

**(2012) 07 P&H CK 0073**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 2595 of 2011 (O and M)

Rajinder Parshad Raturi

APPELLANT

Vs

Punjab State Power Corporation Ltd. and Another

RESPONDENT

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**Date of Decision :** 06-07-2012

**Acts Referred:**

**Citation :** (2013) 1 SCT 320

**Hon'ble Judges :** Rajesh Bindal, J

**Bench :** Single Bench

**Advocate :** A.K. Walia, for the Appellant; Ajaib Singh, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Rajesh Bindal, J.—Prayer in the present petition is to quash the orders dated 07.07.2010 and 30.08.2010 by which benefit of second time bound higher pay scale granted to the petitioner after completion of 16 years of service and third time bound higher pay scale after completion of 23 years of service were withdrawn by respondent No. 2. The petitioner also seeks quashing of impugned order dated 04.02.2011 vide which recovery of Rs. 16,870/- has been ordered by respondent No. 2 on the basis of impugned order dated 30.08.2010. Briefly, the facts of the present case are that the petitioner is working as Upper Division Clerk (U.D.C.) under respondent No. 2. Initially he was appointed as Lower Division Clerk (L.D.C.). To give effect to the recommendations of the third Punjab Pay Commission, respondent No. 1 introduced three tier pay scales for various categories of posts. Accordingly, the petitioner as L.D.C. was granted second time bound higher pay scale after completion of 16 years of service w.e.f. 11.01.1999 and third time bound higher pay scale after completion of 23 years of service w.e.f. 11.01.2006. Subsequently, the petitioner was offered promotion to the post of Circle Assistant vide order No. 25 dated 11.10.2010 issued by respondent No. 1, which was foregone by the petitioner. Respondent No. 1 accepted his request and ordered that the benefit of time bound higher pay scales granted to the petitioner shall be liable to be withdrawn with effect from

the date he had foregone the promotion. These are the orders under challenge before this Court.

2. Learned counsel for the petitioner submitted that the petitioner was given benefit of time bound higher pay scales according to the instructions dated 23.04.1990 and in the said instructions, there is no condition for withdrawing these benefits in case promotion is subsequently offered and is not availed of. The benefit of time bound higher pay scales already granted before foregoing the promotion cannot be withdrawn. He relied upon the judgment of this Hon"ble Court in CWP No. 2587 of 2009 decided on 12,08.2010 titled as Rattan Chand v. PSEB and others in which this Court held that the time bound higher pay scales of proficiency step up granted before foregoing the promotion cannot be withdrawn due to foregoing of promotion subsequently.

3. On the other hand, learned counsel for the respondents submitted that vide letter dated 22.10.1993 it was made clear that if an employee foregoes promotion, he will not be entitled to the grant of time bound higher pay scales. As the petitioner had foregone his promotion, thus benefit of time bound higher pay scales granted to the petitioner is liable to be withdrawn.

4. Heard learned counsel for the parties and perused the paper book.

5. The only question that arises for consideration in the present petition is as to whether the petitioner having declined the offer for promotion to the post of Circle Assistant vide office order No. 25 dated 11.10.2010, incurred any disqualification to draw the time bound promotional scales which was earlier granted to him under the policy decision dated 23.04.1990.

6. Similar issue has been considered by this Court in Rattan Chand's case (supra), wherein it has been held as under:-

9. In the case in hand, the 1st and 2nd time-bound promotional scales were granted to the petitioner on 11.10.1990 and 18.06.1993, respectively. There is indeed no denial to the fact that the petitioner got no offer for promotion as Lineman before 18th June, 1993. As a matter of fact the first ever promotion offered to the petitioner was on 27th December, 2001 only, which he declined to accept may be due to the fact that he was nearing retirement and was not willing to shift to a new place of posting.

10. The clarificatory Circular dated 26.07.1990 (Annexure R3/1) nowhere provides nor it can lead to such absurd consequences that a promotion offered after 16 years of service would take away the service benefit given to an employee on completion of 9 years" service. Since the petitioner never refused to accept the promotion before he was granted the time-bound promotional pay scales on completion of 9/16 years of service, the subsequent offer for such promotion and that too at the fag end of his career, cannot take away the time bound promotional scales which were rightly granted to him being a stagnated employee.

7. The letter dated 22.10.1993 issued by the respondents provides that if the time bound higher pay scales accrue after foregoing the promotion the same are not to be granted but it cannot be interpreted to mean that the benefit of time bound higher pay scales already granted before foregoing the promotion can also be withdrawn. An eligible employee cannot be denied the time bound promotional scales after completion of 16/23 years of service merely on the assumption that he was likely to get promotion in near future. Therefore, once the petitioner was granted the benefit of time bound higher pay scales, the same cannot be withdrawn merely on the ground that he had foregone the promotion offered to him subsequent to grant of higher scale.

8. For the reasons aforesaid, the writ petition is allowed. The impugned order dated 07.07.2010 and 30.08.2010 are hereby quashed. The communication dated 04.02.2011 vide which recovery of Rs. 16,870/- has been ordered, is also quashed. The writ petition is disposed of, accordingly.