



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi - 17**

No. F. 11(1522)/DERC/2017-18/5882

**Petition No. 53/2017**

**In the matter of: Review Application/Petition against tariff order dated 31.08.2017 for  
FY 2017-18 in the ARR petition of BYPL.**

Delhi State Electricity Workers Union,  
Through : its General Secretary  
L-2, Main Road, Brahm Puri,  
Delhi 110 094

....Petitioner

**Petition No. 54/2017**

**In the matter of: Review Application/Petition against tariff order dated 31.08.2017 for  
FY 2017-18 in the ARR petition of BRPL.**

DVB Engineers Association (Recognised)  
Through : its General Secretary'  
D-3, Vikas Puri,  
New Delhi 110 018

....Petitioner

**Petition No. 55/2017**

**In the matter of: Review Application/Petition against tariff order dated 31.08.2017 for  
FY 2017-18 in the ARR petition of TPDDL.**

Mr. Rajan Gupta  
Former Member  
Delhi Electricity Consultative Council  
(Govt. of Delhi)  
Address 355, Udyan, Narela,  
Delhi 110 040

....Petitioner

**Coram: Sh. B.P. Singh, Member**

**Appearance:**

1. Mr. Buddy A Ranganadhan, Advocate, BRPL & BYPL
2. Mr. Hasan Murtaza, Advocate, BRPL & BYPL
3. Ms. Malvika Prasad, Advocate, BRPL & BYPL
4. Ms. Varaa Masood, Advocate, BRPL & BYPL
5. Mr. Kuldeep Kumar, DSEWU
6. Mr. Davinder Singh, DSEWU
7. Mr. Ravinder Singh, DSEWU
8. Mr. Rishipal, DSEWU
9. Mr. V K Malhotra, DVB Eng. Association
10. Mr. Rajan Gupta

## **ORDER**

(Date of Hearing: 15.11.2017)

(Date of Order: 21.02.2018)

1. The Instant review petitions have been filed by M/s DVB Engineers Association (Recognized), M/s Delhi State Electricity Workers Union and Mr. Rajan Gupta against tariff order dated 31.08.2017 for FY 2017-18 in the Aggregate Revenue Requirement (ARR) petition of BYPL, BRPL and TPDDL, respectively. The review petitioners have made following prayers:
  - i. To clarify/modify para 4.110 of Tariff order to the extent that, "impact of statutory pension revision of DVB Pensioners/family pensioners receiving pension from DVB ETBF 2002" or by appropriate modification in para 4.110 and/or similar addition of appropriate direction to the DISCOMs for release of revised pension and arrears w.e.f. 01.01.2016 that an impact of any Statutory Pension revision of pensioners/family pensioners shall be considered separately, based on actual payment made by the Petitioner and prudence check at the time of true up of ARR as specified in the Business Plan Regulations, 2017.
  - ii. To make correction in figure of Rs. 693 Cr. Or Rs. 694 Cr. Payment approved for Pension Trust in FY 2017-18.
2. The Interim Applications for exemption of fees filed along with review petitions have been allowed in public interest.
3. Since, identical issues have been raised in the three separate review petitions the Commission therefore, heard these three review petitions together and a common order is being passed in these review petitions.
4. The review petitioners have made following submissions for review of the order of the Commission;
  - (A) The review petitioners have submitted that the Commission in the Order dated 31.08.2017 for BRPL, BYPL and TPDDL has passed directions for payment of Rs. 694 Crores in FY 2017-18 by the three Discoms to the DVB ETBF (Pension Trust). The relevant extracts are reproduced as under:

*"Para 2.298: The Commission vide letter dated 08.12.2016 has requested GoNCTD for conducting a forensic audit of Pension Trust for authentication of the data of pension*

disbursement from FY 2002-03 to till date to ascertain the actual liability of Pension Trust. The Commission has considered the amount of Rs. 693 Crore sought for FY 2017-18 by the Pension Trust on ad-hoc basis recommended by GoNCTD vide its letter dated 26.07.2017.

