$~33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8730/2026

UNION OF INDIA & ORS. .....Petitioners

Through: Ms. Iram Majid (CGSC), Mr. Mohd. Suboor, Mr. Mohd. Saad, Mr. Amaan Siddiqui (Advocates)

versus

ALL INDIA CIVIL ACCOUNTS OFFICER & ANR. .....Respondents

Through: Mr. Ankur Chhibber, Anshuman Mehrotra, Arjun Panwar, Amrit Koul, Prahil Sharma and Aditi Kapoor, Advocates

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

% **06.07.2026**

C. HARI SHANKAR, J.

1. The respondents were Pay and Accounts Officers[1] in the Central Civil Accounts Services. They desired promotion as Senior Accounts Officers[2] for the period between 2019 and 2023. As per the Recruitment Rules[3] in force at that point of time, two years' regular service as PAO was the stipulated eligibility qualification for promotion as SAO. Admittedly, the RRs were amended only in 2025.

[1] "PAO", hereinafter
[2] "SAO", hereinafter

2. The process for promotion from PAO to SAO was initiated by the petitioner on 12 September 2019. Thereafter, on 31 October 2019, the post of SAO, which was reflected in the RRs as a Group B post, was reclassified as a Group A post, with effect from 9 April 2009.

3. Pursuant to the process for promotion initiated on 12 September 2019, the petitioner wrote to the Union Public Service Commission[4], seeking exemption from consultation for the purpose of effecting promotions to the post of SAO. The UPSC responded to the petitioner, desiring it to take the advice of the DOPT. On 23 November 2021, the DOPT responded to the petitioner stating that promotion from the post of PAO to the SAO was not possible till the RRs were amended, in view of the reclassification of the post of SAO as the Group A post with effect from 9 April 2009.

4. This prompted the respondents to approach the Central Administrative Tribunal[5] by way of OA 3694/2022, in which the respondents claimed a right to promotion as SAO between 2019 and 2023 on the basis of the RRs which were in existence at that point of time.

5. On 18 September 2023, the post of PAO and SAO were merged with effect from 26 April 2023. As a result, both PAO and SAO became Group A posts.

6. Ms. Majid, learned CGSC for the petitioner, has drawn our

---

[3] "RRs", hereinafter
[4] "UPSC", hereinafter
[5] "the Tribunal", hereinafter

attention to the Department of Expenditure OM dated 18 September 2023. We may reproduce the said OM thus:

"E-13615(865)
F.No. A-65061(55)/7912023-Group B-CGA - 686
Government of India
Ministry of Finance
Department of Expenditure
O/o. Controller General of Accounts
***

New Delhi, l 8th September. 2023

OFFICE MEMORANDUM

Subject: Merger of grads of PAO (PL-9) and SrAO (PL-10) – regarding

In pursuance of Department of Expenditure OM No. l5(4) E·llI(B)/2021 dated 26.04.2023 and ID Note no.A-12018/l/2020-Ad.I dated 23.08.2023 on the subject mentioned above, the post of Pay & Accounts Officer in Pay Level-9 of Pay Matrix is hereby upgraded and merged into the grade of Senior Accounts Officer (Group-A) in Pay Level-I0 of Pay Matrix w.c.f. 26.04.2023. Accordingly, all the existing posts of Pay & Accounts Officers of CCAS Cadre arc upgraded to and redesignated as the post of Sr. Accounts Officer (Group-A).

Subsequent to merger of the post of PAO with that of SrAO, the pay of existing PAOs will be regulated in terms or Government of India's Orders (6) below FR-23 w.e.f. date of merger (i.e.26.04.2023).

After merger of the posts or PAO and Sr. Accounts Officer. the feeder cadre for promotion to the. post of Sr. Accounts Officer will be Assistant Accounts Officer (Pay Level-8). Draft Recruitment Rules for Sr. Accounts Officer post notifying aforesaid amendments have already been initiated.

This issues with the approval of the Controller General of Accounts.

(Satish K. Jadhav)
Deputy Controller General of Accounts"

7. Before the Tribunal, the respondents contended that they were entitled for promotion as SAO in accordance with the 2000 Recruitment Rules, which remained in force, as we have noted, till they were amended in 2025. It was pointed out by the respondents that the vacancies of SAO, against which they were seeking promotion, pertained to the year 2019, which were before the post of SAO was notified as a Group A post. They therefore contended that, from 2019 to 2023, they were entitled to be considered for promotion under the 2000 Recruitment Rules.

8. The respondents relied on the judgment of the Supreme Court in ***Bihar State Electricity Board v. Dharamdeo Dass***[6].

9. The Tribunal held that the respondents were entitled for consideration for promotion as SAO between 2019 and 2023 in terms of the 2000 RRs which remained in force till 2025. Reference was made to column 12 of the RRs, which specifically stated that PAOs, who had to their credit two years regular service as PAO, were eligible to be considered for promotion as SAO.

10. The Tribunal noted that the only impediment, therefore, was regarding the requirement of consultation with the UPSC.

11. It is an admitted position that, under Article 320 of the Constitution, consultation with the UPSC was necessary before making promotions to the post of SAO. However, the Tribunal opined

[6] **2024 SCC OnLine SC 1768**

that the classification of the post of SAO as Group A was by way of an executive instruction dated 31 October 2019, without amendment of the RRs. Holding that executive instructions could not supersede the RRs, the Tribunal has expressed a view that consultation with the UPSC may not be necessary.

12. In that view of the matter, the Tribunal has directed the petitioner to convene a Departmental Promotion Committee to consider the case of the respondent for promotion from the post of PAO to SAO against the vacancies which were in existence between 2019 and 2023.

13. Aggrieved thereby, the Union of India is before this Court by way of the present writ petition.

14. We have heard Ms. Iram Majid, learned CGSC for the petitioner and Mr. Ankur Chhibber, learned counsel for the respondents, at length.

15. Ms. Majid submits that the Tribunal has, in effect, directed the respondents to be promoted against posts to which they already stood promoted. To a query from the Court, she, however, modifies the submission to point out that the respondents are already SAOs, by virtue of the OM dated 18 September 2023, issued by the DOE, extracted *supra*. As such, she submits that there can be no question of promoting them as SAOs any further.

16. Ms Majid also submits that, as the post of SAO has been reclassified as a Group A post with effect from 9 April 2009 by the DOE OM dated 31 October 2019, there could be no question of operating the RRs till they were amended, as the RRs identified the post of SAO as a Group A post.

17. Having heard learned counsel for the parties, we are not in agreement with Ms. Majid. We find the impugned judgment of the Tribunal to be unexceptionable, save and except for the limited aspect of consideration by the UPSC.

18. It is true that the posts of PAO and SAO have been merged in 2023 and that, therefore, the respondents are presently SAOs. However, that does not eviscerate their right to be promoted from PAO to SAO between 2019 and 2023, which is what the Tribunal has directed.

19. In so far as the plea of the post having been reclassified as a Group A post is concerned, we are of the opinion that the reclassification cannot constitute a legitimate basis not to operate the RRs from 2019 till 2025 when they came to be amended. During this entire period, the RRs envisaged promotion from the post of PAO to SAO. The mere fact that there was a decision to treat the post of SAO as a Group A post, would not nullify the RRs altogether.

20. The Supreme Court has held, in ***Bihar State Electricity Board*** that though no employee or officer has a right to promotion to a post, the right to consideration for promotion is a fundamental right. We may reproduce the following paragraphs from the said judgment:

"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* v. *Arvind Rai***[7] where, citing earlier precedents in ***Director, Lift Irrigation Corporation Ltd.* v. *Pravat Kiran Mohanty***[8] and ***Ajit Singh* v. *State of Punjab***[9], 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*** 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* v. *State of Punjab***, 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:
>
> > "Articles 14 and 16(1) : is right to be considered for promotion a fundamental right
> >
> > 22. Article 14 and Article 16(1) are closely

---

[7] **(2022) 12 SCC 579**
[8] **(1991) 2 SCC 295**
[9] **(1999) 7 SCC 209**

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*** **v.** ***State of U.P***[10] and followed in ***Jagdish Lal*** **v.** ***State of Haryana***[11], 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

[10] **(1997) 5 SCC 201**
[11] **(1997) 6 SCC 538**

> 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*** , right from 1950."

21. We, therefore, do not find any error in the view of the Tribunal in directing the petitioner to convene a DPC to consider the case of the respondents for promotion from the post of PAO to SAO for the vacancies which arose between 2019 and 2023. We may note that their eligibility during the said period is not in question.

22. However, we are not in agreement with the Tribunal to the extent that it dispenses with the requirement of consultation with the UPSC. The reclassification of the post as a Group A post by the OM dated 31 October 2019 was made effective from 9 April 2009. As such, during the period in question i.e. 2019 and 2023, it was a Group A post by virtue of the said OM. For a Group A post, Article 320(3)(a) of the Constitution requires consultation with the UPSC.

23. We may note that the petitioner had earlier approached the UPSC seeking exemption from consultation. The UPSC had, in a somewhat ambivalent response, stated that it did not grant exemption from consultation but required them to approach the DOPT in that regard.

24. We do not propose to return any opinion on whether the requirement of consultation with the UPSC, as envisaged in Article 320 is dispensable. We, however, clarify that the Tribunal is not correct in holding that consultation with the UPSC was not necessary.

25. Subject to the aforesaid limited caveat, we do not interfere with the impugned judgment of the Tribunal.

26. The appeal is, accordingly, disposed of, in the aforesaid terms with no orders as to costs. We direct steps to be taken to implement the order of the Tribunal, if necessary, by approaching the UPSC for consultation, within a period of four weeks from today.

27. The writ petition is disposed of, in the aforesaid terms.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

JULY 6, 2026/yg