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

No. F. 11(1024)/DERC/2013-14/C.F.4046

Petition No. 36/2013

In the matter of: **Review Application filed against tariff order dtd. 31.07.2013 in Petition No. 04/2013 filed by DTL in the matter of True up of Annual Revenue Requirement (ARR) for FY 2007-08 to FY 2011-12 & Revised ARR for FY 2013-14**

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

Petition No. 37/2013

In the matter of: **Review Application filed against tariff order dtd. 31.07.2013 in Petition No. 04/2013 filed by DTL in the matter of True up of Annual Revenue Requirement (ARR) for FY 2007-08 to FY 2011-12 & Revised ARR for FY 2013-14**

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

Petition No. 38/2013

In the matter of: **Review Application filed against tariff order dtd. 31.07.2013 in Petition No. 04/2013 filed by DTL in the matter of True up of Annual Revenue Requirement (ARR) for FY 2007-08 to FY 2011-12 & Revised ARR for FY 2013-14**

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

Coram:
Sh. P. D. Sudhakar, Chairperson,
Sh. J. P. Singh, Member

Appearance:

1. Mr. Kuldeep Kumar
2. Mr. Rajan Gupta
3. Mr. V.K. Malhotra
4. Mr. Jagraj Singh
5. Mr. Krishan

ORDER
(Date of Hearing: 11.03.2014)
(Date of Order: 25.04.2014)

1. Delhi State Electricity Workers Union, DVB Engineers Association (Recognised) & Mr. Rajan Gupta filed Review Petition No. 36/2013, 37/2013 & 38/2013. The review petitioners have raised identical issues. The Commission therefore, heard all these petitions together and passed a common order in these Review Petitions.

2. In response to the query of the Commission review petitioners have submitted that these review petitions should be considered for review of DTL's impugned order dated 31.07.2013 only.

3. The review petitioners have filed an interim application for exemption of fees. The Commission accepted the request of review petitioners for exemption of fees. The Commission has exempted review petitioners from payment of fee in public interest.

4. The review Petitioner sought review on the following issues:
   (i) Payment of Rs. 400 Cr. to the Pension Trust allowed in the Tariff Order for FY 2013-14 for FY 2013-14 in the ARR of DTL .
   (ii) Transferring lifelong management of funds of Pension Trust to LIC of India by all parties.

   (iii) Payment of carrying cost in case of default in payment of monthly contribution to the Pension Trust by DISCOMs.

ISSUE NO. 1

5. Review petitioner submitted that on conjoint reading of tariff orders for FY 2011-12, 2012-13 and 2013-14 it is noticed that direction for payment of Rs. 400 Cr. to Pension Trust in the ARR of DTL for FY 2013-14, the words, "for all successor entities" are missing. Further no such directions are available in the orders of DISCOMs for the FY 2013-14 thus making the direction disputable.

6. Review Petitioner further submitted that the direction of payment of Rs. 400 Cr. to Pension Trust inclusive of transmission charges by DTL under the rules provide for deduction of TDS & rebate by power utilities as admissible. In the absence of a clarification by the Commission the orders are subjected to misinterpretation by DISCOM's by way of deduction of rebate and TDS on the monthly bills which may be raised by DTL.

7. The review petitioner further submitted that Commission is aware of the fact that total impact of past arrears of DTL is Rs. 1687.52 Cr. Further as per record the DISCOMs have failed to make payment of Rs. 941.14 Cr. as on 31.03.2012, for past years shown at "Note 13" under 'Trade Receivable' in the Annual Balance Sheet as at 31st March, 2012 submitted by DTL before the Hon'ble Commission in their Petition for determination of

ARR for FY 2013-14. The review petitioner is apprehensive about payment of Rs. 400 Cr. to Pension Trust by DTL, which may not be received from the distribution licensees.

8. The review petitioner further submitted that the amount of Rs. 500 Cr. allowed in the ARR of DTL inclusive of Rs. 400 crore for payment towards Pension Trust, assuming even if, recovered would leave less than Rs. 100 Cr. ARR with DTL for FY 2013-14 which is highly insufficient to run transmission business. In that eventuality transfer of Rs. 400 Crore to the Pension Trust by DTL is highly doubtful and would prove detrimental to the interest of pensioners.

9. Review Petitioner further submitted that in view of the above the Commission is requested to kindly review and issue clarificatory order/direction to all DISCOMs for implementation of the directions in the ARR of DTL for FY 2013-14, for payment of Rs. 400 crore to the Pension Trust.

ISSUE NO. 2

10. The Review Petitioner submitted that Commission in its tariff order dated 31.07.2013 of DTL observed 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.

11. The review petitioner further submitted that the words "*at the earliest*" used in the tariff order may be modified to make the directions of Hon'ble Commission more specific and meaningful.

12. The Review Petitioner further submitted that the Commission is therefore, requested to fix up a time schedule for transferring the management of funds of Pension Trust to LIC of India by all Parties i.e. GoNCTD & the Successor entities by removal of words "at the earliest", mentioned in the ARR of DTL dated 31.07.2013.

ISSUE NO. 3

13. The review petitioner further submitted that it was brought to the notice of the Commission that reasons of huge deficit in the funds position of Pension Trust is due to non-payment of regular monthly contribution of the successors entities. It is, therefore, submitted that recovery of carrying cost from the successor entities of DVB is essentially required to adhere to the schedule of payment prescribed by the Commission. The Review Petitioner further submitted that the Commission may kindly consider approving levy of carrying cost at the rate of 2% per month for non-payment of the monthly installment to pension Fund.

14. The Commission heard the review petitioner at length. The Commission has also considered the written and oral submissions of the Petitioner and considered the entire record placed before the Commission along with relevant provisions of the Electricity

Act, 2003, Regulations made there under, Civil Procedure Code and ATE's recent Order dated 24.03.2014 in the matter of Mahendra Gupta & othrs. vs. DERC & othrs.

15. Under Section 94(f), the Commission is empowered to review its decision, directions and orders.

16. Further order 47 Rule 1 of Civil Procedure Court provides that

> ***1. Application for review of judgment.-*** *(1) Any person considering himself aggrieved,—*
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> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
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> *(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, 6r 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.*

17. The above mentioned provisions of Civil Procedure Court 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.

18. The Commission examined the issues raised by the Review Petitioner and is of the view that mere apprehension of the review Petitioner that DTL will not transfer Rs. 400 Crore to the Pension Trust, and to fix time schedule for finalizing transfer of the management of the funds of the Pension Trust to LIC of India and approve carrying cost at the rate of 2% per month for the nonpayment of monthly installment to pension Fund is not sufficient grounds to make these Review Petitions eligible for admission. Further the Commission has noticed that there is no mistake or error apparent on the face of the record, which requires to be corrected.

19. Further, it is noticed that this petition is not the case where on discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of aggrieved person or such matter or evidence could not be produced by him at the time when the order was made.

20. The Commission is not inclined to accept the contentions raised by the Petitioner for review of the impugned order dated 31.07.2013. The Commission is of the considered

view that none of the conditions stipulated for review are satisfied and thus the contentions raised above by the Petitioner are not legally sustainable and devoid of any merits and therefore the review petition needs to be dismissed at the admission stage itself.

21. The Commission further noticed that a group of pensioners had filed an Appeal No. 238 of 2013 in the matter of Mahendra Gupta & othrs vs. DERC & othrs. before the ATE wherein they prayed that Commission may be directed to give an appropriate directions to Pension Trust for payment of pension and other terminal benefits to pensioners.

22. The ATE in its recent order dated 24.03.2014 observed that ;

> "*Any State Commission or this Appellate Tribunal has got no jurisdiction to decide the identical issues which are pending consideration before the Hon'ble High Court because the Hon'ble High Court being a Writ Court as well as the Court of Record has inherent powers under Article 226 and 227 of the Constitution of India. The learned State Commission has no jurisdiction to go into the dispute between the Appellants and the Pension Trust with regard to release of terminal benefits in their favour. The grievances of individual employees/appellants relating to service matters relating to the terminal benefits including pension are not under the jurisdiction of the State Commission. Since the same issue is pending before the Division Bench of the Hon'ble High Court of Delhi at the instance of the identical category of the employees as that of the Appellants, the parties should get the same decided from the Hon'ble High Court.*
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> *It is not open to any State Commission or to this Appellate Tribunal to entertain and decide the issue pending before the Hon'ble High Court because the Doctrine of Comity of jurisdiction requires that this Tribunal should restrain from passing any order which may be in conflict with any order passed by any Competent Court namely; the Hon'ble High Court of Delhi in the instant matter.*

23. In view of the above, the Commission is of the considered view that review petition lacks merit for admission therefore; review petition is dismissed at the admission stage itself.

24. Order accordingly.

Sd/-	***Sd/-***
(J. P. Singh)	(P. D. Sudhakar)
Member	Chairperson