

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12096 of 2022

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Rohit Nandan, S/o Late Rama Nand Prasad, R/o Mohalla - Ranjan Path, Lane No. 3 Ram Vallabha Kunj, West of Gyan Niketan School, P.S. Danapur, District Patna Presentably posted as Assistant Superintendent of Post Offices at Banka Subdivision, Banka Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary Ministry of Communication Government of India Department of Post Dak Bhawan, New Delhi.
2. The Director General of post Ministry of Communication Government of India department of post Dak Bhawan New Delhi.
3. The Assistant Director General of Posts (DE) Office of the Director General of Post Ministry of Communication Government of India Department of Post, Dak Bhawan, New Delhi.
4. The Chief Postmaster General, Bihar Circle, Patna.
5. The Post Master General East Region, Bihar, Patna.
6. The Director Postal Services Headquarter Office of the Chief Post Master General, Bihar Circle, Patna.
7. The Assistant Director (Recruitment) Office of the Chief Post Master General, Bihar Circle, Patna.
8. The Assistant Director -1, office of the Post Master General East Region Bihar, Patna.
9. The Assistant Director (Staff) Office of the Chief Post Master General Bihar Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ram Shankar Das, Advocate
For the Respondent/s	:	Mr. Awadhesh Kumar Pandey, Sr. C.G.C.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 19-01-2023



Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed claiming the following reliefs :-

“(i) To quash the order dated 14.02.2019 issued by the Respondent No.3 which was communicated through the letter dt.12.03.2019 by the Respondent No.8 whereby the name of the petitioner has been deleted from the result published on 16.04.2018 under S.C. category quota for promotion to the cadre of Postal Services year 2014-15 of IP stream held on 18.12.16 solely on the ground that the petitioner is not entitled to get the benefit of schedule caste category as he does not belong to the S.C. category which is contrary to the notification issued by the government, whenever already under S.C category caste Pan existing since 1950, 1956, 1976 onwards.

(ii) To quash the order dated 01.04.2022 passed by the Honorable Central Administrative Tribunal Patna Bench in O.A No. 050/00289/2019 whereby and where under the original application of the petitioner has been



dismissed without considering the Honorable division bench judgment of the Patna High Court passed in CWJC. No. 10650 of 2016 as well as without considering the various orders judgment passed, the scope of the court is very wide and can be used or exercised to remedy in justice, whenever it is found. The caste Pan, Swansi is existing since long in the notified presidential order. It is relevant to state here that caste certificate of pan as well as notification of state still in existence, so that the petitioner is entitled for the promotion in the facts & circumstances.

(iii). Any other relief or reliefs as your lordship may deem fit proper in the facts and circumstances of the case.

3. The short facts, according to the petitioner, are that the petitioner was appointed as Postal Assistant in the year 1997 under Other Backward Caste (OBC) Category on the basis of his 'Tanti' Caste Certificate. Bihar Government vide Gazette Notification dated 2nd July 2015 deleted 'Tanti' caste from the list of OBC to enable it to avail the benefits of Scheduled Caste (SC) category on its merger with Pan/Swasi caste which figures



in the list of Scheduled Caste. The petitioner, following the gazette notification, obtained Scheduled Caste certificate as member of Pan/Swasi caste from the office of District Magistrate, Patna on 29.09.2015 and requested the Chief Post Master General, Patna on 23.06.2016 for change of his category from OBC to Scheduled Caste in his Service Book in terms of the new caste certificate and the aforesaid Gazette notification. The petitioner, who had, by then, been promoted to the cadre of Inspector, applied for promotion to the Postal Service Group 'B' through Limited Departmental Competitive Examination (LDCE) as notified on 07.10.2016, as SC candidate and appeared in the examination held on 18.12.2016. He was declared successful in the examination vide communication dated 16.04.2018, however, his name was not approved for promotion and his result was put on hold for further consideration vide notification dated 06.09.2018. Meanwhile, the office of Postmaster General, East Region, Bihar, Patna ordered on 17.08.2018 to change the category of petitioner to SC in his Service Book. The Department of Posts, after consulting the Department of Social Justice and Empowerment, ordered vide communication dated 14.02.2019 that the petitioner was not entitled to the benefit of SC category as he



does not belong to SC category and deleted his name from the list of candidates successful in the examination vide its order dated 14th February, 2019. Being aggrieved by the aforesaid order dated 14.02.2019, the petitioner filed OA/050/00289/2019 before the Central Administrative Tribunal, Patna Branch, Patna, which was dismissed. Hence, the present Writ.

4. The learned counsel for the petitioner has submitted that after the resolution of the Bihar Government vide Gazette Notification dated 02.07.2015, 'Tanti' caste has ceased to exist and is now Pan (Swasi) caste which figures in the list of Scheduled Castes of State of Bihar. The State Government had acted on the advice of the State Commission for Extremely Backward Classes that 'Tanti' was a sub-caste of Pan/Swasi and in order that it could avail the benefit of Scheduled Castes category as Pan, it should be deleted from the State list of OBC. The Bihar Government Gazette Notification does not include any new caste in the list of SCs and, as such, there is no violation of Article 341 because Pan caste already exists in the Presidential list. The petitioner was entitled for SC category status because of the merger of Tanti/Tatwa caste into Pan (Swasi). The petitioner's caste had been verified and confirmed as Pan (Swasi) by the local authorities. Further, the caste



certificate issued by the District Magistrate and the Circle Officer have not cancelled the certificate issued by any authority. The learned counsel for the petitioner has further submitted that it is well settled that a caste notified in any of the States as a Scheduled Caste under the provisions of Article 341 is entitled to the benefit of SC status for the purpose of entering into Central Services. After deletion of 'Tanti' from the list of OBC of the State Government, the petitioner obtained the SC certificate as a Pan and was thus entitled to the SC benefits under the Central Services. The petitioner's category had also been corrected from OBC to SC in his service book by the departmental authority. It has not been deleted after due process of law. Hence, the order of the respondent authorities denying him the SC status was arbitrary and against the law.

5. *Per contra*, learned counsel for the respondents has opposed the contention of the petitioner. He has submitted that the respondents have denied the SC category to the petitioner on the basis of clarification received from the Department of Social Justice and Empowerment, which reads thus :

"5.1 Supreme Court through a catena of judgments had held that Presidential Orders under Article 341 of the Constitution of India must be read as it is. It is not even permissible to say that a caste/sub-caste, part of or group of any caste is



synonymous to the one mentioned in the Scheduled Castes order if they are not so specifically mentioned in it. Further, it not at all permissible to hold any enquiry or let in any evidence to decide that any caste or part or of group within any caste is not included in the general name even though it is not specifically mentioned in the concerned entry of the Presidential order. A notification once issued by the President under Clause (1) of Article 341 specifying scheduled castes can only be amended by an Act of Parliament as laid down in Clause (2) of Article 341. It is not open to State Governments, Courts or Tribunal or any other authority to modify, amend or alter the list of Scheduled Castes.

5.2 Government of Bihar vide Gazette notification dated 02.07.2015 has deleted Tanti/Tatwa community from the State list of Backward Classes, so that on its inclusion in the list of Scheduled Castes with Pan, Swasi it may get benefits of Scheduled Castes. As of now Tanti/Tatwa community of Bihar has not been included in the list of Scheduled Castes. Therefore, its members cannot get benefit of SC in the name of Pan, Swasi in terms of Bihar Government's Resolution appearing in Gazette notification. Presently Tanti (Tatwa), Tati, Tatin community appears at Sl. No. 48 in the central list of OBC."

Thus, in the light of the aforesaid clarification provided by the Department of Social Justice and Empowerment, the



petitioner is not entitled to get the benefit of SC category as he does not belong to the SC category.

6. The learned counsel for the respondents has further submitted that it is undisputed fact that 'Tanti' (Tatwa) was included as OBC in the State list till the deletion by the Bihar Government through the aforesaid gazette notification. Further, the caste still remains in the Central list of OBCs (Annexure R/3, Sl 48). Simultaneously, Pan (Swasi) is listed in the Presidential list as Scheduled Caste of Bihar. This implies that Tanti (Tatwa) and Pan have separate caste entities. Deleting Tanti from the State list of OBCs and issuing its members the Scheduled Caste Certificate as Pan (Swasi) amounts to bringing Tanti into the SC list by change of name without the parliamentary approval. As long as Tanti is not included in the Presidential list of Scheduled Castes through parliamentary law under Article 341(2), its members cannot get the benefit of SC.

7. Having considered the material available on record and further considering the rival submission, in the present writ petition, the core question which arises is whether the petitioner is entitled to get the benefits under SC category as a member of Pan Caste, in the given facts and circumstances.

8. On a perusal of the Bihar Gazette Notification dated



02.07.2015, it appears that the State Government has only directed for removal of Tanti and Tantwa community from the list of Most Backward Classes as notified for the State of Bihar in view of the fact that it is a sub caste of Pan and Swasi, which is a notified Scheduled Caste, already notified by the Central Government way back in the year 1978 and 1997. It is apparent that finding Pan and Swasi to be already notified as Scheduled Caste in the State of Bihar as per the Constitution Scheduled Caste Order 1950 and Tanti and Tantwa to be erroneously notified as belonging to other Backward Classes in the State of Bihar, it being in the nature of a title and synonymous with the categories Pan and Swasi already notified by the Central Government, keeping in view the recommendation of the EBC Commission, the Circular in question has been issued. It is a case where the State Government has not amended the list of Scheduled Caste as notified by the Union but it has only deleted a particular entry namely Tanti and Tantwa from the list of other Backward Classes and it has been found that as they are synonymous with Pan and Swasi which is a notified Scheduled Caste, therefore, their name should be deleted from the State list of Extremely Backward Classes so that they could get the benefit of the Scheduled Caste category notified by the Union



Government.

9. It is not a case that 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 one of the most backward castes 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.

10. Moreover, the petitioner has been issued a caste certificate of SC category by a competent authority and the same has not been challenged or cancelled. Hence, for all practical purposes, the petitioner is a person belonging to the SC category.

11. In the light of discussion made hereinabove and under the facts and circumstances of the case, the present writ petition deserves to be allowed and is accordingly allowed. The order of learned CAT dated 01.04.2022 and the order dated 14.02.2019 issued by the respondent no.3 are quashed and set aside.

12. This Court directs the concerned respondents to



consider the case of the petitioner in view of the fact that he belongs to SC category within a period of three months from the date of communication of a copy of this judgment.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	25.01.2023
Transmission Date	N.A.

