

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 17 of 2006**

Y.K.Dewangan, aged about 44 yrs. S/o Late Mahabir Dewangan, Ass.
Grade. III Officer of the SDO, PWD Sub Division Patan, Post Office Block
and Tahsil Patan, District Durg. **---- Petitioner**

Versus

1. State Govt. of M.P., Through the Secretary, PWD Department, Vallabh Bhawan, Bhopal (MP)
2. Superintending Engineer, PWD, Durg Circle, Durg.
3. Shrimati Suneeta Agrawal, Asstt. Grade II, Durg Circle, Durg,
4. Shri S.C. Varma, Asstt. Grade II, PWD Sub Division, Rajnandgaon
5. Shri V.B. Dehekar, Asstt. Grade II, PWD Sub Division Rajnandgaon,
6. The Chief Engineer (East Zone), PWD Raipur
7. The Engineer-in-Chief, State Govt. of MP, PWD Satpura Bhavan, Bhopal
---- Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For Respondent/State	:	Mr. Manish Nigam, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****30/04/2018**

Heard.

1. The petitioner had filed an Original Application before the State Administrative Tribunal in the year 1998, aggrieved by the supersession in the year 1988. After the abolition of the Tribunal, the petition was transferred to this Court.
2. The petitioner's grievance, as ventilated in the petition, is that in the matter of promotion of Lower Division Clerk to Upper Division Clerk, the respondents have applied criteria of comparative merit whereas even according to respondents, as stated in their return, the criteria was seniority-cum-merit.
3. Learned counsel for the petitioner would argue that the petitioner was senior to respondents No.3 to 5 but he was superseded and private respondents were promoted by application of criteria of comparative merit. The petitioner's service

records for the relevant five previous years did not contain any adverse material like adverse remarks, penalty or any other material to warrant denial of promotion but it was only because of the criteria that juniors were promoted and the petitioner was superseded. Therefore, the respondents may be directed to consider and grant the promotion to the petitioner since 1988 when respondents No.3 to 5 were promoted.

4. Per contra, learned State counsel would submit that the present petition is liable to be dismissed only on the ground of delay and laches. He would submit that though the petitioner suffered supersession way back in the year 1988, he filed Original Application before the Tribunal as late as in the year 1998. He would submit that his representation was rejected in the year 1988 itself and repeated representation would not justify filing of petition after such a long time. On merits, he would submit that though the petitioner was senior, according to the criteria prepared by respondent, different marks were awarded for different ACR grading for relevant years. Further one of the respondent was possessed of Accountancy Training Certificate, therefore, juniors were found fit and promoted.

5. Having considered the submission of learned counsel for the parties, in the opinion of this Court, the petitioner's claim for promotion from 1988 is concerned, is liable to be dismissed only on the ground of delay and laches. It is apparent that the juniors of the petitioner were promoted way back in the year 1988 and even representation was also rejected in that very year. But thereafter, the petitioner did not approach the Tribunal within a reasonable time. In fact, under the provision of the Administrative Tribunals, Act 1985 (for short 'the Act of 1985'), there was period of limitation prescribed for filing original application and even by application of those provision as contained in Section 21 of the Act of 1985, the petition was hopelessly barred.

6. It is trite law that claim for promotion and seniority should be raised at the earliest possible opportunity and indolence and indifference on the part of the employee would by itself is sufficient to deny any relief irrespective of merits of his claim. It is relevant to note that even representation was also rejected in the year 1988, itself.

7. Submission of learned counsel for the petitioner that the rejection did not contain any reason, therefore, the petitioner had made representation and was therefore justified in awaiting decision on those representation for indefinite period, is required to be rejected. Repeated representation do not enlarge time. If decision was not taken on representation then also the petitioner was required to act with promptitude and approach the Tribunal within a period of limitation prescribed under Section 21 of the Act of 1985 or in any case within a reasonable time. While dealing

with the matter under Article 226 of the Constitution of India, this Court would definitely take into consideration that the petitioner has approached the Court after 10 years of rejection of his representation and supersession.

8. As far as merits of the case are concerned, this Court in the case of **Rajendra Tiwari Vs. State Of Chhatisgarh in WPS No.5058 of 2005**, has considered the distinction between the criteria of seniority-cum-merit and merit-cum-seniority, held as below:

“8. In the service jurisprudence, known criteria for promotion are selection based purely on merit, promotion on the criteria of merit-cum-seniority, promotion based on seniority-cum-merit, promotion based on seniority-cum-fitness. Promotion is a reward and whenever promotions are made, some kind of criteria is required to be fixed. Ordinarily, while granting promotion in the lower rank of post, comparative merit criteria is not resorted to and subject to fitness, promotions are made on the basis of seniority. When promotions are made to higher posts, merit starts playing role. It is in three parts – Firstly, where it is based purely on selection and seniority has no relevance. The other two criteria are merit-cum-seniority and seniority-cum-merit. In most of the public services, while in the matter of promotion to the lower rank of post, subject to fitness, seniority is made a basis, in the matter of promotion to the higher rank of post, carrying higher duties and functions, merit plays a prominent role. The well known jurisprudential concept of merit-cum-seniority and seniority-cum-merit and distinction thereof was considered by the Supreme Court in its authoritative judicial pronouncements in the case of B.V. Sivaiah (supra), the Supreme Court examined the concept of seniority-cum-merit as below -

“17. On behalf of the promoted officers it was urged that for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service seniority can have no bearing and promotion has to be made on a comparative assessment of merit of such officers. We are unable to agree. while applying the principle of seniority-cum-merit for the purpose of promotion what is required to be considered is inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the selected list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to the such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion the basis of seniority-cum-merit seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service.”

9. The aforesaid authoritative pronouncement of the Supreme Court has been followed in subsequent decisions in the case of **Hargovind Yadav v. Rewa Sidhi Gramin Bank (2006 6 SCC 145, Rajendra Kumar Srivastava and ors. v. Samyut Kshetriya Gramin Bank and ors., 2010 (1) SCC 335, Haryana State Warehousing Corporation and ors., 2011 (3) SCC 422 and Prabhu Dayal Khandelwal v. Chairman, Union Public Service Commission and ors., 2015 (14) SCC 427.**

10. The essential distinctions pointed out in the aforesaid decisions, as

between criteria of seniority-cum-merit and merit-cum-seniority, is while in the cases of promotion based on merit-cum-seniority, merit prevails, in considering cases of promotion applying criteria of merit-cum-seniority, a minimum benchmark of merit is prescribed and all the eligible officers who fulfill minimum benchmark of merit are considered for promotion on the basis of their *inter se* seniority. Therefore, fixation of certain minimum benchmark of merit has an attribute of criteria of seniority-cum-merit because in such a case, merit does play a role. In such cases, there is no comparison on merit of two officers. For illustration, if junior and senior officers fulfill minimum eligibility criteria and minimum benchmark of merit is fixed under the rule or by the DPC, even if senior officer is more meritorious and efficient, junior officer would be preferred in the matter for promotion. But in the case of merit-cum-seniority or in the case of promotion made purely based on selection, a comparative merit exercise is required to be undertaken. In such cases, a more meritorious officer, even though junior, would march-past his senior and would get promotion.

11. From the aforesaid well settled legal position, it is clearly discerned that prescription of minimum benchmark of merit would be applicable in the matter of promotion based on the criteria of seniority-cum-merit. Seniority subject to fitness, on its rational, fair and logical interpretation would only mean that the officer is fit for promotion when there is nothing adverse against him. In such cases, where integrity is not in doubt, there are no adverse entries, no departmental enquiry pending or any penalty or any other kind of adverse material, the officer has to be adjudged as fit. A distinction between fit for promotion and merit for promotion has to be underlined. Even if an officer may not achieve minimum benchmark, meaning thereby that higher ACR grading like Excellent or Very Good, yet he may be fit i.e. there is nothing adverse against him. Therefore, the scale of fitness is different from scale of merit. May be in a given case, in the necessity of particular employment, the employer may lay down particular standard of fitness with an award grade of ACR. As long as it is not done, it must be understood that there is nothing adverse against the employee and he is not required to be possessed of any minimum standard of merit. In the present case, promotions are based on the rules framed by the Governor in exercise of power under Article 309 of the Constitution of India which has statutory force. The historic development of the rule applicable in the present case has been noticed by this Court that earlier, the criteria of promotion was based on merit and later on, rule was relaxed in so far as promotion from Class III to Class II post is concerned, while retaining the requirement of merit as a criteria for promotion in the matter of promotion from Class II to Class I post. In this background, the interpretation of rule and criteria of promotion on seniority-cum-fitness should only be understood in the sense that the employee should be promoted on the basis of seniority provided that there is nothing adverse against him like doubtful integrity, departmental enquiry, criminal case, penalty, deleterious material etc.”

9. In the present case, even according to the State, criteria for promotion was seniority-cum-merit that would mean that it was open for the respondent to fix a minimum benchmark of merit and then to consider cases of promotion of all the employees who are eligible by application of minimum benchmark criteria and all those, who were possessed of minimum benchmark were entitled to be promoted on the basis of their seniority.

10. What is reflected from the return of the respondent is that respondent compared cases on comparative basis rather than seniority based on minimum benchmark criteria. Therefore, though the petitioner is not entitled to seek consideration for promotion from 1988 when his junior were promoted, the

petitioner would certainly be entitled for consideration of his promotion to the next higher post from the date of filing of the petition, if not already promoted, by applying principle laid down by this Court in the case of *Rajendra Tiwari (supra)*, discussed herein above.

11. The petition is accordingly partly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge