

Union Of India vs K.D.Nishad on 6 January, 2025

Author: Amit Rawal

Bench: Amit Rawal

2025:KER:487

OP(CAT)NO.16/2017 & conn. cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE AMIT RAWAL
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR
MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946
OP (CAT) NO. 16 OF 2017
AGAINST THE ORDER/JUDGMENT DATED 05.08.2016 IN OA
NO.897 OF 2013 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM
BENCH

PETITIONERS/RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT OF
INDIA, MINISTRY OF DEFENCE,
NEW DELHI-110001
- 2 THE ENGINEER-IN-CHIEF
MILITARY ENGINEER SERVICES,
NEW DELHI-110001
- 3 THE CHIEF ENGINEER
MILITARY ENGINEER SERVICES,
SOUTHERN COMMAND, PUNE-411001
- 4 THE CHIEF ENGINEER (NAVAL WORKS)
MILITARY ENGINEER SERVICES,
KOCHI-682004
- 5 THE CHIEF ENGINEER (R AND D)
MILITARY ENGINEER SERVICES,
SECUNDERABAD-500003

BY ADV SRI.T.V.VINU, CGC

OP(CAT)NO.16/2017 & conn. cases

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RESPONDENTS/APPLICANTS:

- 1 P.K.MANOJ
S/O.KOTHA, AGED 41 YEARS,
LOWER DIVISION CLERK, OFFICE OF THE AGE(I) R&D.
KAKKANAD, RESIDING AT PULICKAL HOUSE,
PATTIKKARA, CHIRANEILUR POST, TRICHUR-680501
- 2 NIJO JOHN
S/O.LATE P.K.JOHN, AGED 31 YEARS, LOWER DIVISION
CLERK, OFFICE OF THE CWE(NW) KOCHI, KATARIBAGH,
NAVAL BASE P.O., KOCHI-682004, PADAYINCHAYIL
HOUSE, PIRAVOM P.O., PIN-686664
- 3 K.D NISHAD
S/O. K.K.DINESan, AGED 39 YEARS,
LOWER DIVISION CLERK, OFFICE OF THE CWE (NW)
KOCHI, KATARIBAGH NAVAL BASE P.O., KOCHI-682004,
KUNNATH HOUSE, EDAKOCHI, KOCHI-682010
- 4 K.K.SASIKUMAR
S/O.LATE K.G.KESAVAN, AGED 58 YEARS,
LOWER DIVISION CLERK, OFFICE OF THE CWE(NW)
KOCHI, KATARIBAGH, NAVAL BASE P.O.,
KOCHI-682004, KULANGARA HOUSE, PATTANAM,
VADAKKEKARA, PIN-683522.

BY ADV SRI.R.SREERAJ

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON
06.01.2025, ALONG WITH OP (CAT).69/2017, 70/2017 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

2025:KER:487

OP(CAT)NO.16/2017 & conn. cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR
MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946
OP (CAT) NO. 69 OF 2017
AGAINST THE ORDER/JUDGMENT DATED 05.08.2016 IN OA
NO.913 OF 2013 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM
BENCH

PETITIONERS/RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT OF
INDIA, MINISTRY OF DEFENCE, NEW DELHI-110 001.
- 2 THE ENGINEER-IN-CHIEF
MILITARY ENGINEER SERVICES,NEW DELHI-110 001.
- 3 THE CHIEF ENGINEER
MILITARY ENGINEER SERVICES,
SOUTHERN COMMAND, PUNE-411 001.

BY ADV SRI.T.V.VINU, CGC

RESPONDENTS/APPLICANTS:

- 1 R.S. MINI VIJAYAN
W/O.LATE K.VIJAYAKUMAR, AGED 43 YEARS
LOWER DIVISION CLERK, O/O THE GARRISON
ENGINEER(AF), PULAYANARKOTTA, THURUVIKKAL POST,
TRIVANDRUM-695 031, RESIDING AT SREENILAYAM,
MSRA 130, MANCHADI, THACHOOTUKAVU,
MALAYANKIZHU POST, TRIVANDRUM-71.

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OP(CAT)NO.16/2017 & conn. cases

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- 2 K.REKHA
W/O.K.GOPAKUMAR, AGED 38 YEARS
LOWER DIVISION CLERK, O/O ADDITIONAL CHIEF
ENGINEER(LAISON),HQ SOUTHERN AIR COMMAND,
INDIAN AIR FORCE,AKKULAM, TRIVANDRUM-11,
RESIDING AT SHIVAM,TC 2019/1, PULAYANARKOTTA,
THIRUVIKKAL POST,TRIVANDRUM-695031.
- 3 B.RADHAKRISHNAN NAIR
AGED 36 YEARS,

LOWER DIVISION CLERK, O/O THE GARRISON ENGINEER
(AF)PULAYANARKOTTA, THURUVIKKAL POST,
TRIVANDRUM-695 031, RESIDING AT SUDHALAYAM,
TC 7/1934, SREE CHITRA NAGAR,HOUSE NO.D-30,
PANGODE, THIRUMALA POST,TRIVANDRUM-695 008.

4 K.O.THULASIDEVI
W/O.V.RAMESH, AGED 42 YEARS
LOWER DIVISION CLERK, O/O THE GARRISON
ENGINEER(ARMY),THIRUMALA POST, TRIVANDRUM-695
006,RESIDING AT ROHINI, AKKULAM,
VIZHINJAM POST,TRIVANDRUM-695 521.

5 J.P.BINDHULEKHA
D/O.A.JAGADHAMMA, AGED 37 YEARS
LOWER DIVISION CLERK, O/O THE COMMANDER WORKS
ENGINEER(AF),HQ SOUTHERN AIR COMMAND COMPLEX,
AKKULAM, TRIVANDRUM-11, RESIDING AT UNNI
BHAVAN,CHEMMANNUVILA, PUNNAMOODU,
PALLICHAL, TRIVANDRUM.

BY ADV SRI.R.SREERAJ

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON
06.01.2025, ALONG WITH OP (CAT).16/2017 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP(CAT)NO.16/2017 & conn. cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

OP (CAT) NO. 70 OF 2017

AGAINST THE ORDER/JUDGMENT DATED 05.08.2016 IN OA
NO.914 OF 2013 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM
BENCH

PETITIONERS/RESPONDENTS:

1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT OF
INDIA,MINISTRY OF DEFENCE, NEW DELHI - 110001.

- 2 THE ENGINEER-IN-CHIEF
MILITARY ENGINEER SERVICES, NEW DELHI - 110001.
- 3 THE CHIEF ENGINEER
MILITARY ENGINEER SERVICES, SOUTHERN COMMAND,
PUNE-400 001.
- 4 THE COMMANDER WORKS ENGINEERS EZHIMALA
MILITARY ENGINEERS SERVICES, INDIAN NAVAL
ACADEMY, EZHIMALA P.O., KANNUR - 670310.

BY ADV SRI.T.V.VINU, CGC
RESPONDENTS/APPLICANTS:

- 1 V V MANOJ
S/O.A.V.DAMODARAN,
AGED 33 YEARS
LOWER DIVISION CLERK,
O/O THE GARRISON ENGINEER(P) NO.2,
2025:KER:487

OP(CAT)NO.16/2017 & conn. cases
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- EZHIMALA, INDIAN NAVAL ACADEMY,
EZHIMALA P.O., KANNUR - 670 310,
RESIDING AT VALLYAVEETIL HOUSE,
NERUVAMBRAM,PAYANGADI P.O., KANNUR - 670 303.
- 2 A.L.PRIYA
D/O LAKSHMANAN NAIR, AGED 32 YEARS
LOWER DIVISION CLERK, O/O THE GARRISON
ENGINEER(P) NO 2 EZHIMALA, INDIAN NAVAL ACADEMY,
EZHIMALA P.O.,KANNUR-670 310, RESIDING AT
AROMKUZHIIYIL HOUSE,CHAKKAMPUZHA P.O.,
EDAKKOLY, KOTTAYAM - 686574.
 - 3 M.SAJITH
S/O.K.GOPI, AGED 36 YEARS
LOWER DIVISION CLERK,O/O THE GARRISON ENGINEER
(P) NO.1, EZHIMALA,INDIAN NAVAL ACADEMY EZHIMALA
P.O., KANNUR-670 310, RESIDING AT DIVYLAYAM,
PINARAYI P.O., THALASSERY VIA, KANNUR - 670 741.
 - 4 P.V.RAVIKUMAR
S/O.C.GOPALAKRISHNAN, AGED 28 YEARS
LOWER DIVISION CLERK, O/O THE GARRISON
ENGINEER(P) NO 2 EZHIMALA, INDIAN NAVAL ACADEMY
EZHIMALA P.O., KANNUR-670 310, RESIDING AT
CHENAMBATH HOUSE,KUNHIMANGALAM,
KOVVAPPURAM P.O.,KANNUR - 670 309.

5 HIMAGIRI MUNAKALA
S/O.BHAVANI SANKAR REDDY, AGED 34 YEARS
LOWER DIVISION CLERK, O/O THE GARRISON ENGINEER
(P) NO.2 EZHIMALA, INDIAN NAVAL ACADEMY,EZHIMALA
P.O., KANNUR-670310,RESIDING AT KUPPIL (VILL) &
(PO), MURAPAKA VIA,SRIKAKULAM DISTRICT,
ANDHRA PRADESH-532430.

6 C.A.AJESH
S/O.C.K.AYYAPPAN, AGED 32 YEARS
LOWER DIVISION CLERK, O/O COMMANDER
WORKS,ENGINEERS EZHIMALA, INDIAN NAVAL
ACADEMY,EZHIMALA P.O., KANNUR - 670310,
RESIDING AT CHAKKANDATH HOUSE,

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OP(CAT)NO.16/2017 & conn. cases

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MANALUR P.O.,THRISSUR-680617.

7 DIPUKUMAR ODAMUTTIL
S/O. I CHANDU, AGED 33 YEARS
LOWER DIVISION CLERK, O/O THE GARRISON
ENGINEER(P) NO.1 EZHIMALA, INDIAN NAVAL ACADEMY,
EZHIMALA P.O.,KANNUR-670310, RESIDING AT ODAMUTI
HOUSE,PINANGODE P.O., KALPATA, WAYNAD-673121.

8 P.V.NAVIN
S/O.P.SATHYANANTHAN, AGED 33 YEARS
LOWER DIVISION CLERK O/O THE COMMANDER
WORKS,ENGINEERS EZHIMALA, INDIAN NAVAL ACADEMY
EZHIMALA P.O., KANNUR-670310, RESIDING ATKAILASH
BHAVAN, PALLIKKUNNU P.O.,KANNUR - 670004.

9 M.K.SUGUNAN
S/O.KUNJAN VAVA, AGED 45 YEARS
LOWER DIVISION CLERK O/O THE COMMANDER WORKS
ENGINEERS EZHIMALA,INDIAN NAVAL ACADEMY EZHIMALA
P.O.,KANNUR - 670310, RESIDING AT MATHUNNITHARA
HOUSE,KAITHARAM P.O., NORTH PARAVOOR,
ERNAKULAM - 683519.

10 K.JAYAKUMARAN
S/O.LATE K.MADHAVAN PILLAI, AGED 51 YEARS
LOWER DIVISION CLERK, O/O THE COMMANDER WORKS
ENGINEERS EZHIMALA, INDIAN NAVAL ACADEMY,
EZHIMALA (P.O) KANNUR - 670310, RESIDING AT
VARADHA, BALADUKKA, CHENGALA P.O.,

CHERKALA, KASARAGOD-671541.

ADV. R. SREERAJ

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON
06.01.2025, ALONG WITH OP (CAT).16/2017 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP(CAT)NO.16/2017 & conn. cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL
&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR
MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946
OP (CAT) NO. 102 OF 2017

AGAINST THE ORDER/JUDGMENT DATED 05.07.2016 IN OA
NO.607 OF 2014 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM
BENCH

PETITIONERS/RESPONDENTS IN OA:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI -110 011.
- 2 THE ENGINEER - IN -CHIEF,
MILITARY ENGINEERING SERVICES ARMY HEAD QUARTERS,
DHQ PO, NEW DELHI -110 011.
- 3 THE CHIEF ENGINEER,
MILITARY ENGINEERING SERVICES HEAD
QUARTERS,SOUTHERN COMMAND,PUNE- 411 011.
- 4 THE CHIEF ENGINEER(NAVAL WORKS) KOCHI,
KARATIBAGH, NAVAL BASE,KOCHI-682 004.

SRI.T.V.VINU - CGC

RESPONDENTS/APPLICANTS IN O.A.:

- 1 P. RADHAMMA
W/O. R REGHU, LOWER DIVISION CLERK,
O/O THE CE(NW) KOCHI, RESIDING AT CHANDRABHAVAN,
NEDUNGADAPPALLY P.O, KOTTAYAM -686 545.

2025:KER:487

OP(CAT)NO.16/2017 & conn. cases

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- 2 RAJI JAYAN
W/O. C.G JAYAN, LOWER DIVISION CLERK, O/O THE CE
(NW) KOCHI, RESIDING AT CHEMBAKASSERIL HOUSE,
KOCHUKADAVANTHRA,KADAVANTHRA- 682 020.
- 3 V.P SARITHAKUMARI
W/O. V.G SURENDRAN,
LOWER DIVISION CLERK, O/O THE CE (NW) KOCHI,
RESIDING AT GOKULAM, H.NO.19/179-A,
PALLURUTHY P.O, KOCHI -682 006.
- 4 MANJU LIJU
W/O. LIJU THOMAS,
LOWER DIVISION CLERK, O/O THE GE (NW),
SOUTH KOCHI, RESIDING AT 'THOMAS VILLA',
KOTTARKAVU, MAVELIKKARA POST,
MAVELIKKARA- 690 101.

SRI.R.SREERAJ

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON
06.01.2025, ALONG WITH OP (CAT).16/2017 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:487

OP(CAT)NO.16/2017 & conn. cases

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

OP (CAT) NO. 199 OF 2017

AGAINST THE ORDER/JUDGMENT DATED 10.01.2017 IN OA
NO.10 OF 2015 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM
BENCH

PETITIONER/RESPONDENTS 1 TO 5 IN OA:

1 UNION OF INDIA

REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT OF
INDIA, MINISTRY OF DEFENCE, NEW DELHI - 110 001.

- 2 THE ENGINEER-IN-CHIEF
MILITARY ENGINEERING SERVICES,
NEW DELHI - 110 001.
- 3 THE CHIEF ENGINEER
HEADQUARTERS SOUTHERN COMMAND, MILITARY
ENGINEERING SERVICES, PUNE - 411 001.
- 4 THE CHIEF ENGINEER NW
MILITARY ENGINEERING SERVICES,
NAVAL BASE, KOCHI - 682 004.
- 5 THE COMMANDER WORKS ENGINEERS
MILITARY ENGINEERING SERVICES,
NAVAL BASE, KOCHI - 682 004.

BY ADVS.
ASSISTANT SOLICITOR GENERAL
SRI.T.V.VINU, CGC

2025:KER:487

OP(CAT)NO.16/2017 & conn. cases

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RESPONDENT/APPLICANTS 1 TO 3 IN THE OA:

- 1 K.D.NISHAD
S/O.K.K.DINESAN,
LOWER DIVISION CLERK, O/O.THE CE (NW), KOCHI,
KATARIBAGH, NAVAL BASE P.O., KOCHI - 682
004, RESIDING AT KUNNATH HOUSE, EDAKOCHI,
KOCHI - 682 010.
- 2 A.L.PRIYA
W/O.HARIKUMAR K.NAIR, LOWER DIVISION CLERK,
O/O.THE GE(NW), KOCHI, KATARIBAGH,
NAVAL BASE P.O., KOCHI - 682 004,
RESIDING AT AROMKUZHIYIL HOUSE,
CHAKKAMPUZHA P.O., EDAKKOLY,
KOTTAYAM - 686 574.
- 3 N.G.SUDHEER
S/O.P.C.GOPALAN (LATE),
LOWER DIVISION CLERK, O/O.THE GE(NW), KOCHI,
KATARIBAGH, NAVAL BASE P.O., KOCHI - 682
004, RESIDING AT NEDUMPARAMBIL HOUSE,

KALOOR, KOCHI - 17.

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON
06.01.2025, ALONG WITH OP (CAT).16/2017 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
2025:KER:487

OP(CAT)NO.16/2017 & conn. cases
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JUDGMENT

[OP (CAT) Nos.16/2017, 69/2017, 70/2017, 102/2017, 199/2017] Amit Rawal, J.

1. This order shall dispose of five(5) OP(CAT)s, OP (CAT) Nos.16/2017, 69/2017, 70/2017 arising out of common judgment and O.P.CAT)Nos.102 of 2017 and 199/2017 on another separate judgments, but on the same reasoning.

2. Succinctly the facts in dispute for adjudication of the controversy are enumerated hereinbelow:

Respondents - applicants were working in Group-D posts having different pay scale and were governed by the Military Engineering Services (Assistant, Upper Division Clerk and Lower Division Clerk) Recruitment Rules, 1999.

The aforementioned Rules, on 18.08.2004, were revised and were renamed as Military Engineering Services "Group C"

2025:KER:487 OP(CAT)NO.16/2017 & conn. cases (Assistant, Upper Division Clerk and Lower Division Clerk) Recruitment Rules, 2004. The percentage of Group D to LDC (Group C) increased from 10% to 15% and 10% quota was through Departmental Examination introduced for the first time and 5% seniority quota. The process of conduct of examination commenced in 2007 and ultimately was held in February, 2009, and thereafter, in 2010 the Departmental Promotion Committee, considered the promotion from Group D to Group C, that is LDC, for the vacancies for 2004-2005 to 2008-2009 and promotion panel was issued. Ultimately all the respondents were promoted. The grievance of the respondents - applicants in short was that for the next promotional post of Upper Division Clerk, had there not been delay for the department in holding the Departmental Promotion Committee (DPC) in view of the amendment in the Rules in 2004, they would not have been required to wait for another five(5) for sitting in the examination; in other words, would be eligible without 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases waiting for another five(5) years.

3. Considering the aforementioned aspects, the Tribunal in Paragraph Nos.8 to 10 of the judgment dated 5.8.2016 allowed the O.As, out of which three OP(CAT)s have arisen, in the following manner:

8. It is pointed out that in an identical case, namely OA 355/2011, which was followed in OA 607/2014, it was held by this Tribunal that the applicants are entitled to be notionally promoted to the cadre of LDC w.e.f. the date of occurrence of vacancies, against which they were subsequently promoted, for the purpose of granting them the eligibility/qualifying service to appear in the limited competitive examination for promotion to the next higher post, if they are otherwise eligible. The respondents would contend that as can be seen from MAI the vacancy position of LDC against 10% quota as aforesaid is seen reflected in the table. For the vacancy year 2004-05 the total vacancy was 11, in 2005-06 total number of vacancy was 27, in 2006-07 the total number of vacancy was 29, for 2007-08 total vacancies were 10 and for the year 2008-09 the number of vacancy was 3 and thus the total vacancy comes to 80.

9. The dispute is only regarding non-convening of the DPC at the relevant time. There were vacancies to be filled up 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases during the years 2004 to 2009. Had prompt action been taken for conducting the examination and for convening the DPCs for filling up the exiting vacancy, then certainly the Group D employees would have got promotion as LDC during the relevant years itself. There would be no doubt that for the purpose of effecting promotion, procedural formalities are to be complied with. Reasonable time would be required for that purpose. Since we have already found that the applicants are not entitled to claim monetary benefits, but it is intended only to count the length of service for the purpose of enabling them to satisfy the eligibility conditions for promotion to the next higher post, we hold that the applicants are entitled to be notionally treated as promoted from the date of occurrence of vacancies, provided the applicants had otherwise acquired the eligibility conditions for being promoted as LDC. The applicants are not entitled to get monetary benefits consequent on this notional promotion which is to take effect from the respective vacancy years.

10. As per the recruitment rules of 1999, the eligibility for promotion under 10% quota was only tenth standard pass plus five years regular service to become LDC from Group D. It is not disputed that the 4th applicant in O.A 897/2013 cannot get the benefit of what have been stated earlier because the 4th applicant had expressed his unwillingness earlier and since he had already waived his right for promotion, he cannot aspire for promotion just like the other applicants. Therefore, the claim made by the 4th applicant has to be turned down. We do so. Other 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases applicants in this OA (OA 897/2003) are entitled to get notional promotion from the date of occurrence of vacancies against which they were subsequently promoted."

On perusal of the aforementioned finding, it is evident that the pith and substance of the judgment though had been on merit but also on the basis of the decision rendered in O.A. Nos.355/2011 and

607/2014.

4. Sri.T.V.Vinu, learned counsel appearing on behalf of the Union of India submitted the promotion from the retrospective date is not a fundamental right as has been held by the Supreme Court in Bihar State Electricity Board and Others v. Dharamdeo Das [Civil Appeal No.6977 of 2015. decided on 23.07.2024] wherein entire case law on this point has been observed and in paragraph Nos.18 and 19 held as under:

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 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in Ajay Kumar Shukla vs. Arvind Rai where, citing earlier precedents in Director, Lift Irrigation Corporation Ltd. vs. Pravat Kiran Mohanty and Others¹⁰ and Ajit Singh and Others vs. State of Punjab and Others¹¹, a three Judge Bench observed thus:

41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty and Others⁹ in para 4 of the report which is reproduced below:

"4.....There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-

writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified."

42. A Constitution Bench in Ajit Singh and Others v. State of Punjab and Others, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27 :

(2022) 12 SCC 579 (1991) 2 SCC 295 (1999) 7 SCC 209 CIVIL APPEAL NO. 6977 OF 2015 "Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected.

They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered"

for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1) ***

27. In our opinion, the above view expressed in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P. , and followed in Jagdish Lal [Jagdish Lal v. State of Haryana¹³, and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion (1997) 5 SCC 201 (1997) 6 SCC a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.¹¹], right from 1950."

19. A similar view has also been expressed earlier hereto in K.V. Subba Rao and Others vs. Government of Andhra Pradesh and Others¹⁴, Union of India and Others vs. K.K. Vadera and Others¹⁵, Sanjay Kumar Sinha-II and Others vs. State of Bihar and Others¹⁶, State of Uttaranchal and Others vs. Dinesh Kumar Sharma¹⁷, Nirmal Chandra Sinha⁶ (supra) and recently 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases in Manpreet Singh Poonam⁷ (supra).

5. The controversy in the present case is squarely covered under the aforementioned finding that no fault can be attributed on the department of not holding the departmental examination giving cause

to the employees for claiming the retrospective promotion much less notional promotion.

6. On the other hand, learned counsel appearing on behalf of the respondents - applicants submitted that the employees were not at fault as they were eagerly waiting for undertaking the departmental examination for, they had not challenged the revision of the Recruitment Rules caused in 2004. But owing to the lapse of the department almost six(6) years were wasted, therefore they have to be granted the notional benefit as it had already been done inter-partes which order has not been assailed before this Court, similar treatment is required 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases to be granted to the respondents - applicants by dismissing the O.P.(CAT)s with exemplary costs.

7. We have heard the learned counsel for the parties and appraised the paper books.

8. Paragraph Nos.22 and 23 of the judgment in Bihar State Electricity Board and Others v. Dharamdeo Das also is extracted hereunder:

22. The spirit behind elevating the right for being considered for promotion to a fundamental right is enshrined in the principle of "equality of opportunity" in relation to matters of employment and appointment to a position under the State.

Once employed, the employees are entitled for being considered for promotion to the next higher post subject to their satisfying the eligibility criteria, as per the applicable rules. Failure to consider an employee for promotion even after satisfying the eligibility criteria would violate her fundamental right. However, a clear distinction has been drawn between the stage of considering an employee for being promoted to taking the next step of recognizing the said right as a vested right for promotion. That is where the line has to be drawn. Stated differently, a right to be considered for promotion being a facet of the right to equal opportunity in employment and appointment, would have to be treated as a fundamental right guaranteed under Articles 14 and 16(1) of the Constitution of 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases India but such a right cannot translate into a vested right of the employee for being necessarily promoted to the promotional post, unless the rules expressly provide for such a situation.

