

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

CWP No.358 of 2011

Date of decision: 02.02.2016

Om Parkash Chitra

...Petitioner

versus

The State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana,
for the respondents.

RITU BAHRI, J.

The petitioner, by way of present petition, is seeking direction to the respondents to protect his substantive pay by restoring the increments so withdrawn and in the alternative allow third ACP as per Haryana Civil Service (Assured Career Progression) Rules, 1996 as Circle Head Draftsman w.e.f. 01.07.2007 on completion of 30 years of service as on 25.06.2007.

The petitioner was appointed as Assistant Draftsman (Civil) on 17.06.1977 with the respondent-department. Vide order dated 26.03.1990 (Annexure P-2), he was promoted as Head Draftsman and thereafter, vide order dated 23.08.1995 (Annexure P-3), he was promoted as Circle Head Draftsman. He was confirmed as such w.e.f. 01.08.2004 vide Annexure P-4. He was given current duty charge of the post of Sub Divisional Engineer vide order dated 03.04.2000 (Annexure P-5). Subsequently, he was substantively

promoted as Sub Divisional Engineer vide order dated 02.08.2002 (Annexure P-6). After 02.08.2002, the petitioner was allowed increments in the running scale of Rs.8000-275-10200-EB-375-13500 w.e.f. 01.05.2003, 01.05.2004, 01.05.2005, 01.05.2006 and 01.05.2007. He was to retire on 31.01.2008. Before his retirement, the increments granted on 01.05.2005, 01.05.2006 and 01.05.2007 were withdrawn by the department on the ground that he did not pass the departmental examination. However, there was no condition in the promotion order dated 02.08.2002 (Annexure P-6) regarding departmental examination. Moreover, there was no specific order withdrawing the increments of the petitioner, but an entry (Annexure P-10) in this regard was made in his service book. This entry was made by the Executive Engineer, Public Health, Division No.2, Sirsa, whereas the promotion was made by respondent No.1 vide order 02.08.2002 (Annexure P-6).

Upon notice, written statement on behalf of the respondents have been filed. In the written statement filed on behalf of respondent No.1, it has been stated that the services of Sub Divisional Engineer were governed under the Punjab Services of Engineers, Class-II (Public Health) Rule, 1966 made under Article 309 of the Constitution of India. As per Rule 15 of Service Rules, departmental examination is to be passed within three years of the appointment and the increment shall be released to the officer after passing of the departmental examination or after getting exemption from the Government. The petitioner neither passed the departmental examination nor obtained exemption from the Government from passing the departmental examination. Hence, he was not entitled for release of the annual increments. The petitioner was promoted in the pay scale of Rs.8000-13500/- w.e.f. 06.08.2002 and was to clear the departmental examination within a period of

three years i.e. till 01.08.2005. Thereafter, he was not held entitled for annual increments. On merits, it has been stated that the petitioner was given current duty charge of the post of SDE w.e.f. 02.04.2000 and adhoc promotion was given in the pay scale of Rs.6500-200-8500-EB-9000 w.e.f. 06.08.2002. The petitioner was required to pass the departmental examination within three years of promotion, which he did not do and hence, after three years, the increments have been legally withdrawn. As per Rule 15 of Punjab Service of Engineers Class-II, the petitioner did not seek exemption from the Government from passing the departmental examination. It has been further stated that claim of the petitioner for grant of third ACP is misconceived because he was promoted in the year 1990 from Assistant Draftsman to Head Draftsman and thereafter, Circle Head Draftsman on 23.08.1995. Finally, he was promoted as SDE on 06.08.2002. Hence, he was not entitled to the third ACP from 01.07.2007.

Learned counsel for the petitioner while referring to the promotional order dated 14.09.2010 (Annexure P-12) has argued that at the time of making promotion of the Junior Engineers to the post of Sub Divisional Engineer (Civil), a condition has been imposed that they will not be entitled for 3rd increment till they clear the departmental professional examination. This condition was not imposed in the promotional order dated 02.08.2002 (Annexure P-6). Before the date of his retirement i.e. 31.01.2008, three increments which were granted to the petitioner for years 2005, 2006 and 2007 had been withdrawn without giving any notice despite the fact that there was no condition in the promotional order dated 02.08.2002 to pass the departmental examination.

This argument of learned counsel for the petitioner is liable to be

rejected. The petitioner, for all intents and purposes, is governed by the Punjab Services of Engineers, Class-II (Public Health) Rule, 1966. As per Rule 15, as amended from time to time, an officer has to pass the departmental examination within three years of the appointment. Hence, the petitioner was required to pass the departmental examination within three years i.e. up till 01.08.2005. Rule 15 is reproduced as under:-

“15. **Departmental examination;-** (1) Officers appointed to the Service unless they have already been do so, shall pass a department examination within three years of their appointment;

Provided that Govt. may for any sufficient cause, extend the period within which any members is required to pas the departmental examination.

(2) If an Officer fails to pass the departmental examination within the prescribed period or within the extended period, if any, he shall not earn his future grade increments till such time as he passes it when the increments shall be released retrospectively;

Provided that he shall not be entitled to get any arrears of the released grade increments for the period during which he could not pass the examination.

Note:- The increments of the officer to whom extension is granted beyond 3 years period for passing the departmental examination shall be withheld without cumulative effect for failure to pass the departmental examination. The amendment of Rule 15 vide Notification No. G.S.R 40/const/Art 309/99 are reproduced as under:-

In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Haryana hereby makes the following rules further to amend the Punjab Services of Engineers, Class II, PWD (Public Health) Rules, 1966 in their application to the State of Haryana, namely:-

1. These rules may be called the Punjab Service of Engineers Class-II PWD (Public Health), Haryana Amendment Rules, 1999.

2. In the Punjab Service of Engineers Class-II, PWD (Public Health) Rules, 1966 in rule 15:-

(1)for sub rule (2) the following sub rule shall be substituted namely:-

(2) If an office passes the departmental examination after the prescribed period or after the extended period, if any, the increment for the period subsequent to that, within which the departmental examination was to be passed shall be released to him from the date following the last day

on which the departmental examination is completed. The increment shall be released within retrospective effect from the date it was otherwise due but no arrears shall be paid for the past period.

- (ii) after sub-rule (2) the following sub rule shall be added at the end, namely:-
- (3) If an officer passes the departmental examination before the prescribed period of three years, he shall be given all the increments which would have otherwise fallen due to him at the end of the said prescribed period with effect from the last day on which the departmental examination was completed. Later increments will, however, be given to him only on the dates on which they would have otherwise due.
- (4) No increment shall be withheld until the period prescribed for passing the departmental examination is over.
- (5) If an officer fails to pass the departmental examination or any part thereof, and is subsequently exempted by the Government from passing the examination(s) his increment(s) for the period subsequent to that within which the departmental examination was to be passed shall be released from the date he is given such exemption. The increment(s) shall be released with retrospective effect from the date it was otherwise due but no arrears shall be paid for the past period.”

After being promoted as Sub Divisional Engineer vide order dated 02.08.2002 (Annexure P-6), the petitioner has neither passed the departmental examination nor obtained any exemption from the Government from passing such examination. The details of the admissible increments due to non passing of the departmental professional examination and actual increments have been given as under:-

Sr. No.	Increments, which were not entitled to the petitioner, as per Rule 15 of Punjab Service of Engineers, Class-II PWD (Public Health) Rule, 1966, due to non passing of Departmental Professional Examination	The actual increments wrongly given to the petitioner
1	---	Pay fixation in the pay scale Rs.8000-13500 w.e.f. 06.08.2002
2	---	---
3	---	---
4	01/05/05	01.05.2005 (increment not entitled due to non passing of DPE)

Sr. No.	Increments, which were not entitled to the petitioner, as per Rule 15 of Punjab Service of Engineers, Class-II PWD (Public Health) Rule, 1966, due to non passing of Departmental Professional Examination	The actual increments wrongly given to the petitioner
5	01/05/06	01.05.2006 (-do-)
6	01.05.2005 date of retirement of the petitioner was 31.01.2008	01.05.2007 (-do-)

From the above table, it is clear that after getting promotion in the year 2002, the petitioner was required to pass departmental examination within three years and on account of non passing such examination, he was not entitled to the increments w.e.f. 01.05.2005 onwards, which were granted to him due to inadvertence. Thereafter, the respondent-department made a correction in his service book vide entry (Annexure P-10). As per this entry, increments were withdrawn due to non passing of the departmental examination and recovery of excess payment has been effected from his pay.

Now, the question for consideration in the present petition would be, as to “whether the aforesaid recovery could be effected in view of the decision of Full Bench of this Court in **Budh Ram and others Vs. State of Haryana and others**, 2009 (3) SCT 333, as there is no allegation that the increments were given to him on account of fraud or misrepresentation.”

In the written statement(s), the respondents have not stated anything that the petitioner had misrepresented the facts to the department for getting the above said benefits. Keeping in view Rule 15 of the Punjab Services of Engineers, Class-II (Public Health) Rule, 1966, the petitioner was not entitled to the increments. However, there was a condition that he could seek exemption from passing the departmental examination. He had not sought this exemption before his retirement. But, in the absence of any allegation of misrepresentation or fraud, recovery of the excess amount

should not have been effected from the petitioner. To this extent, the action of the respondents is liable to be set aside. However, since the petitioner was not entitled to the benefits of three increments, the action of the respondents in reducing his pay by deducting three increments is not required to be interfered with. To this extent, the order passed by the respondents by making correction in his service book is in accordance with Rule 15 of the aforesaid Rules, as amended upto date. However, the petitioner shall be entitled to receive the pay after making correction in the service book vide entry (Annexure P-10) prospectively.

In view of the above discussion, it is held that the excess amount paid by the respondent-department should not have been recovered from the petitioner in view of the judgment passed by Full Bench of this Court in **Budh Ram's** case (supra). Accordingly, the respondents are directed to refund the excess amount recovered from the petitioner on account of grant of three increments w.e.f. 01.08.2005 to 01.05.2007 within a period of three months from the date of receipt of certified copy of this order.

Partly allowed.

(RITU BAHRI)
JUDGE

02.02.2016

ajp