

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

CIRCUIT BENCH AT PORT BLAIR

**PRESENT: HON'BLE JUSTICE RAJASEKHAR MANTHA
AND
HON'BLE JUSTICE PARTHA SARATHI SEN**

WP.CT/24/2026

THE UNION OF INDIA AND OTHERS

... PETITIONERS

Versus

SHRI. RAMYESH SINGH AND ANOTHER

... RESPONDENTS

For the Petitioners

: Mr. Rakesh Kumar

For the respondents

: Mr. Gopala Binnu Kumar

Heard on

: 06.08.2026

Judgment on

: 06.08.2026

PARTHA SARATHI SEN, J.

1. In this writ petition as filed under Article 226/227 of the Constitution of India the judgement and order 18.09.2025 as passed by the Central Administrative Bench, Kolkata, Circuit Bench at Port Blair (Tribunal in short) in OA No. 351/566/A&N/2021 is impugned at the instance of the Department.

2. By the impugned judgement the Tribunal while allowing the original application as filed by the applicant found that the applicant is entitled to get notional promotion to the post of Joint Director

(Agriculture) from the date when he become eligible for the post and when the first Departmental Promotion Committee (DPC in short) was proposed to be conducted for the said post that is from 08.07.2016 with all consequential benefits.

3. For effective adjudication of the instant writ petition we propose to deal with some relevant facts which are as under:

- i. On 29.09.1995 the original applicant/respondent herein was appointed as Assistant Spice Development Officer under the Department of Agriculture.
- ii. The original applicant was thereafter promoted to the post of Assistant Director (Agriculture) on 28.05.2001.
- iii. The original applicant become eligible for promotion to the post of Joint Director (Agriculture) in the year 2008, on completion of his requisite length of regular service of seven years.
- iv. On 01.02.2016 the post of the Joint Director (Agriculture) fell vacant.
- v. On 22.03.2016 the original applicant was appointed on ad hoc basis to the post of Joint Director (Agriculture) for a period of 06 months.
- vi. On 08.11.2026 his ad hoc appointment to the post of Joint Director (Agriculture) was extended for a further period of six months.

- vii. On 01.07.2016 the department had sent a letter to the UPSC requesting them to conduct DPC for promotion to the post of Joint Director (Agriculture).
- viii. On 07.05.2017 the respondent was reverted back to his substantive post of Assistant Director (Agriculture).
- ix. On 27.08.2018 the original applicant was again given current duty charge to the post of the Joint Director (Agriculture) and on 29.09.2018 he was given the charge of Director of Agriculture apart from his additional duty as Joint Director (Agriculture).
- x. On 28.02.2019 the original applicant superannuated from his service from the post of Assistant Director (Agriculture).
- xi. On 29.05.2019 DPC was conducted where the respondent was found to be eligible for promotion to the post of Joint Director (Agriculture) for the vacancy which arose in the year 2015-2016.
- xii. However the original applicant could not be appointed to the post of Joint Director (Agriculture) since he was already superannuated from service.

4. In the back drop of the aforementioned factual scenario the original applicant approached the Tribunal with a prayer for

issuance of appropriate order upon the department commanding them to give all promotional benefit on notional basis for the post of Joint Director (Agriculture) from the date 01.02.2016 i.e. when the said post of Joint Director (Agriculture) fell vacant. The Tribunal on the careful perusal of the entire materials placed before it passed a favourable order which is impugned before us.

5. At the time of hearing Mr. Rakesh Kumar, learned advocate appearing on behalf of the writ petitioner/department at the very outset draws our attention to the impugned judgement. It is submitted that in the impugned judgement the learned Tribunal though quoted various judgements of the of the Hon'ble Supreme Court namely the case of ***Union of India and others vs. N.C. Murali*** reported in ***(2017) 13 SCC 575***, ***Sunaina Sharma and others vs. State of Jammu and Kashmir and Others*** reported in ***(2018) 11 SCC 413*** and the case of the ***Government of West Bengal and others vs Dr. Amal Satpathi and others*** reported in ***2024 SCC OnLine SC 3512***, however the said Tribunal without considering the dicta of the Hon'ble Supreme Court passed a favourable order in favour of the original applicant without considering the settled principle of law that a person cannot claim a promotional benefit even on notional benefit without even joining any post.

