

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWPOA No.4149 of 2019
Decided on: 10th September, 2026

K.C. Kashyap

...Petitioner

Versus

H.P. State Electricity Board and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner: Mr. Ajay Chandel, Senior Advocate
with Mr. Sidhant Jamwal, Advocate.

For the respondents: Mr. Ravinder Thakur, Advocate, for
respondent No.1.

Jiya Lal Bhardwaj, Judge (*Oral*)

By way of present petition, the petitioner has
prayed for the following substantive reliefs:-

"i) the respondent Board may kindly be directed to grant the benefit of time bound promotional scale from the date when the petitioner became eligible in higher induction post of AE and thereby to compute his pay and pension in accordance with revised emoluments.

(ii) That the respondent Board may kindly be directed to release the consequential benefits with interest to the petitioner in accordance with law."

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was initially appointed as Junior Engineer (in short "JE") on 29.11.1966 with respondent No.1-Board and thereafter was promoted as Assistant Engineer (in

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

short "AE") in the year 1985. The petitioner after attaining the age of superannuation, retired from service on 31.03.2002. It has been averred that respondent No.1-Board had convened the Departmental Promotion Committee (in short "DPC") on 28.01.1997 to give effect to time bound benefit of promotional scheme to its employees after completion of 9/16 years of service in respondent No.1-Board. In the said DPC, the name of the petitioner was not considered for grant of next higher pay scale of Rs.3000-5600/-, whereas respondent No.2, who was junior to him, was considered and granted the higher pay scale of Rs.3000-5600 w.e.f. 13.03.1996, as evident from perusal of Annexure P-1.

3. The petitioner through his Advocate got served respondent No.1-Board a legal notice dated 12.07.2006 (Annexure P-2), highlighting his grievance to the effect that he has not been allowed the promotional scale of Rs.3000-5600/-, whereas respondent No.2, who is his junior has been allowed.

4. The petitioner applied under the Right to

Information Act seeking information regarding the action taken on his representation and vide letter dated 25.04.2008 (Annexure P-3), it was informed that since the petitioner had availed the benefit of 1st and 2nd time bound promotional scales of 9/16 years' service in the lower grade of JE(C/M) w.e.f. 01.01.1986 and 01.01.1989 respectively, he is not eligible for the benefit of time bound promotional scale after completion of nine years of service in the grade of AE(C/M). It was also informed that respondent No.2 had also availed the benefit of the time bound promotional scale on completion of 9/16 years of service in the grade of JE (C/M), but later on he had withdrawn the said benefit of time bound promotional scale earlier availed by him in the capacity of JE(C/M) and accordingly, he was granted the benefit of time bound promotional scale in the grade of AE(C/M) w.e.f. 13.03.1996.

5. Respondent No.1-Board did not dispute the fact that the petitioner was senior to respondent No.2. The petitioner vide letter dated 21.08.2008, requested respondent No.1-Board that he may be allowed the same

treatment/benefit as given to his junior. It was submitted that the petitioner was drawing basic pay of Rs.13,300/-, whereas his junior was drawing basic pay of Rs.12,900/- in the month of July, 1999 and after being given the benefit of promotional increment to respondent No.2, he was drawing basic pay of Rs.14,900/-, whereas the petitioner was drawing basic pay of Rs.14,500/- per month. It has been averred that the action of respondent No.1-Board in not granting time bound benefit of promotional scale to the petitioner is arbitrary, discriminatory and illegal inasmuch as violative of Articles 14, 16 and 21 of the Constitution of India. Once junior to the petitioner is getting higher pay, the said benefit cannot be denied to the petitioner without any valid reason, and thus, the petitioner has pressed into service the principle of step up in pay to make his pay equal to his junior.

6. Respondent No.1-Board filed short reply to the petition and averred that the matter was placed before the competent authority for consideration and it was noted that the petitioner was promoted as AE (C/M) on adhoc basis on

24.09.1988 and he had completed nine years of service in the grade of AE (C/M) on 24.09.1997. He was granted the 1st time bound promotional scale of Rs.12,500–17,150/- as AE (C/M) from 24.09.1997 i.e. the date of his completion of nine years of service as AE (C/M) by withdrawing the benefit of 1st time bound pay scale already availed/granted to him in the grade of JE (C/M), as per office order dated 20.12.2012 (Annexure RA-1). Since the grievance of the petitioner stands redressed by respondent No.1-Board and he has been granted the time bound promotional scale from the date of completion of nine years of service as AE (C/M) w.e.f. 24.09.1997, no dispute survives for adjudication.

7. The petitioner filed rejoinder to the reply filed by respondent No.1-Board and placed on record letter dated 11.01.2013 (Annexure P-7), in which it has been stated that he does not accept the scale given to him, vide office order No.452, dated 20.12.2012 and he wants this scale w.e.f. 13.03.1996, on the same terms and conditions and benefits as given to his junior, respondent No.2.

8. I have heard the learned senior counsel for the petitioner and learned counsel for respondent No.1-Board and also perused the record carefully.

9. Mr. Ajay Chandel, learned Senior counsel for the petitioner has vehemently argued that once respondent No.2 has been granted the benefit of time bound promotional scale w.e.f. 13.03.1996, as evident from the perusal of the proceedings of the DPC dated 28.01.1997 (Annexure P-1), the petitioner, being senior to him, is entitled to the said benefit from the said date and not from the date as specified in office order dated 20.12.2012 (Annexure RA-1). He has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others***, (2009) 3 SCC 94 and ***Union of India and others vs. C.R. Madhava Murthy and another***, (2022) 6 SCC 183 and vehemently argued that once the junior has been granted the higher pay on account of the grant of benefit under the time bound benefit of promotional scales, the petitioner is also entitled to the same benefit from the

date when his junior has been granted the said benefit.

10. On the other hand, Mr. Ravinder Thakur, learned counsel for respondent No.1-Board, has supported the decision taken by the Board and contended that once the relief has been extended to the petitioner, as per office order dated 20.12.2012 (Annexure RA-1), the petition deserves to be dismissed.

11. I have given my thoughtful consideration to the submissions made by the learned counsel representing the parties at the Bar.

12. As per the office order dated 20.12.2012, passed by respondent No.1-Board, the petitioner was granted the benefit of 1st time bound promotional scale of Rs.12,500-17,150/-, on completion of nine years of service as AE(C/M) w.e.f. 24.09.1997, by withdrawing the benefit of 1st and 2nd time bound promotional scales granted while serving as JE(C/M). Meaning thereby, respondent No.1-Board has admitted that the petitioner was being paid a lesser pay only on account of the fact that the benefit of 1st time bound

promotional scale, which had been granted to him was in the grade of JE (C/M) and not on the post of AE (C/M), after completion of nine years. Once respondent No.1-Board has granted the benefit to respondent No.2, who admittedly was junior to the petitioner, w.e.f. 13.03.1996, the petitioner is also entitled to the benefit from the said date as per the law laid down by the Hon'ble Supreme Court in the aforementioned judgments.

13. In **Gurcharan Singh Grewal's** case (supra), the Hon'ble Supreme Court has held that a junior cannot draw more salary even if it was on account of incremental benefits in the scale. It is settled principle of law that a senior cannot be paid lesser salary than his junior. The relevant paragraphs of the judgment read as under:

"15. Mr. Chhabra also attempted to justify the disparity in the pay of Shri Shori and the appellant No.1 by urging that the appellant No. 1 had been granted the promotional scale with effect from 1st January, 1996, where the benefits of increment in the scale were lower. On the other hand, Shri Shori who joined the services of the Board in 1974, was granted the promotional scale on 17th May, 2006, with effect from 1st September, 2001, when the increments and the pay-scales were higher. Mr. Chhabra submitted that it is

the disparity in the incremental benefits that led to the anomaly of the appellant No.1 getting a lower salary in the promotional scale.

16. Having regard to the submissions made on behalf of the respective parties, we have little hesitation in accepting Mr. Gupta's submissions that since the writ petition had been jointly filed on behalf of the appellants, whose interest was common, the prayer therein should not have been confined to the appellant No.2 alone and that the High Court should have granted relief to the appellant No.1 also by directing that his pay also be stepped up to that of his junior, Shri R.P. Shori. Although, this question does not appear to have been gone into by the High Court for the simple reason that the writ petition was disposed of only on the averments contained in paragraph 7 of the written statement filed on behalf of respondents that the grievance of the appellant No.2 duly addressed, there ought to have been at least some discussion in the judgment of the High Court regarding the claim of the appellant No.1. Unfortunately, the case of the appellant No.1 was not considered at all by the High Court.

17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No.1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No.1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No.1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2."

14. A similar view has been taken in **C.R. Madhava**

Murthy's case (supra) and the relevant paragraphs of the judgment read as under:

"9. Having heard Ms. Madhvi Divan, learned ASG and considering the facts and circumstances of the case, which has emerged from the impugned judgment and order passed by the High Court, it cannot be said that the original writ petitioners were as such claiming the stepping up of the pay under the ACP Scheme. Their grievance was with respect to the anomaly in the pay scale and their grievance was that while granting upgradation under the ACP Scheme, their juniors were getting higher salaries than what they receive. Therefore, it was a case of removal of anomaly by stepping up of pay of seniors on promotion drawing a less pay than their juniors.

10. The High Court has therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay, which reads as under:

"(22) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior (a) As a result of application of FR 22 C. [Now FR 22 (I) (a) (1)]. In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts

in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR-22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

[G.I., M.F., O.M. No.F.2 [78)E.III (A)/66, dated the 4-2-1966]".

11. Therefore, it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the appellants herein to step up the pay of the original writ petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for."

15. As per the aforementioned judgments, once it is held that a junior cannot draw more pay on account of an anomaly, the petitioner is held entitled to the same benefit w.e.f. 13.03.1996, i.e. the date on which respondent No.2 was granted the said benefit and not w.e.f. 24.09.1997. However,

the petitioner is not held entitled to the arrears on account of removal of the anomaly, since he has approached this Court only in the year 2012. He is held entitled to the arrears only from three years prior to the institution of the present petition.

16. Consequently, the present petition is allowed and respondent No.1-Board is directed to step up the pay of the petitioner and grant him the same pay as granted to respondent No.2 w.e.f. 13.03.1996 with all consequential benefits, except monetary benefits, which shall be paid to him from three years prior to the date of filing the present petition. Respondent No.1-Board is further directed to release the arrears of salary as well as pension to the petitioner within a period of six months from today, failing which, the petitioner shall be entitled to interest @6% per annum on the arrears from today till actual payment. No order as to costs. Pending application(s), if any, shall also stand disposed of.

10th September, 2026

(ankit)

(Jiya Lal Bhardwaj)
Judge