

137

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Draft

Guidelines to deal with representation/ complaints pertaining to various safeguards received from ST person

In order to ensure systematic and expeditious disposal of petitions/complaints and representations received in the National Commission for Scheduled Tribes pertaining to violation of safeguards provided to Scheduled Tribes, the following guidelines are laid down for dealing with these cases:

(1) All cases of individual/associations' complaints /representation pertaining to violation of safeguards in respect all ministries of Govt. of India and there attached offices/PSEs, Bank etc., matter related to State Govt./UTs will be dealt by the respective Units.

The allocation of work pertaining to service safeguards, economic and social development educational development and atrocities and has already been allotted to the research units vide Commission's O.M. dated -----

(2) On receipt of any complaint/representation, the Unit-in-Charge will go through the contents of complaints/representations carefully and take action as given below:

In case, the complaints/representation is

- (i) unsigned or anonymous .
- (ii) an endorsement to the Commission but not addressed to Commission.
- (iii) The cases which are sub-judice before the court of law or has been decided legally by court the Commission will not interfere and intervene.
(The unit in charge RO/AD will file the representation after recording the reasons and the petitioner will be informed accordingly).
- (iv) The representations pertaining to administrative matter such as of non payment of salary pension, grant of leave transfer, allotment of houses etc. will be put up by the unit in charge. Prima-facie if the Director/DS will find, it is neither a case of a violation safeguards nor of harassment of the discrimination then he may at his level either close the case or merely forward it to concerned Ministry Departments of State Govt. / Banks for necessary appropriate action. The petitioner may be informed stating that his case has been forwarded and he may pursue the matter at his level with the organization.
- (v) Complaint/ representations regarding transfer, disciplining proceedings and ACRs, where it appears prima-facie that there is some harassment and discrimination, the Director/DS may approve for calling the comments of the departments/offices in which the petitioner is posted, within 30 days time.

While examining the Service matter

4 (138)

representation of service grievances pertaining to Direct Recruitment & promotion and other from of harassment bias discrimination notice may be sent for calling comments in cases, where it is found appropriate the recruitment rules, seniority list, DPC minutes, and attested copies of rosters may be called for analysis on examination, if it is found to be a fit case in which violation of Recruitment Rules have not been followed. The concerned officers may be advised to take suitably action carry out corrective remedial action.

In transfer cases where it is found that discrimination is meted out to the petitioner transfer policy may be called for examination. On examination if it is noted that transfer policy is applied fairly or arbitrarily. In case arbitrating action is found, in the circumstances action to suitable proceed with the action of investigation and put up the case to Dir/ DS for further action/ hearing. If there will be no issue of discrimination/harassment the Commission should not intervene and inform the petitioner of the position after the approval of Joint Secretary,

So for as maintainers of seniority and its determination is concerned, there is set procedure of DoPT and accordingly seniority is determined and restored, on such issues correspondences may be checked that seniority is being maintained and restored as per rules in accordance under latest rules of DOPT on the subject for restoration of seniority and send that petitioner seniority is wrongly fixed, case may be put upto Dir/ DS for further advice/ direction/ hearing.

A copy of the communication can also been endorsed to the liaison officer of the Ministry department, bank/ PSEs for his intervention. On receipt of the information, the case may be got examined and if the Director/DS is of the opinion that there is no case of violation of safeguards/harassments discrimination etc. he may close the case at his level and inform the petitioner. If found otherwise, the case may be processed further.

Compassionate appointments

In cases of representations/petitions/rejoinders of compassionate appointments, it is a need base appointment there are large number of cases because the Scheduled Tribes families suffer of pecuniary conditions the Commission should write to the departments/organizations for sympathetic considerations..

Appointment

There are cases where requests are made by the petitioner to the NCST recommendations for appointments; in such cases the petitioners may be informed that NCST does not entertain such requests. They may be advised to apply against the vacant posts advertised/sponsored by the employment exchanges according to fulfillment of qualifications and conditions.

139

5

Rosters

The unit in charge should call for the comments with relevant information of concerned Ministry/ Deptts/ PSEs/ Banks State/ UTs Deptts. giving the 30 days time. All communication in this regard should clearly mention/ Deptt. whose attention is drawn with correct address. The name and address of the official should clearly mention on the envelop. A copy of the letter addressed to the officers concerned may also be sent to the petitioner as acknowledgment and in case no reply is received within 1 month, second and third reminder from higher level will be sent. In non-response of above a d.o. letter from further higher authority i.e. Joint Secretary may be addressed.

Complaints are received regarding non maintenance of rosters properly by the departments. These cases are to be taken up with the department/organization concerned at the time of review/monitoring meetings on implementation of reservation of service safeguards. On sample basis copies of the rosters can be called. Petitioner/association may be informed accordingly (to be discuss as JS).

Complaint/ representation received from individual members of Scheduled Tribes or their Associations with regard to grievances relating to socio-economic development of STs such as policy issues and admission in Education Institutions, land alienation, displacement, rehabilitation allotments etc. The matter may be taken up with Ministry/ Deptt./ State Govts./ UTs and concerned institutions, while taking up the issues the Unit Incharge may please ensure:

Education/admissions

Complaints/representation with regards to educational matters like admission delay in issuance of degree, change of subjects etc. The cases with regard to state Universities/ Central University in the jurisdiction of Regional office of NCST may be sent to Regional office of the Commission under intimation to the petitioners.

Rehabilitation and displacement.

Representation/ complaints received from individual association affecting the STs, the complaints grievances may be sent to concerned rehabilitation authority in the State/UTs and Ministry concerned. The petitioner may be informed of the action taken.

Policy matter of rehabilitation/ displacement the Dir/ DS may decide to study the case carefully and put up to higher for action Members may take up the matter at National and local levels about applicability/application and policy and defectiveness in the policy to decide the grievances of ST petitions/ in habitation.

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Where it is noticed that displacement/rehabilitations is of major measure affect for Scheduled Tribes. Member should enquire and take up the matter for investigation.

Census

Information/query asked about census report/studies, such cases may be forwarded to RGI for appropriate action with a copy to petitioner.

Complaint/ representation received from individual members of Scheduled Tribes or their Associations with regard to grievances relating to socio-economic development of STs such as atrocity, Institution, Association etc. The matter may be taken up with Ministry/ Deptt./ State Govts./ UTs and concerned institutions, while taking up the issues the Unit Incharge may please enter:

Court Cases:

Where National Commission for Scheduled Tribes is made respondent in individual cases The case is to be examined accordingly and put up to Dir/ DS for further action. (To discuss with Joint Secretary). While dealing in the socio-economic cases and atrocity cases the comments are to be called as per laid down proceed for other service matters.

- (vi) Case is to be finalized within 90 days and every case is to reviewed every month within 30 days. If this also does not bring an adequate response than the matter may be placed before the Member through Joint Secretary for summoning/ hearing the concerned officers.
- (vii) The reply received from the departments/state/UTs will be examined by the Unit in detail and clearly established in its note, the rules / regulations and safeguard State Govt./UTs, if any that have been violated by the departments. The Director/DS will go through the case carefully and if, it is found that there is no violation/harassment/discrimination of any reservation /regulation policy and there is no case than the case may be put up with remarks, if Joint Secretary agrees to this view he may close the case at his level.
- (viii) Procedure and guidelines for summons
- (ix) Summons may be issued only when concerned Ministry/ Deptts./ PSEs/ Banks/ State/ PSUs etc. have failed to response/ or to deal to emergent situations for inquiry after identifying the issues and analysis of the reply received and examined. (The time frame for summons has to be decided application of rule 29 in emergent situation is also to be discussed).
- (x) No case will be closed at the level of RO/AD.
- (xi) On examination if it is found that certain rules/ regulations and instructions of Govt. have been violated than the Director/DS will

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7

- process the case and put up the case who would record the comments and sent to the concerned Member.
- (xii) The member may like to the conduct hearing and hear the petitioner, the department concerned member may like to call the liaison officer to whom the petitioner endorsed at initials stage it self. During the hearing the unit officer will assist the member concerned and make a record and brief note for discussion held during the hearings.
 - (xiii) The hearing will be fixed by the members indicating the suitable convenient date and time according to suitability and need based in emergent situation.
 - (xiv) To facilitate this hearing the personal staff of the member will maintain diaries listing the cases which the Members have fixed for hearing.
 - (xv) Details of such hearings may also be placed on the notice board in the Room of Secy. and JS for their information. The personal staff of the Member will ensure that file pertaining to hearing case reach the member before two days of hearing. The unit officer and the staff will maintain the similar diary and ensure that there is no delay in processing of cases as per above schedule of the Member. Unite officer will also ensure keeping with his the relevant copies of the order/rule /regulation which are relevant to the cases after conducting the hearing, if it is found there is a violation of specific rules and regulations, a letter may be sent to the concerned head of the department for redressal of grievance or if it is decided the finding are to be issued it may be ensured that the same are routed through the joint Secy./Secy. A copy finding may also be endorsed to the petitioner.
 - (xvi) The concerned unit will maintain all records in office Computer System Ministry wise, Deptt./State/UTs wise as per the prescribed procedure. After following the above procedures separate details cases dealt and closed/successful/to be in corporate in Annual Report are to be kept for record purpose.
 - (xvii) Some times the concerned individual/associations send their representations simultaneously to Members of the Commission, in such eventualities, the unit Officer AD/RO may ensure that these representations are all linked together in one file and the case process accordingly.

8 (142)

National Commission for Scheduled Tribes

Suggestions relating to Crimes and Atrocities on the Scheduled Tribes

1. Suitable amendments need to be carried out in Rule 7 (1) and also Rule 5 (3) of the SCs and STs (POA) Rules, 1995 to empower, apart from the Deputy Supdts. of Police, the Police Inspectors also with a view to expedite the investigation of cases of atrocity on members of Scheduled Tribes..
2. In all the districts of the Fifth Schedule States, Special Courts may be exclusively set up instead of designating Additional Session Courts or Session Courts as a Special Courts. There is also need to appoint Special Public Prosecutors.
3. Chief Secretaries of the nine 5th Schedule States which have not yet prepared and notified the Contingency Plans in terms of Rule 15 of the SCs and STs (POA) Rules, 1995 may be requested to the needful.
4. State/UT Govts. may be requested to make necessary arrangements to ensure that the investigation process is completed within the prescribed period of 30 days and that the victims/their dependents are provided economic assistance immediately after the incident.
5. In case the ST victim is not satisfied with the performance of the Public Prosecutor (PP), he/she should be allowed to change the P.P. and engage a private layer/advocate and the expenses for engaging private layer should be borne by the State Govt.
6. Legal aid, for which there is provision in the SCs and STs (POA) 1989, should be disbursed to the ST victim as early as possible. Awareness programme about grant of legal aid should be launched in tribal areas so that the victims could come to know about availability of free legal aids.
7. The amount of financial relief under Rule 12(4) of the SCs & STs (POA) Rules, 1995 is required to be provided to the victim immediately after the incident. However, it has been noticed that some of the district authorities are not providing the relief particularly in cases of murder, grievous hurt, rape and arson immediately after the incident. Necessary orders should be issued to all the District Magistrates to ensure immediate payment of financial relief especially in heinous offences and in other offences of atrocity as per provision of these Rules.
8. The amount of financial relief to the victims of the atrocities under Rule 12(4) of the SCs & STs (POA) Rules, 1995 should be reviewed and suitably increased in recognition of the hard fact that the cost of living over the past one decade, starting from 1995 has enormously gone up.

143

9

National Commission for Scheduled Tribes

Guidelines for dealing with De-reservation matters received in the Commission.

