

**(2001) 03 P&H CK 0179**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 8960 of 1999

Partap Singh Narwal

APPELLANT

Vs

State of Haryana

RESPONDENT

**Date of Decision:** March 7, 2001

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 226, 309
- Haryana Industrial Training and Vocational Education Department (Group A) Service Rules, 1989 - Rule 13, 13(1), 9(1)

**Hon'ble Judges:** V.S. Aggarwal, J; Amar Bir Singh Gill, J

**Bench:** Division Bench

**Advocate:** R.K. Malik, for the Appellant; Ritu Bahri, DAG, for the Respondent

**Judgement**

V.S. Aggarwal, J.

Petitioner Partap Singh Narval is Assistant Apprenticeship Advisor Junior (A Group) in Industrial Training and Vocational Education, Haryana, Chandigarh. He seeks quashing of the order dated 18.6.1998 by which the claim of the petitioner for the grant of scale of Rs. 2200-4000 had been rejected. The petitioner seeks a direction that he should be granted the said scale.

2. The facts alleged are that the petitioner is a graduate in Engineering. He was appointed as Assistant Apprenticeship Advisor (Technical) Group A Junior and joined as such on 9.9.1996. The said post is governed by the statutory rules called the Haryana Industrial Training and Vocational Education Department, (Group-A) Service Rules, 1989 (forshort "the Rules"). Under the said Rules, three posts namely, Assistant Director Technical Group-A Junior, Principal Technical Industrial Training Institute Group-A Junior and Assistant Apprenticeship Advisor (Technical) Group-A Junior are of equal status. All the above three categories are entitled to be promoted to the post of Deputy Director Technical/Deputy Apprenticeship Advisor (Technical) Group A Senior. When the pay scales were revised with effect from 1.4.1979, all the

three categories were granted the same pay scale i.e. Rs. 900-1700. There is only one post of Assistant Apprenticeship Advisor (Technical) Group-A Junior. Before 1996, the said post was lying vacant. On 30.3.1982, the pay scales of other two categories, namely, Assistant Director (Technical) Group-A Junior, Principal Technical Industrial Training Institute Group-A Junior were revised from Rs. 900-1700 to Rs. 940-2000 w.e.f 1.2.1981 but the claim of the petitioner was not considered. The petitioner submitted representation which has since been rejected. The petitioner claims that the impugned order rejecting his representation is not valid because the post of Assistant Apprenticeship Advisor (Technical) Group-A Junior can be filled up by direct recruitment or by promotion from the Assistant Director (Technical) Group-B. In this process, the post of Assistant Apprenticeship Advisor (Technical) Group-A Junior is higher post and Assistant Director (Technical) Group-B is a feeder post. The pay scale of the feeder post necessarily should be lower and in this process the petitioner cannot be denied his rightful claim to a higher scale.

3. In the written statement filed, it had been pointed out that the petitioner was appointed as Assistant Apprenticeship Advisor (Technical) Group "A" on 27.8.1996 on the recommendations of the Haryana Public Service Commission in the pay scale of Rs. 2000-3500. The petitioner cannot be given the pay scale of Rs. 2200-4000 because the Finance Department has rejected his claim. It is denied that the petitioner, in fact, can claim any higher scale.

4. In separate written statement filed by respondent No. 2, the plea raised is that the services of the petitioner is governed by the Haryana Industrial Training and Vocational Education Department (Group-A) Service Rules, 1998. These rules were framed under the proviso to Article 309 of the Constitution of India. As per Appendix "A" of these Rules, the pay scale of the post of the petitioner is Rs. 2000-3500. The post of Assistant Apprenticeship Advisor (Technical) Group-A Junior) remained vacant for a long time. The same was advertised in the scale of Rs. 2000-3500. The petitioner was selected. It is denied that the petitioner, indeed, is entitled to any higher scale.

5. During the course of arguments, the petitioner only raised one pertinent plea. He urged that the scale of the feeder post to the post which the petitioner is holding is identical and, therefore, the petitioner must be given a higher scale. The relevant part of Rule 9(1) of the abovesaid rules reads as under :-

"9( 1) Recruitment to the Service shall be made :-

(b) in the case of Deputy Director (Tech.)/Deputy Apprenticeship Advisor (Tech.) Group-A Sen-

(i) By promotion from amongst Assistant Director (Technical/Principal (Tech.) Industrial Training Institute, Group-A Junior/Assistant Apprenticeship Advisor (Technical) Group-A Junior; or

- (ii) by direct recruitment if no officer is found eligible for promotion; or .
- (iii) by transfer or deputation of an officer/official already in the service of any State Government or the Government of India;
- (c) in case of Assistant Director/Principal (Tech.) I.T.I. Group A Junior/Assistant Apprenticeship Advisor (Technical) Group-A Junior :-

- (i) 50% promotion from amongst Assistant Director (Technical) Group- B/Principal (Technical), I.T.I. Group B; and
- (ii) 50% by direct recruitment; or
- (iii) by transfer or deputation of an officer/official already in the service of any State Government or the Government of India."

It is abundantly clear from the aforesaid that for the post of the petitioner 50% is to be filled up from amongst Assistant Director (Technical) Group B and 50% by direct recruitment. So far as Assistant Director (Technical) Group B is concerned, the petitioner has drawn a chart which is not disputed before us. It indicates that the scale of the feeder post is same as that of the petitioner. The said chart reads as under :-

	Higher Post	(Feeder Post)
	Assistant	
	Assistant	Director
	Apprenticeship (Technical)	
	Advisor	Group-B/Principal
	(Tech.)	(Technical)
	Group-A	I.T.I.
	Junior	Group
		B.
Before	400-	350-900
1.4.1979	1100	
w.e.f.	900-1700	800-1600
1.4.1979		
w.e.f.	No	900-1700
1.2.1981	change	
1.1.1986	2000-3500	2000-3500
1.1.1996	6500-10500	6500-10500

It is clear from the aforesaid that the post of Assistant Director (Technical) Group B is a feeder post and presently has the same scale as that of the petitioner.

6. Ordinarily, this Court will not interfere in the matter as to what scale has to be given to a particular employee. This Court even does not have such expertise. It is for the expert body to consider the scale that should be given to the employees. However, if the order by itself is discriminatory or unconscionable interference will be called for.

In the case of Harkishan and Anr. v. State of Punjab and Anr., 1987(5) S.L.R. 539, this Court while considering a similar question held as under :-

".....The anomaly is, therefore, writ large, because it would be highly irrational to place a junior post and a higher post in the same scale of pay. We are, therefore, unable to understand as to why the Government rejected the representation of the petitioners and declined to remove the anomaly; in the pay scale of the Patwaris and the Assistant Revenue Clerks."

A Division Bench of this Court in the case of P.L. Goyal, Additional District and Sessions Judge v. State of Haryana and Ors., 1990(5) S.L.R. 108 : 1991(1) SCT 177 (P&H)(DB), deprecating the practice that a subordinate person should be getting a higher scale, in paragraphs 9 and 10 of the judgment, this Court held as under :-

"9. A person, who is junior to the petitioner in the Subordinate Judicial Service but is enjoying the Selection Grade or a person, who is senior to the petitioner but was ignored for promotion to the Superior Judicial Service because of his service record, would continue to get the grade of Rs. 4100- 5300 with annual increments to reach the highest limit of the time scale; whereas the petitioner, on promotion, though his pay which he was getting as a member of the Subordinate Judicial Service has been protected would be denied the annual increments till in the lower time scale the protected pay gets adjusted. This is on the face of it unreasonable, arbitrary and does not stand the test of rule of equality.

10. Since Rule 13 of the Rules became in the way of the petitioner in getting at least the same pay scale which he was getting as a member of the Subordinate Judicial Service, we are of the considered opinion that Rule 13(1) of the Rules, deserves to be struck down as it violates the rule of equality enshrined in Articles 14 and 16 of the Constitution and we order accordingly."

Subsequently, in the case of Sunder Lal Jain and Ors. v. State of Haryana and Ors., 1995(1) S.L.R. 215 : 1995(1) SCT 564 (P&H) (DB), when a similar question again cropped up, this Court had held as under :-

".....The action of the respondents in equating the promotional posts with that of inferior posts in the matter of pay scale would obviously result in restricting the natural aspiration of human being to go higher and higher in service graph and would, thus, be wholly arbitrary. A direction is, thus, issued to forthwith fix the pay of petitioners in the scale immediately higher than the one they were getting on a lower post from which they were promoted. This Court is of the considered view

that the authorities responsible for fixing the pay scales of petitioners should immediately get down and see through that the justice is done to the petitioners by fixing them in a pay scale commensurate to their nature of duties and post. This exercise must be done within six months from today. However, petitioners be paid forthwith all the arrears that might be due to them by fixing them in a pay scale immediately higher to that they were getting on the post from which they were promoted. This petition deserves to be allowed with costs quantified at Rs. 3000/-."

7. Once that in the position that a lower post, which is the feeder post to the petitioner, is having a similar scale, it would be appropriate that the petitioner's claim should be considered and granted higher scale as may be deemed appropriate by the State Government.

8. During the course of arguments, it was pointed out that the petition is highly belated. We find no reason to accept this plea because the petitioner was only appointed to the post in the year 1996, Therefore, he cannot be blamed if the scales were fixed much earlier. His case of action arose when he was appointed.

9. For these reasons, we accept the writ petition and quash the impugned order. It is directed that the State in terms of what has been recorded above would consider the claim of the petitioner for a higher pay scale as may be deemed appropriate by the State Government. The parties are left to bear their own costs.

10. Petition allowed.