

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 76 of 2019

- Dr. Chandra Kant Pandey S/o Shri Ram Sunder Pandey Aged About 62 Years Presently Posted As Deputy Director, Veterinary Services, Department Of Animal Husbandry, Bilaspur, District Bilaspur Chhattisgarh.....(Since during the pendency of the writ petition Appellant was transferred from Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Animal Husbandry, Mantralaya, Mahanadi Bhawan, Atal Nagar, Chhattisgarh.
2. Commissioner- Cum- Director, Directorate Of Veterinary Services, Indravati Bhawan, Atal Nagar, Chhattisgarh.
3. Chhattisgarh Public Service Commission Through Its Secretary, Shankar Nagar Road, Bhagat Singh Square, Raipur Chhattisgarh.
4. R K Sonwane S/o Late Shri C S Sonwane Aged About 56 Years Presently Posted As Deputy Director, Veterinary Services, Rajnandgaon, District Rajnandgaon Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Amrito Das, Advocate
For Respondents No.1 to 3	:	Mrs. Fouzia Mirza, Addl. Advocate General.
For Respondent No.3	:	Ms. Sharmila Singhai, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Ajay Kumar Tripathi, CJ

6/2/2019

1. Writ application of the present appeal was dismissed by the learned Single Judge vide his order dated 15.1.2019. The reason for him to file writ application was that the Public Service Commission should have considered making recommendation for three posts of Joint Director instead of two because there were two clear vacancies on the post of Joint

Director and one was the anticipated vacancy for which recommendation had been made by the government especially the Veterinary Department.

2. Reason for the petitioner to submit so, flows from Rule 7 (4) of the Chhattisgarh Public Service Promotion Rules, 2003.
3. Learned Single Judge taking into consideration such submissions dismissed the writ petition by following order;-

“4.The respondents have filed their reply and in the reply, particularly the reply of the PSC, they have categorically held that the entire selection process was done as per the proposal made by the State Government. According to the PSC, the decision to recommend two persons for promotion was on account of the fact that there were only two vacancies available on the date when the DPC was convened and therefore the PSC could not have recommended for more candidates for want of clear vacancy and thus prayed for the rejection of the writ petition.

5. Having considered the aforesaid facts and circumstances of the case and also considering the submissions made on either side, the fact, which is not in dispute is that of the petitioner working as a Deputy Director in the Veterinary Department. It is also not in dispute that the petitioner has become eligible for being considered for promotion to the post of Joint Director. It is also an admitted factual position that the petitioner's name in the gradation list stands at serial No. 10, so also there is no dispute in respect of the fact that as on date, there were only two clear vacancies in the Department of Joint Director. At this juncture, it would be relevant to refer to the Rule provision as it stands. Rule 7(4) of the Rules of 2003 is reproduced herein under for ready reference:

“7(4) The number of vacancies for promotion during the course of the year, i.e., from 1st January to 31st December shall be worked out after taking into account the existing and anticipated vacancies on account of retirement

and promotions to higher cadres/part of service/higher pay scale of posts. Vacancies arising out of deputation for periods exceeding one year shall also be taken into account. The number of vacancies to be reserved for public servants belonging to Scheduled Castes and Scheduled Tribes shall be worked out on the basis of the roster which is required to be maintained in accordance with the provisions of Rule 9 of these Rules.”

7. So far as the anticipated vacancy is concerned, there appears to have been only a proposal sent by the Veterinary Department to the State Government, there has been no further recommendation made by the State Government to the PSC. The PSC, in turn, has also made a categorical statement that the State Government has not made any proposal for filling up of the post of Additional Director, by virtue of which the post of Joint Director could have fallen vacant. In the absence of there being no promotion process undertaken by the State Government or by the PSC for filling up of the post of Additional Director, it cannot be said that the PSC has committed any error. Moreover, on a query being put to the counsel for the respondents, they have made a statement that the post of Additional Director till date has not been filled up from among the Joint Directors and neither is there any proposal to fill up the said post pending consideration before the PSC.

8. Another aspect, which cannot be lost sight of is that there does not seem to be any process initiated by the State Government also, except for a proposal made by the Department to the State Government, which otherwise is only an internal correspondence between the two Departments. The State Government has not further taken any steps for filling up of the post of Additional Director, only because there has been a proposal made by the Department, by itself would not give rise to a indefeasible right in favour of the petitioner for being considered for the post of Joint Director that to against an anticipated vacancy.

9. To sum up, since as on date, there is no vacant post of Joint

Director available and at the same time there being no proposal pending at the PSC level for filling up of the post of Additional Director, which could give rise a vacancy in the Joint Director cadre, the petitioner could not have been considered by the PSC in the DPC that was held on 03.10.2018.”

4. Having heard learned counsel for the parties, we are not satisfied that there is any error committed by the Public Service Commission in not making recommendation against so-called anticipated vacancy which could have only arisen provided one of the posts became vacant on promotion of a Joint Director to the post of Additional Director which never occurred in the said year in question, as admitted even today.
5. Accordingly, the appeal has no merit, the same is liable to be dismissed and is hereby dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

roshan/-

Sd/-

(Parth Prateem Sahu)
Judge