

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

**CWP No.18379 of 2014
Date of decision: 14.07.2016**

H.S. Mehra

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana.

Ritu Bahri, J.

The petitioner is seeking quashing of the order dated 30.01.2014 (Annexure P-17), vide which, he has been denied the revised pay scale of Rs.13500-17250 w.e.f. 01.01.1996.

Petitioner was initially appointed as Draftsman on 15.03.1961 and promoted as Head Draftsman on 10.05.1966. He was further promoted as Sub Divisional Engineer w.e.f. 14.11.1980 in the pay scale of Rs.900-2000, which was revised to Rs.2000-3500 w.e.f. 01.01.1986. Vide notification dated 24.11.1993 (Annexure P-1), the petitioner was allowed promotion as SDE w.e.f. 22.02.1972. As per tentative seniority list dated 07.11.1997 (Annexure P-2), the petitioner was at serial No.151 and one Nirmal Singh was at seniority No.175 in the cadre of Sub Divisional Engineer. On attaining the age of superannuation, the petitioner had retired from service on 31.10.2000. Thereafter, pension and other retiral benefits were released

to him. While granting pension, the petitioner was not given the benefit of the corresponding pay scale under the Revision of Pay Scales, 1998. Vide Finance Department letter dated 16.05.1990 (Annexure P-3), SDEs (Class-I & II) were allowed the pay scale of Rs.2200-4000/-. On completion of five years of regular satisfactory service, the SDEs were allowed the pay scale of Rs.3000-4500. Further, after 12 years of regular satisfactory service, the SDEs were granted Selection Grade of Rs.4100-5300 limited to 20% of the cadre.

Thereafter, revision of pay scales took place vide notification dated 07.01.1998. Due to some anomalies or discrepancies, the State Government modified the revised pay scales of certain categories vide letter dated 07.08.1998. As per this letter, SDEs were allowed the pay scale of Rs.8000-13500. After rendering five years of regular satisfactory service in the cadre of SDEs, they were allowed Rs.10,000-13900 and further after 11 years, they were given the pay scale of Rs.12000-16500. The scale of Rs.12000-16500 was to be allowed 20% of the posts in the cadre. A further clarification was given on 14.09.1998 (Annexure P-5, collectively) that wherever Selection Grade were existing in the pre-revised scales as a definite percentage of the posts and after stipulated years of service, same would carry the Selection Grade also in the revised scale and the replacement of such Selection Grade would be the replacement scale prescribed under 1st Schedule, Part-II of the Haryana Civil Services (Revised Pay) Rules, 1998. Grievance of the petitioner is that he was not allowed the replacement of Selection Grade i.e. Rs.13500-375-17250. Some of the SDEs and XENs, who retired before revision of pay scales on 01.01.1996, filed CWP No.4977 of 2010 before this Court seeking direction that pension

17250 being the corresponding pay scale of Rs.4100-5300. The said petition was allowed vide order dated 17.03.2011 (Annexure P-6). Vide order dated 29.07.2011 (Annexure P-7), the respondents have implemented the order dated 14.09.1998 (Annexure P-5) and fixed the pension of the petitioners of the aforesaid writ petitions in the pay scale of Rs.13500-17250. One Nirmal Singh, who is junior to the petitioner, has been allowed the benefit of corresponding pay scale of Rs.13500-17250. The petitioner made a representation dated 14.03.2012 (Annexure P-8) to the respondents, followed by a reminder dated 08.05.2012 (Annexure P-9), to grant him the pay scale of Rs.13500-17250, but to no avail. The Engineer-in-Chief, Haryana-respondent No.2, vide order dated 21.05.2012 (Annexure P-10) directed respondent No.3 to send the case of the petitioner with recommendation. When no action was taken, the petitioner filed CWP No.22102 of 2013, which was disposed of by this Court vide order dated 05.10.2013 (Annexure P-16) by giving direction to the respondents to take a final decision on his representation. Pursuant to the said order, the impugned order dated 30.01.2014 (Annexure P-17) has been passed. The main ground for rejection of the claim of petitioner is that at the time of revision of pay scale on 16.05.1990, it had been mentioned that SDEs will be allowed selection grade of Rs.4100-5300 after completion of 12 years of regular satisfactory service in the cadre limited to 20% of the cadre posts. The petitioner does not fulfill the required condition of Haryana Civil Services (ACP Rules 1998) as he had already availed three up-gradations in the shape of promotion. His pay was fixed in the functional pay scale of the post of SDE i.e. Rs.8000-13500 w.e.f. 01.01.1996. The benefit of 2nd ACP Scale of Rs.12000-16500 was withdrawn by the Executive Engineer Public

08.09.2000. Scale of Rs.13500-17250 was not admissible as this was the functional pay scale of the post of Superintending Engineer.

