

Departmental Promotion Committee Not Convening Alone Not Special Circumstance To Confer Retrospective Promotions: Meghalaya High Court

2023 LiveLaw (Meg) 1

HIGH COURT OF MEGHALAYA AT SHILLONG

H.S. THANGKHIEW, J.

WP(C) No. 250 of 2020; 30.01.2023

Shri Andrew Shabong & Ors. versus State of Meghalaya & Ors.

For the Petitioner(s) : Ms. T. Yangi B. Sr. Adv. with Ms. T. Tariang, Adv.

JUDGMENT AND ORDER

1. The case of the petitioners 3 in number in brief is that they had all joined in service in 2009 after due selection to the post of Lower Divisional Assistants in the Public Works Department, Government of Meghalaya. The grievance as made out is that though they had become eligible for promotion as far back in 2014, and although there were vacancies in the promotional post of Upper Divisional Assistants, the Departmental Promotion Committee which was to consider the promotion of eligible LDAs did not meet for several years, and that only in 03.03.2020 pursuant to a meeting of the DPC held on 11.11.2019, the petitioners were given promotion to the post of UDA with effect from the date of joining and not retrospectively.

2. Ms. T. Yangi B. learned Senior counsel assisted by Ms. T. Tariang, learned counsel for the petitioners submits that the petitioner No. 1 had joined service on 02.02.2009, petitioner No. 2 on 02.01.2009 and petitioner No. 3 on 11.02.2009, and as all had rendered 5 years of continuous service by 2014, had become eligible for promotion to the post of UDA. It is further submitted that since 2012, vacancies were present in the post of UDA, but however as the Departmental Promotion Committee (DPC) which ought to sit regularly as per the Rules, did not meet to consider promotion of eligible employees, the writ petitioners submitted several representations to the respondent No. 3, requesting a meeting of the DPC, to consider their promotion to next higher post from the date they had become eligible.

3. The learned Senior counsel submits that it is only on 11.11.2019 that the DPC met, and the petitioners were recommended for promotion to the next higher post of UDA, which was thereafter accordingly acted upon by Office Order No. 4 of 2019 issued on 03.03.2020. She submits that however their promotion was effective from the date of joining. It is contended by the learned counsel that vide Office Memorandum dated 06.03.1998, all Departments and Offices have been advised to hold the Departmental Promotion Committee well in time, preferably even before the date of occurrence of vacancies and that the same had also been recommended by the Fifth Pay Commission. This she submits, had not been adhered to by the respondents which has resulted in the denial of the petitioners' rights to be promoted from 2014. In support of her arguments, reliance has been placed on the following judgments: -

i) Judgment & Order dated 26.05.2022 passed in WP(C) No. 592 of 2021 (Shri Ahongshangbam Tomba Singh vs. State of Manipur & Ors.) in the High Court of Manipur at Imphal.

ii) Judgment dated 1 July, 1996 (H.B. Sharma vs. Union of India) Delhi High Court

iii) Union of India & Anr. vs. Manpreet Singh Poonam & Ors. reported in (2022) 6 SCC 105

4. In reply Mr. H. Abraham, learned GA submits that the non-holding of the DPC earlier was due to the fact that the office records of the Department were gutted in a fire, and as such the advisory on the holding of the DPC was not available. However, he submits the DPC in its meeting held on 11.11.2019 had addressed the grievances of the writ petitioners by recommending them for promotion to the next higher post and suggested that Government approval, be obtained with reference to the date eligibility of the qualified candidates to UDA post. He further submits that the same was not considered, as the delay in holding of the DPC was due to genuine and unavoidable reasons, and there was no intentional, deliberate or willful delay. The learned counsel further submits that in view of the Government notification 04.09.2003, wherein it had been clarified that regular promotion should be effective from the date an officer takes over charge after promotion, orders had been issued accordingly after the recommendation of the DPC.

5. The learned counsel then closed his arguments by submitting that seniority cannot be claimed from a date an employee had not even been borne in the cadre, and that seniority is not to be considered from the date when vacancy arose, but from the date on which appointment was made to the post.

6. I have heard the learned counsels for the parties.

7. The only point for consideration in the present writ petition is the justifiability of the claim of the petitioners to promotion from a retrospective date to the promotional post of UDA. As has been noted from the arguments of the petitioners, their claim is based on only one ground, which is that on the date when they had become eligible for promotion, vacancies were available but due to the non-sitting of the DPC, the said promotions could not be effected, which resulted in their loss of seniority, which in turn has affected their future promotional prospects.

8. In matters of promotion with retrospective effect, it is settled law that the same cannot be resorted to except on very sound reasons and foundation, it becomes necessary to do so. There have been cases, no doubt wherein retrospective promotion had been granted and approved by the Courts, but the same were done on consideration of special circumstances surrounding that particular case, such as by operation of certain rules.

9. In the instant case, as observed earlier the only claim to retrospective date of appointment is due to the non-sitting of the DPC. No averments have been made that scheduled DPC or DPC's had been cancelled or that there was any mala fide intent in not convening the same. The only stand is that as per an advisory issued by the respondents in the year 1998, DPC's were to sit at regular intervals. This however has been countered by the respondents in their reply, that as per notification dated 04.09.2003, regular promotion should be effective from the date the officer takes charge, after promotion orders have been issued on the basis of recommendations of the DPC. The Memorandum dated 04.09.2003 is reproduced hereinbelow:-

**GOVERNMENT OF MEGHALAYA PERSONNEL & ADMV. REFORMS (B)
DEPARTMENT**

.....

NO. PER(AR).123/87/9 Dated Shillong the 4th September, 2003

MEMORANDUM

There have been a number of instances, where Administrative Departments have approached Government in the Personnel & A.R. (B) Department for advice/views/approval in the matter of promotion.

It is clarified that in matters of promotion made on the basis of recommendations of the Departmental Promotion Committee, the promotion cannot be made with retrospective effect. The interse-seniority of members of service shall be in the order in which the names appears in the list as recommended by the Departmental Promotion Committee and the date of joining will have no effect on the aforesaid seniority.

It is further clarified that full charge arrangement cannot be considered and treated as cases of regular promotion, even in cases where full charge arrangement is immediately followed by regular promotion to the higher cadre/post. Regular promotion should be effective from the date the Officer takes over charge, after the promotion orders have been issued on the basis of recommendation of the Departmental Promotion Committee. It has been noticed that some doubts arises as to the date from which such a regular appointment/promotion is to be given effect to, in the absence of specific instructions in the matter. In order to clear any doubt on the matter, it is reiterated that regular appointment/promotion in such cases, should be with effect from the date as stipulated in the original Government Notification/Office Order by which such promotion under regulation 4(d) is made, or, in the absence of a stipulated date there in, from the date of issue of that Government Notification/Order itself.

(Sd/- W.M.S. Pariat),

*Principal Secretary to the Govt. of Meghalaya,
Personnel & Admv. Reforms (B) Department”*

10. Promotion to a higher post in the instant case is not a case of functional promotion, but as can be seen involves a process of selection and recommendation by a duly constituted DPC. A mere existence of a vacancy therefore, will not create a vested right for an eligible employee to claim for appointment on promotion to the said post, especially when the same has to be finalized through a selection process. A case that is relevant and has a bearing on the point in issue wherein leading cases have been digested is the case of ***Union of India & Anr. vs. K.L. Taneja & Anr.***, and other similar cases ***[WP(C) No. 8102/2012]*** decided by the Delhi High Court on ***12.04.2013***. In this judgment which has great persuasive value, after analyzing many cases on this point, at Para-21, it has been held as follows:-

“21. The cornucopia of case law above noted brings out the position:-

- (i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.***
- (ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.***
- (iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e.***

deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.”

11. The Hon'ble Supreme Court in the case of ***Union of India & Anr. vs. Manpreet Singh Poonam & Ors.*** reported in **(2022) 6 SCC 105** in Paragraphs 18 to 21 also held as follows:-

“18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules.

19. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17-04-2012 with effect from 01-07-2011, when the actual vacancies arose, which in any case is a benefit granted to the respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

20. This Court in Union of India v. K.K. Vadera has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that: (SCC p. 627, para 5)

“5....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post after a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

21. Similarly, this Court in [Ganga Vishan Gujrati v. State of Rajasthan](#), has held that: (SCC pp. 52-53, para 45)

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra](#). The principle was reiterated by this Court in [State of Bihar v. Akhouri Sachindra Nath](#), and [State of Uttaranchal v. Dinesh Kumar Sharma](#). In [Pawan Pratap Singh v. Reevan Singh](#), this Court revisited the precedents on the subject and observed: (Pawan Pratap Singh case, SCC pp. 281-82, para 45) ‘45. ... (i) The effective date of selection has to be understood in the context of the Service Rules under which the appointment is made. It may mean the date on which the process of selection starts

with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.'

This view has been re-affirmed by a Bench of three Judges of this Court in [P. Sudhakar Rao v. U. Govinda Rao](#)."

12. As such in view of the stated position of law, and there being no special circumstances or rules present that vest the petitioners with any right to claim for promotion from a retrospective date, there is no merit in the instant writ petition and the same is dismissed.

13. No order as to costs.

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