

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

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**CWP No.17248 of 2012
Date of Decision :18.10.2023**

*Haryana Federation of Engineers, Hisar**..... Petitioner**versus**State of Haryana and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate, for the petitioner

Mr. D.S. Nalwa, Addl. AG, Haryana and
Mr. Ravi Pratap Singh, DAG, Haryana

TRIBHUVAN DAHIYA J. (ORAL):

This petition has been filed seeking a writ of *certiorari* quashing the order dated 18.2.2013, Annexure P-7; a writ of *mandamus* directing the respondents to fix pay scale of Executive Engineer one step higher as compared to that of the Assistant Engineer, and pay scale of Superintending Engineer one step higher as compared to that of the Executive Engineer w.e.f. 1.5.1989.

2. The petitioner is a registered Association of Engineers working with the respondent Department. As submitted by learned counsel for the petitioners in both the petitions, they are aggrieved against pay scales for the posts of Executive Engineer and Superintending Engineer granted w.e.f. 1.5.1989 to 31.12.1995 only.

3. Briefly, facts of the case are, the post of Assistant Engineer/Assistant Executive Engineer is the initial post in the Department; it is the feeder post for Executive Engineer, and Executive

Engineer is the feeder post for Superintending Engineer. Therefore, pay scales of these three posts have always been hierarchically different; Assistant Engineers in the lowest scale, Executive Engineers in the next higher scale and Superintending Engineers in the scale one step higher than that of the Executive Engineers. It was only during the period 1.5.1989 to 31.12.1995 that Assistant Engineers were getting higher pay scale than that of Executive Engineers and equivalent to that of Superintending Engineers, despite the latter two being promotional posts. These pay scales were given vide notification dated 2.6.1989 w.e.f. 1.5.1989.

3.1 This is illustrated by the following table giving scales of pay for these three posts w.e.f. 1.2.1969 to 1.1.1996:

Date w.e.f.	Assistant Engineer/SDE (Pay Scales)	Executive Engineer	Superintending Engineer
1.2.1969	Rs.400-1100	Rs.750-1300 (TS) Rs.1300-1600 (Selection Grade for 10% posts in the cadre)	Rs.1600-1800
1.4.1979	Rs.900-1700	Rs.1200-1860 (TS) Rs.1700-2150 (Selection Grade for 20% posts in the cadre)	Rs.2000-2400
1.2.1981	Rs.940-2000	Rs.1400-2100 (TS) Rs.2000-2300 (Selection Grade for 20% posts in the cadre)	Rs.2100-2500
1.1.1986	Rs.2000-3500	Rs.3000-4500 Rs.3000-5000 (for those Executive Engineers, who were in Selection Grade prior to 1.1.1986)	Rs.3700-5000
1.5.1989	Rs.2200-4000 (TS) Rs.3000-4500 (after five years regular service) Rs.4100-5300 (for 20% posts in the cadre after 12 years regular service)	Rs.3000-4500 (those Executive Engineers, who were in the Selection Grade prior to 1.1.1986, were granted pay scale of Rs.3000-5000).	Rs.4100-5300
1.1.1996	(i) Rs.8000-13500 (functional pay scale) (ii) Rs.10000-13900 (ACP scales) (after completion of 5 years	(i) Rs.10000-13900 (functional pay scale) (ii) Rs.12000-16500 (ACP scales)	(i) Rs.13500-17250 (functional pay scale) (ii) Rs.14300-18000 (ACP scales)

	regular satisfactory service (iii) Rs.12000-13500 (ACP scales) (after completion of 11 years regular satisfactory service limited to 20% of the total cadre post)		
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3.2 It has also come on record that four standard pay scales of Rs.4500-5700, 5100-5700, 5100-6150 and 5100-6700 were prescribed between the pay scales Rs.4100-5300 of Assistant Engineer and Rs.5900-5700 of Chief Engineer, during the aforesaid period.

3.3 Some Executive Engineers and Superintending Engineers serving in the Department earlier approached this Court by filing CWP No.14933 of 1994 titled *V.N. Grover and others v. State of Haryana and another*, raising similar claims as has been raised by the petitioner herein. The petition was allowed vide judgment dated 1.2.2012 (Annexure P-1), holding that Assistant Engineer is a feeder post for Executive Engineer and Superintending Engineer, therefore, the pay scales for the post of Assistant Engineer cannot be higher than those of the other two posts. Operative portion of the judgment reads as under:

For the reasons recorded above, I allow the writ petition and direction is issued to the State Government to remove the anomaly and refix the pay scale for the posts of the petitioners, which should not be lesser than the pay scale of the feeder post. The respondents will also take into consideration the pay scale admissible to the holders of feeder post after completion of 5 years and 12 years of service.

3.4 Review application filed by the respondents against the judgment was dismissed by the Court vide order dated 21.1.2013. Thereafter, they challenged the *V.N. Grover* case (*supra*) by filing LPA No.575 of 2013 titled *State of Haryana and another v. V.N. Grover and*

others. As the judgment was not being implemented, the petitioners therein had to file a contempt petition, COCP No. 3333 of 2012 titled *V.N. Grover and another v. K.K. Jalan*, against the respondents.

3.5 During pendency of the contempt petition, the respondents passed the impugned order, dated 18.2.2013, purportedly in compliance with the judgment passed in *V.N. Grover* case (*supra*), removing the anomaly by granting non-functional pay scales for the post of Executive Engineer and Superintending Engineer to replace the existing scales for the period 1.5.1989 to 31.12.1995. The impugned order states, “*Apart from this the issue with regard to pay scale of the post of Xen has already been settled vide office order dated Grover and Others v/s State of Haryana and another of Hon’ble Punjab and Haryana High Court need to be addressed for compliance in letter and spirit, the following non-functional pay scales are formulated to replace non functional pay scale prevalent during 1.5.1989 to 31.12.1995.*”

...(T)he following non-functional pay scales are formulated to replace non-functional pay scale prevalent during 1.5.1989 to 31.12.1995:

Name of Post	Non-functional pay scale	Remarks
Executive Engineers	(i) 3001-100-3501-125-4501/- (ii) 4101-125-4851-150-5301/-	(i) For those petitioners who have been promoted after 5 years of regular satisfactory service as SDE/AE/AEE. (ii) For those petitioners who have been promoted after 12 years of regular satisfactory service as SDE/AE/AEE.
Superintending Engineers	4102-125-4851-150-5302/-	---

This order would be given effect to with retrospective effect for the period 1.5.1989 to 31.12.1995 subject to the outcome of LPA, for which AD has already been advised vide letter No.9/72/1994-3PR (FD), dated 13.2.2013.

3.6 Before the LPA Bench, a plea was taken by the respondents that the anomaly in the pay scales had been removed by passing the order

dated 18.2.2013. The LPA along with the contempt petition was, accordingly, disposed of in the following terms:

When nothing was done, the private respondents filed COCP No.3333 of 2012 for compliance of the order, referred to above. It was brought to our notice that during pendency of the writ petition, before passing of the order referred to above, needful was done removing that anomaly. If that is so, the present appeal is disposed of and no further action is needed. However, it is stated by counsel for the private respondents that the order passed removing anomaly is irrational and is not in consonance with the established law.

Be that as it may, if that does not suit to the respondents, they may challenge the same as per law. COCP No.3333 of 2012 also stands disposed of.

3.7 After disposing of the LPA, the instant petition was filed impugning the order, dated 18.2.2013, said to have been passed by the respondents in compliance of the judgment passed in *V.N. Grover* case (*supra*).

4. Mr. R.K. Malik, learned senior counsel for the petitioner has contended that the impugned order revising the pay scale for the post of Executive Engineer and Superintending Engineer is in violation of the judgment passed by the Court in *V.N. Grover* case (*supra*). Only one-rupee enhancement has been given in the revised non-functional pay scale for the post of Executive Engineer which is patently illegal as it does not make the scale one step higher than that of the Assistant Engineer, as is the requirement in law. It has been clearly laid down by Division Bench of this Court in *Sunder Lal Jain and others v. State of Haryana and others* (1994) SCC Online P&H 1188, that a promotee is entitled to get higher scale than the one he was getting on the post he has been promoted from.

It is further contended by the learned senior counsel that this Court in *V.N.*

Grover case (*supra*) has held that by granting lower pay scales to the Executive Engineer than those of the Assistant Engineer after five years and twelve years of service, an anomalous situation has been created which needs to be corrected. Enhancement by just one rupee cannot be termed compliance of the judgment.

5. Mr. D.S. Nalwa, learned counsel for the respondents, on the contrary, contends that the functional pay has been enhanced in terms of the judgment passed in *V.N. Grover* case (*supra*) and the anomaly stands removed on that count. The amount by which the scale has been enhanced cannot be questioned by the petitioner since it is prerogative of the government to assign pay scales of a particular post. Since the post of Executive Engineer is a higher post, a higher scale of pay has been given on the post to the incumbent after five and twelve years of service which is more than that of the feeder post/Assistant Engineer. He has relied upon the judgment of the Supreme Court in *State of Bihar and others v. Bihar Veterinary Association and others*, (2008) 11 SCC 60, to contend that it is not for the High Court to interfere in the matters of grant of pay scale on a particular post, since it is purely an executive function. Change in pay scales may have cascading effect on other scales in the service, which will give rise to multifarious problems and litigation. Further, the pay scales essentially depend upon resources of the government, and keeping that in view the government should be given freedom to assign a particular scale of pay to a particular post. Once that has been done by the respondents, vide impugned order dated 18.2.2013, in compliance of the judgment passed in *V.N. Grover* case (*supra*), it should not be interfered with, especially when the LPA as well as the contempt petition filed against the

same stand disposed of.

6. Learned counsel for the parties have been heard and the case file has been perused.

7. Undisputedly, post of Assistant Engineer is a feeder post for the next promotional post of Executive Engineer, and the latter is a feeder post for the next promotional post of Superintending Engineer. Next higher posts in the hierarchy are those of Chief Engineer and Engineer-in-Chief. The pay scales of the promotional posts in the Department have always been a step higher than those of the feeder post/Assistant Engineer w.e.f. 1.2.1969, as is apparent from the table reproduced above. In the earlier round of litigation before this court which led to passing of the judgment in *V.N. Grover* case (*supra*), it was held that there was an apparent anomaly between the scales of feeder post and the promotional post w.e.f. 1.5.1989. Time scale for the post of Assistant Engineer was Rs.2200-4000, after five years of regular service an Assistant Engineer was entitled to pay scale of Rs.3000-4500 and after twelve years of service twenty per cent of the posts in the cadre were to be given pay scale of Rs.4100-5300. Whereas, the time scale of pay for the post of Executive Engineer was Rs.3000-4500; and for Superintending Engineer it was Rs.4100-5300. This clearly shows that after five years of service an Assistant Engineer would be in the scale of Executive Engineer, i.e., Rs.3000-4500; and after twelve years of service in the scale of Rs.4100-5300, which is higher than that of Executive Engineer and equivalent to that of Superintending Engineer. Essentially, therefore, after five years of service the Assistant Engineer gets the promotional scale for the post of Executive Engineer and that of the Superintending Engineer after twelve

years of service, without being so promoted.

8. This anomalous situation was ordered to be corrected by this Court vide judgment passed in *V.N. Grover* case (*supra*). Higher pay scales for the lower/feeder post of Assistant Engineer were held to be essentially discriminatory. The respondents were required to remove this discrimination by providing next higher scales for the promotional posts of Executive Engineer and Superintending Engineer, which they failed to do. Enhancement of only one rupee in the scales already provided for Assistant Engineer, and making the same applicable for the promotional post of Executive Engineer by terming it 'compliance' of the judgment in *V.N. Grover* case (*supra*) cannot be countenanced. The law laid down in the judgment is to provide higher pay scale (not lesser than pay scale of feeder post) on the promotional posts of Executive Engineer and Superintending Engineer which has not been done.

9. It is not in dispute that Assistant Engineer, Executive Engineer and Superintending Engineer are three distinct cadres of service in the Department, and by providing almost identical scales for the three cadres, the respondents have virtually brought them at the same level and, in the process, disturbed the hierarchy of posts and cadres. The posts of Executive Engineer and Superintending Engineer are promotional posts; the incumbents on the post of Assistant Engineer have to be in service for a particular number of years, apart from fulfilling other requirements, to be so promoted; and duties and responsibilities of the promotional posts are higher as compared to that of the feeder post of Assistant Engineer. In this view of the matter, pay scales meant for such higher posts have also to be a step higher than those of the initial/feeder post of Assistant

Engineer.

10. By the impugned notification, the Executive Engineer who get promoted to the post after five years of regular satisfactory service as Assistant Engineer, has been given the scale of Rs.3001-4501, i.e., one rupee more than that of the Assistant Engineer after five years of service; those who get so promoted after twelve years of regular satisfactory service as Assistant Engineer, for them pay scale of Rs.4101-5301 has been provided, which is also one rupee more than what an Assistant Engineer gets after twelve years of service. Further, the scale of Superintending Engineer has been enhanced to Rs.4102-5302, which is two rupee higher than that what an Executive Engineer, promoted after twelve years' service as Assistant Engineer, will get. This enhancement of rupee one or two in the existing scale of Assistant Engineer and providing the same for promotional posts of Executive Engineer and Superintending Engineer, cannot be termed the next higher scale from the post of Assistant Engineer. None of the scales for the higher promotional posts of Executive Engineer and Superintending Engineer in the Department since 1.2.1969, has ever seen such meagre rise of only one or two rupees; nor can this farcical increase be termed next scale of pay meant for the promotional post, it is not a higher scale of pay either. Nothing can be farther from truth and more fallacious than to term one rupee increase in the existing pay scale as the next scale for promotional posts carrying higher responsibilities and duties. Next higher scale of pay for employees in common parlance will also mean, the scale one step higher to the one they were getting on a lower post. One or two rupees increase in the scales for the posts of Executive Engineer and Superintending Engineer

does not satisfy those requirements by any standards. It was, therefore, incumbent upon the respondents to give the next existing standard pay scales in service after the pay scale Rs.4100-5300, that was assigned to Assistant Engineer.

11. Besides, the impugned order is contrary to the law laid down in *V.N. Grover* case (*supra*) but also by the Division Bench in *Sunder Lal Jain* case (*supra*), which has held as under:

8. ...In considered view of this Court. It is totally unreasonable to place a junior post and higher post in the same pay scale. A Division Bench of this Court in *Har Kishan and another v. State of Punjab and another*. 1987(5) SLR, 539 held that "when a lower post is equated with regard to pay scale with the promotional post, it was a clear anomaly and was highly irrational." Another Division Bench of this Court in *P.L. Goyal v. State of Haryana and others* 1990 (5) SLR, 108, held that "reducing the pay scale on promotion would be violative of Articles 14 and 16 of the Constitution of India." In Civil Writ Petition 10534 of 1991 (*Mani Ram and others v. State of Haryana and others*), 1993 (1) SCT 419 (P & H) decided by me on September 20, 1993, it was held that "it was legitimate aspiration of every citizen to be better placed, both, in status and pay on promotion and if this is to be frustrated, it will obviously damper the growth of the man which is a natural desire of everyone." If there is no increase in the emoluments of a citizen on his promotion, no one would ever work with zeal and dedication nor would be ever like to acquire better experience and more qualifications. This would result into complete stagnation. The action of the respondents in equating the promotional posts with that of inferior posts in the matter of pay scale would obviously result in restricting the natural aspiration of human being to go higher and higher in his service graph and would, thus, be wholly arbitrary. A direction is, thus, issued to forthwith fix the pay of petitioners in the scale immediately higher than the one they were getting on a lower post from which they were promoted. This Court is of the considered view that the authorities responsible for fixing the pay

scales of petitioners should immediately get down and see through that the justice is done to the petitioners by fixing them in a pay scale commensurate to their nature of duties and post. This exercise must be done within six months from today. However, petitioners be paid forthwith all the arrears that might be due to them by fixing them in a pay scale immediately higher to that they were getting on the post from which they were promoted. This petition deserves to be allowed with costs quantified at Rs. 3,000/-.

12. The reliance placed by learned State counsel on *Bihar Veterinary Association* case (*supra*) to contend that this Court cannot interfere in the matter, is mis-placed. In that case, the issue was parity of pay scales between a State Service and a Central government service. The members of Bihar Veterinary Association (BVA), who were members of the Bihar Animal Husbandary Service, had demanded the pay scales being given by the Central government to the members of the Indian Veterinary Service (IVS). The claim was accepted by the High Court, and the members of the Association were held entitled to pay parity and, accordingly, higher scales of pay being given to the IVS members. In this factual background, it was held by the Supreme Court that grant of pay scales essentially depends upon resources of the government, and it is not always possible that resources of the Central government and those of the State government are the same. By taking into account these factors, it was held that pay scales granted to the members of the respondent association by the Fitment Committee could not be disturbed, and the High Court was wrong in doing that by accepting the claim of the respondents therein. The law laid down has no bearing on the facts of the instant case. The petitioner herein is not seeking parity in pay scales with those of any other service, nor is it seeking grant of any particular pay

scale, nor has any plea of lack of resources been taken by the government in the case. The petition has been filed only on the ground that the members of the petitioner association, who hold promotional posts of Executive Engineer and Superintending Engineer, are entitled to the next higher pay scale than that of the feeder post of Assistant Engineer. As per law laid down by this Court, discussed hereinabove, pay scale of a promotional post has to be the next higher scale from that of the feeder post. It is not in dispute that the next higher pay scale is to be decided by the government taking into account all relevant factors, including its resources. At the same time, the bare minimal increase of rupee one or rupees two in the pay scale of the promotional posts, as compared to that of the feeder post, cannot be accepted as the next promotional scale.

13. In view of the aforesaid, the order dated 18.2.2013, become unsustainable in law and is, accordingly, set aside. The respondents are directed to assign the next higher standard pay scale in service after the pay scale Rs.4100-5300, to the promotional posts of Executive Engineer and Superintending Engineer w.e.f. 1.5.1989 to 31.12.1995, and release all consequential benefits including arrears of salary/revised pay scales to members of petitioner association, who were working on those posts during the period, within six weeks from receiving a certified copy of the judgment. The arrears of salary shall carry interest at the rate of nine per cent per annum from 2.6.1989 to the date of actual payment. No costs.

(TRIBHUVAN DAHIYA)
JUDGE

18.10.2023

Ashwani

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No