

GOVERNMENT OF HARYANA

FINANCE DEPARTMENT

ORDER

(of the Government under rule 27 and 28 of the Haryana Civil Services (Assured Career Progression) Rules, 2008)

No. 1/83/2008-2PR(FD)

Dated 7.7.2009.

Subject: Interpretation of rule: 12 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 (the ACP Rules) and conditions governing the admissibility of the benefit under rule: 12.

Citing inconsistency between the provisions of the rule: 12 and Explanation below rule: 7 of the Rules, references/queries were made making it necessary to interpret the rule: 12 (under rule: 27) and clearly articulate the conditions to be followed while implementing rule: 12 (under rule: 28) of the ACP Rules, thus this order.

IMPORTANT AND RELEVANT PROVISIONS OF RULES

2. (i) Rule: 27 of the ACP Rules provides as reproduced below:

Interpretation.-

If any question arises relating to the interpretation of any of the provisions of these rules, it shall be referred to the Government for decision.

(ii) Rule: 28 of the ACP Rules provides as reproduced below:

Residuary provisions.-

In the event of any general or special circumstance which is not covered under these rules or about which certain inconsistency comes to the notice, the matter shall be referred to the Government and Government will prescribe the conditions to be followed under such circumstances. Such conditions as prescribed by the Government under this rule shall be deemed to be part of these rules. Further, if the Government is satisfied that there is a requirement to prescribe certain additional conditions under these rules, the Government shall prescribe such additional conditions and such additional conditions shall be deemed to be the part of these rules.

(iii) Rule: 3(h) of the ACP Rules provides as reproduced below:

“Government” means the Government of Haryana in the Finance Department save as otherwise provided by or under these rules.

(iv) Rule: 3(k) of the ACP Rules provides as reproduced below:

“memorandum explanatory” means the memorandum explanatory appended to these rules, briefly explaining the nature, philosophy, justification, objectives, applicability etc. of these rules.

(v) Rule: 12 of the ACP Rules provides as reproduced below:

‘12. Admissibility of stepping up in certain cases.-

If the service rules provides for or circumstances warrant filling up of a post through direct recruitment as well as through promotion, benefit of stepping up of pay band and grade pay shall be admissible to the directly recruited senior Government servant if the junior promoted government servant junior to him is

drawing salary in higher pay band and grade pay on the basis of the benefit of ACP upgradation. However, the benefit of stepping up shall not be admissible to a promotee if he has already got three financial upgradation as provided under these rules in his service career.'

(vi) Explanation below rule: 7 (Eligibility for Grant of ACP grade Pay under the general ACP scheme) of the ACP Rules provides as reproduced below:

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

(vii) Under the rule: 1(3) of the ACP Rules, the objective of the ACP Rules have been defined as given below:

(3) The objective of these rules is to provide two categories of assured career progression schemes for the government servants of Haryana -the first category of scheme is cadre-specific Assured career progression schemes for some cadres/posts prescribing time scales. The second category of scheme is primarily to remove stagnation in service, in the form of a general assured career progression scheme. The second category scheme seeks to ensure that all government servants, whose cadres are not covered by any cadre-specific assured career progression scheme, get at least three financial upgradations, including financial upgradation, availed by such Government servants as a consequence of functional promotion during his entire career. It also seeks to ensure that no government servant stagnates without any financial upgradation for more than ten years unless he has already availed three financial upgradations in his career.'

(viii) In the 'Memorandum Explanatory' appended to the ACP Rules, the subtitle 'Rule 1' explains the justification and the objective of the ACP Rules in the following terms:

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

(i) 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 him 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.'

RELEVANT CONSIDERATIONS

3. Rule 1(3) of the ACP Rules is not in the nature of preamble, it is a part of the Rules itself spelling out the very objective of the ACP Rules. Thus wherever there could be several alternative interpretations that can be argued, the one which furthers the cause of the objective the most is required to be adopted in preference to the one which defeats the objective itself. Further, rule: 6 to rule: 8 lays down the conditions of eligibility to the ACP schemes put in place by the ACP Rules. Before the benefit, general or specific, promised by the ACP Rules are admitted in terms of the provisions of the ACP Rules, the recipient has to be 'appropriately eligible to it in terms of rule: 6 to rule: 8'.

4. 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 the ACP Rules) over a continuing and corresponding minimum length of service (of 10 and 20 years for instance in terms of the 1998 ACP Rules). 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. 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.

5. The differentiating principles based on the rationale 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.

6. The differentiating principle here is that 'such of the employees (belonging to Group C and Group D categories in terms of the 1998 ACP Rules and generally in terms of the ACP Rules) 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.

RATIONALE FOR RULE 12 (the ACP Rules)

7. The ACP Rules are the successor to the 'Haryana Civil Services (Assured Career Progression) Rules, 1998 (the 1998 ACP Rules) and provide for both, the revised

structure of Pay admissibility and the mechanism of switching over (or to be brought over) to the new structure. The general ACP scheme put in place by the 1998 ACP Rules were applicable only on the Group: 'C' and Group: 'D' employees (up to the entry scale of 6500-9900 to be more precise), whereas the ACP Rules were extended to Group: 'A' and Group: 'B' employees as well. A problem was faced in cases of "stagnating direct recruits in Group: 'B' employees" where the service rules provides for the posts in Group: 'B' to be filled by way of both 'direct recruitment' as also 'promotion'. Instances were pointed out when there remained a definite possibility when a promoted officer would, as a consequence of stagnating over 10 and 20 years in a Group: 'C' category and thus earning higher scales of ACP upgradation, carry his ACP pay to the Group: 'B' post that could be higher than the initial direct recruitment scales of pay for the Group: 'B' post. But a direct recruited officer senior to him in Group: 'B' hierarchy, though even he stagnated in the Group: 'B' category for more than the respective 10 or 20 years, would not be entitled to the benefit of ACP upgradations despite the fact that he too stagnated equitably simply because the 1998 ACP Rules were not open to him. As a consequence, though the directly recruited officer in Group: 'B' also stagnated for 10 or 20 years and thus was similarly placed, yet a promoted officer (from Group: 'C') junior to him enjoyed a higher pay* at the strength of ACP upgradation earned by him at lower post where ACP upgradation in terms of the 1998 ACP Rules were admissible.

8. With the extension of scheme to all scales in terms of the ACP Rules, therefore, it became necessary to set right the disparity in cases of all 'stagnating direct recruits' who, though now were similarly placed as they also stagnated for the corresponding length of service and the ACP Rules were now equally applicable on them as well, were drawing less salary than their juniors (drawing a higher pay as a consequence of ACP upgradation enjoyed by the junior at a lower post and not available to his direct recruited senior). Therefore, the rule: 12 is targeted to 'remove the anomaly' in such like cases that has no rationale to be sustained once all the scales of pay were included in the folds of the ACP Rules.

9. The twin Rules of 1998 i.e. the Haryana Civil Services (Revised Pay) Rules, 1998 (the 1998 Pay Rules) and the Haryana Civil Services (Revised Pay) Rules, 1998 (the 1998 ACP Rules) were complementary to each other and Every Government servant was covered under either Haryana Civil Services (Revised Pay) Rules, 1998 or Haryana Civil Services (Assured Career progression) Rules, 1998 and no Government servant was covered under both the rules simultaneously at any point of time (memorandum to the notification No.1/1/98-1 PR (FD) Chandigarh, January 13, 1998 may be referred to). Generally, on direct recruitment every officer was first brought into the 1998 Pay Rules and once he became eligible for the same, he was brought over to the 1998 ACP Rules for grant of ACP upgradation admissible to him. However, barring such of the categories which were specifically covered under the 1998 ACP Rules, the officers who were

* A large number of posts in the category of 'Group: B' in the pre-revised scales of pay were placed in the scales of '6500-9900' and '6500-10500'. For the pre-revised scales of pay in 'Group: C' namely 5500-9000 and 6500-9900, the higher scale of pay '6500-10500' was available as the 2nd and 1st ACP respectively.

recruited directly in scales of pay of 6500-10500 and above were never eligible to the benefits of the 1998 ACP Rules and thus continued for ever in the 1998 Pay Rules. But now, such direct recruits were also made eligible to the ACP Rules and there was a requirement to bring over the similarly placed direct recruits, who were hitherto not covered in the ACP schemes (recruited in the scales of pay above 6500-10500) to the ACP scheme equitably. Earlier, being governed under different set of Rules the direct recruits and promotees in scales of pay above 6500-10500 were never similarly placed but now they had to be. To overcome this aspect of the problem, rule: 12 was inserted in the ACP Rules to be applicable on Direct Recruits once they become eligible to be governed under the ACP Rules.

10. Rule: 12 of the ACP Rules, therefore, is to be applied only in cases of such stagnating senior directly recruited employees to the same post, who, even after fulfilling the relevant eligibility criteria in terms of rule: 6 to 8, finds that a corresponding junior promoted officer is likely to draw salary in higher pay band and grade pay on the basis of ACP upgradation availed by him in lower posts. The touch stone here is that the senior must fulfill the eligibility for admissibility of the benefits under the ACP Rules, i.e. must have stagnated for 10 or 20 or 30 years without the corresponding number of financial upgradation (due to any reason including non admissibility of the benefits under the 1998 ACP Rules) and the junior must be seen to be drawing salary in higher pay band and grade pay on the basis of corresponding ACP upgradation (for 10 or 20 or 30 years respectively may or may not while working at a lower post where ACP upgradation were admissible in terms of the 1998 ACP Rules) availed by him. Such a provision was essential to set right the anomaly that would otherwise visit the senior direct recruit despite the fact that with the ACP Rules in place, they both are 'similarly placed' and the senior happens to be senior in hierarchy as well.

INTERPRETATION AND HOW TO APPLY

11. Before taking any further steps under the ACP Rules, it must first be ascertained as to whether the ACP Rules are applicable on the recipient officer or not? For determining the same, the eligibility as prescribed under the rule: 6 or, as the case may be, rule: 7 and rule: 8 of the ACP Rules must be satisfied. In case the officer satisfies the condition in rule: 7, it must be seen as to in which sub rule of rule: 7 the case of the officer falls.

12. Next to it, it needs to be seen as to whether there is a similarly situated promotee junior to him drawing his pay in 'a higher pay band and grade pay' or not? For this the comparison shall be based on equality in circumstances as explained below:

- i. The senior direct recruit has to stagnate for 10 years at the least to be eligible for the benefit of the ACP Rules and thus to be brought over to the ACP Rules [rule 7(1)]. Unless this criteria is met, the senior is not eligible to be governed by the ACP Rules and a cause for the application

of rule: 12 does not germinate. Such direct recruit shall continue to be governed under the Haryana Civil Services (Revised Pay) Rules, 2008.

- ii. Once found eligible to be governed under the ACP Rules, the comparison would proceed amongst equals i.e. the junior and senior both should be in the similar circumstances qua eligibility (differently determined in terms of sub rule (1) to (4) of rule: 7). This would mean the pay would be compared for the junior and senior falling in the corresponding bands of 'stagnating between 10 and 20 years, 20 and 30 years, and 30 years and above'. This means that if a junior, after having stagnated in a lower (or lower and current) scale of pay for 30 years, has earned the 3rd ACP upgradation [eligible in terms of rule 7(4)], he can only be compared with a senior direct recruit eligible in terms of rule 7(4) and if his length of stagnating service is not good enough for 3rd ACP upgradation, he would be compared with the corresponding junior promotee who is similarly placed in terms of the sub-rules of Rule: 7 for admissibility of corresponding ACP upgradation in terms of eligibility as determined under rule: 7.
- iii. While determining the entitlement of stepping up in terms of rule: 12, the 'similarly placed' junior promoted officer with whom comparison is permissible must be drawing his salary in both 'the higher pay band' and 'higher grade pay' and on the basis of ACP upgradation alone. All these three criteria must be fulfilled simultaneously*.
- iv. Once all the above criteria are satisfied, the 'pay band' and 'the grade pay' of the senior directly recruited officer should be stepped up subject

* In all other situations of 'drawing pay in higher pay band and grade pay' the benefit of stepping up is not admissible. For instance, quoting from the 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):

Quote

(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 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.

Unquote

There could be some other such situations as well.

to other conditions/restrictions in place in terms of the ACP Rules and otherwise.

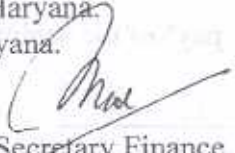
- v. In this rule (rule: 12) there is no stipulation of stepping up of 'pay in the pay band'. Therefore, if a junior is drawing his 'pay in the pay band' at a stage higher than the senior as a consequence of ACP upgradation, within the same pay band no stepping up is admissible to the senior direct recruits. Further, when the 'pay band' is stepped up, the pay of senior would be fixed in such a pay band in terms of rule: 22.

15. This interpretation is required to be taken in terms of this order for such of the aspects of the ACP Rules generally and the rule:12 in particular, that stands interpreted through it while implementing the ACP Rules. Wherever an action has been taken inconsistent with the interpretation given in terms of this order, it must be set right forthwith while making it consistent to this order.

Ajit M. Sharan
Financial Commissioner & Principal Secretary to the
Government of Haryana, Finance Department

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

1. All the Financial Commissioners & Principal Secretaries/ Administrative Secretaries to Government of Haryana.
2. Accountant General (A&E/Audit), Haryana.
3. Registrar (General), the High Court of Punjab & Haryana.
4. All the Heads of Departments in Haryana.
5. All the Divisional Commissioners in Haryana.
6. All the Deputy Commissioners in Haryana.


Deputy Secretary Finance
for the Financial Commissioner & Principal Secretary to the
Government of Haryana, Finance Department

INTERNAL CIRCULATIONS

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

45997-FD.-HGP, Chd