

No.36012/11/2016-Estt.(Res.)  
Government of India  
Ministry of Personnel, Public Grievances and Pension  
Department of Personnel and Training  
North Block, New Delhi 110001  
Dated the 30<sup>th</sup> September 2016

**OFFICE MEMORANDUM**

**Subject:** Contempt Petition (C) No.314/2016 in SLP (C) No.4831/2012-Samta Andolan Samiti through its President vs. Sanjay Kothari & Ors.

- Reference:**
1. SLP(C) No. 30621/2011
  2. SLP(C) No. 31735/2011
  3. SLP(C) No.35000/2011
  4. SLP(C) No. 2839/2012
  5. SLP(C) No.4831/2012
  6. SLP (C) No.5859/2012
  7. SLP(C) No. 5860/2012
  8. SLP(C) No.30841/2012
  9. SLP(C) No.6915/2014
  10. SLP(C) No. 8327/2014
  11. SLP(C) No. 16710-16711/2014
  12. SLP (C) No. 23344/2014
  13. SLP(C) No.23339-23340/2014
  14. SLP(C) No. 21343/2015
  15. SLP(C) No.33163/2014
  16. Contempt Petition (C) No.314/2016 in SLP (C) No.4831/2012

The undersigned is directed to invite attention to this Department's O.M. No. 36012/45/2005-Estt (Res) dated 10<sup>th</sup> August, 2010 (**copy enclosed**) on the subject reservation in promotion – treatment of SC/ST candidates promoted on their own merit.

2. The O.M No. 36012/45/2005-Estt(Res), dated 10.8.2010 was challenged in the High Court of Punjab & Haryana in CWP No. 13218/2009 [Shri Lachhmi Narain Gupta & Ors Vs Jarnail Singh & Ors]. The Hon'ble High Court Punjab & Haryana vide its judgment dated 15.7.2011 quashed the O.M dated 10.8.2010.

3. Against the Order of the Hon'ble Punjab and Haryana High Court dated 15.7.2011, an SLP was filed by Jarnail Singh & Ors. The Union of India through Department of Revenue also filed SLP No.6915/2014 in this case.

4. The Hon'ble Supreme Court vide order dated .03.02.2015 passed the following interim order In SLP No.30621/011- Jarnail Singh & Ors. Vs Lachmi Narain Gupta & Ors:-

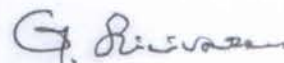
"Let the matter be listed in the second week of March 2015 on a non-miscellaneous day. Status quo existing as on today in respect of the promotional matters that are covered by the impugned judgment shall be maintained till the next date of hearing."

3. Contempt Petitions were filed before the Hon'ble Supreme Court against Department of Personnel and Training and Railways alleging that 5 notifications issued by the DOPT and 5 Notifications issued by the Railways were contrary to the status quo order dated 03.02.2015 of the Hon'ble Supreme Court and therefore notice of contempt was issued. The matter came up for hearing on 29.9.2016 before the Apex Court.

4. In order to preclude any interim order in the contempt case, as desired by the Hon'ble Supreme Court, the Learned Solicitor General has undertaken that till such time the main matter along with the Contempt Petition is decided, no further promotions of reserved category persons to unreserved posts will be made based on the DOPT OM dated 10.8.2010 and Railway Board circular dated 14.9.2010,

5. In the light of the above, till such time that the SLP (s) are decided by the Hon'ble Supreme Court, while considering promotion, the DOPT OM dated 10.8.2010 and Railway Board circular dated 14.9.2010 are not to be relied upon. The main matter along with the contempt petition is likely to be taken up for hearing on 22.11.2016.

6. These instructions may be brought to the notice of all concerned for information and necessary action.



(G.Srinivasan)  
Deputy Secretary

To

1. All Ministries/Departments of the Government of India
2. All Officers and Sections in the Department of Personnel, and all attached/subordinated offices of the Department
3. Ministry of Railways(Chairman, Railway Board), Rail Bhawan, New Delhi
4. Union Public Service Commission, Supreme Court of India/Election Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/Central Information Commission/President Secretariat/Prime Minister's Office/Niti Aayog
5. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi
6. National Commission for SCs, Lok Nayak Bhavan, New Delhi
7. National Commission for ST, Lok Nayak Bhavan, New Delhi

8. National Commission for Backward Classes
9. Office of the Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi-110022
10. CBI, LBSNAA, ISTM, PESB,
11. Information and Facilitation Centre, DOPT, North Block, New Delhi

Director, NIC (Computer Cell), DOP&T with the request to upload on this Department's website on what's New

No.36012/45/2005-Estt. (Res.)  
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Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

North Block  
New Delhi- 110001.

Dated the 10<sup>th</sup> August, 2010.

OFFICE MEMORANDUM

Subject: Reservation in promotion – Treatment of SC/ST candidates promoted on their own merit.

The undersigned is directed to refer to this Department's O.M.No.36028/17/2001-Estt. (Res.) dated 11<sup>th</sup> July, 2002 which clarified that SC/ ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will be adjusted against un-reserved points of the reservation roster and not against reserved points. It was subsequently clarified by this Department's O.M. No.36028/17/2001-Estt. (Res.) dated 31.1.2005 that the above referred O.M. took effect from 11.7.2002 and that concept of own merit did not apply to the promotions made by non-selection method.

2. Central Administration Tribunal, Madras Bench in O.A. No.900/2005 [S. Kalugasalamoorthy v/s. Union of India & Others] has set aside the O.M. No.36028/17/2001-Estt. (Res.) dated 31.1.2005 and held that when a person is selected on the basis of his own seniority, the scope of considering and counting him against quota reserved for SCs does not arise. The High Court of Judicature at Madras in the matter of UOI v/s. S. Kalugasalamoorthy [ WP No.15926/2007 ] has upheld the decision of the Central Administrative Tribunal.

3. The matter has been examined in the light of the above referred judgments and it has been decided to withdraw O.M. No. 36028/17/2001-Estt. (Res.) dated 31.1.2005 referred to above. It is clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method. These

orders will take effect from 2.7.1997, the date on which post based reservation was introduced.

4. These instructions may be brought to the notice of all concerned.



(K.G. Verma)

Director

Tele: 23092158.

To

1. All Ministries/Departments of the Government of India.
2. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of this Ministry.
3. Department of Financial Services (Banking Division), New Delhi.
4. Department of Economic Affairs, North Block, New Delhi.
5. Department of Public Enterprises, New Delhi.
6. Ministry of Railways (Railway Board), Rail Bhawan, New Delhi.
7. Union Public Service Commission/Supreme Court of India/ Election Commission/ Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Secretariat/ Prime Minister's Office/ Planning Commission.
8. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
9. National Commission for SCs, Lok Nayak Bhavan, New Delhi.
10. National Commission for STs, Lok Nayak Bhavan, New Delhi.
12. National Commission for Backward Classes, Trikoot-I, Bhikaji Cama Place, R.K. Puram, New Delhi.
13. Office of the Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi - 110002.
14. CBI, LBSNAA, ISTM, PESB, Central Sectt. Library, MHA Library.
15. Information and Facilitation Centre, DOPT, North Block, New Delhi.
16. NIC (Computer Cell) - with the request to upload on this Department's website.