

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

**CWP No.16250 of 2012**

Date of Decision: 26.03.2015

SI Sunder Singh No.925/C (Retd.)

....Petitioner

Versus

State of Haryana and others

....Respondents

**BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. Anurag Goyal, Advocate  
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana  
for the respondent-State.

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**DAYA CHAUDHARY, J.**

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of *certiorari* quashing the impugned order dated 20.04.2012 (Annexure P-10), whereby, the request of the petitioner for grant of opportunity to give option afresh has been declined and also for issuance of directions to the respondents to give an option to the petitioner again and to re-fix his pay as well as his pension as he has retired from service.

The petitioner was initially appointed as a Constable in Haryana Police on 08.10.1975 and after passing the Lower School Course, he was promoted to the post of Head Constable on 11.02.1988. Thereafter, he passed the Intermediate School Course and was promoted as ASI on 24.12.2002. The Haryana Government, vide its notification dated 29.04.1987 framed rules i.e The Haryana Civil Services (Revised Pay)

Rules, 1987, whereby, the pay scales of the Haryana Government Employees were revised and they were asked to give their options within a period of three months' of the date of publication of these rules. It was also mentioned that once the option is exercised, the same shall be final. Thereafter, on 02.08.1989, an amendment was made, whereby, it was mentioned that option to retain the existing pay scale under the *proviso* to this rule shall be admissible only in respect of one existing scale up to 31.12.1987. It was also mentioned that in case, any amendment is made in these rules, the option may be re-exercised. The petitioner gave his option of fixing his pay in the revised pay scale w.e.f. 01.01.1986 along with his other counterparts including one-Teg Singh. The pay of the petitioner was refixed in the revised pay scale accordingly.

Now the grouse of the petitioner in the present petition is that his junior, namely, Teg Singh, is getting more pay than him and accordingly, he made a representation to the Director General on 10.03.2009 but no action was taken thereupon. Thereafter, reminders were also sent.

Learned counsel for the petitioner submits that not only the junior to the petitioner is getting more salary *viz-a-viz* the petitioner but also the benefit of 3<sup>rd</sup> ACP w.e.f 01.01.2006 which has not been granted. Learned counsel also submits that in view of directions issued by this Court in ***Civil Writ Petition No.955 of 2011***, the claim of the petitioner has not been considered. A direction was issued to take a decision on the representation to be filed by the petitioner within a period of two months. The claim of the petitioner has been rejected vide Order dated 20.04.2012. Learned counsel also submits that the pay of junior to the petitioner has been fixed w.e.f. 01.04.1986 but the pay of the petitioner has been fixed w.e.f. 01.01.1986 as per option exercised by them. Learned counsel also submits that a specific mention was there in the notification dated

02.08.1989 that in case, any amendment is there in the rules, the option may be re-exercised but the petitioner was not given any opportunity to re-exercise his option after issuance of notification dated 02.08.1989. Learned counsel further submits that the petitioner was neither informed orally nor in writing regarding notification or order of option by the Department. Even as per *proviso* added to the rules by way of notification dated 02.08.1989, the option was to be re-exercised but without having oral or written communication, the petitioner could not re-exercise his option.

Learned counsel for the petitioner has also relied upon the judgment of Division Bench of this Court in case ***Dharam Pal vs The Superintending Engineer, Operation Circle UHBVNL, Karnal 2007(2) RSJ 422***, wherein, it has been held that in case, the circular calling for option is not brought to the notice of an employee, it cannot be considered as no option was given. It has also been held therein that it was the duty of the Government to ask for option from the Government employee and the financial loss occurred due to non giving of option is not justified.

At the end, learned counsel for the petitioner submits that the petitioner is also entitled for grant of ACP w.e.f 01.01.2006 instead of 01.09.2011.

Learned State counsel submits that the pay of the petitioner as well as of his junior, namely, Teg Singh was fixed as per the option exercised by them. The fixation of pay as per revised rules of 1987 was not challenged by the petitioner and now the present petition has been filed after considerable delay which has not even been explained. He had made representation in the year 2009 for fixation of pay at par with his junior i.e after a gap of 23 years and till then, he has remained silent. The present petition is liable to be dismissed only on the ground of delay. Learned State

counsel also submits that the petitioner has been granted 3<sup>rd</sup> ACP as per Order dated 28.07.2010 and he has also been granted consequential benefits. Since the petitioner was promoted as Sub Inspector on 04.11.2011 and all benefits have been granted to him, the present petition has become infructuous and the same is liable to be dismissed. Learned counsel also submits that the petitioner was placed under suspension as he was arrested in criminal case i.e FIR No.55 dated 17.04.1998 registered under Sections 186/353/506/34 IPC at Police Station Israna, District Panipat but subsequently, he was reinstated as he was acquitted by the trial Court. He was awarded the punishment of censure vide Order dated 25.07.2005 for not taking interest in his official duties.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