Para 4.83: Secretary, Pension Trust has requested the Commission to allow Rs. 6.94 Cr. In FY 2017-18 for funding of Pension of erstwhile DVB Employees/Pensioners which has also been recommended by GoNCTD vide its letter dated 26.07.2017. Further, the Commission had allowed Rs. 573 Cr. In SRR of the Distribution Licensees for FY 2015-16 which continued till date.

Para 6.2 A total amount of Rs. 160 Cr. Has to be paid to the Pension Trust in Fy 2017-18 by the Petitioner. The petitioner shall submit reconciliation of payment which has already been made to Pension Trust during Fy 2017-18 and the balance amount to be paid within one month of the issuance of this Tariff Order. Based on the reconciliation statement the Petitioner is directed to pay the balance amount out of (Rs. 160 Cr.- already paid during FY 2017-18) in 7 (seven) equal monthly installments to Pension Trust. Any under/over recovery on account of payment to the Pension Trust shall be trued up by the Commission at the time of True up of ARR of FY 2017-18.

Proportionate liability of Discoms in FY 2017-18 is shown in the table below:

Amount in Crores			
BYPL	BRPL	TPDDL	Total
160	299	235	694

- (B) That with regard to payment of wages and allowances as per 7<sup>th</sup> Pay Commission/Wage Revision Committee (WRC) constituted by GNCT, on revision of pay for employees of FR&SR structure transferred to BYPL, the Hon'ble Commission in the tariff Order dated 31.08.2017 has observed as under:

*"Para 4.94 Impact of any Statutory Pay revision on employee's cost as may be applicable on case to case basis shall be considered separately, based on actual payment made by the Petitioner and prudence check at the time of true up of ARR as specified in the Business Plan Regulations, 2017."*

- (C) That after above approval given by the Commission for consideration of employee's cost impact of statutory pay revision separately, BYPL vide office Order No. AsVP (HR)/2017-18/126 dated 21.08.2017, TPDDL vide office order no. IC/HR/2017-18/1022 dated 22.08.2017 and BRPL vide office Order No. HR/CC/2017-18/133

dated 21.08.2017 decided to disburse Interim Relief w.e.f 01.01.2016 to its employees working under FR&SR structure only. Whereas no such orders are issued by BYPL, TPDDL and BRPL for payment of contribution towards Interim relief to the pensioners and family pensioners w.e.f 01.01.2016, though the office order dated 26.07.2017 issued by Dy. Secretary (Power), GNCTD specifically provides approval of Lt. Governor, Delhi for disbursement of Interim Relief to pensioners/family pensioners w.e.f 01.01.2016 drawing pension from DVB ETBF 2002 (Pension Trust).

(D) That the Commission has considered and allowed Rs. 694 Cr. to the Pension Trust in tariff order dated 31.08.2017 for FY 2017-18 for payment of pension to more than 22,000 pensioners and family pensioners at present. The impact/payment of Interim relief liability by three DISCOMs w.e.f 01.01.2016 in FY 2017-18 as a statutory payment to Pension Trust towards pensioners/family pensioners and truing up of the same in their ARR, have not been incorporated in the tariff order. It is pertinent to mention here that Pension Trust has no other source of funding and the three DISCOMs are the only principal contributors to the DVB Pension Trust post unbundling of DVB w.e.f 01.07.2002, as has been held by the Hon'ble Commission and catena of decisions of the court.

