

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-31011-2019 (O&M)

Decided on 17.07.2023

Anil Kumar Nandwani

... Petitioner

VS.

UHBVNL & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohnish Sharma, Advocate for the petitioners

Mr. Hitesh Pandit, Advocate for the respondents

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the order dated 31.05.2019 (Annexure P16) whereby the respondent No.2 has rejected the claim of the petitioner for stepping up of his pay, being senior general category employee at par with his junior counterpart (respondent No.5) of reserved category employee, on the post of Sub Station Attendant. He seeks a direction for grant of benefit of stepping up of his pay at par with respondent No.5 with all consequential pensionary benefits along with arrears in view of law laid down in **Charan Dass vs. State of Haryana (CWP-5956-2008)** decided on 18.11.2008 (Annexure P1) read with instructions dated 05.03.2009, 23.11.2009 and 18.12.2013 (Annexure P3, P5 & P9).

(2). The petitioner joined erstwhile Haryana State Electricity Board as Shift Attendant *ad hoc*, under general category, on 27.10.1977 and was regularized as such w.e.f. 07.01.1978. Later he was promoted as Assistant Sub Station Attendant on 09.08.1982 followed by his promotion as Sub Station

Attendant on 16.03.1990 and thereafter as Junior Engineer on 26.11.2010 and retired as such w.e.f. 31.08.2018.

(3). Learned counsel for the petitioner averred that the petitioner, after his retirement made various representations including the one dated 24.07.2017 (Annexure P14) for stepping up of his pay with his junior counterpart, namely, respondent No.5, being of reserved category, in view of Haryana Govt. instructions and various judgments of this Court as well as the Supreme Court. However, the respondent-Nigam vide cryptic order dated 31.05.2019 (Annexure P16) rejected the claim of the petitioner on the ground that petitioner's request for stepping up of his pay with Sarwan Kumar (respondent No.5), who is working in other power utility, is not maintainable.

(4). It is further averred that the petitioner being general category and senior to respondent No.5, regained his position after catch up on 16.03.1990 on the post of Sub Station Attendant who was still working on the same post being promoted after taking the benefit of Scheduled Caste category reservation w.e.f. 25.08.1987 and thus in view of Haryana Govt. Instructions and the judgments of this Court, the petitioner is entitled for stepping up of his pay at par with respondent No.5.

(5). Notice of motion was issued on 24.10.2019 and the respondent-Nigam filed reply on 11.01.2020 wherein it has been averred that the competent authority, in view of the instructions dated 05.03.2019 duly adopted by the Nigam and after considering the service particulars of the petitioner vis-à-vis respondent No.5 to the effect that the petitioner had caught up his junior counterpart i.e. respondent NO.5 on 16.03.1990, accepted the claim of the petitioner for stepping up, notionally at par with respondent No.5, from the

date when his junior belonging to reserved category was promoted as SSA on 25.08.1987. However, the payment of arrears of 3 years was restricted prior to the date of representation i.e. 24.07.2017.

(6). The petitioner has filed replication dated 28.09.2022 to the reply filed by respondent-Nigam wherein it has been averred that the respondent-Nigam has grossly erred in not appreciating the fact that the petitioner is entitled to benefit of stepping up at par with respondent No.5 w.e.f. 05.03.1987 and not w.e.f. 25.08.1987 and is entitled for full arrears of pay.

(7). Learned counsel for the petitioner vehemently contended that as per their own service record of respondent-Nigam, respondent No.5 was already granted deemed date of promotion as SSA w.e.f. 05.03.1987 vide order dated 08.08.1996 (Annexure P18). He further submitted that the payment of arrears of 3 years cannot be restricted in view of the judgments of this Court in Charan Dass case (supra) and HVPNL & Ors. vs. Satya Pal Nagpal and another , LPA No.1259 of 2011 decided on 29.08.2011.

(8). Heard learned counsel for the parties and gone through the record.

(9). The Division Bench in the case of Charan Dass (supra) noticed the principle of law laid down by Hon'ble the Supreme Court in the case of Ajit Singh Jasuja v. State of Punjab, JT 1999 (7) SC 153 that though a reserved category employee could be promoted to higher post on the basis of reservation roster point earlier to a senior general category employee, when the latter is promoted, he would catch up with the reserved category junior on the last higher post, after which there exists no reservation in promotion and the general category employee declared senior in that particular post would be granted benefits accordingly. Accordingly, the pay of the petitioner in that case was

ordered to be stepped up in his scale of pay on the date of his promotion to the next higher post as Assistant on par with his junior who was promoted earlier and still later to the posts of Deputy Superintendents and Superintendents at the respective Levels 2, 3 & 4 from the dates when he assumed office at the promotion posts. Similarly, in the case of *V.B. Nanda and others v. UHBVN and others (CWP No. 20351 of 2008)* decided on 14.7.2010, a coordinate Bench of this Court has placed reliance on a circular dated 12.4.2007 stipulating that in case an employee is held entitled for benefit of promotion then he may not be given arrears of salary but he would be entitled to the benefit of fixation of pay on notional basis. Accordingly, the claim made in the said writ petition has been allowed and the UHBVNL was directed to re-fix the salary of the petitioners by giving them notional benefit from the date of deemed promotion till the date of actual promotion and to pay them the salary from the date of actual promotion on their respective posts.

(10). This Court in *Charan Dass's* case (supra) observed that in view of the instructions issued by the Government, a senior employee in general category though may be promoted to a later date, would catch up at the promotion post with a junior employee who had been promoted earlier on a roster point and held that the writ-petitioner entitled to stepping up of pay on the date of his promotion to the next higher post on par with his junior.

(11). It is an admitted position that pursuant to filing of the present petition, the respondent-Nigam vide order dated 23.04.2020, held the petitioner entitled to stepping up of his pay notionally at par with respondent No.5 w.e.f. 25.08.1987. The issue with regard to grant of benefit of stepping up of pay of the petitioner has been accepted and thus there is no dispute in regard thereto.

The grievance of the petitioner left out to be adjudicated is with regard to the date of grant of benefit which has been fixed from 25.08.1987 as against the averment of the petitioner that he is entitled to the benefit w.e.f. 05.03.1987, the date when respondent No.5 was granted the deemed date of promotion. The petitioner has relied upon the office order No.266/T dated 08.08.1996 according to which the respondent-Nigam themselves have ascertained that Sarwan Kumar – respondent NO.5 was already granted deemed date of promotion as SSA w.e.f. 05.03.1987. The correct service particulars of the petitioner and his junior respondent No.5, as per the service record, is reproduced as under:-

Pay fixation of Anil Kumar Nandwani after stepping up w.e.f. 25/8/87		Pay fixation of Sh. Sarwan Kumar w.e.f. 5/3/87	
01.01.86	990	01.01.86	950
01.04.86	1010	01.04.86	970
05.03.87	1010	05.03.87	1400
25.08.87	1400	25.08.87	1400
01.08.88	1440	01.08.88	1440
01.08.89	1480	01.08.89	1480
01.08.90	1520	01.08.90	1520
01.08.91	1560	01.08.91	1560
01.07.92	1600	01.07.92	1600
01.08.92	1650	01.08.92	1650
01.08.93	1700	01.08.93	1700
01.08.94	1750	01.08.94	1750
01.08.95	1800	01.08.95	1800

(12). It is crystal clear that even as per the service record of the respondent-Nigam, respondent No.5 has been granted the deemed date of promotion of SSA w.e.f. 05.03.1987 i.e. the date of immediate junior Sh. Pala Ram, consequent upon the decision of this Court in CWP No.1249 of 1985 (AC Gupta & Ors. vs. HSEB) read with instructions dated 12.11.1991. That being so, once the petitioner has been held entitled for stepping up of his pay at par with respondent No.5, it is but natural that the pay of petitioner is bound to be

fixed in the same manner and date as in the case of pay fixation of respondent No.5 who has been granted deemed date of promotion w.e.f. 05.03.1987.

(13). Accordingly, this writ petition is allowed; the order dated 31.05.2019 (Annexure P16) is quashed and it is ordered that the pay of the petitioner shall be fixed w.e.f. 05.03.1987 as has been done in the case of his junior, namely, respondent No.5, along with all consequential benefits and arrears, as admissible to the petitioner, in accordance with law. The necessary benefits shall be released in favour of the petitioner, along with interest @ 6% p.a. within 4 months from the date of receipt of certified copy of this order.

17.07.2023
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No