

(1973) 04 BOM CK 0013
In the Bombay High Court
Case No : Spl. C. Application No. 1591 of 1971

Wasudeo

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 11-04-1973

Acts Referred:

Constitution of India, 1950 — Article 330, 332, 334, 335, 338

Citation : (1973) MhLj 994

Hon'ble Judges : G.G. Bhojraj, J; D.B. Padhye, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; P.G. Palshikar Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Padhye, J.—The petitioner by this petition seeks a writ for quashing and setting aside the letter of the Divisional Personal Officer, dated 23rd February 1971-Annexure-B and further seeks a direction that the respondents Nos. 1 and 2, i. e. the Union of India and the Divisional Superintendent, South Eastern Railway, Nagpur, shall post the petitioner as a Section Controller, Grade II on the pay scale of Rs 250-380. The petitioner prays further that the order dated 23rd February 1971 issued in favour of the respondent No. 3 H. B, Singh appointing him Section Controller, Grade II and incorporated in Annexure B to the petition be quashed and set aside.

2. The petitioner contends that he belongs to the Halba community and was initially appointed on the 18th of August 1960 as a probationer Assistant Station Master in the South Eastern Railway. This appointment was made after he was selected by the Railway Service Commission. He was then promoted as Assistant Station Master, E-Grade with effect from 12th April 1961 and was confirmed as Assistant Station Master with effect from 15th August 1962. It is the case of the petitioner that at the time of his initial appointment in the year 1960, he had stated that he belonged to the Halba caste and hailed from Nagpur District and

on that basis he was offered the appointment and was treated as a reserved quota candidate of Scheduled Tribes.

3. The Government of India has framed rules regarding the services in the Railways and Chapter II Section B incorporated in the Indian Railway Establishment Manual gives rules governing the promotion of subordinate staff. A railway servant can be promoted to fill any post, whether a selection post or a non-selection post, only if he is considered fit to perform the duties attached to the post, for which specified departmental or other tests may be prescribed as condition precedent. For the purposes of selection, Selection Boards are constituted for making recommendations to the competent authority in respect of the railway servants considered by it as suitable for filling a selection post.

4. Rule 216 gives the procedure to be adopted by the Selection Board and the Selection Board after following the procedure prepares a list or a panel of candidates who are considered fit or suitable to be selected for the higher post. This list is to be put before the Competent Authority for approval and if the competent authority does not accept the recommendations of the Selection Board, the case has to be referred to the General Manager who may constitute a fresh Selection Board at a higher level or issue such other orders as he considers proper. After the Competent Authority has accepted the recommendations of the Selection Board the names of the candidates selected will be notified to the candidates. This panel which is drawn by the Selection Board and approved by the competent authority is to be current for two years from the date of approval by the competent authority or till the panel is exhausted whichever is earlier. Rule 218 then provides that the retention of a railway servant's name on a panel will be subject to his/her continued suitability for the post in question. It further provides that notwithstanding anything to the contrary, the removal of a railway servant's name from the panel would require specific approval of the authority next above that which initially approved the panel.

5. A Selection Board for considering the candidates for promotion from the Assistant Station Master to Section Controller, Grade-II was constituted and a panel or a list was prepared by the Selection Board. This panel was of 4 persons and the petitioner's name was put as No. 2 being a member of the Scheduled Tribe, the first name in the list being of a general candidate. Then the third one was again a general candidate and fourth one was a member of the Scheduled Caste. This panel was approved by the Divisional Superintendent who was the competent authority. In the ordinary course, if and when vacancies arose in the promotion post, the candidates from this panel, unless they become unsuitable later on, were to be promoted in that order. This panel was formed on 21st of March 1970.

6. The petitioner complains that although this panel was formed in March 1970, he was not given any posting as a Section Controller, Grade-II, but instead one H. B. Singh, respondent No. 3, who was a guard and who was not in the panel was appointed to officiate as Section Controller, Grade-II, Nagpur and was

working in that post. H. B. Singh was appointed by the appointment letter dated 23-2-1971. The petitioner made representations to the railway authorities, but no action was taken on these representations. Therefore he filed Special Civil Application No. 1030 of 1971, in this Court challenging the order dated 23-2-1971 appointing H. B. Singh as Section Controller, Grade II and not considering the claims of the petitioner. During the pendency of this petition, a letter dated 23-9-1971 was issued by the Divisional Superintendent, the respondent No. 2, to the effect that the petitioner's name was deleted from the panel for promotion. Since the petitioner's name was deleted from the panel, he could not claim any promotion unless the order of deletion was set aside. The petitioner therefore was advised to withdraw that petition with liberty to bring a fresh petition. Accordingly that petition was withdrawn and liberty was reserved to the petitioner to file a fresh petition challenging the deletion of his name from the panel for promotion. The petitioner then has filed the present petition challenging the deletion of his name from the said panel as well as appointment on promotion of the respondent No. 3 H. B. Singh.

7. Article 342 of the Constitution authorises the President to specify by notification the tribes or the tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. In exercise of this power, the President after consultation with the Governors and the then Rajpramukhs of the States concerned, made the Order known as the Constitution (Scheduled Tribes) Order, 1950 by which he specified the tribes or parts thereof as scheduled tribes for the purposes of the Constitution. So far as the State of Maharashtra is concerned, the scheduled tribes are given in Part VII-A of the Schedule to this Order and "Halba" or "Halbi" of Melghat taluq of Amravati District, Gadchiroli and Sironcha taluqs of Ghanda district and Kelapur, Wani and Yeotmal taluqs of Yeotmai district has been specified as a Scheduled tribe. By virtue of a Circular dated 27th September 1967 being Circular No. CBS-1466/91837-M, dated 27th September 1967 of the Education and Social Welfare Department, the Government of Maharashtra has extended concessions to the Halba Koshtis in the whole of the Vidarbha Region and Halba Koshtis in this region are to be treated as belonging to the scheduled tribes and are to be given all concessions admissible to them.

8. The petitioner in the present case contends that by being included in the panel by the Selection Board and the list being approved by the Divisional Superintendent, that is, the Competent Authority, the petitioner has acquired a right to promotion to the post of the Section Controller, Grade-II and before deleting his name from the panel, for whatever reason, a notice should have been given to him and he should have been given a reasonable opportunity to show cause against the proposed action. By not doing so, the principles of statural justice have been violated and the order deleting the name of the petitioner from that panel has to be struck down on that ground alone. It is contended that by deletion of the name of the petitioner from the panel, the right

of the petitioner to be promoted which in fact was as a matter of course, the petitioner is visited with penal consequences and yet he has been denied a reasonable opportunity of showing that his name could not be deleted. It does not appear, nor is it the case of the respondents, that any notice was issued to the petitioner before his name was deleted from the panel. It is, however the ? contention of the respondents that no notice in this case was required since issuing of any notice would not have served any purpose and was only a mere empty formality. The respondents contend that when the petitioner was initially appointed by the Railway Service Commission against the reserved quota of scheduled tribe in the year 1960, he had submitted a certificate dated 10-7-1959 issued by the Deputy Collector, Nagpur, certifying that the petitioner belongs to Halba tribe and was a resident of Nagpur in Bombay State and since he was a resident of Nagpur, he was not covered by the Presidential Order, 1950 and could not be a member of the scheduled tribe and if he was not a member of the scheduled tribe, then his name could not have been included in the panel of the reserved quota on the basis of his being a member of the scheduled tribe. The respondents further contended that the promotion was not a legal right and on this ground also it was not necessary to give any opportunity to the petitioner of being heard before his name was deleted from the panel. As a part of his contention, it is urged by the petitioner that though on the date of his initial appointment and even subsequently he was a resident of Nagpur, his ancestors came from the areas specified in the Presidential Order and, therefore, he could have shown to the authorities concerned that he was a member of the Schedule Tribe.

9. After the petition was heard yesterday and was adjourned for further hearing today, the petitioner has filed an application for amendment today wanting to amend the petition in certain respects. By this amendment the petitioner wants to contend that the petitioner's family was the resident of Armori in Gadchiroli Taluq of Chanda District and the family had migrated to that place centuries ago. It is then submitted that it was only his father who migrated at a young age from Armori to Nagpur in search of an employment and continued staying at Nagpur. It is urged that the other branches of the family and his other ancestors are still living at Armori and these families; are still living at that place and are engaged either in trade, business or service-By this amendment the petitioner wants to show that though the petitioner has been from his birth residing in Nagpur where he was born, still his roots lie in Armori, in taluq Gadchiroli of Chanda District, he will be covered by the schedule of the Presidential Order of 1950 and would thus be member of the scheduled tribe and entitled to take benefit under the same, It would, therefore, first be necessary to find out if the petitioner can claim to be a member of the scheduled tribe even on the allegations which have been made by the petitioner in his petition and the proposed amendment. This is also to be considered along with the certificate which is obtained by the petitioner from the Deputy Collector at the time of joining the service and his admission that he was a permanent resident of

Nagpur. Further the effect of the Circular issued by the State Government extending concessions to the Halbas in the whole of the Vidarbha Region will also have to be considered in this context.

10. Clause 2 of the Constitution (Scheduled Tribes) Order, 1950 gives who would be deemed to be scheduled tribes. According to this rule, tribes and the tribal communities or parts of, or groups within tribes or tribal communities specified in parts I to XXVI of the Schedule to this Order shall, in relation to the States to which those parts respectively relate, be deemed to be scheduled tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule. In the parts of the Schedule and particularly part VII-A relating to the State of Maharashtra, Halba community is included at Serial No. 5, but that is confined only to a few places such as Melghat tahsil in Amravati district, Gadchiroli and Sironcha tahsils of Chanda District and Kelapur, Wani and Yeotmal tahsils of Ycotmal district. This part together with clause 2 of the Order apparently does not include Halbas of Nagpur district of which place the petitioner is a resident.

11. Reading Clause 2 with this part, particularly relating to Halbas, it is only the Halbas, who are residents of these places, are alone to be deemed to be scheduled tribes in relation to the State to which this part relates, namely, State of Maharashtra. It is, however, contended on behalf of the petitioner that the petitioner having his origin at one of these places, his present residence is immaterial and he being originally from that place, which is mentioned at serial No 5 in part VII-A, must be deemed to be a member of the scheduled tribe. Assuming that the allegation of the petitioner made in his application for amendment that his ancestors originally come from the village Armori in Gadchiroli is correct, still on the plain reading of clause 2 of this Order, we cannot hold that though the petitioner himself is not a resident of Armori, but his ancestors or other branches of the family have been the residents of that place, he must be deemed to be a member of the scheduled tribe under this Order. "Resident in the localities" specified in this part must necessarily refer to a person who has got his permanent abode in that place. It depends upon the intention with which the person is living in a particular place and sometimes the duration of his stay at the particular place. It may be that a person is living at one place, and is established there but if for some temporary purpose he is required to go for short duration to another place, he does not become a resident of the other place and still continues to be a resident of the former place even if he is required to go out off and on, or even in a case where he is required to go even for some longer duration but for a temporary period, even then he may not become a resident or a permanent resident of that latter place. But where he intends to shift from his former place of residence to another place permanently and shifts all his establishment there with bag and baggage with the intention of settling in that place, then though he may have originally resided at that place, he would become a resident of the latter place to which he shifts. Granting provisionally that the petitioner's ancestors even upto his father were residents

of village Armori in Gadchiroli, the shifting of the petitioner's father to Nagpur permanently and making Nagpur as his permanent abode would make Nagpur his residence thereafter and he would cease to be a resident of village Armori.

12. Even on the allegations made by the petitioner his father would be a resident of Nagpur and would cease to be a resident of village Armori, The petitioner was born and brought up in Nagpur. His father after his shifting to Nagpur continued to reside in Nagpur. The petitioner was educated in Nagpur and he has been permanently residing in Nagpur since the date of his birth. In these circumstances, there could be no other conclusion than the petitioner is a resident of Nagpur and by no stretch of imagination he can be called a resident of Armori in taluq Gadchiroli, even though his ancestors might have resided there or his uncles and other distant relations are still living at that place. On the reading of this Presidential Order, therefore, coupled with the schedule, we are not in a position to agree with the petitioner that the petitioner would be a member of the scheduled tribe though he is a resident of Nagpur.