- (i) Proposals for dereservation of vacancies reserved for Scheduled Tribes in promotion
- a) A post reserved for Scheduled Tribes has to be filled by a candidate from amongst Scheduled Tribes only and in normal course such reserved posts should be kept vacant until filled by the eligible ST candidate.
 - b) There is complete ban on dereservation of vacancies reserved for Scheduled Tribes (and also Scheduled Castes) in Direct Recruitment.
 - c) In case of appointment by promotion, if a post reserved for ST can not be filled due to non-availability of the eligible ST candidate at the time of promotion as also in near future and for the reason that keeping the post vacant for a very long time may adversely affect the functioning of the Ministry/ Organisation the competent authority may seek dereservation of the post by sending a proposal, in the prescribed proforma, to the National Commission for Scheduled Tribes and to the Department of Personnel and Training.
 - d) After approval by DoPT and NCST the vacancy can be dereserved by the competent authority and the dereserved vacancy may be filled by promoting the eligible non-ST candidate as per promotion rules. However, dereservation does not lead to lapse of the point of reservation for Scheduled Tribes and this point has to be carried forward for promotion in the next Recruitment year. The vacancy occurring in the near future or in the next Recruitment year has to be reserved for ST, keeping in view other conditions relating to filling the vacancies in a Recruitment year. In case no eligible ST candidate is available for appointment by promotion against the post reserved against the carried forward from previous year, the competent authority has to seek dereservation again.
 - e) In order to ensure that the rights of Scheduled Tribes are not likely to be encroached through the process of dereservation, we should call the following information from the concerned authorities.
 - ↓ Recruitment Rules for the post for which dereservation has been sought
 - ↓ Post Based Roster and up-to-date Seniority list of the Officers holding the posts (one of which has been proposed for dereservation)

10

144

- ↓ Recruitment Rules for the post which is a feeder post for the post which has been proposed to be dereserved.
 - ↓ Post Based Roster and up-to-date Seniority list of the Officers holding the feeder cadre posts.
 - ↓ Reasons for non-availability of ST candidates in near future from amongst the officers of the feeder cadre posts and efforts made in the past to fill the vacancies reserved for Scheduled Tribes in the feeder cadre as well as the posts out of which dereservation is sought.
- f) After receipt of above information, if it is noticed that an eligible ST candidate is likely to be available in near future/ within a year the concerned Ministry/ Organisation may be advised to grant promotion on ad-hoc basis to such a candidate and he may be regularized on completion of eligibility condition. However, if no eligible ST candidate is likely to be available in near future or next Recruitment year, the proposal to de-reserve the post may be agreed to, subject to the following conditions:
- ↓ The reserved point agreed for dereservation will be carried forward to be filled in future or in the next recruitment year from amongst the ST candidates and the next vacancy occurring in the cadre may be reserved for ST.
 - ↓ If there is no likelihood of availability of ST candidate in the feeder cadre posts in the near future/ next recruitment years, the vacancy to be filled against carried forward point may be filled by Direct Recruitment, if the RRs provide for DR and later on a DR vacancy may be exchange with promotion process.
 - ↓ In case RRs of feeder cadre post do not provide for DR and there is non-availability or no likelihood of availability of ST candidate, the concerned Ministry/ Organisation may consider amending the RRs of feeder cadre post and the post under consideration for making provision of the clause "filling which by DR" in the RR so that the point reserved for STs are timely filled from amongst ST candidates.

The above exercise is necessary to ensure that the need for dereservation of the same post does not arise in future and due share is made available to Scheduled Tribes in each level of post and also to ensure that the public interest of the Ministry/ Organisation does not suffer.

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11

National Commission for Scheduled Tribes

Draft Internal guidelines for examining the proposals of inclusion in/exclusion from the list of Scheduled Tribes.

In the Constitution of India, no criteria have been spelt out for the specification of a community as a Scheduled Tribe. However, taking into account the definitions in the 1931 Census and the Reports of the first Backward Classes Commission (Kalelkar) 1955, the Advisory Committee on Revision of SC/ST lists (Lokur Committee) 1965 and the Joint Committee of Parliament on the SCs & STs Orders (Amendment) Bill, 1967 (Chanda Committee) 1969, the following criteria are followed for specification of a community as a Scheduled Tribe:-

- a. Indications of primitive traits,
- b. Distinctive culture,
- c. Geographical isolation,
- d. Shyness of contact with the community at large, and
- e. Backwardness.

2. As per the approved modalities for deciding the claims of inclusion/exclusion w.r.t. ST lists, proposals favoured by the State Governments and the RGI are referred to the NCST for opinion by the Ministry of Tribal Affairs. The Commission also directly receives some representations from individuals, associations, etc on the subject. The Commission is not concerned with these representation and therefore the same may be forwarded to the Ministry of Tribal Affairs for appropriate action under intimation to the representationists.

3. The Commission may examine the proposals received form the MTA as per its own procedure. With a view to ascertain that the proposals are based on the broad criteria, referred to in para 1 above, the Commission may apply the following tests with reference to any particular community:-

(A) Way of Living.

- (i) Habitations in geographically isolated areas, hilly terrains, islands, deserts, etc.
- (ii) Prevalence of primitive traits in the matters of clothing, cleanliness etc.

12 (146)

- (iii) Engagement in occupations like hunting, trapping of bird & animals, stone carving, making of articles from forest wood and bamboo, hide & skin work, etc.
- (iv) Mostly non-vegetarians with distinctive food habits like consuming roots and tubers, meat of animals, home made alcoholic drinks etc.

(B) Social customs and Religious practices.

- (i) Distinctive and specific sphere/circle for marriages. Most of the tribal groups are Endogamous and the system of consanguineous marriages is prevalent in most of the tribal areas.
- (ii) Peculiar rituals and ceremonies for marriages.
- (iii) Specific 'Deities' and peculiar ways of worshipping.
- (iv) Peculiarity in dress, e.g. wearing of headgears including turbans, ornaments, body marking, tattooing, etc.
- (v) Unflinching faith in the dictates of Clan Heads.

(C) Dialect.

Peculiarity of language/dialect generally distinct from the general population in the area.

(D) Educational and Economic Status

- (i) Very low rate of literacy as compared to the general literacy rate in the area.
- (ii) Living in very poor conditions much below the poverty line. No sense of savings and dependence on money lenders.

4. The above criteria/tests have to be applied keeping in view the fact that the tribes in India are tribes in transition. The criterion of backwardness thus remains as the main criterion. The relative backwardness of a community as compared to the society at large and other communities in the area has therefore to be judged. For this propose, data on economic development, educational development and social development of the community should be analysed. Such data should, inter-alia, include the data on the representation of the community in government/public sector services, political institutions like Parliament, State Assemblies and local bodies.

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13

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5. The following procedure may be adopted for applying the above tests:-
 - (a) The opinion/comments from public (**supporters as well as opponents**) may be obtained. For this purpose, necessary notices may be got **published in the newspapers** and also put up on the website of the Commission. Thereafter, interested persons/associations may be called in the Commission for discussion. If necessary, a **public hearing** may also be held.
 - (b) Recommendations of the State Government and RGI may be examined thoroughly. **Reasons for not inclusion in the ST list earlier may be ascertained.** Relevant data from 1931 Census and onwards may be scrutinized. If necessary, the concerned officers from the State Government and RGI may be called for a meeting in the Commission.
 - (c) Report on the ethnographical survey, and case studies, if available, may be taken into account.
 - (d) Opinion of experts in the field of Anthropology/Sociology may also be obtained if considered necessary.
 - (e) If considered necessary, a study may be entrusted to some expert agency for determining the relative backwardness of the community.
6. A final view on any proposal may be taken by the Commission in its meeting after the matter has been examined by applying the above procedure.

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Guidelines for dealing with the complaints/representations received in the NCST about issuance of ST certificate/false certificates/delay in issuance by the authorities empowered to issue ST certificate.

Area of concern.

- (i) Complaints are often received that ST certificate are given to persons who do not in fact belonged to STs.
- (ii) Certificates of belonging to a particular ST have not been issued strictly in accordance with the principle governing the issue of such certificates.
- (iii) The certificates have been issued to in eligible persons, carelessly or deliberately without proper verification by officials empowered to issue such certificates and benefits availed by a person on false pretext.
- (iv) The STs who have migrated from one state to another for purpose of employment, education, etc experience difficulty in obtaining ST certificates from the State of migration as well as the State which they have migrated.

In order to remove these difficulties on verification and claims of STs the Govt. of India has issued instruction modified from time to time by the Govt. of India, the officers may take notice of the instructions in dealing with the complaints/representation about their seriousness, and follow it up a under:-

1. On receipt of complaint/representation or a reference received from Department/Ministry/organization the contents of the complaint/representation may be examined carefully to ensure whether it is a fit case for Commission to intervene. Check the merit of the complaint and suggest action as per guidelines.

- (i) The complaint/representation or reference is not unsigned or anonymous
- (ii) It should not be need endorsement to the Commission but addressed to it.
- (iii) Matter of the petition is not subjudice in the Court of Law or the case has not been earlier decided by any Court.

149

15

The merit of the case may be indicated by the unit officer on the representation and action taken accordingly under intimation to petitioner at initial stage.

In the matter where in clarification has been sought with regard to caste nomenclature/notification in the presidential (Constitutional Orders) and Govt. instructions, the petitioner may be advised to seek the clarification from Ministry of Tribal Affairs or Ministry of Social Justice and Empowerment, and if the matter is urgent the petitioner may be forwarded to MTA or MSJE with an endorsement to the petitioner advising him to make further correspondence with the Ministry concerned.

In reference/clarification where the verification and proof of caste certificate and claims is asked by the organization/Ministry/Department with regard to appointment purposes, it is the duty of the appointing authorities to verify the claim of candidates before employment and therefore, the organizations may be advised to approach the concerned District Magistrates/Collectors, who are the empowered authorities to issue such certificates.

Where the complaint is received that there are cases in which persons have produced false caste certificates as belonging to STs and secured a job/admission benefits of reservation against reserved post/ seat, the petition should be forwarded to the Organisation/ Educational Institution for seeking verification from the competent authorities i.e. District Magistrate/Collector who have issued the Certificates and are empowered to cancel the certificates under intimation to the complainant. The concerned Organisation/ Institute may also be advised that they may ask the concern beneficiaries to seek validation of the caste certificate from the Distt./ State Govt. Scrutiny Committee.

There may be petition alleging that Distt/ State Govt. Scrutiny Committee were not issuing validation certificate even after lapse of time frame prescribed by the Supreme Court, such petition may be sent to the Principal Secretary, Tribal Welfare Deptt. of State concern for advising the Scrutiny Committee to process the request on priority basis.

16

156

Inclusion/Exclusion

The NCST receives representation from the Individuals/petitioners/Associations and other forums for inclusion/exclusion of STs communities. The reference are to be examined carefully and suitably disposed off, keeping in view the provision under Article 342(1) and Article 342(2) and the various Constitutionals presidential orders from time to time.

There are certain guidelines/modalities framed by the Ministry of Social Justice and Empowerment vide letter No. 12016/36/96/SCD-(RL cell) – Vol. III dated 30.07.02., these modalities are to be considered necessary in dealing with such representations reference. However, in case a direct request/representation is received regarding inclusion/exclusion, it should be forwarded to the Ministry of Tribal Affairs, and to the concerned state Govts for appropriate action under intimation to the petitioner with advise to pursue the matter with Ministry of Tribal Affairs/State Govt. may also be informing them about the role of the Commission per modalities and duties under the Constitution. Who are the nodal Ministries/ Departments.

The involvement of the NCST and entertainment of such request can be taken care by the NCST (as per modalities) and as prescribed under Article 338(9) of the constitution as and when such proposals for inclusion/exclusion is received from Ministry of Tribal Affairs. Detailed guidelines for the purpose have been framed & circulated earlier.
