

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

**CWP No.20893 of 2012 (O&M)
Date of decision : February 15, 2017**

Dharam Chand Sharma

..... Petitioner

Versus

Food Corporation of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Naresh Kumar, Advocate for
Mr. S.K. Chauhan, Advocate for the petitioner.

Mr. K.K. Gupta, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Petitioner, who was working in the Food Corporation of India since 03.03.1972 was promoted as Assistant Grade-I (D) on 07.01.1998. On the said post, he was given notional promotion w.e.f. 01.12.1994. The petitioner retired from service on 31.05.2008. The grouse of the petitioner is that his pay was not re-fixed w.e.f. 1994 on account of the promotion in the year 1998. After his retirement, he was only paid arrears but without any interest till the year 2008.

The grouse pressed at the time of arguments is that his pay has not been fixed at par with his junior Satya Pal, who was getting higher pay than him and consequently his pay is also liable to be fixed at par with his junior Satya Pal.

In the reply, the respondents have stated that panel year of promotion 1994 was never changed to 1998 as alleged in the petition. It was stated that the process of pay fixation was delayed because of revision/recasting of the zonal seniority of A.G. III(Depot) in terms of Regulation 16(1) of the FCI (Staff) Regulations, 1973 consequent upon the implementation of the judgment dated 11.01.1994 passed in CWP No.4660 of 1990, CWP No.1319 of 1991 and CWP No.4681 of 1993 by the Hon'ble Delhi High Court which was further confirmed by the Hon'ble Supreme Court of India consequent upon the dismissal of Special Leave Petition. After completing the said process, the pay fixation of the petitioner was also carried out and the payment of ₹1,96,408/- was made to the petitioner vide cheque No.015875, dated 18.07.2008, after deduction of ₹15,940/- on account of CPF.

Regarding the fixation of pay equal to his junior Satya Pal, it is stated that Satya Pal was getting higher pay because of his option for notional selection grade in terms of the Circular No.5 of 1995 (Annexure P-10), whereby the said Satya Pal on returning the benefits of his normal promotion opted for notional Selection Grade which was allowed to him at the relevant time. In the said circular (Annexure P-10), it has also been provided under Clause 5 that senior to such persons shall not be entitled for step up of pay at par with such optees. Under Clause 7 of the said Circular, it has been provided that the options under the said Circular could have been exercised till the end of July 1995.

It is claimed that the petitioner had never submitted his option in terms of the said Circular, that is why his pay is less than his junior Satya

Pal. Therefore, his pay is not liable to be stepped up equal to his junior.

I have heard learned counsel for the parties and have also carefully gone through the case file.

First of all regarding the pay fixation, it comes out that the petitioner was allowed the panel year 1994. Once the petitioner is promoted, his pay was required to be fixed, subject to the decision of the various Courts. However, for waiting the decision of the various courts, the pay fixation could not be deferred. It was ultimately on 18.07.2008 that after the pay fixation, the arrears were paid. In this way, the arrears were not paid from 07.01.1998 till the date it was actually paid i.e. on 18.07.2008, whatever may be the reason. Therefore, the petitioner is entitled to interest on the said arrears @ 9% per annum from 07.01.1998 till the date of actual payment. The interest @ 8.50% has been given on the CPF.

So far as the stepping up of the pay of the petitioner equal to his junior Satya Pal is concerned, it is stated that an anomaly has arisen because Satya Pal was not promoted for 12 years and he was entitled to selection grade, whereas the petitioner was promoted on completion of 12 years of service and was not entitled to the selection grade. To remove the said anomaly of promotion, one additional increment was also granted to Satya Pal. The result was that Satya Pal was getting higher pay than the petitioner. To remove the said anomaly, a Circular dated 01.05.1995 (Annexure P-10) was issued, whereby under Clause 5, the option was given to such adversely affected employees to opt for the notional selection grade by returning the arrears on account of promotion. However, the petitioner did not opt for to submit the option as per said Circular dated 01.05.1995 (Annexure P-10)

within the given time frame i.e. July 1995.

Therefore, in view of the Circular dated 01.05.1995 (Annexure P-10), the pay of the petitioner is not liable to step up equal to his junior Staya Pal. However, the petitioner has submitted the information received under RTI dated 26.06.2010 (Annexure P-9), which shows that the said Circular (Annexure P-10) was not circulated to the depots under the control of Area Manager at that time by concerned officers/officials. It goes to show that the said Circular (Annexure P-10) was never circulated to the petitioner. Once, it was not brought to his notice, he could submit his option within time.

Therefore, as one time measure, the petitioner is given one month's time from the date of receipt of certified copy of this judgment to submit his option, in terms of the Circular dated 01.05.1995 (Annexure P-10) and comply with the instructions contained in the said Circular. In case, the petitioner opts for in terms of the said Circular (Annexure P-10), then he will have to return the arrears on account of promotion along with interest @ 8.5% per annum.

Accordingly, the present petition is allowed to the abovenoted extent.

(KULDIP SINGH)
JUDGE

February 15, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No