



सत्यमेव जयते

भारत सरकार

Government of India

राष्ट्रीय अनुसूचित जनजाति आयोग

National Commission for Scheduled Tribes

6th floor, 'B' Wing, Loknaya Bhawan
Khan Market, New Delhi-110 003.

File No. MG/1/2017/MPPP1/SEOTH/RU-I

Dated: 22/10/2018

To

The Secretary,
Department of Personnel & Training,
Room No. 112, North Block,
New Delhi – 110001.
Tel: 23094848, Fax: 23094500.

Sub: Denial of promotion to the post of Deputy General Manager (E&M) (E-7 Grade) in the Singareni Collieries Company Ltd. – a representation of Shri K. Sreenivasulu, working as S.E. (E&M) at RGOCP-III, RG-II area, Singareni Collieries Company Ltd., District – Peddapalli, Telangana State.

Sir,

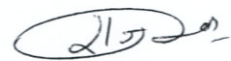
I am directed to refer to the subject cited above and to enclose a copy of the minutes of Sitting held on 05.10.2018 at 12:00 Noon under the Chairmanship of Shri Nand Kumar Sai, Hon'ble Chairperson, National Commission for Scheduled Tribes in the matter for perusal and appropriate action.

Yours faithfully,


(Rajeshwar Kumar)
सहायक निदेशक
Tel: 011-24641640.

Copy for necessary action to:

Research Officer, (RU-IV) NCST Hqrs. New Delhi. This is reference to note dated 17.09.2018 of the Hon'ble Chairperson, NCST in the file bearing No. KS/1/2018/MCOL1/SEPROM/RU-IV, a copy of the minutes of sitting is enclosed for necessary action in the matter.


(Rajeshwar Kumar)
सहायक निदेशक
Tel: 011-24641640.

Copy for information to:

1. PS to Hon'ble Chairperson, NCST
2. NIC (for hosting on Commission's website)

भारत सरकार
Government of India
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes

F. No. MG/1/2017/MPPP1/SEOTH/RU-I


Minutes of the sitting held on 05/10/2018 at 12:00 Noon under the Chairmanship of Shri Nand Kumar Sai, Hon'ble Chairperson, NCST in the case of Ms. Margaret Gangte, Director, Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi regarding restoration of seniority to USSL-1995 and SSGSL-2007 under Reservation Policy & Rule as per CAT order dated 30/11/2004 & Hon'ble High Court Direction in 2013.

List of participants is annexed.

Ms. Margaret Gangte submitted to the Commission that she is an ST from the Hills of Manipur belongs to CSS 1990 Civil Service Exam. She got first promotion from Section Officer to Under Secretary in November 1996 for eligibility of Under Secretaries Select List-1995(USSL). She has been excluded from the revised list for ST/SC Officers of CSS-DR vide O.M. No. 2/1/2016-CS-1(D) dated 06/06/2016. The Seniority list has been revised in compliance with CAT order dated 30/11/2004 and direction of Hon'ble High Court of Delhi, 2013 but the benefit of 4 years has not been given to her as she belongs to ST community. She has submitted that her seniority as Under Secretary is USSL-1995 with 4 years approved service and seniority as Director is Senior Selection Grade Select List - 2007(SSGSL), accordingly she is eligible for promotion to Joint Secretary but DoPT is not taking any action for her promotion.

NCST discussed the issue with the officers of DoPT and petitioner in a sitting held on 16.03.2018 under the Chairmanship of Hon'ble Chairperson, NCST. After hearing DoPT and petitioner, the NCST in its sitting held on 16/03/2018 had recommended that:

- (1) DoPT should take appropriate action to regularize her ad-hoc promotion from Section Officer to Under Secretary vide Order No. 31/36/96-EO(MM)-1 dated 22/11/1996 on the ground that promotion already granted under the said Third Proviso to Rule 12(2) of CSS Rule 1962 cannot be altered subsequently.
- (2) The seniority of Ms. Margarate Gangte be appropriately affected as USSL 1995 and the SSGSL-2006 taking into account the 4 year's benefits granted under Third Rule Proviso of Rule 12(2) of CSS Rule, 1962 vide DoPT Order No. 31/36/96-EO(MM)-1 dated 22/11/1996.



नन्द कुमार साय/Nand Kumar Sai
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

The DoPT vide letter No. 5/14/2017-CS.I(U) dated 04/06/2018 has informed that the matter is under examination in consultation with the various stakeholders alongwith some similarly placed Officer. The decision in this regard will be communicated as and when it will be finalized. The petitioner was not with the action taken by the DoPT and requested for justice. The Hon'ble Chairperson, NCST fixed the sitting for 25.07.2018 to discuss the issue with the Secretary, DoPT and petitioner. But, sitting was postponed due to request of DoPT. The issue was discussed with the officers of DoPT and the petitioner in the sitting held on 05.10.2018.

In the sitting, the Joint Secretary and Director (CS-1) and Director (Reservation) of DoPT appeared on behalf of Secretary, DoPT and the petitioner. The petitioner informed the background of the case and stated that DoPT is not taking action in right way, hence they may be asked to treat her case, as a special case and disposed expeditiously.

The Hon'ble Chairperson, asked the representatives of DoPT to explain the action taken by them in the matter. Representatives of DoPT informed that the reply from UPSC was received. Thereafter, matter was referred to the Estt. Division of the Department for their views. Reply has been received. However, the cases of few officers, who are similarly placed like petitioner, their assessment sheets have been sought from UPSC. The same is still awaited from UPSC. The Department will take action on all the cases as and when reply received from the UPSC.

After discussions, Commission recommended/ suggested that DoPT should consider the case of Ms. Margaret Gangte and settled within one month. Action taken/ to be taken in the matter be intimated to the Commission.


18.10.18
नन्द कुमार साय/Nand Kumar Sai
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
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**Government of India
National Commission for Scheduled Tribes**

Sitting dated 05.10.2018 chaired by Shri Nand Kumar Sai, Hon'ble Chairperson NCST in case of Ms. Margaret Gangte, Director, Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi regarding restoration of seniority to USSL-1995 and SSGSL-2007 under Reservation Policy & Rule as per CAT order dated 30/11/2004 & High Court Direction in 2013.

(File No. MG/1/2017/MPPP1/SEOTH/RU-I)

List of participants

- I National Commission for Scheduled Tribes**
1. Shri Nand Kumar Sai, Hon'ble Chairperson (In chair)
 2. Shri H. K. Damor, Hon'ble Member
 3. Dr. Lalit Latta, Director
 4. Shri P.T. Jameskutty, Deputy Secretary
 5. Shri Rajeshwar Kumar, Assistant Director
 6. Shri Y.K. Bansal, Research Officer
 7. Shri R. S. Misra, Senior Investigator
 8. Shri H.R. Meena, Senior Investigator
- II Department of Personnel & Training**
1. Shri V.K. Singh, Joint Secretary
 2. Ms Rajul Bhatt, Director (CS-1)
 3. Shri G. Srinivasan, Director

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Government of India
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes

(F. No. KS/1/2018/MCOL1/SEPROM/RU-IV)

Minutes of sitting dated 05.10.2018 chaired by Shri Nand Kumar Sai, Hon'ble Chairperson NCST regarding denial of promotion to the post of Deputy General Manager (E&M) (E-7 Grade) in the Singareni Collieries Company Ltd. – a representation of Shri K. Sreenivasulu, working as S.E. (E&M) at RGOCP-III, RG-II area, Singareni Collieries Company Ltd., District – Peddapalli, Telangana State.

List of participants in the sitting is annexed.

The NCST discussed this issue with the officers of Singareni Collieries Company Ltd (SCCL) and the petitioner in the sitting held on 10.09.2018 under the Chairmanship of Shri Nand Kumar Sai, Hon'ble Chairperson, NCST. In the sitting, the case was discussed in detail. The Commission observed that the petitioner Shri Srinivasulu had joined in SCCL as Junior Executive Engineer Trainee (E&M) on 26.02.1998 during the periods of undivided State of Andhra Pradesh. He was Scheduled Tribe native of Andhra Pradesh. His promotion as Deputy Manager (E&M)/E-7 was due in the year 2018 and there were 2 backlog ST vacancies in the cadre. However, being senior most in the ST category, his promotion was denied due to his nativity as ST of Andhra Pradesh and extending the privilege of Rules of Reservation in promotions to only Telangana SC/ST candidates in view of State bifurcation in 2014. In this case Commission observed that :—

“The petitioner was earlier promoted from E-5 grade to E-6 grade through Rules of Reservation in promotions on 01.01.2015 i.e. only after bifurcation of the State by submission of ST certificate issued by the Telangana Government. But, during the next promotion (E-6), his claim of promotion was denied stating that the petitioner belongs to native of Andhra Pradesh and company's policy of extending benefits of promotion only for native of Telangana SC/ST. The SCCL is also implementing Rules of Reservation on promotion as per G.O.Ms. No. 5 dated 14.02.2003 of erstwhile Govt. of AP and in absence of any direction from Telangana Govt., SCCL's decision to stoppage of Rules of Reservation benefit in promotion to Andhra Pradesh native SC/ST employees is totally unjustified. It is also pointed out that the SCCL is a Central Public Sector Undertaking and is a subsidiary of Coal India Limited under the Administrative Ministry of Coal. The Rules of Reservations are applicable in all Central PSUs as per Govt. of India's Reservation policy. The Rules of Reservation of the State Govt. cannot be forced on the Central PSUs. The Section 68 and 71 of State Re-organization Act, 2014 also provides that only Govt. of India can issue direction regarding division of interest between the existing State of Andhra Pradesh in the company and the successor State of Telangana. Hence, the opinion of the Additional Advocate General, Telangana cannot be treated as Government's Administrative instructions/decisions. The Commission also felt that it is not a case of migration of ST person



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from Andhra Pradesh to Telangana State. After State re-organization, the SCCL came under the jurisdiction of Telangana State. But the company was not a part of State Government. Since the petitioner was already employed with SCCL before State re-organization and hence his rights of Scheduled Tribes cannot be denied being a native of Andhra Pradesh. The list of Scheduled Tribes was also not modified after bifurcation of the State. However, if the SCCL has any doubt about implementation of Rules of Reservation in appointment and promotions of SC/ST, then the DoPT and Ministry of Home Affairs, who are the competent authority, can be consulted and seek opinion/advice in the matter. In addition, the Hon'ble High Court of Judicature at Hyderabad in its judgment in W.P. Nos. 16330 of 2015, 16504 of 2015 and similar nature of other writ petitions has ruled that Article 16(2) of the Constitution of India forbids a person from being rendered ineligible for or discriminated against in respect of any employment or office under the State inter alia only on the ground of place of birth or residence or any of them subject, however to the exception envisaged under clause (3) of Article 16 which enables the Parliament to make any law prescribing in regard to a class or classes of employment or appointment to an office under the Government, or any local or other authority within a State or Union Territory, any requirement as to residence within that State or Union Territory, prior to such employment or appointment.

In the light of the above observation, the Commission recommends that the CMD, SCCL should review the case and consider promotion of the petitioner Shri Srinivasulu as DGM – E-6 being senior most and eligible ST candidate against available backlog ST vacancies and as per Government of India's reservation policy”.

The minutes of sitting dated 10.09.2018 was communicated to SCCL, District- Khammam (Andhra Pradesh) for necessary action and with request to submit the action taken report within a month vide NCST's letter dated 19.09.2018. In meanwhile, the Hon'ble Chairperson, NCST decided to obtain the comments of DoPT in the matter. Accordingly, the issue was referred to Secretary, DoPT for furnishing their comments in the matter, in the sitting dated 05.10.2018.

The representatives of DoPT appeared in the sitting dated 05.10.2018 informed that the matter relates with the reservation in PSUs, which requires examination. The DoPT not in position to comment on the minutes of sitting dated 10.09.2018 taken by the NCST in the matter. Hence, NCST may advise the SCCL to submit the proposal in the matter to DoPT through Ministry of Coal for views and comments.

NCST agreed with the suggestions of DoPT and decided that the matter will be referred by NCST to SCCL, Management for appropriate action.


18.10.18

नन्द कुमार साय/Nand Kumar Sai
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
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(F. No. KS/1/2018/MCOL1/SEPROM/RU-IV)

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