

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

**CWP-8053-2012 (O&M)
Date of decision:18.12.2017**

Mohinder Singh

... Petitioner

Vs.

Punjab State Power Corporation Limited & another

... Respondents

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

Present: Mr. S.K. Arora, Advocate for the petitioner.

Ms. Avin Sandhu, Advocate for
Mr. Amit Aggarwal, Advocate for respondents No.1 and 2.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Petitioner joined the erstwhile Punjab State Electricity Board (hereinafter to be referred to as 'the Board') on 12.06.1979 as an unskilled worker. Thereafter, he was promoted as Technical Grade-II. Petitioner now stands superannuated.

Petitioner earlier filed CWP-12539-2008 assailing the action of the Board, whereby benefit of one additional increment which had been granted w.e.f. 12.06.2002 upon completion of 23 years of service was withdrawn and his basic pay stood reduced from Rs.5500/- to 5300/- w.e.f. 01.05.2006. In such writ petition, the Board justified its action by filing an affidavit that the benefit had been withdrawn as the petitioner already stood granted the second time bound promotional scale on completion of 16 years of service w.e.f. 12.06.1995. Petitioner had filed a rejoinder in those

proceedings contending that factually no such time bound promotional scale had ever been granted to him.

The afore noticed writ petition was allowed on the basis that prior to withdrawing the benefit of the additional increment, opportunity of hearing had not been granted and as such, the action was in negation of the principles of natural justice. The writ Court in terms of order dated 12.10.2010 (Annexure P-5) set aside the action of the Board of withdrawal of benefit of one additional increment that had been granted to the petitioner w.e.f. 12.06.2002 and the amount already recovered from the petitioner was ordered to be refunded within a period of three months. Liberty, however, was granted to proceed against the petitioner, if so advised and by complying with the principles of natural justice.

Apparently, the respondent/authorities in terms of liberty granted by this Court in CWP-12539-2008 have passed the order dated 11.04.2012 (Annexure P-8) and vide which the claim of the petitioner for benefit of one additional increment on completion of 23 years of regular service stands declined.

The instant writ petition is directed against the order dated 11.04.2012 (Annexure P-8).

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

Perusal of the impugned order would reveal that the basis of rejection of the claim of the petitioner is by referring to Finance Circular No.20/2000 circulated vide office order No.392/fin./PRC-121 dated 20.02.2000 and in which the following conditions had been incorporated:

“i) He/She has avenue of three promotions but has not earned three regular promotions in his/her regular service from the date of joining on the induction post or any other post specifically declared as induction post for granting time bound promotional/devised promotional scale.

ii) He/She has not earned third promotion in his/her regular service between 16th & 23rd years of service.

iii) He/She has not been placed in a scale which is higher than the scale of his/her next higher post.

iv) The increment(s) are in the nature of advance promotional benefits to be absorbed in the next regular promotion.

v) Those who forgo promotion shall not be entitled for this benefit.”

In the impugned order, it has been recited that the pay scale of the next promotional post of Technician Grade-II is 3480-6500/- and since the petitioner was already drawing a pay scale of Rs.3610-7250/-, he is not entitled to the one additional increment upon completion of 23 years of regular service. Counsel representing the respondent/Corporation submits that under Finance Circular No.20/2000 dated 20.02.2000, there was a specific embargo for granting such benefit i.e. *“he/she has not been placed in a scale which is higher than the scale of his/her next higher post.”*

Accordingly, it is contended that since the petitioner had been granted and was drawing emoluments in the pay scale of Rs.3610-7250/- which was higher than the pay scale of his next promotional post, accordingly, the impugned order dated 11.04.2012 (Annexure P-8) has been rightfully passed.

In the writ petition, there are specific averments made in para 25 to the effect that the petitioner was never granted the second time bound promotional scale of Rs.3610-7250/- w.e.f. 01.06.1995. In the written

statement, there is no specific denial to such assertion.

Since the assertion on behalf of the respondent/Corporation that the second time bound promotional scale of Rs.3610-7250/- in favour of the petitioner was on the basis of a general circular and against the backdrop of the categoric averments made on behalf of the petitioner that such benefits had not actually been accorded to the petitioner, this Court on a previous date of hearing i.e. on 03.11.2017 had passed the following order:

“Petitioner has impugned in the instant petition the order dated 11.04.2012 (Annexure P-8) passed by the Punjab State Power Corporation Limited and in terms of which the benefit of one additional increment on completion of 23 years regular service which had earlier been granted has been withdrawn.

Perusal of the impugned order would reveal that the sole basis of withdrawal of the benefit is that the petitioner was already enjoying a scale which was higher than the scale of his next higher post. In the impugned order itself, it has been recited that pay scale of the next promotional post of Technician Grade II is Rs.3480-6500, whereas the petitioner was already drawing pay scale of Rs.3610-7250.

It is the case of the petitioner that the scale of Rs.3610-7250 was never granted to the petitioner.

Counsel appearing for the respondent/Corporation is directed to produce on the adjourned date the specific order passed by the Corporation and granting to the petitioner herein the scale of Rs.3610-7250.

List on 27.11.2017.

To be taken up immediately after the urgent motion petitions.

It has been made clear to the counsel representing the Corporation that to answer the query put by this Court today, any general circular that may have been issued by the

Corporation will not suffice and the order that has been directed to be produced is in particular reference to and having been passed in favour of the petitioner.

A photocopy of this order be placed on the connected files of this case.”

Thereafter, when the matter was taken up on 27.11.2017, counsel representing the Corporation had sought yet another opportunity. On such date, it had been recorded by this Court that in case, the requisite order reflecting that the petitioner had been granted and was actually drawing pay scale of Rs.3610-7250/- is not placed on record, necessary adverse inference would be drawn.

For reasons difficult to fathom, the respondent/Corporation inspite of having availed two opportunities, has not placed on record any such order.

Counsel representing the Corporation submits that even though the relevant record had been called for but there is no positive response forthcoming.

Under such circumstances and in view of the totally evasive reply filed on behalf of the corporation, this Court would proceed on the basis that the averments contained in para 25 of the writ petition are factually correct and that even though general circular on the subject may have been issued but actually the petitioner had never been granted the second time bound promotional scale of Rs.3610-7250/-.

In such view of the matter, the very basis of passing of the impugned order dated 11.04.2012 (Annexure P-8) i.e. the petitioner having been placed in a scale which is higher than the scale of his next higher post does not exist.

For the reasons recorded above, the writ petition is allowed.
Order dated 11.04.2012 (Annexure P-8) is set aside. All consequential financial benefits be calculated and released to the petitioner within a period of two months from today.

Petition allowed in the aforesaid terms.

18.12.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No