

W.P.(S) 1786/03

BEFORE THE STATE ADMINISTRATIVE TRIBUNAL AT JABALPUR (M.P.)

O.A.NO. 295 /1999 WP 13379/03

APPLICANT-

Shankerlal Dewangan aged
about 44 years, s/o late
Shri Samalia Dewangan, Asstt.
Sub-Inspector, Krishi Upaj
Mandi, Champa, Distt-Janjgeer,
Champa (M.P.)

Vs-

RESPONDENTS-

1/ State of Madhya Pradesh
Through-The Secretary,
Ministry of Agriculture,
Bhopal.

2/ Director Mandies,
Kishan Bhawan, M.P.
Bhopal.

3/ Commissioner,
Agriculture Mandi,
Kishan Bhawan, M.P.
Bhopal.

4- State of Chhattisgarh.
Through The Secretary
Ministry of Agriculture, Raipur.

4/ Dy. Director,
Rajya Krishi Vipran Mandi
Board, Bilaspur.

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

Attested



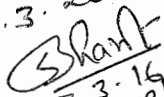
P.S.D

02.17.3.16

Amended by me.

as per Court-ord.

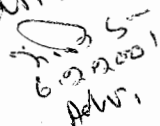
At. 17.3.2016



17.3.16
Santosh Bhanu
Adv

3A: M.D. Chhattisgarh State
Agriculture Marketing Board
G.E. Road Raipur

revised as per
rdt, 5.2.2021


6.2.2021
Adv.

"Respondent No.5 :

LAKHANLAL SAHU
Inspector Grade-2,

No.6 :

Om Prakash Sharma,
Inspector Grade-2,

No.7 :

Padamchand Saraf,
Secretary, Grade-4,

All Sl.Nos.5 to 7 Through-
Director, Agriculture (Mandi)
M.P., Sahkar Bhawan, Bhopal
(M.P.)

Amended
as per order
dt. 8.7.02
10.7.02

Attended
10.7.02



137

-1-

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1786 of 2005

Shankarlal Dewangan

---- Petitioner

Versus

State Of M.P. and Ors.

---- Respondents

For Petitioner	:	Shri Akash Pandey, Advocate
For Respondent-State	:	Shri Chandresh Shrivastava, Panel Lawyer
For respondent- C.G. Marketing Board	:	None appears

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

Order On Board

06/01/2017

Heard.

1. The petitioner is aggrieved on account of rejection of his claim for absorption on the post of Secretary Grade-IV or in the alternative, Marketing Inspector Grade-II in the State Marketing Services constituted under the Krishi Upaj Mandi (Mandi Nidhi Lekha Tatha Rajya Vipnan Sewa Ki Gathan Ki Riti Tatha Anya Vishaya) Niyam, 1980 (hereinafter referred to as "*the Rules of 1980*").
2. The petitioner was initially appointed as Nakedar in the year 1976 in Krishi Upaj Mandi Samiti at Champa. While he was working as such, the State Government, in order to constitute State Marketing Services, promulgated aforesaid Rules of 1980. These Rules contemplated constitution of a State Marketing Services. Rule 83 of the Rules of 1980 provided for absorption in the manner that the incumbents holding posts equivalent to the post included in the service immediately before the commencement of these rules shall be absorbed on suitable posts on the basis of their qualifications, experience and record of

service. It also contemplated constitution of a committee comprising of Chairman and two Members.

3. All over the State, there were large number of Mandies functioning in which large number of Secretaries, Inspectors, Nakedar were working though, as a part of local cadre of respective Mandies. An occasion, therefore, arose for consideration of large number of such Secretaries/Inspectors for absorption under Rule 83 of the Rules of 1980. The petitioner claimed for absorption stating that his service records is outstanding; he had worked as Accountant; he had undergone successfully and passed training as Secretary; he was officiating secretary of the Mandi. The claim of the petitioner, however, was rejected by order dated 14.11.1986. Thereafter, the petitioner again preferred representation, in response to which, he was communicated vide order dated 15.9.1992 (Annexure A-3) that ban has been imposed w.e.f. 27.7.1989 and as and when ban is lifted, his case shall be considered. The petitioner in the, meanwhile, came to know upon perusal of gradation list of 1990-91 that Nakedars junior to him were considered and absorbed as Marketing Inspector Grade-II namely Mansoor Khan and Lakkhu Prasad Gujare. It was also revealed that large number of Nakedar, Clerks were considered and absorbed as Marketing Inspector Grade-II and Secretary Grade-IV. The petitioner, thereafter, filed a petition in the High Court of Madhya Pradesh. That petition, however, was dismissed as withdrawn. Thereafter, in the year 1999, the petitioner filed an Original Application before the then existing State Administrative Tribunal at Jabalpur. Upon abolition of the Tribunal, the case of the petitioner was transferred to this Court.
4. Learned counsel for the petitioner submits that even though the petitioner's records of service was outstanding, full of appreciation, he had worked as Accountant, underwent successfully training of Secretary and fully qualified, he was illegally not absorbed as Secretary Grade-IV or Marketing Inspector Grade-II. It is submitted that number of juniors persons including Mansoor and Lakkhu were appointed and working as Nakedar were considered for absorption and appointed as Mandi Inspector Grade-II. Therefore, the case of the petitioner also ought to be favourably considered.
5. On the other hand, learned counsel for the State submits that the petitioner has

approached the Tribunal after a long delay, therefore, this petition is liable to be dismissed on the ground of delay and laches. According to him, vide memo dated 14.11.1986, the petitioner was informed that his case was considered and he was not found fit for absorption as Secretary. The petitioner, thereafter, did not take any expeditious steps and filed petition before the Tribunal as late as in the year 1999 for which, there are no explanation worth acceptance.

On merits, it is submitted by the learned counsel for the State that the scheme of absorption envisaged consideration of cases of absorption only when the incumbent was holding a post equivalent to the post included in the services. The petitioner was holding the post of Nakerdar, which has not been declared equivalent to any of the post included in the service under the Rules of 1980. Therefore, his claim was rightly rejected.

6. I have considered the rival submissions made by learned counsel for the parties and perused the records.
7. There is an objection to the maintainability of the petition on the ground of delay and laches. Though I find that the petitioner filed this petition after a long period, the explanation offered by the petitioner and the circumstances of the case warrant condonation of delay in filing the petition. The representation of the petitioner was rejected on 14.11.1986. However, the records show that in the year 1990-91, some of the Nakerdar and Clerks were absorbed. The petitioner thereafter again preferred representation and this time, he was assured for consideration of his claim after the ban is lifted, as is evident from memo dated 15.9.1992. He then also filed a writ petition before the High Court of Madhya Pradesh in the year 1993 though that petition was dismissed as withdrawn. The petitioner has stated in the affidavit by way of rejoinder that the counsel who was looking after the case at Jabalpur fell sick and withdrawal of the writ petition was not informed to him till 1998 and as soon as the petitioner came to know, he filed petition before the Tribunal in the year 1999. Therefore, considering this explanation, I am inclined to condone the delay in filing the petition.
8. Rule 83 of the Rules of 1980 provides for consideration of cases of absorption in following manner:-

"83. Absorption- The incumbents holding posts

equivalent to the post included in the service immediately before the commencement of these rules shall be absorbed on suitable posts on the basis of their qualifications, experience and record of service. A committee shall be constituted as follows for reviewing such cases and deciding post of absorption:

(1) Chairman, or any member of Madhya Pradesh State Agriculture Marketing Board nominated by the Chairman.....Chairman;

(2) Director of Mandies...Member;

(3) Joint Director of Mandies or any other officer appointed by the Government not below the rank of Joint Director of Agriculture.....Member-Secretary. The Director of Mandies shall issue absorption order of such staff."

9. According to this rule, the incumbents who were holding post equivalent to the post included in the service immediately before the commencement of the Rule were to be considered for absorption on suitable post based on their qualifications, experience and record or service. For this purpose, the Rule contemplated constitution of a Committee also. Therefore, the first condition for consideration of cases for absorption would be that immediately before the commencement of the Rules of 1980, the petitioner must be holding a post which is equivalent to the post included in the service. In the form XX appended to the Rules of 1980, strength of service including both the number and designation and scale of pay have been enumerated. Depending upon class of marketing committee, cadre posts have been specified. These posts are Secretary, Assistant Secretary, Marketing Inspector of different grade depending upon class of marketing committee. Learned counsel for the petitioner could not demonstrate from any of the provision of the Rules that the post of Nakerdar was considered equivalent to any post included in the service under the Rules of 1980.

10. The main plank of argument of learned counsel for the State is that as the



141

-5-

petitioner was holding the post of Nakedar and not that of Secretary Grade-IV or Mandi Inspector Grade-II in substantive capacity, but he was only working as Secretary in officiating capacity, he could not be considered for absorption on the post of Secretary Class-IV or Mandi Inspector Class-II.

11. In para 6.10, 6.11 and 6.12 of the petition, the petitioner has specifically named large number of Nakedar and Clerks who were considered and absorbed either as Secretary Grade-IV or as Marketing Inspector Grade-II. These facts have not been disputed in the return. The list filed along with the petition as Annexure A-1 and Annexure A-2 also supports the contention of the petitioner to establish that large number of Nakedar and Clerks were considered for absorption either as Secretary Grade-IV or Marketing Inspector Grade-II. It, therefore, appears that for the purpose of considering cases of absorption, the post of Nakedar was treated as equivalent to the post of Secretary Grade-IV or Marketing Inspector Grade-II. Therefore, the stand taken by the respondent that the petitioner could not be considered for absorption is not correct. The respondent cannot adopt pick and choose policy. If large number of Nakedar and Clerks were considered for absorption as Secretary Grade-IV and Marketing Inspector Grade-II, there was no reason to deny benefit of absorption to the petitioner either as Secretary Grade-IV or Marketing Inspector Grade-II only on the ground that the petitioner was actually not working as Secretary Grade-IV or Marketing Inspector Grade-II in substantive capacity.

12. In view of the above consideration, a direction needs to be issued to the respondent- State Agriculture Marketing Board to consider petitioner's case for absorption as Secretary Grade-IV or Marketing Inspector Grade-II. If the petitioner fulfills the other terms and conditions of absorption as embodied in Rule 83 of the Rules of 1980, he shall be considered and absorbed either as Secretary Grade-IV or Marketing Inspector Grade-II from the date his junior Mansoor Khan and Lakkhu Prasad Gujare were considered and absorbed. On that basis, his further claim for promotion on the next higher post shall also be taken into consideration by the respondent- State Agriculture Marketing Board subject to consideration of his service records. However, considering all the aspect, particularly that it is a case involving a dispute which has remained pending since 1986, the difference of wages on the post of Nakedar and post on which the petitioner may be absorbed (either as Secretary Grade-IV or

Marketing Inspector Grade-II), shall be paid to the petitioner to the extent of 25% only.

13. The petition is accordingly partly allowed to the extent and in the manner indicated above. No order as to costs.

Sd/-
Manindra Mohan Shrivastava
Jude

Praveen