

REPORTABLE

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 844 of 2021

1. Shri Mongjam Birajit Singh aged about 56 years, S/o (L) M. Ibobi Singh resident of Laitonjam Mayai Leikai, P.O. & P.S. Nambol and District Bishnupur, Manipur Pin-795134.
2. Shri Naorem Brajamani Singh, aged about 56 years, S/o (L) N. Bor Singh resident of Sagoltongba Makha Leikai, P.O. Langjing & P.S. Patsoi, District, Imphal West, Manipur.

.....Petitioner

– Versus –

1. The State of Manipur through the Chief Secretary-cum-Secretary (Home), Govt. of Manipur, Secretariat South Block, P.O. & P.S. Imphal and District Imphal West, Manipur-795001.
2. The Deputy Secretary (Home), Govt. of Manipur, Secretariat South Block, P.O. & P.S. Imphal and District Imphal West, Manipur-795001.
3. The Director General of Police, Govt. of Manipur, Babupara, P.O. & P.S. Imphal and District Imphal West, Manipur-795001.
4. The Deputy Inspector General of Police (Telecom), Manipur Police Telecommunication Organization, Govt. of Manipur, P.O. & P.S. Imphal and District Imphal West, Manipur-795001.

..... Respondents

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners	:	Mr. Kh. Tarunkumar, Sr.Adv., Ms. K Mercy, Adv.
For the Respondents	:	Mr. Shyam Sharma, GA.
Date of reserved.	:	23.05.2025
Date of Judgement & order:	:	11.08.2025

JUDGEMENT & ORDER **(CAV)**

[1] Heard Mr. Kh. Tarunkumar, learned senior counsel assisted by Ms. K. Mercy, learned counsel appearing for the petitioners and Mr. Shyam Sharma, learned GA for the State respondents.

[2] By the present writ petition, the petitioners are, inter-alia, praying for quashing/setting aside the order dated 23.03.2021 issued by the Deputy Secretary (Home), Government of Manipur and directing the respondents to promote the petitioners to the post of Dy. SP(Telecom)/MPTS(Junior Grade) w.e.f. 22.03.2016 & 31.11.2015 by counting their seniority from the said date without monetary benefits.

The substantial issue involved in the present case is “Whether the employee shall be made to suffer for the lapses of the employer?”.

[3] The brief facts leading to the present case are that the Under Secretary to the Government of Manipur issued a notification dated 12.04.1976 whereby the Recruitment Rules for the post of ATMO (Equivalent) to Dy. S.P. of Police in the Department of Police Wireless and as per the said RR, the said post is to be filled up 50% by direct recruitment and 50% by promotion. In respect of the promotion, Inspector Radio Tech. 5 years regular service in the grade are eligible for promotion to the post of ATMO (equivalent to Dy. S.P. of Police).

[4] Vide order dated 12.04.2002 issued by the Joint Secretary (Home), Govt. of Manipur, the petitioners and 22 other persons were appointed to the post of Inspector (Radio) and the names of the petitioners appeared at serial Nos. 1 & 6 respectively.

[5] On 06.02.2021, the Under Secretary (DP), Government of Manipur issued a notification whereby it was notified that the State Government has exempted the sub rule (e) of Rule 28 of the Manipur Police

Telecommunication Service Rules, 2015 relating to pre-promotional Departmental Examination for promotion to the Deputy Superintendent of Police (Telecom) as a one time relaxation and it was further notified that the said one time relaxation/exemption shall be valid for three months from the date of notification.

[6] Vide notification dated 04.02.2021 issued by the Director General of Police, Manipur was published on 01.02.2021 for final seniority list of Inspector (Radio) re-designated as Inspector (Telecom) in the Manipur Police Department whereby the names of the petitioners appeared at Serial Nos. 2 & 1. A self-contained note was prepared by the DGP, Manipur for DPC for promotion from Inspector (Telecom) to Dy. S.P. (Telecom/Junior Grade) and from the said note, five vacancies were available for the recruitment year 2015-2016. Out of five vacancies, three vacancies fall under the direct recruitment quota and remaining two vacancies falls under the promotion quota.

[7] The Deputy Secretary (Home), Government of Manipur issued a notification dated 12.03.2021 and in pursuance to the notification, Class-I DPC meeting was held on 19.03.2021 for consideration for appointment of Dy. S.P. (Telecom)/MPTS (Junior Grade) by promotion from Inspector (Telecom) in the Manipur Police Telecommunication Organization (MPTO), Police Department Manipur. Vide order dated 23.03.2021 issued by the Deputy Secretary (Home), Government of Manipur, the petitioners and three other persons were appointed on promotion to the post of Dy. S.P. (Telecom)/ MPTS (Junior Grade) with immediate effect and the petitioners' name appeared at serial Nos. 2 & 1.

[8] Being aggrieved by the said promotion, the petitioner No. 1 submitted a representation dated 22.07.2021 to the Director General of Police, Manipur for promoting him with effect from the date of occurrence of vacancy i.e. 22.03.2016 as he was eligible for promotion to the post of Dy. S.P. (Telecom) long before the vacancy arose.

[9] Vide O.M. dated 15.05.2014 issued by the Deputy Secretary (DP), Government of Manipur whereby it was notified for a consolidated instructions and guidelines for hold DPC under different departments of the Government of Manipur and in the said O.M. under Clause 3, it was mentioned that the DPCs would be convened at regular annual intervals to draw panels which could be utilized on making promotion against the vacancies during the course of a year, DPCs may be convened every year if necessary on a fixed date e.g. 25th January or April. Holding DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being revised/amended.

[10] Though the petitioners have already completed five years of regular service in the Grade of Inspector (Radio) which was later re-designated as Inspector (Telecom) way back on 04.06.2007, no DPC was held for promotion due to non-availability of the vacancies to the post of Dy. S.P. (Telecom) which was earlier called ATMO equivalent to Dy. S.P. of Police. After the publication of Manipur Police Telecommunication Service Rules 2015, two vacancies were available for promotion quota in the recruitment year 2015-2016. Against this vacancy, the petitioners' case were considered and promoted to the post of Dy. S.P. (Telecom)/ MPTS (Junior Grade) only on 23.03.2021 at a very belated stage thereby causing a lot of disadvantage in their service career. Hence, the petitioners approached this Court by way of the present writ petition.

[11] Respondent Nos. 3 & 4 filed counter affidavit wherein it is stated that the petitioners were promoted to the rank of Inspector (Radio) on 04.06.2002 and they were eligible for promotion to the post of ATMO in the year 2008, not 2007 due to crucial date eligibility as per old R.R. dated 12.04.1976. However, no DPC was held for promotion from Inspector (Radio) to ATMO due to non-availability of vacancy. The Manipur Police Tele-Communication Service Rules, 2015 was notified on 10.02.2015 wherein it was mentioned that the method of recruitment is clearly mentioned in part-III

at Rule 5 and Rule 5 (1)(b) relating to promotion to Junior Grade, 50% of the substantive vacancies shall be filled by selection borne on the cadre of Inspector (Telecom) of Police Telecom Organization with five years regular service and passed prescribed departmental examination.

[12] However, both the petitioners have not passed the prescribed departmental examination and as such they are not eligible for promotion to the post of Dy. S.P. (Telecom)/MPTS (Junior Grade) against the available vacancies for the year 2015-2016. Vide notification dated 06.02.2021 was published on 08.02.2021 wherein provisions provided in Rule 5(1)(b), Rule 22 and sub rule (e) of Rule 28 of the Manipur Police Telecommunication Service Rules, 2015 relating to pre-promotion Departmental Examination for promotion to Dy. S.P. (Telecom) has been exempted as one time relaxation and this one-time relaxation/exemption has validity for a period of three months from the date of notification. On the recommendation of the DPC meeting held on 19.03.2021, the petitioners and three other persons were appointed as Dy. S.P. (Telecom)/MPTS (Junior Grade) on 23.03.2021. It is stated that the claim of the petitioners being eligible without one time relaxation is strongly denied as the Manipur Police Tele-Communication Service Rule, 2015 does not specifically mention exemption of Inspector (Telecom) from the prescribed Departmental Examination for promotion to Dy. S.P. (Telecom)/MPTS (Junior Grade). Hence, the present writ petition be rejected as being devoid of merit.

[13] The petitioners filed reply affidavit to the counter affidavit filed by respondent Nos. 3 & 4 wherein it is stated that the petitioner No. 1 possessed the qualification of Post Graduate Diploma in Computer Application (PGDCA) and as such he is eligible for promotion to the post of MPTS (Junior Grade)/Dy. S.P. (Telecom) in view of the exemption clause under Rule 28 (e) of the Manipur Police Telecommunication Service Rules, 2015. No departmental examination has been conducted till date due to non-finalization of the syllabus. In such situation, the promotion of the petitioners could not be

withheld on the ground of not passing the departmental examination. The lapse is on the part of the department for not holding the examination.

[14] Learned senior counsel of the petitioners has submitted that the petitioner could not be promoted to the post of Dy. SP.(Telcom) due to non-holding of DPC in time on the day of arising of vacancy and they were promoted to the post of Dy. SP (Telecom) only on 19.03.2021 against the vacancies of the year 2015-16 and as such, they will not be eligible for promotion to the next higher post of Addl. SP (Telecom) of the Manipur Police Dept. and they are praying for notional promotion from the date of vacancy without claiming any monetary benefits. Mr. Kh. Tarunkumar, learned senior counsel for the petitioners cites the decision reported as **(1999) 7 SCC 209**.

[15] Mr. Shyam Sharma, learned GA submits that the petitioners are not entitled to notionally promotion wef 2015-2016 as they were not otherwise eligible then due to non-clearing of the departmental examination. There is no lapse on the part of the department in not holding DPC. It is a long process through different channels and time-consuming process. It is also stated that right to promotion is not a fundamental right and learned GA has relied on the following judgment:

Union of India (UOI) and Ors. vs. Manpreet Singh Poonam and Ors.
(08.03.2022 - SC) : MANU/SC/0280/2022

“14.....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.

.....
27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guarantee 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 right from 1950."

[16] This Court considered the material on record, the submissions made at bar and principles of law in this regard.

[17] It is an admitted fact that vide order dated 12.04.2002 issued by the Joint Secretary (Home), Govt. of Manipur, the petitioner and 22 others persons were appointed on promotion to the post of Inspector (Radio) and the names of the petitioners appeared at Sl. No. 6 and 1 respectively. Vide notification dated 04.02.2021 issued by the Director General of Police, Manipur, the final seniority list of Inspector (Radio) [re-designated as Inspector (Telecom)] in Manipur Police Department as on 01.02.2021 was published, whereby the names of the petitioners appeared at Sl. No. 2 and 1. The Dy. Secretary (Home), Govt. of Manipur issued a Notification dated 12.03.2021 and in pursuance to the Notification, Class-I DPC meeting was held on 19.03.2021 for consideration for appointment of Dy. S.P. (Telecom)/MPTS (Junior Grade) by promotion from Inspector (Telecom) in the Manipur Police Telecommunication Organization (MPTO), Police Department Manipur. Vide order dated 23.03.2021 issued by the Deputy Secretary (Home), Government of Manipur, the petitioners and three other persons were appointed on promotion to the post of Dy. S.P. (Telecom)/ MPTS (Junior Grade) and the petitioners' name appeared at serial Nos. 2 & 1. Though they become eligible for the post of Dy.S.P (Telecom) way back in the year 2007 as per the old R.R dated 12-04-1976 no DPC was held in time. The old R.R. was superseded by the new R.R in the year 2015. Even after the publication of new R.R, no DPC was held through 2 vacancy under the promotion quota was available in the year 2015 and 2016. Only on 19.03.2021, a DPC was held and petitioners

were given promotion to the post of Dy. SP (Telecom) of the Manipur Police Dept. with immediate effect.

[18] It is the settled proposition of law that employees should not be penalized for the procedural or administrative lapses attributable to the employer. Equitable relief is warranted when the employee has acted in good faith and complied with applicable rules. The doctrine of fairness, under Article 14 and Article 21 of the Constitution of India, supports protection against arbitrary or unjust treatment. This will be clear from the following decisions.

[19] In the case of **Ajit Singh (II) v. State of Punjab, (1999) 7 SCC 209**, Hon'ble Supreme Court observed that the right to be considered for promotion is a facet of fundamental right within the meaning of Articles 14 and 16(1) of the Constitution and held as below:

“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.”

[20] In the case of **A. Selvaraj v. C.B.M. College, (2022) 4 SCC 627**, Hon'ble Apex Court held that a retired employee should not be made to suffer for no fault of his and for the delay of his employer.

“12. In that view of the matter, subject to the further final order that may be passed by the Government, the College/Management is first liable to pay the interest on the delayed payment of retirement dues subject to the final decision, which may be taken by the Government, after hearing the Management and the former Secretary. However, because of the inter se dispute between the Management, Secretary and the Government on who is responsible for the delay in making the payment and/or settling the dues, the retired employee should not be made to suffer for no fault of his.”

[21] In the case of **State of U.P. v. Maqbool Ahmad: (2006) 7 SCC 521**, it is held that an employee shall not suffer in relation to service benefit of timely promotion for the inaction of the employer.

“8. The High Court on the basis of the pleadings of the parties and considering the facts of the case, observed that common selection was held by the Uttar Pradesh Public Service Commission for Assistant Engineers. After they were selected by PSC, options were exercised by the employees either to go to the Irrigation Department or to the Public Works Department and the persons junior to the respondent herein (the petitioner before the High Court) opted for PWD. They thereafter went to the Irrigation Department and yet were held entitled to get selection grade or super timescale since there was stagnation for 16 or 18 years and could not be promoted. There was, therefore, no reason to deprive the respondent herein of similar benefit to which others were held entitled and the benefit could not be denied to a similarly situated employee. Accordingly, the petition was allowed and the authorities were directed to grant benefit of selection grade to the respondent herein. Hence, the present appeal.”

[22] In **Calcutta State Transport Corporation and Ors. vs. Ashit Chakraborty and Ors. (08.05.2023 - SC) : MANU/SC/0545/2023**, Hon'ble Supreme Court held that the employees cannot be made to suffer for the fault of the employer.

“11. It is not in dispute that the Respondent No. 1 had exercised his right to receive pension under the 1990 Regulations in the year 1991. Thereafter, it was the duty of the Corporation to have given effect to the same. Merely because there were some wrong deductions from his salary and he was treated as member of the CPF Scheme, cannot be permitted to be raised as a ground to defeat his rightful claim. The pension was to start after retirement of the Respondent. When the same was not released to him, immediately representation was made by him. As no response was received from the Appellant, the writ petition was filed. The argument that there are number of similarly situated employees who will also stake their claims, will not deter this Court in granting the relief to the Respondent, which is legitimately due to him. Rather this argument shows that the Corporation was at fault in implementing the 1990 Regulations in the cases of number of employees though these were notified on 4.1.1991 and were given retrospective effect from 1.4.1984. Technical objections are sought to be raised, which are not tenable. For any fault on the part of the Corporation, the employees cannot be made to suffer.”

[23] In a recent judgment of **The State of Manipur and another vs. Shri Mayanglambam Chitaranjan Singh and 8 others, WA No. 92 of 2023** dated **28.07.2025**, a Division Bench of this Court held that

“50. It is the settled principle of law that the employees should not suffer for the lapses on the part of their employer, especially when they are not at fault. Benefits given to similarly situated employees cannot be denied to them.”

[24] **Ahongshangbam Tomba Singh vs. The State of Manipur and Others WP(C) No. 592 of 2021**, a learned Single Judge of this Court observed that

“31.....the inaction on the part of the department is against the instructions/guidelines framed by the department of Personnel regarding holding of DPC for promotion. Therefore, in order to compensate the loss of time in affording promotion, it will be just and proper to direct the respondent to afford notional promotion to the petitioner with effect from 2014-2015 that is the vacancy year against which the petitioner was recommended.

[25] In the case in hand the petitioners were eligible for promotion in the year 2007/2008 on completion of 5 years of regular services. However, due to non-availability of clear vacancies, their case could not be considered for promotion. Subsequently, 2 (two) number of vacancies were available in the year 2015-16. Office Memorandum dated 14.05.2014 has contemplated holding of DPC for promotion to vacancies available in a year at regular interval annually and need not be delayed. The respondents have not given any cogent reason for not holding DPC in the year 2015-16 when vacancies were available. In the counter affidavit, there is a complete silence on this aspect. Any reason whatsoever like, stay by court, ban on recruitment by government, etc. has not been stated. Finally, the petitioners were promoted to the post of DySP(Telecom)/MPTS(Junior Grade) in the year 2021 w.e.f. 23.03.2021 against the 2 (two) vacancies of 2015-16, on the recommendation of DPC held on 19.03.2021. Since the promotion was not made in the year 2015-16 when the vacancies were available in terms of the OM of 2014 and the promotion being with retrospective effect from 23.03.2021, they lost valuable five years of qualified service in DySP(Telecom)/MPTS(Junior Grade) to be eligible for further promotion. The petitioners were to retire the months of January and February of 2025 and hence, they did not get minimum 5 years' service in the cadre of DySP(Telecom)/MPTS(Junior Grade) for promotion to the next higher post of Senior Grade & JAG (equivalent to Addl SP Telecom) as per RR. If the DPC was conducted in the year 2015-16, the petitioners, being seniormost in the feeder cadre, could have been considered and promoted then and they would have minimum 5 years' service for promotion to the next higher post. In the circumstances, the petitioner requested for notional promotion from the year 2015-16 without monetary benefit so that they could be considered for promotion to the next post of Addl SP Telecom. The plea of non-passing of departmental examination by the petitioners cannot be accepted as the authority has not notified the syllabus for the departmental examination and no examination was held till the writ

petition was filed. In the counter affidavit, the details of the departmental examinations conducted so far, if any, have not been disclosed.

[26] In the circumstances narrated above, it is clear that the two vacancies were available in the year 2015-16. The petitioners are seniormost in the feeder cadre of Inspector (Telecom) and they were considered and promoted in the year 2021 for the two vacancies of 2015-16. No reason is disclosed for failure to hold DPC in the year 2015-16 and the same is in violation of the direction laid down in the OM of 2014 stipulating for conducting DPC at regular interval annually. Due to the lapses of the authority, the petitioners lost 6 (six) precious years, as they were promoted only in the year 2021 with retrospective effect from 23.03.2021 against the vacancies of 2015-16. Since they are to retire in the early part of 2025, they are not eligible for promotion to the next grade of Addl SP Telecom because of not having 5 (five) years regular service in the cadre due to the fault and lapse of the authority. Right to be considered for promotion is a facet of fundamental right enshrined under Articles 14 & 16(1) of the Constitution of India.

[27] Considering the peculiar factual matrix of the case, this Court is of the opinion that it will be just and equitable to make the promotion of the petitioners notionally from the date of arising of vacancies. The writ petition is allowed and disposed of with the following directions:

- (i) The order dated 23.03.2021 is modified in case of the petitioners herein, namely, Shri N. Brajamani Singh (petitioner No.2) is notionally promoted wef 31.11.2015 and Shri Mongjam Birajit Singh (petitioner No.1) wef 22.03.2016 to the post of DySP(Teleco)/MPTS(Junior Grade) without any arrears and for the purpose of promotion to the next grade.
- (ii) If the petitioners are otherwise eligible for promotion to the next grade equivalent to Addl SP (Telecom) in any available vacancies

prior to their retirement, they be considered for the same by conducting a special DPC against such vacancies.

(iii) There will be no change in the order dated 23.03.2021 with respect to the remaining three promotees.

(iv) The whole process as directed in para (i) & (ii) shall be completed within a period of three months from the receipt of a copy of this order.

[28] Send a copy of this order to the Director General of Police, Manipur for information and necessary compliance.

JUDGE

FR/NFR

Kh. Joshua Maring

**KH.
JOSHUA
MARING**

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by KH. JOSHUA
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