



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 9/2013

Arjun Raj Mohnot son of Shri Ugam Raj Mohnot, age about 61 years, R/o B-59, Hari Marg, Malviya Nagar, Jaipur-302017, (Raj)

-----Petitioner

Versus

1. Jaipur Vidhut Vitran Nigam Limited, Jaipur through its Secretary (Administration), Vidhut Bhawan, Jyoti Nagar, Jaipur.
2. The Chairman Cum Managing Director Jaipur Vidhut Vitran Nigam Limited, Vidhut Bhawan, Jyoti, Nagar, Jaipur.
3. Mr. Anil Kumar Kalla (Retd.), Resident of BB-8, Anita Colony, Bajaj Nagar, Jaipur 302015 (Raj.)
4. Mr. Prakash Chand Sharma, Chief Engineer commercial, Jaipur Vidhut Vitran Nigam Limited, Vidhut Bhawan, Jyoti Nagar, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Pradeep Mathur, Adv.
Mr. Deepesh Sharma, Adv.
Mr. Piyush Balot. Adv.

For Respondent(s) : Mr. Sandeep Singh Shekhawat, Adv.
Mr. P.S. Naruka, Adv.

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Judgment

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| 1. Date of conclusion of arguments | <u>06/02/2026</u> |
| 2. Date on which the judgment was reserved | <u>06/02/2026</u> |
| 3. Whether the full judgment or only the operative part is pronounced | Full Judgment |
| 4. Date of pronouncement | <u>11/02/2026</u> |

1. The petitioner has approached this Court by way of the present writ petition preferred under Article 226 of Constitution of India, praying for the following reliefs:

"(i) By an appropriate writ, order or direction, the action of the respondents in promoting respondent No.3 and respondent No.4 to the post of Deputy Chief Engineer and thereafter to the post of Chief Engineer, vide orders dated 18.10.2012, for the vacancy year 2011-2012, be declared illegal, arbitrary and violative of the provisions of the



Engineers Service (Recruitment, Promotion and Seniority) Regulations, 1969 as well as the relevant circulars and be quashed and set aside.

(ii) By an appropriate writ, order or direction, the respondents be directed to convene a Review Departmental Promotion Committee for the vacancy year 2011-2012 for the post of Deputy Chief Engineer and Chief Engineer, after considering the candidature of the petitioner in accordance with law.

(iii) By an appropriate writ, order or direction, the respondents be directed to grant promotion to the petitioner on the post of Deputy Chief Engineer and Chief Engineer, against the vacancy year 2011-2012, with all consequential benefits, including fixation of pay, seniority and arrears.

(iv) Any other order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case, in favour of the petitioner."

2. Briefly stated, the petitioner was appointed in the engineering cadre of the Respondent No.1 -Jaipur Vidyut Vitran Nigam Limited (in short, '**JVVNL**') and in the course of service, held the post of Superintending Engineer. The promotions to higher posts in the cadre are governed by the Engineers Service (Recruitment, Promotion and Seniority) Regulations, 1969, (in short, '**Regulations of 1969**') read with the relevant circulars and instructions issued from time to time and are effected through selection by a Departmental Promotion Committee (in short, '**DPC**'). It is to be noted that for the vacancy year 2011-2012, the crucial date for determining eligibility for promotion to the post of Deputy Chief Engineer was 01.04.2011 and an eligibility/seniority list dated 21.09.2012 was prepared for the said vacancy year, wherein the petitioner was placed within the zone of consideration,





however, the petitioner superannuated from the service on 30.09.2011.

3. The Respondent No.1, for the aforesaid vacancy, convened a DPC on 18.10.2012, pursuant to which respondent Nos. 3 and 4 were promoted to the post of Deputy Chief Engineer and on the very same day, separate orders were issued promoting the said respondents further to the post of Chief Engineer. Consequent upon the promotions, two vacancy remained available at the level of Deputy Chief Engineer for the vacancy year 2011-2012, and as a direct consequence thereof, the petitioner was not promoted against the said vacancy year.

4. Being aggrieved by his non-promotion and the manner in which the promotion process was undertaken, the petitioner submitted representations before the competent authority seeking reconsideration of his claim; however, the same did not yield any redressal and for the same, the petitioner has approached this Court by way of the present writ petition.

5. It is contended by learned counsel for the petitioner that two posts of Deputy Chief Engineer & Chief Engineer were vacant during vacancy year 2011-2012, and the petitioner was within the zone of consideration for promotion to the post of Deputy Chief Engineer, as reflected in the Minutes of Meeting of the DPC, at Annexure-8 conducted on 18.10.2012. The respondent Nos. 3 and 4 were promoted to the post of Deputy Chief Engineer and, on the same day, were promoted to the post of Chief Engineer. The DPC minutes, at Annexure-8 clearly verify the fact of recommending





the respondents for promotion to the post of Chief Engineer. The promotion order of respondent Nos. 3 & 4 to the post of Chief Engineer at Annexure-5, dated 18.10.2012, further substantiates this fact. Thus, it is apparent that two Deputy Chief Engineer posts were made available on the same day, but the department did not consider the promotions to those post, which stands in contrary to the Regulation of 1969.

6. It is also contended that the Chief Engineer post is a higher one. Furthermore, it is evident from the aforesaid record that the respondent Nos. 3 & 4 were promoted to the higher post of Chief Engineer, on the same day, after having been granted promotion to the post of Deputy Chief Engineer.

7. It is vehemently argued that when an employee receives two promotions simultaneously and is appointed to the higher position, the employee moves directly to the higher position without completing the formalities required to assume the lower position. This immediately creates a vacancy in the lower position, opening up opportunities for promotion for other eligible employees. Therefore, on the aforesaid analogy, the petitioner was entitled to be considered for the promotion to the post of Deputy Chief Engineer when the DPC was convened. It is also submitted that the department has failed to show, by any cogent material, that two posts of Chief Engineer were not available on or before 30.09.2011, when the petitioner got superannuated. The onus is upon the respondent to controvert the fact that no vacancies of





Chief Engineer were available on or before the petitioner's superannuation.

8. Per Contra, learned counsel for the respondents vehemently argued that the respondent Nos. 3 & 4 along with the petitioner were considered for promotion against the two posts of Deputy Chief Engineer available for the year 2011-12 and vide review DPC dated 18.10.2012, they were granted promotion to the post of Deputy Chief Engineer based on Merit cum Seniority, and they were further promoted to post of Chief Engineer against the vacancies that accrued after petitioner's retirement i.e., after 30.09.2011. Therefore, the vacancies for the post of Chief Engineer became available after the retirement of the petitioner from the service.

9. It is argued that under any circumstances, the petitioner could not be considered for promotion to the post of Deputy Chief Engineer, as the post of Deputy Chief Engineer was not vacant at the relevant time. It is argued that had the respondent Nos. 3 and 4 been promoted in the year when the two vacancies for the Deputy Chief Engineer existed, they ought to have been posted and worked for the post of Deputy Chief Engineer and by any stretch of imagination, they could not have been considered for the higher post directly without being working at a lower promotional post, therefore, the contention that two vacancies of Deputy Chief Engineer were made immediately available consequent upon the promotion of respondent Nos. 3 and 4 to the higher post of Chief Engineer is wholly misconceived. It is also





contended that it is not the petitioner's vested right to claim the promotion, and that it's not a case in which the petitioner alleges discrimination or unfair treatment compared to equally placed employees.

10. Heard & scanned the material available on the record.

11. It would be apposite for this Court to lay down the law regarding promotion. The right to promotion and seniority does not automatically accrue simply because a vacancy exists in a higher post. The legal precedents established by the Hon'ble Supreme Court clearly provides that promotions are generally effective from the date they are granted, not from the date when the vacancy arises. The promotion becomes effective only upon the actual granting of the promotion (e.g., date of assumption of charge), not when the vacancy arose. The employees have a fundamental right to be considered for promotion against available vacancies, if they are eligible, but they do not have a vested right to the promotion itself.

12. The Hon'ble Apex Court settles the law on this aspect in the case of **Ajay Kumar Shukla and Ors. v. Arvind Rai and Ors., 2021 SCC OnLine SC 1195**, wherein it was observed as under:

"41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in **Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty, (1991) 2 SCC 295** : 1991 SCC (L&S) 472] in para 4 of the report which is reproduced below :

"4. ... **There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with**





relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.”

42. A Constitution Bench in **Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209** : 1999 SCC (L&S) 1239], laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27 : (SCC pp. 227-28)

Articles 14 and 16(1): is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment.





Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1)

27. In our opinion, the above view expressed in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and followed in Jagdish Lal [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201: 1997 SCC (L&S) 1299] right from 1950."

(Emphasis Supplied)

13. In the present case, the petitioner does not claim that he experienced discrimination or unfair treatment, nor does he allege





that juniors were promoted in his place, or that he was overlooked for promotion opportunities. Instead, his argument hinges on the analogy that respondent Nos. 3 and 4 were initially promoted to the position of Deputy Chief Engineer and, on the same date, received further promotion to the higher position of Chief Engineer, consequently leaving two Deputy Chief Engineer vacancies unfilled. It is an undisputed fact that the petitioner retired from service on 30.09.2011. Meanwhile, the respondents' promotion to the post of Chief Engineer was formally finalised on 18.10.2012, after the petitioner's retirement date. Therefore, even if we assume that the vacancies for the Deputy Chief Engineer position arose after the respondents' promotion to Chief Engineer, such vacancies do not constitute a vested right of the petitioner to be promoted to fill those posts. The respondents' promotion to the higher post was clearly effected after the petitioner had already retired.

14. In view of the well-established legal principles, this Court finds no grounds to entertain the present writ petition. Accordingly, the present writ petition sans merit and is hereby dismissed.

15. All pending application(s), if any, shall also stand disposed of.

(PRAVEER BHATNAGAR),J

Ashwani Kr Srivastava/-121

