

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

**RSA No. 4705 of 2015 (O&M)
Decided on : 14.9.2015**

The Uttari Haryana Bijli Vitran Nigam Limited and others

...Appellants

Versus

M.L. Sharma

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Surender Dhull, Advocate,
for the appellant.

K. C. PURI, J.

CM No. 11331-C of 2015

There is delay of 113 days in filing the present appeal. For the reasons mentioned in the application, the same stands allowed and the delay in filing the appeal stands condoned.

Main case

The defendants-appellants have directed this appeal against the judgment and decree dated 28.1.2015 passed by Sh. Aman Deep Dewan, Additional District Judge, Kurukshetra, vide which the appeal preferred by the defendants was dismissed and the judgment and decree dated 7.5.2012 passed by Mrs. Harleen A. Sharma, Civil Judge

(Junior Division), Kurukshetra was upheld and the suit of the plaintiff remained decreed.

The facts of the case are that the plaintiff-respondent joined the services of the defendants department on the post of Shift Attendant on 25.3.1971 and thereafter, he was directly appointed to the post of Line Superintendent (now re-designated as Junior Engineer) on 6.4.1973. The plaintiff was assigned the seniority of Junior Engineer at par with one Lal Singh, A.S.S.A., who was also appointed directly to the post of Junior Engineer during strike period of 4/1973, however, the said Lal Singh, Junior Engineer having date of birth 14.6.1950 and date of joining in the Nigam as Shift Attendant on 23.12.1971 and date of joining the post of Junior Engineer on 6.4.1973 has been placed at Sr. no.1176 in the seniority list of Junior Engineers, whereas the plaintiff has been placed at Sr. No.1190 in the said seniority list and as such the plaintiff has been deprived of his legitimate claim of promotion to the post of Junior Engineer-I and II and thereafter to the post of Assistant Engineer etc. and as such, the plaintiff is required to be assigned proper place in the seniority list over and above the said Lal Singh. The plaintiff was promoted to the post of Junior Engineer Grade-I on 27.5.2002 and was also allowed the current duty charge to the post of Assistant Engineer on 10.5.2006 vide office order issued in this regard and as such the plaintiff is legally entitled to the deemed date of promotion to the post of Junior Engineer Grade-I and thereafter to Assistant Engineer at par with said Lal Singh placed at Sr. No.1176

but such benefits have not been allowed to the plaintiff even after repeated requests and representations made to the defendants department. It was further pleaded that several other junior officials namely Sher Singh having seniority no.1212, R.K.Sharma having seniority no.1336 have been allowed the benefit of promotion to the post of Junior Engineer Grade-I vide letter dated 2.2.2001 and similarly, three persons namely R.G.Sharma, Subhash Bhatia and O.P. Khaturia were promoted to the post of Assistant Engineer during the year 2003 by ignoring the claim of the plaintiff. The plaintiff who joined the services as Junior Engineer on 6.4.1973 is very senior to all the above mentioned employees but the plaintiff was promoted to the post of Junior Engineer Grade-Ist on 27.5.2002 and thereafter he was promoted to the post of Assistant Engineer in the current duty charge on 10.5.2006 and the regular scale of Assistant Engineer has not yet been granted to the plaintiff by the defendants department. It was further pleaded that the plaintiff passed the AMIE (Section A & B) examination in September, 1999 and the defendant no.2 granted him personal allowance equivalent to the two increments last drawn just before the last date of the examination vide office order dated 4.1.2002 but the benefit of said personal allowance has not been allowed to the plaintiff by the defendant no.4 and the plaintiff is thus entitled to the arrears along with interest @ 18% per annum from the date the same became due till final payment is released. The plaintiff requested the defendants department several times for granting deemed date of

promotion to the post of Junior Engineer Grade-I and Assistant Engineer at par with said Lal Singh and other junior officials who were promoted to the post of Junior Engineer Grade-I and thereafter to the post of Assistant Engineer with all consequential benefits i.e. pay fixation, grant of standard/ACP scale on completion of 10/20 years of service and to pay him all the arrears of pay fixation and other allowances as admissible from time to time along with interest @ 18% per annum from the date when the same became due to the plaintiff till payment is released. The plaintiff was directly appointed to the post of Junior Engineer on 6.4.1973 and he was also allowed the seniority of Junior Engineer Grade-I by the defendants department vide memo dated 30.4.1990 and the defendants department has also adopted the Haryana Government Notification dated 8.2.1994 applicable w.e.f. 1.1.1994 vide its memo dated 10.5.1994 vide which standard scale of group C and D were granted after completion of ten and twenty years of regular service but such benefits have not been allowed to the plaintiff and as per instructions and rules of the defendants department, the plaintiff is legally entitled to additional increments after completion of 8/18 years of service w.e.f. 1.7.1992 and similarly on completion of 10/20 years of regular service, the plaintiff is also legally entitled to first standard scale and second standard scale/ACPs. The defendants department revised the pay scales of its employees including the plaintiff vide its order dated 31.3.1989 applicable w.e.f. 1.1.1986 and plaintiff was allowed scale of Rs.1640-60-2600-EB-75-2900 w.e.f.

1.1.1986 and the said scale was further modified w.e.f. 1.5.1990 to Rs.1800-60-2340-75-3105 and there is a clause that after thirteen years of regular service in respective post, the pay of Junior Engineer will be fixed in the pay scale of 2100-60-2340-75-3315 but no such benefit has been allowed to the plaintiff. It was further pleaded that the defendant Nigam granted additional increments to its employees vide memo dated 10.9.1992 w.e.f. 1.7.1992 on completion of eight and eighteen years of service in a particular group but the plaintiff has not been allowed the above benefits, whereas he has completed eight and eighteen years of service as on 1.7.1992 being appointed as Junior Engineer Grade-I on 6.4.1973. Plaintiff also got issued a legal notice upon defendants department and requested them to grant the above claimed benefits to the plaintiff but the defendants department has not paid any heed towards the request of the plaintiff. Hence, the present suit.

The defendants appeared and filed joint written statement taking preliminary objections of maintainability of the suit; cause of action; locus standi of the plaintiff; estoppel of conduct; jurisdiction of Civil Court; suppression of true and material facts etc. On merits, it was pleaded that the plaintiff remained under suspension during his service from 3.4.1999 to 31.10.1999 and a vigilance enquiry on a complaint of consumer is also pending against the plaintiff and the service record of the plaintiff is not satisfactory and untarnished, however, the said fact has been concealed and not disclosed by the plaintiff. It was further averred that it would be prejudice to the rights

of the defendants department to redetermine the seniority along with other officials promoted during the strike period in 4/1973 in accordance with the Board's resolution contained in memo dated 3.3.1979 and the plaintiff is not entitled to any rectification as alleged in view of the above stated facts and the plaintiff has also not exhausted the remedy available to him at the time of circulation of the seniority list. It was further pleaded that the case of said Lal Singh is different from that of the plaintiff as the plaintiff was not eligible for promotion and a vigilance enquiry was still pending against him which was conveyed to the defendants department in the shape of report on 24.10.2006 and the same has not yet been decided by the competent authority and due to this reason the plaintiff was not entitled to the benefits as in comparison to the said Lal Singh. It was further pleaded that the officials other than the plaintiff were promoted as per record and the plaintiff was not promoted due to the reason of his unsatisfactory record and vigilance enquiry pending against him. After the plaintiff passed his AMIE Part-A and Part-B in September, 1999, the sanction was accorded on 4.1.2002 for grant of additional increments to the plaintiff, however, later on the defendants department has withdrawn the above said benefits on 11.6.2003 vide office order issued in this regard and the plaintiff is thus not legally entitled to any benefits as claimed for by him. It was further pleaded that the plaintiff was granted scale of 2100-60-2340-EB-75-3350 w.e.f. 1.5.1990 and his pay was fixed and drawn accordingly and two additional increments

due on 1.7.1992 were also granted to the plaintiff who is not entitled to any other benefit as claimed for by him. The remaining allegations were denied.

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

1. Whether the plaintiff is entitled to a decree for declaration that he is legally entitled for grant of pay scale of 2100-3315 w.e.f. 1.5.1990 and additional increments w.e.f. 1.7.1992, standard scale w.e.f. 1.1.1994 and ACP scale w.e.f. 1.1.1996 and personal allowances etc. of two increments w.e.f. 1.10.1999 for five years with arrears along with interest @ 18% per annum till final payment? OPP
2. Whether the plaintiff is entitled to a decree for mandatory injunction directing the defendants to grant aforesaid pay scale and arrears along with interest? OPP
3. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD
4. Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD
5. Whether the suit of the plaintiff is time barred?
OPD
6. Whether the suit of the plaintiff is not

maintainable? OPD

7. Relief.

Both the parties led their respective evidence on the aforesaid issues. The learned trial court, after appraisal of the evidence, vide judgment and decree dated 7.5.2012 decreed the suit of the plaintiff to the extent that the plaintiff is entitled to the ACP scale of Rs.6500-10,500 w.e.f 1.1.1996.

Feeling dissatisfied with the above said judgment and decree dated 7.5.2012, the defendants filed appeal. The plaintiff also filed cross appeal. Vide judgment and decree dated 28.1.2015 passed by Sh. Aman Deep Dewan, Additional District Judge, Kurukshetra, the appeal filed by the defendants and cross appeal filed by the plaintiff were dismissed.

Still feeling aggrieved, with the aforesaid judgments and decrees dated 7.5.2012 and 28.1.2015, the defendants-appellants have preferred the instant regular second appeal.

Learned counsel for the appellants, in para no.9 of the grounds of appeal has mentioned that following substantial question of law has arisen in the instant appeal :-

- 1) Whether the benefit of ACP can be granted to a employee after promotion to the next post ?
- 2) Whether grant of ACP after completion of 10/20 years of service is a matter of right even after availing other benefits ?
- 3) Whether second ACP can be granted to a employee

who is drawing pay scale higher than the functional pay scale plus ACP?

I have heard learned counsel for the appellant and have gone through the record of the case.

The only point involved in the present case is whether the plaintiff is entitled to ACP after completion of 10 years and 20 years of service. It is not disputed during the course of arguments that service record of the plaintiff is good. No other reasoning has been given by the defendants-appellants for withholding the ACP to the plaintiff after completion of 10 years of service and another ACP on completion of 20 years of service. It is also not disputed during the course of arguments that plaintiff was not granted any promotion during those 20 years. So, both the Courts below have rightly decreed the suit of the plaintiff.

The other point raised during the course of argument is that plaintiff is entitled to ACP but his functional pay is already on higher side. However, that contention is without any merit. It is well known fact that pay scales are revised from time to time. If the pay scale has been revised the benefit of the same has to be given to the employee. The argument of functional pay would not be applicable to the facts of the present case as there is nothing on the record that two ACPs have been granted to the plaintiff after completion of 10/20 years of service. So, I have no hesitation in holding that no substantial question of law has arisen in the present regular second appeal. The

questions of law raised by the appellants do not exist. It is not the case of the appellants that during the course of 20 years, the plaintiff was granted any promotion. No doubt, the grant of ACP is not a matter of right but where the service record of employee is good and there is no other reason for withholding the ACP, in that case the benefit has to be allowed to the employee. Consequently, the appeal is without any merit and the same stands dismissed.

14.9.2015
SN

(K.C.PURI)
JUDGE