Undisputedly, the petitioner had exercised his option w.e.f. 01.01.1986 at the time of revision of his pay scale and accordingly, his pay was fixed. As per option given by his junior, Teg Singh, his pay was fixed w.e.f. 01.04.1986. As per provisions of Rule 6 of Revised Pay Rules, 1987, the employees were asked to exercise their option in writing and it was mentioned that the option once exercised, shall be final. Rule 6 of revised Pay Rules, 1987 regarding exercising of option is reproduced as under :-

**“6. Exercise of option :-**

**(1) The option under the proviso to the rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority mentioned in sub-rule (2) within three months of the date of publication of these rules or where an existing scale has been revised by any amendment made in these rules, within three months of the date of the amendment:**

**Provided that –**

**(i) in case of Government employee who is, on**

the date of such publication or, as the case may be, date of such amendment, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India, and

(ii) where a Government employee is under suspension on the 1<sup>st</sup> day of January, 1986, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub-rule.

(2) The option shall be intimated by the Government servant to the Head of his Office.

(3) If the intimation regarding the option is not received within the time mentioned in sub-rule (1), the Government employee shall be deemed to have elected to be governed by the revised scale of pay on and from the 1<sup>st</sup> day of January, 1986.

(4) The option once exercised shall be final.”

The petitioner has exercised his option and got arrears of increased pay scale w.e.f 01.01.1986. A representation was made by the petitioner in the year 2009, i.e after a period of 23 years. The only justification made by learned counsel for the petitioner is that no written communication was sent to the petitioner regarding subsequent notification for re-exercising his option and it cannot be considered that the provision was in his knowledge. Subsequently, the petitioner was also promoted as Sub Inspector in the year 2011 and all benefits have been granted to him. As far as the claim of the petitioner with regard to 3<sup>rd</sup> ACP is concerned, he was granted exemption from passing of PWO-1 course, whereas, his junior Teg Singh has passed that course on 25.09.2009. Now, the petitioner has been granted the benefit of 3<sup>rd</sup> ACP w.e.f 01.09.2011 from the date of passing of his PWO-1 course and he has also been promoted as Sub Inspector. Petitioner cannot claim parity with his junior Teg Singh. The judgment as relied upon by learned counsel for the petitioner is not applicable in view of the facts and circumstances of the present case as

the claim in that petition was for counting of work charge service.

In **State of Orissa vs. Pyarimohan Samantaray 1977(3) SCC 396**, Hon'ble the Supreme Court has held that making of repeated representations is not a satisfactory explanation of delay. This principle was also reiterated in **State of Orissa vs. Arun Kumar Patnaik 1976(3) SCC 579**.

Similarly, in **Bharat Sanchar Nigam Limited vs Ghanshyam Dass (2) and others 2011(4) SCC 374**, a three-Judge Bench of Hon'ble the Apex Court reiterated the principle stated in **Jagdish Lal vs State of Haryana 1977(6) SCC 538** and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order passed in the year 1992.

Hon'ble the Apex Court in **State of Tamil Nadu vs Seshachalam 2007(10) SCC 137** while testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled as under :-

*“....filing of representations alone would not save the period of limiation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”*

Hon'ble the Supreme Court in **New Delhi Municipal Council vs Pan Singh and others 2007(9) SCC 278** has held that though there is no period of limiation provided for filing a writ petition under Article 226 of

the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In said case, the respondents filed writ petition after a delay of 17 years and explained certain factors but the judgment passed by the High Court was set-aside while exercising the discretionary jurisdiction.

It was held in ***State of M.P. v. Nandlal AIR 1987 SC 251*** that the Court in exercise of its discretion should not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The Court should not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice to third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the Courts in deciding whether or not to exercise such jurisdiction.

It has been pointed out by Hon'ble the Apex Court in a number of cases that representations would not be an adequate explanation to take care of delay. This was first stated in ***K.V. Raja Lakshmiah v. State of Mysore AIR 1967 SC 993***. This was re-iterated in ***R.N. Bose v. Union of India AIR 1970 SC 470*** by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In ***State of Orissa v. P. Samantaraj AIR 1976 SC 2617*** making of repeated representations

was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone.

In view of the facts as mentioned above, there is no merit in the contention raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

26.03.2015  
**gurpreet**

(DAYA CHAUDHARY)  
JUDGE