

AGENDA NOTE

Subject : Comments of NCST required by DoPT on draft O.M. on Instructions regarding implementation of reservation for SCs, STs and OBCs.

I. **Proposal in brief.**

1. The Department of Personnel and Training have sent a proposal for seeking comments of NCST on issue of a draft O.M (placed at Annexure-III to the enclosure), in the matter of instructions regarding implementation of reservation for the SCs, STs, and OBCs with reference to the DoPT OM dated 02.07.1997, which laid the policy of reservation in line with the judgement of the Supreme Court in the case of R.K. Sabharwal Vs State of Punjab. indicating the method of maintaining reservation registers / rosters and other related issues

2. Briefly, the said judgement of the Supreme Court, propounds the principle that prescribed reservation (ST : 7.5 %, SC : 15 %, OBC :27 %) has to be determined with reference to the strength of the cadre. When prescribed percentage of the reservation is achieved , the running account have to come to an end, and thereafter posts have to be filled up on the principle of substitution or replacement principle.

3. The aforesaid O.M. dated 02.07.1997, inter-alia, stipulates that the reservation in respect of the SCs, the STs or the OBCs should not exceed the prescribed percentage of reservation for these categories at any point of time ie ST:7.5%, SC:15% and OBC:27%. By applying this principle, the number of seats reserved for SCs, STs and OBCs comes either equal to the percentage of reservation prescribed for them or less than that. For example, in a cadre of 100 sanctioned posts, STs should not get more than 7.5 seats, meaning thereby that STs in that cadre may get

only 7 posts, to the disadvantage of STs. Thus, **the OM truncates reservation, always to the disadvantage of reserved categories, though Supreme Court in its Judgement quoted above has not imposed any such restriction, that at any point of time, reservation should not exceed the prescribed percentage for the STs (7.5%).** In this connection, it is mentioned that the Committee on the Welfare of SCs and STs, in its 16th Report (thirteenth Lok Sabha), has recommended that the principle of rounding off should be applied to implement the reservation orders.

4. Therefore, DoP&T has proposed that reservation in any cadre should be determined by calculating the number of posts required to be kept reserved for the SCs/STs/OBCs as per percentage of reservation prescribed and applying the principle of rounding off the fraction to the nearest whole number. However, while doing so, it would have to be ensured that total reservation does not exceed the limit of 50 % at any point of time as per the stipulated instructions. For cadres with more than 6 posts, reservation rosters would be substituted by a Reservation Registers in the appended format.

5. The proposed OM also includes an illustration of rounding off the reservation to the nearest whole number without exceeding the reservation limit of 50%. In a cadre of 25 posts where reservation for the SCs, the STs and the OBCs is respectively 15%, 7.5% and 27%, reservation for SCs, the STs and the OBCs as per prescribed percentage would come to 3.75, 1.875 and 6.75 respectively. If these figures are rounded off, reservation for the SCs, the STs and the OBCs shall be

respectively 4, 2 and 7. It would make total reservation more than 50%. To avoid such a situation, following principle may be applied :

- a)** First, the reservation for STs should be taken up. If reservation for the STs exceed a whole number and the fraction is equal to or greater than 0.5, it may be rounded off to the next higher whole number, provided total reservation does not exceed 50%. In the above case reservation for STs would be 2.
- b)** After adjusting the posts for STs, the reservation for the SCs may be taken up in the same manner. In the above example reservation for the SCs would be 4.
- c)** The reservation for the OBCs should then be adjusted applying above principles. In the above example reservation for the OBCs would have to be restricted to 6.

Since the SCs and STs may not get reservation in small cadres even after applying the principle of rounding off, small cadres may be grouped with posts in the same Group(class) for purpose of reservation, as per practice currently in vogue, A 14 point roster may be maintained, where grouping is not possible.

II. Earlier Views of NCSC&ST on the proposal and Comments of DoPT on these views

6. The proposal had been circulated by DoPT for comments earlier. The National Commission for SC & ST had observed as follows :-

- a. The model roster suggested by the Parliamentary Committee on the welfare of SCs and STs for cadres having strength of 13 or less is justified and recommended to be operated.
- b. The rosters of 200 points and 120 points may be redrawn by bringing the squeezing of the reserved points at the beginning in place of at the end.

Comments of DoPT-

- (i) The reserved points suggested by the Parliamentary Committee and the Commission in case of cadres up to 13 posts or 2 and 8 for SCs and Point 4 for STs. These are on the basis of vacancies based rosters. The DoPT fixed the reserved points as per the percentage of reservation prescribed for SC, ST and OBC. The nearest reserved point for SCs by rounding off falls at on number 4 and next at number 10. The point reserved for ST falls at number 7.
- (ii) The proposal contained in the Cabinet note is to do away with the roster for cadres having more than 6 posts. The proposal of rounding off the reservation to the nearest whole number will take care of squeezing and there is no need of redrawing the 200 point or 120 point rosters.

III. Implication of the proposed OM and analysis thereof

- Revised method of calculation being proposed now is leading to reservation of ST points earlier as compared to the existing roster system and even more in some cases.

- **Abolition of roster of reserved posts in cadres with more than 6 posts**

A reservation register is proposed against existing roster register to maintain the transparency and to review the reservation position each time a vacancy is to be filled up.

- **New roster for cadres with less than 6 posts**

New roster for cadres with less than 6 posts is to the advantage of STs, as in existing 14 point roster STs are getting a reserved point at 14, whereas in 14 point roster in the the proposed OM, STs are getting reserved point at point 8 in direct recruitment and at point 7 in case of promotions.

IV. Proposed recommendation of the Commission on the Draft O.M.

- The proposed O.M. is to the advantage of STs as proposed rounding off of the reservation to the nearest whole number results in higher number of reserved posts for STs in cadres with more than 6 posts.
- Further, in small cadres, where rounding off does not result in any reservation for STs, the proposed method of 14 point roster for cadres having less than 6 posts is advantageous to STs as they get reserved point at point 8/7.

- The existing transparency by maintaining roster registers can be achieved by maintaining proposed reservation registers.

Therefore, the Commission may like to consider issue of the proposed OM with illustrations annexed to the OM.