

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3288 of 2005

- Dr. Ashok Kumar Dixit, S/o Thakur Prasad Dixit, Aged 55 years, R/o Mitra Vihar Colony, Behind Vandana Motors, Link Road, Bilaspur

---- Petitioner

Versus

1. Principal Secretary, Public Health and Family Welfare Deptt., Vallabh Bhawan, Bhopal.
2. Director of Health Services, Satpura Bhawan, Bhopal
3. Dr. Pradeep Kumar Kumare, working as ENT Specialist, District Hospital Betul, District Betul
4. Dr. Ramesh Mishra, working as ENT Specialist, District Hospital Mandsour, District Mandsour.
5. Dr. Bhgwan Singh Kushwaha, working as ENT Specialist, District Hospital Guna, District Guna.
6. Dr. Baksho Jo Hinduja, working as ENT Specialist, District Hospital Sidhi, District Sidhi
7. Dr. Ashok Kumar Jain, working as ENT Specialist, District Hospital Narsinghpur, District Narsinghpur.
8. Dr. Jagdish Chandra Meshram, working as ENT Specialist, District Hospital, Sagar, District – Sagar.
9. Dr. Narpat Singh Kukrele, working as ENT Specialist, District Hospital Betul, District Betul.
10. Dr. Ramlal Dhritlahre, working as ENT Specialist, District Hospital, Raigarh.

---- Respondents

For Petitioner : Mr. N.K. Vyas, Advocate
For State / Respondent 1 & 2 : Mr. Chandresh Shrivastava, Panel Lawyer
For Respondents No.3 to 10 : None present.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/10/2016

1. This petition has been filed by the petitioner aggrieved by supersession, on account of promotion of his juniors respondents No.3 to 10 vide order dated 13.04.2000. The petitioner preferred a representation aggrieved by supersession, which was also rejected vide order dated 04.05.2000, which is also challenged in this petition.

2. Facts necessary for decision of controversy involved in the petition are that the petitioner while working as Assistant Surgeon in the Department of Health Services became eligible for being considered for promotion to the next higher post of Specialist, which is a class – I post in the Health Services. The Departmental Promotion Committee (DPC) was convened on 09.08.1999 for consideration of cases of eligible candidates within the zone of consideration for the purpose of making promotion on 17 posts of General category, 4 posts of Scheduled Caste category and 6 posts of Scheduled Tribe category. Vide order dated 13.04.2000 while promoting 17 officers junior to the petitioner in the General category, the petitioner was superceded as he was not found fit for promotion. A petition was moved by the petitioner before the State Administrative Tribunal, which was transferred to this Court after abolition of the Tribunal.
3. Contention of learned counsel for the petitioner is that the petitioner was much senior to respondents No.3 to 10. According to him, respondents No.3 to 10 were placed in the seniority list at Sl.Nos. 173, 177, 182, 214, 218 as also much below at Sl. Nos. 1006 and 1007 respectively as on 01.04.1999. The petitioner's service record has been unblemished. The petitioner was never communicated any adverse Confidential Report, he has neither been charge-sheeted nor any penalty imposed on him. The respondents have not disclosed in the return as to why the petitioner was not found fit for promotion. Therefore, the supersession of the petitioner is illegal and unsustainable under the law. Prayer is that the respondents may be directed to consider the case of the petitioner for promotion as on 09.08.1999 by way of just and fair consideration and accord him promotion from the date when the juniors were promoted with all consequential benefits. Learned counsel for the petitioner submitted that the petitioner, upon reorganization of the State of Madhya Pradesh, was allocated to the State of Chhattisgarh. He was retired in the year 2005. It is submitted that though the petitioner was subsequently promoted as Specialist, the petitioner claimed for seniority as from 01.04.1999 may be granted with all consequential benefits.

4. On the other hand, learned counsel for the respondents-State submits that the case of the petitioner was considered by the DPC, on 09.08.1999, on the basis of criteria formulated by the Departmental Promotion Committee. It is submitted that the petitioner and other eligible candidates, by application of the criteria, were considered for promotion. He submits that in order to consider the case on merit, the respondents had formulated criteria in a manner that in order to suitable for promotion, an officer must have earned over all good grading with atleast good grade in A.C.R. for last two years and with the further stipulation that the officer should not have been awarded 'घ' (poor) grading in any of the last preceding relevant years of service in consideration by the DPC. As the petitioner did not fulfill the criteria, he was not found fit for the promotion.
5. After going through the facts, return filed by the respondents and documents on record, it is found that the pleadings of both the parties are quite vague. The case is to decided on the basis of material available on record, keeping in view that the petitioner has to prove that his case was not considered in accordance with the criteria laid down by the DPC. A perusal of the criteria applied by the DPC as contended in its minute (Annexure/R-2) reveals that in the matter of consideration of cases for promotion to the next hight post of Specialist, clause-2(फ) with reference to sub-clause (2)(अ) was made applicable. The correctness of return filed by the respondents has been accepted by the petitioner by filing no rejoinder to submit that DPC has wrongly applied the criteria, therefore, it has been examined whether on application of the criteria the petitioner's case was considered in proper manner or not.
6. The criteria under reference required that in order to be suitable and fit, the records of 5 years from 1993 to 1997 of Annual Confidential Records should not been of good category and non of them should have been graded as 'घ'. It has been further stipulated that last 2 years ACRs must have been graded as "good". With reference to this criteria, the respondents have stated in the return that the case of the petitioner was considered, therefore, he was not found fit. The petitioner did not file any rejoinder to traverse those pleadings to

submit before this Court that he had been graded “good” in the year 1996 and 1997, therefore, even if it is assumed that no adverse remark was communicated to the petitioner, in order to be promoted, the requirement is grading of “good” in the year 1996 and 1997. It is not the case of the petitioner that the petitioner's ACRs of the year 1996 and 1997 were not communicated to him, although he claimed that adverse remarks were not communicated. Therefore, there is no occasion for production of other records of the DPC.

7. In view of the above consideration, this Court reaches to the conclusion that the consideration of the petitioner's case for promotion did not suffer from any illegality so as to warrant interference by this Court. Therefore, the petition is liable to be dismissed and is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge