



2025:PHHC:035061-DB



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

LPA-1584-2025 (O&M)

Bharat Bhushan

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

The date when the judgment is reserved on	24.12.2025.
The date when the judgment is pronounced	07.03.2026
The date when the judgment is uploaded	09.03.2026
Whether only operative part of the judgment is pronounced or the full judgment has been pronounced	Pronounced in full
The delay, if any of the pronouncement of full judgment and reasons thereof	-

Present:- Mr. Vikas Chatrath, Senior Advocate with
Ms. Preeti Aggarwal, Advocate for the applicants/appellants.

Mr. Aftab Singh Khara, Senior DAG, Punjab.

Anupinder Singh Grewal, J.

CM-8887-LPA-2025

1. This application is for placing on record the reply by way of counter-affidavit on behalf of respondents No.1 to 3 in CWP-16539-2021.
2. Heard.
3. For the reasons stated in the application, the same is allowed and reply by way of counter-affidavit on behalf of respondents No.1 to 3 in CWP-16539-2021 is taken on record subject to all just exceptions.

LPA-1584-2025

1. The appellant has challenged the judgment of the Single Bench whereby the writ petition preferred by him seeking notional promotion to the post of Chief Engineer with effect from 18.02.2021/31.03.2021, has been dismissed.

FACTUAL MATRIX

2. In January 2021, the appellant was holding the substantive rank of Superintending Engineer and was working as Director, Water Resources and Environment Directorate. His services were governed by the Punjab Irrigation Group-A Service Rules, 2004 (hereinafter referred as 'Rules, 2004'). As per the Rules, 2004 the next avenue of promotion is the post of Chief Engineer and 14 such posts had been sanctioned. A Departmental Promotion Committee (hereinafter referred as 'DPC') was convened on 18.02.2021 to identify the candidates suitable for promotion. The DPC recommended the name of the appellant, as well as four other persons, for promotion. The appellant was assessed as 'outstanding' and his name was reflected at serial no.1 against the vacancy that arose on 31.01.2021. Since the date of appellant's retirement was fast-approaching on 01.03.2021 he moved a representation before the Principal Secretary seeking promotion as Chief Engineer w.e.f. 01.02.2021.

3. In the Punjab Water Resources Department, the Chief Engineer is the Head of Department and as per the Standing Orders, the Chief Minister is the competent authority for promotions to the Head of Department. Therefore, the recommendations of the DPC were sent for approval of the Competent Authority, who forwarded the case to the Department of Personnel for comments.

3.1 The Department of Personnel vide their Endst. L. No. 13/02/2021-5PP1/303 dated 31.03.2021, observed that on 31.03.2021, a meeting of the 'Officers Committee' was convened regarding the restructuring of the Water Resources Department, wherein it was decided that the total posts of Chief Engineers be reduced from 14 to 10. At that point in time, 12 Chief Engineers were working in the Water Resources Department. Consequently, vide order dated 31.03.2021 (Annexure P-14), the respondent department cancelled the earlier recommendations of the DPC.

4. On the very same day, i.e. 31.03.2021 the appellant superannuated from service. He moved another representation on 01.04.2021 seeking notional promotion but received no response thereto. Aggrieved, on 20.04.2021, the appellant and two others, namely, Gurinder Singh and Kamal Kant, preferred a writ petition bearing CWP-8707-2021 seeking directions to the respondents to promote them to the post of Chief Engineer by implementing the directions of the DPC dated 18.02.2021. Notice of motion as well as notice regarding stay was issued on 22.04.2021. During the pendency of that writ petition, vide order dated 27.04.2021, the same DPC recommendations that had earlier been 'cancelled' were now kept in 'abeyance' till the approval of the Cabinet. Thereafter, it appears that the Competent Authority re-examined the issue, and decided to give effect to the recommendations of the DPC dated 18.02.2021. Vide order dated 08.06.2021 (Annexure P-2), the respondents declined the appellant's claim for promotion to the post of Chief Engineer as he had retired on 31.03.2021, and the remaining Superintending Engineers were accorded promotion to the post of Chief Engineer. Vide order dated 02.08.2021, the writ petition was dismissed as withdrawn, and liberty was granted to the appellant

to challenge the order denying promotion. Thereafter, the appellant filed CWP-16539-2021 *inter-alia* seeking notional promotion as Chief Engineer, which was dismissed vide the judgement impugned herein, with the following observations:

“14. Nothing has come on record that any of the employees who were recommended for promotion by the DPC in its meeting held on 18.02.2021 were promoted prior to 31.03.2021 i.e. the date of retirement of the petitioner. Once the promotions have been effected after 31.03.2021 and the petitioner had already retired by then, the petitioner cannot claim the benefit of promotion.

15. The similar question came up for consideration before the Hon’ble Supreme Court of India in Civil Appeal No. 13187 of 2024 titled as Government of West Bengal and others Vs. Dr. Amal Satpathi and others, decided on 27.11.2024 wherein the Hon’ble Supreme Court of India has held that there is no concept of retrospective promotion. In the said case also, the employee was claiming retrospective promotion from the date of recommendations of the DPC which were declined. The relevant paragraphs 20 and 21 of the said judgment are as under :-

“20. In the instant case, it is evident that while respondent No. 1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision.

21. While we recognize respondent No.1’s right to be considered for promotion, which is a fundamental right under Articles 14 and 16(1) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity.”

16. Keeping in view the fact that on the date when the recommendations dated 18.02.2021 were accepted by the Competent Authority, the petitioner had already retired and there is no concept of the grant of retrospective promotion, non-grant of promotion to the petitioner though, causes hardship to him but the same cannot be treated as arbitrary or illegal or contrary to the settled principle of law.

17. No other argument is raised.

18. No ground is made out for any interference by this Court in the present petition.

19. Dismissed.”

SUBMISSIONS

5. Learned Senior counsel for the appellant submitted that the appellant was fully eligible for promotion to the post of Chief Engineer. He was placed at serial no.1 by the DPC in its recommendations. The respondents cancelled the recommendations of the DPC ostensibly on the ground that in a restructuring exercise the number of promotional posts had been reduced from 14 to 10. However, the respondents in a *mala fide* and deliberate manner did not promote him during his tenure and scuttled his promotion, which is evident from the fact that soon after the superannuation of the appellant, the respondents immediately promoted the three officers who were placed at serial nos.2 to 4 in the recommendations of the DPC. He further submits that the department had already initiated a comprehensive restructuring exercise and as per order dated 29.07.2020, 14 posts of Chief Engineer stood sanctioned. The power to create and reduce the number of posts lies only with the Council of Ministers and is strictly governed by the Rules of Business of Government of Punjab, 1992 (hereinafter referred as 'Rules,1992') and therefore, the respondents could not simply on the basis of the recommendation of the Officer's Committee, reduce the number of sanctioned posts. In support of his submissions, he has relied upon the judgments of the Supreme Court in the case of *Major General H.M. Singh, VSM versus Union of India & another, (2014) 3 SCC 670, Union of India versus Hemraj Singh Chauhan, (2010) 4 SCC 290* and the judgments of this Court in the cases of *Chaman Lal Lakhnupal versus Union Public Service Commission, (1999) 1 SLR 670 DB and Tek Chand versus State of Haryana, 2002 (1) SCT 308*.

6. *Per contra*, learned State counsel submitted that merely because the appellant was at No.1 in the recommendations of the DPC, he does not have any vested right for promotion. In support of this submission, he has relied upon the judgment of the Supreme Court in the case of ***Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty and Others, (1991) 2 SCC 295***. He further submitted that there is no provision for promotion of retired officer(s) under the Rules and therefore, the appellant had not been promoted. It is also submitted that the Government has full discretion to reduce the number of posts of Chief Engineers.

7. We have considered the submissions made by learned counsel for the parties as well as perused the material available on record.

ANALYSIS

8. It is manifest that the appellant, while holding the substantive rank of Superintending Engineer, was found suitable for promotion, being no.1 in the recommendations of the DPC. However, the said recommendations were not given effect ostensibly on the ground that restructuring of the department was to be done, the total posts stood reduced to 10 and as 12 posts already stood filled, no further promotions could be accorded. A proposal for creation, reduction or restructuring of posts is to be placed by the Personnel Department before the Officers' Committee and the necessary approval is to be accorded by the Finance Department as per the Rules of Business of Government of Punjab, 1992. The proposal is thereafter sent to the Council of Ministers for its approval. However, in the instant appeal, this exercise has not been carried out, and only the recommendation of the Officers' Committee to reduce the number

of promotional posts from 14 to 10, has been relied upon by the respondents to defeat the claim of the appellant for promotion.

9. Moreover, the alleged rationale to not accord promotions-*the reduction of posts*, holds no water because soon after the appellant's superannuation on 31.03.2021, two persons, namely, Gurinder Singh and Kamal Kant, whose names were reflected in the DPC recommendation list, were promoted. It is, thus, patent that the action of the respondents not to promote the appellant before his superannuation was not *bona fide* and the recommendations of the DPC had been "cancelled" only to defeat his legitimate right to promotion in terms of the recommendations of the DPC. Furthermore, a perusal of the order dated 31.03.2021 (Annexure P-14) reveals that the Competent Authority did not in any manner upset the findings recorded by the DPC, in respect of the merit and suitability of the appellant for promotion to the post of Chief Engineer. In regards that aspect, the Competent Authority has remained silent. Even no affidavit has been placed on record to the effect that any departmental proceeding was pending against the appellant on that date or that he had been found unsuitable on any aspect.

CONCLUSION

10. In the aforementioned facts and circumstances, especially when the appellant was found suitable for promotion having been placed at serial no.1 in the recommendations of the DPC, the action of the respondents in choosing not to act on the recommendations of the DPC till his superannuation and immediately thereafter, promoting the candidates, who were junior to the appellant at serial Nos.2 to 4 in the recommendation list, demonstrates that the appellant has been in a *mala fide* manner deprived of his legitimate right to be

considered for promotion. Therefore, the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. We place reliance on the judgment of the Supreme Court in the case of **Major General H.M. Singh, VSM (supra)**. Relevant extract of the same is reproduced hereinbelow:

“25. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties. First and foremost, we have no hesitation in endorsing the submission advanced at the hands of the appellant, that the Appointments Committee of the Cabinet did not in any manner upset the finding recorded by the Selection Board, in respect of the merit and suitability of the appellant for promotion to the rank of Lieutenant-General. On the instant aspect of the matter, the Appointments Committee of the Cabinet has maintained a sullen silence. Even in the pleadings filed on behalf of the respondents, there is an ironic quiescence. Therefore, all other issues apart, the appellant must be deemed to have been found suitable for promotion to the rank of Lieutenant-General, even by the Appointments Committee of the Cabinet.

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*27. It is not a matter of dispute that the appellant was promoted to the rank of substantive Major-General with effect from 7-1-2004. It is also not a matter of dispute that the substantive vacancy in the rank of Lieutenant-General, against which the appellant was eligible for consideration, became available with effect from 1-1-2007. Even though the appellant had nearly 14 months of military service remaining at the aforesaid juncture, the procedure contemplated for making promotions to the rank of the Lieutenant-General was initiated for the first time just two days before the date of retirement of the appellant, on 27-2-2008. Although it is the contention of the learned Senior Counsel for the respondents, that the delay in convening the Selection Board and conducting its proceedings was not deliberate or mala fide, **yet** there can be no doubt about the fact that the appellant was not responsible for such delay. For all intents and purposes, he was repeatedly seeking consideration orally as well as in writing. He had been repeatedly informing the authorities about the approaching date of his retirement. In response, he was always assured that if found suitable, he would be actually promoted prior to the date of his retirement. It was for the respondents to convene the meeting of the Selection Board. Since the Selection Board came to be*

convened for the vacancy which had arisen on 1-1-2007 only on 27-2-2008, the respondents must squarely shoulder the blame and responsibility of the above delay.

28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the seniormost serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.

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34. In view of the fact that we have found the order of rejection of the appellant's claim for promotion to the rank of Lieutenant-General, on the ground that he was on extended service to be invalid, we hereby set aside the operative part of the order of the Appointments Committee of the Cabinet. It

is also apparent that the Selection Board had recommended the promotion of the appellant on the basis of his record of service, past performance, qualities of leadership, as well as, vision, out of a panel of four names. In its deliberations the Appointments Committee of the Cabinet did not record any reason to negate the aforesaid interference relating to the merit and suitability of the appellant. We are therefore of the view, that the appellant deserves promotion to the rank of Lieutenant-General, from the date due to him. Ordered accordingly. On account of his promotion to the post of Lieutenant-General, the appellant would also be entitled to continuation in service till the age of retirement on superannuation stipulated for Lieutenant-Generals i.e. till his having attained the age of 60 years. As such, the appellant shall be deemed to have been in service against the rank of Lieutenant-General till 28-2-2009. Needless to mention, that the appellant would be entitled to all monetary benefits which would have been due to him, on account of his promotion to the rank of Lieutenant-General till his retirement on superannuation, as also, to revised retiral benefits which would have accrued to him on account of such promotion. The above monetary benefits shall be released to the appellant within three months from the date a certified copy of this order becomes available to the respondents.”

11. There is no denying the proposition of law crystallised by the Supreme Court in the case of **Director, Lift Irrigation Corpn. Ltd. (supra)** that an employee does not have a vested right for promotion and even the candidate who finds his name in the selection/recommendation list cannot claim promotion as a matter of right. However, the competent authority has to act in a *bona fide* manner. While exercising judicial review, this Court would examine the action or inaction of the authorities to see whether it is *bona fide* or *mala fide*. Furthermore, as discussed in the foregoing paragraphs, the action of the respondents in denying the promotion does not appear to be *bonafide* and as a matter of fact, the actions of the respondents appears to have been actuated by *malafides* so as to deny the appellant his rightful claim to promotion.

12. Consequently, the instant appeal is allowed. The order dated 08.06.2021 as well as the judgment of the Single Bench dated 02.04.2025 are

set aside. The respondents are directed to accord the appellant notional promotion to the post of Chief Engineer w.e.f. 31.03.2021. The pensionary benefits which would have accrued to him on account of such promotion shall also be revised accordingly. The above monetary benefits shall be released to the appellant within a period of three months from the date of receipt of certified copy of this order.

13. Pending application(s), if any, shall stand disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

March 07, 2026
sonia gugnani

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No