

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 307 of 2016**

(Arising out of order dated 1.4.2016 passed by learned Single Judge
in WPS No.6631/14)

Judgment Reserved on 26.7.2019**Judgment Delivered on 20-9-2019**

1. R.K. Sharma S/o Late Shri R.S. Sharma, Aged About 54 Years
Occupation Assistant Engineer, E/M Public Health Engineering,
Mahasamund Division, Mahasamund, P.S. Mahasamund, Distt.
Mahasamund (CG)

---- Appellant**Versus**

1. State of Chhattisgarh, through Secretary, Department of Public
Health Engineering Mantralaya, Mahanadi Bhawan, Naya
Raipur, P.S. Abhanpur, District Raipur (CG)
2. Engineer In Chief, Public Health Engineering, Raipur, Office of
Engineer-in-Chief, Raipur, P.S. Raipur, District Raipur (CG)
3. Shri A. K. Tiwari, Assistant Engineer, E/M Sub Division
Rajnandgaon, P.S. Rajnandgaon, District Rajnandgaon (CG)
4. Shri S.W. Manurkar, Assistant Engineer, E/M Sub Division
Raigarh, P.S. Raigarh, District Raigarh (CG)

---- Respondents

For Appellant	:	Miss Deepali Pandey, Advocate
For Respondent No.1 & 2	:	Mr. Avinash Singh, Panel Lawyer
For Respondent No.3 & 4	:	Mr. Sunil Otvani, Advocate

Hon'ble Shri P. R. Ramchandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****C A V Order****Parth Prateem Sahu, J**

1. Appellant, who is working as Assistant Engineer in the Public
Health Engineering Department of the State, has filed this writ
appeal challenging the order dated 1.4.2016 passed by learned
Single Judge in WPS No.6631/14 dismissing writ petition filed

for issuance of a direction to respondent State authorities to give promotion to petitioner/appellant as 'Assistant Engineer' with effect from the date on which his juniors secured such promotion i.e. from 1.4.2010.

2. Brief facts relevant for disposal of this writ appeal are that in the year 2010 the appellant was working as 'Sub Engineer' in the Department of Public Health Engineering and he was due for promotion to the post of 'Assistant Engineer'. A seniority list of 'Sub Engineers', as on 1.4.2008, was prepared and published by the department and in which the appellant was at Sr. No.13, whereas respondent Nos.3 & 4 were at Sr. No.19 & 20 respectively. Services of appellant are governed by the Chhattisgarh Public Health Engineering (Gazetted Services) Rules, 1980 (henceforth 'the Rules of 1980') and according to which, 25% posts of 'Assistant Engineer' are to be filled-up by way of direct recruitment; 50% by way of promotion to the Sub-Engineer possessing diploma in engineering; 20% by way of promotion to the Sub-Engineer having degree in engineering, and 5% from Draftsman cadre. Amongst common seniority list of Sub-Engineers, 20% quota is fixed for promotion to the Sub-Engineers having degree of engineering on accelerated basis after completion of 8 years service in that cadre. The Sub-Engineers who have obtained degree in engineering, can be considered for promotion as per their seniority in the gradation list of Sub-Engineers. Other channel is with respect to 20% seats reserved for the Sub-Engineers who have obtained

degree under special accelerating promotion scheme, and 5% posts of Assistant Engineer are to be filled-up from the quota of Draftsman. On 2.1.2010 a meeting of the Departmental Promotion Committee (DPC) was convened for considering eligible candidates for promotion to 11 vacant posts of Assistant Engineer. In the said meeting, total six Diploma Holder Sub-Engineers, which includes one candidate of scheduled caste category, and four Degree Holder Sub-Engineers were recommended for promotion to the post of Assistant Engineer. One Draftsman was also recommended for promotion to the post of Assistant Engineer. Thus, total 11 posts of Assistant Engineer were sought to be filled-up by way of promotion. By virtue of recommendation of the DPC, order of promotion dated 1.4.2010 (Annexure R-1) was issued by respondent No.1. Subsequently, vide order dated 6.2.2012 (Annexure R-3) the appellant was also promoted to the post of Assistant Engineer. Appellant did not make any representation before the authority challenging proceedings of DPC dated 2.1.2010 and consequential promotion order dated 1.4.2010 and after a lapse of more than 4½ years, he has filed writ petition before the writ Court, but in this petition also he has not sought any relief of cancellation of promotion order dated 1.4.2010 issued in favour respondent No.3 & 4. Prayers sought for in the writ petition are as follows;-

“10.1. That, the Hon'ble Court be pleased to direct the respondent state authority to consider and promote the petitioner from the date Shri A.K.

Tiwari and S.w. Manurkar were promoted.

10.2. That, the Hon'ble Court be pleased to direct the state authority to revise the present seniority list of Assistant Engineers thereafter.

10.3. That, any other relief which this Hon'ble court deems fit in the present facts and circumstances of the case may kindly be granted."

3. Learned Single Judge while considering the case of appellant along with reply submitted by respondent State, dismissed writ petition by holding that appellant has not challenged the order of promotion dated 1.4.2010; out of 11 posts of Assistant Engineer, 6 posts were filled by Sub-Engineers, which is in consonance with ratio of promotion quota for promotion from the post of Sub Engineer to Assistant Engineer i.e. 50%; the appellant has approached writ Court with inordinate delay of about more than 4½ years from the date of issuance of promotion order under challenge.
4. Learned counsel representing the appellant submits that from the proceedings of DPC dated 2.1.2010, it is clear that total 11 posts of Assistant Engineer were to be filled-up by way of promotion. Respondents No.3 & 4, who were juniors to the appellant in the seniority list dated 1.4.2008, have been erroneously promoted to the post of Assistant Engineer and thereby appellant has been superseded by his juniors. In the said seniority list, appellant was at Sr. No.13, whereas respondents No.3 & 4 were at Sr. No.19 & 20 respectively. She further submits that as per Rule 31A of the Fundamental Rules, a government servant, whose promotion was delayed due to

wrong assignment of position in the gradation list, is to be promoted from the date when his/her juniors were promoted and all the benefits ought to have been provided from the date when his/her juniors were promoted except the arrears of pay and allowance during the period when such employee did not perform his / her duties on the higher post. The procedure and ratio for consideration of promotion on the post of Assistant Engineer is provided in the Rules of 1980 and accordingly, the DPC was held for considering candidature of Diploma Holder & Degree Holder Sub-Engineers as well as Draftsman for promotion to the post of Assistant Engineer, however, the case of appellant has not been considered, whereas out of total 8 posts, only 6 posts have been filled-up. Reliance is placed on the judgements rendered in the matters of **Ashok V. David v. MG Halappanavar** reported in **AIR 1996 SC 2165**; **State of Uttaranchal & anr vs. Dinesh Kumar Sharma** reported in **(2006) 1 SCALE 246**; **State of Karnataka & ors vs. C. Lalitha** reported in **(2006) 2 SCC 747** and **Pawan Pratap Singh & ors v. Reevan Singh & ors** reported in **(2011) 3 SCC 267**.

5. Per contra, learned State counsel submits that the DPC has considered candidature of eligible candidates strictly in accordance with law and out of total 11 posts of Assistant Engineer available for promotion on the date of DPC, 6 Diploma Holder Sub Engineers were promoted to the post of Assistant Engineer and thereby the ratio provided under the Rules of 1980 has been complied with. He further submits that

the appellant has approached the High Court after a long delay of 4½ years from the date of issuance of promotion order of respondent Nos.3 & 4 and no explanation for such a long delay has been offered by him in the writ petition. He further submits that impugned order has been passed after considering pleadings, documents and arguments submitted by learned counsel for respective parties, which does not call for any interference.

6. Learned counsel for respondent Nos.3 & 4 submits that claim of appellant is with respect to promotion of Diploma Holder Sub Engineer to the post of Assistant Engineer and appellant had projected his case before the learned Single Judge that juniors to him were promoted by superseding him. As a matter of fact, respondents No.3 & 4, who are Degree Holder Sub Engineers, have been promoted under accelerated quota of 20% seats. As per Rules of 1980, there are two channels for promotion; firstly on the basis of seniority in the seniority list prepared by the department, and secondly, 20% seats to be filled-up by Degree Holder Sub-Engineers, which is a different channel and for that purpose seniority is to be reckoned amongst degree holder Sub-Engineers only, subject to their completion of 8 years of service in the cadre. Whereas, the Diploma Holder Sub-Engineers come in zone of consideration after completion of twelve years of service in the cadre according to their seniority. He also submits that the proceedings of DPC filed by appellant along with writ petition, in a very specific terms

mention that out of 11 posts, 7 posts are to be filled-up by candidates of unreserved category; 02 posts by Scheduled Caste category candidates & 02 posts by Scheduled Tribes category candidates. It is also mentioned that as no candidate of 'scheduled tribe category' is available for promotion to the post of Assistant Engineer, therefore, as per CG Public Service (Promotion) Rules, 2003, the DPC had decided to fill those posts from the candidates of 'unreserved category' and eligibility for filling up those posts is minimum '8 years of service in cadre. Accordingly, respondent No.3 & 4 have been promoted to the post of Assistant Engineer and there is no super-session of the appellant by his juniors.

7. We have heard learned counsel for the parties and perused the records.
8. Appellant in his writ petition has raised only two main grounds, which read as under:-

“9.1. Because the petitioner was eligible for promotion as sub Engineer in terms of the rules when the respondents had promoted Shri A.K. Tiwari and S.W. Manurkar were promoted, the action of the state authorities in ignoring them for being considered for promotion besides being in contravention of rules, was illegal arbitrary and discriminatory.

9.2. Because, the petitioner was wrongly passed over from being considered for promotion and therefore cannot be penalized for no fault of him. The services of petitioner were overlooked for the purpose of promotion at appoint of time and was subsequently promoted therefore his promotion should relate back to the date/year on/in which he should have been considered for promotion, as considered and directed by the Hon'ble Supreme Court in Ashok V David vs. Union of India and others AIR 1996 SC 2165.”

9. Perusal of above quoted grounds raised by the appellant would show that his main grievance is that he has been superceded by his juniors. Though the appellant has pleaded in his writ petition that out of total 11 vacant posts, 8 posts were required to be filled from Diploma Holder Sub Engineers; 02 posts (20%) from Degree Holder Sub-Engineers and 01 post (5%) by Draftsman and thereby he tried to segregate the posts available for promotion. In Para 8.9 of writ petition, there is mention about the persons who have been promoted to the post of Assistant Engineer, along with their qualification, but it has not been specifically mentioned as to on what basis they have been promoted to the post of Assistant Engineer from the post of Sub-Engineer. Whether they have been promoted only on the basis of seniority of Diploma Holders or Degree Holder Sub Engineers. Nothing has been placed on record in this regard, except the gradation list dated 1.4.2008 of the Assistant Engineers in which their qualification has been mentioned in front of their names. Gradation list filed along with writ petition showing qualification of Sub-Engineer will itself not be sufficient to arrive at a conclusion that they have been promoted as Degree Holder Engineer or promotion from the quota of Degree Holder Sub Engineers or have been promoted strictly on the basis of seniority of Sub-Engineer.
10. From perusal of the DPC proceeding, it is clear that out of 11 posts of Assistant Engineer available for promotion, 7 were to be filled from unreserved category candidates, 02 from

Scheduled Castes and 02 from Scheduled Tribes category candidates. The DPC has further recorded proceeding that vacant posts of reserved category are to be filled by unreserved category candidates, who are eligible for promotion and have also completed 8 years of service. In the Rules framed the consideration of 8 years service as Sub-Engineer for getting promotion on the post of Assistant Engineer is provided only for degree holder Sub-Engineer, whereas for the Diploma Holders the criteria for consideration is 12 years of service in cadre.

11. Submission of learned counsel for appellant that the appellant is entitled to be promoted from the date when his juniors were promoted on the post of Assistant Engineer and also for re-fixation of his seniority in view of Rule 31A of the Fundamental Rules, is also not sustainable for the reason that present is not the case of wrong fixation of seniority in the gradation list or for one or other reason the appellant was out of zone of consideration for promotion which was subsequently removed by the orders in his favour. Furthermore, this ground and argument has not been raised by learned counsel for the appellant before the writ Court, as it does not appear from the pleadings nor perusal of the impugned order that this specific ground has been raised by counsel for the appellant before the writ Court. Even otherwise, the appellant has not challenged the promotion granted to other employees immediately after issuance of promotion order in their favour or within

reasonable time or the proceedings of DPC to be illegal. Without challenging the proceedings of DPC to be illegal, the petitioner cannot be granted any relief as sought by him. The petitioner is an employee of the same department. His colleagues were promoted but he did not approach this Court within reasonable time raising his grievance .

12. After a lapse of more than 4½ years from the date of issuance of promotion order of respondent Nos.3 & 4 and more than 2½ years from the date of promotion order dated 6.2.2012 of appellant to the post of Assistant Engineer, on 14.12.2014 the appellant has approached the writ Court seeking a relief that he be also given promotion from the date on which respondents No.3 & 4 were promoted to the post of Assistant Engineer i.e. from 1.4.2010. Thus, there is inordinate delay in approaching the Court for seeking relief, as prayed for, by appellant in the writ petition.

13. Learned Single Judge has considered various judgements of Hon'ble Supreme Court in Para-10 to 12 of the impugned order which are as under:-

“10. Delay has always been considered vital in service matters especially with regard to promotion. As far back as (1975) 1 SCC 152, P.S. Sadasivaswamy Vs. State of Tamil Nadu, it was held that it would be a sound and wise exercise of discretion under Article 226 that the Court should not entertain claims regarding seniority after an approximate period of 6 months from the date of cause of action to prevent clogging the dockets of the Court and which would impede the work of the Court in considering legitimate grievances timely.

11. The Supreme Court in Chennai Metropolitan Water

Supply and Sewerage Board and Others v. T.T. Murali Babu, (2014) 4 SCC 108, after relying on its decision rendered in State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566, held thus at para 15 & 16 :

“15. xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx

“24.... If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

12. In the matter of State of Kerala and others Vs. A.K. Gopakumar, (2013) 11 SCC 606, the Supreme Court has held thus in para 9:

“9.It is also apposite to note that the writ petition filed by the respondent on 15-3-2010 was highly belated and the High Court would have been fully justified in refusing to entertain the respondent's prayer because he

had not offered any explanation for the time gap of 2 years and 8 months between the issue of the order of dismissal and filing of the writ petition.”

14. Other verdicts of Hon'ble Supreme Court on this issue are

State of Madhya Pradesh & another v. Bhaillal & ors
reported in **AIR 1964 SC 1006** wherein it was held as under:-

“21.....Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought 134--159 S.C. 18 may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.....”

In the matter of **Rabindra Nath Bose & ors vs. Union of India & ors** reported in **AIR 1970 SC 470** the Supreme Court has observed thus:-

“34. The learned Counsel for the petitioners strongly urges that the decision of this Court in M/s. Tilokchand Motichand's case [1969] S.C Cases 110, needs review. But after carefully considering the matter, we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.”

In the matter of **K.R. Mudgal & ors v. R.P.Singh & ors** reported in **AIR 1986 SC 2086** the Supreme Court referring to its earlier decision in the matter of **Malcom Lawrence Cecil D'Souza v. Union of India** reported in **AIR 1975 SC 1269**, has held as under:-

"9.We may also refer here to the weighty observations made by a Constitution Bench of this Court in **Malcom Lawrence Cecil D'Souza v. Union of India**, [1975] Supp. S.C.R. 409 at page 413-414 : (AIR 1975 SC 1269 at p.1272) which are as follows:

"Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult to doubt to guarantee such security in all its varied aspects. It should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

10. We feel that in the circumstances of this case, we should not embark upon on and enquiry into the merits of the case and that the writ petition should be dismissed on the ground of laches alone."

15.The question of delay and laches has been considered by Hon'ble Supreme Court in the judgment of **Ramchandra Shankar v. State of Maharastra** reported in **AIR 1974 SC 259** and it was observed as under:-

"9.....It may also be noted that the principle on which

the Court proceeds in refusing relief to the petitioner on ground of laches ordeals is that the rights which have accrued to others by reasons of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by Hidayatullah, C.J. in (1969) 2 SCR 824 = AIR 1970 SC 898)

"The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court....."

16. While considering afore-quoted judgements in the matter of Shiba Shankar Mohapatra & ors v. State of Orissa & ors, AIR 2010 SC 706, the Supreme Court has held thus:-

"29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation. "

17. It is not that in every case where the petitioner approaches the Court with delay should ordinarily be dismissed on the ground of delay and laches, but it is for the Court to weigh the explanation and reasons offered by petitioner for approaching the Court after lapse of such period and for condoning the same. In a case where petitioner offers justifiable and sufficient cause and explanation for the delay, the Court can very well entertain writ petition.

18. Undoubtedly, the appellant herein had approached the Court with inordinate delay of more than 4½ years after getting promotion and in view of the law laid by Hon'ble Supreme Court in catena of cases, the claim of appellant could not be entertained particularly when appellant has not given any justifiable explanation and instead of explaining inordinate delay in filing writ petition, has pleaded in Para-7 of writ petition that the petition is well within limitation. The Hon'ble Supreme Court in the above quoted judgements has clearly held that reasonable period for approaching the Court to be six months from the date of the orders passed by the authority adversely affecting rights and interests of any employee. Delay in filing writ petition after expiry of reasonable time was also held to be fatal for invoking writ jurisdiction of the High Court under Article 226 of the Constitution of India.

19. So far as the judgment rendered in Ashok V David's case (supra) on which reliance is placed by appellant is concerned, the same is on different facts and not applicable to the facts of present case as the appellant approached the Court after more than 4½ years and no explanation has been given for the same so as to consider the reasons, if any, to be condonable.

So far as decision in the matter of Dinesh Kumar Sharma (supra) is concerned, in this case, the Hon'ble Supreme Court was considering the claim of respondent therein, who was claiming promotion and seniority to be granted to him from the

date of occurrence of vacancy i.e. 1995 & 1996, whereas he was promoted vide order dated 19.11.1999 and in that facts of case, Hon'ble Supreme Court while rejecting claim of respondent has held that grant of promotion pay is for the service after the date of promotion and not from the date of vacancy arose in the recruitment year. The aforementioned reliance of the appellant is misplaced.

So far as reliance placed by the appellant on the judgements delivered in C. Lalitha (supra) & Reevan Singh (supra) is concerned, the same are of no help to the appellant being based on different set of facts.

20.As we are satisfied that the learned Single Judge rightly took into consideration that writ petition was filed with unexplained inordinate delay and that ground alone dis-entitles the appellant from getting any relief as sought for, we are not dealing the issue with respect to the merits of the claim, if any.

21.In view of above discussions, we do not find any infirmity in the order passed by the learned Single Judge. Writ Appeal being devoid of merits is liable to be dismissed and is hereby dismissed.

Sd/-
(PR Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-