

(1999) 12 GAU CK 0029

In the Gauhati High Court

Case No : Civil Rule No's. 470 and 473 of 1997

Atanu Kr. Das and Others

APPELLANT

Vs

Bongaigon Refinery and Petro Chemicals Ltd. and Others

RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2000) 1 GLT 301

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : N.M. Lahiri, G.N. Sahewalla, A.K. Goswami, B. Goyal, S. Senapati and S. Murarka, for the Appellant; B.K. Sharma, M.K. Choudhury, A. Sarma, B. Dutta and P. Petta, for the Respondent

Judgement

J.N. Sarma, J.—Both these Civil Rules raise the common question of law and facts and as such, they are taken up for hearing together.

2. Civil Rule No. 470 of 1997 has been filed by thirty persons who are employees of Bongaigaon Refinery & Petrochemicals Ltd. (hereinafter referred to as "BRPL" for the sake of brevity). The prayers made in the writ application is to issue a Mandamus directing the Respondents i.e. Respondents No. 1 and 2 to cancel, recall or otherwise forbear from giving effect to the impugned orders dated 31.12.96 and 1.1.1997. These two orders are Annexures-I & J to the writ application. These two orders are quoted below:

Annexure-I

REF: PER: 10.01.02 DATE: 31.12.96

To Shri J.C. Sarma, Id. No. 05666 P & IR Deptt. Through Departmental Head

Dear Sir.

This has reference to our Office No. PER: 10.01.02 dated 20.9.96 whereby your dates of promotion to grade "e", "A" and "B" as contained in Office Order No.

PER: 10.01.02/1994 dated 21.3.94 were set aside in accordance with the judgment and orders dated 25.7.96 of Hon'ble Gauhati High Court in Civil Rule No. 4108 of 1994 and No. 4116 of 1994. Your date of placement in grade "d" as Assistant as contained in para 1 of Office Order No. PER: 10.01.02/1994 dated 21.3.94 remained the same.

As per directions of the Hon'ble Gauhati High Court in the above referred judgment and orders, your case for promotion to higher grade has been reviewed afresh alongwith the cases of Petitioners in the above referred Civil Rules in accordance with the promotion policy/guidelines/rules/instructions etc. in force at the relevant point of time.

On review of your case as stated above, you are hereby promoted to grades "e", "A" and "B" with effect from the dates given below:

Promotion to Effective date of promotion (i) Workman grade "e" 1.5.82 as Sr. Asst. (ii) Executive 1.2.87 as Jr. grade "A" Executive Officer (iii) Executive 1.1.91 as Executive grade "B" Officer. The pay fixation orders will be issued separately in line with the rules of the Company.

Arrears of pay and allowances, if any, as per promotions effected above would be admissible after adjustment of the pay and allowances (including OT payments) paid to you earlier and amount of pay, allowances. OT payments already paid/adjusted will also be taken into consideration.

This issues with the approval of competent authority.

Yours sincerely, Sd/- (HP Sharma) Sr. Manager (Personnel)

Annexure-"J"

REF : PER : 10.01.02 DATE : 1.1.97

To

Shri N. Huda Id No. 02628 Dept. Project Purchase Through Departmental Head

Dear Sir,

This has reference to judgment and orders dated 25.7.96 of Hon'ble Gauhati High Court in disposal of Civil Rule No. 4108 of 1994 and No. 4116 of 1994 forwarded jointly by S/Shri A.K. Das and D. Choudhury vide their letter dated 5.8.96.

As per directions of the Hon'ble Gauhati High Court in the above referred judgment and orders, the cases of Respondents 3 to 13 along with the Petitioners in Civil Rule No. 4108 of 1994 and No. 4116 of 1994, have been reviewed afresh in accordance with the promotion policy/guidelines/rules/instructions etc. in force at the relevant point of time.

On review of your case as stated above by the Departmental Promotion

Committee (DPC) constituted for the purpose, the DPC found your promotion to grade "e" "A" and "B" to be in order and no merit has been found to effect any change in your dates of promotion to grade "e" "A" and "B".

This is in compliance with the Judgment and Orders dated 25.7.96 of Hon'ble High Court in Civil Rule No. 4108 of 1994 and No. 4116 of 1994 and issues with the approval of competent authority.

Yours sincerely, Sd/- (RP Sharma) Sr. Manager (Personnel)

3. Civil Rule No. 473 of 1997 has been filed by ten persons and there also the prayer is to quash the orders dated 31.12.96 and 1.1.97. There is no necessity to quote these orders as they are almost verbatim same. They are Annexure-G & H to the writ application.

4. This case has got a chequered history. A Civil Rule being Civil Rule No. 482/87 was filed by some of the Respondents herein and an order was passed in the Civil Rule on 10.8.88 by the Division Bench of this Court. That case was filed by 12 persons and a Mandamus was sought for to fix their seniority in Grade "D" posts under the BRPL. In paragraph 5 of that judgment, the Division Bench inter alia held as follows:

Having considered the rival cases in their entirety, we are of the view that the Petitioners should be given their due seniority as stated by the Finance Director on 11.4.81. As by that order arrear was denied to the Petitioners they would not be entitled to the same but the service rendered by them would be reckoned for due seniority.

5. As it was not done, a contempt petition being CO(C) petition No. 39/89 was filed and on 6.11.92 this Court passed the following order:

Upon hearing the learned Counsel for the Petitioner and the Respondents and on perusal of the materials on record, we hold that the fixation of seniority of the Petitioners from earlier date as per order of the Finance Director dt. 11.4.81 invariably entailed consequential benefit of the fixation of seniority from earlier dates, namely, restoration of the benefit of seniority, such as appointment or promotion to higher posts on or before the date of appointment or promotion of the juniors to the Petitioners which might have been denied due to error or anomaly in the seniority and other financial benefit except arrear that would have been accrued upto 11.4.81.

6. Against the order in the earlier Civil Rule a SLP was filed by the BRPL before the Supreme Court, but that was dismissed. Thereafter the Respondents were placed/given their respective seniority as ordered by this Court. Thereafter Civil Rule No. 4108 of 1994 was filed by ten persons who are the Petitioners in Civil Rule No. 473/1997. In Civil Rule No. 4108 of 1994 in paragraphs J and 6 this Court pointed out as follows:

It would appear from the records that 9 Petitioners in Civil Rule No. 4108 of 1994

were already in workmen grade "d" from 1977 and 1978 and therefore, admittedly, were senior to Respondents No. 3 to 13. They were in due course of time promoted to various higher grades. By the order dated 21.3.94, the Respondents 3 to 13 are shown to be promoted to grades higher than "d" with retrospective effect that too, earlier to dates of promotion of the said Petitioners. This shows that there was no application of mind in passing the order dated 21.3.94 and the same is arbitrary. Further, there was no direction in the judgment referred to earlier to promote the Respondents 3 to 13 in this manner.

Therefore, the dates of promotions to "E", "A", "B" of Respondents 3 to 13 as contained in the order dated 21.3.94 as also the order dated 11.10.94 are liable to be set aside and are accordingly set aside. It is made clear that contents of paragraph 1 of the impugned order dated 21.3.94 stands. The Respondents 1 and 2 are directed to reconsider the entire matter. While doing so, the cases of all the Petitioners in Civil Rule No. 4108/94 and Civil Rule No. 4116/94 and Respondents 3 to 13 will be considered afresh in accordance with the promotion policy/guidelines/rules/instructions etc. in force at the relevant points of time and they be granted consequential benefits as enjoined by the judgments and orders of the Hon'ble Court as mentioned in the impugned order dated 21.3.94. Pecuniary benefits granted to Respondents 3 to 13 shall not be varied to their disadvantage.

7. Thereafter DPC was held to consider the case of the private Respondents vis-à-vis the Petitioners in both the Civil Rules and the other persons who were eligible and the juniors to the Respondents who were already promoted and on the recommendation of the DPC, the impugned orders have been passed.

8. I have heard Mr. A.K. Goswami, learned advocate for the Petitioners, Mr. B.K. Sharma, learned Sr. advocate for the Respondents No. 1 and 2 and Mr. A Sarma, learned Advocate for the private Respondents.

9. Mr. B.K. Sharma submits that in exercise of power of judicial review the writ Court cannot make topsy-turvy a decision arrived at by the DPC after careful examination of the matter and in support of this preliminary objection, he relied on the following decisions:

(i) 1998 (3) GLT 167 Y. Sashimohan Singh and Ors. v. Gurumayum Satyabati Devi and Ors. where a Division Bench of this Court pointed out that in exercise of power of judicial review in such a situation, the Court while considering the legitimacy of the order, one can look to see whether any irrelevant consideration was taken into account and/or as to whether the decision was made with any improper purpose. Once it is found that body empowered to consider the matter has exercised the power for selection, the Court must not overstep the limit and deal into the merit of the matter. That is beyond the scope of judicial review.

(ii) The next case on this point is Mrs. Anil Katiyar Vs. Union of India and others, where the Supreme Court pointed out that the writ Court is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the

DPC and that it could not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary.

(iii) Durga Devi and another Vs. State of H.P. and others, where the Supreme Court pointed out that the Court cannot arrogate to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was a function of the another body. The Supreme Court in that case relied on an earlier judgment report in Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, where the Supreme Court pointed out that the decision of the Section Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection or proved mala fides affecting the selection etc.

(iv) Orissa Small Industries Corpn. Ltd. and Another Vs. Narasingha Charan Mohanty and Others, where the Supreme Court pointed out that the Court is not entitled to assess the respective merit of the candidates for adjudging their suitability for promotion and only the right is the right for consideration and if that right is not infringed, the Court is not justified to issue a direction for fresh consideration.

On the other hand, Mr. A.K. Goswami, learned advocate for the Petitioners submits that though this Court in Civil Rule No. 4108/94 as quoted above gave certain direction, that was not followed by the authority and in a most mechanical manner the earlier orders itself was reaffirmed by the authority. In this connection Mr. Goswami draws my attention to Mr. S.J.B. Singh, this person is Respondent No. 7 in Civil Rule No. 470/97. He was not found fit for promotion in 1991 alongwith the Petitioner No. 22 in CR No. 470/97 Prabir Kumar Dutta, but later on he was promoted by the DPC from a back date i.e. from 1988. Sri Goswami submits that if a man was not found eligible to be promoted in the year 1991, along with the Petitioners as indicated above, how the authority can find him suitable for promotion from 1988. Regarding this, I have looked to the minutes of the DPC and the DPC has given a cogent reason as to why this promotion had to be given. Moreover, his seniority was restored in view of the order in the earlier Civil Rule which got the seal of approval of the Apex Court. It is an admitted position that the promotion policy in BRPL has been arrived at finally by way of a settlement between the management and the employees union and in that promotion policy the seniority has been given the weightage and these are the things which were taken into consideration. Pursuant to the seniority list of DPC proceeding in 1991 when this S.J.B. Singh was not promoted by that point of time when the Petitioners were promoted and his seniority was not restored. This was restored at a subsequent point of time by virtue of the order of this Court and accordingly that benefit was given to him. That specifically finds place in the minutes of the DPC proceeding. So, this contention of Mr. Goswami has no force. It cannot be said that there was no application of

mind and it was absolutely a mechanical application of mind. Sri Goswami in support of this contention places reliance on the following decisions:

(i) State of Kerala and Another Vs. N.M. Thomas and Others, wherein this Court pointed out that with regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. That is what has been done by the DPC and no fault can be found with the DPC on this ground. In order to appreciate this position let us quote below the chart to show the respective position of seniority of the Petitioners and the Respondents.

Date of joining and promotion to higher grades of Petitioners in C.R. No. 470/97

Petitioner Name	No.	ID No.	Deptt.	Gr."c"	Gr."d"	Gr."e"	Gr."SG"	Gr."A"	Gr."B"	Gr."C"
1. PR Ghosh	13	01120	P&A	01.12.76	01.12.79	20.08.83	-	01.01.88	01.01.93	-
2. DRDeka	20	01119	F&A	01.12.76	01.12.79	20.08.83	-	01.01.89	01.01.93	01.01.96
3. S Paul	17	01132	F&A	01.12.76	01.12.79	20.08.83	-	01.01.89	01.01.93	01.01.96
4. GK Das	7	01156	MATLS	25.11.76	25.11.79	16.08.84	-	01.08.89	01.01.93	-
5. AKDuora	23	01170	F&A	25.11.76	25.11.79	16.08.84	-	01.08.89	01.01.93	-
6. DMusahary	5	02500	MATLS	17.10.77	17.10.80	16.08.84	-	01.08.89	01.01.93	-
7. GRDutta	14	02630	PROJPUR	17.11.77	17.11.80	16.08.84	-	01.08.89	01.01.93	01.01.96
8. BPDutta	4	02135	P&A	16.12.77	16.12.80	16.08.84	-	01.01.89	01.01.93	01.01.96
9. SamirDutta	2	02707	P&A	23.12.77	23.12.80	16.08.84	-	01.01.89	01.01.93	01.01.96
10. M Dasgupta	15	03426	PROJPUR	22.03.78	22.03.81	16.08.84	-	01.01.89	01.01.93	01.01.96
11. Nurul Huda	11	02628	PROJPUR	17.10.77	17.10.80	01.09.85	-	01.08.90	01.01.93	-
12. SC Sarkar	28	02562	F&A	17.10.77	17.10.80	16.08.84	-	01.08.90	01.01.94	-
13. PKDas	3	02719	P&A	23.12.77	23.12.80	16.08.84	-	01.08.90	01.01.94	-
14. H Chaliha	6	01168	MATLS	25.11.76	25.11.79	01.09.85	-	01.08.90	01.01.94	-
15. DBDhar	26	02665	CLPROCUR	07.11.77	07.11.80	01.09.85	-	01.08.90	01.01.94	-
16. AtanuDas	1	02574	P&A	17.10.77	17.10.80	01.09.85	-	01.08.90	01.01.94	-
17. KRahman	9	02720	MATLS	23.12.77	23.12.80	01.09.85	-	01.08.90	01.01.94	-
18. BRChoudhury	24	02860	EDP	21.12.77	23.12.80	01.09.85	-	01.08.90	01.01.94	-
19. DNSarma	10	03372	MATLS	22.03.78	22.03.81	01.09.85	-	01.08.91	01.01.94	-
20. Mr.s. B Sarkar	21	01090	F&A	01.12.76	01.12.79	16.08.84	-	01.08.90	01.01.95	-
21. DKDas	29	02744	MATLS	16.12.77	16.12.80	01.09.85	-	01.08.90	01.01.95	-
22. PK Dutta	22	02847	F&A	16.12.77	16.12.80	01.09.85	-	01.08.91	01.01.95	-
23. SNSarma	12	02859	MATLS	23.12.77	23.12.80	01.09.85	-	01.08.91	01.01.95	-
24. RN BHattacharjee	25	03414	F&A	22.03.78	22.03.81	01.09.85	-	01.08.91	01.01.95	-
25. AB Ahmed	8	03098	MATLS	22.03.78	22.03.81	01.09.85	-	01.08.91	01.01.95	-
26. AN Pathak	19	02677	F&A	17.11.77	17.11.80	01.09.85	-	01.08.91	02.11.91	01.01.95
27. RKRoy	18	02689	F&A	17.11.77	17.11.80	01.09.86	-	01.08.91	01.08.93	-
28. CR Acharjee	27	03384	CAL	22.03.78	22.03.81	01.09.85	-	01.08.91	01.08.92	01.01.96
29. M Das	30	06725	MEDICAL	-	17.03.80	01.09.85	-	-	-	-

01.08.91 01.08.94 - 30. Mr.s S Paul 16 03499 F&A 15.04.78 01.05.82 01.08.87
01.08.92 01.08.93 - Date of joining and promotion to higher grades of
Respondents in C.R. No. 470/97

Petitioner Name No. ID No. Deptt. Gr. "c" Gr. "d" Gr."e" Gr. "SG" Gr."A1 "Gr."B"
Gr."C 1. JC Barman 3 04145 P&A - 15.02.79 01.05.82 - 01.02.87 01.01.91
01.01.96 2. SC Barman 4 05526 MATLS - 16.02.79 01.05.82 - 01.02.88
01.01.91 01.01.95 3. HC Das 5 05575 P&A - 21.02.79 01.05.82 - 01.02.91
01.01.94 - 4. SJB Singha 7 05587 P&A - 22.02.79 01.05.82 - 01.01.88 01.01.91
01.01.95 5. JC Bhagawati 6 05563 P&A - 22.02.79 01.05.82 - 01.02.87 01.01.91
01.01.95 6. KNath 8 04091 P&A - 23.02.79 01:05.82 - 01.08.91 01.01.95 - 7.
PKMudoi 9 05599 MATLS - 26.02.79 01.05.82 - 01.02.87 01.01.91 - 8. PK
Bhagabati 10 05695 P&A - 01.03.79 01.05.82 - 01.02.87 01.01.91 01.01.95 9.
JNBhuyan 11 05617 PR - 01.03.79 01.05.82 - 01.02.87 01.01.91 01.01.95 10.
JC Sarma 12 04666 P&A - 31.03.79 01.05.82 - 01.02.87 01.01.91 01.01.96 11.
UCDas 13 05691 P/&A - 04.04.7s) 01.05.82 - 01.02.82 01.01.91 01.01.95 Date
of joining and promotion to higher grades of Petitioners in C.R. No. 473/97

Petitioner Name No. ID No. Deptt. Gr."c" Gr."d" Gr."e" Gr."SG" Gr."A" "Gr."B"
Gr."C 1. SC Singha 5 00231 MATLS 23.07.73 01.10.77 01.10.80 - 01.01.89
01.01.93 01.01.96 2. TCBora 4 00425 MATLS 04.09.73 01.11.77 01.11.80 -
01.01.88 01.01.92 - 3. B. Talukdar 2 02823 MKTG - 14.12.77 14.12.80 -
01.01.89 01.01.93 01.01.96 4. DNChoudhury 1 01648 MKTG - 16.12.77
16.12.80 - 01.01.88 01.01.91 01.01.95 5. S.R.Biswas 6 01650 F&A - 17.12.77
17.12.80 - 01.01.88 01.01.92 01.01.96 6. JCHazarika 10 03682 MEDICAL -
15.07.78 10.06.81 - 01.08.90 01.01.96 - 7. N. Hoque 7 03700 MEDICAL -
25.07.78 01.05.82 - 01.08.90 01.01.96 - 8. B. Deka 9 03840 MEDICAL -
19.09.78 01.05.82 - 01.08.91 - 9. PBasumatary 8 03852 MEDICAL - 23.09.78
01.05.82 01.08.91 01.08.92 - 10. M Sarma 3 04182 MATLS - 02.04.79 01.05.82
- 01.01.88 01.01.92 - Date of joining and promotion to higher grades of
Respondents in C.R. No. 473/97

Petitioner Name No. ID No. Deptt. Gr."c" Gr."d" Gr."e" Gr."SG" Gr."A" "Gr."B"
Gr."C 1. JC Barman 3 04145 P&A - 15.02.79 01.05.82 - 01.02.87 01.01.91
01.01.96 2. SCBarman 4 05526 MATLS - 16.02.79 01.05.82 - 01.01.88 01.01.91
01.01.95 3. HCDas 5 05575 F&A - 21.02.79 01.05.82 - 01.08.91 01.01.94 - 4.
SJB Singha 7 05587 P&A - 22.02.79 01.05.82 - 01.01.88 01.01.91 01.01.95 5.
JC Bhagawati 6 05563 P&A - 22.02.79 01.05.82 - 01.02.87 01.01.91 01.01.95 6.
KNath 8 04091 F&A - 23.02.79 01.05.82 - 01.08.91 01.01.95 - 7. PKMudoi 9
05599 MATLS - 26.02.79 01.05.82 - 01.02.87 01.01.91 - 8. PK Bhagabati 10
05605 P&A - 01.03.79 01.05.82 - 01.02.87 01.01.91 01.01.95 9. JNBhuyan 11
05617 P&A - 01.03.79 01.05.82 - 01.02.87 01.01.91 01.01.95 IO. JCSarma 12
05666 P&A - 31.03.79 01.05.82 - 01.02.87 01.01.91 01.01.96 11. UCDas 13
05691 P&A - 04.04.79 01.05.82 - 01.02.87 01.01.91 01.01.95 By now the
Petitioners have got further promotion, but because of the stay order the
Respondents have not been promoted.

(ii) The next case is Union Public Service Commission Vs. Hiranyalal Dev and Others, That case does not help the Petitioners inasmuch as that was a case where the Selection Committee took into consideration and relied on adverse remarks which was not communicated to him and the adverse remark was subsequently set aside by the State Government. But the Supreme Court pointed out that even that will not allow the Tribunal to pass an order that the Respondent should be deemed to have been included in the impugned select list.

(iii) B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., . That also a case with regard to Seniority-cum-merit where the Supreme Court pointed out that Seniority-cum-merit implies fulfilment of minimum prescribed standard of merit by candidates eligible for consideration and then making promotion out of them on the basis of their inter se seniority irrespective of their comparative merit. The Supreme Court rejected the plea that parameter of seniority has no relevance in case of candidates appointed on the same day and having equal length of service and that in such case only comparative merit is relevant. The Supreme Court pointed out that in such a situation, the seniority will have the role to play.

11. On the other hand, Sri B.K. Sharma, learned Sr. Advocate for the Respondents No. 1 and 2 submits that most of the Respondents are senior to the Petitioners after restoration of seniority by virtue of the order of this Court. He draws my attention to another aspect of the matter in considering the question of promotion it is the practice of the BRPL that promotions are made department-wise and that benefit was enjoyed by the Petitioners. Some of the Petitioners though junior have been promoted as promotions were made department-wise and in support of this connection Mr. Sharma has produced before me certain minutes of the earlier DPC for different years from 1982 to 1990 and some of recent years even of 1999 and even in 1999 some of the Petitioners have been promoted department-wise. One A.K. Das was promoted on 6.5.1999 in the Personnel Department as there was a vacancy in the Personnel Department. So, the contention of Mr. Goswami that the Petitioners were left out though seniors from being promoted cannot be accepted because of the practice being constantly followed by the BRPL that promotions are made department-wise and the Petitioners having enjoyed that benefit earlier, how they cannot make a somersault and certain benefits which had been enjoyed by them cannot be termed to be illegal. It appears that the Petitioners are trying to block an opportunity of promotion of others, but they have been enjoying the same. They want obstruct that benefit being made available to the Respondents. That argument cannot be accepted. Mr. Sharma also draws my attention to Nagpur Improvement Trust Vs. Yadaorao Jagannath Kumbhare and Others, He relies on paragraphs 8 and 9 where the Supreme Court pointed out that even if in the absence of rules if there is a definite practice or explanation following service procedure in the field of promotion with proper qualification if it is otherwise fair, transparent and reasonable, it should be adhered to R.B. Desai and Another Vs. S.K. Khanolkar and Others, . where the Supreme Court in Paragraph 9 has inter

alia pointed out as follows: "In service law, seniority has its own weightage and unless and until the rules specifically exclude this weightage of seniority, it is not open to the authorities to ignore the same." In the same volume in *Ajit Singh and Others Vs. The State of Punjab and Others*, the Constitution Bench has pointed out that right to be considered for promotion and the "seniority" attached to such promotion become important facets of the fundamental right guaranteed in Article 16(1). The Supreme Court in paragraphs 22 and 23 of that judgment has pointed out as follows:

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).

Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principle of equal opportunity stated in Article 16(1). For example, if the promotion is by rule of "Seniority-cum-suitability", the eligible seniors at the basic level as per seniority fixed at that level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category they would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity.

So, the Constitutional Bench pointed out that a person on the basis of his length of service, even he is otherwise eligible has fundamental right to be considered for promotion. But he has no right for promotion if he is not found suitable for promotion. That right shall be determined on the basis of other things which shall

be taken together. That is what has been done by the DPC.

12. In that view of the matter, I do not find any merit in both the Civil Rules and accordingly the same are dismissed. Stay order passed earlier stands vacated. It is made clear that if in the meantime, the Respondents are entitled to further promotion, that shall be given to them with respective due date, if as because of the stay order passed by this Court, they have not been given promotion earlier. I make no order as to costs.