as at Clause 2.1.1 above is applicable in case 2200 employees and below opt for the SVRS. However, for every additional 110 employees opting SVRS, an enhanced additional benefit at the rate of one day's Basic Pay +DA (as on 31.12.2003) per completed year of service shall be payable to all employees covered under 2.1.1, subject to a maximum ceiling limit of 15 days of Basic Pay DA (as on 31.12.2003).

### 3. EARLY BIRD INCENTIVE

3.1 Early bird incentive of Rs. 10,000/- will be payable, if the voluntary retirement application is received on first day (i.e. 22.12.2003) and Rs. 5,000/- if the voluntary retirement application is received on second day (i.e.23.12.2003).

### 4. OTHER BENEFITS ON VOLUNTARY RETIREMENT

4.1 Various other benefits shall depend upon age of the employee and other factors as applicable

4.1.1 Encashment of Earned Leave (EL) accumulated on 31st Dec. 2003 as per CCS (Leave) Rules, 1972 payable by DVB Pension Trust.

4.1.2 Payment of Saving element with interest in the BRPL Employee Group Insurance Scheme as per rules.

4.1.3 TA/DA on retirement for self and family for Home town as per traveling allowance rules for retirement payable by BRPL.

4.1.4 Gratuity as per rules payable by DVB Pension Trust.

4.1.5 Pension as per rules payable by DVB Pension Trust.

4.1.6 Hospitalization/ Medical scheme as per rules payable by DVB Pension Trust.

4.1.7 Any other benefit as applicable as in the case of retirement as per the rules as applicable to the retiring employee.

4.2 All above Terminal benefits under para 4.1 above except 4.1.2,

4.1.3 and 4.1.7 shall be paid by the Pension Trust, which the employee will have to directly claim from the Trust. The payment under 4.1.2, 4.1.3 and 4.1.7 shall be paid by BRPL.

### 5. OTHER FEATURES

5.1 Three months notice will be given by the employee seeking voluntary retirement. Notice period of three months would be reckoned from the date of receipt of applicable in BRPL and the Company will have the right to relieve the employee at any time (including from the day of acceptance of SVRS applications) without any additional liability.

5.2 The payment as mentioned in para 2 above will be paid by BRPL in lump-sum, subject to exemption/deduction of applicable taxes as per tax laws upon acceptance of the request of voluntary retirement and actual relieving from the services of BRPL. Under the current income tax laws the amount received under voluntary retirement scheme upto Rs. 5 lacs is non-taxable, subject to scheme being accepted by statutory authority.

5.3 The actual Basic Pay and DA "drawn" by the employee as on 31st December 2003, shall be taken into account for calculating the compensation.

11. It is averred in the petitions by the DISCOMS that a large number of employees applied under the Schemes and were allowed to sever their employment. They were granted the ex gratia amounts payable in terms of the Scheme. It is averred that the terminal and the retiral benefits for the entire period of service with DVB had to be paid by the Trust. However, the Trust refused to disburse the terminal benefits or pay pension on the ground that its liability arose only in the event of the employees reaching the normal age of superannuation. It is also averred that the Government of NCT, in the event of any shortfall, was bound both in terms of the tripartite agreements as well as the Act and the Rules to make good such shortfall. Its refusal to do so, is termed as illegal.

12. The DISCOMS have relied upon Section 16(2) of the Act which stipulates that transferred employees would hold office in the successor entities subject to the condition that the service conditions applicable to them would not in any way be less favorable or inferior to those applicable to them immediately before the transfer and that the benefits of service accrued before transfer shall be fully recognized and taken into account for the purpose of including payment of terminal benefits. Further reliance is placed upon Rule 6 (1). The DISCOMS allege that the guarantee of continuity of service conditions means that existing regulations such as Central Civil Service Rules and Fundamental Rules and Supplementary Rules as also the CCS (Pension) Rules, 1972 would continue in all significant aspects even after transfer of the service of such employees. It is averred that an integral part of the tripartite agreement was creation of a pension fund by way of a Trust and obligation of the Trust to pay pensionary benefits of absorbed and transferred employees. It is averred that as a consequence of the tripartite agreements, the GNCT established a Trust in 2002. The Trust Deed, it is contended, recognized all obligations regarding payment of retirement benefits including provident fund, superannuation, pension, encashment of leave, gratuity etc. as available to employees who had retired or were to retire from service of DVB on or after the

date of restructuring. Such obligations were assumed by the Trust.

13. Reliance has been placed upon Rules 6 (7) (8)(9) to say that the Trust and the GNCT are, at all relevant times, under the obligation to effectuate guarantees in the tripartite agreements regarding payment of terminal benefits. They have to ensure that if there is any shortfall in the pension fund, the GNCT, to the extent such fund is unfounded, will bear the liability.

14. The DISCOMS allude to a previous proceeding which had been filed by the employees of the DVB with the advent of the Act and Rules being WP 1864/02, Ashok Kumar -v- GNCT (hereafter "Ashok Kumar "s case"). It is averred that the GNCT had taken the stand that it and DVB were to discharge pensionary liabilities of employees of DVB for the duration of their service. This was a clear acknowledgment of liability of the GNCT towards the employees of DVB to the extent of their services with the latter.

15. The DISCOMS further allege that the GNCT had in its affidavit in WP 1864/02 admitted that the sum of Rs. 1329.10 crores was to be deposited towards pension and terminal benefits and a further guarantee to meet any shortfall in the pension benefit fund at any stage to ensure that pension and terminal benefits of transferred employees and existing pensioners were secured. It is, thus, averred that all contingencies including continuity of service of the employees, whose services were transferred, its inclusion for the purpose of all service benefits including pension, protection of terms and conditions of service were fully visualized. Thus, the GNCT and the Trust were aware at all times that they were liable to pay the terminal benefits and pension to all those eligible in terms of their contracts of employment. In these circumstances, the denial of such liability is attacked by the petitioners.

16. The BSES and BYPL, in their pleadings states that it paid SVRS benefits to the tune of Rs. 328.00 crores as ex gratia to 4352 employees opting for it. It is averred that the second component, namely, the terminal benefits were payable by the Trust which was requested to disburse the payments by a letter dated 31.12.03. It is averred that the Trust, through a letter dated 16.01.04 stated that the exact implication and details of liability cast upon the fund due to SVRS was being worked out by the actuary. The Trust took the position that its Terminal benefits fund was a Superannuation Fund and that payment to VRS retirees could not be made out of it. On 29.01.04, the Chairman and Managing Director, Delhi Power Co. Ltd. who is also Principal Secretary, Department of Power, GNCT mentioned about inadequacy of the initial corpus of the fund to pay the additional amounts on account of the SVRS. It is also averred that on 10.02.04 again the Trust took the position that it was not liable to pay any amounts towards liabilities arising on account of the VRS opted for by the employees under the schemes formulated by the DISCOMS.

17. It is alleged that the position of the GNCT and the Trust are arbitrary. The fund created and managed by the Trust is not just a Superannuation Fund. Reliance has been placed upon Rule 48-A of the CCS (Pension) Rules and the circumstance that the Trust had paid terminal benefits and also paid pension to those who sought and were granted voluntary retirement for the period between July, 2002 and November-December, 2003 under that provision. It is stated that apart from pension the withholding of other terminal benefits such as gratuity, leave encashment etc. on present value basis could not be done as in any case it would not be higher than what the Trust would have to pay the employee at the time of normal retirement. It is alleged by the BSES that a sum of Rs. 50 crores was tendered to the Trust; likewise, the NDPL avers that it tendered the sum of Rs. 41 crores to the Trust. These amounts were based on an actuarial exercise commissioned by the DISCOMS to determine additional liability that would accrue to the fund due to premature release of terminal benefits and pension and were to cover the carrying cost which was equivalent to additional liability as per actuarial valuation. These were without prejudice the rights of the DISCOMS.

18. The DISCOMS allege that the stand put forward by the GNCT and the Trust are vocative of provisions of the Act and the Rules. It is alleged in the grounds urged in the support of the petitions that the denial of the liability to pay pension and terminal benefits negates the guarantee of continuity and protection of past service contained in the tripartite agreements as well as the statutory provisions. It is also pleaded that the GNCT has virtually gone back on its promise made to This Court about making payment for any shortfall in the Pension Trust at any time.

19. The petitioners in WP 1231-40/05 and WP 2340/05, i.e employees of the DISCOMS claim that as a result of the schemes, a large number of employees; 4312 of the BSES and BYPL and 1728 of the NDPL opted for voluntary retirement. They were paid only the ex gratia and special amounts due. However, the other amounts being encashment of earned leave, gratuity, commutation of monthly pension etc. remained unpaid. Therefore, a direction to pay such amounts or in the alternative restore status quo ante as on 31.12.03 and consequently the employment of the petitioners, is sought for. An additional direction to pay back wages to these petitioners has been claimed.

#### STAND OF THE TRUST

20. The Trust in its counter affidavit has adverted to the sequence of events which led to enactment of the DERC Act, framing of the Rules, tripartite agreements and creation of the DISCOMS. The Trust avers that as on 30.06.02, the total work force of DVB who were transferred to three DISCOMS, aggregated to 17692. As a consequence of the Schemes formulated by the three DISCOMS, 6210 of such employees (2496 of BSES, 1868 of BYPL, 1846 of NDPL) or a third of the total strength of the total employees opted for the VSS/ VRS packages. The Trust claims that the schemes provided heavy inducement and allurements to separate from

employment in the form of ex gratia payments of up to 60 months salary to those opting for it. Additionally early bird incentives were also held out. The Trust claims that the benefits offered to the employees as part of the VRS packages payable by it (i.e. the Trust) were pension, commutation of pension, gratuity, leave encashment, medical reimbursement and LTC after retirement. The Trust claims that prior to declaration or publication of the schemes, its approval or consent was not sought and on the contrary, the DISCOMS ignored the warnings given to them by it.

21. It is claimed that according to the Trust Deed, a superannuation fund was created which is premised on the assumption that the contributed funds with annual growing contributions would be locked up and would continue to generate interest till the employee retires on attaining the age of superannuation. The liability of the Trust is in the event of superannuation of the employee. Therefore, if the invested securities are encased ahead of schedule to fulfill VRS/SVRS demands, a huge loss of income from interest would ensue apart from unwarranted erosion of the corpus and loss of future contribution. It is alleged that no mandate for such incursion into Trust fund and investment is permitted in the Deed. The payments in question on account of VSS/SVRS would lead to unforeseen financial implications such as Pre pavement of pension, pre- ponement of gratuity, Pre pavement of payment of leave encashment, loss of pension and leave salary contributions which the Trust would otherwise be entitled to till decision of normal date of superannuation and a substantial loss of interest on the capital amounts.

22. It is alleged that additional financial implications for an estimated 10 year cycle/service period based on present value of money were worked out. The Trust relies upon Clauses 3 (a)(d), 4, 5 and 6 (h) of the tripartite agreements to underline its stand that what was visualized or contemplated when the employees were assured protection were their existing terms and conditions of service and also protection of accrued benefits. It was made clear that the benefits or stipulations in the agreements would not extend to those employed by the new concerns/ DISCOMS. Much emphasis has been placed upon the expression superannuation pension by the Trust. It is averred that a mass premature exodus of this nature (out of the 18000 employees) was never within the contemplation of the tripartite agreement or the GNCT when the Trust was set up; consequently it was not catered to. It is averred that both the documents show a concern to retain the existing work force, which was a significant factor in the bid and the implications worked out between the parties at the time of unbundling.

23. The Trust relies upon Clause (b) of the Preamble of the Deed which stipulates that it was set up to establish a Superannuation Fund for the purpose of providing pension according to the rules to the members on their retirement after attaining a specific age or on their being incapacitated. It is averred that retirement has been defined with reference to Rule 35 of CCS (Pension) Rules, which contemplates superannuation. It is, Therefore, alleged that retirement other than superannuation



such as voluntary retirement, defined under Rule 36 of the CCS Pension Rules and catered to by Rule 48 and 48A are not covered by the Trust Deed. Therefore, the Trust can not go beyond its charter.

24. It is further averred that the VSS/superannuating schemes are later events, after the Transfer Scheme came into force, having no connection with the terms of the tripartite agreement and were not conditions of service on the date of transfer or on the date of creation of Trust. They were never intended. The Trust claims that the GNCT, on advice of its consultants to the reforms process based upon an actuarial valuation discharged its liability by depositing a one time payment of Rs. 868 crores, being the balance of Rs. 1329.10 crores of the required corpus available with the then DVB. It is stated that the actuary in its letter dated 13.08.01 had stated that "the valuation for 31st March, 2001 is based on data of 31.03.2000 and cannot be used for VRS, mass withdrawal and its investments". It is alleged that the DISCOMS had in their plea before the Supreme Court in SLP No. 1772/03 (Civil Appeal No. 663/2004) stated that the pension Trust is not funded for VRS/the Schemes. It is claimed that having regard to the objectives of the VRS schemes which were essentially cost driven and aimed at man power reduction leading to greater financial efficiency as well as enhanced profitability, no additional liability can be fastened upon the Trust or the GNCT.

25. The Trust avers that it holds funds on behalf of about 34,000 members of whom about 13,000 are pensioners. Those beneficiaries are placed in a recognized schedule of payment beneficiaries and would approach the Trust on the scheduled date of superannuation. They would be paid terminal benefits from that date, provided the individual meets the eligibility/ qualifying service criteria and full contributions on his behalf have been received till the date of superannuation. These promises would be, however, unfulfilled in the case of VRS optees and the Trust claims that it cannot pay in violation of those conditions. It urges that if compelled to withdraw amounts to pay 6500 VSS/ SVRS optees, the survival of the Trust itself would be seriously jeopardized and besides, immediate loss would be caused. It would lead to discrimination to other remaining beneficiaries who have not opted for VRS.

26. The Trust alleges that in a meeting held in September, 2003 where representatives of DISCOMS were special invitees, they were clearly informed that the scheme/SVRS was not covered by the Trust Deed and the Rules. Hence they are now estopped from claiming that the Trust or the GNCT is liable.

27. The Trust, in addition has adverted to a decision taken by the Indraprastha Power Generation Company Ltd, (IPGCL) one of the successors entities of DVB which decided to promulgate a VRS Scheme. In that context, it is stated that in the meeting held on 29.09.03 the conclusion was that the pension Trust Deed and the Rules did not provide for discharging additional liabilities arising out of the VRS to the new entities. It is averred that this matter was referred to the GNCT which on 11.11.04

decided that one time payment to VRS optees of IPGCL on account of commutation of pension gratuity and leave encashment will be made by IPGCL and the recurring payment on account of the residual pension to such VRS optees would be by IPGCL from the date of their separation from the company till the date of their superannuation or death, whichever is earlier. This decision was adopted and SVRS optees of IPGCL, it is stated, received payments on that pattern.

#### STAND OF THE GNCT

28. The GNCT in its affidavit, like the Trust has referred to various provisions of the Act, the Rules and conditions in the tripartite agreement. It has also referred to Rule 35 of the CCS (Pension) Rules. Its position is that the liability to pay pension before the date of superannuation, in terms of the schemes does not fall upon it. It is claimed that the nominee Director of the GNCT, who was in the Board of the NDPL had agreed with the resolution to publish and implement the VRS with the caveat that the company should pay the extra cost on account of the additional liability to the Pension Trust. It is averred by GNCT that at all relevant times, the DISCOMS were aware that liabilities arising out of SVRS for premature payment of terminal dues would not be borne either by the Trust or by it. The GNCT has supported the stand of the Trust that the fund does not cover any VRS Scheme and can cater only to a superannuation pension. According to GNCT, the Trust was created on the premise that a certain small percentage of employees would be retiring or dying during a year and was not funded for a mass exodus of employees through voluntary retirement Scheme. Substantial payment of such retiral dues, Therefore, was never within the contemplation of the Trust. The GNCT avers that this was communicated to the DISCOMS by it on 31.12.03.

29. It is averred by the GNCT that there is substantial difference between a voluntary retirement in terms of Rule 48 and 48 A of the CCS (Pension) Rules and the SVRS/ VSS Schemes introduced by the DISCOMS. The statutory schemes, it is alleged condition cessation of service upon the completion of a certain tenure of service without an element of inducement. However, the schemes of DISCOMS here were applicable to employees with less than 20 years of service or even below 50 years of age with massive inducement of ex gratia payment of up to 60 months pay. It is alleged that if liability is cast upon the Government in such cases where employees leave their services on the basis of allurements/inducement, huge funds would be lost from the public exchequer. It is alleged that the claim of the petitioners cannot be encouraged as that would cause danger to public funds. The GNCT further states that adequacy or otherwise of pension funds is not relevant "what is important is that such schemes are not and were never within the contemplation when the Trust was established and it does not cater to them. The GNCT too has relied upon the actuarial valuation communicated to it on 13.08.01 and further, like the Trust states that the profit or efficiency oriented objective favoring the DISCOMS cannot be the basis for saddling additional liability on the GNCT or endangering other members of

the Trust who would be entitled to the full value of their benefits.

30. The GNCT avers that drastic reduction of man power through the VRS/SVRS mode is contrary to the intent of the tripartite agreement and the transfer scheme. Both, the agreement and the Scheme disclose the intention to retain the work force, as a cost factor in the bid. The promise of any premature and unscheduled payment of terminal dues extended to the section of employees, it is averred, does not come from the pension Trust. The GNCT further states that as according to the declaration of DISCOM in their annual revenue retirement (ARR) filed before the DERC, an estimated 75 per cent of their earlier DVB employees were to opt for voluntary retirement. If the scheme of DISCOMS were to be accepted and the Trust made liable, the consequent result would be exploitation of 3/4th of the fund of the employees and payment of terminal benefits by the GNCT/Trust which would bear the entire cost of such exercise. If such intention were to be countenanced, the GNCT itself could have performed it and then transferred the company for a higher bid. Submissions of DISCOMS

31. Mr. A.S.Chandhiok, learned senior counsel appeared on behalf of the BSES and BYPL; Mr. Harish Salve, learned senior counsel appeared on behalf of NDPL. Mr. Chandhiok contended that the refusal of the GNCT to honour its obligations to fund the pension Trust to the extent of the shortfall, on account of SVRS 2003 was arbitrary. He relied on Section 16, particularly Section 16(2)(b) and contended that the provision assured statutory continuity of service in all respects. This was further reinforced by Rule 6(6) and (7) as well as Clauses 3(1)(d) and 3(c) of Tripartite Agreement, which had to be honoured in terms of the Rules. Counsel submitted that Rule 6(9) constitutes acknowledgment of financial benefits which were not thought out or contemplated and that about the likelihood of some part of it being unfounded. Therefore, the Trust and the GNCT could not shrug off their responsibility in making payments towards terminal benefits.

32. It was contended that the internal correspondence between the DISCOMS, particularly BSES and the Trust and DPCL showed that the scheme was approved. Reliance was placed upon the letter of Shri Jagdish Sagar dated 20.9.2003 in this regard. The Board resolutions by which the SVRS were approved had been agreed to by the nominee directors of the GNCT. Counsel also contended that BSES and BYPL had by letters dated 19.12.2003 sought clarifications from the Trust as to whether as per the schemes, extra 5 years weightage could be given, in accordance with Rule 48-B of the CCS pension Rules. The Trust had replied on 29.12.2003, in the affirmative. In the light of these facts the volte face by the Trust and the GNCT that they were not liable, was contrary to their understanding. In any case both were estopped from raising such contention.

33. It was contended that huge amounts of Rs. 326 crores were paid by the BSES in furtherance of the Scheme. It was contended that on an application of Rules 37A(11A) and 48-A of the CCS Pension Rules, the employees of DISCOMS who opted

for voluntary retirement were undeniably entitled to terminal benefits and pension. These were assured and guaranteed by the GNCT in the Tripartite Agreements and given statutory cover under the Rules, particularly Rule 6(9). Therefore, it was not open for the Trust or the GNCT to contend that their liabilities were outside the scope of the provision or were not visualized. Learned Counsel relied on a condition in para 3 (b) of the Tripartite Agreement to say that the GNCT had, in the most categorical terms, held out the assurance of protecting conditions and service rules; they were even guaranteed. These included the conditions of service such as Rule 48-A which enabled employees to retire voluntarily.

34. Learned Counsel contended that as long as there was no provision in the Act or the Rules prohibiting the extension of benefits to such class of employees who opted for voluntary retirement, the GNCT much less the Trust could not deny the liability.

35. Learned Counsel next contended that the GNCT is bound by its assertion contained in the affidavit filed before This Court in Ashok Kumar's case. It was submitted that the GNCT guaranteed to meet any shortfall in the Trust at any stage to ensure that pensionary and terminal benefits of erstwhile DVB employees are secured after the transfer. In these circumstances the respondents could not deny their liability.

36. Mr. Harish Salve, learned senior counsel contended that as a matter of law between the two of them i.e. the Trust and the GNCT, were liable to pay terminal benefits as well as pension to all eligible employees including those opting under the Schemes. It was submitted that retirement is cessation of service. Rule 48-A of the Pension Rules, which was applicable to the DVB and its employees, outlined the conditions upon the fulfillment of which employees could seek voluntary retirement. Once those conditions are fulfilled and the options were exercised, the cessation of service took place. In such an eventuality the individual acquired an indefeasible right to be paid the terminal benefits and pension.

37. Learned Counsel contended that the liability of an employer to pay the retiral or terminal benefits arises either through contract or by operation of law. The erstwhile DVB could not have contended that no employee was entitled to seek voluntary retirement. On the face of this the statutory liability of the erstwhile DVB which was in the clearest terms cast upon the Trust, which is a mechanism to ensure payments, cannot be whittled down by the latter, with an argument that only superannuation pension is payable by it or that the Trust Deed does not envision payment of any terminal benefits except superannuation pension. Such a construction would be impermissible and in fact it would render the Tripartite Agreements as well as statutory provisions contained in Section 16 on the one hand and protection of existing service conditions on the other, entirely illusory.

38. Learned Counsel contended that the position advanced in these proceedings by the Trust and GNCT amounts to virtually forfeiting the rights of the employees to pension in spite of a clear-cut liability of the respondents in that regard. Having not contested or disputed the likelihood of the VSS Scheme and even clarified about the extra weightage that can be given to optees under the VSS, on an application of Rule 48-B of the Pension Rules, the respondents cannot now deny their liability.

39. Learned Counsel contended that all the VRS optees of NDPL except two qualified for retiral and terminal benefits under the Pension Rules, in terms of Rule 48-A, having worked for at least 20 years. The VSS Scheme in question was designed to provide a comprehensive package in lieu of existing rules to the employees who accepted the voluntary severance or voluntary retirement. In such a situation it could have been possible to create packages which excluded benefits that would have arisen under the Rules. However, the Scheme of the DISCOMS were not of that category. They expressly recognize the right of the employee to receive such retiral benefits under the Rules.

40. Learned Counsel relied upon the decisions reported as [UCO Bank and Others Vs. Sanwar Mal, Jaipal Singh Vs. Smt. Sumitra Mahajan and Another](#), and [Reserve Bank of India and Another Vs. Cecil Dennis Solomon and Another](#), in support of the submission that although the fact of resignation and voluntary retirement is cessation of service on account of the volition exercised by the employee, yet they have different repercussions. One fundamental distinction is that resignation can be tendered at any time whereas voluntary retirement can be sought for after rendering the prescribed period of qualifying service. The second distinction is that in the case of voluntary retirement, there is a nexus between such retirement and the retiral benefits. Reliance was also placed upon the decision reported as [Bank of Baroda Vs. Rajender Pal Soni](#), where the Court had held that the liability in the event of amalgamation of a private bank with another transferee bank was that of the transferor bank.

41. It is next contended that the correspondence on record was court leads to inference with the principle the GNCT accepted that severance of service of employees would lead to a fresh liability of payment of pension and retiral benefits and a converse right to such employees. In the face of such an admission, it is not open having regard to provisions of the Act and Rules, particularly Rule 6(9) to escape payment of liability.

42. Learned Counsel contended that the stand of the respondents that VRS was not designed to meet the liabilities is undeniable because:

i) A fair reading (of the provisions) shows that the obligation of Govt was to fund for superannuation as well as voluntary retirement - the expression voluntary retirement would need to be construed in harmony with Rule 48 A. ii) Even if the VSS is a scheme introduced by NDPL, the Government is under an obligation to create

an appropriate fund to meet its liability towards retiral benefits of VRS Optees under Rule 48 A (NDPL having discharged its part of the liability under the VRS). In this context the stand taken by the Delhi Government and the Judgment of this Hon"ble court in Ashok Kumar case are conclusive of the matter. iii)Rule 37A (25) and (26) are directly relevant in this context. A plain reading of the Rules suggests that one of the mandatory safeguards that the government has to provide for on privatization/disinvestments is the voluntary retirement benefits.

43. It was urged that in any disinvestment proposal down-sizing by "golden hand shakes" is a well known rule. Most cases of disinvestment involve, inter alia, reorganization of the work force. Rule 37A (25) and (26) assume great importance - by commanding that voluntary retirement benefits be protected. They ensure that employees who want to disassociate themselves from the privatized entity are assured of voluntary retirement benefits and these are not taken away as a consequence of disinvestment.

44. Mr. Salve submitted that the NDPL as a matter of law, is not obliged to bear any additional burden for payment of retiral benefits to those opting for VRS. He made a "with prejudice" offer, in writing, on the basis of instructions, that if the respondents agree to pay the pension and other retiral benefits forthwith to the employees(which would include reimbursement to NDPL of what was wrongfully withheld and which had to be paid by NDPL in an appropriate manner with carrying cost) then the petitioner would be agreeable to an actuarial calculation of the net incremental liability (in lumpsum) of the fund. Such calculation could be conducted by a mutually agreed actuary to determine the difference between the funding requirement of the Trust as on the date of VSS (01.01.2004) to service the retiral benefits of the 1798 VRS Optees. The calculation would be assuming that the VSS Optees had retired on superannuation age in the normal course, as against retirement on the date of VSS. This net incremental liability cast on the Trust as worked out could be funded by the petitioner (NDPL) without any right to seek recompense.

Submissions on behalf of the GNCT

45. Mr. A.M.Singhvi, learned Senior counsel for the GNCT submitted that a combined reading of the Tripartite Agreements, Section 16 Rule 6 and the Trust Deed would clarify that what was contemplated towards the pension liability of the DVB employees whose service were transferred to the DISCOMS were superannuation pension and not pensionary liability arising on account of operation of Rule 48-A or any liability on account of Special Separation Schemes/Voluntary Retirement Schemes. learned Counsel relied upon the clarifications given by the consultant to the Actuary namely S.B.I. Capital Markets Ltd that the valuation for creation of the fund to be administered by the Trust, on 31.3.2001 was based on data of 31.3.2000 and could not be used for VRS, mass withdrawal and disinvested. It was submitted that reliance placed upon the so-called approvals by the nominee directors of GNCT

to the schemes were misplaced. The nominee directors had in each case expressly recorded that the DISCOMS would have to pay the extra cost to be borne by the Trust on this account.

46. Learned Counsel contended that the GNCT had by its letter dated 31.12.2003 clearly warned DISCOMS against launching the scheme and clarified those signalling that it could not be saddled with liability. Learned senior counsel contended that the argument about entitlement to seek voluntary retirement in terms of Rule 48-A was misplaced. He submitted that during the period between 1.7.2002 and 31.12.2003 i.e. post DVB period after the services of employees was transferred, only a negligible percentage of employees namely 0.65 % working in the DISCOMS had applied and secured voluntary retirement under Rule 48-A. However, the schemes were entirely different; they lowered the threshold eligibility to 10 years qualifying service or employment of an individual of 40 years age. Besides this, the schemes were designed to encourage mass cessation of service and the record bore out this basic premise, as one third of the totality of the employees in the DISCOMS sought severance. The liability to pay terminal and pension benefits on the basis of such unilateral schemes could not be thrust upon the Trust or even the GNCT. In this context it was contended that what was within the contemplation of parties when Rule 6(9) was framed was a residual unforeseen exigency but not a unilateral decision resulting in huge liability.

47. Learned Counsel contended that a reading of Rule 35, CCS Pension Rules (which finds mention in the Trust Deed) qualifies that the liability assumed by the Trust and also under the Rules was only superannuation pension. He relied upon the letter written by Shri Jagdish Sagar, the nominee of GNCT and submitted that Shri Sagar had also mentioned that the additional contribution from the new entities would have to be calculated and paid to the Trust. In addition he had clearly said that the principles adopted for VRS of IPGCL should be applied to NDPL.

48. Learned Counsel submitted that the CCS Pension Rules cannot ipso facto be applied as a matter of law. They were not part of the conditions of service of erstwhile DVB employees. He relied upon the decision of This Court in Ashok Kumar's case (supra) to say that the Division Bench had ruled that Rule 37-A of those Rules was inapplicable.

#### Submissions of the Trust

49. Mr. Sumeet Pushkarna submitted that the Trust cannot go beyond its charter in the Deed. Such a transgression would invite penal action. Learned Counsel contended that in the application for directions filed by the DISCOMS before the Supreme Court, there was a clear admission that the Trust had not been funded for the SVRS. On the face of these, the DISCOMS are estopped from raising any contention against the Trust fund. It was submitted that the Division Bench in Ashok Kumar's case had rejected the claim for release of pro rata pension by holding that

Rule 37-A of the Pension Rules could not be applied. Therefore, a claim for piecemeal Pre-superannuating relief i.e. payment of terminal benefits before the event of the employees attaining the age of superannuation cannot be entertained except in the case of death or incapacitation. Learned Counsel contended that the relevant provisions are Clause A(a)(xxvi) of the Preamble to the Trust Deed; Clause (xxvi) of the Rules defining retirement amounting as superannuation. Rule 35 of the CCS Pension Rules and Clauses 6.7 and 6.8 of Part of the Rules of the Trust defining forfeiture were relevant. Put together, these establish that the liability of the Trust for payment of terminal benefits would arise in each case where the employee attains the age of superannuation and not before that. It was also submitted that none of the other documents or provisions namely the Tripartite Agreement, the Act or the Rules cast any right or create any corresponding liability to pay retirement benefits to any transferred employee before his normal date of retirement. Counsel relied on Clause 3(d)(5) and 3(h) of the Tripartite Agreement to say that the GNCT had a duty to fund only superannuation, incapacitation and death liability and that for all other liabilities the DISCOMS were liable.

50. Learned Counsel contended that the schemes of the DISCOMS cannot, under any circumstances, be compared with any form of statutory retirement provisions enabling premature exit from service. It was submitted that the object of the schemes was entirely profit oriented, to streamline the DISCOM'S functioning. It was founded on the desire to change the work force profile and not to rationalise it. Learned Counsel contended that if an employer by a contractual arrangement with a section of his employees secured advantages and economies by promising such employees attractions or advantages which would be additionally payable over and above what is their right in terms of the contract of employment, the liabilities on such account and consequences arising from it cannot be fastened on the Trust. He relied upon the judgments of the Supreme Court reported as [HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others](#), and [Hindustan Machines Tools Ltd. and Another Vs. M.S. Kang/P.N. Kashyap](#), that when, pursuant to an offer held out by a VRS an employee opts, he makes an offer, which if accepted gives rise to a contract. He cannot in such an event claim something over and above the package offered by the employer. In the present case the employees were induced to seek retirement for the benefit of the DISCOMS who paid substantial ex gratia payment. That cannot be an occasion to pre-empt the liability of the Trust to pay terminal benefits in the event of superannuation. The decision in Hindustan Machines Tools Ltd.'s case (supra) was relied upon to submit that there is intelligible differentia between those who retire in the normal course and Ors. who opt to retire pursuant to VRS.

51. Learned Counsel also placed reliance on the judgment of the Supreme Court reported as [A.K. Bindal and Another Vs. Union of India \(UOI\) and Others](#), . Mr. Pushkarna next relied upon the judgment of This Court in [O.P. Gupta Vs. Delhi Vidyut Board and Another](#), to say that there is no automatic applicability of the



service conditions of Central Government employees to erstwhile DVB employees whose services were transferred to the DISCOMS. He placed reliance on the judgment of the Supreme Court reported as [Committee of Management of Pachaiyappa's Trust Vs. Official Trustee of Madras and Another](#), to contend that the upholding of the contentions of the petitioners would amount to re-writing the Trust Deed. This submission was in the context that the Trust has to cater to the needs of a service class whose rights can be prejudiced by unwarranted incursions into the fund by the significant withdrawals which were never within the contemplation of any one at the time of its formation.

52. Counsel contended that the Trust owes an obligation towards those employees who did not opt for VRS and has to protect their interest since the contributions received on their behalf would be irretrievably jeopardised if its liability to pay terminal benefits and pension of VRS optees is upheld. Learned Counsel submitted that the Aggregate Revenue Requirement (ARR) filed by DISCOMS before the DERC for the relevant years establish that the objective of the schemes were to provide inducement to separate from employment before the actual date of superannuation, voluntarily. It was further contended that both the DISCOMS were aware of the additional expenses on account of VSS and had declared its funding. In these circumstances, they were estopped from contending that pension or retiral benefit were payable on any time before the superannuation of their employees, by the Trust. That liability had to be borne by them till the date of normal superannuation of the VRS optees. Relevant provisions of the Trust Deed and CCS Pension Rules.

53. Before proceeding to consider the rival submissions, it would be necessary to extract the relevant provisions of the Trust Deed and the pension rules. As noticed earlier, the Trust Deed was executed on 26.03.02. Part (b) of the preamble indicates that the Government of NCT decided to establish a superannuation fund for the benefit of those entitled to pension in accordance with the pension scheme of DVB, as detailed in the rules of the fund (annexed to the Trust Deed which are referred to hereafter as the "Trust Rules"). Clause (3) of the Deed enjoins the Trustees to pay pension and other terminal benefits in accordance with the Trust Rules. The Trust Rules, inter alia, define actual service by referring to Rule 30 of the CCS (Pension) Rules; the duration of pension payable, by Clause 2 (x) is provided by Rule 54 (6) of the CCS (Pension) Rules; "eligible members" under Clause 2 (xi) is defined as those covered by the CCS (Pension) Rules. The term "qualifying service" has been defined as what is contained in Rule 3 (q) of the CCS (Pension) Rules. The expression "retirement" and "normal retirement date" have been defined as follows:

(xxvi) "RETIREMENT" as defined under Rule 35 Central Civil Services (Pension) Rules, 1972, as amended from time to time.

(xxvii) "NORMAL RETIREMENT DATE" shall mean the date of retirement as defined in Fundamental Rules, 1956.

54. Rule 4 deals with contributions to the fund by the corporation and the members. It refers to the fund being a superannuation fund. Rule 4 (b) (c) empowers the Trustees with the authority to fix additional contribution amounts to be paid by the "new entity" i.e. DISCOM S and other successors, from time to time in consultation with the Government. Part V of the Trust Rules outlines the benefits. Rule 6.1 provides that a member, on superannuation would be entitled to pension and other terminal benefits as available to the existing employees on the retirement commencing from the month following superannuation, as per the Fundamental Rules. Rule 6.2 states that to qualify for benefit on superannuation, employees should have completed a minimum reckonable service as defined by Rule 14 of the CCS (Pension) Rules. The relevant parts of Rule 6 are extracted below:

6.1. A member on superannuation will be entitled to pension and other terminal benefits as available to the existing employees on the retirement commencing from the month following superannuation as per Fundamental Rules, 1956 as amended from time to time. A member would be entitled to pension life time.

6.2. TO QUALIFY FOR BENEFIT ON SUPERANNUATION: Employees must have completed a minimum reckonable service as per Rule 14 of the Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

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6.6. MINIMUM PENSION: In no case pension shall be less than the amount of pension payable as per Rule 40 (3) of Central civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

6.7. On separation from service of a member by his resignation before completion of the qualifying service as specified in Rule 14 of Central Civil Services (Pension) Rules, 1972, shall be dealt with as per Rule 26 of Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

6.8. On separation of a member who is dismissed/removed from the services of the Corporation and/or has otherwise lost his lien on his employment with the Corporation, the member shall be dealt with as per Rule 24 of Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

55. From the above, it is apparent that the concepts such as the retirement, terminal benefits, qualifying service and superannuation have been borrowed from the CCS (Pension) Rules. Indeed the Trust's rules have incorporated those provisions. The relevant provisions of CCS (Pension) Rules are extracted below:

### 3. DEFINITIONS

3 (q) "Qualifying Service" means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;

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## CHAPTER V

### CLASSES OF PENSIONS AND CONDITIONS GOVERNING THEIR GRANT

35. Superannuation pensions A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.

36. Retiring pension pension shall be granted-

(a) to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rule 48 or 48A of these rules, or Rules 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations; and

(b) to a Government servant who, on being declared surplus, opts for voluntary retirement in accordance with the provisions of Rule 29 of these rules.

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37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body or a Public Sector Undertaking:

(1) On conversion of a department of the Central Government into a Public Sector Undertaking or an Autonomous Body, all Government servants of that Department shall be transferred en masse to that Public Sector Undertaking or Autonomous Body, as the case may be, on terms of foreign service without any deputation allowance till, such time as they get absorbed in the said undertaking or body, as the case may be, and such transferred Government servants shall be absorbed in the Public Sector Undertaking or Autonomous Body, as the case may be, with effect from such date as may be notified by the Government.

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(25) In case the Government disinvests its equity in any Public Sector Undertaking or Autonomous Body to the extent of fifty-one per cent or more, it shall specify adequate safeguards for protecting the interests of the absorbed employee of such Public Sector Undertaking or Autonomous Body.

(26) The safeguards specified under Sub-rule (25) shall include option for voluntary retirement or continued service in the undertaking or body, as the case may be, or voluntary retirement benefits on terms applicable to Government employees or employees of the Public Sector Undertaking or Autonomous Body as per option of the employees, assured payment of earned pensionary benefits with relaxation in period of qualifying, as may be decided by the Government.

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#### 48-A. Retirement on completion of 20 years" qualifying service

(1)At any time after a Government servant has completed twenty years" qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

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(2) The notice of voluntary retirement given under Sub-rule (1) shall require acceptance by the Appointing Authority: Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3)Deleted.

(3-A) (a) A Government servant referred to in Sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of Sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the Appointing Authority, shall be precluded from withdrawing his notice except with the specific approval of such authority: Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and (retirement gratuity) of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who-

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement. Explanation- For the purpose of this rule, the expression "Appointing Authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant

seeks voluntary retirement. Questions for decision by the Court

56. The following questions arise for decision by the Court in these proceedings:

(1) Whether the liability of the respondents to pay or ensure payment of terminal dues is confined to cases of superannuation, death or incapacitation of employees of the DISCOMS or it extends to cases of voluntary retirement;

(2) Nature of the schemes formulated by the DISCOMS and the obligation to pay pension and terminal benefits;

(3) Relief, if any. Regarding Question No. 1

57. This question i.e. nature of liability of the respondents and whether it is confined to the incidence of superannuation or retirement in the normal course of service of the transferred employees has to be first decided in view of extensive contentions by the parties made in the court. The DISCOMS allege that liability to pay terminal benefits/pension to the VRS optees is as a matter of right in view of the Rule 48-A of the CCS Pension Rules coupled with the mandate of Section 16 of the Act and Rule 6 (framed under the Act) as well as provisions of the tripartite agreements. On the contrary, the Trust and the GNCT contend that the arrangement made at the time of un-bundling and the creation of the Trust obliged only satisfaction of the liability upon attainment of superannuation, of existing employees of the erstwhile DVB and not any under any other circumstances.

58. Superannuation, voluntary retirement and resignation no doubt bring about cessation of services of employees. Yet, there are certain salient features with significant nuances that distinguish each of these concepts. It is undoubtedly correct that resignation and voluntary retirement are pursuant to choice exercised by the employee. On the other hand, superannuation occurs on the happening of a certain event foreseen by the parties to the contract of the employment i.e. attainment of a specified age. Although in the broadest sense the three methods of severing the employer-employee relationship have the same effect, (as far as the contract of the employment is concerned), the legal effect, so to say, of each of these would vary having regard to the terms and conditions or the applicable rules which govern the employment. Ordinarily the event of resignation does not entitle the employee to terminal benefits like pension. Resignation normally entails forfeiture of past service- as the universal assumption is that the employee wishes to terminate his contract to secure another or better employment. Therefore, specific rules such as Rule 26 of the CCS Pension Rules expressly provide for forfeiture of service. In the case of voluntary retirement, the event is subject to the employee fulfilling the qualifying conditions i.e. a defined quantum of service and acceptance of his request by the employer. Such defined quantum of service signifies, not only the pre-condition for an application (to voluntarily retire) but also a corresponding obligation of the employer to ensure payment of terminal benefits and/or pension, having regard to the liability cast under the rules for the past service of the

employee. Therefore, the volition or choice exercised by the employee in the case of voluntary retirement does not entail forfeiture of past or accrued benefits for the purpose of payment of accrued benefit unlike resignation. The third category of severance namely superannuation on the other hand does not require exercise of choice by either party. It is the happening of an event foreseen in the contract of employment or service rules, namely, attainment of a particular age, by the employee. In this case too the employee is entitled to payment of terminal benefits and/or pension.

59. In a decision by a Division Bench of This Court i.e. *Ashwani Kumar v. Oriental Bank of Commerce*, 103 (2003) DLT 738 it was held that the resignation of an employee would not entail forfeiture of his past service and that there is, in fact, no distinction between such method of ending a contract of employment and voluntary retirement. However, that view was overruled in the judgment of the Supreme Court reported as [UCO Bank and Others Vs. Sanwar Mal](#), In that decision as well as in the other judgment noticed above i.e. *Cecil Dennis Soloman's case* and *HHEC Retired Employees Welfare Society's case* (supra) the Supreme Court noticed distinction between voluntary retirement and resignation. In *CECIL Dennis Soloman's case* the Court held that a fundamental distinction between the two is that retiral benefits are denied in case of resignation whereas they are admissible in the case of voluntary retirement.

60. In said two decisions of the Supreme court, namely, *HHEC Retired Employees Welfare Society's case* and *Cecil Dennis Soloman's case*, the court held that voluntary retirement is a condition of service created by statutory provision. In the absence of any specific statutory rules, voluntary retirement does not bring about superannuation. This view had also been taken earlier in the case of [Union of India and Others Vs. Rakesh Kumar etc.](#), .

61. The facts of the present case disclose that even before the process of un-bundling and re-organisation were finalized, the DVB, GNCT and employees of the erstwhile DVB entered into a tripartite agreement. This was occasioned by the anxiety of the employees that the process of re-organisation might lead to unforeseen and un-settling consequences upsetting their livelihood and extinction or whittling down of their accrued benefits. The agreements were aimed at assuring that the right to pension and the right to employment, right to accrued benefits and the right to terminal benefits would not be disturbed. The tenor of the agreements"both which were executed on the same date and contained identical terms"lend support to the conclusion that they were meant as a general assurance by the then public employer (DVB) backed by a guarantee of the GNCT, that the unbundling process would be painless to the employees. Thus, the agreements have to be seen as assuring and guaranteeing generally in regard to the terms and conditions of service, with the object of securing and protecting them and consequently, have to be construed in a broad and liberal manner.

62. Clause 3(b) ( of the Agreements) guarantee that existing terms and conditions of service (of the erstwhile DVB employees) would be continued and that modifications would be only by mutual negotiations, without detriment to existing benefits. Clause 3(d) obliged the GNCT to create a pension fund by a Trust and pensionary benefits of absorbed employees to be paid out of such pension fund. Clause 3(d) (1) to (4) use the expression "pensionary liability". However, Clause 3(d)(5) provided that arrangements under the agreement would be applicable to existing pensionary benefits and to existing employees on their superannuation in the successor bodies/new entities. It further stated that such arrangements would not apply to employees directly recruited by the new entities. Clause 3(e) guarantees continuation of existing welfare measures like compassionate appointment, medical reimbursement etc.; Clause 3(f) guarantees that benefits of services rendered by employees in the DVB on the date of re- structuring would be protected and given full effect to.

63. Section 16(2) of the Act provides that the transferred personnel of the erstwhile DVB would hold office in the DISCOMS and other successor companies inter alias on the same terms and conditions applicable to them which would not be in any way less favorable or inferior to those applicable to them immediately before the transfer. Section 16(2)(c) protects benefits of service accrued before the transfer for all purposes including payment of any and all terminal benefits. Rules 6(9) which is most material for the purpose of these proceedings, casts statutory obligations in terms of tripartite agreement. It mandates the GNCT to make "appropriate arrangement" as provided in the tripartite agreement vis-a-vis funding of the terminal benefits to the extent it is unfounded on the date of transfer from the board. A transitory arrangement by which TRANSCO was to pay amounts falling due to existing pensioners was also created. "Existing pensioner" was defined in these provisions. The expression "Terminal benefit" has been defined in Clause 6(9)(b) to include gratuity, pension, dearness allowance and other terminal benefits to the personnel and existing pensioners.

64. The Trust, which was formed on 28.3.2002 framed its rules. The tenor of those rules no doubt appear to be restrictive. This is borne out by reference to definition of retirement; retirement date and provisions of Part V all of which point to payment of superannuation pension, indicated by Rule 35 of the CCS Pension Rules. That means retirement of the employee on his attaining the age of retirement, specified in the rules.

65. A textual analysis of provisions of the Trust and the Tripartite agreements undoubtedly lend support to the contention by the Trust and the GNCT that their liability is restricted to payment of terminal benefits, only of those employees who superannuate from their services in the normal course. Attractive though this solution may appear to be, such a simplistic approach should be avoided by the Court which is bound to explore the larger context in which the tripartite agreement

was entered into and the apprehension which it sought to allay. As noticed earlier, the first in the entire series of documents and statutory instruments (apart from the Act), were the tripartite agreements. The background in which they were entered into was the justifiable apprehension voiced by employees of the then DVB about the uncertain fate of their past service and the future prospects of their employment. The then public employer ( DVB) and GNCT sought to allay these concerns and comprehensively dealt with all aspects of employment, guaranteeing existing terms and conditions of service and the arrangements for payment of terminal benefits on the basis of past service. The tripartite agreements, Therefore, are to be viewed not as an endeavor to restrict benefits but as a guarantee and assurance of continuity held out to the employees. The agreements, except Clause 3(d)(5) nowhere talk of superannuation"they emphasise upon continuity of existing service conditions and assurance to pay pensionary benefits and discharge of pensionary liability. Clause 3(b) assures and guarantees that existing terms and conditions of service of all the employees would be protected.

66. The agreements in effect were implemented by Section 16(2) which protected all terms and conditions of service applicable to existing employees, their continuity of service and recognition of the benefits of their service. The relevant rule namely Rule 6 takes the guarantee further and provides for protection of all conditions of service. Rule 6(9) obliged GNCT to make appropriate arrangements. It expressly referred to the tripartite agreement, in regard to the funding of the terminal benefits. Terminal benefits are also defined to include gratuity, pension, dearness allowances and other terminal benefits to personnel and existing pensioners.

67. In the above backdrop the question which has to be further decided is whether the right to seek voluntary retirement under the CCS Pension Rules and claim pension, was in any manner disturbed or curtailed. The submissions of the DISCOMS here were that the schemes formulated by them and opted for by their employees were voluntary retirement under existing rules and that such rights of employees could not be defeated. On the contrary, the argument of the Trust and the GNCT here was that the CCS Pension Rules did not apply and that in any event the Trust was liable only to pay those who superannuated in the normal course.

68. As discussed in the preceding paragraph, the right to apply for a voluntary retirement and the entitlement to pension in the eventuality of such severance is not an implied condition of service unlike resignation but has to be expressly provided for. It would, Therefore, be necessary to examine firstly whether the Pension Rules were applicable and further whether the right to apply for voluntary retirement under Rule 48-A existed as a condition of service for the employees of DVB.

69. The Division Bench of This Court in Ashok Kumar v. GNCT of Delhi (in CWP 1864/2002,decided on 16th September, 2002) had to decide whether Rule 37 of the CCS Pension Rules applied to the employees of the erstwhile DVB. That petition too



was filed in the wake of the un-bundling process of DVB. The court noticed, in para 11 of the judgment that the predecessor of the DVB i.e. DESU was a department of the Municipal Corporation of Delhi. The Corporation (MCD) had framed Regulations in 1973 granting benefits to employees of DESU. Subsequently, in 1977 the DESU (DMC) Service Regulations were approved. They stipulated that service rules applicable to Government Servants would also apply to DESU employees. Regulation 4 indicated that unless provided in the Act or the Regulation, the rules applicable to Government Servants in the service of the Central Government, were to, so far as may be, regulate the service of Municipal employees except in regard to the matters relating to provident fund. The Division Bench noticed that upon incorporation of the DVB the assets and liabilities of the DESU and its undertaking devolved on it. The DVB later issued a circular protecting existing service conditions and expressly mandating "there must be no retrenchment or change in service conditions to the detriment of the staff. Pension and all terminal benefits must be safeguarded by the Delhi Government."

70. The Division Bench after considering the assurances held out by the DVB and analysing the provisions of Section 16, rules and the tripartite agreement, held that Rule 37 of the Pension Rules could not be applied as there was no question of deemed retirement. The Court held that Rule 37 could apply where by legal fiction a person superannuated but not otherwise. Accordingly where there was no retirement in terms of legal fiction, the question of payment of pro-rata pension did not arise. As far as the decision of the court in O.P Gupta's case is concerned, the contention raised was that in terms of Rule 9 of the CCS Pension Rules, the authority and jurisdiction to effect a cut in pension was with the President of India and not DVB. This was negated; the court held that Pension Rules are not automatically applicable to employees of DVB and they were adopted mutates mutans. The President of India is not the employer of the employees of DVB nor were the employees holders of civil posts. They were not governed by Articles 309 of the Constitution of India. DVB was held to be a body constituted and being an autonomous body, required to act according to its own rules etc. As the Board of the DVB was the supreme authority, it was entitled to pass necessary orders under Rule 9 of CCS Pension Rules in the case of employees of DVB. The court did not rule out applicability of the CCS Pension Rules, but held them to be applicable, in so far as exercise of powers under Rule 9 were concerned.

71. There is, in my opinion, another detail which lends support to the view that the right to apply under Rule 48-A was considered an integral part of the service conditions of the erstwhile DVB employees. In its letter of 29-12- 2003, the Trust clarified that the benefit of five years' weightage could be given to those retiring, in terms of Rule 48-B of the CCS Pension Rules. That rule applies to employees who seek and are permitted to retire under Rule 48-A.

72. The above analysis would show that at material times when the functions of the erstwhile DVB were carried out by its predecessor in interest, i.e DESU, Regulations had been framed which extended the terms and conditions of service applicable to the Government Servants. Those conditions were protected and they became part of the conditions of service of employees of DESU upon its creation. No material has been brought to the notice of the court by way of a conditional circular or resolution, restricting applicability of the CCS Pension Rules to exclude the right to apply for voluntary retirement under Rule 48-A. In these circumstances, the logical inference is that such a right to apply for voluntary retirement under Rule 48-A (of the CCS Pension Rules) existed and was a protected condition of service in terms of the tripartite agreements, Section 16(2) and Rule 6. Though the terms of the Trust Deed undoubtedly support the plea that superannuation is the incident on which pension is payable, yet Rule 6(9) in my opinion was framed to cater to the eventuality of the Trust not being liable to pay, but the GNCT being obliged to make arrangements to the extent the Trust is unfounded, if there is a shortfalls in the event of exercise of option by an employee under Rule 48-A CCS Pension Rules. In this context, it has to be held that the tripartite agreements cannot be read as a charter to restrict existing rights "their tenor and purpose was to grant continuity. Such being the case the defect if any of the GNCT in Constituting the Trust and the restrictive definition in the Trust rules entitling only superannuated employees to pension cannot rob or divest those applying, and becoming eligible to pension, in terms of rule 48-A of Pension Rules to the terminal and pension benefits. In such an eventuality, the GNCT has to the extent of Trust being unfounded bear the liability wherever recourse is made by the transferred employees to Rule 48-A of the Pension Rules. Regarding Question No. 2

73. A decision on question No. 1 cannot automatically be dispositive of the proceedings. The second question, as to the liability, to pay pension and terminal benefits in terms of the schemes of the DISCOMS contested by both parties and asserted with equal vehemence not to be that of either party, but the other, is of crucial importance in this case.

74. In the recent past, employers, particularly corporate and public employers, have resorted to schemes with a view to reduce manpower, and achieve rationalization or "downsizing" of staff. At times, this is aimed as a part of restructuring of the employer's staffing pattern; sometimes, it is aimed at economizing activity and many times, its objective is to shed excess manpower. In *Bank of Baroda v. O.P. Swarnakar* (2) SCC 721; [Board of Trustees, Visakhapatnam Port Trust and Others Vs. T.S.N. Raju and Another](#), and [State Bank of Patiala Vs. Romesh Chander Kanoji and Others](#), it was held that voluntary retirement Schemes are not proposals or offers but merely an invitation to treat. They become binding contracts, upon the acceptance of the application of the employee (an offer) by the management.

75. In the Board of Trustees, Vishakapatnam Port Trust case (supra) the Supreme Court applied the reasoning in the previous decisions that Voluntary Retirement Schemes are contractual, and meant for achieving specific purposes; they are non-statutory. The court held as follows:

In [Bank of India and Others Vs. O.P. Swaranakar etc.](#), the moot question posed and answered by this judgment was whether the VRS is an offer/proposal or merely an invitation to offer. The question was whether the Banks intended to make an offer or merely issued an invitation to treat is essentially a question of fact. In paragraph 49, This Court held as under:

49. An offer indisputably can be made to a group of persons collectively which is capable of being accepted individually but the question which has to be posed and answered is as to whether having regard to the service jurisprudence : the principles of Indian Contract Act would be applicable in the instant case. It is the specific case of the "Banks" that the schemes had been floated by way of contract. It does not have any statutory flavour. Reference to the pension scheme framed under the regulations was made for computation of the pension." The learned Judges of the Bench have also elaborately discussed the use of the term "offer" or "proposal" and held in paragraphs 59, 60, 61, 62 and 74 as under:

59. The request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the competent authority. The Competent Authority had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the scheme. A procedure has been laid down for considering the provisions of the said scheme to the effect that an employee who intends to seek voluntary retirement would submit duly completed application in duplicate in the prescribed form marked offer to seek voluntary retirement" and the application so received would be considered by the competent authority on first come first serve basis. The procedure laid down, Therefore, suggests that the applications of the employee would be an offer which could be considered by the bank in terms of the procedure laid down thereof. There is no assurance that such an application would be accepted without any consideration."

60. Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing. This clause is crucial in view of the fact that therein the acceptance or rejection of such request has been provided. The decision of the authority rejecting the request is applicable to the Appellate authority. The application made by an employee as an offer as well as the decision of the bank thereupon would be communicated to the respective General Managers. The decisions making process shall take place at various levels of the banks."

61. The following, Therefore, can be deduced:

- (i) The banks treated the application from the employees as an offer which could be accepted or rejected.
- (ii) Acceptance of such an offer is required to be communicated in writing.
- (iii) The decision making process involved application of mind on the part of several authorities.
- (iv) Decision making process was to be formed at various levels.
- (v) The process of acceptance of an offer made by an employee was in the discretion of competent authority.
- (vi) The request of voluntary retirement would not take effect in praesenti but in future.
- (vii) The Bank reserved its right to alter/rescind the conditions of the scheme.

62. From what has been noticed before, it is apparent that the Nationalized banks in terms of the scheme had secured for themselves an unfettered and unguided right to deal with the jural relationship between themselves and their employees.

74. We, Therefore, have no hesitation in coming to the conclusion that the voluntary scheme was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an "offer"." In [HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others,](#) , This Court in paragraph 11 held as under:

11. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefore. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is "State" within the meaning of Article 12 of the Constitution, the terms and conditions of service would be governed by the contract are employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of the Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only is an invitation of offer floated. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts Therefore, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, Therefore, would be applicable too [Bank of India and Others Vs. O.P. Swaranakar etc.,](#)

76. Order P. Swarnakar's case concerned a situation where the employer, i.e the public sector bank had statutory conditions which enabled employees to apply for voluntary retirement in the event of fulfilling the qualifying service criteria. The employers introduced non-statutory schemes, which contained additional benefits. The Supreme Court was required to decide whether the option once exercised by employees, could be withdrawn, in the event of the conditions in the non-statutory scheme being amended. The court held that the schemes operated as contracts, which were complete upon acceptance by the employer.

77. The above discussion was necessary for an understanding of the exact nature of the rights of employees to secure terminal and other benefits, in the event of their offers under special voluntary retirement schemes being accepted. The decisions have consistently reasoned that such schemes are special in nature, and contractual. The expression "Special Scheme" must be understood in the context of a general Scheme of employment governing the terms and conditions of service or which is a part of the statutory rules governing the service of the employees. In this sense also the Voluntary Retirement Schemes or the schemes of the DISCOMS in this case are Special Schemes. (Ref. HEC Voluntary Retd. Employees Welfare Society case, supra).

78. In the present case, the facts show that the objectives of the schemes were not manpower reduction, but change of employee profile. The objectives outlined by the DISCOMS in their ARR Petitions show that they desired to restructure hierarchies and re-pattern employment within their organizations. It was not as if new recruits were completely ruled out. No doubt, reduction and the consequent economics was a significant factor; but it was not the main or predominant one. More than a third of the workforce opted for the schemes. As on 1-7-2002 (i.e date of transfer) the total work force of DVB who were transferred to three DISCOMS, aggregated to 17692. As a consequence of the Schemes formulated by the DISCOMS, 6210 such employees (2496 of BSES, 1868 of BYPL, 1846 of NDPL) opted for the VSS/ VRS packages. The question is whether the liability for payment of terminal benefits is cast upon the Trust or the GNCT, or both of them.

79. Both schemes of the DISCOMS have largely common features:

(1) Eligibility is 10 years" qualifying service or 40 years age of the employee, making the offer;

(2) Benefit, other than the "usual" ones, was defined as amounts equal to Basic pay plus dearness allowances as applicable on the date of separation (i.e. date when his request is accepted by the employer) for the number of months worked out, on the basis of two months for each completed year in transferee DISCOM/DVB or the monthly emoluments i.e. Basic Pay + DA on the date of separation multiplied by the balance months of service left before normal date of retirement, whichever was less. In addition to this, in the case of BSES the employer gave additional incentives if the

employees opting exceeded 2200, and also an "early bird" incentive;

(3) Pension, terminal benefits, medical benefits, LTC, etc, as per rules, payable by the Trust.

(4) Three months' notice pay.

(5) The nature and tenuous character of the schemes is evident, like in the schemes considered in the reported cases, where the employer had the discretion to refuse, or decline the request, and not accept the offer. In the schemes of BSES and BYPL, Clause 10.3 and in the case of NDPL, Clause XI (c) conferred such discretion on the employer. These provisions override all other clauses and state, in the clearest terms that the scheme does not confer any right on any employee to have his/her request for voluntary retirement/separation accepted by the competent authority.

80. There are some important differences between the nature and character of the DISCOM's schemes and the conditions spelt out in Rule 48/ 48-A. They are:

(1) In terms of the said rules the condition for cessation of service, indeed the making of an application, i.e eligibility, is upon the completion of a fairly long tenure of service (30 years in the case of Rule 48; 20 years for Rule 48-A.) However, the period is far less in the two schemes. It is 10 years or the employee being 40 years of age.

(2) Rules 48 and 48-A are devoid of any element of inducement. However, the schemes of DISCOMS contain inducement of ex gratia up to 60 months pay. Besides, other inducements such as early bird incentives, etc were held out.

81. The Trust and GNCT aver that in the normal course, when employees applied for retirement in terms of Rule 48-A during the period when the schemes were not in force, i.e between 1-7-2002 and 31-12-2003, only 141 employees sought such premature retirement. They constituted less than 1% (i.e 0.65%) of the workforce. In contrast, the number of applicants under the VRS/schemes of the DISCOMS were a staggering 6210 or more than 33% of the total employee strength.

82. It had been contended on behalf of the DISCOMS that the GNCT and the Trust were estopped from taking the position that they were not liable to pay terminal dues in the event of acceptance of the offers under the schemes, because the former were made aware. Strong reliance was placed upon the letter of Shri Jagdish Sagar, dated 20-9-2003, nominee director of GNCT in NDPL, as well as the decision of the DISCOMS endorsed by the respective nominees of GNCT. At first blush, the letter of Shri Sagar seemingly supports this contention. Yet, a careful reading of the entire letter, particularly the last paragraph would reveal that he had cautioned that the DISCOM would have to bear the additional funding for the cost by the DISCOMS: When calculating the benefits of the Early Separation Scheme, it will be necessary to take into account the additional contributions that would be expected from the new

entities."

Similarly, the resolutions of DISCOMS, endorsed by nominee directors of GNCT, uniformly record that extra cost of the scheme to be paid by the Trust would have to be borne by the company (i.e DISCOMS). Even before the scheme became operational, the GNCT, by its letter dated 31-12-2003 disclaimed its liability, and told all the DISCOMS that:

It has already been made clear at different times that the Pension Trust will be able to take on the additional burden created by VRS only on the basis of suitable compensation to the Trust for the additional expenditure on this account. The Trust is working out the implications in detail and will be apprising you of them with the relevant calculations in the near future."

83. It has been held in numerous decisions that to invoke the doctrine of promissory estoppel, there should be clear, sound and positive foundation that the party invoking the doctrine has altered its position relying on the assurance of the Government. The assurance or promise relied upon should be forthright and unequivocal; the party relying on it should have unalterably changed its circumstances on the basis of that promise. ( Ref. [Union of India \(UOI\) and Others Vs. Godfrey Philips India Ltd., Kasinka Trading and another, etc. etc. Vs. Union of India and another, Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others](#), and [A.P. Steel Re-Rolling Mill Ltd. Vs. State of Kerala and Others](#), In the present case, there is no such foundation; the materials also disclose that the GNCT had reservations about the liability to pay terminal benefits and Therefore consistently took the position that the Trust had to be compensated additionally if it were to be saddled with the liability. Therefore, I hold that there is no question of the GNCT, or the Trust being estopped, as contended by the DISCOMS, or any liability on account of alleged estoppel.

84. The factual matrix would show that the anxiety of the GNCT and the DVB was to primarily allay the concerns of existing employees (of DVB) as to their continuity of service, protection of service conditions, and preservation of accrued rights, including terminal benefits. To that end, a Trust was created; Rs. 860 crores were transferred to it, as a one time payment, by the GNCT. The latter also guaranteed that it would make good any shortfall, to the extent the Trust was unfunded. These show that the objective of the GNCT and the mechanism devised, i.e Section 16, Rule 6 as well as the Trust, was to ensure to the benefit of all the employees, assuring their past service, as well as accrued benefits. The Trust was not foreseen, or created as a device to achieve future manpower reduction of DISCOM's. If such were the intention, the GNCT could have negotiated or devised suitable measures. What was visualized was continuity of the existing state of affairs. This is reinforced by the express assurance that there would be no retrenchment. The facts also show that though the concept of voluntary retirement existed and was protected in the DISCOMS as a condition of employment, i.e Rule 48-A of the CCS Pension Rules, that

was not resorted to in these cases. The employees who opted under the schemes, did so under special terms and were primarily impelled by the ex-gratia amounts and other substantial monetary benefits. Besides as a matter of law too, the schemes are contractual, and stand apart from the "normal" voluntary retirement u/s 48.

85. Apart from the above considerations, such as distinctions between the statutory scheme (Rule 48-A) and the VRS schemes of the DISCOMS, there is another feature which assumes significance. The Trust has to cater to a large number of members, who are expected to attain superannuation on achieving the age of retirement. The application of Rule 48-A is an exception; it has operated in an insignificant manner, in the normal course. In its own terms, an employee's request for voluntary retirement does not operate as a severance unless it is accepted by the employer. Thus, if the employee seeks voluntary retirement under Rule 48-A, it is subject to regulation and the individual is retired only if the offer is accepted. In normal circumstances if such requests are received from an unusually large number of employees, without any form of allurements, then too, the employer has a right to withhold acceptance, on grounds of financial considerations, if so advised by the Pension Trust. Here, the proportion of employees opting under the schemes is on an exodus scale. It does not tax one's imagination as to why such requests were made: the inducements and allurements held out by the DISCOMS were formidable and powerful. This was based on a unilateral scheme formulation exercise, by the DISCOMS, on an assumption of the Pension Trust and GNCT's liability. If the employer, i.e the DISCOMS are allowed to in effect deplete Trust funds (as would be the case, if their claim is upheld) then, even those ineligible under Rule 48-A can claim terminal benefits. More importantly, vis-a-vis those (among the optees) who would be covered by Rule 48-A, the Trust funds's corpus would be depleted, to the grave prejudice of the contributories, who have to await their normal turn. There is clearly no warrant for such an inroad into the Trust funds in the Deed. The payments in question on account of VRS/SVRS do lead to unforeseen financial implications such as Pre payment of payment of pension, Pre payment of gratuity, Pre payment of payment of leave encashment, loss of pension and leave salary contribution which the Trust would otherwise be entitled to till decision of normal date of superannuation and a substantial loss of interest on the capital outcome. The Trust has alleged that financial implications for an estimated 10 year cycle/service period based on present value on money were worked out, when the fund was created. In the HEC Voluntary Retd. Employees Welfare Society and Anr. v. Heavy Engineering Corpn. Ltd. case and State Bank of Patiala case (supra) the Supreme Court had recognized that VRS schemes are special as well as the end product of careful financial planning, which include putting in place special funding. The DISCOMS were aware of this, as is evident from the disclosure in ARR petitions, where provision to fund the ex-gratia payments were made. However, they adopted an ostrich like and schizophrenic approach when it came to the payment of terminal



benefits entirely seeking to cast the burden on the Trust, whose charter is to cater to normal contingencies, such as superannuation, and pay out of terminal and pensionary benefits to a negligible percentage of the members every year, on account of death, incapacitation or due to voluntary retirement, and not make pay-outs on adoption of unplanned and unapproved policies, by DISCOMS, as in this case.

86. For the above reasons, I find that the schemes of DISCOMS cannot be equated with voluntary retirement in exercise of the conditions of service which existed at the time of transfer; they are in any case outside the purview of Rule 48-A. Therefore, the optees do not fall within the description of those voluntarily retiring as per conditions of service existing as on 1-7-2002; they were induced to contractually depart from employment. The Trust is not geared to bear this sudden and substantial, unilaterally created burden; the GNCT, too, is not liable in terms of the Act or Rule 6(9) to fund the payment of terminal benefits, of such VRS/SVSS optees. The severance being achieved through contract between the DISCOMS and the employees, the liability for payment of terminal benefits, as well as commutation of pension and monthly residual pension, is that of the DISCOMS.

#### REGARDING QUESTION NO.3

87. In the preceding discussion it has been held that the VRS/Schemes formulated by "DISCOMS" are contractual. The employees who opted, clearly did so on the assumption that they would be paid pension and their other terminal benefits of past service based on the provisions of the Act as well as continuity guaranteed in terms of the Act, Rules and the Tripartite Agreements. However, the terms in the VRS assuring payment of pension and terminal benefits by the trust were unilateral.

88. The Scheme was accepted in its terms by the employees on the assumption that they would be paid the entire package which include terminal dues. Today as the consequence of the above findings the liability to pay pension and terminal dues, according to the Schemes does not fall upon the Trust. A simple solution would be to relegate the parties to the position they stood when the contract was formed i. e. restoration of the employment of those who opted for the VRS. This is because the entire VRS offered and accepted by the two contracting parties was one whole package. It is not possible for the Court to excise one part of it and uphold the latter. This logic is strengthened by a powerful reasoning that the contract failed because the material consideration remained unpaid. However, this reasoning would lead to some complications. The VRS optees severed relationship with the DISCOMS more than three years ago. The employers have in the meanwhile restructured their organization and clearly proceeded ahead on that basis. Relegating parties to a status quo ante in these circumstances would not be practicable. The second option could be to declare that the liability to pay pension and terminal benefits till the attainment of normal age of superannuation by the VRS optees is that of the DISCOMS and leave it to the employees to work out their remedies. In such case this

judgment would at best be declaratory and lead to multiplicity of litigation as the DISCOMS liabilities would have to be worked out through appropriate legal proceedings.

89. During the proceedings the trust had adverted to what is termed as the "IPGCL model" whereby a successor company of DVB, IPGCL was to make one time payment to the VRS optees on account of commutation of pension, gratuity, provident fund and leave encashment etc., on the assumption that such amounts would be refunded by the trust to the IPGCL without any interest when the concerned employees attains the age of superannuation, or dies, whichever is earlier. As far as the liability to pay residual pension to such optees was concerned, the IPGCL assumed that liability from the date of severance of the optees till the date of their superannuation in the normal course or death, whichever was earlier. The trust, according to IPGCL model would assume the liabilities for payment of residual pension after the employee attained the normal date of superannuation. The NDPL during the course of the proceedings had suggested that another possible solution could be for appropriate determination of the additional compensation, by application of actuarial principles, through a process of adjudication/determination of an expert body. The BSES/BYPL have not made any suggestions in this regard.

90. These batch of cases has presented various complexities. It is well-known that in judicial review the Court does not enter into a primary decision making exercise. It is enjoined to apply judicial review standards and decide whether action of the State or public agencies are correct and proper. This is conditioned with one imperative under Article 226 of the Constitution i.e. the need to do justice between the parties. It has been held repeatedly that the Court exercising powers under Article 226 of the Constitution of India can mould the relief. The amplitude of the proceedings are sufficiently wide and the Court can devise appropriate modalities or mechanisms to do substantial justice between the parties.

91. In this case if the Court were to decide the cases on the basis of the findings, the judgment would be merely declaratory. As explained earlier, such a declaratory judgment would spawn further litigation. That course would not be correct since the former employees of the DISCOMS who opted for the VRS have also claimed relief in the proceedings through substantive writ petitions. Therefore, this is an appropriate case whether the Court should discharge its duties and issue appropriate directions for the parties to achieve substantial justice with a view to end all disputes.

92. Two options, hereafter elaborated are proposed. The first is payment of the terminal dues to VRS optees by the DISCOMS through the IPGCL model. In case the DISCOMS do not agree to this, the Trust would pay the dues, and residual pension, after the DISCOMS pay the additional costs on account of premature withdrawal to it, on the basis of award of an Arbitral Tribunal, constituted in terms of this judgment.

93. In the light of the above discussion it is hereby declared and directed as follows:

I (i) The Pension Trust and GNCT are not liable to make payment towards terminal benefits and residual pension arising to those who opted VRS/VSS, formulated by the petitioners DISCOMS namely, BSES Rajdhani Power Ltd., BYPL and the NDPL employees of the above (referred to as "DISCOMS"). The employees of the DISCOMS who opted by VRS/VSS or the Scheme by whatever name called and were relieved from employment are entitled to payment of terminal dues (which expression would include all accrued benefits such as gratuity, provident fund, leave travel concession, leave encashment, payment towards medical facilities, commutation of pension and residual pension and such other payments as they are entitled to in terms of the protected terms and conditions of service under the Act and Rules) from the date of their respective severance from employment. Such date of severance shall be hereafter referred to be called "entitlement date".

(ii) It is open to the DISCOMS to adopt the IPGCL Model of paying pension, gratuity, leave encashment and other liabilities to the optees, in terms of the letter of the Government of NCT of Delhi dated 11.11.2004 This has been described in Para 87 above.

(iii) The DISCOMS shall indicate to the pension trust, in writing within two weeks from the date of this judgment whether they are willing to accept IPGCL Model or not.

(iv) In the event of acceptance of the IPGCL Model, the liabilities of the DISCOMS to make payments from the entitlement date to each VRS/VSS optee till the date of payment shall be discharged within three months from today. In other words, the payments for the period commencing from entitlement date till 1st of July, 2007 shall be made within three months. The payment for the period ending three months from today shall also be after 1.7.2007 and included in this regard while discharging this liability. In the event of this option being exercised and any default in payment, the VRS optees concerned shall be entitled to interest @ 8% per annum for the entire amount till the date of payment.

(v) In the event of option being exercised by DISCOMS, they shall also be liable to make payments towards family pension and terminal benefits of all optees who died during the interregnum ie from the date of entitlement till today.

II(i) In the event of the concerned DISCOMS not accepting the IPGCL Model and opting out of direction No. I (ii) above, they shall be liable to pay additional contributions to the pension trust, in the manner to be determined hereinafter.

(ii) For the purpose of deciding the additional contributions to be made by DISCOMS to the Trust's Pension Fund, on account of payment of commuted value pension and all terminal benefits and liabilities, due to such optees, the matter shall be referred to two arbitral tribunals within four weeks of receipt of communication by the pension trust from the concerned DISCOMS.

(iii) The first arbitral tribunal shall be comprised of a nominee of the Institute of Actuaries, 302, Indian Globe Chambers, 142, Fort Street, Off D.N. Road, Fort, Mumbai, incorporated u/s 3 of the Actuaries Act (which was enacted and received assent of the President on 27.8.2006 and was brought into force on 8.11.2006). The nominee of the Institute shall be indicated by the President, Governing Council of the Institute. The second member of the Tribunal shall be a common nominee of the GNCT and the Pension Trust and the third nominee shall be nominated by the NDPL. The provision of composition of the Tribunal shall be completed within six weeks from the date of exercise of option by the NDPL

(iv) The second tribunal shall comprise a nominee of the Institute of Actuaries, to be indicated in the manner as directed in Clause II(iii) above the second member shall be; a common nominee of the GNCT Pension Trust and the third member shall be a common nominee of BSES and BYPL.

(v) All members of the two arbitral tribunals should be actuaries, having knowledge and experience in the field of pension funds;

(vi) The proceedings before the Tribunals shall be regulated by the provisions of the Arbitration and Conciliation Act 1996 and its Award would be an Award within the terms of that Act;

(vii) The terms of reference of the Arbitral Tribunal concerned would be the determination of additional contributions payable by the concerned DISCOMS on account of premature pay-outs by the pension trust due to the exercise of option by the VRS optees. The Tribunal shall decide on an application of actuarial principles, the cost of such pay-outs, which shall include loss of interest and also such other incidental matters including but not confined to premature payment of commuted value of pension, provident fund, gratuity and all other terminal benefits to the concerned optees from the date of their entitlement. The arbitral tribunal shall complete its proceedings and publish its award within six months from the date of its Constitution. All parties shall cooperate in this regard.

(vii) The arbitration proceedings shall be conducted by the Tribunal in accordance with law.

III (i) The liability to pay residual pension ie monthly pension from the date of this judgment in the event the DISCOMS exercise the second option ie of going in for actuarial calculation; shall be borne by the concerned DISCOMS for the period till the award is published by the Tribunal and payment made to the trust on the basis of such award, by the concerned DISCOMS.

(ii) The payments made by DISCOMS to the optees shall also be subject to suitable adjustment/reckoning for the actuarial exercise adjudication by the Tribunal.

(iii). The liability of the Trust to make payments to the VRS/VSS optees shall arise after the DISCOMS deposit the amounts determined as additional contributions with

the pension trust.

(iv) The VRS optees are entitled to interest on the terminal benefits, i.e gratuity, provident fund, commuted value of pension, arrears of pension, etc @ 8% p.a. from the date of entitlement, to payment. This shall be paid by the DISCOMS.

94. All the writ petitions and pending Civil Misc. Applications are disposed of in terms of the above directions. In the peculiar circumstances of the case, the petitioners in WP(C) 4827/05 and 5198/2005 shall pay costs quantified at Rs. 50,000/- for each set of the proceedings, to the petitioners in other set of petition Nos. namely WP(C) Nos. 23460/2005 and 13231-40/2005. Order dusty to all parties.