

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 2800 of 2016

Date of decision : 16-01-2019

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Harish Chander

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Om Pal Sharma, Advocate for the petitioner.

Mr. Hitesh Pandit. Addl. A.G., Haryana.

Mr. Pankaj Gupta, Advocate for respondents no. 2 and 3.

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RITU BAHRI, J.

The petitioner is seeking directions to the respondents to rectify the date of grant of first ACP to the petitioner from 01.09.2003 to 01.05.2000 and then to grant him second ACP w.e.f 1.5.2010 along with interest and quash reply dated 16.7.2014 (Annexure P-5) so given by the respondent in response to legal notice dated 20.6.2014 (Annexure P-4) given by the petitioner.

The petitioner joined the Haryana State Electronic Development Corporation Ltd., (hereinafter referred to as `the respondent-

Corporation') on 19.8.1983 as Establishment Assistant. He was promoted to the post of Section Officer on 16.4.1990 and retired as such after attaining the age of superannuation on 30.4.2013. The petitioner has been granted the first ACP w.e.f 1.9.2003 and was denied the benefit of second ACP. The case of the petitioner is that, that he was entitled for the first ACP w.e.f 1.5.2000 and second ACP w.e.f 1.5.2010. As per the petitioner, the respondent-Corporation has withheld the partial benefit of first ACP and has ignored the benefit of second ACP wrongly.

Counsel for the petitioner has argued that as per the letter dated 16.7.2014 (Annexure P-5) of the respondent-Corporation, the petitioner has been granted the second ACP w.e.f 1.9.2003 upon completion of 20 years of regular satisfactory service by taking into consideration his initial recruitment on 19.8.1983 on the post of Establishment Assistant. Counsel for the petitioner has further argued while referring to Rule 7 of the Haryana Civil Services (Assured Career Progression) Rules 2008, that the benefit of first ACP has to be granted when a Government servant completes 10 years of regular satisfactory service and has not been granted any financial upgradation in these ten years and petitioner was promoted on the post of Section Officer on 16.4.1990 and till 16.4.2000, he did not get any financial upgradation and hence as per Rule 7 Sub Clause 1 of Haryana Civil Services (Assured Career Progression) Rules, 2008, he ought to have been granted the benefit of the first ACP w.e.f 1.5.2000 after completion of ten years from the date of his promotion i.e from 16.4.1990 and further he was entitled for second ACP w.e.f 1.5.2010. Due to misreading as well as

misinterpreting of the relevant rules, the respondent-Corporation has granted him first ACP on 1.9.2003 instead of 1.5.2000.

Counsel for the State has submitted that the case of the petitioner has to be considered as per Rule 5 the Haryana Civil Services (Assured Career Progression) Rules, 1998. The same reads as under:

“5. Eligibility for Grant of ACP

Scales:-

(1) Every Government servant, who after a regular satisfactory service for a minimum period of 10 years, if the minimum period is not otherwise prescribed to be different than 10 years either in these rules or by the Government for any class or categories of Government servant from time to time, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawal of pay, be eligible for placement into the First ACP scale with reference to him.

(2) Every Government servant, who after a regular satisfactory service for a minimum period of 20 years, if the minimum period is not otherwise prescribed to be different than 20 years either in these rules or by the Government for any class or categories of Government servant from time to time has not got more than one financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995

shall for the purposes of drawal of pay, be eligible for placement into the Second ACP scale with reference to him.

Provided that grant of ACP scale shall also be considered financial upgradation for the purposes of this rule.

Learned State counsel has argued that in the case of the petitioner, after being appointed as Establishment Assistant in the year August 1983, he had been promoted to the post of Section Officer on 16.4.990. Hence as per Rule 5, he was not eligible for first ACP as he had already got one financial upgradation in terms of grant of a pay scale higher than the functional pay scale as on 31.12.1995. The case of the petitioner is covered under sub clause II of Rule 5 of the **Haryana Civil Services (Assured Career Progression) Rules, 1998.**

As per the reply filed on behalf of the State, the benefit of Ist ACP was granted to the petitioner on 1.7.1992 on completion of 8 years of

service with the Corporation as he had joined the service w.e.f 19.8.1983. The benefit of 2nd ACP was given to the petitioner w.e.f 1.9.2003 on completion of 20 years of service with the Corporation and his basic pay was fixed at Rs.5500-175-8300-EB175-9000 w.e.f 1.9.2003 as per Schedule I Part II of the Pay Revision 1996. The State in his written statement has also placed on record (Annexure R-1) regarding refixation of the salary of the petitioner Harish Chander. A perusal of the Annexure R-1 shows that on 01.07.1992, he was given the benefit of additional increment on completion of 8 years services and his basic pay was fixed at Rs.1750/- and finally on 1.9.2003, he was given the benefit of 2nd ACP on completion of 20 years of service and his basic pay was fixed at 7250/-. The respondents have placed on record (Annexure R-2) giving details of the functional pay scales to the post as on 31.12.1995. The petitioner was getting basic pay scale of 5500-175-8300-EB-175-9000. The functional pay scale of the petitioner was 1400-40-1600-50-2300-EB-60-2600.

The petitioner filed replication on 15.12.2018. In this replication, he has clarified that he was initially appointed as Establishment Assistant on 19.8.1983 thereafter on 16.4.1990 i.e after six years and 8 months, he was promoted to the post of Section Officer. He completed 10 years on this post on 1.5.2000. Hence benefit of First ACP has to be given to the petitioner on 1.5.2000 and the second ACP w.e.f 1.5.2010. It is further clarified that on 1.7.1992, on completion of 8 years of service, he was granted an additional increment, which was granted to Group C & D employees and the benefit of additional increments cannot be considered as

ACP.

The respondents in the present case have not disputed that after being appointed as Establishment Assistant on 19.8.1983, the petitioner was promoted to the post of Section officer on 16.4.1990. After this promotion, he remained a Section Officer and was not granted any further promotion for the next 10 years. As per the ACP Rules as reproduced above, the petitioner was entitled to grant of ACP w.e.f 1.5.2000 i.e after ten years of promotion as Section Officer. As per Rule 5(1) Sub Clause 'c' of the Haryana Civil Services (Assured Career Progression) Rules, 1998, there should not be any upgradation in the functional pay scale of a post to be eligible for grant of Ist ACP. The petitioner in the present case was granted one additional increment which cannot be taken to be a financial upgradation of the functional pay scale in which he was promoted as Section Officer on 16.4.1990. The another fact which the respondents are not disputing is that the petitioner had retired on 30.4.2013 as Section Officer, hence, he was eligible for grant of IInd ACP on 2.5.2010 as per Rule 5 Sub Clause-II of the Haryana Civil Services (Assured Career Progression) Rules 1998 as reproduced above. The benefit of Ist ACP was granted to the petitioner on 1.7.1992 on completion of 8 years of service as after joining on 19.8.1983, the petitioner was given promotion to the post of Section Officer on 16.4.1990. However, as per Rule 5 clause I sub clause (c) of the Haryana Civil Services (Assured Career Progression) Rules, 1998, he was not even eligible for grant of Ist ACP on 1.7.1992. The order placed on record by the respondents (Annexure R-1) dated 20.1.2014 is with

regard to refixation of the pay of the petitioner after being promoted to the post of Section Officer and grant of additional increment w.e.f 1.4.1991. This refixation of pay has nothing to do with fixation of ACP Scales. Annexure R-2 becomes functional pay scale as it existed on 31.12.1995 of a post and in Schedule-I (Annexure R-2) becomes functional pay scale of the post and thereafter Ist ACP and 2nd ACP in the higher pay scale. The petitioner was given the pay scale of Rs.1600-50-2300-EB-60-2660 on promotion to the post of Section Officer on 16.4.1990 and this pay scale is at serial no.12 of Annexure R-2 and the petitioner's claim is that he should be given the benefit of Ist ACP in 1.5.2000 and second ACP on 1.5.2010.

The stand of the State that the petitioner was given the benefit of Ist ACP in 1992 after completing 8 years of service is liable to be rejected as petitioner was promoted on the post of Section Officer on 16.4.1990. After being promoted on the post of Section Officer, he was never granted any financial upgradation in the pay scale on which he was appointed as Section Officer. He retired from the same post on 30.4.2013.

In view of all that has been discussed above, writ petition is allowed. A direction is given to the respondents to refix the pay of the petitioner by taking his pay on the post of Section Officer as on 1.4.1990 in the pay scale of 1600-50-2300-EB-60-2660 and thereafter grant him Ist ACP w.e.f 1.5.2000 and IInd ACP w.e.f 1.5.2010 with all consequential benefits. The entire benefit will be given along with 6% interest from the due date.

16-01-2019

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No