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**(2014) 05 P&H CK 0632**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP-14382-CAT-2002 (O&M)**

Tejinder Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 22-05-2014

**Acts Referred:**

**Citation :** (2014) 05 P&H CK 0632

**Hon'ble Judges :** Sanjay Kishan Kaul, C.J.; Arun Palli, J

**Bench :** Division Bench

**Advocate :** Aman Chaudhary, Advocate for the Appellant; Puneet Jindal, Advocate for Respondents Nos. 1 and 2 and Mr. Jagdeep Jaswal, Advocate for Respondent No. 4, Advocate for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Sanjay Kishan Kaul, C.J.

CM-6533-2014

1. Notice which is accepted by learned counsels for the respondents.
2. The aforesaid application has been filed seeking correction/modification of our order dated 15.05.2014.
3. We have heard learned counsels for the parties.
4. What we have recorded on 15.05.2014 is what was urged before the Court and there is no mistake in recording the order. It appears that there is a change in the direction of the submission made now by learned counsel for the petitioner. This is so, as earlier what was urged before us was that respondent No. 4 had failed to make out the cut-off 60% in the written examination. Now what is sought to be urged is that respondent No. 4 did not have an aggregate of 60% marks in both the written test and interview. However, in our view, it makes little difference to the controversy as undoubtedly the requirement was to have 60% even over all apart from 60% in the written test.

5. The second limb of this application arises from a plea that the select panel is arranged on the basis of marks obtained in the competitive test including written test and viva-voce. Thus, if six vacancies were there, the six topmost people in the merit would form the part of that panel and thereafter the seniority would have a play in placement of the top six meritorious persons.

6. The aforesaid is clearly a new plea as our order dated 15.05.2014 confirmed the position that the mode of selection was that if the pool of persons is available who qualified the written test and interview, then the first six people on seniority would be taken out of them to form the select panel on account of six vacancies and it is re-confirmed by learned counsel for respondents No. 1 and 2.

7. The application accordingly stands disposed of.

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8. In furtherance to our order dated 15.05.2014, we may note that the relevant information has been produced to establish that respondent No. 4 obtained the requisite 60% marks in the written test and in the interview separately and even in the aggregate had 60% marks. The plea sought to be now raised through CM-6533-2014 is possibly on account of this fact as the petitioner now seeks to show that he was more meritorious in the test and, thus, the first six persons should be taken on the basis of their performance in the test and only out of those six persons the select panel be arranged in accordance with seniority. However, that is not what is done, as explained aforesaid. The result is that decision of respondents No. 1 and 2 to replace the petitioner with respondent No. 4 cannot be faulted.

9. We are conscious of the fact that both the parties i.e. the petitioner and respondent No. 4 have been working for the last 15 years in the promoted post. This was of course on account of interim orders granted in favour of the petitioner. We are informed by learned counsel for respondents No. 1 and 2 that the same is against sanctioned post of the over all cadre. Thus, the strength of the cadre on the promotion of both the petitioner and respondent No. 4 would not be violated. Both these persons have also qualified in the test which would entitle them to promotion. If there were seven vacancies instead of six available, both could have been adjusted. The strength of the cadre permits both of them to continue in the present promoted post.

10. The judgment of the Hon'ble Supreme Court in V. Kameshwari (Smt) Vs. Union of India (UOI) and Others, is cited in this behalf where promotion of one was held ought not to give rise to reversion of other person. We are, thus, inclined to follow that line with no serious objection on the part of learned counsel for respondents No. 1 and 2.

11. The result of the aforesaid is that the legal aspect having been enunciated as aforesaid, both the petitioner and respondent No. 4 can continue to occupy the promoted post. This would be in the administrative interest of respondents No. 1

and 2 as both of them have worked in the promoted post for 15 years.

12. The petition is accordingly disposed of leaving the parties to bear their own costs.