



**GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES**

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

File No. Policy-7/Service/DOPT(De-reserv.Proced/2012/RU-I

Dated 26/12/2012

To

Shri Sharad Kumar Srivastava
Under Secretary,
Ministry of Personnel, Public Grievances and Pensions,
Department of Personnel & Training,
North Block,
New Delhi- 110001

Sub: Comments on Review of Procedure for de-reservation.

Sir,

I am directed to refer to your letter No. 36020/2/2007-Estt.(Res) dated 29/10/2012 seeking comments of NCST on the Procedure for de-reservation and to say that the subject matter was discussed as Agenda Item No-VIII in the 40th Meeting of the Commission held on 17/12/2012.

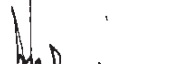
2. Relevant Extracts from the Summary Record of the meeting of the Commission are enclosed for information and further necessary action. It is requested that information about action taken on the views and observations of National Commission for Scheduled Tribes on the subject matter, and the nature and the manner in which those views have been incorporated, may be forwarded to this Commission urgently for including the same in the Annual Report of the Commission.

Yours faithfully,


(M.S. Chopra)
Director

Copy with enclosure forwarded for information to:-

1. The Secretary, Ministry of Tribal Affairs, Shastri Bhawan, New Delhi-110001
2. SSA (NIC) for uploading on the Website of NCST
3. Assistant Director (Coordination)


(M.S. Chopra)
Director

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 40th meeting of the Commission held at 11:30 AM on 17-12-2012

The 40th meeting of the Commission was held at 11:30 AM on 17-12-2012 in the Conference Room of the Commission in Loknayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Hon'ble Chairperson, NCST. List of participants is enclosed at Annexure. There were fourteen Agenda Items for discussion in the meeting. In addition, as desired by the Chairperson, NCST important administrative issues of immediate concern relating to functioning of the Commission were also taken up for discussion as additional Agenda item No. XV.

2. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below:

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Agenda Item VIII	Comments on Review of procedure for de-reservation
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21. Department of Personnel & Training (DoPT), Ministry of Personnel Public Grievances and Pensions vide letter No. 36020/2/2007-Estt. (Res.) dated 29/10/2012 have requested the Commission for comments with regard to raising the time-limit for seeking the comments from the DOPT and NCST and NCSC on the proposals for the de-reservation of posts from present 2 weeks to 4 weeks.

22. Joint Secretary, NCST mentioned that in accordance with the procedure prescribed by the DoPT vide DoPT OM No. 36011/ 20/ 79-ESTT (SCT) dated 02/11/1979 for de-reservation of reserved vacancies in case of promotion, and revised procedure prescribed vide DOPT OM No. 36020/2/2007-Estt. (Res.) dated 07/12/2009, the Administrative Ministry/ Deptt. before taking a decision to de-reserve a vacancy under the delegated powers, shall prepare a proposal in the prescribed proforma and send one copy each thereof for comments to the DoPT and the NCSC and NCST, as the case may be. After sending the proposal, the Ministry/ Deptt. shall wait for a period of at least two weeks for the comments of the DoPT and NCSC and

NCST. DOPT has now proposed to increase the said notice period from 2 weeks to at least 4 weeks.

23. The Commission observed that de-reservation of posts reserved for STs was being sought mainly due to inability on the part of the various Ministries/ Deptts. to fill up such posts by promotion even after waiting for considerable period. The Commission felt that this situation has arisen as necessary corrective measures to improve representation of STs have not been taken. In this connection, the Commission re-iterated its earlier recommendations, as under, to improve better representation of STs:

(i)	There should be total ban on dereservation of posts reserved for Scheduled Tribes to be filled by any method i.e. whether Direct Recruitment or promotion in all Ministries/Deptts./Organisations except those where reservation is exempted..
(ii)	The ban on dereservation in Direct Recruitment should be monitored strictly as many Ministries/Deptts./Organisations including DoPT have failed to appoint Scheduled Tribes candidates against Direct Recruitment posts/ grades of general nature, for which there should be no paucity of qualified/ eligible ST candidates.
(iii)	Recruitment Rules in r/o each post must specifically mention about applicability of reservation for Scheduled Tribes, Scheduled Castes and OBCs (where admissible).
(iv)	There should be total ban on dereservation in general, excluding certain exceptional categories of posts. The exceptional posts should be decided in consultation with the Ministry of Tribal Affairs as well as National Commission for Scheduled Tribes also.
(v)	No exchange of vacancies be permitted between ST, SC or OBC or vice-versa.
(vi)	Instead of seeking dereservation of the post, provisions of the DoPT OM No. 36011/14/83-Estt.(ST) dated 30/04/1983 relating to consideration of cases of ad-hoc promotion of SC/ ST employees should be applied in the matter of promotion of ST candidates against reserved posts. The relaxation in period of ad-hoc appointments upto 3 years agreed in respect of Group 'C' and 'D' posts vide DoPT OM No. 28036/01/2007-Estt(D) dated 14/11/2007 may be allowed, with suitable amendments, in case of ad-hoc promotion of ST candidates appointed against all categories of posts reserved for Scheduled Tribes.
(vii)	To check various issues and problems connected with de-reservation and to ensure accomplishment of the targets of achieving required percentage of reservation for Scheduled Tribes in all categories of posts, the DoPT OM No. 36011/14/83-Estt.(ST) dated 30/04/1983 may be revised to prescribe drawing of separate lists of eligible ST and SC candidates in respect of all kinds of promotion on regular as well as ad-hoc basis in all categories of posts.
(viii)	If no ST candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs if the existing RRs do not provide for the same or relaxing them, instead of seeking de-reservation of the post.
(ix)	Action should simultaneously be taken to amend the RRs for each post to provide for element of direct recruitment in all cases where appointment is being made 100% by promotion, by incorporation of 'failing which' clause, or, at least provision for relaxation of the same for filling up ST vacancies.
(x)	In normal course Recruitment Rules should provide elements of Direct Recruitment as well as deputation/transfer on deputation, beside promotion, instead of 100% by promotion, so that deficiencies due to non-availability of reserved category candidate(s) in the seniority list of the feeder grade may be made up through Direct Recruitment or deputation/transfer on deputation as the case may be. In this connection, DoP&T O.M. No. AB.14017/30/89-Estt.RR dated 10.07.1990 also provide that reserved vacancy can be temporarily transferred from one mode of recruitment to other and this relaxation of RRs can be exercised by Ministries/Departments

	themselves subject to approval of UPSC.
(x)	As per instructions of the Supreme Court of India separate list of eligible ST and SC candidates, fulfilling the prescribed conditions relating to educational and experience qualification may be prepared for filling the posts reserved for Scheduled Tribes and Scheduled Castes respectively.
(xii)	In case of non-availability of ST/SC candidates in the feeder grade, in the near future, the post may be filled by deputation and the reserved point to be carried forward as shortfall/ backlog vacancy till such time the eligible ST/SC candidates becomes available for promotion.
(xiii)	In case of non-availability of ST/SC candidates, at all, in the feeder grade the post(s) could be filled by Direct Recruitment from the candidates belonging to the concerned reserved category to the extent of shortfall/backlog. This may be done by resorting to Special Recruitment Drive.

24. The Commission also noted that in general, de-reservation of posts is sought in respect of the posts which remain vacant for years while no action is taken by the concerned Ministries/ Deptt. to amend Recruitment Rules to facilitate better representation of STs. Under such circumstances, fixation of time-frame for receiving recommendations of the Commission needs to be re-viewed. In this connection, **the Commission also re-iterated its earlier recommendations that there should be total ban on dereservation of posts reserved for Scheduled Tribes to be filled by any method** i.e. whether Direct Recruitment or promotion as on an overall basis sincere efforts to fill up the vacant posts reserved for STs has been found to be missing as reflected through considerably lower level of representation in various organisations, especially at higher levels almost in all organisations.

25. The Commission, however, observed that proposals for dereservation are likely to be received in the Commission till such time directions for total ban on dereservation of vacancies reserved for Scheduled Tribes and Scheduled Castes were issued by the Government and therefore, the above proposal received from DoPT may have to be considered for the time being. In this context, the Joint Secretary, NCST informed the Commission that to facilitate proper examination of the dereservation proposals and to ensure uniformity, the Commission has framed standardized internal guidelines for dealing with dereservation proposals and their disposal, which are based on the DoPT's instructions. These guidelines, *inter-alia*, provide that in order to ensure that the rights of Scheduled Tribes are not likely to be encroached through the process of dereservation, the Commission should call for and examine the following information from the concerned authorities.

- Recruitment Rules for the post for which dereservation has been sought
- Post-based Roster and up-to-date Seniority list of the Officers holding the posts (one of

which has been proposed for dereservation)

- Recruitment Rules for the post which is a feeder post for the post which has been proposed to be dereserved.
- Post-based Rosters and up-to-date Seniority list of the Officers holding the feeder cadre posts.
- Reasons for non-availability of ST candidates in near future from amongst the officers of the feeder cadre posts and efforts made in the past to fill the vacancies reserved for Scheduled Tribes in the feeder cadre as well as the posts out of which dereservation is sought.

26. The examination of proposals for de-reservation of posts have revealed that very often, the proposal require clarifications/details from the concerned Ministry/Deptts. Further, the proposals are submitted to the concerned Member as per the procedure being followed in the Commission. The scrutiny of the cases reveals that following time period is generally involved in the whole process:

	Activity	Assessed Time-frame
i)	Postal time taken in actual receipt of the proposal from the concerned Ministry/ Deptt. in the Commission	1 week
ii)	Examination of the proposal in the Commission	1 week
iii)	Submission of requisite clarifications/details by the concerned Ministry/Deptt	2-4 week
iv)	Submission/consideration of the proposal to the concerned Member	1 week
v)	Communication of recommendations of the Commission and its receipt by the concerned Ministry/Deptt.	1 week
	Total time involved	6-8 weeks

27. Considering the position explained above, the Commission is of the view that the time limit for seeking comments from the DOPT and NCSC and NCST by the Ministries/Deptts. on the proposals for de-reservation of posts should be raised from existing 2 weeks to at least 2 months. The Commission further recommended that it should be mandatory for the Ministries/Deptts. to wait for the comments of the NCST before taking decision for de-reservation of posts reserved for STs and also to accept recommendations of the Commission in the matter.

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