

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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| 1. O.A. No.63/994/2017 | Reserved on: 12.10.2018 |
| 2. O.A. No.63/993/2017 | Date of decision: 25.10.2018 |

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A).**

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1. O.A. No.63/994/2017

Sunita Rani, aged 59 years W/o Surender Pal R/o Block-C, Flat No.5, Verma Apartments, Dyerton Estate, Bye-Pass Khalini, Shimla-2 HP. Group C.

... APPLICANT

VERSUS

1. Union of India, Ministry of Home Affairs/Grih Mantralaya, 2/A Mansingh Road, New Delhi-110011.
2. Director, Directorate Census Operations, Himachal Pradesh, CGO Complex, Himadri Block, Longwood, Shimla-1.
3. Deputy Director of Census Operations, Himachal Pradesh, CGO Complex, Himadri Block, Longwood, Shimla-1.

... RESPONDENTS

2. O.A. No.63/993/2017

Surjan Singh Nainta, aged 52 years, S/o Sh. Sohan Lal Nainta, R/o Roshni Niwas, Near Dhingu Bawri, Sanjauli, Shimla-6, HP. Group-C.

... APPLICANT

VERSUS

1. Union of India, Ministry of Home Affairs/Grih Mantralaya, 2/A Mansingh Road, New Delhi-110011.
2. Director, Directorate Census Operations, Himachal Pradesh, CGO Complex, Himadri Block, Longwood, Shimla-1.
3. Deputy Director of Census Operations, Himachal Pradesh, CGO Complex, Himadri Block, Longwood, Shimla-1.

... RESPONDENTS

PRESENT: Sh. Rajesh Kashyap vice Sh. N.S. Sidhu, counsel for the applicants.
Sh. Subh Mahajan, counsel for the respondents.

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. This order shall dispose of the above captioned two Original applications as they involve identical facts, questions of law and relief claimed therein and likewise is also requested by learned counsel for the parties. However, for convenience facts are taken from the case of Sunita Rani vs. UOI & Ors.
2. The applicant assails order dated 18.05.2017, whereby her representation for ante-dating or retrospective promotion as Senior Compiler from 04.03.2015 to 16.02.2011 has been rejected.
3. Facts which led to filing of the O.A. are that the applicant Ms. Sunita Rani initially joined as Assistant Compiler in the year 1982. During service, she earned first promotion as Compiler in the year 1998 and then second promotion to the post of Senior Compiler in the year 2015. The post of Senior Compiler is feeder post for promotion to the post of Statistical Investigator Gr-II. The case set-up by the applicant is that due to merger of post of Statistical Investigator grade-III and Statistical Investigator grade-II by notification dated 25.08.2014 special onetime permission to convene DPC was granted for assessing fitness of persons in merged cadre and therefore, four posts became available in the feeder cadre of Senior Compiler. Resultantly, the applicant representation requesting to consider her claim for promotion to the post of Senior Compiler from the date when vacancy became available i.e in the month of February 2011 and not from the date when she was actually promoted in the year 2015. The grounds which the applicant has taken is that since the vacancies became available because of giving promotion to the

persons of higher post on notional basis from earlier date, resultantly the vacancies became available ,therefore, applicant being eligible at that time also is entitled to get promotion from that date. However, the representation submitted by the applicant has been turned down by the respondents vide impugned order dated 18.05.2017. Hence present petition.

4. Respondents have filed written statement wherein they have supported the impugned order and have submitted that they have rightly rejected representation for ante-dating her promotion because concession was given for promotional post as one time measure because of merger of two posts, therefore, it cannot be said, on giving promotion to occupant of higher post, resultant vacancy which became available, can be granted to her. It has also been stated that suitability of the applicant was judged as per rule formation and she was rightly promoted to the said post in the year 2015.
5. The applicant has filed replication contradicting the averment made in the written statement.
6. We have heard learned counsel for the parties.
7. Sh. Kashyap, learned counsel for the applicant vehemently argued that the impugned order rejecting claim of the applicant for grant of promotion from the date when vacancy became available is illegal, arbitrary and liable to be set aside. To substantiate his arguments he submitted that the case of the applicant is to be considered from the date when vacancy became available, and they can be given notional promotion when vacancy became available and actual from the date when they were actually promoted.

8. Per contra, Sh. Mahajan, learned counsel for the respondents opposed the prayer and submitted that applicants cannot claim promotion as a matter of right and their claim was considered by the Departmental Promotion Committee and they were rightly promoted in the year 2015, therefore, their promotion cannot be ante-dated. To buttress his claim, he placed reliance on following orders:

- i. Judgment dated 04.12.2006 passed by the Hon'ble Supreme Court of India in the case State of Uttaranchal & Anr. vs. Dinesh Kumar Sharma (SLP(C) No.12966/2005).
- ii. Judgment dated 05.03.2014 passed by the Hon'ble High Court of Punjab and Haryana in the case of Union Territory, Chandigarh Administration and Others vs. Tarlochan Singh and others (CWP No.17079-CAT of 2013 (O&M).
- iii. Order dated 24.01.2012 passed by the Principal Bench of the Tribunal in the case of Ranvir Singh & Ors. vs. Govt. of NCT & others.
- iv. T. N. Administrative Service Officers Assn. vs. Union of India, reported as 2000(5) SCC 728.
- v. K. Ramulu (Dr.) vs. (Dr.) S. Suryaprakash Rao, reported as 1997 (3) SCC 59.
- vi. Union of India vs. Vijender Singh & Ors., reported as 2011 (176) DLT 247.
- vii. Ram Niwas, Junior Engineer, Marketing Board, Faridabad vs. The Haryana State Agricultural Marketing Board, Panchkula and another, reported as 1994 (2) SLR 729.
- viii. Union Territory of Chandigarh and another vs. Vin Dosanjh and another (CWP No.3865 of 2012) decided on 04.03.2013

9. We have given our thoughtful consideration to the entire matter with able assistance of learned counsel for the parties.
10. The solitary issue that arises for our consideration is whether the applicants can claim retrospective promotion from the date of occurrence of vacancy or not?
11. As we would proceed to note the law on the subject, we would find that to the normal rule of law that nobody can be promoted with a retrospective effect, the exception is that when there exist facts which necessitate so or there is a rule which permits so. Thus,

the facts which necessitated the exception to be applied have to be specifically pleaded.

12. Time and again this issue has got attention of Courts Of Law. Way back in the year 1970 a full bench of Hon'ble Punjab and Haryana High Court in the case of **Head Constable Sardul Singh vs. Inspector General of Police** reported as AIR 1970 Punjab 481, held that "no civil servant has a right to be promoted to a higher rank and that only right is that he has a right for being considered for promotion." In the case of **State of Haryana vs. Subhash Chander Marwaha and others**, reported as AIR 1973 SC 2216, Lordships have held as under:-

"8. One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed....."

13. Hon'ble apex judicial dispensation in the case **of Union of India & others vs. K. K. Vadera & other**, reported as AIR 1990 SC 443, held that there is no law or rule under which a promotion is to be effective from the date of creation of a promotional post and that after a post falls vacant for any reasons whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date when such post falls vacant. Recently, the same view has again been reiterated in the case of **Union of India and others vs. N. C. Murali and others**, reported as 2018 (13) SCC 73, where after analyzing law on the subject, Lordships have held that an employee has a right for consideration for promotion but he cannot

claim promotion from the date of occurrence of vacancy except when rule says so while relying on judgment in the case of **Nirmal Chandra Sinha vs. Union of India**, reported as 2008 (14) SCC 29 where earlier judgment in the case of K. K. Vadera (supra), Lordships have recorded its findings in para 17 where they have said that unless there is a specific rule entitling an employee to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallize on the date of occurrence of vacancy and promotion is to be extended on the date when it is actually effected.

14. The decision is in line with the reasoning that unless a rule to the contrary exists, promotions cannot be made or directed to be made retrospectively. It is for the employer to initiate process of promotion keeping in view its requirement.
15. Admittedly, the applicant commences her service as Assistant Compiler in the year 1982. She was promoted as Compiler on 2.2.1998 and worked as such till she was further promoted as Senior Compiler on 27.2.2015. There are seven cadre post of Senior Compiler. Out of which four were promoted as Statistical Investigator Grade-III on notional basis w.e.f. 17.2.2011 because of merger of Statistical Investigator Grade- III with II that too with special one time permission for holding DPC for merged post. As a result of that four posts of Senior Compiler fell vacant and case of the applicant along with two more persons was considered by DPC, which recommended their case on 4.3.2015 for promotion.
16. Even otherwise as per Para 17.11 of DOPT O.M dated 10.4.1989 the promotions shall be effective from the date of DPC or from the date of actual promotion, whichever is later.

17. Thus for the reason that vacancy became available on promotion of persons to promotional posts as a special case, that does not create right in favour of the applicant to seek retrospective promotion against resultant posts in view of above law and rule formation.
18. In the wake of above, answer to the poser is given in negative. Accordingly, both the OAs being devoid of merit are dismissed, leaving the parties to bear their own costs. No other point argued.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 25.10.2018.
Place: Chandigarh.

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