

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14372-2018 (O&M)

Decided on 24.03.2026

Satya Narayan & Ors.

... Petitioners

VS.

Union of India & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Pawan K Sharma, Advocate for the petitioners

Mr. Sandeep Bhatia, Advocate for the respondents

Sandeep Moudgil, J.

Prayer

(1). The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the memorandum dated 30.10.2017 (Annexure P6) and reply to the legal notice dated 16.01.2018 (Annexure P8) overriding OM dated 25.01.2016 (Annexure P3) and to direct the respondents to promote the petitioners as Assistant Commandant/GD as per their respective seniority with all consequential benefits.

Facts

(2). The petitioners were members of the Indo-Tibetan Border Police Force (ITBP) belonging to the General Duty (GD) cadre and were fully eligible for promotion to the post of Assistant Commandant (GD) against the vacancies of the year 2013-14, their names figuring at serial numbers 28, 29, 33, 35 and 36 in the relevant seniority/eligibility list (Annexure P-1). When their turn for promotion was due, the respondent-Department undertook a merger of five distinct cadres, namely General Duty, Telecom, Transport, Armourer and EDP,

by notifying the Recruitment Rules of General Duty Cadre (Group 'A' posts) on 05.10.2010 and initiating preparation of a combined seniority list. During this period, some personnel of the Telecom cadre approached the High Court of Delhi by filing W.P.(C) No.7545 of 2011, and resultantly, the promotion of technical cadre officers in the merged GD cadre was stayed and the respondents stopped convening DPCs resulting in a large backlog of promotions across the Force. However, the Delhi High Court, vide its judgment dated 25.05.2015, quashed the merger and ordered de-merger of the cadres but by that time, the petitioners had retired and thus could not receive the promotion which department decided to withhold.

(3). Hence this writ petition.

Contention of the petitioners

(4). Learned counsel for the petitioners assert that throughout their service they have an exceptionally meritorious and **unblemished** record, having served in extreme high-altitude and inhospitable areas, and have always remained highly motivated with excellent work ethics and dedication to the Force and the Nation. He relies on the Office Memorandum of the Department of Personnel and Training dated 25.01.2016, which lays down the procedure and guidelines for promotion of Government servants who are exonerated after retirement and provides, *inter alia*, that such retired Government employees, if found fit on opening of the sealed cover, are entitled to notional promotion from the date of promotion of their next junior and to fixation of pension on the basis of such notional pay.

(5). By placing reliance on the judgment of this Court in **Nirmal Singh v. State of Punjab & Others, 2017(1) SCT 554**, wherein the Court

considered the case of a Government employee whose promotion had already been approved but could not be implemented before his retirement due to the imposition of the election code of conduct, it is contended that the petitioners could not be made to suffer because of circumstances beyond their control, namely the pendency of the litigation to which they were never party, and consequently promotions were withheld not on account of any fault or disqualification attributable to them.

Respondents' counter

(6). Per contra, the stand of the respondents, as set out in their counter affidavit, is that the petitioners were duly considered by the Departmental Promotion Committee held on 26.07.2017 for promotion to the rank of Assistant Commandant (GD) against the vacancy year 2013-14 and were declared 'fit'; however, in view of the provisions contained in DoP&T OM No.22011/1/2014-Estt(D) dated 14.11.2014, they could not be promoted actually as they were not in service when the DPC was convened

(7). On this basis, it is argued that though the petitioners' names were considered and they were found fit by the DPC, they cannot claim the right to actual promotion or its monetary incidents after retirement, and that the department has strictly followed DoP&T instructions.

(8). Leaned counsel for the respondents further point out that Recruitment Rules of General Duty Cadre (Group 'A' posts) in supersession of existing Recruitment Rules for five cadres, namely General Duty, Telecom, Transport, Armourer and EDP, were notified on 05.10.2010 which led to filing of several writ petitions before the Delhi High Court by officers of GD cadre, Telecom cadre, Transport cadre and Tailor (specialist) cadre challenging the

merger/combined seniority and the Court by an interim order dated 08.01.2013, granted stay on promotion of Technical Cadre officers in the merged GD cadre, due to which no DPC was convened for promotion to posts in the merged GD cadre, where technical cadre officers occupied places in the combined seniority list, until 25.07.2017. It is thus the stand of the respondents that the delay in holding DPCs was occasioned by judicial orders and the pendency of the litigation, and not due to any mala fide or arbitrary inaction on their part.

(9). In respect of vacancy year 2012-13, it is contended that a DPC was in fact held on 20.04.2012 to fill up 71 vacancies of Assistant Commandant (GD), for which the zone of consideration was 110 officers, and that, as per seniority, the petitioners did not fall within the zone of consideration for that vacancy year hence, there is no question of their being denied promotion in 2012-13. With regard to the DoP&T OM dated 25.01.2016, it is the categorical stand of the respondents that those instructions relate only to Government servants who were not promoted due to pending disciplinary or criminal proceedings, whose cases were kept in sealed cover and who were thereafter exonerated after retirement and in the present case, no disciplinary or criminal proceedings were pending against the petitioners at the time of their retirement and their cases were never placed in sealed cover.

(10). Heard learned counsel for the parties.

Analysis

(11). The moot question for adjudication by this Court is whether, despite the petitioners having retired by the time the DPC for vacancy year 2013-14 was held on 26.07.2017, are they entitled to notional promotion

against that vacancy year, with consequential fixation of pension, in the light of the DoP&T instructions.

(12). It is not in dispute that the petitioners were eligible and within the zone of consideration for the vacancy year 2013-14 and that the DPC, when ultimately convened, found them fit for promotion. It is equally not disputed that the delay in holding the DPC for 2013-14 was not attributable to the petitioners but arose because the department chose to halt the promotion process in view of the ongoing litigation and interim orders regarding merger/demerger and combined seniority. Once this position is accepted, the petitioners' grievance is not for grant of promotion in preference to others, but for restoration of an accrued right which stood deferred solely due to administrative and judicial contingencies beyond their control.

(13). The respondents' reliance on the OM dated 14.11.2014 to deny even notional promotion appears, on a proper reading of that OM along with earlier and subsequent instructions, to be misplaced. The OM of 14.11.2014 was issued in the backdrop of earlier DoP&T instructions which mandated preparation of year-wise panels and avoidance of clubbing of vacancies, and it clarified that there is no bar to consideration of retired employees, who were within the zone of consideration for the relevant year, while preparing the panel. It further provided that such retired employees would have no right to "actual promotion". The emphasis of the OM is on ensuring that, for the purpose of determining the correct zone of consideration and for preventing juniors from stealing a march over seniors due to delayed DPCs, the names of retired officials must be included in the panel. Where retired employees are included in the panel only for that limited purpose, it is understandable that

they cannot claim to be posted to the promoted post or to receive full back wages after cessation of service.

(14). However, the situation in which an employee is denied promotion during service due to factors completely foreign to his conduct or eligibility, and where delay in convening DPCs results in his retirement before the panel is finalized, stands on a different footing. In such cases, courts have consistently recognized the doctrine of deemed or notional promotion to prevent violation of Articles 14 and 16 and to ensure that an employee is not penalized for administrative lapses or external events such as imposition of election code of conduct.

(15). In *Nirmal Singh's* case (supra), this Court, confronted with a case where the promotion of the petitioner had been duly approved but not implemented solely because the election code of conduct intervened before issuance of the formal order, held that the petitioner could not be made to suffer for such fortuitous circumstance and granted him deemed promotion with all consequential benefits observing that but for the code of conduct, he would have been promoted prior to his retirement. The ratio of that decision, though arising in the context of election code, is grounded in the broader principles of fairness and non-arbitrariness, and applies equally where promotion is deferred due to departmental decisions arising from litigation which ultimately ends without any adverse finding against the concerned employees.

(16). Moreover, subsequent clarificatory instructions like DoP&T OM No.22011/3/2013-Estt(D) dated 25.01.2016, though issued in the context of sealed-cover cases arising from disciplinary or criminal proceedings, indicate the policy trend of Government to protect the pensionary interests of retired

employees by granting notional promotion and consequential fixation of pension once they are found fit. The OM specifically contemplates cases where the Government servant has retired by the time he is exonerated of all charges and provides that such an employee, if found fit on opening of the sealed cover, is to be granted notional promotion from the date his junior was promoted and is entitled to fixation of pension on the basis of such notional pay. While the factual matrix of the petitioners may not strictly fall within the sealed-cover category, the underlying principle is that retirement should not operate as a bar to grant of notional promotion and pension revision where the employee has been found fit and the earlier denial of promotion was not on account of his own delinquency.

(17). The respondents' reading of the OM dated 14.11.2014 as a complete bar to notional promotion for retired employees conflates "actual promotion", in the sense of assumption of duties and drawing of full salary on the promoted post, with the distinct concept of notional promotion for limited purposes like seniority and pension. The OM only says that retired officials would have no right to "actual promotion", which must be understood as no right to physical appointment to the higher post. It does not prohibit the competent authority, or for that matter a court exercising writ jurisdiction, from granting notional promotion for the intervening period and corresponding revision of pension, especially when juniors have actually been promoted and are enjoying higher emoluments. In fact, as noticed earlier, DoP&T OM of 09.04.1996 and 25.01.2016 permit inclusion of retired officials in the panel and extension of notional promotion with pension fixation, in appropriate situations.

(18). In view of the aforesaid discussion, the writ petition is allowed. The impugned communications dated 30.10.2017 and 16.01.2018, whereby the petitioners' claim for promotion was rejected, are quashed. The respondents are directed to treat the petitioners as having been notionally promoted to the rank of Assistant Commandant (GD) against the vacancies of the year 2013-14, with effect from the date on which their immediate juniors were promoted, and to refix their pay notionally for the limited purpose of recalculating and revising their pension and other retiral benefits on that basis. The exercise of notional fixation and revision of pension shall be completed within a period of one month from the date of receipt of a copy of this order.

(19). Pending applications stand disposed of accordingly.

24.03.2026

V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?* :
2. *Whether reportable?* :

Yes/No
Yes/No