

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

Date of decision: 10.05.2016

CWP No.23196 of 2012

Avtar Singh Parmar

...Petitioner

Vs.

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Avtar Singh Parmar – petitioner in person.

Mr. Harkesh Manuja, Addl. AG, 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)

The respondents were directed in the petitioner's earlier writ petition presented to this Court in CWP No.12047 of 2001 vide order dated 27.02.2012 (Annex P-14) to reconsider the issue of stepping up of the salary of the petitioner to the level of Piara Singh by keeping in view the circular issued by the Finance Department, Government of Punjab dated 03.06.2005 clarifying its earlier instructions dated 21.06.2000. The respondents were directed to pass a speaking order on the representations pending without any decision thereon till when the writ petition was filed and disposed of on 27.02.2012 by the learned single judge.

In the fresh exercise carried out, the claim of the petitioner for stepping up of his pay to that of his junior at Level-I (Superintendent Grade-II) has been rejected necessitating the present petition. The dispute has arisen by virtue of the rule of reservation whereby junior reserved category

candidate Piara Singh in the lower level came to be promoted to higher post on reserved roster point. Reserved roster points in the matter of seniority and promotions lost their significance with the pronouncement of the judgments of the Supreme Court in Ajit Singh Janjua & others Vs. State of Punjab & others, AIR 1996 SC 1189; JT 1996 (2) SC 727 (*Ajit Singh-1*) and Ajit Singh Janjua & others Vs. State of Punjab & others, (1999) 7 SCC 209 (*Ajit Singh-2*) which held that accelerated promotion did not bring with it the desired accelerated seniority.

The general category candidates, like the petitioner, had a right of restoration of their previous inter se seniority and also the right of being treated promoted from the date junior/s was/were promoted belonging to the reserved category. Because the reserved category candidate had been promoted earlier, he was placed in higher pay scale while the petitioner continued to draw salary in the pay scale of the lower post. This created an anomaly which was sought to be corrected in the first petition and in the present one in challenge to the impugned order to bring pay at par with erstwhile junior scheduled category candidate.

Learned Single Judge in the earlier writ petition had pointedly directed consideration of the case in the light of the instructions dated 03.06.2005. These instructions have been placed on record along with the written statement at Annex R-1. These instructions in the impugned order have been misinterpreted and misapplied since the benefit of stepping up of pay was granted to the petitioner for the first time equivalent to a colleague namely Sarup Singh, therefore, the petitioner has exhausted his right to claim 2nd stepping up benefit equivalent to Piara Singh, Superintendent, who is stated to be a third party. On this reasoning, the Controller, Printing &

Stationary, Punjab, Chandigarh in the impugned order dated 30.04.2012 (Annex P-15) has held that the instructions dated 03.06.2005 do not cover the case of the petitioner.

The question which requires determination is as to the instructions dated 03.06.2005 and what they entail in their consequence in stepping up of pay to that of the admitted junior in receipt of higher pay by virtue of promotion earlier. In order to understand the prescription in the instructions, they would need to be read. The instructions deal with the subject of '*Removal of Anomaly by Stepping up the pay of Senior employee drawing pay less than a junior employee*'. The Punjab Government found that the instructions earlier issued on 21.06.2000 were silent on the issue as to whether the pay of the senior employee can be stepped up for a second time, in case he happens to draw less pay than his junior due to stepping up of pay of the later with reference to pay of persons further junior to him by applying the said provision. The operative parts of the instructions, which are related to the present case, in paragraphs 2 & 3 as under:

"2. The matter has been considered and it has been decided to adopt the policy laid down by the Government of India, which is as follows:

"The pay of senior 'A' employee is stepped up with reference the pay of his first junior 'B' and at a later date, the pay of 'B' is stepped up with reference to another junior 'C' the senior 'A' may happen to draw lesser pay than his junior 'B'. In such cases, the pay of the senior 'A' may again be stepped up at par with his junior 'B' provided all the conditions under the general orders for stepping up of pay of 'A' vis-à-vis 'C' are fully satisfied."

3. *It is further clarified that the benefit of stepping up of pay can be allowed to senior officials second time, provided the anomaly has arisen with reference to pay the same junior, with reference to whom the pay of the senior was stepped up first time.”*

The instructions, reproduced above, are clarificatory in nature and, therefore, would relate back to the parent instructions dated 21.06.2000. The Punjab Government has tried to solve the problem encountered by borrowing from the instructions of the Government of India by adoption them. The plain reading of the extracted part of the instructions of the Government of India made part of the body of serviced law in Punjab do not support the stand or the interpretation placed by Controller, Printing & Stationary, Punjab, Chandigarh on them in the present dispute. If the petitioner's pay was stepped up to the level of Sarup Singh, then in the event of Piara Singh, an admitted junior, when began to draw salary higher than his senior then nothing to the mind of this court is found in these instructions which could deprive the petitioner of his right to have his pay stepped up to that of Piara Singh. The instructions do not mandate that the right gets exhausted with the 1st stepping up which in the present context would refer to Sarup Singh who is said to be a member of the backward classes. This is simply for the reason that it is by now well embedded principle that ordinarily no person senior would draw pay less than a junior unless the cause has been due to benefit of past increments or disciplinary action etc. A reading of Para.3 would also reveal that the further clarification given by the Punjab Government was that the benefit of stepping up of pay can be allowed to senior officials for the second time, provided the anomaly has arisen with reference to pay the same junior with reference to whom the pay of the senior was stepped up for first time. This is not a case of anomaly vis-

à-vis Piara Singh. This petition presents a problem which has arisen because of operation of the rule of reservation and right of reserved category candidate promoted to higher post on reserved roster point [which right they still have and what is taken away by the Courts is a right to accelerated seniority on the basis of roster points]. Roster points are not seniority points. But we are not dealing with seniority in this case and the claim is only for stepping up of pay to that of admitted junior Piara Singh.

It needs to be explained after hearing Mr. Parmar on the point that Sarup Singh's pay was higher than his pay because of award of two proficiency step ups to Sarup Singh while the petitioner got only the benefit of one proficiency step up which made the difference in the salary. It may be noted that Sarup Singh is a member of Backward Class and also belongs to a reserved category. However, the issue between the petitioner and Sarup Singh was not based on rule of reservation. Once the Government stepped up the pay of the petitioner to that of Sarup Singh on representation made to remove the anomaly, the grievance for the time being was redressed without problem arising out of Piara Singh in sight. However, when Piara Singh was promoted to the further promotional post of Superintendent and began getting more pay than the petitioner, that the petitioner's right to have his pay stepped up to that of his junior Piara Singh got activated and became a dispute for which resolution the petitioner has approached court for directions prayed. This is not the result of anomaly but of one emanating from accelerated promotion.

The anomaly was created when Sarup Singh was promoted in the year 1998, which anomaly was removed by stepping up of the petitioner and bringing it at par to that of Sarup Singh. However, the fact still remains

that the petitioner before he retired was in receipt of pay less than Piara Singh, who was his junior and, therefore, going by first principles of service law, the petitioner's pay deserves to be stepped up to that of Piara Singh from the due date with a right to re-fixation of pay and allowances and, therefore, pension.

For the foregoing reasons, the instant petition is allowed. The impugned order is set aside being based on misreading of the instructions. A fresh order is directed to be passed in accordance with law. The respondent-department is directed to re-fix the pay of the petitioner for the purposes of pension. The re-fixation will carry consequential benefits. The exercise is directed be completed within two months from the date of receipt of certified copy of this order. If it results in parity of pay from the due date then the difference of arrears be paid to the petitioner a month thereafter.

10.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE