

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4801 of 2014**

- Raju S/o Nandlal Aged About 26 years R/o Village Bhanora, Post & P.S. Balrampur, Distt Balrampur- Ramanujganj, CG.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Department of Panchayat And Rural Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, Post Naya Raipur, Dist Raipur, CG.
2. Development Commissioner, Development Commissionerate, Vikas Bhawan, Civil Lines, P.S. Civil Lines, Tehsil Raipur, Raipur, Dist Raipur, CG.
3. Executive Engineer Rural Engineering Service, R.E.S. Division Balrampur, P.S. & Tehsil Balrampur, Distt Balrampur- Ramanujganj, CG.
4. K.K.Kindo Executive Engineer, Rural Engineering Service, R.E.S. Division, Balrampur, P.S. & Tehsil Balrampur, Distt Balrampur- Ramanujganj, CG.
5. Krishan Prasad Yadav S/o Jokhan Yadav Aged About 29 Years R/o Village & Post Aragahi, P.S. Ramanujganj, Distt Balrampur- Ramanujganj, CG.

---- Respondents

For Petitioner	:	Shri RS Baghel, Advocate
For Respondent-State	:	Shri Shashank Thakur, GA for the State
For Respondent No.4	:	Shri NN Roy, Advocate
For Respondent No.5	:	Shri DN Prajapati, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****30/07/2015**

1. Petitioner and respondent No.5 applied for recruitment for the post of Peon in the establishment of Rural Engineering Services, Balrampur Division. While the petitioner secured 17 out of 20 marks, the respondent No.5 secured 16 out of 20 marks. After publication of result, the recruiting agency invited claims and objections from the participants. An objection was raised

against the petitioner that despite the fact that he has incorrectly answered question No.10, 13 and 20, yet he has been granted 17 marks, whereas if answer to these questions are treated incorrect, he will only secure 14 marks, which is less than the marks secured by respondent No.5 i.e. 16 out of 20.

2. To examine the complaints, the concerned Collector constituted a three member committee. The committee concluded that answer given by the petitioner to the above stated questions were wrong and as a matter of fact, the petitioner should have been awarded only 14 marks out of 20 marks. Thus, after reducing his marks, respondent No.5 was offered appointment.
3. On the request of Shri RS Baghel, learned counsel for the petitioner, this Court went through the answer-sheet, as well as, the finding of the enquiry committee. It appears, the finding of the enquiry committee for question No.13 & 20 is not correct, inasmuch as in these questions, the object was not to test petitioner's knowledge about the language or grammar, but the object was to test his knowledge on the subject with which the question relates, however, the committee has treated the questions incorrect on the ground that the spelling of the answers written by the petitioner is incorrect. Thus, if only one answer i.e. answer No.10 is treated to be incorrect, then the petitioner will secure 16 out of 20, which is equal to the marks of respondent No.5.
4. True it is that the committee has not treated answer to question No.10 as incorrect, however, a perusal of the answer-sheet would clearly indicate that there is over writing while answering question No.10. The said question having related to subtraction of figures, any over writing in the figures would make the answer doubtful, as it is difficult to find out as to which figure was

written earlier and which was the corrected figure. The context in which the question was asked, answer to this question should not have been taken account while calculating the total marks.

5. It is well settled proposition of law that in case, the marks obtained by two candidates in written examination are equal, the older candidate shall be preferred to the younger. {See: **Public Service Commission, Uttaranchal Vs. Jagdish Chandra Singh Bora and Another**¹ (para 19)}
6. Applying the said criteria, respondent No.5, who is 29 years of age is senior in age to the petitioner, who is only 26 years of age. Thus, respondent No.5 would be placed above the petitioner in the merit list and as such the offer of appointment made to him does not suffer from any illegality.
7. Accordingly, the writ petition is dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Ashu

¹ (2014) 8 SCC 644