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**(2013) 07 P&H CK 0383**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 651 of 2006**

Sarwan Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 18-07-2013

**Acts Referred:**

**Citation :** (2013) 172 PLR 156 : (2014) 1 SCT 767

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Advocate :** Vikas Chatrath, for the Appellant; Ranbir Singh Pathania, DAG, Punjab, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

K. Kannan, J.—The petitioner who is retired Mechanic from the Punjab Roadways has a grievance that in the order of the General Manager his twin pleas namely (i) in the manner of calculation of similar terminal benefits the last drawn pay has not taken note of the personal pay and allowances attached to his salary as relevant for computation and (ii) that the annual increment due to him on a relevant date, had not been accorded to him. As regards the first contention of what should be taken as pay and allowances, the learned counsel would refer me to decision already rendered by this Court while interpreting the meaning of pay under the Punjab Civil Service Rules. I do not propose to reproduce the Rules since the same matter has been considered by this Court in Rameshwar Kaushik Vs. State of Haryana and others in C.W.P. No. 8058 of 2009 dated 25.02.2010 that considered the very same issue of a person who claimed for a similar relief. This Court, after referring two earlier decisions in Radhe Krishan Sharma Vs. State of Haryana 1993 (1) SCT 58 and Wazir Singh Garg Vs. Chief Secretary to Government of Haryana and others 2003(2) SCT 143 held that special pay forms part of pay and it could also be added for computation of pension. I, therefore, uphold the contention that in the manner of reckoning the pay drawn for pension, the special pay accorded to him must also be added.

2. As regards the second contention that his increment had not been properly given, the plea is resisted on a factual contention that after his appointment, he earned his first annual increment on 04.05.1975 and that he was promoted as a Mechanic on 23.01.1976. On such promotion, he was already afforded an additional increment for assumption of additional charge but instead of giving him an annual increment, which would have normally fallen in May 1976, the increment was provided only in January 1977 in the following year by computing the increase that was given to him in January at the time of his promotion. The counsel would argue that the increment that he earned on his promotion was in view of the relevant rules and instructions that earned for him an additional increment on assumption of additional charge and that would be totally irrelevant for the purpose of considering his claim for annual increment which normally fell in May of every year. The counsel would contend that as per the definition of Civil Service Rules 4.7, the annual increment always arose after 12 months after the period when the previous increment had been given and at any point of time of service if the first increment had been at a particular month, the same will continue for the rest of the service period.

3. Rule 4.7 deals with the provision for increment which reads as follows:-

An increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld from the Government employee by a competent authority if his conduct has not been good or his work has not been satisfactory. In ordering withholding of an increment; withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect of future postponement.

This rule merely provides for circumstances when it can be withheld and does not make any reference about either a provision for an increment on appointment to a higher post with additional responsibility nor does it refer to the period when there will be a recurrent action for increment. Rule 4.9 prescribes the conditions on which the service counts for increment in time scale. Rule 4.9 (a) reads as follows:-

All duty in a post on a time-scale counts for increment in that time-scale.

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment.

4. An example is provided in Note III that describes a situation of a person, who is officiating in post proceeds on training or to attend a course on instruction and thus treated on duty. These periods of duty would also count for increment in the post in which he was actually officiating prior to his being sent for training. These can be seen to be an obvious corollary to a situation where as a consequence of his continuing in duty, he would earn his normal increment. The exceptions provided under the Rule relate to the period of training as probationary inspectors which do not apply in this case. The other clauses providing for

increments are not applicable and hence not produced. Rule 4.9A deals with annual increments and the provision would require to be reproduced since the petitioner's claim is that the annual increment had not been given to him by the only fact that an additional increment had been given and the assumption of higher responsibilities in a promotion post within one year from the date when usual annual increment was due. This rule reads as follows:-

Notwithstanding anything contained in the foregoing rule, the annual increment shall be allowed with effect from the first day of the month in which this fell due under the normal rules regulating increments.

5. As I understand the provision, the annual increment is considered only for a particular post at a time scale. It will be wrong to assume that the increment would invariably fall on a particular date right through the service in respect of whether there had been an increment earned even before the period when the normal increment was to have fallen due in an eventuality of promotion earned before a full term of 12 months and when an additional increment is provided. In such a situation, I would reckon that the annual increment will fall only after 12 months from the day he is afforded a new time scale in the promotion post.

6. I, therefore, reject his plea that the petitioner had been denied the annual increment at the appropriate time. It should be noticed that the petitioner himself had stayed in service for another two decades after the time when he was promoted and it was too late in the day to open the issue which has been closed. The counsel would argue that his entitlement ought not to be seen from the fact that he had not claimed earlier and that his right can be restricted only to the period of 38 months prior to the day when he retired but I do not think that such consideration is necessary in the light of what I have reasoned that there was no scope for providing for annual increment after he assumed higher post within 12 months, especially when he had earned increment even within a period of 12 months along side his promotion and assumption of higher responsibilities.

7. The writ petition is allowed in part only in so far as it seeks for refixation of pay that included his special pay for consideration of pension. The petitioner is entitled to such a consideration and the pension shall be computed afresh and the arrears computed on the above basis shall be disbursed within 12 weeks with interest at 9% per annum. The writ petition is allowed in part and the impugned order is quashed to the above extent.