

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00504/2019

Jabalpur, this Wednesday, the 04th day of September, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ashish Kumar Tanti, S/o Shri Sitaram Tanti,
Aged about 35 years, Junior Clerk
O/o Principal Chief Material Manager,
Stores Department, West Central Railway
C/o Awadhesh Kumar 884/13 Mohini Homes,
Bilhari Jabalpur 482001 **-Applicant**

(By Advocate –**Shri Manoj Sharma**)

V e r s u s

1. Union of India,
Through General Manager
West Central Railway,
Opposite Indira Market
Jabalpur (M.P.) 482001

2. Chief Personnel Officer,
West Central Railway
Opposite Indira Market
Jabalpur (M.P.) 482001

3. Principal Chief Material Manager
Stores Department
West Central Railway
Opposite Indira Market
Jabalpur (M.P.) 482001

- Respondents

(By Advocate –**Shri Vijay Tripathi**)

ORDER (ORAL)

By Ramesh Singh Thakur, JM:-

This Original Application has been filed against the order dated 04.06.2019 (Annexure A/1) passed by respondent No.2.

2. The applicant has prayed for the following reliefs:-

“8(i) To call for the entire material and record pertaining to the aforesaid controversy for its kind perusal;

8(ii) To quash and set aside the impugned order dated 04.06.2019 (Annexure A/) so far as it relates to applicant and further direct the respondents authorities not to take any action against applicant on the basis of the impugned order (Annexure A/1);

8(iii) To command and direct the respondent's authorities to include name of applicant under schedule caste category.

8(iv) To grant any other relief which this Court may deems fit;

8(v) To award the cost of instant list to applicant.”

3. Precisely the case of the applicant is that on 22.07.2011 applicant was initially appointed to the post of Group D in the West Central Railway under General

category. Thereafter, applicant was promoted to the post of Junior Clerk on 09.03.2018 under reserved category of Scheduled Caste. Applicant belongs to Pan/Sawasi Caste which is under Schedule Caste (SC) which is a notified schedule caste in State of Bihar and written his title as a 'Tanti'. Government of Bihar issued an order/memorandum/circular/clarification wherein Tanti (Tatwa) has been excluded/deleted from the OBC and to be included in Schedule Caste Category. Copy of circular dated 01.07.2015 and 02.07.2015 is annexed as Annexure A/2. Thereafter the applicant gets the scheduled caste certificate and name of applicant has been included by the railway under SC category. West Central Railway on 18.05.2016 also included the caste of Tanti/Tatwa under Schedule Caste. Copy of caste certificate dated 08.10.2016 is annexed as Annexure A/3. Thereafter applicant was promoted to the post of Junior Clerk on 09.03.2018. Copy of promotion order dated 09.03.2018 is annexed as Annexure A/5.

4. The order of Government of Bihar of inclusion of Tanti/Tatwa title included in the Schedule Caste category and treated as Pan/Sawasi caste has been challenged before Hon'ble High Court of Bihar and vide order dated 03.04.2017, Hon'ble High Court dismissed the writ petition and held that there is no infirmity and illegality while included /treated Tanti/Tatwa under Schedule Caste of Pan/Sawasi. Copy of judgment dated 03.04.2017 passed by Hon'ble High Court of Bihar is annexed as Annexure A/6. That on the basis of the letter of Ministry of Social Justice dated 15.09.2016 wherein it has been mentioned that action of State of Bihar is wrong while including Tanti/Tatwa under schedule caste and respondent authorities vide order dated 04.06.2019 (Annexure A/1) name of applicant excluded from the schedule caste category and vide order dated 22.12.2016 the respondent authorities are going to revert the applicant from the post of Junior Clerk to the post of Group D.

5. The respondents have filed their reply. It has been submitted by the replying respondents that the applicant was appointed in the year 2011 on the post of Group D against a General category. Thereafter he was promoted to Junior Clerk on 09.03.2018 as Scheduled Caste candidate. Thus, he has taken benefit of reservation at the time of promotion as a Junior Clerk. The applicant has stated in the Original Application that he belongs to Pan/Sawasi caste which is under Scheduled Caste in the State of Bihar and written his title as "Tanti". Subsequently the mistake committed by the department was realized when a letter was received from the Government of India, Department of Social Justice dated 15.09.2016 in which a specific instruction was given that the caste of Tanti was to be kept in OBC and should not be included in SC. This letter dated 15.09.2016 is annexed as Annexure A-8. In this letter it is stated that Tanti Community does not come in SC category. This caste comes under OBC vide serial No.48 of the list of the Central list of OBC's. It has been

specifically submitted by the replying respondents that in view of the Hon'ble Supreme Court, the list of various castes as issued under the Constitution under Article 341, should be read as the entries are. It has been further stated in this letter dated 15.09.2016 that any amendment in the list issued under Article 341 of the Constitution of India can be done only by exercise of powers under Article 341(2). No State Government or any court has any power under Article 341 of Constitution of India to change or amend the list of various castes included in SC list or any other list. Therefore, Tanti (Tatwa) cannot be said to be included in SC category. Hence, all the members of Tanti Community are not entitled to get any benefit of SC community.

6. That it is exclusive jurisdiction of the parliament under Article 341 of Constitution of India to prepare a list of SC's and ST's and the caste of the applicant namely Tanti (Tatwa) is in the Central List of OBC's and not in the Central list of SC's. The central list of SC's is annexed

as Annexure R/2 and the caste of Pan, Sawasi, are included in the central list of SC's and these names appears at serial No.18. The Central List of OBC's (Annexure R/3) has not been amended. The entry No.48 very much exists over there and name like Tanti or Tatwa is included in Annexure R-3. The applicant therefore belonging to the caste of Tanti Tatwa, is OBC and not SC as wrongly claimed by him.

7. It has been further submitted by the replying respondents that there is a notification of Bihar Government (Annexure A-2) which states that for the purposes of the vacancies in the Government services of the State of Bihar some amendments are being made in the state list of SC's and OBC's. So, as per Annexure A-3, the caste Tanti (Tatwa) which is mentioned as OBC in the list of castes issued by the State of Bihar has been omitted and the same has been included in serial No.20 of the list of caste of Scheduled Caste in the State of Bihar. Consequently Annexure A-3 declares that along with Pan,

Sawasi the caste of Tanti Tatwa is also included amongst the SC's and for the purposes of services in the State of Bihar the benefit of SC category would be given to those belonging to Tanti Tatwa caste also. So, by no stretch of imagination applied to or amends the Central List of OBC's Annexure R-3 or Central List of SC Annexure R-2 as the State Government has no right, authority or power to amend Annexure R-2 and R-3 and the Central List remains as it is.

8. It has been further submitted by the replying respondents that issue of the caste of Tanti (Tatwa) getting the benefit of SC's in the State of Bihar for the purposes of services in the State of Bihar appears to have come up for consideration before the High Court of Patna in Civil Writ Jurisdiction No.10650/2015 ***Deepak Kumar*** vs. ***State of Bihar***. Though the Hon'ble High Court of Patna has declared that Bihar State Commission for Backward class has been created under the provisions of Bihar State Commission for Backward Classes Act, 1993 and once the

Commission under the Bihar Act has made a recommendation, the same is binding on the State Government.

9. It has been specifically mentioned by the replying respondents that the Hon'ble High Court of Patna has nowhere gives any order to the respondents to take effect of the said notifications Annexure A-2 and the Hon'ble High Court has also stated that the power to include a Scheduled Caste or Scheduled Tribe can only be done by the Government of India in view of the mandate of Article 341 (2). The respondent-department has relied upon the judgment of Hon'ble Supreme Court in the matter of ***Jarnail Singh vs. Lachhmi Narain Gupta*** Special Leave Petition (Civil) No.30621/2011 decided on 26.09.2018 where it has been held that Parliament alone has the complete freedom to include or exclude persons from the Presidential Lists based on relevant factors.

10. The replying respondents have relied upon the order dated 09.07.2019 passed by this Tribunal in Original

Application No.200/00950/2018 whereby the action of the respondent-department in treating Tanti as OBC has been held just and proper.

11. We have heard the learned counsel for both the parties and also gone through the documents annexed with this Original Application.

12. From the pleadings itself it is clear that as per Annexure A/1 member of Tanti (Tatwa) castes, who were in OBC category, were not entitled to get the Scheduled Caste certificate in view of the clarification dated 15.09.2016 issued by Ministry of Social Justice and Empowerment, wherein Tanti/Tatwa Caste of Bihar State was not considered member under Scheduled Caste. The main thrust of the argument put forth by the applicant is that as per Annexure A/2 (Sankalp), on the recommendation of the State Commission for Other Backward Caste, the State Government after proper deliberation the Tanti(Tatwa) was deleted from the OBC list and was included in the Scheduled Caste list.

Accordingly, extra ordinary Gazette notification has been issued by Government of Bihar on 2nd July 2015.

13. On the other hand the contention of the replying respondents is that as per Presidential order, the separate list has been prepared for SC and ST and Constitution of India does not permit to alter the same in any form. The learned counsel for the respondents has invited our attention to the Article 341 of Constitution of India which reads as under:-

“341. Scheduled Castes- (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

14. The learned counsel for the applicant had relied upon the judgment passed by the Hon'ble High Court of Patna in the matter of ***Deepak Kumar vs. The State of Bihar and others***. The arguments of the learned counsel for the applicant is that the issue of validity of Sankalp as per Annexure A/2 has already been decided by the Hon'ble High Court of Patna and is binding to State Government of Bihar and also to Union of India. The Secretary Scheduled Caste Commission is one of the party-respondent before the High court of Patna. We have perused Annexure A/6, the judgment passed by Hon'ble High Court of Patna whereby Hon'ble High Court has held that the validity of recommendation of the committee has been accepted by the State Government to grant Most Backward Caste so that the persons belonging to that category would get the benefit of a Scheduled Caste category. In the conclusion portion of the judgment, the Hon'ble High Court has held that once the commission has made its recommendation which is binding on the State Government in view of

Sections 9 and 11 of the Act and taken action in the matter, the Court cannot sit over the decision of the Commission. Accordingly, the Writ Petition was dismissed. The learned counsel for the respondents has relied upon the order dated 09.07.2019 passed by this Tribunal in Original Application No.200/00950/2018 (*Dharmendra Kumar vs. Union of India and others*) wherein reliance has been placed upon the judgment passed by the Hon'ble High Court of Madhya Pradesh, Jabalpur in Writ Petition No.643/2018 titled as *Hemprakash Keer vs. The State of M.P. and others* along with other Writ Petitions vide order dated 14.10.2018. The learned counsel for the respondents has also relied upon the judgment of the Hon'ble Apex Court in the matter of *Bir Singh vs. Delhi Jal Board and others* (2018) 10 SCC 312, whereby the Hon'ble Apex Court has held that a person who is recognized as a member of Scheduled Caste and Scheduled Tribe in his original State, will be entitled to all the benefits of reservation under the Constitution in that State only and not in other State/Union

Territories and not entitled to benefits of reservation in the migrated State/ Union Territory. The relevant portion of the judgment passed by the Hon'ble Apex Court is as under:-

“34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions “in relation to that State or Union Territory” and “for the purpose of this Constitution” used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State ‘A’ cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State ‘A’.

35.

36. The upshot of the aforesaid discussion would lead us to the conclusion that the Presidential Orders issued under Article 341 in regard to Scheduled Castes and under Article 342 in regard to Scheduled Tribes cannot be varied or altered by any authority including the Court. It is Parliament alone which has been vested with the power to so act, that too, by laws made. Scheduled Castes and Scheduled Tribes thus specified in relation to a State or a Union Territory does not carry the same status in another State or Union Territory. Any expansion/deletion of

the list of Scheduled Castes/Scheduled Tribes by any authority except Parliament would be against the constitutional mandate under Articles 341 and 342 of the Constitution of India.”

15. The learned counsel for the respondents had relied upon the judgment passed by the Hon’ble Apex Court in the matter of ***Subhash Chandra and another vs. Delhi Subordinate Services Selection Board and Others*** along with other Writ Petitions (2009) 15 SCC 458 wherein the Hon’ble Apex Court has held that benefit of Article 16 (4) cannot be applicable to grant benefit of reservation for SCs/STs who have migrated to another State or Union Territory. It has been specifically held that the Presidential Orders under Article 341 (1) acquire overriding status. The relevant portion of the judgment of Hon’ble Apex Court is as under:-

“66. Clause (4) of Article 16 of the Constitution, as noticed hereinbefore, cannot be made applicable for the purpose of grant of benefit of reservation for Scheduled Castes or Scheduled Tribes in a State or Union Territory, who have migrated to another State or Union Territory and they are not members of the Scheduled Castes and Scheduled Tribes. By virtue of Article 341, the Presidential Orders made under clause (1) thereof acquire an overriding status. But

for Articles 341 and 342 of the Constitution, it would have been possible for both the Union and the States, to legislate upon, or frame policies, concerning the subject of reservation, vis-à-vis inclusion of castes/tribes. The presence of Articles 338, 338-A, 341, 342 in the Constitution clearly precludes that.”

16. In the instant case, it is an admitted fact that the Sankalp (Annexure A/2) has been issued by the Government of Bihar in view of the recommendation made by the Backward Class Commission which has been accepted by the State of Bihar, resultantly by way of this Tanti(Tatwa) has been deleted from the category of OBC and has been added to the category of SC. The contention of the applicant is that the Pan/Sawasi was challenged before the Hon’ble High Court of Patna which was held valid by the Hon’ble High Court.

17. We have perused the judgment passed by the Hon’ble High Court in the matters of **Deepak Kumar** (supra) and relevant portion of the said judgment is as under:-

“9. We find that once the Commission has made its recommendation which is binding on the State Government in view of Sections 9 and 11 of the Act

and taken action in the matter, we cannot sit in appeal over the decision of the Commission and make any further indulgence into the matter. The petitions filed by the petitioners are misconceived and we see no reason to interfere into the matter. It is not a case as canvassed by the petitioners wherein the State Government has amended the Presidential order without any authority of law and has included a particular caste in the category of Scheduled Caste or Scheduled Tribe, but the State Government has only deleted certain highly Backward Caste from the State list on account of the fact that it is a Scheduled Caste already notified in the Presidential order and, therefore, to enable them to take the benefit of the Presidential order the circular has been issued as a clarification. That being the actual position, we see no reason to make any indulgence into the matter.”

18. From this Para 9 of the Hon’ble High of Patna, it is clear that the recommendation made by the Commission is binding on the State Government. In view of the Section 9 and 11 of that Act and the Court cannot sit over the decision of the Commission as authorities qua the applicant. As per judgment of the Hon’ble Apex Court in the matter of **Subhash Chandra** (supra) held that any decision any amendment or alternation is to be brought about by a parliamentary legislation, the same purpose cannot be achieved by taking recourse to circular letters

which do not have the force of law. As per Article 341(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. So by relying upon the judgment passed by the Hon'ble Apex Court in the matter of ***Subhash Chandra*** (supra) admittedly there is no compliance of Article 341 (1) which has also been indicated by the Ministry of Social justice vide Annexure A/8 dated 15.09.2016. Admittedly in the instant case, the recommendation by the State Commission which has been considered by State of Bihar and accordingly notification was issued on inclusion of Tanti/Tatwa caste from OBC category to Scheduled Caste category. So, there is no compliance of the Article 341 of the Constitution of India. So, the law has been settled by the Hon'ble Apex Court to

the effect that there cannot be addition or deletion except as per Article 341 (1) and (2) of the Constitution of India.

19. In view of the above, we do not find any illegality and ambiguity in the order passed by the respondent-department.

20. Resultantly, the O.A. is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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