

GAHC010127762025



2025:GAU-AS:16867

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/197/2025

LATHRANG BORN BUAM
S/O LATE DR. P WELSON BUAM, DEPUTY GENERAL MANAGER, OFFICE
OF NEW INDIA ASSURANCE CO. LTD., GUWAHATI REGIONAL OFFICE,
STAR CITY COMPLEX, 5TH FLOOR, LACHIT NAGAR, G.S. ROAD,
GUWAHATI 781008

VERSUS

UNION OF INDIA AND 23 ORS
REPRESENTED BY ITS SECY. OF FINANCIAL SERVICE, MINISTRY OF
FINANCE, JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI 110001,
INDIA.

2:GENERAL INSURANCE PUBLIC SECTOR ASSOCIATION

REPRESENTED BY ITS CHAIRMAN
HAVING ITS REGISTERED OFFICE AT ORIENT HOUSE
3RD FLOOR
A 25/27
ASAF ALI ROAD
NEW DELHI.

3:THE NEW INDIA ASSURANCE CO .LTD. (NIACL)
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING
87
M.G. ROD
FORT MUMBAI 400001 (REPRESENTED BY ITS CHAIRMAN CUM
MANAGING DIRECTOR) E-MAIL- CMD.NIA@NEWINDIA.CO. IN PH 022-
22708219 ALSO AT 2ND AND 3RD FLOOR
R.G. CITY CENTRE
LSC

BLOCK B
LAWRENCE ROAD
DELHI 110035 (THROUGH ITS DEPUTY GENERAL MANAGER)

4:ORIENTAL INSURANCE CO. LTD. (OICL)
AT BLOCK-4
PLATE-A
NBCC OFFICE COMPLEX
KIDWAI NAGAR EAST
NEW DELHI-110023
(THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR)

5:UNITED INDIA INSURANCE CO. LTD.
(UIICL)
24
WHITES ROAD
CHANNAI 600014 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR0.

6:NATIONAL INSURANCE CO. LTD.
(NICL) PREMISES NO. 18-0374 PLOT NO. CBD 81
NEW TOWN
KOLKATA 700156 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

7:GENERAL INSURANCE CORPORATION OF INDIA
(GIC RE)
SURAKSHA
170
JAMSHEDJI TATA ROAD CHURCHGATE
MUMBAI 400020
INDIA (THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR)

8:AGRICULTURE INSURANCE CO. OF INDIA LTD. (AICIL)
PLATE B AND C 5TH FLOOR
BLOCK 1
EAST KIDWAI NAGAR
NEW DELHI 10023 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

9:MS. KALAIVENI SUBBIAH

UNITED INDIA INSURANCE CO. LTD. (UIICL)
24 WHITES ROAD
CHENNAI 60014 (THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR)

10:MS. CHANDRA S. IYER

GENERAL INSURANCE CORPORATION OF INDIA (GIC RE)
SURAKSHA
170
JAMSHEDJI TATA ROAD CHURCHGATE
MUMBAI 400020
INDIA (THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR)

11:MS. VENUGOPAL NALINI

THE NEW INDIA ASSURANCE CO. LTD. (NIACL)
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING 87
M.G. ROAD
FORT
MUMBAI 400001 (THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR)

12:KHARBANDA LALIT KUMAR

THE NEW INDIA ASSURANCE CO. LTD. (NIACL)
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING 87
M.G. ROAD
FORT
MUMBAI 400001 (THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR)

13:MS. SAXENA ANJANA

THE NEW INDIA ASSURANCE CO. LTD. (NIACL)
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING 87
M.G. ROAD
FORT
MUMBAI 400001 (THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR)

14:SACHINDRADATTARA M SALVI

GENERAL INSURANCE CORPORATION OF INDIA (GIC RE) SURAKSHA 170
JAMSHEDJI TATA ROAD CHURCHGATE
MUMBAI 400020 INDIA (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

15:SANJAY JOSHI

UNITED INDIA INSURANCE CO. LTD. (UIICL0
24 WHITES ROAD
CHENNAI 600014 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

16:SANDIP SHANKARRAO KARMAKAR

GENERAL INSURANCE CORPORATION OF INDIA (GIC RE)
SURAKSHA 170
JAMSHEDJI TATA ROAD CHURCHGATE
MUMBAI 400020
INDIA (THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR)

17:SANJAY LAILA

NATIONAL INSURANCE CO. LTD. (NICL) PREMISES NO. 18-0374
PLOT NO CBC 81
NEW TOWN
KOLKATA 700156 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

18:C.M. MANOHARAN

UNITED INDIA INSURANCE CO. LTD. (UIICL)
24 WHITES ROAD
CHENNAI 600014 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

19:RAMAN K.V.

THE NEW INDIA ASURANCE CO. LTD. (NIACL) HAVING ITS REGISTERED
AND HEAD OFFICE AT NEW INDIA ASSURANCE BUILDING
87 M.G. ROAD
FORT MUMBAI 400001 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

20:RAJIV KR. GUPTA

ORIENTAL INSURANCE CO. LTD. (OICL) AT BLOCK 4
PLATE A
NBCC OFFICE COMPLEX
KIDWAI NAGAR EAST
NEW DELHI 110023 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

21:MS. VINITA JOSHI

ORIENTAL INSURANCE CO.LTD. (OICL) AT BLOCK 4
PLATE A NBCC OFFICE COMPLEX
KIDWAI NAGAR EAST
NEW DELHI 110023 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

22:AMANDEEP SINGH GROVER

NATIONAL INSURANCE CO. LTD. (NICL)
PREMIES NO. 18-0374 PLOT NO. CBD 81 NEW TOWN
KOLKATA 700156 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

23:S. SIVASANKAR

NATIONAL INSURANCE CO.LTD. (NICL) PREMISES N. 18-0374 PLOT NO.
CBD-81
NEW TOW
KOLKATA 700156 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

24:MS. MINI GEORGE

NATIONAL INSURANCE CO. LTD. (NICL) PREMISES NO. 18-0374 PLOT NO.
CBD 81
NEW TOWN
KOLKATA 700156 (THROUGH ITS CHAIRMAN CUM MANAGING
DIRECTOR)

Advocates for the appellant : Mr. K.N. Choudhury, Sr. Advocate.

Mr. S.P. Sharma, Advocate.

Advocates for the respondents: Ms. K. Phukan, CGC.

Mr. Zorawar Singh, Adv.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date on which judgment is reserved : 05.12.2025
Date of pronouncement of judgment : 08/12/2025
Whether the pronouncement is of the : No.
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. K.N. Choudhury, learned Senior Counsel for the appellant assisted by Mr. S.P. Sharma, learned counsel. Also heard Mr. Zorawar Singh, learned counsel appearing for the respondent nos.2 to 8. Ms. K. Phukan, learned CGC appears for the respondent no.1.

2. The appellant, who is the writ petitioner has put to challenge the judgment and order dated 03.06.2025, by which the prayer of the petitioner for setting aside the impugned selection, promotion of the private respondents and for having a review DPC, had been rejected by the learned Single Judge.

3. The appellant's case is that in terms of the Promotion Policy, as laid out in Clause 7.1, Clause 8.1, Clause 9.1.1, Clause 9.1.2, Clause 13.0.1.3 and Clause 13.1.1, the selection process for promotion of officers from Scale-VI to Scale-VII of the respondent no.3 requires the following parameters to be considered :- merit and suitability, with due regard to seniority.

4. The appellant's further case is that the appellant has been superseded for promotion to Scale-VII on two occasions, i.e. in the Financial Year 2022-2023 and 2023-2024. It is the case of the appellant that in terms of the Promotion Policy for selection of candidates for promotion to Scale-VII, the parameters on which marks are to be given are as follows :

Work Record - 60 marks.

Seniority - 20 marks.

Screening - 10 marks.

Interview - 20 marks.

5. The appellant's counsel submits that when the appellant had secured 60 marks under the parameters 'Work Record', the appellant being the senior to all the private respondents except respondent nos.9 and 10, the other respondents, except for respondent nos.9 and 10, could not have been promoted over the appellant, by superseding him. Further, the appellant had been awarded 7.36 marks out of 10 under the heading 'Screening'.

6. The appellant's counsel submits that a perusal of the pleadings goes to show that the respondent no.12, during his service career, had made a loss for the insurance company. Further, the predecessor of respondent no. 12 had made a profit for the Insurance Company. On the other hand, the predecessor of the appellant had made a loss for the concerned company, while the appellant had made profits for the concerned company. As such, there was no ground for the respondents to have promoted the respondent no.12 over and above the appellant. In respect of the respondent no.9, the appellant's counsel submits that the said respondent no.9 was having a criminal case against him arising out of FIR No.0027 dated 17.01.2020 under Section 420/34 IPC. Thus the said respondent no.9 could not have been promoted over the appellant, who did not have any criminal case against him. He also submits that as per his information, the respondent nos. 14 & 16 had secured less than 60 marks in the selection process, prior to interview. However, they were still promoted by superseding the appellant.

7. The learned counsel for the appellant submits that in paragraph-40 of the affidavit-in-opposition filed by the respondent no.3, the respondent no.3 has

taken a stand that promotions at the level of Scale-VII is subjective in nature. He accordingly submits that promotions should have been made on an objective assessment of various parameters and not on subjective satisfaction. He also submits that the records of the selection process had not been brought before the learned Single Judge, to enable the learned Single Judge to have looked into the manner, as to how marks had been provided to the candidates. He submits that unless the respondents produce the contemporaneous records to show the distribution of marks to the various candidates, the promotion based on subjective satisfaction of the respondents cannot be a valid procedure for promotion, as the same would be in violation of the Promotion Policy.

8. The learned counsel for the appellant submits that the learned Single Judge has decided the writ petition on wrong understanding of the 'Promotion Policy' wherein, he has taken seniority to be a factor only to extent that the same would be considered for promotion where a candidate falls into the zone of consideration. After a candidate falls into the zone of consideration, the selection would be based only on merit without seniority having any further role.

9. The learned counsel for the respondent nos.2 to 8, on the other hand submits that the promotion of officers from Scale-VI to Scale-VII is to be made on the basis of Clause 7.2 of the Promotion Policy, which provides that promotion to Scale-VII would solely be based on merit, though Seniority would be duly respected in terms of Clause 7.1. He submits that a reading of Clause 11.1 and Clause 11.5 would go to show that the marks to be provided under the parameter of Seniority has been given importance, only in respect of promotion from Scale-I to Scale-V and not for promotion beyond Scale-V, though seniority is to be respected when all other things are equal.

10. The learned counsel for the respondent nos.2 to 8 further submits that

the appellant has not challenged the Promotion Policy as on date and the appellant had also been promoted to Scale-VI from Scale-V, on the basis of the existing Promotion Policy. He also submits that the appellant has now brought out a new case in the writ appeal, which was never an issue before the learned Single Judge. In this respect, the learned counsel for the respondent nos.2 to 8 submits that the FIR No.0027 dated 17.01.2020 and the other documents mentioned in the additional affidavit filed by the appellant on 30.07.2025, cannot be permitted to be agitated in this writ appeal, as it is a settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, when no such pleadings had been made before the learned Single Judge. The learned counsel for the respondent nos.2 to 8 also submits that Closure Report has been filed in respect of FIR No.0027 dated 17.01.2020 by the Pandav Nagar Police Station, Delhi and there is a protest petition pending against the same in the Court of the Chief Judicial Magistrate, East Karkardooma Courts. The learned counsel also submits that as per the impugned judgment passed by the learned Single Judge, it is clear that the entire records had been produced and perused by the learned Single Judge.

11. The learned counsel for the respondent nos.2 to 8 submits that 47 persons were screened for the 16 vacant posts, as one person did not appear for the selection process. However, the marks secured by the appellant placed him in the 19th position, for which he could not be promoted. He also submits that the issue with regard to the respondent No. 12 apparently having incurred losses for the company does not give a true picture of the work performance of an employee in the business of an insurance company. In this respect, he submits as an example, that when Mr. 'A' makes a loss for the company @ Rs.10/- per annum and the next incumbent to the said post makes a loss @

Rs.5/-, then the same amounts to a vast improvement in the company finances. On the other hand, when Mr. 'A' makes a profit for the company @ Rs.10 per annum and the next incumbent makes a profit of only Rs. 5/- per annum, then that amounts to a loss of profit for the company. The other issues amongst others, to be considered, are also with respect to the place of posting of an employee. Thus, there are many factors required to be taken into consideration when considering various issues.

12. The learned counsel for the respondent nos.2 to 8 submits that the issue with regard to paragraph-40 of the respondent no.3's affidavit-in-opposition to the writ petition, wherein it has been stated that promotions at higher levels are subjective in nature, would have to be read in conjunction with the additional affidavit filed by the respondent no.3 in compliance with the order dated 18.03.2025 passed in WP(C) 2697/2024. The respondent no.3 was directed to file an additional affidavit to the query of the Court, as to the feasibility of production of the relevant records, indicating the objective materials on which the subjective satisfaction had allegedly been arrived at, while promoting the selected candidates.

13. Accordingly, in terms of the order dated 18.03.2025, an additional affidavit was filed by the respondent no.3, wherein it has been stated in paragraph-4 to 6, as follows :

“4. That it is respectfully submitted that Paragraph 13.1.1 of the Promotion Policy Indicates the guiding parameters for the Promotion Committee for selection of candidates for promotion. The Promotion Committee conducts an objective assessment based on these parameters in making the final determination. Notably, the Promotion Committee takes into consideration the performance appraisal records of the candidates from preceding 6 (Six) years as part of the promotion evaluation. The candidates are allotted marks under the following parameters:

- 1. Work Record (ACRs for the immediately preceding Six years).*
- 2. External Assessment.*

3. *Seniority.*
4. *Interview.*

5. *Further, the Work Record (ACRs) constitute marks allotted towards the following parameters:*

1. *Performance.*
2. *Major Contribution.*
3. *Institution Building.*
4. *Health.*
5. *Integrity.*
6. *General Assessment.*
7. *Outstanding Work.*
8. *Fitness.*

6. *For each of the parameters stated above the Promotion Committee assigns marks, and candidates are awarded marks based on their performance against these parameters and the total marks obtained by each candidate are arrived at. The Candidates are then arranged in descending order of the total marks so obtained by them, and a merit list is accordingly prepared. From the top of the merit list, number of Candidates equal to the number of available vacancies, are selected for promotion. Therefore, as established above, there are specific objective parameters that enables the Promotion Committed to evaluate the candidates for promotions to the Scale-VII cadre. It is respectfully submitted that the query of this Hon'ble Court stand answered along with the fact that the Petitioner has duly been evaluated on the above said Parameters. Therefore, there is no question of any challenge by the Petitioner."*

14. The learned counsel for the respondent nos.2 to 8 further submits that the tweaking of the Promotion Policy by lowering the qualifying service of 2 years to 1.5 years, thereafter to 1 year and subsequently to 1¼th year, has not been put to challenge and the petitioner has also benefited from the same in the promotion exercise that had been held for filling up Scale-VII vacancies in 2023-2024, as he became eligible to be in the consideration zone. Thus, there was no favouritism or ulterior motive or biasness in changing the number of qualifying years of service required of candidates for promotion.

15. We have heard the learned counsels for the parties.

16. The basic issue to be decided in the present appeal, is whether the criteria for promotion from Scale –VI to Scale- VII as provided in terms of clause 7.1 and 7.2 of the promotion policy, entails giving primacy to merit or seniority. Clauses 7.1 and 7.2 of the promotion policy states as follows :-

“7. Broad criteria for promotion:

7.1 The organizational needs, by way of promotions of officers from one scale to another, shall be fulfilled in such a manner that merit is appropriately recognized while seniority is duly respected in the extant consistent with efficiency of the Organization

7.2 While promotions to Scale-V and Scale-VII shall be based on the sole criterion of merit. promotions upto Scale-V shall be based on the overall ranking obtained under the various parameters for measuring merit and seniority amongst those qualifying the benchmark prescribed under Para 9.”

17. Clause 7.1 provides that for promotion from one scale to another, the organisational needs should be fulfilled/done in such a manner that merit is appropriately recognized while seniority is duly respected, consistent with efficiency of the organization. In this respect, we do not find any infirmity with the submission of the learned counsel for the appellant that clause 7.1 requires a candidate to be considered on his merit and suitability with due regard to seniority. However, clause 7.2 categorically provides the emphasis or criteria to be given primacy to, at the time of promotion from scale-VI to Scale-VII. Clause 7.2 provides that promotion from Scale – VI to Scale–VII shall be based only on the sole criterion of merit, while promotion up to Scale-V shall be based on the overall ranking under various parameters for measuring merit and seniority amongst those qualifying the benchmark prescribed in para 9. Thus, in our view, for promotion from Scale-VI to Scale-VII, the criterion to be given primacy is merit, with seniority being duly respected in terms of clause 7.1.

18. Clause 8.1 of the promotion policy provides for empanelment of candidates for consideration for promotion to the cadre of Scale – VI and Scale – VII, for those Officers who have completed a minimum of two years of continuous service in the existing cadre, subject to para 17, which provides that Officers who are superseded in promotion on 3 (three) consecutive promotion exercises, shall not be included in the zone of consideration for two immediately succeeding promotion exercises.

19. The changes that were affected by the State respondents in respect of the minimum qualifying years of service, required for promotion from Scale–VI to Scale–VII, in our view, does not have any bearing to the facts of this case, especially when no challenge to the same has been made by the appellant.

20. Clauses 9, 9.1, 9.1.1 and 9.1.2 provides that a screening interview for promotion to the cadres of Scale-VI and Scale-VII would be made by a “Screening Committee” comprising of out-side experts of various fields, as stipulated therein. The “Screening Committee” are to assess the Officers under various parameters with a total of 10 marks that can be awarded. The petitioner has been given 7.36 marks out of 10 by the “Screening Committee”.

21. Clauses 11.5 and 11.5.2 provides the manner in which the marks are to be awarded for seniority amongst different batches and between Officers belonging to the same batch. Clauses 11.5, 11.5.1 and 11.5.2 are reproduced herein below, as follows :-

“11.5 Seniority :-

Evaluation for the parameter of seniority shall be done as under:-

11.5.1 The marks for completed years of service will be allotted as under:-

(a) For the first three completed years of service (ie. the minimum eligibility period) In the existing Scale: Nil.

(b) For each completed year of service (beyond the first three years) in the existing Scale, as per following table:-

Scale	Marks for each completed year of service (beyond the first three years) In the existing Scale as on 31 March of the year referred to In para 8.2	Maximum marks
Scale I	[5]6	40
Scale II	4	35
Scale III	3	25
Scale IV	2	15

11.5.2 To give weightage to Inter-se seniority amongst the officers belonging to the same batch, 0.01 mark will be added in the ascending order, starting with 0.00 for the last officer In the list. If there is more than one batch in the same year, all such batches of officers shall be arranged according to the date of selection and marks will be allotted as above.”

22. As can be seen from the parameters laid down and the marks to be awarded for seniority, there cannot be much difference in the marks between the Officers of the same batch, as provided in Clause 11.5.2. The difference in marks amongst Officers of the same batch starts from 0.01 in an ascending order, starting with 0.00 for the last officer in the list.

23. After the “Screening Committee” held screening of the candidates, the final selection is to be done by the “Interview & Promotion Committee” in terms of clauses 13.0.1.3, 13.1 and 13.1.1, which are reproduced herein below, as follows :-

“13.0.1.3 Selection :

The Promotion Committee shall select officers (equal to the number vacancies determined as per provisions under para 13.0.1.1) for INSITU promotion for placement in Scale VI or Scale VII, as the case may be, based on the overall merit, suitability, growth potential, length of balance service,

qualifications, service experience in functional areas and seniority of the empanelled candidates as may be assessed from the performance appraisal and other records. Such selection of officers for INSITU promotion by the Promotion Committee shall be final. A list of officers so selected for INSITU promotions shall be prepared in the order of their inter-se seniority in their cadre, which shall be forwarded to the Appointing Authority for issuance of INSITU Promotion Order(s).

13.1. Promotion from the cadres of Scale-V to Scale-VI and Scale-VI to Scale-VII:

13.1.1. Eligible Officers, after being Interviewed by the Screening Committee, da per para 9.1, shall appear for an interview by the Promotion Committee. The Promotion Committee shall, after taking into account the assessment recommendations of the Screening Committee; overall merit, suitability, growth potential, length of balance service, qualifications, service experience in various functional areas and seniority of the candidates, as may be assessed from the performance appraisal records as well as personal interview, prepare a list of officers selected for promotion. The list shall be so prepared as to maintain the Inter-se seniority of the concerned officers in the existing cadres. Such selection of officers for promotion by the Committee shall be final. The list shall be to the extent of the vacancies available for the year concerned."

24. We have seen the extract of the records pertaining to the exercise conducted by the Screening Committee and the marks provided by them to the candidates under various categories. We have also seen the marks awarded by the "Interview & Promotion Committee" under the various heads i.e. work record, seniority, screening and interview. We do not find any infirmity in the manner of giving of marks by the Screening Committee and the "Interview & Promotion Committee". All the marks awarded are within the permissible limit. No procedure or parameters which are to be followed by the State respondents have been violated. Further, there is no question of us substituting the marks given by the 2 Committees, when there is nothing to show that the marks were not fair or not within parameters set by them. As such, there is no reason for us to interfere with the marks awarded by the concerned Committees, which has been made under various parameters. The appellant has also not alleged *mala fides* against any person and as such, there is nothing to doubt the actions of the members of the Screening Committee and the "Interview & Promotion Committee".

25. With regard to the submission made by the learned counsel for the appellant that the respondent no. 9 could not have been promoted, as an FIR had been registered against him at the time he was being considered for promotion, it would be profitable to refer to the decision of the Supreme Court in the case of ***Union of India Vs. K.V. Jankiraman [(1991) 4 SCC 109]***, where it has been held that the benefit of promotion cannot be withheld merely because some disciplinary/criminal proceeding is pending against the employee. To deny the said benefit, it must be at the stage when charge sheet has been furnished to the employee. In the present case, the case was closed prior to any charge-sheet being filed and as such, there was no ground to refuse promotion to the respondent no. 9. Further, as a closure report has already been filed in respect of FIR No. 0028 on 19/04/2024 and the transfer by promotion

had been made on 24/04/2024, there was no illegality committed by the respondents. The respondent no.9 was also not under suspension when he was considered for promotion. Paragraph 16 & 17 of **K.V. Jankiraman (supra)** is reproduced hereinbelow as follows :

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3)

*(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before .
, ,*

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some

disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

26. With regard to the stand of the appellant’s counsel that the respondent nos. 15 & 16 having secured less marks than the appellant under the category “Work record”, they could not have superseded the petitioner, the records and marks that have been produced today show that the appellant’s overall marks is less than the overall marks of the respondent nos. 15 & 16, though the appellant has higher marks in the “Work Record’ category.

27. On perusing the original documents that has been produced before us, we find that all the candidates have been given marks for seniority in terms of their length of service. There being 4 (four) different batches of candidates, marks have been awarded out of 10 to all the candidates on the basis of batch wise seniority.

28. On considering the *inter-se* seniority of the batch of 2021-2022, where the appellant belongs, in respect of those candidates who had participated in the selection process and promoted, the giving of marks on the *inter-se* seniority marks amongst them, on the assumption that the appellant is the senior most amongst all the candidates of the 2021-22 batch, we find that the added marks for being senior most, in terms of Clause 11.5.2 of the Promotion Policy, would not allow the appellant to overtake the last selected candidate. As such, the overall marks given to the appellant, with or without the *inter-se* seniority marks for the 2021-2022 batch, is less than the marks secured by the last selected candidate.

29. In the case of ***Bihar State Electricity Board and others Vs. Dharmdeo Das [2024 SCC OnLine SC 1768]***, the Supreme Court has held that an employee has the right to be considered for promotion, but does not have the right to be necessarily promoted to the promotional post.

30. In the case of ***Union of India and others Vs. Lt. Gen. Rajendra Singh Kadyan & Anr. [(2000) 6 SCC 698]***, the Supreme Court has held that it is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on records, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding out whether the process in reaching the decision has been observed correctly and not the decision as such.

31. In the case of *Union of India Vs. A.K. Narula [(2007) 11 SCC 10]*, the Supreme Court held that it is only when the process of assessment is vitiated either on the ground of *bias, mala-fide or arbitrariness*, the selection calls for interference. Where a DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms for all the candidates and there is no arbitrariness in the process of assessment by the DPC, the Court will not interfere.

32. In the present case, we find that the learned Single Judge has gone minutely into the details of the official records and has held that the promotion exercise undertaken by the respondents appears to have been made on objective criterias, in accordance with the promotion policy for the Officers.

33. On considering the fact that the promotion policy under clause 7.1 and 7.2 provides that promotion to Scale-VII should be on the basis of merit with due respect to be given to seniority, we find that there has been no violation of the procedure prescribed in the promotion policy. Besides, there are no allegations of *mala fides* made by the appellant. The marks awarded to the candidates, are all within the permissible limit and the same yardstick and norms have been applied to all the candidates equally. As such, we do not find any reason to interfere with the marks awarded by the experts to the candidates in the selection process.

34. In view of the reasons stated above, we do not find any ground to interfere with the decision of the learned Single Judge. The Writ Appeal is accordingly dismissed.

JUDGE

JUDGE

Comparing Assistant