

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

**CWP No.9083 of 2015**  
**Reserved on :01.11.2017**  
**Date of decision:22.11.2017**

Shri Bhagwan Sharma & others ....Petitioners

Versus

State of Haryana & others ...Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr.R.N.Sharma, Advocate, for the petitioners.

Mr.Harish Rathee, Sr.DAG, Haryana.

**G.S. SANDHAWALIA, J.**

The petitioners, under Article 226 of the Constitution of India, seeks directions for payment of pay-scale of the post of Sub-Divisional Engineer for the period they were given the Current Duty Charge (CDC) against the vacant sanctioned posts prior to their regular promotions from the post of Junior Engineer (Civil) and for release of arrears of difference between the due and drawn pay along with interest. Further relief is also sought for refixing the pay.

The claim, in the opinion of this Court, is justified and is liable to be allowed, to the extent that they are eligible to be given the regular pay-scale of the higher posts for the period they worked. The reason for the same would be clear from the pleadings which would go on to show that the petitioners were appointed as Junior Engineers and were given CDC on the higher posts between periods ranging from 5 to 10 years, as per the chart enclosed as Annexure P-1. The same would go on to show that in the case of petitioner No.2, he had been given charge on 01.08.2000 to 14.05.2014, which is the date of the promotion (Annexure P-2) For other petitioners,

there were various periods ranging from 3 years onwards.

It is the case of the petitioners that there were posts available under the promotion quota and despite representation dated 23.07.2014 (Annexure P-5) having been made by petitioner No.1 that benefit have not been given and thereafter, legal notice dated 05.02.2015 (Annexure P-6) was also served upon the respondents but instead of making promotions, only CDC had been given. Resultantly, the present writ petition came to be filed.

The defence of the State is that they were given CDC against vacant posts meant for direct recruitment with the condition that they would not claim seniority of the CDC. The order giving CDC dated 15.10.2003 (Annexure R-1), in the case of some petitioners, were appended. The plea taken was that under the Punjab Service of Engineer Class-II Rules, 1966, there was separate quota for various categories for promotion and only 35% posts were meant for promotional categories (20% Junior Engineer, 10% AMIE/BE Degree holders, 5% for Drawing category) and 65% posts were meant for direct recruitment. Vide notification dated 29.10.2003, the percentage had been amended and 57% posts were meant for direct recruits and 43% meant for promotions (25% for Junior Engineers, 12% for AMIE/BE Degree holders and 6% for Drawing categories). Vide notification dated 29.03.2004, the percentage had been further amended and 50% were made for direct recruits and 50% for promotions (30% meant for Junior Engineers, 14% for AMIE/BE Degree holders and 6% for Drawing categories).

It was further averred that under Sub-Rule (3) of Rule 6, in case candidates are not available from direct recruitment and drawing category (promotion quota), person can be appointed as a stop-gap arrangement from other than the allotted sources in the public interest which was not to be reckoned for the purposes of seniority. The end result being that the petitioners were not being promoted and were given CDC in their own pay-scales of Junior Engineers. If the benefits of pay-scale of Sub-Divisional Engineers and consequential benefits were given, it would mean that they were given promotion to the post of SDO against the quota meant for direct recruits and would amount to encroachment upon the quota and would result into seniority with the direct recruits who had to be recruited within their own quota subsequently. Resultantly, a table was given to show the date of the CDC and the date of appointments, as such. Accordingly, it was pleaded that they had no right to be adjusted against the direct recruited posts. They had been promoted as and when promotional posts had become available in the quotas as SDO and no posts were available in the AMIE/BE quota and this was in their knowledge and that is why they agreed to perform the CDC, which was a stop-gap arrangement.

The order giving them the CDC and the conditions imposed upon reads as under:

“ORDER OF THE GOVERNOR OF HARYANA

The current duty charge of the posts of Sub Divisional Engineer is hereby given to the following Junior Engineers possessing AMIE / B.E. degree qualification in their own rank and pay scale subject to the following conditions:-

xxx

xxx

xxx

- i) This current duty charge, however will not effect the right of seniority of other Junior Engineers over them, if they will be found fit for promotion retrospectively.
- ii) No extra payment will be given to them for this current duty charge.
- iii) They will not claim seniority on the basis of this current duty charge.
- iv) These orders will be effect from the date they assume the charge of the Sub Division after their posting.
- v) The above orders are without prejudice to the final outcome of the matter pending before the Hon'ble Punjab and Haryana High Court.”

Thus, there is no dispute that the petitioners were given independent charge and responsibilities of the higher post though all conditions were to the extent that no extra payment would be paid to them for working on CDC. Similarly, they could not claim seniority for the CDC period and which has been justified on the ground that the promotion is not against sanctioned posts of quota for the promotees and it was only on account of lack of direct recruitment and candidates not being available from the said source. No replication has been filed denying this aspect of adjustment against the direct quota vacancies. In such circumstances, the petitioners are well justified in asking for the regular pay-scales of SDO on account of having worked on the said posts.

The said issue came up before the Full Bench in **Subhash Chander Vs. State of Haryana & others 2012 (1) SCT 603** wherein the following question was framed:

"Whether an employee who is given independent charge and responsibility of a higher post alone is entitled to regular pay scale without being substantively appointed to such post."

Accordingly, it was held that when there was independent charge, as such, given and there was assumption of responsibilities and duties of greater importance, the person could not be deprived of higher salary for the duty performed. Reliance was also placed upon the judgment of the Apex Court in **Smt.P.Grover Vs. State of Haryana AIR 1983 SC 1060** and the above-said question was answered as under:

"17. In view of the above, the question posed in para no. 1 is answered in affirmative and it is held that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Accordingly, the petitioner is held entitled to the higher pay scale from the date he has assumed the charge of the post of Secretary with all consequential benefits including promotion. His pay may be re-fixed and the arrears of his pay shall be calculated from the date when he has been officiating on the post of Secretary, Municipal Committee. The payment of arrears shall be made within three months from the date of receipt of a certified copy of his order with all consequential benefits.

18. Accordingly, the writ petition is disposed of in the above terms."

Resultantly, keeping in view the same, the present writ petition is allowed, and the petitioners are held entitled for the pay-scale of the posts of SDO for the period they were given the charge against the said vacant posts, prior to regular promotions. Their pay, however, is not to be re-fixed after the said period is over, since the State has clarified

that they had been given annual increments and salary in their original scale of Junior Engineers. Therefore, they have only the right of arrears of difference of pay for the 2 posts while holding the CDC. The payments be made within a period of 2 months from the date of receipt of a certified copy of this order, failing which, the same would carry interest @ 7% per annum from the date it became due.

22.11.2017  
Sailesh

(G.S. SANDHAWALIA)  
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No