

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

**CWP No. 20562 of 2011.
Date of Decision : 30.01.2015**

Bijender Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. S.P. Chahar, Advocate for the petitioner.

Mr. D.S. Nalwa, Additional Advocate General, Haryana.

Tejinder Singh Dhindsa, J.(Oral)

The petitioner, who is an employee of the Haryana State Transport Department, filed the instant petition impugning the order dated 12.05.2011 (Annexure P-10) passed by the General Manager, Haryana State Transport, Sonipat, in the light of which, the benefit of ACP (Assured Career Progression) Scheme was withdrawn and the pay was re-fixed at a lower stage.

The entire case set up on behalf of the petitioner was that he was initially appointed as Motor Mechanic Helper in the year 1980 and promoted to the post of Assistant Fitter on 28.08.1985. On completion of 10 years regular satisfactory service, petitioner was granted the benefit of 1st ACP On 1.3.1996. Thereafter, the petitioner earned promotion to the post of Fitter on 21.11.2002 (such date subsequently revised to 21.9.2000) and was even granted the benefit of 2nd ACP on 1.1.2006.

The withdrawal of benefit of 1st ACP was stated to be in complete derogation of the ACP Rules, 1998 as also in violation of the Principles of Natural Justice.

Upon notice of motion having been issued, a short reply on behalf of the General Manager, Haryana Roadways Sonapat, respondent

No. 2, has been placed on record. In the reply, a stand has been taken that the claim of the petitioner for grant of ACP Scale has since been re-considered and an order dated 27.06.2014 at Annexure A-1 has been passed and in terms of which the petitioner has been found entitled to benefit of 1st ACP scale w.e.f. 01.01.2013.

The averments contained in the petition as regards the petitioner having been promoted as Assistant Fitter on 28.08.1985 and having been granted benefit of 1st ACP w.e.f. 1.3.1996 on completion of 10 years of regular satisfactory service, have not been denied.

This Court is of the considered view that the order dated 27.06.2014 appended as Annexure A-1 suffers from a total non application of mind. Such order does not even disclose the basis on which the benefit of 1st ACP scale has been granted only w.e.f. 1.1.2013.

Learned State counsel has also been unable to justify passing of such order dated 27.6.2014. Even the assertion made on behalf of the petitioner that the impugned order dated 12.05.2011 (Annexure P-10) withdrawing the benefit of ACP and re-fixing the pay of the petitioner at a lower stage was passed without issuance of notice or grant of opportunity has not been rebutted.

The claim of the petitioner for grant of ACP benefit had to be considered strictly in terms of the ACP Rules. The benefit of 1st ACP would accrue to an employee upon completion of 10 years of regular satisfactory service. It is not even the case made out on behalf of the State that the petitioner was not eligible for grant of 1st ACP benefit or did not complete 10 years regular satisfactory service i.e. in the Cadre of Assistant Fitter as on 1.3.1996.

Under such situation, the impugned order dated 12.5.2011 at Annexure P-10 cannot sustain. For the same very reason, even the subsequent order dated 27.6.2014 (Annexure A-1) along with the written statement would not hold good.

Writ petition is allowed. Order dated 12.5.2011 at Annexure P-10 as also order dated 27.6.2014 at Annexure A-1 are set-aside.

The respondents are directed to re-consider the matter and examine the claim of the petitioner for grant of benefit of ACP strictly in terms of his eligibility and under the relevant statutory provisions governing the subject. The requisite order upon exercise of re-consideration be passed within a period of two months from the receipt of the certified copy of this order.

The release of consequential benefits would be subject to the outcome of such fresh order to be passed.

Writ petition allowed in the aforesaid terms.

January 30, 2015.
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(TEJINDER SINGH DHINDSA)
JUDGE