

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.4906 of 2011**

- Anand Potdar, S/o Late Shri Vinayak Rao Potdar, aged about 53 years, Assistant Grade-II, R/o Qtr. No.RH 13, PWD Colony, Korba, Distt. Korba (C.G.)

----- Petitioner**Versus**

- 1.State Of Chhattisgarh through Secretary, General Administration Department, D.K.S. Bhawan, Raipur (C.G.)
- 2.Chhattisgarh State Election Commission through Secretary, Mahanadi Khand, Mantralaya Premises, Raipur (C.G.)
- 3.Collector and District Election Officer, Korba, District Korba (C.G.)
- 4.Deputy District Election Officer (Local Election), Collectorate, Korba, Distt. Korba (C.G.)
- 5.S. A. Salim, Incharge Superintendent, Collectorate, Distt. Korba (C.G.)
- 6.S. K. Paikara, Assistant Superintendent, Sthaniya Nirvachan (Local Election), Collectorate, Distt. Korba (C.G.)

----- Respondents

For Petitioner	Mr. R. S. Baghel, Advocate
For Respondent-State	Mr. Sunil Otwani, Addl. AG
For Respondent No.2	Mr. B. D. Guru, Advocate
For Respondent No.5	None
For Respondent No.6	Mr. Anadi Sharma, Advocate

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

16/09/2021

1. The petitioner herein is merely aggrieved by his non promotion on the post of Assistant Superintendent and promotion of respondent No.6 on the post of Assistant Superintendent by order dated 28.07.2011 (Annexure-P/11) passed by the respondent No.3 on the ground that the promotion was required to be done on the basis of merit-cum-seniority, whereas it has been done on the basis of seniority-cum-merit and if the principle of merit-cum-seniority could have been applied, the promotion could have been granted to the petitioner, therefore, the petitioner be granted notional promotion on the post of Assistant Superintendent from the date the respondent No.6 was promoted i.e. 28.07.2011.
2. When the matter is taken up for hearing, Mr. Guru, learned counsel for the respondent No.2, would submit that the petitioner has been convicted vide judgment dated 30.11.2016 passed by the learned Special Judge (Prevention of

Corruption), District Korba in Criminal Case No.01/2014 for the offence punishable under Section 7 read with Sections 13 (1) (d) & 13 (2) of the Prevention of Corruption Act, 1988 and on the basis of the petitioner's conviction, the District Magistrate/Collector, Korba vide order dated 23.12.2016 terminated the services of the petitioner w.e.f. 30.11.2016 itself, as such he is the terminated employee and notional promotion, if any, cannot be granted to the petitioner and the petitioner is not entitled to the same. In reply to the said submission, Mr. Baghel, learned counsel for the petitioner, would submit that the appeal against the judgment of the Special Court is pending consideration before the High Court, therefore, even if the petitioner has been convicted and thereafter terminated from the service, this will not prejudice this Court to determine the issue of grant of notional promotion to the petitioner, which he is otherwise entitled.

3. Mr. Sunil Otwani, learned State counsel, would submit that since the petitioner has been

convicted on criminal charges and thereafter terminated from the service on the ground of conviction, the direction for consideration of promotion by convening review DPC and further direction to grant the notional promotion would not be in accordance with law.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
5. True it is that the post of Assistant Superintendent was to be filled up by the respondent No.2 on the basis of merit-cum-seniority as per the criteria for promotion floated by the respondent No.2 itself vide Annexure-P/1 and the post of Assistant Superintendent has been filled up on the basis of seniority-cum-merit and following the said principle, the respondent No.6 has been promoted to the post of Assistant Superintendent vide order (Annexure-P/11) and as such the principle of merit-cum-seniority has not been followed and promotion on the post of Assistant Superintendent has been done

contrary to applicable criteria, therefore, this Court would have proceeded to consider the claim of the petitioner on merits, but since the petitioner as on today stands convicted for the aforesaid offences by the jurisdictional Criminal Court and on account of his conviction on the criminal charges, he has also been terminated from service, therefore, it would not be appropriate to consider the matter on merits and it would also be inappropriate to remit the matter to the respondent No.2 to convene the meeting of DPC to consider the case of the petitioner and respondent No.6 in accordance with law. It is stated at Bar that the respondent No.6 has already been promoted to the post of Naib Tahsildar and presently he is working. It is placed on record.

6. Accordingly, the writ petition is dismissed leaving the parties to bear their own cost (s).

Sd/-
Sanjay K. Agrawal
Judge

Nirala