

**CENTRAL ADMINISTRATIVE TRIBUNAL****LUCKNOW BENCH LUCKNOW****ORIGINAL APPLICATION No. 332/00534 of 2024****Dated, this 1st day of July, 2025****Hon'ble Mr. Justice Anil Kumar Ojha, Member- Judicial**
Hon'ble Mr. Pankaj Kumar, Member-Administrative

1. All India Civil Accounts Officer (Sr. Accounts Officer and Pay & Accounts Officers) Association through its Secretary General.
2. Kaushal Kumar Mishra, aged about 50 years House No. C-16, Mayur Vihar , Indira Nagar, Lucknow 226016.

.....Applicants**By Advocate: Shri Praveen Kumar****VERSUS**

1. Union of India through Secretary, Ministry of Finance, Department of Expenditure, North Block, New Delhi 110001.
2. The Secretary, Union Public Service Commission, Dhoolpur House, Shahjahan Road, New Delhi 110069.
3. The Controller General of Accounts, Mahalekha Niyantrak Bhawan, E Block, CGO Complex INA, New Delhi.
4. The Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievance & Pensions, North Block, New Delhi-110001.

.....Respondents**By Advocate: Smt. Prayagmati Gupta****ORDER (ORAL)****Per Hon'ble Mr. Pankaj Kumar, Member-Administrative**

In this case relating to promotion, the applicants have sought following reliefs:

- “1. To quash and set aside the letter dated 28.05.2020 of the Respondent No. 2.
2. To direct the respondents No. 3 to prepare the proposal for filling up the post of ACA for the vacancy year 2020, 2021, 2022, 2023, 2024 for convening DPC and respondent no. 2 will hold DPC for promotion

for the post of ACA within 4 weeks therefore, as per existing Recruitment Rules.

3. *To Direct the Respondent No. 2 to hold the DPC for STS of ICAS in case of eligible members of 2020, 2021, 2022 batch of officers as per the existing RR and promote the eligible persons.*
4. *Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.*
5. *Cost of the present case."*

2. The applicants have approached this Tribunal for consideration for their promotion to the post of Assistant Controller of Accounts (ACA, hereafter) in terms of the Indian Civil Accounts Service (Group 'A') Recruitment Rules, 2006 (ICAS Rules, hereafter). They are aggrieved by letter dated 28.05.2020 issued by the respondent no. 2 Union Public Service Commission (UPSC, hereafter) advising respondent no. 1 that the respondent no. 3 should consult the Department of Personnel & Training (DoPT, hereafter) in regard to applicability of reservation in promotion.

3.1 The applicants contend that in terms of ICAS Rules, 33.33% posts of ACA are required to be filled on promotion from Pay & Accounts Officers (PAOs, hereafter) and Senior Accounts Officers (Sr AO, hereafter) and the remaining posts through direct recruitment. They state that while the respondents have filled up posts through direct recruitment for the years 2020 to 2024, no post has been filled up through promotion for these years.

3.2 They further state that the post of Sr AO has been classified as Group 'A' post vide office memorandum (OM, hereafter) dated 31.10.2019 following which respondent no. 3 (Controller General of Accounts) requested respondent no. 2 (UPSC) through letter dated 13.03.2020 to convene the meeting of Departmental Promotion Committee (DPC, hereafter) for promotion of eligible Sr AO/PAO to ACA. However, UPSC has asked for consultation with DoPT vide their

impugned letter dated 28.05.2020 thereby further delaying the promotion process.

3.3 The applicants contend that the impugned letter dated 28.05.2020 has been issued by UPSC by failing to consider OM dated 06.09.2007 issued by DoPT after the judgment of Hon'ble Supreme Court in ***Dr Rajender Singh vs State of Punjab & Ors (2001) 5 SCC 482*** and in ***Union of India through Govt of Pondicherry & Anr vs V Ramakrishnan & Ors (Civil Appeal No. 6332 of 2005)***.

4.1 The respondents state that in pursuance of Ministry of Finance OM dated 11.03.2015, method of induction of Group 'B' officers into ICAS has been changed from 33.33% of duty posts, which worked out to 70 posts, to 33.33% of Junior Time Scale (JTS, hereafter) posts in ICAS cadre which works out to 13 posts.

4.2 In addition, consequent upon order dated 22.10.2013 passed by the Principal Bench of this Tribunal and ID Note dated 25.10.2019 issued by respondent no. 1, the post of Sr AO was classified as Group 'A' post with effect from 09.04.2009 vide OM dated 31.10.2019.

4.3 Thereafter, a reference was made to UPSC vide letter dated 13.03.2020 for clarification whether the induction of Sr AOs at JTS level of ICAS will be continued even after classification of the post of Sr AO as Group 'A' although both posts are at the same level with same classification. In response, UPSC, vide letter dated 28.05.2020, advised consultation with DoPT. Vide their ID Note dated 03.11.2023, DoPT pointed out *inter alia* that the Recruitment Rules (RRs, hereafter) for the post of Sr AO had not been amended for the last 4 years and the ICAS Rules had also not been changed; thus in RR for the post of Sr AO, Sr AO has been classified as Group B post and also in the promotion criteria prescribed in ICAS Rules for induction of JTS, the feeder grade

as Sr AO (Group B). DoPT further advised consultation with Department of Legal Affairs (DoLA, hereafter). DoLA, vide ID Note dated 14.03.2024, opined that induction of Sr AO of erstwhile CCAS (Group B) into ICAS shall be as per extant RRs and that administrative instructions cannot modify the conditions of service of those employees who are governed by a statute or statutory rules and further that to facilitate induction of Sr AO of erstwhile CCAS (Group B) into ICAS may warrant amendments in the relevant RRs provided that such amendments should not take away the vested rights of the persons.

4.4 The respondents state that in view of the structural changes in the feeder grade, i.e., Sr AO (Group A), it is mandatory to incorporate it in the RRs for any appointment or promotion, and that efforts are being made for amendment of RRs of ICAS with the nodal Ministry DoPT, UPSC and Department of Expenditure.

4.5 Reference has been made by the respondents to **OA No. 2131 of 2020 Narendra Singh Negi vs UOI & Ors** which was dismissed on 22.12.2020, and **OA No. 472 of 2020 Gurcharan Singh vs UOI & Ors** which was dismissed on 02.11.2020.

5. In the rejoinder affidavit, the applicants contend that the respondents are delaying their promotion and that they are entitled for consideration for promotion as per existing RRs which provide for filling up 33.33% of duty posts of ICAS through promotion.

6. We have heard both the parties.

7. The legal position regarding the right to consideration for promotion is well settled and has been recapitulated on 23.07.2024 by Hon'ble Supreme Court in **Bihar State Electricity Board & Ors vs Dharamdeo Das (Civil Appeal No. 6977 of 2015)** in the following terms:

18. It is no longer *res integra* that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. **No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself.** In this context, we may profitably cite a recent decision in **Ajay Kumar Shukla vs. Arvind Rai (2022) 12 SCC 579** where, citing earlier precedents in *Director, Lift Irrigation Corporation Ltd. vs. Pravat Kiran Mohanty and Others* (1991) 2 SCC 295 and *Ajit Singh and Others vs. State of Punjab and Others* (1999) 7 SCC 209, a three Judge Bench observed thus:

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 *Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty and Others* 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 and Others v. State of Punjab and Others*, 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, J.J., observed the same as follows in paras 22 and 27 :

“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], and followed in *Jagdish Lal* [*Jagdish Lal v. State of Haryana*(1997) 6 SCC 538], 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.*], right from 1950.”

(emphasis supplied)

Thus, while there is no right to promotion, there is indisputably the right to be considered for promotion in accordance with relevant rules. Admittedly, the respondents have not been able to convene meeting of DPC after 2019 for considering the case of applicants for promotion. In our view, the delay in convening the DPC infringes the right of the applicants to be considered for promotion. We may add that the facts and circumstances of **Narendra Singh Negi (supra)** and **Gurcharan Singh (supra)** cited by the respondents are different from the instant case in that those OAs pertained to retired employees who could not be promoted due to non-availability of vacancies.

8.1 Coming to the ICAS Rules, it is noted that Schedule-II of ICAS Rules has the following provision for promotion of Sr AO:

S. No.	Name of the Post/ Grade/ Scale	Method of Recruitment	Field of Selection and the minimum qualifying service for promotion
1.	Junior Time Scale (Rs. 8,000-275-13500)	(i) 66.67% by direct recruitment on the basis of Civil Services Examination. (ii) Remaining 33.33% by promotion in consultation with	Senior Accounts Officers, in Group ‘B’ of the Central Civil Accounts Service with 5 years’ combined regular service as Senior Accounts Officer (Rs. 8000-13500) and Pay & Accounts Officer (Rs.

		Union Public Service Commission.	7500-12000) as on 1st January of the year.
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(emphasis supplied)

It is noted that the pay scales in JTS and Sr AO (Group B) are the same.

8.2 Turning to OM dated 31.10.2019, the following position is noted therein:

“Subject: Classification of post of Senior Accounts Officer in Central Civil Accounts Service – reg.

In pursuance of Ministry of Finance, Department of Expenditure I.D. Note No. A-12034/7/2014-Ad.I dated 25.10.2019 issued with the approval of Hon’ble Finance Minister, the post of Senior Accounts Officer in Central Civil Accounts Service is classified as Group ‘A’ post w.e.f. 09.04.2009 without any change in Pay Level.

2. All settled cases (such as promotions to the post of Senior Accounts Officer, induction into ICAS, disciplinary cases, etc.) will not be re-opened. The attendant benefits such as consultation with UPSC for promotion, change in disciplinary authority, contribution to CGEGIS etc. will be effective from the date of issue of order for classifying the post of Senior Accounts Officer as Group ‘A’.”

(emphasis supplied)

It follows from the OM quoted above that the attendant benefits, including consultation for promotion, will be effective from the date of classification of Sr AO as Group A.

8.3 We are refraining from commenting on the merits, or otherwise, of amendment of ICAS Rules being considered by the respondents in view of OM dated 31.10.2019 as it is a policy matter. Suffice it to say that the respondents have the liberty to amend the ICAS Rules, with or without retrospective effect, in a lawful manner. However, such an exercise cannot delay the consideration of applicant’s promotion inordinately as discussed in paragraph 7 above.

8.4 In our view, the ICAS Rules hold sway irrespective of the OM dated 31.10.2019 in terms of the following observations of Hon’ble Supreme Court in ***Union of India vs Somasundram Viswanath & Ors 1988 AIR SC 2255:***

*“It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. **If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail**, and if there is conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails.”*

(emphasis supplied)

9. In conclusion, the applicants have the right to be considered for promotion and the exercise of convening the DPC for promotion cannot be held up indefinitely by the respondents.

10.1 In view of the foregoing, the respondents are directed to convene the DPC for considering the promotion of the applicants as per rules within three months of receipt of certified copy of this order.

10.2 Pending MAs, if any, are also disposed of.

10.3 The Parties shall bear their own costs.

(Pankaj Kumar)

Member (A)

(Justice Anil Kumar Ojha)

Member (J)

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