23. The view that seniority can neither be reckoned from the date when a vacancy arises, nor can it be granted retrospectively unless the service rules specifically provide for such a situation, is fortified by the decision of this Court in K.K. Vadera¹⁴ (supra) which has emphasised in no uncertain terms the settled position in law that promotion to a post should only be granted from the date of the promotion and not from the date on which a vacancy may have arisen. In Ganga Vishan Gujarati vs State of Rajasthan²³, this Court had reiterated the principle that retrospective seniority cannot be granted to an employee from (2019) 16 SCC 28 CIVIL APPEAL NO. 6977 OF 2015 the date when she was not even borne on the cadre. This principle has been built upon by a line of precedents starting with the decision of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra²⁴, followed in Akhoury Sachindra Nath¹⁷ (supra), Dinesh Kumar Sharma¹⁶ (supra) and several other cases.

9. The controversy in the aforementioned case was also with regard to the claim of notional promotion/retrospective promotion. While noticing all the judgments on this point, it has been held that the promotion is not a fundamental right. Though no doubt the seniority of 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases the employees would be reckoned from the date when the vacancy arose, that is from 2004, but the fact remains that since the examination was not held cannot be granted the promotion from the date of occurrence of vacancy, owing to the fact that under the revised Rules, the examinations were ultimately held in 2009, even if the department had taken the process earlier. Thus, we are of the view that the findings of the Tribunal based upon the findings in some earlier O.As. cannot be permitted to sustain. Orders impugned are set aside.

Petitions stand allowed.

Sd/-

AMIT RAWAL JUDGE Sd/-

K. V. JAYAKUMAR JUDGE nak 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases APPENDIX OF OP (CAT) 69/2017 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE LETTER NO 150101/4-B/GP'D TO LDC/1622/E1B(R-DPC) DATED 6.5.2010 ANNEXURE A2 TRUE EXTRACT OF THE GOVERNMENT OF INDIA, DEPARTMENT OF PERSONNEL & TRAINING OM NO 22011/3/91 ESTT(D)DATED 13.5.1991 ANNEXURE A3 TRUE EXTRACT OF THE GOVERNMENT OF INDIA, DEPARTMENT OF PERSONNEL & TRAINING OM NO 22011/9/89-ESTT(D) DATED 17.10.1994 ANNEXURE A4 TRUE COPY OF THE 1999 RECRUITMENT RULES FOR THE POST OF LOWER DIVISION CLERK ANNEXURE A5 TRUE COPY OF THE 2004 RECRUITMENT RULES FOR THE POST OF LOWER DIVISION CLERK ANNEXURE A6 TRUE COPY OF THE FINAL ORDER DATED 8.9.2004 IN OA NO 967/2013 ON THE FILE OF THIS HON'BLE TRIBUNAL ANNEXURE A7 TRUE COPY OF THE LETTER NO 150101/4-B/GP 'D' TO LDC/1904(R-DPC_ DATED 5.3.2005 ANNEXURE A8 TRUE COPY OF THE REPLY STATEMENT IN OA 111/2009 ON THE FILE OF THIS HON'BLE TRIBUNAL ANNEXURE A9 TRUE COPY OF THE SENIORITY LIST OF LDCS CIRCULATED A PER HQ LETTER NO 150153/LDC/2/E1B(R-DPC) DATED 2.3.2013 ANNEXURE A10 TRUE COPY OF THE REPRESENTATION DATED 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases 6.6.2013 SUBMITTED BY THE 1ST APPLICANT EXHIBIT P1 : TRUE COPY OF THE OA NO.913/2013 DATED 9-9-2013 FILED BY THE RESPONDENT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH EXHIBIT P2 : TRUE COPY OF THE REPLY STATEMENT IN OA NO.913/2013 DATED 27-11-2013 FILED BY THE PETITIONERS.

EXHIBIT P3 : TRUE COPY OF COMMON ORDER IN OA NO.913/2013 AND CONNECTED CASES DATED 5-8-2016 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

2025:KER:487 OP(CAT)NO.16/2017 & conn. cases APPENDIX OF OP (CAT) 70/2017 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE LETTER NO. 150101/4/-

B/GP 'D' TO LDC/1622 (E1B(R-DPC) DATED 6.5.2010.

ANNEXURE A1(A) TRUE COPY OF THE LETTER NO. 132402/26- D/454/E1B(S)/A1 DATED 6.7.2012.

ANNEXURE A2 TRUE EXTRACT OF THE GOVERNMENT OF INDIA, DEPARTMENT OF PERSONNEL AND TRAINING OM NO. 22011/3/91/ESTT (D) DATED 13.5.1991.

ANNEXURE A3 TRUE EXTRACT OF THE GOVERNMENT OF INDIA, DEPARTMENT OF PERSONNEL AND TRAINING OM NO. 22011/9/89-ESTT (D) 17.10.1994.

ANNEXURE A4 TRUE COPY OF THE 1999 RECRUITMENT RULES FOR THE POST OF LOWER DIVISION CLERK.

ANNEXURE A5 TRUE COPY OF THE 2004 RECRUITMENT RULES FOR THE POST OF LOWER DIVISION CLERK ANNEXURE A6 TRUE COPY OF THE FINAL ORDER DATED 8.9.2004 IN OA NO. 967/2013 ON THE FILE OF THIS HON'BLE TRIBUNAL.

ANNEXURE A7 TRUE COPY OF THE LETTER NO. 150101/4- B/GP D TO LDC/1904 EIB (R-DPC) DT. 5.3.2005.

ANNEXURE A8 TRUE COPY OF THE REPLY STATEMENT IN OA 111/2009 ON THE FILE OF THE TRIBUNAL.

ANNEXURE A9 TRUE COPY OF THE SENIORITY LLIST OF LDC'S CIRCULATED AS PER HQ LETTER NO. 150153/LDC/2/E1B(R-DPC) DATED 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases 02.03.2013 ANNEXURE A10 TRUE COPY OF THE REPRESENTATION DATED 06.06.2013 DATED 27.11.2013, FILED BY THE PETITIONERS.

EXHIBIT-P1: TRUE COPY OF THE OA NO.914/2013 DATE 08.09.2013, FILED BY THE RESPONDENT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT-P2: TRUE COPY OF THE REPLY STATEMENT IN OA NO.914/2013 DATED 27.11.2013, FILED BY THE PETITIONERS.

EXHIBIT-P3: TRUE COPY OF COMMON ORDER IN OA NO.914/2013 AND CONNECTED CASES DATED 05.08.2016 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

2025:KER:487 OP(CAT)NO.16/2017 & conn. cases APPENDIX OF OP (CAT) 102/2017 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE FINAL ORDER DATED 12.6.2012 IN OA 355/2011 ON THE FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

ANNEXURE A2 TRUE COPY OF THE ORDER DATED 4.12.2013 IN CONTEMPT PETITION (CIVIL) 55/2013 ON THE FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

ANNEXURE A3 TRUE COPY OF THE REPRESENTATION DATED 3.3.2014 SUBMITTED BY THE ONE OF THE APPLICANTS TO THE 3RD RESPONDENT.

ANNEXURE A4 TRUE COPY OF THE LETTER NO.120070/LDC/1562/E1B(S) DATED 26.6.2014 ISSUED ON BEHALF OF THE 4TH RESPONDENT.

ANNEXURE A5 TRUE COPY OF THE LETTER NO.150101/4-B/GP 'D' TO LDC/1094/EIB(R- DPC) DATED 5.3.2005 ISSUED ON BEHALF OF THE 3RD RESPONDENT ALONG WITH THE PANEL APPENDED TO IT.

ANNEXURE A6 TRUE COPY OF THE LETTER NO.132402/22/3183/EIB(S)/A1 DATED 24.4.2014 ISSUED ON BEHALF OF THE 3RD RESPONDENT.

ANNEXURE A7 TRUE COPY OF THE RELEVANT PORTION OF THE COMMAND SENIORITY LIST OF LDC AS PER PHYSICAL REPORTING DATED AS 1.1.2014.

ANNEXURE R1 TRUE COPY OF HQ CME PUNE LETTER NO.0853/LDC TO UDC/RESULT II/57/MES 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases DATED 03.12.2013.

ANNEXURE R2 TRUE COPY OF HQ CE SC LETTER NO.150101/LDC/2013-14/97/E1B (R-DPC) DATED 24.01.2014.

ANNEXURE R3 TRUE COPY OF HQ CE SC LETTER NO.132402/26/3163/E1B(S)/A-1 DATED 13.03.2014.

ANNEXURE R4 TRUE COPY OF SRO 129 DATED 18.08.2004.

ANNEXURE R5 TRUE COPY OF HQ CE SC LETTER NO.150101/4/LDC/2014-15/29/E1B9R-DP) DATED 04.04.2014.

ANNEXURE R6 TRUE COPY OF HQ CE SC LETTER NO.132402/26/3164/E1B(S)A-1 DATED 30.4.2014.

ANNEXURE R7 TRUE COPY OF SRO 27 OF 08.05.2013.

EXHIBIT P1 TRUE COPY OF THE OA NO 180/607/2014 DATED 30-06-2014 FILED BY THE RESPONDENT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, EERNAKULAM BENCH
EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT IN OA NO 180/607/2014 DATED 17-10-2014 FILED BY THE PETITIONERS
EXHIBIT P3 TRUE COPY OF ORDER IN OA NO 180/607/2014 DATED 05.07.2016 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH 2025:KER:487 OP(CAT)NO.16/2017 & conn. cases
APPENDIX OF OP (CAT) 199/2017 PETITIONER ANNEXURES
ANNEXURE A1 TRUE COPY OF THE RELEVANT PAGES OF SRO-

27 DATED 08.05.2013 IN RESPECT OF RECRUITMENT RULES FOR THE POST OF UPPER DIVISION CLERK.

ANNEXURE A2 TRUE COPY OF THE FINAL ORDER DATED 12.06.2012 IN OA NO.355/2011 ON THE FILE OF THIS HON'BLE TRIBUNAL.

RESPONDENT ANNEXURES ANNEXURE R1 TRUE COPY OF THE RECUITMENT RULES PUBLISHED VIDE SRO NO.27 DATED 08.05.2013 ANNEXURE R2 TRUE COPY OF THE E-IN-C'S BRANCH LETTER NO.B/20976/MES EXAM/E1C (2)/42 DATED 16.12.2014 PETITIONER EXHIBITS EXHIBIT P1. TRUE COPY OF THE OA NO.18000010/2015 DATED 04.01.2015 FILED BY THE RESPONDENTS BEFORE THE CAT, ERNAKULAM BENCH.

EXHIBIT P2. TRUE COPY OF THE REPLY STATEMENT DATED 22.05.2015, FILED BY THE PETITIONERS.

EXHIBIT P3. TRUE COPY OF THE ORDER IN OA NO.180/00010/2015 DATED 10.01.2017 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

2025:KER:487 OP(CAT)NO.16/2017 & conn. cases APPENDIX OF OP (CAT) 16/2017 PETITIONER ANNEXURES ANNEXURE A13 TRUE COPY OF THE LETTER NO.160101/4-B/GP 'D' TO LDC/REPN/85/E 1B (R-DPC) DATED 21.5.2013.

ANNEXURE A1 TRUE COPY OF THE LETTER NO.150101/4/-B/GP 'D' TO LDC/1622(E1B(R-DPC) DATED 6.5.2010.

ANNEXURE A1 (A) TRUE COPY OF THE LETTER NO.132402/26-D/454/E1B(S)/A1 DATED 6.7.2012.

ANNEXURE A2 TRUE EXTRACT OF THE GOVERNMENT OF INDIA, DEPARTMENT OF PERSONNEL AND TRAINING OM NO.22011/3/91/ESTT.(D) DATED 12.5.1991.

ANNEXURE A3 TRUE EXTRACT OF THE GOVERNMENT OF INDIA, DEPARTMENT OF PERSONNEL AND TRAINING OM NO.22011/9/89-ESTT.(D) DATED 17.10.1994.

ANNEXURE A4 TRUE COPY OF THE 1999 RECRUITMENT RULES FOR THE POST OF LOWER DIVISION CLERK.

ANNEXURE A5 TRUE COPY OF THE 2004 RECRUITMENT RULES FOR THE POST OF LOWER DIVISION CLERK.

ANNEXURE A6 TRUE COPY OF THE FINAL ORDER DATED 8.9.2004 IN OA 967/2013 ON THE FILE OF THIS HON'BLE TRIBUNAL.

ANNEXURE A7 TRUE COPY OF THE LETTER NO.150101/4-B/GP'D' TO LDC/1904(R-DPC) DATED 5.3.2005.

ANNEXURE A8 TRUE COPY OF THE REPLY STATEMENT IN OA 111/2009 ON THE FILE OF THIS HON'BLE TRIBUNAL.

2025:KER:487 OP(CAT)NO.16/2017 & conn. cases ANNEXURE A9 TRUE COPY OF THE REPRESENTATION DATED 10.12.2012 SUBMITTED BY THE 1ST APPLICANT.

ANNEXURE A10 TRUE COPY OF THE REPRESENTATION DATED 29.11.2012 SUBMITTED BY THE 2ND APPLICANT.

ANNEXURE A11 TRUE COPY OF THE REPRESENTATION DATED 27.11.2012 SUBMITTED BY THE 3RD APPLICANT.

ANNEXURE A 12 TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BY THE 4TH APPLICANT.

ANNEXURE A14 TRUE COPY OF THE REPRESENTATION DATED JULY 2013 SUBMITTED BY THE 2ND APPLICANT.

ANNEXURE A15 TRUE COPY OF THE REPRESENTATION DATED JULY 2013 SUBMITTED BY THE 3RD APPLICANT.

ANNEXURE A16 TRUE COPY OF THE REPRESENTATION DATED JULY 2013 SUBMITTED BY THE 4TH APPLICANT.

EXHIBIT P1 TRUE COPY OF THE OA NO.897/2013 DATED 9.9.2013, FILED BY THE RESPONDENT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT IN OA NO.897/2013 DATED 25.11.2013 FILED BY THE PETITIONERS EXHIBIT P3 TRUE COPY OF COMMON ORDER IN OA NO.897/2013 AND CONNECTED CASES DATED 5.8.2016, OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.