

AGENDA NOTE

Subject : Comments of NCST required by DoPT to review OM No. 36012/2/96-Estt.(Res.) dated 02.07.1997 issued by DoPT following Supreme Court decision dated 10.02.1995 in the case of R. K. Sabharwal, in the light of the judgment of the Supreme Court dated 16.09.1999 in the case of Ajit Singh-II.

I. Proposal in brief.

1. The Department of Personnel and Training has sent a proposal for seeking comments of NCST to review DoPT OM No. 36012/2/96-Estt.(Res.) dated 02.07.1997 in the light of the judgment of the Supreme Court dated 16.09.1999 in the case of Ajit Singh-II and the comments of Attorney General of India.

2. Briefly, DoPT has proposed :-

- i) Implementation of DoPT OM dated 02.07.1997 regarding post based rosters w.e.f. from date of Supreme Court Judgement in the case of R.K. Sabharwal, i.e. 10.02.1995.
- ii) Promotion of SCs/STs in excess of the vacancies as worked out based on PBR prior to the 10.02.1995 to be treated as ad hoc, and to be regularized against future vacancies in that category.
- iii) SCs/STs Candidates promoted after 10.02.1995 in excess of the vacancies as worked out based on PBR after 10.02.1995 to be reverted.

3. The DoPT has stated that on the basis of the Supreme Court judgment held on 10.02.1995 in the case of R. K. Sabharwal and others Vs. State of Punjab and others regarding implementation of reservation policy in posts and services, the DoPT introduced post based reservation rosters vide OM NO. 36012/2/96-Estt.(Res.) dated 02.07.1997 and made them operative with effect from the date of issue of the OM i.e. 02.07.1997.

4. The issue of prospectively of the orders of the Supreme Court in the R. K. Sabharwal's case came before the Supreme Court in the Ajit Singh-II and the Hon'ble Court has delivered the judgment that the reservation roster should be operative from the date of the Supreme Court judgment date 10.02.1995. In this regard, the views of the Attorney General of India have been obtained. The learned Attorney General opined as under:

- a) The Law of the land laid down in Ajit Singh-II warrants modification of DoPT's OM dated 02.07.1997 to provide that DoPT's said OM should be given effect from 10.02.1995 instead of 02.07.1997.
- b) Law of land laid down in Ajit Singh-II warrants modification of DoPT's OM dated 02.07.1997 to provide that any promotions made before 10.02.1995 in excess of any quota as per roster are to be treated as ad hoc.
- c) The direction given in Ajit Singh-II, if not complied with, would tantamount to contempt.

- d) Making post-based reservation rosters effective from a date earlier than 10.02.1995 on the ground that vacancy based reservation rosters could not determine as to whether reserved category officials were promoted as per their quota or in excess of quota, is not advised because that will disturb vested rights of various persons and lead to needless litigation.

5. It is mentioned in the DoPT letter that in view of judgement of Supreme Court in Ajit Singh-II, and the opinion of the Learned Attorney General, DoPT's O.M. date 02.07.1997 would have to be made effective from 10.02.1995. Promotion of employees belonging to SC/ST made before 10.02.1995 by way of reservation, in excess of quota determined by application of PBR would be treated as ad hoc and would be regularized against future vacancies reserved for them or on own merit, whichever is earlier. Persons promoted in excess of the vacancies determined by PBR, after 10.02.1995 will have to be reverted. It will have adverse impact on some employees belonging to SC/ST, but as advised by Attorney General, the judgement of Supreme Court would have to be implemented lest it should result into contempt of the court.

II. Views of NCSC&ST and Comments of DoPT thereon.

6. The proposal had been considered by the National Commission for SC and ST and it was suggested that adequate provisions may also be made protect the interests of SC/ST people who will be affected by (

ad hoc and reversion) on the preponement of the date of implementation of OM in respect of post based rosters.

Comments of DoPT - The Supreme Court in Ajit Singh II has held that PBR are to be made effective from 10.02.1995. The court has protected the SC/ST candidates promoted in excess of their quota before 10.02.1995 from reversion but not after 10.02.1995. The judgement of the Supreme Court has become the law of the land under Article 141 of the Constitution. Therefore, it would not be possible to protect the promotion of SC/ST candidates made in excess of their quota after 10.02.1995.

III. Implications of the Proposed preponement of OM dated 02.07.1997 to 10.02.1995.

- i) SCs/STs candidates promoted in excess of the vacancies determined as per PBR prior to 10.02.1995 will lose their seniority.
- ii) SCs/STs candidates promoted in excess of the vacancies determined as per PBR after 10.02.1995 will be reverted .

Note : The matter of seniority of SC/ST Government servants on promotion by virtue of rule of reservation is clarified vide DoPT O.M. No. 20011/1/2001-Estt.(D) dated 21.01.2002. As per this O.M. the candidates belonging to general/OBC category promoted later will be placed junior to SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.

IV. Proposed Recommendations of the Commission on the matter.

7. The Commission may like to consider:

i) In case DoPT OM dated 02.07.1997 is amended as per Hon'ble Supreme Court judgment then the persons promoted in excess of quota will have to be reverted and there will be lot of litigation. If the OM is not amended, it will lead to contempt. It is therefore, proposed that interest of STs to be protected while commenting on the matter.

ii) Proposal on promotions effected prior to 10.02.1995.

In case of R.K. Sabharwal case, Supreme Court had clearly stated in its judgement that " We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively." It is mentioned that as PBR 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.

iii) Proposal on promotions effected between 10.02.1995 and 02.07.1997

In view of the Supreme Court Judgement 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 such time their regularization against the vacancies arising out in future in that category or on their own merit, whichever is earlier.