

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3583 of 2009

S.M. Mulye Aged about 54 years, S/o. Late Shri Madhukar Rao Mulye, Occupation Service, Working as Sub Engineer (E&M) Department of Public Health Engineering Mahasamund Sub Division District Mahasamund Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Government of Chhattisgarh, Department of Public Health Engineer, Mantralaya, D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh
2. Engineer-in-Chief, Department of Public Health Engineering, Raipur, Chhattisgarh
3. Superintending Engineer (E&M), Public Health Engineering, Raipur, Chhattisgarh
4. Executive Engineer (E&M), Raipur division, Raipur, Chhattisgarh
5. D.N. Shrivastava, Aged about 53 years, Public Health Engineering Department (E&M), Dharampura Road Sub Division, Jagdalpur, Chhattisgarh
6. Shri S.C. Maheshwari, Aged about 50 years, Sub Engineer (E&M), Baikunthpur, Sub Division Baikunthpur, District Koriya, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Rahul Kumar, Advocate on behalf of Mr. R.S. Marhas, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.
For respective Respondent(s)	:	Mr. Shivang Dubey, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/08/2019

1. The claim of the petitioner in the present writ petition is for an appropriate direction to the respondents to firstly quash the gradation list (Annexure P/5) and secondly to issue an appropriate order for publication of a fresh seniority list and placing the petitioner over and above the respondents No. 5 & 6 and as a consequence also to hold a review DPC for grant of

promotion to the petitioner on the post on which the respondents No. 5 & 6 have been promoted.

2. The contention of the petitioner is that the petitioner and the respondents No. 5 & 6 were all appointed as a Sub-Engineer in the year 1980. The petitioner and the respondent No.5 were appointed on 23.01.2018 and the respondent No.6 was appointed on 29.01.1980 and in the order of merit, the name of the petitioner reflected over and above the respondent No.5 and since the respondent No.6 was appointed subsequently, both the respondents No. 5 & 6 would had been juniors to the petitioner.
3. According to the petitioner, the grant of seniority should had been in the light of the provisions of Rule 12(1) of the Chhattisgarh Civil Services (General Conditions of Services) Rules of 1961, where seniority ought to had been given on the basis of the order of merit as reflected in the select list published. The contention of the petitioner is that the respondents ignoring the said provisions have granted seniority to the respondents No. 5 & 6 ahead of the petitioner and in the process the respondents No. 5 & 6 also have been promoted vide order dated 06.02.2012 and the petitioner has been deprived of the same and the petitioner could get the promotion only on 04.01.2013. The contention of the petitioner is that had the seniority list published properly, the petitioner could have got promotion earlier than the respondents No. 5 & 6.
4. Perusal of the record would show that particularly the reply and the documents enclosed with the reply would show that the petitioner in all the gradation lists except for the provisional gradation list published in between was shown junior to the respondents No. 5 & 6. There is no gradation list, which has been brought by the petitioner on record to show that from the

date of appointment till the writ petition was filed or till 2000, the petitioner was allocated to the State of Chhattisgarh, his name appeared over and above the private respondents in the gradation list.

5. In the absence of any documents produced by the petitioner, the inference that has to be drawn is that the gradation list all along showed the private respondents No. 5 & 6 to be placed over and above the petitioner and which continued even after the petitioner stood allocated to the State of Chhattisgarh.
6. If that be so, the petitioner having not challenged the gradation list right from the date of appointment till 2009, the petition has to be held that it suffers from delay and laches as the challenge to a gradation list or disturbance in the seniority of a particular employee has to be challenged promptly, if not within a reasonable period of time. The petitioner in the instant case has filed the writ petition after almost about three decades in service, which undoubtedly is a pity long time for challenging the things, which are otherwise settled by efflux of time. The view of this Court stands fortified from the two judgments of the Hon'ble Supreme Court in the case of **“Vijay Kumar Kaul & others v. Union of India & others” (2012) 7 SCC 610** and **“Shiba Shankar Mohapatra & others v. State of Orissa & others” (2010) 12 SCC 471.**
7. Another reason, why this Court is reluctant to entertain the writ petition further is that the private respondents No. 5 & 6 have got promotion only on 06.02.2012 as contended by the petitioner and the petitioner himself has been granted promotion immediately thereafter in January, 2013 and the petitioner finally stood retired from service on 31.01.2017 and meanwhile

neither the private respondents nor the petitioner have been granted any promotion to cause any damage to the petitioner

8. Given the aforesaid reasons, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved