

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

CWP-2229-2006(O&M)

Date of Decision : February 12, 2020

SURESH KUMAR

.....Petitioner

VERSUS

THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AND
OTHERS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. S.K.Sharma Budhladawala, Advocate
for the petitioner.

Mr. Luvinder Sofat, Asstt. A.G., Punjab.

Mr. Dhiraj Chawla, Advocate
for the respondents.

NIRMALJIT KAUR, J.

The prayer in the present petition is for quashing of the order dated 16.12.2005 vide which the request of the petitioner for the grant of annual grade increment in the revised scale from 1.1.1996 was rejected and the pay was refixed at Rs.5,000/- w.e.f. 1.1.1996 with the next date of increment as on 1.1.1997.

Reply has been filed. As per the said reply, the Punjab Govt. vide Notification No.7/1/97-FPI/314 dated 16.01.1998 Annexure P-1, revised the pay scales of its employees. The Punjab Government Employee including petitioner was required to give option for adopting revised pay scales or existing pay scales within 3 months from the date of publication of notification dated 16.01.1998. The petitioner submitted

his option on 10.02.1998 to adopt revised scales of pay as revised by the Punjab Government. The petitioner after exercising his due diligence, gave the option on 10.02.1998, in view of the notification of the Punjab Government. His option was accepted in accordance with the instructions of the Government on the subject as mentioned in the notification and his pay was fixed accordingly at Rs.5000/- w.e.f. 01.01.1996 in revised pay scale of Rs.5000-8100. Prior to 01.01.1996, the petitioner was drawing his total emoluments less than Rs.5000/- i.e. at Rs.4814/- in the old pay scale.

The petitioner submitted another option dated 24.02.1998 (Annexure P-2/A) which the petitioner could not exercise under the instructions of the Government and rules on the subject. Therefore, the option of the petitioner dated 24.02.1998 was rightly declined by the respondent no.3 vide order dated 04.03.1998, which was duly conveyed to the petitioner vide memo No.344 dated 06.03.1998, addressed to his immediate Presiding Officer as Annexure P-3. However, without referring to the earlier rejection of his request on 4.3.1998, an application purported to be dated 16.03.1998 was once again moved by the petitioner to the respondent no.3 for grant of increment w.e.f. 01.01.1996. It was on his subsequent application, mis-representing the facts, that a clerical mistake occurred from the dealing Assistant and petitioner was granted increment fixing his pay at Rs.5160/- instead of Rs.5000/- w.e.f. 01.01.1996.

Thus, once the application of the petitioner for grant of

annual increment was declined vide order dated 4.3.1998, he could have either changed or filed a representation against the same but the petitioner very cleverly moved a fresh application without disclosing that his earlier application has already been dismissed vide order dated 4.3.1998. Thus, his application was allowed under the impression that he was exercising his option for the first time.

Reply has been filed by the respondents stating therein that his second application was allowed under the impression that it was his first option whereas, it was his second option. The respondents were not bound to accept his second option in view of the import of the notification as mentioned in Sub Rule 2 of Rule 6 of the Notification which makes it clear that an option exercise under sub rule (1) shall be final and shall be intimated by the government employee to the head office. He submitted his second option without disclosing that his first option duly stands accepted and his application for second option already stood dismissed vide order dated 4.3.1998. As soon as it came to notice, the same was sought to be rectified. A proper show cause notice was issued to the petitioner for the same. His reply was considered and rejected by way of the impugned order finding that he had obtained the earlier order for grant of increment fixing his pay as Rs.5,160/- w.e.f. 1.1.1996 by concealing the facts and misrepresentation.

While praying for setting aside the said order, learned counsel for the petitioner argued that the petitioner did not misrepresent to his authorities and the competent authority had duly allowed his

application and corrected his option. Therefore, the same authority could not have recalled the earlier order granting the relief. Secondly, the case was not of re-option but a case of revised option made within three months of the stipulated period granted for exercising the option. The clerical mistake in the original option could although be corrected as per note 1 to Proviso 4 to Rule 7 as read with Rule 6(2) of the Revised Pay Rules whereas, the respondents were misreading and misinterpreting the rules and are causing recurring loss of one increment every month to the petitioner. Further, the respondents were wrongly applying the policy that the option once submitted is final and that it could not be revised. The petitioner had sought review of his earlier option during the stipulated period of three months. Hence, the respondents could not take the ground that the petitioner had not exercised his option within time or that he could not change his mind once he had given his option.

It may be true that an option becomes final in case he wants to review his option or change his mind after a stipulated period provided for exercising the option but may not be strictly followed in case the employee seeks to review his option afresh in case he chooses to change his mind qua the option during the stipulated period.

However, in the present case, the petitioner may have exercised or reviewed his option during the stipulated period of three months of exercise his option but still this Court does not find him entitled to the relief claimed in view of the reasons mentioned below:-

Although, the facts as stated above are crystal clear, still, this

Court for the purpose of clarity may note that here the case is not of exercising his second option or that his earlier option exercised once had become final but a case of concealment and misrepresentation.

As per Annexure P-1/A, the pay of the petitioner on his exercising of option was fixed on 1.1.1996 as under:-

“18. Date of next increment	1.1.96	5000+30PP
	1.1.97	5160+30PP
	1.1.98	5320+30PP.”

On 24.2.1998 vide Annexure P-2, the petitioner asked for fixing his pay by submitting as under:-

“It is respectfully submitted that earlier I had sent you option, whereupon, I had missed to mention Annual Grade Increment due 1-1-96. Accordingly, again I am sending option by incorporating a note thereon. Kindly fix my pay in accordance with this option of mine. I shall be highly grateful.

Yours faithfully

Sd/-

Suresh Kumar Ahalmad”

The same was declined vide order dated 6.3.1998 by observing that:-

“Please refer to your office endorsement No.417 dated 24.2.98 on the subject cited above.

The request of Sh. Suresh Kumar, Ahalmad of your Court for change of revise option has been declined as he has already furnished option and the same has been placed on record and his pay has been fixed and claimed under

the revised pay rules. According to sub rule 2 below rule 5 of the Punjab Civil Service (Revised Pay) Rules, 1998 the option once exercised under sub rule 1 shall be final.”

Instead of challenging the above order, the petitioner sent an application afresh on 12.3.1998 Annexure P-4. The District and Sessions Judge, Sangrur thinking it was his first option and that the pay of the petitioner had been wrongly fixed, directed the needful to be done as prayed for. Thus, his pay was fixed on 1.1.1996 as Rs.5,160+30. It was only when one of the other colleague of the petitioner asked for her own stepping up of pay in parity with the petitioner that it came to light that the petitioner had been wrongly granted the same. It was thereafter, that a show cause notice was issued to the petitioner and the mistake was rectified. Thus, it is evident from the application, Annexure P-4, filed by the petitioner that after the rejection of his second option, he cleverly misrepresented the facts and stated that his annual grade increment is due w.e.f. 1.1.1996 whereas, he knew that he has already exercised his option on 10.2.1998 and his pay has been fixed and his second option has been declined, so no increment was due to him w.e.f. 1.1.1996. In this manner, the petitioner managed to get his increment wrongly fixed at Rs.5,160/- w.e.f. 1.1.1996 whereas, it was supposed to be Rs.5,000/- w.e.f. 1.1.1996 because prior to the same he was drawing only Rs.4,814/- before it was fixed at Rs.5,000/- in pursuance to his first option. Due to the second option in which it was not disclosed that his earlier request had been declined and that his first option stood already implemented, he got himself double benefit. Vide his first option, he got his pay fixed as

Rs.5,000/- w.e.f. 1.1.1996 and after his second option he got it fixed as Rs.5,000 + 160 from 1.1.1996.

In view of the above, no interference is called for in the impugned order rectifying the error. The present writ petition is, accordingly, dismissed being devoid of any merit.

February 12, 2020
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(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No