

The Registrar
Punjabi University,
Patiala

Subject: Request for withdrawl/ cancellation of Letter No. 5575/ Estt./A-8 dated 28-3-2003 (Notification/ Merit Promotion/2003/1) regarding cancellation of promotion to the position of Professor of Physics under MPS (1983) w.e.f.1-4-1995

Respected Sir,

With reference to your letter No. 55575/Estt/S-8 dated 28-3-03 (Notification/ Merit Promotion/2003/1) issued by the Deputy Registrar (Estt.), I have following OBJECTIONS to the issuance of the above said letter as no opportunity was provided to me before reaching to the unjust decision. This malafide and unjust decision is unjust due to the following reasons:

- (a) Due to the implementation of the said notification, I shall deemed to be Professor under MPS (1987) w.e.f. 3.7.2000, the date on which MPS does not exist. The quota for this promotion is available w.e.f.1-4-1995.
- (b) Due to the implementation of this notification, I shall be rendered to be junior to Dr. B.L.Mehta and four others namely Dr. Allawadhi, Dr. Buta Singh, Dr. Dham and Dr. Bahri. Dr. Mehta was rejected in the interview in which I was selected and he was subsequently selected under CAS (1996). The other four are junior to me as Reader and have become Professors under CAS (1996) and deemed to have joined w.e.f 27-7-98. All the five persons named above were interviewed much later than my interview.
- (c) Legally, there is a quota of about 14 more Professors under MPS (1983) and the scheme now stands abolished w.e.f. 24-12-98 with the introduction of CAS (1996) w.e.f 27-7-98.
- (d) The stay order of the High Court is in force since July 2000 for filling the positions of Professors under MPS (1983).

Under protest to the issuance of the above said notification, I submit as follows for your kind consideration::

1. The date of 1.4.1995 for six professors (namely Dr. S.D.Gajrani, Dr. D.S.Dhillon, Dr. G.R.Kataria, Dr. Harbans Pathak, Dr. H.R.Verma and Dr. Surinder Singh Khaira) promoted from Reader to Professor, under Merit Promotion Scheme has been fixed by the office of the University (including the Establishment branch and the Registrar) and ratified by the then Vice-Chancellor Dr. J.S.Ahluwalia. The decision was conveyed on 23-01-2002 through letter No.1672-82/Estt./S-8 (Notification/ Merit Promotion/2000/5) in continuation to the earlier notifications (Notification/ Merit Promotion/2000/1-4 dated 3-5-2000 and 3-7-2000).

Since it is more than one year and no person has gone to the court of law against this decision, there is no reason to reconsider the same especially in the light of the Punjab and Haryana High Court Judgment referred in the SLR 2002(2) according to which "A right which has been conferred or acquired by virtue of an instruction or rule or by way of granting a concession, the same can not be withdrawn to the prejudice of an employee."

- 2 The appointments of all the six Professors promoted under the MPS scheme (1983) after their interviews and selections, have been approved by the syndicate. (Syndicate 346 dated 29.6.2000 and Syndicate 347 dated 24.10.2000.
3. (a) The decisions taken by any Vice-Chancellor are implemented by the succeeding Vice-Chancellor. This decision was not touched upon by the succeeding Vice-Chancellor Mr. Rattan who immediately came after the exit of Dr. Ahluwalia.
- (b) If this decision of the Vice-Chancellor Dr. Ahluwalia is to be reviewed, then all the appointments made by him should be reviewed.
- (c) Even the decision of the Vice-Chancellor Dr. J.S. Puar should be reviewed - especially regarding appointments of Professors in the Physics Department.

Through the facts mentioned below, I want to justify my promotion w.e.f.1-4-1995:

1. I became eligible for promotion from Reader to Professor w.e.f. 1-1-1994 and submitted my bio-data to the University through letter No.1550/Phys/ on 30.12.1993 (according to the condition prevailing in the Calendar Volume-I, 1987 that the bio-data is to be submitted on 31st of December of the proceeding year).

<p><u>STATUTES regarding appointment by promotion of Lecturers as Readers and Readers as Professors (w.e.f.1-1-1983)</u></p> <p>(vi) Merit Promotion of Lecturer/ Readers (Page 74 to 77 of Punjabi University Patiala Calendar Volume-I 1997)</p> <p>5. The teachers interested in such assessment and consideration for merit promotion shall:</p> <p>(a) <u>Present their bio-data and work</u> (to include research publications, books, reviews, curriculum development teaching aid, innovation in teaching methods, equipment developed etc.) <u>on prescribed proforma atleast one month prior to the date of his/her fulfilling the conditions of eligibility.</u></p>

The candidates who aspire to get promotion w.e.f. 1.4.95 under the MPS (1983), can not be considered by the University at this moment because of the following reasons:

- (a) There is a stay of the Punjab and Haryana High Court in CWP 8174/2000.
- (b) According to my information, most of these aspirants did not apply prior to 1.3.95 and thus are not eligible to be considered for promotion w.e.f 1.4.95 as per the above statutes since it is not only the position of an individual in the combined seniority list which is important, it is more important to satisfy the condition of eligibility mentioned above.

2. The quota became available w.e.f.1-4-1995. The University did not bother to hold the interviews immediately after it was clear that the quota is available w.e.f.1-4-95. Moreover, there was no petition filed (Dr. D.S.Dhillon and others versus Punjabi University) at that time.
3. In Punjabi University Patiala, the Readers /Professors appointed through Merit Promotion were at par with the directly recruited Readers/ Professors, the combined seniority list of the teachers appointed through Merit Promotion and through open selection was in force in accordance with the syndicate decision of 7.3.1987 (para 32). The decision of the above said case (Dr. D.S.Dhillon and others versus Punjabi University and others – CWP 14161/1995) was made in 1998. In the light of this decision, the Readers based on the promotion under MPS could not be included in the list of Readers (discriminated as ex-cadre). Reacting to this and equating the appointees under the Merit Promotion Scheme and the direct recruits, the University Syndicate in its meeting on 28.2.1998 passed the following amendment in the Statute 15(1), 15(2), 15(3) of Punjabi University Calendar Vol. I, 1997 pp. 39-40 and statute 6, pp.48 and 49 and sent to the Chancellor for approval on 6.4.1998.

When the University started the process of holding the interviews for the posts of Professors from the list of direct recruited Readers, a CWP 14757 of 1999 (S.M.Vasudeva and others versus Chancellor Punjabi University and others) was filed by the Readers and Professors promoted under the MPS (1983) in the Punjab and Haryana Court based on the decision of the Supreme Court of India (Judgement Today 1999(1) pp.SC1 and SC2) regarding Inter Se Seniority of the teachers appointed through MPS (1983) and direct recruits. The immediate effect of this writ petition was that the amendment in the above statutes proposed by the Syndicate on 28.2.1998 were approved by the Hon'ble Chancellor on 22.3.2000. According to these amendments there is no difference between the direct recruited Professors/ Readers vis-à-vis Professors/Readers appointed through Merit Promotion and the recruitment of Reader/ Professor may also be made by promotion from amongst the Lecturer/ Readers, as the case may be, under Merit Promotion Scheme of the UGC or any other such scheme approved by the Syndicate from time to time.

Since the approval of the Statutes is in continuation of the already existing Merit Promotion Scheme (1983) of the UGC adopted by the Punjabi University through Statutes, according to which there was no difference between the direct recruits and the promotes and which got disturbed for a very brief period due to the High Court Judgment (and which is under challenge) , the amendment will have retrospective effect due to necessary implications (Refer to Ex.Capt.K.C.Arora and another versus State of Haryana and others 1984(2) SLR-97 paras 15 of the Apex Court, which reads as follows:

” It may be pointed out at the very outset that the Parliament as also the State Legislature have plenary powers to legislate within the field of legislation committed to them and subject to certain constitutional restrictions they can legislate prospectively as well as retrospectively. It is however, a cardinal principle of construction that every statute is prima facie prospective unless it is expressly **or by necessary implication made to have retrospective effect**. But the rule in general is applicable where the subject of the statute is to affect the vested rights or to impose new burden or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to effect existing rights, it is deemed to be prospective only. Provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. The Governor can also exercise the same powers under Art.309 of the constitution and there is not the slightest doubt that the impugned amendments in the instant case by necessary implication have undoubtedly a retrospective effect.”

The University relied on the statutes 15(1), 15(2), 15(3) and 6 of the University Calendar duly approved by the Chancellor on 6.4.98 and the Deans and Heads were changed according to the common seniority lists of Direct recruits and Merit promotes.

4. In the light of the amendment approved by the Chancellor, the Hon'ble Mr.Justice G.S.Singhvi and Mr.Justice Mehtab S.Gill of the Punjab and Haryana High Court in CWP No.14757 of 1999 directed the University to go ahead to make promotion on the vacant posts of Professors within a period of two months as an interim order issued on 24.3.2000 and who became Professor later under CAS(1996) (Item 7,Syndicate 353 dated 23.10.2001)
5. The interview for the post of Professor in Physics under Merit Promotion Scheme was conducted on 3-7-2000 and I was selected as Professor over and above Dr. B.L.Mehta, who happened to be senior to the undersigned as Reader (Annexure 20(A) Syndicate 347 dated 24.10.2000).
6. Although the quota for promotion was available w.e.f 1.4.1995, yet the University Registrar issued the appointment letter No. 14477-85/ Estt./S-8 dated 3.7.2000 (Notification/Merit promotion/2000/2) with conditions 1-5. As per condition 1, this promotion is to be governed by the decision of CWP 14757 of 1999 and as per condition 5, the date was to be fixed along with other cases afterwards with the stipulation, interalia, that my seniority would be fixed in due course. I joined as professor on 3.7.2000 (AN) accordingly as under the MPS (1983), the selected Professors are deemed to be

promoted as Professors from the date the quota is available. This appointment under the MPS (1983) has been approved by the Syndicate 347 (para 34) in its meeting held on 24.10.2000 along with two other cases of promotion i.e. Dr. Harbans Pathak of Public Administration and Dr. Surinder Singh Khaira of the Department of Punjabi Development.

7. With the introduction of revised grades, the Career Advancement Scheme called CAS (1996) was introduced by the UGC. Consequently, the MPS (1983) scheme was abolished w.e.f 24.12.98 as communicated by University Grants Commission in its letter F.5-1/99(PS) dated 24-2-2000.
8. The University vide letter No. 14893-953/Estt./S-4 dated 30.7.99 asked for applications up to 16.8.1999 from eligible candidates for promotions to higher positions under CAS (1996) scheme duly adopted by the Syndicate in its meeting on 24-3-1999. I submitted my bio-data for consideration and promotion to the position of Professor under CAS (1996) vide letter No. 8505/Phys/HRV/99 dated 16.8.99.
The promotions under this scheme were to be effective from 12.3.99 (and the promotes have been deemed to have joined w.e.f.12.3.99 although selections were made in May/June 2001) and could be shifted from back date i.e. 27.7.1998 Since the date of promotion under MPS (1983) was still to be decided and to cover the risk of decision of CWP 14757/1999, I requested the Registrar for consideration of my candidature for promotion to the position of Professor under CAS (1996) vide letter No. 1495/Phys dated 13.7.2000. It was also necessary as my juniors were going to be considered under this scheme and in the case of their selections, there was a doubt of their considering themselves as senior in the rank of Professor due to their joining w.e.f. 1999 while the date of my promotion was still to be decided under MPS (1983). However, as per the letter No. 21667/Estt./S-8 dated 17.10.2000 from Registrar, my request for consideration under CAS (1996) was turned down by the worthy Vice-Chancellor with the remarks that I shall have to forgo my promotion of Professor under MPS(1983) as I am already a Professor and a Professor can not be considered for the position of Professor.

From the law of equality as envisaged in the constitution, the same yardstick should be applied to all the Professors promoted under CAS (1996). In that case, no one of them can be considered for promotion under MPS (1983) unless one forgoes the earlier promotion taken under CAS (and become Reader first) even if there is no stay by the High court to carry out such promotions.
9. In continuation of the earlier notifications (Notification/ Merit Promotion/2000/1-4 dated 3.5.2000 and 3.7.2000) issued by the

University, I was informed by the Deputy Registrar (Estt.) vide letter No. 1672-82/Estt./S-8 dated 23.01.2002 (Notification/ Merit Promotion/2000/5) that my date of promotion under MPS(1983) has been fixed as 1.4.1995.

The date of 1.4.1995 has been fixed for all the six professors (namely Dr. S.D.Gajrani, Dr. D.S.Dhillon, Dr. G.R.Kataria, Dr. Harbans pathak, Dr. H.R.Verma and Dr. Surinder Singh Khaira) promoted under Merit Promotion Scheme by the office of the University (including the Establishment branch and the Registrar) and ratified by the then Vice-Chancellor. This date has been decided on the basis of legal aspects by taking into consideration the date of becoming eligible, the application sent by me prior to the date of becoming eligible and the date of quota becoming available etc.

The decision is in continuation to the condition 5 laid down in the earlier notifications according to which the decision regarding the date of promotion was to be made later along with other cases. The University (including the Establishment branch and the Registrar) decided about the date based on the facts, which was ratified by the then Vice-Chancellor.

10. In response to the office order No. 1672-82/Estt/A-8 dated 23-1-2002, I have submitted my joining report (and deemed to have joined as Professor in the Department of Physics w.e.f. 1.4.95) to the Registrar vide letter No. 202/Phys/ dated 24.1.2002 through Head, Department of Physics.

In the light of the above, it is requested that the revised Notification/ Merit Promotion 2003/1 be immediately withdrawn/ cancelled to avoid injustice being done to me.

Thanking you,

Dated 31-3-2003

Yours faithfully,
Sd/-

(Dr. H.R.Verma)
Professor of Physics

Forwarded by HoD Physics
Sd/- (Dr.S.P.S.Virdi)
Dated 3/4/03