

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

**CWP No. 4821 of 2016 (O&M)**

**Reserved on: May 11, 2023**

**Pronounced on: 26.05.2023**

**Captain J.S. Bishnoi**

**...Petitioner**

**Versus**

**State of Haryana and others**

**...Respondents**

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Hitesh Verma, Advocate  
for the petitioner.

Mr. Ravi Dutt Sharma, DAG, Haryana.

**JAISHREE THAKUR, J.**

1. The petitioner a war veteran, by way of instant writ petition seeks issuance of a writ in the nature of Certiorari for quashing order dated 08.01.2020 (Annexure P/4) passed by respondent No. 3, whereby the benefit of selection grade has been denied to him; with a further prayer to direct the respondents to re-fix his pay after granting him selection grade from 1.8.1999 and benefits of 2<sup>nd</sup> and 3<sup>rd</sup> ACP upgradation, as provided under the Haryana Civil Services (ACP) Rules, 2008.

2. In brief, the facts are that the petitioner joined as Short Service Commissioned Officer on 15.03.1970 in the Indian Army and fought for the country in the 1971 war. He was awarded four medals during his service and was released from Army on 27.09.1975, after completing the prescribed

tenure. Thereafter, he joined Zila Sainik Board in Haryana on 29.08.1979 as Secretary and stood retired on 28.02.2006, after attaining the age of superannuation. It is claimed that as per the service rules, selection grade was granted in the pay scale of Secretary, Zila Sainik Board which was limited to 20% of the cadre strength and the petitioner was entitled to selection grade w.e.f. 01.08.1999. Apart from that, the petitioner was also entitled to three ACPs w.e.f. 01.01.2006, as he had completed more than 30 years of service. On 29.12.2005, the petitioner applied for grant of selection grade, which was rejected by the respondents vide letter dated 07.02.2006, without assigning any reason. On 28.07.2009, the petitioner again made a representation to respondent No.2 in this regard, in which comments of the Finance Department were sought, which vide letter dated 30.10.2009 stated that the selection grade could not be granted to the petitioner due to the reason that earlier three Secretaries of the Zila Sainik Board had wrongly availed the benefit and when recovery proceedings were initiated against them, they filed a CWP No. 9599 of 1997, which stood admitted by this Court and, therefore, the decision on grant of selection grade will be taken only after the decision of the said writ petition. Vide letter dated 06.12.2010 (Annexure P/5), respondent No.3 informed the petitioner that the Governor of Haryana has been pleased to grant him one ACP grade pay of ₹6,000/- w.e.f. 01.01.2006 in the pay scale of ₹15,600-₹39100. However, it was further informed that the military service rendered by the petitioner would not be counted towards grant of ACP.

3. Aggrieved by the denial of selection grade as well as two

ACPs, the petitioner made an application before the Lokayukta, Haryana for redressal of his grievance. However, the Lokayukta disposed of the complaint on 09.03.2015 with liberty to the petitioner to approach the competent court of law. Consequently, the petitioner served a legal notice dated 4.8.2015 (Annexure P/8) upon the respondents, to which the respondents, vide letter dated 20.10.2015 (Annexure P/9) reiterated that the petitioner cannot be granted selection grade as long as the aforesaid writ petition is pending. Hence the present writ petition.

4. Learned counsel appearing on behalf of the petitioner would contend that the sole ground on which the selection grade has been denied to the petitioner is pendency of CWP No. 9599 of 1997. It is submitted that the petitioner is not party to the said writ petition nor any stay order on grant of selection grade to the Secretaries of Zila Saink Board has been passed. In fact, in the said writ petition recoveries qua the petitioners therein have been stayed and the said writ petition has no bearing on the case of the petitioner. Learned counsel in support of his claim is relying upon Annexure P/10, the instructions issued by the Government of Haryana to contend that the selection grade remained in operation even after 01.01.1996 and is also relying upon the letters issued by the respondents themselves Annexures P/1 and P/2 respectively, wherein the petitioner has been found eligible for the relief which the petitioner has prayed for in the instant writ petition.

5. Per contra, learned counsel appearing on behalf of the respondents would argue that insofar as the benefit of first and second ACP scale is concerned, the same has already been granted to the petitioner and

thus partial demand of the petitioner has already been accepted. However, insofar as the selection grade is concerned, it is submitted that the petitioner himself has admitted that the selection grade was limited to 20% of the cadre strength. Therefore, the petitioner was claiming the said benefit w.e.f. 01.08.1999, but without indicating his seniority in the cadre and without any proof that he was covered under 20% of the total cadre strength. It is further submitted that allowing selection grade was stopped on account of the promulgation of Haryana Civil Service (Revised Pay) Rules, 1998. It is further submitted that the total sanctioned strength of Secretary, Zila Sainik Board is 12. Therefore, the senior most four officers are covered under the 20% of the total cadre post for grant of selection grade, whereas the petitioner never remained at the top most four posts in the cadre, thus he was not entitled to the benefit of selection grade. The position of cadre strength as well as the seniority of the petitioner has been tabulated in the reply.

6. I have heard learned counsel for the parties and with their assistance have gone through the pleadings.

7. The claim of the petitioner for selection grade is based on Annexure P/1, which is based on a noting that the petitioner would be eligible to selection grade as Secretary of Zila Sainik Board as on 1.8.1999. The claim of the petitioner in the said selection grade has been rejected on the ground that CWP No. 9599 of 1997 stood admitted by this Court and, therefore, the decision on grant of selection grade will be taken only after the decision of the said writ petition. In the opinion of the Court, the issues

involved in the said writ petition are not germane to the issues in the instant case. The aforesaid writ petition has been filed by the persons who had been given the benefit of selection grade, but later on the department held that they were not entitled to the same and sought recoveries. Therefore, the respondent—department could not have negated the claim of the petitioner only on the ground that the said writ petition was pending.

8. The petitioner has approached this Court seeking selection grade based on Annexure P/1, wherein it is mentioned that the date of eligibility of selection Grade to the Secretaries Zila Sainik Board in the case of the petitioner would be 01.08.1999. This document would have no relevance in light of the fact that there is a categorical stand as taken by the respondents that the selection grade remained in existence only upto 31.12.1995 as it was discontinued on promulgation of the Haryana Civil Service (Revised Pay) Rules, 1998, applicable w.e.f. 01.01.1996. In fact, the petitioner has not been able to establish that anyone has been allowed the selection grade after 1995. In para 4 of the reply filed by the respondent, the position of cadre strength and the seniority of the petitioner has been detailed reflecting that in the year 1993, there was sanctioned strength of 16 Secretaries in the Zila Sainik Board and 20% of the sanctioned strength came to 3, whereas the seniority position of the petitioner in 1993 was at serial No.10. Likewise, in the year 1994, his seniority position was at serial No. 8 making him ineligible. Though there is no sanctioned strength depicting the seniority of the petitioner in the year 1995, still if it is presumed that the sanctioned strength was 16 and 20% of the number of

posts was 3, the seniority position of the petitioner would not make him eligible for grant of selection grade, as the selection grade was discontinued thereafter.

9. It is also relevant to note that on promulgation of the Haryana Civil Service (Revised Pay) Rules, 1998, notified on 07.01.1998, applicable with effect from 01.01.1996, the concept of selection grade was stopped. But to remove the stagnation of the different cadres, the Haryana Government introduced the Haryana Civil Service (Assured Career Progression) Rules, 1998 (for short “**the Rules, 1998**”) and these rules were primarily confined to Group C & D and not A & B Cadre. Therefore, in order to remove the stagnation in Group A and B under the Rules 1998, a cadre specific scheme was framed as per Schedule 1 Part 1. However, under the above Schedule, the post of Secretary Zila Sainik Board, which was a Group B post, was not included in the specific cadre scheme.

10. As per para 4 of the reply, the petitioner did not fall within the ambit of the Rules, 1998, which were subsequently amended in the year 2008. If the case of the petitioner was not covered under the Rules 1998, then the case of the petitioner had to be considered for grant of selection grade on his turn. It appears that the petitioner is stuck in a catch 22 situation. His claim was not considered on the ground that the selection grade has been discontinued in the year 1996 on promulgation of the Haryana Civil Service (Revised Pay) Rules, 1998, which came into effect 01.01.1996, whereas in order to remove stagnation of the different cadres, the Rules, 1998 were primarily made applicable to Group C & D posts and

to remove stagnation in Group A and B under Rules, 1998, a cadre specific scheme was framed as per Schedule 1 Part 1 of Rules, 1998. However, under these rules, the post of Secretary, Zila Sainik Board, which is a Group B post was not included in the said Schedule. In other words, the petitioner has not been considered either under the Rules of 1998, while taking the plea that selection grade has been discontinued or under the HCS (Revised Pay) Rules, 1998.

11. The submissions as made by the respondents are contradictory in nature. On the one hand, the respondents have taken a categorical stand that the concept of selection grade was stopped after promulgation of the Haryana Civil Service (Revised Pay) Rules, 1998, applicable w.e.f. 01.01.1996 and, therefore, the petitioner is not entitled to selection grade. On the other hand, it is pleaded that in order to remove stagnation in different cadre, a cadre specific scheme was framed and as per Schedule 1 Part 1 of Haryana Civil Services (Assured Career Progression) Rules, 1998, the post of Secretary, Zila Sainik Board, which is Group B post was not included in the said specific cadre scheme. Thus, the case of the petitioner neither falls under the selection grade nor ACP Rules. No reason much less cogent reason has been given as to why the Group B post was not included in the specific cadre scheme. Thus, the action of the respondents has deprived the petitioner of his legitimate right of either selection grade or that of Assured Career Progression, which is unwarranted and deserves to be quashed. Apart from that, the petitioner has been non-suited by taking a plea that a writ petition is pending, which pertain to recoveries so made to

the petitioners therein. As a result of the above discussion, this Court comes to the conclusion that the claim of the petitioner has to be re-determined, keeping in view of the specific stand taken in the written statement, which for the sake of convenience is reproduced as under:-

*“It is worthwhile to mention here that while revising the pay scale of Haryana Government employees w.e.f. 01.01.1996, it was decided to allow first and second ACP scales to all Group C and D employees. However, some cadres of Group-B & A were placed under ACP Rules, 1998 keeping in view the existing problem of stagnation in their cadre. Accordingly, they have been placed in Schedule-1 Part 1 of HCS (ACP) Rules 1998. For these employees the second ACP scale was limited to 20% of the total cadre post. In this way the case of the petitioner did not fall within the ambit of HCS (ACP) Rules, 1998. The said rules remained in existence upto 31.12.2005.”*

12. Consequently, this writ petition is allowed, the impugned order is quashed. The case of the petitioner for grant of selection grade be considered afresh by passing a speaking order. The petitioner be given adequate opportunity to present his case through himself or his counsel. Notice be issued to him for appearance before deciding his claim. Let the needful be done within one month from the date of receipt of a copy of this order and in case the petitioner is found entitled to the selection grade, the consequential financial benefits be released to him within two weeks thereafter.

**May 26, 2023**

*prem*

Whether speaking/reasoned :

Whether Reportable :

**(JAISHREE THAKUR)**

**JUDGE**

Yes

No