6. It is argued by Mr. Rakesh Kumar, learned advocate appearing for the writ petitioner/department that from the chronology of the events as placed before this Court as well as before the Tribunal it would reveal that at no material time the original applicant assumed the post of the Joint Director (Agriculture) and on the contrary sufficient materials have been placed before the Tribunal as well as before this Court that after the post of Joint Director (Agriculture) fell vacant, the original applicant was given appointment to the said post on ad hoc basis that too for a limited period. It is further submitted by Mr. Rakesh Kumar that admittedly when the post of the Joint Director (Agriculture) fell vacant the original applicant came under the zone of consideration but since prior to his superannuation he never joined the said promotional post, he was not entitled to any promotional benefit even on notional basis despite discharging his duties on ad hoc basis.

7. It is thus submitted by Mr. Rakesh Kumar that the learned Tribunal has failed to visualize the true purport of the established rules of service law and thus passed a faulty order which requires interference in judicial review.

8. *Per contra*, Mr. Gopala Binnu Kumar, learned advocate appearing on behalf of the original applicant/respondent herein places his reliance upon two office memos dated October 12, 1998

and November 14, 2014 as issued by the Ministry of Personnel, Public Grievances and Pension, Government of India.

9. It is submitted by Mr. Gopala Binnu Kumar that the said OMs categorically indicated that the concerned Ministry have considered the plight of the retired personnel of the department who came under zone of consideration and could not join promotional post on account of non formation of the DPC.

10. It is further argued by Mr. Gopala Binnu Kumar that from the aforementioned two OMs it would reveal that it is the direction of the Ministry that in such an event notational benefits may be given to the incumbents who become eligible for promotion but could not join the promotional post on account of delayed recommendation by the DPC and on account of superannuation of the incumbent in the meantime.

11. It is thus submitted by Mr. Gopala Binnu Kumar that the learned Tribunal duly considered the said two OMs and also considered that for a considerable length of time the original applicant has discharged his duties as Joint Director (Agriculture) and thus rightly allowed the said original application.

12. We have meticulously gone through the entire materials as placed before us. We have given due consideration over the submissions of the learned counsels for the contending parties.

13. On careful perusal of the impugned judgement it appears to this Court that the said Tribunal while passing the impugned order was practically persuaded with the facts that when the post of Joint Director (Agriculture) fell vacant i.e. on 01.02.2016 the original applicant become eligible for selection by way of promotion in the said post but the promotion of the original applicant could not take effect since the DPC make recommendation on 29.05.2019 for filling the vacancy of the Joint Director (Agriculture) while the original applicant retired from his service on 28.02.2019.

14. As rightly pointed out by Mr. Rakesh Kumar, learned advocate for the writ petitioner that though the learned Tribunal quoted the aforementioned three Supreme Court judgements namely **N.C. Murali (supra)**, **Sunaina Sharma (supra)** and **Dr. Amal Satpathi (supra)** and a decision of the Madras High Court, however the Tribunal made no venture while passing the impugned judgement as to why those judgements of the Hon'ble Supreme Court are distinguishable from the facts and circumstances as placed before it.

15. In course of hearing Mr. Rakesh Kumar again places his reliance upon the judgement of **Dr. Amal Satpathi (supra)**. In considered view of this Court the relevant portion of the judgement of **Dr. Amal Satpathi (supra)** is required to be looked into and the same is quoted herein below in verbatim:

"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. On perusal of the judgement of **Dr. Amal Satpathi (supra)** as quoted supra it appears to us that the Hon'ble Supreme Court categorically observed that it is established legal precedent that promotion only becomes effective upon assumptions of the duties in the promotional post and not on the date of the occurrence of the vacancy or on the date of recommendation.

17. We have also noticed that in the case of **Dr. Amal Satpathi (supra)** the Hon'ble Supreme Court while dealing with a similar case considered that the respondent No.1 before them superannuated before his promotion was effectuated and thus he is not entitled retrospective financial benefits.

18. In our considered view the judgement of the Hon'ble Supreme Court in the case of **Dr. Amal Satpathi (supra)** squarely applies to the facts and circumstances of the case inasmuch as we have already discussed that the original applicant though become eligible for promotion for the post of Joint Director (Agriculture) but for some

reason or other he could not assume the said promotional post and he superannuated from the post of Assistant Director (Agriculture) on 28.02.2019 when the DPC was not constituted.

19. Such being the position we thus find sufficient merit in the instant writ petition.

20. Accordingly the instant writ petition is hereby allowed.

21. Consequently the impugned judgement dated 18.09.2025 as passed the Central Administrative Bench, Kolkata, Circuit Bench at Port Blair (Tribunal in short) in OA No. 351/566/A&N/2021 is hereby set aside.

22. Consequently the OA No. 351/566/A&N/2021 stands hereby dismissed.

23. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on priority basis on compliance of all legal formalities.

I agree

(RAJASEKHAR MANTHA, J.)

(PARTHA SARATHI SEN, J.)