

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 7594 of 2018**

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, Baloda Bazar, District Baloda Bazar-Bhatapara Chhattisgarh.

**---- Petitioner****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.

**----Respondents**

|                    |   |                                |
|--------------------|---|--------------------------------|
| For Petitioner     | : | Mr. Amrito Das, Advocate       |
| For State          | : | Mr. Jitendra Pali, Dy. A.G.    |
| For Respondent/PSC | : | Ms. Sharmila Singhai, Advocate |
| For Intervenor     | : | Mr. Shashank Thakur, Advocate  |

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****15/01/2019**

1. The petitioner through the present writ petition has questioned the decision of the ***Chhattisgarh Public Service Commission*** (in short "***PSC***") in respect of the ***Departmental Promotion Committee*** (in short "***DPC***") held on 03.10.2018, whereby the PSC considered and recommended the promotion of only two posts of Joint Director (Veterinary Services).
2. The relevant facts necessary for the decision of the present writ petition is that the petitioner as on date is working as a Deputy Director (Veterinary Services). The next promotion post is to the post of Joint Director (Veterinary Services). According to the petitioner, the Veterinary Department had made a proposal to the State Government

for filling up of three posts of Joint Director (Veterinary Services). According to the petitioner, there were two clear posts available on the date of proposal and there was one anticipated vacancy that was to arise on the filling up of the post of Additional Director from among the available Joint Director. That when the DPC was convened by the PSC, they had considered only two persons for the said posts against the two clear vacancy and they did not consider filling up of the said anticipated vacancy. It is this action, which is under challenge in the present writ petition.

3. According to the counsel for the petitioner, there is a clear violation of the Rule 7(4) of the ***Chhattisgarh Public Service Promotion Rules, 2003*** (in short "***Rules of 2003***"), which envisages a Rule, which directs the Department to count the number of vacancies for promotion during the course of the year from 1<sup>st</sup> January to 31<sup>st</sup> December taking into account the existing and anticipated vacancies on account of retirements and promotions. The petitioner canvassed that this Rule provision has not been adhered to by the PSC and therefore an appropriate direction should be given to the respondents in this regard.
4. It is further the contention of the petitioner that once when the Department/ Government has made a recommendation to the PSC, there cannot be any alternation made by the PSC, so far as the number of posts to be filled up is concerned. According to the petitioner, since the selection to the post of Joint Director was applying the criteria of merits-cum-seniority, if the PSC would have considered filling up of three posts, the number of candidates, who would have come within the zone of consideration, would have been inclusive of the petitioner as his seniority in the gradation list was at serial No. 10. However, since

the PSC had convened the DPC for filling up of only two posts, only 8 candidates were as per the Rules were brought within the zone of consideration, thereby the petitioner could not be considered for the said promotion to the post of Joint Director. According to the petitioner, if the PSC would have consider filling up of the three posts, by virtue of merits as the credentials of the petitioner was far better than the two persons, who have now been recommended, the petitioner would have been selected on the promotion post of Joint Director.

5. 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.
6. 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 rosier 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.
10. For the foregoing reasons, this Court is of the opinion that, no strong case has been made out by the petitioner and the petition being devoid of substance, deserves to be and is accordingly dismissed.

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