RAJASTHAN HIGH COURT

REPORTABLE

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

Judgment reserved on: 02.11.2026

Judgment delivered on: 18.11.2026

Judgment (Full) uploaded on: 18.11.2026

Rajasthan High Court
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D.B. Civil Reference No. 3/2025

CNR: RJHC020964472025 | URN: CREF / 6U / 2025

1. State Of Rajasthan, Through Additional Chief Secretary, Department Of Home, Government of Rajasthan, Secretariat, Jaipur.
2. The Principal Secretary, Department Of Personnel, Government of Rajasthan, Secretariat, Jaipur
3. The Director General of Police, Rajasthan, Jaipur.

----Petitioners

Versus

Ajay Kant Ratudi (Sharma) S/o Shri Anusuya Prasad Ratudi, Aged About 48 Years, R/o Plot No. 360/B, Devi Nagar, New Sanganer Road, Sodala, Jaipur (Rajasthan).

----Respondent

For Petitioner(s)	:	Mr. Bhuwnesh Sharma, AAG with Mr. Samee Khan, Adv. and Mr. Vishnu Dutt Sharma, Adv. Mr. Siddharth Sharma, Adv. Ms. Epsa Nangalia, Adv. Mr. Banshi Lal Bhati, AAG through VC with Mr. Deepak Chandak, Adv., through VC and Ms. Sulochna Bishnoi, Adv., through VC Mr. Sukhdev Sharma, Adv,through VC Mr. N.S. Rajpurohit, AAG, through VC with Ms.Aditi Sharma,Adv through VC Mr. Sajjan Singh Rathore, AAG through VC
For Respondent(s)	:	Mr. Ashish Saksena, Adv. with Mr. Akash Saxena, Adv. Mr. Banwari Lal Sharma, Adv. with Mr. Namo Narayan Sharma, Adv. Mr. Shobit Tiwari, Adv. with Mr. Pushpendra Singh, Adv. and Mr. Rohit Tiwari, Adv.,

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Mr. Shiv Charan Gupta, Adv,
Mr. Harsh Saraswat, Adv.,
Mr. Akshit Gupta, Adv.,
Ms. Pragya Seth, Adv.,
Mr. Naman Maheshwari, Adv.
Mr. Vishwas Fatehpuria, Adv.
Ms. Manasvita Sharma, Adv.
Mr. G.S. Gouttam, Adv.,
Mr. Shreyansh Dhariwal, Adv.,
Mr. Nakul Bansal, Adv.,
Mr. Pallav Pancholi, Adv.,
Mr. Mohit Khandelwal, Adv.,
Mr. Pranav Sharma, Adv.,
Mr. Keshav Dadhich, Adv.,
Mr. Mohit Sharma, Adv.,
Ms. Parul Sharma, Adv.,
Mr. Naman Yadav, Adv.
Mr. Yashpal Khileree, Adv., through VC
Ms. Vinita, Adv., through VC
Mr. Praveen Dayal Dave, Adv.,
through VC
Mr. Ankur Mathur, Adv., through VC

FULL BENCH

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE SAMEER JAIN
HON'BLE MR. JUSTICE PRAMIL KUMAR MATHUR

C.A.V. JUDGMENT

Sanjay K. Agrawal, CJ

For the sake of convenience, the judgment is divided in following parts:-

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Part I- Preface

1. Divergent judicial opinion on the question as to whether a government servant, who has been inflicted with the minor penalty of censure/stoppage of one grade increment without cumulative effect, which are minor penalties under Rule 14 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter called as 'the Rules of 1958'), can be considered for the purpose of granting promotion if the said penalty has been awarded within seven years period, led to the making of the reference to the Larger Bench by a Division Bench of this Court, with one allied question of law, by order dated 27.08.2025 passed in D.B. Special Appeal Writ No.591/2025, which states as under:

Part II- Questions of law referred to the Larger Bench.

> "(I) As to whether a Government servant who is subjected to penalty even with any other minor penalty under Rule 14 of the CCA Rules, be that as it may, by 'CENSURE' or by stopping of one grade increment without cumulative effect, can be considered for the purpose of granting promotion if the said punishment has been awarded within seven years period?
>
> (II) Whether in cases where promotion is to be granted on seniority-cum-merit criteria, the punishment awarded within seven years of service from the year of consideration can be considered for denying promotion?"

Part III- Genesis of the Reference

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2. Mr. Ajay Kant Ratudi, respondent in the writ petition, was appointed as Sub-Inspector on 23.11.1996. Thereafter, on 26.07.2006, the Government issued a circular regarding consequence of penalties imposed upon a Government servant under the Rules of 1958. Thereafter, the Government issued another circular on 04.06.2008 and during the pendency of the appeal, the Government issued a fresh circular dated 22.10.2024.

3. On 30.09.2013, the respondent was promoted as Inspector and on 16.12.2017, first penalty of censure was imposed under Rule 14(i) of the Rules of 1958, following the proceedings under Rule 17 of the Rules of 1958. Thereafter, the respondent was inflicted with second penalty of censure on 29.06.2019 and again on 18.06.2021, third penalty of censure was imposed upon him.

4. The respondent challenged the aforesaid three minor penalties by way of appeal, wherein an interim order was also granted by the Appellate Authority. On 26.04.2022, the competent authority issued a combined seniority list of Inspectors/Company Commanders, where the respondent’s name stood at serial No.58. On 29.08.2023, the Police Headquarters sought service records, penalty details and information about pending inquiries for consideration for promotion to the Rajasthan Police Service (Junior Scale).

5. Thereafter, in the year 2024, the respondent filed S.B. Civil Writ Petition No.13239/2024 seeking his consideration for promotion despite three minor penalties of censure inflicted upon him. The said writ petition was disposed of by the learned Single

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Judge vide order dated 23.08.2024, relying upon the order passed in **Pradeep Singh Charan Vs. State of Rajasthan (S.B. Civil Writ Petition No.7761/2022, decided on 04.09.2023)** and **Raghuveer Singh Vs. State of Rajasthan (S.B. Civil Writ Petition No.20358/2018, decided on 07.05.2024).**

6. In the matter of **Raghuveer Singh** (supra), it was held by the learned Single Judge that the circular dated 04.06.2008 cannot deprive a Government servant of consideration under seniority-cum-merit on account of censure, or withholding of increment.

7. On 22.10.2024, the Government of Rajasthan issued further instructions concerning the effect of censure on promotion. The State of Rajasthan preferred a special appeal under Rule 134 of the Rajasthan High Court Rules, 1952, questioning the order of the learned Single Judge dated 23.08.2024.

8. The Division Bench, finding conflict qua the effect of minor penalties imposed within preceding seven years on promotion under the seniority-cum-merit criteria, referred the matter to the Larger Bench on the above-stated questions of law and pursuant to the order dated 27.08.2025, this Full Bench has been constituted. This is how this reference is before us for consideration.

9. Rule 14 of the Rules of 1958 lists censure and withholding of increments as penalties and lists withholding of promotion separately. The Rule itself prescribes no period of ineligibility for promotion consequent upon a minor penalty.

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10. Rule 14 of the Rules of 1958 states as under:

> "**14. Nature of Penalties.**–The following penalties may, for good and sufficient reasons, which shall be recorded, and as hereinafter provided, be imposed on a Government servant, namely :–
>
> (i) censure ;
>
> (ii) withholding of increments or promotion;
>
> (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of any law, rule or order ;
>
> (iv)……..
>
> (v)…….
>
> (vi)…….
>
> (vii)……..
>
> **Explanation :–**(1) The following shall not amount to a penalty within the meaning of this rule:–
>
> (i) withholding of increments of a Government servant for failure to pass a departmental examination in accordance with the rules or orders governing the Service or post or the terms of his appointment;
>
> (ii) stoppage of Government servant at the efficiency bar in the time scale on the ground of hid unfitness to cross the bar;
>
> (iii) non–promotion whether in a substantive or officiating capacity of Government servant, after consideration of his case, to a Service, Grade or post for promotion to which he is eligible;
>
> (iv) reversion to a lower service, grade or post of a Government servant officiating in a higher service grade or post on the ground that he is considered after trial, to be unsuitable for such higher Service, grade or post or on administrative grounds unconnected with his conduct ;
>
> (v) reversion to his permanent service, grade or post of a Government servant

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appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation;

(vi) compulsory retirement of Government servant in accordance with the provisions relating to his superannuation or retirement;

(vii) termination of the services:–

(a) of a Government servant appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation ; or

(b) of a temporary Government servant appointed otherwise then under contract on the expiration of the period of appointment;

(c) of a Government servant employed under an agreement, in accordance with the terms of such agreement;

(d) of a Government servant in the services of any of the integrating units of Rajasthan, on non–selection or non–absorption for appointment in any of the services of the integrated State of Rajasthan in accordance with the integration rules.

Explanation:(2) The discharge of a person appointed on an ad–hoc or provisional basis to any of the posts in the integrated setup of Rajasthan Services otherwise than for reasons of non–selection or non–absorption to any such services or posts in accordance with the integrated rules, shall amount to removal or dismissal as the case may be.

11. Rules 15, 27, 28 & 28-A of the Rajasthan Police Service Rules, 1954 (hereinafter called as ‘the Rules of 1954’) provide for

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selection on seniority-cum-merit from amongst eligible inspectors. No provision is brought to our notice which makes censure or stoppage of an increment a disqualification from consideration. Rule 27(1) of the Rules of 1954 states as under:

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> "**27. Criteria for selection.**(1) For purposes of recruitment by promotion, a selection strictly on "seniority-cum-merit" shall be made from among all the Inspectors, who are eligible for promotion under the provisions of these Rules 'on the first day of the month of April of the year of Selection'.
>
> (2) Deleted.
>
> Explanation.- In case direct recruitment to a post has been made earlier than regular selection for promotion in a particular year, such of the persons, who are or were eligible for appointment to that post by both the methods of recruitment and have been appointed by direct recruitment first, shall also be considered for promotion."

12. The seven year period is traced to Department of Personnel circulars dated 26.07.2006 and 04.06.2008 and the State also relied on the circular dated 22.10.2024, which the State Government issued during the pendency of the appeal, pending before the Division Bench. The relevant portion of circular dated 26.07.2006 states as under:

> ".....
>
> 1. दण्डादेशों के प्रभाव हेतु रिक्ति वर्ष के पूर्व के 7 वर्षों का रिकार्ड देखा जायेगा और इन सात वर्षों में सबसे पुराने दण्डादेश का प्रभाव सबसे पहले तथा उसके बाद के दण्डादेश का प्रभाव बाद में लागू होगा ।
>
> 2. उक्त दिशा–निर्देश इस परिपत्र के जारी होने की तिथि से ही प्रभावी माने जायेंगे। इन दिशा–निर्देशों के सन्दर्भ में पूर्व में निस्तारित प्रकरण को पुनः नहीं खोला जायेगा तथा पूर्व वर्षों की विभागीय पदोन्नति समिति यदि इस परिपत्र के जारी होने के बाद आयोजित होती है, तो उसमें भी पूर्व की व्यवस्था ही लागू होगी।
>
> ....."

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13. Now the question which arises for consideration is "Can a circular issued by the State Government create a bar that Rules do not specifically provide so?"

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14. Clauses (i) to (iii) are minor penalties, whereas clauses (iv) to (vii) are major penalties (Rules 16 & 17). "Withholding of……. promotion" is itself an enumerated penalty under Rule 14(ii) of the Rules of 1958. Explanation (1) appended to Rule 14 of the Rules of 1958 lists what "shall not amount to a penalty".

15. Clause (iii) of the Explanation appended to Rule 14 of the Rules of 1958, states as under:

> "(iii) non-promotion whether in a substantive or officiating capacity of Government servant, after consideration of his case, to a Service, Grade or post for promotion to which he is eligible."

16. Rule 15(2) of the Rules of 1958 requires consultation with the Rajasthan Public Service Commission, in respect of the State Services, before imposing the penalties "other than censure, and withholding of increments". Withholding of promotion is not within that exemption.

17. Explanation 1(iii) to Rule 14 of the Rules of 1958 protects non-promotion from being a penalty only when it occurs "after consideration of his case" and in respect of a post "to which he is eligible". The Rule Making Authority, thus, built in the sequence: eligibility, then consideration and then a decision. Non-promotion without consideration on account of a penalty falls outside the explanation. Once outside the Explanation, such non-promotion is, in substance, the penalty of "withholding of …… promotion"

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under Rule 14(ii) of the Rules of 1958. The said penalty can be imposed only "for good & sufficient reasons, which shall be recorded, and as hereinafter provided", i.e., by the disciplinary authority following Rule 17 of the Rules of 1958.

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18. The Rules of 1958 permit enhancement only through Rules 30, 32, 33 and 34, each with notice and a time limit, the outermost being three years under Rule 34 of the Rules of 1958. A seven-year bar operating by circular increases the real weight of the penalty with no notice and no hearing. What the Rules forbid directly cannot be achieved indirectly by an executive instruction.

Part-IV: Executive instructions may supplant, but cannot amend or supersede the Statutory Rules

19. In the matter of **Sant Ram Sharma Vs. State of Rajasthan & Ors.**[1], their Lordships of the Supreme Court held that executive instructions may fill gaps where the Rules are silent, but cannot amend or supersede the statutory rules.

20. Similarly in the matter of **Guman Singh Vs. State of Rajasthan & Ors.**,[2] their Lordships of the Supreme Court held that the instructions may guide the selection process but cannot curtail the powers entrusted to the selection committee by the Rules and held in para 39, 40, 41 and 53 as under:

> "39. Then the question is whether the Government is competent to issue the said Circular and whether the Circular in any manner effects the discretion and powers of the Committee functioning under the statutory rules. The position is clear, as laid down by this Court in Sant Ram Sharma v. State of Rajasthan and another:

1 1967 SCC OnLine SC 16
2 (1971) 2 SCC 452

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"**It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but it the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."**

40. ……..The Circular contains administrative instructions and it does not profess to lay down anything else. The Government have issued those instructions "for the guidance of all selection/promotion committee and appointing authorities mentioned in the statutory service Rules. These administrative instructions and the statutory service Rules should together be taken as a complete code on the subject".

41. From the above extract it is clear that in the matter of selection or promotion the Committees concerned are enjoined not only to have regard to the statutory rules under which they function, but also to the administrative instructions given in the Circular. This makes it very clear that it is not open to the Committee concerned to ignore the instructions contained in the Circular or to act contrary to the directions contained therein. **Therefore, it will be seen that if the Circular or any part of it gives instructions contrary to or opposed to any of the rules, the Circular or that part of the Circular to that extent will be invalid.** "

53. The object of the circular may be to bring about uniformity in the award of marks. But the directions contained therein do' offend the rules. **This is not a case of the government filling up the gaps or of giving executive instructions on matters not provided for by or not inconsistent with the rules……**..."

21. The State Government itself issued a circular dated 22.10.2024 clarifying the legal position that the promotion shall not be deferred on account of minor penalty of censure. The aforesaid circular states as under:

"राजस्थान सरकार

कार्मिक (क/2) विभाग

क्रमांकः– प.4(1)कार्मिक/क–2/अं.प्र./2006 जयपुर, दिनांकः 22.10.2024

1 समस्त अतिरिक्त मुख्य सचिव / प्रमुख शासन सचिव / शासन सचिव
2 समस्त विभागाध्यक्ष (संभागीय आयुक्त/ जिला कलेक्टर्स सहित)

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परिपत्र

विषयः– राजस्थान सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1958 के अंतर्गत अनुशासनिक कार्यवाहियों में अधिरोपित विभिन्न प्रकार के दण्डों का कार्मिक की पदोन्नति पर प्रभाव।

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राजस्थान सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1958 के अंतर्गत अनुशासनिक कार्यवाहियों में राज्य सरकार के कर्मचारियों/अधिकारियों को दोषी पाये जाने पर आरोपित किये जाने वाले लघु अथवा वृहद दण्डों का प्रभाव संबंधित राज्यकर्मी की पदोन्नति पर भी पड़ता है। कार्मिक विभाग के परिपत्र दिनांक 26.07.2006 तथा परिपत्र दिनांक 04.06.2008 के भाग–1 के बिन्दु सं. 16 (पदोन्नति में दण्डादेश का प्रभाव) में राजसेवकों को दिए गए दण्डादेशों का पदोन्नति पर होने वाले प्रभावों के संबंध में निर्देश जारी किये गये है, जिसके अनुसार परिनिन्दा के दण्ड हेतु एक बार पदोन्नति से वंचित किये जाने का प्रावधान है।

दण्डादेशों के पदोन्नति पर होने वाले प्रभावों का पुनः परीक्षण किया गया। इस संबंध में स्पष्ट किया जाता है कि राजस्थान सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1958 के अंतर्गत अनुशासनिक कार्यवाहियों में राज्यकर्मी को परिनिन्दा का दण्ड दिये जाने पर इससे संबंधित राज्यकर्मी की पदोन्नति प्रभावित नहीं होगी, अर्थात परिनिन्दा के दण्ड के कारण किसी भी राज्यकर्मी को पदोन्नति से वंचित नहीं किया जायेगा।

यह संशोधन जारी किये जाने की दिनांक से प्रभावी होगा। इस संशोधन के आधार पर पूर्व में आयोजित हो चुकी डीपीसी प्रकरणों को पुनः नहीं खोला जायेगा। यह स्पष्ट किया जाता है कि यदि किसी विभाग में किन्हीं पदों की वर्ष 2024–25 की डीपीसी अभी तक आयोजित नहीं की जा सकी है, तो उक्त डीपीसी इस परिपत्र के नवीन प्रावधानों के अनुसार की जायेगी, परंतु पूर्व वर्षों की विभागीय पदोन्नति समिति/रिव्यू विभागीय पदोन्नति समिति की बैठक इस परिपत्र के जारी होने के बाद आयोजित होती है, तो उसमें पूर्व की व्यवस्था ही लागू होगी।

अतः समस्त विभागाध्यक्षों एवं नियुक्ति प्राधिकारियों से निवेदन है कि कृपया भविष्य में होने वाली पदोन्नतियों में उक्त दिशा–निर्देशों की कठोरता से पालना सुनिश्चित कराई जावें।

(कृष्णा कांत पाठक)

शासन सचिव"

22. As such, merely on account of awarding censure, a Government servant cannot be deprived of consideration of promotion. Even the Rules of 1958 nowhere bar the promotion on account of imposition of any minor penalty under the prescribed Rules.

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Part-V: Eligibility and Suitability

23. In the matter of **Sarva U.P. Gramin Bank Vs. Manoj Kumar Chak**[3], the circulars excluded employees from promotion consideration on the basis of an adverse rating or disciplinary penalty in a preceding period, although the promotion rules contained no such disqualification. Their Lordships of the Supreme Court held that DPC may take misconduct and penalty into account in assessing the performance and suitability, but the management cannot, by circular, introduce a new threshold disqualification absent from the governing Rules. Relying upon its earlier decision in the matter of **Guman Singh** (supra) and other decisions, it was held in para 30, 34, 35, 37, 39 and 44 as under:

> "30. ……..It is by now settled beyond cavil that **statutory rules can be supplemented but cannot be supplanted**. This is the ratio of law laid down in Sant Ram Sharma [AIR 1967 SC 1910: (1968) / SCR 111] . It has been reiterated by this Court in a catena of subsequent judgments. It is, however, not necessary to burden the present judgment by making a copious reference to the other decisions which merely reiterated the same ratio.
>
> 34. ……...**The aforesaid Rules do not provide that any emplovee/officer, who has suffered a punishment or has received an adverse appraisal/Grade D in the performance appraisal, shall not be eligible.** However, the Circulars dated 30-11-2009 and 12-7-2010 enable the appellant Banks to eliminate such employees, which is clearly contrary to the provisions contained in the statutory service rules. **The procedure prescribed under the aforesaid two Circulars clearly has the effect of supplanting the provision of eligibility, which is not permissible.**
>
> 35. **Such an additional provision cannot be justified on the basis that it would form part of the minimum merit required to be considered for promotion.** In our opinion, the reliance placed in support of this proposition on the judgment in Rajendra Kumar Srivastava [(2010) 1 SCC 335 : (2010) / SCC (L&S) 1086] is wholly misplaced. In the aforesaid

3 (2013) 6 SCC 287

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judgment, this Court has observed as follows: (SCC pp. 340- 1, para 11).

> "11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of "seniority' and the principle of 'merit-cum-seniority'. Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then **promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority.** The minimum merit necessary for the post may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous years, or by a combination of either two or all the three of the aforesaid methods. There is no hard-and-fast rule as to how the minimum merit is to be ascertained. So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement. willnot militate against the principle of seniority-cum-merit."

37. Similarly. the reliance placed by Mr Dhruv Mehta on the judgment of this Court in **K.V. Jankiraman case /Union of India v. K.V. Jankiraman, (1991) 4 SCC 109 : 1991 SCC (L&S) 387: (1993) 23 ATC 322]** is also misplaced. In that judgment, this Court considered the circumstances under which the banks could resort to the "sealed cover procedure", when considering the claims of the eligible candidates for promotion. The Court also examined the impact of departmental punishment for assessment of the suitability of an employee for promotion. The relevant ratio of this Court is as under: (SCC p. 123. para 29)

> "29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original

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date even when the penalty imparted is of reduction in rank. On principle, for the same reasons. the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. **An employee has no right to promotion. He has only a right to be considered for promotion.** The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an emplovee with promotion retrospectively from a date when for his conduct before that date he is penalised in presenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, **while considering un employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified.** If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (üi) of para 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal."

These observations make it abundantly clear that promotion can be justifiably denied to eligible candidate at the time of his/her performance appraisal by DPC. **The fact that the officer/employee has been departmentally**

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> **punished would form part of the service record and can be taken into account by DPC. In such circumstances, the employee cannot possibly claim to have been subjected to a further penalty on the basis of the misconduct which led to his punishment. This, however, would not permit the management to debar an employee from being considered for promotion at the stage of considering whether such an employee is "eligible" to be considered in terms of Rule 2(e).**

39. **There is no doubt that punishment and adverse service record are relevant to determine the minimum merit by DPC. But to debar a candidate, to be considered for promotion, on the basis of punishment or unsatisfactory record would require the necessary provision in the statutory service rules**. There is no such provision under the 1998 Rules.

44. There is another very good reason for not accepting the submissions made by Mr Dhruv Mehta. Different rules/regulations of the banks provide specific punishments such as "withholding of promotion, reduction in rank. lowering in ranks/pay scales". However, there is another range of penalty such as censure, reprimand, withholding of increments, etc. which are also prescribed under various staff regulations. **To debar such an emplovee from being considered for promotion would tantamount to also inflicting on such emplovee, the punishment of withholding of promotion.** In such circumstances, a punishment of censure/reprimand would, in fact, read as censure/reprimand plus five years' debarment from promotion. **Thus the circulars issued by the Bank debarring such emplovees from being considered would be clearly contrary to the statutory rules.** The circulars clearly do not fall within the ratio in Sant Ram case [AIR 1967 SC 1910: (1968) 1 SCR 111].

24. In the matter of **State of Rajasthan Vs. Dr. Ashok Singhvi**[4] the Division Bench considered the circular dated 26.07.2006 in a promotion to Junior Specialist under the Rajasthan Medical and Health Services Rules, 1963 on the criteria of seniority-cum-merit. Relying upon the decision in **Guman Singh** (supra) and **Manoj Kumar Chak** (supra), it upheld the

4 (2013) 4 WLN 251

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direction that the candidature be considered without applying the circular as an automatic bar and held in para 12 as under:

> "12. A glance at the impugned order passed by the learned Single Judge clearly and unequivocally reveals that the learned Single Judge hus simply confined the relief to the respondent vis-a-vis his right of consideration for promotion and question of his suitability for promotion has been left open to be decided by the competent authority. Learned Single Judge has further observed that **if the penal suffered by the incumbent adversely effects minimum merit necessary for efficiency of administration, the DPC can adjudge him unsuitable for promotion.** Learned writ Court has further concluded that **debarring an incumbent from his right of consideration for promotion on the strength of Circular dated 26th of July 2006 is not sustainable** and that being so issued directions to consider the candidature of the respondent ignoring the said Circular. On examining the impugned order in the light of Rule 24A of the Rules of 1963 and on the touchstone of the Constitution Bench judgment of the Apex Court in Guman Singh's case (supra), and the latest verdict of the Hon'ble Apex Court in case of Sarva V.P. Gramin Bank's case (supra). we do not feel persuaded to interfere with the impugned order. The legal precedents which are cited by the learned Addl. Advocate General. are having no bearing whatsoever on the issue involved in the matter, and therefore, these mudgments are of no help to the appellants. **We, therefore, fully concur with the impugned order passed by the learned Single Judge and find no merit in this appeal."**

25. Similarly, in **State of Rajasthan & Others Vs. Manoj Kumar Machra**[5], the Division Bench rejected the State's plea that an employee was not entitled to be considered merely because censure had been imposed, following the principle of law laid down in the matter of **Dr. Ashok Singhvi** (supra). Both the Division Bench judgments rendered in **Dr. Ashok Singhvi** (supra) and

5 DBSAW 662/2022, decided on 20.07.2022

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Manoj Kumar Machra (supra) clearly preserve the DPC's authority to assess the suitability and they clearly rejected the exclusion from the zone of consideration by executive instructions.

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26. In **Raghuveer Singh** (supra) and **Pradeep Singh Charan** (supra), which the learned Single Judge has relied upon, it has already been held that the circular dated 04.06.2008 cannot deprive a Government Servant of consideration under seniority-cum-merit on account of censure or withholding of increments. It was further held that a circular cannot attach the consequence of one penalty to another.

27. In the matter of **State of Rajasthan Vs. Ucchab Lal Chhanwal[6],** a censured officer was not recommended for promotion to the senior scale against 1996-97 vacancies under the Rules of 1954 (on the criteria of senior-cum-merit). The State Government relied upon the later circular dated 26.07.2006. Their Lordships of the Supreme Court held that the later circular could not be relied upon to deny promotion against earlier vacancies and held in para 9 and 10 as under:

> "9. There can he no scintilla of doubt that the finding recorded by the High Court pertaining to the circular is absolutely correct and unassailable. **The said circular could not have been placed reliance upon by the State to contend that the respondents could have been deprived of promotion.** However, the said circular is totally inconsequential for the present case, for what we are going to hold.
>
> 10. **Though some argument was canvassed with regard to the relevance of the punishment of censure, vet the said aspect need not be adverted to.** On a perusal of the writ petition, the order of the writ court and that of the Division Bench we notice that there were

6 (2014) 1 SCC 144

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> specific «verments that juniors placed at Serial Numbers 9, 10 and 11 in the gradation list had been promoted vide order dated 20-8-1997. They have not been arrayed as parties. Needless to emphasise, in the event the order passed by the High Court is affirmed, the persons who are seniors to the respondents in the promotional cadre are bound to become junior regard being had to their seniority position in the feeder cadre. It is well settled in law that no order can be passed behind the back of the person that shall adversely affect him."

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28. The decision of the Supreme Court in the matters of **Union of India Vs. KV Jankiraman**[7] and **Union of India Vs. AN Mohanan**[8], concern the sealed cover recommendations and retrospective promotion after a penalty. They show that censure is a blameworthy factor, but it does not disqualify the employee from future consideration.

29. In the matter of **State of Rajasthan & Ors. Vs. Shankar Lal Parmar**[9], their Lordships of the Supreme Court upheld a one-year deferral of selection grade under a particular scheme requiring a satisfactory record. The selection grade is a financial progression scheme with its own conditions and it is not regular promotion under the Police Service Rules and observed in para 26(iii) as under:

> "26.....
>
> (i).....
>
> (ii).....
>
> (iii) **The emplovees who have earned censure in the past years for their service record will not be entitled to he granted "selection grade" along with those who have a clean and unblemished record. They would be granted "selection grade" only one year thereafter.**
>
> (iv)......"

7 (1991) 4 SCC 109
8 (2007) 5 SCC 425
9 (2011) 14 SCC 235

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Answer to Question No.1

30. In view of the aforesaid observations, our answer to Question No. 1 is that a Government servant, who suffered censure/withholding of one grade increment without cumulative effect under Rule 14(i) and 14(ii) of the Rules of 1958 within seven years can be considered for promotion. Unless the governing statutory rules themselves prescribes disqualification, the circular cannot exclude an otherwise eligible officer from zone of consideration.

Answer to Question No.2

Part-VI: Minor penalty under Rule 14 of the Rules of 1958

31. Seniority-cum-merit requires every eligible candidate to be assessed against a minimum standard, those who meet it are promoted in order of seniority, without comparative assessment of merit. In **B.V. Sivaiah & Ors. Vs. K. Addanki Babu & Ors.,**[10] the Supreme Court explained the principle of 'seniority-cum-merit'. It was held by their Lordships that the seniority has priority once the candidate meets the prescribed minimum standard of merit and suitability. It was further held that seniority alone does not confer a right to promotion and held in para 8 and 9 as under:

> "8. In the matter of formulation of a policy for promotion to a higher post, the two competing principles which are taken into account are inter se seniority and comparative merit of employees who are eligible for promotion. In Sant Ram Sharma V. State of Rajasthan, this court has pointed out that the principle of seniority ensures absolute objectivity by requiring all promotion to be made entirely on grounds of seniority and that if a post falls vacant, it is filled by the person who had served longest in the post immediately below. But the seniority system is so objective that it fails to

10 (1998) 6 SCC 720

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take any account of personal merit. It is fair to every official except the best ones. An official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The criterion of merit, on the other hand, lays stress on meritorious performance irrespective of seniority and even a person, though junior but much more meritorious than his seniors, is selected for promotion. The Court has expressed the view that there should be a correct balance between seniority and merit in a proper promotion policy. The criteria of "seniority cum-merit" and "merit-cum- seniority" which take into account seniority as well as merit seek to achieve such a balance.

9. The principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule 5(2) of the Indian Administrative Service/Indian Police Service (Appointment by promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" Mathew, J. in Union of India v. Mohan Lal Capoor, has said :- (SCC p.856, para 37)

"[F] or inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale.

Similarly, Beg, J. (as the learned Chief Justice then was) has said:(SCC p.851, para 22)

"22. Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant Rules, is that the 'entrance' or 'inclusion' test for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor."

32. In the matter of **K.V. Jankiraman**(supra), the Supreme Court held that an employee has no indefeasible right to

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promotion but does have a right to be considered for promotion in accordance with the applicable rules. It was further held by their Lordships that while considering an employee for promotion, his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. It was further held that if the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion.

33. In the matter of **Shankar Lal Parmar**(supra), the Supreme Court considered the question whether employee who had earned censure could claim selection grade automatically upon completing 9, 18 or 27 years of service. Their Lordships of the Supreme Court upheld the approach of the State Government of deferring selection grade by one year holding that the employees with a clean service record could reasonably be distinguished from the employee who had earned censure. As such, it was held that the State may, where the applicable rules or valid administrative instructions permit, take censure into account and defer selection grade benefit by one year.

34. In the matter of **Dr. Ashok Singhvi**(supra), it was held by a Division Bench of this Court that administrative instructions cannot

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override the statutory service rules. The State Government could supplement the rules through administrative instructions, but could not introduce a restriction inconsistent with them. It was further held that an employee's right to be considered for promotion is protected by Article 16 of the Constitution of India and the circular could not deprive an otherwise eligible employee of that consideration when the governing statutory rules did not provide for such exclusion.

35. The said judgment expressly preserved the Departmental Promotion Committee's authority to assess the employee's suitability. If the penalty adversely affected the minimum merit required for administrative efficiency, the DPC could find the employee unsuitable under the applicable rules. Relying upon the decision in the matter of **Manoj Kumar Chak** (supra), it was held that an additional restriction on promotion must have support in the governing statutory rules.

36. In the matter of **Manoj Kumar Machra** (supra), relying upon the judgment in **Dr. Ashok Singhvi** (supra), the Division Bench permitted consideration of delinquent employee for promotion who has suffered the penalty of censure.

37. As such, the disciplinary authority forms part of the service record and it is relevant to suitability, as **K.V. Jankiraman**(supra) recognizes that the employee's whole record may be considered, **AN Mohanan**(supra) treats censure as a blameworthy factor, **Shankar Lal Parmar**(supra) accepts that censure may form part of the record and non-selection on that assessment is not an

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additional penalty. Even **Manoj Kumar Chak**(supra) accepts that the DPC may take the penalty into account when assessing suitability.

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38. In view of the above, our answer to Question No.2 is that where promotion is on seniority-cum-merit criteria, a penalty awarded within seven years can be considered by the DPC as a part of overall record in judging whether an employee meets the minimum standard of suitability. The mere existence of minor penalty(s) within seven years doesn't by itself create an automatic bar to consideration or an automatic finding of unsuitability. It cannot be treated as an automatic ground for denying promotion merely because a circular so provides.

Part-VII: Answer to Question No.1 and Question No.2, collectively

39. Thus, our answer to the two questions, as referred to hereinabove, collectively is as under:

Answer to Question No.1

> "That a Government servant, who suffered censure/withholding of one grade increment without cumulative effect under Rule 14(i) and 14(ii) of the Rules of 1958 within seven years can be considered for promotion. Unless the governing statutory rules themselves prescribes disqualification, the circular cannot exclude an otherwise eligible officer from zone of consideration.

Answer to Question No.2

> "That where promotion is on seniority-cum-merit criteria, a penalty awarded within seven years can be

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considered by the DPC as a part of overall record in judging whether an employee meets the minimum standard of suitability. The mere existence of minor penalty(s) within seven years doesn't by itself create an automatic bar to consideration or an automatic finding of unsuitability. It cannot be treated as an automatic ground for denying promotion merely because a circular so provides."

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40. The reference is, accordingly, disposed off in the aforestated terms.

41. Let the matter be placed before the appropriate Bench having roster for deciding the writ petition in light of the questions of law, so answered.

42. We place on record our appreciation for the assistance rendered by Mr. Bhuwnesh Sharma, AAG with Mr. Samee Khan and Mr. Vishnu Dutt Sharma Mr. Siddharth Sharma, Ms. Epsa Nangalia, Mr. Banshi Lal Bhati, AAG with Mr. Deepak Chandak, Ms. Sulochna Bishnoi, Mr. Sukhdev Sharma, Mr. N.S. Rajpurohit, AAG, with Ms.Aditi Sharma, Mr. Sajjan Singh Rathore, AAG learned counsels for the petitioners and Mr. Ashish Saksena With Mr. Akash Saxena, Mr. Banwari Lal Sharma, with Mr. Namo Narayan Sharma Mr. Shobit Tiwari, with Mr. Pushpendra Singh, Mr. Rohit Tiwari, Mr. Shiv Charan Gupta, Mr. Harsh Saraswat, Mr. Akshit Gupta, Ms. Pragya Seth, Mr. Naman Maheshwari, Mr. Vishwas Fatehpuria, Ms. Manasvita Sharma, Mr. G.S. Gouttam, Mr. Shreyansh Dhariwal, Mr. Nakul Bansal, Mr. Pallav Pancholi, Mr. Mohit Khandelwal, Mr. Pranav Sharma, Mr. Keshav Dadhich, Mr. Mohit Sharma, Ms. Parul Sharma, Mr. Naman Yadav, Mr. Yashpal Khileree, Ms. Vinita, Mr.

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Praveen Dayal Dave, Mr. Ankur Mathur, learned counsels for the respondents, who appeared and made submissions in arriving at the aforesaid conclusion.

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RAMIL KUMAR MATHUR),J (SAMEER JAIN),J (SANJAY K. AGRAWAL),CJ

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