

**No. Policy-1/2006/ST/SSW/RU-I**

**Proceedings of the sitting of Shri Oris Syiem Myriaw, Hon'ble Member with  
DOPT and NIC on 15.07.2009**

**Issues**

Separate zone of consideration for promotion by selection of SC/ST candidates.

Computerization of reservation policy for its smooth, uniform and error free implementation in all Govt. Depts. and Ministries.

**Background**

National Commission for Scheduled Tribes is receiving a lot of complaints from ST candidates regarding their promotion by the departments even when the vacancies are available and employees are also eligible as per recruitment rules, but their promotion is denied by the department on the ground that such candidates are not falling within the zone of consideration for promotion by selection.

It is noted that DOPT, vide their O.M. No. 36012/27/2000-Estt.(Res.) dated 15.03.2002, have issued guidelines that in case of adhoc promotion of SC/ST candidates, they can be promoted in accordance with the seniority list, provided they are eligible and found fit for such adhoc promotion against the available vacancies without any limitation due to zone of consideration. In this connection, however, in case of regular promotion, DOPT O.M. No. 22011/2/2002-Estt.(D) dated 06.01.2006 prescribes the extended zone of consideration for SC and ST candidates, maximum five times the number of vacancies. As a result, it is revealed that even if the eligible candidates are available, they can't be considered for promotion due to the limitation imposed by the zone of consideration ( 5 times the number of vacancies).

Hon'ble Supreme Court in its judgement in CA No. 4026/1988 had ordered that there has to be a separate zone for consideration so far as SC/ST candidates are concerned. Clubbing the Scheduled Castes with the general category in the same zone of consideration would defeat the very purpose of reservation. In the same Judgement Hon'ble court had resolved the specific case and ordered to promote SC/ST vacancies by preparing separate zone of consideration for SC/ST candidates as well as General Category candidates. In the words of Hon'ble Court " Thus total vacancies of Superintending Engineers available for SC/ST candidates would be 13 (7+6), which will be filled by

preparing separate zone of consideration for SC/ST candidates as well as General Category candidates".

After the issue of the judgement by Hon'ble Supreme Court as mentioned above, the same was quoted in many of the succeeding judgements. Since this judgement, the DOPT has not issued any order to implement this judgement. Due to this situation, the eligible SC/ST candidates are not getting their legitimate promotion due to their lower position in the gradation list. To resolve this issue a letter was written to the DOPT on 07.05.2008 followed by reminders, but there was no response.

Another issue which keeps on striking the Commission by way of grievances from the ST candidates is wrong casting of reservation roster or its wrong interpretation/understanding. Post Based Reservation Roster (PBR) in Central Govt. Departments have been introduced vide DOPT O.M. dated 02.07.1997. NCST is receiving a lot of queries / complaints regarding understanding of PBR and its squeezing at the end of the Cadre. The officials in various departments are making mistakes in calculating the reserved posts due to lack of knowledge of Post Based Roster and its interpretation. To overcome this problem, a proposal was sent to DOPT vide Commission's letter dated 19.05.2008, to get the software developed to implement the current reservation system i.e. the Post Based Roster, for the benefit of all the Central Govt. Deptts. and State Govt. Deptts. also. Reminders were sent to DOPT to expedite the matter. NIC were also approached to render their support in this matter.

In view of above, Shri Oris Syiem Myriaw, Hon'ble Member of National Commission for Scheduled Tribes decided to have a discussion with the officials of DOPT and NIC on the above issues on 15.07.2009 at 1500 hrs in the Commission.

A letter dated 10.06.2009 was received from the DOPT mentioning that after introduction of post based reservation, the Government has not prescribed any format for maintenance of rosters. It is not possible to develop software for the roster unless a format is prescribed for maintaining rosters/registers.

## **Discussion**

It was stated by DOPT that the extended zone of consideration as per O.M. dated 06.01.2006 is equivalent to separate zone of consideration.

The Commission mentioned that in case of regular promotion, DOPT O.M. No. 22011/2/2002-Estt.(D) dated 06.01.2006 prescribes the extended zone of consideration for SC and ST candidates, maximum five times the number of vacancies. As a result, even if the eligible candidates are available, they can't be considered for promotion due to the limitation imposed by the zone of consideration (5 times the number of vacancies). The same observation was

given by the Attorney General of India that the extended zone of consideration for SC/ST candidates is substantially equivalent to a separate zone of consideration for SC/ST candidates. This was, however, subject to the rider that in practice the extended zone appears to be more limited than separate zone.

The Commission further mentioned that since the delivery of judgement by Hon'ble Supreme Court in 1988, DOPT have not issued any order to implement it. DOPT O.M. dated 06.01.2006 is not in line with the judgement of the Hon'ble Court. The judgement clearly mentions that there has to a separate zone for consideration so far as SC/ST candidates are concerned. Clubbing the Scheduled Castes with the general category in the same zone of consideration would defeat the very purpose of reservation. The Commission stated that DOPT should issue instruction in compliance with the Hon'ble Supreme Court judgement. In case, DOPT believes that one of the existing order is as per judgement, clarification to this effect is required to be issued.

DOPT further clarified that in case of adhoc promotions, the barrier of zone of consideration has been removed vide their order dated 15.03.2002.

The Commission stated that as there is no reservation in adhoc promotions, DOPT order dated 15.03.2002 doesn't serve any purpose. DOPT clarified that the same reservation principle as in case of regular promotions is applicable in case of adhoc promotions. Only difference in case adhoc promotions is that rosters are not updated.

The Commission observed that in view of the problem faced by the ST candidates due to difficulty in understanding by the official of various departments, DOPT should take initiative to get the software developed for implementation of the current reservation policy.

DOPT explained that while issuing the instructions to implement the post based reservation in 1997, the format for maintaining the roster was not prescribed. Various departments are using the old format of vacancy based reservation. To overcome this problem and various other problems faced during this period, DOPT has sent a proposal to modify the existing post based reservation system, for getting comments of various Ministries and Commissions. The Comments of NCSC are still awaited, due to which this proposal is held up to be put to the Cabinet. Once the proposal is through, it can be computerized, as all the required formats are prescribed in that.

NIC mentioned that they have no problem in developing the software subject to availability of support, both administrative and financial.

## Recommendation

In view of the above discussion, the Commission recommended that

- i) DOPT may issue instruction in compliance with the Hon'ble Supreme Court judgement in CA No. 4026/1988 regarding separate zone of consideration for SC/ST candidates, so that eligible SC/ST candidates may be promoted against the available vacancies without any barrier as imposed by the extended zone of consideration.
- ii) As clarified during the discussion, DOPT to send a separate communication to the Commission mentioning that the same reservation system is applicable in case of adhoc promotions as in case of regular promotions, but for roster updation.
- iii) DOPT may prescribe the format for roster maintenance as per instructions currently in vogue. The software for implementation of current reservation system may be developed in association with NIC. As and when changes are made in the reservation policy/implementation system, the application software may also be modified / updated accordingly.

## **ANNEXURE**

The following were present in the sitting on 15.07.2009:

### **National Commission for Scheduled Tribes**

1. Shri Oris Syiem Myriaw, Hon'ble Member .....**In Chair**
2. Shri Vinod Aggarwal, Director

### **DOPT**

1. Shri K. G. Verma, Director

### **NIC**

1. Dr. V. V. S. Rao, Dy. Director General
2. Shri S. N. Sowpari, Sr. Tech. Director