

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

**CWP-19089-2014 (O&M)
Date of Decision: 04.07.2017**

Ravi Ranjan

--Petitioner

Versus

Punjab State Power Corporation Limited & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Rajeev Dev Sharma, Advocate for the petitioner.

Mr. Y.P. Khullar, Advocate for the respondents.

TEJINDER SINGH DHINDSA, J.

The petitioner has filed the instant petition impugning the office order dated 26.07.2013 (Annexure P-3) passed by the respondent/Punjab State Power Corporation Limited (hereinafter to be referred to as 'the Corporation') in terms of which the benefit of time bound promotional scale granted to him upon completion of 16 and 23 years of regular service on the post of Circle Assistant in the years 2003 and 2010 respectively has been withdrawn.

Perusal of the impugned order would reveal the basis of such decision i.e. the petitioner having chosen to forego promotion to the post of Divisional Superintendent.

Brief facts which are not in dispute are that the petitioner served the Corporation continuously on the post of Circle Assistant and on account of having not been promoted was granted the time bound promotional scale on completion of 16 years regular service on the same post vide order dated 30.06.2003. Thereafter, petitioner was even granted the further time bound promotional scale having completed 23 years

of regular service on the same post i.e. Circle Assistant in the light of order dated 30.06.2010.

Vide office order dated 17.05.2013 passed by the Chief Engineer/Personnel, Patiala, petitioner was promoted to the post of Divisional Superintendent. However, petitioner chose not to avail of the benefit of promotion and requested to forego the benefit of promotion for a period of 3 years. Request made by the petitioner was accepted and office order No.68 dated 18.06.2013 was passed whereby the promotional order of the petitioner from the post of Circle Assistant to Divisional Superintendent was cancelled and the promotion was directed to be foregone for a period of 3 years.

The Corporation while contesting the present petition has sought to justify the action of withdrawing the time bound promotional scale granted to the petitioner upon completion of 16 and 23 years of regular service on the post of Circle Assistant by placing reliance upon a clarificatory circular dated 26.07.1990 appended along with written statement.

Mr. Khullar, learned counsel representing the Corporation would submit that a specific clarification had been given on the point as to what would be the effect if an employee foregoes promotion and the circular dated 26.07.1990 clarifies that upon an employee foregoing his promotion, he would not be entitled for revised promotional scale on completion of 9/16 years of service. It is contended on behalf of the Corporation that in the light of clarification contained in the circular dated 26.07.1990, the impugned order is well founded and the same does not call for any interference.

Counsel for the parties have been heard at length and the case pleadings have been perused.

The precise issue that arises for consideration is as to whether the petitioner having declined the offer of promotion to the post of Divisional Superintendent has incurred any disqualification so as to justify the withdrawal of the time bound promotional scales that had already been granted to him prior in point of time? Furthermore, the effect and ambit of the clarificatory circular dated 26.07.1990 appended along with written statement also falls for consideration.

In the considered view of this Court, the two issues formulated hereinabove already stand considered and dealt with by a coordinate Bench of this Court in **Rattan Chand Versus Punjab State Electricity Board and others, 2011 (1) SCT 833**. Relevant observations are extracted hereunder:

“(7). In order to justify their action, the respondents have placed reliance upon the circular dated 26th July, 1990 (Annexure R3/1) issued by the Finance Section of the Board as a “clarification in respect of grant of promotional/devised promotional scale”. The relevant clause of the said Circular reads as follows:-

“Subject: Clarification in respect of grant of Promotional/Devised Promotional Scale.

Please refer to this office order No.197/Fin/PRC-1988, Office Order No.198/Fin/PRC-1988 both dated 23.04.1990 and office order No.201/PRC/Fin-1988 dated 03.05.1990, regarding the grant of promotional/Devised Promotional Scales. Certain points have been raised for clarification in respect of grant of promotional/Devised Promotional Scales, the procedure for which was laid down in the office order dated 23.04.1990. The matter has been considered in detail and the following clarifications are given to the various points:-

Points**Clarification**

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6. What will be effect if an employee foregoes a promotion.

The employee who foregoes his promotion will not be entitled for promotional scale on completion of 9/16 years service.”

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(8). There is no room to doubt from the plain language of the Circular that if an employee is offered ‘promotion’ and he refuses to accept and foregoes the same, in that event, the employee is not entitled for the promotional pay scale on completion of 9/16 years of service. Point No.6 (reproduced above) of the subject Circular is absolutely consistent and in conformity with the Board’s policy decision dated 23.04.1990 whereby time-bound promotional scales were decided to be granted to those employees who despite completion of 9 or 16 years or service were stagnated without any promotion. When an employee gets promotion as per his seniority/merit and/or eligibility, he cannot be said to be stagnated and obviously would not be entitled to the time-bound promotional scale. Conversely, an eligible employee cannot be denied the time bound promotional scale even after completion of 9 or 16 years of service merely on the assumption that he was likely to get promotion in near future.

(9). In the case in hand, the 1st and 2nd time-bound promotional scales were granted to the petitioner on 11.10.1990 and 18.06.1993, respectively. There is indeed no denial to the fact that the petitioner got no offer for promotion as Lineman before 18th June, 1993. As a matter of fact the first ever promotion offered to the petitioner was on 27th December, 2001 only, which he declined to accept may be due to the fact that he was nearing retirement and was not willing to shift to a new place of posting.

(10). The clarificatory Circular dated 26.07.1990 (Annexure R3/1) nowhere provides nor it can lead to such absurd

consequences that a promotion offered after 16 years of service would take away the service benefit given to an employee on completion of 9 years' service. Since the petitioner never refused to accept the promotion before he was granted the time-bound promotional pay scales on completion of 9/16 years of service, the subsequent offer for such promotion and that too at the fag end of his career, cannot take away the time bound promotional scales which were rightly granted to him being a stagnated employee."

For the reasons assigned in **Rattan Chand's case (supra)**, the present writ petition is allowed. The impugned order dated 26.07.2013 (Annexure P-3) is quashed.

Respondents are directed to restore the time bound promotional scales that had already been granted to the petitioner and sought to be denied to him in terms of the impugned order. It is further directed that the consequential financial benefits flowing upon the setting aside of the impugned order dated 26.07.2013 (Annexure P-3) would be released to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

Petition is allowed in the aforesaid terms.

04.07.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |