



2026:AHC:27296-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 17740 of 2025

Radha Bhattacharya

.....Petitioner(s)

Versus

Union of India and 4 others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ashish Kumar Srivastava, Sunil
Counsel for Respondent(s)	:	A.S.G.I., Anurag Sharma

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard Shri Ashish Srivastava, learned counsel for the petitioner and Shri Anurag Sharma, learned counsel for respondents no. 1 to 3.

2. In view of the nature of the order being passed, it is not necessary to issue notice to respondent no. 4 whose rights would not be prejudiced by this order. Respondent no. 5 being Tribunal, service of notice on it is dispensed with.

3. This writ petition has been filed challenging the order dated 25.08.2025, whereby Central Administrative Tribunal, Allahabad Bench, Allahabad ('the Tribunal') has dismissed the Original Application ('O.A.') No. 1096 of 2014 (Radha Bhattacharya Vs. Union of India and others) declining to set aside the order dated 25.11.2013, which was impugned in the said O.A. and has also been impugned in the present writ petition. Further prayer has been made to issue a direction to the respondents to allow promotion to the petitioner on the post of Senior Scale (Group-B) w.e.f. 30.03.2004 with all consequential benefits.

4. Brief facts of the case are that the petitioner was appointed on 25.11.1993 on the post of Junior Scale of Class-2 in the Personnel Department of Railways. While posted as Assistant Personnel Officer (APO) in Jhansi Division, a Senior Scale post of Divisional Personnel Officer (DPO) at the headquarters, Allahabad became available and, being the senior most APO, name of the petitioner was considered for adhoc promotion to the post of DPO, subject to vigilance clearance from her parent department. On

04.02.2004, vigilance clearance was issued by the competent authority covering the period upto 31.03.2003, however, soon thereafter, another letter dated 09.02.2004 was issued by the same office indicating that the petitioner was 'figuring in a case wherein report has been sent to the Board'.

5. In view of the second communication dated 09.02.2004, the respondents employed 'sealed cover procedure' and, by an order dated 30.03.2004, respondent no. 4 being junior to the petitioner, was promoted to the Senior Scale Post of DPO.

6. The case of the petitioner is that on the date of her consideration for promotion, i.e. on 30.03.2004, neither any disciplinary proceedings were pending against her nor any charge sheet had been issued nor was she facing any criminal prosecution and since vigilance clearance was also issued on 29.03.2004, i.e. one day prior to the date of her consideration for promotion, there was no impediment in granting promotion to her. The petitioner preferred a representation dated 07.04.2004 before the competent authority raising her grievance.

7. In pursuance of the representation, the department withdrew its earlier objection and, on opening the sealed cover, the petitioner was found fit for promotion and was, accordingly, promoted on adhoc basis as DPO w.e.f. 14.07.2004. It is the said date which is being objected to by the petitioner and her case is that when the petitioner was found fit for promotion on 30.03.2004, subsequent opening of sealed cover would not justify granting promotion to her on the date when the sealed cover was opened but she should be granted promotion along with consequential pay fixation, seniority and pensionary benefits w.e.f. 30.03.2004, however, the respondents rejected her claim by order dated 25.11.2013, impugned before the Tribunal.

8. The claim of the petitioner was contested by the respondents before the Tribunal on the ground that vigilance clearance process was going on, by a confidential letter dated 11.05.2004, clarification was sought and on 29.06.2004, the petitioner's case was placed before the competent authority for consideration and, thereafter, on opening of the sealed cover, she was found fit for promotion, recommendations pertaining thereto were approved by the General Manager and the select list was issued on 13.07.2004. Consequently, the petitioner was promoted to Senior Scale (Adhoc) vide

office order dated 14.07.2004 and whatever delay in granting promotion occurred, the same was not on account of any negligence or arbitrariness on the part of the respondents but was solely on account of the vigilance status communicated by the Central Railways at the relevant point of time.

9. The Tribunal, by order dated 25.08.2025, has dismissed the O.A. after placing reliance on certain decisions of Hon'ble Supreme Court wherein it has been laid down that promotion becomes effective only from the date it is actually granted and not from the date when a vacancy arises or when a junior is promoted. It has further been observed by the Tribunal that though there is a right to be considered for promotion, there is no vested right to be promoted, nor can retrospective seniority or pay fixation be conferred from a date prior to assumption of duties in the higher post.

10. Learned counsel for the petitioner has made submissions that the Tribunal has not appropriately considered the case of the petitioner, which is only to the effect that once she was found fit for promotion and even vigilance clearance was issued on 29.03.2004, 'sealed cover procedure' was unwarrantedly applied in her matter and when, ultimately, sealed cover was opened on 14.07.2004, the petitioner was again found fit for promotion and, further, once it is established on record that promotion to respondent no. 4 who was junior to her, was accorded on 30.03.2004, grant of promotion to the petitioner from the date when the sealed cover was opened was not justified and she was also entitled to be not only promoted w.e.f. 30.03.2004 but also get all other consequential benefits.

11. It has further been submitted that the Deputy CPO (Gaz.), Central Railways also confirmed that the sealed cover procedure was no longer applicable in the petitioner's case and, therefore, the petitioner has been non-suited for absolutely no reason at all and, hence, rejection of her claim either by the department or by the Tribunal is wholly unjustified. Reliance has been placed on a judgment of Hon'ble Supreme Court in the case of **Union of India Etc. Etc. Vs. K.V. Jankiraman Etc. Etc.: (1991) 4 SCC 109.**

12. Per contra, learned counsel for the respondents no. 1 to 3 has made submissions that the claim qua promotion is not a vested right and once adhoc promotion was accorded to the petitioner, she cannot claim any relief qua the date from which it should have been granted to her. Reliance has

been placed on a judgment of Hon'ble Supreme Court in the case of **Union of India and another Vs. Manpreet Singh Poonaj Etc.:** (2022) 6 SCC 105.

13. We have considered the submissions made and have perused the material available on record.

14. Facts of the case not being in dispute, the question to be considered by this Court is that as to when the petitioner was found fit to be promoted, vigilance clearance was issued on 29.03.2004 and, further, respondent no. 4, who was junior to her, was accorded promotion w.e.f. 30.03.2004, as to whether subsequent intra departmental communications and consequent opening of sealed cover on or around 14.07.2004 would justify grant of promotion to the petitioner w.e.f. 14.07.2004.

15. It is not in dispute that at no point of time any disciplinary proceedings were initiated against the petitioner nor was she criminally prosecuted. As to, then, what prompted the respondents to adopt sealed cover procedure merely based upon pendency of some vigilance inquiry, is not understandable, particularly in view of the fact that Deputy CPO (Gaz.), Central Railways himself had confirmed, as also noted in the Tribunal's order, that the sealed cover procedure was no longer applicable in the petitioner's case.

16. Law relating to 'sealed cover procedure' has been explained by the Hon'ble Supreme Court in the case of **K.V. Jankiraman (supra)** and it has been held that when the findings are kept in a sealed cover, the vacancy which might have gone to the officer concerned, is filled up only on an officiating basis but if, on conclusion of the departmental/court proceedings, the officer concerned is completely exonerated and where he is under suspension that is held to be wholly unjustified, the sealed cover is opened and the recommendations of DPC are acted open. It has further been held that if the officer could have been promoted earlier, the officiating arrangement terminates and, on his promotion, he gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course but for the pending disciplinary/court proceedings.

17. The ratio of the decision of the Hon'ble Supreme Court in the case of

K.V. Jankiraman (supra) is that promotion and other benefits have to be accorded not from the date when the sealed cover is opened but from the date the employee is entitled to the benefits but for the sealed cover procedure. Therefore, it can safely be concluded that the petitioner was entitled for adhoc promotion w.e.f. 30.03.2004 making her further entitled for one increment w.e.f. 01.04.2004 and subsequent increments thereafter.

18. The judgment cited on behalf of the respondents in the case of **Manpreet Singh Poonaj (supra)** is not applicable as the same was passed in a different context, wherein the controversy involved was as to whether the promotion should be granted from the date on which vacancy arises or from the date when it is actually granted *vis-a-vis* retrospective seniority of the employees. The facts of the case and the issue involved in the present case being altogether different, the respondents cannot get advantage out of the said decision.

19. The principle on which the Tribunal has dismissed the O.A. is also not applicable in the present case as the judgments relied upon by the Tribunal deal with a situation where the controversy arises as to from which date the promotion would come in effect, that is to say as to whether from the date when a vacancy arises or a junior is promoted or from the date when it is actually granted. The judgments do not deal with a case like that of the petitioner herein in which the respondents had found her fit to be promoted, vigilance clearance was also issued and the case was also found as 'not involving sealed cover procedure'. Therefore, if the sealed cover procedure was erroneously applied in the case of the petitioner and 3-4 months stood lapsed in the process when the department finally found the sealed cover procedure as not applicable and no existing material against the petitioner, it is a fit case where adhoc promotion to her should have been granted w.e.f. 30.03.2004 and not from any subsequent date.

20. We are of the considered view that the respondents cannot take advantage of their own wrong and the legal maxim *Nullus commodum capere potest de injuria sua propria (or Commodum ex injuria sua nemo habere debet)* applies in full force which means that a person should not be benefited from his own illegal acts, breach of duty, or wrongful conduct frustrating legal rights of another person.

21. Admittedly, the petitioner has retired after attaining the age of superannuation and in view of the discussion made, she is found to be entitled for notional adhoc promotion and pensionary/post retiral benefits on account of adhoc promotion w.e.f. 30.03.2004 and not w.e.f. 14.07.2004.

22. Accordingly, the order dated 25.11.2013 passed by the respondents and also the order dated 25.08.2025 passed by the Tribunal cannot be sustained. The same are hereby **set aside**.

23. The writ petition stands **allowed** with a direction to the respondents to grant notional adhoc promotion to the petitioner w.e.f. 30.03.2004 and compute and release balance of all post retiral benefits including arrears of pensionary benefits to her on that basis within a period of two months from today.

24. It is made clear that we have not granted any relief to the petitioner qua arrears of salary.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

February 6, 2026

AKShukla/-