

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 418 of 2017***{Arising out of Order dated 26.07.2017 passed in Writ Petition (S) No. 7709 of 2007 by the learned Single Judge}*

1. Chhattisgarh State Agricultural Marketing Board Through Its Managing Director, Purani Ganj, Mandi Parisar, Raipur, District Raipur Chhattisgarh.
2. Managing Director, Chhattisgarh State Agricultural Marketing Board, Purani Ganj, Mandi Parisar, Raipur, District Raipur Chhattisgarh.
3. State Of Chhattisgarh, Through Secretary, Krishi Upaj Mandi Samiti, Naya Raipur, District Raipur Chhattisgarh

---- Appellants**Versus**

1. Thomas Toppo S/o Late Augustus Toppo, R/o Ambikapur, District Surguja Chhattisgarh.
2. Jageshwar Kumar Kanwar, Secretary (Junior), Krishi Upaj Mandi Samiti, Nagri, District Dhamtari Chhattisgarh

---- Respondents

For Appellants : Shri Y.S.Thakur, Additional Advocate General.
 For Respondent No. 1 : Shri Manoj Paranjpe, Advocate.
 For Respondent No. 2 : Shri Amrito Das, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Sanjay Agrawal, Judge

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****30/08/2018**

1. Heard counsel for the parties.
2. The Respondent No. 1 was Petitioner before the writ court. He assailed the decision of the Appellants who found him to be unfit for promotion to the post of Senior Secretary, Grade IV in Mandi services.
3. An exercise for grant of promotion from Junior Secretary to Senior Secretary was initiated and a Departmental Promotion Committee (*for*

short 'the DPC') convened a meeting on 27.01.2005. The DPC shortlisted 31 candidates for consideration out of which 16 persons were found fit but did not include the private Respondent No. 1. He submitted before the learned Single Judge that even though he was senior to many a promoted persons, his claim for promotion was ignored for extraneous reasons.

4. From the order impugned dated 26.07.2017 passed by the learned Single Judge, it seems that the whole case was built up on the line of judgment which was rendered in case of ***Rajendra Tiwari v. State of Chhattisgarh*** {Writ Petition (S) No. 5058 of 2015}, decided on 11.01.2017. The learned Single Judge, going by the rationale and reasoning and using the order of *Rajendra Tiwari (supra)* allowed the writ application with a direction upon the Appellants to hold a review DPC and then take a decision on the issue of grant of promotion to the private Respondent No.1 *i.e.* the Petitioner before the writ court.

5. The Appellants are aggrieved by the said order and have taken two legal grounds to assail it. The first argument on behalf of the counsel representing the Chhattisgarh State Agricultural Marketing Board as well as the State is that the judgment of the learned Single Judge stands vitiated for the reason that the case of *Rajendra Tiwari (supra)* which was an issue relating to grant of promotion in Excise Department has been erroneously used for deciding the case of the private Respondent No. 1. In case of *Rajendra Tiwari (supra)*, the relevant rules talked of 'seniority-cum-fitness' but there is a separate set of rules for grant of promotion in the Mandi services which is governed by the Chhattisgarh State Marketing Board Service Rules, 1998 (*for short 'the Rules, 1998'*). Rule 15 of the Rules, 1998 lays down the basis and parameters for consideration in matters of grant of promotion to the employees of the Marketing Board. Here, parameters are either 'seniority-cum-merit' or 'merit-cum-seniority'. There is

no concept of 'seniority-cum-fitness' and therefore, drawing analogy from the decision of *Rajendra Tiwari (supra)* and not taking into consideration the Rules which govern the said employees including the private Respondent No.1 has caused not only an error in the decision but also a wrong decision has come to be rendered, finding loopholes in the decision making which was not even the parameters on which the DPC decided the issue of promotion of the private Respondent.

6. We have carefully gone through the decision rendered in *Rajendra Tiwari (supra)* as well as the 1998 Rules. Since there are no specific rules relating to grant of promotion in relation to an employee of the Marketing Board, therefore, the rules in relation to grant of promotion in Excise Department cannot be used as the basis for deciding the so-called wrong caused to the private Respondent in non-grant of promotion. Thus, the submission on behalf of the Appellants is sustained.
7. The second limb of argument on behalf of the Appellants is that persons who are said to be junior to the private Respondent were not made Respondents in the writ application. Since a right had been created in them, any decision even if it meant holding of a review DPC would have a fallout upon an acquired right and they were necessary party. Non-joinder of necessary party therefore makes the writ application vulnerable.
8. It was pointed out that the private Respondent No. 1 had impleaded one Shri Jageshwar Kumar Kanwar as a Respondent showing that he was one of the juniors who was the necessary party but the said person did not find place in the list of promoted candidates and therefore, he is not a necessary party nor was he before the Court against the decision of non-promotion.

9. From the list of 16 persons who had been granted promotion, it has been successfully demonstrated that many a juniors to the private Respondent No. 1 had been granted benefit of promotion and therefore, if he was making a grievance that juniors have been considered and granted benefit of promotion at his cost, then they all are necessary party and therefore, non-impleadment does go to the root of the matter.
10. In the above circumstances, the counsel representing the private Respondent No. 1 takes a stand that the order of the learned Single Judge, if interfered, may be remanded for fresh consideration or else serious prejudice will be caused to him in light of these factual aspects which could not be taken note of during the course of assistance before the learned Single Judge.
11. We are satisfied that a case for interference with the impugned order dated 26.07.2017 is made out. The decision has been rendered by the learned Single Judge on parameters and the Rules which have have no application to the case in hand and therefore, the same is set aside. However, the writ application is remanded back for fresh consideration where all these issues will be brought to the notice of the learned Single Judge. The parties are free to supplement their pleadings, if needed even at this stage.
12. The appeal is allowed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE