



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 6th February, 2026
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+ W.P.(C) 12069/2018

SH. NAVEEN KUMAR GUPTAPetitioner

Through: Mr. Vivek Singh, Mr. Onkar Nath and
Mr. Anuj Mirdha, Advocates.

versus

BHARAT HEAVY ELECTRICALS LTD. NEW DELHI

.....Respondent

Through: Mr. A. K. Roy, Advocate.

+ W.P.(C) 12110/2018

SH. MUKUL AGARWALPetitioner

Through: Mr. Vivek Singh, Mr. Onkar Nath and
Mr. Anuj Mirdha, Advocates.

versus

BHARAT HEAVY ELECTRICALS LTD. NEW DELHI

.....Respondent

Through: Mr. A. K. Roy, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The Petitioners were long-serving executives of Bharat Heavy



Electricals Limited¹, a Central Public Sector Enterprise. Both left BHEL after being selected to a post in another Government of India undertaking. Their applications were routed through proper channel. Their resignations were accepted and they were relieved. Subsequently, BHEL declined (i) to transfer, or otherwise monetise, the Half Pay Leave² standing to their credit and (ii) to transfer any pension corpus or contribution to the National Pension System³, or otherwise account for such benefit. The Petitioners contend that the refusal contradicts the applicable Government policy and BHEL's own personnel rules and framework. BHEL maintains that resignation operates as a severance and, in any event, its rules contain no enabling provision for the reliefs sought.

2. The petitions are being decided by a common judgment, given the substantial overlap in the grounds of challenge, the reliefs sought, and the legal questions that arise for determination. The leave claim, however, requires separate treatment. In Mukul Agarwal's case, the leave balance has already been transferred to the transferee organisation. In Naveen Kumar Gupta's case, the HPL has not been transferred and the Petitioner seeks either transfer or, if transfer is not possible, payment of the equivalent value.

FACTS IN BRIEF

3. Mukul Agarwal joined BHEL on 25th November, 1994 and served in the finance stream. He was promoted as Manager on 25th June, 2014. In November 2013, he applied through proper channel for the post of Manager (F&A) in Rural Electrification Corporation Limited⁴, a Government of India

¹ "BHEL"

² "HPL"

³ "NPS"

⁴ "REC"



CPSE. BHEL forwarded the application by letter dated 19th November, 2013. REC issued an appointment letter dated 09th February, 2015. The Petitioner resigned from BHEL and was relieved with effect from 28th March, 2015. At the time of resignation, he claims Earned Leave of 63 days and Half Pay Leave of 265 days, besides the pension contribution/corpus under the relevant superannuation benefit scheme. REC wrote to BHEL on 17th April, 2015 seeking transfer of (i) Earned Leave/Half Pay Leave, (ii) provident fund/gratuity, and (iii) the accumulated pension fund, including accrued interest. Internally, BHEL's HR department sought processing from the concerned finance/payroll branch on 30th April, 2015. When no resolution followed, the Petitioner raised the issue through CPGRAMS. BHEL rejected the request on 07th May, 2016. The Petitioner pursued the matter again and BHEL, by communication dated 01st June, 2017, declined transfer of leave on the premise that there was no provision in BHEL rules to transfer leave to another PSU in case of resignation.

4. Naveen Kumar Gupta joined BHEL on 28th December, 1995 and was promoted to the post of Deputy General Manager (Finance) on 25th June, 2014. He applied through proper channel for the post of Executive Director (Finance) in National Handloom Development Corporation Limited,⁵ a Government of India undertaking. BHEL forwarded his application on 17th July, 2015. NHDC issued an appointment letter dated 09th September, 2015. Before being relieved, he addressed a request dated 30th September, 2015 seeking transfer or encashment of Half Pay Leave. BHEL accepted his resignation with effect from 17th October, 2015 and relieved him accordingly. NHDC thereafter wrote on 26th November, 2015 seeking



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transfer or credit of the Petitioner's HPL. The Petitioner continued to pursue the matter through representations dated 27th September, 2016 and 10th November, 2017, but to no avail.

5. Both Petitioners, aggrieved by the continuing refusal, approached this Court by filing W.P.(C) 4303 of 2018 (Mukul Agarwal) and W.P.(C) 4368 of 2018 (Naveen Kumar Gupta). By a common order dated 27th April, 2018, this Court granted time to submit concise representations and directed BHEL to reconsider the matter and pass a speaking decision. Pursuant to those directions, representations dated 15th May, 2018 were submitted. BHEL thereafter issued separate speaking orders dated 02nd July, 2018 rejecting the claims relating to leave and pension. The present writ petitions assail those orders and seek the reliefs earlier pressed. Those speaking order which are the principal subject of challenge read as follows:

W.P.(C) 12069/2018 [Shri. Naveen Kumar Gupta]

“Pursuant to the Order of the High Court at Delhi dated 27th April, 2018 in the matter of W.P. (C) no 4368 of 2018-Sri. Naveen Kumar Gupta Vs. Bharat Heavy Electricals Limited, New Delhi, your representation dated 15th May 2018 has since been received in BHEL House Sin Fort New Delhi on 18th May 2018. In your representation, the following aspects have been raised:

*i). **Transfer of Half Pay Leave** balance of 250 days standing to your credit at the time of your resignation from the services of BHEL to your new employer National Handlooms Development Corporation Ltd. or equivalent amount be paid in lieu thereof, and*

*ii) **Transfer of Pension fund** from the date of your joining in BHEL or from the date of start of scheme i.e. 01.01.2007, be transferred to your NPS Ac. No.(PRAN) 110121482966 or paid directly to your SBI Ac. No. 10667912051.*

Both the issues raised in the representation have been examined in consideration to DPE guidelines / company policy on the matter.

⁵ “NHDC”



A. Transfer of Half Pay Leave;

The Company policy provides that carry forward of leave at the credit of employees in earlier organisation, on joining the services of the company, is allowed only in cases of employees who join the company from central government and other Public sector undertakings, provided management of both the organisations agree to such transfer of services and a provision of transfer of half pay leaves is also available in rules of both the organisations.

Carry forward/ transfer of leave, however, is not permitted in cases of employees who leave the company for joining the other organisation.

BPE OM No. 2(2)/85-BPE (WC) dated 25th January, 1988 provides for the carry forward of leave in the case of employees moving from one public enterprise to the other with the consent of both the Managements, which is further subject to the condition that both the Organisations should contain a specific provision permitting transfer and acceptance of the liability for the balance of Half pay leave standing to the credit of the employee on the date of resignation.

Since BHEL Rules do not contain the provision for transfer of leave liability to other organisations, the request for transfer of leave balance in your case to National Handlooms Development Corporation Ltd. is not permissible.

Further transfer of services of one Govt. Department / Public Sector Organisation to another cannot be treated at par with an employee who has submitted his resignation on his own volition No Objection Certificate from the Company for appearing in interview in other Govt, organisation is provided merely to meet application requirement of such prospective employers.

National Handloom Development Corporation/ any other Govt. Department has not approached the company to transfer / spare your services, in Govt. interests, at any point of time nor BHEL intended to transfer services of the BHEL employee to National Handloom Development Corporation/any Govt. Deptt.

The company is therefore constrained to accede to your request for transfer of Half pay leave or equivalent amount to National Handloom Development Corporation.

Further, with regard to your request that in case transfer of leave to National Handloom Development Corporation is not possible, an equivalent amount be paid in lieu thereof, it is informed that there is no provision of encashment of Half Pay Leave on resignation in company rules / DPE guidelines.

It may further be noted that corrective action has been initiated and refund of the amount transferred towards Half Pay Leave in case of Shri Pradip Kumar Das Staff no 3502376 has been sought from Rural Electrification Corporation Ltd., New Delhi.



A. Transfer of Pension Fund to NPS or to his Bank Account:

The eligibility condition for pension corpus under BHEL Employees Pension Scheme inter alia provides as under:

4.1 Regular employees of the Company, who superannuate from the Company on or after 01/01/2007, with minimum 15 years of continuous service. Note: Service rendered more than 14 years & 6 months but less than 15 years will not be treated as 15 years. The services rendered as temporary workers against sanctioned vacancy will be counted for 15 years of service.

4.3 Superannuation on account of early retirement by the Company on or after 01.01.2007, with minimum 15 years of continuous service.

4.8 "Severance of service by the employee on account of resignation, termination, compulsory retirement as a penalty, dismissal / removal because of disciplinary proceedings, will not be eligible under the Scheme. Cases of voluntary retirement under specific VRS/VSS scheme, would be examined separately. However, cases of employees availing Voluntary (premature) retirement if otherwise eligible for pension, will be covered under BIHEL Employees' Pension Scheme."

In terms of the approved scheme of the company, in the event of resignation the pension corpus is NOT payable to an employee nor can it be transferred to another organisation.

Further, there is no provision under the scheme for an employee to make his /her own contribution to pension fund. BHEL Employees' Pension Scheme is purely and entirely company funded scheme. It is also pertinent to mention that there is no provision under BHEL Pension Scheme for commutation of pension or draw reduced pension / pension corpus or encashment payment of pension corpus to an employee in events other than specified for eligibility of pension corpus.

*DPE OM F.No. W-02/0017/2014-DPE-(WC)-G1-XI/14 dated 21st May 2014 on Pension Scheme and Post Superannuation Medical Benefits in CPSEs, clearly specifies that "In the event of any employee resigning from the services of CPSE and joining another CPSE having broadly similar schemes, the entire amount of employer's and employee's contribution along with the interest accrued thereon can be transferred to such CPSE. **However, employees who resign from CPSE to join another CPSE, not having similar schemes, or any organisation not being a CPSE (irrespective of whether such scheme exists in that organisation), shall not be allowed the benefit of transferring their accumulated fund under these schemes. However, the employee's contribution along with accrued interests shall be refundable to the employees."***

Since there is no employee contribution to BHEL Pension Fund, in terms of BHEL Pension Scheme and also in terms of DPE Guidelines, there is no amount available in BHEL Pension Fund which was created out of your own contribution and therefore question of refund of your contribution does not arise. Accordingly, your request for payment of pension fund to your



Bank Account cannot be acceded to.

It is also informed that BHEL Employees Pension Scheme and Pension Scheme of National Handloom Development Corporation, your current employer are entirely different BHEL Employee Pension Scheme is operated on group corpus basis whereas National Handloom Development Corporation / NPS, Scheme is individual account based scheme wherein employer and employee both can contribute. Under BHEL Pension Scheme individual account is not created, maintained or operated for crediting of pension contributions.

Under BHEL Scheme, an employee Is eligible for individual pension corpus only at the time of retirement/ superannuation/ death. In such an event, individual pension corpus is calculated based on funds viability and there is no fund earmarked to an individual employee during his/her service Since Pension schemes of both organisations are completely different and dissimilar, It is not feasible to transfer or earmark the pension corpus in name of any individual for transfer to another organisation or for commutation / encashment.

*However, since you had applied to National Handloom Development Corporation through proper channel, and there is continuity of service in the company and National Handloom Development Corporation, in terms of OM No. W-02/0017/2014-DPE (WC)-GL-IV/17 dated 1st February, 2017 the benefits of past service in BHEL, for the **purpose of reckoning of eligibility period** for superannuation benefits such as gratuity etc., shall be made available to you by National Handloom Development Corporation, in the event of leaving their services, subject to scheme / rules framed by them. Furthermore, even in case of government service, there is forfeiture of Pension at the time of resignation and the amount of corpus is not returned to the individual. Pension in their case as well is regulated only at the time of superannuation from Government service.”*

W.P.(C) 12110/2018 [Shri Mukul Agarwal]

“Pursuant to the Order of the High Court at Delhi dated 27th April, 2018 in the matter of W.P. (C) no. 4368 of 2018-Sh. Mukul Agarwal Vs. Bharat Heavy Electricals Limited, New Delhi, your representation dated 15th May 2018 has since been received in BHEL House Siri Fort New Delhi on 19.05.2018. In your representation, the following aspects have been raised:

*i). **Transfer of Half Pay Leave** balance of 265 days and Earned leave of 63 days standing to the credit at the time of your resignation from the services of BHEL to his new employer REC Ltd. or equivalent amount be paid to him, and*

*ii) **Transfer of Pension fund** from the date of your joining in BHEL or from*



the date of start of scheme i.e. 01.01.2007, be transferred to your NPS Ac. No.(PRAN) 1100117394231 or paid directly to your SBI Ac. No. 10173161692.

Both the issues raised in the representation have been examined in consideration to DPE guidelines / company policy on the matter.

A. Transfer of Half Pay Leave:

The Company policy provides that carry forward of leave at the credit of employees in earlier organisation, enjoining the services of the company, is allowed only in cases of employees who join the company from central government and other Public sector undertakings, provided management of both the organisations agree to such transfer of services and a provision of transfer of half pay leaves is also available in rules of both the organisations.

Carry forward/ transfer of leave (HPL/EL), however, is not permitted in case of employees who leave the company for joining the other organisation.

BPE OM No. 2(2)/85-BPE (WC) dated 25th January, 1988 provides for the carry forward of leave in the case of employees moving from one public enterprise to the other with the consent of both the Managements, which is further subject to the condition that both the Organisations should contain a specific provision permitting transfer and acceptance of the liability for the balance of Half pay leave standing to the credit of the employee on the date of resignation.

Since BHEL Rules do not contain the provision for transfer of leave liability to other organisations, the request for transfer of leave balance in your case to REC Ltd. is not permissible.

Further, transfer of services of one Govt. Department / Public Sector Organisation to another cannot be treated at par with resignation of an employee on its volition. No Objection Certificate from the Company for appearing in interview in other Govt. organisation is provided merely to meet application requirement of such prospective employers.

REC Ltd / any other Govt. Department has not approached the company to transfer / spare your services, in Govt. interests, at any point of time nor BHEL intended to transfer services of the BHEL employee to REC Ltd./ any Govt. Deptt.

The company is therefore constrained to accede to the request for transfer of Half pay leave / EL or equivalent amount to REC Ltd.

Further, with regard to your request that in case transfer of leave to REC is not possible, an equivalent amount be paid in lieu thereof, it is informed that there is no provision of encashment of Half Pay Leave on resignation in company rules / DPE guidelines.

It may further be noted that corrective action has been Initiated and refund of the amount transferred towards Half Pay Leave in case of Shri Pradip Kumar Das Staff no 3502376 has been sought from Rural Electrification



Corporation Ltd., New Delhi.

A. Transfer of Pension Fund to NPS or to his Bank Account:

The eligibility condition for pension corpus under BHEL Employees Pension Scheme inter alia provides as under:

4.1 Regular employees of the Company, who superannuate from the Company on or after 01/01/2007, with minimum 15 years of continuous service. Note: Service rendered more than 14 years & 6 months but less than 15 years will not be treated as 15 years. The services rendered as temporary workers against sanctioned vacancy will be counted for 15 years of service.

4.3 Superannuation on account of early retirement by the Company on or after 01.01.2007, with minimum 15 years of continuous service.

4.8 "Severance of service by the employee on account of resignation, termination, compulsory retirement as a penalty, dismissal / removal because of disciplinary proceedings, will not be eligible under the Scheme. Cases of voluntary retirement under specific VRS/VSS scheme, would be examined separately. However, cases of employees availing Voluntary (premature) retirement if otherwise eligible for pension, will be covered under BHEL Employees' Pension Scheme."

In terms of the approved scheme of the company, in the event of resignation the pension corpus is NOT payable to an employee nor can it be transferred to another organisation.

Further, there is no provision under the scheme for an employee to make his /her own contribution to pension fund. BHEL Employees' Pension Scheme is purely and entirely company funded scheme. It is also pertinent to mention that there is no provision under BHEL Pension Scheme for commutation of pension or draw reduced pension / pension corpus or encashment/ payment of pension corpus to an employee in events other than specified for eligibility of pension corpus.

DPE OM F.No. W-02/0017/2014-DPE-(WC)-GI-XI/14 dated 21st May 2014 on Introduction of Pension Scheme and Post Superannuation Medical Benefits in CPSEs, clearly specifies that "In the event of any employee resigning from the services of CPSE and joining another CPSE having broadly similar schemes, the entire amount of employer's and employee's contribution along with the interest accrued thereon can be transferred to such CPSE. **However, employees who resign from CPSE to join another CPSE, not having similar schemes, or any organisation not being a CPSE (irrespective of whether such scheme exists in that organisation), shall not be allowed the benefit of transferring their accumulated fund under these schemes. However, the employee's contribution along with accrued interests shall be refundable to the employees.**"

Since there is no employee contribution to BHEL Pension Fund, in terms of BHEL Pension Scheme and also in terms of DPE Guidelines, there is no amount available in BHEL Pension Fund which was created out of your own contribution and therefore question of refund of your contribution does not arise. Accordingly, your request for payment of pension fund to your



Bank Account cannot be acceded.

It is also informed that BHEL Employees Pension Scheme and Pension Scheme of Rural Electrification Corporation Ltd., your current employer are entirely different. BHEL Employee Pension Scheme is operated on group corpus basis whereas REC Scheme is individual account based scheme wherein employer and employee both can contribute. Under BHEL Pension Scheme individual account is not created, maintained or operated for crediting of pension contributions.

Under BHEL Scheme, an employee is eligible for individual pension corpus only at the time of retirement/ superannuation/ death. In such an event, individual pension corpus is calculated based on funds viability and there is no fund earmarked to an individual employee during his/her service. Since Pension schemes of both organisations are completely different and dissimilar, it is not possible or feasible to transfer or earmark the pension corpus in name of any individual for transfer to another organisation or for commutation / encashment.

However, since you had applied to REC ltd. through proper channel and there is continuity of service in the company and REC, in terms of OM No. W-02/0017/2014- DPE (WC)-GL-IV/17 dated 1st February, 2017 the benefits of past service in BHEL, for the purpose of reckoning of eligibility period for superannuation benefits such as gratuity etc., shall be made available to you by REC, in the event of leaving their services, subject to scheme / rules framed by them.

Furthermore, even in case of government service, there is forfeiture of Pension at the time of resignation and the amount of corpus is not returned to the individual. Pension in their case as well is regulated only at the time of superannuation from Government service.”

THE GOVERNING DOCUMENTS

BPE OM dated 25th January, 1988

6. This OM deals with “carry forward of leave in the case of employees moving from one public enterprise to the other”. It contemplates transfer of accumulated sick leave/half-pay leave to the transferee public sector enterprise, subject to the transfer being with consent of managements of both enterprises, or under Government/PESB direction, and subject to discharge of liability by the transferor through a lump sum corresponding to leave salary for the period transferred.



DPE OM dated 21st May, 2014 and DPE OM dated 1st February, 2017

7. The OM dated 21st May, 2014 provides clarifications on pension and post-superannuation medical benefits in CPSEs. Clause (x) speaks to a situation where an employee resigns from a CPSE and joins another CPSE having broadly similar schemes, permitting transfer of the entire amount of employer's and employee's contribution with interest. It also states that where the joining is in an organisation not having similar schemes or not being a CPSE, transfer is not allowed, but employee contribution with interest is refundable.

8. Clause (xvi) of the 21st May, 2014 OM states that in cases of resignation (excluding resignation covered under "technical formality clause"), and certain penalty exits, the annuity would be based only on member's contributions, if any, and interest thereon.

9. The DPE OM dated 1st February, 2017 clarifies the meaning of "technical formality". It states that resignations under the "technical formality clause" include resignations where a CPSE employee applied for a post in the same or another CPSE through proper channel and, on selection, is required to resign the previous post for administrative reasons. The OM states that the clarification is for the purposes of superannuation benefit schemes implemented in CPSEs in light of earlier DPE guidelines.

BHEL Personnel Manual, Volume II, Section E-1 (Carry forward of leave)

10. The Petitioners rely on Clause 8.2 of the Personnel Manual which, in substance, adopts DPE guidelines for carry forward of leave "in the case of employees moving from one public sector enterprise to the other with the consent of both the Managements", while also referencing the condition that both organisations' rules should contain a specific provision permitting



transfer and acceptance of liability, and that the transferor pays a lump sum equal to leave salary for the period of leave transferred.

BHEL Employees' Pension Scheme (Revised with effect from 1st March, 2016), and amendment dated 20th February, 2021 effective from 1st January, 2017

11. The 2016 scheme states it is a defined contribution plan with contributions by the company within a prescribed ceiling. It identifies eligibility categories for “pension corpus from the company”. Clause 4.8 excludes “severance of service by the employee on account of resignation” from eligibility.

12. The 20th February, 2021 Corporate HR Circular amends Clause 4 with effect from 1st January, 2017. The revised Clause 4.8 states that, with effect from 1st January, 2017, employees separated on or after 1st January, 2017 on attaining age of superannuation, retirement, premature retirement (company-initiated or employee-initiated), compulsory retirement other than as a penalty, voluntary retirement, voluntary separation scheme, resignation, and removal other than as a penalty shall be eligible for pension under the scheme. It also states that transfer of pension corpus for purchase of annuity or to NPS account would be on request.

RIVAL CONTENTIONS IN BRIEF

13. The Petitioners contend that their resignations were not voluntary severance in the ordinary sense. Each applied through proper channel to another Government of India undertaking/CPSE, was selected, and was required to tender resignation only as an administrative formality to enable joining the new post. They submit that the governing public enterprise policy recognises such movement and preserves service-linked benefits, and



that BHEL has wrongly treated their exits as disentitling “resignation” cases.

14. On transfer of leaves, the Petitioners rely on the BPE Office Memorandum dated 25th January, 1988 and Clause 8.2 of BHEL’s Personnel Manual, which, according to them, permit transfer of HPL in the case of employees moving from one public enterprise to another with consent of both managements, subject to discharge of leave liability by remittance of the equivalent leave salary. They also point to instances where BHEL transferred leave liability (including HPL) to another CPSE and submit that denial in their case is arbitrary. In Naveen Kumar Gupta’s case, it is urged that NHDC had expressly sought transfer/credit of HPL, yet BHEL refused; he therefore seeks transfer, and if transfer is not possible, payment of the equivalent amount.

15. On pension, the Petitioners rely on the DPE OM dated 21st May, 2014 and the clarificatory DPE OM dated 1st February, 2017 on “technical formality”. They submit that once the resignation is understood as technical formality in CPSE-to-CPSE move through a proper-channel, it cannot be used to forfeit the benefit of employer contribution under a defined contribution superannuation framework. They also rely on the order dated 27th April, 2018 passed by this Court in the earlier writ petitions, which clarified that if the pension schemes are not comparable, pension has to be transferred to NPS or released to the concerned employee.

16. BHEL contests the petitions and supports the orders dated 2nd July, 2018. It submits that, as a matter of its leave rules and policy, carry forward of leave is contemplated only for employees joining BHEL from Central Government/other PSUs, and that outward transfer of HPL on resignation is not permitted. It contends that Clause 8.2 of the Personnel Manual is



conditional, and since BHEL's leave rules contain no enabling provision for transfer of HPL liability, the Petitioners cannot claim transfer. BHEL also submits that an NOC or forwarding of an application through proper channel is issued only to meet the requirements of the prospective employer and cannot be equated with "consent of management" for transfer of service.

17. On pension, BHEL submits that its Employees' Pension Scheme is a company-funded superannuation benefit operated through a common corpus/trust and purchase of annuity, and cannot be equated with Government pension. It relies on Clause 4.8 of the scheme which excludes resignation cases, and argues that no transfer or refund can arise since employees make no contribution and no individual account is maintained during service. BHEL also argues that the DPE framework contemplates transfer only where schemes are broadly similar, which, according to BHEL, is not the case with NPS/NHDC. It further contends that the DPE OM dated 1st February, 2017 cannot assist the Petitioners who resigned in 2015 and that any later change in policy operates prospectively.

18. On these rival positions based on the pleadings, the material on record and the submissions advanced, following questions arise for determination:

- (i) Do the guidelines issued by the Bureau/Department of Public Enterprises on carry forward/transfer of leave and on superannuation benefit schemes apply to BHEL and, if so, to what extent?
- (ii) On the leave claim, did BHEL lawfully refuse to transfer the Half Pay Leave ("HPL") balance or to otherwise discharge the leave liability, in light of the BPE Office Memorandum dated 25th January, 1988 and the relevant provisions of BHEL's Personnel Manual/leave policy?
- (iii) On pension, can BHEL deny any transfer or accounting of pension



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corpus/contribution where an employee resigns after selection through proper channel to another CPSE/Government of India undertaking, by treating such resignation as a disqualifying severance, despite the DPE guidance on “technical formality”?

(iv) Is BHEL entitled to rely on 1st January, 2017 as the cut-off date to resist claims arising from separations in 2015, particularly where the controversy remained alive through representations and judicial directions culminating in the speaking orders dated 2nd July, 2018?

ANALYSIS

Issue (i): Applicability of BPE/DPE OMs to BHEL

19. BHEL is a CPSE. The DPE issues guidelines on pay revision and associated superannuation benefits to CPSEs. BHEL itself asserts in its counter affidavit that its pension scheme was introduced as part of wage revision as per DPE guidelines. The said paragraph reads as follows:

“That it is pertinent to clarify that unlike in Govt., the employees of the company are member of contributory provident fund scheme under Employees Provident Fund & Miscellaneous provisions Act, 1952 Pensionary benefits under BHEL Employees’ Pension Scheme is as an additional superannuation benefit and has been introduced as part of wage revision w.e.f. 01.01.2017, as per DPE guidelines, The pension scheme is nothing but a mere purchase of annuities from Insurance Companies on retirement/ death and cannot be compared with pension scheme in Govt. where pension is disbursed from the Consolidated Funds of India.”

20. This assertion has two consequences. First, BHEL cannot simultaneously adopt DPE guidelines as the source of authority for creating and operating a pension scheme and then disown the interpretive framework that accompanies those guidelines when disputes arise about mobility and continuity.

21. Second, where BHEL’s own internal policy instrument (such as its



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Personnel Manual) expressly states that DPE guidelines “will be followed” in a defined class of cases, the guidelines are not being invoked as a mere external persuasion. They enter the normative field through incorporation by reference. The task then is to reconcile the internal instrument with the Government guidelines rather than to treat them as strangers.

22. This is especially so in matters which affect mobility within public service. CPSEs, unlike purely private entities, operate within a regulated ecosystem where the State’s policy seeks to balance organisational autonomy with fair treatment of personnel who move within the public sector under lawful process.

Issue (ii): HPL transfer or discharge of liability

23. Two strands appear in BHEL’s reasoning in the speaking order dated 2nd July, 2018. One is textual: BHEL says its leave rules do not contain an enabling provision for transfer of leave liability to another organisation, and therefore the BPE OM dated 25th January, 1988 cannot be operationalised. The other is factual: BHEL says this was not a “transfer of service” with management consent but a voluntary resignation, and that NOC/proper-channel forwarding does not constitute “consent”.

24. Neither strand answers the Petitioners’ case in a manner that can be sustained. The Personnel Manual clause invoked by the Petitioners is not confined to employees joining BHEL. Clause 8.2 reads as follows;

*“8.2 In the matter of carry forward of leave in the case of employees moving from one public enterprise to the other with the consent of both the managements, **the guidelines issued by the DPE from time to time will be followed.** This is subject to the condition that:*

a) Leave rules of both the Organisations should contain a specific provision permitting transfer and acceptance on transfer of the liability for the balance of earned leave and half-pay leave/sick leave standing to the credit of the employee on the date of resignation.



b) The transferor Organisation arranges with the transferee organisation to pay to the latter a lumpsum amount equal to the leave salary for the period of such leave transferred.”

This clause speaks of employees “moving from one public sector enterprise to the other with the consent of both the Managements” and then declares that DPE guidelines will be followed, subject to the conditions recorded. BHEL seeks to read into the policy a unilateral restriction: that leave carry forward is permitted only for inward movement, not for outward movement. That restriction does not emerge from the text relied upon.

25. The insistence on a separate “enabling provision” in leave rules cannot be used as a device to negate the Personnel Manual itself. If the Manual forms part of the service administration framework, and it states that DPE guidelines will be followed in the defined class of movements, BHEL cannot adopt the Manual for administration and then, when the employee seeks enforcement of the same clause, respond that there is “no provision”. The Manual clause is itself a provision. It may require operational steps, but it is not a nullity.

26. The “consent” point requires a proper understanding of CPSE mobility. A CPSE does not typically “transfer” an employee to another CPSE in the same manner as inter-departmental Government transfers. The common mechanism is: employee applies through proper channel, the parent organisation forwards the application after internal scrutiny, and if selected, the employee is released on resignation for administrative reasons. That is precisely what DPE later called “technical formality”.

27. In these circumstances, “consent” of management for movement is best tested by the parent organisation’s conduct. BHEL forwarded the



application through proper channel. It accepted the resignation without recording any reservation that HPL transfer would not be permitted or that the employee would lose the benefit as a consequence of the mode of exit. It relieved the employee to join another Government undertaking. This is not a case of an employee slipping out in defiance of the employer's process. The employer participated in the process and enabled it.

28. BHEL's attempt to reduce proper-channel forwarding to a mere "application requirement" misses the point. Proper-channel forwarding is not a clerical courtesy. It reflects institutional permission for the employee to compete for the post and, if selected, for the employee to be released subject to exigencies. That institutional permission is the relevant "consent" within the CPSE mobility framework.

29. In Mukul Agarwal's case, this issue is largely academic because his leave has been transferred. However, this is significant, although it cannot by itself create a right, contrary to rules. It does demonstrate that BHEL has, at least once, operationalised the concept of transferring leave liability outwards to another CPSE (BHEL's own letter dated 3rd November, 2010 remitting a cheque to REC for leave transfer in the case of Pradip Kumar Das). Further, BHEL's subsequent description of that act as an "inadvertent payment" and its attempt to seek refund does not resolve the present dispute. If the earlier act was consistent with the governing framework, it is not "inadvertent". If it was inconsistent, BHEL must show how the present refusal squares with the Personnel Manual clause and the BPE OM.

30. BHEL's refusal in Naveen Kumar Gupta's case is unsustainable in light of Clause 8.2 of the Personnel Manual read with the BPE Office Memorandum dated 25th January, 1988. The reasoning that there is "no



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provision” does not grapple with BHEL’s own policy which adopts the DPE framework for CPSE-to-CPSE movement on consent of both managements. The leave liability, therefore, must be discharged in the manner contemplated by the policy, namely by transfer to the transferee organisation wherever feasible, accompanied by remittance of a lump sum equal to the leave salary for the period of leave transferred. Where, owing to passage of time or intervening changes in service, such transfer is not practicable, BHEL shall discharge the same liability by paying the equivalent leave salary directly to the employee.

31. In Mukul Agarwal’s case, since the leave has already been transferred to the transferee organisation, that transfer shall be treated as valid discharge of the liability and shall not be reopened or sought to be reversed on the basis of any later view that the transfer was “inadvertent” or erroneous, particularly where the movement was through proper channel and the transfer was processed through official communications between the two CPSEs.

Issue (iii): Pension claim and “technical resignation”

32. BHEL rests on Clause 4.8 of its pension scheme and says resignation cases are outside eligibility, and therefore there is nothing to transfer. This clause reads as follows;

“4.8 Severance of service by the employee on account of resignation, termination, compulsory retirement as a penalty, dismissal / removal because of disciplinary proceedings, will not be eligible under the Scheme. Cases of voluntary retirement under specific VRS/VSS scheme, would be examined separately. However, cases of employees availing Voluntary (premature) retirement if otherwise eligible for pension, will be covered under BHEL Employees’ Pension Scheme.”

The Petitioners rely on DPE guidance which recognises that resignation in a proper-channel selection scenario is a technical formality. They also rely on



the nature of the scheme as a defined contribution plan funded by the company within an identified percentage ceiling.

33. On this aspect, following points are critical:

The meaning of resignation in a public sector mobility setting

33.1 In ordinary private employment, resignation may represent a complete severance chosen by the employee, often unrelated to public interest. The CPSE setting is different. When an employee applies through proper channel to a post in another CPSE or Government undertaking, and the parent organisation forwards the application and releases the employee on resignation for administrative reasons, the resignation serves as the legal form by which movement is effected. The substance is not a repudiation of service. It is a structured transition within the public sector framework. Technical resignation is thus a service-law shorthand used mainly in Government and PSU contexts. It refers to a resignation that is treated as a technical formality because the employee is moving from one Government post to another Government post, with proper permission, and the administrative system requires a “resignation” from the old post to enable appointment to the new one.

33.2 DPE’s clarification dated 1st February, 2017 captures this substance. It does not invent the practice. It names and defines it. The practice existed long before the OM, as the earlier DoPT OM on technical resignation and lien and the public sector movement guidelines show. When a later OM describes itself as a “clarification”, the Court’s task is to examine whether it merely explains the meaning of an existing category or creates a new category. The language of the 1st February, 2017 OM points to explanation, not creation. The same is extracted for ease of reference:



“OFFICE MEMORANDUM

Subject:-Superannuation Benefits Schemes for employees of CPSEs - clarification regarding Technical Formality

The undersigned is directed to refer to this Department’s OM of even number dated 21.05.2014 regarding clarification of Pension and superannuation Medical Benefits Scheme in CPSEs.

2. Para (xvi) of the said OM specifies that in cases of resignation (excluding resignation covered under “technical formality clause”) and compulsory retirement, removal, dismissal because of disciplinary proceedings, the annuity would be based only on member’s contributions, if any, and interest thereon. However, the meaning of the term ‘Technical Formality clause’ has not been clarified in the said O.M.

3. Resignations under ‘Technical Formality clause’ includes resignations in cases where a Central Public Sector Enterprises (CPSE) employee has applied for a post in the same or other CPSE through proper channel and on selection to the said post, is required to resign the previous post for administrative reasons. Resignation submitted for other reasons or if competent authority has not allowed him to forward his application through proper channel is a resignation and benefit of past service will not be admissible

4. The above clarification is only for the purposes of Superannuation Benefits Schemes implemented in CPSEs in light of DPE’s OM dated 26.11.2008 and 21.05.2014 and subsequent DPE guidelines on Superannuation Benefits Schemes.

5. All the administrative Ministries/Departments are requested to bring the above to the notice of the CPSEs under their administrative control.”

33.3 BHEL’s principal response is temporal: it says the Petitioner resigned on 17th October, 2015 and therefore cannot rely on the DPE OM dated 1st February, 2017. That response is too blunt. A clarification, in law and administrative practice, ordinarily operates as an exposition of what the governing framework already contemplated, unless it expressly creates a new right or confines itself to future cases. The DPE OM dated 1st February, 2017 does neither. It records that the scope of “technical formality” had not been clarified and clarifies it by describing a proper-channel CPSE-to-CPSE movement which requires resignation for administrative reasons. This



reading is also consistent with the subsequent policy direction in the CPSE wage-revision/superannuation framework, which progressively moved away from rigid severance-based exclusions and strengthened the continuity rationale for employees moving within CPSEs. The clarification, therefore, is a legitimate aid to construing the earlier DPE regime while deciding a dispute that remained live and was adjudicated by a speaking order in 2018.

33.4 This distinction is decisive in cases like the present where the claim remained alive through representations and judicial directions. Even if the Petitioners resigned earlier, the decision on their representations was taken in 2018. The authority was required to interpret the applicable policy framework correctly when deciding a live dispute. A later clarification of meaning is a legitimate aid to interpretation of the very expression which the 2014 OM used.

The interaction between DPE framework and BHEL scheme text

34. BHEL says it adopted a pension scheme as part of wage revision as per DPE guidelines. The DPE guidelines, particularly the 21st May, 2014 OM, contemplate situations of resignation and provide a distinct treatment for resignations falling under “technical formality”. The scheme text in BHEL excluding resignation, cannot be read in isolation from the DPE framework which BHEL says it implemented.

35. The correct harmonisation is this: Clause 4.8 addresses resignation as a severance in the ordinary sense. It cannot be applied mechanically to technical formality resignations which are, in substance, a mode of CPSE-to-CPSE movement through proper channel. To apply the disqualification to technical formality resignations would defeat the very category recognised by DPE and would penalise mobility which the Government framework, for



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good administrative reasons, has historically accommodated.

36. BHEL's speaking order tries to treat "technical resignation" as irrelevant on the footing that it is applicable only for superannuation benefits and not for leave, and in any event pension schemes are different. This line of reasoning does not engage with the central point: the category of technical formality is invoked to determine whether resignation is a disqualifying severance at all. Once the resignation is treated as a technical formality, it ceases to operate as a disqualification for benefits that are meant to continue when an employee moves from one CPSE to another.

The "group corpus" argument

37. BHEL also contends that no individual account is maintained under the scheme and that employees make no contribution, and therefore nothing can be transferred. This does not justify a complete denial of the claim. The fact that the scheme operates through a common corpus rather than individual accounts may affect the manner of computation, but it does not make it impossible to determine or transfer the benefit attributable to an employee.

38. This is reinforced by BHEL's later amendment (effective 1st January, 2017) which explicitly contemplates transfer of pension corpus to NPS on resignation on request. That amendment demonstrates feasibility in principle. It also reveals that the "no individual account" feature was not an immutable structural bar. It was a choice which could be adjusted by policy. BHEL's stance in 2018 that transfer is "not feasible" because the scheme is group corpus cannot stand alongside its own later policy allowing transfer to NPS on resignation.

39. The proper question, therefore, is not feasibility. It is entitlement in



the relevant category and, if entitled, the method of quantification and transfer.

40. BHEL's reliance on the expression "broadly similar schemes" in the DPE OM dated 21st May, 2014 also does not advance its case. The guideline does not require that the schemes be identical in structure; it only refers to broad similarity for the purpose of administrative transfer. The use of the word "broadly" itself indicates that the condition is one of practical compatibility rather than strict equivalence. In the present case, the later amendment to the BHEL scheme permitting transfer of pension corpus to the NPS demonstrates that a difference in scheme architecture is not, by itself, a barrier to transfer but a matter capable of administrative adjustment. Where transfer is administratively feasible, differences in scheme design cannot by themselves justify a complete denial of the benefit.

Issue (iv): The 1st January, 2017 cut-off

41. By a Corporate HR Circular dated 20th February, 2021, BHEL amended Clause 4 of the BHEL Employees' Pension Scheme with effect from 1st January, 2017. The amendment expanded the categories of employees eligible for pension under the scheme and, *inter alia*, brought resignation within the scope of eligibility and permitted transfer of the pension corpus on request. As per the 2021 circular, the amendment is effective from 1st January, 2017. BHEL argues that, since the Petitioners resigned in 2015, they cannot claim the benefit.

42. A cut-off date in wage revision and superannuation schemes is not, by itself, suspect. Courts do not re-write fiscal policy simply because a date produces hard cases. However, a cut-off cannot be used as a blanket shield where the dispute is not about creation of a new benefit but about correct



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classification under an existing framework.

43. Here, the Petitioners' case is not "apply the new benefit retroactively because it is generous". Their core case is "our resignations were technical formalities under the CPSE mobility framework, and should not have been treated as disqualifying severance even under the earlier DPE framework". The cut-off therefore does not answer the claim. At best, it shows that BHEL later broadened eligibility on resignation for separations on or after 1st January, 2017. It does not establish that technical formality resignations before that date were necessarily to be treated as ordinary resignations for all purposes.

44. Moreover, the dispute was kept alive. Representations were pending. This Court's order dated 27th April, 2018 required a speaking decision. The decision maker in 2018 was expected to apply correct interpretive principles. It was not a closed past transaction being reopened for the first time in 2023. It was an ongoing dispute in which the authority was called upon to explain its position.

Relief and moulding

45. The remedies must be workable. For leave, Mukul's case is resolved. For Naveen, the passage of time and his later move out of NHDC to another organisation makes a strict "credit in leave account of transferee" difficult. A monetary discharge pegged to leave salary, which is the measure used by the policy framework for transfer of leave liability, is an appropriate course.

46. For pension, the relief must respect the nature of the scheme. A direction to "release pension as if superannuated" would be wrong. The correct relief is a direction to compute the pension corpus attributable under the scheme architecture for the period recognised by the scheme and to



transfer that computed corpus to NPS on request, treating the resignation as technical formality. If actuarial computation is required, it must be undertaken by the Trust/Fund Manager(s) under the scheme with reasons and records. BHEL cannot retain the entire benefit as a windfall when the employee's exit is within the CPSE mobility framework and the Government policy recognises continuity benefits in such cases.

FINDINGS

47. The Court records the following findings:

- (i) The Petitioners applied through proper channel for posts in Government of India undertakings/CPSEs. BHEL forwarded their applications and released them upon selection. Their resignations, in substance, were resignations as technical formality for administrative reasons. They fall within the meaning clarified by DPE OM dated 1st February, 2017, which is properly read as clarificatory of the category used in DPE OM dated 21st May, 2014.
- (ii) In the context of CPSE mobility, BHEL's attempt to treat proper-channel forwarding and release as irrelevant to "consent" is artificial. The relevant consent is institutional permission and facilitation of movement, not a separate "transfer order" in the Government departmental sense.
- (iii) On HPL, BHEL's refusal in Naveen Kumar Gupta's case is unsustainable in light of its Personnel Manual clause 8.2 read with the BPE OM dated 25th January, 1988. The reasoning that there is "no provision" fails to engage with the internal incorporation of DPE guidelines. The liability should be discharged by transfer to the transferee organisation wherever feasible. Where, due to passage of time, transfer is not practicable, the liability must be discharged by payment of the equivalent leave salary



for the relevant period, which is the method the policy uses for discharging the leave liability.

(iv) On pension, BHEL cannot reject the claim solely by invoking Clause 4.8 as if all resignations are alike. Clause 4.8 must be construed in harmony with the DPE framework and cannot be applied to technical formality resignations in a manner that defeats recognised CPSE mobility benefits. The “group corpus” and “no individual account” structure does not justify a total refusal. It calls for a method of computation.

(v) The 1st January, 2017 cut-off in BHEL’s later amendment does not defeat the Petitioners’ entitlement where the claim rests on correct classification as technical formality and on interpretation of the DPE framework which BHEL asserts it implemented. The cut-off may govern the new expanded eligibility as a distinct policy layer, but it cannot be used to deny correct treatment under the earlier framework in a live dispute.

RELIEF

48. The writ petitions are allowed to the extent indicated below, by a common order.

Leave (HPL)

48.1 In W.P.(C) 12110 of 2018 (Mukul Agarwal), the parties state that HPL has already been transferred to the transferee organisation. No further direction is required on the leave component. If any consequential reconciliation remains between the two organisations, it shall be completed within eight weeks.

48.2 In W.P.(C) 12069 of 2018 (Naveen Kumar Gupta), BHEL shall, within eight weeks:

(a) ascertain from NHDC whether that organisation will accept



transfer/credit of the Petitioner's HPL balance standing to his credit as on 17th October, 2015, in terms of the BPE OM dated 25th January, 1988 and the policy framework reflected in BHEL Personnel Manual clause 8.2; and

(b) if the transferee organisation agrees to accept the transfer/credit, BHEL shall discharge the leave liability by remitting to that organisation a lump sum equal to the leave salary for the period of HPL sought to be carried forward, computed on the basis of the Petitioner's admissible pay components as on 17th October, 2015, along with an explanatory computation sheet; and

(c) if the transferee organisation declines, or if such transfer has become impracticable for reasons beyond the Petitioner's control due to passage of time, BHEL shall pay the same computed lump sum directly to the Petitioner within the same eight-week period.

Pension corpus

49. For both Petitioners, BHEL shall, within six weeks:

(a) treat the Petitioners' resignations, tendered after proper-channel selection, as technical formality resignations within the CPSE mobility framework;

(b) cause the BHEL Employees' Superannuation Benefit Fund/Trust and the Fund Manager(s)/Actuary (as the scheme provides) to compute the notional individual pension corpus attributable to each Petitioner as on the date of resignation, applying the scheme's operative formulae and rules as would be used to determine pension corpus upon prescribed separation, with service reckoned up to the date of resignation, and with a reasoned computation note;

(c) transfer the computed corpus to the Petitioner's NPS account (PRAN)



if furnished, or in the alternative, where the Petitioner opts for transfer to the successor CPSE scheme and that CPSE agrees to accept it, transfer it to such scheme, subject to regulatory compliances; and

(d) if BHEL contends that any portion cannot lawfully be transferred due to a specific statutory or trust-deed bar, BHEL shall place on record the precise clause relied upon, the legal basis for that construction, and a proposed alternative that ensures the Petitioner is not left remediless, and the competent authority shall pass a supplementary speaking decision within the same twelve-week period.

50. The speaking order dated 2nd July, 2018 shall stand set aside to the extent it rejects the claims contrary to the findings recorded in this judgment. Any fresh decision under clause 59(d) shall be confined to quantification and modality and shall not re-open entitlement.

51. If BHEL fails to comply within the timelines fixed above, the amounts payable under clauses 58(c) and 59(c) shall carry simple interest at the rate of 6 per cent per annum from the date of default until payment.

52. The petitions are allowed in above terms. Pending applications, if any, stand disposed of.

SANJEEV NARULA, J

MARCH 10, 2026/ hc