

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

CWP No.4200 of 2014

Date of decision: 18.03.2016

Baru Ram

...Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.L. Dhingra, Advocate,
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate,
for the respondents.

RITU BAHRI, J.

The petitioner is seeking direction to the respondents to release an amount of Rs.1,10,000/- along with interest at the rate of 12% per annum, which has been withheld from his retiral benefits i.e. Leave Encashment.

Initially, the petitioner was appointed in the respondent-department on 22.04.1974. Thereafter, he was promoted as Lineman on 01.09.2007 and retired as such on 30.04.2013 while posted in the office of Executive Engineer (OP) Division, UHBVN, Shahabad (M), Shahabad, District Kurukshetra. At the time of retirement, he was not facing any charge sheet or enquiry. He had rendered more than 33 years of service with the respondent-department, therefore, he was entitled to full pension and other retiral benefits. In the month of April, 2013, his basic pay was Rs.17,800/- plus DA. Vide PPO No.9977/UHBVNL dated 15.07.2013 and order dated 22.07.2013 (Annexure P-4), the respondent-Nigam released the pension and other retiral benefits of the petitioner. DCRG was released on 15.07.2013

(Annexure P-5) and commutation value of pension was released on 15.07.2013 (Annexure P-6).

As per Pay register, amount of Leave Encashment of the petitioner came to Rs.3,07,000/-. However, out of this amount, only a sum of Rs.1,97,000/- has been paid to the petitioner and the remaining amount of Rs.1,10,000/- has been withheld by the respondents. Even pension of the petitioner has not been rightly calculated. In this regard, he made representations (Annexure P-8 and P-9), but no action has been taken thereon so far.

Upon notice, written statement on behalf of the respondents has been filed, wherein, it has been stated that the petitioner had retired on 30.04.2013 as Lineman. Before this date, he was given the benefit of stepping up of pay at par with his junior namely, Maya Ram vide office order dated 14.09.2009 (Annexure R-1). Later on, this benefit was withdrawn by the competent authority vide order dated 15.01.2013 (Annexure R-2) on the advice of Chief Account Officer, UHBVN, Panchkula (Annexure R-3). After withdrawing the above said benefit, recovery of Rs.97,315/- has been made from leave encashment of the petitioner. This recovery was made in pursuance of an undertaking dated 30.04.2014 (Annexure R-5) given by the petitioner himself.

The respondents have placed on record an order dated 14.09.2009 (Annexure R-1), whereby the benefit of Ist ACP scale has been given to the petitioner at par with his junior employee namely, Maya Ram. Subsequently, vide order dated 15.01.2013 (Annexure R-2), the said benefit has been withdrawn. The respondents have relied upon the clarification issued by the Government of Haryana vide memo dated 23.06.2009, which

was adopted by the respondent-Nigam vide memo dated 13.01.2010 (Annexure R-4). The respondents have further taken a stand that these instructions had been issued in compliance of the judgment passed 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).

Similar issue has been considered by the Hon'ble Supreme Court in **Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others**, Civil Appeal No.3250 of 2006 (Special Leave to Appeal (Civil) No.20264 of 2004, decided on 02.08.2006, wherein it has been observed as under:-

“In the result, all the appeals are partly allowed. The appellants shall receive the pay scales of the respondents. In case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. Revised order shall be passed within a period of two months of the receipt of the copy of this order by the Government. However, if upon revision of the pay scale any employee is refunded 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 from the date of receipt of the copy of this order by the Government.

Consequently, the appeals are partly allowed with no order as costs.”

In the facts of the present case, the benefit of stepping up of pay was extended to the petitioner before date of retirement, at par with his junior namely, Maya Ram vide office order dated 14.09.2009 (Annexure R-1). Thereafter, this benefit has been wrongly withdrawn by the authorities vide order dated 15.01.2013 (Annexure R-2) and an amount of Rs.97,315/- has been recovered from his leave encashment. This amount has been withheld consequent upon an undertaking dated 30.04.2014 (Annexure R-5) given by

the petitioner himself. Since the pay of the petitioner had rightly been stepped up at par with his junior, the undertaking (Annexure R-5) cannot be a ground to deprive him the legitimate right of stepping up of pay. Thus, the action of the respondents in withdrawing the benefit of ACP and thereafter, making recovery from the amount of leave encashment, is illegal and arbitrary and the same is liable to be quashed.

Consequently, the petitioner is held entitled for the benefit of stepping up of pay scale at par with his junior Maya Ram along with all consequential benefits.

Resultantly, this petition is allowed and the respondents are directed to refund/release the recovered amount of Rs.1,10,000/- to the petitioner along with interest at the rate of 9% per annum w.e.f. 01.05.2013 till its actual realization.

18.03.2016
ajp

(RITU BAHRI)
JUDGE