

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

Civil Writ Petition No. 3772 of 2016

Date of Decision : February 27, 2020

Rakesh Chander

..... PETITIONER(S)

VERSUS

Punjab State Power Corporation Limited and others

..... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Vijay Kumar Rana, Advocate, for the petitioner.
 Mr. S.P. Soi, Advocate, for the respondents.

Sanjay Kumar, J.

The petitioner is an Upper Division Clerk in the service of the Punjab State Power Corporation Limited. By way of this writ petition, he assails the Office Order dated 15.10.2015 passed by its Deputy Chief Engineer (Personnel) directing withdrawal of the additional time scale/promotional increments granted to him upon completion of 9, 16 and 23 years in service. He seeks a consequential direction to the Corporation to restore the said benefit and release the arrears due to him with interest.

The petitioner entered the service of the Corporation as a Lower Division Clerk on 29.09.1987. As per the policy of the Corporation,

every employee should ideally earn two promotions after his initial

recruitment in service. As promotional avenues and opportunities do not allow this to happen in every case, the Corporation grants the benefit of time-bound promotional scales to employees upon completion of the stipulated periods of service without requisite promotions. The petitioner was granted the first time-bound promotional scale upon completion of 9 years in service on 29.09.1996. He was then promoted as an Upper Division Clerk on 03.06.2002. As he did not get the second promotion even after completion of 16 years of service, he was extended the benefit of the time-bound promotional scale, linked to completion of 16 years, on 29.09.2003. Further, he was also granted the 23 years time-bound pay scale on 29.09.2010.

It was only thereafter that he was offered promotion to the post of Circle Assistant, *vide* Office Order dated 30.06.2015 passed by the Deputy Secretary (Zonal) of the Corporation at Patiala. However, the petitioner expressed the desire to forego his promotion for a period of 3 years due to his domestic circumstances. Accepting the same, the Deputy Chief Engineer (Personnel) of the Corporation issued the impugned Office Order dated 15.10.2015 cancelling the promotion offered to the petitioner. He recorded therein that after expiry of the period of three years and upon the petitioner making a request, his name would be reconsidered for promotion. Having stated so, the Deputy Chief Engineer also recorded that as the petitioner chose to forego his promotion, the benefits of 9, 16 and 23 years additional time scale/promotional increments, which had been granted, were liable to be withdrawn. He further stated that proceedings would be initiated by the present office where the petitioner

was posted.

It is the case of the petitioner that without initiation of any further proceedings, the Corporation straightaway started reducing his net monthly salary, by giving effect to the withdrawal of the promotional scales earlier extended to him.

The only reason offered by the Corporation for such withdrawal is that an employee who opts for benefits under the scheme of promotional time-bound scales/increments should not shirk the higher responsibility of a promotional post as and when it is offered to him.

It may however be noted that, in terms of the Corporation's policy, the ideal of offering two promotions to each and every employee during his service career is not realized and that is the reason why benefits, in terms of promotional scales, are extended to such employees after completion of stipulated periods of service without advancement by way of the desired promotions.

Therefore, the right of the petitioner to avail such promotional scales stood crystallized upon his completion of 9 years, 16 years and 23 years respectively, as he had the benefit of only one promotion during the said period. Once his right to such promotional scales vested in him upon completion of 23 years in service, the offer of a second promotion in the 28th year and his refusal to accept the same, be it for whatever reason, would not divest him of such a vested right.

Significantly, this very issue fell for consideration before this Court in **CWP-2587-2009**, titled **Rattan Chand v/s. Punjab State Electricity Board and others**. A copy of the decision rendered therein

on 12.08.2010 is placed on record. This Court held therein that withdrawal of the promotional scales would be legally unsustainable even if the employee concerned turned down a promotion thereafter. Following the aforesaid decision, **CWP-8877-2006**, titled **Shiv Murti v/s. Punjab State Electricity Board and others**, decided on 12.10.2010, and **CWP-12252-2011**, titled **Nawal Kishore and others v/s. Punjab State Power Corporation Limited, Patiala, and others**, decided on 16.07.2018, were allowed holding that withdrawal of the promotional scales was not permissible in law in like circumstances.

That apart, it may also be noted that further proceedings were required to be initiated, even as per the impugned Office Order dated 15.10.2015, but admittedly, no steps were taken in that regard. The petitioner was not even put on notice, much less afforded an opportunity of hearing, before giving effect to the withdrawal of the promotional scales. He was therefore visited with adverse civil consequences, in terms of withdrawal of his promotional scales, in utter violation of the rule of *audi alteram partem*. This aspect also fell for consideration in **Rattan Chand** (*supra*) and this Court held the same to be in violation of the principles of natural justice.

Thus, on both counts, the impugned action of the Corporation is invalid in law.

As regards the contention of the Corporation that the petitioner cannot shirk higher responsibility by refusing promotion, it is noticed that the petitioner wanted to forego his promotion only for three years and the said period is long over. The Corporation would therefore

be at liberty to consider his candidature for promotion at this stage.

The writ petition is accordingly allowed. The impugned Office Order dated 15.10.2015 is set aside. The Corporation shall restore the time-bound promotional scales extended to the petitioner upon completion of 9, 16 and 23 years of service respectively and release the arrears due and payable to him along with interest thereon at the rate of 6% per annum.

There shall be no order as to costs.

February 27, 2020
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No