

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA****CWPOA No.420 of 2019****Decided on: 05th May, 2026**

Ravish Chander Kaushal**...Petitioner****Versus**

State of Himachal Pradesh and others**...Respondents**

*Coram***Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge***Whether approved for reporting?¹*

For the petitioner:

Mr. R.K. Gautam, Senior Advocate
with Mr. Jai Ram Sharma, Advocate.

For the respondents:

Mr. Rupinder Singh Thakur and Mr.
Vishwa Deep Sharma, Additional
Advocate Generals, for respondents
No.1 and 2.Mr. Prem P. Chauhan, Advocate, for
respondent No.3.Mr. Vikrant Thakur, Advocate, for
respondent No.4.

Jiya Lal Bhardwaj, Judge *(Oral)*

The petitioner, by way of present petition, has
prayed for the following substantive reliefs:

*"(1) That in view of the facts and circumstances it is
respectfully submitted that the case of applicant may be
allowed and applicant may be promoted to the post of Distt.
Director Physical Education as being senior to R-3 in the*

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*



interest of justice.

(2) That the seniority list of APTS/DPEs may be prepared and giving benefit of approved military service and proper placement be given to the applicant in the interest of justice."

2. The facts which emerge from the pleadings are that the petitioner had earlier joined the Indian Army on 24.12.1975 and was released therefrom in the year 1991. Being an Ex-serviceman, he was offered appointment as Diploma in Physical Education (hereinafter referred to as "DPE") in Education Department, where he joined his services on 14.06.1994. Since the petitioner was appointed against the reserved vacancy meant for Ex-servicemen, he was assigned seniority position taking his military service w.e.f. 06.10.1978 as evident from office order dated 04.11.1997 (Annexure A-1), which was in pursuance of Rule 5 of the Demobilized Armed Forces Personnel (Reservation of vacancies in Himachal State Non-Technical Services) Rules, 1972. Keeping in view the seniority position assigned to the petitioner, he was promoted vide office order dated 18.05.1999 (Annexure A-2)



as Assistant District Physical Education Officer (hereinafter to be referred as "ADPEO"), , in the pay scale of Rs.5480-8925 on adhoc basis with immediate effect.

3. The claim of the petitioner in the present petition is that, for further promotion to the post of Assistant Director of Education (Physical Education) (Class-II Gazetted), respondent No.1-State has framed the Recruitment and Promotion Rules, vide notification dated 28.08.1997 (Annexure A-3), which are called as "the Himachal Pradesh, Education Department Asstt. Director of Education (Physical Education) (Class-II-Gazetted) Recruitment and Promotion Rules 1997" (hereinafter to be referred as "R&P Rules"). As per these Rules, the post of Assistant Director of Education (Physical Education) (hereinafter to be referred as Assistant Director) has to be filled up from amongst the ADPEOs, who possess 10 years regular service or regular combined with continuous adhoc (rendered up to 31.03.1991). It has further been prescribed that, in case, where a junior person becomes



eligible for consideration by virtue of his total length of service (including the service rendered on adhoc basis upto 31.03.1991) in the feeder post, all persons senior to him in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration. A proviso has been added that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least 3 years or that prescribed in the R&P Rules for the post, whichever is less.

4. The petitioner, when was not considered for promotion to the post of Assistant Director, preferred representations to the respondents-State, however, his claim for promotion was not considered. The petitioner has placed on record the Notification dated 27.01.2007 (Annexure A-5), whereby one Smt. Kanta Verma, who was working as ADPEO, was promoted to the post of Assistant Director and the petitioner had no grievance qua her promotion to the said post since she was senior to him and in the petition, he has



not even challenged her promotion to the post of Assistant Director.

5. The petitioner has averred that respondent No.3 is being considered for promotion to the post of Assistant Director after 28.02.2007, which is wrong for the reason that the petitioner was senior to him in the cadre of DPEs, who had been appointed on 24.10.1986. In case of one Sh. Anant Ram, who was appointed as DPE on 20.06.1995, was brought above the petitioner on the strength of approved military service. Since the petitioner had been given the benefit of approved military service, he is entitled to be promoted to the post of Assistant Director.

6. The respondents-State filed reply to the petition and averred that the petitioner cannot be promoted to the post of Assistant Director, due to the fact that as per the existing R&P Rules, the post of Assistant Director is to be filled up by promotion amongst the ADPEOs, who possess 10 years regular service or regular combined with continuous adhoc



service rendered up to 31.03.1991. The petitioner is working as ADPEO since 18.05.1999 on adhoc basis and has not completed 10 years' service as ADPEO, which is essential for the post of Assistant Director. Respondent No.3 is not junior to the petitioner, for the reason that he is working on the said post since 03.10.1985, whereas the petitioner was working since 18.05.1999 on adhoc basis.

7. The petitioner filed rejoinder to the reply filed by the respondents-State and placed on record the office order dated 30.10.1985 (Annexure A-11), which is pertaining to the appointment of respondent No.3 as Assistant Physical Training Supervisors/DPE (Schools). The petitioner has also placed on record, the final seniority list of ADPEOs as it stood on 30.09.1995 (Annexure A-12). A perusal of Annexure A-12 clearly reveals that respondent No.3 has been shown to have been appointed as Assistant Physical Training Supervisors/DPE (Schools) w.e.f. 30.10.1985.

