

**326 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision : 13.05.2015

1. CWP No.14464 of 1992(O&M)

V.M.Bhimwal and others Petitioners

versus

State of Haryana and others Respondents

2. CWP No. 14512 of 1993(O&M)

V.M.Bhimwal and others Petitioners

versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. L.S.Virk, Advocate for the petitioners.
Mr.Ashok Singh Chaudhary, Addl.AG, Haryana
Mr.P.S.Poonia, Advocate for respondents No. 2 to 4.
Mr.Ashok Kumar Jindal, Advocate
for Mr.Sanjay Mittal, Advocate for respondent No.5 to
44.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This order shall dispose of above said two petitions.
Since common questions of law and facts are involved therein, they
are being decided by this common order. First I deal with CWP No.
14464 of 1992.

By this petition the petitioners have challenged the seniority list prepared by the respondents and the order by which their objections thereto have been rejected.

The admitted facts are that prior to 1974 there was one cadre of Foreman who could be promoted to Special Foreman and further to master foreman. In the year 1974 a new cadre of Instrument Mechanics came into being. The salary structure of the three cadres in 1974 was as follows:-

Date of implementation	Sr.Technician/Spl. Foreman	Instrument Mechanics	Foreman Technician
8/74	275-605	260-360	200-450

With effect from 1.4.79 their pay scales were revised as follows

Date of implementation	Sr.Technician/Spl. Foreman	Instrument Mechanics	Foreman Technician
1.4.79	700-1250	700-1250	700-1150

With effect from 1.1.86 the following pay scales were granted to them:-

Date of implementation	Sr.Technician/Spl. Foreman	Instrument Mechanics	Foreman Technician
1.1.86	1640-2900	1600-2600	1600-2600

Subsequently it was decided to merge all the three cadres into a new cadre of Foreman Grade-I with a uniform salary structure of 1640-2900. While preparing the seniority of this new cadre the respondents placed the Special Foreman first followed by Foreman followed by Instrument Mechanics.

The precise grievance of the petitioners is that this en-bloc arrangement of seniority is wrong and once all the posts were merged in one it meant that the official respondents themselves considered them to be equivalent posts and on merger the seniority of members of the merged unified cadre could only have

been fixed on the basis of continuous length of service. The respondents have sought to justify this en bloc assignment of seniority on the ground that in the year 1974 the Instrument Mechanics were in the lowest pay scale and that is why on merger it was decided to keep them below other two categories.

Learned counsel for the petitioners has countered this argument by pointing out that in the pay revision w.e.f. 1.4.79 the pay of instrument mechanics was equated with that of Special Foreman and higher than that of Foreman; and w.e.f. 1.1.86 though the pay scale of Special Foreman was higher yet the pay scale of Instrument Mechanics and Foreman was identical.

In my considered opinion the arguments of both the sides are too extreme. No doubt when different cadres of posts are merged one of the reasons is that they are roughly equivalent posts but that is not an inflexible rule and, therefore, grant of seniority on the basis of pay scale cannot be taken to be ex facie illegal. In **Dhole Govind Sahebrao and others v. Union of India(UOI) and others** reported as 2015(4) SCALE 259 the Hon'ble Supreme Court held as follows:-

“35. The deficiencies in the two cadres sought to be merged, were sought to be overcome, by subjecting the members of the two cadres to different examinations, whereby, the two cadres were trained for discharging their duties efficiently, on merger, whilst holding the posts of Tax Assistants/Senior Tax Assistants. It is, therefore, not possible for us to accept, that there was any serious difference between the two merged cadres, either on the issue of nature of duties, or on the subject of powers exercised by the officers holding the post, or the extent of territorial or other charge held, or responsibilities discharged by them, or for that matter, the qualifications prescribed for the posts. On account of the aforesaid, by and large similarity, we are satisfied, that the merger of the cadres, and the determination of the inter se seniority on merger, were justifiably determined, on the basis of the different pay-scales

of the cadres merged, under the TA Rules, 2003 and the STA Rules, 2003. By the mandate of the above Rules, all posts in equivalent pay-scales were placed at the same level. Posts in the higher scale of pay, were given superiority on the subject of inter se seniority, with reference to posts in the lower scale of pay. In our considered view, the above determination, at the hands of the rule framing authority, on the issue canvassed before us, cannot be termed either arbitrary or discriminatory. We are, therefore satisfied in concluding, that the provisions of Rule 4 of the TA Rules, 2003 and Rule 5 of the STA Rules, 2003, cannot be faulted on the touchstone of Articles 14 and 16 of the Constitution of India.”

Even looked at from this angle the action of the official respondents can still not be completely justified. There is no justification for categorisation on the basis of the pay scales of 1974. The only lawful categorisation would have been done on the basis of pay scales originally granted to these separate cadres w.e.f. 1.1.86. With effect from 1.1.86 Special Foremen were granted higher pay scale. Therefore, in the facts of this case it has to be held that the en bloc assignment of seniority to Special Foreman over and above the other categories is correct but as regards the seniority between erstwhile Instruments Mechanics and erstwhile Foreman it has to be on the basis of length of service from the date of their respective appointments.

In the circumstances this petition is partly allowed and it is directed that the seniority of the erstwhile Instrument Mechanics and Foreman would be redrawn on the basis of date of appointment of the incumbents. It is unfortunate that this seniority dispute is being decided after almost two and a half decades when all/most of the affected persons have retired from service but this cannot take away the legal rights of the petitioners. In the circumstances they would be entitled to all consequential benefits

of the reworked seniority. It is made clear that if any person has been granted any further benefits out of this faulty seniority list no recovery be made from him. Official respondents are directed to conduct the necessary exercise to work out the fresh seniority list (with all consequential benefits to be granted to the petitioners) within a period of six months from the date of receipt of a certified copy of this order. As mentioned above at the most now the petitioners would be entitled to some monetary benefits. It is made clear that if monetary benefits are not released within a further period of six months, the petitioners would be entitled to claim the same with interest at the rate of 8% p.a. w.e.f. the date/s the amount/s fell due till the date of payment.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

CWP No.14512 of 1993

In this petition the petitioners have challenged the order dated 29.09.1993 i.e. Annexure P-8 whereby the benefit of higher pay scale of Rs. 2100-3315 awarded to them w.e.f. 01.05.90 vide letter dated 20.02.1992 (Annexure P-7) was withdrawn and the petitioners were paid in the old scale of Rs.1800-3105. The genesis of the present lis is the letter Annexure P-8 whereby it has been mentioned that the higher pay scale of Rs. 2100-3315 would be granted to the erstwhile Special Foreman after 13 years of service but with regard to the erstwhile Instrument Mechanics and Foreman it would be granted after 13 years from 15.1.86 i.e. the date of merger.

The contention is that once the posts were merged the benefit of the higher pay scale should have been granted with effect from the date the petitioners came into their erstwhile position like

the Special Foreman and could not have been limited to 13 years after 15.1.86.

In my opinion this challenge must fail. Once I have held that the erstwhile Special Foreman would steal a march over the erstwhile Instrument Mechanics and the erstwhile Foreman in the matter of seniority it cannot be unjustified to hold that for the grant of higher pay scale the service of the erstwhile Special Foreman would be counted from the date of their appointment but for the erstwhile Instrument Mechanics and Foreman it would count from the date they were merged. However, by applying the ratio of **State of Punjab v. Rafiq Masih** reported as 2015(1) R.A.J. 104 where it has been laid down that recovery cannot be made from the employees of categories C and D, the recovery in the present case cannot be sustained. Recovery has been suspended ad interim vide order dated 24.11.1993 in CWP No. 14512 of 1993. This writ petition is, therefore, dismissed with the clarification that no recovery can be made.

No other argument has been raised.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

May 13, 2015
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