

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15260 of 2009

Date of decision: 17.8.2015

R.L. Arora

.....Petitioner(s)

Versus

The UT of Chandigarh & ors.

.....Respondent(s)

**CORAM:- HON'BLE MR.JUSTICE M. JEYAPPAUL
HON'BLE MR.JUSTICE DARSHAN SINGH**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

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Present: Mr. Amit Chopra, Advocate for the petitioner(s).

None for the respondents.

DARSHAN SINGH, J.

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ of certiorari, mandamus or any other suitable writ, direction or order quashing the order dated 3.12.2008 (Annexure P-2) passed in the Original Application (in short "OA") No.361-CH of 2007 and the order dated 29.6.2009 (Annexure P-4) passed in Review Application No.22 of 2009 by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short "the CAT").

2. The petitioner was appointed as the Lower Division Clerk (hereinafter referred to as "LDC") with the respondent-Department on 20.12.1971. He was thereafter promoted to the post of Upper Division Clerk (hereinafter referred to as "UDC") with effect from 12.5.1978 on provisional basis subject to the condition that he shall have to pass the Departmental Accounts Examination to be held by the Department. His junior K.V.Mehta had been promoted as UDC w.e.f. 12.1.1977. The petitioner was also granted promotion as UDC w.e.f. 12.1.1977. The petitioner had discharged the duties and responsibilities of the post of UDC uninterruptedly w.e.f. 12.1.1977 till the date of his superannuation i.e. 30.4.2006 but he had been denied the benefit of pay fixation as per the pay scales of UDC upon rendering 9/16/23 years of service.

3. The petitioner preferred OA before the learned CAT. The claim of the petitioner was contested by the respondents. The learned CAT vide order dated 3.12.2008 rejected the OA filed by the petitioner. The review application was also dismissed vide order dated 29.6.2009. The petitioner has claimed that the orders dated 3.12.2008 and 29.6.2009 be quashed and a writ of mandamus be issued directing the respondent-authorities to grant him proper refixation of pay on the post of UDC after rendering 16 years of service w.e.f. 12.1.1993 in the pay scale of Rs.1800-3200 and also revision of the pay scale in the revised pay scales w.e.f. 1.1.1996 with further refixation of his pay allowing him two set-up increments after rendering 23 years of service on the post of UDC with a

direction to refix the aforesaid pay of the petitioner on the post of UDC from the date of his initial promotion taking into consideration the basic pay drawn by him on the post of LDC with all consequential benefits.

4. Respondents No.1 and 2 have filed the written statement contesting the claim of the petitioner on the ground, inter alia, that he was initially appointed as LDC and was subsequently promoted to the post of UDC with the condition of qualifying the Departmental Accounts Examination for ministerial establishment (in short "DAE") in the prescribed chances. The petitioner failed to qualify the DAE but he was not reverted to the post of LDC as he was covered under 20% quota meant for unqualified LDC for promotion as UDC. He was only to get 2nd Time Bound Promotional Scale of Rs.1640-2925 after rendering 16 years of service as LDC and UDC and was not entitled to the refixation of the pay scale as claimed by him.

5. We have heard learned counsel for the petitioner and have carefully gone through the record of the case.

6. Learned counsel for the petitioner contended that the petitioner was promoted as UDC on 12.5.1978. He was assigned the seniority w.e.f. 12.1.1977 i.e. the date on which junior K.V. Mehta was promoted. He retired on 30.4.2006 as UDC. He has been denied the fixation of his pay in the scale of Rs.1800-3200 w.e.f. 12.1.1993 erroneously on completion of the requisite service of 16 years as UDC. He contended that as per the rules, the petitioner was entitled for the 2nd Time Bound Promotional Scale of the UDC on

completion of 16 years of service. He contended that this benefit of Time Bound Promotional Scale has been declined to the petitioner on the ground that his promotion as UDC w.e.f. 12.1.1977 was not proper. He contended that when the petitioner was promoted, the instructions dated 3.1.1953 (Annexure A-8) issued vide Memo No.96/195 were applicable.

6. Later on, the Engineering Department had issued the Chandigarh Administration Engineering Department, Circle Cadre (Group-C) Ministerial, Upper Division Clerks, Recruitment Rules, 1985, on 11.6.1985 (Annexure A-10) (hereinafter called "the Rules of 1985"). He contended that when the petitioner was already promoted on 12.5.1978 w.e.f. 12.1.1977 the subsequent Rules of 1985 were not applicable to him. He further contended that the petitioner is entitled for fixation of his pay in the Time Bound Promotional Scale of Rs.1800-3200 w.e.f. 12.1.1993 on completion of 16 years of service.

