



AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Order reserved on 16.1.2026

Order delivered on 29/01/2026

WPS No. 3800 of 2020

1. Rukam Singh Tomar S/o Shri Hawaldar Singh Tomar Aged About 58 Years Post Senior Horticulture Development Officer At Government Garden Ropdi Anjori Pali Kharsia Police Station And Block Kharsia, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

... Petitioner(s)

versus

1. State Of Chhattisgarh Through The Under Secretary, Agriculture Development And Farmer Welfare And Bio Technology Department , Mantraya , Mahanadi Bhawan, Naya Raipur , Atal Nagar, District Raipur Chhattisgarh.,
2. The Director Horticulture And Farm Forestry (Pracchetra Vaniki) Directorate Indravati Bhawan, Atal Nagar , Naya Raipur , District Raipur Chhattisgarh.
3. Raghav Swarup Verma S/o Shri Mohan Swarup Verma Aged About 58 Years Assistant Director Horticulture Balodabazar , District Balodabazar Bhatapara Chhattisgarh.

... Respondents

For Petitioner	: Mr. Anil Singh Rajput, Advocate
For Respondent No.1 & 2	: Mr. Vivek Sharma, Advocate General
For Respondent No.3	: Mr. Raghvendra Pradhan, Advocate

DB: Hon'ble Mr. Justice Ramesh Sinha, CJ
Hon'ble Mr. Justice Parth Prateem Sahu, J

CAV Order

Per Parth Prateem Sahu, J

1. This writ petition is listed before this Division Bench on a reference being made by learned Single Judge observing thus:-

“ The germane issue for consideration before this Court is whether the view taken by this Court in Harikrishna Patel (supra) that for consideration of promotion on the basis of “seniority-cum-fitness”, no minimum Benchmark could be prescribed by the DPC, is contrary to the provisions contained under Rule 4(1) and Rule 6(5) of the Promotion Rules, 2003 or whether the other view taken by this Court in Prahalad Singh Gunwan (supra) that for promotion on the basis of “seniority-cum-fitness”, the DPC was empowered to prescribe a minimum Benchmark on the basis of ACR grading, is correct or not?”

2. For answering the reference, we find it appropriate to discuss the facts of case, subject matter of writ petition. Petitioner, who is holding post of Senior Horticulture Development Officer, became eligible for his consideration for promotion on the post of Assistant Director (Horticulture). For consideration of eligible candidates for promotion on the post of Assistant Director (Horticulture), the Departmental Promotion Committee (DPC) was constituted and its meeting was held on 24.6.2020 considering seniority of the employees holding

post of Senior Horticulture Development Officer as on 1.4.2019. As per claim of petitioner, his name finds place at Sr. No.19 in the gradation list, however, respondent No.3, who is junior to petitioner and whose name is at Sr. No.20 in gradation list, had been promoted, superseding the petitioner. Aggrieved with which, petitioner has filed this writ petition precisely on the ground that as there is no adverse remark in ACRs / departmental inquiry is not pending against him, therefore, petitioner could not have been superseded by respondent No.3 being junior to him.

3. Respondent No.1 and 2-State submitted reply to writ petition stating that criteria for promotion to the post of Assistant Director (Horticulture) from Senior Horticulture Development Officer was seniority-cum-merit on the basis of evaluation of annual confidential reports of preceding five years. It is pleaded that DPC has formulated minimum benchmark that “upon valuation of five years annual confidential reports, minimum of which must be “good” (minimum 10 marks) and in none of the years grading of employee shall be ‘D’. Further, there shall be no adverse remarks. As the petitioner was graded with ‘C’ grading, he was not found fit for promotion despite being senior to respondent No.3. To support the contention, reliance is placed on the order dated 24.10.2019

passed by Single Bench in **WPS No.5350/2009**, parties being **Prahlad Singh vs. Gunwan v. State of CG & ors.**

4. During course of arguments before learned Single Judge, learned counsel for petitioner placed reliance upon order dated 31.7.2025 passed in **WPS No.2528/2020 (Harikrishna Patel and others vs. State of CG and others)**, and submitted that where criteria for promotion is on the basis of 'seniority-cum-fitness', no minimum benchmark can be prescribed by the DPC, it has to be solely on the basis of seniority, provided there is no adverse remark against the employee concerned.
5. Learned Single Judge taking note of two decisions of this Court passed by learned Single Judge i.e. **Prahlad Singh Gunwan (supra) and Harikrishna Patel (supra)**, has made this reference.
6. Service rules applicable to the facts of present case are Chhattisgarh Horticulture (Gazetted) Service Recruitment Rules 2013 (for short 'the Rules of 2013'). Rule 14 of the Rules of 2013 provides for appointment by promotion. Assistant Director Horticulture is mentioned at Sr. No.16 in Schedule-1 and is classified as Class-II (Gazetted). Under Schedule-II it is mentioned that 75% of total sanctioned of posts is to be filled by promotion. Schedule-IV provides for a post from which employee is to be promoted i.e. promotional

post. Promotional post for the employee holding post of Senior Horticulture Extension Officer is Assistant Director Horticulture and minimum experience of working in feeder cadre is provided as five years. Under sub-rule (3) of Rule 14 of the Rules of 2013, it is provided that every promotion shall be made in accordance with the provisions of the Chhattisgarh Public Service (Promotion) Rules 2003 and as per model roster.

7. Rule 4 of the Rules of 2003 provides for determination of basis of promotion. It provides that promotion from Class II to higher pay scale of Class II or Class II to Class I post, shall be made on the basis of "seniority subject to fitness".
8. In case of **Harikrishna Patel (supra)** learned Single Judge has considered the promotion on the post of Lab Attendant (Class IV post) to the post of Lab Assistant (Class-III post), which, according to Rule 4 of the Rules of 2003 is to be based on seniority subject to fitness. Learned Single Judge while considering claim of rival parties has taken note of decision in case of **Rajendra Tiwari vs State of Chhattisgarh, (2017) SCC Online Chh. 1639**, wherein learned Single Judge while considering the issue relating to promotion from the post of Excise Inspector to Assistant District Excise Officer i.e. from Class III to Class II post, has observed that "in this background, the interpretation of rules and criteria of

promotion on seniority subject to fitness should only be understood in the sense that the employee should be promoted on the basis of seniority provided that there is nothing adverse against him like doubtful integrity, departmental enquiry, criminal case, penalty, deleterious material etc.

9. In case of **Rajendra Tiwari (supra)**, promotion proceeding, subject matter of that writ petition, was of the year 2002 i.e. prior to coming into force of the Rules of 2003.
10. Under sub-rule (5) of Rule 6 of the Rules of 2003 it is provided that Departmental Promotion Committee shall assess the suitability of the public servants for promotion on the basis of their service record and with particular reference to the Annual Confidential Reports (ACRs) for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the Departmental Promotion Committee shall see the record with particular reference to the ACRs for the years equal to the required qualifying service. Under this rule it is specifically provided that Departmental Promotion Committee shall assess the suitability of the public servants for promotion.
11. If Rule 4 of the Rules of 2003 is read conjointly with sub-rule (5) of Rule 6 of the Rules of 2003, it is clear that even if an employee fulfills basis of promotion i.e. seniority subject to

fitness, then also the Departmental Promotion Committee has jurisdiction to assess suitability of the public servant for promotion and the word used under sub-rule (5) of Rule 6 is “shall”.

12. Under Rule 6 of the Rules of 2003, the law making authority has consciously bring in sub-rule (5) of Rule 6 granting power to the Departmental Promotion Committee to further assess suitability of public servants for promotion with reference to annual confidential reports of 5 preceding years.
13. In case of **Prahlad Singh Gunwan (supra)**, the proceedings of promotion, subject matter therein, was of the year 2009 i.e. after coming into force of the Rules of 2003. In that case, DPC has fixed the benchmark that candidates having eligible to be considered for promotion must have secured at least ‘Good’ grade in last five years annual confidential reports and should not have obtained two continuous or more than two ‘C’ grade in last five years. Petitioner therein was awarded ‘C’ grading thrice and therefore it was observed that petitioner did not attain minimum benchmark. In the aforementioned decision, learned Single Judge relied upon decision in case of Chairman, **Rushikulya Gramya Bank v Bisawamber Patro and others**, reported in (2013) 4 SCC 376 and **Palure Bhaskar Rao and others vs. P. Ramaseshaiah and others**, reported in (2017) 5 SCC 783.

14. From the above discussion, it is clear that decision which was relied upon by learned Single in case of **Harikrishna Patel (supra)** of **Rajendra Tiwari (supra)**, the proceeding of promotion, subject matter of that writ petition, is of prior to coming into force of the Rules of 2003 and the decision in case of **Prahlad Singh Gunwan (supra)**, wherein the proceeding of promotion, subject matter of issue, was of the year 2009 i.e. after coming into force of the Rules of 2003.
15. Sub-rule (5) of the Rule 6 of the Rules of 2003, as discussed above, confers power upon the Departmental Promotion Committee using the word 'shall' to assess suitability of the public servants for promotion on the basis of their service record with reference to the ACRs. In case at hand, according to the proceedings of DPC enclosed as Annexure R1/1 and R1/2 along with return, DPC considered the Rules of 2003 and the Rules of 2013, initiated the proceeding for promotion on the basis of seniority, subject to fitness. DPC has formulated minimum benchmark for considering the candidature of an employee to see his/her suitability for promotion i.e. his/her 5 years ACR should be of 'Good' grade, there should be no grade 'D' in any year and no adverse remark. Minimum criteria, which is laid down by the DPC is based on the entries of an employee available in the ACRs,

which in the opinion of this Court, is in consonance with sub-rule (5) of Rule 6 of the Rules of 2003 and the Rules of 2013.

16. In case of **Union of India vs. Lt. Gen. Rajendra Singh Kadyan and another**, reported in **(2000) 6 SCC 698**, a three Judges Bench of Hon'ble Supreme Court while considering the issue with regard to promotion of junior on the post of Army Commander superseding senior, wherein view of the High Court that promotion as Army Commander should be on the basis of seniority-cum-fitness, has observed thus:

“11.....Selection for promotion is based on different criteria depending upon the nature of the post and requirements of the service. Such criteria fall into three categories, namely,

1. seniority-cum-fitness,
2. seniority-cum-merit,
3. merit-cum-seniority with due regard to seniority.

12. Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects.....”

17. In case of **K. Samantaray vs National Insurance Company Ltd.**, reported in **(2004) 9 SCC 286**, Hon'ble Supreme Court observed thus:-

“7. The principles of seniority-cum-merit and merit-cum-seniority are conceptually different. For the

former, greater emphasis is laid in seniority, though it is not the determinative factor, while in the latter merit, is the determinative factor. In *The State of Mysore and Anr. v. Syed Mohamood and Ors.*, AIR (1968) SC 1113, it was observed that in the background of Rule 4 (3) (b) of the Mysore State Civil Services (General Recruitment) Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit, that the rule required promotion to be made by selection on the basis of "seniority subject to fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. But these are not the only modes for deciding whether promotion is to be granted or not.

11. While laying down the promotion policy or rule, it is always open to the employer to specify area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, nor has the effect of violating of any statutory scope of interference and other relatable matters. The decision in *B. V. Sivaiah case*¹ is clearly distinguishable on facts and in law. That was a case where statutory rules governed the field. This Court, inter alia, held that fixing terms which are at variance with the statutory

rules is impermissible. In the case at hand, prior to the formulation of policy in February, 1990, there were no codified prescriptions....”

(emphasis supplied)

18. In case of **Ravikumar Dhansukhlal Maheta and another V.**

High Court of Gujarat and others, reported in **(2024) 11**

SCC 424, Hon’ble Supreme Court observed thus:-

“96. One must be mindful that the terms “merit-cum-seniority” or “seniority-cum-merit” are not statutorily defined by the legislature. These principles are judicial connotations that have been evolved over a period of years through various decisions of this Court and the High Courts *whilst dealing with matters of promotion pertaining to different statutes and service conditions*.

97. This Court in *B.V. Sivaiah* [*B.V. Sivaiah v. K. Addanki Babu*, (1998) 6 SCC 720 : 1998 SCC (L&S) 1656] , *Rajendra Kumar Srivastava* [*Rajendra Kumar Srivastava v. Samyut Kshetriya Gramin Bank*, (2010) 1 SCC 335 : (2010) 1 SCC (L&S) 1086] , *Shriram Tomar* [*Shriram Tomar v. Praveen Kumar Jaggi*, (2019) 5 SCC 736 : (2019) 2 SCC (L&S) 90] , *Sujata Kohli* [*Sujata Kohli v. High Court of Delhi*, (2020) 14 SCC 58 : (2021) 1 SCC (L&S) 802] and a catena of other decisions has held that the principles of “merit-cum-seniority” and “seniority-cum-merit” are conceptually different. Whilst explaining the difference between these two principles, this Court has only gone to the extent of laying down what these principles postulate for the purpose of promotion. In other

words, this Court has only gone so far as to lay down what is permissible within the four corners of these principles and by no stretch of imagination has this Court in any manner held that such postulations are *stricto sensu* required to be complied with.

98. The various decisions of this Court have only developed upon the principles of “merit-cum-seniority” and “seniority-cum-merit” by explaining the criteria that may be postulated within the framework of these principles for the purpose of promotion. The scope of the aforesaid principles is summarised below:

(I) The principle of “seniority-cum-merit” postulates that:

- (i) Minimum requirement of merit and suitability which is necessary for the higher post can be prescribed for the purpose of promotion.
- (ii) Comparative assessment amongst the candidates is not required.
- (iii) Seniority of a candidate is not a determinative factor for promotion but has a predominant role.
- (iv) Upon fulfilling the minimum qualifications, promotions must be based on *inter se* seniority.

(II) The principle of “merit-cum-seniority” postulates that:

- (i) Merit plays a predominant role in and seniority alone cannot be given primacy.
- (ii) Comparative assessment of merit is a crucial, though not a mandatory factor.
- (iii) Only where merit is equal in all respects can *inter se* seniority be considered. Meaning***

that a junior candidate can be promoted over the senior if the junior is more meritorious.

100. The principles of “merit-cum-seniority” and “seniority- cum-merit” should by no means be regarded as rigid or inflexible in nature, otherwise, these judicial connotations would effectively assume the character of statutory stipulation laid down through various judicial pronouncements and would become applicable to all types of services, posts and promotions. This would lead to the transgression by the judiciary into the realms of policy-making.
- 101.** This Court in *Rajendra Singh Kadyan [Union of India v. Rajendra Singh Kadyan, (2000) 6 SCC 698 : 2000 SCC (L&S) 797]* whilst explaining the intricacies between the principles of “merit-cum-seniority” and “seniority-cum-merit” made a pertinent observation that selection for promotion is based on different criteria depending *upon the nature of the post and requirements of service*, and that such criteria could be said to fall into three categories which include “merit-cum-seniority” and “seniority-cum-merit”.
- 105.** What can be discerned from the aforesaid is that, wherever the expression “merit-cum-seniority” or “seniority-cum-merit” has been supplemented by an elaborate promotion policy or statutory rules clearly indicating the parameters on which promotions are to be made, the mode of promotion assumes the character of a Hybrid or Dynamic Mode of Promotion as held in *K. Samantaray [K. Samantaray v. National Insurance*

Co. Ltd., (2004) 9 SCC 286 : 2004 SCC (L&S) 864] .

128. The objective sought to be achieved by the introduction of a suitability test in the regular promotional category was limited to the assessment of a minimum standard of suitability. It would be incorrect to say that the marks scored by a candidate in the suitability test are proportional to the merit of the candidate. This can be understood with the aid of an illustration — take a case wherein the minimum marks required to be obtained in the suitability test is 'x'; then for the purpose of 65% promotional quota, as soon as a candidate obtains 'x' marks in the suitability test, such a candidate becomes eligible for being considered for promotion in that category subject to their seniority vis-à-vis the other suitable candidates. It cannot be said that a candidate who obtains (x + 10) marks is more meritorious or more suitable than those candidates who obtain 'x' or (x + 5) marks in the suitability test. Every candidate who scores higher than or equal to 'x' marks in the suitability test is considered equally suitable and equally meritorious for the purpose of 65% promotional category.

141.2. For the 65% promotional quota this Court in *All India Judges Assn. (3)* [*All India Judges Assn. (3) v. Union of India*, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] did not state that after taking the suitability test, a merit list should be prepared and the judicial officers should be promoted only if they fall in the said merit list. It cannot be said to be a

competitive exam. Only the suitability of the judicial officer is determined and once it is found that candidates have secured the requisite marks in the suitability test, they cannot be thereafter ignored for promotion.”

19. In view of above discussed facts, in the case at hand, according to the Rules of 2003, DPC is conferred with the powers to mandatorily assess suitability of the public servants for promotion.

20. In case of **B. V. Sivaiah & Ors vs K. Addanki Babu and others**, reported in **(1998) 6 SCC 720**, Hon’ble Supreme Court has observed thus:-

“18. We thus arrive at the conclusion that the criterion of “seniority-cum-merit” in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.”

(emphasis supplied)

21. In the case at hand, the promotion is to be made based on proviso under Rules of 2013 and promotion is to be made in accordance with provisions of the Rules of 2003. As discussed above, under sub-rule (5) of Rule 6 of the Rules of 2003, it is provided that Departmental Promotion Committee (DPC) shall assess suitability of the public servant for promotion on the basis of their service record and with particular reference of ACRs. In case at hand, Departmental Promotion Committee (DPC) has fixed the benchmark to assess suitability of the public servants based on ACRs which is assessed and written by appropriate authority prior to the date of consideration of the DPC for promotion.

22. In case of **Union of India through its Secretary and others vs Major General Manomoy Ganguly**, reported in **(2018) 9 SCC 65**, Hon'ble Supreme Court has observed thus:-

“44. In English parlance, the word ‘suitable’ is assigned the meaning as ‘appropriate, fitted for the purpose or acceptable’. The concise Oxford Dictionary defines the word ‘suitable’ as “well fitted for the purpose; appropriate”. This ordinary meaning is to be given effect to as a general guide, unless this expression is given special meaning in a statute or rule in administrative instructions. In *R (Quintavalle) v. Human Fertilisation Authority*⁷, the House of Lords remarked that “the word ‘suitability’ is an empty vessel which is filled with meaning by context and background.

45. In service jurisprudence, where the word ‘suitable’ is normally examined from the point of view as to whether a particular person is suitable to hold a particular post, it is construed as ‘fit’ to hold that post. It

would mean that the job profile and job requirement of a particular post would be seen and then, going by the calibre, competence, attributes, skill and experience of the candidate, it would be ascertained as to whether such a person would be able to discharge the duties of the post i.e. whether he is suited to carry out the functions of the post, to the satisfaction of his employer.”

23. Suitability of a candidate, as assessed by the DPC, is that candidate must have track record of service of preceding five years with grade ‘Good’, no grading of ‘D’ and no adverse remarks. The benchmark, which is fixed by DPC, *prima facie* is to assess the suitability of the candidates to hold post and is in consonance with statutory Rules of 2003 framed by the respondent State in exercise of powers conferred by proviso to Article 309 read with Articles 16 and 335 of the Constitution of India.
24. In view of above discussion, we are of the opinion that the view taken in case of **Prahlad Singh Gunwan (supra)** is correct.
25. Reference is answered accordingly.
26. Let this petition be listed as per roster for its decision on merits.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

roshan/-

HEAD NOTE

For promotion on the basis of 'seniority-cum-fitness', Departmental Promotion Committee is empowered to prescribe a minimum benchmark on the basis of ACR grading.

वरिष्ठता-सह-योग्यता के आधार पर पदोन्नति के लिए, विभागीय पदोन्नति समिति को गोपनीय चरित्रावली में ग्रेडिंग के आधार पर न्यूनतम मानदंड निर्धारित करने का अधिकार है