

No. 6/4/98-DPE (SC/ST Cell)
Government of India
Ministry of Industry
Department of Public Enterprises

Block 14, CGO Complex,
 Lodi Road, New Delhi-3.
 Dated the 12th January, 1998.

SUB: Reservation in promotion—prescription of lower qualifying marks/ lesser standard of evaluation.

The undersigned is directed to forward herewith a copy of Department of Personnel & Training's OM No. 36012/23/96-Estt.(Res) dated 22nd July, 1997 on the subject mentioned above and to request that all Ministries/Departments may kindly bring the contents of the OM under reference to the notice of all Public Sector Undertakings under their administrative control for information and compliance.

Sd/
 (C.C. Umnikrishnan)
 Under Secretary to the Govt, of India

ENCL: As above

To

All Administrative Ministries/Departments concerned with PSUs

Copy to:

1. Chief Executives of all PSES
2. Deptt. of Personnel & Training with reference to their OM cited above
3. Secretary, National Commission for SC/ST, Lok Nayak Bhawan, New Delhi.
4. Ministry of Welfare, Shastri Bhawan, New Delhi.

Sd/-
 (C.C. Umnikrishnan)
 Under Secretary to the Govt, of India

No. 36012/23/98-Estt, (Res)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)

North Block, New Delhi.
 Dated the 22nd July, 1997

OFFICE MEMORANDUM

Sub: Reservation in promotion—Prescription of lower qualifying marks/ lesser standard of evaluation

1. O.M No. 8/12/69-Estt. (SCT) dt.23.12.1970.
2. O.M. No.36C21/10/76-Estt. (SCT) dt.21.1.1977
3. Para 6.3.2 of the DPC guidelines circulated vide O.M. No.22011/5/ 86-Estt. D. dt. 10.4.1989.

The undersigned is directed to say that in terms of instructions noted above, certain relaxations/concessions in the matter of qualifying marks/ standards of evaluation of performance are to be made in favour of candidates belonging to the scheduled castes and the scheduled tribes while considering them for promotion.

2. The validity of such lower qualifying marks/lesser standards of evaluation was called into question in courts in the context of the judgement of the Supreme Court in the case of *Indira Sawhney Vs. Union of India*. The Supreme Court, in the case of *S. Vinod Kumar Vs. Union of India 1996(8) S.C. 6431* has held that the provision for lower qualifying marks/lesser level of evaluation, in the matter of promotion, provided for candidates belonging to the Scheduled Castes and the Scheduled Tribes under Government's instructions, is not permissible under Article 16(4) in view of the command contained in Articles 335 of the constitution. The court has further observed that even if it is assumed for the sake of argument that reservation is permitted by Articles 16(4) in the matter of promotion, a provision for lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotion, in virtue of Articles 335. The Court also held that the protection for reservation in promotion for five years, given by the Supreme Court, vide para 829 of the judgement in *Indira Sawhney's case*, did not save the provision for lower qualifying marks/lesser level of evaluation.

3. It has accordingly been decided to withdraw the instructions contained in this Department's O.M. No.8/12/69-Estt. (SCT) dated 23/12/70 and O.M. No.30021/10/76-Estt. (SCT) dated 21.1.1977, in so far as these provide for lower qualifying marks for Scheduled Castes/ Scheduled Tribes candidates in departmental qualifying/competitive examinations for promotion. Similarly, the relevant portions of para 6.3.2 of the DPC guidelines circulated vide this Department's O.M.No.2211/5/86-Estt.(D) dated 10.4.1989, to the extent they provide for consideration of Scheduled Castes/Scheduled Tribes candidates without reference to merit and the prescribed "bench mark", are hereby rescinded.

4. It is clarified that the effect of these instructions is that henceforth there shall be no separate standards of evaluation for candidates of the Scheduled Castes/Scheduled Tribes for promotion, and assessment of all candidates for this purpose will be with reference to uniform standards. Any other instructions of the Government, which provide for lower qualifying marks/lesser standards of evaluation in matters of promotion for candidates belonging to the Scheduled Castes/Scheduled Tribes, may also be treated as having been modified to this extent.

5. These instructions take immediate effect.

6. All Ministries/Departments and also requested to bring these instructions to the notice of their attached/subordinate offices and Autonomous Bodies/Public Sector Undertakings under their control for compliance.

Sd/-
 (Y.C. Parande)
 Director

Note: These orders were modified by DOP's OM dated-03-10-2000.

Department of Personnel
O.M. No.8/12/69-Estt. (SCT) dated
23rd December, 1970 to all Ministries etc.

OFFICE MEMORANDUM

Subj: Relaxation of standards in favour of Scheduled Castes/Scheduled Tribes candidates in departmental competitive examination for promotion and in departmental confirmation examinations.

Attention of the Ministry of Finance etc. is invited to ministry of Home Affairs O.M. No. 1/1/70-Est. (SCT) dated 25th July, 1970, in which it has been provided that in the case of direct recruitment, whether by examination or otherwise, if sufficient number of Scheduled Castes/Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to these communities may be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for appointment to such post or posts. A question has been raised whether relaxation in the qualifying standards could be granted to Scheduled Castes/Scheduled Tribes candidates on the same basis on promotions made through departmental competitive examinations and in departmental confirmation examinations where such examinations are prescribed to determine the suitability of candidates for confirmation. The matter has been carefully examined and it has been decided that in Promotions/confirmations made through such examinations Scheduled Caste/Scheduled Tribes candidates who have not acquired the general qualifying standards in such examinations could also be considered for promotions/confirmations provided they are not found unfit for such promotions/confirmations. In other words, the qualifying standards in these examinations could be relaxed in favour of Scheduled Castes/Scheduled Tribes candidates in keeping with the above criterion.

DEPARTMENT OF PERSONNEL & ADMINISTRATIVE
REFORMS

O.M. No.8/12/69-Estt.(SCT)
Dated 21st January, 1977 to all Ministries etc.

Subj: Relaxation of standards in the case of Scheduled Castes/Tribes candidates in qualifying examination for promotion to the higher grade on the basis of seniority subject to fitness.

The undersigned is directed to refer to this Department's Office Memorandum No.8/12/69-Estt.(SCT) dated the 23rd December, 1970 in which it has been provided that in promotions made through departmental competitive examinations and in departmental confirmation examinations, if sufficient number of Scheduled Caste/Scheduled Tribe candidates are not available on the basis of the general standard to fill the vacancies reserved for the candidates belonging to these communities who have not acquired the general qualifying standard should also be considered for promotion/confirmation provided they are not found unfit for such promotion/confirmation. A question has been raised whether relaxation in qualifying standards should be granted to Scheduled Castes and Scheduled Tribes candidates, on the same basis, in promotions on the basis of seniority subject to fitness, where fitness is decided on the basis of qualifying examination. The matter has been carefully considered and it has now been decided that in promotions made on the basis of seniority subject to fitness in which there is reservation for Scheduled Castes and Scheduled Tribes in accordance with this Department's Office Memorandum No.27/2/71—Estt.(SCT) dated the 27th November, 1972, and where an examination is held to determine the fitness of candidates for such promotion, suitable relaxation in qualifying standard in such examinations should be made in the case of Scheduled Castes/Scheduled Tribes candidates. The extent of relaxation should however, be decided on each occasion whenever such an examination is held taking into account all relevant factors including (i) the number of vacancies reserved, (ii) the performance of scheduled Caste/Scheduled Tribe candidates as well as general candidates in that examinations (iii) minimum standard of fitness for appointment to the post, and also (iv) the overall strength of the cadre and of the Scheduled Castes and Scheduled Tribes in that cadre.

The Ministry of Finance etc., are requested to bring the above decision to the notice of all authorities concerned.