

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

Letters Patent Appeal No.332 of 2017 (O&M)

Date of Decision: 6th August, 2019

Sewak Singh

.....Appellant

versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Tribhawan Singla, Advocate for the appellant.

Ms. Lavanaya Paul, Assistant Advocate General, Punjab,
for the respondents.

KRISHNA MURARI, CHIEF JUSTICE

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 02.12.2016 passed by the learned Single Judge dismissing the petition filed by the appellant-petitioner laying a challenge to the order dated 23.01.2013 whereunder the benefit of proficiency step up increment granted w.e.f. 08.11.1987 has been withdrawn and his pay has been re-fixed.

2. Facts in brief leading to the controversy at hands can be summarized as under:-

Appellant-petitioner was appointed as Veterinary Inspector on 04.09.1979 with the Department of Animal Husbandry, Punjab. He was granted selection grade w.e.f. 01.01.1986 and was given the benefit of one additional increment as proficiency step up on completion of eight years service w.e.f. 08.11.1987 in terms of the instructions dated 01.12.1988.

3. State of Punjab issued a circular letter dated 01.12.1988 for implementation of the 3rd Pay Commission with regard to proficiency step up increments and as per the said instructions subject to suitability besides the regular annual increment, one additional increment on completion of 8 & 18 years of service on or after the appointed date as defined in the Punjab Civil Services Revised Pay Rules, 1988 in the form of proficiency step up was allowed to be granted to all the Punjab Government employees. In view of the instructions in the circular dated 01.12.1988 the appellant-petitioner was granted 8 years proficiency step up increment w.e.f. 01.11.1987 and his pay was fixed at Rs. 1470/- and his next annual increment was fixed on 01.01.1988 and accordingly with effect from the said date his pay was fixed at Rs.1500/-. Subsequently, a clarificatory circular letter dated 01.09.1989 was issued clarifying that such employees, who have been benefited by the grant of senior/selection scale, their service prior to that period was not liable to be counted. The aforesaid instructions were challenged before this Court and this Court held that the instructions will operate prospectively and not retrospectively.

4. Certain departments sought clarifications whether all those Clerks who were placed in the scale of Senior Clerks before 01.01.1986 or on 01.01.1986 and there was increase in pay as a result of placement in the senior scale are to be given the benefit of proficiency step up(s) by counting their entire service as Clerk/Senior Clerk or by counting their service from the date of placement in the senior scale in view of para 1(7) of the instructions dated 01.12.1988 according to which for reckoning the period for 8 or 18 years the entire service in the time scale, senior scale and selection grade etc. wherever available in the cadre, shall be counted.

5. The matter was considered by the Government keeping in view the judgment of this Court and it was clarified that in the cases of those employees whose date(s) of grant of proficiency step up(s) fall before 01.09.1989 by counting their entire service in a cadre and they have also gained at the time of placement in the senior scale or grant of selection grade, they may be allowed proficiency step up(s) irrespective of the gain in pay of their cases. However, in the cases of those employees in whose cases the date(s) of proficiency step up(s) fall after 01.09.1989 by counting their entire service in a cadre, their cases may be directed in the light of the instructions dated 01.12.1988 and the clarification given in government instructions dated 01.09.1989. It was further clarified that as per instructions dated 20.09.1994 under reference all the points clarified in the instructions dated 01.09.1989 shall be kept in view only in the cases of those employees in whose cases the date(s) of proficiency step up(s) fall after 01.09.1989 by counting their entire service in a cadre and in cases of those employees whose date(s) of proficiency step up(s) fall before 01.09.1989 the proficiency step up(s) may be allowed from due dates irrespective of the position that as per clarification given in the instructions dated 01.09.1989, they are not entitled to proficiency step up(s) from due date.

6. Admittedly, since the appellant-petitioner was given the benefit of proficiency step up(s) after completion of 8 years of service w.e.f. 01.11.1987 vide order passed after 01.09.1989 and therefore, was covered under the instructions. Noticing this administrative error/mistake caused inadvertently, the same was withdrawn.

7. Learned Single Judge after hearing learned counsel for the parties and perusing the record held that the order granting proficiency step up(s) increment w.e.f. 08.11.1987 was passed after 01.09.1989 and

therefore, in terms of the instructions the withdrawal of the proficiency step up(s) cannot be faulted with.

8. Having gone through the entire material on record we are in concurrence with the view taken by the learned Single Judge.

9. Learned counsel for the petitioner vehemently submitted that the order has been passed in violation of the principles of natural justice and as no opportunity of hearing was provided, the same is bad in law.

10. The principles of natural justice cannot be laid in straight jacket formula. The requirements of complying with the principles of natural justice, therefore, vary from case to case. If upon giving an opportunity of hearing to an effected employee it is possible to arrive at a different finding, the principles of natural justice must be complied with. However, if the mistake or error is apparent on the face of record and borne out from the facts and a notice and an opportunity of hearing would not lead to a different conclusion, the violation of principles of natural justice in such a matter may not vitiate the action as observed by the Apex Court in ***Union of India and others v. Bikash Kuanar (2006) 8 Supreme Court Cases 192***, as under:-

“It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance with the principles of natural justice. It is only in a case where the mistake is apparent on the face of the record, a rectification thereof is permissible without giving any hearing to the aggrieved party.”

11. In the case in hand, the benefit extended to the appellant-petitioner was by mistake which was apparent on the face of record and therefore, rectification of the same by the impugned order did not necessarily require an opportunity of hearing and the decision to correct the

mistake would not stand vitiated for want of compliance of principle of natural justice.

12. The next issue raised before us is in respect of the recovery being effected from the appellant-petitioner of the financial benefits extended to him after the order stands withdrawn. Admittedly, the appellant-petitioner was not involved in any manner in the grant of additional increment as proficiency step up and no motive can be attributed to him in this regard. In the absence of any involvement of the petitioner-appellant in any manner in the financial benefits extended to him, which was granted inadvertently, no recovery can be effected from him in view of the law laid down by the Apex Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others* 2015(4) SCC 334.**

13. In view of the aforesaid facts and discussion, while upholding the view of the learned Single Judge that withdrawal of the proficiency step up increment granted to the appellant-petitioner cannot be faulted with, we provide that no recovery of any kind shall be made from him for the financial benefits extended to him on account of additional increment of proficiency step up.

14. With the aforesaid observations and directions, the appeal stands finally disposed of.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

6th August, 2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No