

GOVERNMENT OF HARYANA

FINANCE DEPARTMENT

No.: 6/57/2007-3PR(FD)

Dated: 23rd June, 2009

OFFICE MEMORANDUM

TO

1. All the Administrative Secretaries to the Government of Haryana.
2. Registrar (General), the High Court of Punjab & Haryana.
3. All the Divisional Commissioners in Haryana.
4. All the Heads of Departments in Haryana.
5. All the Deputy Commissioners in Haryana.
6. All the Sub Divisional Officers (Civil) in Haryana.

Sub: Clarification regarding grant/withdrawal of grant of benefit under the schemes namely:

- i. **Additional increment(s) at 10th and 20th years point in time scale;**
- ii. **Additional increment(s) on completion of 8 and 18 years of service;**
- iii. **Higher Standard Pay scales on completion of 10/20 years of regular satisfactory service; and**
- iv. **Other schemes in the nature of Assured Career Progression scheme**

References:

- i. Letter No. 9/9/91-3PR(FD), dated 14.5.1991;
- ii. Letter No. 9/9/91-3PR(FD), dated 9.4.1992;
- iii. Letter No. 1/138/92-1PR(FD), dated 7.8.1992;
- iv. **Letter No. 1/34/93-4PR(FD), dated 8.2.1994;**
- v. **Letter No. 10/108/94-4PR(FD), dated 29.12.1995;**
- vi. Letter No. 1/34/93-4PR(FD), dated 1.4.1998;
- vii. Letter No. 2/3/98-5PR(FD), dated 7.12.1998;
- viii. **Letter No. 2/48/2000-5PR(FD), dated 23.7.2003.**
- ix. Judgement of Honourable High Court of Punjab & Haryana dated 9.1.2009 delivered in C.W.P. No. 4563 of 2007 (Title: P.C. Manchanda

and others Vs State of Haryana and others bunched with C.W.P. 9780 of 2008 and C.W.P. 12144 of 2008).

Sir,

Referring to the subject cited above, it is to make the appreciation of the issue clear that the issue of stepping up of the pay of a senior at par with that of a junior happens to be one amongst the most vexed, complicated and litigated upon issue that the government has faced since the first scheme of affording 'financial up gradation' to the targeted employees facing the hardship of stagnation consequent to the non availability of adequate number of posts in the promotional (functional) hierarchy was introduced. The aspect of issue and rationale behind the ACP schemes needs a clear understanding as at times it is perceived to be at conflict with the doctrine of 'senior must get more pay as pay compensates for responsibility being shouldered and determines status'. Though now with the revised structure of pay, where 'Grade Pay' has been introduced as a distinct component constituting the 'Pay' and it is the 'Grade Pay' that is to be regarded as determining the status in the hierarchy in a limited way some of the perceived sense of disparity is expected to be set to rest, yet while addressing some of the issues rooted in earlier schemes as also to be faced in times to come, a clear appreciation of and distinction between the issues relating to "financial up gradation based on length of service put in to offset the hardship of 'not been afforded an opportunity of functional promotion (or stagnation)' in terms of various ACP schemes" and other issues 'regulating stepping up of Pay to set off disparity' is required to be spelled out.

2. The entire rationale behind the ACP schemes hinges upon what was termed by the 5th Central Pay Commission (the Commission that formulated and recommended it as a structured scheme for the first time while dealing with reforms in structures of pay) as 'one needs more money as one grows old'. The distinctions and the rationale on which the schemes of ACPs are founded have been explained in greater details under clause 'Rule 1' of the 'Memorandum Explanatory to the Haryana Civil Services (Assured Career Progression) Rules' 1998 and 2006 respectively. Though these memorandums form a part of the respective Rules, they are very rarely read, understood and quoted while settling disputes or defending cases before a court of law. For the benefit of clearer

appreciation, the relevant extracts outlining the rationale are being appended as Annexure – II and III to this Memorandum as well.

3. As stands settled clearly and beyond ambiguity, parity can be sought to be established only amongst 'equally placed' beneficiary. In matters of 'service' and 'pay as a reward to service', there can be a large number of circumstances that would justify the 'distinction – doctrine of intelligible differentia' and would not permit the parity to be sought and sustained solely on routine rudimentary consideration of seniority in the hierarchy alone. Some of them have found a mention in the judgement under reference as well and they are:

(b) Parity of scales for senior and junior admit of exceptions:

9. The application of ACP scales have always to be done with reference to terms of the scheme itself and it would be wrong to apply **the principle that a senior would always be entitled to a higher pay merely because a junior had obtained to such a higher scale.** There could be several instances when such a situation may not happen. Stepping up of pay on the only ground that a junior is drawing more pay will be untenable **where a junior is enjoying special pay for some arduous work and earns a higher pay, as pointed out by the Hon'ble Supreme Court in Surinder Kumar V. Union of India (2005) 2 SCC 313; AIR 2005 SC 1103.** The parity of pay shall only be in context of the constitutional principle of "Equal Pay for Equal Work" enacted through Article 39(d) of the Constitution of India. A similar situation may also result **when an adhoc promotee draws a higher pay on earlier officiation on a higher post, when he may have earned increments. When the previous pay is taken into account (pay protection) of fixing his pay on promotion, his senior cannot expect stepping up of pay***. This situation was considered in the case of **Union of India Vs. R. Swaminathan (1997) 7 SCC 690.** Another situation that the courts have dealt with is that **when a direct**

* Such a situation would arise when as per the condition of CSR, a person joins the service afresh after being in the employment of Haryana Government elsewhere. In such a situation, the pay being drawn by him on such eligible 'previous employment' is protected in the new employment even where the earlier employment happened to be in a relatively higher scale of pay. As he carries his protected pay in the new employment, when promoted to the next stage in hierarchy, his pay may appear to be higher than the persons promoted earlier than him.

recruitee was offered scales attached to the post, when the same post was earlier meant for adhoc appointees of lower scales on contract, such an adhoc appointee cannot ask for stepping up of his pay if under a scheme^{**} his service are sought to be regularised and his pay is fixed at the scale which he would have earned if his services have been regularised on that day. This situation was noted in *State of Karnataka Vs. Sh. G. Hallapa* reported in (2002) 4 SCC 662. The(re) may be another instance, when there are two streams of promotional avenues and when the promotional post is occupied from two different feeder cadres, the issue of stepping up may not arise. This situation was dealt with in a decision of the Hon'ble Supreme Court in the case of *Union of India Vs. O.P. Saxena* (1997) 6 SCC 360.

[Emphasis has been added and expression in italics font has been inserted for highlighting relevant instances for the purposes of this Memorandum.]

4. In addition to the four specific situations quoted in the judgement under reference, there are a few other situations that are frequently encountered and where the issue of stepping up may not arise at all. Some of them are:
- i. When the same post is occupied by both promoted and directly recruited incumbents. A promotee would carry his pay from the feeder post and get fixed in terms of the fixation formula relevant to him and the pay of a direct recruitee would be fixed in terms of the conditions of his appointment and the rule relevant to such an induction. The inductions 'by way of promotion' and 'by way of direct recruitment' are entirely different situations and 'the principle that a senior would always be entitled to a higher pay merely because a junior had obtained to such a higher scale (doctrine of higher pay for shouldering higher responsibility)' would not be applicable here.
 - ii. When a senior in the feeder post was found unfit for promotion and a junior was found fit and was promoted earlier. The senior in the feeder post was not debarred from earning annual increments as a consequence of 'being adjudged unfit' and was found 'fit to be promoted at a later stage', and while being

^{**} Such like situation arises in several situations. The regularization of services of adhoc and daily wage employees in early 90s in Haryana is one such instance.

promoted carried his pay to the promotional post. The junior promoted earlier, though would be senior to him in the promotional post, yet he cannot claim stepping up as both of them were equally permitted to carry their respective pay from the feeder post and there had been no discrimination on this account.

5. Appreciating the rationale behind the ACP schemes, it was devised to address and offset the financial hardship consequent to 'non requirement/availability of posts in the promotional hierarchy' promising financial up gradation on substantial promotion. The schemes promised at least two financial up gradations (now three in terms of ACP Rules 2008) over a continuing and corresponding minimum length of service (of 10 and 20 years for instance in terms of ACP Rules, 1998). This minimum length of service and the corresponding 'minimum financial up gradation' was to be reckoned from the date and scale of pay in which the individual eligible beneficiary entered into (directly recruited as a fresh entrant) the government service. These schemes were 'in lieu of non availability of adequate avenues of promotions and consequential financial up gradations' and not 'in addition to whatever avenues of promotions and consequential financial up gradations available and availed' under the normal circumstances. To that extent, the scheme was an exception to the established norm (Rule) that a special (other than the normal annual increment) financial up gradation is justified only when the 'higher responsibility is shouldered by way of occupying a higher promotional post in the hierarchy'. The scheme promised at the least two (or three now in terms of 2008 ACP Rules) financial up gradation with the rider that such up gradations were not otherwise availed or forthcoming under the normal channel of exhausting or availing the functional promotions. So wherever the normal channel of promotional avenues are good enough to offer the requisite up gradations within the minimum prescribed time frame, this exceptional scheme had to keep quite, to be sprung into force only when the normal channel was not good enough to that end. That is why the benchmark scale was the 'functional scale of pay attached to the post against which the government servant was recruited as a direct recruited fresh entrant'. The rationale was that every employee must get at the least two financial up gradation counted from where he entered into service. The idea was not to give him 'an additional up gradation whenever he exceeds a predetermined minimum length of service in a scale of pay'. For instance, if the

eligibility in terms of minimum time frame for getting afforded the said two financial up gradations are 10 and 20 years under some ACP scheme, wherever an employee gets two up gradations under the normal channel of service conditions (promotions, etc.) say within 5 years itself (less than 10 or 20 years) and thereafter continues at the same place in terms of scale of pay for a further 25 years even, he has no cause to feel aggrieved as what the ACP scheme envisaged to promise him after 10 and 20 years stood realised by him too soon (within 5 years in this example) and, further, the objective sought to be achieved was to afford him at least one and two up gradations at the turn of 10 and 20 years of service, something that stands achieved after 5 years alone.

6. The differentiating principles based on the rational of the scheme would thus be to see:

As to whether at the turn of the respective minimum length of service (10 and 20 years for instance) counted from the date on which the individual beneficiary employee was recruited into government service as a direct recruited fresh entrant, did he get the requisite number of financial up gradation promised by the scheme with reference to the scale of pay in which he was inducted as fresh entrant by way of direct recruitee?

In all such cases where he got it under normal circumstances without applying the ACP scheme, he would not be eligible to the benefits offered by the scheme.

7. The differentiating principle here is that 'such of the employees belonging to Group C and Group D categories across the employment in government and across all relevant scales of pay who have not got the requisite number of financial up gradations (with reference to the scale of pay in which they were recruited as 'a direct recruited fresh entrant in a regular fashion') within the respective minimum length of service as prescribed in the relevant ACP scheme constitute a class in themselves' and the 'objective sought to be achieved through the relevant ACP scheme happens to be to set right the hardship faced by this class of employees by affording financial up gradation faced by them due to stagnation'. The guiding principle and objectives sought to be achieved in the ACP schemes are, therefore, entirely different than the 'doctrine of higher pay for shouldering higher responsibility'. A large number of perceived disparity based on the erroneous presumption that the ACP schemes have to be consistent also with the

'doctrine of higher pay for shouldering higher responsibility (promising higher pay to a senior in the hierarchy justifying stepping up of pay)' would thus be untenable. Some of such instances are as given below:

- i. A junior in the hierarchy who, due to his personal eligibility under the ACP scheme (guided by the criteria founded upon length of service) is drawing a higher pay (may or may not in a higher scale of pay) is drawing a higher salary under the ACP scheme and not under the normal scheme founded on the 'doctrine of higher pay for shouldering higher responsibility'. In case of ACP Rules 1998 or 2008, he is doing so under a different set of Rules altogether. Therefore, a senior who is yet to join 'a class of employees' on which the principle of ACP scheme applies is 'differently placed' and thus cannot seek parity by seeking stepping up of pay. On his turn, however, as and when the senior becomes eligible to seek benefit under the ACP schemes, he would be entitled to it depending upon the applicability of scheme in his case as well.
- ii. The objective of ACP scheme is to afford a minimum number of financial up gradations on completion of the respective minimum number of years of service as benchmark criteria counted from the date and scale of pay 'where he joined the service as a direct recruited fresh entrant'. When several such employees coming from different source of entry (carrying their different respective scale of pay on which they initially joined the government service as a direct recruited fresh entrant) converge at any particular stage in the hierarchy (frequently faced when there are several streams of promotional avenues and when the promotional post is occupied from several different feeder cadres as also by directly recruited incumbents), their respective entitlement shall individually be determined with reference to the ACP scheme which has a close nexus with the 'respective scale of pay on which individual employee initially joined the government service as a direct recruited fresh entrant'. A situation may, therefore, arise frequently where a

senior, having joined the service in a lower scale of pay as a direct recruited fresh entrant, might have exhausted the benefits of ACP scheme while rising finally up to a lower scale of pay alone, but a junior, having joined the service in a relatively higher scale of pay as a direct recruited fresh entrant, is yet to exhaust his claim on benefit that the ACP scheme offers, and when he obtains the benefit, he is placed in a higher scale of pay even it terms of ACP scheme. (Such like situations are encountered more frequently where a direct recruitee is junior in service to a promotee.) Here also senior and junior are 'differently placed' and thus cannot seek parity by seeking stepping up of pay.

There can be several other such 'circumstantial differentiations'.

8. Tracing the background leading to the judgement under reference, the government through its order dated 8th February 1994 (arrayed as reference iv) put in place a scheme in the nature of ACP with clear stipulation in para 12 that reads as given below:

'12. Since the grant of higher standard pay scale under these instructions is compensation for stagnation and is therefore based on length of service without involving higher responsibilities, this will be treated as fortuitous circumstances and thus no benefit of step up of pay to a senior just on the basis of seniority in the hierarchy will be admissible.'

Subsequently, through a clarificatory memo dated 29.12.1995 (arrayed as reference v), under Sr. No. 10, following clarification was inserted:

	Points Raised	Clarification
*10	Where pay/pay scales of a junior government employee becomes higher than the pay/pay scale of his senior due to grant of additional increment under scheme dated 7-8-92/higher standard pay scales, whether in such cases the pay/pay scales of senior may be stepped up or not to the level of his junior employee within the cadre?	The pay/pay scale of the senior government employee shall be stepped up to the level of his junior provided (that) this benefit shall not be admissible to a senior government employee vis-à-vis a junior government employee who has been appointed on transfer basis. In case a senior government employee has got two promotions within his line of promotion and so he becomes ineligible to Higher Standard Pay Scales but his junior who has completed 20 years of service and has got no promotion and becomes eligible

	for 2 nd Higher Standard Pay Scale. In case the Higher Standard Pay Scale of the lower post happens to be higher than the pay scale of the promotional post, the pay scale of the senior shall be stepped up to the level of pay scale of his junior and his pay would be fixed assuming higher responsibilities for the pay scales so granted.'
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This part of clarification was clearly against the basic philosophy guiding the ACP scheme that sought only to address the problem of stagnation where length of service without a financial up gradation is the sole criteria. Now with this clarification, for instance, when a directly recruited incumbent after say 2 years of service is followed by a promoted incumbent from a feeder cadre where he, on being directly recruited, stagnated for more than 20 years before the said promotion while earning two Higher Standard Pay Scale/other financial up gradations, earned more than 20 annual increments, etc, the directly recruited incumbent was permitted, just after 2 years of service, the benefit of stepping up on the same footings as if he had also, after being directly recruited on the lower post, from which the promotee junior to him rose, stagnated for more than 20 years before the said date on which the said promotee was inducted in the post becoming his junior, and earned two Higher Standard Pay Scale/other financial up gradations and earned more than 20 annual increments, etc. This was clearly a largesse that the scheme of ACP never envisaged. This miscarriage was noticed and set right in terms of decision of Government conveyed through instructions dated 23rd July, 2003 (arrayed as reference vii) which provided:

- i. That the benefit under the schemes issued vide F.D.'s letter dated 14.5.91, 7.8.92, and 8.2.94, which was meant only for the employees in Group 'C' and 'D', is not validly extendable *ipso-facto* to the officers of Group 'A' and 'B'.
- ii. That the provisions contained in point No. 10 of para 2 of F.D.'s letter dated 29.12.1995 is to be treated as withdrawn. Apart from above, the deletion of para 12 of (the F.D.'s letter) dated 8.2.1994 vide F.D.'s letter dated 29.12.1995 is also withdrawn. The instructions dated 7.12.1998

are also hereby withdrawn. Consequently the benefit of stepping up of pay allowed to the senior officers erroneously may of course be withdrawn/set right after affording them a reasonable opportunity of hearing. The recovery, if any, however, may not be affected from the retrospective effect but can be affected from the date of issuance of these instructions.

- iii. (In all such cases where) the officers who got erroneous benefit and got retired from the service, their cases be reviewed for the withdrawal of the same after giving them a reasonable opportunity of hearing. No recovery is to be made from them. However their pension (admissibility) should be recomputed/refixed notionally for the period prior to the date of issue of these instructions and actually from the date of issuance of these instructions.

9. In terms of the implication of the decision conveyed vide instruction dated 23rd July, 2003, though the 'additional benefit' accruing in terms of para: 10 of the instruction dated 29.12.1995 was to be withdrawn right from the inception of its grant, yet no recovery was to be ordered/made for such consequential excess payments made on this account up to the date of issue of instruction i.e. 23rd July, 2003. Further, while ordering the withdrawal of the said benefit, an order was to be passed after affording a reasonable opportunity of being heard to the concerned employee (or pensioner) through a Show Cause Notice. As a consequence, wherever passed, there was invariably a time lag between the date on which an order consistent with the instruction dated 23rd July, 2003 were passed and the date 23rd July, 2003 itself and to this extent the order so passed had a retrospective implication. (For instance, even when, after giving a Show Cause Notice, the order was passed say on 1st October, 2003, the recovery was to be effected w.e.f. 23rd July, 2003 and thus the 'order contained a retrospective implication between 23rd July and 30th September.)

10. The implementation of the decisions conveyed vide instruction dated 23rd July, 2003 gave causes to feel aggrieved to a number of employees and some of them approached appropriately to various authorities to seek relief from the perceived injustice and one such instance culminated finally into the C.W.P. No. 4563 of 2007 before the

Honb'le High Court of Punjab & Haryana to be disposed off through order dated 9.1.2009 (judgement under reference - text appended as Annexure - I to this memorandum). The summary of sequence of events and its appreciation as forming part of the body of judgement is as reproduced below:

III. Details of instructions for claiming ACP Scales:-

4. The instructions which were applicable to all the Government employees of Group 'C' and Group 'D' provided, inter alia, that persons who had completed 20 years of regular service or more of satisfactory service before 01.01.1994 but who had got only one promotion or promotional scales/higher time scale/selection grade/, could be allowed in the place of present pay scale, the first higher standard scale with respect to the pay scale of the post applicable from 01.01.1986. Any employee who completed such regular satisfactory service of 20 years after 01.01.1994 but had got only one promotion or the higher pay scale could be allowed the first higher standard scale with effect from the first day of the month following the month in which he completed such service. In case of an employee who had got promotion already but the pay scale of the promotional post was only equal to or lower than the pay scale of the feeder post, the benefit of higher standard scale was also to be given.

IV. The petitioner's grievance:-

5. The petitioners' complaint was that in spite of the applicability of the instructions for the higher scales, they had not been awarded the same and certain representations yielded to fresh instructions dated 29.12.1995 granting the benefit of stepping up of their pay with effect from 01.04.1995 instead of 01.01.1994 as has been previously said in the earlier instructions. The instructions had also specifically given the scales of pay at the various levels, namely, at Rs.1400-2300 as was applicable w.e.f. 01.01.1986. The corresponding higher pay scale was given as Rs.1600-2660. This scale of Rs.1600-2660 was higher than the revised pay scale of Rs.1400-2600 and as such benefit of first higher pay scale was admissible. However, in the case of Head Draftsmen, the modified pay scale w.e.f. 01.05.1990 remained at par

with the higher standard pay scale admissible on the basis of pay scale of Rs.1600-2660. In such an event, the instructions stated that the benefit of higher standard pay scale could not be availed but they would be entitled for stepping up their pay in the manner specifically set forth in the notification. It could be noticed that the Assured Career Progression Scheme itself was only to act as an incentive in the nature of employment with assured promotions. If any employee had already received two promotions or more, by implication, the benefit of Assured Career Progression Scales was not applicable at all. According to the petitioners, it was this aspect which was lost sight of. Assured Career Progression Scales had been given across the board to all persons holding the posts of Draftsmen and who, in some cases, had been promoted as Head Draftsmen. The instance of a mistake, as pointed out by the petitioner, was the case of Abhnashi Lal Chugh who was originally a Tracer, later promoted as Draftsman and still later promoted as Head Draftsman, had also been given the Assured Career Progression Scales but during the relevant period, *the said person had received two promotions and that his initial appointment was on a lower post as Tracer and the benefit granted under the Assured Career Progression Scale for him who had obtained two promotions was clearly wrong.* When they found out the mistake and sought the recovery against Abhnashi Lal Chugh, they applied the same yardstick to all the persons such as petitioners who had obtained promotion in some cases as Draftsmen. The order of withdrawal of the stepped up pay scales was given effect by the proceedings impugned in the writ petition on 15.01.2007. The petitioners treated all the Draftsmen at par and visited to some persons with similar orders of withdrawal of ACP Scales and for recoveries subsequently by its proceedings dated 17.04.2008 which came to be challenged in the other two writ petitions referred to above.' (emphasis has been added)

