



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 19.09.2024

CWP No.1682 of 2019(O&M)

Rajesh Kumar

....Petitioner

VS.

Chandigarh Administration and another

....Respondents

CWP No.18226 of 2020(O&M)

Rajesh Kumar

....Petitioner

VS.

Chandigarh Administration and another

....Respondents

CORAM: HON’BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Mohit Jaggi, Advocate
for the petitioner in both the petitions

Mr. Ashish Rawal, Advocate
for respondent No. 2 in both the petitions

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order CWP No. 1682 of 2019 and CWP No. 18226 of 2020 are hereby adjudicated as common questions of law and facts are involved. With the consent of both sides, facts are borrowed from CWP No. 1682 of 2019.



2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 14.01.2019 (Annexure P-34) whereby he has been promoted to the post of Senior Assistant instead of Sub-Inspector (Enforcement).

2. The petitioner was absorbed as Clerk on 16.06.1998 in the Municipal Corporation, Chandigarh. The respondent vide communication dated 16.10.2017 called options from employees for promotional posts i.e. Senior Assistant and Sub-Inspector (Enforcement). The said letter indicates that eight posts of Senior Assistants and one post of Sub-Inspector (Enforcement) were to be filled up through promotion from amongst the eligible Clerks/Junior Assistants. The promotion was to be made as per Municipal Corporation, Chandigarh Service Regulations, 2012. The petitioner vide communication dated 23.10.2017 (Annexure P-23) opted for the post of Sub-Inspector (Enforcement). The respondent vide communication dated 25.06.2018 (Annexure P-25) again asked the petitioner to clarify his position with respect to option submitted by him. He was also informed that if he does not file fresh option, his earlier option would be considered as final. The relevant extracts of communication dated 25.06.2018 are reproduced as below:-

“Reference your application dated 23.10.2017 on the subject cited above.

The CMC has ordered to seek the advice from DoP, Chd. Admn. whether the Recruitment Rules in r/o Sub-Inspector are applicable on the existing vacancy or at the total sanctioned posts. The DoP through SLG, Chd. Admn. is being requested to advice this office in the matter. It will take some time.



At present, 8 posts of Sr. Assistant are lying vacant, which are to be filled up 100% by promotion from amongst Clerks/Jr. Assistants having 5 years of service as the feeding cadre for the post of Sub-Inspector and Sr. Assistant is the same. Therefore, you are again given an opportunity to exercise your option afresh, whether you are willing to get the promotion against the post of Sr. Assistant or still for the post of Sub-Inspector as opted on 23.10.2017. Your option must reach in this office within 7 working days, failing which the option dated 23.10.2017 for promotion to the post of Sub-Inspector earlier exercised by you shall be considered as final and thereafter, you will not claim for promotion to the post of Sr. Assistant in future.”

3. The matter of petitioner and other employees was put up before Departmental Promotion Committee which found that there are total 20 posts of Sub-Inspectors (Enforcement). 5 posts can be filled through promotion and 15 posts are meant for direct recruits. It was also found that 11 promotees are holding posts of Sub-Inspector (Enforcement) whereas maximum promotees could be five. In these circumstances, the petitioner was promoted to the post of Senior Assistant instead of Sub- Inspector (Enforcement). Seven persons were promoted and five of them joined. The petitioner opted not to join on the post of Senior Assistant. He opted to file the instant petition.

4. Mr. Ashish Rawal, Advocate confirms that at present five promotees are holding position of Sub-Inspector (Enforcement), thus, entire quota stands filled up. As soon as post meant for promotee would be available, the petitioner would be considered.



5. Mr. Mohit Jaggi, Advocate submits that respondent itself invited options from Clerks/Junior Assistants and thereafter took a somersault and rejected claim of the petitioner. It was categoric stand of the respondent that one post of Sub-Inspector (Enforcement) meant for promotees is available.
6. I have heard counsel for the parties and perused the record with their able assistance.
7. From the arguments and perusal of record, it is evident that there are total 20 posts of Sub-Inspector (Enforcement). Out of 20 posts, 15 are to be filled up through direct recruitment and five from amongst the promotees. At present no seat meant for promotees is lying vacant and petitioner is claiming said position as promotee. In the absence of available vacancy, this Court cannot ask respondent to adjust petitioner on the post of Sub-Inspector (Enforcement). Needless to mention, the respondent would consider claim of the petitioner as soon as post of Sub-Inspector (Enforcement) falls vacant.
8. In the backdrop, the petitions stand disposed of.
9. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

19.09.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	