

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.2289 of 2017.

Date of Decision: March 21, 2017

Gurmukh Singh and others

.....Petitioners

versus

Chandigarh Administrative Tribunal, Chandigarh Bench and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.Amit Jhanji, Advocate, for the petitioners.

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Surya Kant, J. (Oral)

The petitioners are aggrieved by the order dated 07.09.2016 passed by the Central Administrative Tribunal, Chandigarh Bench, whereby their Original Application seeking a direction for their promotion to the post of Junior Engineers has been dismissed on the ground of res-judicata as well as on merits as the plea of discrimination could not be substantiated.

[2] The facts may be noticed briefly.

[3] The petitioners and the private-respondents are/were working as Technicians in various disciplines like Furnishing, Trimming, Painting, Manufacturing and Shell at Rail Coach Factory, Kapurthala. 36 posts of Junior Engineers in Mechanical Department were decided to be filled up by way of competitive selection process for which notice was issued on 30.01.2008. The petitioners as well as private-respondents competed and selection result was declared on 30.04.2008. There were multiple challenges to the selection process before the Central Administrative Tribunal which led to issuance of two sets of directions on different occasions, namely, (i) in one of the round, the Tribunal directed that the selection shall be made strictly on the basis of merit in the competitive test; (ii) in the second round,

the Tribunal declined the prayer for re-valuation sought by some of the

candidates on the ground that such a direction cannot be issued after 2½ years of selection.

[4] The petitioners' case is that the private-respondents are juniors to them in different disciplines and regardless of the fact that they are lower in merit also, the authorities have promoted the private-respondents as Junior Engineers over and above the petitioners.

[5] It is the conceded position that such a claim was first time raised by the petitioners by way of OA No.060/0062/14 (**Gurmukh Singh and others versus Union of India and others**) wherein also they did not lay any challenge to the selection of their juniors but sought a direction for their own promotion. The said OA was dismissed by the Tribunal in the following terms:-

“....1. After arguing for some time, learned counsel for the applicants states that the applicants may be permitted to withdraw the O.A., with liberty to approach respondents for redressal of their grievance....”

[6] It may be seen that the petitioners did not seek any permission from the Tribunal to file another Original Application on the same cause of action. After withdrawing the earlier OA, they served the Railways authorities with a legal notice and thereafter filed second OA again without challenging the selection of their juniors but reiterating that they are entitled to be promoted in view of the fact that their juniors stood promoted in the year 2008.

[7] The Tribunal has dismissed the second OA vide the impugned order on the ground that second petition was barred by the principle of res-judicata and that the petitioners cannot allege discrimination for the reason that promotion granted to private-respondents have been already protected

by the Tribunal in its previous orders.

[8] We have heard learned counsel for the petitioners at a considerable length and gone through the record.

[9] It is undeniable that the petitioners filed the first OA in the year 2014 only in which specific claim for their own promotion was raised on the ground that their juniors had been promoted. Instead of inviting an order on merits, the petitioners withdrew that OA with liberty to approach the authorities for redressal of their grievance. Mere serving the railways authorities with a legal notice thereafter, in our considered view, does not amount to accrual of a fresh cause of action so as to permit them to file another OA before the Tribunal.

[10] The petitioners' plea that the candidates lower in merit have been promoted ignoring them is factually debatable in view of the averments made in the written statement read with the merit-list attached thereto. It is also an admitted fact that candidates stated to be lower in merit than the petitioners, were promoted in the year 2008 and the petitioners ought to have challenged their promotions within a reasonable and prescribed time limit. No meaningful action having been taken by them within time, we decline to interfere with the order under challenge.

Dismissed.

[SURYA KANT]
JUDGE

March 21, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

CM No.4162 of 2017 in
CWP No.2289 of 2017.

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Gurmukh Singh and others versus Chandigarh Administrative Tribunal,
Chandigarh and others

Present : Mr.Amit Jhanji, Advocate,
for the applicant-petitioners.

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For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and the document (P-5) is taken on
record.

CM stands disposed of.

(SURYA KANT)
JUDGE

March 21, 2017
mohinder

(SUDIP AHLUWALIA)
JUDGE