(E) In view of the above the review petitioners submits as under:

(i) That on the request of the DISCOMs the Hon'ble Commission is pleased to introduce additional surcharge of 3.70% for recovery of Pension Trust funding from September 2017 onwards in the tariff order dated 31.08.2017. That Interim Relief approved by Lt. Governor, Delhi w.e.f 01.01.2016 vide GNCTD order dated 26.07.2017 to the DVB pensioners and family pensioners by the Pension Trust though a statutory payment has not been disbursed to them. The Hon'ble Commission has already approved under para 4.110 of tariff order for FY 2017-18 impact of statutory pay hike for the employees which shall be recovered by BYPL, TPDDL and BRPL in true up of ARR on actual bases but BYPL, TPDDL and BRPL have not taken any action in respect of payment to the Pension Trust. The

applicant humbly submits that similar provision may be incorporated in the Tariff Order for FY 2017-18 for payment to the Pension Trust on account of impact due to statutory revision of pension/family pension by way of clarification/modification of the provision of the tariff order.

(ii) That in the relating para to Pension Trust two different figures has been considered by the Hon'ble Commission. Apparently, on the face of record there is an error in figures of the funds provided to the Pension Trust, which needs to be corrected.

- (F) The Judgment of Apex Court and Delhi High Court have held that the payment to Pension Trust is mandated under the law, thus liability of pensioners/family pensioners is a part of innate liability of the DISCOMs;
- (G) The life time payment of pension and all statutory payments to the pensioners is required to be made by the DISCOMs the successor entities in monthly basis in term of Section 16(2)(c) Delhi Electricity Reforms Act, 2000, Rule 6(8) Transfer Scheme Rules 2001 and Statutory provisions of CCS (Pension) Rules 1972 with amendments thereof;
- (H) Pension Trust was established as a part of Transfer Scheme Rules, 2001 framed under Delhi Electricity Reforms Act, 2000 (DERA) and the Tripartite Agreements executed by the GONCTD with unions of employees and Associations of the officers of the erstwhile DVB. In terms of the aforesaid Rules and Tripartite Agreements, the Pension Trust was funded at the time of unbundling of the DVB by way of one lump sum payment by the GONCTD. Subsequent contributions from the date of unbundling have to be made to the Pension Trust by the successor entities of DVB. The Commission has been releasing adhoc payments in the DTL Tariff Orders from FY 2011-12 onwards upto FY 2016-17.
- (I) The pensioners are being deprived of their legitimate medical reimbursement claims in a definite time frame which is a component of employees cost under the Operation and

Maintenance in the ARR Petition of the successor utilities, affecting the lives in the old age;

- (J) The ratio of the Hon'ble Supreme Court order dated 13.01.2010, Civil Appeal No. 663 of 2004, Kuldeep Kumar Vs. Delhi power Supply Co. and Ors. And Order dated 03.05.2010, Civil Appeal No. 4269 of 2006 and 4270 of 2006, North Delhi Power Limited Vs. GNCTD and BSES Rajdhani Power Limited and Ors. Vs. GNCTD cast direct liability of payment of pension on the transferee companies.
  - (K) The Pension Trust is in a precarious financial situation as it cannot meet out its financial liability of payment of pension to presently more than 22000 pensioners. The pensioners and superannuating employees are being deprived for timely payment of pension/terminal benefits/statutory payments like interim relief and reimbursement of medical claims by Pension Trust.
  - (L) The State Commission had allowed payment of Rs. 150 Cr., Rs. 160 Cr., Rs 400 Cr., Rs. 470 Cr., and Rs. 573.23 Cr. In FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, FY 2015-16 to the Pension Trust in the ARR orders.
5. In addition to the above, the review petitioners have also filed their Written submissions on the issue of Actuarial Valuation, which contain the following:
- (i) During the hearing on 15.11.2017 the Commission had shown concern, that no Actuarial Valuation of the Pension Trust has been got done despite the fact that Commission has been approving in the ARR's of Discoms for making ad-hoc payments to the Pension Trust since FY 2011-12. The Commission directed the review petitioners to take up the matter with the Government for conduct of Actuarial Valuation of Pension Trust to estimate exact demand of funds. In reply it was clarified to the Commission that there has been some misrepresentation of the factual status in respect of conduct of Actuarial Valuation by the Pension Trust.
  - (ii) That there has been some misrepresentation of the factual status in respect of conduct of Actuarial Valuation of the Pension Trust.

