

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12586 of 2024

1. The Union of India through the Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi - 110001.
2. Director General, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi-110001.
3. CEO, Prasar Bharti, Prasar Bharti Secretariat, Tower C, Mandi House, Copernicus Marg, New Delhi - 110001.
4. Chief Engineer, Civil Construction Wing, All India Radio, 6th Floor, Soochna Bhawan, CGO Complex, Lodi Road, New Delhi-110003.
5. UPSC, through Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi - 110069

... .. Petitioner/s

Versus

Vishwa Mohan Kumar (In person) S/o Madan Mohan Chaudhary, R/o D-1, Sumitra Villa Apartment, Magistrate Colony patna, P.S. Rajeev Nagar, Dist. - Patna.

... .. Respondent/s

Appearance :

For the Petitioners	:	Dr. K.N. Singh, ASG Mr. Ram Tujabh Singh, CGC Mr. Radhika Raman, Advocate
For the Respondent	:	Mr. Vishwa Mohan Kumar (In person)

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 15-10-2025

Heard Dr. K.N. Singh, learned Additional Solicitor General of India assisted by Mr. Ram Tujabh Singh, learned counsel for the petitioners and Mr. Vishwa Mohan Kumar (In person) for the sole respondent.

2. The present writ petition has been filed for challenging the order dated 04.01.2024 passed in OA No.



050/00505 of 2019 by which the learned Central Administrative Tribunal has been directed to the respondent's promotion to the post of Executive Engineer should be regularized w.e.f. 30.11.2010 the date on which he was given the current duty charge of that post as he held that post continuously till regular promotion. Apart from the aforesaid, the learned Central Administrative Tribunal also directed the petitioners to issue order of promotion to the post of Executive Engineer w.e.f. 30.11.2010 with all consequential benefits within three months from the date of this order.

3. Learned counsel for the petitioners submits that the respondent herein was appointed as Assistant Engineer in the Civil Construction Wing of All India Radio on 19.12.1990 and was granted financial up-gradation to Grade Pay of Rs. 6600/- w.e.f. 18.12.2002 vide order dated 27.04.2005. Respondent was given current duty charge of the post of Executive Engineer w.e.f. 30.11.2010. The grade pay for the post of Executive Engineer was Rs. 6600/-, so there was no financial enhancement in the pay scale for the current duty charge. The respondent was conferred second MACP with Grade Pay of Rs. 7600/- vide order dated 18.12.2020.

4. The respondent was promoted after regular Departmental Proceeding Committee (DPC) to the post of Executive Engineer vide order dated 25.02.2020.



5. Learned counsel for the petitioners submits that the respondent's case was before Central Administrative Tribunal (hereinafter referred as "CAT") that respondent was eligible for promotion to the post of Executive Engineer after completing eight (08) years regular service on the post of Assistant Engineer. For the promotion to the post of Superintending Engineer, the eligibility of five (05) years on the post of Executive Engineer. The respondent pleaded before the learned CAT that he was granted only one substantive promotion in the last 30 years of his service. Learned counsel for the petitioners submits that from perusal of letter dated 30.11.2010 by which the respondent was officiating to the post of Executive Engineer (Current Duty Charge). The said appointment letter clearly indicates that such appointment will not entitle for any monetary benefit or claim to seniority. The private respondent was ultimately promoted to the post of Executive Engineer by order dated 25.02.2020 after the recommendation of DPC. The delay in process by the DPC for the appointment of Executive Engineer was due to a SLP No. 35912-35913 of 2010 was pending before the Hon'ble Apex Court with respect to seniority matter and the Hon'ble Apex Court had granted an interim order of *status quo* by order dated 17.01.2011. The said *status quo* was vacated by the Hon'ble Apex Court by



order dated 19.08.2015. Thereafter, the matter was kept pending in the Hon'ble Apex Court and ultimately the same was disposed of by order dated 18.01.2017. After disposal of the aforesaid SLP, the seniority list was prepared by the authority concerned. Ultimately, the said seniority list was also subject to challenge before the Hon'ble Apex Court in M.A. No. 2220-2221 of 2018 and the same was finally disposed of vide order dated 17.02.2020 thereafter the respondent has been given to the promotion vide order dated 25.02.2020. Learned counsel for the petitioners submits that from the aforesaid, it transpired that due to multiple litigation, the DPC could not take place for the period of last 10 years. Learned Additional Solicitor General of India brought to our notice Office Memorandum dated 10th April, 1989 where the Ministry of Personnel, Public Grievances & Pensions Department of Personnel and Training had formulated a guidelines which would govern the promotion/appointment of such persons to the post in question. He has relied upon Para 6.4.4 and Para 17.10 and Para 17.11 which is reproduced hereinbelow :-

“6.4.4 – While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s).



17.10- The general principle is that promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later.

17.11- In cases where the recommendations for promotion are made by the DPC presided over by a Member of the UPSC and such recommendations do not require to be approved by the Commission, the date of Commission's letter forwarding fair copies of the minutes duly signed by the Chairman of the DPC or the date of the actual promotion of the officers, whichever is later, should be reckoned as the date of regular promotion of the officer. In cases where the Commission's approval is also required the date of UPSC's letter communicating its approval or the date of actual promotion of the officer whichever is later will be the relevant date. In all other cases the date on which promotion will be effective will be the date on which the officer was actually promoted or the date of the meeting of the DPC whichever is later. Where the meeting of the DPC extends over more than one day the last date on which the DPC extends over more than one day the last date



on which the DPC met shall be recorded as the date of meeting of the DPC.

Appointment to posts falling within the purview of ACC can, however, be treated as regular only from the date of approval of ACC or actual promotion whichever later except in particular cases where the ACC approves appointments from some other date”.

6. Learned counsel for the petitioners submits that from perusal of the aforesaid guidelines, it is made clear that no such appointment/promotion could have been made effect with a retrospective date, only a prospective promotion/appointment would have been made. Learned counsel for the petitioners further relied upon a judgment of Hon’ble Supreme Court in the case of Government of West Bengal and Others Vs. Dr. Amal Satpathi and Others, reported in (2024) SCC OnLine SC 3512, Paragraph Nos. 19 and 20 of the said judgment which is reproduced hereinbelow:

“19. It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to



a recent decision of this Court in the case of Bihar State Electricity Board v. Dharamdeo Das, wherein it was observed as follows:

“18. It is no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in *Ajay Kumar Shukla v. Arvind Rai* where, citing earlier precedents in *Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty* and *Ajit Singh v. State of Punjab*, a three-Judge Bench observed thus:

41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in *Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty* in para 4 of the report which is reproduced below:

‘4..... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the



corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.'

42. A Constitution Bench in Ajit Singh v. State of Punjab, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27:

'Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said



clause particularises the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right. “Promotion” based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1).

* * *

27. In our opinion, the above view expressed in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., and followed in Jagdish Lal [Jagdish Lal v. State of Haryana, and other cases, if it is intended to lay down that the right guaranteed to employees for being “considered” for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a



fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.], right from 1950.’

“20. In State of Bihar v. Akhoury Sachindra Nath, it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in Keshav Chandra Joshi v. Union of India, where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P., in the following words:

‘37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in Keshav Chandra Joshi v. Union of India held that when promotion is outside the quota, seniority would be reckoned from the date



of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits.....

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime.”

(emphasis supplied)

20. In the instant case, it is evident that while respondent No. 1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision”.

7. Learned counsel for the petitioners submits that it is not in dispute that the respondent was given the officiating charge (Current Duty Charge) of Executive Engineer, the said



appointment letter itself indicates that the respondent could not have made claim for any monetary benefit or seniority on the basis of the said appointment. The said appointment letter was issued in the year 2010 in favour of respondent and the respondent was never challenged the aforesaid letter and now he has not claimed the promotion on retrospective effect.

8. Mr. Vishwa Mohan Kumar, who has appeared in person submits that it is not in dispute that the respondent was not eligible for the promotion to the post in question. The petitioners have denied the promotion to the respondent solely on the ground that the status quo was maintained by the Hon'ble Apex Court on the sole ground that the petitioners could not hold DPC. Mr. Vishwa Mohan Kumar further submits that after the *status quo* order dated 17.01.2011 the petitioners conducted DPC and issued Promotion Order No. 7/2011-BA (E) dated 24.10.2011 and issued posting order to certain officials. Further submits that the *status quo* was modified by the Hon'ble Apex Court vide order dated 19.08.2015 where the Hon'ble Apex Court held that "*We modify the interim order and permit the Union of India to make the promotions to the post of Executive Engineer. However, we make it clear that the promotions will be subject to the outcome of this appeal*". Apart from the aforesaid, the petitioners could have



conducted the DPC immediately after the modification of *status quo* order by the Hon'ble Apex Court on 19.08.2015. The indefinite 10 years long period of Current Duty Charge ratified in the regular promotion on 25.02.2020. Further submits that respondent was neither a party in the said SLP nor his eligibility or his position in Direct Recruit slot was to get affected. The appointment was made on Current Duty Charge according to Rule of FR 49, Current Duty Charge is a stop gap arrangement for a very short duration only. Mr. Vishwa Mohan Mumar also relied upon a decision in the case of K Madhavan and Another Vs. Union of India, reported in (1987) 4 SCC 566 held that with a view to ensure that miscarriage of justice does not occur, promotion should be deemed to have taken effect retrospectively from the commencement of the so called ad hoc stop gap and current duty charge, provided the incumbent concerned fulfilled the essential criteria for consideration for promotion on the initial date.

9. We have heard both the parties at length and this Court has come to the conclusion that due to statue quo granted by the Hon'ble Apect Court in SLP No. 35912-35913 of 2010 the petitioners had not held the DPC for the promotion of the respondents in question and apart from the aforesaid in the recent judgment as mentioned aforesaid by the petitioners in the case of



Government of West Bengal and Others (supra) which suggests that the promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation.

10. As a result of the above discussion, the judgment/order dated 04.01.2024 passed in O.A. No. 050/00505/2019 is hereby set aside.

11. The writ petition is allowed. No order as to costs.

12. Pending application (s), if any, shall stand disposed of.

(Sudhir Singh, J)

I agree.

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(Rajesh Kumar Verma, J)

AFR/NAFR	NAFR
CAV DATE	04.09.2025
Uploading Date	15.10.2025
Transmission Date	N.A.

