

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

CWP No.23260 of 2017 (O&M)

Date of Decision:13.12.2018

Basdev Bansal

... Petitioner

Versus

Punjab and Haryana High Court and Another

... Respondents

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

Present: Mr.Kanwal Goyal, Advocate for the petitioner

Ms.Geeta Sharma, Advocate for the respondents

**RAJIV NARAIN RAINA, J.**

1. By way of this petition, the petitioner seeks a writ of certiorari quashing the orders dated 5/9.12.2016 (Annex. P-1) and 8.2.2017 (Annex. P-3) to the extent they deny actual financial benefits on par with his junior Arun Kumar Jain restricting the actual benefit from 5<sup>th</sup> December, 2016. By this order of 5<sup>th</sup> December, 2016, relief of stepping up of pay has been accepted w.e.f. 30.5.2014 with next increment on the completion of qualifying service of 12 months under Rule 34(1) of the High Court Establishment (Appointment & Conditions of Service) Rules, 1973 and instructions issued by the Punjab Government vide letter dated 12.8.2010. The petitioner claims arrears of pay and allowances for the period 30.5.2014 to 4.12.2016.

2. The brief facts of the case are that the petitioner was appointed as Clerk in 1991 to serve in the establishment of this Court. He was promoted as Special Secretary on 14<sup>th</sup> May, 2013. He made a

representation on 15<sup>th</sup> December, 2016 stating that he came to know that he drew less salary than his junior Arun Kumar Jain when he applied for 10 days leave encashment in October, 2016 for the purpose of Leave Travel Concession. On coming to know of this, he applied for benefit of proficiency step up for bringing his pay on par with his junior which representation was allowed by the order dated 5.12.2016. He claimed full salary for the past period on parity with his junior who had obtained the benefit of more pay due to grant of proficiency step up. His representation was declined by the impugned order dated 8<sup>th</sup> February, 2017 (Annex. P-3). The prayer was declined by this non-speaking order for the cryptic reason that his claim was not covered under the Rules/instructions as well as policy framed by this Court in such like matters. As a result, the stepping up was made only on notional basis for the period 30.5.2014 to 4.12.2016 and it was ordered that no arrears would be payable to him for the said period.

3. While issuing notice of motion the Bench observed that the orders (Annex. P-1 and P-3) are not speaking ones. The Court found the reasons vague and the rules etc. relied on were not reflected in the impugned order (Annex. P-3). The High Court being put to notice was directed to file a short reply by the next date of hearing.

4. It is urged by Mr.Goyal, the learned counsel for the petitioner that the impugned order dated 8.2.2017 is cryptic and non-speaking as it does not specify any reason on the face of the order and the same has been passed without affording an opportunity of hearing.

5. The respondents have filed a counter on 14<sup>th</sup> May, 2018 contesting the case. In paragraph 6 of the reply on merits, it is stated that

in a similar matter in a case of stepping up of pay of one Mr.Narinder Singh, Superintendent Grade-I (Now Joint Registrar) to that of his junior Mr.Varinder Shahi, Superintendent Grade I (Now Deputy Registrar) w.e.f. 30.7.2008 in the cadre of Superintendents whereby the pay of Narinder Singh was stepped up w.e.f. 30.7.2008, but only on notional basis and the actual benefit was granted to him only from 1.10.2016.

6. Mr.Goyal points out that in that case, there was a delay of 8 years in approaching the appropriate authority whereas in the present case, the petitioner approached the authorities with his grievance within a reasonable time i.e. 2 1/2 years approximately while the period of limitation for a suit of recovery is three years had one ben filed. The petitioner states that his case is similar to the case of Narinder Singh. To fortify his claim the petitioner asserts that both he and Arun Kumar Jain belong to the same cadre and the posts to which they have been promoted are the same. Both were Court Secretaries and later promoted to the post of Special Secretaries. The pay scales for the post of Secretaries and Special Secretaries is identical. The petitioner was drawing more pay than his junior Arun Kumar Jain before promotion as Special Secretary. Both Officers at the time of promotion to the post of Special Secretaries exercised option to get their pay fixed in terms of the same clauses of Rule 11 of the rules. Though the anomaly in the pay of the petitioner with the pay of junior employee has been seen at the time of fixation of pay of junior employee, the reason behind this anomalous position is that junior employee after getting the benefit of ACP pay in the pay band with the pay of the petitioner in the pay band w.e.f.

30.5.2014. Since the benefit of pay fixation on promotion is actually granted to the junior employees as such it can be said that the anomaly in the pay of the petitioner and junior employee w.e.f. 30.5.2014 on account of fixation of pay of junior employee is directly as a result of application of the provisions of Rule 11-A of the Punjab Civil Services (Revised Pay) Rules, 2009 (for short “2009 Rules”)

7. When the case of Narinder Singh was considered and decided on the administrative side by the Hon’ble Judge, His Lordship was pleased to observe as follows:-

“The matter herein pertained to removal of alleged anomaly in pay fixation which has crept in due to the fact that while senior employee stood promoted on the higher post, his junior, while continuing in the feeder cadre, became eligible for the grant of ACP and eventually got it, before his further promotion in cadre in which his senior had already been promoted.

Since there are several such like cases, it was advised on 26.6.2016 that the matter entails policy-decision and be placed before the DPC.

Office has now suggested that it is not necessary to refer the matter to DPC as there is already a decision dated 6.6.2010 by a committee of two Hon’ble Judges laying down the guidelines for stepping-up the pay.

I have gone through the decision of the Committee which is reproduced at Page 41 of the office noting and has no relevance on the point in issue.

Be that as it may, the perceived anomaly has not been caused on account of wrongful action of the High Court establishment. The grant of ACP to the junior employee, for which he became entitled to

under a separate scheme, was in incidence of service. The eligibility or entitlement of the junior employee is not in question. However, having regard to the fact that after the junior employee has been promoted and the representationist as well as his junior both are working in the same cadre and the senior employee is getting lesser pay than his junior, which is truly a cause of heart burning, it may be treated as an “anomalous situation” as for the limited purpose of stepping up of senior’s at par with his junior. Let the said pay be stepped up w.e.f. 30.7.2008 but only on notional basis. The actual benefit be granted from 1.10.2016 only.”

8. This administrative precedent has been applied in the case of the petitioner to deny him the benefit of arrears for the period claimed. It is apparent that actual benefit was restricted from 1.10.2016 on account of delay of 8 years in making the claim and this, Mr. Goyal, says, is the distinguishing feature from the present one where delay cannot be said to be unreasonable so as to deny the benefit.

9. The Punjab Government instructions dated 12.8.2010 may be noticed as they deal with removal of anomaly of stepping up pay of senior government employees by drawing less pay to the juniors due to operation of the provisions of Rule 11-A of the 2009 Rules. The relevant text of the instructions in paragraph 2 read as follows:-

“2.After careful consideration of the matter the Governor of Punjab is pleased to decide that if due to normal operation of the provisions of Rule

11-A of the Punjab Civil Services (Revised Pay) Rules, 2009, the pay of a senior employees gets fixed at a level lower than his junior employee, the pay of such senior employees shall be stepped up to the level of the pay of his junior employee subject to the following conditions:-

(a) The junior and senior government employee should belong to the same cadre and the posts in which they have been promoted should also be identical and in the same cadre.

(b)The pre-revised and revised scale/pay band and grade pay of the lower and higher posts, in which they are entitled to draw pay, should be identical.

(c)The senior government employee at the time of his promotion to the higher level had been drawing pay equal to or more than the pay of the junior. No relief will be given under these instructions if the senior employee exercises an option to get his pay fixation/promotion postponed or opts for revised pay structure from a date different than the date of option of the junior. However, if the option for fixation of pay exercised by the senior and junior employee is under different clauses of rule 11 of the Punjab Civil Services (Revised Pay) Rules, 2009 and at the time of the promotion of the junior employee the pay of such junior is fixed at a level higher than the pay of the senior, the senior employee may, if it is advantageous to him get his pay refixed subject to resultant financial adjustment, as if he had exercised the option under the same clause of rule 11 as has been exercised by the junior employee.

(d)The anomaly should be directly as a result of application of the provisions of rule 11-A of the Punjab Civil Services (Revised Pay) Rules, 2009. However, if in the lower post, the junior officer was drawing more pay in the pre-revised/revised pay scale than his senior by virtue of any advance increments granted to him or due to any inflation in pay other than by way of normal pay fixation, the benefit of step-up envisaged under these instructions shall not be admissible.

(e) The next increment to senior government employee shall be admissible on the same date as that of his junior, in respect to whom, he has got his pay stepped up.

(f)The benefit of stepping up of pay can be allowed to the senior employee for the second time, if the anomaly has again arisen with reference to the pay of the same junior, in respect of whom, the pay of the senior was stepped up for the first time.”

10. The guidelines framed by the Committee of two Hon’ble Judges are contained in the minutes of meeting dated 6<sup>th</sup> October, 2010.

The operative part of the directions read as follows:-

“i) In terms of Rule 26(1) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973, the scale of pay payable to the employees of the High Court shall be as per the First Schedule to the Rules.

ii)IN the said pay scale, the pay shall be fixed in terms of Rule 34(1)(A) keeping in view the Rule 4.4 and Rule 4.14 of the Punjab Civil Services Rules such as by pay protection in case of an employee promoted to higher post in a lower scale of pay and pay fixation by granting additional

increment on account of promotion and such similar reason;

iii) The employees of one cadre will be placed in the same “pay scale” irrespective of source of promotion or feeder cadre;

iv) The pay of a senior is not required to be stepped up, if the pay of both senior and junior is fixed as per pay fixation rules and instructions, and when junior draws higher pay on account of his length of service or pay fixation or some other reason including personal pay etc.”

11. The High Court relies on a clarification of the Punjab Government made through letter dated 1<sup>st</sup> September, 1989 in respect of grant of proficiency step up. The respondents further rely on the judgment (Annex. R-3) passed in CWP No.16674 of 2011 (*Surjit Singh vs. District & Sessions Judge, Hoshiarpur and another* decided on 16.4.2012). The crux of the clarification is that an employee would be eligible for proficiency increment only if he had not gained an enhancement in his pay except by way of annual increments and fixation of pay as a result of revision of pay scales from time to time. The Court in *Surjit Singh's* case held that this would show that a person, who obtains an enhancement of his basic pay by any other mode, such as how it has happened to the petitioner, when his pay was stepped up when his junior was drawing a higher pay on securing promotion, he shall not be disentitled to obtain ACP scales as well. Mr.Goyal agrees that the prayer of the petitioner for ACP is in the alternative and the petitioner relinquishes that claim in the light of the

judgment of the Letters Patent Bench in appeal against the decision in *Surjit Singh's* case in LPA No.790 of 2012 (*Surjit Singh vs. District & Sessions Judge, Hoshiarpur and another* decided on 3.8.2012). Having given up the prayer resting on ACP Rules, Mr. Goyal concentrates on his claim for stepping up of pay based on arrears of proficiency step up. The anomaly in pay is not on account of length of service or pay fixation or some other reason including personal pay etc. while keeping in view Rule 26(1) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 and 34(1)(A) keeping in view the Rule 4.4 and Rule 4.14 of the Punjab Civil Services Rules. The striking point in the present case is that as a matter of record, the petitioner started drawing lesser pay than his immediate junior even though he was promoted to the post of Special Secretary before Arun Kumar Jain was promoted to that post. The anomaly has been rectified by the respondents, but the disputed period has been sidelined on notional basis and not the actual arrears of difference in salary. The junior while serving on the same post for the relevant period had enjoyed higher benefit than the petitioner, and therefore, for all intents and purposes, the petitioner is entitled to actual upgradation of the pay from the date the said scale was extended to his junior.

12. Even the Hon'ble Administrative Judge in the decision dated 27.10.2016 in the case of Narinder Singh, which is similar to the case of the petitioner, had emphatically

observed upon reading the decision dated 6.6.2010 of the Committee of two Hon'ble Judges, referred to above, that the decision of the Committee has no relevance on the point under decision.

13. It is for this reason that the impugned orders dated 5/9.12.2016 (Annex. P-1) and 8.2.2017 (Annex. P-3) are unsustainable in the eyes of law and deserve to be set aside to the extent of non-grant of actual pecuniary benefits from the due date. Neither the rules nor the instructions can deprive the petitioner of this right. The case of Narinder Singh is distinguishable by reason of gross delay and laches spreading over 8 years for which reason the benefit was rendered notionally by the respondents. Moreover, the petitioner's claim for the benefit of ACP w.e.f. 14.5.2017 has been relinquished till he would become entitled to ACP w.e.f. 30.5.2018 on completion of four years of service from the date of stepping up with Arun Kumar Jain, Special Secretary (Readers' Line).

14. For what has been said before, this petition is allowed and the impugned order dated 5/9.12.2016 (Annex. P-1) to the extent it restricts actual benefit of stepping up from 5.12.2016 is held erroneous and arbitrary and is therefore quashed and as a consequence thereof, the order dated 8.2.2017 (Annex. P-3) declining the request of the petitioner for arrears of proficiency step up for the period 30.5.2014 to 4.12.2016 is invalidated. The petitioner is held entitled to arrears of proficiency step up for the period claimed to remove unfair

discrimination. As a result, the amount due be calculated and disbursed to the petitioner within a reasonable time of say three months. This order will, however, not apply to claim for ACP benefits which become due on completion of four years service w.e.f. 30.5.2018 since the claim from 2017 has been given up by the petitioner as non-contested. No prayer for interest on the arrears has been made in this petition and I find no ground for awarding interest on the arrears.

**13.12.2018**  
**MFK**

**(RAJIV NARAIN RAINA)**  
**JUDGE**

*Whether speaking/reasoned*

*Yes/No*

*Whether Reportable*

*Yes/No*