

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

**Civil Writ Petition No.4032 of 2014 (O & M)**

**Date of Decision: *August 13, 2018***

Harnek Singh

..... PETITIONER

*VERSUS*

State of Punjab & others

..... RESPONDENTS

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**CORAM:      HON'BLE MR. JUSTICE JASPAL SINGH**

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**PRESENT:** - Mr. Harinder Sharma, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General,  
Punjab.

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**Jaspal Singh, J**

Through the instant writ petition preferred under Article 226 of the Constitution of India, petitioner has sought for issuance of a writ in the nature of certiorari, quashing order dated January 21/24, 2011 (Annexure P-3) passed by respondent No.3 – District Collector –cum– Deputy Commissioner, Faridkot and order dated December 27, 2012 (Annexure P-5) passed by respondent No.2 – Commissioner, Faridkot Division, Faridkot, whereby his claim for grant of additional increments under Proficiency Step-up Scheme on completion of 16 and 24 years of service has been rejected on the ground that he had voluntarily forgone promotion offered to him.

Petitioner further prays for direction to respondents to revise his pay after

granting aforesaid additional increments under Proficiency Step-up Scheme, retiral benefits and arrears alongwith interest @ 12% per annum.

The facts giving rise to the instant lis are that petitioner was appointed as Patwari on November 25, 1980. His services were regularised w.e.f. January 07, 1982. He retired on December 31, 2011 on attaining the age of superannuation. During service, on November 01, 1989, he was granted additional increment under Proficiency Step-up Scheme on completion of eight years of service as Patwari. He was granted senior scale w.e.f. November 01, 1993 which was further revised w.e.f. January 01, 1996. In the interregnum, vide order dated October 10, 1995 he was offered promotion from Patwari to Assistant Revenue Clerk (ARC) which was forgone by him permanently. It is the case of petitioner that he completed 16 and 24 years of service as Patwari in the same cadre and thus, he became entitled to additional increments in terms of Proficiency Step-up Scheme/ Assured Career Progression Scheme but his claim was rejected by respondent No.3 vide impugned order dated January 24, 2011 (Annexure P-3) on the report of DCFA, Faridkot on the ground that since petitioner had himself forgone the promotion offered to him, he is not entitled to additional increments under the Proficiency Step-up Scheme or Assured Career Progression Scheme.

Aggrieved petitioner preferred an appeal against order, Annexure P-3, which was also dismissed by respondent No.2 vide order dated December 27, 2012 (Annexure P-5).

At the very outset of arguments, learned counsel for the respondents has submitted that additional increment on account of completion of 16 years of service, has been granted to the petitioner which

fact has not been disputed by learned counsel for the petitioner. Accordingly, writ petition has been rendered infructuous qua relief of additional increment under Proficiency Step-up Scheme on completion of 16 years of service.

As far as additional increment under Assured Career Progression Scheme on completion of 24 years of service is concerned, learned counsel for the petitioner submits that aforesaid impugned orders are unjust, arbitrary and contrary to the well settled legal proposition. Additional increment on completion of 16 years of service is required to be considered under Assured Career Progression Scheme issued by the Government of Punjab through Notification No.7/37/88-5PP-1/12851 dated September 25, 1998 (sub-clause (iii) of Para 3), wherein it is not specifically mentioned that a person who does not avail the promotional opportunity shall not be entitled to the benefit of proficiency step-up. Accordingly, impugned orders are liable to be set aside and instant petition deserves to be allowed.

Per contra, Learned counsel for the respondents submits that since petitioner was offered promotion as Assistant Revenue Clerk but he refused to accept the same, so he is not entitled to any additional increment under Proficiency Step-up Scheme as per Para 9 of letter No.7/14/88-SP.P.1/16200 dated September 01, 1989 issued by Government of Punjab, Department of Personnel.

This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and gone through the record available and finds no legal weight in the submissions of learned counsel for the petitioner.

