

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION NO. 3270 OF 2003**

Saumitra Mansingh Mahapatra S/o late Shri Dilip Mansingh Mahapatra, aged about 37 years, presently posted as Sub Auditor, O/o Assistant Registrar (Audit) Durg, District Durg (CG).

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Co-operative Societies, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (CG).
2. Commissioner cum Registrar, Co-operative Societies, Chhattisgarh, Raipur (CG).
3. Assistant Commissioner (Audit) Co-operative Societies Durg (CG).

... Respondent(s)

For Petitioner	:	Shri Saumya Rai, Advocate.
For Respondents-State	:	Shri Saleem Kazi, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08.02.2019

1. The claim of the petitioner in the present writ petition is non consideration of the petitioner for promotion when his juniors were promoted first on 22.05.1998 and then again on 02.11.1999. On both the occasions juniors to the petitioner were found eligible and promoted ahead of the petitioner.
2. According to the petitioner, the criteria for promotion was seniority cum merit and therefore, the petitioner ought to have been granted due weightage for his seniority. He further submits that there has been no punishment in operation or any disciplinary proceedings pending at that relevant point of time by virtue of which he could have been denied promotion. It was the further contention of the petitioner that so far as the promotion was concerned, the Departmental

Promotion Committee (in short, DPC) ought to have considered the ACRs of the petitioner for the period between 1994 to 1998 and during the said period there was no adverse entry marked in his ACRs which could also be a ground of denying promotion to the petitioner and thus prayed for appropriate relief in this regard by granting the petitioner promotion from the date his immediate juniors have been granted promotion i.e. on 22.05.1998.

3. The State counsel, on the contrary, opposing the petition submits that it is a case where the petitioner's case was considered by the DPC held on each occasions and it was found that the petitioner's ACR for the preceding years were not up to the mark and therefore he was not found fit for promotion which led to the juniors being promoted ahead of the petitioner. The State counsel referred to Annexure R/4 which reflects the ACR of the petitioner for the previous years and so far as the ACR for the years 1992 and 1993, the entry were "Gha" which would mean it is "Below Average". Likewise, the entry for the year, 1994 also would show that it is "Ga" i.e. "Average". Further contention of the State counsel was that so far as the petitioner is concerned, his ACR for the years 1996 and 1997 was not available and therefore as per the decision of the DPC previous two years ACRs were taken into consideration and where it was found that the ACRs of the petitioner was adverse, and therefore, he was not found fit for promotion.
4. The State counsel further referred to the proceedings of the DPC which had clear guidelines laid down as to how the candidates would be considered and the guidelines clearly reflected that in the event of

there being non availability of two years ACRs, previous two years ACRs would be taken into consideration. Thus, prayed for rejection of the writ petition.

5. Having heard the rival contentions put forth on either side and on perusal of records, once when it is an admitted position that the petitioner has been found unfit for promotion on account of adverse ACRs, it cannot be said that the petitioner has been superseded without any reasons. Moreover, it is a case where the criteria for promotion was seniority cum merit that means giving due weightage is seniority, the ACR would also be considered to assess the suitability of the officers for promotion. In the instant case, it clearly reflected that there were two adverse entries in the ACRs of the petitioner for the year, 1992 and 1993. The same has not been questioned or challenged by the petitioner at any point of time. Therefore, if the authorities concerned have taken note of the adverse entries and found the petitioner to be unfit for promotion in the year, 1998 and again in the year, 1999, it cannot be said to be, in any manner, bad in law, arbitrary or contrary to the rule provisions. Later on, it is also revealed that the petitioner has subsequently been promoted vide order dated 05.07.2005 (Annexure D/1).
6. For all the aforesaid reasons, this court is of the opinion that no strong case has been made out to interfere with the impugned order.
7. The writ petition thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge