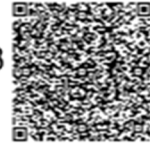


After hearing learned counsel for the appellants, we are of the considered view that the delay on the part of the State is neither deliberate nor intentional, it would be in the interest of justice, if the delay is condoned and the appeal is heard and decided on merits.

Consequently, this application is allowed and the delay of 166 days in filing the appeal is condoned.

Main Appeal

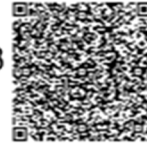
1. The appellants have challenged the judgment of learned Single Judge dated 03.07.2024, whereby it has been directed that the pay of the respondent be stepped up to bring it at par with that of his junior from the date the anomaly arose.
2. Pursuant to previous order dated 05.02.2025, affidavit of Mr. Pawan Kumar Attri, Administrative Officer has been filed by learned State counsel. The same is taken on record.
3. Learned counsel for the appellants submits that the case of the respondent was entirely different from the case of his junior as the respondent had been appointed to the post of Deputy District Attorney as a direct recruit while his junior who was working as Assistant District Attorney had been promoted to the post of Deputy District Attorney. She had been granted the benefit of second ACP and therefore, she was drawing a higher pay than the respondent. While relying on Rule 57 of Haryana Civil Services (Pay) Rules, 2016 (hereinafter referred to as the Rules of 2016), he submits that there are situations wherein the grant of higher pay to a junior would be justified.



4. Learned counsel for the respondent/Caveator submits that as the respondent was senior to one Ms. Palvinder Kaur Nadda in the merit list, at the stage of initial appointment as Assistant District Attorney and the respondent had applied for the post of Deputy District Attorney through proper channel and having been appointed as such, he was entitled to stepping up of pay at par with Palvinder Kaur Nadda. He further submits the plea of the State that the respondent cannot be granted relief as his case is covered by Rule 57(e) of the Rules of 2016, is erroneous inasmuch as the pay of the respondent was not fixed under Rule 9 but was fixed under Rule 10, he being a subsequent appointee and the case of the respondent for stepping up of pay is squarely covered by Rule 58 of the Rules of 2016.

5. Heard.

6. The respondent and said Palvinder Kaur Nadda are stated to have been appointed as Assistant District Attorney on 28.03.2003 in pursuance to the advertisement issued by the State Government in the year 2002. In accordance with their merit, the respondent was placed at serial No.157 while Palvinder Kaur Nadda was placed at serial No.159 in the seniority list. In 2012, the respondent seeking appointment as Deputy District Attorney had applied for the said post through proper channel. In the meanwhile, both having completed 8 years of regular service were granted benefit of first ACP scale w.e.f. 01.04.2013. The writ petitioner/respondent was selected as Deputy District Attorney and joined as such on 05.02.2014. He sought the benefit of pay protection in terms of Rule 10 of the Rules of 2016, whereby the pay of an employee who has been appointed to a higher



post after applying through proper channel has to be protected and it has to be fixed equal to the basic pay already drawn by him. The relevant extract of Rule 10 (ii) of the Rules of 2016 is reproduced hereunder:

“10. Fixation of pay on subsequent appointment to a post higher or identical to Functional/ACP Level.—

On subsequent appointment to a post of pay scale higher than or identical to Functional or ACP Pay scale in the same or any other department of Haryana Government where the application for the same has -

xxx xxx

(ii) been submitted through proper channel, the pay shall be fixed—

(a) at entry level pay of the post; or

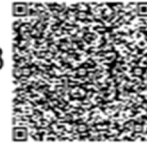
(b) equal to the corresponding cell if available in the functional level of the new post; or

(c) at the next cell above the existing cell if the same cell is not available in the functional level of the new post.”

xxx xxx”

Thereafter, vide order dated 07.03.2014, the pay of the respondent was protected and his pay was fixed by granting him only difference of grade pay of the promotional post.

7. It is apposite to note that the appointment to the post of Deputy District Attorney is through two channels, i.e., 75% by way of promotion and 25% by way of direct recruitment. The respondent had applied through proper channel and had been appointed to the post of Deputy District Attorney. He had been continuing in service as Assistant District Attorney prior to his appointment as Deputy District Attorney and there was no break in his service. On 01.04.2019, Ms. Palvinder Kaur Nadda was granted the benefit of second ACP after completing 16 years of service, and admittedly



began drawing a pay higher than that being drawn by the respondent. Thereafter, she was subsequently promoted to the post of Deputy District Attorney on 27.05.2019 although she was junior to the respondent as Assistant District Attorney.

8. We do not find any merit in the contentions of the learned State counsel that in view of Rule 57(e) of the Rules of 2016 as Palvinder Kaur Nadda had been granted the benefit of second ACP, therefore, the respondent would not be entitled to stepping up of pay at par with his junior.

The Rule 57(e) of the Rules of 2016 is reproduced hereunder:

“Chapter - XII

Stepping up of Pay of senior Government employee

57. Instances where stepping up of pay of senior is not admissible:—

[In the instances listed below, stepping up of pay shall not be admissible even if a junior Government employee is drawing more pay than that of senior Government employee:-

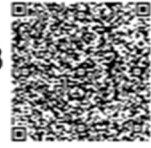
(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) Where a person is promoted from lower to a higher post, his pay is fixed with reference to the pay drawn on the lower post under rule 13 and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example, a Junior Scale Stenographer on promotion to the post of Senior Scale Stenographer gets his pay fixed under rule 13 with reference to the pay drawn on the post of Junior Scale Stenographer, whereas the pay of direct recruit Senior Scale Stenographer is fixed under rule 9. In such cases, the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up.



(f) xxx xxx xxx”

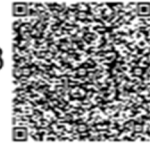
It is apparent from the bare reading of Rule 57(e) of the Rules of 2016 that it visualises and justifies higher pay for a promotee vis-a-vis a direct recruit to the same post. The rationale behind it appears to be that the promotee was in service earlier and earned benefit of increment/ACP in terms of number of years of service. However, in the case at hand, the respondent had been in continuous service at par with junior and was higher in merit and seniority on the post of Assistant District Attorney.

9. We are in agreement with the submission of learned Counsel for the respondent that the instant case is covered by Rule 58 of the Rules of 2016. It is stipulated in Rule 58 that stepping up of pay of senior at par with junior is permissible to remove the anomaly in a situation where both the senior and junior belong to same cadre and the posts to which they have been promoted or appointed are in the same cadre or when the pay scale of both the lower and higher posts to which the junior and senior are entitled to draw are identical. Relevant extract of the same is reproduced below:

“58. Instances where stepping up of pay of senior is admissible.— In case of any anomaly between junior and senior Government employee which shall not cover in the list of instances as laid down in rule 57 and satisfy the conditions given below shall be sent to Finance Department alongwith documents required under rule 59 through Administrative Department for consideration:-

(a) both the junior and senior Government employee should belong to the same cadre and the posts in which they have been promoted or appointed are identical and in the same cadre;

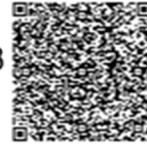
(b) the pay scale of the both lower and higher posts in which the junior and



*senior Government employees are entitled to draw pay are identical;
(c) the anomaly is directly as a result of the application of these rules.”*

10. The respondent and his junior, both joined service in the same cadre on the post of Assistant District Attorney and ultimately in 2019 were fused in the same cadre, that of Deputy District Attorney. They were both drawing identical pay scale on the lower post as well as the higher post. It is apparent that it was only account of grant of the second ACP to the junior on 01.04.2019 that she began drawing a higher pay than the writ petitioner. It is trite that a junior cannot draw higher pay than that being draw by his senior. Reference can be made to the judgment of the Supreme Court in the case of ***Union of India and others Vs. Shri C.R. Madhava Murthy and another, 2022 INSC 397***, wherein somewhat similar argument was raised that senior was not entitled to step up of pay in view of the junior drawing more pay on account of upgradation under the ACP scale and the same had not found favour with the High Court of Karnataka and the judgment of the High Court of Karnataka was upheld by the Supreme Court. The relevant extract of the judgment of the Supreme Court is reproduced hereunder:

“6. Therefore, it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the appellants herein to step up the pay of the original writ petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for.”



11. Consequently, the appeal is dismissed being devoid of any merits.

12. The pending miscellaneous application(s) is also disposed of as such.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

25.02.2025
sandeep

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No