



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No. Policy-06/Service/2008/RU-I

छठी मंजिल, 'बी' विंग, लोक नायक भवन
खान मार्केट, नई दिल्ली-110003
6th Floor, 'B' Wing, Lok Nayak Bhawan
Khan Market, New Delhi - 110 003

Dated

16.07.2009

To

The Secretary,
Department of Personnel, & Training,
Ministry of Personnel, PG & Pension,
North Block,
New Delhi-110001

Sub: Review of Office Memorandum No.36012/2/96-Estt.(Res.) dated 02.07.1997 issued by Department of Personnel and Training in the light of the judgement of the Supreme Court dated 16.09.1999 in the case of Ajit Singh-II and the comments of Attorney General of India

Sir,

I am to refer to your letter No.36012/2/96-Estt(Res.) Part V dated 22nd November, 2007 on the subject matter. The issue was considered by the Commission in its meeting held on 14.10.2008 and 03.07.2009 and the comments of the Commission on the proposal are as follows:-

2. As per the proposal, the implementation of Post Based Roster (PBR) is to be preponed from 02.07.1997 to 10.02.1995 and will have the following implications:-

- SC/ST candidates promoted in excess of the vacancies determined as per PBR prior to 10.02.1995 will lose their seniority.
- SC/ST candidates promoted in excess of the vacancies determined as per PBR after 10.02.1995 will be reverted.

The Commission noted that these issues have arisen as a result of shifting from Vacancy Based Roster, which has been in use since inception of reservation policy, to a new system of reservation, as per guidelines laid down by the Supreme Court of India,

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16/7/09
ISSUED

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which culminated in PBR. As the Govt. machinery could not be halted till the new system was developed, the appointments and promotions continued to be made as per then existing system of VBR. Although the period by which preponement is sought is two year only and only a few appointments / promotions have been made, yet it will be not advisable to consider reverting the promotees or terminating the services of those appointed as DR against backlog vacancies on the basis of then existing VBR. Moreover, the provision regarding the seniority of SCs and STs in matter of promotion made in Article 16(4A) of the Constitution vide the Constitution (85th Amendment) Act 2001, having retrospective effect after the Supreme Court judgment dated 10.02.1995, and the same having been upheld by the Supreme Court of India, has also to be kept in view.

In view of the above, Commission recommended that:

a) In case of promotions of SC/ST candidates effected prior to 10.02.1995.

In case of R. K. Sabharwal case, Supreme Court had clearly stated in its judgment that

"We, however, direct that the interpretation given by us to the working of the roster and our findings in this point shall be operative prospectively".

It is mentioned that as Post Based Roster is operative only after 10.02.1995, the excess promotions as determined by PBR can not be worked out prior to 10.02.1995, or considered ad hoc since these were made as per guidelines then in vogue. Therefore, it will not be feasible to disturb the promotions effected before 10.02.1995. Excess therein, if any, may be adjusted against future vacancies in that category.

b) In case of promotions of SC/ST candidates effected between 10.02.1995 and 02.07.1997.

In view of the Supreme Court judgment in the case of R. K. Sabharwal and in absence of any instructions/guidelines from DOPT thereon, the persons belonging to SC/ST category promoted in excess to the vacancies, determined by PBR between 10.02.1995 and 02.07.1997 may not be reverted, as proposed by DOPT, and should be considered on ad hoc basis, till their regularization against the vacancies arising in future in that category or on merit, whichever is earlier.

3. You are requested to kindly intimate the outcome of the proposal in view of the recommendations made by the Commission as mentioned above.

Yours faithfully,


(Vinod Aggarwal)
Director