

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-586-2017

Date of decision: 08.08.2018

Daya Nand

...Petitioner

V/s.

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Anurag Goyal, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

RITU BAHRI, J. (Oral).

The petitioner is seeking quashing of the impugned orders dated 11.12.2015 and 21.01.2016 (Annexure P-8 and P-9) whereby the benefit of ACP granted to him by counting his adhoc service has been withdrawn and at the same time no benefit of ACP has been granted to him by counting his regular service as a Peon when he was working as Peon from 31.03.1981.

The facts not in dispute between the parties are that the petitioner was appointed as Peon with the respondent-Excise and Taxation Department on 31.03.1981. Thereafter he was promoted to the post of Clerk on 03.07.1997 on adhoc basis. He continued to work on the said post and finally he was regularized w.e.f. 31.10.2001. Copy of order dated 19.11.2001 regularizing the promotion of petitioner to the post of Clerk w.e.f. 31.10.2001 is at Annexure P-2. The petitioner was granted 1st ACP in the cadre of Clerk w.e.f. 01.08.2007 vide order dated 17.06.2013 (Annexure P-4) and his pay was increased from 1900-2400 to 5200-20200.

This order was subsequently withdrawn vide order dated 18/29.04.2014 (Annexure P-5) on the ground that the benefit of adhoc service as a Clerk was wrongly taken into account. Thereafter pursuant to the order passed by this Court in CWP-11610-2014 (Annexure P-6), the petitioner was given show cause notice and finally speaking order rejecting the claim of the petitioner was passed (Annexures P-7 and P-8) giving the same ground that the petitioner was promoted as Clerk on 03.07.1997, his adhoc service as Clerk was wrongly taken into account counting as 10 years while granting 1st ACP in the cadre of Clerk.

The stand taken by the respondent-Department is that initially the ACP rules were notified (Annexure P-3) and subsequently on 30.12.2008 they were again notified after the 6th pay Commission and the revision of the ACP scale as per 6th pay commission were to be implemented from 01.01.2006.

Learned counsel for the petitioner has argued that the petitioner was initially appointed as Peon on 31.03.1981 and he was given adhoc promotion. He had already got the right to claim 1st ACP as a Peon on 31.03.1991 and this benefit has not been given to him. He was granted adhoc promotion as a Clerk on 03.07.1997. He was entitled for second upgradation in his service career and he was regularly appointed as a Clerk on 31.10.2001 and hence he is entitled for 3rd upgradation on 31.10.2011. To support his contention, he has referred to rule 11(c) of notification dated 30.12.2008 (Annexure P-11). As per the said rule, when a person is appointed as a direct recruit, each promotion, each grant of ACP grade pay or any other upgradation will be counted as one upgradation and an employee is not entitled to any benefit of ACP, if he has already availed

three upgradations in his career by way of ACP or otherwise. Hence, in the present case the petitioner is entitled to 1st ACP in the year 1996 and he is entitled to 2nd upgradation in the year 2011 after completing 10 years regular service as a Clerk after being regularised on the post of Clerk on 31.10.2001.

After going through the notification dated 30.12.2008 (Annexure P-11), the case of the petitioner is squarely covered by Rule 11 (c) and this petition deserves to be allowed. Hence, a direction is being given to the respondents to consider the case of the petitioner to grant 1st ACP w.e.f. 01.01.1996 as per ACP Rules 1998 (Annexure P-3) on the post of a Peon and he is entitled for 2nd ACP w.e.f. 31.11.2011 taking into account his regular service of 10 years as a Clerk as per the ACP Rules (Annexure P-11) with all consequential benefits/arrears along with 6% interest within a period of four months from the date of receipt of certified copy of the order and a report be sent to this Court after compliance.

08.08.2018

Divyanshi

**(RITU BAHRI)
JUDGE****Whether speaking/reasoned**

:

Yes/No**Whether reportable**

:

Yes/No