7. He further contended that this fact is not disputed that the petitioner has worked as UDC right from 12.5.1978 till the date of his superannuation 30.4.2006. So, he is very much entitled for the pay scales of the UDC whatever may be the legal defect in his promotion. To support his contentions he relied upon cases **LPA No.198 of 2003 decided on 23.8.2007 (B.K. Dhir versus State of Punjab & another), Pritam Singh Dhaliwal versus State of Punjab & another. 2004 (6) SLR 758 and Selva Raj versus Lt. Governor of Island, Port Blair, 1999 AIR (SC) 838.**

8. We have duly considered the aforesaid contentions.

9. This fact is not disputed that the petitioner was inducted in service under respondents No.1 and 2 as LDC on 20.12.1971. He was provisionally promoted as UDC vide order dated 12.5.1978 (copy Annexure A-4) with a specific condition that the provisional promotion order was subject to the condition that the petitioner shall have to pass the Departmental Accounts Examination as soon as it is held by the said organization in a number of chances as would be prescribed. It is not disputed that the petitioner did not appear in the said Departmental Accounts Examination. In this way, he never qualified the said examination and does not fulfill the conditions attached to his provisional promotion and continue to occupy the post of UDC under the colour of the order dated 12.5.1978 granting him the provisional promotion. The question of seniority is not disputed in this case as the petitioner was granted the seniority w.e.f. 12.1.1977 on getting the provisional promotion i.e. from the date when his junior Sh. K.V. Mehta was promoted.

10. In the meanwhile, the pay of the petitioner was refixed in the Time Bound Promotional scale of the UDC in the pay scale of Rs.1800-3200 w.e.f. 12.1.1993 i.e. on completion of 16 years of service. On realising the mistake, the Superintending Engineer, Electricity Operation Circle, Union Territory, Chandigarh served a show cause notice upon the petitioner to which the reply was submitted by him and after considering his reply, the Time Bound Promotional Scale of qualified UDC of Rs.1800-3200 earlier granted

to the petitioner w.e.f. 12.1.1993 was withdrawn and the pay of the petitioner was refixed in the pay scale of Rs.1640-2925 w.e.f. 20.12.1987, the time bound promotional pay scale admissible to the petitioner being his induction post as LDC as per the PSEB policy. The recovery of the excess payment was also ordered to be effected vide order dated 1.7.2002 (Annexure A-13).

11. The petitioner filed OA No.361/CH of 2007 before the learned CAT but the said application was dismissed by the CAT vide impugned order dated 3.12.2008 (Annexure P-2) but the respondents were held not entitled to recover the excess payment. Even the review application filed by the petitioner was dismissed vide order dated 29.6.2009 (Annexur P-4).

12. The dispute in the present case is with respect to the refixation of the pay of the petitioner in the time bound promotional pay scale for the post of UDC and not for the functional pay scale of the UDC.

13. We do not find any substance in the plea raised by the learned counsel for the petitioner that the petitioner was not governed by the Rules of 1985 (Annexure A-10). As already mentioned, the petitioner was only provisionally promoted to the post of UDC subject to the clearance of DAE which was never cleared by him. So, he was never regularly promoted to the post of the UDC prior to coming into force the Rules of 1985, rather, the respondents have shown the favour to the petitioner that instead of reverting him to the post of LDC they have accommodated him on the post of UDC

under 20% quota of unqualified LDCs under the New Rules i.e. Rules 1985. As per the Rules 1985 the rules for promotion for the post of UDC are as under:

1	By direct	Pay scale/grade as per PSEB
	40% by direct recruitment	i) Rs.1200-2200 (with initial start of Rs.1350/-) ii) Rs.1640-2925 (Ist TBPS after completion of 9 years service) iii) Rs.1800-3200 (2 nd TBPS after completion of 16 years service who passed the DAE) Rs.1800-3200 (2 nd TBPS after 16 year of service who have not passed the DAE)
2	By promotion	
a	40% by promotion from amongst the LDC/Ledger Keeper/Cashier who have passed the Departmental Accounts Examination	i) Rs.1200-2200 (initial Rs.1350/-) on promotion as UDC ii) Rs.1640-2925 (Ist TBPS after completion of 9 years service as UDC) iii) Rs.1800-3200 (2 nd TBPS after completion of 16 years service as UDC) Note: A UDC promoted under this quota before 1.1.86 can opt for grant of scale of Rs.1640-2925 after 16 years service as LDC & UDC then he is not entitled for promotional scale of Rs.1800-3200 as per PSEB Fin. Circular No.48/92 (Annexure R-3)
3	20% of the cadre posts of UDC will be filled up from amongst the LDC who fail to negotiate the Departmental Accounts Examination within two year/four chances and further subject to condition that a matriculate LDC should have put in service for atleast 6 years and a graduate LDC for atleast 3 years.	i) Rs.1200-2200 (initial Rs.1350/-) on promotion as UDC ii) Rs.1640-2925 (Ist TBPS after completion of 9 years service as LDC & UDC)

As per the above rules, the petitioner not having qualified the DAE was accommodated/promoted in third category i.e. 20% of the cadre post of UDC to be filled up amongst the LDC who failed to pass DAE.

14. The Chandigarh Administration Finance Department Accounts Branch vide letter dated 3.4.1992 (Annexure R-5) revised

the pay scales of the employees working in the Electricity Operation Circle of the Engineering Department, Chandigarh Administration on Punjab/PSEB Pattern w.e.f. 1.4.1991. The pay of the employees was to be fixed as per the provisions contained in Chandigarh Administration Civil Service (Revised Pay) Rules, 1991 on notional basis w.e.f 1.1.1986. Annexure II of the aforesaid letter shows the pre-revised and the revised pay scales of the employees. The UDC figures at Serial No.18 of Annexure II and the same reads as under:

"S.No.	Designation of post	Pre-revised pay scale as on 31.12.85	Revised scale of pay on PSEB pattern
18.	Upper Division Clerk	510-800	i) 1200-2200 (with initial start of Rs.1350/-) ii) 1640-2925 1st time bound scale to be allowed after 9 years of service. iii) a) 1800-3000 2nd time bound scale to be allowed after 16 years of service to those who have passed DAE for Ministerial Estt. b) 1800-3000 2nd time bound scale to be allowed after 16 years of service to those who have passed DAE for Ministerial Estt.

Note: For UDCs joining Elec. Deptt. U.T.as a result of either through direct recruitment or by promotion from amongst LDCs after passing the DAE, the date of joining as UDC will be taken as a date of 1st induction in the Elec. Department for the purpose of grant of 9/16 years of time bound scales."

15. Later on, the matter was further clarified vide Circular No.33/92 issued vide Memo No.127913/128533/FIN./PRC-1988/LOOSE-118A dated 26.6.92. The relevant part of the same

reads as under:

“It is, therefore, clarified that those lower division clerks who were promoted as Upper division clerk under 20% quota prior to 1.1.86 will get the 2nd time bound promotional scale/devised promotional scale of 1640-2925 after completion of 16 years service as lower division clerk and upper division clerk. The terms and conditions as applicable vide office order No.197/Fin./PRC-1988 dated 23.4.90 will remain in force to grant this scale and the competent authority will be the promoting authority of the employee means there by who is competent to grant the 2nd time bound/devised promotional scale of 1640-2925.”

16. As per the above clarification, the LDC who was promoted as UDC under 20% quota prior to 1.1.1986 were only entitled to get 2nd Time Bound Pay Scale/Revised Promotional Scale of Rs.1640-2925 after completion of 16 years of service as LDC and UDC. The aforesaid clarification clinches the entire matter and shows that the petitioner was not entitled for the time bound promotional pay scale of Rs.1800-3200 of the UDC. Thus, the mistake in pay fixation of the petitioner has been rightly corrected vide order dated 1.7.2002 Annexure A-13 by the Superintending Engineer Electricity OP Circle U.T., Chandigarh whereby the time bound promotional pay scale of qualified UDC of Rs.1800-3200 has been withdrawn and the pay of the petitioner has been refixed in the

pay scale of Rs.1640-2925 w.e.f. 20.12.1987 i.e. on completion of 16 years of service as LDC and UDC. The aforesaid order has been upheld by the learned CAT vide impugned order dated 3.12.2008. We do not find any legal infirmity in the impugned orders passed by the learned CAT.

17. Cases relied upon by the learned counsel for the petitioner are entirely on different footings as in those cases there was no dispute with respect to the refixation of pay in the time bound promotional pay scales.

18. Consequently, in view of our aforesaid discussion, the present petition is without any merit and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

August 17, 2015
ps

(DARSHAN SINGH)
JUDGE