

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 5316 of 2006

Vinod Kumar Kesharwani, S/o. Late Shri Janak Ram Kesharwani, Aged about 54 years, Presently working as Assistant Commissioner in the office of the Commissioner, Department of Tribal Scheduled Caste Development, Pt. Ravishankar University Parisar, Raipur, Chhattisgarh, R/o. A/10 Revenue Colony, Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary Department of Tribal and Scheduled Caste Development, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. The Commissioner, Department of Tribal and Scheduled Caste Development, Pt. Ravishankar University Parisar, Raipur, Chhattisgarh
3. B.L. Mishra, Project Administrator, Integrated Tribal Department Project, Dharamjaigarh, District Raigarh Chhattisgarh
4. T.K. Vaishnav, Joint Director, Tribal Research and Training Institute, Pt. Ravishankar University Parisar, Raipur, Chhattisgarh
5. Smt. Dipti Banarjee, Deputy Commissioner, O/o. Commissioner, Department of Tribal and Scheduled Caste Development, Pt. Ravishankar University Parisar, Raipur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Anup Majumdar, Advocate along with Mr. Hemant Kesharwani, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.
For Respondent No.3	:	Mr. A.N. Bhakta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/12/2018

1. The petitioner has filed the present writ petition seeking for the following reliefs:-

“7.2 The Hon'ble Court may kindly be pleased to quash the promotion order dated 03.03.2006 (Annexure P/1) in respect of respondents No.3 to 5 by issuing writ of certiorari.

7.3 The Hon'ble Court may kindly be pleased to direct the respondents by issuing writ of mandamus to promote the

petitioner w.e.f. 03.03.2006 i.e. the date of promotion of junior to the petitioner with all consequential benefits and his name be placed in the seniority list of Deputy Commissioner/Joint Director before the respondents No. 3 to 5.”

2. The contention of the petitioner is that the petitioner was initially appointed as an Assistant Statistical Officer with the respondents on 25.07.1977, thereafter he was promoted on the post of Research Officer on 18.11.1996 finally rose up to the post of Assistant Commissioner under the respondents. A departmental promotion committee (DPC) was held for promotion to the post of Deputy Commissioner/Joint Director. The D.P.C. was convened on 17.01.2006. Though, according to the petitioner, he had fulfilled the minimum eligibility criteria for promotion, but, he was not considered for promotion in the D.P.C. that was held in the year 2006. That as per the information that has been supplied to the petitioner, he was found unfit without assigning any reason as to what was the unfitness.
3. According to the petitioner, till the date when the D.P.C. was convened, there was no adverse ACRs, which were communicated to the petitioner and therefore, any such uncommunicated adverse ACRs, could not have been taken into account by the respondents for declaring the petitioner unfit. He further submits that even if, there were some disciplinary proceedings pending against the petitioner, even then the petitioner could not have been declared unfit, rather the petitioner's case should have been considered and placed in a sealed cover subject to the outcome of the disciplinary proceedings.
4. The counsel for the petitioner further submits that finally the disciplinary proceedings culminated on 22.07.2011, where the petitioner was

inflicted with a minor punishment. According to the petitioner, since he was inflicted with a minor punishment, the said minor punishment could not have come in the way of the petitioner being considered for promotion, when his immediate junior was considered in the D.P.C., that was held in the month of January, 2006 and thus prayed for an appropriate relief.

5. The State counsel on the contrary submits that the perusal of the record itself would show that the petitioner on the date of the D.P.C. i.e. in the year 2006 was undergoing a disciplinary proceedings and since he was undergoing a disciplinary proceeding, his case could not have been considered and further the fact that the petitioner immediately has been inflicted with a punishment on 22.07.2011 and the petitioner become dis-entitled for promotion and therefore the petitioner does not have any strong case made out.
6. Having heard the contentions put forth on either side and on perusal of record, what reflects from the proceedings that have been brought on record is that the petitioner was while working as a Research Officer placed under suspension in August, 2004 and a charge sheet was later on issued to the petitioner in November, 2004 and a departmental enquiry was also conducted which finally resulted in the charges being found proved and the petitioner was inflicted with a punishment vide order dated 22.07.2011.
7. Given the said facts, even if the contention of the petitioner is accepted that the case of the petitioner should had been placed in a sealed cover, this Court is of the opinion that things would not have improved so far as the petitioner's claim for promotion is concerned, as the departmental

enquiry which was initiated finally resulted in a punishment. As long as there was a pendency of the D.P.C., the petitioner could not have been promoted. The fact that the departmental enquiry has resulted in the punishment would dis-entitle the petitioner for promotion. Had the petitioner been exonerated in the departmental enquiry, then perhaps, the claim of the petitioner would have become strong and the matter could have been considered relating it back to the date of D.P.C. that was held in January, 2006. However, since the departmental enquiry has resulted in a punishment, the petitioner would not have been entitled for any promotion, even if he would have been considered by the D.P.C. in January, 2006 held and as such no substantial prejudice has been caused to the interest of the petitioner.

8. So far as uncommunicated ACRs are concerned, this Court is of the opinion that we need not delve into that issue as the petitioner admittedly was subjected to a disciplinary proceeding, when the D.P.C. was held and the disciplinary proceedings resulted into a punishment in July, 2011.
9. In view of the same, this Court does not find any strong case made out by the petitioner to interfere with the promotion order, which was issued on 03.03.2006 (Annexure P/1) and the writ petition to that extent, therefore stands rejected. However, in case, if the petitioner is found eligible for promotion for the subsequent period after the punishment order was passed, it is left open for the petitioner to approach the authorities concerned, and the respondent authorities on the petitioner's representation, if any, shall consider the same in accordance with the rules and regulations available.

10. With the aforesaid observations, the writ petition accordingly stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved