

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4553 of 2019**

Rahul Kumar Rathore S/o Late Shri Rajesh Kumar Rathore, Aged About 29 Years, Presently Posted And Working As Peon, Municipal Council, Kharsiya, District Raigarh Chhattisgarh. R/o Ward No. 6, Pankhatiya, Post And Police Station Kharsiya, District Raigarh Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Urban Administration And Development Department, Mahanadi Mantralaya, Atal Nagar, Naya Raipur, Post Office And Police Station Naya Raipur, Atal Nagar, District Raipur, Chhattisgarh
2. Collector, Raigarh, District – Raigarh, Chhattisgarh
3. Joint Director, Urban Administration And Development Department, Raigarh, Chhattisgarh
4. Chief Municipal Officer, Municipal Council, Kharsiya District Raigarh Chhattisgarh
5. Chitranjan Bhardwaj, Peon, Municipal Council, Kharsiya District Raigarh Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Vivek Agrawal, Advocate
For Respondents	:	Mr. Ishan Verma, P.L. & Mr. Sudeep Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

25.06.2019

1. The grievance of the petitioner in the present writ petition is to the action on the part of the respondents in not considering the petitioner for promotion to the post of Assistant Grade-III from Class-IV cadre to which the petitioner belongs.
2. The brief facts of the case are that the petitioner was working under respondent no.4 as a Peon and as per the gradation list, the petitioner is senior to respondent no.5. Recently, the respondents have initiated proceedings for promotion to Assistant Grade-III among the eligible candidates of Class-IV cadre. The name of the petitioner in the gradation list appears at serial no.7 and the name of respondent no.5 appears at serial no.10.
3. It has been contended by the counsel for the petitioner that the candidates whose name appear from serial nos. 1 to 9, except for the petitioner who is at serial no.7, are ineligible for promotion as they do not have the minimum eligibility criteria. He submits that the petitioner and the respondent no.5 were found eligible but the claim of the petitioner was not considered on the ground that ACR of the petitioner for the year 2016-17 & 2017-18 reflects grading 'A' which means 'Average'. That the ACR of respondent no.5 is said to have been 'Very Good' all along, therefore, respondent no.5 is being considered for promotion ignoring the claim of the petitioner. Further contention of the petitioner is that the ACR of the petitioner for the year 2016-17 and 2017-18 has not been communicated to him and that the petitioner never had an occasion of making a representation

against the adverse entry. Hence, counsel for the petitioner prays that the respondents may be directed to firstly provide a copy of the ACR and secondly, permit the petitioner to represent against the adverse entry. Counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in the case of Dev Dutt Vs. Union of India & others, 2008 (8) SCC 725 and Sukhdev Singh Vs. Union of India and others, 2013 (9) SCC 566 in this regard. The petitioner also refers to a decision of this Court in the case of Dr Rajendra Prasad Tripathi Vs. State of Chhattisgarh and others, WPS No. 211/2009 decided on 22.04.2015.

4. Counsel for the respondents opposing the petition submit that since they are appearing on advance notice, as of now they are not in a position to state whether the petitioner has been communicated with the ACR for the year 2016-17 and 2017-18.
5. Given the said submission made by the counsel for the parties, this Court is of the opinion that ends of justice would meet if the writ petition is disposed of with a direction to respondent no.4 to immediately serve a copy of the ACR for the year 2016-17 & 2017-18 (in case the same till date has not been served to the petitioner) permitting the petitioner to represent the same. Thereafter, the said representation/objection be considered on its merit and an appropriate decision be taken. If the respondents allow the representation of the petitioner by expunging the adverse entries and by upgrading the grading, the claim of the petitioner for further promotion be considered in accordance to his seniority and eligibility.

Meanwhile, any promotion order that is carried out, the same shall be subject to the outcome of the decision to be taken by respondent no.4 on the representation of the petitioner.

6. The writ petition accordingly stands disposed of.

**Sd/-
P. Sam Koshy
Judge**