

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3632 of 2007**

1. Mahesh Kumar Garehwal S/o Late Shri Mannulal Garehwal, aged about 48 years, R/o H.No.11/587, Nayapara, Lakher Line Near Ashok Market, Raipur (C.G.)

---- **Petitioner****Versus**

1. State of Chhattisgarh, through Secretary, Department of Agriculture, D.K.S. Bhawan, Raipur (CG).
2. M.K. Chandrakar, Joint Director, C.G. State Seed & Agriculture Development Corporation Ltd.
3. S.R. Verma, Joint Director, Directorate Agriculture, Raipur (CG)
4. S.C. Padam, Joint Director, Agriculture, C.G. State Krishi Vipnan Board, Raipur (CG).
5. C.N. Singh, Joint Director, Agriculture, Bilaspur (CG).
6. P.K. Dabe Joint Director, Officio Under Secretary, Agriculture Department, Raipur (C.G.)

---- **Respondent**

For Petitioner	Shri Praveen Das, Advocate
For Respondent No.1	Shri B. Gopa Kumar, Dy. Adv. General
For Respondents No.2 to 6	Shri Ashish Shrivastava, Advocate

Hon'ble the Acting Chief Justice Shri Navin Sinha**Order On Board****20/03/2015**

1. Heard Counsel for the Petitioner, for Respondent No.1 and for private Respondents No.2 to 6.

2. The Petitioner assails grant of promotion to the private Respondents as Joint Director alleging that he has wrongly not being considered for promotion and was superseded by his juniors contrary to the law. He was facing humiliation having to work under his juniors. His representation has been rejected on 4-4-2007 by a cryptic, non-speaking one line order only that it did not merit consideration.
3. Learned Counsel for the Petitioner submits that even if promotion from the post of Deputy Director to Joint Director was on basis of merit-cum-seniority, the Petitioner had still to be considered unless there was anything adverse lowering him in merit below his juniors. Seniority could not be ignored relying on merit alone. If the Annual Confidential Report (ACR) for the past 5 years was to be considered and the benchmark required for promotion was 'very good' under Rule 7 (8) (9) of the Chhattisgarh Public Services (Promotion) Rules, 2003 (for short 'the Rules') and the Petitioner was not fulfilling the requirement of the benchmark, any other entry falling short of the benchmark operates as an adverse entry which was required to be communicated to the Petitioner enabling him to represent and be considered for promotion. He cannot be denied consideration for promotion on basis of an uncommunicated adverse entry. Reliance was placed on (2008) 8 SCC 725 {Dev Dutt v. Union of India}.
4. Learned Counsel for the State is not in a position to deny the submission that the entry in his ACR short of the benchmark was never communicated to the petitioner. Likewise, it is not in dispute on behalf of the private Respondents that they were junior to the Petitioner. It is

submitted on behalf of the private Respondents that if the benchmark was fixed under the Rules and the Petitioner admittedly fell short of the benchmark, it cannot be said that he has been prejudiced in any manner or that his case has not been considered properly and that the private Respondents have been promoted wrongly. Each of the private Respondents has entries above the benchmark as either 'very good' or 'excellent'. The promotion was based on merit-cum-seniority. The Respondents were thus more meritorious than the Petitioner.

5. The Court has considered the respective submissions. The only question for consideration is if any other entry short of the benchmark of 'very good' operates as an adverse entry or not, required to be communicated to the concerned to enable representation to be filed. The representation filed by the Petitioner has been disposed in one line by a non-speaking order stating that it merited no consideration.
6. If a benchmark was fixed for promotion and meeting the same was mandatory to enable a candidate to be considered, it does not need much discussion that in the facts of the case it effectively works as an adverse entry because the candidate is denied consideration for promotion on that ground alone. No further discussion is required in view of Dev Dutt (supra), relied upon by the Petitioner.
7. In Dev Dutt (supra), the Appellant was likewise superseded because he did not achieve the benchmark of 'very good' for the last 5 years ACR. Candidates only with 'very good' entries in their ACR for the last 5 years were considered. Similar grievance as presently was raised by the

Appellant therein that any other entry short of 'very good' operates as an adverse entry since it effectively debars the candidate from consideration. It had therefore to be considered as an adverse entry. If it had been communicated, a representation could be made with all possibilities of having it corrected also or future improvement. It was likewise contended on behalf of the Union of India that 'good' entry was not an adverse entry, which was required to be communicated. The contention of the Respondents did not find favour holding as follows :

“9. In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the *effect* which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

10. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned Counsel for the Respondent are distinguishable.”

8. The non-consideration of the Petitioner by the Departmental Promotion Committee when his juniors came to be considered and promoted, is, therefore held to be arbitrary and illegal contrary to Article 14 of the Constitution of India shutting the petitioner out from consideration altogether. The Petitioner is held entitled to be considered for promotion from the date that his juniors may have been promoted.
9. Let such consideration be done and appropriate final orders be passed within a maximum period of 8 weeks from the date of receipt and/or production of a copy of this order. The order dated 4-4-2007 rejecting the representation of the Petitioner is set aside.
10. The writ petition is allowed.

ACTING CHIEF JUSTICE

Gowri