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## CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

No.O.A.350/00519/2014  
M.A.350/00002/2015

Date of order: 19.01.2016

Present: Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Noorul Hoda, son of Late Md. Hasan,  
Resident of village:- Serhwa, P.O. Jogia,  
P.S.: - Ramnagar, Dist: - West Champaran(Bihar)  
Aged about 54 years presently residing at  
Doordarshan Staff Quarters, Type 'E',  
Doordarshan Complex, Golf Green,  
Kolkata-700095 working as Superintending  
Engineer(Elect.), Civil Construction Wing,  
All India Radio

### - VERSUS -

The Union of India through the Secretary,  
Ministry of Information & Broadcasting(M.I.&B),  
5<sup>th</sup> Floor, Shastri Bhawan, New Delhi-110001

For the applicant : Mr. S. K. Singh, counsel  
Mr. S. Kumar, counsel

For the respondents : Mr. B.P. Manna, counsel

### ORDER

Per Ms. Jaya Das Gupta, A.M.

The applicant Sri Noorul Hoda has filed this application under Section 19 of the  
Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8.1 That your lordship may be graciously pleased to direct Respondent no.1 to issue  
order granting benefits of promotion with retrospective effect from date of arising of  
vacancy i.e. 01.10.2010;

8.2 That your Lordships may further be graciously pleased to direct the Respondent  
to pay compensation for his sorrow and sufferings and cost of the case may please be  
awarded including expense incurred on its litigation in favour of the Applicant;

8.3 That any other order or orders be passed as your Lordship may please deem fit  
and proper in the interest of Justice."

2. The case of the applicant is that he joined the Civil Construction Wing of All India Radio  
as an Assistant Engineer(Electrical) as per recommendation of UPSC on 11.07.1988.  
Thereafter, he was promoted to the post of Executive Engineer(Electrical) on ad hoc basis and  
then regularized on and from 13.04.1998. Two posts of Superintending Engineer(Electrical) fell

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vacant on 01.03.2009 and 01.10.2010. He has also mentioned that before the above vacancies fell vacant, he was holding the charge of Superintending Engineer(Electrical), Kolkata from 30.08.2010 in addition to his own duties as Executive Engineer(Electrical), CCW, All India Radio, Patna without any monetary benefits.

It is the contention of the applicant that though DPC meeting was expected to be held, immediately the posts fell vacant as per their own circular dated 2009 and 2010, there was no initiative on the part of the respondents for holding the DPC. The DPC was held up unnecessarily because of the matter of adverse remarks in respect of another Engineer who was being considered for promotion to the same posts of Superintending Engineer(Electrical) and the applicant was in no way responsible for the delay in holding the DPC meeting. Finally the DPC meeting was held on 14.06.2013 and the applicant was promoted to the post of Superintending Engineer(Electrical) on 08.10.2013 i.e. much after the post fell vacant on 01.03.2009 and 01.10.2010. The applicant had approached C.A.T., Patna Bench in O.A.No.170/2011 for getting appropriate relief and for being promoted retrospectively from the date the vacancy arose in the post of Superintending Engineer(Electrical) and an order was passed by the said court to decide the matter of promotion to the post of Superintending Engineer(Electrical) as per rules for promotion from retrospective date i.e. 30.08.2010.

A speaking order was accordingly given which rejected the plea of the applicant for giving him promotion retrospectively. Hence, he has filed the present O.A. in C.A.T., Calcutta Bench as he has been transferred in the meantime to Calcutta.

3. Per contra it is the case of the respondents that they had taken regular steps for filling up of the vacancies in time, but it was held up for non-observance of procedure of communication of below bench mark grading to one Sri L.K. Salgat, Executive Engineer who was senior to Noorul Hoda, the applicant and was also eligible for promotion to the post of Superintending Engineer.

In pursuance of the Tribunal's order dated 12.12.2011 in M.A.No.253/2011 and O.A.172/2011 Sri Nurool Hoda was given ad hoc promotion on 23.03.2012. DPC for regular promotion of Noorul Hoda was held up in UPSC because of the procedural delays for which the deficiencies pointed out by UPSC had to be met and rectified. Eventually, the proposal for promotion of the applicant was considered by the UPSC and as per recommendation of the DPC held on 14.06.2013 an order for promotion of the applicant was issued on 08.10.2013. The respondents submitted that they had taken right earnest in connection with the holding of the DPC and the applicant was promoted after the recommendation of DPC was received and it

is not a case that unnecessarily the DPC had been held up by the respondent authorities. Hence, the O.A. should be dismissed.

4. The issue to be considered is whether the applicant Sri Noorul Hoda has a right to be considered for the post of Superintending Engineer(Electrical) from the date the vacancy arose or subsequent to the recommendation of DPC.

5. From the records it is apparent that the applicant had initially approached the C.A.T., Patna Bench in O.A.No.170 of 2011 where the following order was passed on 27.09.2013:-

"3. XXXXXXXXXXXXXXXXXXXXXXXX The prayer of the applicant was to hold DPC for promotion to the posts of Superintending Engineer(E) as per applicable rules as also to grant promotion to the applicant with retrospective effect from 30.08.2010 (i.e. the date of assuming current duty chart of Superintending Engineer(E), at Kolkata.

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6. We, therefore, disposed of this OA with direction to the respondents to decide the matter of promotion to the post of Superintending Engineer(Electrical) as per rules, after considering recommendation of DPC in its meeting held on 14.06.2013 within a period of three months from the date of receipt of a copy of this order.

7. It is further directed that if the applicant is eventually selected for promotion then his representation for promotion from retrospective date i.e. 30.08.2010 be considered by the respondents and decision be communicated to the applicant within a period of two months after decision in the matter of promotion."

6. A speaking order accordingly was issued on 18.03.2014, relevant portions of which are set out below:-

"AND WHEREAS in pursuance to the above directions of the Tribunal dated 12-12-2011 in MA the proposal of granting ad hoc promotion to Sh. Noorul Hoda to the post of Superintending Engineer(Elect.) was put up for the approval of MIB and on the basis of approval of the competent authority Sh. Hoda was promoted on ad hoc basis to the post of SE(E) vide order No.2/2012 dated 23-03-2012 in the Pay Band-3-Rs.15600-39100/- with Grade Pay of Rs.7600/-.

AND WHEREAS after getting ad-hoc promotion Sh. Hoda insisted for regular promotion. As such, a fresh proposal was called from CCW for regular promotion of Sh. Hoda & Others.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX the matter was taken up with UPSC for conducting DPC for regular promotion of SE. However, the Commission returned the proposal with some observations. The needful was done and the proposal was accepted by UPSC on 08-03-2013 for conducting DPC for regular promotion of SE.

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AND WHEREAS UPSC finally convened DPC on 14.6.2013 and Sri Noorul Hoda was recommended for regular promotion to SE(E) against the vacancy of 2010-11. After approval of the competent authority to the recommendation of UPSC, Shri Noorul Hoda was given regular promotion vide Ministry of I & B order dated 8.10.2013 from the date Shri Noorul Hoda assumed charge of the post of SE(E) on a regular basis.

AND WHEREAS from the facts stated above it may be seen that there has been no lackadaisical or deliberate delaying approach on the part of the Contemnor to grant either adhoc or regular promotion to the petitioner.

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AND WHEREAS so far as the question of considering the promotion of petitioner from retrospective effect w.e.f. 30-06-2010 i.e. the date of holding current duty charge of the post of SE(Elect.) is concerned, it is stated that the current duty charge is not in the category of promotion. The concept of entrusting of additional charge of post formally or on current duty charge basis is envisaged under F.R.49 dealing with "Combination of Appointments". According to the provision of FR-49(i), the Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure. As per FR-49(v) no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge.

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AND WHEREAS the general principle is that promotion is always made effective from a prospective date. It has been emphasized by DOP&T vide para 6.4.4 in its OM No.22011/8/87-Estt.(D) dated 09-04-1996 that the promotions have only prospective effect even in cases where the vacancies relates to earlier years. A copy of the DOP&T OM dated 09-04-1996 is at Annexure-R-3. DOP&T in its another OM dated 17-07-2002 has categorically stated that promotions are made effective from a prospective date after the competent authority has approved the same and the same principle is also applicable in Flexible Complementing Scheme. A Copy of the DOP&T OM dated 17-07-2002 is placed at Annexure R-4.

