

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT APPEAL No. 247 of 2017**

1. State Of Chhattisgarh Through The Additional Chief Secretary, Department Of Finance, Planning, Commercial Tax, Eco Statistics, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh).
2. The Commissioner Excise, Chhattisgarh, Raipur (Chhattisgarh).

---- Appellants**Versus**

1. Rajendra Tiwari S/o Shri G. P. Tiwari, Aged About 59 Years, Excise Sub Inspector, Circle Sitapur, District Surguja, Ambikapur (Chhattisgarh).
2. Pradeep Kumar Sharma, Assistant District Excise Officer, State Level Flying Squad, Raipur (Chhattisgarh).
3. M. C. Dubey, Assistant District Excise Officer Raigarh (Chhattisgarh).
4. Upendradhar Badgaiya, Asstt. District Excise Officer, Mahasamund (Chhattisgarh).
5. Mateen Ahmad Qureshi, Asstt. District Excise Officer, District Kawardha (Chhattisgarh).

---- Respondents

For Appellant/State : Shri R.K. Gupta, Deputy Advocate General
 For Respondent No.1 : Shri PKC Tiwari, Senior Advocate with Shri Kripesh Kela, 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****28/07/2017**

1. We have heard the learned Deputy Advocate General and learned counsel for the contesting respondents in this appeal which stands with an application seeking condonation of delay of

128 days.

2. Notwithstanding whatever ground has been projected in support of the application seeking condonation of delay, we have examined merits of the writ appeal.
3. The matter relates to promotion to the post of Assistant District Excise Officer and alleged denial of benefit of scale promotion.
4. Hearing learned counsel for the appellant-State and learned counsel for the respondent No.1 it is seen that the eligibility condition for promotion as applicable at the relevant time is seniority subject to fitness. As rightly noticed by the learned Single Judge in para No. 8 of the impugned judgment, in service jurisprudence, when seniority subject to fitness is the modality for promotions, the law is that promotions have to be made on the basis of seniority, subject only to the situation that a person who is unfit would be liable to be overlooked. The learned Single Judge has applied this principle, also taking into consideration the precedents in ***B.V. Sivaiah and others vs. V.K. Addanki Babu and others, AIR 1998 SC 2565*** and ***Hargovind Yadav vs. Reva Sidhi Gram Bank and Anr., 2006 (6) SCC 145***. We see no illegality in that finding.
5. The aforesaid position notwithstanding, the learned Single Judge has also held that even if the case of comparative evaluation is to be taken, there is clear material to show that the so-called adverse remarks were not communicated to the officer concerned. This obviously is in breach of the law laid down by the Apex Court in ***'Dev Dutt vs. Union of India & Others'***,

2008 (8) SCC 275. This issue has also been rightly decided by the learned Single Judge.

6. For the aforesaid reasons, we do not find any merits in this writ appeal. As a consequence no grounds are made out to sustain the application for condonation of delay as well.
7. In the result this appeal and the application for condonation of delay are dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge