

CF 006

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No. 1853 /2003

PETITIONER

: K.M. Kashyap, S/o Late Shri I.R.
Kashyap, Aged about 41 years,
Working as Sub Engineer
in Department of Rural Engineering
Services, Block : Patharia,
Teh: Mangeli, Distt. Bilaspur (C.G.).

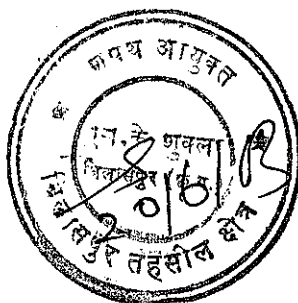
P. R. No. 1205703
Presented by Shri. Sunil Sahay
dated 21.06.03

- Versus -

RESPONDENTS

- (1). State of Chhattisgarh
Through Secretary, Department of
Panchayat and Rural Development,
Mantralaya, DKS Building,
Raipur (C.G.).
- (2). Superintending Engineer,
Rural Engineering Services,
Bilaspur Division,
Bilaspur (C.G.).
- (3). Shri Rajesh Kumar Dewangan,
Graduate Sub Engineer
(Now promoted as Asst. Engineer),
In the Office of Development
Commissioner, Pradhan Mantri
Gramin Sadak Yojana, Raipur (C.G.)
- (4). Shri Narayan Nimje,
Graduate Sub Engineer
(Now promoted as Asst. Engineer)
RES Sub Division, Thakatpur,
District Bilaspur (C.G.).

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION
OF INDIA FOR ISSUANCE OF SUITABLE WRIT, ORDER OR DIRECTION
TO DO JUSTICE IN THE MATTER.



16/12/16

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 1853 of 2003

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K.N. Kashyap

--- Petitioner

Versus

State Of Chhattisgarh & Ors.

--- Respondents

For Petitioner	:	Mr. B.D. Guru, Advocate
For Respondents No.1 & 2	:	Mr. Chandresh Shrivastava, Advocate
For respondents No.3 & 4	:	None appears

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

29/11/2016

Heard.

1. The grievance of the petitioner is in a narrow compass.
2. The petitioner was initially appointed on the post of Sub-Engineer in the Department of Rural Engineer Services. While in service, the petitioner desirous of improving his qualification, got admission in B.E. Course. The petitioner pursued study and appeared in the B.E. Examination held in the month of November, 2002. Result were, however, declared on 22.01.2003, in which, the petitioner was declared pass.
3. On 28.05.2003, DPC was convened for promotion to the next higher post of Assistant Engineer. Those graduate engineers who had obtained degree while in service, were also considered for promotion. The petitioner, however, was not considered for promotion in this quota. Junior officers Respondents No.3 & 4 who were graduate Sub-Engineer were considered for promotion in 20% quota and promoted. This gave arise of petitioner's grievance and led to filing of this petition.
4. Learned counsel for the petitioner relying upon the judgment of the Supreme Court in the case of **Chhotu Ram vs. State of Haryana and Others**¹

¹ (2000) 10 SCC 399



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submits that irrespective of the date of declaration of result, if the examination has been conducted prior to the cut-off date, the officer has to be held eligible. According to him, the petitioner had already appeared in the examination of B.E. Course and the result was declared well in advance on 22.01.2003 which was almost five months prior to the date holding of DPC. Therefore, non-consideration of petitioner's case for promotion as graduate Sub-Engineer against 20% quota is illegal, unjustified, arbitrary and unfair.

5. Per contra, learned State counsel submits that the governing Recruitment Rules known as Madhya Pradesh (Chhattisgarh) Rural Engineering (Gazetted) Service Recruitment Rules, 1986 (hereinafter referred as "Recruitment Rules of 1986") in the matter of consideration of cases for promotion, Rule 14 of the Recruitment Rules of 1986 clearly prescribed first of January of the year of consideration by DPC as the cut-off date. In the present case, the petitioner's result was declared after the cut-off date, therefore, he cannot be said to be possessed of the degree so as to entitle him for being considered for promotion against 20% quota of graduate Sub-Engineer.

6. It is next submitted that the judgment of the Supreme Court is distinguishable because that judgment is founded only on the basis of clarificatory circular issued in that case by the Government which is not the case here.

7. As far as reliance on the decision of the Supreme Court in the case of **Chhotu Ram (supra)** is concerned, it turns only on the basis of clarificatory circular wherein, it was clarified that irrespective of the date of declaration of result, if prior to the cut-off date, examination is held, the candidate would be held eligible.

8. In the present case, learned counsel for the petitioner could not bring to the notice of the Court any circular of the State Government that irrespective of the date of declaration of result, if the examination is held prior to cut-off date, the candidate would be treated as eligible.

9. The Rules are absolutely silent on this issue. Provision contained in Rule 14 of the Recruitment Rules of 1986 prescribes cut-off date only with reference to completed years of service and nothing more. There is hardly anything in the Rule to deal with such a contingency. In fact, at the time when the Rules was

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promulgated in the year 1986, there was no provision for separate quota of 20% of post of Assistant Engineer earmarked for only graduate Sub-Engineer. The Rules were amended in the year 1988 and at that time, it was provided for the first time that 20% of the post of Assistant Engineer to be filled up by way of promotion, shall be earmarked separately for graduate Sub-Engineer who have acquired degree in engineering while in service. That would mean that all those Sub-Engineer who obtained degree while in service will be entitled to consider for accelerated promotion against 20% of the vacancy of Assistant Engineer earmarked for promotion. This is a kind of incentive to those Sub-Engineer who have improved their qualification while in service. However, while bringing about this important change in the scheme of promotion, the respondents have not come out with any specific provision to deal with this contingency as to what would be the cut-off date for considering the case of promotion against 20% quota of Assistant Engineer from amongst those Sub-Engineer who have obtained degree engineering while in service. It has also been observed herein above that Rule 14 provides cut-off date only with reference to completed years of service.

10. It would have only been better if the State would have either clarified by way of circular or brought an appropriate corresponding amendment in the Rules, itself, to provide the cut-off date for consideration of cases for promotion of graduate Sub-Engineer against 20% quota. This is essentially in the matter of statutory policy of promotion or in the absence, an administrative policy to govern cases of candidate for promotion by prescribing eligibility with specific reference to a cut-off date. The petitioner had appeared in the examination in the month of November, 2002 and his result was also declared in the month of January 2003. The DPC was held long thereafter in the month of May, 2003. May be that in case an appropriate cut-off date would have been provided, the petitioner would have been considered for promotion in the graduate Sub-Engineer quota.

11. This Court cannot lay down an administrative policy of promotion. This aspect requires to be considered by the Government. Moreover, the Government could also invoke its power of interpretation under Rule 19 of the Recruitment Rules of 1986. In that view of the matter, I am inclined to issue direction to the State to consider the matter on administrative policy and take a decision in the matter so that the petitioner's case may be considered according to such decision. The matter should be considered and decision be

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taken within an outer limit of four months. If as a matter of policy the cut-off date is provided is fixed after the date the petitioner acquired degree, the respondent shall hold a review DPC to consider the case of the petitioner against quota of graduate Sub-Engineer as on the date his juniors respondents No.3 & 4 were considered and if he is found fit on the basis of records, the petitioner should be accorded seniority, on the post of Assistant Engineer from the date his juniors were promoted with all consequential benefits.

12. The petition is allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

ekha