

Sr.No.202

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

CWP No.21559 of 2013 (O&M)

Date of Decision: 29.11.2022

Surinder Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Munish Kumar, Advocate
for Mr. Jastej Singh, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

ARUN MONGA, J.(ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondent authorities to grant and release service benefits in the form of two ACPs, first one to be accrued from December-1999 (instead of 01.06.2010) and the second one to accrue from December-2009 (instead of 01.06.2020).

2. Succinct facts first. Petitioner joined the services of the respondent as a driver on 26.12.1989. In the year 1998, the respondents introduced Assured Career Progression Rules, 1998. In December-1999, the petitioner requested the respondents to grant him the benefit of Assured Career Progression Rules (*hereinafter referred to as 'the ACP Rules'*), as he had completed 10 years of service under the respondents. However, the respondents

denied the said benefits on the ground that a criminal case was pending against the petitioner. On 07.12.2002, the petitioner was acquitted of all the charges and he again requested the respondents to release the payments of the ACP. On 25.08.2003, another criminal case was registered against the petitioner, i.e., after four years from the earlier one. On 22.02.2010, the petitioner again approached the respondents by way of letter mentioning therein that he had been acquitted of all the charges in the latter criminal case as well and by virtue of continuous service of 20 years, he was entitled for two ACPs. On 01.06.2010, the respondents released only one ACP to the petitioner. Vide letter dated 19.03.2012 (Annexure P-1), the petitioner was informed by the respondents that since the first ACP was granted him on 01.06.2010, therefore, the second ACP can be released only after 10 years from the date of the release of the first ACP. On 26.03.2012, the petitioner through his counsel served the respondent with a legal notice demanding the arrears of his service benefits, as mentioned above.

3. In the return filed, the claim of the petitioner has substantially been negated on the ground that the benefit of ACP on completion of 10/20 years of regular satisfactory service has to be given subject to the pre-condition that the concerned official should be fit for promotion and there would not be any pending case against him as envisaged under Rule 7 of the ACP Rules, 1998 and the employee should have earned more than 70% good ACRs. Consideration of the petitioner's case revealed that overall service record of his service was not satisfactory and upto the mark. He had been given several punishments and issued charge-sheets as under:

Detail of Charge-Sheets issued to the Petitioner Shri Surinder Kumar, Driver No.301 during his service tenure:

Sr.No.	Charge-sheet under punishment and appeal rules	Suspension Period	Charges	Punishment
1.	Recovery notice	--	Less K.M.P.L.	Punishment
2.	Explanation	--	Bus was not stopped on 20.9.90 near Kurukshetra after signal	Warning
3.	Under Rule-7	8.1.99 to 20.04.99	For causing accident which duty on 28.10.98 and a person died in that accident	Warning Service censured vide order No.3187/ECD dt. 6.7.90
4.	Under Rule-7	-do-	By MACT claim department paid Rs.96,000/- as compensation due to accident on 28.10.1998	Case file suspension period restricted to subsistence allowance vide order No.4359, dt. 16.8.04
5.	Under Rule-8	--	Break down of Bus No.112 on 12.10.99	
6.	Under Rule-7	7.6.96 to 31.7.96	For causing accident on duty with Bus No.5802 on 23.5.96 a person died at spot in accident	Suspension censured vide order No.1730/ECD, dt. 12.4.04
7.	Under Rule-7	27.8.03 to 17.9.03	For causing accident on duty with Bus No.8729 on 2.8.03 near Kurukshetra a person died	An annual increment was stopped without cumulative effect and suspension period was restricted subsistence allowance only vide order No.1424/ECD, 25.5.10
8.	Under Rule-8	--	He was not stopped the Bus No.8993 on 18.12.2008 at YNR-Rohtak route near Godhalna after signal given by the Inspectorate staff	Warning vide order No.1000/W.I., dt. 9.3.2012

4. I have heard the rival contentions of the parties and with the able assistance of their learned counsel gone through the record.

5. Learned State Counsel has opposed the petition essentially on the same premise, as has been pleaded in the return and noted herein above by relying upon Rule 7 *ibid*.

6. While issuing notice of motion, following observations were made by Rajiv Narain Raina, J. (as he then was in this Court) vide order dated 27.09.2013:

“Learned counsel for the petitioner contends that when the first ACP was due, the petitioner was facing criminal trial on charge under Section 304 Part-A of the IPC resulting from negligent driving. Therefore, it could not have been said that he had satisfactory service. The petitioner was acquitted in the criminal case and his right to receive ACP was revived with effect from the date of the due date on completion of 10 years. The matter remained pending consideration when another FIR came to be registered against the petitioner which led to a second trial in which he has been acquitted as well. The contention of the learned counsel for the petitioner is that as a result of acquittal in the first trial, ACP became due and payable in December 1999. The subsequent trial can only impact on grant of next ACP pay scales.

Notice of motion returnable on 10.12.2013.”

8. Subsequently, the matter was heard by my Learned Brother Arun Palli, J. and following order was passed on 25.04.2018:

“The petitioner is employed as driver with the respondent department since 26.12.1989. Owing to a departmental enquiry pending against him, he was deprived of the benefit of first ACP on completion of 10 years of service. However, vide order dated 25.5.2010 (AnnexureR-2), a punishment of stoppage of one increment, without cumulative effect, was awarded to the petitioner, thus, the proceedings have since been concluded. Whereafter, the petitioner was granted the benefit of first ACP on 1.6.2010. The limited grievance that the petitioner has is; that he has not been released the benefit of second ACP, which he had become entitled to on completion of 20 years of service, i.e. in the year 2009. The reason being assigned by the respondents to resist his claim: that as the petitioner was granted the benefit of first ACP on 1.6.2010, he shall now be entitled to second ACP after 10 years.

It is urged that the petitioner was entitled to the first ACP in December, 1999, and it was owing to the pendency of the enquiry, he was not released the benefit thereof. Thus, just because he was granted the first ACP on 1.6.2010,

though entitled to in 1999, that would not deprive him of the second ACP, which he had become entitled to on completion of 20 years of service, i.e. in the year 2009.

Faced with this, learned State counsel prays for a short accommodation to furnish a specific affidavit, and explain as to how, in the given situation, the petitioner could be denied the benefit of second ACP on completion of 20 years of service.

Adjourned to 9.5.2018.”

9. Pursuant thereto, affidavit dated 09.07.2018 of Shri Ravinder Pathak, General Manager, Haryana Roadways, Yamuna Nagar was filed on behalf of the respondents. It was stated therein that in view of the provisions contained in Rule 7(2) of the ACP Rules, 2008 applicable from 01.01.2006, the petitioner would be entitled to be considered for grant of second ACP from 01.06.2010 only after ten years of granting of first ACP grade.

10. On 12.09.2018, the matter again came up before Rajiv Narain Raina J., who passed the order as under :

“After hearing counsel, Ms. Goyal takes time to justify the additional affidavit in the light of order dated 25.04.2018 and reconcile the entire picture with the written statement and the service and confidential record of the petitioner. She would also explain what is the meaning of “regular satisfactory service” in the ACP Rules and whether warning, censures and other minor penalties are included.

List again on 18.09.2018.”

11. Thereupon further affidavit dated 21.09.2018 of said officer was filed on behalf of the respondents. Therein, it was again stated that the service record of the petitioner was not upto the mark, certain guidelines were reproduced regarding procedure for consideration of past record for promotion in cases pending Departmental proceedings and it was re-iterated that the petitioner would be entitled to be considered for grant of second ACP only after ten years from 01.06.2010 i.e date of grant of first ACP grade. It was also stated that the petitioner

had attained the age of superannuation and retired on 30.09.2013 and was not entitled to second ACP grade.

12. As would be seen, the petitioner had joined service on 26.12.1989. He claims entitlement to the first ACP grade from December, 1989 when he completed ten years of service in December, 1999. He claims second ACP from 2009, i.e., on completion of next ten years of service from December, 1999. The Haryana Civil Services (Assured Career Progression) Rules, 1998 were effective from 01.01.1996. Obviously, the said 1998 Rules would govern the petitioner's claim for the first ACP grade from December, December, 1999. The Haryana Civil Services (Assured Career Progression) Rules, 2008 had come into force from 01.01.2006. For the petitioner's claim of second ACP from 2009, therefore, the said Rules of 2008 would apply. Rules 5(1),(3), (4) and 24 of the 1998 Rules *ibid* which are as under:

“The Haryana Civil Services (Assured Career Progression) Rules, 1998

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 or 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 purpose of drawal of pay be eligible for placement into the First ACP scale with reference to him.

xxxx xxxx xxxx

(3) For determining the eligibility of grant of ACP scale, following conditions must also be fulfilled by the Government servant:-

(a) After completing the respective prescribed period of eligibility for the grant of ACP scales of the Government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;

(b) If such promotion involves test of any departmental post or other test etc. such conditions should also be fulfilled by such Government servant.

(4) The eligibility for grant of the ACP scales shall further be subject to any other restriction as may be prescribed by the Government from time to time including the restriction of the number of Government servant to be granted the respective ACP scales in terms of percentage of posts in the cadre to which such ACP placements shall be limited;

Provided that till the time such restrictions are not imposed by the Government:-

(a) there shall be no restriction on the number of Government servants to be granted the first of second ACP scales with reference to the Government servants covered in sub-rule (2) of rule 4.

(b) for the Government servants covered in sub-rule (1) of rule 4, there shall be no restriction on the number of Government servants for grant of first ACP scale. However, the grant of the second ACP scale for such Government servant as covered in sub-rule (1) of rule 4 shall be limited to 20% of the total posts in the cadre.

24. Repeal: All the orders/notifications/instructions/any other instrument issued by Government through which the Government servant is entitled to draw the salary in a pay scale other than the functional pay scale prescribed for the post against which he is working shall become inoperative with effect from the date preceding the date of publication of these rules, with respect to Government servants on whom these rules apply;

Provided that the Government servants who have elected under rule 13 to continue in the present scale shall continue to be governed by the earlier orders as applicable to them,

till the time, they elect to be governed or are brought over to these rules;

Provided further that nothing in these rules shall amount to discharging the liability of the Government servant to refund the additional financial benefit taken by them to the Government.

THE HARYANA CIVIL SERVICES (A.C.P.) RULES, 2008

7. Eligibility for Grant of ACP grade Pay under the general ACP scheme:-

(1) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the first ACP grade pay (given in column 4 of Part II of Schedule in respect of the functional pay scale or pay structure of his post) If he has completed 10 years of regular satisfactory service and has not got any financial upgradation in these ten years with reference to the functional pay structure of the post to which he was recruited as a directed entrant. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 1.1.2006.

(2) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the second ACP grade pay (given in column 5 of Part II of Schedule in respect of the functional pay scale or pay structure of his post) if he has completed 20 years of regular satisfactory service and has not got any financial upgradation in the last ten years. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/ modification of the pay structure for the same post after 1.1.2006.

xxxx xxxx xxxx

8. Other general conditions of eligibility of ACP Pay structure.-

The following general conditions shall also be fulfilled by a Government servant for availing benefit of ACP:-

(a) after completing the respective prescribed period for eligibility for the grant of ACP pay structure the Government servant should be fit to be promoted to the next higher post in the notional hierarchy in his cadre, but could not be

functionally promoted due to lack vacancy in the promotional post in the hierarchy to which he is eligible to be promoted.

(b) if such promotion involve passing of any departmental or other test etc. such condition should also be fulfilled by such Government servant.”

13. The petitioner’s claim for first ACP grade from December, 1999 on completion of ten years service and for second ACP grade from 2009 on completing twenty years service was declined vide impugned letter dated 19.03.2012 Annexure P-1 issued by respondent No. 3. For its appreciation in the proper perspective, its contents are reproduced below:

“Subject: Regarding arrears of ACP accrued to Sh. Surender Singh.

Sir

Regarding the above subject, it is intimated to you that you had given a letter in this Department that you had joined on 26.12.89 and that you have received the first ACP on 01.06.2010. After completion of 20 years of your service, you have applied for the second ACP because you have completed 20 years of satisfactory service up-till 01.03.2011.

We want to inform you that you cannot be given the second ACP on 01.03.2011 because due to the pendency of the departmental proceedings against you, you were given the first ACP on 01.06.2010. As per the rules and regulations of the Department, you can be given the second ACP after ten years from 01.06.2010.”

14. It would be seen that absolutely no reasons, whatsoever, were disclosed to the petitioner’s while rejecting his claim for first ACP grade from December, 1999 on completion of ten years service. In my opinion, it was incumbent upon the competent authority in accordance with the Rules *ibid* and the principles of natural justice and fair play, to consider the service record of the petitioner, apply its mind and to record reasons for not granting the benefit of first ACP grade from the due date i.e. on completion on completion of 10 years service in December, 1999

and instead of that granting the same from 01.06.2010. There is not even a whisper in the letter ibid if the competent authority had taken into consideration the service record of the petitioner, apply its mind and recorded reasons for not granting the benefit of first ACP grade from the due date in December, 1999 and instead of that granting the same from 01.06.2010. Furthermore, it was also incumbent upon respondent No. 3 to disclose to those facts and reasons to the petitioner while rejecting his claim for the grant of the said benefit from due date adversely affecting his valuable civil rights. This was not at all done. In my opinion, owing to the total failure of the competent authority to do so, the impugned order dated 19.03.2012 Annexure P-1 is liable to be set aside.

15. In the written statement, no doubt, it has been stated that the service record of the petitioner was not upto the mark, owing to which he was not granted the benefit of first ACP from 1999 and instead was granted the same from 01.06.2010. This belated disclosure of the reasons in the written statement prepared with expert legal advice cannot be allowed to be used as a substitute for the disclosure of the reasons to the petitioner at the time of rejecting his claim from the due date. That apart, even the written statement does not show that before passing the impugned order Annexure P-1, the competent authority had taken into consideration the service record of the petitioner, applied its mind thereto and recorded reasons for not granting the benefit of first ACP grade from the due date i.e. on completion on completion of 10 years service in December, 1999 and instead of that granting the same from 01.06.2010. No record, whatsoever, has been produced to show if any such exercise was undertaken at all.

16. Petitioner's claim for the grant of 1st and 2nd ACP grades on completing ten and twenty years' service, respectively was rejected vide impugned order dated 19.03.2012 Annexure P-1 passed by respondent No. 3. The instant writ petition filed in 2013 has been stoutly resisted by the respondents. Asking them to pass fresh orders in this behalf would enable them to plug the lacunae left earlier at the time of passing the impugned order. It is highly unlikely that at this stage, the respondents would change mind and reverse their stand so far. The petitioner has already retired in 2013.

17. In the given circumstances, the impugned order is set aside. Respondents are directed to grant to the petitioner the benefit of first ACP grade from the due date on completion of 10 years service and the second ACP grade on completion of 20 years service. Necessary exercise be carried out and consequential monetary dues be paid to the petitioner within six months of the receipt of certified copy of this order.

18. Petition stands allowed.

19. Pending civil miscellaneous application, if any, also stands disposed of.

November 29, 2022
ashish

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No