

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

**Civil Writ Petition No. 15445 of 2013
Date of Decision: 23.09.2016**

Sukhraj Singh

..... Petitioner

Versus

Punjab State Power Corporation Limited, Patiala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. B.D.Sharma, Advocate for the petitioner(s).

Mrs. Avin Sandhu, Advocate for
Mr. Amit Aggarwal, Advocate for the respondents.

JASWANT SINGH, J. (Oral)

The petitioner was promoted as Draftsman on 26.07.2004 in the pay scale of Rs.6300-10700 by the Punjab State Power Corporation Limited. The petitioner has laid challenge to the speaking order dated 14.03.2013 (**Annexure P-10**), whereby his pay as Draftsman w.e.f. 31.08.2004 has been re-fixed at the rate of Rs.6300/- i.e. the initial of the pay scale of Rs.6300-10700 and consequently the annual increments drawn in the same pay scale have been ordered to be withdrawn till November, 2009 and the recovery of excess amount of Rs.1,91,937/- paid w.e.f. 01.08.2005 to 23.05.2011, has been effected.

It is not in dispute that the petitioner had joined on the post of Junior Draftsman with the respondents by way of direct recruitment on

post of Draftsman, a Junior Draftsman is required to possess 12 years of experience. It is also not in dispute that the petitioner was promoted as Draftsman on 26.07.2004, when he had not completed 12 years of service as Junior Draftsman.

It is the case of the petitioner that vide Office Memo dated 17.08.1976 (**Annexure P-11**), the erstwhile PSEB (successor-PSPCL) had laid down the minimum period of service/time gap between promotion from one rank to the other to streamline the administration. A perusal of **Annexure P-11** reveals that the time gap for promotion from the rank of Junior Draftsman to that of Draftsman provided was five years. Since the petitioner at the time of his promotion as Draftsman on 26.07.2004 fulfilled the aforesaid criteria, therefore, he was legally entitled to release of his annual increments w.e.f. 01.08.2005 after his promotion as Draftsman on 26.07.2004.

It is further the case of the petitioner that the condition of 12 years experience for promotion was imposed vide order dated 06.11.2008 (**Annexure P-4**), which would have prospective application.

Upon notice, the respondents-PSPCL has filed its reply.

It is asserted that the conditions for promotion from the Junior Draftsman to Draftsman were made applicable as per the Finance Circular No.58/90 dated 03.10.1990 (**Annexure R-1**), which provided that a Junior Draftsman would be eligible for promotion as Draftsman after a minimum period of 12 years of service. In case, the Draftsman already promoted before putting in 12 years of service, their pay would be fixed at the minimum of the pay scale and shall be entitled to get increment in that scale

service. The said condition was further reinforced by the subsequent Finance Circular No.25 of 2003 dated 13.11.2003 (**Annexure R-2**), wherein while revising the pay scale of the employees, in Group No.12, the pay scale of the Draftsman was enhanced and specifically provided that a promoted junior Draftsman would get the revised pay scale after 12 years of service. It is thus submitted that only the increments w.e.f. 01.08.2005 to the petitioner in the rank of Draftsman were illegally granted and hence were rightly ordered to be withdrawn and recovery of excess amount effected.

Learned Counsel for the petitioner based on the Circular dated 17.08.1976 (**P-11**) has argued that the promotion of the petitioner was effected after five years of having worked as Junior Draftsman and, therefore, the only increments earned were rightly released while working on the promoted post of Draftsman. He further argued that even if the increments are held liable to be withdrawn in the light of the Circulars dated 03.10.1990 and 13.11.2003 (**R-1** and **R-2**), at least the recovery of the excess amount would not be permissible in the light of the law recently reiterated by Hon'ble the Supreme Court in **State of Punjab Vs. Rafiq Masih (White Washer), 2015 (1) S.C.T. 195** as there was no misrepresentation on the part of the petitioner at the time of wrong fixation of the pay of the petitioner w.e.f. 01.08.2005.

On the other hand, learned Counsel for the respondents has argued that the Office Memo dated 17.08.1976 (**P-11**) stood impliedly superseded by the subsequent Finance Circular dated 03.10.1990 (**R-1**), reinforced by Circular dated 13.11.2003 (**R-2**), which specifically provided that for a Junior Draftsman to be eligible for promotion, he was required to

earlier, at least the increments in terms of the Circular were required to be released on attaining of the minimum period of eligibility of 12 years. She further submits that the order of withdrawal have been passed after following the principles of natural justice and thus are legal and valid. She further submits that the case of the petitioner, on facts, is not covered by the case of the Hon'ble Supreme Court, as cited above by learned Counsel for the petitioner.

After hearing learned Counsel for the petitioner, this Court finds that the present petition is devoid of any merit.

The reliance placed by the petitioner on the Office Memo dated 17.08.1976 (**P-11**) is totally misplaced as in the subsequent Circular dated 03.10.1990 (**R-1**), the following was provided:-

" A Junior Draftsman shall be eligible for promotion as draftsman in the scale of 1800-3200 after a minimum period of 12 years of service as such. JDM/Tracer already promoted as draftsman before putting in twelve years of service in the lower scale will start in the scale of 1800-3200 at the minimum of Rs.1800/- and shall be entitled to get increment in that scale only after they have completed the aforementioned minimum eligibility period of twelve years of service. "

The aforesaid condition was reiterated by the Finance Circular No.38/94 dated 08.08.1994 and thereafter vide Memo dated 13.11.2003 (**R-2**).

It is evident from the above that a Junior Draftsman like the petitioner would have become eligible only on possession of the minimum period of 12 years of service as a Junior Draftsman. In fact, the petitioner could not be promoted on 26.07.2004 since he did not possess the stipulated

eligibility. The condition of restricting the release of the only increments upon acquiring 12 years of service was made applicable to those employees, who already stood promoted as Draftsman before 12 years at the time of the revised condition of eligibility circulated on 03.10.1990. The department, however, has been lenient enough to invoke the alternative clause and thereby recovering only the increments illegally granted till he attained the eligibility of 12 years. Otherwise, even the promotion of the petitioner was *de hors* the requirement of minimum eligibility condition. Thus, on that account, no grievance of the petitioner can be countenanced. As regards, the argument qua recovery, it is to be noticed that the promotion itself in 2004 was illegal and, therefore, the petitioner was not entitled to work on the higher post. However, since the petitioner has worked on the higher post and has been permitted to draw the salary in the higher post, the recovery atleast of the impermissible increments has to be enforced as the petitioner is not from the poor section of the society. It is conceded that he holds the Class-III post. Therefore, this Court is of the view that the cited judgment is distinguishable on facts and does not advance the cause of the petitioner.

In view of the above, the present petition stands dismissed.

September 23, 2016
Gagan

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No