
(2000) 11 P&H CK 0223
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6067 of 1998

Onkar Nath and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Civil Services (Revised Pay) Rules, 1988 — Rule 8

Citation : (2000) 11 P&H CK 0223

Hon'ble Judges : R.C. Kathuria, J;M.L. Singhal, J

Bench : Division Bench

Advocate : Mr. R.S. Manhas, for the Appellant; Mr. Lakhinderbir Singh, Addl. A.G., for the Respondent

Judgement

M.L. Singhal, J.—Through this civil writ petition No. 6067 of 1998 filed by the Onkar Nath and others under Articles 226/227 of the Constitution of India, they have prayed for direction to the State of Punjab for issuance of a writ in the nature of mandamus directing the State of Punjab to grant them the benefit of two additional increments with immediate effect from the date(s) they have completed 18 years of service with interest @ 18% per annum till payment.

2. Facts :

Onkar Nath and others are Class IV employees working in the State of Punjab in its Public Health Department. They had earlier filed CWP 18383 of 1996 titled Joginder Pal and others v. State of Punjab and others wherein they had claimed the benefit of proficiency step up(s) on completion of 8/18 years of service. They had prayed that while computing their 8/18 years of service, service rendered by them on work charge basis prior to their regularisation be also counted. The said writ petition was disposed of by Hon"ble Division Bench of this Court vide order dated 18.5.1997 which reads as follows :

"Learned counsel for the respondents slates that appropriate decision would be

taken within three months keeping in view the decision in C.W.P. No. 11704 decided on 24.1.1996. If the petitioner is found entitled to any relief, the same be granted within 15 days. If any adverse order is passed, the petitioner will be entitled to approach the Court."

3. In pursuance of the direction given by the Hon"ble Division Bench of this Court in C.W.P. No. 18383 of 1996 (supra), the Govt. decided to count the work charge service while computing 8/18 years of service for the purpose of determining their eligibility for the grant of proficiency steps ups. Thus, the work charge service rendered by the petitioners prior to their regularisation was counted for determining their eligibility for the grant of the benefit of proficiency step ups to them on completion of 8/18 years service. Their grievance is that on completion of 18 years of service, they should have been given two increments i.e. one increment by way of proficiency step up and another increment by way of stagnation at the lower post whereas they were granted only one increment which was proficiency step up increment. Their case is that till they had put in 18 years of service, they had not been promoted to higher post nor they were granted any selection grade and, therefore, they should have been given one increment by way of proficiency step up and other increment by way of solace to them because of their non- promotion to the higher post/non-award of selection grade. They have claimed the benefit of two increments at the stage when they crossed 18 years of service in view of instructions Annexure P-1 issued by the Punjab Government. Annexure P-1 reads as follows :

"I am directed to address you on the subject cited above and to say that on careful consideration of the recommendations of the Third Pay Commission regarding proficiency step-up(s) the President of India is pleased to decide as follows :

1. Subject to suitability, besides the regular annual increment, one additional increment on each occasion on completion of 8 years and 18 years service or after the appointed day (as defined in Punjab Civil Services (Reserved Pay) Rules, 1988 published in Punjab Government Gazette (Extra) on 18.9.1988) against a post in the form of proficiency step-up(s) shall be granted to all the Punjab Government employees except the Members of Punjab Civil Services (Executive Branch) Deputy Superintendents of Police and Members of the Punjab Forest Services Class-11.

2. In adjudging the suitability for proficiency step-up(s) the procedure for assessing the work and conduct to be satisfactory as applicable to a case of promotion shall be followed and it shall be given only if the employee is found suitable for the same. An employee who is not considered for a proficiency step-up(s) that is whose assessment of work and conduct is below the requisite standard shall be given the additional increments) but his regular increment if otherwise due, shall be released as usual.

3. In case an employee is found unsuitable for the grant of proficiency step-up(s)

on a particular date his case will be reviewed thereafter for the grant of that step-up on year to year basis and he will be granted that step-up on and from the date which he is found suitable, for the same. The suitability for the purpose shall be determined after taking into consideration the ACRS of the employee upto 31st March, of the proceeding (preceding ?) year.

4. That on grant (non-grant ?) or proficiency step-up on account of unsuitability shall not be considered as punishment under the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

5. That competent authority for the grant of proficiency step-up shall be the same as in the case of promotion. Representations, appeal etc. against the order of non-grant shall also be in the same manner in case of promotion.

6. That the case of the grant of proficiency step-up(s) shall be taken at least three months before the due date. For a case becoming eligible before the 30th June of a financial year, the annual confidential reports upto the 31st March, of the preceding year only should be considered.

7. For reckoning the period of 8 and 18 years, the entire service in the time scale, senior scale and selection grade (of mere placement and not involving fixation of pay at higher level) etc. wherever available in a cadre, shall be counted, if any employee joins a scale at a stage higher than the minimum as a result of promotion or otherwise his proficiency step-up(s) would stand postponed by a number of years equal to the number of increments already covered by him from the minimum of the scale at the time of initial fixation of pay in the scale. That the step-up is related to the number of years of service in a particular scale and if an employee's pay is fixed by process of promotion at the sixth stage of a scale he will be entitled to earn step-up in that scale only after 8 years and is not promoted to a higher scale on account of lack of promotion opportunity or nonavailability of a vacancy in the promotional scale, he would be granted two step-up in his emoluments.

8. Pay fixation on promotion to a higher post shall be regulated according to (Rule) 8 of the Punjab Civil Services (Revised Pay) Rules, 1988. Thus, if an employee has been promoted to a higher post after having got one or two proficiency step-up(s) his pay in the scale of promotion post shall be fixed by giving him the benefit of one increment.

9. As a necessary corollary to this decision, the existing institution of efficiency bars if abolished, the cases of efficiency bars, which fell due prior to 1.1.1986 would be settled according to the then prevalent rules/instructions.

(2) The proficiency step-up(s) shall be admissible only from the appointed day that is only after the fixation of pay of the concerned in the revised by scale under the Punjab Civil Services (Revised Pay) Rules, 1988.

This issues with the concurrence of the Department of Finance conveyed vide F.D. No. 10/44/8/PP1/ 2521 dated 25.11.1988.

(4) For any interpretation/clarification the decision contained in this circular letter the Department of Personnel and Administrative Reforms in consultation with the Department of Finance shall be the final authority,"

4. Their claim is that as per these instructions if an employee serves in a scale of pay for more than 18 years and is not promoted to a higher post on account of lack of promotional opportunity or non-availability of a higher post, he would be granted 2 step-up(s) in his emoluments. They had completed 8/18 years of service in their cadre and they are working on one post without getting any promotion, selection grade or senior grade and as they had been stagnating on one post for the last more than 18 years and as such they are entitled to two additional increments on completion of 18 years of service in accordance with these instructions.

5. After they had been granted one increment by way of proficiency step-up on completion of 8/18 years of service, they requested the State of Punjab for the grant of two additional increments on completion of 18 years of service but to no effect. Any instructions contrary to instructions Annexure P-1 laying down to the detriment of the petitioners shall have no effect.

6. Respondents contested this writ petition urging that proficiency step-up is not admissible to work charge employee on completion of 8/18 years of service (Annexure R-1), as such they are not entitled to this benefit. Proficiency step-up is to be given from the date of regularisation of service as per para 6 of instructions Annexure R.-2. Besides, regular increment, one additional increment on different occasion on completion of 8/18 years of service in the form of proficiency step-up can be granted as per Punjab Government instructions Annexure A-1. At the stage of 8/18 years of service, one regular increment can be granted and one proficiency step-up increment can be granted. Thus total two increments can be granted on completion of 18 years of service.

7. In this writ petition, the only question that requires our consideration is "whether on completion of 18 years of service the petitioners became entitled to one usual increment, one increment by way of proficiency step-up and one increment in lieu of stagnation at the lower post without any promotion to the higher post though they have served for 18 long years on the lower post or they are entitled to two increments i.e. one usual increment and the other increment by way of proficiency step-up only." For determining this question, we have to look to the background why the concept of proficiency step-up was introduced. Chapter 9 of the 3rd Punjab Pay Commission Report is prefaced "Policy on promotions and Prevention of Stagnation" where the Commission has observed as under :

9.1. The issue of promotion prospects for employees in Government and its various relevant aspects has been a subject of deliberations by Government as well as the association of employees. The associations of employees have been urging that three-four promotional chances should be available to an employee in

service career to ensure that his dedication and motivation in work is maintained. The Government have also acknowledged the need for providing vertical movement to the employees and one process which has become quite fashionable is that of Cadre Reviews by which levels of posts are periodically reviewed/upgraded keeping in view, inter alia, the aspect of stagnation within a particular service. This review has been done in the case of Armed Forces and some of the Central Services and there is a demand even among some services of the State for a similar dispensation. In cases where the cadres are small and there are only a limited number of posts at different levels of hierarchy, the demand is sought to be satisfied indirectly by vertical upgradation of posts. A number of employees who have been holding isolated posts and have been working for a number of years on the same posts, as they were recruited to, have also appeared before us and urged upgradation of posts on the consideration that no avenue of promotion is available to them.

9.2. The question as to what should be the number of promotion normally available to a person entering Government service has been debated among many quarters. The 2nd Punjab Pay Commission after deliberating on the issue in detail had come to the conclusion that there should be two promotions, for every employee and on this ground suggested selection grades where higher posts (as in the case of drivers) are not available.

9.8. We (Commission) are, therefore, constrained to come to the following conclusions :

(i) It is not possible to ensure to all employees any particular number of promotion chances in the traditional sense; (ii) The disparity regarding promotion prospects would continue among different categories as it is based on functional differentiation, needs of work and supervision and the temporal element in the expansion of a particular programme and consequently a particular cadre; (iii) The only thing which Government can try to ensure is that subject to good and satisfactory work by an employee, adequate rise in salary at suitable intervals is provided.

9.9. Two alternatives are possible for (iii) above. One is the institution of grant of selection grade in which an employee with the same designation and same functions is put in a higher scale. The other is the provision of pay scale in which at suitable intervals a rise in pay is given to an employee even though he continues performing the same functions.

9.10. The Government had introduced the institution of Selection grades for removal of stagnation in the cadres where promotional opportunities to higher posts were either non-existent or were extremely restrictive. The existing policy for the grant of selection grades is contained in the Punjab Government circular letter No. 7/25/84-5FR/11160 dated 29th October, 1984. which lay down that selection grades will be provided in cases where the number of higher posts (all levels taken together) to which employees in a particular cadre can seek

promotion is less than half of the strength, of that cadre or where there is no promotion at all available to a cadre or service. Selection grade shall not be admissible to an official unless he has completed 15 years of service. The service should either be in the basic scales where appointment to the basic scale is by way of fresh entry and in the one scale next below. The number or selection grade posts of each level should not exceed 20% of the strength of the basic scale for which the selection grade posts are to be sanctioned. It is further provided that selection grade at the rate of 20% should be admissible subject to the minimum of one post. In other words, it means that in cadres consisting of less than five posts at least one post in the selection grade is to be provided.

9.14. In line with the foregoing analysis, we propose to suggest instead a scheme covering practically all employees in which there should be two proficiency step-ups available to an employee after he completes 8 and 18 years service in a scale. The grant of a proficiency step-up (PROP) would provide the benefit of one additional increment to the employee besides the regular annual increment. The object of this provision is that every employee, whose work and conduct is found to be satisfactory, should get a first step-up in his emoluments on completion of eight years service and a second step-up on completion of 18 years service in the scale unless he is considered not fit for proficiency step-up. If an officer joins a scale at a stage higher than the minimum as a result of promotion or otherwise, his proficiency step-up would stand postponed by the number of years equal to the number of increments already covered by him from the minimum of the scale at the time of initial fixation of his pay in the scale. That is, the step-up related to the number of years of service in a particular scale and if an employee is fixed by process of promotion at 6th stage of a scale, he will be entitled to earn a step-up in that scale only after 8 years. Thus if an employee serves in a scale of pay for more than 18 years and is not promoted to a higher scale on account of lack of promotional opportunities or lack of vacancy in the promotional scale, he should be able to earn two step-up(s) in his emoluments.

9.15. When an official is promoted to a higher scale after getting one or two proficiency step-up(s), his pay in the higher scale shall be fixed giving him the benefit of only one increment since he has already enjoyed the benefit of one/two increments by way of proficiency step-up(s). An employee promoted to a higher scale before completing 8 years in the lower scale will get the normal fixation benefit on promotion viz, two increments as proposed by us in a separate chapter."

It is thus clear that as it was not possible to ensure to all employees any particular number of promotion chances in the traditional sense, the Commission thought that the Government should try to ensure that subject to good and satisfactory work, he should be given adequate rise in his salary at suitable intervals. First proficiency step-up was introduced with a view to boosting the morale of an employee who has worked to the satisfaction of his superiors that

he should be awarded one usual increment and another increment by way of morale boosting. Second proficiency step-up was introduced with a view to provide solace to an employee by way of grant of one additional increment who should otherwise have been promoted to the higher post but could not be promoted for want of a vacancy in the promotional cadre. Second proficiency step-up was introduced with a view to compensate him for the drudgery and stagnation at the lower post without being promoted to the higher post for want of vacancy in the promotional cadre. Second proficiency step-up was introduced by the Govt. because the Govt. thought that in normal course an employee should be promoted after having put in such number of years of service, but if he is not able to be promoted for 18 years, he shall be compensated with the grant of one increment additional to the grant of usual increment. We are, thus, of opinion that the petitioners cannot claim three increments at the stage of second proficiency step up i.e. one usual increment, one proficiency step-up increment and one increment in lieu of non-promotion to the higher post and stagnation at the lower post because if this claim of the petitioners is accepted, we would be acting against the concept of "proficiency step-ups" introduced by the Commission and recommended to the Govt. and recommendation accepted by the Govt. It seems to us that there are certain departments of the Govt. where an employee continues stagnating for a number of years on a particular post without any prospect of promotion to the higher post and so that drudgery and monotony which afflicts the efficiency of employee on the lower post is allayed, to some extent, the Govt. introduced the institution of proficiency step-up or selection grade for the removal of stagnation where promotional opportunities to higher posts were either non-existent or were extremely restrictive. The grant of three increments at the stage of second proficiency step-up to the petitioners would be going against the very concept of proficiency step-up introduced in the Govt. service by the Commission and accepted by the Govt.

For the reasons given above, this writ petition fails and is dismissed. No order as to costs.

8. Petition dismissed.