

Op 8859/03 (4)
OA 867/94

IN THE MADHYA PRADESH STATE ADMINISTRATIVE TRIBUNAL AT
JABALPUR:

O.A. No. 867 of 1994.

W.P. No. 925/05

For use of Tribunals Office;

Date of filing	I
or	
Date of receipt	
by post	<u>22/4/94</u>
Registration No.	<u>3022</u>
REGISTRAR.	

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL,
ACT, 1985.

BETWEEN

1. APPLICANT : Krishna Dani Sinha, S/o Kalaram Sinha, aged about 43 years, R/o Shakti Nagar, Durg, at present working as PEON in the Office of E.E., P.W.D. (B&R), Division No 1, DURG, (M.P.)

+VERSUS+

2. NON-APPLICANT : 1. State of M.P. through Secretary, Public Works Department, Vallabh Bhawan, BHOPAL. M.P.
2. Executive Engineer, Division No 1, P.W.D. (B&R), DURG, M.P.
3. Liladhar Purbaiya, L.D.C. Div. No.1, E.E. Office. P.W.D. DURG, M.P.
4. Harbans Lal Chandrakar, Clerk, Division No. 1, E.E. P.W.D. DURG M.P.
5. Teerath Lal, L.D.C. Sub. Division Office BEMETARA, (P.W.D.). Distt. Durg M.P.

3. Particulars of order against which the



543

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 925 of 2005

- Krishna Dani Sinha

---- Petitioner

Versus

- State of M.P. And Ors.

---- Respondent

For Petitioner : Shri Alok Bakshi, Advocate.

For Respondent/State : Shri P.K. Bhaduri, GA with Shri S. Majid Ali,
Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

20/04/2016

1. The petitioner is claiming promotion on the post of LDC in the Department of PWD at Durg with effect from 3.12.1993 or 8.9.1988.
2. On 8.9.1988, respondent No.3 Liladhar Purbaiya and respondent No.4 Harbans Lal Chandrakar were promoted whereas on 3.12.1993, respondent No.5 Teerath Lal was promoted as LDC.
3. Drawing attention of the Court to the gradation list showing seniority of peons working in the Durg Division, learned counsel would submit that the petitioner was at S. No.47 whereas respondent No.3 Liladhar Purbaiya was at S. No.57 and respondent

No.4 Harbans Lal Chandrakar was at S. No.50, therefore, the petitioner being senior to them should have been promoted along with these two respondents on 8.9.1988. He would further submit that the petitioner was again superseded on 3.12.1993 when respondent No.5 Teerath Lal was promoted ignoring the petitioner's seniority and suitability. Learned counsel would refer to the instructions/circulars issued by the State Government, Department of Public Works to buttress the above submissions. Reliance is placed on a judgment rendered by this Court in the matter of **Mohan Lal Sahu & Others Vs. State of Chhattisgarh & Others** {WPS No.2723/2011, decided on 16.10.2015}.

4. On the contrary, learned State Counsel would submit that the record of DPC proceeding held in the year 1993 and the gradation list used therein would indicate that seniority was maintained from the date of entering into service and not on the basis of date of acquisition of qualifying examination of higher secondary pass.
5. It is informed by the parties that the subject promotion is not governed under any statutory rule framed under Article 309 of the Constitution. However, the State Government has issued instructions from time to time framing guidelines for such promotion. Vide circular dated 30th December, 1975, it was provided that for promotion of Class-IV employees to the post of LDC, a condition of continuous satisfactory working of 5 years on the feeder post should be made compulsory. In another circular issued on 28.11.1984, it was provided that 15% posts should be reserved for promoting such Class-IV employees to the post of LDC who have passed higher secondary examination and have completed 5 years regular service, with further provision that as

56

soon as the employee acquires qualification of higher secondary pass, his name be included in the gradation list which should be revised every time when the DPC is convened for making such promotion to ensure that qualified persons are not left out of the consideration.

6. Record of the DPC proceeding held in the year 1988 is not available with learned State counsel, although gradation list and list of candidates who were eligible for consideration for promotion to the post of LDC are available. The second list of eligible candidates contains the name of one Jai Singh who has acquired the qualification of higher secondary pass in the year 1987.
7. In course of hearing on 1.4.2016, this Court directed learned State counsel to produce the service book of the petitioner to ascertain as to whether the fact of his having passed matriculation examination in the year 1987 was recorded in the service book.
8. Learned State Counsel has made available to this Court the original service book of the petitioner which carries entry made on 8.3.88 mentioning that the petitioner passed higher secondary examination with grace marks in the supplementary examination in 1987. Thus the fact that the petitioner was eligible for consideration of his case for promotion in the year 1988 was known to the department, yet his name was not included in the list of eligible candidates although similarly placed candidate namely, Jai Singh who also passed matriculation examination in 1987 was included in the list of eligible candidates and was also promoted in 1988.
9. DPC record of the year 1993 also contains list of eligible Class-IV

employees. In column 5 of the list, the year of acquisition of qualification of higher secondary pass is mentioned. As against the name of petitioner, it is clearly mentioned that he has acquired the qualification in 1987 whereas as against respondent No.5, it is mentioned that he has acquired qualification in 1989. However, respondent No.5 was promoted ignoring the claim of the petitioner on the ground that he is placed lower in the list than respondent No.5.

10. In view of the circular issued by the State Government on 28th November, 1984, the Department is enjoined to prepare a list of eligible candidates, however, their original seniority is required to be maintained because the circular does not speak of a separate gradation list strictly to be made by reckoning seniority from the date of acquisition of qualification.
11. The above discussion makes it vivid that the subject promotion is not governed under any statutory rule framed under Article 309 of the Constitution of India. Therefore, method of preparation of gradation list and consideration for promotion is governed by the circulars issued by the State Government from time to time. The circulars also do not provide that seniority would be reckoned from the date of acquisition of qualification of higher secondary pass. Even otherwise gradation list and the list of eligible candidates which are part of the record produced before this Court would clearly indicate that the lists were prepared to reckon the seniority from the date of joining service and not on the basis of the date of acquisition of qualification of higher secondary pass. The petitioner was thus illegally and arbitrarily kept out of consideration during the DPC proceeding held in the year 1988

pursuant to which promotion order in respect of two juniors namely, respondent No.3 Liladhar Purbaiya and respondent No.4 Harbans Lal Chandrakar was issued on 8.9.88. The petitioner having already passed the matriculation examination in the year 1987 and one similarly placed candidate namely Jai Singh, who also passed matriculation examination in the year 1987, having been considered for promotion and promoted, the petitioner was also entitled for promotion. The criteria for promotion being seniority cum merit and the record of the DPC proceeding of 1988 having not been produced before this Court and the record of 1993 not containing anything adverse against the petitioner, he was clearly entitled for consideration of his case in the year 1988 itself because he was fully eligible for such consideration.

12. The question for grant of consequential benefits pursuant to an order for retrospective notional promotion was considered in (2007) 6 SCC 524 (**State of Kerala Vs. E.K. Bhaskaran Pillai**), observing as follows:

“4.....So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect



53

and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefits subject to there being any change in law or some other supervening factors....".

13. In a very recent judgment in the matter of **Prabhu Dayal Khandelwal Vs. Chairman, U.P.S.C. & Others** {AIR 2015 SUPREME COURT 3057}, the Supreme Court has observed thus:-

"10. In case the appellant is found to be entitled for promotion to the post of Chief Commissioner of Income Tax, he shall be promoted to the said post, with effect from the date of his entitlement. In such an eventuality, he shall also be entitled to all arrears of salary, as would have been payable to him, if he had been promoted as Chief Commissioner of Income Tax at the right time. Simultaneously, he would be entitled to revision of his retiral benefits."

14. In view of the above settled legal position, since the petitioner was entitled to be promoted as he was wrongly superseded by promoting his juniors, the Writ Petition is allowed. The respondents are directed to treat the petitioner as having been promoted to the post of LDC with effect from 8.9.88 and recalculate his pension in accordance therewith. The petitioner is also entitled for entire arrears of salary and pension w.e.f. 8.9.88 onward.

15. Let the entire arrears be paid to the petitioner within a period of 3 months from the date of submission of certified copy of this order before the competent authority.

Sd/-
Prashant Kumar Mishra
Judge