

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/01540/2017 Date of order:- 16.2.2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Arun Kumar, resident of House No.614, Sector 41-A, Chandigarh, presently working as Junior Assistant (Group C post), in the office of Hospitality Department, U.T. Chandigarh.

.....Applicant.

(By Advocate :- Mr. K.B.Sharma)

Versus

1. Union Territory Chandigarh through its Adviser to Administrator, UT Sector 9, Chandigarh.
2. The Secretary, Hospitality department, Chandigarh Administration, UT State Guest House, Sector 6, Chandigarh.
3. The Director Hospitality, Chandigarh Administration, UT Secretariat, Sector 9, Chandigarh.

...Respondents

(By Advocate : Shri Arvind Moudgil).

O R D E R

Sanjeev Kaushik, Member (J):

Applicant assailed the order dated 27.11.2017 vide which his promotion order as Senior Assistant dated 21.11.2017 has been cancelled with immediate effect. He also sought directions from the Tribunal to direct the respondents to allow the applicant to continue as Senior Assistant against the post of Ram Achal Yadav who is holding higher post of Manager, Panchayat Bhawan, Chandigarh.

2. Facts which led to the filing of the OA are that as a result of direct recruitment, the applicant commenced his service as clerk on 21.6.2006. He was re-designated as Junior Assistant on 22.5.2014. The next promotion is of Senior Assistant which is to be filled up 100% by promotion from amongst the Junior Assistants/Clerks/Steno-typists with five years regular service in the cadre as per Service Rules known as Hospitality Department, Chandigarh Administration (Group C) Recruitment Rules, 2001. The applicant submitted representation dated 7.8.2017 requesting the respondents to consider his case for promotion against two vacant posts i.e. one on retirement of Shri Sunil Khanna on 31.7.2017 and other of Shri Ram Achal Yadav who is holding higher post of Manager in Panchayat outside the cadre. His request was considered by the department and acting upon the recommendations made by the DPC, the applicant as well as Smt. Sunita Devi who was working as Steno-typist were promoted as Senior Assistant on 21.11.2017. Vide impugned order dated 27.11.2017, the respondents have cancelled the promotion of the applicant against which the applicant is before this Court.

3. To invalidate the cancellation of his promotion order, the applicant has taken a solitary ground that since there are two vacancies in the cadre of Sr. Assistant against which they were considered and promoted, therefore, the impugned order cancelling his promotion is bad in law. In support of the plea, Shri K.B.Sharma, learned counsel for the applicant vehemently argued that since there is one clear vacancy and the other vacancy is of Shri Ram Achal Yadav who is holding the post outside the cadre, therefore, his case

was rightly considered and was promoted as Senior Assistant. Once the post of Senior Assistant which has been occupied by Shri Ram Achal Yadav is lying vacant in the department as he has been deputed on a higher post in the Panchayat Bhawan, therefore, the applicant ought to continue on the said post, thus, the impugned order be declared illegal and the same be set aside.

4. While resisting the claim of the applicant by filing written statement, the respondents have not disputed the factual accuracy. However, they submitted that without realizing that Rule 254 of GFR has already been repealed on 28.3.2017 i.e. prior to considering the case of the applicant for promotion against the substantive post of Shri Ram Achal Yadav, Senior Assistant, the competent authority while giving approval have realized their mistake and by realizing their mistake have passed the impugned order by cancelling the promotion order of the applicant. It has further been clarified that after repealing of GFR, they are drawing salary of Shri Ram Achal Yadav, Senior Assistant from the respondent department who is deputed on higher post of Manager, Panchayat Bhawan. Thus, it cannot be said that the said post is lying vacant against which the applicant can be adjusted/promoted. It is also submitted therein that since there is single post and Smt. Sunita Devi being senior to the applicant has been considered and allowed to continue on the promotional post of Senior Assistant.

5. In support of the above plea, Shri Moudgil learned counsel appearing on behalf of the Chandigarh Administration has submitted that since one post of Senior Assistant is vacant and the department

had wrongly promoted the applicant by considering the post of Shri Ram Achal Yadav is vacant, whereas the salary of said Shri Ram Achal Yadav is being drawn against the post of Senior Assistant, therefore, while rectifying their mistake, the respondents have passed the impugned order dated 27.11.2017 by cancelling the promotion order dated 21.11.2017 qua the applicant. Thus, he submitted that there is no illegality and the impugned order be upheld.

6. Having completed all the formalities, having heard the learned counsel for the parties, having gone through the record and legal provision with their valuable assistance. A conjunctive perusal of the pleadings make it clear that there are two cadre posts of Senior Assistant and out of two posts, one is occupied by Shri Ram Achal Yadav and the other fall vacant on 31.7.2017 due to retirement of Shri Sunil Khanna. Therefore, as per rule formation, the respondents ought to have considered the person who is senior against the single post. But under the wrong notion of Rule 254 of GFR, the respondents have considered the case of the applicant along with Smt. Sunita Devi for promotion by considering that two clear vacancies are lying vacant in the cadre of Senior Assistants and they were promoted. While giving approval, it came to the notice that the post of Shri Ram Achal Yadav cannot be said to be vacant though he was holding the higher post of Manger, Panchayat Bhawan, but is getting salary against the post of Senior Assistant and Rule 254 of GFR had already been repealed prior to considering the case of the applicant for promotion. Therefore by rectifying their mistake, they reviewed the promotion of the applicant and have passed the impugned order. Therefore, we find no fault in passing the impugned

order. It is settled proposition of law that the department is free to rectify its mistake at any point of time. Reliance in this regard is placed on judgments in the cases of **Jagdish Prajapat versus State of Rajasthan & Ors.** (1998(2) A.T.J. Page 286); **Chandigarh Administration & Ors. versus Naurang Singh & Ors.** (1997(3) J.T. Page 536) and **G.Srinivas versus Government of Andhra Pradesh** (2005(13) S.C.C. Page 712).

7. In view of above discussion, we are of the view that the present OA is bereft of any merit and the same is accordingly dismissed. Needless to say that the interim order granted on 22.12.2017 automatically stands vacated. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A).

Dated:- February 16, 2018.

Kks