
(2013) 02 P&H CK 0201
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 2077 of 2012 (O and M)

State of Haryana and Others	Vs	APPELLANT
Dev Raj		RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2013) 2 SCT 101

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : B.S. Rana, A.A.G., Haryana, for the Appellant; Naveen Daryal, for the Respondent

Judgement

A.K. Sikri, C.J.

C.M. No. 5466-LPA of 2012

There is a delay of 47 days in filing the appeal.

For the reasons stated in the said application, delay is condoned.

Disposed of.

LPA No. 2077 of 2012

1. The question which arises for consideration in this appeal is as to whether the respondent herein would be entitled to third ACP under the Haryana Civil Services (Assured Career Progression) Rules, 2008 (hereinafter referred to as Rules 2008). Under these Rules, which are applicable to the posts of Group A, B, C and D employees, when an employee stagnates at a particular post, he is entitled to first up-gradation after 10 years of service in that grade, second up-gradation after 20 years and third up-gradation after 30 years. Needless to mention, the scheme of ACP is about granting a person pay up-gradation, when functional considerations do not permit him to rise in hierarchy. It means that though a person may be eligible for promotion to a higher post, however, he is

not able to secure the promotion because of want of vacancies in the higher post and, thus, keeps stagnating at his existing post. In such circumstances, the ACP Scheme comes as a morale booster, as per which, though he continues to perform the same job as before, but moves into the prescribed higher pay band and grade pay, subject to his eligibility. In the present case, the respondent herein was appointed as Peon in the year 1971. He was promoted as Clerk on 01.01.1975. However, thereafter, he could not get immediate promotion and stagnated at this post for quite some time. After promulgation of the aforesaid Rules, he was given first financial up-gradation on 01.01.1994 and second financial up-gradation on 27.05.1995. In normal course, third up-gradation would have become due in May, 2005. However, this was not given to him on the ground that the respondent had got one promotion in his service career i.e. from Peon to Clerk and, therefore, out of the three ACPs, which are available under Rules 2008, it has to be reduced by the number of promotions and as one promotion was given, the respondent was held not entitled to third ACP. The respondent filed writ petition claiming third ACP as well, which was allowed by the learned Single Judge, holding that since the respondent had stagnated at the post of Clerk for 30 years, third financial up-gradation would also be admissible.

2. The State of Haryana is in appeal before us, challenging the aforesaid orders of the learned Single Judge. As mentioned above, the matter is governed by Rules 2008, which are framed under proviso to Article 309 of the Constitution of India. The relevant Rules would be Rules 7, 11 and 12, which read as under:-

7. Eligibility for Grant of ACP grade Pay under the general ACP scheme:

(1) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the first ACP grade pay (given in column 4 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 10 years of regular satisfactory service and has not got any financial upgradation in these ten years with reference to the functional pay structure of the post to which he was recruited as a direct entrant. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 1.1.2006.

(2) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the second ACP grade pay (given in column 5 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 20 years of regular satisfactory service and has not got any financial upgradation in the last ten years. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 1.1.2006.

(3) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the third ACP grade pay (given in

column 6 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 30 years of regular satisfactory service and has not got any financial upgradation in the last ten years and has not got more than two financial upgradation so far. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 1.1.2006.

(4) In case of a Government servant who gets promoted, he will be considered for the next ACP grade pay after he completes 10 years of regular satisfactory service in the promotional post without any financial upgradation and will be entitled to the next ACP grade pay with reference to the grade pay of the promotional post he holds:

Provided that a Government servant shall not be entitled to avail ACP upgradation if, he has already availed of three financial upgradation of any kind in his career.

Note. For the purpose of these rules, "regular satisfactory service" means continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government before re-organization, commencing from the date on which the Government servant joined his service after being recruited through the prescribed procedure or rules etc. for regular recruitment, in the cadre in which he is working at the time of being considered his eligibility for grant of ACP pay band and grade pay under these rules and further fulfilling all the requirements prescribed for determining the suitability of grant of ACP pay structure.

Explanation. The ACP pay structure upgradation in the form of first ACP grade pay will come into play only if a Government servant has not got the benefit of at least one grade pay upgradation within the prescribed period of first 10 years. Similarly, the second and third ACP grade pays will come into play only if a Govt. servant does not get two upgradations after twenty years of service and three upgradations after thirty years of service. If within 10 years of service, the Government servant has already got at least one financial upgradation or within 20 years of service, the Government servant has already got at least two financial upgradations, or within 30 years of service, the Government servant has already got at least three financial upgradations, benefit of these rules will not be extended to such employees save if otherwise provided in these rules.

11. Grant of Assured Career Progression grade pays:

(1) The rule 7 and 8 only prescribe eligibility conditions for placement in the relevant ACP pay structure and does not authorize automatic placement in ACP pay structure in which Government servant is eligible to be placed under these rules. The authority competent to grant promotion in case of a Government servant shall be required to pass suitable orders for grant of ACP pay structure under these rules, authorizing the placement of a Government servant in the appropriate ACP pay structure. Before passing such order:-

(a) the authority competent shall ensure that if there is a Departmental Promotion Committee, such Committee should consider the cases for grant of ACP pay structure as if these were cases for determining the suitability for promotion and that its recommendations are considered in the manner as considered in case of functional promotions;

(b) the authority competent shall ensure that the conditions and provisions laid down in these rules or any other order/instructions etc. issued under these rules or otherwise with this purpose, are strictly adhered to;

(c) the authority competent shall ensure that the number of financial upgradations granted to a Government servant is counted with reference to the pay scale or pay structure of the post to which the Government servant was inducted as a direct recruit fresh entrant. For this purpose, each promotion, each grant of ACP grade pay or any other upgradation will be counted as one upgradation. The benefit of ACP shall not be extended to a Government servant if he has already availed three financial upgradations in his career by way of ACP or otherwise;

(d) the authority competent shall also ensure compliance with the provision of these rules or any other rules or instructions issued by Government.

Explanation. The "authority competent" for the purpose of this rule would mean the authority competent in case of promotion for the respective categories of posts.

(2) The ACP pay structure so granted shall be effective from the date it is due and not from the date on which the orders are issued by the competent authority, if the orders so issued by the competent authority has been issued on a date which is different from the due date of eligibility:

Provided that the Government servant shall draw his pay only after the orders for granting such pay structure are issued by the competent authority in the relevant ACP pay structure.

(3) In case of Government servants who are drawing pay in a pay scale other than the functional pay scale of the post held by them on or before the date of notification of these rules, there shall be no need to pass any orders under the provisions of sub-rules (1) and (2) above and they shall be entitled to draw their pay in the ACP pay structure corresponding to the pay scale in which they are drawing their pay:

Provided that this deemed grant of ACP pay structure will not affect his entitlement for revised pay structure in which he will be placed as a consequence of application of these rules. Such Government servants shall be placed in the appropriate revised ACP pay structure as per their eligibility under these rules for the purposes of fixation of pay as a consequence of application of these rules.

12. Admissibility of stepping up in certain cases:

If the service rules provides for or circumstances warrant filling up of a post through direct recruitment as well as through promotion, benefit of stepping up of pay band and grade pay shall be admissible to the directly recruited senior Government servant if the junior promoted government servant junior to him is drawing salary in higher pay band and grade pay on the basis of the benefit of ACP upgradation. However, the benefit of stepping up shall not be admissible to a promotee if he has already got three financial upgradation as provided under these rules in his service career,

3. As is clear from the reading of Rule 7, it grants three upgradations as ACP benefits on the completion of 10 years, 20 years and 30 years" regular satisfactory service to a person who has not got the financial upgradation in these years. On the other hand, Rule 11(1)(c) clarifies that the number of financial upgradations granted to a government servant are to be counted with reference to the pay scale or pay structure of the post to which the government servant was inducted as a direct recruit fresh entrant. Each promotion given to the employee will reduce benefit of ACP. Thus, the conjoint reading of the aforesaid provisions would clearly show that though an employee is given the benefit of maximum three ACPs under the Rules, the number of promotions are also to be counted as benefit granted and to that extent the benefit of ACPs has to be reduced. In the present case, since one promotion was earned by the respondent i.e. from the post of Peon to Clerk, he would be entitled to two up-gradations only.

4. Learned counsel for the respondent has referred to orders dated 07.07.2009 issued by the State of Haryana clarifying the aforesaid Rules. He submits that as per the said clarification, irrespective of his promotion from the post of Peon to Clerk, the respondent would be entitled to three up-gradations. He has relied upon sub para (ii) of Rules 2008, which reads as under:-

(ii) When an employee gets promoted, for the purpose of admissibility of ACP subsequent to the promotion, his service in the promoted cadre/post will be taken into consideration to determine if he has stagnated at that stage. For example, if a peon gets promoted as clerk, his case will be reviewed after 10, 20 and 30 years as clerk and ACP will be given with reference to the pay scale of clerk.

5. If this is read in isolation, probably the contention of the respondent may appear to be correct. However, it is not so, as the aforesaid sub para is immediately followed by sub para (iii), which reads as under: -

(iii) As per General ACP Scheme, an employee can get a maximum of three ACPs in his career. This means, if the employee has got ACP up-gradation in the post in which he was initially recruited, then in the promotional post, the number of ACPs will be reduced after adjusting the number of ACPs he got in the post of his initial recruitment. However, direct recruitment to a higher post will not debar for the entitlement of ACP Scheme. An employee initially appointed to a lower post

and subsequently appointed to a higher post through direct recruitment or limited competition of existing employee will also be entitled to full range of ACP.

6. We are, therefore, of the opinion that the learned Single Judge was not right in giving the benefit of third ACP to the respondent. Learned Counsel for the respondent has sought to take umbrage under Rule 12 of Rules 2008 and submits that since the junior of the respondent had started getting higher pay, because of that upgradation, the respondent also should have been stepped up. This Rule, however, makes it clear that benefit of stepping up is not to be admissible to a promotee, if he has already got three financial upgradations, as provided under these Rules in his service career. Since, in the instant case, the respondent has been given three financial upgradations, one in the form of promotion from the post of Peon to Clerk and other two as ACPs, Rule 12 also would not apply in this case. As a consequence, the present appeal is allowed, order of learned Single Judge is set aside and the writ petition filed by the respondent herein is dismissed.