

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4212 of 2010**

Suresh Prasad Sharma, S/o. Late C.P. Upadhyay, Aged about 60 years, Occupation Retired Joint Director, Public Prosecutor, Bilaspur, R/o. Sector-10, Qtr. No.2A, Bhilai, District Durg Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Chief Secretary, Government of Chhattisgarh, Dau Kalyan Singh Bhawan, Secretariat, Raipur Chhattisgarh
2. The Principal Secretary, Department of Home, State of Chhattisgarh, Dau Kalyan Singh Bhawan, Secretariat, Raipur Chhattisgarh
3. Chhattisgarh Public Service Commission, through: its Chairman, Shanker Nagar, Raipur, Chhattisgarh
4. The Director, Chhattisgarh Public Service Commission, Raipur Chhattisgarh
5. The Principal Secretary, Law & Legislative Affairs, Government of Chhattisgarh, Mantralaya, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh, D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh.
6. Shri Girish Kumar Kashyap, Joint Director, Public Prosecution, Raipur Range, Raipur, Chhattisgarh

----Respondents

For Petitioner	:	Petitioner in person.
For State	:	Mr. R.N. Pusty, Govt. Advocate
For Respondents/P.S.C.	:	Mr. Y.C. Sharma, Advocate
For Respondent No.6	:	None.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****03/10/2018**

1. The relief sought for by the petitioner in the present writ petition is for a direction to the respondents to grant promotion to the petitioner to the post of Additional Director (Prosecution) w.e.f. 09.02.2010 onwards. The further relief sought for by the present petitioner is for quashment of the letter/order dated 23.02.2010 (Annexure P/10), whereby the respondent/State Government has granted promotion

to the petitioner from the post of Deputy Director (Prosecution) to the post of Joint Director (Prosecution) with a retrospective effect from 07.02.2009 onwards i.e. the date on which the petitioner was actually promoted from Deputy Director to Joint Director.

2. The sum and substance of the petition is that the petitioner was entitled for promotion to the post of Additional Director (Prosecution) and in this regard the State Government had twice held the DPC, one on 11.02.2010 and again on 23.02.2010, but on both these dates for some reason or the others, the DPC could not finalize the promotion process and thereafter no further meeting of DPC was held for filling up of the post of Additional Director (Prosecution) and in between the petitioner stood retired on 28.02.2010.
3. According to the petitioner, if the authorities concerned would have considered the case of the petitioner, he would have retired on the post of Additional Director and would have got his retiral benefits and other benefits attached to the post of Additional Director and which has substantially put him to loss.
4. It was the further contention of the petitioner that on the date when the DPC was convened i.e. on 11.02.2010 as also on 23.02.2010, it was only the name of the petitioner, which was proposed by the State Government for promotion as he was the only Joint Director available and therefore the DPC had no other option, but to recommend the promotion of the petitioner on the post of Additional Director and it is for this reason the petitioner had filed the present writ petition.
5. It is also the contention of the petitioner that the respondents have wrongly deferred the case of the petitioner on 23.02.2010 awaiting

the reconsideration of the respondent No.6 for Additional Director for the reason that the respondent No.6 does not have any working experience as he has been working all along on the post of Deputy Director and for this reason also Annexure P/10 dated 23.02.2010 is bad in law and deserves interference by this Court.

6. The counsel appearing for the State Government as well as the Chhattisgarh Public Service Commission is concerned, submitted that on 11.02.2010 when the DPC was for the first time convened, on account of certain technicalities, the proceedings stood adjourned for 23.02.2010. He submits that as per the proceedings produced by the petitioner himself, it reveals that on 11.02.2012, the ACRs of the petitioner of the previous year i.e. 2009 was not available so also the gradation list/seniority list was not present with the DPC and certain members of the DPC were also not present, due to which the proceedings stood deferred for 23.02.2010. According to the counsel for the respondent No.1 to 3, before the meeting dated 23.02.2010 had been convened, there was a development which had taken place on 22.02.2010, wherein the respondent No.6 whose representation for promotion along with the petitioner on the post of Joint Director was considered and decided and the respondent No.6 was granted promotion from the post of Deputy Director to Joint Director with effect from the date the petitioner was promoted i.e. from 07.02.2009.
7. According to the respondents, since before 23.02.2010 i.e. the date of the subsequent DPC, the respondent No.6 was also granted promotion from a back date from the date the petitioner was

promoted, the DPC meeting held on 23.02.2010 further stood deferred and no further DPC was thereafter held.

8. The counsel for the respondents referred to the documents along with the writ petition, wherein it is the contention of the respondent No.6 that he was senior to the petitioner on the post of Deputy Director and therefore he should have been promoted on the post of Joint Director ahead of the petitioner. This being the factual dispute, the matter being deferred on 23.02.2010 and in between the petitioner superannuated on 28.02.2010 and hence no further development took place.
9. Taking this actual position, now if we look into the reply, which the respondents have filed particularly the State Government, wherein they have in paragraph No.13 in reply to paragraph No.8.11 have held that the claim of the petitioner is under consideration. The said reply of the State Government was filed as early as on 24.01.2012.
10. Given the aforesaid factual matrix of the case, considering the fact that undisputedly a DPC was convened for consideration of filling up of the post of Additional Director way back in February 2010 itself, it would be in the larger interest of justice, particularly in respect of the petitioner who would be otherwise put to great detriment if his case is not considered for promotion to the post of Additional Director.
11. Let the respondents therefore, in the light of the reply that they have taken and the fact that they have not further convened the DPC for filling up of the post of Additional Director, hold the DPC for filling up of the post of Additional Director on the position as is stood on 23.02.2011 when the DPC was formally convened and thereafter taking into consideration the *inter se* seniority between the

petitioner and the respondent No.6 and any other person in the seniority list, consider their case for promotion and thereafter pass a formal order of promotion of the most eligible candidate. In case if the petitioner is found eligible for promotion, let appropriate order be passed and the petitioner would thereafter be held entitled for all the consequential benefits including pension and other retiral dues on the emoluments that are otherwise payable on the post of Additional Director.

12. Let this exercise be completed within a period of 4 months from the date of the receipt of the certified copy of this order.
13. With the aforesaid observation, the present writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved