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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7002 of 2008**

Jaywant Raj Walter (J. R. Walter) S/o Shri Walter Kumar, aged about 38 years, R/o Qtr. No. C-1/2, PWD Colony, ITI Rampur, Korba, District Korba (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Public Works Department, DKS Bhawan, Raipur (CG)
2. Chief Engineer, Public Works Department, Raipur (CG)
3. Superintendent Engineer, Public Works Department, Bilaspur Circle, District Bilaspur (CG)
4. Executive Engineer, Public Works Department, Korba Division, district Korba (CG)
5. Shri H. S. Sai, Assistant Engineer, Public Works Department, Sub Division Baikunthpur, District Korba (CG)

---- Respondents

For Petitioner	:	Shri Sanjay Patel, Advocate
For Respondents 1 to 4	:	Ms. Sunita Jain, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.09.2018**

The challenge in the present writ petition is to the order Annexure P-4 dated 19.09.2008 whereby respondent no.5 has been granted promotion on the post of Assistant Engineer and the petitioner in spite of being senior and eligible for promotion has not been granted promotion.

2. The facts of the case relevant for adjudication of the present writ petition are that the petitioner as well as respondent no.5 both were appointed by the same order dated 23.01.1996 on the post of Sub Engineer. The petitioner joined service on 19.02.1996 and respondent no.5 joined service only on 13.03.1996. Right from the date of appointment the petitioner was shown senior to respondent no.5 in all the gradation lists. In the gradation list published in the year 2005, the name of the petitioner stood at serial no.93 and the name of respondent no.5 was placed at serial no.94. Likewise, in the gradation list of the year 2007, the name of the petitioner appeared at serial no.478 whereas the name of respondent no.5 stood at serial no. 479. Thus, from the two previous gradation lists it is established that the petitioner is senior to respondent no.5. The next promotion post for the petitioner was the post of Assistant Engineer. The petitioner as well as respondent no.5 were found well within the zone of consideration for promotion on the post of Assistant Engineer. The DPC in the instant case was held on 24.07.2008. The rules governing the service condition of the petitioner is the CG Promotion Rules 2003 and the criteria for promotion from the post of Sub Engineer to the post of Assistant Engineer is seniority-cum- merit i.e. due weightage has to be given for the seniority among the candidates found eligible for promotion.

3. Counsel for the petitioner has challenged the promotion given to respondent no.5 on the ground that the petitioner being senior to respondent no.5 and was found eligible could not have been refused promotion and the promotion granted to respondent no.5 ahead of the petitioner was therefore bad in law and has prayed for quashment of the same.

4. Counsel for respondent/State opposing the petition submits that it is true that the petitioner and respondent no.5 both were found within the zone of consideration for promotion but when the overall assessment of the candidates was made, respondent no.5 was found to be more meritorious in as much as the assessment of previous 5 years ACR reflects that the petitioner had scored less marks as compared to respondent no.5 which led the State Govt. to grant promotion to respondent no.5 ahead of the petitioner. She submits that the criteria was seniority-cum-merit and therefore, some element of merit was also assessed among all the eligible candidates.

5. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that once when the criteria is seniority-cum-merit, reverse of the same cannot be applied by the respondents by applying merit-cum-seniority to the selection process. Seniority-cum-merit means it is the seniority which would have an upper hand and all that the respondents have to see is whether there is any disqualification prescribed under the rules with which eligible candidate or the candidate within the zone of consideration would be denied promotion. If not, the eligible candidate cannot be refused promotion by making a comparative assessment of all the eligible candidates which would amount to giving more weightage to merit as compared to seniority which would be in violation of the very criteria of seniority-cum-merit. The impugned order Annexure P-4 to that extent is not justified and the same deserves to be and is accordingly set aside/quashed.

6. The promotion to respondent no.5 was made way back about 10 years ago i.e. on 19.09.2008. No fruitful purpose would be served in setting

aside the promotion granted to respondent no.5 at this juncture after putting in 10 years service. Ends of justice would meet if the respondents 1 to 4 are directed to consider the case of the petitioner against any of the vacant post of Assistant Engineer and consider for grant of promotion to the petitioner along with respondent no.5 w.e.f. 19.09.2008. The consequential benefits to be notionally provided to the petitioner and all other actual benefits to be given from a prospective date.

7. The writ petition accordingly stands allowed.

**Sd/-
P. Sam Koshy
Judge**