

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3977 of 2005**

Devendra Kumar Dubey aged about 45 years son of Shri C.P.Dubey, R/o Civil Lines, Mahasamund, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary cum Commissioner Scheduled Caste & Scheduled Tribe, Backward Classes and Minority Welfare, DKS Bhawan, Raipur (CG)
2. State of M.P. through Secretary, Scheduled Caste and Scheduled Tribe Welfare Department, Vallabh Bhawan, Bhopal (MP)
3. The Commissioner, Tribal Development and Welfare Deptt. Satpura Bhawan, Bhopal M.P.
4. The Collector, District Mahasamund Chhattisgarh

---- Respondents

Shri Kishore Bhaduri and Shri Sunny Agrawal, counsel for the petitioner/s.
Shri Dhiraj Wankhede, Govt. Advocate for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****18/01/2018**

The petitioner has filed this petition aggrieved on account of non-promotion in the year 1998.

2. Facts necessary for decision of the petition are that at the time when the petitioner was substantively posted as Area Circle Organizer in the department of Scheduled Caste and Tribe, Backward Classes and Minority Welfare Department in the services of the State of Chhattisgarh, DPC was convened in the year 1997 in which, the case of the petitioner and other eligible Circle Organizers within the zone of consideration were considered. Though according to the petitioner, his services were

meritorious and unblemished, the petitioner was not found fit for promotion and other Circle Organizers were promoted vide order dated 17/07/1998.

3. The petitioner preferred representation on 10/08/1998 which remained pending until it was rejected vide communication dated 22/08/2000. The petitioner, aggrieved by rejection of his representation and non-promotion, filed Original Application before the State Administration Tribunal, Bench at Raipur. The Tribunal was abolished and the petitioner's case was received upon transfer by this Court.

4. Learned counsel for the petitioner submits that petitioner's case for promotion has not been considered in a just, fair and proper manner. It is submitted that service records of the petitioner were clean and unblemished and the petitioner was never communicated any adverse remark having deleterious effect on the quantity of performance. Therefore, in these circumstances, the petitioner was entitled to be promoted. He would further submit that number of Circle Organizers promoted vide order dated 17/07/1998 were junior to the petitioner. Therefore, it is clear that the petitioner suffered supercession also for which, there is no reason. Learned counsel for the petitioner would rely upon decision of the Supreme Court in the case of **Sarat Kumar Dash and ors v. Biswajit Patnaik and ors., 1995 Suppl. 1 SCC 434.**

5. State counsel would submit that the petition is liable to be dismissed not only on the ground of delay and laches but also on account of non-joinder of necessary parties. Learned counsel submits that the petitioner's claim of promotion from the date, other officers were promoted in the year 1998, is liable to be rejected because all those officers, who were promoted vide order dated 17/07/1998 have not been impleaded as party. Next submission is that the petitioner's cause of action arose when other officers were promoted vide order dated 17/07/1998 but the petitioner did not take recourse to remedy under the law. Mere filing of representation would not justify long delay of more than two years in filing the petition.

On merits, submission of learned State counsel is that according to the Chhattisgarh Tribal and Harijan Welfare (Gazetted) Service recruitment Rules, 1969 (for short 'the Rules of 1969'), the criteria for promotion is merit-cum-suitability having due regard to seniority. Therefore, the DPC had evolved mechanism for assessment on merits. The petitioner was graded as 'average' whereas other employees who were promoted were graded either as 'excellent' or as 'very good'. Therefore, the petitioner being less meritorious could not get promotion against vacancies available for promotion. In the year 2010, the petitioner was finally promoted upon consideration of merits and availability of vacancies. Therefore, there is no illegality in the action of the respondents. In support of his submission, he would also rely upon affidavit and relevant records of DPC containing minutes of proceedings.

6. A perusal of Rule 14 and 15 of the Rules of 1969 would reveal that the criteria for promotion to the post of Area Organizer is merit and suitability in all respects, with due regard to seniority. That means the criteria is merit-cum-seniority. Therefore, in such a case, seniority alone cannot be made a basis for promotion but the criteria for promotion would be merit and those who are more meritorious will march past even their seniors. The DPC records placed before this Court show that in order to categorize the officers as good, very good and average, the ACRs of the last 5 years were made basis. On cumulative basis, grading was given. The petitioner was graded as 'average' whereas large number of officers were graded 'very good' and some of the officers were graded as 'excellent'. It is not a case of the petitioner on facts that even after granting promotion to those who were graded 'excellent' and 'very good', vacancies remained available, yet the petitioner was not promoted.

7. Reliance placed on the decision of the Supreme Court in the case of **Sarat Kumar Dash** (supra) is misplaced in law. In that case also, Hon'ble Supreme Court explained the principles of merit-cum-suitability as below -

“8. In case of merit-cum-suitability, the seniority should have

no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a junior most man may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service, and accelerates ability and encourages merit to improve excellence. The seniority would have its due place only where the merit and ability are approximately equal or where it is not possible to assess *inter se* merit and the suitability of two equally eligible competing candidates who come very close in the order of merit and ability. Under those circumstances, the seniority will play its due role and calls it in aid for consideration. But in case where the relative merit and suitability or ability have been considered and evaluated, and found to be superior, then the seniority has no role to play. In our view the PSC has evolved correct procedure in grading the officers and the marks have been awarded according to the grading. It is seen that the four officers have come in the grading of 'B'. In consequence, the PSC had adopted the seniority of the appellants and Panda in the lower cadre in recommending their cases for appointment in the order of merit.”

8. As far as objection to the maintainability of the petition is concerned, I am not inclined to dismiss the petition on that ground because the petitioner's representation was rejected, communication of which was made only vide memo dated 22/08/2000. Therefore, fresh cause of action arose for the petitioner to file Original Application before the State Administrative Tribunal. But for the reason that persons who were promoted vide order dated 17/07/1998 were not impleaded as party would also be one of the reason for this Court not to grant any relief to the petitioner.

9. In the result, no case is made out. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge