

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH  
(orders reserved on 22.11.2018).**

**O.A.NO. 060/00901/2017 Date of order:- 10.1.2019.**

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

Ankur Sharma son of Sh. Yograj Sharma, r/o Administrative Officer, Vigilance, PGIMER, Sector 12, Chandigarh.

.....Applicant.

( By Advocate :- Mr. Vivek Sharma )

Versus

1. Union of India through its Secretary, Department of Health & Family Welfare, Union of India, Nirman Bhawan, New Delhi.
2. Post Graduate Institute of Medical Education & Research Chandigarh, Sector 12, Chandigarh, through its Director.

...Respondents

( By Advocate : Mr. D.R.Sharma).

**O R D E R .**

**Sanjeev Kaushik, Member (J):**

The present petition is directed against order dated 26.4.2017 (Annexure A-12)vide which the prayer of the applicant for antedating his date of promotion as Administrative Officer from the date of acquiring eligibility has been declined. He further sought issuance of direction to the respondents to promote him to the post of Administrative Officer with effect from 25.1.2015 instead of 18.2.2016 with all consequential benefits.

2. The solitary issue that arise for our consideration is whether an employee can claim retrospective/ antedating promotion from the date of occurrence of vacancy/acquiring the eligibility or not.

3. The applicant was selected and appointed as Assistant Administrative Officer vide order dated 16.1.2012. He joined on 25.1.2012. Initially, he was put on probation for a period of two years, which was subsequently extended for another seven months vide order dated 22.1.2014. He made a representation against extension of his probation period. Subsequently vide order dated 17.9.2015, the applicant was confirmed with effect from 25.9.2014. The next promotion is to the post of Administrative Officer for which a person, having three years experience as Assistant Administrative Officer, is eligible. Since the applicant was eligible, therefore, he submitted representation to consider his claim for promotion to the post of Administrative Officer, and in terms of rule formation which was supplemented by another representation and ultimately he was promoted as such vide order dated 17.2.2016 with immediate effect. His representation was rejected vide order dated 26.4.2017 (Annexure A-12) against which the applicant is before this Court.

4. The factual accuracy, as noticed herein above, has not been disputed by the respondents. However, it has been pleaded in the written statement that the applicant cannot claim promotion as a matter of right even though he was eligible. The Departmental Promotion Committee considered his claim and found him suitable and as such recommended his case for promotion and he was

promoted vide order dated 171.2.2016. It has also been stated therein that earlier the work and conduct of the applicant was not satisfactory and for that very reason, his probation period was extended. Thus, he cannot be promoted retrospectively.

5. To buttress their plea, the respondents placed reliance on a judgment passed by the jurisdictional High Court in the case of **U.T. Chandigarh & Ors. versus Tirlochan Singh** ( CWP No.17079-CAT of 2013) and judgment passed by a coordinate Bench of the Tribunal in O.A.No.063/0084/2016 ( **Ranendra Barman versus Union of India & Ors.** ). A judgment passed by the Tribunal in the case of **Sunita Rani versus Union of India & Ors.** ( O.A.No.063/994/2017) decided on 25.10.2018 has also been relied upon by the respondents wherein similar issue has been put to rest based upon various judicial pronouncements.

6. We have heard the learned counsel for the parties and have perused the pleadings available on record.

7. Apart from the narration of factual averments, learned counsel for the applicant produced before us a copy of judgment dated 7.3.2012 in O.A.No.280/2008 ( **Y.S.Chaudhary & Ors. versus Union of India & Ors.** ) passed by the Principal Bench of the Tribunal.

8. We have given our thoughtful consideration to the entire matter with the able assistance of learned counsel for the parties.

9. Before touching upon the merits of the case, we note the law on the subject. Though, the normal rule of law is that nobody can be promoted with retrospective effect, exception being that when there exist facts, which necessitate retrospective promotion, it can be done. Thus, the facts which necessitated the exception, to be applied have to be specifically pleaded.

10. Time and again, this issue has attracted attention of Courts Of Law. Way back in the year 1970, 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 has 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." The Hon'ble Apex Court in the case of **State of Haryana vs. Subhash Chander Marwaha & Ors.**, (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....."

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**, (2008 (14) SCC 29) where earlier judgment in the case of K. K. Vadera (supra), Lordships have recorded findings in para 17, 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.

11. 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.

12. In the light of the above authoritative pronouncements, we proceed to examine the facts of the present case. We are of the view that the present petition deserves to be dismissed being bereft of merit. It is not in dispute that there is no rule which mandates that necessarily the respondents are under obligation to promote an employee on his acquiring the eligibility. It is for the employer to see whether the employee requires any promotion or not. There is no malice levelled against the respondents that for arbitrary exercise

of power, the promotion of the applicant has been withheld. Merely, when the applicant become eligible and since the promotional post is lying vacant does not make him ipso facto eligible for promotion, therefore, the plea raised by the applicant that he be promoted to the promotional post cannot be accepted because it is within the domain of the competent authority to go for promotion or not in absence of any specific rule. Moreover, para 17.11 of the DoPT guidelines dated 10.4.1989 specifically provides that the promotions shall be effective from the date of DPC or from the date of actual promotion, whichever is later.

13. Thus, in view of discussion made herein above, the poster raised in the instant OA is decided against the applicant. Accordingly, the OA is dismissed, with no order as to costs.

**(SANJEEV KAUSHIK)  
MEMBER (J)**

**(P.GOPINATH)  
MEMBER (A).**

Dated:- 10.1.2019.

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