

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5605 of 2008**

- Kanhaiya Nirmalkar, aged about 39 years, S/o Late Viptu Ram, Moharrir (Asstt. Revenue Inspector, Nagar Panchayat Ratanpur, District Bilaspur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Ministry of Urban Administration & Development, D.K.S. Bhawan, Raipur.
2. Nagar Panchayat Ratanpur, Through Chief Municipal Officer, Nagar Panchayat Ratanpur, District Bilaspur (C.G.)
3. Ghanshyam Sharma, aged about 30 years, S/o Late Hanuman Prasad Sharma, Moharrir, Nagar Panchayat Ratanpur, District Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Shri Ravindra Agrawal, Advocate.
For Respondent No.1State:	:	Shri Jitendra Pali, Deputy Advocate General.
For Respondent No.2	:	Shri Manoj Paranjpe, Advocate.
For Respondent No.3	:	Shri Amrito Das, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****08.02.2019**

1. Heard learned counsel for the parties.
2. Petitioner filed the writ application when the Respondent No.2/Nagar Panchayat Ratanpur issued a promotion order in favour of one Shri Ghanshyam Prasad Sharma from the post of Assistant Revenue Sub Inspector to the post of Revenue Sub Inspector. This order dated 27.08.2008 is Annexure P/6 to the writ application.
3. Petitioner pleads that he was senior to Shri Ghanshyam Sharma-Respondent No.3 in service. This will be evident from Annexure P/3. If that be so, his seniority should not have been ignored and a junior granted promotion over and

above him. Prayer has been made therefore, to not only quash the said decision, but also give a direction for promotion of the Petitioner.

4. Besides the return which has been filed by Respondent No.2, the Court directed the Municipal Authorities to produce the original record relating to the decision which formed the basis for issuance of Annexure P/6.
5. A copy of the minutes of the District Selection Committee has been produced before us, which is dated 29.04.2008.
6. From perusal of the minutes, it is reflected that promotion of the eligible candidates was considered in terms of Rule 12 of the Chhattisgarh Municipal Employees (Recruitment & Condition of Service) Rules, 1968 (for short, 'Rules of 1968'). Rule 12 reads as under:

“12. Recruitment by promotion – (1) Recruitment by promotion shall be made on consideration of merits, seniority being taken into account where merits are equal.

(2) In selecting candidates for promotion regard shall be had to-

- (i) tact and energy;
- (ii) intelligence and ability;
- (iii) integrity; and
- (iv) previous record of service.

(3) In the case of posts carrying a maximum monthly salary not exceeding Rs.95/- the Chief Municipal Officer and in other cases the District Selection Committee shall consider the cases of all the eligible candidates and may in his or its discretion interview any of the candidates.

(4) The Chief Municipal Officer or the District Selection Committee, as the case may be, will select candidates and will arrange their names in the order of preference. Where the Chief Municipal Officer is the competent authority for making appointment, the orders will be issued by him. In other cases the District Selection Committee shall recommend the names of the candidates found suitable for promotion to the Standing Committee. The Standing Committee will then make a final selection.”

7. Based on the above Rules, three candidates including the present Petitioner were short listed. Comparative seniority-cum-merit has been analyzed and keeping in mind that Ghanshyam Sharma was more suitable despite the present Petitioner being senior, was granted the benefit of promotion.
8. From reading of Rule 12, it is evident that it is not only seniority which is of significance, but the promotion is to be based on merit-cum-seniority and only when the two employees are equal in merit, then seniority will be required to be given weightage.
9. From the service record extracted in the minutes, it seems that Ghanshyam Sharma, the private Respondent is way ahead in terms of merit over and above the present Petitioner despite his seniority. Therefore, in terms of Rule 12, the private Respondent was granted benefit of promotion and it is not a case where the Petitioner was deliberately left out from the zone of consideration or surpassed for extraneous reasons.
10. The minutes of selection committee is placed on record for reference.
11. We are satisfied that there were reasons to grant benefit of promotion to private Respondent No.3 which was inconformity with Rule 12 of the Rules of 1968. No interference, therefore, is warranted with the impugned order.
12. Writ application has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice