

No.6/13/96-DPE (SC/ST Cell)
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Block No. 14, CGO Complex,
 Lodi Road, New Delhi-110003
 Dated the 26th February, 2002.

OFFICE MEMORANDUM

SUB: Seniority of SC/ST Government servants on promotion by virtue of rule of reservation/roster.

In continuation to this Department's OM of even number dated 17.3.1997 circulating therewith DOPT's OM No.20011/1/96-Estt. (D) dated 30.1.97, the undersigned is directed to forward herewith a copy of Department of Personnel & Training's OM No.20011/1/2001—Estt. (D) dated the 21st January, 2002 on the subject mentioned above. All Administrative Ministries/Departments are requested to bring these instructions to the notice of all PSEs under their administrative control for information and compliance.

(C.C. Unnikrishnan)
 Deputy Secretary to the Govt. of India
 Tel. No.4360624

To

All Administrative Ministries Departments concerned with PSUs

Copy to:

- i) Chief Executives of all PSUs.
- ii) Department of Personnel & Training (Shri Alok Saxena, DS), North Block, New Delhi.
- iii) Secretary, National Commission for SC/ST, Lok Nayak Bhawan, New Delhi.
- iv) Ministry of Social Justice & Empowerment, Shastri Bhawan, New Delhi.

Sd/-
 (C.C. Unnikrishnan)
 Deputy Secretary to the Govt. of India

No.20011/1/2001—Estt.(D)
Government of India
Ministry of Personnel & Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 21st January, 2002.

OFFICE MEMORANDUM

SUB: Seniority of SC/ST Government servants on promotion by virtue of rule of reservation/roster.

The Seniority of a person appointed to a post is determined according to the general principle 5(i) contained in MHA OM No.9/11/55-RPS dated 22.12.1959 and para 2.2. in DOPT OM No.22011/7/86-Estt.(D) dated 3.7.1986 read with DOPT OM No.20011/5/90-Estt.(D) dated 4.11.1992. Seniority of such persons is determined by the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades is determined in order of selection for such promotion. Thus, as per the aforementioned instructions, persons appointed through an earlier selection would en bloc be senior to those promoted through subsequent selection.

2. This position was reviewed subsequent to the judgment of the Supreme Court dated 10.10.1995 in the case of Union of India Vs. Virpal Singh Chauhan etc. (JT 1995(7) SC,231) and it was decided vide DOPT OM No.20011/1/96-Estt.(D), dated 30.1.1997, to modify the then existing policy by addition of the proviso to general principle 5(i) contained in MHA (now DOPT) OM No.9/11/55-RPS dated 22.12.1959 and para 2.2 in DOPT OM No.22011/7/86-Estt.(D) dated 3.7.1986, which stipulated that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled tribe in the immediate higher post/grade.

3. The Government have now decided to negate the effects of the DOP&T OM dated 30th January, 1997 by amending Article 16(4A) of the Constitution right from the date of its inclusion in the constitution i.e. 17th June, 1995 with a view to allow the Government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation. In other words, the candidates belonging to general/

OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.

4. Therefore, in pursuance of the aforementioned Constitution (Eighty-fifth) Amendment Act, 2001, it has been decided as follows:

- (i) (a) SC/ST Government servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and
 - (b) the above decision shall be effective from 17th June, 1995.
- (ii) The instructions contained in DOPT OM No.20011/1/96-Estt.(D) dated 30.1.1997 as well as the clarifications contained in DOPT OM No.20011/2/97-Estt.(D) dated 21.3.1997 shall stand withdrawn w.e.f. 30.1.1997 itself.
- (iii) Seniority of Government servants determined in the light of OM dated 30.1.1997 shall be revised as if that OM was never issued.
- (iv) (a) on the basis of the revised seniority, consequential benefits like promotion, pay, pension, etc. should be allowed to the concerned SC/ST Government servants (but without arrears by applying principle of 'no work no pay').
 - (b) For this purpose, senior SC/ST Government servants may be granted promotion with effect from the date of promotion of their immediate junior general/OBC Government servants.
 - (c) Such promotion of SC/ST Government servant may be ordered with the approval of Appointing Authority of the post to which the Government servant is to be promoted at each level after following normal procedure of DPE (including consultation with UPSC)
 - (v) except seniority other consequential benefits like promotion, pay, etc. (including retirement benefits in respect of those who have already retired) allowed to general/OBC Government servant by virtue of implementation of OM dated 30.1.1997

and/or in pursuance of the directions of CAT/Court should be protected as personal to them.

5. All Ministries/Departments are requested to bring the above decisions to the notice of all concerned for guidance and compliance. Necessary action to implement the decisions contained in para 4 (ii) above may be completed within three months from the date of issue of these instructions and necessary action to implement the decision at para (iv) above may be completed within 6 months from the date of issue of these instruction.

6. Hindi version will follow.

Sd/-

(Alok Saxena)

Deputy Secretary to the Govt. of India

To

All Ministries/Departments of the Govt. of India