

114.

2023:PHHC:064808

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

CWP-4619-2023

Date of Decision: 03.05.2023

BALBIR SINGH DHAMA

.... Petitioner

Versus

STATE OF HARYANA THROUGH FINANCIAL COMMISSIONER AND
PRINCIPAL SECRETARY AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajesh Kumar Dhankar, Advocate, for the petitioner.

JAISHREE THAKUR.J

1. The petitioner herein seeks a writ in the nature of mandamus directing the respondents to fix his pay in terms of order dated 09.11.2001 (Annexure P-4) and to release the consequential benefits.

2. Brief facts, as pleaded, are that the petitioner herein was appointed as a Salesman by respondent No.2 vide order dated 20.06.1978 in the pay scale of Rs.160-400. However, just after four months, his services were terminated by respondent No.2 vide order dated 13.11.1978. However, on the application of the petitioner, the said termination order was withdrawn vide order dated 01.01.1979 and he was posted as Clerk in the lower scale of Rs.110-225 at the Head Office, Chandigarh. It was also directed that his absence period from the date of termination till joining as Clerk i.e. w.e.f. 13.11.1978 to 30.12.1978 will be treated as extra ordinary leave. Upon request of the petitioner, vide order dated 09.11.2001, his cadre was allowed

to be changed under Rule 3.17(a) of CSR Volume-I Part-I with effect from the date of joining as Clerk and it was directed that his seniority will be fixed in accordance with Rule 4.4(a) (iii) of CSR Vol.-I, Part-I at the tail of the cadre strength. However, that order was not implemented despite his representation dated 19.04.2005 and another dated 18.04.2011 reiterating his request regarding re-fixation of his pay by adding that one M.L. Sharma, Salesman and Surender Singh, MO also changed their cadre like the petitioner and their pay was protected, but in the case of the petitioner, it was not done. When no response was found, another representation dated 31.10.2013 was also given, but to no avail. Petitioner retired from service on 31.08.2015 on attaining the age of superannuation. On 24.02.2016, the petitioner made another representation stating that Mr. Krishan Kumar Chawla, who was junior to him, has been promoted as District Manager while ignoring his case and further his pay was not protected in terms of order dated 09.11.2001. He requested to grant him personal hearing. However, his request was declined vide order dated 10.10.2016 stating that no person junior to him was given promotion as District Manager. Thereafter, respondent No.2, in compliance with the decision of the Board of Directors held on 05.06.2017, promoted the petitioner to the post of District Manager w.e.f. 10.07.2015 in the pay scale of PB-2 Rs.9300-34800 plus grade pay of Rs.4200/- and directed that his pay would be fixed notionally and retirement benefits would be paid after obtaining necessary approval from the State Government. The petitioner made another representation dated 11.05.2017 to the effect that he became due to be promoted to the post of District Manager in March, 2013 instead of 10.07.2015 and that his pay may

be protected in terms of order dated 09.11.2001. He approached this Court by way of CWP No.11594 of 2019 for releasing all his service benefits, but it was dismissed as withdrawn vide order dated 03.05.2019 with liberty to impugn the promotion order dated 05.07.2017. Accordingly, the petitioner challenged the said order by way of CWP No.24553 of 2019, which is pending consideration before this Court.

3. Learned counsel appearing on behalf of the petitioner would argue that the petitioner was granted promotion w.e.f. 10.07.2015 whereas he should have been granted promotion to the post of District Manager w.e.f. March, 2013 and his pay ought to have been protected as per order dated 09.11.2001 which was issued on 25.02.2002, but nothing has been done to his request by the respondents.

4. I have heard learned counsel for the petitioner and have gone through the paper book.

5. The claim of the petitioner for fixation of his pay in accordance with rule 4.4. (a) (iii) of CSR Vol. I, Part I in view of order dated 09.11.2001, is highly belated and deserves to be dismissed at the very outset. His representation for pay protection had been dismissed as far back as in 2006 and the petitioner has not challenged the said order which has since attained finality. The petitioner, though retired, has been agitating for promotion and consequential benefits. He was promoted as District Manager w.e.f. 10.07.2015 but claims that it should have been made available to him in 2013 for which he has already filed CWP No.24553 of 2019 which is pending before this Court. The writ petition pending also makes a mention of his

claim for pay protection but no specific relief has been sought therein. In fact, the main grievance is for relief of deemed date of promotion as District Manger w.e.f. 2013. The petitioner could have agitated in 2006 itself for pay protection, which was not done, nor has he agitated the relief in the pending writ petition.

6. Consequently, the petitioner cannot be permitted to raise his grievances piece meal and that too after an inordinate delay of 23 years. The writ petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

03.05.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No