

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

Date of Decision: 14.12.2015

1)

CWP No.16737 of 2011

Om Parkash Dua

.... Petitioner

Vs.

Punjab State Electricity Board and others

.... Respondents

2)

CWP No.16691 of 2011

Baljit Singh

.... Petitioner

Vs.

Punjab State Electricity Board and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Ms. Sonia G. Singh, Advocate
for both the petitioners.

Mr. Jaswinder Singh Randhawa, Advocate
for the respondents.

To be referred to reporter: Yes.

AMOL RATTAN SINGH, J.(Oral)

Civil Misc. No.16037 of 2015 in CWP No.16691 of 2011

In terms of the order dated 02.12.2015, learned counsel for the respondents has filed photocopies of a circular dated 23.04.1990, circular dated 28.07.2000, circular dated 09.11.1999 and an extract of the Punjab State Electricity Board Ministerial Service (Class-III) Regulations, 1985.

The aforesaid circulars and the extract of the regulations are taken on record as Annexures R-1 to R-4 with the written statement already filed by the respondents.

Application disposed of accordingly.

CWP Nos.16737 and 16691 of 2011

1. The issue in these two petitions filed by a single petitioner in each of them, is whether or not the petitioners are entitled to a promotional increment in lieu of the fact that they have not been promoted thrice in their careers to higher posts, as are available to them for promotion. The increment, therefore, is to be granted to at least partly off set the stagnation that employees face in their careers, for lack of enough posts in the higher ranks to which they can be promoted.

The said incentive was offered by the Punjab State Electricity Board (predecessor of the respondent Corporation), vide its instructions dated 23.04.1990 (Annexure P-1 with both the petitions).

The petitioner in CWP No.16737 of 2011, Om Parkash Dua, joined as a Lower Division Clerk in the year 1965 but gained only one promotion, to the post of Upper Division Clerk, till his retirement in the year 2000.

Baljit Singh, the petitioner in CWP No.16691 of 2011, joined as a Lower Division Clerk in the year 1974 and retired as such in the year 2007.

2. Learned counsel for the petitioner has pointed to clauses 5 and 7 of the circular dated 23.04.1990 (Annexure P-1/R-1), in which it is stated as follows:-

“5. The Board shall draw up schedule(s) indicating the lowest post (s) for direct recruitment in respect of various cadres for the purpose of this order, separately.

6. xxxx

7. In case of employees who do not fulfill the qualification/passing of examination essential for their promotion to the next higher post, they shall also be placed into time promotional/devised promotional scale to be specified by the Board in the schedule as referred to in para 5 (above)”.

She submits that in terms of clause 7, even if an employee has not passed the departmental examination that is essential for promotion to the next higher post, the said employee shall be placed in the time (bound) promotional/devised promotional scale, as per a schedule to be specified by the Board, in terms of clause 5 aforesaid.

3. Learned counsel further submits that, as a matter of fact, these conditions are only a part of the features of the scheme of granting time bound promotional/devised promotional scales at the 9th and 16th year points of service of an employee and are not conditions towards the grant of a promotional increment to an employee (as opposed to a higher scale), on completion of 23 years of regular service. Such increment, learned counsel submits, would be available to an employee simply on the conditions given in Clause 2 of the circular dated 23.04.1990, which reads as under:-.

“2. The Punjab State Elec. Board has further decided to allow benefit of promotional increment(s) to an employee on completion of 23 years of regular service provided:-

- i) He has not been benefited by the scheme of 9/16 years time bound promotional scale.
- ii) He has not earned three regular promotions in his career.
- iii) He has not earned third promotion in his regular service between 16th and 23rd years of service.
- iv) The increments referred to in para 2 above are in the nature of advance promotional benefit to be absorbed in

next regular promotion”.

Sub clause (ii) above, was thereafter amended on 10.06.1993, to read as follows:-

“(ii) He has not earned three regular promotions in his regular service from the date of joining on the induction post/lowest post specifically declared as induction post for granting time bound promotional/devised promotional scales.”

This was further amended on 28.07.2000, which shall be considered further ahead.

4. Learned counsel for the respondent-Corporation, on the other hand, submits that as stated in the impugned order and the reply filed by the Corporation, passing of the departmental examination is an essential condition as is provided even for grant of time bound higher scales, as such scales are granted only in lieu of promotion which a person could not achieve due to lack of sufficient posts in the higher echelon of the promotional avenues available to him. Such departmental examination, he further submits, is an essentiality even in terms of Regulation 8 of the Punjab State Electricity Board Ministerial Service (Class-III) Regulations, 1985.

Thus, the two petitioners in these two petitions, not having passed the departmental examination and thereby not being eligible for promotion itself, the question of granting higher pay-scales or increments in lieu of promotion, does not arise.

In other words, the submission is that if the petitioners had passed the departmental examination but still could not be promoted due to lack of sufficient posts in the higher ranks to which they could have been

promoted, then only could they claim higher scales at the 9th and 16th year point, in lieu of promotion, and one increment at the 23rd year point of their service.

5. Having heard learned counsel for the parties and having gone through the circular dated 23.04.1990 in detail, on which the claim of the petitioners is based, I am of the considered opinion that, as submitted by the learned counsel for the petitioners, sub-clauses (1) to (9) of Clause 1 of the said circular, are only applicable to the grant of time bound promotional/devised promotional scales at the 9th and 16th year points of service of an employee. That too has further been qualified by sub-clause (7), to the effect that such employees as do not pass the departmental examination, would still be placed in the time bound promotional/devised promotional scales, to be specified by the Board in terms of the schedule to be prepared by the Board, as per sub-clause (5) of the said circular dated 23.04.1990.

Though, initially, this Court was inclined to direct the respondents to file an affidavit as to whether any scheme had been drawn up by the Board in terms of sub-clauses 7 and 5 of the aforesaid circular, however, I do not think even that is necessary, in view of the fact that actually only Clause 2 of the said circular is relevant for the purpose of these petitions, wherein the petitioners are not seeking time bound promotional scales at the 9th and 16th year point of service, but are only seeking grant of a promotional increment at the 23rd year point of their service. Thus, the only conditions that they have to satisfy for grant of such increment at the 23rd year point of their service, are the conditions specified in sub-clauses (i) to

(iv) of Clause 2 of the said circular.

6. It is to be specifically noticed, that Clause 2 of the circular does not state that the conditions attached to the grant of a promotional increment at the 23rd year point of service of an employee, are in addition to the conditions that are essential for the grant of pay-scales at the 9th and 16th year points of service. The rationale behind that is not far to seek, inasmuch as, the conditions attached to the grant of a higher pay-scale would obviously be far more stringent to the conditions attached simply to the grant of one increment in lieu of promotion. Thus, it is not surprising that in lieu of passing of a departmental examination, sub-clauses 5 and 7 of Clause 1 of the circular lay down that the Corporation (erstwhile Board) would formulate a schedule by which higher pay-scales are to be granted to those who have not cleared the departmental examination, which is otherwise essential for promotion. Thus, obviously, the condition of passing the examination, or for drawing up of a separate schedule of payment of higher scales of pay, to those who have not passed the examination, is not a necessary pre-condition for the grant of one increment to a person who has completed 23 years of regular service and has not been granted three promotions in such a long span of time. Eventually, such an employee is to get only one promotional increment in lieu of three promotions. Hence, it is very logical that there would be no stringent conditions attached to the grant of one increment, in lieu of three promotions, after 23 years of regular service.

7. In fact, even the aforesaid conditions contained in the circular dated 23.04.1990 were modified vide circular dated 28.07.2000, as has been

placed on record today by the learned counsel for the respondents as Annexure R-2 (earlier already on record as Annexure P-2 with CWP No.16737 of 2011). That circular lays down as follows:-

“The Punjab State Electricity Board is pleased to decide that the grant of benefit of promotional increment(s) to an employee on completion of 23 years service as envisaged in its O/O No.384/Fin./PRC-121 dated 9.11.99 will be governed by the following conditions:-

- i) he/she has the avenue of three promotions but has not earned three regular promotions in his/her regular service from the date of joining on the induction post/or any other post specifically declared as induction post for granting time bound promotional/devised promotional scale.
 - ii) he/she has not earned third promotion in his/her regular service between 16th and 23rd years of service.
 - iii) he/she has not been placed in a scale which is higher than the scale of his/her next higher post.
 - iv) the increment (s) are in the nature of advance promotional benefits to be absorbed in the next regular promotion.
 - v) Those who forego promotion shall not be entitled for this benefit.
2. This order will be effective from 1.1.96 without prejudice to the Assured Career Progression Scheme to be devised consequent upon revision of pay scales.
3. The other conditions as incorporated in office order No.197/Fin./PRC-1988 dated 23.04.1990 and amended from time to time will remain unchanged.
4. The arrears accruing from re-fixation of pay on grant of advance promotional increment(s) will be credited to GPF accounts of the employees in full wherever GPF accounts exist and payable in cash w.e.f. 1.8.2000. For the retired employees, the arrears will be paid in cash as per existing policy.”

Thus, clause/condition (i) of Clause 2 of the circular dated 23.04.1990 has been done away with and it is not necessary that for the grant of a promotional increment at the 23rd year point of service, an employee should not have been benefited by the 9th and 16th year point time

bound promotional scale. All that is now required for grant of such increment, is that there should be at least three avenues of promotion open to an employee, to which he/she has not been able to earn such promotion and further, that he/she has not been placed in a scale which is higher than the scale of his/her next higher post.

Though it has been stated in clause 3 of the circular dated 28.07.2000, that the other conditions as incorporated in the order dated 23.04.1990, amended from time to time, shall remain unchanged, however, that seems to be a clause put in mechanically without any application of mind, because if that were so, then sub-clause (iii) of the circular of 1990, would not have been repeated, almost *ad verbatim*, in the circular dated 28.07.2000, to the effect that the employee should not have earned a 3rd promotion in his/her regular service, between the 16th and 23rd years of service. Similarly, sub-clause (iv) of both the circulars are again identical in nature. Therefore, if the intention, while issuing the circular dated 28.07.2000, had been that only some additional conditions be imposed (such as the one contained in sub-clause (i) of that circular), and all the existing conditions as are contained in clause 2 of the circular dated 23.04.1990, are to be retained, then there would have been no need to still add sub-clause (ii) in clause 1 of the circular dated 28.07.2000, which is identical to sub-clause (iii) of clause 2 of the circular dated 23.04.1990. Similarly, sub-clause (iv) need not have been added in clause 1 of the Circular of the year 2000, as that was already contained in sub-clause (iv) of clause 2 of the circular of 1990.

8. Next, the petitioners in both these petitions, in terms of the

regulations placed on record today, obviously have at least 3 avenues of promotion open to them, inasmuch as, Baljit Singh, petitioner in CWP No.16691 of 2011, joined as a Lower Division Clerk in 1974 and retired as such in 2007 and undoubtedly, the avenues of promotion available to an LDC, in terms of Regulation 8 of the 1985 Regulations, are:-

- i) Upper Division Clerk
- ii) Circle Assistant/ARA
- iii) Head Office Assistant
- iv) Superintendent (Grade II)

Similarly, Om Parkash Dua, petitioner in CWP No.16737 of 2011, joined as a Lower Division Clerk on 06.02.1965 and was promoted as an Upper Division Clerk on 02.02.1982 and retired as such in the year 2000.

Thus, had there been sufficient posts available in higher posts to which he could have been promoted, he would have 3 avenues of Circle Assistant/ARA, Head Office Assistant and Superintendent (Grade II), open to him for such promotion. It is, therefore, a complete misnomer on the part of the respondents, to state in the written statement, that they do not have 3 avenues of promotion open to them. That stand seems to have been taken on the ground that they have not passed the departmental examination and as such cannot be promoted.

It has already been discussed that passing of the departmental examination is not a necessary condition for the grant of a promotional increment after 23 years of service, for the reasons already given hereinabove and as such, the stand of the respondents to the effect that neither of the petitioners in these petitions has three avenues of promotion

available to them, as is a pre-condition for the grant of the promotional increment, in terms of sub clause (i) of clause 1 of the circular dated 28.07.2000, is a wholly misconceived argument and is, therefore, rejected.

9. In view of the above, I see no impediment whatsoever, in allowing these petitions and directing the respondents to grant to both the petitioners, a promotional increment at the 23rd year points of their service, in terms of the circular dated 23.04.1990, read with the circular dated 28.07.2000.

It needs to be again noticed specifically, that though petitioner Om Parkash Dua retired on 30.09.2000, firstly, the circular dated 28.07.2000 was issued before that date and in any case, the said circular is applicable, as per Clause 2 thereof, w.e.f. 01.01.1996.

10. It is, therefore, held that in terms of the relevant clauses of the aforesaid two circulars, i.e. Clause 2 of the circular dated 23.04.1990 read with the circular dated 28.07.2000, passing of a departmental examination is not necessary for the grant of a promotional increment to an employee at the 23rd year point of his/her service. Such condition may only be applicable for grant of time bound promotional/devised promotional scales at the 9th and 16th year points of service of an employee, though that too is subject to what is contained in sub clauses 7 and 5 of Clause 1 of the circular dated 23.04.1990. Further, such condition is not applicable to a Lower Division Clerk, because as per circular dated 28.04.1998 (Annexure P-4 with CWP No.16691 of 2011), that condition was waived off for employees for promotion from the post of LDC to UDC, if they had completed 50 years of age.

In any case, the present two petitioners are not claiming time bound promotional scales, hence, the question of applicability of sub-clause 7 of the circular dated 23.04.1990 also does not arise. However, as has been discussed hereinabove, they would be entitled to grant of a promotional increment at the 23rd year point of their service.

11. Before concluding, however, it is necessary to state that learned counsel for the respondents also submits that there is a large delay in the petitioners' filing the present petitions and hence, in case the petitions are to be allowed, then the arrears to be granted to the petitioners should be suitable restricted.

No doubt, the petitioners first approached the respondents, as per the stand taken in the respective written statements, only in the year 2008 in the case of Om Parkash Dua and in the year 2009 in the case of petitioner Baljeet Singh, for redressal of their grievance, by way of separate representations. Thereafter, petitioner Om Parkash Dua filed CWP No.2270 of 2010 and petitioner Baljeet Singh filed CWP No.2257 of 2010, both of which were disposed of with a direction to the respondents to decide their representations. The representations having been rejected vide the orders impugned in these two petitions, the present writ petitions were filed.

Though the respondents have taken a stand that petitioner Om Parkash Dua has approached this Court in the year 2011, 23 years after he had completed 23 years of service in 1988, this stand is not wholly tenable, in view of the fact that the instructions granting the benefit of one promotional increment, came about only on 23.04.1990. It is possible that there was some confusion with regard to the conditions attached to the grant

of the increment till further instructions were issued in the year 2000, leading to the non-payment of the benefit, by the respondents till that date at least. However, in any case, other than that, the fact remains that the petitioners are both drawing pension and the non-grant of the increment due to them, would reflect as a monthly loss in the amount of their pension. Hence, it is a recurring loss that the petitioners are suffering. Therefore, the relief to be granted has to be suitably moulded, especially as both the petitioners are from the lower rungs of the service hierarchy, one having retired as an Upper Division Clerk and the other as a Lower Division Clerk.

12. Consequently, these petitions are allowed. The order, Annexure P-9 in CWP No.16737 of 2011, as also the order, Annexure P-8 in CWP No.16691 of 2011, both dated 09.04.2010, are quashed. The respondents are directed to grant both the petitioners, one promotional increment at the 23rd year points of their respective services, along with all consequential benefits flowing therefrom, within a period of two months from the date of receipt of a certified copy of this order.

In view of the fact that the respondents have not granted the petitioners what was due to them, in terms of the circular issued by the respondent Corporation/its predecessor Board itself, resulting in a recurring loss to them, the petitioners shall also be entitled to simple interest at the rate of 7% per annum, on the increment to be granted to them, running from 3 months after the date that they first made their respective representations to the respondents, i.e. such interest would run from 01.01.2009 in the case of the petitioner in CWP No.16737 of 2011 and from 01.10.2009 in the case of the petitioner in CWP No.16691 of 2011. The interest, in both cases, shall

run till the date that arrears are actually paid to each petitioner

However, as is submitted by the learned counsel for the respondents, since the petitioners have undoubtedly delayed approaching the respondents, in respect of claims arising in terms of circulars dated 23.04.1990 and 28.07.2000, the grant of arrears, as would flow from this order, to each of the petitioners, shall be restricted to a period of 38 months prior to the date of filing of their respective representations to the respondents, i.e. Annexure P-6 with CWPNo.16737 of 2011 and Annexure P-5 with CWP No.16691 of 2011.

There shall be no order as to costs, in either petition.

December 14, 2015
vcgarg

(Amol Rattan Singh)
Judge