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Immediate

**No.36012/2/96-Estt(Res.) Part-V  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel and Training)**

New Delhi, Dated the 22<sup>nd</sup> November, 2007.

✓ To

**The Chairman,  
National Commission for Scheduled Tribes,  
6<sup>th</sup> Floor, B Wing,  
Loknayak Bhawan, Khan Market,  
New Delhi-110003.**

**Subject: -Review of Office Memorandum No 36012/2/96-Estt.(Res.) dated 2nd July, 1997, issued by the Department of Personnel & Training, in the light of the judgment of the Supreme Court dated 16.09.1999 in the case of Ajit Singh-II.**

I am directed to say that the Supreme Court in the case of R.K. Sabharwal and others Vs. State of Punjab and others had inter alia held on 10.2.1995 that reservation should be with reference to posts and not vacancies and that representation of each of the reserved categories should not exceed the prescribed percentage of reservation. The Court observed that once the prescribed percentages of reserved categories are reached, the posts falling vacant thereafter should be filled by the replacement principle i.e. the post vacated by a Scheduled Caste should be filled up by a person belonging to the Scheduled Caste and that vacated by a general category candidate should be filled up by a person of general category etc. The Court made its orders operative prospectively. A copy of the Supreme Court judgement is enclosed as **Annexure-I**.

2. Department of Personnel & Training introduced post based reservation rosters vide OM No.36012/2/96-Estt(Res.) dated 2.7.1997 and made them operative with effect from the date of issue of the OM i.e. from 2.7.97. A copy of the OM dated 2.7.97 is enclosed as **Annexure-II**.

3. The issue of prospectivity of the orders of the Supreme Court in the R.K. Sabharwal's case came before the Supreme Court in the case of Ajit

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Singh-II. A copy of the said judgment is enclosed as Annexure-III. The Court in that case has made following observations.

“Before Sabharwal was decided on 10.02.1995, it appears that, in several services, the roster was initially put in operation and promotions at all the roster points were filled up. But the roster was once again operated on future vacancies, even though all the required reserved candidates were in position at the promotional level. It was not realised that once the roster points were all filled, the roster had served its purpose and fresh members of the reserved classes could claim promotional posts only if any promotional posts filled by the reserved candidates fell vacant. This misapplication of the roster came to be removed for the first time on 10.02.95 when Sabharwal was decided. Obviously, by that time several reserved candidates had got promotion in excess of their quota because of the wrong “re-operation” of the roster points. If the Law declared in Sabharwal were to be treated as retroactive as is the normal position whenever the Law is declared by this court, it would have resulted in reversions of several officers of the reserved classes as their promotions before 10.02.95 by the fresh operation of the roster, as aforesaid, was wholly unjustified. This court in Sabharwal therefore tried to prevent such reversions and declared (p.753 Of SCC, Para 11) as follows at the end of the judgment:

“We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operated prospectively.”

4. The Supreme Court in Ajit Singh-II concluded the issue of prospectivity of R.K. Sabharwal as follows:

“It is axiomatic in-service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a court decides that in order only to remove hardship such roster point promotees are not to face reversions, then it would, in our opinion be, necessary to hold consistent with our interpretation of Article 14 and 16(1)- that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while Courts can relieve immediate hardship arising

out of the past illegality, Courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.02.95 are protected such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed after 10.02.95 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. This disposes of the "prospectivity" point in relation to Sabharwal."

5. Views of the Attorney General of India have been obtained on the Supreme Court judgement in Ajit Singh-II which are placed as Annexure-IV. The learned Attorney General has opined as under:

[a] The Law of the land laid down in Ajit Singh-II warrants modification of Department of Personnel & Training's O. M. dated 02.07.1997 to provide that DOPT's said O.M. should be given effect from 10.02.1995 instead of 02.07.1997;

[b] Law of the land laid down in Ajit Singh-II warrants modification of DOPT's O.M. dated 02.07.1997 to provide that any promotions made before 10.02.1995 in excess of any quota as per roster are to be treated as ad hoc;

[c] The directions given in Ajit Singh-II, if not complied with, would tantamount to contempt;

[d] Making post-based reservation rosters effective from a date earlier than 10.02.1995 on the ground that vacancy based reservation rosters could not determine as to whether reserved category officials were promoted as per their quota or in excess of quota, is not advised because that will disturb vested rights of various persons and lead to needless litigation.

6. In view of the judgement of the Supreme Court in Ajit Singh-II, and the opinion of the Learned Attorney General, DOPT's O.M. dated 02.07.1997 would have to be made effective from 10.02.1995. Promotions of employees belonging to Scheduled Castes/Scheduled Tribes made before 10.02.1995 by way of reservation, in excess of the quota determined by application of the principle of post based reservation would be treated as ad hoc. Such candidates will be treated to be appointed on a regular basis from the date on which they

get promotion against any future vacancy reserved for their category, or are promoted on the basis of their own merit, whichever is earlier.

7. Persons promoted in excess of the vacancies determined by post based rosters, after 10.02.1995 will have to be reverted. It will have adverse impact on some employees belonging to the Scheduled Castes and Scheduled Tribes but as advised by the Attorney General, the judgement of the Supreme Court would have to be implemented lest it should result into contempt of the Court. Orders may, therefore, be issued accordingly.

8. Views of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes, the Ministry of Law and Justice (Department of Legal Affairs) and the Ministry of Social Justice and Empowerment were called for on the above proposal. Views of the Commission / Ministries consulted and comments of the Department of Personnel and Training thereon are given in **Annexure-V**.

9. It is requested that comments of the National Commission on the above proposal may be sent to this Department at the earliest possible.

Encl:- **As above.**

Yours faithfully,



(K.G. Verma)

Director

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