

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 02.07.2019****CWP No.9558 of 2013 (O&M)**

Satish Chander

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Nishant Arya, Advocate, for
Mr. S.K.Verma, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. Challenge in this petition is to the order dated 29.11.2012, whereby the benefit of higher responsibility increment had been denied to the petitioner. He claims addition of this increment to his pay w.e.f. 01.01.2011 relying on Haryana Government instructions dated 27.07.2009 and the modified Govt. order dated 11.10.2010, which deal with matters regarding fixation of pay of an employee where the feeder and promotional posts are identically placed in the same Grade Pay.

2. The petitioner retired from service on 30.06.2013 as an Assistant Geologist. He was promoted to the post of Assistant Geologist (HAS-II) w.e.f. 01.01.2011. On 16.09.1987, the petitioner earned his promotion as Technical Assistant from Section Officer, the post on which he was appointed on ad hoc basis on 11.07.1978 and, thereafter, his services were regularized w.e.f. 16.09.1982. By virtue of an office order, the petitioner was granted the 1st ACP scale of Rs.9300-34800+4200 (GP) with

retrospective effect from 01.01.2006 and thereafter the 2nd ACP scale of Rs.9300-34800+4600 (GP) w.e.f. 01.05.2007. These were by orders dated 04.02.2010 and 28.08.2012 respectively. The benefit of 2nd ACP master pay scale remains the same, but the Grade Pay was increased to Rs.4600/-.

3. It is urged in the petition and in the replication filed by the petitioner that at the time of promotion as Assistant Geologist, his promotional grade was not equivalent to the Grade Pay drawn by the petitioner on the post of Technical Assistant. The pay is prescribed by the Haryana Civil Services (Revision of Pay) Rules, 2008 and the Haryana Civil Services (Assured Career Progression Scheme) Rules, 2008. The petitioner argues that the scope of Haryana Civil Services (Assured Career Progression Scheme) Rules, 2008 [for short 'the HCS (ACP) Rules, 2008'] is very limited and applicable in the situation when an employee has stagnated on a post for a period of 10, 20 or 30 years, he is on this account entitled to the next ACP scale. After granting of ACP scale, the scope of the HCS (ACP) Rules, 2008 comes to an end and the Haryana Civil Services (Revision of Pay) Rules, 2008 [for short 'the HCS (RoP) Rules, 2008'] again come into operation. Per contra, the moot instructions on the subject relied upon by the State are dated 09.04.2010 as also the instructions dated 11.10.2010 and 27.07.2009. The petitioner says that it is wrong to allege that instructions dated 09.04.2010 are in the context of HCS (ACP) Rules, 2008 while instructions dated 11.10.2010 and 27.07.2009 are in the context of HCS (RoP) Rules, 2008. Both these Rules came into force in the same year 2008 to achieve and fulfill different objects and reasons.

4. On the other hand, the State argues that the latter two instructions are not applicable to the case of the petitioner and they pray for a dismissal of the petition.

5. The petitioner appears to base his claim on the fact that at the time of promotion as Assistant Geologist, his promotional grade was not equivalent to the Grade Pay drawn by the petitioner on the post of Technical Assistant and the benefit of 2nd ACP was given to the petitioner not at the time of promotion, but by an order actually passed on 28.08.2012 with retrospective effect from 01.05.2007. The fact remains that the petitioner has actually drawn the benefit w.e.f. 01.05.2007 in terms of moneys, which becomes the material date to measure his rights.

6. It is the case of the State that the scale of the promotional post of Assistant Geologist and that of 2nd AC on feeder post of Technical Assistant were the same and, therefore, the petitioner is not entitled to grant of an additional increment or what may be called “higher responsibility increment” under Rule 4.4(a)(i) read with Rule 4.13 of the Haryana Civil Services Rules on promotion. This is for the reason that the petitioner was drawing his salary in 2nd ACT scale of his feeder post as per Rule 7(4) of the HCS (ACP) Rules, 2008. Therefore, his pay on promotion shall be determined as per the provisions of HCS (ACP) Rules, 2008 read with instructions dated 09.04.2010. This is precisely what the impugned order dated 29.11.2012 does in declining the representation of the petitioner.

7. It may be recorded that amended written statement has been filed by the State with due permission of the Court. The amended written statement reveals a subsequent event in the shape of an order dated 06.02.2017 modifying the order dated 28.08.2012. With the modification,

the benefit of 2nd ACP scale stands granted to the petitioner w.e.f. 01.10.2007. It is asserted by the State that at the time of promotion of the petitioner as Assistant Geologist on 01.01.2011, his promotional pay scale i.e. Rs.9300-34800+4600 (GP) was equivalent to the 2nd ACP scale drawn by the petitioner on the post of Technical Assistant, which was a feeder post. In Para. 2 of the Preliminary Submissions, the State has explained the object and purposes of both the Rules of 2008. The Government of Haryana while extending the benefit of recommendations of the 6th Pay Commission had framed these two sets of Rules for two types of employees existing in the establishment. Accordingly, the pay of such employees who were drawing their salary in the functional pay structure of their feeder cadre post was to be fixed as per the provisions of the HCS (RoP) Rules, 2008. However, the pay of such employees, who were drawing their salary in Assured Career Progression pay structure of the feeder cadre post was to be fixed/regulated as per the provisions of the HCS (ACP) Rules, 2008. It transpires that the petitioner was drawing his salary in 2nd ACP pay structure of the feeder cadre post i.e. Technical Assistant, but he was not actually promoted by then. Therefore, the pay of the petitioner was to be fixed/regulated in terms of the HCS (ACP) Rules, 2008 and the instructions/clarification issued thereunder.

8. The Haryana Government in the Finance Department by letter dated 09.04.2010 (Annex R-1) issued clarification regarding the Haryana Civil Services (Assured Career Progression Scheme) Rules, 2008 – on the subject Pay Fixation/Clarification. The relevant part from Annex R-1 deserves to be reproduced, as it is the prevailing law on the subject on the disputed issue raised by the petitioner. The same reads as follows:

“As per existing provisions, contained in note below Rule 18 of HCS (ACP) Rules, 2008, if the grade pay of promotional post and ACP pay structure in which the Government servant is drawing his pay prior to promotion are identical, his pay will not again be fixed in the functional pay structure of the promotional post which is identical to the ACP pay structure in which he was drawing his pay before promotion. He will continue to draw his salary at the same stage and his date of increment will also continue to be same as before promotion.

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For Example: Mr. ‘Y’ drawing pay in functional pay structure of the post carrying grade pay of Rs.3600/- has been granted ACP grade pay of Rs.4000/- being stagnated for 10 years on the post and further granted regular promotion in the hierarchy of his cadre carrying grade pay of Rs.4200/-.

Provided that above methodology will not be applicable in the cases where grade pay of ACP pay structure granted under Rule 13 of HCS (ACP) Rules, 2008 is higher than that of the grade pay of the promotional post in which the government employee is drawing his salary prior to ACP structure, his pay will be raised by 3% of the total pay in the pay band and grade pay drawn before such ACP upgradation and grade pay of the relevant ACP pay structure will be in addition.

2. If the grade pay of the promotional post is inferior than that of ACP pay structure in which the government employee is drawing his salary prior to the promotion, his pay will not be re-fixed and he will continue to draw his salary at the same stage and his date of increment will also continue to be same as before promotion.”

9. Earlier also, the Finance Department vide order dated 27.07.2009 had issued instructions regarding the categories of employees who are promoted from one post to another ‘*in their respective hierarchy while staying in the same grade pay on such promotion*’. The relevant extract from the order dated 27.07.2009 is as follows:

“2. It is ordered that the operation of the Rule 13 of the Haryana Civil Services (Revised Pay) Rules, 2008 shall be relaxed in the circumstances and up to the extent as narrated below:

In all such cases where as a consequence to the application of the provisions of the Haryana Civil Services (Revised Pay) Rules, 2008 the feeder and the promotional posts are identically placed in the same Grade Pay, on promotion, the incumbent employee shall entitled to ‘one’ increment equal to 3% of the pay in the pay band plus the existing Grade Pay to be rounded off to the next multiple of ‘10’ and the same shall be added to the existing pay in the pay band while the Grade Pay remaining unchanged provided that before such a dispensation is accorded, the competent authority certifies that the promotional post carries higher responsibilities and duties.

3. Rest of the conditions of the Haryana Civil Services (Revised Pay) Rules, 2008 shall remain unchanged.”

10. There is another aspect to be noticed and considered. The Government of Haryana, Finance Department on 11.10.2010 issued instructions regarding fixation of pay of an employee on his promotion where the functional pay scale of the feeder post and functional scale of the promotion post are identical. The relevant part of the said instructions is as follows:

“In all such cases where, as a consequence to the application of the provisions of the Haryana Civil Services (Revised Pay) Rules, 2008, the feeder and promotional posts are identically placed in the same Grade Pay, on promotion the incumbent employee shall be entitled to ‘one’ increment equal to 3% of the pay in the pay band plus the existing grade pay to be rounded off to the next multiple of ‘10’ and the same shall be added to the existing pay in the pay band while the Grade Pay remaining unchanged provided that before such a dispensation is accorded, the competent authority certifies that

the promotional post carries higher responsibilities and duties. However, the conditions as laid down in Finance Department letter No.1/8/3PR (FD)/88 dated 07.03.1988, 1/37/2001-2PR (FD) dated 04.12.2001 and dated 09.01.2004 shall also remain unchanged.

2. The above modification shall take place w.e.f. 01.01.2006 i.e. from the date of implementation of Haryana Civil Services (Revised Pay) Rules, 2008.”

11. Ms. Shruti Jain Goyal argues from the stand in the written statement that a bare perusal of the instructions dated 09.04.2010 would clearly show that the said instructions were issued in reference to and in the context of the provisions of the HCS (ACP) Rules, 2008. While a reading of the instructions dated 11.10.2010 and 27.07.2009 would clearly reveal that the said instructions were issued in reference/context of the provisions of the HCS (RoP) Rules, 2008.

12. It is indisputable that the petitioner was drawing his salary in the 2nd ACP structure of his feeder post i.e. Technical Assistant as per Rule 7(4) of the HCS (ACP) Rules, 2008 and was not drawing his salary in the functional pay structure of his post i.e. Technical Assistant under the HCS (RoP) Rules, 2008 on the material date. Since the petitioner was drawing his salary in the 2nd ACP structure of his feeder post as per Rule 7(4) of the HCS (ACP) Rules, 2008, therefore, the fixation of pay of the petitioner on promotion on the post of Assistant Geologist, was to be considered as per the provisions of the HCS (ACP) Rules, 2008 read with instructions dated 09.04.2010 and not as the counsel for the petitioner suggests that his case should be considered only from the point of view of HCS (RoP) Rules, 2008.

13. To make the understanding clearer, the State in its response provides a hypothesis. It argues that had the petitioner been drawing his pay

in the functional pay scale i.e. Rs.9300-34800+4000 (GP) of his feeder post i.e. Technical Assistant under the provisions of the HCS (RoP) Rules, 2008, the fixation of the pay on promotion on the post was liable to be considered and fixed in the pay scale of Rs.9300-34800+4600 (GP) as per the provisions of the HCS (RoP) Rules, 2008 read with instructions dated 11.10.2010. Thus, the learned State counsel contends that instructions dated 11.10.2010 are not applicable to the case of the petitioner. These instructions have not been issued to remove any anomaly whatsoever in the instructions dated 09.04.2010. Rather, the same have been issued to supplement the HCS (RoP) Rules, 2008. The instructions dated 11.10.2010 have no relationship with the HCS (ACP) Rules, 2008 and the instructions dated 09.04.2010.

14. Rule 7(4) of the HCS (ACP) Rules, 2008, referred to above, deserves reproduction. The same reads:

“7(4) In case of a Government servant who gets promoted, he will be considered for the next ACP grade pay after he completes 10 years of regular satisfactory service in the promotional post without any financial upgradation and will be entitled to the next ACP grade pay with reference to the grade pay of the promotional post he holds:

Provided that a government servant shall not be entitled to avail ACP upgradation if, he has already availed of three financial upgradation of any kind in his career.”

15. To re-phrase the argument, the instructions dated 27.07.2009 and 11.10.2010 relied upon by the petitioner, have been issued according to the State in furtherance of the provisions of Rule 13 of the HCS (RoP) Rules, 2008 and do not even remotely apply to this case. Those instructions apply where a promotion takes place in the same structure i.e. where the functional pay structure of feeder and promotional post happens to be

exactly the same and the employee concerned must be working in that very pay structure also at the time of promotion. As far as the present case is concerned none of the two conditions applied, as neither the functional pay structure of the feeder and promotional post was same nor was the petitioner working in the functional pay structure of his feeder post at the time of promotion. As a matter of fact, the petitioner was drawing his pay in the 2nd next ACP structure of his feeder post i.e. the functional pay structure of the promotional post and in attaining this pay structure he had already got not only one, but as many as two times the benefit of pay fixation benefits had been received by him i.e. benefits of full-fledged two increments.

16. The 1st pay fixation taking place on 01.01.2006, while the 2nd on 01.10.2007 by virtue of Rule 7(4) of the HCS (ACP) Rules, 2008 even as the petitioner had continuously been discharging the duties of his feeder post i.e. Technical Assistant as per the provisions of Rule 9 of the HCS (ACP) Rules, 2008 and he was not promoted to the higher post which actually involved duties of higher responsibility.

