

Centre divided over the promotion of a Lohar community archaeologist under the Scheduled Tribe quota

The Bihar Government's circular declaring the Lohar community, listed in the Central OBC list, as a Scheduled Tribe was struck down by the Supreme Court

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The promotion of an archaeologist in the Culture Ministry under the Scheduled Tribes quota now has multiple departments of the Union Government divided — specifically because of confusion over a 2016 Bihar Government circular, which declared the Lohar community as a Scheduled Tribe (ST).

The archaeologist in question, Shankar Sharma, a member of the Lohar community, joined service with the Archaeological Survey of India under the Other Backward Classes (OBC) quota. The Lohar community has always been listed in the Central OBC list for Bihar.

After the Bihar Government issued the circular in August 2016, Mr. Sharma was promoted as an Assistant Superintending Archaeologist (ASA) — this time under the quota meant for Scheduled Tribes. However, the Bihar Government's circular was challenged in the Supreme Court, which struck it down in February 2022, following which the State withdrew it.

But now, with Mr. Sharma up for his next promotion to the post of Deputy Superintending Archaeologist (DSA), the Ministry of Culture finds itself in a tricky position, with the Social Justice Ministry and the National Commission of Scheduled Tribes (NCST) recommending that his ASA promotion be reversed but the Department of Legal Affairs (Law Ministry) saying that there was no need for it because there was no malintent involved.

In its opinion to the Ministry of Culture, the Social Justice Ministry said that the Lohar community was never deleted from the Central OBC list for Bihar since it was introduced in 1993, and that there is no record of it ever being added to the ST list. It noted that the power to add communities to the ST list remains with the Union government, the Parliament and the President of India.

It added, “Thus, the action of M/o Culture to change the OBC status of Shri Shankar Sharma to ST and provide him consequential benefits of promotion etc, without consultation of the Nodal Ministries violates the Central Government’s reservation policies, and is incorrect and needs to be reversed/ corrected by them immediately.”

Further, the NCST, in its opinion said that the Culture Ministry needs to “fix responsibility” for the procedural lapses that resulted in Mr. Sharma’s promotion to the post of ASA, adding that the ST roster point “wrongly availed by an OBC on promotion is required to be corrected urgently” by filling up the said ST roster point with a deprived ST person retrospectively.

On the other hand, the Department of Legal Affairs, in response to the Culture Ministry’s query, said: “The promotion which he already availed to the rank of ASA by virtue of notification dated 23.8.2016 need not be disturbed since there was no mischief or fraud played by the employee concerned.” It also added, “The Administrative Ministry (Culture) may restructure the seniority list of their Departmental ASA’s by keeping in mind the roster system in use in the Department.”

While the NCST, Social Justice Ministry and the Department of Legal Affairs (DoLA) agreed that there was no way Mr. Sharma could now be promoted under the ST quota in light of the 2022 Supreme Court judgement, the bone of contention is the ASA promotion that Mr. Sharma was given.

Before parting with its note, the Department of Legal Affairs said that the Culture Ministry should proceed after taking the views of the Ministry of Tribal Affairs, NCST

and the Social Justice Ministry.

The Tribal Affairs Ministry said that the Culture Ministry should look towards the Law Ministry and the Department of Personnel and Training for further decision in the matter. The DoPT, however, in its opinion said that the Culture Ministry should take a decision based on inputs from the DoLA, Social Justice Ministry and the Tribal Affairs Ministry.

‘Lohar’ versus ‘Lohra’

Significantly, even after the Supreme Court struck down the Bihar Government’s circular on the Lohar community, a 2020 petition in the same matter remains pending with the Patna High Court, where an association of community members have sought that they be given ST status.

In response to these petitions, the Ministry of Tribal Affairs had taken a similar position in 2022, noting that the Lohar community does not qualify to be categorised as an ST and that it was different from the ST known as Lohra.

The confusion originated from an amendment to the Constitution (Scheduled Tribes) Order in 2006, which had added English translations to the “Lohra” community. The amendment was supposed to add “Lohara” and “Lohra” as the English spellings of the caste name but in a mistake had added “Lohar” instead.

The 2006 Amendment was eventually withdrawn through the Repealing and Amendment Act of 2016, correcting the mistake.

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