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No. 10237/Gen.

GOVERNMENT OF ORISSA

GENERAL ADMINISTRATION DEPARTMENT

RESOLUTION

The 20th March 2002

SUBJECT—Seniority of the Scheduled Castes and Scheduled Tribes Government Servants on promotion by virtue of rule of reservation/roster.

The principle of fixation of *inter-se-seniority* of General, Scheduled Caste and Scheduled Tribe Government Servants in the promotional posts has engaged the attention of the Government for some time past. Earlier Government in their Resolution No. 39734(e)/Gen., dated the 2nd November 2000 has adopted the principle of fixation of seniority between General, Scheduled Castes and Scheduled Tribes candidates in the promotional posts in the State Civil Services/posts as an interim measure in pursuance of the guidelines contained in Office Memorandum No. 20011/1/96-Estt. (D), dated the 30th January 1997 and No. 20011/2/97-Estt. (D), dated the 21st March 1997 of the Government of India, Ministry of Personnel, P. G. and Pensions (Department of Personnel and Training). meanwhile the Government of India, Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training) in their Office Memorandum No. 20011/1/2001 Estt. (D), dated the 21st January 2002 have decided to negate the effects of the Office Memorandum, dated the 30th January 1997 and 21st March 1997 after 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 allowing the Government servants belonging to Scheduled Castes and Scheduled Tribes to retain their seniority in the case of promotion by virtue of rule of reservation.

2. In the above premises, the Government after careful consideration, have been pleased to decide to withdraw the G. A. Department Resolution No. 39734 (e), Gen., dated the 2nd November 2000 along with the previous Resolution No. 21260/Gen. dated the 16th June 2000 and Office Order No. 30083/Gen., dated the 27th July 2000 on the subject. The guidelines issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) in their Office Memorandum No. 2001-1/20017 Estt.(D), dated the 21st January 2002 (Copy enclosed) shall be followed in letter and spirit for fixation of seniority of SC/ST Government servants on promotion by virtue of rules of reservation in the State Civil Services/post. In the other words, consequent upon withdrawal of DOPT O. M. No. 20011/1/1996-Estt. (D) dated the 30th January 1997, read with DOPT. O. M. No. 20011/2/1997-Estt. (D), dated the 21st March 1997, the catch up principle enunciated therein and adopted by the State Government in G. A. Department Resolution No. 39734, dated the 2nd November 2000 shall not be followed any longer. The Government servants belonging to S. Cs/S. Ts. shall retain their seniority in the case of promotion by virtue of rule of reservation. On the other hand the Government servants belonging to General/O. B. C. category promoted later will be placed junior to the S. C./S. T. Government servants promoted earlier even though by virtue of the rule of reservation.

3. All the Departments of Government are requested to implement the above decision and issue necessary instructions to all the Heads of Departments, Public Sector Undertakings and other Appointing Authorities under their administrative control for taking immediate action accordingly.

4. This has been concurred in by the Law Department in their U. O. R. No. 363-L, dated the 2nd March 2002.

ORDER—Ordered that the Resolution be published in the extra ordinary issue of the *Orissa Gazette* and copy forwarded to all Departments of Government/all Heads of Departments/all Collectors/Registrar, Orissa High Court/Registrar, O. A. T./Special Secretary, O. P. S. C. for information.

By order of the Governor

B. C. DAS

Additional Secretary to Government

No. 20011—1/2001-Estt. (D)

GOVERNMENT OF INDIA

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS DEPARTMENT
OF PERSONNEL AND TRAINING

New Delhi, dated the 21st January 2002

OFFICE MEMORANDUM

SUBJECT—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 O M, No. 9—11/55-RPS, dated the 22nd December 1959 and Para 2.2 in DOPT O.M. No. 22011—7/86-Estt. (D), dated the 3rd July 1985 read with DOPT O M No. 20011—5/90-Estt. (D), dated the 4th November 1992 (copy enclosed). 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 the order of selection for such promotion. Thus, as per the aforementioned instructions persons appointed through an earlier selection would enable be senior to those promoted through subsequent selection,

2. This position was reviewed subsequent to the Judgement of the Supreme Court, dated the 10th October 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 the 30th January 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 the 22nd December 1959 and Para-2.2 in DOPM OM No. 22011—7/786-Estt. (D), dated the 3rd July 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 who is promoted later to the said immediate higher post/grade, the 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 DOPT OM, dated the 30th January 1997 by amending Article 16 (4A) of the Constitution right from the date of its inclusion in the Constitution i.e. dated 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 through 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 the 17th June 1995.

- (ii) The instructions contained in DOPT OM No. 20011—1/96-Estt.(D), dated the 30th January 1997 as well as the clarifications contained in DOPT OM No. 20011—2/97-Estt. (D), dated the 21th March 1997 shall stand withdrawn w. e. f. the 30th January 1997 itself.
- (iii) Seniority of Government servants determined in the light of O. M., dated the 30th January 1997 shall be revised as if that O. M. 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 DPC (including consultation with UPSC).
- (v) Except seniority other consequential benefits like promotion, pay etc. (including retiral benefits in respect of those who have already retired) allowed to general/OBC Government servant by virtue of implementation of O. M., dated the 30th January 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 instructions.

6. Hindi version will follow

ALOK SAXENA

Deputy Secretary to Government of India