

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2271 of 2024
Date of Decision: 28.11.2025

Pardeep Kumar		Petitioner
	Versus	
State of Himachal Pradesh & Ors.		Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Vijay Bir Singh, Advocate.

For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, Judge (oral):

Precisely, the question, which needs to be determined in the case at hand is that “Whether promotion from the due date, or from the date on which the promotional post became available, can be denied merely on the ground that meeting of Departmental Promotion Committee could not be convened for want of certain clarifications?”

2. Explicitly, relevant facts, as emerge from the pleadings, adduced on record by the respective parties are that petitioner, after his having completed Matriculation in the year 1984, passed Diploma in the trade of Surveyor in the year 1986 (Annexure P-1 colly). On the basis of aforesaid qualification, petitioner was appointed as Surveyor on daily wage basis with the respondent-department w.e.f 02.11.1986.

¹Whether the reporters of the local papers may be allowed to see the judgment?

Services of the petitioner were regularized as Surveyor w.e.f. 01.01.1997. After his having completed three years regular service, petitioner, pursuant to permission granted by the department, took admission in the Institute of Advanced Studies in Education Deemed University Gandhi Vidya Mandir Sardarshahr, Rajathan (*in short "IASE"*) in three year diploma course of Civil Engineering. Petitioner completed said diploma in the year 2009 in first division from afore institute (Annexure P-2).

3. As per the petitioner, he had become eligible for promotion to the post of Junior Engineer in terms of Recruitment & Promotion Rules formulated by the department concerned in the year 2013, but yet despite there being availability of vacancies, he was denied promotion from the due date.

4. Bare perusal of Recruitment & Promotion Rules for the post in question, notified vide notification dated 05.06.2004, reveals that Surveyors having Diploma of at least three years duration in the trade of Civil Engineering or its equivalent from Institution/University recognized by the Central/State Government with three years regular service or regular combined with continuous *ad hoc* service rendered upto 31.03.1998, if any, are eligible for promotion to the post of Junior Engineer (Annexure P-3). Subsequently, Government of Himachal Pradesh, in consultation with the Himachal Pradesh Public Service

Commission, amended Recruitment & Promotion Rules for the post of Junior Engineer (Civil), Class-III (Non-gazetted), Technical Services in Irrigation and Public Health Department, Himachal Pradesh. As per amended Recruitment & Promotion Rules, the quota was increased from 3% to 5%. Primarily, Rule 11(i) of the Notification dated 26.06.2013 is relevant for adjudication of the case at hand (Annexure P-4).

“11. In the case of recruitment by promotion, deputation, transfer, grade from which promotion/deputation/transfer is to be made-By promotion from amongst the following:-

(i) Surveyors having Diploma of at least three years duration in the trade of Civil Engineering or its equivalent from an Institute/University recognized by the Centra/H.P. Government with 3 years regular service or regular combined with continuous ad hoc service rendered, if any, in the grade, failing which the quota will go to Colum 11(ii) below.....5%?

5. In terms of aforesaid Rules, petitioner herein requested the respondent-department for promotion to the post of Junior Engineer (Civil), but his request was denied on the ground that he has not done Diploma in Civil Engineering from the Institute recognized with Himachal Pradesh Government. Feeling aggrieved and dissatisfied with the impugned action of the respondent-department, petitioner had approached erstwhile Himachal Pradesh Administrative Tribunal by way of T.A. No.2676 of 2015, which was disposed of vide

order dated 30.06.2017 (Annexure P-5). Erstwhile Himachal Pradesh Administrative Tribunal disposed of the afore petition with a direction to the respondents/competent authority to consider the case of the petitioner in light of judgments noticed in the order. Pursuant to afore order passed by erstwhile Himachal Pradesh Administrative Tribunal, petitioner made representation to the competent authority with the prayer that he may be promoted to the post of Junior Engineer (Civil) as per Rule 11(i), but same was rejected, vide office order dated 19.12.2018, on the ground that the person, who has done diploma from IASE Rajasthan after academic session of 2007-08, is not eligible for the promotion to the post of Junior Engineer (Civil).

6. Though no steps, if any, were taken by the respondents to consider the case of the petitioner in light of judgments detailed in the order passed by erstwhile Himachal Pradesh Administrative Tribunal, but vide notification dated 04.12.2018 issued under the signatures of Deputy Secretary (I&PH) to the Government of Himachal Pradesh, it came to be conveyed that Government has decided to consider all such incumbents for promotion, who were admitted in the academic session of 2007-08 or prior to that period and had acquired Diploma as required under the Recruitment & Promotion Rules for the post of Junior Engineer (Civil) from Institute Advance Studies in Education (IASE) Gandhi Vidhya Mandir

Sardarshehar, Rajathan for which IASE was recognized by the Government of Himachal Pradesh. Vide afore notification, Government also clarified that incumbents admitted after the year 2007-08 cannot be considered for promotion unless their degrees have been recognized by the concerned/competent authorities (Annexure P-6). Vide office order dated 02.03.2019 (Annexure P-8) petitioner was promoted to the post of Junior Engineer (Civil), but benefit of regularization w.e.f 01.01.2013, when post had become available, never came to be granted/extended to the petitioner. Petitioner filed representation dated 15.07.2021 (Annexure P-9) for his promotion from due date i.e. 01.01.2013 with all consequential benefits, but till date no decision has been taken upon the same and as such, petitioner has approached this Court in the instant proceedings, praying therein for the following main reliefs:

- "a. Issue a writ of certiorari to quash Annexure P-11 i.e. impugned office order dated 10.11.2023.*
- b. Issue a writ of mandamus directing the Respondents authorities to promote the petitioner for the post of Junior Engineer (Civil) with effect from 01.01.2023 instead of 02.03.2019 with all consequential benefit in the interest of justice and fairly play."*

7. In nutshell, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Vijay Bir Singh, learned counsel representing the petitioner, is that in terms of Recruitment & Promotion Rules, petitioner had become eligible for

promotion to the post of Junior Engineer (Civil) in the year 2013, but yet at that time, despite there being availability of 15 posts, promotion was denied to the petitioner on the ground that he had not done his Diploma in Civil Engineering from a recognized Institute. Mr. Singh, submitted that petitioner's promotion to the post of Junior Engineer (Civil) was delayed for six years without any fault on his part on the pretext that there is no clarity, if any, with regard to recognition of the Diploma acquired by the petitioner in the trade of Civil Engineering. Mr. Singh, further submitted that once Government itself clarified, vide Notification dated 04.12.2018, that such of the incumbents, who were admitted in the academic session of 2007-08 or prior to that period and had acquired Diploma as required under the Recruitment & Promotion Rules for the post of Junior Engineer (Civil) from IASE, shall be eligible for promotion, petitioner ought to have been given promotion from the date when he had become eligible and the post had become available. While referring to judgment passed by this Court in CWP No.3993 of 2021, titled as ***Jitender Singh Rangta and Others Vs. State of Himachal Pradesh and Another***, along with connected matter, Mr. Singh, further submitted that posts, which earlier could only be filled up in relevant year, can be subsequently filled up by following the procedure laid down in Clause 16.29 of Chapter 16 of Handbook on Personnel Matters (Vol.1). He further

submitted that in afore case, since petitioners were wrongfully denied promotion in the relevant year, this Court directed the respondents to hold review DPC for promoting the petitioners therein to the post of Group Instructor, as per procedure contained in Clause 16.29 of Handbook on Personnel Matters, by preparing year-wise vacancy position and consider them for promotion to the post of Group Instructor, from the date, they had attained eligibility and posts became available. He also placed reliance upon the judgment passed by this Court in CWP No.5315 of 2024, titled as ***Yog Raj Vs. State of H.P. and Another***, wherein in similar facts and circumstances, direction came to be issued to the respondents to convene Review DPC, by following due procedure, as laid down in Clause 16.29 of Chapter 16 of Handbook on Personnel Matters (Vol.1).

8. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while justifying the impugned action of respondents in granting the promotion to the petitioner w.e.f 2019, submitted that petitioner herein cannot claim promotion as a matter of right, because it is well settled that employee though has right to be considered for promotion, but he cannot claim promotion, as a matter of right. Mr. Rajan Kahol, learned Additional Advocate General, further argued that since till the year 2018, there was no clarity with regard to recognition of the Diploma awarded by IASE, case of the

petitioner for promotion to the post of Junior Engineer (Civil) was rightly not considered. He submitted that clarification with regard to recognition of Diploma obtained by the petitioner from the concerned institute came to be issued for the first time in the year 2018 and thereafter, petitioner was immediately promoted to the post of Junior Engineer (Civil) under 5% quota. While inviting attention of this Court to judgment dated 18.05.2023 passed by this Court in CWP No.5122 of 2020, titled as ***Vinyak Kashyap Vs. State of H.P. and Another***, Mr. Rajan Kahol, learned Additional Advocate General, submitted that prayer made on behalf of the petitioner through instant petition deserves to be rejected, being barred by delay and laches. He submitted that since petitioner remained silent for more than five years and at no point of time, raised objection with regard to promotion granted to him in the year 2019, he, being a fence-sitter, is not entitled to relief, as prayed for, in the instant petition. He further argued that promotion cannot be claimed from the date of vacancy, rather, promotion can be claimed from the date, employee concerned was considered for promotion.

9. Having heard learned counsel representing the parties and perused material available on record, this Court finds that there is no dispute with regard to entitlement of the petitioner for promotion to the post of Junior Engineer under 5% quota. It is also not in dispute

that Diploma in Civil Engineering, as required under the Recruitment & Promotion Rules for the post of Junior Engineer (Civil), awarded by IASE was recognized for the academic session 2007–08 and for sessions prior to that period. It is also not in dispute that petitioner had taken admission in Diploma course in Civil trade during the academic session of 2007-08 that too with the prior permission of the respondent-department. Vide communication dated 04.12.2018 (Annexure P-6), department itself clarified that after having examined the matter in consultation with the law department, it has decided to consider all such incumbents for promotion, who were admitted in the academic session of 2007-08 or prior to that period and had acquired Diploma as required under the Recruitment & Promotion Rules for the post of Junior Engineer (Civil) from Institute Advance Studies in Education (IASE) Gandhi Vidhya Mandir Sardarshehar, Rajasthan for which IASE was recognized, meaning thereby, department was fully convinced at the time of issuance of aforesaid notification that Diploma awarded by the institute concerned to the candidates admitted in academic session of 2007-08 or prior to afore period, was fully recognized for awarding Diploma in Civil trade. Incumbents, who were admitted after the year 2007-08, could not be considered for promotion for the reason that after 2007-08 there was some dispute with regard to recognition of the institute. It is an admitted fact that the

respondents, after considering the Diploma of the petitioner to be valid in terms of Recruitment & Promotion Rules, granted him promotion to the post of Junior Engineer (Civil) in the year 2019. Case of the petitioner is that once vide notification dated 04.12.2018, it was decided to consider all such incumbents, who were admitted in the academic session of 2007-08 or prior to that period and had acquired Diploma as required under the Recruitment & Promotion Rules, for promotion the post of Junior Engineer (Civil), petitioner as well as similarly situate persons ought to have been considered for promotion against the post of Junior Engineer w.e.f 2013, especially when there is no dispute that in the year 2013, 15 posts of Junior Engineer were available. However, respondent-department kept on delaying the promotion of the petitioner to the post concerned for want of clarification, which ultimately came to be issued on 04.12.2018.

10. Though respondents, in their reply, have not disputed the facts, as have been noticed hereinabove, but an attempt has been made to refute the claim of the petitioner on the ground that since there was no clarity with regard to recognition of IASE from where petitioner had done his Diploma, he could not be promoted to the post of Junior Engineer and when the clarification came to be issued, petitioner was promoted to the post of Junior Engineer in the year 2019. No doubt, in terms of Recruitment & Promotion Rules, a

candidate desirous of getting promotion to the post of Junior Engineer under 5% quota should have done Diploma in Civil Engineering from the recognized University/College. Petitioner herein though repeatedly informed the respondents that he had passed diploma from recognized institute, but yet for want of clarifications, matter with regard to his promotion to the post of Junior Engineer remained pending with the department for more than six years. In the year 2018, respondents, while deciding to consider all such incumbents for promotion, who were admitted in the academic session of 2007-08 or prior to that period and had acquired Diploma as required under the Recruitment & Promotion Rules, for the post of Junior Engineer (Civil) from IASE, further clarified that for afore period IASE was recognized. Once respondents granted promotion to the petitioner in the year 2019 to the post of Junior Engineer, considering his diploma done from IASE, they are estopped from rejecting the claim of the petitioner for promotion to the post of Junior Engineer w.e.f 2013 on the ground that Diploma done by the petitioner from IASE was not recognized. No material worth credence has been placed on record by the respondents to suggest that prior to the issuance of communication dated 04.12.2018 (Annexure P-6), some complaint or other material was available with them suggestive of the fact that IASE was not a recognized Institute for awarding Diploma in Civil Engineering. If it is

so, petitioner, who admittedly had become eligible for promotion to the post of Junior Engineer (Civil) in terms of Recruitment & Promotion Rules, is well within his right to claim promotion from the year 2013, when admittedly 15 posts of Junior Engineer were lying vacant.

11. Petitioner, while filing rejoinder to the reply filed by the respondents, has categorically stated that in the year 2014, 15 posts of Junior Engineer were lying vacant in the department and petitioner, being at serial No.1 in his cadre i.e. Surveyor, was eligible to be considered against the post reserved under 5% quota and such plea of him has not been refuted by the respondents by way of filing sur-rejoinder or counter, as such, this Court presumes the same to be correct. Even otherwise, impugned order dated 10.11.2023, whereby representation having been filed by the petitioner, in terms of judgment dated 19.09.2023 passed by this Court in CWP No.5061 of 2023, titled as ***Pardeep Kumar Vs. State of Himachal Pradesh & Ors.***, came to be decided, nowhere suggests that in the year 2013, post of Junior Engineer (Civil) against which petitioner could be promoted was not available, rather representation has been rejected for want of clarification with regard to recognition of the institute from where petitioner had done Diploma.

12. Though at this stage, Mr. Rajan Kahol, learned Additional Advocate General, vehemently argued that in any eventuality,

petitioner could not be considered for promotion in the year 2013, against the vacancy, rather promotion could only be given from the prospective date, but this Court is not persuaded to agree with the aforesaid submission of Mr. Kahol, learned Additional Advocate General.

13. In nutshell, case of the petitioner is that since he was eligible for promotion against the post in question in the year 2013 and at relevant time, 15 posts were also available, he should have been promoted from that date, but definitely not from the date of convening of Departmental Promotion Committee. At this stage, it would be apt to take note of Clause 16.29 of Chapter 16 of Handbook on Personnel Matters (Vol.1), which reads as under:

“16.29 Cases where the DPC could not be held any year even though some vacancies arose during that year

(a) Preparation of year wise select lists.

It has been decided that where the DPC could not be held in any year even though some vacancies arose during that year, the DPC that meets thereafter should follow the following procedure:-

(i) Determine the actual number of regular vacancies that arose in each of the previous year/years immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each year those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a consolidated select list separately for each of the years starting with the earliest year onwards including the names of officers of reserved categories.

(iv) Prepare a consolidated select list by placing the select list of the earlier year above the one for the next and so on.

The above decision is operative with effect from 23rd June, 1984, i.e. the date on which the instructions were issued. It is clarified that past cases already decided will not be reopened.

(H.P. Government Department of Personnel letter No. PER(AP-II) A (1)-1/80-III, dated 23rd June, 1984-Annexure -16.24)."

14. Careful perusal of aforesaid instructions reveals that where DPC could not be held in any particular year despite there being availability of vacancies, promotion would be granted to the eligible candidates after determining the actual number of regular vacancies that arose in each of the previous year/years immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately. As per aforesaid procedure, Departmental Promotion Committee would consider vacancies of each year and shall prepare a consolidated list separately for each of the year starting from the earliest year onward including the names of the officers of the reserved categories.

15. Since specific plea raised by the petitioner with regard to availability of 15 posts in the year 2013 has not been denied by the respondents in their reply, Mr. Vijay Bir Singh, learned counsel representing the petitioner, is right in contending that petitioner, ought to have been considered for promotion against the vacancy in the

year 2013. At this juncture, this Court finds it necessary to take note of relevant part of Clauses 16.6 and 16.7 of Handbook on Personnel Matters (Vol.I), which provides specific guidance on the subject of timely convening of Departmental Promotion Committee and the duty of the department to ensure that no eligible candidate is deprived of promotion, which reads as under:

“16.6 Frequency at which D.P.C. should meet

The D.P.C. should be convened at regular annual intervals to draw panels which could be utilized for making promotions against the vacancies occurring during the course of a year. It has been observed that Departments do not convene meetings of the D.P.Cs. annually for various reasons even though eligible officers of the lower grade were available and the vacancies in the higher grade were also available for their promotion. This is often due to non-finalization of the seniority list of officers at the lower grade which forms the field of consideration. Sometimes, meetings of the D.P.C. are also not convened annually under the impression that a panel, prepared by a D. P. C. for filling "Selection" posts could be kept operative for a period of one year and six months and that, therefore, action to convene the next meeting of the Departmental promotion Committee need be initiated only after the expiry of that period. As delay in convening the D.P.C, meeting results not only in financial loss to the concerned officers due to delay in their promotion to the next higher grade but also affects them adversely in their future career in as much as their promotion to the next higher grade is also delayed, it is necessary that the D.P.C. meeting should be convened at regular intervals as indicated above. The requirement of convening annual meetings of the DPC should only be dispensed with after a certificate is issued by the respective appointing authority to the effect that there no vacancies are to be filled up by way of promotion or no officers/officials are due/eligible for confirmation during the year, in question.

16.7 Time-schedule for holding meetings of D.P.C.

The instructions contained in H.P. Govt. Deptt. of Personnel letter No. 1-13 /73-DP (A-II) dated 27-4-1993 (Annexure 16.18) provide that the time schedule for holding of regular Departmental Promotion Committee will be during the month of April-May. The subsequent instructions issued vide letter. No. 1-13/75-DP (AP-II) dated 14-2-1984 (Annexure 16.22) provided that meeting of the Departmental Promotion Committee may be held once a year in the month of April every year as far as possible. The latest instructions contained in letter No. 1-13/75-DP(A-II) dated 6-9-1984 and letter No. Per(AP-II)B(3)-1/94 dated 16-11-1994 (Annexures 16.25 and 16.55) provide that meetings of the Departmental Promotion Committees for making promotions should be held during the first quarter of the financial year as far as possible for all the existing and anticipated vacancies. For unanticipated vacancies, fresh meetings of the Departmental Promotion Committees for making promotions should be held during the course of the year within three months from the date of creation of the posts. In so far as the meetings of the DPC for promotion to the posts falling within the purview of the Himachal Pradesh Public Service Commission are concerned, the time schedule for such meetings may be spread over the month from April to December every year. Particulars of vacancies which are likely to occur during the next twelve months may also be furnished to the Commission by the end of the month of January every year so that the time schedule for holding meetings of the DPCs in respect of each department could be determined by the Commission keeping in view the, existing vacancies and the vacancies likely to occur in the Department. This will enable the Commission to arrange meetings of the DPC well in time."

- 16.** In the case at hand, though petitioner was eligible for promotion in the year 2013, but yet department failed to convene DPC for six years, despite there being availability of clear cut vacancies,

thereby violating not only the statutory rules, but also the principles enshrined in the Handbook on Personnel Matters, which are binding administrative instructions having the force of law in service matter. Otherwise also, it is well established principle in service jurisprudence that once a vacancy arises in the promotional post, it becomes incumbent upon the appointing authority to take expeditious steps to convene the Departmental Promotion Committee for considering all eligible candidates.

17. The failure of the respondent-department in convening timely DPC has led to the deprivation of the petitioner from promotion, despite his continued eligibility under Recruitment & Promotion Rules. Such dereliction on the part of the authorities not only constitutes administrative negligence, but also defeats the legitimate expectation of the petitioner. Reliance in this regard is placed upon judgment passed by Hon'ble Apex Court in ***Union of India Vs. Hemraj Singh Chauhan***, 2010 (4) SCC 290, wherein it has been categorically held that incumbents shall not suffer due to the slackness or lethargic attitude of the administration and that delay in holding DPCs resulting in loss of promotional opportunity to eligible employees, amounts to grave injustice. Relevant part of afore judgment, reads as under:

“38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution.

The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

39. In *The Manager, Government Branch Press and Anr. v. D.B. Belliappa* - (1979) 1 SCC 477, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomised under Articles 14 and 16 is "fairness founded on reason" (See para 24 page 486).

40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the Government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy."

18. Though at this stage, Mr. Rajan Kahol, learned Advocate General, placed reliance upon the judgment dated 17.05.2014 passed by Division Bench of this Court in CWP No.9271 of 2013, titled as ***Prakash Chand Vs. State of H.P. and Another***, along with other connected matter, but such reliance upon the aforesaid judgment is wholly misplaced. If the aforesaid judgment is read in its entirety, it clearly provides that normal rule of law is that nobody can be promoted from a retrospective effect, except when there exist facts, which necessitate so, or there is a rule, which permits so. In the case at hand, as has been discussed in detail, petitioner became eligible for promotion in the year 2013, but despite there being availability of

15 posts, respondents for no cogent and convincing reason, failed to convene Departmental Promotion Committee, till the year 2019. In afore judgment, it has been categorically held that in case due to administrative reason, DPC could not be held in a year, then the person cannot claim retrospective promotion in the absence of *mala fides*, since *mala fide* taints every act requiring a person wronged to be placed in the position but for the *mala fides* or tainted exercise of power. There cannot be any quarrel with aforesaid proposition of law laid down by Division Bench of this Court, rather, same is required to be religiously followed. However, in the instant case, no cogent and convincing reason has been placed on record, for not convening the DPC, save and except that clarification for first time with regard to recognition of diploma awarded by IASE, came to be issued in the year 2008, which contention raised by respondent-State, deserves outright rejection, for the reason that prior to passing of the aforesaid judgment, there were no instructions or rules, if any, of respondent-State, specifically prescribing therein that Diploma awarded by IASE shall not be recognized, rather, Recruitment & Promotion Rules, if perused for the post in question in their entirety, talk about the Diploma issued by recognized University. It is none of the case of the respondents that Diploma awarded in favour of the petitioner on account of his having taken admission during the academic session of

2007-08 is not recognized. If it is so, there was otherwise no occasion, if any, for the respondents not to convene DPC in the year 2013. Moreover, in the case at hand, Clauses 16.6 and 16.7 of Handbook on Personnel Matters, as taken note hereinabove, specifically provide for convening DPC twice a year, so that rightful claim of a person, entitled for promotion, is not defeated on account of non-convening of DPC.

19. At this juncture, Mr. Rajan Kahol, learned Additional Advocate General, also placed reliance upon judgment passed by Hon'ble Apex Court in ***Union of India and Others Vs. N.C. Murali and Others***, (2017) 13 SCC 575, to contend that unless there is a specific rule, entitling applicants to receive promotion from the date of occurrence of vacancy, right of promotion does not crystallize on the date of vacancy and promotion is to be extended, on the date it is actually effected, however, after having perused aforesaid judgment in its entirety, this Court finds no application of the same in the case at hand. In aforesaid judgment, precisely, it has been held that the right of promotion does not crystallize on the date of occurrence of vacancy and the promotion is to be extended on the date, when it is actually effected, unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy. As noted hereinabove, Clauses 16.6 and 16.7 of the Handbook on Personnel

Matters (Volume I) provide for convening of the Departmental Promotion Committee twice a year. The very purpose and object of afore Clauses is that vacancy, if any, in relevant year is filled in the same year, so that person eligible in that particular year, is not subsequently deprived of promotion, on account of the fact that DPC could not be convened earlier.

20. Mr. Rajan Kahol, learned Advocate General, further placed reliance upon judgment passed by Coordinate Bench of this Court in ***Ramesh Kumar Thakur Vs. State of H.P. and Another***, CWP No.3256 of 2025, decided on 09.04.2025, to state that there is no absolute right to promotion itself. Promotion become effective upon assumption of duties on promotional post and not on date of occurrence of vacancy or recommendation for promotion. However, aforesaid judgment has no application in the case at hand for the reason that petitioner in that case, before approaching competent Court of law, stood superannuated, however, in the instant case, petitioner was firstly denied promotion in the year 2013, despite there being availability of vacancy on the ground that he does not possess requisite qualification, but subsequently in the year 2019, on the basis of same qualification, he was granted promotion. Moreover, petitioner is still in service and in case prayer made on his behalf for considering

his case from retrospective date is not considered, he would continue to suffer, till his superannuation.

21. Judgment passed by this Court in **Vinyak Kashyap** (supra) pressed into service by learned Additional Advocate General cannot be said to have any application in the case at hand for the reason that in afore case, petitioner, after having accepted promotion, remained silent for more than four years. However, in the instant case, petitioner has been approaching the competent Court of law from the very beginning i.e. from the day he had become eligible for promotion. Initially, petitioner approached erstwhile HP Administrative Tribunal by way of Original Application/T.A. No.2676 of 2015, which came to be disposed of vide order dated 30.06.2017 with a direction to the respondents to consider the case of the petitioner in light of judgments detailed therein, but nothing was done. Repeatedly petitioner filed representations, praying therein to grant him promotion to the post in question w.e.f 2013, but same were rejected for totally unjustifiable reasons. In view of above, it cannot be said that petitioner is a fence-sitter, as such, he is not entitled to relief, as prayed for.

22. Consequently, in view of the above, this Court finds merit in the present petition and accordingly the same is allowed. Impugned order dated 10.11.2023 (Annexure P-11) is quashed and set-aside. Respondents are directed to consider the case of the petitioner for

promotion to the post of Junior Engineer from due date, i.e. from the year 2013, by convening Review Departmental Promotion Committee, by following procedure, as laid down in Clause 16.29 of Chapter 16 of Handbook on Personnel Matters (Vol.1). Since petitioner has not worked against the post of Junior Engineer w.e.f 2013 to 2019, he shall be entitled to notional benefits only along with seniority, but not monetary benefits. Since petitioner has been fighting for his rightful claim for quite long, this Court hopes and trusts that needful shall be done by the respondents expeditiously, preferably, within a period of two months from today. Pending application(s), if any, stand disposed of.

**(Sandeep Sharma),
Judge**

November 28, 2025

(Sunil)