AND WHEREAS as per DOP&T OM No.515/39/2011-BA(E) dated 28<sup>th</sup> February, 2014 read with O.M. No.22011/3/75-Estt.(D) dated 29<sup>th</sup> October, 1975, and reiterated in O.M. No.28036/8/87-Estt.(D) dated 30.03.1988 and O.M. No.28036/1/2001-Estt.(D) dated 23.07.2001, an ad-hoc appointment does not bestow on the person a claim for regular appointment and the service rendered on ad-hoc basis in the grade concerned also does not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade. However, in ad-hoc promotions the incumbent is entitled to higher pay scale of his ad-hoc post, whereas in CDC the higher pay of the post under FR-49(v) is not admissible. A copy of DOP&T O.M. No.515/39/2011-BA(E) dated 28<sup>th</sup> February, 2014 is placed at Annexure-R-5.

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AND NOW based on the above facts the request of Sh. Noorul Hoda for considering his regular promotion to the post of SE(Elect) from 30-08-2010 cannot be acceded to and he has been rightly promoted to the grade of Superintending Engineer(Civil) on regular basis vide Ministry of I&B order dated 08-10-2013 from the date he assumed charge of the post of SE on a regular basis in the pay scale of Rs.15600-39100/- (Pay Band-3) with Grade Pay of Rs.7600/-"

7. Against the above speaking order the applicant has approached the C.A.T. asking for the reliefs mentioned supra. The counsel for the applicant has submitted two judgments delivered by the Hon'ble Apex Court which are discussed below:-

- (i) Civil Appeal No.192/2014 (Arising out of SLP (C ) No.2008/2010)-Major General H.M. Singh, VSM vs. Union of India & Another- This referred case is distinguishable from the present case.

Since in the Civil Appeal, Hon'ble Apex Court nowhere has mentioned that promotion of Major General H.M. Singh from the post of Major General to the post of Lieutenant General, vacancy of which fell from 01.01.2007, should be considered from 01.01.2007 or from the date the case of the applicant was recommended for promotion by the Selection Board on 27.02.2008. In fact, the Hon'ble Apex Court has directed that " We are, therefore, of the view

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that the Appellant deserves promotion to the rank of Lieutenant General from the date due to him, ordered accordingly."

It is to be mentioned that by the time the Hon'ble Apex Court's order came into effect, the applicant i.e. the Major General H.M. Singh had already retired and the Hon'ble Court ordered that the applicant shall be deemed to have been in service in the rank of Lieutenant General till his deemed retirement on 28.02.2009. The Hon'ble Apex Court did not mention the date from which deemed promotion will come into effect.

(ii) In the second case decided by the Apex Court in **Union of India & Another v. Hemraj Chauhan & Ors.**, the Id. counsel for the applicant brought to our notice para 37 and 38 of the judgment which are extracted below:-

"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 State Government are to act as model employees which is consistent with their rule in a welfare state."

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

The above paras 37 and 38 only specifically mention the right to be considered for promotion in a fair and just manner. This case actually deals with the issue of controversy as to whether reexamination of the strength and composition of Indian Administrative Service cadre in the State of Uttar Pradesh had taken place in accordance with the mandate of Rule 4 Sub-rule 2 of the Cadre Rules. This is not applicable to the present O.A. at all.

8. On the above issue our mind goes back to the orders passed by the larger bench of C.A.T., Calcutta Bench in O.A.536 of 2008 with M.A.467 of 2011(**PALLAB PHOUZDER & ORS. VS. UNION OF INDIA & ORS.**) passed on 06.08.2015 by three Members namely, Hon'ble Justice Mr. G. Rajasuria, Judicial Member., Hon'ble Mr. A.K. Patnaik, Judicial Member and Ms. Jaya Das Gupta, Administrative Member, which has decided the matter in details, coming to the conclusion that there can be no retrospective promotion effective from the date the vacancy arose. The following portions of the order are extracted for ready reference:-

"Concerning the vacancies which arose during the period of 2002-2003 in the posts of Junior scale of Group A IRSE; the vacancies were expected to be filled up from two sources, one from the feeder post and another from direct recruits. The applicants were in the feeder post. Instead of conducting the DPC in the year 2003 and giving them promotion, due to laches and laxity on the part of the Railway Administration, the DPC was held in the year 2005, and they were given promotion prospectively instead of giving promotion retrospectively so to say with effect from 2003. Their representations went in vain. Therefore, this O.A. has been filed seeking the aforesaid reliefs.

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In the referral order the Id. Bench suo motto referred to the Hon'ble Andhra Pradesh High Court's judgment dated 14.08.2001 in WPCT No.4766/2000(Union of India & Ors. Vs. P.V. Subba Rao & Ors.).

The Principal Bench of C.A.T. in its order dated 29.01.2010 in O.A.No.280/2008 referred to the same issue and held that there were laches and laxity on the part of the Railway Administration in giving promotion and hence it should take effect from 2003, the year in which the vacancies arose, and such an order was passed after considering the pros and cons of the matter relating to the same DPC which is referred to in this O.A., and it also pointed out that the said DPC was not constituted by the Railway Administration as per the DOP&T memoranda dated 10.04.1989 and 29.07.2004. In fact, as per him, in the said order the relevant portion of the DOP&T's memorandum is found extracted and the Bench held that since the DPC was held belatedly due to the laches on the part of the Railway Administration, the promotees should not suffer the consequences and accordingly the said Bench gave retrospective effect to the promotion which cannot be found fault with.

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At the outset, itself we would like to fumigate our mind with the DOP&T's O.M. No.22011/5/86-Estt.(D) regarding "Guidelines on Departmental Promotion Committee" dated 10.04.1989 and O.M.No.22012/1/2201-Estt(D) dated 29.04.2007 regarding "Introduction of Group-B officers of the Zonal Railways etc., into Group-A of the various Railway Services – Date of effect of DPCs recommendations".

A bare perusal of those memoranda would portray and demonstrate that the date of conducting DPC is the criterion for reckoning the promotion. No doubt in the cited memoranda, it is also found that there should not be any delay in conducting the DPC. However, it is not the view of the DOP&T that the promotion could be reckoned anterior to the date of the DPC. The Hon'ble Division Bench of the Principal Bench in O.A.28 of 2008 at paras 25 and 26 of its order has taken the view that if there was laxity on the part of the Administration in conducting DPC, then the promotion should be reckoned from the date of vacancy. This is a broad proposition virtually laid down by the Hon'ble Division Bench of the Principal Bench. Now it has to be verified and analysed as to whether such a widened proposition could be accepted in view of the decision of the Hon'ble Andhra Pradesh High Court in the case of Union of India & Ors. Vs. P.V. Subba Rao & Ors. cited supra. Certain excerpts from it would run thus:-

"From the various authorities cited before us, the following principles would emerge:

- (i) Even when vacancies arises/exists it is not incumbent on the part of the authorities to fill up the vacancies. The officers may have a legitimate expectation, but they cannot have any enforceable right either to compel constitution of DPC or to seek promotion with retrospective date for valid reasons DPC, may be postponed;
- (ii) The principle of weightage has to be applied having regard to other principles of seniority and cannot be construed or applied in a straight jacket formula.
- (iii) The principle of weightage has to be applied by giving due weightage of service of five years from the date of substantive appointment and not from the year of allotment.
- (iv) The principle of giving weightage of five years from the date of substantive appointment is fair and equitable procedure and cannot be held to violate Article 14 and 16 of the Constitution of India.
- (v) The principles of giving weightage subject to condition that weightage assigned shall not exceed the total non-remunerative service rendered by the officer in the lower category; and
- (vi) If the principle of giving five years of weightage in service in the promoted category is reckoned with reference to year of allotment, the same would violate the principle of equity in Articles 14 and 16 of the Constitution of India, in that, even a person whose claims were rejected earlier or who was not qualified or who was not within the zone of consideration would get the benefit of weightage of five years of service which is illogical and illegal.

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The learned Tribunal in the impugned judgment while holding that the first respondent is entitled for weightage from the year in which vacancy occurred placed reliance on the principles contained in the letter dt.30.11.1976 and did not notice the subsequent amendment by letter dated 23.4.1991. Apart from this as observed by the Supreme Court in NIGAM's case (supra) five years weightage can only be given from the DOITS i.e. the date on which the substantive appointment is made and not from the year in which the vacancy occurred. Be it noted that the year of service is always connoted by initial pay on permanent promotion and not promotion with reference to a panel year. In this view of the matter, the impugned judgment of the Tribunal suffers from error and is liable to be set aside which requires to be recalled by us in this petition for judicial review."

6. Undoubtedly the Hon'ble Andhra Pradesh High Court by referring to the Hon'ble Apex Court's judgment, held that "promotion cannot be reckoned from the date anterior to DPC and that too from the date of arisal of the vacancy. The ratio decidendi found emerged from the said judgment of the Hon'ble Andhra Pradesh High Court is that simply because vacancy arises in a post, there is no vested right correspondingly accrues in favour of the prospective promotees from the date of arisal of the vacancy. As such in the referral order the Hon'ble Division Bench of this C.A.T citing the said decision of the Hon'ble Andhra Pradesh High Court highlighted that the said precedent was not referred to in the order passed by the Division Bench of the Principal Bench.

The Hon'ble Apex Court in the recent decision in Civil Appeal Nos.7514-7515 of 2005(Union of India & Ors. vs. N.R. Parmar & Ors.) with 3(three) Others as cited by the Id. counsel for the applicant (referred to supra) also held that promotion could be effective from the date of DPC only. We would like to extract hereunder the para 9 of the said judgment:-

"9. We have heard the learned counsel appearing for the contending parties at considerable length and we are of the view that as far as inter se seniority is concerned, the same has to be based on the vacancies arising for a particular year. Thereafter, the seniority has to be determined on the basis of rota quota rule which has been illustrated in the aforesaid illustration contained in the O.M. of 7.2.1986. As far as direct recruits are concerned, the crucial date on which they have to be considered will be the date when the Staff Selection Commission makes the selection of direct recruits. Hence the date of forwarding the dossier of direct recruits by the Commission to the department, date of actual joining or taking over charge by the direct recruit would all be irrelevant. It would be the date on which the Staff Selection Commission makes the selection of the direct recruits that will be the material date for fixing the seniority. This would avoid injustice being done on account of administrative delays, i.e. delay in matter of issue of orders of appointment and posting and of actual taking over of a charge. Similar will be the position in regard to promotees. It will be the date on which the promotee is selected for promotion by the departmental promotion committee. Hence the date on which the promotee actually assumes charge of the promotional post similarly will be relevant. The seniority list which is impugned in the present proceeding, it appears, has not followed the instructions which we are not issuing in the present order."

[Emphasis supplied]

As such, clearly and categorically by way of disambiguating the ambiguity the Hon'ble Apex Court in the cited judgment highlighted that with regard to promotees, the date of DPC alone will be the criterion for reckoning the service of them in the promotion post. In such a case, it is quite obvious and axiomatic that the applicants' service in the promotion post could be reckoned only from the date of DPC and not from the date of arisal of the vacancy.

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Accordingly the reference is answered to the effect that the date of promotion of the applicants should be reckoned from the date of DPC and not from any anterior date as laid down by the Division Bench of the Principal Bench. In as much as the answer to the reference fully disposes of the O.A. and nothing more to be decided, the O.A. is dismissed. No costs."

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9. The ld. counsel for the applicant had also referred to the decisions arrived at by the Principal Bench of C.A.T., New Delhi in O.A.2067/2010 (S.K. Garg & Ors. Vs. Union of India) and Vin Dosajh vs. Secretary, Technical Education, Chandigarh Administration in O.A.No.800-CH od 2011.

It is needless to say that the above orders passed by C.A.T. have all been passed in their capacity in Division Bench while the decision of a larger bench(three members) have been cited supra which has given its definite findings.

10. Ld. counsel for the applicant has also brought to our notice the judgments in other cases which are being dealt with below:-

In the judgment of the Calcutta High Court dated 23.08.2010 passed in WPCT 334/2008, the Hon'ble High Court upheld the decisions arrived at by the Central Administrative Tribunal, Calcutta Bench in O.A.1166 of 2003 passed on 31<sup>st</sup> January,2008. The Calcutta Bench in O.A.No.1166 of 2003 which they passed on 31.01.2008(Devalalya Basu & 9 Ors.) has considered the case of the applicants who were officers under the Ordnance Factory Board, Ministry of Defence and were due for promotion to the post of JTS cadre since 1991. The posts under this cadre are filled up partly by direct recruitment and partly by promotion, in the ratio of 60:40. Seniority is on the basis of Quota Rota as per the provisions of Article 16 of the Civil Service Regulation(CSR). The grievance of the applicants were that no DPC took place in 1991,1992 and 1993 which resulted in the 40% quota not having filled up, while , the 60% direct recruitment quota was duly filled up. The applicant's grievance was that by the inactions on the part of the respondents in holding the DPC on time, there was an imbalance on the ratio of direct recruit and promotee officers in the years 1991-1993 whereby seniority of the applicants were unduly affected and above all the next promotion to the post of STS being after three years of service in JTS, the promotion chances of the applicants were crippled. This point of quotas of direct appointments and promotes is distinguishable from the present case where the post of Superintending Engineer is filled up by promotion only.

The C.A.T., Calcutta Bench had depended on the findings of the Apex Court in case of P.N. Premachandran vs. State of Kerala (2004)1 SCC 245, as under:-

"It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time

when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect."

Accordingly the C.A.T. passed orders allowing the O.A. and the applicants were deemed to have been promoted in the JTS cadre in 1991, 1992 and 1993 respectively depending upon their seniority position and availability of vacancies. The above decision of the C.A.T., Calcutta Bench which was upheld by Calcutta High Court (supra) can be distinguished from the present O.A. on two points. In the case of **P.N. Premachandran vs. State of Kerala**, the DPC did not take place for 16 years. Also State Government of Kerala itself took a decision to give retrospective promotion as they admitted that there was administrative delay in holding the DPC. The State Government of Kerala took recourse to Rule 39 of Kerala State and Subordinate Service Rule, 1958 which is a residuary provision conferring overriding power and on these terms, the grant of promotion with retrospective effect was permissible. But in the present case only about three years after the date the post fell vacant, the DPC was convened. The respondents have in no way agreed that there was administrative delay in holding the DPC. In fact, they had submitted that due to procedural delays involving UPSC also, the DPC could not be held earlier.

In fact, as per the reference made by the larger bench(supra) to Civil Appeal No.7514-7515 of 2005 (Union of India & Ors. Vs. N.R. Parmar & Ors.) with 3(three) others, it was observed that promotion could be effective from the date of DPC only. At the risk of repetition, we would again extract para 9 of the said judgment:-

"9. We have heard the learned counsel appearing for the contending parties at considerable length and we are of the view that as far as inter se seniority is concerned, the same has to be based on the vacancies arising for a particular year. Thereafter, the seniority has to be determined on the basis of rota quota rule which has been illustrated in the aforesaid illustration contained in the O.M. of 7.2.1986. As far as direct recruits are concerned, the crucial date on which they have to be considered will be the date when the Staff Selection Commission makes the selection of direct recruits. Hence the date of forwarding the dossier of direct recruits by the Commission to the department, date of actual joining or taking over charge by the direct recruit would all be irrelevant. It would be the date on which the Staff Selection Commission makes the selection of the direct recruits that will be the material date for fixing the seniority. This would avoid injustice being done on account of administrative delays, i.e. delay in matter of issue of orders of appointment and posting and of actual taking over of a charge. Similar will be the position in regard to promotees. It will be the date on which the promotee is selected for promotion by the departmental promotion committee. Hence the date on which the promotee actually assumes charge of the promotional post similarly will be relevant. The seniority list which is impugned in the present proceeding, it appears, has not followed the instructions which we are not issuing in the present order."

[Emphasis supplied]

Ld. counsel for the applicant had referred to the case of **Union of India vs. Mohan Singh Rathore & Another** which the Apex Court disposed of on 02.09.1996. Here, the present O.A. can be clearly distinguished because the case of **Mohan Singh Rathore & Another**

involve fulfilling of the requirement of Indian Police Service(Appointment by Promotion) Regulation, 1955 which in no way can be related to the present O.A. The case of **Nirmal Chandra Bhattacharjee & Another vs. Union of India & Others** which was disposed of by the Apex Court on 19.09.1990 was also decided on different issue. That case dealt with two classes of employees, namely Group 'C' and Group 'D' and the anomaly resulting from restructuring and movement from Group 'D' post to Group 'C' post. By this process the juniors and those who could be selected were likely to become senior and better placed than those who are already placed in Group 'C'. This in the minds of the Hon'ble Supreme Court was very unfair and in fact the Hon'ble Apex Court had disposed of that case by observing that "this appeal by grant of special leave is directed against order of the Central Administrative Tribunal, Guwahati Bench. The question that arises for consideration is more of equity and fair play than law. Therefore, we proceed to exercise our jurisdiction under Article 136 read with Article 142 of the Constitution to do justice between the parties."

11. Taking note of the facts of the case and also in view of the various citations of Hon'ble Supreme Court and citations of Central Administrative Tribunal supra, as relied upon by the id. counsel for the applicant and the final order of the larger bench of C.A.T., Calcutta Bench which is based on the two judgments of the Hon'ble Apex Court(supra), we have no hesitation to conclude that promotion cannot be retrospective and it will take effect from the date the DPC was held /the date of order subsequent to the recommendations of the DPC. Accordingly, the present O.A. is dismissed. Accordingly the M.A. also stands dismissed. No cost.

(J. Das Gupta)  
Administrative Member

(B. Banerjee)  
Judicial Member

s.b