- (iii) That on the request of the Discoms and the GoNCTD first Actuarial Valuation was carried out by the Pension Trust from Sh. P.C Gupta, Fellow of Institute of Actuaries, U.K. Fellow of Actuarial Society of India and Associate of the Institute of Actuaries Australia. The Actuarial report covering the calendar year from 1<sup>st</sup> January 2003 to 31<sup>st</sup> December 2003 was submitted by the Actuary on 24.06.2004 to the Pension Trust and the Government.
- (iv) Upon directions of Additional Secretary (Power), GoNCTD vide letter dated 12.09.2005, second Actuarial Valuation of the Pension Trust as on 01.07.2002 and 01.04.2007 was carried out.
- (v) The second report by Sh. M.L Sodhi (consulting Actuary) Fellow of Institute of Actuaries of India and Associate of Institute of Actuaries, U K was submitted on 13.09.2007 to the Pension Trust and GoNCTD. The said report of Actuarial Valuation by Sh. M. L Sodhi has also been relied upon in WP (C) No. 8973 of 2017; TPDDL Vs. GoNCTD. Presently pending adjudication before Hon'ble Delhi High Court. As per the Actuarial report the liability of Rs. 1254 Crore is estimated towards GoNCTD and Rs. 1316 Crores for the Discoms.
- (vi) The Actuarial Valuation report dated 13.09.2007 estimated liability as on 01.07.2002 and 01.04.2007 was got reviewed by Sh. A. Ghoshal, Management & Actuarial consultant, as per directions of GoNCTD. The reviewed Actuarial Valuation report by Sh. A. Ghosal dated 15.10.2008, was submitted by him with the findings that value done on Actuarial bases for both 2002 and 2007 by Sh. M. L Sodhi seems to be reasonable.
- (vii) Third Actuarial Valuation of the liability of Employees, Retirees & VRS Optees as on 01.04.2008 was done by Sh. M.L Sodhi, Fellow Actuary.
- (viii) That on the directions of the Commission, an oversight committee was constituted by the GoNCTD. On the directions of oversight committee, comprising of Sr. Representatives of DISCOMs, fourth Actuarial Valuation of the liability of employees, Retirees(including pensioners, family pensioners and Ex pensioners) & VRS Optees as on 01.04.2013 was done by Life Insurance Corporation of India. The fourth Actuarial Valuation report of the LIC of India as on 01.04.2013

is available with the Discoms, Government and the Pension Trust but they have failed to submit the valuation report as directed by the Commission in its statutory advice. It is therefore incorrect to suggest that no Actuarial Valuation of the Pension Trust was conducted during the period.

- (ix) It is humbly submitted that it is a joint responsibility of Discoms, Pension Trust and the Delhi Government to resolve the issue, if any, for lifelong payment of pension to the employees of DVB and the pensioners with the aid and advise of the Commission for smooth functioning of the Pension Trust for 22,800 existing pensioners.
- (x) The Hon'ble Commission in tariff order for FY 2013-14 of DISCOMs was pleased to observe as under:

*Para: 3.149 The Commission is also of the view that parties to the discussion for transferring the management of funds of Pension Trust to LIC of India should work out the modalities and should sort out the technical, legal and financial issues involved in such a transfer at the earliest, to avoid ad-hoc provisions of this nature on a continuing basis.*

- (xi) It is humbly submitted that sub-rule 8 & 9 of Rule 6 Transfer Scheme mandates payment of pension to the "existing pensioners" which means all the persons eligible for the pension on the date of transfer from the board. That DISCOMs are the principal contributors of funds to the Pension Trust as per Transfer Scheme. The Transfer Scheme do not create any classification or distinction between pre and post unbundling pensioners of DVB as has been repeatedly clarified by the Supreme Court in the case of R.K Jain Civil Appeal No. 4269 of 2006 and 4270 of 2006; North Delhi Power Limited Vs. GoNCTD and BSES Rajdhani Power Limited, relied upon by the Hon'ble Commission in various tariff orders.

- (xii) The Commission while relying upon the judgment of Hon'ble Delhi High Court and Hon'ble Supreme Court in tariff order dated 31.08.2017 has also taken similar view which is reproduced as under:

*Para 2.296*

*"In LPA No. 98/2005, the Hon'ble High Court of Delhi in its judgment dated 30.03.2006 has held that: "There is no*



*escape from concluding that even in all these suits which are pending are filed by the retired employees in the Court claiming for their service benefits, thereby creating liability of DVB on the respective transfer company. The transfer company shall be substituted instead of DVB." In civil Appeal No. 4269 of 2006 read with Civil Appeal No. 4270 of 2006, the Hon'ble Supreme Court of India has observed that GoNCTD has taken a clearest decision possible by its letter dated 21.01.2004, which is binding on all parties. The Hon'ble Supreme Court has further observed that the view taken by the High Court of Delhi is correct."*

- (xiii) Payment of pensioner benefits to the beneficiaries receiving pension from DVB ETBF 2002 is not booty or gracious payments but is governed by CCS (Pension) Rules 1972. The judgment of Hon'ble Supreme Court in case of R.K Jain leaves no doubt on the innate liability of the Discoms for payment of pension to all the existing and future pensioners. The applicant submits that the contention of the DISCOMs for pre and post unbundling pensioners receiving pension from DVB ETBF 2002 is totally unfounded and misrepresentations of the facts and in law before the Hon'ble Commission.

### **ANALYSIS AND ORDER**

6. The review petitioners have sought review to the effect that the provisions of para 4.110 of Tariff Order for FY 2017-18 regarding impact of statutory pay hike for the employees shall also be made applicable to DVB Pensioners, therefore a similar provision may be incorporated in the Tariff Order for FY 2017-18 by way of clarification/modification.
7. It is noticed that in all the three review petitions, prayers have been made to clarify/modify the provisions of Para 4.110 so as to incorporate for payment to the Pension Trust on account of impact due to statutory revision of pension/family pension. However, contents of Para 4.110 are different in the Tariff Order for different Discoms. The paragraphs with such provisions for TPDDL is Para 4.110, for BRPL is Para 4.108 and Para 4.100 for BYPL in their respective Tariff Order.

8. The DVB Pensioners have submitted that the Actuarial Valuation of Pension Trust liability has been done four (4) times which is in the table appended below. However, none of the Actuarial Valuation report was accepted by all relevant stakeholders:

S. N	Particulars	Basis	Actuarial Valuation carried by	Report date	Report Submission Date
1	First Actuarial Valuation	Suo-Motto decision by Pension Trust	Sh. P.C. Gupta, Fellow of Institute of Actuaries, U.K., Fellow of Actuarial Society of India and Associate of the Institute of Australia	31.12.2003	24.06.2004
2	Second Actuarial Valuation	Upon directions of Additional Secretary (Power), GoNCTD vide their letter dated 12.09.2005	Sh. M.L. Sodhi (Consulting Actuary) Fellow Institute of Actuaries of India & Associate of Institute of Actuaries of U.K.	01.07.2002	13.09.2007
3	Third Actuarial Valuation			01.04.2007	13.09.2007
4	Fourth Actuarial Valuation	On the Direction of Oversight Committee (on the direction of DERC)	LIC (on the direction of oversight committee, which was formed on the direction of DERC)	01.04.2013	-

9. It is submitted by the review petitioners that in pursuance to the tripartite agreement, the GoNCTD established the Pension Fund (DVB ETBF – 2002) with initial corpus of Rs. 1,329.10 Crores for the disbursement of pension and terminal benefits on superannuation to the employees of DVB. DISCOMs represented that the fund requirement of balance 27 months upto 01.07.2002 (March 2000 – June 2002) was left underfunded. Through the letter No. F.11 (42)/2004-Power/2543 dated 12.09.2005 from GoNCTD to Pension Trust, the Government directed that the amount involved in under-funding of the Pension Trust fund as on 30.06.2002 (the date of effect of the transfer scheme) may be estimated by the trust and intimated to GoNCTD.
10. The issue of exhaustion of the Pension Trust funds was provisionally addressed during the True up of FY 2008-09 and FY 2009-10 (August 2011 order) based on the submission of the Pension Trust and subsequent

submissions of the DISCOMs. The Commission noticed that shortfall of the fund in the Pension Trust is the main issue in the Writ Petition filed in High Court regarding determination of liability and that the matter was sub-judice. The Commission observed that Pension Trust was facing acute shortage of fund and was left with meagre fund just sufficient to meet its obligation towards the pensioners for next 5 to 6 months only.

11. In view of the above and to avoid any undue hardship to the retired employees (pensioners) of the erstwhile DVB, the Commission considered providing a provisional lump sum amount of Rs 150 Cr in the ARR of the DTL for FY 2011-12 subject to the final outcome in the Civil Writ Petition (C) No 1698/2010.
12. The Commission has continued to provisionally allow the contribution to DVB Pension Trust every year since then as follows:

<b>Financial Year</b>	<b>Amount (Rs. Cr.)</b>
2011-12	150
2012-13	160
2013-14	400
2014-15	470
2015-16	573
2016-17	573
2017-18	694
Total	3020

13. The Commission has also advised the GoNCTD to order forensic audit of the Pension Trust during FY 2016-17 vide letter dated 08.12.2016 for authentication of the data of pension disbursement from FY 2002-03 onwards to ascertain the actual liability of the Pension Trust.
14. Regarding prayer of the review petitioners seeking clarification/ modification of the provision of tariff order regarding *impact of any Statutory Pay revision on employee's cost as may be applicable on case to case basis* to the extent that to take care of Pensioners also, it is clarified the word "employee" in aforesaid provision includes DVB employees transferred to respective utilities at the time of unbundling of DVB, hence it takes care of pensioners also.
15. It is to be noted that the amount of Rs. 693 Crore, as provided for by the Commission in the Tariff Order is based on the request of Pension Trust forwarded by GoNCTD, which is for all the liabilities of the Pension Trust including statutory revisions of Pension.

16. Regarding correction in figure of Rs. 693 Crore or Rs 694 Crore provided for Pension Trust for FY 2017-18, it is clarified that it is a difference of rounding off only. Moreover, as Pension Trust has to be funded provisionally @3.7% of energy charges, this subtle difference has no impact.

17. Further, in respect of review of order of the Commission it is pertinent to point out that for review of an order the provisions of Order 47 Rule 1 of Civil Procedure Code are applicable which is as under:

***"1. Application for review of judgment.- (1) Any person considering himself aggrieved,—***

*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*

*(b) by a decree or order from which no appeal is allowed, or*

*(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."*

18. The above mentioned provisions of Civil Procedure Code mandates that Court of review may allow a review only on three specific grounds which are as under:-

(i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or

(ii) Mistake or error apparent on the face of the record; or

(iii) For any other sufficient reason which is analogous to the above two grounds.

19. The Commission has examined the contentions raised by the review petitioners in depth and it is observed that the petitioner could not establish to place either a new fact or to demonstrate an error apparent on the face of record. Neither the petitioner was able to cite any sufficient reason for review of the order. Thus, the Commission is of the considered view that none of the conditions stipulated for review are satisfied and

therefore the review petitions need to be dismissed at the admission stage itself.

20. In view of the above the review petitions are dismissed at the admission stage itself.
21. Ordered accordingly.

**Sd/-**  
**(B. P. Singh)**  
**Member**