

14.01.2025

Jayanta/03

MAT 1613 of 2024

+

IA No.: CAN 1 of 2024

Union of India & Others

- *Versus* -

Kalyan Karmakar

Mr. Kushi Prasun Chatterjee

... for the Appellants.

Mr. Sanjib Dawn,

Mr. Ranabir Banerjee

... for the Respondent/
Writ petitioner.

The present appeal has been preferred by Union of India and its functionaries challenging an order dated 13th May, 2024 passed by the learned single Judge in the writ petition being WPA19597 of 2023. By the said order it was directed that subject to fulfillment of other conditions, the writ petitioner's name shall feature in the list of promotees to the post of Inspector, Border Security Force (in short, BSF) in the scheduled caste category.

Mr. Chatterjee, learned advocate appearing for the appellants submits that the writ petitioner/respondent herein, namely, Kalyan Karmakar (hereinafter referred to as Kalyan) initially entered into service in the month of February, 1989 declaring himself to be general category candidate. He was thereafter promoted to the post of Head Constable/Fitter in the general category. Such promotion was duly accepted by him. Subsequent thereto, Kalyan produced a caste certificate containing a declaration that

he belongs to the 'Lohar' caste which is recognized as a scheduled caste. On the strength of such certificate Kalyan sought for subsequent promotions. Having entered into service as a general category candidate, Kalyan could not have availed the benefits under scheduled caste category. Such arguments, as advanced, were glossed over by the learned single judge and no finding was returned on the same. Such infirmity warrants interference of this Court.

He argues that the proposition of law laid down in the judgment delivered by the Hon'ble Supreme Court in the case of *J & K Public Service Commission- vs.- Israr Ahmed & Ors.*, reported in (2005) 12 SCC 498 was not appropriately applied to the facts of this case.

Mr. Dawn, learned advocate appearing for Kalyan/respondent herein, however, denies and disputes the contention of the appellants and submits that upon production of the scheduled caste certificate, the appellants duly incorporated such caste status in his service records. Subsequent thereto, he was considered for promotion as a scheduled caste category candidate and he was duly promoted to the post of ASI Fitter and thereafter to the post of SI Fitter under scheduled caste category. The appellants having thus accepted Kalyan as a scheduled caste category candidate cannot alter their stand in course of the subsequent promotion process to the post of Inspector.

In reply, Mr. Chatterjee argues that the grant of promotion to the post of ASI Fitter and thereafter to the post of SI Fitter as a scheduled caste category candidate cannot create any indefeasible right in his favour to be considered as a scheduled caste candidate in future promotions.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The argument advanced on behalf of the appellants/respondents in the writ petition that Kalyan cannot be granted promotion to the post of Inspector, BSF in the scheduled caste category was rightly discounted by the learned single judge on the rudiments of the sequence of facts that though Kalyan initially entered into service as a general category candidate, he was promoted to the post of ASI Fitter and thereafter to the post of SI Fitter as a scheduled caste category candidate. Having accepted Kalyan's caste status and having granted him two promotions in the reserve category, the appellants cannot change their stand. The authenticity of Kalyan's scheduled caste certificate has not been disputed by the appellants and the said caste status has been duly incorporated in his service records. The judgment delivered in the case of *J & K Public Service Commission (Supra)*, was rightly held to be distinguishable on facts.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned, warranting interference of this Court.

The appeal and the stay application are, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)