Undisputably, petitioner served as Patwari and retired as such on December 31, 2011 on attaining the age of superannuation. It is also

not in dispute that he was offered promotion to the post of Assistant Revenue Clerk (ARC) which he refused to accept permanently. It is the case of petitioner that he is entitled to benefit of additional increment on completion of 24 years of service on account of his rendering regular satisfactory service and non-availing of promotion by him cannot be a circumstance to reject his claim of proficiency step-up and thus action of the respondents amounts to reduction in rank which is hit with the vice of Article 14 of the Constitution of India being wholly arbitrary and unfair.

Similar question has been answered by a Division Bench of this Court vide judgment reported as ***Rakesh Kumar vs. State of Haryana & others, 2010(3) SLR 434***, wherein after following the judgments rendered by the Hon'ble Apex Court, it has been observed as under:-

It is a matter of record that keeping in view the prevailing circumstances in some state services like lack of promotional avenues or non-availability of such promotional avenues for long periods of time, Hon'ble the Supreme Court in Council of Scientific and Industrial Research v. KGS Bhatt, (1989) 4 SCC 635 had pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective and therefore suggested/ directed the State authorities to take steps for framing appropriate schemes for such category of officers. This view has been consistently reiterated by Hon'ble the Supreme Court in State of Tripura v. K.K. Roy (2004) 9 SCC 65 and Food Corporation of India v. Parashotam Das Bansal, (2008) 5 SCC 100. In order to

provide advancement of the employees who have been suffering stagnation in service, the State of Haryana under proviso to Articles 309 of the Constitution of India framed the ACP Rules, 1998. It is not in dispute that Rule 5 provides for conditions of eligibility for placement/grant of ACP scales after 10 years and 20 years of regular satisfactory service. However, Rule 11 provide that in the event of foregoing of promotion by a Government servant, he shall cease to be entitled to be placed in the ACP scale from the date of foregoing his promotion. In the present case the dispute relates to Rule 11 and it would be appropriate to reproduce the same which reads as under:-

“11. Ceasing of Entitlement of ACP scales:- In case the government servant chooses to forego any functional 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 pay scales and shall draw his pay in the functional pay scales prescribed for the post on which he is substantively working from the date of such forego of promotion.”

A plain and bare reading of Rule 11 of ACP Rules, 1998 reveals that a Government servant who has been placed in the ACP scale, if chooses to forego his promotion on any ground whatsoever while drawing the ACP scale shall cease to be entitled to draw his pay in the ACP pay scale from the

date of his refusal of promotion. It is thus clear that continuance of the grant of pay in the ACP scale is based on the condition that the Government employee shall not forego his promotion for whatever reason. The rationale is based on logic besides being just and fair as placing in the ACP scale is itself made on account of stagnation/non-availability of promotional avenues and in the event, though subsequently, the Government servant willingly refuses to accept the offer of promotion for whatever reason then it can safely be presumed that the Govt. Servant considers there is no stagnation in his Govt service, which needs/deserves to be compensated by ACP/promotional scale. Therefore, in our opinion, the State Government would be well within its right to withdraw placement of such an employee in ACP scale as the same was subject to certain condition which is germane to the grant of the same. Consequently, the provision of Rule 11 cannot be by any stretch of reasoning be held to be arbitrary. A reading of the clarification Annexure P/2 further reveals that for implementing the provision of Rule 11 of the ACP Rules, the method and manner of refixing the pay scale of the Government servant covered under Rule 11 has been provided. No serious challenge has been laid to the clarification Annexure P/2. Therefore, no infirmity can also be found with Annexure P/2. We further find that the refixation of the pay of the petitioner vide Annexure P/6 in

terms of Rule 11 cannot also be faulted. Therefore, challenge to Annexure P/6 also fails.”

The ratio of law referred to above is fully applicable in the facts and circumstances of the case in hand which makes it abundantly clear that once an employee has foregone the promotion, he or she is not entitled to the benefit of ACP.

Adverting to facts of the instant case, the petitioner voluntarily opted to forgo the promotion and as such, he disentitled himself to the ACP on completion of 24 years of service. There is nothing illegal or unjustifiable in the impugned order and it does not call for any interference by this Court.

In view of what has been discussed above, instant petition is devoid of merits and is accordingly dismissed.

No order as to costs.

**August 13, 2018**  
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**(Jaspal Singh)**  
**Judge**

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No