

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7410 of 1998

Date of Decision: 06.06.2016

Rakesh Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. H.C.Arora, Advocate for the petitioner

Mr.Rajinder Goyal, Addl.A.G., Punjab

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner was appointed as a Junior Engineer on 3rd June, 1982 by direct recruitment. Before he was appointed, he possessed the degree of Bachelor Engineering (Civil). It is not disputed that the post of Junior Engineer and Sectional Officer carried the same pay scale in terms of the provisions of Clause (b) of Rule 3 of the Punjab Civil Services (Revised Pay) Rules, 1988 applicable to the Department of Public Works (B&R), Punjab where the petitioner was appointed. The pay scale of Sectional Officer was revised from ₹ 200-415 to ₹ 700-1200. The revised scale carried with it the benefit of two increments for those who are AMIE qualified and possess the degree in Engineering (Civil). To some of the employees, the higher pay scale of ₹ 800-1400 was given by way of selection grade from amongst 20% of the cadre from the top downwards. The exact words in the Notification read as follows:-

“700-1200 with two advance increments for those who are AMIR. Possess degree in Engineering. 800-1400 (S.G. @ 20).”

2. The revised pay scales admissible to Sectional Officers were available to those who “are” AMIE or degree holders. The word “are” is used in the past tense, and therefore, it cannot be read in substitution of the words: such as those who “acquired” these qualifications while in service in the future tense. Therefore, the benefit of the higher pay scales ₹ 700-1200 would be available to all those across board with respect to availability of two advance increments. Since the petitioner was recruited in 1982, the notification dated 14th January, 1981 (Annex. P-2) was the prevailing law with respect to revision of pay scales. As a result, the petitioner became entitled to the pay scale of ₹ 700-1200 on the date of appointment and would have the advantage of two advance increments which were in fact given to him vide letter dated 28th April, 1987 (Annex.R-1).

3. The second limb of the case of the petitioner originates from the Notification issued by the Punjab Government on 2nd June, 1989 (Annex.P-3) brought into force in pursuance of powers under Clause (b) of Rule 3 of the Punjab Civil Services (Revised Pay) Rules, 1988 where the post of Junior Engineer fell at Sr.No.3 in the Department of Irrigation and Power. The pay scale of Junior Engineer in the notification was placed in the running scale ₹ 700-1200 with revised pay scale of ₹ 800-1400 as available to Sectional Officer. This pay was revised to ₹ 1800-3200. It is recorded in the Notification in the last column seen at page 23 of the paper-book in the following words:

“After eight years of regular service, two increments- one proficiency step up and the other regular annual increments will be admissible.”

4. This provision gave a right to the petitioner to two advance increments, one proficiency step up and the other regular annual grade increments on completion of 8 years of regular service. The petitioner completed 8 years of regular service in 1990. There is no dispute that the petitioner has been released his regular annual increments on the promotional pay scale.

5. The present dispute relates to the thesis propounded by the Punjab Government that under the Notification dated 2nd June, 1989, the petitioner would not be entitled to two advance increments for acquiring higher qualification because he was a degree holder on the date of recruitment and there is no provision in the 1989 rules to account for those increments. Government interprets the expression “two increments” restrictively, and therefore, denies the benefit under 1989 Rules on pay revision with effect from 1.1.1986.

6. On the other hand, Mr.H.C.Arora, learned counsel for the petitioner contends that this was a mistake committed by the department of Government by erroneously reading the Notification dated 2nd June, 1989 in an incorrect manner which has deprived the petitioner of his valuable rights. He submits that the rights flowing under the 1989 notification are in addition to the petitioner’s acquired rights prior to the issuance of the Notification and therefore he would have the advantage independently of two increments

from the date of revision of the pay scale to ₹ 1800-3200. In support of his argument, Mr.Arora draws attention to the office order dated 29th May, 1992 (Annex.P-4) where sanction was accorded in terms of the Notification dated 14th January, 1981 for grant of two advance increments in the case of one Sh. Jagjiwan Kumar, J.E. who on having acquired higher qualification after passing A & B Examination of the Institution of Engineers (India) held in Summer 1983 and Winter 1985 respectively in the Civil Engineering Board had been granted the two advance increments. The result of which final examination was declared on 4th April, 1986 and two advance increments had been sanctioned w.e.f. 4th April, 1986 and the pay of the incumbent was re-fixed in the manner provided in the office order. If Jagjiwan Kumar was given the benefit of two advance increments on acquiring higher qualifications while in service, then there is no reason why the Notification dated 2nd June, 1989 should not be interpreted in his favour to bring him the desired relief. Undoubtedly, he possessed the degree of B.E. at the time of entry into service. Therefore, I am inclined to think that the contention of Mr.Arora, learned counsel merits acceptance and is apparently the correct interpretation to be placed on the Circulars dated 1981 and 1989. Otherwise, an anomalous situation would be created where Jagjiwan Kumar would steal a march in pay over and above the petitioner and became entitled to receipt of higher pay only for the reason that Jagjiwan Kumar acquired AMIE qualification while in service, while the petitioner armed with a degree has not been given. If this is permitted, it would amount to unfair discrimination and being unusual exercise of administrative power wherein the person of the same cadre gets higher pay than the other without any distinguishing features which are based on reasonably classification.

7. Though no impugned order has been passed in this case, but the stand of the Department has been taken by way of a reply to the legal notice served by the petitioner for correction of the anomaly and grant of his monetary benefits as claimed in this petition. The reason given in the reply dated 12th September, 1997 (Annex.P-7) is that there are no instructions of the Punjab Government covering cases of grant of two increments on account of acquiring higher qualification after the revision of new pay scale w.e.f. 1.1.1986. There is neither a provision in the 4th Pay Commission Report implemented w.e.f. 1st January, 1986 to grant two increments on account of acquisition of higher qualifications than required for the post in the rules. Hence the pay of the petitioner cannot be re-fixed after granting two increments on account of higher qualifications. Therefore, two special increments cannot be granted to him. It is against this anomaly that the petitioner had approached this Court in the year 1998 which Mr.Rajinder Goyal, learned Addl.Advocate General, Punjab contends, is a belated approach to this Court and the petition suffers from delay and laches and deserves to be dismissed on that account. To counter the argument, Mr.Arora, learned counsel submits that the loss is recurring in nature and financial loss is occasioned by the passing day and therefore, the question of delay and laches is not sufficient to non-suit the petitioner since the monetary claims can be moulded to 36 months prior to the date of filing of the writ petition with notional benefits admissible retrospectively. I would not accept the argument of Mr.Goyal and venture to dismiss the writ petition on the ground of delay and laches largely for the reason that the petition was entertained and admitted by this Court to be heard on the regular board. Even otherwise, the cause of action is a recurring one with cause of action

accruing everyday. In fact, apart from his right asserted, the proper pay and pension has been denied to the petitioner by misinterpreting the 1989 notification. The 1989 Notification is an independent right which the petitioner possessed as a pre-existing one, which now has deservedly to be given to him.

8. At the end Mr.Arora submits that this is a fit case for award of interest on delayed payments on the amounts withheld by the respondents without just cause or legal justification by the erroneous view taken by the Executive Engineer, Canal Lining Division, Rampura Phul (BTI) in reply to the legal notice. Mr.Goyal opposes this prayer and says that it is not a case of grant of interest.

9. Having considered the arguments of both the learned counsel on the issue of interest, this Court feels that element of interest cannot be excluded altogether and in the circumstances due to faulty interpretation of the rules and hence, this Court would direct payment of interest at the rate of 6% per annum as the minimum compensation for restitution of rights to money which are akin to right to property safeguarded by Article 300A of our Constitution at rates prescribed by Section 34 of the Code of Civil Procedure, 1908. Interest is payable for the reason that money owned by one person was kept by another and he earned interest on it, then he must return it to the rightful owner. I would, therefore, accept the prayer of Mr.Arora with regard to interest.

10. However, before parting with the judgment, I am constrained to say that the government should not treat replies to representations and legal notices except when channelled through an Officer authorized by it as

competent to express the viewpoint of the State Government and conveyed only after the Secretary of the Department concerned has vetted the reply and approved it to represent the stand of the State. Otherwise, the court is faced with the stand of the State in a reply to a representation/legal notice and to treat it as an order settling rights and liabilities of an aggrieved employee and then put it to judicial scrutiny and review of administrative action. If this is allowed to go on, it would be an unsatisfactory method for disposal of the cases where the Court might be faced with a situation as to whether the reply has come from proper source or not. However, in the present case, the written statement has been filed and the same has been approved or is deemed to have been approved by the State Government. It is not the department should not make a reply and send it to the addressee, but it should ordinarily be accompanied or followed by an order in writing passed by the competent public authority in his official capacity since it is trite that Government speaks only formally and in writing when valuable rights of an employee are likely to be adversely affected and delivered at the recorded address for communication. Section 80 of the CPC does not make it obligatory on the State to reply to non-statutory legal notices and representations and all that the provision is designed for is that an action will not be brought in a court of law until the expiration of two months next after notice in writing has been delivered to, or left at the office of the authority concerned. The period is meant for the State to visit or revisit the claim or grievance and correct errors if they have been occasioned on record.

Learned counsel for the State may bring this order to the notice of the quarters concerned to take steps to clear the path of justice whenever the Court is approached by a direct order capable of being impugned in writ

proceeding. The other reason is that a reply to a notice/representation is written in the comfort of office without hearing the person affected. Adopting such course would violate the principles of natural justice. It is too late in the day in this case to consider remittance of the case to the authority competent to pass the order, to pass a fresh one in accordance with law.

11. For the foregoing reasons, this petition is allowed. The communication dated 12th September, 1997 (Annex.P-7) by way of reply to the legal notice is quashed. Respondents are directed to release two additional increments w.e.f. 1.1.1986 under the pay revision rules. The arrears would earn interest at the rate of 6% per annum. Pay and pension of the petitioner be re-fixed accordingly but the monetary benefits will be restricted to 36 months prior to the filing of the writ petition. The exercise be completed by mid August 2016.

(RAJIV NARAIN RAINA)

JUDGE

06.6.2016

MFK