The stand taken by the respondents in their written statement is that the pay of the petitioner was fixed in the pay scale of Rs.3000-4500 and Rs.4100-5300 on 01.05.1989 as per eligibility. His pay was fixed in the pay scale of Rs.12000-16500 w.e.f. 01.01.1996 as per Finance Department, Haryana, notification dated 07.01.1998. As the petitioner was promoted as SDE from drawing category and availed three upgradations/promotions, hence, he was entitled for the scale of Rs.8000-13500 on 01.01.1996 i.e. functional pay scale of the post of SDE. Therefore, the petitioner was not eligible for ACP scale of Rs.12000-16500. Accordingly, the pay scale of Rs.12000-16500 was withdrawn by the Executive Engineer, P.H. Engg. Div. No.1, Rohtak, vide office order dated 08.09.2000 in compliance with Engineer-in-Chief, Haryana PWD Public Health Branch, Chandigarh vide memo dated 10.08.2000. The petitioner filed a representation to the Commissioner & Principal Secretary to Govt. of Haryana, Public Health Engineering Department on 15.07.2009 that he may be granted ACP scale of Rs.10000-15000 and Rs.12000-16500 w.e.f. 01.01.1996. The Government considered his representation and filed the same vide memo dated 05.04.2010 because it was without any substance. The instructions dated 07.01.1998 and 14.09.1998 have been placed on record as Annexure R-1 and R-2 respectively. It has been further stated that the impugned order dated 31.01.2014 (Annexure P-17) has rightly been passed on the basis of instructions dated 07.01.1998 & 14.09.1998. The main ground for rejection of the claim of petitioner is that on revision of pay scales vide notification dated 16.05.1990, he was allowed the selection grade of Rs.4100-5300 after

20% of the cadre post. However, the benefit of 2nd ACP scale of Rs.12000-16500 was withdrawn on the ground that he had availed three upgradations in the shape of promotions.

Heard, counsel for the parties.

In the facts of the present case, the petitioner was appointed as Draftsman on 15.03.1961 and thereafter, promoted as Sub Divisional Engineer on 22.02.1972. He superannuated on 31.10.2000 while working as SDE. From 22.02.1972 till 31.10.2000, he served as SDE for a period of 28 years. In these 28 years, he has not been granted any promotion. The benefit of grant of selection grade was rightly given to him vide letter dated 16.05.1990 (Annexure P-3). As per above instructions, he was given selection grade of Rs.4100-5300, which was limited to 20% of the cadre posts. The object of grant of selection grade is also to remove stagnation to an employee when he is not granted any promotion. Pursuant to Finance Department letter dated 16.05.1990 (Annexure P-3), the pay scale of Rs.4100-5300 was granted to the petitioner on 05.04.1994 (Annexure P-4). Thereafter, he superannuated on 31.10.2000. The Haryana Government vide clarification/instructions dated 14.09.1998 (Annexure R-2) decided that wherever Selection Grades were existing in the pre-revised scales as a definite percentage of the posts and after stipulated years of service, they would carry the Selection Grade also in the revised scales and the replacement of such Selection Grade would be the replacement scale prescribed under 1st Schedule Part-II of the Haryana Civil Services (Revised Pay), Rules, 1998, if the same has not been mentioned separately. This would hold good in case of all the concerned Government employees to whom specific ACP Scales have not been provided.

petition deserves to be allowed. While rejecting the claim of the petitioner, the respondents have implemented the judgment passed by this Court in **S.P. Sood Vs. State of Haryana and others**, CWP No.5520 of 2003, decided on 02.02.2009 (Annexure P-6). The said petition was allowed by this Court and the petitioner was held entitled for fixation of pension in the scale of Rs.13500-17250, which was the revised scale of Rs.4100-5300. In the case of present petitioner, vide order dated 05.04.1994 (Annexure P-4), he has been given the pay scale of Rs.4100-5300 being selection grade under 20% of the cadre post. In their written statement, the respondents have admitted that they have implemented the judgment dated 02.02.2009 (Annexure P-6) with respect to those petitioners only. Once, the respondents have implemented the said judgment, they cannot take a contrary stand in the written statement that the replacement scale of Rs.4100-5300 is not 13500-17250. While passing the impugned order, this fact is admitted by the respondents. However, the petitioner is not being extended the benefit of Revision of Pay Scales, 1998 on the ground that he has got three upgradations/promotions. Even this finding of the respondents is wrong as after getting promotion in 1972, the petitioner has superannuated on 31.10.2000 as SDE after serving for 28 years without getting further promotion. This case is squarely covered by the judgment passed in **S.P.Sood's** case (Annexure P-6).

Resultantly, impugned order dated 30.01.2014 (Annexure P-17) is set aside and the respondents are directed to fix the pension of the petitioner in the revised scale of Rs.13500-17250 and pay arrears thereof along with interest at the rate of 8% per annum from the date of entitlement till the actual date of payment, within a period of three months from the date of

three months, even the interest component would earn interest at the rate of 8% per annum till the payment is made.

Allowed accordingly.

14.07.2016
ajp

(RITU BAHRI)
JUDGE