

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5000 of 2008

U.K. Kulmitra, aged about 51 years, S/O. Shri Kashiram, Office Assistant Grade-II, Office of Chief Medical and Health Officer, Kabirdham (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Health & Family Welfare Department, DKS Bhawan, Mantralaya, Raipur
2. Director, Health Services, Chhattisgarh, Raipur, C.G.
3. Block Medical Officer, Community Health Center, Bodla, Distt. Kabirdham, C.G.
4. A. Siddiqui, Accountant, Community Health Center, Wadrafnagar, Distt. Sarguja, C.G.
5. C.B. Pathak, Accountant, Community Health Center, Pandaria, District Kabirdham, C.G.

---- Respondents

For Petitioner	:	Shri Pallav Mishra, Advocate
For Respondent/State	:	Shri S.P. Kale, Dy.A.G.

Order On Board

28/09/2015

Heard.

1. The petitioner has filed this petition aggrieved by his supersession and non-promotion to the next higher post of Assistant Grade-I while his juniors have been promoted vide impugned order dated 31st May, 2008.
2. While the petitioner was posted as Assistant Grade-II in the office of Chief Medical and Health Officer, Kabirdham, there was an allegation of he being involved in commission of offence under Sections 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988. On account of charges having been framed against him in a corruption case, he was placed under suspension. The petitioner was, however, acquitted of the charges vide judgment of acquittal dated 30.6.2006. The suspension of the petitioner was therefore revoked on 24th January, 2007 and the petitioner joined in the office. Thereafter, in view of appeal having been preferred against judgment of acquittal, the petitioner was again placed under suspension vide order dated 10.9.2007. During the period, the petitioner was under suspension, the DPC was held by the

respondent on 24th October 2007. Obviously, for the reason that the petitioner was facing criminal proceedings and he was under suspension, he was not found fit for promotion.

3. The order of suspension dated 10.9.2009 was set aside vide order dated 30th January, 2008 giving rise to this petition.
4. Learned counsel for the petitioner submits that the reasons stated for he being not found fit for promotion are not supported by any records. He submits that the respondents ought to have deferred consideration of petitioner's case for promotion as he was under suspension. The reason assigned for his supersession are that his integrity is doubtful and remarks are poor, whereas at that time the respondents did not have with them, the ACR of the petitioner as the petitioner was suspended for long time and even on the date DPC was convened, he was under suspension. The respondents have not brought on record any ACR containing any remark of doubtful integrity. There is no ACR placed on record to show that the petitioner had earned poor remarks. The main operative reason as stated in the communication dated 2.1.2009 supplied to the petitioner under Right to Information Act is that the petitioner was continuing under suspension.
5. On the hand, learned counsel for the State submits that according to respondents, the main operative reason for holding the petitioner unfit for promotion is that his remarks are poor (*gha*) and his integrity is doubtful.
6. There is no material placed on record to substantiate that the petitioner was communicated poor ACR prior to the date of holding DPC nor is there any ACR of the petitioner recorded by the authority and kept on record to show that his integrity was doubtful.
7. What appears to be the main operative reason for denying the promotion of the petitioner is that the date on which DPC was held, he was under suspension. It appears that as appeal against petitioner's acquittal was filed before the High Court and the petitioner was again placed under suspension vide order dated 10.9.2007, the petitioner was not found fit for promotion.
8. Suspension order dated 10.9.2007 has already been set aside by this Court and later on, as is stated at the bar, the appeal against acquittal has also been dismissed.
9. In view of the above situation, the respondents are under an obligation to reconsider the case of the petitioner by a review DPC as on 24th October, 2007 and consider case of the petitioner of promotion on the basis of his ACR for the last 5 years prior to the date of DPC i.e. 24.10.2007 applying the statutory criteria as laid down in Rule 4 of the

Chhattisgarh Public Services (Promotion) Rules, 2003. The respondents No. 1 to 3 shall hold review DPC within a period of 4 months from the date of receipt of copy of this order. In case the petitioner is found fit, he will be entitled to seniority with effect from the same date on which his juniors/respondents No. 4 & 5 were promoted, with all consequential benefits of pay, perks and seniority.

10. The petition is accordingly partly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge