

वे. नारायणसामी  
V. NARAYANASAMY



राज्यमंत्री  
प्रधानमंत्री कार्यालय,  
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय  
भारत सरकार  
Minister of State  
Prime Minister's Office,  
Personnel, Public Grievances & Pensions  
Government of India

10-5-2012

Dear Dr. Rameshwar Oraon

I acknowledge the receipt of your DO letter No. Policy-13/1/NCST/2005-Admn. dated 3.5.2012 regarding judgement in Civil Appeal No.2608/2011 dated 27.4.2012 (U.P. Power Corporation Ltd. Vs. Rajesh Kumar & Ors.).

With regards,

Yours sincerely,

(V. Narayanasamy)

Dr. Rameshwar Oraon  
Hon'ble Chairman  
Ex. Member of Parliament (Lok Sabha)  
National Commission for Scheduled Tribes,  
6<sup>th</sup> Floor, Lok Nayak Bhawan,  
New Delhi 110 003.

AD/Coord  
Re. disans  
15/5

South Block, New Delhi - 110101  
Tel.: 011-23010191 Fax : 23017931  
e-mail : samyselvi@nic.in



<http://www.persmin.gov.in>

North Block, New Delhi - 110001  
Tel. : 011-23092475 Fax : 23092716  
Tel. (R) : 011-23794522 Fax : 23794524



डा. रामेश्वर उराँव

अध्यक्ष

(भूतपूर्व सांसद-लोकसभा)

(पूर्व जनजातीय कार्य राज्यमन्त्री)

**Dr. RAMESHWAR ORAON**

Chairman

(Ex Member Parliament-LS)

(Former Minister of State for Tribal Affairs)

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

छठी मंजिल, लोकनायक भवन,

खान मार्किट, नई दिल्ली-110003

Government of India

National Commission for Scheduled Tribes

6th Floor, Lok Nayak Bhawan,

Khan Market, New Delhi-110003

Tel. : 011-24635721

Telefax : 011-24624628

D.O. no. Policy-13/1/NCST/2005-Admin

03-05-2012

*Respected Sir,*

I invite your kind attention to the two judges bench of the Hon'ble Supreme Court judgment in civil appeal No. 2608/2011 dated 27.04.2011 (U.P. Power Corporation Ltd. vs. Rajesh Kumar & others), which has nullified the reservation in promotion and upheld the Allahabad High Court, Rajasthan and HP High Court judgments, as the State Govt. had not undertaken any exercise as indicated in M. Nagraj case regarding three parameters viz. backwardness, inadequacy in representation of SCs/STs and administrative efficiency for providing reservation in promotion. It may be recalled that in 1992, a nine judges bench of the Hon'ble Supreme Court had given a judgment in Indira Sawhney case disallowing the reservation in promotion for SC and ST. In order to remove this anomaly, the Parliament, through 77th Amendment in the Constitution, added a new clause 4A in Art. 16 i.e. 16(4A) w.e.f. 17.06.1995 making provision for reservation in promotions for SCs and STs and 16(4B) through 85th Amendment in the Constitution to allow reservation in promotion. The 77th & 85th amendment in the Constitution were challenged by the general category employees before a 5 judge bench of the Supreme Court. The Court clubbed all the petitions challenging these amendments and in the case of M. Nagraj, gave a decision that the amendments were Constitutionally valid with certain conditions as evident in Hon'ble Supreme Court judgment concerning M. Nagraj case.

It is seen that in direct requirement no such exercise of three parameters i.e. backwardness, inadequacy in representation of SCs/STs and administrative efficiency have been mentioned for giving reservation for Scheduled Tribes whereas it has been made mandatory by the Hon'ble Supreme Court to follow these three condition in promotion. In promotion, the criteria of eligibility, ACRs, Service Records of SCs and STs officer, fitness are being applied while considering their promotions. Thus, it doesn't not give any undue advantage to SCs and STs officials. In this context, I would like to mention that the Commission had earlier recommended that the rule of reservation should be extended in promotion by selection within Group 'A' posts in terms of the Constitution (77th Amendment) Act, 1995 and the Constitution (85th Amendment) Act, 2001, to provide inter alia for making reservation in matters of promotion, with consequential seniority, to any class or classes of posts in services under the State in favour of SCs and STs. The Commission is of the opinion that the Scheduled Castes and the Scheduled Tribes (Reservation in Posts and Services) Bill need to be framed and introduced urgently in the Parliament to take care of any ambiguity of the existing Constitutional provisions.

Since intervention through review petition to the Hon'ble Supreme Court may take considerable long time and outcome may also be uncertain, our view is that a corrective measure be taken up by amending the constitutional provision suitably so that the interests of SCs/STs are protected in the light of the said Supreme Court Judgment. I would be extremely grateful if the Commission is apprised of the action taken by the DoPT in the matter please.

With high regards.

Yours Sincerely,

*Rameshwar Oraon*  
(Dr. Rameshwar Oraon)

Shri V. Narayanasamy  
Minister of State,  
Prime Minister's Office,  
Personnel, Public Grievances & Pensions,  
Govt. of India,  
South Block,

1878  
03/5/12  
जारी किया  
ISSUED