11. In the said bunch decided vide order dated 9.1.2009, the issues under examination included the implementation of instruction dated 23rd July, 2003 as well. The Honb'le court decided the issue in terms of the operating part of the judgement that is reproduced below:

12. Whatever the petitioners had not been apprised of, would be really irrelevant so long as the mistake which the Department had committed, was found later and all the petitioners had been granted an opportunity to show cause against the withdrawal of the benefits. **It had not sought for return of the entire amount that had been wrongly paid by stepping up of the pay. On the other hand, it had specifically mentioned that no recovery will be effected with retrospective effect but would be effected only w.e.f. 23.07.2003 from the date of issue of instructions by the Finance Department.** If there is a scope for intervention in this regard, it is this direction that would have to be modified. None of the petitioners could be imputed with any fraud or any voluntary act on their part that had resulted in payment of higher pay. **While not finding fault with the withdrawal of the benefit of higher scale by stepping up of their pay for what they were not entitled, we find interest of justice would be best sub served if the recovery which had been ordered w.e.f. 23.07.2003 is modified to the effect that there shall be no recovery at all for any excess amount paid. The Department would be entitled to recompute/refix the scale of pay notionally for the period from the day when their scales were stepped up and the retiral benefits would be paid on such notional refixation of pay. Here again, we direct that there shall be no recoveries for any excess payment that have been made for the retired employees.**

13. All the writ petitions, therefore, are disposed of with the direction that higher scale of pay, if they have been refixed by stepping up their pay only on the ground that some juniors have been granted higher pay, shall be withdrawn. No recoveries shall be made for excess payments made already. The retiral benefits shall be refixed/recomputed on a notional refixation of the pay drawn on the last day of retirement of the respective employees. If the higher pay to the petitioners has resulted from the application of ACP Scales, then there is no question of withdrawal of benefits and there will also be no question of recoveries to be made. The decision and reasoning in C.W.P. No.4563 of 2007 will govern

also the findings in C.W.P. Nos. 9780 and 12144 of 2008. The petitioners in the respective writ petitions will also be not entitled to the higher scale of pay if they had been stepped up on a wrong basis, apart from the fact that they not also be liable for any recovery. The retiral benefits whenever arise, they shall be recomputed on notional refixation of pay without stepping up their pay. The impugned orders are set aside for re-examination of the issue in the light of the observations made above.'

As an implication, therefore, any retrospective recovery with reference to the benchmark date i.e. 23rd July was found unjustified and ordered to be 'revoked' by the Honorable High Court. That is to say that 'there had to be no recovery at all for any excess amount paid even pertaining to a period between 23rd July, 2003 and the date on which the orders were passed withdrawing the benefit'.

12. Now, therefore, in addition to all the various actions that this judgement may require qua the individual merit in similar other cases to be taken otherwise, it has been decided that following action must be initiated and completed immediately:

- i. Wherever orders pursuant to the instruction dated 23rd July, 2003 has already been passed while ordering recoveries w.e.f. 23rd July, 2003, the same should be modified bringing them consistent with the decision of Hon'ble High Court dated 9.1.2009 by redrawing the date of applicability to be substituted as 'recomputed/refixed notionally for the period prior to the date of issue of the order (as against instructions dated 23rd July, 2003) and actually from the date of issuance of the order withdrawing the benefits promised by part of instruction dated 29.12.1995 (that stood withdrawn vide instruction dated 23rd July, 2003). Such a correction should be made in substitution of the order already passed with same number and date. Such a modification must be carried out within 20 days counted from the date of issue of these instructions.
- ii. In all such cases where some other litigation is pending before the court(s) of law on similar/same issues, early hearing be sought and the import of this judgement be brought appropriately into the notice of

respective courts of law. Such applications of early hearing quoting the urgency must be moved within 7 days of issue of this memorandum. In all such cases where pending final disposal injunctions have been issued by the court of law, application for vacating such an injunction order should also invariably be moved simultaneously.

- iii. The urgency assumes significance as the honourable court has also ordered that **'there shall be no recovery at all for any excess amount paid** (even pertaining to a period between 23rd July, 2003 and the date on which the orders were passed withdrawing the benefit)'. In effect it would mean 'undue benefit' shall continue to be perpetuated in favour of the employee for as long as the final order on 'withdrawal of the benefit of **higher scale of pay, if they have been refixed by stepping up their pay only on the ground that some juniors have been granted higher pay (and other consequential benefits such as increased pension)**' is not made. In these circumstances, therefore, any undue delay would amount affording unjustified enrichment in favour of the recipient employee whose claim has been found unjustified in terms of the judgment under reference for as long a time as is taken in passing a proper order withdrawing the same. All such cases should, therefore, be pursued with utmost urgency.
- iv. Once the injunction has been lifted or, as the case may be, case has been disposed off in terms similar to the judgment under reference either in terms of sub clause (i) above, or alternatively, in all such cases where order withdrawing the benefits could not be passed due to injunction order or, as the case may be, due to pendency of the case before the court of law, by passing fresh orders. Wherever a fresh order is to be passed the same must be passed finally within 20 days counted from the date of lifting of injunction or, as the case may be, decision of the court of law. While doing so, in all cases where a reasonable opportunity of being heard has not been afforded so far, the same should be afforded. It is suggested that all the employees/retirees falling under this category be

- afforded the said hearing on one or two predetermined dates by issuing individual notices to be supplemented by 'Collective Notice issued through News Paper' as well.
- v. In all such cases where the cases of similarly placed employees who are continuing to draw the benefit of **'higher scale of pay on the pay being refixed by stepping up on the sole ground that some juniors were granted higher pay'** (or, as the case may be, an increased pension is being paid to the retirees as a consequence thereof) due to reasons other than any injunction order of a court of law, the order of withdrawal of the benefit of higher pay scale found unjustified in terms of the judgment under reference be passed finally within 20 days counted from the date of issue of this instruction. While doing so, if a reasonable opportunity of being heard has not already been afforded so far, the same should be afforded. It is suggested that all the employees/retirees falling under this category be afforded the said hearing on one or two predetermined dates by issuing individual notices to be supplemented by 'Collective Notice issued through News Paper' as well.
- vi. Save in terms of specifically protected, any order/instruction/advice issued by the Finance Department on the subject or, as the case may be, related to the subject that, either wholly or partially, hinders the implementation of the decisions conveyed vide this memorandum must, to the extent of inconsistency prompting the said hindrance need to be treated as withdrawn without any further reference to the Finance Department.
- vii. Cases where benefits contrary to the expectations of these instructions stands admitted to individual employee in compliance with the orders of court of law that has attained finality between the parties (with the employee in question being a party to the judgement) shall not be reopened in terms of these instructions.
- viii. Time being an element of utmost importance here as any delay shall cost 'pecuniary loss' to the employer exchequer, frivolous

correspondences/references must be avoided scrupulously. In the dire urgency of seeking advice, personal contacts/interviews must be resorted to liberally rather than making time consuming references in routine.

- ix. Whenever a cause may so arise, these instructions shall apply *mutatis mutandis* on the affected retirees as well while re-computing their respective retiral benefits based on notional refixation of pay without stepping up their pay. Consequential recovery arising in terms of judgment dated 9.1.2009, if any, may also be ordered to be made, but only after following the procedures relevant to it.

13. Appreciating the financial implications involved, it must be noted that 'an otherwise appearing to be a meager benefit of just Rs. 100/- per month as pay' when translated in terms of its cumulative financial implication under the assumption that it is availed for 20 years and further perpetuated at the rate of Rs. 50/- per month as component of pension for another 20 years (with an assumed rate of cost of money or interest or Dearness Component as 8% per annum and in other usual presumptions), this single largesse amounts to a cumulative nominal outgo from exchequer as Rs.5,95,700/- (about 6,000 times) with the cumulative Net Present Value on the date of award being Rs. 82,700/- (about 900 times). It is a huge outgo and, if found unjustified, it is a huge 'financial loss to the Government'.

14. The calculations given above is expected to foster a feeling of responsibility encouraging all concerned to act swiftly and save the exchequer from unnecessary further burden on this account by meeting the actionable deadlines indicated in this memorandum. It may, therefore, attract utmost importance and any negligence on this account causing further loss to the Government must be scrupulously avoided at all costs.

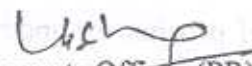
15. Though in a normal reading of the judgment under reference, it may appear to be just a passing remark, yet the observation of the court appearing in para 10 that reads: 'The impugned order dated 15.01.2007 in C.W.P. No.4763 of 2007 cites of the office order No.197/E-II dated 08.03.1996 that 81 Head Draftsmen (HDM) were stepped up to the scale of Rs.2000-3200 w.e.f. 01.04.1995 to the level of their juniors and consequently the benefit of stepping up of pay allowance to the senior officers was sought to be

withdrawn. The situation under which the juniors earned higher pay is not discernible from the order' speaks volumes about the common cause for 'poor quality' of orders passed by the administrative authorities. The orders passed in such a situation involving financial implications are expected to be 'eloquently speaking', but at the least they must 'discern' clearly the cause of its own existence.

16. These instructions shall come into force with immediate effect.


17. Wherever the situations are similar in cases of PSUs, etc, wholly or substantially owned or controlled by the Government of Haryana or, as the case may be, autonomous institutions aided by the Government of Haryana (including the Universities and Aided Institutions) who largely adopt the government instructions, these instructions must be implemented through the respective Administrative Department(s) with equal sense of urgency.

18. These instructions should be brought to the notice of all concerned for strict compliance.


Senior Accounts Officer (PR)
for the Financial Commissioner & Principal Secretary
to the Govt. Haryana, Finance Department.

A copy is forwarded to the following for information and necessary action at their end:

1. Accountant General (A&E), Haryana.


Senior Accounts Officer (PR)
for the Financial Commissioner & Principal Secretary
to the Govt. Haryana, Finance Department.

INTERNAL CIRCULATIONS

- i. All the Officers/ Deputy Secretaries/ Under Secretaries/ Superintendents of F.D.
- ii. In charge, Computer Cell (F.D.)

ANNEXURE - I

[Judgement of Honourable High Court of Punjab & Haryana dated 9.1.2009 delivered in C.W.P. No. 4563 of 2007 (Title: P.C. Manchanda and others Vs State of Haryana and others bunched with C.W.P. 9780 of 2008 and C.W.P. 12144 of 2008)]

C.W.P. No.4563 of 2007

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
C.W.P. No.4563 of 2007

Date of decision: 09.01.2009

Prem Chand Manchanda and othersPetitioners

Versus

State of Haryana and anotherRespondents

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL

HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not ? **Yes**

3. Whether the judgment should be reported in the Digest ? **Yes**

Present: Mr. Raghuwinder Singh, Advocate

and Mr. Ravi Sharma, Advocate

for the petitioners.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

2. C.W.P. No.9780 of 2008

Kulwant Singh and others Petitioners

Vs.

State of Haryana and othersRespondents

Present: Mr. Ravi Sharma, Advocate with

Mr. Sunil Bhardwaj, Advocate

for the petitioners.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

3 C.W.P. No.12144 of 2008

Jarnail Singh and another Petitioners

Vs.

State of Haryana and another Respondents

Present: Mr. Ravi Sharma, Advocate with

Mr. Sunil Bhardwaj, Advocate

for the petitioners.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

K.KANNAN, J.

I. Nature of lis:-

The benefit of retaining the stepped-up pay by giving effect to Assured Career Progression Scales in the department of PWD and its subsequent withdrawal by the department gives rise to these bunch of writ petitions that affect fairly a large number of persons who have figured as petitioners in the respective writ petitions.

2. C.W.P. No.4563 of 2007 seeks for quashing of the proceedings of respondent No.2 dated 15.01.2007 (Annexure P-6) under which the increased pay scales granted to the petitioners earlier on 08.03.1996 had been withdrawn. The impugned order, however, clarified that no recoveries would be effected with retrospective effect but that recovery would be effected from 23.07.2003 i.e. from the date of issue of instructions by the Finance Department. The impugned order further stated that the pension of the retirees would be compounded/refixed notionally for the period prior to the date of issue of instructions dated 27.03.2003 and actually from the date of issuance of directions i.e. 23.07.2003. C.W.P. Nos.9780 and 12144 of 2008 impugned the order of respondent No.2 issued on 17.04.2008, similarly, withdrawing the benefits of stepping up of pay granted to the petitioners and for recovery in the manner stated in the earlier order.

II. Facts giving rise to the dispute:-

3. All the petitioners had initially joined services of the respondent department as Draftsmen. The promotional post for them was Head Draftsmen. During their employment with the respondent-department, pay scales of all categories had been revised w.e.f. 01.01.1986 and consequent upon some anomalies pointed out by the employees association in some departments, pay scales were modified w.e.f. 01.05.1990 instead of 01.01.1986. The modification of the pay scales meant better emoluments but they had the benefit only from 31.04.1990 through modified instructions issued on 23.08.1990. The department came to issue another set of instructions on 08.02.1994

providing for Assured Career Progression Scales to prevent stagnation in service. The issue of how these instructions operated in the manner of their application together with the subsequent modifications that were effected gives rise to the core controversy between the parties.

III. Details of instructions for claiming ACP Scales:-

4. The instructions which were applicable to all the Government employees of Group 'C' and Group 'D' provided, inter alia, that persons who had completed 20 years of regular service or more of satisfactory service before 01.01.1994 but who had got only one promotion or promotional scales/higher time scale/selection grade/, could be allowed in the place of present pay scale, the first higher standard scale with respect to the pay scale of the post applicable from 01.01.1986. Any employee who completed such regular satisfactory service of 20 years after 01.01.1994 but had got only one promotion or the higher pay scale could be allowed the first higher standard scale with effect from the first day of the month following the month in which he completed such service. In case of an employee who had got promotion already but the pay scale of the promotional post was only equal to or lower than the pay scale of the feeder post, the benefit of higher standard scale was also to be given.

IV. The petitioner's grievance:-

5. The petitioners' complaint was that in spite of the applicability of the instructions for the higher scales, they had not been awarded the same and certain representations yielded to fresh instructions dated 29.12.1995 granting the benefit of stepping up of their pay with effect from 01.04.1995 instead of 01.01.1994 as has been previously said in the earlier instructions. The instructions had also specifically given the scales of pay at the various levels, namely, at Rs.1400-2300 as was applicable w.e.f. 01.01.1986. The corresponding higher pay scale was given as Rs.1600-2660. This scale of Rs.1600-2660 was higher than the revised pay scale of Rs.1400-2600 and as such benefit of first higher pay scale was admissible. However, in the case of Head Draftsmen, the modified pay scale w.e.f. 01.05.1990 remained at par with the higher standard pay scale admissible on the basis of pay scale of Rs.1600-2660. In such an event, the instructions stated that the benefit of higher standard pay scale could not be availed but they would be entitled for stepping up their pay in the manner specifically set forth in the notification. It could be

noticed that the Assured Career Progression Scheme itself was only to act as an incentive in the nature of employment with assured promotions. If any employee had already received two promotions or more, by implication, the benefit of Assured Career Progression Scales was not applicable at all. According to the petitioners, it was this aspect which was lost sight of. Assured Career Progression Scales had been given across the board to all persons holding the posts of Draftsmen and who, in some cases, had been promoted as Head Draftsmen. The instance of a mistake, as pointed out by the petitioner, was the case of Abhnashi Lal Chugh who was originally a Tracer, later promoted as Draftsman and still later promoted as Head Draftsman, had also been given the Assured Career Progression Scales but during the relevant period, the said person had received two promotions and that his initial appointment was on a lower post as Tracer and the benefit granted under the Assured Career Progression Scale for him who had obtained two promotions was clearly wrong. When they found out the mistake and sought the recovery against Abhnashi Lal Chugh, they applied the same yardstick to all the persons such as petitioners who had obtained promotion in some cases as Draftsmen. The order of withdrawal of the stepped up pay scales was given effect by the proceedings impugned in the writ petition on 15.01.2007. The petitioners treated all the Draftsmen at par and visited to some persons with similar orders of withdrawal of ACP Scales and for recoveries subsequently by its proceedings dated 17.04.2008 which came to be challenged in the other two writ petitions referred to above.

V. The State's defence:-

6. The justification preferred by the respondents was that the claim for grant of ACP was originally applied as Rs.10,000/- and Rs.20,000/- in the time scale but to Group 'C' and Group 'D' employees vide letter of the Government dated 14.05.1991 to take effect from 01.01.1991 itself and was implemented on 07.08.1992. The subsequent claim for ACP referred to its application that refers to the completion of years of service, namely, 8/18 years. This period of 8/18 years had been subsequently changed as 10/20 years by Government letter dated 08.02.1994 which was to take effect from 01.04.1994. This claim was again modified on 01.01.1996 by the introduction of Haryana Civil Services Assured Career Progression (Rules 1998).

7. When this scheme through its notifications and later through the rules came into effect, it gave rise to some anomalous situation requiring several clarifications to be issued over a period of time. In a writ petition filed by Surinder Singh and others in C.W.P. No.7255 of 1997, this Court dealt with the issue of counting of ad hoc service for computing 'regular satisfactory service' for entitlement to ACP Scheme. In the factual position that the case grappled with, the Court observed that the benefit of higher standard pay scale to a senior on the ground that the pay of his junior had been fixed higher to his pay in terms of the scheme contained in circular shall not be admissible to such a senior. This observation was purported to be in consideration of the instructions dated 08.02.1994. The rationale of such a statement was that the ACP Scales were intended to provide for higher scales based on length of service without involving higher responsibilities and hence in cases where a junior earned higher pay under fortuitous circumstances, no benefit of step up of pay would be admissible only on the basis of seniority. The judgment sent the department scurrying to issue the notification dated 23.07.2003 that withdrew the clarification that it had given on 29.12.1995 (Annexure P-3) in C.W.P No.4563 of 2007 in answer to a query that the scale of senior employee would be stepped up to the level of his junior provided this benefit shall not be admissible to a senior government employee besides junior government employee who had been appointed on temporary basis. It only confirmed the earlier instructions made on 08.02.1994 (Annexure P-2) that the higher standard pay scale being in the nature of compensation for stagnation and as an incentive based on length of service without involving their responsibilities, there would be no benefit of stepping up of pay to a senior just under the head of seniority. The Government felt that it had stepped up the scales of pay to the seniors only on the basis of the seniority over the scales of some of the juniors and sought to withdraw the benefit and also obtained recoveries in the manner referred to in the impugned notice. Preparatory to the action, the Government had issued a show cause notice and a final order had been made.

VI. Relevant considerations:

(a) Basis of Surinder Singh's Case

8. The impugned order is on a perception that while applying the ACP Scales, instead of taking the relevant number of years qualifying for the entitlement, there had

been wrong application of the normal principle applied in service jurisprudence that the scales of pay of the seniors should be stepped up to match with the scale of a junior. It had been found that such a stepping up of scales were made for certain seniors when the juniors had been given a higher pay and purporting to apply the principle of law laid down by this Court in **Surinder Singh and others Vs. State of Haryana** in C.W.P. No.7255 of 1997 dated 10.09.1997 that the benefit of higher standard pay scale to a senior on the ground that pay of his junior had been fixed higher to his pay in terms of the scheme contained in the circular ought not to be admissible to such senior. This decision had been rendered particularly in reference to a point raised before the Bench whether period of ad hoc service should be counted for reckoning the qualifying number of years of service for extending the benefit of the ACP Scheme. The Bench was merely reaffirming a clarification that had already been given by the Department that such a benefit could not be extended only on the ground of seniority, without reference to the number of years of regular satisfactory service within the cadre.

(b) Parity of scales for senior and junior admit of exceptions

9. The application of ACP Scales have always to be done with reference to the terms of the Scheme itself. It would be wrong to apply the principle that a senior would always be entitled to a higher pay merely because a junior had obtained to such a higher scale. There could be several instances when such a situation may not happen. Stepping up of pay on the only ground that a junior is drawing more pay will be untenable where a junior is enjoying special pay for some arduous work and earns a higher pay, as pointed out by the Hon'ble Supreme Court in **Surinder Kumar V. Union of India (2005) 2 SCC 313; AIR 2005 SC 1103**. The parity of pay shall be only in the context of the constitutional principle of "Equal Pay for Equal Work" enacted through Article 39 (d) of the Constitution of India. A similar situation may also result when an ad hoc promotee draws a higher pay on earlier officiation on a higher post, when he may have earned increments. When the previous pay is taken on account of fixing his pay on promotion, his senior cannot expect stepping up of pay. This situation was considered **C.W.P. No.4563 of 2007** in the case of **Union of India Vs. R. Swaminathan (1997) 7 SCC 690**. Another situation that Courts have dealt with is that when a direct recruit was offered scales attached to the post, when the same post had been earlier meant for ad hoc appointees of lower scales

on contract, such an adhoc appointee cannot ask for stepping up of his pay if under a Scheme his services are sought to be regularised and his pay is fixed at the scale which he would have earned if his services have been regularised on that day. This situation was noted in **State of Karnataka Vs. Sh. G. Halappa** reported in (2002) 4 SCC 662. There may be another instance, when there are two streams of promotional avenues and when the promotional post is occupied from two different feeder cadres, the issue of stepping may not arise. This situation was dealt with in a decision of the Hon'ble Supreme Court in the case of **Union of India Vs. O.P. Saxena** (1997) 6 SCC 360.

10. The impugned order dated 15.01.2007 in C.W.P. No.4763 of 2007 cites of the office order No.197/E-II dated 08.03.1996 that 81 Head Draftsmen (HDM) were stepped up to the scale of Rs.2000-3200 w.e.f. 01.04.1995 to the level of their juniors and consequently the benefit of stepping up of pay allowance to the senior officers was sought to be withdrawn. The situation under which the juniors earned higher pay is not discernible from the order. The petitioners have responded to this act by stating that the petitioners were holding the posts whose pay scales were modified w.e.f. 01.05.1990 against the pay scales of 01.01.1986. According to them, the petitioners were not given the benefit of higher standard pay scales but were merely placed at par with similarly situated juniors. They cited the instance of a Head Draftsman who got one promotion and completed 20 years or more of regular satisfactory service in the pay scale of Rs.1600-2660 as on 01.01.1986, the first higher standard pay scale was Rs.1640-2900 as per column III of the Annexure of letter dated 08.02.1994. It was at par with the promotional scales of Circle Head Draftsman as on 01.01.1986 and hence the benefit of higher standard pay scale of Rs.2000-3200 was admissible as per para 5 of the letter dated 08.02.1994. The said letter clarifies as follows:-

“In case an employee who has got promotion already but the pay scale of the promotion post is either equal to or lower than the pay scales of the feeder post, the benefit of higher standard scale will be granted in such cases.”

The pay scales of the petitioners have been stepped up w.e.f. 01.04.1995 along with Mr. Abnashi Lal Chug and others similarly situated employees with reference to the pay scale of Draftsman namely Rs.2000-3200. The applicants have also been given the highest pay scales of Rs.2000-3200 w.e.f. 01.04.1995. This according to the petitioners had been

merely in satisfaction of their claims to ACP Scales and they never knew that there was any stepping up of pay on account of the fact that Mr. Abnashi Lal Chug had been put on higher scale of Rs.2000-3200. The so called clarification which was effected on 29.12.1995 had never been applied to them, being part of internal departmental communication.

VII. Our dispensation

11. The whole exercise of fixation of higher scale has to be reappraised in the light of the scheme by first computing the length of service 'regular satisfactory service of 10/20 years'. This will be done by computing the period of ad hoc service also, in the manner set forth in Surinder Singh's case (supra). While awarding the higher scales, if a junior draws a higher pay, stepping up of pay for the senior will not always result in the circumstances outlined above. If higher scales have been fixed on completion of relevant number of years of satisfactory service of 10/20 years to the seniors, without reference to the scales of juniors, who may have earned higher pay through increments by officiation in ad hoc promotion posts and such like situations, there is no scope for withdrawal of the benefits of higher pay. However, if the scales of pay have been stepped up wrongly, there is justification for the withdrawal of the benefit. Even in such a case, there shall be no recovery of higher pay already made.

12. Whatever the petitioners had not been apprised of, would be really irrelevant so long as the mistake which the Department had committed, was found later and all the petitioners had been granted an opportunity to show cause against the withdrawal of the benefits. It had not sought for return of the entire amount that had been wrongly paid by stepping up of the pay. On the other hand, it had specifically mentioned that no recovery will be effected with retrospective effect but would be effected only w.e.f. 23.07.2003 from the date of issue of instructions by the Finance Department. If there is a scope for intervention in this regard, it is this direction that would have to be modified. None of the petitioners could be imputed with any fraud or any voluntary act on their part that had resulted in payment of higher pay. While not finding fault with the withdrawal of the benefit of higher scale by stepping up of their pay for what they were not entitled, we find interest of justice would be best sub served if the recovery which had been ordered w.e.f. 23.07.2003 is modified to the effect that there shall be no recovery at all for any excess

amount paid. The Department would be entitled to recompute/refix the scale of pay notionally for the period from the day when their scales were stepped up and the retiral benefits would be paid on such notional refixation of pay. Here again, we direct that there shall be no recoveries for any excess payment that have been made for the retired employees.

13. All the writ petitions, therefore, are disposed of with the direction that higher scale of pay, if they have been refixed by stepping up their pay only on the ground that some juniors have been granted higher pay, shall be withdrawn. No recoveries shall be made for excess payments made already. The retiral benefits shall be refixed/recomputed on a notional refixation of the pay drawn on the last day of retirement of the respective employees. If the higher pay to the petitioners has resulted from the application of ACP Scales, then there is no question of withdrawal of benefits and there will also be no question of recoveries to be made. The decision and reasoning in C.W.P. No.4563 of 2007 will govern also the findings in C.W.P. Nos. 9780 and 12144 of 2008. The petitioners in the respective writ petitions will also be not entitled to the higher scale of pay if they had been stepped up on a wrong basis, apart from the fact that they not also be liable for any recovery. The retiral benefits whenever arise, they shall be recomputed on notional refixation of pay without stepping up their pay. The impugned orders are set aside for re-examination of the issue in the light of the observations made above.

14. All the writ petitions are disposed of in terms of the above directions.

(MEHTAB S. GILL)

JUDGE

January 9, 2009

Pankaj*

(K. KANNAN)

JUDGE

ANNEXURE – II

[Relevant extract from the Haryana Civil Services (Assured Career Progression) Rules, 2008 outlining the rationale and objective of the scheme of Assured Career Progression]

MEMORANDUM EXPLANATORY TO THE HARYANA CIVIL SERVICES (ASSURED CAREER PROGRESSION) RULES, 2008

Rule 1. This rule is self explanatory.

The objective of this rule is to provide two kinds of Assured Career Progression Scheme namely:-

- (1) Cadre Specific Assured Career Progression Scheme for certain categories of employees/ cadres.
- (2) General Assured Career Progression Scheme for all other group A, B, C and D employees of Haryana Government who are not covered under scheme (1)
- (3) The object is that in case of stagnation i.e. in the absence of promotion for a certain years of service, the employee will move to the Ist, IInd and IIIrd ACP structure of pay though he shall continue to discharge the same responsibility. Functionally, therefore, this movement shall not amount to a promotion and the objective of this scheme is to offset the financial stagnation as a consequence of non-availability or non requirement of functional promotion posts. These rules have been framed so that this facility is available to all the employees equally under equal circumstances. The classification, therefore, is based on the principle that one requires reasonable financial upgradations at different stages of his career if the requirements do not allow him an opportunity of functional promotion and consequential financial upgradation due to non availability of functional promotional avenues.

The problem of stagnation was widely recognized throughout the country in Government employments. It was felt that to keep the level of motivation of the employees at a satisfactory level it is required that this general problem

of lack of promotional avenues and thereby lack of financial advantages should be addressed to adequately.

The entire scheme of Assured Career Progression is about granting a person pay upgradation, when functional considerations do not permit his to rise in the hierarchy. He continues to perform the same job as before but moves into the prescribed higher pay band and grade pay, subject to his eligibility. The idea here is the basic one that reasonable financial upgradation at different stages of his career can be provided in the absence of opportunity of functional promotion. The effort of these rules are to relieve stagnation without unduly upsetting the hierarchy. Thus, the State Government employee of group A, B, C and D shall be covered under this scheme in following manner :-

- (i) The scheme will provide opportunities of financial upgradation to employees on completion of 10, 20 and 30 years of services, if they have not got promotion during previous 10 years of service. For this purpose, every employee's service record may be reviewed on completion of 10, 20 and 30 years. If on these landmarks of career, it is found that they have not been promoted in the last 10 years, then they may be given financial upgradation in the form of conferring the next available grade pay. The admissible grade pay is to be followed as per **Table-13** of this report.
- (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.
- (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 upgradation 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.

The ACP scheme through these rules provides for the following:

- (i) every employees recruited in a particular grade pay shall be allowed to move to his respective and specific higher grade pay on completion of specified period of residency in the lower pay band and grade pay, with reference to the pay band and grade pay or post in a pay band and grade pay, to which he was recruited as a direct recruited fresh entrant.
- (ii) on placement in next higher grade pay, the incumbent shall continue to perform duties of his original posts and will continue to hold the old designation till such time as he is actually promoted to the higher grade pay on the occurrence of a vacancy.
- (iii) placement in higher grade pay will entail only the financial benefits.
- (iv) the number of financial upgradations to be given shall be counted from the grade where an employee was inducted on direct recruitment basis. The number of financial upgradations shall be strictly adhered to and there shall be no additional financial upgradation for a senior employee on the ground that a junior employee in the pay band and grade pay got higher pay band and grade pay under this scheme, if both the senior and junior are not subject to identical circumstances.

The present scheme provides for following distinguishing features:-

- (i) the classification is based on the differentiation distinguishing the direct recruits in a lower pay band and grade pay and the direct recruits in a lower pay band and grade pay and the direct recruits in a higher pay band and grade pay. Further it differentiates Government servants based on the length of service. For example a suitably eligible employee in a lower pay band and grade pay may be granted the higher pay band and grade pay after completing 10, 20 and 30 years of service while he still continues functionally holding the same post on which he was recruited. He may, therefore, actually be placed in a higher grade pay after completion of 20 or 30 years of service, as the case may be, in the lower post than the pay band and grade pay prescribed for the next promotional post in the hierarchy. But he constitutes a different class and category of employees recruited directly against such higher post, which is the next promotional post for the post on which an employee has been granted the benefit of ACP pay structure under these rules, based on a different principle.
- (ii) the objective sought is to compensate financially an employee who is stagnating without any promotion in a lower post in cases for example for 10,20 and 30 years. There is no functional requirement for creating posts in the higher hierarchy for all such employees. Therefore, they are being allowed a higher grade pay in compensation. The classification explained in (i) above meets this objective and therefore, is having a rational relation to the object sought to be achieved by these rules.

The present scheme provides for following distinguishing features:-

- (i) the classification is based on the differentiation distinguishing the direct recruits in a lower pay band and grade pay and the direct recruits in a lower pay band and grade pay and the direct recruits in a higher pay band and grade pay. Further it differentiates Government servants based on the length of service. For example a suitably eligible employee in a lower pay band and grade pay may be granted the higher pay band and grade pay after completing 10, 20 and 30 years of service while he still continues functionally holding the same post on which he was recruited. He may, therefore, actually be placed in a higher grade pay after completion of 20 or 30 years of service, as the case may be, in the lower post than the pay band and grade pay prescribed for the next promotional post in the hierarchy. But he constitutes a different class and category of employees recruited directly against such higher post, which is the next promotional post for the post on which an employee has been granted the benefit of ACP pay structure under these rules, based on a different principle.
- (ii) the objective sought is to compensate financially an employee who is stagnating without any promotion in a lower post in cases for example for 10, 20 and 30 years. There is no functional requirement for creating posts in the higher hierarchy for all such employees. Therefore, they are being allowed a higher grade pay in compensation. The classification explained in (i) above meets this objective and therefore, is having a rational relation to the object sought to be achieved by these rules.

ANNEXURE – III

[Relevant extract from the Haryana Civil Services (Assured Career Progression) Rules, 1998 outlining the rationale and objective of the scheme of Assured Career Progression]

MEMORANDUM EXPLANATORY TO THE HARYANA CIVIL SERVICES (ASSURED CAREER PROGRESSION) RULES, 1998

Rule 1. This rule is self explanatory.

The objective is that in case of stagnation i.e. in the absence of promotion for a certain years of service, the employee will move to the Ist and IInd ACP scale of pay though he shall continue to discharge the same responsibility. Functionally, therefore, this movement shall not amount to a promotion and the objective of this scheme is to offset the financial stagnation as a consequence of non-availability or non requirement of functional promotion posts. These rules have been framed so that this facility is available to all the employees equally under equal circumstances. The classification, therefore, is based on the principle that one requires more money as one grows older, and the requirements do not allow him an opportunity of functional promotion and consequential financial upgradation due to non availability of functional promotional avenues.

The problem of stagnation was widely recognized throughout the country in Government employments. It was felt that to keep the level of motivation of the employees at a satisfactory level it is required that this general problem of lack of promotional avenues and thereby lack of financial advantages should be addressed to adequately.

The entire scheme of Assured Career Progression is about granting a person pay upgradation, when functional considerations do not permit him to rise in the hierarchy. He continues to perform the same job as before but moves into the prescribed higher scale, subject to his eligibility. The idea here is the basic one that a person needs more money as he becomes older, but he may not receive a promotion because there is no need for another post in the hierarchy. The effort of these rules are to relieve stagnation without unduly upsetting the hierarchy.

The ACP scheme through these rules provides for the following:

- (i) Every employee recruited in a particular grade/scale of pay shall be allowed to move to his respective and specific higher scale on completion of specified period of residency in the lower pay scale(s) with reference to the pay scale or post in a pay scale, to which he was recruited as a direct recruited fresh entrant;
- (ii) On placement in the next higher grade, the incumbent shall continue to perform duties of his original posts and will continue to hold the old designation till such time as he is actually promoted to the higher grade on the occurrence of a vacancy;
- (iii) Placement in higher grade will entail only the financial benefits;
- (iv) The number of financial upgradations to be given shall be counted from the grade where an employee was inducted on direct recruitment basis. The number of financial upgradations shall be strictly adhered to and there shall be no additional financial upgradation for a senior employee on the ground that a junior employee in the grade got higher scale under this scheme, if both the senior and junior are not subject to identical circumstances.

The doctrine of more pay as one grows older, however, is basically different than the doctrine of more pay for higher responsibility. The present scheme provides for following distinguishing features:-

- i. the classification is based on the differentiation distinguishing the direct recruits in a lower scale and the direct recruits in a higher scale. Further it differentiates Government servants based on the length of service. For example a suitably eligible employee in a lower grade may be granted the higher pay scale after completing 10 and 20 years of service while he still continues functionally holding the same post on which he was recruited. He may, therefore, actually be placed in a higher pay scale after completion of 20 years of service in the lower post than the pay scale prescribed for the next promotional post in the hierarchy. But he constitutes a different class and category of employees than the class and categories of employees recruited directly against such higher post, which is the next promotional post for the post on which an employee

has been granted the benefit of ACP pay structure under these rules, based on a different principle.

- ii. the objective sought is to compensate financially an employee who is stagnating without any promotion in a lower post in cases for example for 10 and 20 years. There is no functional requirement for creating posts in the higher hierarchy for all such employees. Therefore, they are being allowed a higher pay scale in compensation. The classification explained in (i) above meets this objective and therefore, is having a rational relation to the object sought to be achieved by these rules.