

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 177 of 2019**

- Kanhaiya Nirmalkar S/o Late Viptu Ram Aged About 49 Years R/o Moharrir (Asstt. Revenue Inspector) , Nagar Panchayat Ratanpur, District Bilaspur Chhattisgarh. Presently Working As Revenue Sub Inspector / In Charge C.M.O. , Nagar Panchayat Kharod, District Janjgir Champa Chhattisgarh

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Urban Administration Land Development, Mantralaya Bhawan, New Raipur Chhattisgarh
2. Nagar Panchayat Ratanpur, Through Chief Municipal Officer, Nagar Panchayat Ratanpur District Bilaspur Chhattisgarh
3. Ghanshyam Sharma S/o Late Hanuman Prasad Sharma, Aged About 40 Years Moharrir, Nagar Panchayat Ratanpur District Bilaspur Chhattisgarh.

Presently Working As Revenue Sub Inspector / In Charge C. M. O., Nagar Panchayat Jarhi, District Surajpur Chhattisgarh.

---- Respondent

For Appellant	Mr. Ravindra Agrawal, Advocate
For Respondent/State	Mr. Siddharth Dubey, Dy. GA
for Respondent No.2	Mr. Anurag Singh, Advocate on behalf of Mr. Manoj Paranjpe, Advocate
For Respondent No.3	Mr. Amrito Das, Advocate

DB.:Hon'ble Mr. Prashant Kumar Mishra, Ag. C.J. &**Hon'ble Mr. Parth Prateem Sahu, J.****Order On Board By****Prashant Kumar Mishra, Ag. C.J.**

11/4/2019

1. Heard.
2. The issue agitated before the writ Court was in relation to promotion of respondent No.3 to the post of Revenue Sub Inspector. Promotion to the said post is governed under Rule 12 of the Chhattisgarh Municipal Employees (Recruitment & Condition of Service) Rules, 1968, which has been reproduced in para 6 of the order dated 8.2.2019 passed by the learned Single Judge in WPS No.5605 of 2008.
3. The rule is explicit that promotion is to be made on the principle of merit-cum-seniority. The seniority shall be taken into account only where merits are equal.
4. In the case at hand, the DPC evaluated the respective merits of the appellant/petitioner and respondent No.3 and while doing so, has considered the ACRs of both the employees. Having considered that there are certain adverse remarks against the appellant/petitioner, he was found less suitable and meritorious than respondent No.3 and as such, respondent No.3 was eventually promoted.
5. In **Sukhdev Singh Vs. Union of India and others, (2013) 9 SCC 566**, the Supreme Court has reiterated the principle laid down in the matter of **Dev Dutt Vs. Union of India, (2008) 8 SCC 725**, to hold that every entry in the ACR whether 'poor', 'fair', 'average', 'good', 'very good' or 'outstanding', should be communicated to the employee concerned within a reasonable

period.

6. On the previous date of hearing, we had sought information from learned counsel for the Nagar Panchayat to state as to whether the adverse entries in the ACRs of the appellant, which have been considered by the DPC, were communicated to the appellant or not.
7. Today, learned counsel appearing for the Nagar Panchayat, on instructions, would submit that those adverse entries in the ACRs of the appellant were not communicated to him.
8. In Civil Appeal No.32 of 2013 (Rukhsana Shaheen Khan Vs. Union of India and others) decided on 28.8.2018, the Supreme Court was considering whether consideration of un-communicated ACRs, which are adverse to the appellant therein, is proper.
9. Referring to **Sukhdev Singh** (supra), the Supreme Court held that un-communicated adverse ACRs cannot be relied upon for promotion.
10. In view of the above settled position, the writ appeal deserves to be and is hereby allowed. The promotion of respondent No.3 on the post of Revenue Sub Inspector is set-aside. The Nagar Panchayat is directed to convene a fresh DPC after providing copies of all the ACRs to the appellant within a period of 15 days from today. After the said period, the appellant shall move a representation against the adverse entries in the ACRs within next 15 days. The competent authority shall decide the

representation within next one month and the fresh DPC shall be convened thereafter.

11.It is made clear that during pendency of the fresh DPC, respondent No.3 shall continue to discharge the duties on the promotional post on adhoc measure, which shall remain subject to final outcome of the fresh DPC proceedings.

12.It is also made clear that if eventually in the fresh DPC, respondent No.3 is found suitable and entitled for promotion, his seniority shall be reckoned from the date of initial promotion and likewise, if the petitioner/appellant is found suitable, he shall also be entitled to seniority from the date when respondent No.3 was initially promoted.

13.It is informed that after 2008, fresh DPC have taken place for consideration of promotion on the post of Revenue Sub Inspector. Therefore, rights of the appellant/petitioner or respondent No.3 for consideration in any DPC held after 2008 is left open.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge