



CGHC010226202021



2026:CGHC:29576-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4814 of 2021

1 - Kamlesh Kumar Thakur S/o Late M.S. Thakur, Aged About 46 Years
Posted as District Fire Brigade Officer, Bilaspur, Tahsil & District Bilaspur,
Chhattisgarh.

... Petitioner(s)

Versus

1 - State of Chhattisgarh, Through Secretary, Department of Police,
Mantralaya Mahanadi Bhawan, Police Station - Rakhi, Nawa Raipur
Chhattisgarh.

2 - State of Chhattisgarh Through Its Secretary Department of Personnel,
Administrative Reforms And Training, Mantralaya, Nawa Raipur Chhattisgarh.

3 - Public Service Commission, Shankar Nagar Road, Bhagat Singh Square,
Raipur, 492001.

4 - The Director General of Police, Police Head Quarter, Nawa Raipur
Chhattisgarh.

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner	:	Shri Goutam Khetrapal, Advocate.
For Respondent/State	:	Shri P.K. Bhaduri, Dy. Advocate General.
For Respondent No.3	:	Dr. Sudeep Agrawal, Advocate.

Hon'ble Shri Justice Ramesh Sinha, CJ

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Order on Board

14.07.2026

Per, Ramesh Sinha, CJ.

1 The petitioner has filed the present writ petition under Article 226 of the
Constitution of India, seeking following reliefs:

“10.1 That this Hon'ble Court may kindly be pleased to set-aside/quash the circular dated 02/05/1990 which is contrary to the Chhattisgarh Police Executive (Gazette Service Recruitment and Promotion) Rules, 2005.

10.2 That, this Hon'ble Court may kindly be pleased to hold and declare the circular dated 02/05/1990 as unconstitutional (Annexure-P-5) and violative of fundamental rights, thus ultra-vires to the Constitution of India in the interest of justice.

10.3 That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to call for the Annual Confidential Reports (ACRs) of the petitioner; place the same before the Departmental Promotion Committee (DPC), as and when meeting of the DPC convened; and consider the case of the petitioner for promotion to the post of Deputy Superintendent of Police (DySP), as per the gradation list dated 28/5/2021 wherein his name finds place at S.No. 19.

10.4 That any other relief/order which this Hon'ble Court may deem fit and proper and just in the facts and circumstances of the case including award of the cost of the petition may kindly be granted in the light of the equity, justice and good conscience.”

- 2 Learned counsel for the petitioner would submit that the petitioner was appointed on 16.08.2000 to the of Sub Inspector in Police Department and posted at Fire Brigade, Bilaspur. Vide order dated 14.05.2007 he was promoted to the post of Town Inspector along with 58 other police personnel on the ground of bravery. A gradation list was also published by the Police Headquarter, Nawa Raipur on 28.05.2021 in which the name of petitioner was at serial No.19. The petitioner was working with utmost sincerity and received excellent remark in his ACR. According to Chhattisgarh Police Executive (Gazetted Service Recruitment and Promotion) Rules, 2005 (in short, the Rules, 2005), the next promotional post of Town Inspector is the Deputy Superintendent of

Police (in short, DSP). There was 56 vacant posts of DSP available with the department and promotion of petitioner was due for which a meeting of Departmental Promotion Committee (in short, DPC) was to be convened. The Police Headquarter, Nawa Raipur, called ACRs of 12 candidates on 14.07.2021. Name of those 12 candidates are below the name of petitioner in the gradation list. Despite seniority in the said gradation list, the name of the petitioner was not considered for promotion to the post of DSP. The petitioner came to know that there is an order of punishment in a Departmental Enquiry against him and as per circular dated 02.05.1990, the petitioner is not entitled for promotion due to punishment in the Department Enquiry and therefore the name of the petitioner was not recommended for promotion in the said DPC. The petitioner was facing Department Enquiry for the charge of violation of regulation No.580 and 64(2) of the Police Regulations with the charge that having knowledge of culprit in crime related to theft, abusing his powers as Town Inspector, had let the culprit walk out freely. In the Departmental Enquiry a punishment order was passed against the petitioner with effect of stoppage of annual increment with cumulative effect. The petitioner had already filed an appeal before the appellate authority which was pending consideration. He would further submit that as per clause-2 of circular dated 02.05.1990, it has been provided that if a government employee has been awarded a punishment in a departmental enquiry, then he should not be considered for the promotion during the time of punishment imposed against him. Rule 14 & 15 of Rules, 2005 governs the rules for promotion on the post of DSP and seniority is the requisite condition.

The candidature of the petitioner for promotion does not depend upon the recommendation of the DPC, but it should be from the seniority and therefore depriving the petitioner for promotion to the post of DSP is arbitrary and is violative of his legal right of promotion. Therefore, he challenged the circular dated 02.05.1990 and claimed promotion to the post of DSP as per gradation list dated 28.05.2021.

- 3 On the other hand, learned counsel for the State opposes the submissions made by the counsel for the petitioner and would submit that challenge of the petitioner to the circular dated 02.05.1990 is misconceived and based on an incomplete reading of circular. The said circular do not completely debar the petitioner from his promotion. It is only restricted up to the period for which the punishment is effected. After completion of DPC, a fresh DPC is to be convened for fresh consideration of the subsequent batch of candidates for their promotion. The petitioner has not disclosed the entire facts of his service career as he was imposed various major and minor penalties during his service career. The petitioner was initially appointed on 06.08.2000 and promoted on the post of Inspector on 15.05.2007. In between 2016 to 2020 the petitioner was punished for 16 major punishments and 27 minor punishments. In the year, 2017, he was punished with stoppage of increment for one year. The said stoppage of increment was with non cumulative effect as a result of departmental enquiry and the said punishment was imposed against him on 30.12.2020.

The circular dated 02.05.1990 provides that the person who has been punished in departmental enquiry, his promotion cannot be

considered for the period under which the punishment was operative. The petitioner relied upon circular, however, the said circular cannot over right the Rules. Rules, 2005 does not restrict the applicability of the provisions of Chhattisgarh State (Civil Services) Promotion Rules, 2003 framed by the State Government which relates to determination of the basis for promotion on the public services and posts relates to reservation in favour of Scheduled Castes and Scheduled Tribes. He would further submit that rule 16 of Rules, 2005 empowered the DPC to prepare a list of persons who are found eligible for promotion. The criteria for promotion was merit-cum-seniority. After considering the ACRs of last five years, the candidates were to be considered for promotion. During currency of punishment the employee can validly be deprived from consideration of promotion and the circular dated 02.05.1990 itself reflect that the candidature is restricted to those candidates whose cases were either to be considered for punishment or in the currency of punishment. The restriction has only been made to honour the punishment made to the employee.

In the present case the petitioner was inflicted with punishment on 31.12.2020 and at the time when gradation list published, his punishment was in currency. Therefore, the candidature of the petitioner was not considered for promotion. The petitioner could not demonstrate any arbitrariness or malafide action not to consider him for promotion and therefore the petition is liable to be dismissed.

- 4 We have heard the counsel for the parties and perused the documents annexed with the petition.

- 5 Before entering into consideration of the case, it is necessary here to notice the relevant provisions of rule 15 of Rules, 2005, which reads as under:

“15. CONDITIONS OF ELIGIBILITY FOR PROMOTION OF INSP. TO DEPUTY SUPERINTENDENT OF POLICE :-

(1) Without prejudice to the generality of the provisions of Chhattisgarh State Civil Service (Promotion) Rules, 2003 the procedure for making promotions, shall be in accordance with these rules only. The procedure for promotions are laid down in the Rules 16 to 19.

(2) The Committee shall consider all the cases of those persons, who have fulfill the minimum qualifying service on the post/posts or the post declared to its equivalent by the Government as mentioned in Col. No. 2 of Schedule-IV or substitute completes the minimum qualifying service as mentioned in Col. No.4 of Schedule-IV as on 1st January of that corresponding year and who comes in the zone of consideration.

Explanation:- Eligibility for promotion and Procedure of Calculation of Qualifying Service:-The year in which Departmental Promotion Committee/Screening Committee hold its meeting shall calculate the minimum qualifying service of the Public Servants till the 1st January of DPC year from the Calendar year in which the public servant attained the post/feeder channel and not from the date of promotion.

(3) (a) There shall be no Zone of Consideration for all the categories, if the promotions are given except unqualified persons on the basis of their seniority or Seniority-cum-fitness principle. For this purpose the number of vacant posts shall be calculated according to the existing vacancies in all the feeder channel including the number of anticipated vacancies by retirement in coming one year.

(b). In addition to the vacancies mentioned in sub rule (3)(a), for filling up the previous unexpected vacancies, the zone of

consideration shall be extended suitably by increasing two public servants or 25 percent of the select list which is more.

(4.) The promotion shall be given in accordance with the Reservation Roster prescribed by the Government."

- 6 Since the petitioner has challenged the circular dated 02.05.1990 which debars him for promotion on the ground of punishment imposed upon him in the department enquiry, and therefore, clause-4 of the said circular dated 02.05.1990 is also necessary to reproduce here, which reads as under:

"4. विद्यमान निर्देशों के पालन में कोई त्रुटि न हो, उस उद्देश्य से निम्नांकित पूरक निर्देश पुनः प्रसारित किए जाते हैं:-

(1) विभागीय पदोन्नति समिति की बैठक के समय लसंबित विभागीय जांच/संभावित विभागीय जांच निलंबन में उलझे शासकीय सेवक के मामले में सीलबंद लिफाफा में रखी गई सिफारिशों के अनुसार पदोन्नति उसी स्थिति में की जाए जबकि संबंधित शासकीय सेवक को विभागीय जांच में पूर्णतया दोषमुक्त माना गया हो या उसकी निलंबन पूर्णरूपेण अनुचित माना गया है. यदि ऐसे शासकीय सेवक को विभागीय जांच के परिणामस्वरूप कोई शास्ति दी गई हो तो उसे पदोन्नति की पात्रता नहीं होगी.

नोट - विभागीय जांच का परिणाम संबंधित प्रकरण के तथ्यों एवं स्वरूप पर या तो "शास्ति देने का होना चाहिए या फिर दोषमुक्ति का विभागीय जांच की परिणिति चेतावनी के रूप में कदापि नहीं होना चाहिए क्योंकि यह "दण्ड" की परिभाषा में नहीं आता, परन्तु यदि किन्हीं प्रकरणों में विभागीय जांच से संबद्ध शासकीय सेवक को विभागीय जांच के परिणाम स्वरूप चेतावनी देना ही उचित समझा जाता है तो इसके लिए यह अनिवार्य होगा कि विहित प्राधिकारी उन परिस्थितियों एवं कारणों का स्पष्ट उल्लेख करें जिनके आधार पर संबंधित शासकीय सेवक को उसके विरुद्ध चल रही विभागीय जांच में केवल "चेतावनी" देना ही उचित एवं पर्याप्त समझा गया हो.

संबंधित विहित प्राधिकारी "चेतावनी" का कथित दण्ड (जो वास्तव में दण्ड नहीं है) प्राप्त सेवक की पदोन्नति करते समय उपर्युक्तानुसार "चेतावनी" की परिस्थितियों एवं कारणों का अध्ययन करेगा तथा इनके आधार पर वह यह निष्कर्ष निकालेगा कि संबंधित शासकीय सेवक पूर्णरूपेण दोषमुक्ति की परिधि में आता है इसलिए उसे पदोन्नत किया जाना चाहिए या वह पूर्णरूपेण दोषमुक्त नहीं है इसलिए उसे पदोन्नति नहीं किया जाना चाहिए"

- 7 Perusal of clause 4(1) of the circular dated 02.05.1990 would clearly state that if any government servant is being punished in departmental enquiry, he is not entitled for promotion. Rules 15 to 19 prescribe the procedure for promotion and preparation of the select list. However, the Rules do not deal with the consequences of a departmental punishment or consideration for promotion. The field is therefore, supplemented by the executive instructions contained in the circular dated 02.05.1990. Sub-rule (1) of rule 15 of The Rules, 2005 provides “without prejudice to the generality of the provisions of Chhattisgarh State Civil Services (Promotion) Rules, 2003” and thereby the applicability of general promotion rules of 2003 has been preserved and thus, as per the circular dated 02.05.1990 when it is provided that the candidate who have been punished in departmental enquiry cannot be considered for promotion, cannot be said to be a new disqualification under the Rules, 2005.
- 8 The petitioner could not dispute that on 31.12.2020 he was punished with stoppage of one increment with non cumulative effect and as per the document Annexure R/1 which is the service record of the petitioner, he was not entitled for consideration of his promotion in the DPC which was held in the year, 2021 and at that time his punishment order dated 31.12.2020 was in currency. Rule 16 of The Rules, 2005 provides preparation of list of suitable candidates for the post of DSP and the list so prepared shall be reviewed and revised every year. Merely because the statutory appeal against the punishment order was pending, did not render the punishment inoperative. In the absence of any order staying or setting aside the punishment, the respondents

were justified in treating the punishment operative on the date of consideration by the DPC.

- 9** Sub clause-2 of Clause-4 of the circular dated 02.05.1990 provides that the candidature of the candidates who have been punished and their candidature was not considered during currency of their punishment, are to be considered for promotion in the next DPC so that they may not suffer for stoppage of their promotional avenue for a long period. Sub-clause (2) of clause-4 of the Circular dated 02.05.1990 reads as under:

“(2) विभागीय पदोन्नति समिति द्वारा तैयार की गई चयन सूची (पैनल) समाप्त होते ही अगली विभागीय पदोन्नति समिति की बैठक अविलम्ब आयोजित की जाए जिससे विभागीय जांच में लघु शास्ति पाने वाले शासकीय सेवकों को बहुत लम्बी अवधि तक पदोन्नति के अवसर से बंचित होने का अतिरिक्त और अघोषित दण्ड न भोगना पड़े.”

- 10** Thus, when the circular dated 02.05.1990 itself provides that restriction for consideration of the candidates who have been punished in departmental enquiry only up to currency of their punishment and their candidature will again be considered in the next DPC after completion of their punishment and admittedly the punishment of the petitioner was in currency at the time when DPC was convened in the year, 2021, it cannot be said that the petitioner is arbitrarily deprived for consideration of his promotion to the post of DSP.
- 11** So far as the challenge to the constitutional validity of the circular dated 02.05.1990 is concerned, the same is devoid of merit. A subordinate executive instruction can be declared ultra vires only when it is shown to be inconsistent with the statutory rules, contrary to any constitutional or statutory provision, or manifestly arbitrary so as to offend Articles 14 and 16 of the Constitution. The petitioner has failed to demonstrate any

such inconsistency. On the contrary, Rule 15(1) of the Chhattisgarh Police Executive (Gazetted Service Recruitment and Promotion) Rules, 2005 expressly provides that, *without prejudice to the generality of the provisions of the Chhattisgarh State Civil Services (Promotion) Rules, 2003*, the procedure for promotion shall be governed by the Rules, 2005. The impugned circular merely supplements the procedure for considering employees who are either facing departmental proceedings or have been meted out punishment and does not create any independent disqualification dehors the statutory rules.

12 In *Union of India v. K.V. Jankiraman, (1991) 4 SCC 109*, the Hon'ble Supreme Court recognized that the employer is entitled to withhold or defer the promotion of an employee whose conduct is under a cloud on account of disciplinary proceedings and that an employee has no vested right to promotion, but only a right to be considered in accordance with the applicable rules and instructions. After punishment, the employee cannot claim retrospective promotion during the period of punishment operated. Once disciplinary proceedings culminate in the imposition of punishment, the employee cannot claim the same treatment as an employee who has been exonerated. The underlying principle is that promotion to a higher post necessarily involves assessment of the suitability and service record of the employee. Therefore, an executive instruction providing that an employee undergoing the currency of punishment shall not be promoted cannot, by itself, be said to be arbitrary or violative of Articles 14 and 16 of the Constitution, particularly when it seeks to preserve administrative discipline and efficiency in public service.

- 13** In the present case, it is not disputed that the petitioner was inflicted with the punishment of stoppage of one annual increment by order dated 31.12.2020 and that such punishment was operative when the Departmental Promotion Committee met in the year 2021. The impugned circular only postpones consideration of promotion during the currency of the punishment. Significantly, Clause 4(2) of the circular mandates that immediately after the existing select panel expires, the next Departmental Promotion Committee shall be convened so that an employee who has suffered only a minor punishment is not deprived of promotional opportunity for an unduly long period. Thus, the circular neither permanently debars the petitioner from promotion nor extinguishes his right to be considered. It merely regulates the stage at which such consideration would take place. The petitioner has only a right to be considered for promotion in accordance with the applicable Rules and executive instructions and not a vested right to promotion merely on the basis of his placement in the gradation list.
- 14** In view of the aforesaid, the petitioner has failed to establish that the circular dated 02.05.1990 is inconsistent with the Rules, 2005 or that it infringes any constitutional guarantee. Rather, the circular harmoniously operates with the statutory Rules by laying down the manner in which the suitability of employees undergoing disciplinary proceedings or suffering punishment is to be considered by the Departmental Promotion Committee. Since the restriction imposed is temporary, founded on a rational classification, and has a direct nexus with maintaining discipline and integrity in public service, it cannot be characterized as arbitrary, unreasonable or ultra vires the Constitution.

Consequently, the challenge to the validity of the circular dated 02.05.1990 deserves to be rejected.

15 In so far as the prayer seeking a direction to the respondents to call for the petitioner's ACRs, place the same before the Departmental Promotion Committee and consider his case for promotion to the post of Deputy Superintendent of Police is concerned, the same also cannot be granted. As discussed hereinabove, on the date when DPC was convened in the year 2021, the punishment imposed upon the petitioner was admittedly in currency and, in terms of the circular dated 02.05.1990, he was not eligible for consideration for promotion during the subsistence of the said punishment. Since the action of the respondents in not placing the petitioner's case before the DPC has been found to be in accordance with the applicable Rules and the circular governing the field, no mandamus can be issued directing consideration of his case in the said DPC. However, it is observed that the petitioner's non-consideration in the DPC held during the currency of the punishment shall not deprive him of his entitlement to be considered for promotion in the subsequent Departmental Promotion Committee after the currency of the punishment is over, in accordance with the applicable Rules, the circular dated 02.05.1990 and his inter se seniority, subject to his otherwise fulfilling the prescribed eligibility conditions.

16 In view of the foregoing discussion, this Court finds no merit in the challenge laid to the circular dated 02.05.1990 or in the grievance raised by the petitioner regarding his non-consideration for promotion to the post of Deputy Superintendent of Police in the Departmental

Promotion Committee held in the year 2021. The action of the respondents is in consonance with the applicable statutory Rules as well as the executive instructions governing the field and does not suffer from any arbitrariness, illegality or constitutional infirmity warranting interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

17 Consequently, the writ petition, being devoid of merits, deserves to be and is hereby **dismissed**. No order as to costs.

18 Pending interlocutory application(s), if any, shall also stand disposed of.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

inder