13. It is then urged that by virtue of the circular issued by the State Government ne would become a member of the scheduled tribe. The circular referred to above directed the Collectors to see that the Halba Koshtis should be treated as belonging to the scheduled tribe and given all concessions admissible to them. This has, however reference to the affairs of the State only and it cannot have any effect so far as the affairs of the Union are concerned. We do not desire to adjudicate in this petition as to the effect of this Circular so far as Halba Koshtis in the areas of the Maharashtra State not covered by Part VII- A of the Schedule to the Presidential Order are concerned. It is doubtful whether any modification to the Presidential Order could be made by the State in view of the provisions of Article 342 (1) of the Constitution. However, even assuming that such a Circular could be issued by the State Government and the concessions admissible to the scheduled tribes could be extended also to the Halba Koshtis in the areas not mentioned in Part VII-A of the Schedule to the Presidential Order, still we do not see how for the purposes of this service to which the petitioner belongs, these concessions can be made admissible. The authority of the State in this matter, if any, would extend only to the services under the State and not to the services under the Union to which the railway service belongs. The State could not by extending the concessions bind the Union Government or its affairs. At the most the effect of his Circular would be that all the Halba Koshtis in the whole of the Vidarbha Region and not merely to the areas specified in the schedule would be considered to be belonging to the scheduled tribes and on that basis all the Halba Koshtis could claim the concessions which wilt go to the scheduled tribes, but that has necessarily to be confined only to the State of Maharashtra and it cannot have any effect on the other States or the Union Territories or the Union Government,

14. The learned counsel for the petitioner referred to Article 34F of the Constitution and stated that if this tribe is deemed to be a scheduled tribe in

relation to the State of Maharashtra, then it is also a scheduled tribe for every other territory and in particular, the Union or the Central Government. He relies on the phrase used in this Article "for the purposes of this Constitution." Therefore, according to the learned counsel, this Halbas in the Vidarbha Regions also would become the scheduled tribe under the Constitution or for all purposes of the Constitution. We does not subscribe to this part of the submissson and to the meaning sought to be given to these words. Part XVI of the Constitution commencing from Article 330 onwards itself would show as to what is means by the term "-for the purposes of the Constitution". Article 350 provides that seatsshallbe reserved in the House of the People for the scheduled castes, scheduled tribes and other tribes. Then Article 332 provides for seats being reserved in the Legislative Assembly. Article 334 also provides for reservation of seats. Article 335 refers to the claims of the Scheduled castes and scheduled tribes to be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or of a State. Similarly Article 338 requires a Special Officer to be appointed by the President for the Scheduled Castes and Scheduled Tribes. There are also other provisions relating to the scheduled tribes and castes in this part. There are other provisions in other parts of the Constitution. It only means that wherever the Constitution deals with the scheduled castes and scheduled tribes, if the President by an Order notifies a particular tribe or part of it in any area, then that tribe will be deemed to be a scheduled tribe from that area or from the Union Territory wherever reference to the scheduled tribe comes in the Constitution. It does not mean that if a particular tribe or part of it or a group within a tribe is notified and that tribe is deemed to be a scheduled tribe in relation to that State where the area falls, that tribe is deemed to be a scheduled tribe for alt purposes. Such a wide interpretation is not possible to be given. Even Article 335 does not bear out such a wide meaning as is sought to be given on behalf of the petitioner. It only states that the claims of the members of the scheduled tribe are to be taken into consideration in the making of appoint ments to services and posts in connection with the affairs of the Union or of a State.

15. If, however, the appointment to a service, is in connection with the affairs of the Union, then be must be a member of the scheduled tribe in relation to the Union. If, however, his claim is to be taken into consideration in connection with the affairs of a State, then he must be a member of the scheduled tribe in relation to that State, but if he is a member of a scheduled tribe in relation to a particular State, he cannot claim the benefit under this article as far as another State or even the Union is concerned. Now the Presidential Order of 1950 has specified definite areas and the definite tribes in those areas who alone can be regarded as scheduled tribes. If this scheduled tribe is in that State, then the claims of the members of that scheduled tribe have to be taken into consideration only in connection with the affairs of that State and not in connection with the affairs of any other State or the Union. Now the claim of the petitioner, assuming that he is a member of the scheduled tribe, could be taken

into consideration in the matter of promotion only if he were to make his claim in the service or post in the State of Maharashtra and not elsewhere. Article 342 as also clause 2 of the Presidential Order specifically states that such tribes are deemed to be scheduled tribes in relation to that State only and not generally.

16. Assuming that the Circular issued by the State Government gives benefit of the concessions to all the Halba Koshtis in the Vidarbha area, the petitioner who is in the service of railways under the Union Government would not be able to claim any concessions on the basis of his being a member of the scheduled tribe.

17. The petitioner contends that if opportunity had been given to him by the authority concerned before the ordering deletion of his name from the panel, he would have been able to satisfy the authority concerned that he was a member of the scheduled tribe under the Presidential Order and was, therefore, entitled to the concessions or privileges or rights admissible to the members of such tribe. In not giving him any opportunity, he has been deprived of a valuable right and he has been denied justice. Now it is no doubt true that before any adverse order is passed against a person involving penal consequences, that person should be given a reasonable opportunity of being heard and after hearing him, the order could be made. That is on the principle that no person should be condemned without being heard. That is no doubt a rule of natural justice which should be observed. There may, however, be cases where inspite of the hearing given to the person concerned, the answer to the question involved the same and cannot be altered by any amount of persuasion or reasoning. In such cases the giving of a so-called opportunity or giving a notice to that person would only be an empty formality or an exercise in futility. One can understand the notice being issued where it is possible to have more than one view on a particular subject and the person concerned may be able to satisfy the authority and bring him to his own view. The giving of a notice in such cases does serve a purpose, but if it is not a case of that kind and whether the notice is given or not, there cannot be any change in the result, we do not see any usefulness in observing the formality of giving a notice and the so called opportunity to the person concerned.

18. In the instant case, the petitioner at the time of seeking the appointment has unequivocally admitted that he was born in Nagpur and that he was a permanent resident of Nagpur. Even in the affidavit filed today in support of the application for amendment, the petitioner does not dispute this fact that he has got now his permanent residence in Nagpur. In fact his father had migrated, according to him, from Armori to Nagpur and has been continuing to live here. In such circumstances, it cannot, but be accepted, that the petitioner is a resident of Nagpur within the meaning of Article 342 of the Constitution and the Presidential Order of 1950. The word "resident" used in the Presidential Order of 1950 can only mean a permanent resident of that place Or a person having a permanent abode in that place. It cannot have any other meaning. If this position, that the petitioner is a resident of Nagpur is accepted, then it is a matter of wholly

applying or not applying the Presidential Order. The Presidential Order confines its application only to certain specified areas in which Nagpur is not included. Therefore, under the Presidential order the petitioner or the Halbas living in Nagpur cannot be deemed to be members of the scheduled tribe. The Circular by the State Government extending the concessions to the scheduled tribes does not also held the petitioner. In these circumstances, the petitioner could not be held to be the member of the scheduled tribe so far as the Union Government is concerned as also the Railway Administration in which he is serving and, therefore, he could not have got a place in the reserved quota on the basis of his being a member of the scheduled tribe. The authority, therefore, had nothing else to do except to rely on the information which was supplied by the petitioner himself at the time of his appointment, including the Deputy Collector's certificate. On the basis of that material read with the Presidential Order only one conclusion was possible, namely, that the petitioner is not a member of the scheduled tribe. We do not see what kind of opportunity was required to be given to the petitioner to show that he is still belonging to the scheduled tube. We do not, therefore, see that in this case the principles of natural justice can be said to have been violated and on that account the order deleting his name from the panel needs to be quashed.

19. It is then contended that the petitioner was initially appointed in the reserved quota on account of his being a member of the scheduled caste when he was initially appointed in the year 1960 and since then is continued to be regarded as member of the scheduled tribe till the order deleting his name from the panel. It is true that at the time of his initial appointment, the petitioner was regarded, rightly or wrongly, as one belonging to the scheduled tribe. He got the appointment in the reserved quota on that basis. It is also true that prior to the letter in question, he has been serving in the railways and even at the time of the selection he was regarded as a member of the scheduled tribe and on that basis his name was included in the panel, though in general competition his name could not have appeared. If he was entitled to be considered a member of the scheduled tribe, then according to the panel he would have been the second person to be promoted to the post of Section Controller Grade II.

20. It is contended on behalf of the petitioner that the petitioner acquired a right to be promoted as his name was included in the panel and his promotion to the post of Section Controller, Grade-II was as a matter of course, subject however to his becoming unsuitable under rule 218 of the Railway Establishment Manual. It is further contended that the petitioner having been accepted as a member of the scheduled tribe not only at the time of his initial appointment, but for a number of years thereafter, including his selection for the promotion post, the respondents cannot now turn round and say that he does not belong to the scheduled tribe and, therefore, not entitled on that account to claim a promotion. In a way, it is said that the respondents are estopped from saying that the petitioner is not entitled to claim promotion on the basis of his being a member of the scheduled tribe. Whether a person is a member of the scheduled tribe or

not on admitted set of facts is a question of law. In *Bhaiya Ram Munda v. Anirudh Patar* AIR 1971 S. C. 2633 their Lordships of the Supreme Court have held that whether a particular person is a member of the scheduled tribe so declared by the President under Article 342 of the Constitution is essentially a question of law. The question being a question of law, no estoppel can arise.

21. In the case before the Supreme Court the respondent there while conveying some property declared that he was not a member of any scheduled caste or backward community. Such a declaration was necessary because a sale deed by a member of the scheduled caste or backward class could not be made without the sanction of the Deputy Commissioner and such document without the sanction could also not be registered. The appellant in the case relied upon this admission of the respondent in the sale deed. It was held that inspite of such a statement by the respondent, no estoppel arose against him because this was essentially a question of law and though there was an admission by him that he was not a member of the scheduled tribe and that admission was evidence against him in an election petition, that evidence was not conclusive.

22. Now here the petitioner on his own showing was a resident of Nagpur within the meaning of clause 2 of the Presidential Order. He therefore, under the Presidential Order could not be a member of the scheduled tribe. This was wholly a question of law and simply because the petitioner came to be regarded as a member of the scheduled tribe when he was first appointed and continued to be regarded as such till the deletion of his name from the panel, that cannot create an estoppel against the respondents if subsequently it is found that the petitioner could not be regarded as a member of the Scheduled Tribe. If the petitioner is not a member of the scheduled tribe and cannot be regarded as such, merely because the respondent wrongly regarded him for a number of years a member of the scheduled tribe cannot make him one. It is a matter of status granted by the President and such a status cannot be created by any admission or acquiescence on the part of the authorities. It is the law which gives him the status and such status cannot be claimed on the basis of any admission or the acquiescence, however wrong or erroneous that might be.

23. The petitioner was included in the panel only on the basis of his being a member of the scheduled tribe. If he cannot enjoy that status, he certainly has no right to remain in the panel in which he was included only by reason of his being a member of the scheduled tribe. His inclusion in the panel was erroneous and that mistake could be corrected any time on being found that he was not eligible to be included in the panel. We do not, therefore, see any illegality in the deletion of the name of the petitioner from the panel since the very basis of his inclusion in the panel disappears. Ineligible person cannot claim a right to be continued on the panel. It is urged that the petitioner was also initially appointed on the same basis in the year 1960 and it was not within the power of the respondents to remove him from his service because, though he was taken in the reserved quota, it is now found that he could not have been taken against that

reserved quota. We are not called upon to say anything in that matter, because, the petitioner now has worked in that post for a large number of years and taking an action now so far as that service is concerned, could not have been thought advisable and we would not consider that to be advisable. But here, there is now a new phase in which the petitioner wants to enter, namely the promotion to a higher post, namely, that of Section Controller Grade-II. At such a time certainly his claims can be considered and he can be promoted if he is eligible in all respects. There is no bar to his being promoted without claiming the concessions or privileges on the basis of his being a member of the scheduled tribe or caste, but he cannot claim the benefit of the reserved quota and claim promotion on that basis without satisfying the conditions of his being eligible for the same. At this time, certainly the authorities can take a fresh look and find out whether he can be taken in the reserved quota on the basis of his being a member of the scheduled tribe. There is nothing to preclude the authorities from taking that factor into consideration, though initially he might have been mistakenly regarded as a member of the Scheduled Tribe.

24. It is urged that the petitioner's name could not be deleted under rule 218 of the Railway Establishment Manual as that rule requires that it could be removed if he ceases to be suitable for the post in question. Rule 218 does say that "the retention of a railway servant's name on a panel will be subject to his/her continued suitability for the post in question". It is, therefore, contended that in this case there was no question of the petitioner not being suitable for the post in question and it has not been shown that he has not continued to be suitable for that post. It does appear that the suitability of a servant as contemplated by rule 218 has reference to the responsibility of the post to which he is to be promoted and rule 218 may not strictly be availed of in a case like this, but there is nothing to prevent the authorities concerned to consider the eligibility of the candidate for promotion and to correct an obvious mistake which initially committed, which was in fact should not have been committed. We are, therefore, of the view that the respondents had power to delete the name of the petitioner from the panel in view of the fact that he was not a member of the scheduled tribe on which basis he came to be included therein. In this view of the matter, we do not see any reason to quash the letter dated 23rd September 1971-Annexure-D regarding the deletion of the name of the petitioner from that panel and the letter dated 23rd of February 1971-Annexure-B regarding the posting of the respondent No. 3 H B. Singh.

25. The petition therefore, fails and is dismissed, but we do not make any order as to costs.