

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

**Regular Second Appeal No.2331 of 2012 (O&M)
Date of decision: 01.09.2015**

**General Manager, Haryana Roadways, Kaithal and others
.....Appellants**

Versus

**Hukam Chand
.....Respondent**

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Siddhartha Sanwaria, DAG, Haryana.

**Mr. Harish Mehta, Advocate,
for the respondent.**

Ritu Bahri, J.

Defendants-appellants have come up in regular second appeal against the judgment dated 29.11.2011 passed by the Additional District Judge, Kaithal, dismissing their appeal against the judgment and decree dated 21.12.2010 passed by the Civil Judge (Junior Division), Kaithal, whereby suit of the plaintiff-respondent was decreed to the effect that he was entitled to the benefit of second ACP w.e.f. 04.08.2014 and refixation of pay along with interest at the rate of 18% per annum.

Hukam Chand-plaintiff (respondent herein) was appointed as conductor in Haryana Roadways on 01.12.1980. In the year 1998, the Government of Haryana had promulgated the Haryana Civil Services (Assured Career Progression) Rules, 1998 w.e.f. 01.01.1996 (known as ACP Rules, 1998). As per these rules, the benefit of first ACP was to be granted

to the plaintiff-respondent after rendering the service of 10 years by giving a

scale of Rs.4000-6000 and after rendering the service of 20 years, he was entitled to the pay scale of Rs.5000-7850 being the second ACP. He was entitled for this benefit since 2001. However, the plaintiff was given the benefit of second ACP on 01.04.2007 vide order dated 13.05.2008. Vide order dated 19.02.2004, defendant No.1 had stopped efficiency bar of the plaintiff-respondent for one year i.e. from 01.01.2004 to 31.12.2004. Vide circular dated 07.01.2008 issued by the Haryana Government, Finance Department, pay scale of the Government employees were revised, however, the pay of the plaintiff-respondent was not refixed correctly and was defective. The plaintiff had requested the department many a times for fixation of his pay as per rules, but of no use. Hence, the present suit.

Upon notice, defendants-appellants filed written statement and admitted that the plaintiff had been appointed as Conductor on adhoc basis on 07.12.1980. However, adverse remarks with regard to his integrity were recorded in his ACR for the year 1996-97 by the office of General Manager, Haryana Roadways, Jind on the basis of fraud amounting to Rs.23/-, Rs.08/-, Rs.32 and Rs.46/-. As per Government instructions issued vide circular dated 14.01.1982, an employee who had earned an adverse remarks against integrity should not be allowed to cross the efficiency bar, provided that if, any such report or the incident which led to the imposition of any penalty indicating lack of integrity is older than ten years. But, the competent authority took a lenient view, therefore, the effect of the adverse remarks recorded in the year 1996-97 would be operative till 2007. It was further stated that service record of the plaintiff was not satisfactory and two increments with cumulative effect were stopped on 26.09.1997. Apart from that one increment was stopped without cumulative effect on 25.09.1997.

After completion of 240 days of ad hoc service, the plaintiff was regularized w.e.f. 04.08.1981. As per letter dated 07.08.1992 of the Financial Department, instructions were issued for giving Higher Standard Pay Scale on completion of 10 years regular satisfactory service. Accordingly, first Higher Standard Pay Scale was granted to the plaintiff w.e.f. 01.01.1994 and his next date of increment would be placed w.e.f. 01.01.1995 under the pay scale of Rs.950-1500 to Rs.1200-2040. Pay of the plaintiff was fixed at Rs.1200/- per month and the second ACP scale would be granted after completion of 20 years regular satisfactory service. However, during the year 1996-97, the integrity of the plaintiff was shown doubtful in his ACR, therefore, benefit of second ACP after completion of 20 years' service, could not be given in the year 2001. However, the said benefit was given w.e.f. 01.04.2007. Thereafter, the plaintiff preferred an appeal against adverse remarks of integrity before the Transport Commissioner, Haryana, Chandigarh, which was rejected vide memo/order dated 16.07.2004. The department had passed two separate orders dated 19.02.2004 and 07.06.2005 regarding stoppage of efficiency bar for one year each on the basis of adverse remarks which were recorded in his ACR. First effect of these remarks was to continue for 10 years. The plaintiff crossed the efficiency bar on 01.04.2007.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to the benefit of second ACP w.e.f. 04.08.2001 and order dated 07.08.2009 and 13.05.2008 regarding the course of efficiency bar of the plaintiff are liable to be set aside? OPP

2. Whether the plaintiff is entitled to the relief of mandatory injunction directing the defendants to allow him the second ACP w.e.f. 04.08.2001 and re-fix his pay accordingly as per Haryana Civil Service Rules, 2008 and ACP Rules 2008 with interest @ 18% per annum from the due date till realization?
OPP
3. Whether the suit of the plaintiff is not maintainable in the present form by way of operation of law i.e. court fee, jurisdiction etc.? OPD
4. Whether the suit of the plaintiff is bad for mis-joinder of necessary parties? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the service record of the plaintiff is dissatisfactory and his suit is liable to be dismissed on this ground? OPD
7. Relief.

The trial Court, after going through the evidence led by both the parties, decreed the suit of the plaintiff (respondent) on the ground that Government instructions issued vide circular No.37/21/81 (I) dated 14.01.1982 could not be made applicable against the plaintiff as they had not been issued in accordance with the rules. Plaintiff has more than 90% good ACRs and hence, on account of one adverse entry against his integrity in the ACR pertaining to the year 1996-97, he could not be denied the benefit of second ACP scale.

The appeal filed by the State was dismissed by the lower Appellate Court by observing that witness of the defendants-appellant

namely Tarsem Bala (DW-1), in her cross-examination, had deposed that the plaintiff-respondent had been promoted to the post of Sub Inspector on 21.09.2010. This fact clearly showed that the adverse remarks of the year 1996-97 had become stale and sting of adverse remarks doubting his integrity had been completely wiped out by virtue of the said promotion.

As per notification dated 14.01.1982, an employee who has earned an adverse report against integrity during the period of which the work and conduct is taken into consideration, should not be allowed to cross the efficiency bar. However, if any such report is older than 10 years, the competent authority may take a lenient view of it. A perusal of these instructions shows that these were meant to be applied at the time of considering the case of an employee while crossing the efficiency bar. As per the judgment passed by the trial Court, he was allowed to cross the efficiency bar when the adverse entry of doubtful integrity pertaining to the year 1996-97 became more than 10 years old. The defendant-department had passed two orders dated 19.02.2004 and 07.06.2005 (Ex.D4 and Ex.D5) for stoppage of efficiency bar w.e.f. 01.01.2004 till 31.12.2004 and 31.12.2004 to 31.12.2005. Thereafter, there was no order for stoppage of efficiency bar. As the adverse entry of doubtful integrity pertaining to the year 1996-97 was 10 years old, the plaintiff could cross the efficiency bar on 01.01.2006. As per Rule 4.8 of Civil Service Rules, Vol-I, Part-I, Note 2, there has to be a specific order for stoppage of efficiency bar and it has to be reviewed annually. However, there was no order of stoppage of efficiency bar beyond 31.12.2005. Hence, the instructions dated 14.01.1982 were to be applied only at the time of considering the case of the plaintiff at the stage of crossing of efficiency bar. These instructions were not to be made

applicable for grant of ACP scales.

Recording of adverse ACR of doubtful integrity has not been stated to be a bar or to make an employee ineligible for grant of ACP scales. The only condition was that he should have 10 years of regular service. As per Rule 8, the authority competent to grant promotion to a Government servant was to pass suitable orders for ACP scales. The plaintiff-respondent having 90% good ACRs in the last 10 years, was thus, rightly held eligible for grant of second ACP scale in the year 2001. He had been regularized on 04.08.1981 and was held entitled for second ACP scale after completing 20 years in the year 2001. While denying such benefit, the defendant-department had wrongly placed reliance on the notification dated 14.01.1982, which was meant to be applied for crossing the efficiency bar.

After going through the impugned judgments passed by the Courts below, this Court is of the view that the suit of the plaintiff-respondent has been rightly decreed, as he was entitled to grant of second ACP w.e.f. 04.08.2001 and further fixation of pay as per ACP Rules, 2008.

Recently the Hon'ble Supreme Court in **Megh Varan Sharma Vs. State of U.P. & others**, 2015 (1) SCT 12, has considered the question of grant of interest, which is to be paid on delayed payment, pension, gratuity etc. It has been held that an employee should be given the highest of the maximum rate, at which scheduled banks are currently paying interest on fixed deposits. In para Nos.12 and 13 of the judgment, the Hon'ble Supreme Court has further observed as under:-

“12. The term 'current rate of interest', referred to in Section 3, has been defined in Section 2 (b) of the Interest Act, 1978. The same is also being extracted hereunder:-

“2(b) “current rate of interest” means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than

those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

Explanation:- In this clause, “scheduled bank” means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949).”

On a cumulative interpretation of Section 3 read with Section 2(b) of the Interest Act, 1978, leaves us with a clear understanding, that interest would be payable at the highest of maximum rate at which interest is payable on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions).

13. In the above view of the matter, we are satisfied that while assessing the penalty payable by the respondent-Corporation on account of delayed payment of retiral benefits, the appellant would be entitled to the highest of the maximum rate, at which Scheduled Banks are currently paying interest on fixed deposits. We, accordingly, direct the respondent-Corporation to calculate and pay the above interest to the appellant, within two months from the date of receipt of a copy of this order.”

In view of the judgment passed by the Hon'ble Supreme Court in **Megh Varan Sharma's** case (supra), the judgment passed by the trial Court is being modified to the extent that after grant of second ACP scale w.e.f. 04.08.2001, the payment of arrears shall be made along with interest at the rate of 9% per annum.

With the above modification, the present regular second appeal is disposed of.

01.09.2015
ajp

(RITU BAHRI)
JUDGE