GAHC010280442024

2026:GAU-AS:16959-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/372/2025

1. The Chairman cum Managing
Director, Bharat Sanchar Nigam Limited,
Corporate Office, 4th Floor,
Bharat Sanchar Bhawan,
Janpath, New Delhi- 110 001

2. The Director (H.R.)
Bharat Sanchar Nigam Limited,
Bharat Sanchar Bhawan,
Janpath, New Delhi- 110 001

.....***..Petitioners***

-Versus-

Shri Udit Gupta,
Superintending Engineer (Civil)
Office of Chief Engineer (Civil), BSNL,
Panbazar, Guwahati, Assam,
PIN- 781001

.....***..Respondent***

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the petitioners : Mr. G. Goswami, Advocate
For the respondent : Ms. S. Kanungoe, Advocate

Date of hearing : 17.11.2026

Date of Judgment : 17.11.2026

JUDGMENT & ORDER (ORAL)

(Ashutosh Kumar, C.J.)

We have heard Mr. G. Goswami, learned Advocate for the petitioners/*The Chairman cum Managing Director BSNL & Another* and Ms. S. Kanungoe, learned Advocate for the sole respondent/*Udit Gupta*.

2. The impugned order dated 19.07.2024 passed by the Central Administrative Tribunal (hereinafter to be referred as 'Tribunal') Guwahati Bench in O.A. No.040/251/2017 enjoins upon the petitioner/BSNL to hold a review DPC for the respondent for considering his case for early promotion/antedated promotion in view of the judgment of the Supreme Court in ***Shiv Kumar Sharma and Another vs. Union of India and Others :: (1997) 11 SCC 112.***

3. The petitioner/BSNL has questioned this judgment on several grounds.

4. Before we deal with those grounds, it will be necessary to state in brief as to why the respondent was not promoted earlier to his juniors.

5. The respondent started his service in BSNL in the year 1992 as an Assistant Executive Engineer (Civil). In the year 2005, he was given ad-hoc promotion to the post of Superintending Engineer (Civil). He was never given regular promotion on account of the remarks "below the benchmark" in his APARs/Annual Confidential Reports, whereas the eligibility criteria for regular promotion to the post of Superintending Engineer, as per the Recruitment Rules of 2009 for the scale of Rs.16,000-400-20,800 (ES), is "very good"; "not adverse" and not more than one "good". Four "very good" and one "good" would be sufficient for regular promotion to the post of Superintending Engineer.

6. The Tribunal, Guwahati Bench, though took note of the fact that the challenge of the respondent to his assessment and grading him below the benchmark for promotion never met with any success except to the extent of a direction from the Central Administrative Tribunal, Madras, to the BSNL for passing a speaking order, but considering the fact that the respondent had been topper of his batch of engineers and was denied time-bound promotion only on account of not meeting the benchmark gradings in the APAR and that also for the reason of his being a whistle-blower in the department, the Tribunal applied the principle enunciated in ***Shiv Kumar Sharma (supra).***

7. In the afore-noted judgment, the Supreme Court had accepted the suggestion of the Full Bench of the CAT that to meet the ends of justice in the circumstance of cases that for the period, during which the

employees shouldered higher responsibilities for higher Class I post, their gradation should be treated as one level higher than the grading awarded to them for that period. Though no finding was recorded in the afore-noted case, but the Supreme Court agreed that in case such suggestion was accepted by the UPSC, that should put the matter at rest.

8. Thus, applying the afore-noted principle and taking the grading of the respondent to one higher level, it was found that perhaps the respondent would have qualified for being promoted to the higher post much earlier, i.e. when his juniors were considered.

9. Commenting on the afore-noted decision, Mr. Goswami, learned Advocate for the petitioner/BSNL has submitted that the directions given by the CAT, Guwahati Bench is flawed for the reason that the challenge comes after several years, when juniors to the respondent have already been promoted and most of them have retired from service. While such order was passed, the Tribunal did not appropriately consider that antedating the promotion of the respondent would have disturbed the seniority of 40 other employees, who had been promoted before the respondent and no effort was taken by the respondent to implead those 40 persons, whose seniority would have been tampered with, should the respondent been promoted from an early date.

10. It has also been argued on behalf of the petitioner that the judgment of the Supreme Court in ***Shiv Kumar Sharma (supra)*** was in a separate special circumstance which cannot automatically be applied in case of the respondent, who is an employee of BSNL which has its own promotion rules, which are being followed by the letter.

11. That apart, we find that the respondent was promoted to the post of Chief Engineer and has now retired. The entire exercise of holding a DPC for giving antedated promotion to the respondent to the post of Superintendent Engineer (Civil) would be meaningless and would unnecessarily disturb the pecking order of seniority of the retired employees.

12. Thus, we do not find the directions issued by the Tribunal to be tenable.

13. We are, thus, constrained to set aside the impugned order passed by the Tribunal.

We order accordingly.

The writ petition, thus, stands allowed.

JUDGE **CHIEF JUSTICE**

Comparing Assistant