

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1180 of 2008**

1. Sunil Madhukar Mone, S/o Late Shri M.D. Mone, aged about 47 years, occupation Lab Technician, Water Resource Department, R/o MIG S.26 Laxmi Nivas Parisar, Bilaspur, District Bilaspur (CG)
2. Hemant Kumar Soni, S/o Shri Uday Ram Soni, Aged about 54 years, Occupation Lab Technician, Water Resource Department, R/o Kaserpara Champa, District Janjgir-Champa (CG)
3. Brahmin Keshav Pandey, S/o Shri Ramsanehi Pandey, aged about 43 years, Occupation Lab Technician, Water Resource Department, Bhathagaon, R/o Ramnagar, Ward No.6, Nagari District Dhamtari (CG)
4. Prakashchandra Sharma, S/o Late Sri J.R. Sharma, Aged about 47 years, Occupation Lab Technician, Water Resource Department, R/o Vidya Nagar, Gali No.2, District Bilaspur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh , through Secretary, Water Resources Department, Mantralay, DKS Bhavan, Raipur (CG)
2. Engineer in Chief, Water Resource Department, Sihawa Bhawan, Civil Lines, Raipur (CG)
3. Superintendent Engineer, Water Resource Department, Sihawa Bhawan, Civil Lines, Raipur (CG)
4. Jagdish Prasad Awadhiya, aged about 52 years, Post Embankment Inspector, R/o Irrigation Colony, Gandhi Nagar, Ambikapur, District Surguja (CG)
5. Pradeep Kumar Padamwar, Aged about 49 years, Post Embankment Inspector, R/o Gokulchandrama Mandir, Budhapara, Raipur (CG)

---- Respondent

For Petitioners
For Respondent /State

Mr. Prakash Tiwari, Advocate
Ms. Fouzia Mirza, Additional Advocate
General

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****3/10/2019**

1. Heard.
2. The matter concerns appointment by promotion from the post of Lab Technician to the post of Embankment Inspector in the Department of Water Resource. The subject appointment is governed under the provisions of the C.G. Irrigation Department (Non-Gazetted) Service Recruitment Rules, 1969 (in short "the Rules, 1969").
3. Admittedly, the criteria for promotion to the subject post is seniority subject to fitness.
4. Initially, the DPC for considering such promotion met on 27.10.2005, wherein, the name of petitioner No.1 was also recommended, but later on, it was found that the post of Embankment Inspector is not mentioned in the Schedule of posts under the Rules, 1969, therefore, the DPC proceedings were not given effect to. After inclusion of the subject post in the Schedule to the Rules, 1969, the DPC was convened on 11.10.2007.
5. At the time of formation of the State of Chhattisgarh, 33 posts of Embankment Inspector were shown to be allocated to the State of Chhattisgarh, but since only 16 persons were occupying the post of Embankment Inspector, at the time of re-

organisation, by virtue of the State Government's Circulars dated 6.2.2004 and 2.5.2001, only 16 posts were taken to be created leaving the remaining 17 posts as having lapsed.

6. Under the Service Rules, 75% posts are to be filled by direct recruitment and the remaining 25% by promotion. Out of 17 posts, 6 posts were occupied as on the date of holding of DPC, therefore, out of the remaining 10 posts, 25% i.e. three posts were available for promotion. Once again, out of the three posts available, one post fell in the Reserved Category for being filled up amongst eligible SC or ST candidate and the remaining two fell for the unreserved category candidates.
7. Admittedly, none of the petitioners belong to SC or ST category and were thus required to be considered for the two unreserved posts available for promotion. Respondents 4 & 5 being seniors to the petitioners and they having not declared to be unfit or found to be unsuitable for promotion, they were recommended for promotion by the DPC.
8. Mr. Prakash Tiwari, learned counsel for the petitioners, would submit that in the DPC dated 27.10.2005, petitioner No.1 was recommended, however, the DPC recommendation was not giving effect to in an arbitrary and unreasonable manner. According to him, when posts were available, merely because the subject post was not mentioned in the Recruitment Rules, the recommendations could not have been dropped. He would also submit that petitioner No.1 being more meritorious than

respondents 4 & 5, he should have been promoted by applying the proviso to sub-rule (3) of Rule 15 of the Rules, 1969.

9. The first contention regarding abrupt dropping of the recommendation of the first DPC dated 27.10.2005 is concerned, it is to be appreciated that there is no recommendation by the DPC to the Government for promotion on the post of Embankment Inspector. The document Annexure R-1/3 pertaining to the said DPC is not signed by the members of the DPC. Though it is filed by the respondents, but when it is compared with the DPC proceedings dated 11.10.2007 filed vide Annexure R-1/4, it is seen that the subsequent DPC proceedings are signed by all the members, whereas, the earlier DPC proceedings are not signed. The DPC might have met for considering the issue of promotion of the subject post but having realized that the subject post is not finding mention in the Schedule appended to the Rules, the DPC remained inconclusive. Although draft minutes were prepared, but the same were not signed. An unsigned DPC report shall not be taken to be recommendation by the DPC.

10. In so far as the second argument is concerned, the petitioner is admittedly junior to respondents 4 & 5. Merely because of the fact that on perusal of the comparative chart of the ACRs of last 5 years, petitioner No.1 appears to be more meritorious, the same cannot be applied in favour of the petitioner to grant him promotion on the post when the criteria is seniority subject to fitness and not merit-cum-seniority. If the contention of

learned counsel for the petitioners is accepted, it would amount to change of the criteria, which is not permissible.

11. Similarly, proviso to sub-rule (3) of Rule 15 of Rules, 1969 cannot be read in favour of the petitioners for the simple reason that the said provision enables the Government to place more meritorious person higher in the list of promoted candidates, but it never confers power on the Government to promote any person from down below the list, if he is not coming in the select list of persons found suitable for promotion.

12. For the above stated reasons, I do not find any ground to interfere with the promotion of respondents 4 & 5 or to direct consideration of the petitioners' case for promotion from the date respondents 4 & 5 have been promoted.

13. The writ petition is dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge

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