17. The case built by the petitioner is by a misconception of the HCS (RoP) Rules, 2008 and the instructions dated 27.07.2009 and 11.10.2010 issued by the Finance Department thereunder, which are not applicable to him. The case of the petitioner is covered under Note to Rule 18 of the HCS (ACP) Rules, 2008, the relevant portion of which is reproduced below:

“18. Fixation of initial pay in the revised ACP pay structure—

The initial pay of a government servant who elects or is deemed to have elected under sub rule (3) of rule 17 to be governed by the revised ACP pay structure or and from the 1st day of January, 2006, shall unless in any case the government

by special order otherwise directs, be fixed in the revised ACP pay structure depending upon his eligibility in the following manner namely:

	xx	xx	xx
Note -	The placement in the first, second or third ACP pay structure, as the case may be, does not amount to a functional promotion and therefore the presumption of higher responsibility cannot be taken in such placements in the ACP pay structure. However, still the benefit of fixation of pay corresponding to the placement in the higher pay structure as a consequence of promotion that is presuming the higher responsibility shall be extended at the stage of fixation of pay in the first, second or third ACP pay structure as the case may be. Therefore, if the grade pay of the promotional post and the ACP pay structure in which the government servant is drawing his pay prior to the promotion are identical, his pay will not again be fixed in the functional pay structure of the promotional post which is identical to the ACP pay structure in which he was drawing his pay before promotion. He will continue to draw his salary at the same stage and his date of increment will also continue to be the same as before the promotion.”		

18. I accordingly find merit in the submission of the State that once an employee has reached the stage of functional pay scale of the promotional post on the basis of grant of ACP scale, he is not entitled to re-fixation of his pay in the functional pay scale of the promotional post, which is identical to the ACP scale drawn. He would continue to draw the salary on the same stage and the date of increment will also continue to be the same as before his promotion.

19. The petitioner has actually received the benefit of higher pay of the promotional post while working as Technical Assistant i.e. the feeder post and while not actually functioning as an Assistant Geologist, is not entitled to the same benefit of additional increment when he was actually promoted as Assistant Geologist. I agree that that situation was already over when the petitioner got benefit of his pay fixation in the 2nd ACP pay scale on completion of 20 years of service on 01.10.2007 granting the monetary benefit retrospectively vide order dated 28.08.2012, which has been modified by the order dated 06.02.2017.

20. The situation has to be averted that he is given another benefit of increment on the basis of promotion on identical ACP scale, and if this were to happen, the petitioner would draw more pay than his seniors, who might have been promoted earlier. To sustain this legal proposition, the State relies on the ruling in State of Haryana & another Vs. Partap Singh & others, (2006) 10 SCC 251. This was a case resulting from acquiring higher pay scale on achieving higher educational qualification while in service, which did not involve promotion, but yet closer reading shows that the ratio of case applies to hold that person cannot get another fixation of pay which would amount to double benefit to the persons who are already working as Masters. Rule 4.4 of the Punjab Civil Services Rules as applicable to Haryana was considered by the Supreme Court to answer whether the petitioners are entitled to get benefit under the said Rule.

21. In an elaborate judgment, learned Single Judge of this Court in a bunch of writ petitions accompanying CWP No.22066 of 2012 titled 'Ganga Ram Punia & others Vs. State of Haryana & others' decided on 17.08.2015 considered the issue in the context of Haryana Civil Services

(Assured Career Progression) Rules, 1998 and the Civil Service Rules and answered it in favour of the State. The Court refused to accept the contention that ACP Rules are distinct from Civil Service Rules and the right which has accrued under the Civil Service Rules (Rule 4.4(a)(i) and 4.13) would entitle an employee to the benefit on the ground that general rules cannot prevail over the special rules. Since the special rules i.e. ACP Rules, 1998 cover and clarify the position with regard to the grant of fixation of pay when an employee is ultimately promoted to the post from the feeder cadre after availing of the ACP scales, the said rules would have an over-riding effect over the Civil Service Rules, which are general rules. Thus, the Court held that the petitioners would not be entitled to the benefit of Rule 4.4(a)(i) and 4.13 of the CSR. The Court also observed that the claim of the petitioners cannot be accepted in the light of the observations of the Supreme Court in Union of India Vs. Ashoke Kumar Banerjee, 1998 (3) RSJ 105 which are as follows:

“8. In our view, the respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs. 2000 - 3500 when he is promoted on 1.8.1991 as Assistant Engineer. This is because as on 1.8.1991, he is not being fitted into the "time-scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by

virtue of the OM there is no possibility of applying this part of the FR which says:-

"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more..."

22. In view of the above, I find on a due consideration of the case that the petitioner is not entitled to the relief claimed by him and as a result of the conclusions arrived at I would dismiss the petition as devoid of merit.

02.07.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No