

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 18.03.2026

DELIVERED ON: 18.03.2026

CORAM:

**THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND**

**THE HON'BLE JUSTICE PARTHA SARATHI SEN
F.M.A. 113 of 2026**

WITH

I.A. No. CAN 1 of 2026

**The District Judge, Paschim Bardhaman
Versus
Salil Ray & Ors.**

Appearance:-

Mr. Pinaki Dhole

Mr. Avishek Prasad

.....for the appellants

Ms. Pampa Dey Dhabal

Mr. Pritam Sarkar

.....for the respondent no.1/

Writ petitioner

JUDGEMENT (ORAL):

PER, SUJOY PAUL, CJ.:-

1. This intra-Court appeal takes exception to the judgment dated 04.12.2025 passed by writ Court in WPA 26365 of 2025, whereby the petition was disposed of by directing the respondent no. 3/department to reckon the seniority of the petitioner on the post of Process Server with effect from 10.09.2018.

2. The admitted facts between the parties are that the writ petitioner, while holding the feeder post of Group-D was considered for promotion on the promotional post of Process Server. The Office of District Judge, Paschim Bardhaman, Asansol issued the promotion order dated 15.06.2022 (Annexure-‘P9’). The relevant portion of the promotion order reads thus:

“The promotional benefit shall have retrospective effect right from the date of vacancies arise, against which the incumbents promoted in the present process have become eligible for notional fixation on & from the dates mentioned against their names respectively but their financial benefit shall take effect on and from the date of joining in their respective promotional posts.

Sl. No.	Name of the employee	Effective date of promotion
01.	SALIL RAY	10.09.2018
02.	MD. TOWFIQ	10.09.2018
03.	TAPAN KUMAR BANERJEE	10.09.2018
04.	PARAMESWAR KISKU	10.09.2018
05.	AKHIL KUMAR MANDAL	10.09.2018

They will remain on probation for a period of one year from the date of their joining to the promotional post as per extant Government rules.

Posting Order follows.

The Service Books of the employees concerned so received are returned herewith”.

(Emphasis Supplied)

3. The writ petitioner, in furtherance of this promotion order dated 15.06.2022 started receiving the necessary notional benefits and was occupying the promotional post of Process Server.

Admittedly, this order dated 15.06.2022 was never modified or cancelled.

4. The writ petitioner was shocked to receive the gradation list dated 16.06.2025, wherein his date of seniority is shown as 10.08.2022 and not 10.09.2018, the date he was given retrospective promotion on the post of Process Server. Since this grievance could not be redressed departmentally, he filed instant writ petition before the learned Single Bench. The learned Single Judge after considering the promotion order opined that after having given promotion with retrospective effect from 10.09.2018, his seniority has to be reckoned from the said date and not from the date of issuance of promotion order i.e. 10.08.2022 or from the date of joining on the promotional post.

CONTENTION OF APPELLANT/DEPARTMENT

5. It is contending that the notional promotion was given to the writ petitioner from 10.09.2018 but he is not entitled to get seniority from the said date. Sri Dhole learned counsel for the appellant/department placed reliance on the West Bengal District Court (Condition of Service, Recruitment, Appointment, Probation and Discipline of Employees) Rules, 2015 (for short '**Rules**' of 2015). By placing heavy reliance on Chapter –V Rule

41(3) of the Rules, it is urged that seniority of employees has to be determined according to the date on which they report for duty. For similar purpose, he placed reliance on West Bengal Services (Determination of Seniority) Rules, 1981 (Rules of 1981). Rule 5(1) is relied upon to contend that date of joining of a post is the date from which seniority is to be reckoned. He submits that grant of ante-dated seniority to the writ petitioner runs contrary to the aforesaid Rules and therefore, learned Single Judge has committed an error in deciding contrary to the Rules.

6. To buttress his aforesaid submission, he placed reliance on the judgment of Supreme Court in ***Pawan Pratap Singh & Ors. vs. Reevan Singh & Ors. (2011) 3 SCC 267.***

CONTENTION OF EMPLOYEE/RESPONDENT

7. On the other hand, learned counsel for the employee supported the impugned order and submitted that in view of the specific language employed in the promotion order, no fault can be found in the order impugned passed by learned Single Judge.

FINDINGS

8. A plain reading of the relevant portion of promotion order dated 15.06.2022 makes it clear that the date of promotion is from

retrospective effect i.e. 10.09.2018. The order, in no uncertain terms, makes it clear that while getting retrospective promotion, he will get the benefit of notional fixation from 10.09.2018 on the promotional post but shall not get financial benefits till the date he actually joins the said post. In service jurisprudence, that is the meaning of 'notional' promotion. The employee gets retrospective promotion but since he has not performed duties from retrospective date and joins on a subsequent date, from retrospective date till the date he joins the post, he is hypothetically treated to have occupied the promotional post and his pay-scale is also given to him notionally from the date he was given retrospective promotion. From that retrospective date, his pay is drawn on hypothetical/notional basis till his actual joining of the post. Hence, he does not get the arrears of salary of promotional post from retrospective date till the date of actual joining but upon actual joining, he gets the same pay, which he would have drawn had he actually joined on 10.09.2018 minus the arrears of the salary of promotional post. There cannot be any other meaning of this order of promotion dated 15.06.2022.

9. If petitioner was given retrospective promotion from 10.09.2018, except arrears salary of promotional post, for all other purposes,

he is deemed to be holding the said promotional post from 10.09.2018. Interestingly, this promotion order dated 15.06.2022 was never cancelled or modified. In absence of challenge to it the writ Court was not obliged to examine whether this promotion order was passed contrary to rules or not.

10. After having issued such clear promotion order with retrospective effect, it is no more open to the department to say that it was issued contrary to the rules.
11. So far Rules on which reliance is placed, the rules are issued in normal circumstances and does not deal in specific with retrospective promotion. No provision could be brought to our notice, which debars retrospective promotion on notional basis. Such retrospective notional promotions are not unknown to service jurisprudence. Many times when employee is wrongly superseded or his fate is kept in the sealed cover awaiting the decision of departmental proceeding or criminal case after exoneration, the retrospective promotions are given when review DPC takes place or sealed cover is opened. Thus, it cannot be said that retrospective/notional promotion is unknown to service jurisprudence or is contrary to law. Same is the dicta in **Pawan Pratap Singh & Ors. (supra)**. The Apex Court said that

‘ordinarily’, notional seniority may not be granted. There is no absolute bar in granting notional promotion & seniority.

12. No express rule could be pointed out, which prohibits grant of notional promotion/notional seniority. Apart from legal principles settled in service law, from common sense angle also, the action of department in not granting seniority from the date of retrospective promotion cannot be countenanced.
13. Once petitioner has been given retrospective promotion with notional pay benefits of promotional post, it has to be presumed that from that retrospective date, he is occupying the promotional post and accordingly, entitled to get the seniority. Any other interpretation will lead to a absurd situation, where employee is getting the pay-scale of promotional post from retrospective effect with notional benefits but is not getting the benefit of seniority.
14. Seniority is the date from which an employee holds a post. The respondent held the said post on ‘notional’ basis with effect from 10.09.2018 and therefore, question of depriving him from fruits of seniority does not arise.
15. The learned Single Judge has taken a plausible view, which does not warrant any interference.

16. This intra-Court appeal sans substance and is accordingly **dismissed**. Connected application (I.A. No. CAN 1 of 2026) is also dismissed.
17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)