8. I have heard the learned counsel for the parties



and also perused the record carefully.

9. It is not in dispute that the petitioner was appointed as DPE on 14.06.1994 and thereafter as per office order dated 04.11.1997 (Annexure A-1), he was assigned the provisional position in the seniority list of DPEs, taking into account his approved military service w.e.f. 06.10.1978.

10. It is also not in dispute that the petitioner was promoted to the post of ADPEO vide office order dated 18.05.1999 (Annexure A-2). It is also not in dispute that in the year 2007, when the respondents-State had issued the notification on 27.01.2007, one Smt. Kanta Verma was promoted to the post of Assistant Director on regular basis, who was senior to the petitioner. It is also not in dispute that as per the R&P Rules, there is only one post of Assistant Director of Education. The claim of the petitioner is that since he had rendered 3 years' service on the post of ADPEO, he ought to have been considered for promotion to the post of Assistant Director of Education, cannot be accepted for the



simple reason that the Rules do not envisage so. The relevant Rule 11 of R&P Rules for the post of Assistant Director is reproduced hereinbelow:

“11 In case of recruitment by promotion, deputation, transfer, amongst the Assistant grade from which District Physical Education promotion/deputation/transfer Officers who possess ten years’ regular service or regular combined with continuous adhoc (rendered upto 31.3.1991) service, if any, in the grade.

Note: (1) In all cases of promotion, the adhoc service rendered in the feeder post upto 31.3.1991, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these Rules for promotion subject to the condition: that in all cases where a junior person becomes eligible for consideration by virtue of his total length of service (including the service rendered on adhoc basis upto 31.3.1991) in the feeder post in view of the provisions preferred to above, all persons senior to him in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration.

Provided that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least three years or that prescribed in the Recruitment and Promotion Rules for the post, whichever is less;

Provided further that where a person becomes ineligible to be considered for promotion on account of



the requirements of the preceding proviso, the person(s) junior to him shall also be deemed to be ineligible for consideration for such provision.

Explanation :- The last proviso shall not render the junior incumbents ineligible for consideration for promotion if the senior ineligible persons happened to be Ex-servicemen recruited under the provisions of Rule-3 of Demobilised Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-Technical Service) Rules, 1972 and having been given the benefit of seniority thereunder or recruited under the provisions of Rule-3 of Ex-Servicemen (Reservation of Vacancies in the Himachal Pradesh Technical Services) Rules, 1985 and having been given the benefit of seniority thereunder.

(2) Similarly, in all cases of confirmation, adhoc service rendered on the feeder post upto 31.3.1991, if any, prior to the regular appointment against such post shall be taken into account towards the length of service;

Provided that inter-se-seniority as a result of confirmation after taking into account, adhoc service rendered upto 31.3.1991 shall remain unchanged."

11. Proviso to the rule only envisages that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least three years or that prescribed in the R&P Rules for the post, whichever is less. This proviso has been inserted with a view to consider the person, who has rendered at least three years service as



ADPEO where a person, who is junior to an incumbent becomes eligible for consideration by virtue of his total length of service in the feeder post, then all persons senior to him in the respective category/post/category shall be deemed to be eligible for consideration. It cannot be construed that the person even if he rendered three years' service as ADPEO is eligible for promotion to the post of Assistant Director.

12. The claim put forth by the petitioner that respondent No.3 was junior to him cannot be countenanced at this juncture when as per the petitioner himself and the documents which he has placed on record as Annexure A-12, he has been shown in the final seniority list of ADPEO as it stood on 30.09.1995.

13. No doubt, the petitioner has been promoted to the post of ADPEO vide order dated 18.05.1999 (Annexure A-2) after the final seniority list of ADPEO as it stood on 30.09.1995, but the petitioner did not take any steps thereafter to assign him the seniority above, respondent No.3



and approached the Tribunal only in the month of February 2007, that too, after the promotion of one Smt. Kanta Verma to the post of Assistant Director as per notification dated 27.01.2007 (Annexure A-5), who was senior to the petitioner and no claim is made against her promotion.

14. Once as per the pleadings of the petitioner himself, Smt. Kanta Verma was rightly considered for promotion to the post of Assistant Director; and there is only one post of Assistant Director in the R&P Rules; and the petitioner has not challenged the appointment of Smt. Kanta Verma, who is otherwise senior to the petitioner, the claim put forth by the petitioner that he was entitled to be promoted to the post of Assistant Director on the anvil of the fact that he had rendered 3 years' service and was eligible for the post is not based on correct interpretation of the R&P Rules and thus, the claim put forth by him is without any substance.

15. As already discussed above, once there was only



one post of Assistant Director and the said post had been filled up by a person, who was senior to the petitioner, no relief can be granted to him and as such the petition is rejected.

16. Resultantly, I do not find any merit in the present petition and the same is accordingly dismissed. However, there shall be no orders as to costs. Pending miscellaneous application(s), if any, shall also stand disposed of.

5th May, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**