



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

102+207

CWP-12555-2024 (O&M)

Date of Decision: 12.08.2025

Union of India and others

...Petitioners

Versus

Nitin Kumar Yadav and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Promila Nain, Senior Panel Counsel
Mr. Abhishek Rawal, Advocate, for the petitioners.

Mr. S.P. Arora, Advocate, for respondent No.1.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-7244-CWP-2025

The application is allowed and the replication to the reply filed by respondent No.1 is taken on record, subject to all just exceptions.

CWP-12555-2024

1. In the present petition, the challenge is to the order dated 03.11.2023 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'Tribunal'), in OA No.60/1410/2021, by which order, the benefit has been given to the deceased employee for fixing her pensionary benefits in accordance to the grant of the proforma promotion, which benefit was allowed in her favour vide order dated 09.02.2021 in continuation of order dated 12.10.2020, with effect from 01.10.2020, while she was working on deputation at Department



of Telecommunication.

2. Learned counsel appearing on behalf of the petitioners argues that though, the deceased employee was appointed in the Department of Post, but she was working on deputation with the Department of Telecommunications as Joint Controller Communication Accounts, on her turn for promotion in the Department of Post, she was granted proforma promotion at level-14 of the Pay Matrix (Rs.144200-218200) w.e.f. 01.10.2020 vide order dated 09.02.2021 in continuation of order dated 12.10.2020.

3. Learned counsel for the petitioners argues that once respondent No.1 never reverted to the Department of Post to choose the option so as to get the benefit of proforma promotion before she unfortunately died while working on deputation with the Department of Telecommunications, hence, the benefit of the proforma promotion could not be granted to the employee concerned so as to ascertain the same benefits admissible which are to be given after the death of the such employee, who died while being in service as she never joined back the Department of Post till her death.

4. Learned counsel for the petitioners submits that the benefits admissible to the deceased employee can only be granted in accordance to the proforma promotion in case the employee accepts the proforma promotion by exercising an option to opt the same and places reliance upon the instructions dated 17.06.2010 (Annexure P-9) as well as the instructions dated 15.03.2021 (Annexure P-10) to underpin the said assertion. Learned counsel for the petitioners submits that in the present case, it is a conceded fact that the employee concerned never opted for acceptance of the benefit



of proforma promotion and therefore, the claim that after the death of such employee, who though died while being in service but on deputation, hence, the direction given that, the emoluments admissible to such an employee be calculated on the basis of the proforma promotion is incorrect and the judgment of the Tribunal impugned in the present writ petition granting the said relief is liable to be set aside.

5. Learned counsel appearing on behalf of respondent No.1 submits that the interpretation being given by the petitioner that in order to avail the benefit of proforma promotion, the employee concerned has to exercise the option so as to avail the benefit of the proforma promotion is incorrect as, once the benefit of proforma promotion is granted, the same becomes applicable and admissible to employee concerned and the instructions dated 17.06.2010 (Annexure P-9) and the instructions dated 15.03.2021 (Annexure P-10) are only qua the aspect as to how, after grant of such proforma promotion, the salary of the employee concerned is to be fixed while he/she has been working on deputation. Learned counsel submits that argument being raised by the petitioner that the proforma promotion will be effective upon exercising the option is misinterpretation of the instructions dated 17.06.2010 (Annexure P-9) and the instructions dated 15.03.2021 (Annexure P-10) and therefore, the relief granted by the Tribunal while passing the impugned order dated 03.11.2023 (Annexure P-1) is perfectly correct and the writ petition may kindly be dismissed.

6. We have heard the learned counsel for the parties and have gone through the record with their able assistance.



7. The only argument which has been raised by the learned counsel for the petitioners to impugn the order dated 03.11.2023 (Annexure P-1) passed by the Tribunal is that exercising the option qua proforma promotion is must before getting the benefit of the proforma promotion. The reliance is being placed upon Clause 4 of the Memorandum dated 17.06.2010 (Annexure P-9). The said Clause 4 is as under:-

“4. Exercise of option

4.1 An employee appointed on deputation/foreign service, may elect. However, in case of Government employees on deputation/ foreign service to CPSEs, this option will not be allowed and their pay will be governed in terms of the orders issued by Department of Public Enterprises vide OM dated 26.11.2008 and clarifications issued thereafter.

4.2 The borrowing authority shall obtain the option of the employee within one month from the date of joining the ex-cadre post unless the employee has himself furnished the option.

4.3 The option once exercised shall be final.

4.4 However, the employee may revise the option under the following circumstances which will be effective from the date of occurrence of the same:

- (a) When he/she receives proforma promotion or is appointed to non-functional selection grade or up-gradation of scale in the parent cadre;
- (b) When he/she is reverted to a lower grade in the parent cadre;
- (c) When the scale of pay of the parent post on the basis of which his emoluments are regulated during deputation/foreign service or of the ex-cadre post held by the employee on deputation/foreign service is



revised either prospectively or from a retrospective date.

(d) Based on the revised/same option of the employee, in the event of proforma promotion/appointment to non-functional Selection Grade/revision/upgradation of scales of pay in the parent cadre, his/her pay will be re-fixed with reference to the revised entitlement of pay in the parent cadre. However, if the initial option was for the pay scale of the deputation post and no change in option already exercised is envisaged, the pay already drawn in deputation post will be protected if the pay re-fixed is less.

Note: Revision in the rates of DA, HRA or any other allowance either in the parent or borrowing organisation shall not be an occasion for revision of the earlier option.”

8. A bare perusal of the reproduction would show that the option has to be availed by an employee for fixation of the salary, wherein employee has to elect to draw either the pay in the scale of pay of deputation/foreign service post or his/her basic pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any in case same gets increased after the grant of proforma promotion in the parent department while an employee concerned working on deputation. In case, while working on deputation, the benefit of proforma promotion is to be taken by the employee so as to get the higher salary, then an option has to be submitted. But non-submission of an option does not mean that the benefit of proforma promotion granted to employee concerned becomes redundant so as not to be made applicable to him/her qua calculation of other benefits



admissible to him/her upon joining the parent department. The question of fixing the salary as per the Memorandum dated 17.06.2010 (Annexure P-9) arises only when an employee is on deputation. The said regulation will not be applicable in the present case, as the claim being raised for the grant of proforma promotion is only after the death of the employee concerned, who unfortunately died while being on deputation, but is to be treated as having been reverted to the parent department for release of the benefits, which are to be released to the legal heirs of the deceased employee qua the service rendered by such deceased employee. Hence, the argument being raised by the learned counsel for the petitioners that the proforma promotion will only come into operation after choosing of the option is not correct interpretation of the office Memorandum dated 17.06.2010 (Annexure P-9), which only related to the fixing of the salary upon the proforma promotion and that too, while employee concerned is working on deputation.

9. The reliance has also been placed upon the office Memorandum dated 15.03.2021, copy of which is appended as Annexure P-10. A bare perusal of the same would also show that the said memorandum deals with the grant of deputation allowance while an employee is working on deputation. The same does not relate to the aspect where the proforma promotion has been granted while working on deputation and the deputation allowance is to be revised, but procedure need to be followed. It is only, under those circumstances, that an employee who wants to enhance his/her salary on the basis of the proforma promotion granted in her parent



department, the option is to be given so that the correct salary could be fixed as per the option given while working on deputation. The said office memorandum also does not say or recite that the proforma promotion granted by the parent department while working on deputation will be redundant in case no option is given by the employee to accept the same.

10. It may be noticed that in the present case, the employee concerned died while being on deputation but after she was granted the benefit of proforma promotion by the parent department. Upon death, she is to be treated having been returned to the parent department for the purpose of calculating the entitlement qua the service rendered by the employee concerned, which could be released in favour of the legal heirs of the employee concerned. Once the employee is to be treated having been reverted to the parent department, she will only come back on a post, on which she has already been granted the proforma promotion. That being so, the order passed by the Tribunal granting the benefit of proforma promotion on deemed reversion by the such deceased employee so as to calculate the entitlement of her service benefits, which are to be given to legal heirs, is perfectly valid and legal.

11. Further, Rule 33 of the Central Civil Services (Pension) Rules, 1972, is being pressed to deny the benefit of proforma promotion. As per the definition of the 'emoluments', the same is being treated as the basic pay which the Government servant was receiving immediately before his retirement or on the date of his death. It may be noticed that while pressing



the said argument, the petitioners are missing the relevant fact that the deceased employee was on deputation and upon death, she is to be treated as having been reverted to her parent department, where her salary is to be fixed before calculating her entitlement. Once, by a deeming fiction that the dead employee will be treated having reverted back to the parent department for the purpose of grant of the same benefits, the petitioners were under obligation to fix her emoluments keeping in view her status by keeping in mind the proforma promotion granted.

12. Keeping in view the above, there is no perversity in the order dated 03.11.2023 (Annexure P-1) passed by the Tribunal so as to hold that the benefit to the deceased employee is to be given after giving her proforma promotion and then calculating the entitlement qua the service career of the said deceased employee to be paid to the employee concerned. No ground is made out for any interference by this Court in the facts and circumstances of the present case.

13. Accordingly, the writ petition is dismissed.

14. Pending application(s), if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

August 12, 2025
harish

Whether speaking/reasoned	Yes
Whether reportable	No