

**(2014) 07 P&H CK 0221**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CWP No. 14677 of 2010 (O&M)

Manjit Singh

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** July 14, 2014

**Hon'ble Judges:** Hemant Gupta, J; Fateh Deep Singh, J

**Bench:** Division Bench

**Advocate:** Sapan Dhir, Advocate for the Appellant; Vikas Suri, Advocate for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Hemant Gupta, J.

Challenge in the present writ petition is to an order passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh on 30.03.2010 whereby, an original application filed by the petitioner claiming promotion to the post of Operator Grade-II remained unsuccessful.

2. The petitioner was appointed as Trade Mate (A.C.) on 5.6.1990 by way of direct recruitment. The next promotion from the post of Trade Mate is to the post of Operator Grade-II. The rules for promotion to the post of Operator Grade-II were finalised in the year 2007 called "Engineering Department, Project Public Health Service, Union Territory, Chandigarh, Group C, Posts of field Staff, Recruitment Rules, 2007 (for short, "Recruitment Rules of 2007)". The cadre strength of Operator Grade-II (A.C) is 21. As per the Recruitment Rules of 2007, 20% posts are to be filled up by promotion and 80% by direct recruitment. The representation of the petitioner for promotion was declined on 17.01.2008 Annexure P/8 inter alia on the ground that at present 07 Operator Grade-II (A.C.) (promotee quota) are working against the 21 sanctioned posts of A.C. which are excess, as, only 04 posts goes to promotee quota.

3. The grievance of the petitioner is that a vacancy arose in the category of Operator Grade-II in the year 2003 when Ashok Kumar was promoted and, therefore, resultant vacancy should be filled up by promotion from amongst the Trade Mate (A.C). Since the petitioner is senior most, he is entitled to be promoted against the vacancy arose after the promotion of Ashok Kumar. It is pointed out that in the year 2003, the draft Recruitment Rules were being followed which provided 50% quota for promotion and direct recruitment each.

4. The application has been dismissed by the Tribunal holding that the post vacated by Ashok Kumar was meant for direct quota as he was directly appointed as Operator Grade-II and was promoted as Operator Grade-I w.e.f. 14.5.2003, therefore, the petitioner cannot stake his claim against this vacancy.

5. We have heard learned counsel for the parties. It is admitted by learned counsel for the petitioner that none of the junior was promoted after the promotion of Ashok Kumar on 14.5.2003. It is a finding of fact recorded by the Tribunal that Ashok Kumar was a direct appointee and the vacated post is meant for direct recruitment. It is also found that mere fact that vacancy was available does not confer any right on a official to seek promotion.

6. The question whether existence of vacancy confers any right for promotion has been examined by the Division Bench of this Court in CWP NO. 17079-CAT of 2013 titled as Union Territory, Chandigarh Administration and others vs. Trilochan Singh and others decided on 05.03.2014, wherein it has been held that mere availability of vacancy does not confer right to seek promotion. The relevant extract reads as under:-

In view of the various judgments referred to above, we find that a person is not entitled to seek promotion from the day vacancies arises. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date or for a direction that the vacancy in the promotional post should be filled up. However, if the decision of the employer is to fill up the promotional post is actuated by the considerations other than administrative, such action or inaction can be subjected to the judicial review, but there cannot be any direction to grant promotion from the date the vacancy arises. However, in case, an Officer is given Current Duty Charge or promoted on adhoc basis, he shall be entitled to the pay of the promoted post as has been held in [Smt. P. Grover Vs. State of Haryana and Another](#), .

In view of the consistent well established principles of law as enunciated in the above mentioned judgments, we find that the direction of the Tribunal holding that the applicants are entitled to be promoted from the day the vacancy arose is clearly not sustainable in law. Consequently the present writ petition is allowed and the impugned order dated 15.3.2012 passed by the Tribunal is set aside.

7. The representation of the petitioner to seek promotion has been declined in the year 2008 after promulgation of Recruitment Rules of 2007. Such statutory rules contemplate the quota of promotion to 20%. The petitioner can be considered for promotion to a post falling to his category and not against a category meant for direct recruitment after promulgation of said rules. Prior to the promulgation of statutory rules, none of the junior has been promoted. Therefore, the petitioner cannot make claim for promotion merely on the ground that a vacancy was available.

8. We do not find any error of law in the order passed by the Tribunal, which may warrant interference in the present writ petition. Dismissed.