

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

CWP No.11672 of 2015(O&M)

Date of Decision:7.9.2018

Amar Nath Yadav

... Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.B.S.Mittal, Advocate for the petitioner

Mr.RD Bawa, Advocate and

Mr.Samuel Gill, Advocate for the respondents

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard counsel for the parties and perused the paper-book and propose to make the following order.

2. The only reason why the claim of the petitioner for the benefit of ACP scale of pay has been rejected is that he chose to forgo promotion as Bill Distributor in 1992 for personal reasons to serve as Peon. The Assured Career Progression Rules came into force in 1998. In these rules, opportunity of financial upgradation to the employees was available on completion of 10, 20 and 30 years of service, if they had not got promotion during the previous 10 years of service. The ACP Rules, 1998 were revised by the DHBVNL (Assured Career Progression) Rules, 2009 and came into force on 28th February, 2009. In these rules also, the pattern of 10, 20 and 30 years of service was

followed. Rule 14 of the Rules, 2009 provided for ceasing of entitlement of ACP pay structure containing the same embargo as in Rule 11 of the Rules of 1998.

3. The Haryana Civil Services (Assured Career Progression) Rules, 2008 also contain the same pattern of 10, 20 and 30 years of service for entitlement to financial upgradation. Further to the Rules of 2008, the Government of Haryana, Finance Department issued order dated 4th March, 2014 by which length of three stage service was changed from 10, 20 and 30 to 8, 16 and 24 years. All other relevant provisions of the rules will be deemed to have been modified to that extent.

4. It is noticed that in 2005, the petitioner was promoted as LDC from the post of Peon, as per Rules. The petitioner's case under the aforesaid order of the Government of Haryana dated 4th March, 2014, which order has been adopted by the respondent-Nigam, has not been taken into consideration while passing the order, although it was relevant material in decision making. Unfortunately, the impugned order limits its attention, while declining ACP scales, to the fact that the petitioner did not accept his promotion in the year 1992 and was thus reverted to the post of Peon after serving for about 4 months on the higher post.

5. The petitioner has, inter alia, relied upon a clarificatory letter dated November 26, 2002 (Annex. P-4) issued by the Finance Department, Haryana with reference to the Finance Department Notification dated 7th January, 1998 promulgating the Rules, 1998 effective from January 1, 1996. By way of this letter, Rule 11 was clarified. Rule 11 is to the following effect:-

“11.Ceasing of entitlement of ACP Scales:- In case the Government employee choose to forgo any financial promotion on any ground whatsoever while drawing his pay in any ACP scale with reference to him, he shall cease to be entitled to draw his pay in the ACP scale and shall draw his pay in the functional pay scale prescribed for the post on which he is substantively working from the date of such forgoing of promotion.”

6. When some departments sought clarifications on various points with regard to the operation of the above rule, the State of Haryana clarified the position as follows:-

“a) Where promotion was forgone by the Government employees prior to 7.1.1998 while drawing their pay in Higher Standard Pay Scale a special one time protection was allowed vide F.D. instructions issued on 3.4.1998 that their I/II Higher Standard Pay Scale granted prior to 7.1.1998 would not be disturbed. Under these instructions, they were to be switched over to the appropriate ACP Scale strictly in accordance with ACP Rules, 1998. Therefore, as per provision in the above said instructions the pay of such Government employees who were drawing pay in 1st Higher Stand Pay Scale is to be fixed in the appropriate ACP Scale admissible to them under the rules and promotion already foregone by them prior to 7.1.1998 will be ignored.”

7. This clarification does not create any new rights and obligations and would, therefore, relate back to the 1998 Rules. The clarification was to the effect that if promotion was not accepted prior to

January 7, 1998, the same would be ignored for the purpose of award of ACP Scales.

8. Be that as it may, this aspect has also not been considered by the respondents, in addition to the applicability of the 2014 Rules rendering the impugned order inadequate in understanding the case of the petitioner for the purpose of judicial review. Accordingly, for the shortcomings, it is deemed fit and proper that the matter should be remitted to the authority competent to pass an order in the case of the petitioner after taking into consideration all the aspects which are considered relevant to the decision making process including as indicated above.

9. As a result, this petition succeeds partially and is allowed to the extent the impugned order/reply dated November 13, 2014 (Annex. P-3) is quashed. The case is remanded to the competent authority amongst the respondents to pass a fresh order, in accordance with law. Opportunity of hearing shall be given to the petitioner before the final order is passed which must be comprehensive in dealing with all the aspects and on each of the points raised by the petitioner. The right to the benefit of ACP scales of pay would be decided at the appropriate stages i.e 8, 16, 24 duly worked out till the petitioner's retirement i.e. June 30, 2014.

10. Monetary benefits, if found due, shall be paid to the petitioner within two months from the date of passing of the final order by the competent authority. The final order be passed within six weeks from the date of receipt of a certified copy of this order. Any amount found outstanding towards ACP pay scale in favour of the petitioner

shall carry interest @ 6% per annum from the due date/s till the date of realization.

7.9.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No