

S/L 32
13.05.2024
Court. No. 13
*Sourav/
Suwayan*

WPA 19597 of 2023

**Kalyan Karmakar
Vs.
Union of India & Ors.**

*Mr. Sanjib Dawn
Mr. Ranabir Banerjee*

...for the petitioner.

*Mr. S. N. Dutta
Mr. Saikat Karmakar*

...for the respondent nos. 1 to 3.

The petitioner is aggrieved by the fact that his scheduled caste certificate has not been considered for the promotion process from the post of SI fitter to Inspector.

The admitted facts are, *inter alia*, that the petitioner joined service as a Constable GD with the BSF as an unreaserved general candidate in February, 1989. He received promotion to the post of Head Constable fitter in the general category in the year 1996.

Sometime, in January, 1997 the petitioner discovered that he belonged to scheduled caste and obtained a scheduled caste certificate from the appropriate authorities. He submitted the certificate to the BSF, his service book was rectified and he was treated as scheduled caste employee.

He was, thereafter, given two promotions to the post of Head Constable fitter to ASI fitter and ASI fitter to SI fitter in the scheduled caste category with effect from 2006.

The petitioner, thereafter, tried to participate in the promotion process to the post of Inspector, BSF in the scheduled caste category but has been denied the same.

The respondents contend by placing reliance on the decision of the case ***J & K Public Service Commission Vs. Israr Ahmed & Ors.*** reported in ***(2005) 12 SCC 498*** that once a person entered service as a general caste candidate, he cannot be allowed to change his caste status.

The same decision cannot come to the aid of the respondent, as in the facts of the said case, a change of caste was sought to be made by the respondents therein from the preliminary stage of a competitive examination to a final stage. In the preliminary stage, the employee therein appeared in the competitive examination as a general category candidate, however, in the final examination, he produced a SRO No. 126 of 1994 declaring that person residing in his area worth to be given reserved status. It is essentially in those facts that the Hon'ble Supreme Court held the same was not permissible.

In the facts of the instant case, it is seen that the writ petitioner's scheduled caste status was not only accepted by the respondent/BSF 15 years after he had joined service but was also granted two promotions based on the said certificate in the reserved category.

In the aforesaid facts, it appears that the respondents not only accepted change of the petitioner's caste status but also acted upon the same by granting him two promotions in the reserved category. The respondents are now, therefore, estopped from denying the reserved category status to the petitioner at the promotion stage from SI fitter to Inspector, BSF.

In those circumstances, this Court directs that subject to fulfillment of other conditions, the petitioner's name shall feature in the list of promotees to the post of Inspector, BSF in the scheduled caste category.

The respondents may take an appropriate decision on the subject, within a period of three weeks from the date of communication of this order.

In view of the above, the writ petition being **WPA 19597 of 2023** is allowed and disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Rajasekhar Mantha, J.)