

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

CWP No.4112 of 2015 (O&M)

Date of decision: 30.03.2016

Ramesh Kumar Garg

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.R. Bansal, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Ritu Bahri, J.

The petitioner is seeking setting aside of the order dated 09.09.2010 (Annexure P-8), whereby his 3rd ACP has been restricted upto 12.11.2009 instead of 04.07.2010 and order dated 05/07.05.2014 (Annexure P-19). Further direction is sought to be issued to the respondents to grant 3rd ACP to the petitioner w.e.f. 14.01.2011.

Petitioner joined the services of respondent-department as Laboratory Technician in 1974. He retired on the said post on 30.04.2014 on attaining the age of superannuation.

He was promoted as Senior Lab Technician vide order dated 12.11.2009. Thereafter, vide order dated 10.06.2010 (Annexure P-5), the petitioner was posted in Blood Bank, Hisar. On account of family circumstances, he was unable to move to Hisar, therefore, he made a request

dated 05.07.2010 (Annexure P-6) to forgo his promotion for one year. His request was forwarded to respondent No.2 vide letter dated 07.07.2010 (Annexure P-7). The petitioner was granted 3rd ACP vide order dated 09.09.2010 (Annexure P-8) w.e.f. 01.01.2006. However, this benefit was restricted up to 12.11.2009 on the ground that he had forgone his promotion on the post of Senior Lab Technician. Thereafter, vide notification dated 14.01.2011, the department of Health Services, Haryana was bifurcated into two departments i.e. Health Services, Haryana and Department of Food and Drug Administration, Haryana. The petitioner remained in the Department of Food and Drug Administration, Haryana, as he was already working in the Drug Laboratory, Haryana. After bifurcation of the department, the petitioner made a request on 01.05.2012 (Annexure P-9) for promotion to the post of Senior Lab Technician. The Government Analyst, Haryana, vide letter dated 07.05.2012 (Annexure P-10), recommended the case of the petitioner to respondent No.3. There was no sanctioned post of Senior Lab Technician in the department and the petitioner was informed vide letter (Annexure P-11) that if, he wants his promotion as Senior Lab Technician, then he could apply to the Director General, Health Services, Haryana. Thereafter, the petitioner was informed that the Department of Food and Drug Administration was a separate department and he could not be considered for promotion in the Department of Health Services, Haryana. The petitioner, thereafter, made an application (Annexure P-12) for restoring his 3rd ACP scale, which was restricted upto 12.11.2009 vide order dated 09.09.2010, as there was no sanctioned post of Senior Lab Technician in the Department of Food and Drug Administration, Haryana and he could not be considered for promotion in the Department of Health Services, Haryana.

& Drug Department, Haryana and in the meantime, the petitioner retired on 30.04.2014 on attaining the age of superannuation. Finally, his case was rejected by respondent No.1 vide letter dated 07.05.2012 (Annexure P-19). Hence, the present petition.

The stand taken by the respondents in the written statement is that after bifurcation of the Health Department, Haryana, vide notification dated 04.01.2011 (Annexure R-1), the petitioner had chosen to forgo his promotion to the post of Senior Lab Technician vide his request dated 05.07.2010 (Annexure P-6) for a period of one year. Under Rule 14 of Assured Career Progression Rules, 2008 (ACP Rules, 2008), in case the Government servant chooses to forgo any functional promotion on any ground whatsoever, while drawing his pay in any ACP pay structure, he shall cease to be entitled to draw his pay in the ACP pay structure. Relevant Rule 14 is reproduced as under:-

“14. Ceasing of entitlement of ACP pay structure:- In case the Government servant chooses to forego any functional promotion on any ground whatsoever, while drawing his pay in any ACP pay structure with reference to him, he shall cease to be entitled to draw his pay in the ACP pay structure last granted to him and shall draw his pay in the pay band and grade pay he was drawing before the grant of the last ACP grade pay from the date of such forgoing of promotion”

Vide order/letter dated 24.09.2010 (Annexure P-8), the ACP granted to the petitioner was restricted to 12.11.2009. After bifurcation of the Health Department, Haryana, the petitioner was transferred to the Department of Food and Drug Administration, Haryana. However, no sanctioned post of Senior Lab Technician was available in the said department. The request of the petitioner for restoration of 3rd ACP was referred to the Government and the Government vide letter dated

05/07.05.2014 (Annexure P-19) had informed the petitioner that the 3rd ACP could not be considered in view of Rule 14 of the ACP Rules, 2008.

The question for consideration in this petition would be, as to whether the petitioner is entitled for restoration of his ACP after he had forgone his promotion for one year on 05.07.2010 on account of family circumstances.

The object of giving promotion to the employee in service is to remove stagnation from his service career. After expiry of one year i.e. on 05.07.2011, the petitioner had a right to be considered for promotion. After bifurcation of the Health Department, he was retained in the Department of Food and Drug Administration, Haryana. However, there was no post of Senior Lab Technician available in the said Department. Hence, he could not be promoted to the post of Senior Lab Technician. In the absence of any promotional avenue, the ACP Rules, 2008 have to be implemented to remove stagnation in the service career of an employee. A perusal of Rule 14 of ACP Rules, 2008 shows that in case a Government servant chooses to forego any functional promotion on any ground while drawing his pay in any ACP pay structure, he shall cease to be entitled to draw his pay in the ACP pay structure last granted to him. The petitioner was granted 3rd ACP vide order dated 09.09.2010 (Annexure P-8) w.e.f. 01.01.2006. However, on account of family circumstances, he did not avail his promotion on the post of Senior Lab Technician. Hence, the benefit of ACP was restricted to 12.11.2009 as he had foregone his promotion on the post of Senior Lab Technician. The department has held the petitioner entitled to the benefit of 3rd ACP w.e.f. 01.01.2006 to 12.11.2009 on completion of 30 years of regular satisfactory service as he had not got any financial upgradation for the last 10 years. The respondents have not taken into consideration this fact

that after bifurcation of the Health Department, no post of Senior Lab Technician was available, on which, the petitioner could be appointed after one year i.e. 12.11.2010. The department was well aware that there was no promotional avenue available for the petitioner and hence, after expiry of one year, the benefit of 3rd ACP should have been restored. The petitioner had not availed even a single promotion up till his retirement on 30.04.2014. Therefore, after 12.11.2010, the benefit of ACP should have been restored as after bifurcation of Health Department, there was no promotional avenue available for the petitioner.

In view of the above discussion, the impugned order dated 09.09.2010 (Annexure P-8) is set aside and the respondents are directed to grant the benefit of 3rd ACP to the petitioner w.e.f. 14.01.2011 when the Department of Food and Drug Administration was formed.

The petition stands allowed accordingly. No order as to costs.

30.03.2016
ajp

(RITU BAHRI)
JUDGE