

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17472-1999

Decided on: 25.03.2026

D.P. PIPLANI

...PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Manish Dadwali, Advocate for the petitioner.

Mr. Sanjeev Kaushik, Addl. AG Haryana

SANDEEP MOUDGIL, J

Prayer

1. The jurisdiction of this court has been invoked under articles 226 of the Constitution of India for seeking quashing of the order dated 14.09.1999 whereby the respondents rejected the claim of petitioner for notional promotion, with a further prayer for promoting the petitioner from August 1996 onwards when the post of Chief Engineer became available, with consequential benefits and interest at rate of 18% p.a.

Brief Facts

2. The petitioner joined the respondent-department on 18.03.1963 and, after earning successive promotions, superannuated on 31.08.1996 while serving as Superintending Engineer. Prior to his retirement, a proposal was initiated in April, 1996 for promotion to the post of Chief Engineer against four available vacancies. A panel of eligible Superintending Engineers was

prepared in which the petitioner stood at Serial No. 5. According to the petitioner, although two officers senior to him were not recommended at that stage on account of disciplinary issues, resulting in certain vacancies, his case was not cleared despite his eligibility and satisfactory service record.

3. Aggrieved by his non-consideration for promotion during service, the petitioner, after retirement, submitted a representation dated 24.11.1996 seeking grant of notional/proforma promotion to the post of Chief Engineer with all consequential benefits. This was followed by repeated reminders, including a detailed representation dated 26.02.1999 and a legal notice dated 05.05.1999.

4. Ultimately, the respondents rejected his claim vide order dated 14.09.1999, endorsed on 07.10.1999, leading to the filing of the present writ petition seeking quashing of the said order and a direction for retrospective promotion to the post of Chief Engineer with all consequential benefits.

5. Aggrieved by the same, the petitioner has filed by the present petition.

Contentions

On behalf of petitioner

6. Learned counsel for the petitioner contends that the petitioner was fully eligible and within the zone of consideration for promotion to the post of Chief Engineer in the year 1996, and his non-consideration is arbitrary and violative of Articles 14 and 16 of the Constitution of India. It is urged that though a panel was prepared, two officers senior to the petitioner were not recommended on account of suspension and involvement in a corruption case, resulting in available vacancies against which the petitioner, being next in

seniority, ought to have been considered and promoted. It is further argued that additional vacancies arose prior to the petitioner's retirement due to superannuation of incumbents, yet the respondents failed to fill the same in a timely manner, thereby depriving the petitioner of his legitimate promotional avenue. Counsel submits that the action of the respondents reflects a policy of pick and choose, particularly when similarly situated officers, even those nearing retirement, were granted promotions, whereas the petitioner was singled out without any justifiable reason.

7. It is also contended that the subsequent promotion of officers, including those earlier under cloud, after the petitioner's retirement, demonstrates that the vacancies did exist and were deliberately withheld during his service tenure. The absence of record, it is argued, cannot prejudice the petitioner and rather warrants an adverse inference against the respondents. On these premises, it is prayed that the petitioner be granted notional retrospective promotion with all consequential benefits.

On behalf of respondents

8. Per contra, learned State counsel submits that the petitioner had no enforceable right to claim promotion, as only four vacancies were available in April, 1996 and the petitioner, being placed at Serial No. 5 in the panel, fell outside the zone of promotion. It is contended that the mere non-recommendation of senior officers did not automatically entitle the petitioner to promotion, as the process required approval of the competent authority, which had not materialized prior to his retirement on 31.08.1996. It is further argued that no officer junior to the petitioner was promoted during his service tenure, and therefore, no case of discrimination or violation of Articles 14 and

16 is made out.

9. Learned counsel submits that the promotions granted to certain officers occurred only after the petitioner's retirement and cannot retrospectively confer any right upon him. It is also urged that repeated representations and legal notice do not create a cause of action where none exists in law, and the writ petition suffers from delay and is an attempt to revive a stale service claim.

10. With regard to the non-availability of record, it is submitted that despite best efforts, the same could not be traced due to passage of time, and no adverse inference ought to be drawn in absence of any foundational proof by the petitioner.

11. Heard.

Analysis

12. The present writ petition raises a narrow yet significant question touching the contours of fairness in public employment ***whether an employee, admittedly within the zone of consideration and otherwise unblemished, can be denied consideration for promotion on account of administrative inaction, and thereafter be non-suited merely because he has crossed the threshold of superannuation?***

13. At the outset, it must be stated that while it is trite that promotion is not a matter of right, the right to be fairly considered for promotion is now firmly entrenched as a facet of Articles 14 and 16 of the Constitution. The jurisprudential foundation of this principle was authoritatively laid down by the Supreme Court in ***Union of India v. Hemraj Singh Chauhan, (2010) 4***

SCC 290, wherein it was held that denial of timely consideration for promotion, when vacancies exist, constitutes arbitrariness in State action. The Court underscored that the State cannot defeat legitimate expectations of employees by its own inaction. Relevant extracts are as under:

37. The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State.

38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

*39. In **The Manager, Government Branch Press and Anr. v. D.B. Belliappa - (1979) 1 SCC 477**, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomised under Articles 14 and 16 is "fairness founded on reason" (See para 24 page 486).*

40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the Government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.

14. In the present case, the factual matrix is not in serious dispute. The

petitioner was placed at Serial No. 5 in the panel prepared in April 1996. Four vacancies were initially notified. However, two officers senior to the petitioner were admittedly not recommended due to pending disciplinary proceedings. This, in effect, created a situation where the zone of actual consideration stood altered. The respondents, however, chose to treat the panel as static, ignoring the dynamic reality that disqualification of empanelled candidates necessarily triggers a cascading effect, bringing the next eligible candidate within the operative zone of consideration.

15. This Court finds such an approach to be legally unsustainable. In *Ajit Singh (II) v. State of Punjab, (1999) 7 SCC 209*, the Supreme Court emphasized that equality in promotion is not merely formal but substantive, and any administrative act that disturbs the legitimate promotional prospects of an eligible candidate must withstand the test of reasonableness. It was held that,

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 the matters relating to employment or appointment to any office under the State". It has been held repeatedly by this Court that sub-clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said sub-clause particularizes the generality in Article 14 and identifies, in a constitutional sense "equality opportunity" in matter 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) :

23. Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principle of equal opportunity stated in Article 16(1). For example, if the promotion is by rule of 'seniority-cum-suitability', the eligible seniors at the basic Level as per seniority fixed at that Level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category they would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity. Similarly, if the promotion from the basic level is by selection or merit or any rule involving consideration of merit, the senior who is eligible at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority is to be considered and if found eligible and more meritorious than the first person in the seniority list, he should be promoted. In either case, the person who is first promoted will normally count his seniority from the date of such promotion. (There are minor modifications in various services in the matter of counting of seniority of such promotees but in all cases the senior-most person at the basic level is to be considered first and then the others in the line of seniority). That is how right to be considered for promotion and the 'seniority' attached to such promotion become important facets of the fundamental right guaranteed in Article 16(1).

16. The Apex court made it clear that 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. The respondents' failure to revisit the panel in light of disqualifications and non-consideration of the petitioner even though him being eligible and falling within the zone of consideration amounts not only to the violation of the fundamental right of the petitioner but also to an abdication of their obligation.

17. Equally untenable is the contention that the petitioner's superannuation extinguishes his claim. The law in this regard is no longer res integra. In "***K.V. Jankiraman v. Union of India, (1991) 4 SCC 109***", the Supreme Court categorically held that where an employee is wrongly denied promotion during service, he is entitled to notional promotion with all consequential benefits, even after retirement, however the since the Court was therein dealing with a case of pending disciplinary proceedings, the monetary benefits of notional promotion were denied. However, in "***State of Kerala vs E.K. Bhaskaran Pillai 2007 (6) SCC 524***", the apex court held that,

"So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary

benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

18. The argument of the respondents that no junior was promoted during the petitioner's tenure is equally misconceived. The gravamen of the petitioner's grievance is not comparative promotion, but denial of consideration despite availability of vacancies.

19. It also an admitted fact that the senior officials who earlier stood disqualified from promotion due to pendency of disciplinary proceedings, were promoted after the retirement of the petitioner. What further weighs with this Court is the admitted inability of the respondents to produce the relevant record of their exoneration from the disciplinary proceedings so as to make them eligible for promotion. In service jurisprudence, particularly where the employer is the State, the burden of maintaining and producing records lies squarely on the administration. The plea of "non-traceability" after decades cannot become a shield to defeat a legitimate claim.

20. The sequence of events in the present case unmistakably points towards administrative lethargy, if not arbitrariness. The petitioner, despite repeated representations, was left remediless during his service tenure. The subsequent promotions granted after his retirement only reinforce the conclusion that vacancies were indeed available but were not filled in a timely manner.

21. This Court cannot countenance a situation where the State, by delaying the decision-making process, effectively nullifies the promotional

rights of an employee and then seeks refuge behind his retirement. Such an approach strikes at the very heart of constitutional governance.

Conclusion

22. In view of the discussion made ;herein-above, the impugned order dated 14.09.1999 deserves to be quashed. The petitioner is held entitled to be considered as promoted to the post of Chief Engineer on a notional basis with effect from the date the vacancy arose in 1996, subject to his position in the revised zone of consideration after excluding the disqualified candidates.

23. Consequentially, the respondents are directed to grant the petitioner notional promotion with all consequential benefits, including revision of pensionary dues and arrears of pay. The claim for interest at 18% per annum, however, appears excessive and is declined. Instead, the petitioner shall be entitled to interest at the rate of 6% per annum on arrears, which would meet the ends of justice.

24. The above said exercise shall be completed by the respondents within a period of 8 weeks from the date of receipt of certified copy of this order.

25. The writ petition is accordingly allowed in the above terms.

26. Pending applications, if any, stand disposed of

(SANDEEP MOUDGIL)
JUDGE

25.03.2026

Meenu

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*