

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 213 of 2017**

(Arising out of order dated 17/05/2017 in WP(S) No.7168/2007 of the learned Single Judge of this Court)

H. R. Chauhan S/o Late Shri Puni Ram Chauhan, Aged About 58 Years
Collectorate, New Colony, Mahasamund (Chhattisgarh) Presently
Posted At Collectorate, Jashpur, District Jashpur (Chhattisgarh).

---- Appellant

Versus

1. State Of Chhattisgarh Through : Its Secretary, Tribal Welfare Department, Ministry, D K S Bhawan, Raipur (Chhattisgarh).
2. Additional Secretary, Government Of Chhattisgarh, Tribal Welfare Department, Ministry, D K S Bhawan, Raipur (Chhattisgarh).

---- Respondents

For Appellant	: Shri Roop Naik, Advocate
For State	: Shri UNS Deo, Government Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

15/11/2017

1. Heard the learned counsel for the appellant and the learned Government Advocate. This appeal is against the decision of the learned Single Judge refusing to interfere with the departmental decision to recall an order of promotion.
2. The premise on which the promotion given to the petitioner/appellant was withdrawn by the establishment was that he was involved in a criminal case in which charge-sheet was filed charging him with commission of offences punishable under different Sections of Indian Penal Code, including Sections 420 and 409. As rightly opined by the learned Single Judge in paragraph 8 of the impugned judgment, if the

trial Court had concluded the trial leading to the acquittal of the appellant, the writ Court would have quashed the order recalling the promotion. This is because, even if there was a criminal case pending, due mechanism that ought to have been adopted by the establishment, was to consider the case of the petitioner for promotion following the sealed cover procedure. It is not the law that the case of a person facing a criminal case is not to be considered for promotion. The sealed cover procedure will ultimately be handled depending upon the conclusion of the criminal case.

3. In the instant case, it is now brought on record along with covering memo dated 15/11/2017 filed by the learned counsel for the appellant that the criminal case against the petitioner/appellant ended in his acquittal. In that view of the matter, following the impugned judgment, we hold that the appellant is entitled to have the order impugned in the writ petition quashed for the reason that the criminal case against him has ended in his acquittal.
4. In the result, this writ appeal is allowed modifying the impugned judgment in the light of the order of acquittal in order dated 06/11/2017 in Criminal Case No. 700/2007 passed by the learned Judicial Magistrate First Class, Jaijaipur, District Janjgir Champa (C.G.) and consequently quashing the order impugned in the Writ Petition - Annexure P/3.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge