

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

Date of decision: 28.03.2016

1. CWP No.10885 of 2014 (O&M)

Khem Chand

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

2. CWP No.9735 of 2014 (O&M)

Satyapal Nasa

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. K. L. Dhingra, Advocate,
for the petitioner(s).**

**Mr. P.S. Poonia, Advocate,
for the respondents.**

Ritu Bahri, J.

This order will dispose of CWP Nos.10885 of 2014 and 9735 of 2014 together, as common questions of law and facts are involved in both the petitions. For reference, the facts are being taken from CWP No.10885 of 2014.

Petitioner (in CWP No.10885 of 2014) is seeking direction to the respondents to re-fix/restore his pay by granting stepping up of pay at par with his junior i.e. respondent No.4.

Khem Chand-petitioner was initially appointed as Peon on 17.04.1980 on regular basis. He was promoted as Meter Reader in HSEB on

20.10.1983. Ultimately, he had retired on 28.02.2011 after attaining the age

of 58 years. He served the respondent-Nigam for about 31 years on regular basis. One Nand Lal-respondent No.4 was directly appointed as Meter Reader in HSEB on 07.03.1986. He was much junior to the petitioner and was a direct recruitee. However, the pay of the petitioner was not fixed at par with aforesaid Nand Lal on the ground that he being direct recruitee in the pay scale of Rs.3050-4350, his Ist and 2nd ACP was in the scale of Rs.4000-6000 and 5000-7850 respectively, whereas the persons who were promoted from Group 'D' post, their functional pay scale being 2650-4000, Ist ACP scale is 3050-4350 and 2nd ACP is 4000-6000 as per ACP Rules dated 07.01.1998 (Annexure P-3).

The petitioner was equated with his junior namely, Nand Lal-respondent No.4 by stepping up his pay, but later on, it was withdrawn on the plea that being Class-IV promotee, his functional pay scale was 2650-4000 to which, Ist ACP is 3050-4350 and 2nd ACP is 4000-6000. Due to fixation of revised pay in the year 2011, his pay was lowered and recovery was effected from his pension by fixing him at the lower stage from the date of grant of Ist ACP i.e. w.e.f. 01.01.2006. Hence, this petition.

The petitioner(s) (in both the petitions) are seeking the benefit of judgments rendered by the Hon'ble Supreme Court in **Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others**, 2007 (3) RSJ 154. As per pay fixation chart of Sh. Khem Chand-petitioner and Sh. Nand Lal-respondent No.4 (Annexures P-6 and P-7 respectively), his (petitioner's) pay had rightly been fixed at par with his juniors. After retirement of the petitioner in the year 2011, the benefit has been wrongly withdrawn retrospectively w.e.f. 01.04.1996.

Stand taken by the respondents, in their written statement, is that

instructions dated 23.06.2009 duly adopted by the respondent-Nigam vide memo dated 13.01.2010 (Annexure R-1). It has been further stated that Khem Chand-petitioner had been initially appointed as Peon and thereafter, he was promoted as Meter Reader. Nand Lal-respondent No.4 was a direct recruit on the post of Meter Reader (MR) and the petitioner's pay could not be stepped up at par with respondent No.4. Recovery has been rightly effected from the petitioner in view of the decision given by a Division Bench of this Court in **Prem Chand Manchanda and others Vs. State of Haryana and another**, CWP No.4563 of 2007, decided on 09.01.2009.

Along with the replication, the petitioner has placed on record instructions dated 23.11.2006 (Annexure P-10), which were issued pursuant to the judgment passed by the Hon'ble Supreme Court in **Ram Sarup Ganda's** case (supra).

After hearing learned counsel for the parties, this petition deserves to be allowed. Instructions dated 23.11.2006 (Annexure P-10) clarified that after introduction of the ACP Scales in lieu of Higher Standard Pay Scales, some of the aggrieved Government employees filed various petitions before this Court seeking stepping up of pay at par with their juniors. Those petitions were disposed of in terms of the decision rendered in **Suraj Bhan Vs. State of Haryana**, CWP No.45 of 1999 (decided on 21.09.2000). The promotees in that case had been allowed the pay scales at par with their juniors i.e. direct recruits. This Court held that the pay could not be validly reduced. Finally, in **Ram Sarup Ganda's** case (supra), the Hon'ble Supreme Court held that if, Group 'D' employee gets promotion to Group 'C' post by selection and there was any anomaly to that effect and the senior Government servant was receiving lesser pay than his juniors who entered

servant is entitled stepping up of his pay in order to bring him on par with the salary which is being received by his juniors. There was no clause in the scheme which prohibited stepping up of salary, which is a common practice applicable to all Government employees in case there is anomaly in the pay structure of the employees. This observation was given by the Hon'ble Supreme Court while interpreting Rule 9 of the ACP Rules, 1998. Pursuant to the aforesaid judgment, the State of Haryana vide instructions dated 23.11.2006 (Annexure P-10) gave direction to implement the same. However, it was clarified that on revision of pay scales, if the employee is liable to refund any amount, the Government shall not insist on refund of such amount. If any employee is entitled to get any amount by way of pay revision, the said amount shall be made available to him within a period of six months.

The case of the petitioner(s) is covered by the above said instructions dated 23.11.2006 (Annexure P-10), which have been made basis for declining their claim. This issue came up for consideration before this Court in **Rajbir Singh Vs. Uttar Haryana Bijli Vitran Nigam Limited and others**, CWP No.25750 of 2013, decided on 08.01.2015 (Annexure P-11), wherein it has been held that the respondent-authorities have misread and misunderstood the ratio of the judgment passed in **Prem Chand Manchanda's** case (supra). While issuing instructions dated 13.01.2010, the earlier instructions had not been taken into consideration. The said petition was allowed as the benefit of pay fixation had been granted as per the spirit and judgment passed by the Hon'ble Supreme Court in **Ram Sarup Ganda's** case (supra). The aforesaid judgment has been followed by this Court in **Satya Narain Sharma Vs. Uttar Haryana Bijli Vitran Nigam and**

No LPA has been filed against the judgments dated 08.01.2015 and 24.04.2015 (Annexures P-11 & P-12). The present case is squarely covered by the judgment passed in **Ram Sarup Ganda's** case (supra) and instructions dated 23.11.2006 (Annexure P-10).

Resultantly, both these petitions i.e. CWP Nos.10885 of 2014 and 9735 of 2014 are allowed and a direction is given to the respondents to re-fix the pay of the petitioner by bringing him at par with Sh. Nand Lal-respondent No.4 as per the judgment passed in **Ram Sarup Ganda's** case (supra) and instructions dated 23.11.2006 (Annexure P-10). Necessary exercise be completed within a period of three months from the date of receipt of certified copy of this order and thereafter, arrears be paid within next one month. Compliance report thereof, be sent to this Court.

28.03.2016
ajp

(RITU BAHRI)
JUDGE