

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/397/93

Date of Decision: 18.07.2000

Shri Nathalal Karamta : Petitioner (s)

Mr. M. D. Rana : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mrs. P. J. Davawala : Advocate for the Respondent(s)

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The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. P. C. Kannan : Member(J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? *No*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal? *N*

Nathalal Karamata,
Resodong at Shantinagar Colony,
Behind Govt. hospital,
Mangrol, serving as postal Assistant. : Applicant

Advocate: Mr.M.D.Rana

Versus

1. The Union of India,
(Notice to be served through;
the Post Master General, Postal Department),
Khanpur, Ahmedabad.
2. The Senior Superintendent of Post Offices,
Junagadh Division,
Junagadh. : Respondents

Advocate: Mrs.P.J.Davawala

JUDGMENT

OA/105/96

Date:18.7.200

Per: Hon'ble Mr. V.Ramakrishnan : Vice Chairman

We have heard Mr. Rana for the applicant and Mrs.Davawala for the respondents.

2. The applicant is an employee of the Postal Department and belongs to the scheduled tribe. He is aggrieved by the fact that at the time of his promotion to the selection grade in the scale of Rs.1400-2300 his claim was over looked and his juniors were promoted.

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3. As per the instruction of the Postal Department, persons are given next higher scale on completion of 16 years of service in the lower level and in case sufficient scheduled caste/Schedule tribe candidates are not available the qualifying service is reduced to 10 years. The applicant's claim is that he belongs to the scheduled tribes and as he had joined service in 1979 he was due to be considered in 1989. The department considered some persons who belong to the reserved categories but promoted one Shri R.B.Karmata in the higher grade with effect from 17.2.93. The applicant who is admittedly senior to Karmata was not so promoted. Mr.Rana says that the applicant was asked to produce the scheduled tribe certificate all over again and he since took some time to get the certificate again ,he was not promoted w.e.f. 17.2.93 but was subsequently promoted w.e.f. 18.4.95 by an order dated 30.8.95 as at Annexure A-4. Mr.Rana submits that the department already had a caste certificate given by the applicant at the time of his initial appointment and since he was asked to produce the caste certificate once again the applicant made efforts and took some time and he has produced such certificate in November, 94. The department has accepted such caste certificate and has given him promotion with effect from 18.4.95 as brought out earlier. Mr.Rana says that there is no dispute that the applicant belongs to scheduled tribe. There is no reason as to why a junior of the applicant who also belongs to scheduled tribe should have been promoted overlooking his claim. He relies on the judgment of the Rajasthan High Court in the case of Nand Kishore vs. R.S.E.B. and another 1999 LAB. I.C.187 . The head note reads as follows:-

"Constitution of India , Art.16- Seniority- Petitioner appointed as Junior Engineer- He belonged to S.C.Category - Merc non-submission of caste certificate at the time of promotion to the post of Assistant Engineer would not disentitle him seniority at par with other S.C. Candidates promoted- More so in absence of rule, making it obligatory for petitioner to submit caste certificate within specified time."

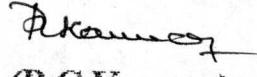
Mr.Rana states that there is no doubt at all that the applicant belongs to the scheduled tribe and the applicant is entitled to whatever benefits are available to the scheduled tribe from the date on which his junior who also belongs to scheduled tribe was promoted. He says that the applicant's promotion should be advanced from April, 95 to the date on which his junior was promoted with effect from 17.2.93 .

4. Mrs.Davawala ,counsel for the respondents says that while scrutinising the records, the department had some doubt about the caste certificate produced by the applicant earlier which has been issued by the Mamlatdar Talala and the applicant was shown as the resident of a different area and they could not locate it from the original certificate. The applicant was therefore asked to produce a fresh certificate and such a certificate was produced by the applicant only on 30.11.94. Mrs.Davawala further submits that soon after receipt of such certificate ,the same was considered again and the applicant was given promotion with effect from 18.4.95. According to her, the delay in giving promotion is only on account of the fact that the reissued caste certificate was not produced in time.

5. We have considered the rival contentions . As has been brought out earlier, the only reason given for not considering the applicant for promotion in 1993 when his junior was considered for promotion was that the department had some doubt about the certificate which was produced by him initially. The applicant was asked to get another certificate and the department accepted the reissued certificate and the applicant was accepted as belonging to a scheduled tribe . If he belongs to scheduled tribe he has acquired ^{fresh a} status by birth and not from the date he obtained the certificate which he produced.

There is no reason as to why the department should not have considered the applicant as belonging to scheduled tribe in February, 93 when his junior also was considered. While some time was taken on account of re-verification, the fact remains that the applicant's status as a scheduled tribe~~s~~ was established beyond doubt. Mr.Rana has rightly relied on the judgment of Rajasthan High Court in the case of Nand Kishore vs. R.S E.B. and another 1999 LAB I. C. 187

6. In the circumstances, we hold that the action of the department in denying consideration of the applicant for promotion solely on the ground that there has ~~been~~ some delay in production of a fresh certificate cannot be sustained when his status as scheduled tribe has been established and was found to be in order and the certificate produced earlier also ~~was~~ has held to be genuine. We accordingly direct the respondents to hold a review DPC to consider the suitability of the applicant for higher grade for the period from February, 93 to April, 95 and if the applicant is found fit, the department shall advance his promotion to the higher grade with effect from 17.2.93 the date on which his junior R.B.Karmata was promoted. This exercise should be completed within three months from the date of receipt of a copy of this order.
7. With the above directions, the OA is finally disposed of. No costs.


(P.C.Kannan)
Member(J)


(V.Ramakrishnan)
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

081/397/93

of 19

Transfer Application No.

Old Writ. Pet. No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated:

Countersigned.

Section Officer/Court Officer.

Dealt with

PMKARW *PF*

GD
Signature of the Dealing
Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

CAUSE TITLE

08/397/93

NAME OF THE PARTIES

Mafatlal K.

VERSUS

U.O.I. & Ors.

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