



दक्षिण रेलवे/ **SOUTHERN RAILWAY**

सं No.P(R)171/Policy/SCT

प्रधानकार्यालय/Headquarters Office
कार्मिक शाखा/Personnel Branch
चेन्नै/Chennai - 600 003
दि./ Dated:08-07-2019

पी बी सी सं/ PBC No.141 / 2019

All PHODs / DRMs / CWMs / CEWE / CAO / CPM / Dy.CPOs / Sr.DPOs /
DPOs / SPOs / WPOs / APOs of HQ / Divisions / Workshops.

(As per mailing list-'A')

विषय/Sub: Reservation in promotion-treatment of SC/ST
candidates.

The copies of under mentioned Railway Board letters along with
the enclosures on the above subject is enclosed for information, guidance
and strict Compliance.

- 1.No .2018-(SCT)/1/25/9. Dated :03/06/2019.
2. No .E(NG)I-2019/PM3/2CC Dated 17/06/2019.

The Railway Board's letter dated 30/09/2016,19/06/2018
& 21/06/2018 referred therein has been circulated as PBC No.139/16,116/18
& 136/18 respectively.



(R.M.Ravikumar)

वरिष्ठ कार्मिक अधिकारी/नियम
Senior Personnel Officer/Rules
For Principal Chief Personnel Officer

संलग्न/Encl: as above

प्रतिलिपि/Copy to : The Genl Secy / SRMU
The Genl Secy / AISCSTREA
The Genl Secy / AIOBCREA
The Genl Secy / NFIR

**GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

No. 2018-E(SCT)/1/25/9

New Delhi, dated 03.06.2019

The General Manager (P)
South East Central Railway,
Bilaspur.

(Kind Attn.: Shri Sukhbir Singh, PCPO/SECR/BSP)

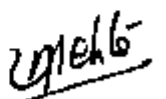
Sub: Reservation in promotion-treatment of SC/ST candidates.

Ref: SECR's letter No. P-HQ/RUL/123/1/1864 dated 10.04.2019.

Kindly refer to your above mentioned letter on the above subject. In this regard, latest instructions have been issued by Railway Board vide letter No. 2018-E(SCT)/1/25/9 dated 28.12.2018 that promotions may be made as directed in the judgement of the five judges Bench of the Hon'ble Supreme Court dated 26.09.2018 in SLP (Civil) No. 30621 of 2011 in the matter of Jarnail Singh and others Vs. Lachhmi Narain Gupta and others, on provisional basis and subject to final outcome of ongoing litigation/court cases in the matter (copy enclosed).

Also, a copy of reply of the Department of Personnel & Training (DOPT)'s ID Dy. No. 1348347/18/CR dated 16.01.2019 received in another matter is enclosed for information.

DA: As above.



(U.N. Mehta)
Joint Director, Estt. (Res.)

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

No. 2018-E(SCT)1/25/9

New Delhi, dated: 28.12.2018

General Manager (P),
All Indian Railways
and Production Units.

Sub: Promotions on Railways.

Ref: Rly Bd's letters No. (i) 2016-E(SCT)1/25/8 dated 30.09.2016 (RBE 117/2016) and (ii) 2018-E(SCT)1/25/9 dated 19.06.2018 (RBE 91/2018) and 21.06.2018 (RBE 94/2018).

Some of the Railways have referred the issue about Reservation in promotions in view of ongoing litigations as well as the judgement of the Five Judges Bench of the Hon'ble Supreme Court in the matter of Jamail Singh and others versus Lachhmi Narain Gupta and others : SLP (Civil) No. 30621 of 2011 dated 26.09.2018.

Attention is invited to Railway Board's RBE 117/2016 dated 30.09.2016 and subsequent instructions issued vide RBE 91/2018 dated 19.06.2018 and RBE 94/2018 dated 21.06.2018, which reiterated the instructions issued by DOPT.

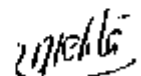
Now, in view of the above judgement in Jamail Singh's case, promotions can be made as directed therein.

It may also be ensured that

- (i) As per the extant instructions, seniority list/eligibility list of those coming up for promotion is circulated in advance.
- (ii) As further instructions from the Nodal Ministry are awaited, all promotion orders should be on provisional basis stating that "these orders are provisional and are subject to the final outcome of ongoing litigations/court cases on the subject."

All concerned may note accordingly.

This issues with the approval of Board (MS & CRB).



(U.N. Mehta)
Jt. Dir. F.(Res.)I

depending upon the promotional post that is in question. (Para 20 of the judgment)

(vii) However, the conclusion in Nagaraj that the State has to collect quantifiable data showing backwardness of the SCs and STs being contrary to the nine-judge Bench in Indra Sawhney is held to be invalid to this extent (Para 21 of judgment)

3. Individual Cases relating to "reservation in promotion for SCs/STs", reservation in promotion on own merit" including cases filed by different State Governments/individual parties, have been clubbed and were to be taken up on 29.11.2018. However, the cases were not listed. The two major issues in the matter of reservation in promotion, which are pending are as under:-

- (i) SLP (C) No. 30621/2011 filed by Jarnail Singh and other related cases arising out of final judgment and order dated 15.07.2011 in CWP No. 13218/2009 passed by the Hon'ble High Court of Punjab & Haryana whereby the DOPT OM dated 10.08.2010 on own-merit in reservation in promotion for SCs/STs was set aside.
- (ii) SLP (C) No. 31288/2017 filed by Union of India and related cases arising out of Hon'ble Delhi High Court judgment dated 23.08.2017 whereby the Department of Personnel & Training OM No. 36012/18/95-Estt.(Res)(Pt-II) dated 13.08.1997 on the subject 'Reservation to SCs/STs in promotion' providing continuation in reservation in for SCs/STs

4. In view of the above background, this Department is not in a position to give any further clarification till settlement of all cases on "own merit" and "reservation in promotion for SCs/STs" pending before the Hon'ble Supreme Court. Till then, the instructions in OM dated 15.06.2018 are to be followed.

5. This issues with the approval of AS (E).



(Raju Saraswat)

Under Secretary to the Govt. of India

Telefax - 23092110

Government of India
Ministry of Personnel, PG and Pensions
Department of Personnel & Training
Establishment (Reservation-I) Section

References Ministry of Railways' following ID Notes

- I. Railway's ID note No. 2018-E(SCT)/25/17 dated 17.12.2018;
- II. Railway's ID note No. E(GP) 2018/2/13 dated 11.12.2018

2. The matter has been examined. The major observations of the Apex Court in the judgment dated 26.09.2018 are as below:-

(i) we have confined arguments on two points which requires serious consideration. The two points are (a) whether State has to collect quantifiable data as observed in Nagaraj judgment, which is contrary to nine-judge Bench in Indra Sawhney Vs Union of India and (b) whether creamy layer concept will be applicable in the case of SCs/STs. (Para 3 of the judgment)

(ii) When Nagaraj applied the creamy layer test to SCs and STs in exercise of application of the basic structure test to uphold the constitutional amendments leading to Articles 16 (4-A) and 16(4-B), it did not in any manner interfere with Parliament's power under Article 341 or 342. We are, therefore, clearly of the opinion that this part of the judgment does not need to be revised..... (Para 17 of the judgment).

(iii) Thus, we may make it clear that quantifiable data shall be collected by the State, on the parameters as stipulated in Nagaraj on the inadequacy of representation, which can be tested by the Courts. We may further add that the data would be relatable to the concerned cadre. (Para 17 of the judgment)

(iv) argument that as a member of a SC or ST reaches the higher posts, he/she longer has the taint of either untouchability or backwardness, as the case may be and that therefore, the State can judge the absence of backwardness as the posts go higher, is an argument that goes to the validity of Article 16 (4-A). If we were to accept this argument, logically, we would be able to strike down Article 16(4-A) as the necessity for continuing reservation for a SC and or ST member in the higher posts would then disappear..... (Para 19 of the judgment).

(vi) According to us, Nagaraj has wisely left the test for determining adequacy of representation in promotional posts to the States for the simple reason that as the post gets higher, it may be necessary, even if a proportionality test to the population as a whole is taken into account, to reduce the number of SCs and STs in promotional posts, as one goes upwards. This is for the simple reason that efficiency of administration has to be looked at every time promotions are made. For this reason, we make it clear that Article 16 (4-A) has been couched in language which would leave it to the States to determine adequate representation

भारत सरकार GOVERNMENT OF INDIA
रेल मंत्रालय MINISTRY OF RAILWAYS
(रेलवे बोर्ड RAILWAY BOARD)

Most Urgent
Court Case
2019.06.06.0001

No. E(NG)I-2019/PM3/2 CC

New Delhi, dated 27.06.2019

The General Manager (P)
Southern Railway,
Park Town, Chennai,
Tamil Nadu - 600003.




**Sub: O.P. (CAT) No. 97 of 2017 in High Court of Kerala titled
Union of India & ors. Vs. Shailesh N.P. & others.**

Please find enclosed herewith a copy of No. 36012/3/2014 - Estt. (Res.) dated 12.03.2019 received from Shri G. Srinivasan, Director, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DoPT) forwarding a copy of the letter ASGI/OP(CAT)/97/2017/FB dated 31.10.2018 received from Shri Nagaresh, Assistant Solicitor General of India, High Court of Kerala with a certified copy of judgment passed by Hon'ble High Court of Kerala in the aforesaid O.P.

Necessary action may be taken in the matter as per the observation (copy enclosed) of E(SCT) Dte., the nodal Dte. in the matter, under advise to this office.

DA: As above


(P.M. Meena)
Dy. Director-II/E(NG)I
Railway Board

J. E(NG)1-2019/PM3/2 CC

Sub:-O.P. (CAT) No. 97 of 2017 in High Court of Kerala titled Union of India & Ors. Vs. Shailesh N. P. & Others.

Ref:-Notings at Prepage.

Attention is invited to EDE(N)'s notings at prepage 3/n ante regarding any advice/guidance to be given to the Railways in dealing the above mentioned matter.

2. In this regard, it is brought out that, DOP (S.No.3) in regard to consideration of SC/ST candidates against UR vacancies (posts) on their own merit, has mentioned that the provisions of the DOP&T OM dated 10.08.2010 on 'Own Merit' were quashed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in its Order dated 15.07.2011 in the case of Lachhmi Narain Gupta & Ors Vs. Jarnail Singh & Others (CWP No. 13218/2009). SLP was filed by Department of Revenue before the Apex Court (SLP No. 30621/2011) and the Hon'ble Supreme Court in its interim order dated 03.02.2015 has given the instructions that Status quo existing as on today in respect of the promotional matters that are covered by the impugned judgement shall be maintained till the next date of hearing.

3. About 15 SLPs have been tagged with the SLP No 30621/2011, in which against one of the SLPs i.e. 4831 of 2012 related to Railways, a Contempt Petition (Civil) No. 314 of 2016 has been filed. During hearing of this Contempt Petition, Shri Ranjit Kumar, the then Solicitor General of India has assured (S.No.4) Hon'ble Supreme Court that in the matter of making any promotion of a reserved category officer/employee the Department concerned would not rely upon or make the basis of such promotion to an unreserved post based on the circulars dated 10.08.2010 (S.No.5) and 14.09.2010 (inadvertently quoted, may be read as 01.09.2010, S.No 6). Accordingly instructions have been issued by Railway Board (S.No.8 /RBE - 117/2016) and DOP&T (S.No.9). P 61 3911b

4. Further, in Special Leave Petition (Civil) No. 30621 of 2011 titled as Jarnail Singh & Ors. Vs. Lachhmi Narain Gupta & Ors., an order dated 17.05.2018 (S.No. 10) has been passed by the Hon'ble Supreme Court. The same is quoted below:-

"It is directed that the pendency of this Special Leave Petition shall not stand in the way of Union of India taking steps for the purpose of promotion from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of promotion on merits. Post for further orders after summer vacation."

5. The Hon'ble High Court of Delhi's vide judgment dated 23.08.2017 has quashed and set aside DOP&T's OM No.36012/18/95-Estt.(Res.)Pt.-II dated 13.08.1997, in the backdrop of M. Nagaraj case, which is the foundation/base O.M. allowing reservation in promotion beyond 1997. An SLP (C) No.31288/2017 has been filed by Union of India (DOP&T) against the judgment dated 23.08.2017. However, in SLP (C) No.28366/2017 in which SLP © No. 31288/17 is listed/tagged, the Hon'ble Supreme Court on 05.06.2018 (S.No.11) had made the following order:-

"Heard learned counsel for the parties. Learned ASG has referred to order dated 17.05.2018 in SLP(C) No. 30621 of 2011. It is made clear that the Union of India is not debarred from making promotions in accordance with law, subject to further orders, pending further consideration of the matter. Tag to SLP(C) No. 30621 of 2011."

6. DoP&T has issued instructions vide their OM No. 36012/11/2016-Esit.(res-1);P-11; dated 15.06.2018 (S.No. 12/3) on this issue. based on which Ministry of Railways has issued their letter No. 2018-E(SCT)/25/9 dated 19.06.2018 (S.No. 12) followed by a corrigendum dated 21.06.2018 (S.No. 13) which may be perused.

7. In this regard, it is brought out that, DOPT vide their OM dated 08.12.2017 (S.No.14) has brought out that Hon'ble Supreme Court in Order dated 14.11.2017 in CA No.4562-4564/2017 in the matter of State of Tripura & Ors. Vs Jayanta Chakraborty & Ors has referred the issues arising out of M. Nagaraj Judgement to a Constitutional Bench.

8. Further, a five Judge Bench of Hon'ble Supreme Court has given the judgement on 26.09.2018 (S.No. 15) in SLP (C) No. 30621/2011 in the matter of Jarnail Singh & Ors. Vs. Lachhmi Narain Gupta & Ors. & other connected matters as detailed in the judgment observing that Judgement in Nagaraj does not need to be referred to a seven Judge Bench. However, the conclusion in Nagaraj that state has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine Judge bench in Indra Sawhney is held to be invalid to this extent. The matter was referred to DOPT (S No. 16 & 17). In response to which, DOPT (S.No. 18) brought out that individual cases relating to 'reservation in promotion relating to SCs/STs' and 'reservation in promotion in own merit' are still pending before the Hon'ble Supreme Court & hence, DOPT, is not in a position to give any further clarification till settlement of all cases on "own merit" and "reservation in promotion for SCs/STs" pending before the Hon'ble Supreme Court. DOPT has also advised that till then, the instruction in OM dated 15.06.2018 are to be followed. Railway Board's has issued letter dated 28.12.2018 (S.No. 19) in this regard.

9. Recently, in Special Leave Petition No. 30621/2011 titled as Jarnail Singh & Ors. Vs. Lachhmi Narain Gupta & Ors. which is tagged with around 85 SLPs cases, Hon'ble Supreme Court of India has passed an order dated 15.04.2019 (S.No.20), which is quoted as under:

"Issue notice in the fresh matters. Until further orders, status quo, as it exists today, shall be maintained. List II the matters on 15.10.2019."

10. Based on the above information, Southern Railway may be advised to suitably bring out the position before the Hon'ble CAT/Court.

20/06/18

21/5/19

21/5/19
S.O./E(SCT) - 1

DDE(Res)

JDE(Res-II)

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EDE(Res.)

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AM(Staff)

23/12

EDE(N)

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