

CHRONOLOGICAL COMPILATION OF THE CIRCULARS AND PRACTICE DIRECTIONS

(Volume III)

COMPILATION

SUBMITTED BY THE COMMITTEE FOR PREPARATION AND UPDATION
OF A REFERENCE BOOK CONTAINING A CHRONOLOGICAL
COMPILATION OF THE CIRCULARS AND PRACTICE DIRECTIONS ISSUED
BY THE HON'BLE HIGH COURT OF DELHI AND DELHI DISTRICT COURTS

UNDER THE DIRECTIONS AND GUIDANCE OF

SH. A. K. CHAWLA
DISTRICT & SESSIONS JUDGE (HQs), DELHI

&

Under the supervision of:

SH. VIRENDER KUMAR BANSAL, ASJ, DELHI

Committee Members:

SH. D. P. NIDARIA, SR. ADMINISTRATIVE OFFICER (JUDL.)

SH. JAI DEV KULESH, ADMINISTRATIVE OFFICER (JUDL.)

SH. DHARAM PAL GUPTA, ADMINISTRATIVE OFFICER (JUDL.)

**CHRONOLOGICAL
COMPILATION OF THE OFFICE
MEMORANDUMS AND
JUDGEMENTS**

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WRITING OF ACR

CONFIDENTIAL

(69)

No. 51/5/72 Ests. (A)
 Government of India/Dherat Sarker
 Cabinet Secretariat/Mandirmandal Sachivalaya
 Department of Personnel/Kermik Vibhag

New Delhi-1, the 20th May 1972.

OFFICE MEMORANDUM

Subject: Confidential Reports - preparation and maintenance of.

1.1 The undersigned is directed to state that a need has been felt for some time past of consolidating at one place the instructions issued from time to time and still in force on the subject of preparation and maintenance of confidential reports, communication of adverse remarks, etc. Accordingly it has been decided to bring out the salient features of the existing instructions on the subject in this Office Memorandum which may please be brought to the notice of all administrative authorities in or under the Ministry of Finance, etc. for information, guidance and compliance.

Importance of annual confidential reports.

2.1 Since Government have accepted the principle that confirmation, crossing of efficiency bar, promotion, grant of pensionary benefits, etc. should be based on the assessment of the confidential dossiers, this matter is of the greatest importance for the efficiency and the morals of the services. It is in the interest of Government no less than that of the employees that the value of a proper system of confidential reports is recognized by all concerned.

Responsibility for the maintenance of confidential reports

3.1 The head of every department/office should regard it as his personal and special responsibility to ensure that annual confidential reports are properly maintained in respect of all persons working under his direct or ultimate control.

3.2 In the case of Central Government officers who are deputed to other Departments/State Governments or are on foreign service the confidential files should be maintained by their parent Departments and the periodicity of such confidential reports should be the same as in the parent Department. It will be the responsibility of the parent Department to obtain the reports of their officers on deputation and maintain them.

3.3 Officers writing the confidential reports should have carefully observed the work and conduct of those under their control, and have provided the required training and guidance where necessary. The annual confidential reports as well as the periodical inspections.

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Custody of confidential reports:

- 4.1. The confidential reports on officers of the organized services should, as hitherto, be kept by the Ministry/Department/Office which controls the service.
- 4.2. The reports of the heads of Departments and their deputies, other than those in the IAAS, where such reports are kept by the Comptroller and Auditor General should be kept by the Administrative Ministry concerned.
- 4.3. The reports on other Class I and Class II officers should be kept by the head of the Department or any other authority specified by him.
- 4.4. The reports on Class III and Class IV employees should be kept by the authority specified by the head of the Department.
- 4.5. The reports should not in any case be kept by an authority higher than the appointing authority.

Form and content of confidential reports:

- 5.1. The form in which the confidential reports are recorded might vary from Department to Department and as between different levels of responsibility within a departmental hierarchy, depending upon the nature of work and duties attached to various posts. However, an assessment of certain qualities of general importance such as integrity, intelligence, honesty, industry, tact, attitude to superiors and subordinates, relations with fellow employees, etc., should invariably find place in the report. In addition to the detailed assessment of specific attributes, every confidential report should carry a general appreciation of the character, conduct and aptitudes and shortcomings of the officer reporting upon. Reference to a specific incidents may be made, if at all, only by way of illustration to support adverse comments of a general nature, e.g. inefficiency, dilatoriness, lack of initiative or judgement, etc.
- 5.2. The procedure for filling up the column relating to integrity is as follows:

- (a) Supervisory officers should maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and action to verify the truth of such suspicions should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the annual confidential report, this diary should be consulted and the material in it utilised for filling the column about integrity, if the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following instructions:

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- (b) The column pertaining to integrity in the character roll should be left blank and a separate Secret note about the doubts and suspicions regarding the officer's followed up.
- (c) A copy of the secret note should be sent together with the character roll to the next superior officer who should ensure that the follow-up action is taken with due expedition.
- (d) If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry made in the character roll. If suspicions regarding his integrity are confirmed, this fact can also be recorded and duly communicated to the officer concerned.
- (e) There are occasions when a reporting officer cannot in fairness to himself and to the officer reported upon, either certify integrity or make an adverse entry; or even be in possession of any information which would enable him to make a secret report to the Head of the Deptt. Such instances can occur when an officer is serving in a remote station and the reporting officer has not had occasion to watch his work closely or when an officer has worked under the reporting officer only for a brief period or or has been on leave, etc. In all such cases, the reporting officer should make an entry in the integrity column to the effect that he has not watched the officer's work for sufficient time to be able to make any definite remark or that he has heard nothing against the officer's integrity as the case may be. This would be a factual statement to which there can be no objection. But it is necessary that a superior officer should make every effort to form a definite judgement about the integrity of those working under him, as early as possible, so that he may be able to make a positive statement.
- (f) There may be cases in which after a secret report/note has been recorded expressing suspicion about an officer's integrity, the inquiries that follow do not disclose sufficient material to remove the suspicion or to confirm it. In such a case the officer's conduct should be watched for a further period, and, in the meantime, he should, as far as practicable, be kept away from positions in which there are opportunities for indulging in corrupt practices.

3.3 Specific mention should be made in the confidential reports on officers working in or holding charge of Top Secret/Secret Sections about their trustworthiness especially in matter affecting departmental security

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MHA OM
b.51/14/
O-Ests.
A) dt.
9.1.62)

5.4 With respect to officers who have undergone any training in approved or at institutions in India or abroad the following procedure should be adopted:-

- (i) Whenever an officer attends an approved course* of study or training the fact of his having done so should be entered in his confidential report.
- (ii) The report, if any, received from the head of the institution should either be placed in original in the confidential dossier of the officer or the substance of it entered therein.
- (iii) An entry about the 'report', if any, submitted by the officer on his work abroad should also find mention in his confidential report if it is either outstandingly good or of poor quality indicating that the officer had not made good use of his period of study or training.

MHA OM
.51/14/
-Ests.
) dt.
.10.61)

Period and Frequency of reporting:

6.1 In every Department confidential reports should be recorded annually preferably for the period covered by the financial year.

6.2 There is no objection to two or more independent reports being written for the same year by different reporting officers in the event of a change in the reporting officer during the course of a year provided that no report should be written unless a reporting officer has at least three months' experience on which to base his report. In such cases, each report should indicate precisely the period to which it relates and the reports for the earlier part or parts of the year should be written at the time of the transfer or immediately thereafter and not deferred till the end of the year. The responsibility for obtaining confidential reports in such cases should be that of the head of the Department or the office.

HA OM
.51/14/
-Ests.
) dt.
.10.61)

Objectivity in confidential reports:

7.1 In order to minimise the operation of the subjective human element and of conscious or unconscious bias, the confidential report of every employee should contain the assessments of more than one officer except in cases where there is only one supervisory level above the officer reported upon. The confidential report should be written by the immediate superior and should be submitted by the reporting officer to his own superior.

HA OM
51/14/
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10.61)

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*Approved courses of training include courses sponsored by the Government, financed wholly or partly by Government attended with the permission of Government, or for which Government grant study leave.

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7.2 While it might be difficult for the higher officer to get to know a large number of employees two grades below him his overall assessment of the character, performance and ability of the reported officer is vitally necessary as a built-in corrective. The judgement of the immediate superior, even though completely fair in its intent might sometimes be too narrow and subjective to do justice to the officer reported upon. The officer superior to the reporting officer should, therefore, consider it his duty to personally know and form his own judgement of the work and conduct of the officer reported upon. He should accordingly exercise positive and independent judgement on the remarks of the reporting officer under the various detailed headings in the form of the report of well as on the general assessment, and express clearly his agreement or disagreement with those remarks. This is particularly necessary in regard to adverse remarks (if any) where the opinion of the higher officer shall be construed as the correct assessment.

7.3 The reviewing officer is free to make his remarks on points not mentioned by the reporting officer. Such additional remarks would, in fact, be necessary where the report is too brief, vague or cryptic.

Communication of adverse remarks:

8.1 It is necessary that every employee should know what his defects are and how he could remove them. Past experience suggests that it would make for better efficiency and contentment of the public services if every reporting officer realizes that it is his duty not only to make an objective assessment of his subordinate's work and qualities but also to give him at all times the necessary advice, guidance and assistance to correct his faults and deficiencies. If this part of the reporting officer's duty is properly performed, there should be no difficulty about recording adverse entries which would only refer to defects which had persisted despite the reporting officer's efforts to have them corrected.

8.2 All adverse entries in the confidential reports of the officers should be communicated by the Reviewing Officer after they have been seen by the countersigning authority, if any. This should be done as far as possible within one month of the completion of the report. The communication should be in writing and a record to that effect should be kept in the confidential roll of the officer. Where there is no reviewing officer, the adverse entry will be communicated by the reporting officer likewise.

8.3 The authority in whose custody the character rolls of officers in a service/post are maintained will

- (a) ensure that the annual confidential reports of the officer in the service/post are received without undue delay;

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(b) Scrutinise the reports as soon as received to see whether the adverse remarks, if any, have been communicated to the officers concerned. If it is found that the adverse remarks have not been communicated in any case, he should return the incomplete report, bringing it to the notice of the head of the Department/Office where the officer was last working during the period under report, requesting for the early return of the report after due compliance.

(c) communicate to the officer concerned through the Ministry/Department/Office in which the officer is serving the full standards, if any, in relation to his past performance as revealed through his annual confidential reports, as required in the Ministry of Home Affairs Office Memorandum No. 51/3/53-Ests. (A) dated the 2nd March, 1968. (C)

HA OM 8.4 While mentioning any faults/defects, the reporting
.51/14/ officer should also give an indication to the efforts at
-Ests. reform made by him, by way of guidance, admonition, etc. and
) dt. the result of such efforts.

.10.61) 8.5 In communicating remarks to the officer reported upon, the following procedure should be adopted:

HA OM (a) Where no adverse entry is made in a confidential
.51/14/ report, nothing should be communicated except in
-Ests. cases dealt with in (c) below;

.10.61) (b) Where an adverse entry is made, whether it relates to a remediable or irreparable defect, (including a reference to the communication of a "warning" or "displeasure of the Government" or a "reprimand" it should be communicated under the orders of, and wherever possible, by an officer superior to the one to whom the remarks are communicated. In the case of an officer holding the post of Secretary to the Government of India (which term includes Additional Secretary and Special Secretary) such remarks will be communicated by the Cabinet Secretary. In all these cases, the substance of the entire report, including what may have been said in praise of the officer, should also be communicated; and

HA OM
.51/3/69-
ts.(A) dt.
.9.69)

HA OM No.
/4/66-Ests.
) dt.
12.66)

HA OM
.51/3/
Ests.
dt.
.68)

@ There may be cases, where though the remarks in the CR are not adverse in a strict or narrow sense, the effect of these remarks significantly on the service prospects of the officer or officers (e.g. fall in standards of the officer's performance as compared to his past performance). In such cases, the attention of the officer should be specifically drawn to that fact, so that he could be alerted for improving his performance.

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- (c) Where the report on an officer shows that he had made efforts to remedy or overcome defects mentioned in the preceding report, the fact should be communicated to the officer in a suitable form and a copy of such communication added to the confidential report.

The object of the second part of (b) and (c) is to let an officer know that his good qualities as well as his defects have been recognized and that notice has also been taken of the improvement, if any, made by him.

(MHA OM No.
51/2/64-Ests. (A)
(d) dt. 30.3.64)

While communicating the adverse remarks to the Government servant concerned, the identity of the superior officer making such remarks should not normally be disclosed. In, however, in a particular case it is considered necessary to disclose the identity of the superior officer, the authority dealing with the representation may at his discretion allow the identity to be communicated.

(MHA OM No.

1/3/65-Ests.

(A) dt.

20.2.67)

(MHA OM

No. 1/3/65-

Ests. (D)

dt. 20.2.67

& MHA OM

No. 51/3/69

Ests. (A)

dt. 27.9.69)

(MHA OM

No. 51/4/

60-Ests.

(A) dt.

31.10.61)

(MHA OM

No. 51/14/

50-Ests.

(A) dt.

31.10.61)

Representations against adverse remarks:

- 9.1 The adverse remarks should be communicated expeditiously in all cases.

9.2 Representations against adverse entries (including reference to 'warnings' or 'communications' of the displeasure of the Government or 'reprimands' which are recorded in the confidential report of the Government servant) should be made within six weeks of the date of communication of such remarks. While communicating the adverse remarks to the Government servant concerned, the time limit as stated above, should be brought to his notice.

9.3 The competent authority may, at its discretion entertain a representation made beyond the time specified above, if there is satisfactory explanation for the delay.

9.4 All representations against adverse entries should be decided expeditiously by the competent authority and in any case not later than six weeks from the date of submission of the representation.

9.5 The following procedure may be adopted in dealing with representations from Government servants against adverse remarks communicated to them:

- (1) All representations against adverse remarks should be examined by an authority superior to the reporting officer, in consultation, if necessary, with the reporting and the reviewing officers. The said superior authority shall be regarded as the competent authority to deal with such representations;

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- (11) If the competent authority finds that -
- (a) the remarks justified and the representation is frivolous, a note will be made in the confidential report of the Government servant that he did not take the correction in good spirit;
 - (b) there is not sufficient ground for interference, the representation should be rejected and the officer informed accordingly;
 - (c) the remarks should be toned down, he will make the necessary entry separately, with proper attestation, at the appropriate place of the report (on no account will corrections be made therein the earlier entries themselves); and
 - (d) the adverse remarks was inspired by malice or is entirely incorrect or unfounded, and therefore, deserve expunction, he should score through the remarks, paste it over, or otherwise obliterate it, and also make a dated entry, under his signature, stating that he has done so, under intimation to the concerned head of the Department or office if he himself does not occupy that position.

(111) Representations (including explanation) submitted in respect of adverse entries should not be appended to the respective confidential reports. If the representation was well founded, it would have resulted in the competent authority toning down or expunging the adverse remarks; if on the other hand, the representation was without substance, it would have been rejected. In any case, no useful purpose would be served by attaching the representation to the confidential report.

9.6 Representations against a "warning" or communication of the displeasure of the Government" or reprimand" recorded in the confidential report of the Government servant, should be dealt with in accordance with the above procedure unless:

- (a) an opportunity had already been given to the officer concerned to make a presentation in the matter relating to the relevant incident or fault and such representation had been duly considered and a decision taken before the "warning" or "reprimand" was administered or the "displeasure of the Government" communicated to him; or
- (b) where the "warning", "reprimand" etc. had been administered as a result to disciplinary proceedings.

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Confidential reports on retired and deceased officers and their disposal:

(MHA OM No. 51/14/60-Ests. (A) dt. 31.10.61) 10.1 Confidential reports or copies thereof should not be given to a retired officer or any body who has otherwise relinquished Government service. However, on request from such a person, there should be no objection to the issue of an objective testimonial based on his work and conduct.

10.2 Confidential reports relating to a deceased officer may be destroyed after a period of two years from the date of his death and that of a retired Government servant, five years after his date of retirement.

Confidential reports on honorary or part-time officers:

(MHA OM No. 51/14/60-Ests. (A) dt. 31.10.61) 11.1 Confidential report need not be written for honorary or part-time officers.

Forwarding of confidential reports on Government servants to private or semi-Government or autonomous bodies:

(MHA OM No. 51/14/60-Ests. (A) dt. 31.10.61) 12.1 Copies of confidential reports on Government servants or even the substance of such reports should not be sent to private bodies, in connection with appointment to posts advertised by them for other purposes.

12.2 If a request is received from a public or semi-autonomous body controlled by Government only a gist of the relevant reports may normally be supplied. There may, however, be cases in which it is in Government's own interest that the management of a corporate public enterprise should see the confidential report(s) in full. In such cases the reports may be shown under the orders of the head of the Department/Ministry concerned if the reports relate to a Class I or Class II officers.

Propriety of issue of letters of appreciation or notes of commendation to Government servants:

(MHA OM No. 51/14/60-Ests. (A) dt. 31.10.61) 13.1 The general policy should be to discourage the practice of granting letter of appreciation or notes of commendation to Government servants and placing them in the confidential reports. Exceptions, may, however, be made in the following cases:

- ✓ (i) Letters of appreciation issued by the Government or a Secretary or Head of Department in respect of any outstanding work done should go into the confidential report dossier.
- ✓ (ii) Letters of appreciation issued by special bodies or commissions or committees, etc. or excerpts of their reports expressing appreciation for a Government servant by name should only go into the Confidential Report Dossier, and

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- (iii) Letters of appreciation from individual non-officials or from individual officials (other than a Secretary or Head of Department) may go into the confidential report if confined to expressing appreciation for services rendered far beyond the normal call of duty, and provided the Secretary or the Head of the Department so directs.

13.2 Appreciation of work should more appropriately be recorded in the annual confidential report rather than in such letters of appreciation which do not give a complete perspective of the employee's good and bad points. However, the mere fact that a stray letter of appreciation goes into his confidential report does not give the officer undue advantage in the matter of promotion which is governed more by consideration of general and consistently high performance than by occasional flashes of good work.

Scrutiny of confidential reports:

14.1 The Establishment or Personnel branches of the Ministries/Departments concerned should scrutinise the annual confidential reports relating to the services and staff under their control, to see whether they have been written in accordance with these instructions, and whether adverse remarks, if any, have been communicated to the officers concerned. If there is any defect in a report, it should be returned to the reviewing officer concerned for rectification.

15.1 It is requested that these instructions may be brought to the notice of all concerned for favour of strict compliance.

sd/-

(S. KRISHNAN)

DEPUTY SECRETARY TO THE GOVT. OF INDIA

(61)

No. 21011/02/98-Estt.(A)
Government of India
Ministry of Personnel, Pub. Grievances & Pensions
(Department of Personnel & Training)
.....

New Delhi, the 20th April, 1998

OFFICE MEMORANDUM

Sub:- Timely completion of Annual Confidential Reports.
.....

The undersigned is directed to refer to the instructions contained in this Ministry's OM No. 35014/4/93-Estt.(A) dated 23.9.85 on the subject noted above and to say that according to the prescribed time schedule, the Annual Confidential Reports (ACRs) should be completed by the 5th June, in respect of a financial year.

2. A case has come to the notice of this Ministry where ACRs of some of the officers were not available for four years, out of the assessment period of five years, the reason being that reporting / reviewing officers had retired from service. As a result, the Union Public Service Commission (UPSC) had to recommend officers for promotion to the next higher grade on the basis of available ACRs of the preceding years. This led to a situation where the Departmental Promotion Committee (DPC) had to assess ACRs for the periods which were the basis of promotion of officers to the post presently held by them.

3. The case cited in the preceding paragraph has arisen because of non-adherence to the instructions about timely completion of Annual Confidential Reports. Non-availability of ACRs for abnormally long periods could affect just and fair selection by the Departmental Promotion Committees and the UPSC.

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4. It is requested that the instructions contained in this Ministry's OM dated 23.9.85 should be carefully observed for ensuring availability of ACRs for just and fair selections.

5. Hindi version will follow.

21st Nov 85
(Harinder Singh)

Joint Secretary to the Government of India
Tel.No. 301 1276

To

1. All Ministries / Departments of the Government of India.
2. All Officers / Sections in DOPT.
3. Secretary, Union Public Service Commission with reference to their letter No. 10/3/98-AU (C) dated 30.3.98.
4. 50 spare copies.

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NO. 21011/6/2001-Estt(A)
Government of India
Ministry of Personnel Public Grievances and Pensions
Department of Personnel and Training

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New Delhi, the 14th May, 2001

OFFICE - MEMORANDUM

Subject:- Retention / custody of C.R. dossiers of Retired Govt. Servants whose cases are pending in courts and with UPSC.

The undersigned is directed to refer to the MHA's O.M. No. 51/14/60-ESTS (A) dated 21.10.61 and this Department's OM No. 51/5/72-Estt(A) dated 20.5.1972 which provide that Annual Confidential Reports of retired Government servants may be retained for a period of five years after the date of retirement.

2. Since, a lot of problems were being faced in the absence of the Annual Confidential Reports, when the proposals by the Ministries/Departments were sent to the Union Public Service Commission for consideration of their promotion after the retirement of the officers whose cases are pending in courts. Therefore, the existing system of retention of ACR dossiers of Government servants has been revised by this Department as per recommendation of Union Public Service Commission.

3. Accordingly, it has been decided that the Annual Confidential Reports of the officers who have retired will be preserved/ kept in safe custody till the time for filing of an appeal, has lapsed or till a final decision in the appeal, filed by an officer in the court, has been taken or the promotion case of the officer is pending with UPSC.

Cont...2/-

4. All the Ministries/Departments are requested to bring this into the notice of all concerned for information and necessary action.

5. This issues with the approval of Joint Secretary (E), Department of Personnel and Training.

(SAHADEO RAM)
DEPUTY SECRETARY TO THE GOVT. OF INDIA
Tel. 3017338

To,

All Ministries/Departments of Govt. of India with usual number of spare copies.

No.21011/6/2001-Estt.(A)

Dated the 14th May, 2001

Copy with usual number of spare copies for information to :-

1. The Comptroller & Auditor General of India.
2. The Central Vigilance Commission.
3. The Union Public Service Commission.
4. Lok Sabha/ Rajya Sabha Sectt.
5. The Commissioner of Linguistic Minorities, Allahabad.
6. All attached and subordinate officers of MHA & DOP&T.
7. All administrative Sections in DOP&T

(SAHADEO RAM)
DEPUTY SECRETARY TO THE GOVT. OF INDIA

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No.43011/10/2002-Estt.(Res.)
 Government of India
 Ministry of Personnel, Public Grievances and Pensions
 Department of Personnel and Training

North Block, New Delhi.
 Dated: 19th December, 2003.

OFFICE MEMORANDUM

Subject: Annual Reports regarding representation of SCs, STs and OBCs in the Central Government Services.

The undersigned is directed to say that each Appointing Authority is required to send several reports and returns in respect of Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) to the Ministry/Department concerned and Ministries/Departments in turn are required to send consolidated reports and returns to this Department. These reports and returns have been reviewed in the light of para 125 of the Central Secretariat Manual of Office Procedure and it has been decided to discontinue all of them and to prescribe two annual reports namely SC/ST/OBC Report-I and SC/ST/OBC Report-II in place thereof.

2. Soon after the first of January of every year, each Appointing Authority shall send to the Ministry/Department concerned:-

(i) SC/ST/OBC Report-I in the enclosed proforma showing the total number of Government servants and the number of SCs, STs and OBCs amongst them as on the 1st January of the year and the number of appointments made during the preceding calendar year alongwith the number of SCs, STs and OBCs amongst them.

(ii) SC/ST/OBC Report-II in the enclosed proforma showing the representation of SCs, STs and OBCs in various grades of organised Group 'A' services as on the 1st January of the year and the particulars of recruitment to the various grades during the preceding calendar year in the service.

3. Each Ministry/Department shall consolidate the information received from all Appointing Authorities under it and shall send to the Department of Personnel and Training by the 31st March of each year:-

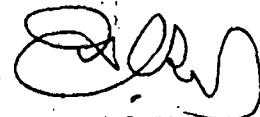
(i) Consolidated SC/ST/OBC Report-I in respect of the Ministry/Department including information in respect of all Attached and Subordinate Offices under its control.

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(v) Figures in respect of Scheduled Castes, Scheduled Tribes and Other Backward Classes should include persons appointed by reservation as well as appointed on their own merit.

(vi) Attached/Subordinate Offices should not send information direct to this Department. They should send it to their administrative Ministry/Department.

(vii) Ministries/Departments should not send partial or incomplete information to the DOPT and should send consolidated information in respect of entire Ministry/Department including information from all Attached and Subordinate Offices at one go.



(K.G. Verma)

Deputy Secretary to the Government of India
Tele: 23092797

To

1. All Ministries/Departments of the Government of India.
2. Department of Economic Affairs (Banking Division), New Delhi.
3. Department of Economic Affairs (Insurance Division), New Delhi.
4. Department of Public Enterprises, New Delhi.
5. Railway Board.
6. 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.
7. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
8. Ministry of Social Justice and Empowerment, Shastri Bhavan, New Delhi.
9. National Commission for SCs and STs, Lok Nayak Bhavan, New Delhi.
10. National Commission for Backward Classes, Trikot-I, Bhikaji Cama Place, R.K. Puram, New Delhi.
11. Information and Facilitation Centre, DOPT, North Block, New Delhi.

SC/ST/OBC REPORT-II

ANNUAL STATEMENT SHOWING THE REPRESENTATION OF SCs, STs AND OBCs IN VARIOUS GOUP 'A' SERVICES AS ON FIRST JANUARY OF THE YEAR AND NUMBER OF APPOINTMENTS MADE IN THE SERVICE IN VARIOUS GRADs IN THE PRECEDING CALENDAR YEAR

MINISTRY/DEPARTMENT/ATTACHED/SUBORDINATE OFFICE:

SERVICE:

Pay Scale (in rupees)	Representation of SCs/STs/OBCs (As on 1-1-2004)				Number of appointments made during the calendar year 2003									
	Total number of Employees	SCs	STs	OBCs	By Direct Recruitment				By Promotion			By Other Methods		
					Total	SCs	STs	OBCs	Total	SCs	STs	Total	SCs	STs
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
8000-13500														
10000-15200														
12000-16500														
14300-18300														
16400-20000														
18400-22400														
22400-24500 & above														
TOTAL														

NOTE: If scales of pay in any service are different, applicable scales in the service may be indicated in Column 1.

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7631 OF 2002

Dev Dutt

Appellant

-vs-

Union of India & Ors.
Respondents

JUDGMENT

Markandey Katju, J.

JUDIS

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1. This appeal by special leave has been filed against the impugned judgment of the Gauhati High Court dated 26.11.2001 in Writ Appeal No. 447 of 2001. By the aforesaid judgment the Division Bench of the Gauhati High Court dismissed the Writ Appeal of the appellant filed against the judgment of the Learned Single Judge dated 21.8.2001.
2. Heard learned counsel for the parties and perused the record.
3. The appellant was in the service of the Border Roads Engineering Service which is governed by the Border Roads Engineering Service Group 'A' Rules, as amended. As per these rules, since the appellant was promoted as Executive Engineer on 22.2.1988, he was eligible to be considered for promotion to the post of Superintending Engineer on completion of 5 years on the grade of Executive Engineer, which he completed on 21.2.1993. Accordingly the name of the appellant was included in the list of candidates eligible for promotion.
4. The Departmental Promotion Committee (DPC) held its meeting on 16.12.1994. In that meeting the appellant was not held to be eligible for promotion, but his juniors were selected and promoted to the rank of Superintending Engineer. Hence the appellant filed a Writ Petition before

the Gauhati High Court which was dismissed and his appeal before the Division Bench also failed. Aggrieved, this appeal has been filed by special leave before this Court.

5. The stand of the respondent was that according to para 6.3(ii) of the guidelines for promotion of departmental candidates which was issued by the Government of India, Ministry of Public Grievances and Pension, vide Office Memorandum dated 10.4.1989, for promotion to all posts which are in the pay scale of Rs.3700-5000/- and above, the bench mark grade should be 'very good' for the last five years before the D.P.C.. In other words, only those candidates who had 'very good' entries in their Annual Confidential Reports (ACRs) for the last five years would be considered for promotion. The post of Superintending Engineer carries the pay scale of Rs.3700-5000/- and since the appellant did not have 'very good' entry but only 'good' entry for the year 1993-94, he was not considered for promotion to the post of Superintending Engineer.

6. The grievance of the appellant was that he was not communicated the 'good' entry for the year 1993-94. He submitted that had he been communicated that entry he would have had an opportunity of making a

representation for upgrading that entry from 'good' to 'very good', and if that representation was allowed he would have also become eligible for promotion. Hence he submits that the rules of natural justice have been violated.

7. In reply, learned counsel for the respondent submitted that a 'good' entry is not an adverse entry and it is only an adverse entry which has to be communicated to an employee. Hence he submitted that there was no illegality in not communicating the 'good' entry to the appellant.

8. Learned counsel for the respondent relied on a decision of this Court in Vijay Kumar vs. State of Maharashtra & Ors. 1988 (Supp) SCC 674 in which it was held that an un-communicated adverse report should not form the foundation to deny the benefits to a government servant when similar benefits are extended to his juniors. He also relied upon a decision of this Court in State of Gujarat & Anr. vs. Suryakant Chunilal Shah 1999 (1) SCC 529 in which it was held:

"Purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the

adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance".

On the strength of the above decisions learned counsel for the respondent submitted that only an adverse entry needs to be communicated to an employee.

9. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

10. In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry, because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good'

entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

11. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.

12. Learned counsel for the respondent submitted that under the Office Memorandum 21011/4/87 [Estt. 'A'] issued by the Ministry of Personnel/Public Grievance and Pensions dated 10/11/09.1987, only an adverse entry is to be communicated to the concerned employee. It is well settled that no rule or government instruction can violate Article 14 or any

other provision of the Constitution, as the Constitution is the highest law of the land. The aforesaid Office Memorandum, if it is interpreted to mean that only adverse entries are to be communicated to the concerned employee and not other entries, would in our opinion become arbitrary and hence illegal being violative of Article 14. All similar Rules/Government Orders/Office Memoranda, in respect of all services under the State, whether civil, judicial, police, or other service (except the military), will hence also be illegal and are therefore liable to be ignored.

13. It has been held in *Maneka Gandhi vs. Union of India & Anr.* AIR 1978 SC 597 that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the A.C.R. of a public servant is arbitrary because it deprives the concerned employee from making a representation against it and praying for its up-gradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits).

Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. vs. Yamuna Shankar Misra 1997 (4) SCC

7. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

14. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry.

15. In most services there is a gradation of entries, which is usually as follows:

- (i) Outstanding

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- (ii) Very Good
- (iii) Good
- (iv) Average
- (v) Fair
- (vi) Poor

A person getting any of the entries at items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the concerned authority.

16. If we hold that only 'poor' entry is to be communicated, the consequences may be that persons getting 'fair', 'average', 'good' or 'very good' entries will not be able to represent for its upgradation, and this may subsequently adversely affect their chances of promotion (or get some other benefit).

17. In our opinion if the Office Memorandum dated 10/11.09.1987, is interpreted to mean that only adverse entries (i.e. 'poor' entry) need to be communicated and not 'fair', 'average' or 'good' entries, it would become arbitrary (and hence illegal) since it may adversely affect the incumbent's chances of promotion, or get some other benefit.

18. For example, if the bench mark is that an incumbent must have 'very good' entries in the last five years, then if he has 'very good' (or even 'outstanding') entries for four years, a 'good' entry for only one year may yet make him ineligible for promotion. This 'good' entry may be due to the personal pique of his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or for some other extraneous consideration.

19. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka

Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.

20. Thus it is not only when there is a bench mark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder..

21. Learned counsel for the respondent has relied on the decision of this Court in U. P. Jal Nigam vs. Prabhat Chandra Jain AIR 1996 SC 1661. We have perused the said decision, which is cryptic and does not go into details. Moreover it has not noticed the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) which has held that all State action must be non-arbitrary, otherwise Article 14 of the Constitution will be violated. In our opinion the decision in U.P. Jal Nigam (supra) cannot be said to have laid down any legal principle that entries need not be communicated. As observed in Bharat Petroleum Corporation Ltd. vs. N.R. Vairamani AIR 2004-SC 4778 (vide para 9):

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"Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute, and that too, taken out of their context".

22. In U.P. Jal Nigam's case (supra) there is only a stray observation "if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading". There is no discussion about the question whether such 'good' grading can also have serious adverse consequences as it may virtually eliminate the chances of promotion of the incumbent if there is a benchmark requiring 'very good' entry. And even when there is no benchmark, such downgrading can have serious adverse effect on an incumbent's chances of promotion where comparative merit of several candidates is considered.

23. Learned counsel for the respondent also relied upon the decision of this Court in Union of India & Anr. vs. S. K. Goel & Ors. AIR 2007 SC 1199 and on the strength of the same submitted that only an adverse entry need be communicated to the incumbent. The aforesaid decision is a 2-Judge Bench decision and hence cannot prevail over the 7-Judge Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) in which it has been held that arbitrariness violates Article 14

(39)

of the Constitution. Since the aforesaid decision in Union of India vs. S.K. Goel (supra) has not considered the aforesaid Constitution Bench decision in Maneka Gandhi's case (supra), it cannot be said to have laid down the correct law. Moreover, this decision also cannot be treated as a Euclid's formula since there is no detailed discussion in it about the adverse consequences of non-communication of the entry, and the consequential denial of making a representation against it.

24. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

25. In the present case, the action of the respondents in not communicating the 'good' entry for the year 1993-94 to the appellant is in

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our opinion arbitrary and violative of natural justice, because in substance the 'good' entry operates as an adverse entry (for the reason given above).

26. What is natural justice? The rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible. They may, however, be summarized in one word : fairness. In other words, what they require is fairness by the authority concerned. Of course, what is fair would depend on the situation and the context.

27. Lord Esher M.R. in *Voinet vs. Barrett* (1885) 55 L.J. QB 39, 39 observed: "Natural justice is the natural sense of what is right and wrong."

28. In our opinion, our natural sense of what is right and wrong tells us that it was wrong on the part of the respondent in not communicating the 'good' entry to the appellant since he was thereby deprived of the right to make a representation against it, which if allowed would have entitled him to be considered for promotion to the post of Superintending Engineer. One may not have the right to promotion, but one has the right to be considered for promotion, and this right of the appellant was violated in the present case.

29. A large number of decisions of this Court have discussed the principles of natural justice and it is not necessary for us to go into all of them here. However, we may consider a few.

30. Thus, in A. K. Kraipak & Ors. vs. Union of India & Ors. AIR 1970 SC 150, a Constitution Bench of this Court held :

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice"

(emphasis supplied)

31. The aforesaid decision was followed by this Court in K. I. Shephard & Ors. vs. Union of India & Ors. AIR 1988 SC 686 (vide paras 12-15). It was held in this decision that even administrative acts have to be in accordance with natural justice if they have civil consequences. It was also held that natural justice has various facets and acting fairly is one of them.

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32. In Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant

AIR 2001 SC 24, this Court held (vide para 2):

The doctrine (natural justice) is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action".

(emphasis supplied)

33. In the same decision it was also held following the decision of

Tucker, LJ in Russell vs. Duke of Norfolk (1949) 1 All ER 109:

"The requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth".

34. In Union of India etc. vs. Tulsiram Patel etc. AIR 1985 SC 1416

(vide para 97) a Constitution Bench of this Court referred to with approval the following observations of Ormond, L.J. in Norwest Holst Ltd. vs. Secretary of State for Trade (1978) 1, Ch. 201 :

"The House of Lords and this court have repeatedly emphasized that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case".

(emphasis supplied)

Thus, it is well settled that the rules of natural justice are flexible. The question to be asked in every case to determine whether the rules of natural justice have been violated is : have the authorities acted fairly?

35. In Swadesh Cotton Mills etc. vs. Union of India etc. AIR 1981 SC 818, this Court following the decision in Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors. AIR 1978 SC 851 held that the soul of the rule (natural justice) is fair play in action.

36. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

37. Originally there were said to be only two principles of natural justice : (1) the rule against bias and (2) the right to be heard (audi alteram partem). However, subsequently, as noted in A.K. Kraipak's case (supra) and K.L. Shephard's case (supra), some more rules came to be added to the rules of

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natural justice, e.g. the requirement to give reasons vide S.N. Mukherji vs. Union of India AIR 1990 SC 1984. In Maneka Gandhi vs. Union of India (supra) (vide paragraphs 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

38. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of

the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in Union of India vs. Major Bahadur Singh 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector

corporations and other instrumentalities of the State (in addition to Government servants).

42. In *Canara Bank vs. V. K. Awasthy* 2005 (6) SCC 321, this Court held that the concept of natural justice has undergone a great deal of change in recent years. As observed in para 8 of the said judgment:

"Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values".

43. In para 12 of the said judgment it was observed:

"What is meant by the term 'principles of natural justice' is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *R. v. Local Govt. Board* (1914) 1 KB 160:83 LJKB 86 described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. v. Spackman* (1943) AC 627: (1943) 2 All ER 337, Lord Wright observed that it was not desirable to attempt 'to force it into any Procrustean bed'".

44. In *State of Maharashtra vs. Public Concern for Governance Trust & Ors.* 2007 (3) SCC 587, it was observed (vide para 39):

"In our opinion, when an authority takes a decision which may have civil consequences and affects the rights

of a person, the principles of natural justice would at once come into play".

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

46. In view of the above, we are of the opinion that both the learned Single Judge as well as the learned Division Bench erred in law. Hence, we set aside the judgment of the Learned Single Judge as well as the impugned judgment of the learned Division Bench.

47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the

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appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

49. With these observations this appeal is allowed. No costs.

.....J.
(H. K. Sema)

.....J.
(Markandey Katju)

New Delhi;
May 12, 2008

JUDIS

(11)

No. 21011/1/2005-Estt (A) (Pt-II)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi, 14th May, 2009

OFFICE MEMORANDUM

Subject:- Maintenance and preparation of Annual Performance Appraisal Reports-
communication of all entries for fairness and transparency in public
administration.

The undersigned is directed to invite the attention of the Ministries/Departments to the existing provisions in regard to preparation and maintenance of Annual Confidential Reports which inter-alia provide that only adverse remarks should be communicated to the officer reported upon for representation, if any. The Supreme Court has held in their judgement dated 12.5.2008 in the case of Dev Dutt vs Union of India (Civil Appeal No.7631 of 2002) that the object of writing the confidential report and making entries is to give an opportunity to the public servant to improve the performance. The 2nd Administrative Reforms Commission in their 10th Report has also recommended that the performance appraisal system for all services be made more consultative and transparent on the lines of the PAR of the All India Services.

2. Keeping in view the above position, the matter regarding communication of entries in the ACRs in the case of civil services under the Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government:-

- (i) The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR).
- (ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment.
- (iii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.
- (iv) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.

- (v) The new system of communicating the entries in the APAR shall be made applicable prospectively only with effect from the reporting period 2008-09 which is to be initiated after 1st April 2009.
- (vi) The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation.
- (vii) The competent authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the competent authority and the final grading shall be communicated to the officer reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section.
3. All Ministries/Departments are requested to bring to the notice of all the offices under them for strict implementation of the above instructions.



(C.A. Subramanian)

Director

To

All Ministries/Departments of Government of India

Copy to:-

1. Chief Secretaries of All State Governments/U.T.s
2. The President's Secretariat, New Delhi.
3. The Prime Minister's Office, New Delhi.
4. The Cabinet Secretariat, New Delhi.
5. The Rajya Sabha Secretariat.
6. The Lok Sabha Secretariat.
7. The Comptroller and Auditor General of India, New Delhi.
8. The Union Public Service Commission, New Delhi.

Copy also to:-

- (a) All Attached offices under the Ministry of Personnel, Public Grievances and Pensions.
- (b) Establishment Officer and Secretary, ACC (10 copies).
- (c) All officers and Sections in the Department of Personnel and Training.
- (d) Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi.
- (e) All Staff Members of Departmental Council (JCM).
- (f) All Staff members of the Departmental Council (JCM), Ministry of Personnel, Public Grievances and Pensions.
- (g) NIC (DoP&T) for placing the Office Memorandum on the web-site of DoP&T.
- (h) Hindi Section for Hindi version of the O.M.

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.05.2012

+ W.P.(C) 5042/2002

UOI & ANR

... Petitioner

versus

V. S. ARORA & ORS

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Ravinder Agarwal with Mr Amit Yadav
 For the Respondent : Mr Abhay S. Kushwaha with Ms Vandana Sharma and
 Mr Abhigya.

AND

+ W.P.(C) 606/2012

UNION OF INDIA AND ANR

... Petitioner

versus

GOVIND JHA AND ANR

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajesh Katyal
 For the Respondent No.1 : Mr Govind Jha -in-person
 For the Respondent No.2 : Mr Naresh Kaushik with Ms Amita Kalkal Chaudhary
 and Mr Aditya Sharda

AND

+ W.P.(C) 3298/2011

UNION OF INDIA AND ANR

... Petitioner

(91)

versus

R N KURMI & ORS

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr R. V. Sinha with Mr R. N. Singh and Mr A. S. Singh
 For the Respondent No.1 : Ms Jyoti Singh, Sr Advocate with Ms Tina Bajwa and Ms Sahila Lamba
 For the Respondent No.2 : Mr Naresh Kaushik with Ms Amita Kalkal Chaudhary and Mr Aditya Sharda

AND**+ W.P.(C) 3300/2011****UNION OF INDIA AND ANR**

... Petitioner

versus

A K VERMA & ORS

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr R. V. Sinha with Mr R. N. Singh and Mr A. S. Singh
 For the Respondent No.1 : Mr O. P. Kalshian

CORAM:-**HON'BLE MR JUSTICE BADAR DURREZ AHMED****HON'BLE MR JUSTICE V.K. JAIN****JUDGMENT****BADAR DURREZ AHMED, J (ORAL)**

1. These writ petitions raise a common issue of law and, therefore, they are being disposed of together. The issue before this Court in these writ petitions is with regard to the below benchmark ACRs (Annual Confidential Reports) which were not communicated to the employees.

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The question is whether when the DPC meets, what does it have to do with regard to these below benchmark non-communicated ACRs? Does it ignore those ACRs or is it the requirement of law that the ACRs should be communicated to the concerned employees even at that stage and that they be given an opportunity to move representations against the same and after the representations are disposed of, the DPC should be re-convened to consider the case of the employees for promotion?

2. A series of decisions have been referred to by the learned counsel appearing on both sides. The learned counsel appearing for the petitioners had a twofold contention. In the first place, they submitted that the decision in the case of Dev Dutt v. Union of India: (2008) 8 SCC 725 was in conflict with certain other decisions of the Supreme Court including that of Satya Narain Shukla v. Union of India: 2006 (5) SCALE 627 and K. M. Mishra v. Central Bank of India and Others: (2008) 9 SCC 120. It is for this reason that the Supreme Court itself, in the case of Union of India v. A. K. Goel: SLP (Civil) 15700/2009 by an order dated 29.03.2010, has referred the matter to a Larger Bench. A similar order of reference has been passed in Union of India v. Uttam Chand Nahta and Others: SLP

(Civil) No. 29515/2010 by an order dated 29.11.2010. Thus, according to the learned counsel for the petitioners, this Court should await the decision of the Larger Bench of the Supreme Court.

3. The second point that was urged on behalf of the petitioners was that the decision of the Supreme Court in the case of Abhijit Ghosh Dastidar v. Union of India (UOI) and Ors.: (2009) 16 SCC 146 has already been interpreted by a Division Bench of this Court in the case of UOI v. Krishna Mohan Dixit: WP(C) 6013/2010 and other connected matters decided on 08.08.2010. According to the petitioners, in the latter decision, a clear view has been taken that below benchmark ACRs, which have not been communicated, are not to be simply ignored. But, the employee concerned is to be given an opportunity of making a representation against the same after communication of the said below benchmark ACRs to him and it is thereafter that the DPC is to consider the case of such an employee. The learned counsel for the petitioners also submitted that another Division Bench of this Court in a batch of matters which included WP(C) 8841/2004 and other connected matters, applied the decision in Krishna Mohan Dixit (supra). Thus, according to them, till the Larger Bench decision comes, the

law, as interpreted by *Krishna Mohan Dixit (supra)*, would apply.

4. On the other hand, the respondents have submitted that starting from the decision of the Supreme Court in *Dev Dutt (supra)*, the principle has been that a below benchmark ACR, which is not communicated to the employee, cannot be considered by the DPC while examining his case for promotion. They submitted that in *Dev Dutt (supra)*, the solution provided was that the below benchmark ACRs ought to be communicated to the concerned employee at the stage of consideration by the DPC so that the employee has an opportunity to represent against the same. After the representation is disposed of, the DPC should re-convene and consider the case of the employee. The learned counsel for the respondents submitted that though this was the law, as laid down by the Supreme Court in *Dev Dutt (supra)*, the subsequent decision in *Abhijit Ghosh Dastidar (supra)*, which is a decision rendered by a Bench of three Hon'ble Judges of the Supreme Court, took the matter further. The Supreme Court in *Abhijit Ghosh Dastidar (supra)*, affirmed the view taken by *Dev Dutt (supra)* to the extent that a below benchmark ACR, if not communicated, cannot be considered by the DPC. However, the Supreme Court in *Abhijit Ghosh*

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Dastidar (supra), further directed that such ACRs should not be considered. Therefore, according to the respondents, the question of communicating the below benchmark ACRs at the stage of the consideration by the DPC, does not at all arise and all that needs to be done is that the below benchmark ACRs ought to be ignored from the purview of consideration.

5. The learned counsel for the respondents further submitted that the view in *Abhijit Ghosh Dastidar (supra)* has been affirmed and followed in subsequent decisions of the Supreme Court, which includes the decision in the case of Union of India v. J. S. Garg: Civil Appeal No. 5319/2003, decided on 24.11.2009 and Union of India v. Ranjana Kale: SLP (C) No. 29929/2010 decided on 29.11.2010 as also in the case of Union of India v. N.K. Bhola: Civil Appeal No. 6937/2011 decided on 16.03.2012.

6. The learned counsel for the respondents also pointed out that, in fact, even the Union of India has understood the decision in *Abhijit Ghosh Dastidar (supra)* to mean that the below benchmark ACRs ought to be ignored. According to them, this is amply displayed by the fact that in Union of India and Anr. v. Sunil Mathur : SLP (C) No. 7623/2011, the

learned Additional Solicitor General appearing for the Union of India stated that in view of the judgment of the Supreme Court in *Abhijit Ghosh Dastidar (supra)*, they may be permitted to withdraw the Special Leave Petition and the Supreme Court permitted such withdrawal. The said order was passed in *Sunil Mathur (supra)* on 24.01.2012.

7. It was, therefore, contended by the learned counsel for the respondents that the decision of this court in *K. M. Dixit (supra)*, interpreting the Supreme Court decision in *Abhijit Ghosh Dastidar (supra)*, would no longer hold good in view of the fact that subsequently the Supreme Court in the case of *Sunil Mathur (supra)* as also in the case of *N. K. Bhola (supra)*, have accepted and applied the view taken by the Supreme Court in *Abhijit Ghosh Dastidar (supra)* of ignoring the below benchmark ACRs.

8. In order to consider the rival contentions, it would be necessary for us to trace the chronology of decisions on the subject. The first decision that we need to refer to is that of *Satya Narain Shukla (supra)*, wherein the Supreme Court observed as under:

“The appellant also argued that the remarks made in the ACR were not communicated to him. It was also urged by the appellant that this Court should direct the authorities to

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streamline the whole procedure so that even remarks like 'good' or 'very good' made in ACRs should be made compulsorily communicable to the officers concerned so that an officer may not lose his chance of empanelment at a subsequent point of his service. In our view, it is not our function to issue such directions. It is for the Government to consider how to streamline the procedure for selection. We can only examine if the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and *mala fides*."

9. A plain reading of the above extracted portion of the said decision indicates that the appellant before the Supreme Court had sought a direction from the Court that the authorities be asked to streamline the entire procedure so that even remarks like "good" or "very good" made in the ACRs, should be made compulsorily communicable to the officers concerned so that the officer may not lose his chances of empanelment at a subsequent point of his service. The Supreme Court, of course, declined to give such a direction. But, at the same time, it also observed that the Court can only examine if the procedure for selection, as adopted by the Government, was unconstitutional or otherwise illegal or vitiated by arbitrariness and *mala fides*. In other words, the Supreme Court in *Satya Narain Shukla (supra)*, while it refused to give any direction to the

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concerned authorities to streamline and /or adopt a particular procedure, it also kept the issue alive by observing that where the constitutionality of the procedure for selection was found to be illegal or vitiated by arbitrariness and or *mala fides*, the courts would step in.

10. This is exactly what has been done in *Dev Dutt (supra)*. There, the Supreme Court examined the constitutionality of the procedure of not communicating the below benchmark ACRs. The Supreme Court found that such a step meant that it would violate the principles of natural justice and would also be arbitrary and, therefore, would be contrary to Article 14 of the Constitution of India. Therefore, the Supreme Court came to the conclusion that below benchmark ACRs have to be communicated to the concerned officer/employee. The exact words used by the Supreme Court in this connection are as under:-

"14. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered

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for promotion (or some other benefit) a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry.

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39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

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45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

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47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest."

11. Thereafter, the decision in the case of *K. M. Mishra (supra)*, decided on 16.09.2008 needs to be considered. Here, the Supreme Court, while it referred to its earlier decision in *Satya Narain Shukla (supra)*, it appears that the decision in *Dev Dutt (supra)* had not been brought to the notice of the Supreme Court, while it was considering the case of *K. M. Mishra (supra)*. However, the Supreme Court, following *Satya Narain Shukla (supra)*, made the following observations:-

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"17. Mr. Srivastava then submitted that in the preceding years the appellant had 'Excellent' ratings and in the year 1995 he had 'Very Good'. The rating 'Good' for the year 1996-97 was thus a climb down and it was incumbent upon the authorities to intimate the appellant about his ratings for the two years in question. Since no intimation was given to the appellant the ratings for those two years should not have been taken into account and instead the ratings for the earlier years should have been considered for the purpose of promotion. We are unable to accept the submission. In *Satya Narain Shukla v. Union of India and Ors.*: (2006) 9 SCC 69 it was held and observed as follows:

"29. The appellant also argued that the remarks made in the ACR were not communicated to him. It was also urged by the appellant that this Court should direct the authorities to streamline the whole procedure so that even remarks like "good" or "very good" made in ACRs should be made compulsorily communicable to the officers concerned so that an officer may not lose his chance of empanelment at a subsequent point of his service. In our view, it is not our function to issue such directions. It is for the Government to consider how to streamline the procedure for selection. We can only examine if the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and *mala fides*."

12. This takes us to consider the next decision and that is in the case of *Abhijit Ghosh Dastidar (supra)*. We may point out straightaway that in the series of decisions referred to by the counsel on both sides this is the only decision which has been rendered by a Bench of three Hon'ble Judges of the Supreme Court. All the other decisions are of two Hon'ble Judges of

the Supreme Court. The Supreme Court in *Abhijit Ghosh Dastidar (supra)*

held as under:-

“4.Coming to the second aspect, that though the benchmark “very good” is required for being considered for promotion admittedly the entry of “good” was not communicated to the appellant. The entry of ‘good’ should have been communicated to him as he was having “very good” in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or to get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries “good” if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

5. Learned Counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion on 28.08.2000. Therefore, the appellant also be deemed to have been given promotion from 28.08.2000. Since the appellant had retired from service, we make it clear that he is not entitled to any pay or allowances for the period for which he had not worked in the Higher Administrative Grade Group-A, but his retrospective promotion from 28.08.2000 shall be considered for the benefit of re-fixation of his pension and other retrial benefits as per rules.”

(underlining added)

13. Analyzing the above extracted portion from the said decision in *Abhijit Ghosh Dastidar (supra)*, we find that the Supreme Court had affirmed the decision in *Dev Dutt (supra)*, when it observed that – “the same view has been reiterated in the above referred decision relied upon by the appellant”. The above referred decision related to *Dev Dutt (supra)*. The principle that was culled out by *Abhijit Ghosh Dastidar (supra)* from the decision in *Dev Dutt (supra)* was that non-communication of an ACR would be arbitrary and would be violative of Article 14 of the Constitution. The reasons for this were that the non-communication of an entry of an ACR of a public servant has civil consequences because it could affect his chances for promotion or to receive any other benefits.

14. However, the Supreme Court in *Abhijit Ghosh Dastidar (supra)* went further and observed categorically that, therefore, the entries “good”, if at all granted to the appellant, ought not to have been taken into consideration for being considered for promotion to the higher grade. What this meant was that the below benchmark ACRs, which had not been communicated to an employee, ought not to be taken into consideration for the purposes of considering the promotion of that employee to a higher

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grade. We must also distinguish between the stage when ACRs are written and the stage when they are considered by the DPC. What **Dev Dutt** (*supra*) and, indeed, **Abhijit Ghosh Dastidar** (*supra*) hold in unison is that the ACRs must be communicated to the concerned employee/officer soon after it is written. Beucase, its non-communication is contrary to the provisions of article 14 of the Constitution. But, this is at the stage when the ACRs are recorded or shortly thereafter. The objective of communicating the ACRs is two-fold. In the first place, as an element of natural justice, the officer concerned gets an opportunity of representing against the ACR before it is too late. Secondly, it also informs and warns the officer concerned that his performance is not upto the mark so that he may improve himself in the next year. However, at the stage of the DPC, the ACRs already stand crystallized and their communication then may not serve any fruitful purpose apart from informing the concerned employee/officer and, perhaps, enabling him to represent against it. But, the second aspect of improvement is lost. Consequently, at the stage of the DPC meeting the practical approach would be to not consider the uncommunicated ACRs as held in **Abhijit Ghosh Dastidar** (*supra*).

15. It is further to be noted that the directions given by the Supreme Court in the subsequent paragraphs, that is, in paragraph 5 of the said decision were in respect of the particular case before the Supreme Court and the Supreme Court had merely directed that as the appellant therein had retired from service, he would not be entitled to any pay or allowance for the period for which he had not worked in the Higher Administrative Grade. However, it had directed that his promotion would be retrospective with effect from 28.08.2000 and that should be considered for the benefit of re-fixation of his pension and retiral benefits and other benefits as per rules. We are not going by the specific directions given by the Supreme Court in the facts of that case, but by the general principles of law declared by the Supreme Court in the earlier portion of the said decision which is set out in paragraph 4 of the same. The Supreme Court did two things. First of all, it affirmed the view taken by *Dev Dutt (supra)* to the extent that non-communication of an ACR would be arbitrary and would be violative of Article 14 of the Constitution. Secondly, it concluded that such entries, which are not communicated, should not be taken into consideration for being considered for promotion to the higher grade. Thus, while *Dev Dutt (supra)* had been affirmed by the Supreme Court in *Abhijit Ghosh Dastidar*

(*supra*) on the first aspect, as regards what has to be done with a non-communicated below benchmark ACR, the Supreme Court in *Abhijit Ghosh Dastidar (supra)* took the view that such an ACR ought not to be considered.

16. We, then, have the decision of the Supreme Court in the case of *Union of India v. R.K. Anand: Civil Appeal No. 7061/2002* decided on 27.11.2008. Although this decision of the Supreme Court is subsequent to the decision in *Abhijit Ghosh Dastidar (supra)*, it refers only to the decision in *Dev Dutt (supra)*. Apparently, the decision in *Abhijit Ghosh Dastidar (supra)* had not been pointed out by the counsel appearing in that matter. Anyhow, all that *R. K. Anand (supra)* decides is that it follows the decision in *Dev Dutt (supra)*.

17. Then comes the decision of the Supreme Court in the case of *J. S. Garg (supra)*. The Supreme Court, in this case, held that in view of the decision in the case of *Dev Dutt (supra)*, which had been affirmed by a Three-Judge Bench in the case of *Abhijit Ghosh Dastidar (supra)*, the appeal was liable to be dismissed. All that this decision shows is that the

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line of decisions starting from *Dev Dutt (supra)* and ending with *Abhijit Ghosh Dastidar (supra)* was being followed by the Supreme Court.

18. However, in *A.K. Goel (supra)*, the following order was passed:-

“In view of the apparent conflict between the decisions of this Court in *Dev Dutt Vs. Union of India & Ors.* 2008 (8) SCC 725 on the one hand and *Satya Narain Shukla Vs. Union of India* 2006 (9) SCC 69 and *K. M. Mishra Vs. Central Bank of India and Others* 2008 (9) SCC 120, these appeals are referred to a Larger Bench. Let the matter be placed before the Hon’ble The Chief Justice of India for this purpose.”

19. A similar reference was made in *Uttam Chand Nahta (supra)* on

29.11.2010. The very same Bench, which made the reference in *Uttam*

Chand Nahta (supra), on the same day, also decided the case in *Ranjana*

Kale (supra), where the Supreme Court passed the following order:-

“It is not in dispute that the issue raised in this special leave petition is directly covered by the decision of this Court in *Abhijit Ghosh Dastidar vs. Union of India & Ors.* reported in (2009) 16 SCC 146. Following the same, the special leave petition is dismissed.”

20. We then have the case of *Sunil Mathur (supra)*, wherein the learned

Additional Solicitor General who appeared for the Union of India stated

that in view of the judgment of the Supreme Court in *Abhijit Ghosh*

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Dastidar (supra), the petitioners (Union of India and Others) be permitted to withdraw the Special Leave Petition. Consequently, the Supreme Court granted the permission and dismissed the Special Leave Petition as withdrawn. While doing so, it also directed the petitioners to comply with the orders of the Central Administrative Tribunal within a period of four months from that date. Therefore, considering the circumstance, as indicated in the *Sunil Mathur (supra)*, we are in agreement with the learned counsel for the respondents that it was even the understanding of the Union of India that the decision in *Abhijit Ghosh Dastidar (supra)* was the determinative and conclusive ruling holding the field.

21. Finally, we come to the case of *N. K. Bhola (supra)*. The Special Leave Petition in *N. K. Bhola (supra)* came up for hearing on 03.12.2010. On that date, in view of the order dated 29.09.2010 passed in SLP(C) No. 29515/2010 [*Uttam Chand Nahta (supra)*], whereby the matter was referred to a Larger Bench, the Supreme Court issued notice. Thereafter, the respondents in *N. K. Bhola (supra)*, filed an IA being IA 1/2011 in that matter requesting the Supreme Court to modify its order dated 03.12.2010 and to post the matter for hearing in the interest of justice. In the said

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application, the following averments were made:-

"2. That in SLP(C) No. 29515 of 2010 while passing the order dated 29.11.10, this Hon'ble Court had referred to another order of two judges Bench dated 29th March 2010 to the following effect.

"In view of the apparent conflict between the decisions of this Court in Dev Dutt Vs. Union of India & Ors. 2008 (8) SCC 725 on the one hand and Satya Narain Shukla Vs. Union of India 2006 (9) SCC 69 and K. M. Mishra Vs. Central Bank of India and Others 2008 (9) SCC 120, these appeals are referred to a Larger Bench. Let the matter be placed before the Hon'ble The Chief Justice of India for this purpose."

It is also brought to our notice the decision of three judges Bench reported in 2009(16) SCC 146.

In view of the fact that the similar issue/ matter has been referred to Larger Bench, we feel that this issue is also be considered by the Larger Bench. Accordingly, we order notice and post the matter alongwith Civil Appeal of 2010 and SLP(C) No. 15770 of 2009 etc.

Both the parties are directed to maintain status quo prevailing as on date until further orders.

Counsel of both the parties are permitted to raise all points before the Larger Bench."

The True copy of order dated 29th November 2010 and the true copy of order dated 03.12.2010 of this Court are annexed herewith as Annexure R-1 and Annexure R-2 respectively.

3. The respondent No. 1 respectfully submit that though the case of Dastidar 2009 (16) SCC 146 was brought to the notice of the reference Bench but the court was not apprised that the case of Dev Dutt Vs. UOI & Ors., 2008 (8) SCC 725 was

followed in three Judge Bench decision reported in *Abhijit Ghosh Dastidar Vs. UOI* 2009 (16) SCC 146.

4. As the controversy has already been laid to rest by a Larger Bench in *Abhijit Ghosh Dastidar* case, there is no need for consideration of the same issue by the Larger Bench and there is no conflict of judgments of this Hon'ble Court."

22. Thereafter, on 21.02.2012, when the said IA No. 1/2011 came up for hearing, the Supreme Court issued notice thereon. The learned counsel for the appellant/non-applicant waived service of notice in the application and prayed for time to seek instructions on the question as to whether or not the issue raised in the appeal before the Supreme Court was concluded by a Three-Judge Bench decision of the Supreme Court in *Abhijit Ghosh Dastidar (supra)*. On 16.03.2012, when the matter was again placed before the Supreme Court, it allowed IA No. 1/2011. The main appeal was also taken up for consideration and the Supreme Court dismissed the appeal in the light of the order dated 24.01.2012 passed in SLP(C) No. 7623/2011 [i.e. (*Sunil Mathur (supra)*)].

23. It is, therefore, clear from the aforesaid sequence of events that the Supreme Court and, particularly so, in *N. K. Bhola (supra)*, accepted the contention that the issue stands settled by *Abhijit Ghosh Dastidar (supra)*, notwithstanding the fact that a reference had been made to a Larger Bench

in the case of *A. K. Goel (supra)* and *Uttam Chand Nahta (supra)*. We are also in agreement with the contention raised by the learned counsel for the respondents that the decisions of Division Benches of this Court in *K. M. Dixit (supra)* and WP(C) No. 8841/2004 and other connected matters, which had been referred to by the learned counsel for the petitioners, would lose significance in view of the clear decisions of the Supreme Court, particularly in the case of *N. K. Bhola (supra)*. More so, in view of the specific averments made in the said IA No. 1/2011 therein which was allowed by the Supreme Court.

24. Therefore, the position that emerges is that the decision in *Abhijit Ghosh Dastidar (supra)* holds the field. Now, what is it that *Abhijit Ghosh Dastidar (supra)* decides? It has, in the first instance, while affirming *Dev Dutt (supra)*, concluded that non-communication of an ACR is violative of the constitutional rights of a government servant/employee. In the second instance, it has stated that such below benchmark ACRs ought not to be taken into consideration while the question of promotion of a particular government servant is in contemplation. Now, that leaves us with the further question as to what is to be done after we ignore/do not consider the below benchmark ACRs. In this regard, we have clear guidelines contained

in Chapter 54 of the Manual on Establishment and Administration for Central Government Offices, which have been issued by the Government of India for DPCs (G.I., Dept. of Per. & Trg., O.M. No. 22011/5/86-Estt.(d), dated the 10th April, 1989 as amended by O.M. No. 22011/5/91-Estt.(d), dated the 27th March, 1997 as amended / substituted vide Dept. of Per. & Trg., O.M. No. 22011/5/98-Estt.(d), dated the 6th October, 2000). The relevant portion of the guidelines reads as under:-

“6.2:1. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence –

- (a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.
- (b) The DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for **five preceding years** irrespective of the qualifying service prescribed in the Service/ Recruitment Rules. The ‘preceding five years’ for the aforesaid purpose shall be decided as per the guidelines contained in the DoP&T, O M. No. 22011/9/98-Estt. (D), dated 8-9-1998, which prescribe the Model Calendar for DPC read with OM of even number, dated 16-6-2000. (If more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year.)

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- (c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.

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25. From the above, it is clear that the DPC should consider the confidential reports for equal number of years in respect of all the employees considered for promotion subject to (c) mentioned above. The latter sub-paragraph (c) makes it clear that when one or more confidential reports have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if, in any case, even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per sub-paragraph (b) above. If this is also not possible, all the available CRs should be taken into account. We are of the view that the same would apply in the case of non-communicated below benchmark ACRs. Such ACRs would be in the same position as those CRs which have not been written or which are not available for any reason.

Thus, it is clear that below benchmark ACRs, which have not been communicated, cannot be considered by the DPC and the DPC is then to follow the same procedure as prescribed in paragraph 6.2.1 (c), as indicated above.

26. In view of the foregoing discussion, the writ petitions are dismissed. There shall be no order as to costs. The impugned orders of the Tribunal stand modified to the extent indicated above. The compliance time is extended by a further period of 3 months from today.

BADAR DURREZ AHMED, J

V.K. JAIN, J

**MAY 31, 2012
SR**

LEAVE

(61)

No.13018/2/2008-Estt.(L)
Government of India
Ministry of Personnel, Public Grievances & Pensions
[Department of Personnel & Training]

New Delhi, the 11th September, 2008.

OFFICE MEMORANDUM

Subject:- Recommendations of the Sixth Central Pay Commission relating to enhancement of the quantum of Maternity Leave and introduction of Child Care Leave in respect of Central Government employees.

Consequent upon the decisions taken by the Government on the recommendations of the Sixth Central Pay Commission relating to Maternity Leave and Child Care Leave, the President is pleased to decide that the existing provisions of the Central Civil Services (Leave) Rules, 1972 will be treated as modified as follows in respect of civilian employees of the Central Government:-

- (a) The existing ceiling of 135 days Maternity Leave provided in Rule 43(1) of Central Civil Services (Leave) Rules, 1972 shall be enhanced to 180 days.
 - (b) Leave of the kind due and admissible (including commuted leave for a period not exceeding 60 days and leave not due) that can be granted in continuation with Maternity Leave provided in Rule 43(4)(b) shall be increased to 2 years.
 - (c) Women employees having minor children may be granted Child Care Leave by an authority competent to grant leave, for a maximum period of two years (i.e. 730 days) during their entire service for taking care of upto two children whether for rearing or to look after any of their needs like examination, sickness etc. Child Care Leave shall not be admissible if the child is eighteen years of age or older. During the period of such leave, the women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. It may be availed of in more than one spell. Child Care Leave shall not be debited against the leave account. Child Care Leave may also be allowed for the third year as leave not due (without production of medical certificate). It may be combined with leave of the kind due and admissible.
2. These orders shall take effect from 1st September, 2008.
 3. In view of paragraph 2 above, a women employee in whose case the period of 135 days of maternity leave has not expired on the said date shall also be entitled to the maternity leave of 180 days.
 4. Formal amendments to the Central Civil Services (Leave) Rules, 1972 are being issued separately.
 5. In so far as persons serving in the Indian Audit & Accounts Departments are concerned, these orders are issue in consultation with the Comptroller & Auditor General of India.
 6. Hindi version will follow.


(Simmi R. Nakra)
Director(P&A)

To

All Ministries/Departments of the Govt. of India, etc.(As per standard mailing list).

(33)

No.13018/6/2013-Estt.(L)
Government of India
Ministry of Personnel, Public Grievances and Pension
[Department of Personnel & Training]

New Delhi, the 5th June, 2014.

OFFICE MEMORANDUM

Subject: Child Care Leave (CCL) in respect of Central Government Employees as a result of Sixth Central Pay Commission recommendations – Clarification – regarding.

The undersigned is directed to refer to this Department's O.M. No.13018/2/2008-Estt.(L) dated 11/09/2008 regarding introduction of Child Care Leave(CCL) in respect of Central Government employees. Subsequently, clarifications have been issued vide OMs dated 29.9.2008, 18.11.2008, 02.12.2008 and dated 07.09.2010. Child Care Leave at present is allowed for a minimum period of 15 days. References have been received from various quarters seeking a review of this stipulation.

2. The matter has been considered in consultation with Department of Expenditure, and it has been decided to remove the requirement of minimum period of 15 days' CCL. There is no change as regards other conditions of this leave.

3. These orders take effect from the date of issue of this Office Memorandum.

4. Hindi version will follow.

(S.G. Mulchandaney)

Under Secretary to the Government of India
Tel.No.26164316

1. All Ministries/Departments of the Government of India, etc.
(As per standard mailing list).
2. All State Government and Union Territories.
3. Governors of all States/Lt. Governors of all Union Territories.
4. Secretary, National Council of JCM (Staff Side), 13-C, Feroz Shah Road, New Delhi.
5. All Members of Staff Side of the National Council of JCM/Departmental Council.
6. All Officers/Sections of DOP&T/Department of Administrative Reforms and Public Grievances/ Department of Pensions and Pensioners' Welfare/PESB.
7. Ministry of Finance, Department of Expenditure.
8. Railway Board, New Delhi.
- ✓ 9. NIC. DOP&T.
10. 50 Spare copies.

SEXUAL HARASSMENT

(2)

PETITIONER:
VISHVA & ORS.

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 13/08/1997

BENCH:
CJI, SUJATA V. MANOHAR, B. N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Verma, CJI:

This Writ Petition has been filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.

Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of

mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

The notice of the petition was given to the State of Rajasthan and the Union of India. The learned Solicitor General appeared for the Union of India and rendered valuable assistance in the true spirit of a Law Officer to help us find a proper solution to this social problem of considerable magnitude. In addition to Ms. Meenakshi Arora and Ms. Naina Kapur who assisted the Court with full commitment, Shri Fali S. Nariman appeared as Amicus Curiae and rendered great assistance. We place on record our great appreciation for every counsel who appeared in the case and rendered the needed assistance to the Court which has enabled us to deal with this unusual matter in the manner considered appropriate for a cause of this nature.

Apart from Article 32 of the Constitution of India, we may refer to some other provision which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Articles 14, 19(1)(g) and 21, which have relevance are:

Article 15:

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on only of religion, race, caste, sex, place of birth or any of them.

(2) xxx xxxx
xxxx

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) xxxx xxxx
xxxx"

Article 42:

"42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief."

Article 51A:

"51A. Fundamental duties. - It shall be the duty of every citizen of India, -

(a) to abide by the Constitution and respect its ideals and institutions, ...

xxxx xxxx

xxxx

(2) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

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Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51 :

"51. Promotion of international peace and security - The State shall endeavour to -

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(c) foster respect for international law and treaty obligations in the dealings of organised people with one another, and

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xxx"

Article 253 :

"253. Legislation for giving effect to international agreements - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Seventh Schedule :

"List I - Union List:

xxxx

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14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

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In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides

that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the parliament enacts to expressly provide measures needed to curb the evil.

Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirements as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the learned Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.

The progress made at each hearing culminated in the formulation of guidelines to which the Union of India gave its consent through the learned Solicitor General, indicating that these should be the guidelines and norms declared by this Court to govern the behaviour of the employers and all others at the work places to curb this social evil.

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:

- (a) to ensure that all persons are able to live securely under the Rule of Law;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) to administer the law impartially among persons and between persons and the State."

Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are:

Article 11:

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on basis of equality of men and women, the same rights, in

particular:

(a) The right to work as an inalienable right of all human beings;

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xxxx

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

xxx

xxxxx

xxxxx

Article 24 :

"States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention."

The general recommendations of CEDAW in this context in respect of Article 11 are :

"Violence and equality in employment:

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advance, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place."

The Government of India has ratified the above Resolution on June 25, 1993 with some reservations which are not material in the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made a official commitment, inter alia, to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women's Rights to act as a public defender of women's human rights; to institutionalise a national level mechanism to monitor the implementation of the Platform for Action. We have, therefore, no hesitation in placing reliance on the above

(13)

for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in Minister for Immigration and Ethnic Affairs vs. Tech. 128 ALR 535, has recognised the concept of legitimate expectation of its observance in the absence of contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

In Nilabati Behera vs. State of Orissa 1993(2) SCC 746, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of 'enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993,

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other

responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector

4. bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
4. Criminal Proceedings:
Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.
In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
5. Disciplinary Action:
Where such conduct amounts to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.
6. Complaint Mechanism:
Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.
7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative:
Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.
9. Awareness:
Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.
10. Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.
11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines

laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

JUDIS

**2012 STPL(Web) 616 SC
SUPREME COURT OF INDIA**

(R.M. LODHA, ANIL R. DAVE & RANJAN GOGOI, JJ.)

MEDHA KOTWAL LELE AND OTHERS

Petitioners

VERSUS

UNION OF INDIA AND OTHERS

Respondents

Petition (Criminal) Nos. 173-177 of 1999 with T.C. (C) No. 21 of 2001, Civil Appeal No. 5009 of 2006, Civil Appeal No. 5010 of 2006-Decided on 19-10-2012.

Prevention and redressal of sexual harassment at workplaces

JUDGMENT

R.M. Lodha, J.-The Vishaka [Vishaka and Others v. State of Rajasthan and Others; [(1997) 6 SCC 241] judgment came on 13.8.1997. Yet, 15 years after the guidelines were laid down by this Court for the prevention and redressal of sexual harassment and their due compliance under Article 141 of the Constitution of India until such time appropriate legislation was enacted by the Parliament, many women still struggle to have their most basic rights protected at workplaces. The statutory law is not in place. The Protection of Women Against Sexual Harassment at Work Place Bill, 2010 is still pending in Parliament though Lok Sabha is said to have passed that Bill in the first week of September, 2012. The belief of the Constitution framers in fairness and justice for women is yet to be fully achieved at the workplaces in the country.

2. This group of four matters – in the nature of public interest litigation – raises principally the grievance that women continue to be victims of sexual harassment at workplaces. The guidelines in Vishaka are followed in breach in substance and spirit by state functionaries and all other concerned. The women workers are subjected to harassment through legal and extra legal methods and they are made to suffer insult and indignity.

3. Beijing Declaration and Platform for Action, inter alia, states, “Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms..... In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture”.

4. Vishaka guidelines require the employers at workplaces as well as other responsible persons or institutions to observe them and ensure the prevention of sexual harassment to women. These guidelines read as under :

“1. Duty of the employer or other responsible persons in workplaces and other institutions:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to

provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive steps: All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
- (b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal proceedings: Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In

particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary action: Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. Complaints Committee: The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them. The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

8. Workers' initiative: Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third-party harassment: Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993."

5. In these matters while highlighting few individual cases of sexual harassment at the workplaces, the main focus is on the lack of effective implementation of Vishaka guidelines. It is stated that the attitude of neglect in establishing effective and comprehensive mechanism in letter and spirit of the Vishaka guidelines by the States as well as the employers in private and public sector has defeated the very objective and purpose of the guidelines.

6. In one of these matters, Medha Kotwal Lele, this Court has passed certain orders from time to time. Notices were issued to all the State Governments. The States have filed their responses. On 26.4.2004, after hearing the learned Attorney General and learned counsel for the States, this Court directed as follows :

“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka’s case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules.”

This Court further directed in the order dated 26.4.2004 that similar amendment shall be carried out in the Industrial Employment (Standing Orders) Rules. As regards educational institutions and other establishments, the Court observed that further directions would be issued subsequently.

7. On 17.1.2006, this Court in couple of these matters passed the following order:

“These matters relate to the complaints of sexual harassment in working places. In **Vishaka vs. State of Rajasthan, (1997) 6SCC 241**, this Court issued certain directions as to how to deal with the problem. All the States were parties to that proceedings. Now, it appears that the directions issued in Vishaka case were not properly implemented by the various States/Departments/Institutions. In a rejoinder affidavit filed on behalf of the petitioners, the details have been furnished. The counsel appearing for the States submit that they would do the needful at the earliest. It is not known whether the Committees as suggested in Vishaka case have been constituted in all the Departments/Institutions having members of the staff 50 and above and in most of the District level offices in all the States members of the staff working in some offices would be more than 50. It is not known whether the Committees as envisaged in the Vishaka case have been constituted in all these offices. The number of complaints received and the steps taken in these complaints are also not available. We find it necessary to give some more directions in this regard. We find that in order to co-ordinate the steps taken in this regard, there should be a State level officer, i.e., either the Secretary of the Woman and Child Welfare Department or any other suitable officer who is in charge and concerned with the welfare of women and children in each State. The Chief Secretaries of each State shall see that an officer is appointed as a nodal agent to collect the details and to give suitable directions whenever necessary. As regards factories, shops and commercial establishments are concerned, the directions are not fully complied with. The Labour Commissioner of each State shall take steps in that direction. They shall work as nodal agency as regards shops, factories, shops and commercial establishments are concerned. They shall also collect the details regarding the complaints and also see that the required Committee is established in such institutions. Counsel appearing for each State shall furnish the details as to what steps have been taken in pursuance of this direction within a period of eight weeks. Details may be furnished as shown in the format furnished by the petitioners in the paperbooks. A copy of this format shall form part of the order. The above facts are required at the next date of hearing. A copy of this order be sent to the Chief Secretary and Chief Labour Commissioner of each State for taking suitable action.”

8. From the affidavits filed by the State Governments the following position emerges in respect of each of these States:

GOA

The amendments in the Civil Services Conduct Rules and the Standing Orders have not been made so far.

GUJARAT

No amendments in the Civil Services Conduct Rules and the Standing Orders have been made so far. It is not stated that all Complaints Committees are headed by women. There is no information given whether in such committees.

NGO members have been associated.

NCT OF DELHI

The amendments in the Civil Services Conduct Rules have been made. The position about amendments in the Standing Orders has not been clarified. It has not been specified that all Complaints Committees are headed by women.

HIMACHAL PRADESH

There is nothing to indicate that the State of Himachal Pradesh has made amendments in the Civil Services Conduct Rules and the Standing Orders. No details of formation of Complaints Committees have been given.

HARYANA

The amendments in the Government Employees (Conduct) Rules, 1966 have been made. However, it is not specified that the amendments in Standing Orders have been made.

MAHARASHTRA

Necessary amendments in Maharashtra Civil Services (Conduct) Rules, 1974 have been made. The Labour Commissioner has taken steps for amending Mumbai Industrial Employment (Permanent Orders) Rules, 1959.

MIZORAM

The State of Mizoram has amended Civil Services Conduct Rules and also constituted Central Complaints Committee to look into complaints pertaining to cases of sexual harassment of working women at all workplaces for preservation and enforcement. A notification has been issued giving necessary directions to all private bodies. SIKKIM The amendments in the Civil Services Conduct Rules have been carried out and a notification has been issued for constitution of complaints committees by departments/institutions with 50 or above staff to look into sexual harassment of women at workplaces.

UTTARANCHAL

(43)

The State of Uttaranchal has carried out amendments in Civil Services Conduct Rules as well as the Standing Orders. The District Level and State Level Complaints Committees have been constituted.

WEST BENGAL

The amendments in the Rules relating to duties, rights and obligations of government employees have been made. The amendments in the Standing Orders have been carried out. Out of 56 departments of Government of West Bengal, Complaints Committees have been formed in 48 departments and out of 156 Directorates under the Government, Complaints Committees have been formed in 34 Directorates. Of 24 institutions under the Government, Complaints Committees have been formed in 6.

MADHYA PRADESH

Although State of Madhya Pradesh has made amendments in the Civil Services Conduct Rules but no amendments have been made in the Standing Orders. The Complaints Committees have been constituted in every office of every department right from the Head of the Department level to the District and Taluka level. The District Level Committees have been constituted under the chairmanship of the District Collector. The steps taken by the District Committees are monitored by the nodal departments.

PUNJAB

The State of Punjab has carried out amendments in the Civil Services Conduct Rules as well as the Standing Orders. 70 Complaints Committees have been constituted at the headquarters of different Directorates and 58 Complaints Committees have been constituted in various Field Offices.

ORISSA

No amendments in the Civil Services Conduct Rules and the Standing Orders have been made.

ANDHRA PRADESH

Amendments in the Civil Services Conduct Rules and in the Standing Orders have been made.

KARNATAKA

The amendments in the Civil Services Conduct Rules have been made by the State of Karnataka but no amendments have been made in the Standing Orders. It is stated that in most of the committees, the number of women members is above 50%. The Chairpersons are women and in most of the committees, an outside member, i.e., an NGO has been associated.

RAJASTHAN

The State of Rajasthan has carried out amendments in the Civil Services Conduct Rules but no amendments have been carried out in the Standing Orders.

(45)

BIHAR

The State of Bihar has made amendments in the Civil Services Conduct Rules but there is nothing to show that amendments in Standing Orders have been made. However, only one Complaints Committee has been constituted for the entire State.

MEGHALAYA

The State of Meghalaya has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders.

TRIPURA

The State of Tripura has carried out the amendments in the Civil Services Conduct Rules. There are no Standing Orders applicable in the State. 97 Complaints Committees have been constituted in most of the state government departments and organisations.

ASSAM

Amendments in the Civil Services Conduct Rules have been made but no amendments have been carried out in the Standing Orders.

MANIPUR

The State of Manipur has carried out amendments in the Civil Services Conduct Rules, but no definite information has been given regarding amendments in the Standing Orders. Only one Complaints Committee has been formed for the entire State.

UTTAR PRADESH

Amendments both in the Civil Services Conduct Rules and the Standing Orders have been carried out.

JAMMU AND KASHMIR

The State of Jammu and Kashmir has carried out amendments in the Civil Services Conduct Rules. It is stated that steps are being taken for amendments in the Standing Orders.

NAGALAND

The amendments have been carried out in the Civil Services Conduct Rules by the State of Nagaland but no amendments have been carried out in the Standing Orders.

ARUNACHAL PRADESH

The State of Arunachal Pradesh has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders. There is only one State Level Committee for the entire State of Arunachal Pradesh.

(42)

KERALA

Amendments in the Civil Services Conduct Rules and in the Standing Orders have been carried out. There are 52 Complaints Committees in the State. All such committees are headed by women and 50% members of these committees are women and there is representation of NGO members in these committees.

TAMILNADU

The State of Tamil Nadu has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

JHARKHAND

The State of Jharkhand has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

9. From the affidavits filed by the State Governments, it transpires that the States of Orissa, Meghalaya, Himachal Pradesh, Goa, Arunachal Pradesh and West Bengal have amended the Rules relating to duties, public rights and obligations of the government employees but have not made amendments in Civil Services Conduct Rules. Similarly, the States of Sikkim, Madhya Pradesh, Gujarat, Mizoram, Orissa, Bihar, Jammu & Kashmir, Manipur, Karnataka, Rajasthan, Meghalaya, Haryana, Himachal Pradesh, Assam, NCT of Delhi, Goa, Nagaland, Arunachal Pradesh, Jharkhand and Tamil Nadu have not carried out amendments in the Standing Orders. These States appear to have not implemented the order passed by this Court on 26.4.2004 quoted above. The States which have carried out amendments in the Civil Services Conduct Rules and the Standing Orders have not provided that the report of the Complaints Committee shall be treated as a report in the disciplinary proceedings by an Inquiry Officer. What has been provided by these States is that the inquiry, findings and recommendations of the Complaints Committee shall be treated as a mere preliminary investigation leading to a disciplinary action against the delinquent.

10. The States like Rajasthan, Meghalaya, Himachal Pradesh, Assam and Jammu and Kashmir seem to have not formed Complaints Committees as envisaged in the Vishaka guidelines. Some States have constituted only one Complaints Committee for the entire State.

11. The Union Territories of Andaman and Nicobar Islands, Daman and Diu, Lakshadweep, Dadra and Nagar Haveli and Puducherry have not made amendments in the Standing Orders. The Union Territory of Chandigarh does not seem to have carried out amendments in the Civil Services Conduct Rules. Some of the Union Territories like Dadra and Nagar Haveli and Chandigarh are reported to have not yet formed Complaints Committees. Daman and Diu have formed one Complaints Committee for the Union Territory.

12. While we have marched forward substantially in bringing gender parity in local self-governments but the representation of women in Parliament and the Legislative Assemblies is dismal as the women represent only 10-11 per cent of the total seats. India ranks 129 out of 147 countries in United Nations Gender Equality Index. This is lower than all South-Asian Countries except Afghanistan. Our Constitution framers believed in fairness and justice for women. They provided in the Constitution the States' commitment of gender parity and gender equality and guarantee against sexual harassment to women.

13. The implementation of the guidelines in Vishaka has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and so on and so forth.

14. In Seema Lepcha [Seema Lepcha v. State of Sikkim & Ors. [Petition for Special Leave to Appeal (Civil) No. 34153/2010 decided on 3.2.2012] this Court gave the following directions:

“(i) The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance of the guidelines framed by this Court in Vishaka’s case and the directions given in Medha Kotwal’s case by getting the same published in the newspapers having maximum circulation in the State after every two months.

(ii) Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka’s case and the directions given in Medha Kotwal’s case.

(iii) Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the Government departments of the State and its agencies/instrumentalities but also for the private companies.”

15. As a largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence – domestic violence, sexual assault, sexual harassment at the workplace, etc; — and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women.

16. In what we have discussed above, we are of the considered view that guidelines in Vishaka should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place.

(i) The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

(ii) The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause (i) within two months.

(iii) The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

(iv) The State functionaries and private and public sector undertakings/ organisations/ bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant – victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

(v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with the Vishaka guidelines and the guidelines in the present order.

17. We are of the view that if there is any non-compliance or non- adherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.

18. Writ petitions (including T.C.) and appeals are disposed of as above with no orders as to costs.

(51)

रजिस्ट्री सं० डी० एल०—(एन)०४/०००७/२००३—१३

REGISTERED NO. DL—(N)०४/०००७/२००३—१३



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड I

PART II — Section I

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 18। नई दिल्ली, मंगलवार, अप्रैल 23, 2013/ वैशाख 3, 1935 (शक)

No. 18। NEW DELHI, TUESDAY, APRIL 23, 2013/ VAISAKHA 3, 1935 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd April, 2013/Vaisakha 3, 1935 (Saka)

The following Act of Parliament received the assent of the President on the 22nd April, 2013, and is hereby published for general information:-

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

(No. 14 of 2013)

[22nd April, 2013.]

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement

1. (1) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "aggrieved woman" means—

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

(b) "appropriate Government" means—

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly

(A) by the Central Government or the Union territory administration, the Central Government;

(B) by the State Government, the State Government;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

(c) "Chairperson" means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

(d) "District Officer" means an officer notified under section 5;

(e) "domestic worker" means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

(f) "employee" means a person employed at a workplace for any work on regular, temporary, *ad hoc* or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

(g) "employer" means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

(57)

Explanation.— For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

(h) "Internal Committee" means an Internal Complaints Committee constituted under section 4;

(i) "Local Committee" means the Local Complaints Committee constituted under section 6;

(j) "Member" means a Member of the Internal Committee or the Local Committee, as the case may be;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "Presiding Officer" means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

(m) "respondent" means a person against whom the aggrieved woman has made a complaint under section 9;

(n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(o) "workplace" includes—

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or a house;

(p) "unorganised sector" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

Prevention of
sexual
harassment

3. (1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:--

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

CHAPTER II

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

Constitution
of Internal
Complaints
Committee.

4. (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:--

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees;

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,--

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

CHAPTER III

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

5. The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

Notification
of District
Officer.

6. (1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

Constitution
and
jurisdiction of
Local
Complaints
Committee

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.

(3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

7. (1) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:--

Composition,
tenure and
other terms
and conditions
of Local
Complaints
Committee

(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member *ex officio*.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

(63)

6

THE GAZETTE OF INDIA EXTRAORDINARY

[PART II]

(3) Where the Chairperson or any Member of the Local Complaints Committee—

- (a) contravenes the provisions of section 16; or
- (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest.

such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Grants and
audit

8. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (4) of section 7.

(2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.

(4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

CHAPTER IV

COMPLAINT

Complaint of
sexual
harassment

9. (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Conciliation

10. (1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

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Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Inquiry into complaint

45 of 1860.

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

45 of 1860.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

5 of 1908

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

CHAPTER V

INQUIRY INTO COMPLAINT

12. (1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—

Action during pendency of inquiry

(a) transfer the aggrieved woman or the respondent to any other workplace; or

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[PART II -

(b) grant leave to the aggrieved woman up to a period of three months; or

(c) grant such other relief to the aggrieved woman as may be prescribed.

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

Inquiry report.

13. (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be---

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Punishment
for false or
malicious
complaint and
false evidence

14. (1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

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(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

15. For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to --

Determination
of
compensation

(a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;

(b) the loss in the career opportunity due to the incident of sexual harassment;

(c) medical expenses incurred by the victim for physical or psychiatric treatment;

(d) the income and financial status of the respondent;

(e) feasibility of such payment in lump sum or in instalments.

22 of 2005

16. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Prohibition of
publication or
making known
contents of
complaint and
inquiry
proceedings.

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

17. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

Penalty for
publication or
making known
contents of
complaint and
inquiry
proceedings

18. (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations, may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

Appeal

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

CHAPTER VI

DUTIES OF EMPLOYER

19. Every employer shall --

Duties of
employer.

(a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting the Internal Committee under sub-section (1) of section 4;

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(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force; 45 of 1860

(h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; 45 of 1860.

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

CHAPTER VII

DUTIES AND POWERS OF DISTRICT OFFICER

Duties and powers of District Officer.

20. The District Officer shall,--

(a) monitor the timely submission of reports furnished by the Local Committee;

(b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

CHAPTER VIII

MISCELLANEOUS

Committee to submit annual report

21. (1) The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

(2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government.

Employer to include information in annual report

22. The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Appropriate Government to monitor implementation and maintain data

23. The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

Appropriate Government to take measures to publicise the Act

24. The appropriate Government may, subject to the availability of financial and other resources,--

(a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace.

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(b) formulate orientation and training programmes for the members of the Local Complaints Committee.

25. (1) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing,--

Power to call for information and inspection of records

(a) call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;

(b) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

(2) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

26. (1) Where the employer fails to--

(a) constitute an Internal Committee under sub-section (1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

Penalty for non-compliance with provisions of Act.

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to--

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence;

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

27. (1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.

Cognizance of offence by courts

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Every offence under this Act shall be non-cognizable.

28. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

29. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power of appropriate Government to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the fees or allowances to be paid to the Members under sub-section (4) of section 4;

(b) nomination of members under clause (c) of sub-section (1) of section 7;

(c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;

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- (d) the person who may make complaint under sub-section (2) of section 9;
- (e) the manner of inquiry under sub-section (1) of section 11;
- (f) the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- (g) the relief to be recommended under clause (c) of sub-section (1) of section 12;
- (h) the manner of action to be taken under clause (i) of sub-section (3) of section 13;
- (i) the manner of action to be taken under sub-sections (1) and (2) of section 14;
- (j) the manner of action to be taken under section 17;
- (k) the manner of appeal under sub-section (1) of section 18;
- (l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
- (m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of section 21.

(3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Any rule made under sub-section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to
remove
difficulties.

30. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

P.K. MALHOTRA,
Secy. to the Govt. of India.

CORRIGENDA

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT) ACT, 2012 (2 of 2013)

At page 18, in line 2, for "Arts", read "Art".

At page 21, in line 14, for "Protection", read "(Protection)".

(77)

CORRIGENDUM

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2012
(3 of 2013)

At page 6, in line 22, for "clause", read "clause".

CORRIGENDUM

THE BANKING LAWS (AMENDMENT) ACT, 2012
(4 of 2013)

At page 8, in line 29, for 'sections 30', read 'section 30',.

CORRIGENDUM

THE APPROPRIATION ACT, 2013
(9 of 2013)

At page 1, in the marginal heading to section 2, for "4715,54,00,000", read "49715,54,00,000".

**GOI'S INSTRUCTIONS REGARDING PREVENTION OF SEXUAL HARASSMENT
OF WORKING WOMEN**

Supreme Court judgment in the case of Vishaka Vs. State of Rajasthan regarding sexual harassment of working women.

In the case of Vishaka and Ors Vs. State of Rajasthan and Ors. (JT 1997 (7) SC 384), the Hon'ble Supreme Court has laid down guidelines and norms to be observed to prevent sexual harassment of working women.

2. It has been laid down in the judgment above-mentioned that it is the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or implication) as :-

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

3. Attention in this connection is invited to Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964, which provides that every Government servant shall at all times do nothing which is unbecoming of a Government servant. Any act of sexual harassment of women employees is definitely unbecoming of a Government servant and amounts to a misconduct. Appropriate disciplinary action should be initiated in such cases against the delinquent Government servant in accordance with the rules.

4. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the concerned authorities shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

5. In particular, it should be ensured that victims, or witnesses are not victimized or discriminated against while dealing with complaints or sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

6. Complaint Mechanism :- Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in every organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints. Wherever such machineries for redressal of grievance already exist, they may be made more effective and in particular women officers should preferably handle such complaints.

(25)

7. Awareness :- Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (copy enclosed) in a suitable manner.

8. A specific provision is, however, being made in the CCS (Conduct) Rules, 1964, prohibiting sexual harassment of women by Government servants, in compliance of the judgment of the Hon'ble Supreme Court.

GUIDELINES AND NORMS LAID DOWN BY THE HON'BLE SUPREME COURT IN VISHAKA & ORS. V. STATE OF RAJASTHAN & ORS. (JT 1997 (7) SC 384)

HAVING REGARD to the definition of 'human rights' in Section 2 (d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

1. Duty of the Employer or other responsible persons in work places and other institutions :

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition :

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as :

- a) Physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

(22)

3. Preventive Steps :

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality to this obligation they should take the following steps :-

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings :

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action :

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism :

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaint Mechanism :

The complaint mechanism referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative :

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness :

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third Party Harassment :

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

[DOPT OM No. 11013/10/97-Estt.(A), dated 13.02.1998]

(25A) Prevention of sexual harassment of working women

The above guidelines (decision No. 25) inter-alia stipulate for the creation of an appropriate complaint mechanism in every organization for redressal of the complaints made by the victims. It has come to the notice of this Department that in one of the Central Government Offices, the Committee constituted for the purpose was headed by an official of the rank of Upper Division Clerk. As an official not sufficiently higher in rank may not be able to express views independently/freely especially when the perpetrator is holding an higher position, the arrangement makes mockery of the system. It is, therefore, requested that the Committee constituted for redressal of the complaints by the victims of sexual harassment should be headed by an officer sufficiently higher in rank, so as to lend credibility to the investigations.

[DOPT OM No. 11013/10/97-Estt.(A), dated 13.07.1999]

(25B) Report of the Complaints Committee constituted for prevention of sexual harassment of women at work places – follow up action

Reference is invited to this Department's OM No. 11013/10/97-Estt. (A) dated 13th February, 1998 under which the guidelines and norms laid down by the Supreme Court in the case of Vishka and others Vs. State of Rajasthan and others (JT 1997 (7) SC 384) for

prevention of sexual harassment of women at work places, were circulated to all Ministries/Departments for compliance by all concerned.

2. The guidelines laid down by the Supreme Court provide, inter-alia, for the constitution of a Complaints Committee in the employer's organization for redress of the complaint made by the victim. In this connection, a question has been raised regarding the status of the inquiry held by the Complaints Committee. It is clarified that the findings of the Complaints Committee regarding sexual harassment of the complainant/victim will be binding on the disciplinary authority to initiate disciplinary proceedings against the Government servant(s) concerned under the provisions of the CCS (CCA) Rules, 1965. The report of the Complaints Committee should be treated as a preliminary report against the accused Government servant.

[DOPT OM No. 11013/11/2001-Estt.(A), dated 12.12.2002]

25C. Report of the Complaints Committee constituted for prevention of sexual harassment of women at work places – follow up action.

Reference is invited to this Department's O.M. of even number dated 12th December, 2002 in which it has been clarified that the report of the Complaints Committee should be treated as a preliminary report against the accused Government servant.

2. In the order dated 26.04.2004 in Writ Petition (Crl.) No. 173-177/1999 (Medha Kotwal Lele & Others Vs. Union of India and others) the Supreme Court has directed that "the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules." Sub-rule (2) of rule 14 of the CCS (CCA) Rules, 1965 has accordingly been amended to provide that the Complaints Committee shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these Rules by the Notification No. 11012/5/2001-Estt. (A) dated 01.07.2004 (GSR 225 dated 10th July, 2004).

3. In view of the said amendment made to the CCS (CCA) Rules, 1965 the instructions contained in the O.M. No. 11013/11/2001-Estt. (A) dated 12th December, 2002 should be treated as modified and the report of the Complaints Committee should be treated as an enquiry report and not a preliminary report.

SENIORITY, PROMOTION AND ESTABLISHMENT



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No.20011/3/80-Estt (D)
 Government of India/Bharat Sarkar
 Ministry of Home Affairs/Grih Mantralaya
 Department of Personnel and Administrative Reforms
 (Karmik Aur Prashasnik Sudhar Vibhag).

.....
 New Delhi-110001 dated 16 June 1980

OFFICE MEMORANDUM

Subject: - Prematurely Retired and re-employed Officers whether they should be eligible for promotion and confirmation after re-employment.

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Ministries/Departments are aware that persons who are in military service retire from service much earlier than persons employed in civil posts. Thus the persons who are employed in military posts render shorter span of service. Government have introduced various schemes for suitable re-employment of these officers. In civil posts two methods of re-employment are possible. The first category comprises of those who had retired after the date of normal superannuation under Civil Rules viz. 58 years-age. The other category comprises of persons who retire at an earlier age from the military service, or are discharged on compensation/invalid pension or otherwise retire from Civil service prior to the attainment of the age of superannuation under civil rules. On re-employment, the latter continue to work against the civil posts till the normal date of superannuation under civil rules viz 58years of age.

2. A question has been raised whether the officers who are re-employed can be promoted or confirmed after their re-employment. The answer to the above question would depend on whether the re-employed officers find a place in the seniority list, since the confirmation or promotion of any officer will depend on his position in the seniority list and his suitability. The manner in which the seniority of the re-employed officers has to be determined, has not been laid down in any of the instructions issued so far. The matter has however, been examined and it has now been decided that for the purpose of determination of seniority of reemployed officers the following procedure should be adopted: -

3. The question of determination of seniority of re-employed officers should arise only in cases where the officers are re-employed before they attain the age of normal superannuation i.e. 58 years of age. Officers who are re-employed after obtaining the age of 58 years would not form part of the cadre at all and would be treated like contractual appointees. Consequently, they can neither be confirmed in the civil post in which they are re-employed nor promoted to the higher post. They may, if the recruitment rules permit, and in exigencies of public service, be appointed to a higher post, again as a freshly re-employed officer.

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4. (1) Officers re-employed after they has retired/discharged, whether from Defence of Civil employment prior to the attainment of the age of superannuation under the civil rules, will, if appointed to civil posts under the provisions of the recruitment rules applicable to direct recruits, be treated as direct recruits and their seniority in the grade fixed accordingly.

(2) However, where such officers are appointed to civil posts and the recruitment rules applicable thereto prescribe re-employment as a distinct mode of recruitment, their seniority will be determined as under.

(a) The inter-se seniority of persons so re-employed shall be determined in accordance with the order of their selection.

(b) The relative seniority of persons so re-employed in relation to direct recruits and promotees shall be determined:

(i) Where the recruitment rules prescribe specific quotas for each of the categories, on the basis of rotation of vacancies based on the said quotas.

(ii) In other cases, on the basis of the chronology of selection.

5-In the case of officers referred to in para 4 above, their confirmation and promotion to higher posts would take place with reference to the seniority so fixed.

6-These instructions would apply subject to any special provisions that may be applicable to particular services/posts in terms of the recruitment rules applicable to those services/posts.

7-Ministry of Finance etc. are requested to bring the above decision to the notice of all officers working under them for their information and necessary action.

Sd/-
(J.K. SARMA)
Director

To

All Ministries/Departments (as per standard list) /President/Vice President's Secretariat/Lok Sabha/Rajya Sabha Sectt./ P.M. Office.

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No. 14015/1/76-Estt.D
 Government of India/Bharat Sarkar
 Ministry of Home Affairs/Grih Mantralaya
 Department of Personnel & Administrative Reforms
 (Karmik Aur Prashasanik Sudhar Vibhag)

New Delhi, the 4th August 1980

Office Memorandum

Sub: Appointment of meritorious sportsmen to Group 'C' and 'D' posts in relaxation of the procedure.

General Scheme:

Under this Department's O.M. No. 14/1/72-Estt.(D) dated 28.12.72 orders were issued that the Secretary of the Ministry/Department or the Head of Department under it may recruit a meritorious sportsmen to a Class III or Class IV service/post (now Group C&D) in the Ministry/Department/Establishment, as the case may be, direct recruitment to which is made otherwise than through a competitive examination held by the Union Public Service Commission, subject to the provisions contained in that O.M. with the coming into being on the Staff Selection Commission, recruitment to group 'C' posts have generally to be made through the Staff Selection Commission. The entire policy of recruitment of sportsmen in various Departments/Offices has since been examined and the following orders are issued for providing for relaxation of recruitment rules to the extent mentioned below:

1. ELIGIBILITY:

- a) Appointments under these orders can be made of a sportsmen considered meritorious with reference to the following criteria:
 - i) Sportsmen who have represented a State or the country in the National or International competition in any of the games/sports mentioned in the list at Annexure (A).
 - ii) Sportsmen who have represented their University in the Inter-University Tournaments conducted by the Inter-University Sports Boards in any of the sports/game showing the list at Annexure 'A'.
 - iii) Sportsmen who have represented the State Schools Teams in the National Sports/games for schools conducted by the All India School Games Federation in any of the games/sports shown in the list of Annexure 'A'.
 - iv) Sportsmen who have been awarded National Awards in Physical Efficiency under the National Physical Efficiency Drive.



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- b) No such appointments can be made unless the candidate is, in all respects, eligible for appointment to the post applied for, and in particular in regard to age, educational or experience, qualification prescribed under the Recruitment Rules applicable to the post, except to the extent to which relaxations thereof have been permitted in respect of class/category of persons to which the applicant belongs.

2. POSTS TO WHICH APPLICABLE:

- a) Appointment of meritorious sportsmen can be made to any post in Group 'C' or Group 'D' which under the Recruitment Rules applicable thereto, is required or permitted to be filled by direct recruitment, otherwise than through the Union Public Service Commission.
- b) No such appointment shall be made to any post in Group A or Group B by direct recruitment.
- c) A meritorious sportsmen can be considered for appointment under sub para (a) above, notwithstanding the fact that he is already in the service of the Government.
- d) In making appointments to any post under the Government by promotion, no preference shall be given to meritorious sportsmen though that fact may be taken into account in assessing the overall merit.

3. EXTENT TO SUCH RECRUITMENT:

- a) Ministries/Departments of Government of India can recruit meritorious sportsmen in any year in relaxation of the recruitment procedure, to the extent that these including all other reservations under existing orders do not exceed 50% of the total number of vacancies proposed to be filled by direct recruitment.
- b) For the purpose of making appointment of meritorious sportsmen, the appointing authorities may at their discretion notify to the Staff Selection Commission, in all cases where the recruitment to the posts have been entrusted to that Commission, vacancies reduced by upto 5% thereof and may fill such vacancies so held back by appointing meritorious sportsmen subject to the overall limitations mentioned in sub-para (a) above.

4. SENIORITY:

Where sportsmen are recruited through the Employment Exchange or by direct advertisement and are considered alongwith other general category candidates, they may be assigned seniority in the order in which they are placed in the panel for selection.

Where recruitment to a post is through a selection made by the SSC, whether by a competitive examination or otherwise, the sportsmen recruited by the departments themselves should be placed enable junior to those who have



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No. 14017/27/75-Estt.D (Pt.)
 Government of India/Bharat Sarkar
 Ministry of Home Affairs/Grih Mantralaya
 Department of Personnel & Administrative Reforms
 (Karmik Aur Prashasanik Sudhar Vibhag)

New Delhi, the 7th March, 1984

Office Memorandum

Sub: Criteria for determining analogous posts.

Whenever the recruitment rules for a post prescribe 'transfer on deputation/transfer' as a method of filling up the post, it generally contains an entry in column 12 of the standard form of schedule stating inter-alia that the transfer on deputation/transfer shall be made from the officers holding analogous posts under the Central/State Governments. This Department has been receiving references from various Ministries/Departments asking for the definition of the words 'analogous posts'. It has, therefore, been considered appropriate to lay down the following criteria for determining whether the posts in question could be treated as analogous to each other or not in so far as posts under the Central Government are concerned:-

- (i) Though the scales of pay of the two posts which are being compared may not be identical, they should be such as to be an extension of or a segment of each other, e.g. for a post carrying the pay scale of Rs.1200-1600, persons holding posts in the pay scale of Rs.1100-1600 will be eligible and for a post in the scale of Rs.1500-2000, persons working in posts carrying pay scale of Rs.1500-1800 and Rs.1800-2000.
- (ii) Both the posts should be falling in the same Group of posts as defined in the Department of Personnel and Administrative Reforms Notification No. 21/2/74-Estt.D dated 11th November 1975.
- (iii) The levels of the responsibility and the duties of the two posts should also be comparable.
- (iv) (a) Where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules.
- (b) Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on

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transfer on deputation whose qualifications and experience are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made.

2. As far as the posts under the State Governments/Public Undertakings, etc. are concerned, it is quite likely that even posts with identical designations may not have comparable scales of pay and they may also differ with reference to the extent and stage of merger of D.A. with pay. The levels in the hierarchy and the nature of duties, may not also be comparable. These posts may not also be classified into 4 groups as has been done under the Central Government. Taking these factors into consideration the selecting authorities may have to be guided more by the nature of duties performed by the candidates in their parent organization vis-a-vis those in the posts under selection, and qualifications and experience required for the post under the Central Government for making selection for appointments by transfer/deputation (including short-term contract) from outside the Central Government service. Since details of recruitment rules for the posts under State Government/Public Undertakings etc. may not be available, bio-data sheets, signed by the officers themselves and certified/ countersigned by their employer indicating their qualifications, experience, assignments held in the past, contributions made by them in the field of research, publications to their credit and any other information which the officers might consider relevant for assessing their suitability for the posts in question may be obtained in the proforma (enclosed) prescribed vide the Department of Personnel and A.R's O.M. No. 39011/8/81-Estt.(B) dated the 18th July 1981.

3. The Ministries/Departments are requested to keep the above guidelines in mind in examining the applications from officers holding analogous posts for making selection by the process of transfer on deputation/transfer (including short-term contract).

Sd/-
(K.S.R. Krishna Rao)
Under Secretary to the Govt. of India

To

All Ministries/Departments of the Govt. of India.

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No. 20019/2/83-Estt.D
 Government of India/Bharat Sarkar
 Ministry of Personnel & Training, Administrative Reforms and
 Public Grievances and Pension
 (Department of Personnel & Training/Karmik Aur Prashikshan Vibhag)

New Delhi, the 10 September 1985.

Office Memorandum

Sub: General Principles of Seniority - Preparation of a Combined Select List of promotees where quotas have been laid down for the various posts in the feeder grades.

As the Ministries/Departments of the Government of India are aware, the general principles of seniority for civil services/posts have been laid down in the MHA O.M. No. 9/11/65-RPS dated 22.12.59. According to principle 5(ii), where promotions to a grade are made from more than one grade and quotas have been laid down for each feeder grade, the eligible persons are to be arranged in separate lists in the order of their relative seniority in their respective grades. Thereafter, the Departmental Promotion Committee is to select persons for promotion from each list upto the prescribed quotas and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade. The 'NOTE' given below that principle gives a direction to the Ministries/Departments to the effect that if quotas for promotion have not already been prescribed in the relevant recruitment rules, they may do so, in consultation with the UPSC where necessary. Despite this clear direction, it has come to the notice of this Department that in a large number of cases separate quotas for the feeder grades have not been prescribed with the result that difficulties arise in the preparation of a panel of promotees. It is, therefore, necessary to initiate action to review the existing recruitment rules with a view to considering the feasibility laying down quotas for the feeder grades, in consultation with this Department and UPSC where necessary.

2. References have been received in this Department seeking guidance in the matter of preparation of a consolidated order of merit where quotas for the feeder grades have been laid down in the recruitment rules. The matter has been examined in this Department in consultation with the Union Public Service Commission and it has been decided that where the posts in the feeder grade are in different scales of pay or even in the identical or equivalent scales of pay, the officers upto the number of vacancies for each feeder grade as per the quota may be selected and interpolated in a combined select list according to the grading. The persons who are assigned the same grading by the DPC should be arranged in the consolidated order of merit with reference to the date arrived at after adding the requisite number of years of qualifying services in the feeder grade to their date of appointment i.e. with reference to the date from which they became eligible for promotion after rendering

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the prescribed qualifying services in the feeder grade, maintaining their inter-se seniority in the parent service grade.

3. This decision may kindly be brought to the notice of all concerned for guidance/compliance. The cases decided otherwise will not be re-opened.

Sd/-
(A. JAYARAMAN)
Director
Tel: 3011479

To

1. All Ministries/Departments of the Government of India including all attached and subordinate offices of the Ministry of Home Affairs and Department of Personnel and Training.
2. President/Vice President Secretariat.
3. Prime Minister's Office.
4. Lok Sabha/Rajya Sabha Secretariat.
5. The UPSC with 10 spare copies. Their letter no. 1/10/84-S.II dated 29.2.85 refers.
6. The Comptroller and Auditor General, reference their U.O. No. 576-Audit-I/12-83 dated 26.7.85
7. SSC/Commission of SC & ST/AR Wing/All regular Section of the Department of Personnel & Trg., Ministry of Home Affairs.
8. 100 spare copies.

No. 35014/2/80-Estt.D
 Government of India
 Ministry of Personnel, Public Grievances and Pension
 (Karmik, Lok Shikayat Tatha Pensions Mantralaya)
 (Department of Personnel & Training)

North Block, New Delhi-1
 the 7 February, 1986.

Office Memorandum

Sub: General Principles for determining the seniority of various categories of persons employed in Central Services.

As the Ministry of Finance etc. are aware, the General Principles for determination of seniority in the Central Services are contained in the Annexure to Ministry of Home Affairs O.M. No. 9/11/55-RPS dated 22nd December 1959. According to Paragraph-6 of the said Annexure, the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and the promotees, which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. In the Explanatory Memorandum to these Principles, it has been stated that a roster is required to be maintained based on the reservation of vacancies for direct recruitment and promotion in the Recruitment Rules. Thus where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter-se-seniority of direct recruits and promotees is determined on 1:1 basis.

2. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quotas as prescribed, in cases where there was delay in direct recruitment or promotion, or where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was short-fall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter had also come up for consideration in various Court Cases both before the High Courts and the Supreme Court and in several cases the relevant judgement had brought out the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service.

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3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be benched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

Illustration:

Where the Recruitment Rules provide 50% of the vacancies in a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are 10 vacancies in the grade arising in each of the years 1986 and 1987 and that 2 vacancies intended for direct recruitment remained unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

1986		1987	
1.	P1	9.	P1
2.	D1	10.	D1
3.	P2	11.	P2
4.	D2	12.	D2
5.	P3	13.	P3
6.	D3	14.	D3
7.	P4	15.	P4
8.	P5	16.	D4
		17.	P5
		18.	D5
		19.	D6
		20.	D7

4. In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a Vacancy Register giving a running account of the vacancies arising and being filled from year to year may be maintained in the proforma enclosed.

5. With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad-hoc promotees.

6. The General Principles of seniority issued on 22nd December, 1959 referred to above, may be deemed to have been modified to that extent.

7. These orders shall take effect from 1st March 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principle in force prior to the issue of this O.M.

8. Ministry of Finance etc. are requested to bring these instructions to the notice of all the Attached/Subordinate Offices under them to whom the General Principles of Seniority contained in O.M. dated 22.12.1959 are applicable within 2 week as these orders will be effective from the next month.

Sd/-

(Aarti Khosla)

Joint Secretary to the Govt. of India

To

All Ministries/Departments of the Govt. of India, etc.etc.

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No. 20020/7/80-Estt.D
 Government of India/Bharat Sarkar
 Ministry of Personnel, Public Grievances & Pensions
 Department of Personnel & Training

New Delhi, the 29th May 1986**Office Memorandum**

Sub: Seniority of persons absorbed after being on deputation.

The undersigned is directed to say that the existing instructions on seniority of transferees contained in para 7 of the Annexure to this Department's O.M. No. 9/11/55-RPS dated the 22nd December, 1959 (copy enclosed) mainly deal with cases where persons are straightaway appointed on transfer. It is, however, observed that most of the cases of permanent absorption are those where the officers were taken on deputation initially under the method of 'transfer on deputation/transfer' contained in the relevant, recruitment rules. This O.M. is intended to fill this gap in the existing instructions.

2. Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principle that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not affect any regular promotions made prior to the date of absorption. Accordingly, it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide O.M. dated 22nd December 1959:-

“(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for “Transfer on deputation/Transfer”), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation,
- or
- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department,

whichever is later.

The fixation of seniority of a transferee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption."

3. All the Ministries/Departments are requested kindly to bring these instructions to the notice of all concerned in the Ministries/Departments and Attached and Subordinate Offices under them for their guidance and to ensure their compliance.
4. These orders will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C&A.G from time to time.
5. Hindi version is attached.

Sd/-
(K.S.R. Krishna Rao)
Deputy Secretary to the Govt. of India

To

1. All Ministries/Departments of the Govt. of India.
2. President's/Vice President's Secretariat.
3. Prime Minister's Office.
4. Lok Sabha/Rajya Sabha Secretariat.

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No.22011/7/86-Estt.(D)
 Government of India
 Ministry of Personnel, Public Grievances & Pensions
 (Department of Personnel & Training)

dated 3-7-86

OFFICE MEMORANDUM

Subject: SENIORITY – Consolidated orders on.

The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government. For facility of reference, the important orders on the subject have been consolidated in this Office Memorandum. The number and date of the original communication has been quoted in the margin so that the users may refer to it to understand fully the context in which the order in question was issued.

SENIORITY OF DIRECT RECRUITS AND PROMOTEES

(MHA O.M.No.9/11/55-RPS dated 22.12.59).

2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

2.2 Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

2.3 Where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

2.4.1 The relative seniority of direct recruits and of promotee shall be determined according to the rotation of vacancies between direct recruits and promotees which

shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

- 2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. [DPT OM No.35014/2/80-Estt.(D) dt.7.2.86].

In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional, direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent year.

ILLUSTRATION: Where the Recruitment Rules provide 50% of the vacancies of a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are ten vacancies in the grade arising in each of the year 1986 and 1987 and that two vacancies intended for direct recruitment remain unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

	<u>1986</u>		<u>1987</u>
1.	P1	9.	P1
2.	D1	10.	D1
3.	P2	11.	P2
4.	D2	12.	D2
5.	P3	13.	P3
6.	D3	14.	D3
7.	P4	15.	P4
8.	P5	16.	D4
		17.	P5
		18.	D5
		19.	D6
		20.	D7

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2.4.3 In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a Vacancy Register giving a running account of the vacancies arising and being filled from year to year may be maintained in the proforma enclosed.

2.4.4 With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad-hoc promotees.

SENIORITY OF TRANSFEREES

(MHA OM No.9/11/55-RPS dated 22.12.1959)

3.1 The relative seniority of persons appointed by transfer to a Central service from the subordinate offices of the Central Government or other department of the Central or a State Government shall be determined in accordance with the order of their selection for such transfer.

3.2 Where such transfers are effected against specific quotas prescribed in the Recruitment Rules, the relative seniority of such transferees vis-à-vis direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for transfer, direct recruitment and promotion respectively in the Recruitment Rules. Where the vacancies in any quota or quotas are carried forward, the principles stated in para 2.4.2 will apply, mutatis mutandis in determining inter-se seniority of the appointees.

3.3 Where a person is appointed by transfer in accordance with the provisions in the Recruitment Rules providing for such transfer in the event of non-availability of suitable candidate by direct recruitment or promotion, such transferee shall be grouped with direct recruits or promotees, as the case may be. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion.

3.4.1 In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from -

- the date he has been holding the post on deputation,
- or
- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department;

whichever is later.

3.4.2 The fixation of seniority of a transferee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

3.5 In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption.

[DOP&T O.M.No.20020/7/80-Estt.(D) dated 29.5.1986]

SENIORITY IN SPECIAL TYPE OF CASES

[MHA O.M.No.37/1/52-DGS dated 10.7.54, O.M.No.13/4/56-RPS dated 29.9.1956 & No.13/4/57-RPS dated 14.7.58, MHA O.M.No.9/13/82-Estt.(D) dated 10/10/62 & O.M.No.9/30/63-Estt.(D) dt.7.2.64].

4.1 In the case of such ex-T.B. or ex-Pleurisy ex-Leprosy patients, as have been declared non-infective and medically fit for Government service, on re-employment in the same posts from which they were discharged the actual previous service rendered by them should be counted for seniority. The seniority of such persons re-employed in other posts will be fixed in consultation with the Department of Personnel & Training.

4.2.1 An order imposing the penalty of reduction to a lower service, grade or post or to a lower time-scale should invariably specify:-

- (i) the period of reduction, unless the clear intension is that the reduction should be permanent or for an indefinite period;
- (ii) Whether on such re-promotion, the Govt. servant will regain his original seniority in the higher service, grade or post or higher time-scale which had been assigned to him prior to the imposition of the penalty.

4.2.2 In cases where the reduction is for a specified period and is not to operate to postpone future increments, the seniority of the Govt. servant may, unless the terms of the order of punishment provide otherwise, be fixed in the higher service, grade or post or the higher time scale at what it would have been but for his reduction.

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4.2.3 Where the reduction is for a specified period and is to operate to postpone future increments, the seniority of the Govt. servant on re-promotion may, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service rendered by him in the higher service, grade or post or higher time-scale.

4.3.1. The surplus employees are not entitled for benefit of the past service rendered in the previous organization for the purpose of their seniority in the new organization. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions etc. [MHA O.M.No.8/27/65-CS.II dated 25.2.66 & O.M.No.9/22/68-Estt.(D) dated 6.2.69].

4.3.2 When two or more surplus employees of a particular grade in an office are selected on different dates for absorption in a grade in another office, their inter-se seniority in the latter office will be same as in their previous office provided that -

- (i) no direct recruit has been selected for appointment to that grade in between these dates; and
- (ii) if there are no fixed quotas for direct recruitment and promotion to the grade in question in the new office no promotee has been approved for appointment to that grade in between these dates.

4.3.3 When two or more surplus employees of a particular grade in an office are simultaneously selected for re-deployment in another office in a grade, their inter-se seniority in the particular grade, on redeployment in the latter office, would be the same as it was in their previous office.

4.3.4 The above orders would not be applicable in respect of personnel who are appointed on the recommendations of the U.P.S.C. to posts/services recruitment to which is made through the Commission. Seniority of surplus officers appointed on the recommendations of the Commission will be decided on merits in consultation with the Commission.

5. It is requested that these instructions may be brought to the notice of all administrative authorities for information, guidance and compliance.

(Hindi version will follow soon)

Sd/-
(K.S.R. Krishna Rao)
Deputy Secretary to the Govt. of India
Tel: 3011225

To

All Ministries/Departments of the Government of India etc. etc.

(37)

Department of Personnel and Training O. M. No. 36011/8/84-Estt.(SCT),
dated the 17th October, 1986, to all the Ministries/Departments, etc.

Subject:—Educational qualification and standard prescribed in the recruitment rules-relaxation for SC/ST.

Instructions were issued in the Ministry of Home Affairs O.M. No. 1/1/70-Estt. (SCT) dated 25-7-70 regarding selection of SC/ST candidates against the reserved vacancies by direct recruitment. Subsequently certain clarification were issued in the Ministry of Personnel, Public Grievances and Pensions O.M. No. 36011/8/84-Estt. (SCT) dated 29-5-85. A number of references have been received enquiring whether the OM dated 25-7-70 has been modified or amended by the OM dated 29-5-85. While clarifying that the OM dated 25-7-70 has not been modified or amended by the OM dated 29-5-85, in order to remove all doubts it has been decided to supersede the OM dated 29-5-85 and to state the correct position regarding concession to SC & ST candidates in direct recruitment:

- (i) Where an educational qualification has been prescribed in the recruitment rules, all candidates including the SC & ST candidates shall satisfy the said qualification. Sometimes, a minimum number of marks or a minimum grade is also prescribed as part of the educational qualification in the recruitment rules. In such cases, the minimum marks/grade so prescribed shall also uniformly apply to all candidates including SC & ST candidates.
- (ii) In case of direct recruitment through an examination or an interview, the selecting authority shall determine the minimum standard for purpose of selection at the examination or at the interview.
- (iii) Selection shall be made according to the place or rank obtained in the examination or at the interview, subject to fulfilling the minimum standard referred to above.
- (iv) However, if adequate number of SC and ST candidates who satisfy the minimum standard are not available to fill the reserved vacancies, then SC and ST candidates may be selected to the extent of shortfall in vacancies by relaxing the minimum standard, provided that they are not considered unfit to hold the post.

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**Department of Personnel and Training O.M. No.36012/12/88-Estt.(SCT),
dated the 21st September, 1988, to all Ministries/Departments, etc.**

**Subject:—Concessions to Scheduled Castes and Scheduled Tribes in posts filled by promotion by
selection—posts within Group A (Class I)**

The undersigned is directed to invite a reference to the Ministry of Home Affairs O.M. No. 1/9/69-Estt.(SCT) dated 26th March, 1970 as amended vide O.M. No. 1/10/74-Estt.(SCT), dated 23rd December, 1974 according to which in promotions by selection to posts within Group A (Class I) which carry an ultimate salary of Rs. 2250/- (per revised), the SC/ST officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. The scales of pay of group A post have been revised on the basis of the recommendations of the 4th Central Pay Commission. It has, therefore, been decided that orders contained in the aforesaid O.M. would apply to promotions by selection to posts within Group A carrying an ultimate salary of Rs. 5700/- or less in the revised scale of pay.

2. Ministry of Finance etc. are requested to bring the above decision to the notice of all concerned.

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No. 20011/1/88-Estt.D
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 12 December 1988

Office Memorandum

Sub: General Principles of Seniority-Preparation of a Combined Select List of promotees where quotas have been laid down for the various posts in the feeder grade.

The undersigned is directed to refer to this Department's O.M. No. 20019/2/83-Estt.(D) dated the 10th September, 1985 which lays down the procedure for preparation of a consolidated order of merit where quotas for the feeder grades have been laid down in the Recruitment Rules. According to the instructions referred to above, where the posts in the feeder grade are in different scales of pay or even in identical or equivalent scales of pay, officers up to the number of a vacancies for each feeder grade as per the quota have to be selected and interpolated in a combined Select List according to the grading and persons who are assigned the same grading by the DPC have to be arranged in the consolidated order of merit with reference to the date arrived at after adding the requisite number of years of qualifying service in the feeder grade to their date of appointment in that grade i.e. with reference to the date from which they became eligible for promotion after rendering the prescribed qualifying service in the feeder grade, maintaining their inter se seniority in the present service/grade.

2. The matter has been re-examined in the light of a recent judicial pronouncement and it has been decided that the instructions quoted above may continue to be followed subject to the modification that among the persons in the feeder grades given the same grading, those in the higher scales of pay will rank senior to those in the lower scale of pay.

3. It is requested that this decision may be brought to the notice of all concerned for guidance/compliance.

Sd/
(M.V. KESAVAN)
Director

To

1. All Ministries/Departments of the Government of India
2. All attached/subordinate offices under the Ministry of Personnel & Training.
3. The Secretary, Union Public Service Commission, New Delhi.
4. The Secretary, The Staff Selection Commission, New Delhi.
5. The Rajya Sabha Secretariat(Admn. Branch), New Delhi.

6. The Lok Sabha Secretariat,(Admn. Branch), New Delhi.
7. Supreme Court of India, New Delhi.
8. Commission for Schedule Castes/Scheduled Tribes
9. Ventral Vigilance Commission/Election Commission.
10. Secretary, Staff Side, National Council(JCM), 9 Ashoka Road, New Delhi.
11. All Members of the Staff Side of the National Council.
12. All Sections of the Department of Personnel & Trainings.

Copy forwarded for information and similar action to:

1. The Comptroller and Auditor General of India.
2. The President's Secretariat/Vice-President Secretariat
3. Secretary, Ministry of Surface Transport /Department of Railways (Railway Boards), New Delhi.

Copy forwarded to Chief Secretaries of all States Governments/Union Territories for information.

Sd/
(M.V. KESAVAN)
Director



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No.20020/4/89-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training

... New Delhi, the 7th February, 1990

OFFICE MEMORANDUM

Subject: Inter-se seniority of promotees from more than one feeder grades-
Clarification regarding.

....

The undersigned is directed to refer to MHA O.M.No.9/11/55-RPS dated 22.12.1959 on the above subject and to say that the following clarification has been given therein:

“General Principle 5(ii) : Illustration; Where 75% of the vacancies in the grade of Head Clerk are reserved for promotion from the grade of Upper Division Clerk and 25% from the grade of Storekeeper shall be arranged in separate lists with reference to their relative seniority in those grades. The DPC will make selection of three candidates from the list of UDC and 1 from the list of Store Keeper. Thereafter, the selected persons from each list shall be arranged in a single list in a consolidated order of merit assessed by the DPC which will determine the seniority of the persons on promotion to the higher grade.”

2. The illustration referred to above relates to a situation where promotion is made by a single DPC from more than one stream and by selection. This principle cannot be applied to cases where there is a separate DPC for promotion from either stream and the method of selection from either stream may also vary. It is clarified that in such cases the principle of rotation of vacancies between different streams will have to be followed and not general principle 5(ii) referred to above. For instance, if promotion to a grade is made 50% from grade 'A' and 50% from grade 'B' through separate DPCs, vacancies in the promotion quota may be filled in the order A1, B1, A2, B2, A3 etc. etc. assuming that A1, A2, A3 are the candidates included in the select list of Grade 'A' and 'B'1 & B2 are those included in the select list of Grade 'B'.

3. It is requested that this clarification may be brought to the notice of all concerned for guidance/compliance.

(M.V. KESAVAN)
Director

To

1. All the Ministries/Departments of the Govt. of India.
2. All Attached offices of Department of Personnel & Training.
3. Secretary, Staff Selection Commission, New Delhi.
4. Rajya Sabha Secretariat (Admn. Branch), New Delhi.
5. Lok Sabha Secretariat (Admn. Branch), New Delhi.
6. Supreme Court of India, New Delhi.
7. Commission for Scheduled Castes/Scheduled Tribes, New Delhi.
8. Central Vigilance Commission/Election Commission.
9. Secretary, Staff Side, National Council, 9 Ashoka Road, New Delhi.
10. All Members of the Staff Side of the National Council
11. All Sections of the Department of Personnel & Training.

Copy forwarded for information and similar action to:-

1. Comptroller & Auditor General Of India, New Delhi.
2. President's Sectt./Vice-President's Sectt.
3. Secretary, Ministry of Surface Transport (Department of Railways (Railway Board), New Delhi.

Copy also forwarded to Chief Secretaries of all States Governments/Union Territories for information.

(M.V. KESAVAN)
Director

(33)

**Department of Personnel and Training O.M. No. 36024/4/86-Estt.(SCT),
dated the 6th June, 1990, to all Ministries/Departments, etc.**

Subject:—Reservation for Scheduled Castes and Scheduled Tribes in vacancies filled by promotion by selection—promotion to vacancies in posts in Group B, within group B and from group B to lowest rung of Group A.

The undersigned is directed to invite attention to the DP&AR O.M. No. 10/41/73-Estt.(SCT), dated 20-7-74 No. 10/37/74-Estt.(SCT) dated 3-2-75 and O.M. No. 1/9/74-Estt.(SCT) dated 29-4-75 on the above mentioned subject.

2. Para 2(v) and 2(vi) of O.M. No. 10/41/73-Estt.(SCT) dated 20-7-74 providing for reservation in promotion by selection from Group C to Group B, within Group B and from Group B to the lowest rung of Group A, lay down that there will be no carry forward of reservation from year to year and in the event of adequate number of SC/ST candidates not being available in any particular year, a SC candidate may be considered for appointment against a vacancy reserved for ST and vice versa in the same year itself in which the reservation is made. However, in para 1 of OM dated 3-2-75 it is laid down that when a vacancy falling on a reserved point in the roster is treated as unreserved due to its being the only vacancy during the year of promotion, the reservation so due against the reserved point should be carried forward to subsequent three recruitment years. As in case of promotion by selection method from Group C to Group B, within Group B and from Group B to the lowest rung of Group A the reservations are not to be carried forward, it is hereby clarified that in such promotions where a vacancy falling at a reserved point in the roster is treated as unreserved due to the fact that there is only one vacancy during the year of promotion, it will be carried forward to three recruitment years and exchange between SC and ST would be allowed only in the third year of carry forward in the event of non-availability of candidates belonging to the community for which the reservation has been provided.

3. These instructions modify the instructions contained in OM No. 10/37/74-Estt.(SCT), dated 3-2-75 and O.M. No. 1/9/74-Estt.(SCT), dated 29-4-75 to the extent indicated above and take effect from the date of issue of this OM.

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**Department of Personnel and Training O.M. No.39016/9(S)/89-Estt.(B),
dated the 16th August, 1990, to all Ministries/Departments, etc.**

Subject :—Representation of Scheduled Castes/Tribes and Minorities on Selection Boards/Committees.

As the Ministries/Departments of the Government of India are aware, the instructions contained in this Department's OM No. 16/1/74-Estt. (SCT), dated 23rd May 1975 enjoin upon the Ministries/Departments to nominate a Scheduled Caste/Scheduled Tribes officer while constituting Selection Committee/Boards for recruitment to various posts/services under them. In this Department's OM No. 39016/6(S)/87-Estt. (B), dated 10-6-87, Ministries/Deptts. were instructed to nominate a member of the minority community also in the Selection Committee/Boards for recruitment to Group C and Group D posts within the overall sanctioned strength of the Committee/Board. It has been observed that in spite of the above instructions, a number of Selection Committee/Boards are constituted by various Ministries/Departments which do not have a representative belonging to the Scheduled Castes/Scheduled Tribes and the minority communities.

2. The matter has been reviewed and in partial modification of the above instructions, it has now been decided that wherever a Selection Committee/Board exists or has to be constituted for making recruitment to 10 or more vacancies in Group C or Group D posts/services, it shall be mandatory to have one member belonging to SC/ST and one member belonging to Minority Community in such Committees/Boards. Where, however, the number of vacancies against which selection is to be made is less than 10, no effort should be spared in finding a Scheduled Caste/Scheduled Tribe officer and a Minority community officer for inclusion in such Committees/Boards.

3. Similar instructions in respect of Public Sector Undertakings and financial institutions, including Public Sector Banks, will be issued by the Department of Public Enterprises and Ministry of Finance respectively.



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No.22011/4/91-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training

... North Block, New Delhi-110001

Dated, the 14th Sept., 1992

OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation – Procedure and guidelines to be followed.

... The undersigned is directed to refer to Department of Personnel & Training O.M.No.22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment dated 27.8.1991 of the Supreme Court in Union of India etc. Vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin). The procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this O.M. for their guidance.

2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental Promotion Committee.

- i) Government servants under suspension
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for criminal charge is pending.

2.1 The Departmental Promotion Committee shall assess the suitability of Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post ofin respect of Shri.....(name of the Government servant). Not to be opened till the terminator of the disciplinary case/criminal prosecution against Shri.....'. The proceeding of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the

vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committee convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exercised the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enunciate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found as a result of the proceedings, that some blame attached to the Government servant; at least the penalty of 'censure' should be imposed.

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalize expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should



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review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite the completion.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which keeps its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of given him ad-hoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against the public interest;
- b) Whether the charge are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after adhoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC hold in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecutions against him.

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and

- ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the adhoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecutions on the merits of the case or is fully exonerated in the departmental proceeding, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion will all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placements in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC. He would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

6. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also.

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions have been issued after consultation with the Comptroller and Auditor General of India.

9. Hindi version will follow.

Sd/-
(M.S. Bali)
Director

(115)

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To

All Ministries and Departments of the Government of India with usual number of spare copies.

No.22011/4/91-Estt.(A) Dated the 14th Sept.,1992

Copy forwarded for information to:-

1. Central Vigilance Commission, New Delhi.
2. Central Bureau of Investigation, New Delhi.
3. Union Public Service Commission, New Delhi.
4. Comptroller and Auditor General, New Delhi.
5. President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat and Prime Minister's Office.
6. Chief Secretaries of All States and Union Territories.
7. All Officers and Administrative Sections in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.

Sd/-
(M.S Bali)
Director

(113)

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No. 20011/5/90-Estt.D
Government of India/Bharat Sarkar
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 4th November 1992.

Office Memorandum

Sub: Delinking seniority from confirmation.

The seniority of Government servants is determined in accordance with the general principles of seniority contained in MHA OM No. 9/11/55-RPS dated 22.12.59 (copy enclosed). One of the basic principles enunciated in the said OM is that seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in the grade.

2. This principle has been coming under judicial scrutiny in a number of cases in the past, the last important judgement being the one delivered by the Supreme Court on 2.5.90 (JT-1990(2)SC-264) in the case of Class II Direct Recruits Engineering Officers Association Vs. State of Maharashtra. In para 47(A) of the said judgement the Supreme Court has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

3. The general principle of seniority mentioned above has been examined in the light of the judicial pronouncement referred to above and it has been decided that seniority may be delinked from confirmation as per the directive of the Supreme Court in para 47(A) of its judgement dated 2.9.90. Accordingly in modification of the general principle 3, proviso to general principle 4 and proviso to general principle 5(i) contained in MHA (now DOPT) O.M. No.9/11/55-RPS dated 22.12.59 and para 2.3 of this Department OM dated 3.7.86 (copy enclosed) it has been decided that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation.

4. These orders shall take effect from the date of issue of this Office Memorandum. Seniority already determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders.

5. All the Ministries/Departments are requested kindly to bring these instructions to the notice of all concerned for guidance and compliance.


Sd/-
(Y.G.Parande)
Director

To

All Ministries/Departments etc.

Copy to:-

1. The Comptroller and Auditor General of India.
2. Rajya Sabha Secretariat/Lok Sabha Secretariat.
3. UPSC, New Delhi(with 10 spare copies).
4. All Union Territory Administrations.
5. All attached/subordinate offices under the DoP&T.
6. Commissioner for SCs/STs, New Delhi.
7. Secretary, Staff Side, National Council(JCM), 9 Ashoka Road, New Delhi.
8. All Sections.
9. 200 spare copies for Establishment (D) Section.



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No.35015/2/93-Estt.(D)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

....

New Delhi, the 9-8-1995

OFFICE MEMORANDUM

Subject: Candidates recommended by the UPSC/SSC for appointment to Central Civil Services and the post- delay in joining revival of offer of appointment after their cancellation - determination of seniority.

.....

The undersigned is directed to say that according to DP & T O.M.No.9/23/71-Estt.(D) dated 6.6.78 (copy enclosed) an offer of appointment issued by different Ministries/Departments, should clearly indicate that the offer would lapse if the candidate did not join within the specified period which shall not exceed two or three months. If, however, within the period stipulated, a request is received from candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months.

2. The Staff Side of the Departmental Council (JCM) of DOP&T have demanded that direct recruits may be allowed a maximum of three months for joining instead of nine months provided for in the O.M. under reference so as to avoid delay in preparation and issue of select/seniority list. The matter has been examined in consultation with the UPSC and it has been decided to reduce from nine months to six months the maximum time upto which an offer of appointment can be kept to open. In other words, an offer of appointment should clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period. If however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only upto a maximum of six months from the date of issue of the original offer of a appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment.

3. Subject to the above modifications the other provisions contained in the OM dated 6.6.78 should be followed scrupulously.

4. These instructions are not applicable to cases of persons who have been granted exemption under rule 4 of Civil Services Examination Rules.

5. The Ministry of Finance etc. are requested to bring the above instructions to the notice of all concerned.

(B. THYAGARAJAN)
Director

To

1. All Ministries/Departments of the Govt. of India, including all Attached & Subordinate Offices of Deptt. of Personnel.
2. Union Public Service Commission, with reference to their letter No.2/39/93-S.II. dated 19.4.95.
3. Secretary, Staff Side, Departmental Council, DOP&T.
4. Secretary, National Council, JCM.
5. CS-IV with reference to their file No.2/26/93-CS.IV
6. AIS-I Section
7. All Sections in DOP&T
8. 300 copies for Estt.(D)

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No.20011/2/92-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel and Training)

New Delhi, the 3rd Nov., 1995**OFFICE MEMORANDUM**

Subject:- **Fixation of seniority in the case of delayed promotion due to penalty.**

The undersigned is directed to refer to the instructions contained in DoP&AR O.M. No. 21/5/70-Estt.(A) dated 15.5.71 (reiterated vide O.M. No. 22011/2/78-Estt.(A) dated 16.02.1979) according to which a Govt. servant on whom a minor penalty of withholding of increment etc. has been imposed should be considered for promotion by the DPC which meets after the imposition of said penalty and if he is considered fit for promotion despite imposition of penalty, the promotion may be given effect to after the expiry of the penalty. References have been received from various Departments seeking clarification on the question of seniority of such officers on their promotion.

2. It is clarified that the officer who has been recommended for promotion by a DPC despite his penalty will be promoted only on the basis of the recommendation of the said DPC after the expiry of the penalty and his seniority would be fixed according to his position in that panel.

Sd/-
(K.K. Jha)
Director(E)

To
All Ministries/Departments etc.

Copy to:-

1. Comptroller and Auditor General of India
2. Rajya Sabha Sectt./Lok Sabha Sectt.
3. UPSC (with 10 spare copies) w.r.t. letter No. 2/8/95-S-II dated 13.9.95.
4. All Union Territory Administrations
5. All attached/subordinates offices under the DoP&T
6. Commissioner for SC/ST, New Delhi.
7. Secretary, Staff Side, National Council(JCM), 9, Ashoka Road, New Delhi
8. All Sections
9. 200 spare copies for Estt.(D)

No. 20011/1/96-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 30th January, 1997

OFFICE MEMORANDUM

Subject:- Seniority of SC/ST officers promoted earlier vis-à-vis general candidate promoted later.

.....

According to the general principle 5(i) contained in MHA OM No. 9/11/55-RPS dated 22.12.1959 and para 2.2 in DOPT OM No. 22011/7/86-Estt. (D) dated 3.7.1986 read with DOPT OM No. 20011/5/90-Estt. (D) dated 4.11.1992, (copy enclosed) seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades shall be determined in the order of selection for such promotion. Thus, persons appointed through an earlier selection will enbloc be senior to those promoted through subsequent selection.

2. The Supreme Court has in its judgment date 10.10.95 in the case of Union of India Vs. Virpal Singh Chauhan etc. (JT 1995(7) SC.231) held as follows:-

“Even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category.”

3. Having regard to the above judgment of the Supreme Court, it has been decided to modify the existing policy of fixing seniority on promotion on the lines mentioned in para 2 above. Accordingly, it has been decided to add the following proviso to general principle 5(i) contained in MHA (now DOPT) OM No. 9/11/55-RPS dated 22.12.59 and para 2.2 of this Department OM No. 22011/7/86-Estt. (D) dated 3.7.1986 :-

“Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over

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such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade."

4. These orders shall take effect from the date of issue of this Office Memorandum.

Sd/-
(K.K. JHA)
Director(E)

To

All Ministries/Departments etc. of the Govt. of India.

Copy to:

1. Comptroller and Auditor General of India.
2. Secretary, Union Public Service Commission.
3. Rajya Sabha Sectt./Lok Sabha Sectt.
4. All State/Union Territory Governments/Administrations
5. All attached/subordinate offices under the DOPT/MHA
6. National Commission for SC/ST, New Delhi.
7. National Commission for OBC, New Delhi.
8. Secretary, Staff Side, National Council (JCM), 9, Ashoka Road, New Delhi.
9. Registrar General, Supreme Court, New Delhi.
10. All Officers/Sections
11. 500 spare copies for Estt. (D).

No. 22011/5/91-Estt.D
Government of India
Ministry of Personnel, Public Grievances and Pension
(Department of Personnel & Training)

New Delhi, dated the 27th March, 1997

Office Memorandum

Sub: Procedure to be observed by Departmental Promotion Committee.

The undersigned is directed to refer to the instructions contained in paras 2.1.1, 2.2.2, 2.3.1(i), 2.3.2(i), (ii) & (iii) of this Department's O.M. No. 22011/5/86-Estt.(D) dated 10.3.89 and to make the changes in the aforementioned paragraphs:-

I. Para 2.1.1:
SELECTION METHOD

The word 'selection' appearing in the first line of the above paragraph may be substituted by the word 'Selection-cum-Seniority' & Selection by Merit'.

II. Para 2.2.2 of O.M. dated 10.3.89 may be substituted as under:-

"In case of each officer, an overall grading should be given. The grading shall be one among (i) Outstanding (ii) Very Good (iii) Good (iv) Average (v) Unfit, excepting cases covered under para 2.3.1 (iii)".

(III) (i), (ii) , (iii) & (iv) of para 2.3.1 of O.M. 10.3.89 may be substituted as under:-

SELECTION-CUM-SENIORITY AND SELECTION BY MERIT

(i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category of posts.

For all Group-C, Group-B and Group-A posts (upto and excluding the level of Rs. 3700-5000) the bench mark would be 'Good' and will be filled by the method of Selection-cum-Seniority as indicated in sub-para(iii).

(ii) In respect of posts which are in the level of Rs.3700-5000 and above, the bench mark grade should be 'Very Good' and will be filled by the method of Selection by Merit as indicated in sub-para (iv).

(iii) Each Departmental Promotion Committee considering the suitability of officers for promotion to posts for which the bench mark has been

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determined as 'Good' would grade the officers as 'Good', 'Average' and 'Unfit' only. Only those officers who obtain the grading of 'Good' will be included in the panel in the order of their seniority in the lower grade subject to availability of vacancies.

(iv) Notwithstanding the provisions mentioned above, in the case of promotions made for induction to Group A posts/services from lower groups, while the bench mark would continue to be 'Good', the DPC shall grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be and the officers will be arranged according to the grading obtained, placing the 'Outstanding' Officers on top followed by those grade as 'Very Good' and so on in the select panel upto the number of vacancies, with the officers having the same grading maintaining their inter-se-seniority in the feeder grade.

SELECTION BY MERIT

(v) In respect of services/posts for which the bench mark has been determined to be 'Very Good', each DPC would grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be. However, only those officers who are graded as 'Very Good' XXXXXXXX and above will be included in the select panel, by placing the officers graded as 'Out-standing' on top followed by those graded as 'Very Good', subject to availability of vacancies, with the officers with the same grading maintaining their inter-se-seniority in the feeder grade.

(vi) Appointments from the panel shall be made in the order of names appearing in the panel for promotion.

(vii) Where sufficient number of officers with the required bench mark grade are not available within the zone of consideration, officers with the required bench mark will be placed on the panel and for the unfilled vacancies the appointing authority should hold a fresh DPC by considering the required number of officers beyond the original zone of consideration.

IV. Para 2.3.2 (i): the word 'Selections' appearing in line 1 of the above paragraph may be substituted by the words 'Selection-cum-seniority' and 'Selection by Merit'.

Para 2.3.2(ii) & Para 2.3.2 (iii):- the word 'Selection' appearing in line 1 of the above two paragraphs may be substituted by the words 'Selection-cum-Seniority'."

2. Consequently, the provisions contained in some of the paragraphs of this Department's O.M. No. 22011/5/86-Estt (D) dated 10.4.1989 circulating the

consolidated guidelines on DPC procedure would require a number of changes and these are indicated in the Annexure.

3. Ministry of Finance, etc are requested to take note of the above decision and take immediate steps to amend the recruitment rules for the various posts which were hitherto filled by the method of 'Selection' and substitute the word 'Selection' in the column pertaining to method of promotion to either 'Selection-cum-Seniority' or 'Selection by Merit' as per the above revised instructions.

4. These orders shall be effective from 15th April, 1997.

Sd/-
(K.K. Jha)
Director (Estt)

To

All Ministries/Departments of the Government of India (Secretary by Name)

Copy to:-

1. Ministry of Railways, New Delhi.
2. Department of Atomic Energy, New Delhi.
3. Department of Electronics, New Delhi.
4. Department of Space, New Delhi.
5. Union Public Service Commission,
Dholpur House, New Delhi
6. Staff Selection Commission, New Delhi.
7. Lok Sabha Secretariat, New Delhi.
8. Rajya Sabha Secretariat, New Delhi.
9. President's Secretariat, New Delhi.
10. Comptroller & Auditor General of India, New Delhi.
11. All attached offices under the Ministry of Personnel, Public Grievances & Pensions.
12. All Officers and Sections in the Department of Personnel and Training.
13. 100 spare copies for Estt.(D).

With reference to their letter No.
10/1/88-AUC dated. 5.2.1997.

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No. 20011/1/2000-Estt.D
 Government of India/Bharat Sarkar
 Ministry of Personnel, Public Grievances & Pensions
 Department of Personnel & Training

New Delhi 110001
 March 27, 2001

Office Memorandum

Sub: Seniority of persons absorbed after being on deputation.

The undersigned is directed to say that according to our O.M. No. 20020/7/80-Estt.D dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer", his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation,
- or
- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department,

whichever is later.

2. The Supreme Court has in its judgment dated December 14, 1999 in the case of **Shri. S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi, JT 1999 (9)SC 597** has held that the words "whichever is later" occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term "whichever is later" occurring in the Office Memorandum dated May 29, 1986 by the term "whichever is earlier".

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75-Estt.D)(Pt.) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from the December 14, 1999 which is the date of the judgment of the Supreme Court referred to above.

DoP&T's O.M. No.20011/1/2008-Estt.(D) Dated 11th November 2010

5. In so far as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India. However, these orders (in keeping with paragraph 4 of the Office Memorandum dated May 29, 1986 as referred to above) will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C&AG from time to time.

6. The above instructions may be brought to the notice of all concerned for information, guidance and necessary action.

Sd/-
(K.K. Jha)
Director (Establishment)

To

All Ministries/Departments of the Government of India

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. The Rajya Sabha Secretariat, New Delhi.
4. The Lok Sabha Secretariat, New Delhi.
5. The Registrar General, The Supreme Court of India.
6. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
7. The Comptroller and Auditor General of India, New Delhi with reference to their letter No. 248/Audit(Rules)Gr.IV 16-98 dated 5.10.2000.
8. The Secretary, Union Public Service Commission, New Delhi with reference to their letter No. F.2/7/2000-S.II dated 28.2.2001.
9. Ministry of Home Affairs (UTP), New Delhi with reference to their D.O. letter No. 14040/32/99-UTP dated 7.1.2000.
10. The Staff Selection Commission, New Delhi.
11. National Commission for SCs/STs, New Delhi.
12. National Commission for OBCs, New Delhi.
13. All State Governments/Union Territory Administrations.
14. All attached/subordinate offices under the Ministry of Personnel, Public Grievances and Pensions/Ministry of Home Affairs.
15. All Sections in the Ministry of Personnel, Public Grievances and Pensions.
16. The Secretary, Staff Side, National Council(JCM), 9 Ashoka Road, New Delhi.
17. Facilitation Center, DoP&T **(20 Copies)**.
18. NIC (DoP&T) for placing this Office Memorandum on the website of DoP&T.
19. Establishment(D) Section, DoP&T **(500 copies)**.

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No. 20011/1/2001-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

...
New Delhi, dated the 21st January, 2002.

OFFICE MEMORANDUM

SUBJECT: Seniority of SC/ST Government Servants on promotion by virtue of rule of reservation/roster.

The Seniority of a person appointed to a post is determined according to the general principle 5(i) contained in MHA OM No. 9/11/55-RPS dated 22.12.1959 and para 2.2 in DOPT OM No. 22011/7/86-Estt. (D) dated 3.7.1986 read with DOPT OM No. 20011/5/90 Estt (D) dated 4.11.1992 (copy enclosed). Seniority of such persons is determined by the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades is determined in the order of selection for such promotion. Thus, as per the aforementioned instructions, persons appointed through an earlier selection would enbloc be senior to those promoted through subsequent selection.

2. This position was reviewed subsequent to the judgment of the Supreme Court dated 10.10.1995 in the case of Union of India Vs. Virpal Singh Chauhan etc. (JT 1995(7) SC.231) and it was decided vide DOPT OM No. 20011/1/96-Estt.(D), dated 30.1.1997, to modify the then existing policy by addition of the proviso to general principle 5 (i) contained in MHA (now DOPT) OM No. 9/11/55-RPS dated 22.12.1959 and para 2.2 in DOPT OM No. 20011/7/86-Estt.(D) dated 3.7.1986 which stipulated that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/ grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade.

3. The Government have now decided to negate the effects of the DOP&T OM dated 30th January, 1997 by amending Article 16(4A) of the Constitution right from the date of its inclusion in the Constitution i.e. 17th June, 1995 with a view to allow the Government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation. In other words, the candidates belonging to general/OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.

4. Therefore, in pursuance of the aforementioned Constitution (Eighty-fifth) Amendment Act, 2001, it has been decided as follows:

- (i) (a) SC/ST Government servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and
 - (b) the above decision shall be effective from 17th June, 1995
- (ii) The instructions contained in DOPT OM No. 20011/1/96- Estt (D) dated 30.1.1997 as well as the clarifications contained in DOPT OM No. 20011/2/97- Estt. (D) dated 21.3.1997 shall stand withdrawn w.e.f. 30.1.1997 itself.
- (iii) Seniority of Government servants determined in the light of O.M. dated 30.1.1997 shall be revised as if that O.M. was never issued.
- (iv) (a) On the basis of the revised seniority, consequential benefits like promotion, pay pension, etc. should be allowed to the concerned SC/ST Government servants (but without arrears by applying principle of no work no pay)
 - (b) For this purpose, senior SC/ST Government servants may be granted promotion with effect from the date of promotion of their immediate junior general/OBC Government servants.
 - (c) Such promotion of SC/ST Government servant may be ordered with the approval of Appointing Authority of the post to which the Government servant is to be promoted at each level after following normal procedure of DPC (including consultation with UPSC).
- (v) Except seniority other consequential benefits like promotion, pay etc, (including retrieval benefits in respect of those who have already retired) allowed to general/OBC Government servant by virtue of implementation of O.M. No. dated 30.1.1997 and/or in pursuance of the directions of CAT/Court should be protected as personal to them.

5. All Ministries/Departments are requested to bring the above decisions to the notice of all concerned for guidance and compliance. Necessary action to implement the decisions contained in para 4 (iii) above may be completed within three months from the date of issue of these instructions and necessary action to implement the decision at para (iv) above may be completed within 6 months from the date of issue of these instructions.

6. Hindi version will follow.

Sd/-
(Alok Saxena)
Deputy Secretary to the Government of India

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To

All Ministries/Departments of the Govt. of India

Copy to:

1. The Comptroller and Auditor General of India.
2. The Secretary, Union Public Service Commission.
3. Rajya Sabha Secretariat
4. Lok Sabha Secretariat
5. All State Governments/Union Territory Administrations
6. All Attached/Subordinate offices under the Department of Personnel and Training/Ministry of Home Affairs.
7. Ministry of Railways (Railway Board)
8. National Commission for SCs/STs, New Delhi
9. National Commission for OBCs, New Delhi.
10. The Secretary, Staff Side, National Council
11. The Registrar General, The Supreme Court of India
12. All Officers/Sections of DOP&T
13. Principal Information Officer, Ministry of I&B
14. Facilitation Center, DOP&T-20 spare copies.
15. NIC (DOPT Branch) for placing this O.M. on the web site of DOPT.
16. Establishment (D) Section (500 Copies)

F.No.35034/7/97-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi – 110001
February 8, 2002

OFFICE MEMORANDUM

Subject:-Procedure to be observed by Departmental Promotion Committees (DPCs)
- No supersession in 'selection' promotion- Revised Guidelines regarding

The undersigned is directed to invite reference to the Department of Personnel and Training (DoP&T) Office Memorandum (O.M.) No.22011/5/86-Estt(D) dated March 10, 1989 and O.M. of even number dated April 10, 1989[as amended by O.M.No.22011/5/91-Estt(D) dated March 27, 1997] which contain the instructions on the Departmental Promotion Committees (DPCs) and related matters. In regard to the 'selection' mode of promotion('selection-cum-seniority' and 'selection by merit'), the aforesaid instructions prescribe the guidelines (as briefly discussed in paragraph 2 below) for overall 'grading' to be given by the DPC, 'bench-mark' for assessment of performance and the manner in which the 'select panel' has to be arranged for promotions to various levels of post/grade.

2. Existing Guidelines

2.1 As per the existing (aforementioned) instructions, in promotions *up to and excluding* the level in the pay-scale of Rs.12,000-16,500 (excepting promotions to Group 'A' posts/services from the lower group), if the mode happens to be 'selection-cum-seniority', then the bench-mark prescribed is 'good' and officers obtaining the said bench-mark are arranged in the select panel in the order of their seniority in the lower (feeder) grade. Thus, there is no supersession among those who meet the said bench-mark. Officers getting a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.2 In the case of promotions from lower Groups to Group 'A', while the mode of promotion happens to be 'selection by merit', the bench-mark prescribed is 'good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per grading obtained. Thus, officers getting a superior grading supersede those getting lower grading. In other words, an officer graded as 'outstanding' supersedes those graded as 'very good' and an officer graded as 'very good' supersedes officers graded as 'good'. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

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"While the zone of consideration would remain as already prescribed. the DPC, in the aforesaid category of cases, may assess the suitability of eligible employees in the zone of consideration (in the descending order) for inclusion in the panel for promotion up to a number which is considered sufficient against the number of vacancies. With regard to the number of employees to be included in the panel, the DPC may also be required to keep in view the instructions issued vide Department of Personnel and Training Office Memorandum No.22011/18/87-Estt(D) dated April 9, 1996 relating to norms for preparing extended panel for promotion. In respect of the remaining employees, the DPC may put a note in the minutes that "the assessment of the remaining employees in the zone of consideration is considered not necessary as sufficient number of employees with prescribed bench-mark have become available."

4. Provisions of the paragraph 1 (vii) of the DoP&T O.M.No.AB-14017/2/97-Estt(RR) dated May 25, 1998 stand modified in accordance with these revised instructions. In addition to this, if the guidelines contained 'in this Office Memorandum come in conflict with the provisions of any other executive instructions (O.M.) issued by DoP&T on this subject, the same shall be taken to be modified to the extent provided herein.

5. The instructions contained in this Office Memorandum shall come into force from the date of its issue.

6. Ministries/Departments are requested to give wide circulation to these revised instructions for general guidance in the matter so that immediate steps are taken to amend the Service Rules/Recruitment Rules of various services/posts/grades so as to appropriately incorporate the mode of promotion as 'selection' (in accordance with these instructions) in place of 'selection by merit' and 'selection-cum-seniority' (as was hitherto prescribed by the aforementioned O.M. dated March 27, 1997) as the case may be. The powers to amend Service Rules / Recruitment Rules in this regard are delegated to the Ministries /Departments. DoP&T need not be consulted to carry out the required amendments.

Sd/-

(ALOK SAXENA)

Deputy Secretary to the Government of India

To

All Ministries/Departments of the Government of India.

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.

3.3 Promotion to the revised pay-scale (grade) of Rs.12,000-16,500 and above

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'very good'. This will ensure element of higher selectivity in comparison to selection promotions to the grades lower than the aforesaid level were the bench-mark, as indicated in the following paragraphs, shall be 'good' only.
- (iii) The DPC shall for promotions to said pay-scale (grade) and above, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'very good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'very good'.

3.4 Promotion to grades below the revised pay-scale (grade) of Rs.12,000-16,500 (including promotions from lower Groups to Group 'A' posts/grades/services)

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'good'.
- (ii) The DPC shall for promotion to posts/grades/services in the aforesaid categories, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed benchmark of 'good'.

3.5 Zone of consideration

The guidelines relating to the 'zone of consideration' in its existing form (twice the number of vacancies plus four) shall continue to have general application. However, in view of the modifications in promotion norms indicated in paragraph 3.3 above, the following stipulation [as is already applicable in the case of promotions below the revised pay-scale (grade) of Rs.12,000-16,500/- vide DoP&T O.M.No.22011/8/ 98-Estt(D) dated November 6, 1998] is also made in the regard to the zone of consideration for promotion to the revised pay-scale (grade) of Rs.12,000-16,500/- and above

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3. The Cabinet Secretariat, New Delhi.
4. The Rajya Sabha Secretariat, New Delhi.
5. The Lok Sabha Secretariat, New Delhi.
6. The Comptroller and Audit General of India, New Delhi.
7. The Union Public Service Commission, New Delhi with reference to their letter No.1017/2001-AU(C) dated 30.10.2001 (20 copies).
8. The Staff Selection Commission, New Delhi.
9. All attached offices under the Ministry of Personnel, Public Grievances and Pensions
10. Establishment Officer & Secretary, ACe (10 copies) (Smt Chitra Chopra)
11. All Officers and Sections in the Department of Personnel and Training.
12. Establishment (RR) Section, DoP&T (10 copies). They may also issue separate instructions in terms of the position indicated in paragraph 4 above.
13. Facilitation Centre, DoP&T - 20 spare copies
14. NIC (DOP&T Branch) for placing this Office Memorandum on the website of DoP&T.
15. Establishment (D) Section, DoP&T (500 copies)

(13)

No. 22011/2/2002 -Estt (D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi-1100 01
January 6, 2006

Office Memorandum

Subject: DPC Guidelines- Review of size of zone of consideration.

.....

The size of zone of consideration for promotion by 'selection' as prescribed vide DoPT O.M. No. 22011/1/90-Estt.D dated 12th October 1990 read with O.M. No 22011/1/90-Estt- (D) dated 22nd April 1992 is as under

No. of vacancies.	Normal size of zone of consideration.	Extended zone of consideration for SC/ST.
1	5	5
2	8	10
3	10	15
4	12	20
5 and above	Twice the number of vacancies + 4	5 times the number of vacancies.

2. In view of the earlier policy of empanelling officers in accordance with the overall grading assigned to them by the DPC, thereby involving supersessions, a wider size of zone of consideration was necessary to provide the required choice for selection on merit. However, vide DoPT O.M. No. 35034/7/97-Estt-D dated 8th February, 2002, it has been decided by the Government that there shall be no supersession in the matter of 'selection' promotion and the officers are to be graded by the DPC as 'fit' or 'unfit' with reference to the prescribed bench mark and those found 'fit' are to be included in the panel as per the seniority in the feeder grade. Accordingly, a need has arisen for review of the size of zone of consideration. Having a size of zone of consideration larger than is necessary in the revised context would lead to unnecessary paper work, which may also lead to delay in convening DPCs. However, the zone of consideration has still to be wide enough to cater to the needs of the Department/cadre authorities for giving an extended panel against empanelled officers who are on deputation or are expected to proceed shortly; who have retired or will be retiring in the course of the vacancy year or who have refused promotion and are under debarment. The size should also be sufficient to take care of officers in the feeder grade whose cases are to be placed in 'sealed

cover' and also of those who do not meet the prescribed benchmark. Thus, there is a need for optimizing the size of zone of consideration.

3. The matter has been considered carefully. Keeping in view the considerations in para-2 above, it has been decided to modify the existing provisions relating to size of zone of consideration as under:

- i) For vacancies upto [and including] 10, existing provisions relating to normal size of zone of consideration will continue to be applicable;
- ii) For vacancies exceeding 10, the normal size of zone of consideration will now be one and a half times the number of vacancies, rounded off to next higher integer, **plus three** but shall not be less than the size of zone of consideration for ten vacancies;
- iii) The existing size of extended zone of consideration for SC/ST officers, viz. five times the total number of vacancies, will continue to be applicable.

4. A statement indicating the revised size of zone of consideration based on the above decision is annexed. It is, however, reiterated, that while the size of zone of consideration would, hereafter, be as now prescribed, the DPC, as per the extant instructions, need not assess and grade all the officers in the eligibility list. Assessment of suitability of eligible employees in the zone of consideration (in the descending order of seniority in the feeder grade) for inclusion in the panel for promotion may be considered only upto a number, which is considered sufficient for preparing the normal panel with reference to the number of vacancies as also for preparing the extended panel for promotion in terms of Department of Personnel and Training Office Memorandum No. 22011/18/87-Estt- (D) dated April 9, 1996. In respect of the remaining employees in the zone of consideration, as now prescribed, the DPC may put a note in the minutes that the assessment of the remaining employees in the zone of consideration is not considered necessary, as sufficient number of employees with prescribed benchmark have become available.

5. These instructions take effect from the date of issue of this Office Memorandum.


(Vidhu Kashyap)
Director

To

All Ministries/Departments of the Government of India.

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Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi
3. Cabinet Secretariat, New Delhi.
4. Rajya Sabha Secretariat/ Lok Sabha Secretariat, New Delhi.
5. The Registrar General, Supreme Court of India.
6. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
7. The Comptroller and Auditor General of India, New Delhi.
8. Union Public Service Commission, New Delhi with reference to UPSC letter no. F.10/6/2002-AU-C dated 12th September, 2002. (20 copies)
9. Staff Selection Commission, New Delhi.
10. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
11. National Commission for SCs, New Delhi.
12. National Commission for STs, New Delhi.
13. Secretary, National Council(JCM), 13, Ferozeshah Road, New Delhi
14. Establishment Officer & A.S.
15. National Commission for OBCs, New Delhi.
16. All Officers and Sections in the Department of Personnel and Training.
17. Facilitation Center, DoP&T(20 copies).
18. NIC (DoP&T) for placing this Office Memorandum on the Website of DoP&T
19. Establishment (D) Section (50 copies).

ANNEXURE

No. of vacancies.	Normal size of Zone of consideration.	Extended Zone of consideration for SC/ST.
1	5	5
2	8	10
3	10	15
4	12	20
5	14	25
6	16	30
7	18	35
8	20	40
9	22	45
10	24	50
11	24	55
12	24	60
13	24	65
14	24	70
15	26	75
16	27	80
17	29	85
18	30	90
19	32	95
20	33	100
30	48	150
40	63	200
50	78	250
60	93	300
70	108	350
80	123	400
90	138	450
100	153	500

(17)

संख्या-22011/2/2002-स्थापना (घ)
भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, दिनांक: 06 जनवरी, 2006

कार्यालय ज्ञापन

विषय: विभागीय पदोन्नति समिति संबंधी दिशा-निर्देश- विचारण क्षेत्र के आकार की समीक्षा।

'चयन' द्वारा पदोन्नति के लिए विचारण क्षेत्र का, कार्मिक और प्रशिक्षण विभाग के दिनांक 22 अप्रैल, 1992 के कार्यालय ज्ञापन संख्या-22011/1/90-स्थापना (घ) के साथ पठित दिनांक 12 अक्टूबर, 1990 के कार्यालय ज्ञापन संख्या-22011/1/90-स्थापना (घ) में निर्धारित किए अनुसार, आकार निम्नानुसार है :-

<u>रिक्तियों की संख्या</u>	<u>विचारण क्षेत्र का सामान्य आकार</u>	<u>अनुसूचित जाति/अनुसूचित जनजाति के लिए विचारण का बढ़ा हुआ क्षेत्र</u>
1	5	5
2	8	10
3	10	15
4	12	20
5 और इससे अधिक	रिक्तियों की संख्या से दोगुणा + 4	रिक्तियों की संख्या से पाँच गुणा

2. विभागीय पदोन्नति समिति द्वारा अधिकारियों को दी गई समय ब्रेडिंग के अनुरूप उनके नाम पैनल में शामिल किए जाने की पूर्व की नीति, जिसमें अधिक्रमण हो जाता था, के मद्देनजर, योग्यता क्रम के आधार पर चयन किए जाने के क्रम में अपेक्षित मांग पूरी करने के लिए विचारण के एक व्यापक क्षेत्र की आवश्यकता होती थी तथापि, कार्मिक और प्रशिक्षण विभाग के दिनांक 8 फरवरी, 2002 के कार्यालय ज्ञापन संख्या-35034/7/97-स्थापना (घ) के अन्तर्गत, भारत सरकार द्वारा यह निर्णय लिया गया था कि 'पदोन्नति द्वारा चयन' के मामले में कोई अधिक्रमण नहीं होगा और निर्धारित बैन्च मार्क के संदर्भ में

अधिकारियों को, विभागीय पदोन्नति समिति द्वारा उपयुक्त अथवा अनुपयुक्त के रूपमें थ्रेडिंग की जानी है और जो अधिकारी उपयुक्त पाए जाएं उन्हें फीडर थ्रेड की वरिष्ठता के अनुसार पैनल में शामिल किया जाना है। तदनुसार विचारण क्षेत्र आकार की समीक्षा किए जाने की आवश्यकता हुई है। संशोधित संदर्भ में विचारण क्षेत्र का आकार, आवश्यकता से अधिक रखने से अनावश्यक कागजी कार्रवाई बढ़ेगी जिससे विभागीय पदोन्नति समितियों की बैठकें आयोजित करने में देर होगी। तथापि विचारण क्षेत्र के आकार को अभी और अधिक व्यापक बनाना है ताकि पैनल में शामिल किए गए उन अधिकारियों के संबंध में बढ़ा हुआ विचारण का क्षेत्र देने की, विभाग/संवर्ग प्राधिकारियों की आवश्यकता को पूरा किया जा सके जो प्रतिनियुक्ति पर गए हुए हैं अथवा जिनकी अल्पावधि के पश्चात् प्रतिनियुक्ति पर जाने की उम्मीद है, जो सेवानिवृत्त हो गए हैं अथवा रिक्ति वर्ष में सेवानिवृत्त हो जाएंगे अथवा जिन्हें पदोन्नति लेने से इन्कार कर दिया है और विवर्जित कर दिए गए हैं। इसका आकार इतना पर्याप्त होना चाहिए कि यह फीडर थ्रेड के उन अधिकारियों के मामलों का ध्यान रख सके जिनके मामले बंद लिफाफे में रखे जाने हैं और ऐसे अधिकारियों के भी मामले, जो निर्धारित बैन्च मार्क को पूरा नहीं करते। अतः विचारण क्षेत्र के आकार को इष्टतम बनाने की आवश्यकता है।

3. इस मामले पर ध्यानपूर्वक विचार किया गया है। उपर्युक्त पैरा 2 में दिए गए विचारों के मद्देनजर, विचारण क्षेत्र के आकार से सम्बद्ध मौजूदा प्रावधानों को निम्नानुसार संशोधित किए जाने का निर्णय लिया गया है :-

- (i) जिन मामलों में रिक्तियों की संख्या 10 तक होगी (दसवी सहित) वहां विचारण क्षेत्र के सामान्य आकार से सम्बद्ध मौजूदा प्रावधान लागू होते रहेंगे;
- (ii) जहां रिक्तियों की संख्या 10 से अधिक होगी वहां विचारण क्षेत्र का सामान्य आकार, रिक्तियों की संख्या का डेढ़ गुणा होगा जिसे अगले उच्चतर पूर्ण अंक में मिला दिया जाएगा और इसमें तीन और उम्मीदवारों के नाम शामिल किए जाएंगे अपितु यह 10 रिक्तियों के विचारण क्षेत्र के आकार से कम नहीं हो;
- (iii) अनुसूचित जाति/अनुसूचित जनजाति के अधिकारियों के विचारण क्षेत्र का मौजूदा आकार, अर्थात् रिक्तियों की कुल संख्या का पाँच गुणा, लागू होना जारी रहेगा।


4. उपर्युक्त निर्णय पर आधारित, विचारण क्षेत्र के संशोधित आकार को दर्शाने वाला एक विवरण संलग्न है। तथापि यह बात पुनः दोहराई जाती है कि चूंकि विचारण क्षेत्र का इसके पश्चात् आकार, अब निर्धारित किए अनुसार होगा, अतः मौजूदा अनुदेशों के अनुसार, विभागीय पदोन्नति समिति को पात्रता सूची वाले सभी अधिकारियों का मूल्यांकन करने और उन्हें थ्रेड प्रदान करने की आवश्यकता नहीं है। पदोन्नति के लिए पैनल में शामिल किए जाने के आशय से विचारण क्षेत्र में पात्र कर्मचारियों की उपयुक्तता के मूल्यांकन (फीडर थ्रेड में

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वरिष्ठता के अवरोही क्रम में), पर विचार केवल उस संख्या तक किया जाए जिसे, रिक्तियों के संदर्भ में सामान्य पैनल तैयार करने के लिए और कार्मिक और प्रशिक्षण विभाग के दिनांक 9 अप्रैल, 1996 के कार्यालय ज्ञापन संख्या-22011/18/87-स्थापना (घ) की शर्तों के अनुसार, पदोन्नति के लिए बढ़ा हुआ पैनल तैयार करने हेतु, पर्याप्त समझा जाता है। अब निर्धारित किए गए विचारण क्षेत्र, में आए शेष कर्मचारियों के संबंध में विभागीय पदोन्नति समिति, कार्यवृत्त में यह टिप्पणी रख सकती है कि विचारण क्षेत्र के शेष कर्मचारियों का मूल्यांकन किया जाना आवश्यक नहीं समझा जाता क्योंकि निर्धारित बैच मार्क वाले पर्याप्त कर्मचारी उपलब्ध हो गए हैं।

5. ये अनुदेश, इस कार्यालय ज्ञापन के जारी होने की तारीख से लागू होंगे।


 (विधु कश्यप)
 निदेशक

सेवा में,

भारत सरकार के सभी मंत्रालय/विभाग।

प्रतिलिपि निम्नलिखित को प्रेषित:-

1. राष्ट्रपति सचिवालय, नई दिल्ली।
2. प्रधान मंत्री कार्यालय, नई दिल्ली।
3. मंत्रिमण्डल सचिवालय नई दिल्ली।
4. राज्य सभा सचिवालय/लोक सभा सचिवालय नई दिल्ली।
5. महापंजीयक, भारत का उच्चतम न्यायालय।
6. पंजीयक, केन्द्रीय प्रशासनिक अधिकरण, प्रधान न्यायपीठ, नई दिल्ली।
7. भारत के नियंत्रक और महालेखापरीक्षक, नई दिल्ली।
8. संघ लोक सेवा आयोग को उनके दिनांक 12 सितम्बर, 2002 के पत्र सं. एफ.10/6/2002-ए.यू.सी. के संदर्भ में (20 प्रतियाँ)।
9. कर्मचारी चयन आयोग, नई दिल्ली।
10. कार्मिक, लोक-शिकायत तथा पेंशन-मंत्रालय के अन्तर्गत सभी संबद्ध कार्यालय।
11. राष्ट्रीय अनुसूचित जाति आयोग, नई दिल्ली।
12. राष्ट्रीय अनुसूचित जनजाति आयोग, नई दिल्ली।
13. सचिव, राष्ट्रीय परिषद, संयुक्त परामर्शदायी तंत्र, 13, फीरोजशाह मार्ग, नई दिल्ली।
14. स्थापना अधिकारी और अपर सचिव।
15. राष्ट्रीय अन्य पिछड़ा वर्ग आयोग, नई दिल्ली।
16. कार्मिक और प्रशिक्षण-विभाग के सभी अधिकारी और अनुभाग।
17. सूचना सुविधा काउंटर, कार्मिक और प्रशिक्षण-विभाग (20 प्रतियाँ)।
18. राष्ट्रीय सूचना विज्ञान केन्द्र, (कार्मिक और प्रशिक्षण-विभाग) को यह कार्यालय ज्ञापन, कार्मिक और प्रशिक्षण-विभाग की वेबसाइट पर सुलभ करवाने हेतु।
19. स्थापना (घ) अनुभाग (50 प्रतियाँ)।

अनुबंध

<u>रिक्तियों की संख्या</u>	<u>विचारण क्षेत्र की सामान्य आकार</u>	<u>अनुसूचित जाति/अनुसूचित जनजाति के लिए विचारण का बढ़ा हुआ क्षेत्र</u>
1	5	5
2	8	10
3	10	15
4	12	20
5	14	25
6	16	30
7	18	35
8	20	40
9	22	45
10	24	50
11	24	55
12	24	60
13	24	65
14	24	70
15	26	75
16	27	80
17	29	85
18	30	90
19	32	95
20	33	100
30	48	150
40	63	200
50	78	250
60	93	300
70	108	350
80	123	400
90	138	450
100	153	500

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Chapter 9

PROMOTION

9.1 The regular promotions of the government employees are generally decided on the basis of recommendations made by the Departmental Promotion Committees. The Departmental Promotion Committees are constituted to judge the suitability of officers for -

- (a) promotions to "Selection" as well as "Non-selection" posts
- (b) assessment of the work and conduct of probationers for the purpose of determining their suitability for retention in service or their discharge from it or extending their probation and subsequent confirmation if found suitable for retention in service.

9.2 The UPSC should be associated with DPCs in respect of all Central Civil Services/posts belonging to Group 'A' where promotion is based on the principles of "Selection cum Seniority" unless it has been decided by the Government not to associate the UPSC with a Group 'A' DPC. The UPSC need not be associated in respect of the posts belonging to Group 'A', if the promotion is based not on the principles of "Selection" but on "seniority-cum-fitness" only. Whenever the UPSC is associated with a DPC, the Chairman or a Member of the Commission will preside over the meeting of the DPC.

9.2.1 Where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion.

9.2.2 The eligibility dates for determining the eligibility of officers for promotion would be the first day of the crucial year, i.e. January, 1 irrespective of whether ACRs are written financial year-wise or calendar year-wise.

9.3 **Zone of Consideration**

In the normal zone of consideration, field of choice from the eligible officers is to be kept as twice the number of vacancies + 4. However, in case the vacancies are reserved for SC/ST also, then the field of choice is to be extended upto 5 times of the number of vacancies. This zone is called as an extended zone for consideration for SC/ST. The normal zone and the extended zone for vacancies will accordingly be as follows:-

No. of vacancies	Normal Zone	Zone for consideration for SC/ST
1	5	5

2	8	10
3	10	15
4	12	20
5 and above	Twice the number of vacancies + 4	5 times the number of vacancies

9.4 **Guidelines for DPCs**

The following guidelines are laid down to regulate the assessment of suitability of candidates by DPCs:

9.4.1 While merit has to be recognised and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result-oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process.

9.4.2 Confidential Reports are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence, the DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for five preceding years irrespective of the qualifying service prescribed in the Service/Recruitment Rules. (If more than one CR has been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year).

9.4.3 Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per above para. If this is also not possible, all the available CRs should be taken into account.

9.5 **Principles to be observed for preparation of panel**

9.5.1 In case of 'selection' (merit) promotion, the hitherto existing distinction in the nomenclature ('selected by merit' and 'selection-cum-seniority') is dispensed with and the mode of promotion in all such cases is rechristened as 'selection' only. The element of selectivity (higher or lower) shall be determined with reference to the relevant benchmark ("Very Good" or "Good") prescribed for promotion.

9.5.2 The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed benchmark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed benchmark) by the DPC shall be included and arranged in the select panel in order

(23)

of their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed benchmark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed benchmark) by the DPC¹¹¹.

9.6 Procedure to be followed by DPC in respect of government servants under cloud

9.6.1 At the time of consideration of the cases of government servants for promotion, details of government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

- i. Government servants under suspension;
- ii. Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- iii. Government servants in respect of whom prosecution for a criminal charge is pending.

9.6.2 The DPC shall assess the suitability of the government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including "Unfit for Promotion", will be kept in a sealed cover.

9.6.3 The same procedure outlined in the above para will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the government servant concerned is concluded.

9.7 It has been decided that the "Sealed Cover Procedure" prescribed in the Department of Personnel and Training, OM No. 22011/4/91-Estt.(A) dated 14.9.1992²¹² referred to above may be followed at the time of consideration for ad hoc promotion also in the case of government servants -

- (i) who are under suspension;
- (ii) in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- (iii) in respect of whom prosecution for a criminal charge is pending³¹³.

9.8 Processing of recommendations of DPC

¹¹¹Govt. of India OM No. 35034/7/97-Estt.(D) dated 08.02.2002.

²¹²DP&T OM No. 22011/4/91-Estt.(A) dated 14.9.92.

³¹³Govt of India Pers. & Trg. OM No. 28036/2/98-Estt.(D) dated 23.2.99.

The recommendations of the DPC are advisory in nature and should be duly approved by the appointing authority. A clearance from the Vigilance Section of the Office/Department should also be obtained before making actual promotion or confirmation of officer approved by DPC to ensure that no disciplinary proceedings are pending against the officer concerned. Promotion should be made strictly in the order in which the names of the officers appear in the panel.

9.9 **Refusal of promotion**

9.9.1 When a government employee does not want to accept an offer of promotion, he may make a written request to that effect and the same will be considered by the appointing authority. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad hoc promotions against short-term vacancies are refused.

9.9.2 In cases where the reasons adduced by the officer for his refusal for promotion are not acceptable, the appointing authority should enforce the promotion of the officer and in case the officer still refuses to be promoted, then even disciplinary action can be taken against him for refusing to obey the orders of the appointing authority.

9.10 **Validity of a panel**

9.10.1 The panel for promotion drawn up by DPC for 'selection' posts would normally be valid for one year. It should cease to be in force on the expiry of a period of one year or when a fresh panel is prepared, whichever is earlier.

9.10.2 The date of commencement of the validity of panel will be the date on which the DPC meets. In case the DPC meets on more than one day, the last date of the meeting would be the date of commencement of the validity of the panel. In case the panel requires, partially or wholly, the approval of the Commission, the date of validity of panel would be the date (of Commission's letter) communicating their approval to the panel. It is important to ensure that the Commission's approval to the panel is obtained, where necessary, with the least possible delay.

9.11 **Assured Career Progression Scheme**

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The Assured Career Progression Scheme for Central Government employees was introduced by the Government of India on the recommendations of the Fifth Central Pay Commission to deal with the problem of genuine stagnation and hardship faced by the employees owing to lack of adequate promotional avenues. This scheme is operational since 9th August, 1999, for group 'B', 'C' and 'D' employees only. Casual employees (including those holding temporary status), ad-hoc & contract employees are not covered in this scheme. The salient features of the scheme are:

(i) The ACP Scheme provides merely placement of government servants in the higher pay scale upto Rs.14300-18300 without regular promotion. It would neither require creation of new posts nor will it have relevancy to the seniority of the government servants.

(ii) The first financial upgradation under the ACP Scheme is allowed after 12 years of regular service followed by second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. Regular service will be counted from the grade in which an employee was approved as direct recruit. If the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, the second upgradation would also get deferred accordingly. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him. In case of an employee declared surplus in his/her organisation and in case of transfer including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme.

(iii) On upgradation under the ACP Scheme pay of an employee is fixed under the provisions of FR 22 (I) a (1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office, Memorandum No.1/6/97-Pay.I dated July 5, 1999. The Financial benefit allowed under the ACP Scheme is final and no pay fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade.

(iv) In the matter of disciplinary/penalty proceedings, grant of benefit under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules, 1965 and instructions thereunder.

(v) The ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since reservations in promotion are applicable only in the cases of regular promotions, the reservation roster shall not apply to the ACP Scheme. However, at the time of

regular/functional (actual) promotion, the Cadre Controlling Authorities are to ensure that all reservation orders are applied strictly. After the introduction of this scheme, the government has issued various clarifications regarding the same⁴⁽⁴⁾.

⁴⁽⁴⁾For details see GOI OM No.35034/1/97-Estt (D) dated: 9.8.99

IMMEDIATE

No.35034/3/2008-Estt. (D) 133
 Government of India
 Ministry of Personnel, Public Grievances and Pensions
 (Department of Personnel and Training)

.....
 North Block, New Delhi, the 19th May, 2009

OFFICE MEMORANDUM

SUBJECT: - MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.

The Sixth Central Pay Commission in Para 6.1.15 of its report, has recommended Modified Assured Career Progression Scheme(MACPS). As per the recommendations, financial upgradation will be available in the next higher grade pay whenever an employee has completed 12 years continuous service in the same grade. However, not more than two financial upgradations shall be given in the entire career, as was provided in the previous Scheme. The Scheme will also be available to all posts belonging to Group "A" whether isolated or not. However, organised Group "A" services will not be covered under the Scheme

2. The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a MACPS and has accepted the same with further modification to grant three financial upgradations under the MACPS at intervals of 10, 20 and 30 years of continuous regular service .

3. The Scheme would be known as "**MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES**". This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group "A", "B", and "C" Central Government Civilian Employees **except officers of the Organised Group "A" Service**. The status of Group "D" employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would be treated as Group "C" employees. Casual employees, including those granted 'temporary status' and employees appointed in the Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in **Annexure-I**.

4. An Screening Committee shall be constituted in each Department to consider the case for grant of financial upgradations under the MACP Scheme. The Screening Committee shall consist of a **Chairperson** and **two members**. The members of the Committee shall comprise officers holding posts which are at least one level above the grade in which the MACP is to be considered and not below the rank of Under Secretary equivalent in the Government. The Chairperson should generally be a grade above the members of the Committee.

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5. The recommendations of the Screening Committee shall be placed before the Secretary in cases where the Committee is constituted in the Ministry/Department or before the Head of the organisation/competent authority in other cases for approval.

6. In order to prevent undue strain on the administrative machinery, the Screening Committee shall follow a time-schedule and meet twice in a financial year – preferably in the first week of January and first week of July of a year for advance processing of the cases maturing in that half. Accordingly, cases maturing during the first-half (April-September) of a particular financial year shall be taken up for consideration by the Screening Committee meeting in the first week of January. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year.

7. However, to make the MACP Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee within a month from the date of issue of these instructions to consider the cases maturing upto 30th June, 2009 for grant of benefits under the MACPS.

8. In so far as persons serving in The Indian Audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme.

11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly.

12. Hindi version will follow.

(S.Jainendra Kumar)

Deputy Secretary to the Govt. Of India

To

All Ministries/Departments of the Government of India

Copy to :-

1. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/Supreme Court/Rajya Sabha Secretariat/Lok Sabha Secretariat/ Cabinet Secretariat/UPSC/CVC/C&AG/Central Administrative Tribunal (Principal Bench), New Delhi.
2. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions.
3. Secretary, National Commission for Minorities.
4. Secretary, National Commission for Scheduled Castes/Scheduled Tribes
5. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi
6. All Staff Side Members of the National Council (JCM)
7. Establishment (D) Section - 1000 copies
8. NIC, DoPT, North Block for up-loading of the OM in DoPT website.

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MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS)

1. There shall be three financial upgradation s under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.
2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1 , Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.
3. The financial upgradation s under the MACPS would be admissible up-to the highest grade pay of Rs. 12000/ in the PB-4.
4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage.
5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs.

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Illustration-I

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10500.

- (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.
- (b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2.

6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS.

6.1 In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008, the Government servant has the option under the CCS (RP) Rules, 2008 to have his pay fixed in the revised pay structure either (a) w.e.f. 01.01.2006 with reference to his pre-revised scale as on 01.01.2006; or (b) w.e.f. the date of his financial upgradation under ACP with reference to the pre-revised scale granted under ACP. In case of option (b), he shall be entitled to draw his arrears of pay only from the date of his option i.e. the date of financial upgradation under ACP.

6.2 In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1st ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs.6500-10500 corresponding to the revised grade pay of Rs.4200 in the pay band PB-2, he will now be granted grade pay of Rs.4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. In CPWD by granting them the grade pay of Rs.4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.

7. With regard to fixation of his pay on grant of promotion/financial upgradation under MACP Scheme, a Government servant has an option under FR22 (I) (a) (I) to get his pay fixed in the higher post/ grade pay either from the date of his promotion/upgradation or from the date of his next increment viz. 1st July of the year. The pay and the date of increment would be fixed in accordance with clarification no.2 of Department of Expenditure's O.M. No.1/1/2008-IC dated 13.09.2008.
8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.
- 8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.
9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.
10. Past service rendered by a Government employee in a State Government/statutory body/Autonomous body/Public Sector organisation, before appointment in the Government shall not be counted towards Regular Service.
11. 'Regular service' shall include all periods spent on deputation/foreign service, study leave and all other kind of leave, duly sanctioned by the competent authority.
12. The MACPS shall also be applicable to work charged employees, if their service conditions are comparable with the staff of regular establishment.
13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.
14. The MACPS is directly applicable only to Central Government Civilian employees. It will not get automatically extended to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry/Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Governing Body/Board of Directors and the administrative Ministry concerned and where it is proposed to adopt the MACPS, prior concurrence of Ministry of Finance shall be obtained.

15. If a financial upgradations under the MACPS is deferred and not allowed after 10 years in a grade pay, due to the reason of the employees being unfit or due to departmental proceedings, etc., this would have consequential effect on the subsequent financial upgradation which would also get deferred to the extent of delay in grant of first financial upgradation.
16. On grant of financial upgradation under the Scheme, there shall be no change in the designation, classification or higher status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government accommodation shall be permitted.
17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs. 7600 and above.
18. In the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder.
19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay /grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Therefore, no reservation orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme.
20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.
21. Pay drawn in the pay band and the grade pay allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employee.
22. If Group "A" Government employee, who was not covered under the ACP Scheme has now become entitled to say third financial upgradation directly, having completed 30 year's regular service, his pay shall be fixed successively in next three immediate higher grade pays in the hierarchy of revised pay-bands and grade pays allowing the benefit of 3% pay fixation at every stage. Pay of persons becoming eligible for second financial upgradation may also be fixed accordingly.

23. In case an employee is declared surplus in his/her organisation and appointed in the same pay-scale or lower scale of pay in the new organization, the regular service rendered by him/her in the previous organisation shall be counted towards the regular service in his/her new organisation for the purpose of giving financial upgradation under the MACPS.

24. In case of an employee after getting promotion/ACP seeks unilateral transfer on a lower post or lower scale, he will be entitled only for second and third financial upgradations on completion of 20/30 years of regular service under the MACPS, as the case may be, from the date of his initial appointment to the post in the new organization.

25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal.

26. Cases of persons holding higher posts purely on adhoc basis shall also be considered by the Screening Committee alongwith others. They may be allowed the benefit of financial upgradation on reversion to the lower post or if it is beneficial vis-a-vis the pay drawn on adhoc basis.

27. Employees on deputation need not revert to the parent Department for availing the benefit of financial upgradation under the MACPS. They may exercise a fresh option to draw the pay in the pay band and the grade pay of the post held by them or the pay plus grade pay admissible to them under the MACPS, whichever is beneficial.

28. Illustrations

- A (i) If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-I in the Grade Pay of Rs.2800 after completion of 18 years (8+10 years).
- (ii) In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 28 years (8+10+10).
- (iii) However, if he gets 2nd promotion after 5 years of further service in the pay PB-II in the Grade Pay of Rs.4200 (Asstt. Grade/Grade "C") i.e. on completion of 23 years (8+10+5years) then he would get 3rd financial upgradation after completion of 30 years i.e. 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs.4600.

In the above scenario, the pay shall be raised by 3% of the total pay in the Pay Band and Grade Pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same Grade Pay or in the higher Grade Pay. Only the difference of grade pay would be admissible at the time of promotions.

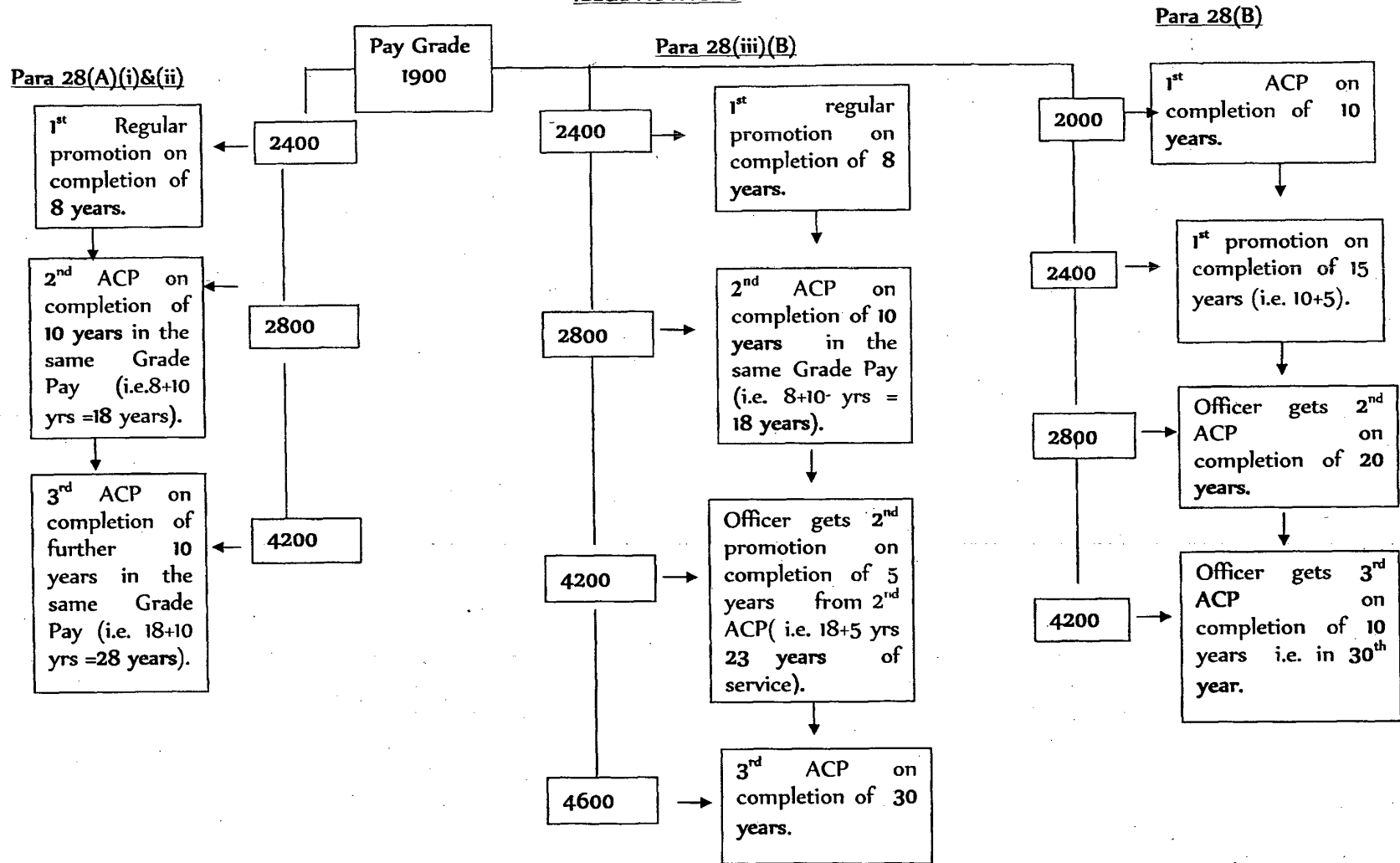
- B. If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-I in the Grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion (UDC) in PB-I in the Grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-I in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.
- C. If a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy.

(S.Jainendra Kumar)

Deputy Secretary to the Govt. Of India.

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ILLUSTRATIONS



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GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. PC-VI/215 ,

No. PC-V/2009/ACP/2

RBE No.101/2010

New Delhi, dated 21.7.2010

Sub: Grant of financial upgradation under the Modified ACP Scheme - reckoning of Non-Functional Grade (NFG) to DR Assistants/DR Grade 'C' Stenographers - clarification reg.

In supersession of Board's Order of even number dated 17.2.2010, it is clarified that DR Assistants/DR Grade 'C' Stenographers who have got Non-Functional Grade (NFG) in the Grade Pay of RS.5400 would only be entitled to 3rd financial upgradation in the immediate grade pay of RS.6600 on completion of 30 years of continuous service or on completion of 10 years of stagnation in 2 single Grade Pay, whichever is earlier. No further financial upgradation would be admissible to such officials.

2. This issues with the concurrence of the Finance Directorate of the Ministry of Railways and has the sanction of the President.

3. Hindi version is enclosed.

(N.P.Singh)

Dy. Director/ Pay Commission- V
Railway Board

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*Efficiency and the Public Good*

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On

**'MODIFIED ASSURED CAREER PROGRESSION
SCHEME FOR CENTRAL GOVERNMENT
CIVILIAN EMPLOYEES'**
(Updated upto 21st August 2012)

CONDUCTED BY

Institute of Secretariat Training and Management
(Government of India, Dept. of Personnel and Training)
Administrative Block, Old JNU Campus,
Olof Palme Marg, New Delhi -67.
Tele: 011-2619 4086, Fax: 011-26104183
www.istm.gov.in

Institute of Secretariat Training and Management

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MODIFIED – ASSURED CAREER PROGRESSION SCHEME

INTRODUCTION:

The Department of Personnel & Training, vide their Office Memorandum No. 35034/3/2008-Estt (D) dated 19th May 2009, have issued a detailed scheme, known as the "Modified Assured Career Progression Scheme for the Central Government Civilian Employees". This scheme will supersede the previous ACP scheme and clarifications issued thereon. It will be applicable to all regularly appointed Group 'A' & 'B' & 'C' employees except the officers of organized Group "A" services. The status of Group 'D' employees would cease on their completion of prescribed training and would be treated as Group 'C' employees.

2. The scheme would be operational w.e.f. 01.09.2009. Financial upgradation as per the provisions of the earlier ACP Scheme of August, 1999 would be granted till 31.08.2008.

THE SCHEME:

3. There shall be three financial upgradation on completion of 10, 20, and 30 years services respectively, counted from direct entry grade.

4. Benefit of Pay Fixation like regular promotion, i.e. increase the band pay by 3 % of total pay (Basic Pay + Band Pay) drawn before such upgradation. The grade would be the immediate next higher grade pay as recommended by 6th Pay Commission and accepted by the Government. This Grade Pay could be different from that employee is entitled for at the time of regular promotions. In such cases higher grade will be given at the time of actual promotion and there will not be any enhancement in band pay.

ILLUSTRATION I :-

A Government servant joined service in PB-1 with Grade Pay of Rs.1,900. He gets no promotion till 10 years on completion of 10 years, he shall get Grade Pay of Rs.2000 & Band Pay increased by 3 % of (Basic Pay + Band Pay).

If he gets promotion, say to the grade with Grade Pay 2,400, he will only be granted higher grade pay. No additional increment will be granted at this stage.

5. Promotions earned/upgradation under ACP which now carry the same Grade Pay due to merger of scales, shall be ignored for the purpose of upgradation under MACPS.

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ILLUSTRATION II :-

Pre revised scales in hierarchy in an organization are as under:

5000-150-8000

5500-175-9000

6500-200-10500

- (a) A Government Servant recruited in the scale 5000-150-8000 who did not get any promotion for 25 years prior to 1.1.2006 would have got two upgradations under ACP to 5500-9000 and 6500-10500.
- (b) Another Government Servant recruited in scale 5000-150-8000 got two promotions for the higher grades of 5500-150-9000 and 6500-200-10,500.

Now, in both cases as a result of merger of the above three scales, the above promotion/upgradation will be ignored. Both will be granted Grade Pay of Rs. 4200 in PB-2. Subsequently two upgrades under MACPS to next two higher grades of Rs. 4600 and Rs 4800 in PB-2.

6. If ACP has been granted till 1.1.2006, the revised pay will be fixed with reference to the pay scale granted to them under the ACPS. If ACP granted between 1.1.2006 and 31.8.2008, Govt. Servant can get his pay fixed in revised pay structure either w.e.f 1.1.2006 or from the date of grant of ACP. In case of second option no arrears of pay will be given till the date of upgradation. If granted ACP under old scheme to a grade, which has been upgraded the pay of such employee will be fixed in revised pay structure w.e.f. the higher grade pay granted to the post.

ILLUSTRATION-III :-

If a Government Servant given ACP to the scale of 6500-10500. The corresponding grade pay would be 4200/- But the scale 6500-10500 has been upgraded to 7500-12000, hence the corresponding grade pay given will be Rs. 4800 in PB-2.

OTHER IMPORTANT POINTS TO REMEMBER :-

- On getting upgradation under MACPS Government Servant has option under FR 22 (I) (a) (1) to get his pay fixed either from the date of upgradation or from DNI viz 1st July.
- Promotion earned in the post carrying same grade pay in the hierarchy as per Recruitment Rule shall be counted for the purpose of MACPS.
- Grade Pay 5400/- in PB-2 and 5400 in PB-3 shall be treated separate Grade Pays for the purpose of MACPS.
- Regular service for MACPS shall commence from date of joining in direct entry grade on regular basis as DR or on absorption/re-employment basis. Service rendered on **adhoc/contract** basis before regular appointment on pre-appointment training **shall not count**. However, past continuous regular service in another department in the **same grade** without break shall count for MACP (not for regular promotion).
- Past service rendered in a **State Government/Statutory body/Autonomous body/PSU** before appointment in Government service, **shall not count**.
- Any other time bound promotion scheme including in-situ promotion scheme, shall not run concurrently with in MACPS. Exception being Staff Car Driver Scheme only as a fall back option.
- This MACPS shall **not** automatically extend to Autonomous/Statutory Bodies under various Ministries/Departments a decision in this regard shall be taken by respective Governing Body/Board of Directors and the final approval by the concerned Ministry or Department.
- If financial upgradation is deferred due to employee being unfit or due to departmental proceedings etc., this would have consequential effect on subsequent upgradation(s) which would also get deferred.
- Financial upgradation under MACPS will not change status, designation or classification. However, certain other benefits linked to pay drawn as HBA, govt. accommodation etc. shall be permitted.

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- In case of Disciplinary/Penalty proceedings, MACPS shall be subject to rules governing normal promotion under the provision of CCS (CCA) Rules 1965.
- No reservation orders/rosters shall apply to MACPS.
- Upgradation is purely personal, no relevance to his seniority, there shall be no stepping up of pay. This will be taken in to account for retirement benefits.
- If a surplus employee gets appointed in same or lower scale in a new organization his earlier service shall count for the purpose of MACPS.
- If an employee goes to a lower scale by choice after getting first promotion/upgradation, he will get 2nd/3rd upgradation after 20/30 years of regular service.
- If promotion refused, no financial upgradation will be given. If upgradation given and subsequent promotion is refused, upgradation will not be withdrawn. However, he shall not be eligible for next upgradation unless he agrees to be considered for promotion again. Future upgradation(s) shall be deferred to the extent of period of debarment due to the refusal.
- Employees on deputation need not revert. They may exercise fresh option to draw pay of deputation post or the pay admissible under MACPS, whichever is beneficial.

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IMMEDIATE

No.35034/3/2008-Estt. (D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi, the 19th May, 2009

OFFICE MEMORANDUM

SUBJECT: - MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.

The Sixth Central Pay Commission in Para 6.1.15 of its report, has recommended Modified Assured Career Progression Scheme(MACPS). As per the recommendations, financial upgradation will be available in the next higher grade pay whenever an employee has completed 12 years continuous service in the same grade. However, not more than two financial upgradations shall be given in the entire career, as was provided in the previous Scheme. The Scheme will also be available to all posts belonging to Group "A" whether isolated or not. However, organised Group "A" services will not be covered under the Scheme

2. The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a MACPS and has accepted the same with further modification to grant three financial upgradations under the MACPS at intervals of 10, 20 and 30 years of continuous regular service .

3. The Scheme would be known as "**MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES**". This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group "A", "B", and "C" Central Government Civilian Employees **except officers of the Organised Group "A" Service.*** The status of Group "D" employees would cease on their completion of prescribed training, as recommended by the Sixth Central Pay Commission and would be treated as Group "C" employees. Casual employees, including those granted 'temporary status' and employees appointed in the Government only on adhoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in Annexure-1.

4. An Screening Committee shall be constituted in each Department to consider the case for grant of financial upgradations under the MACP Scheme. The Screening Committee shall consist of a Chairperson and two members. The members of the Committee shall comprise officers holding posts which are at least one level above the grade in which the MACP is to be considered and not below the rank of Under Secretary equivalent in the Government. The Chairperson should generally be a grade above the members of the Committee.

* MACPS is now applicable to those officers who are inducted to the ~~organised~~ Gp 'A' Services at a later stage (nearing retirement) of their service.

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5. The recommendations of the Screening Committee shall be placed before the Secretary in cases where the Committee is constituted in the Ministry/Department or before the Head of the organisation/competent authority in other cases for approval.

6. In order to prevent undue strain on the administrative machinery, the Screening Committee shall follow a time-schedule and meet twice in a financial year – preferably in the first week of January and first week of July of a year for advance processing of the cases maturing in that half. Accordingly, cases maturing during the first-half (April-September) of a particular financial year shall be taken up for consideration by the Screening Committee meeting in the first week of January. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year.

7. However, to make the MACP Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee within a month from the date of issue of these instructions to consider the cases maturing upto 30th June, 2009 for grant of benefits under the MACPS.

8. In so far as persons serving in The Indian Audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme.

11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly.

12. Hindi version will follow.

(S.Jainendra Kumar)

Deputy Secretary to the Govt. Of India

To

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Comd-P-3/-

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ANNEXURE-1

MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS)

1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.

2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion.

3. * The financial upgradations under the MACPS would be admissible up-to the highest grade pay of Rs. 12000/ in the PB-4.

4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage.

5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs.

** MACPS is now available upto HAG Scale of ^{Comd. P. St.} Rs. 67000 - 79000/-

[Auth: No. 35034/3/2008 - Estt (D)
dt 24th December 2010]

Illustration-1

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10500.

- (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.
- (b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2.

6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS.

6.1 In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008, the Government servant has the option under the CCS (RP) Rules, 2008 to have his pay fixed in the revised pay structure either (a) w.e.f. 01.01.2006 with reference to his pre-revised scale as on 01.01.2006; or (b) w.e.f. the date of his financial upgradation under ACP with reference to the pre-revised scale granted under ACP. In case of option (b), he shall be entitled to draw his arrears of pay only from the date of his option i.e. the date of financial upgradation under ACP.

6.2 In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay; the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1st ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs.6500-10500 corresponding to the revised grade pay of Rs.4200 in the pay band PB-2, he will now be granted grade pay of Rs.4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. In CPWD by granting them the grade pay of Rs.4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.

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7. With regard to fixation of his pay on grant of promotion/financial upgradation under MACP Scheme, a Government servant has an option under FR22 (I) (a) (I) to get his pay fixed in the higher post/ grade pay either from the date of his promotion/upgradation or from the date of his next increment viz. 1st July of the year. The pay and the date of increment would be fixed in accordance with clarification no.2 of Department of Expenditure's O.M. No.1/1/2008-IC dated 13.09.2008.

8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.

9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.

10. Past service rendered by a Government employee in a State Government/statutory body/Autonomous body/Public Sector organisation, before appointment in the Government shall not be counted towards Regular Service.

11. 'Regular service' shall include all periods spent on deputation/foreign service, study leave and all other kind of leave, duly sanctioned by the competent authority.

12. The MACPS shall also be applicable to work charged employees, if their service conditions are comparable with the staff of regular establishment.

13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.

14. The MACPS is directly applicable only to Central Government Civilian employees. It will not get automatically extended to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry/Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Governing Body/Board of Directors and the administrative Ministry concerned and where it is proposed to adopt the MACPS, prior concurrence of Ministry of Finance shall be obtained.

Conditions/procedures for extension of MACPS to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry/Department have been laid down vide D.O.P.T OM No. 35034/3/2010-E&H (1)

15. If a financial upgradation under the MACPS is deferred and not allowed after 10 years in a grade pay, due to the reason of the employees being unfit or due to departmental proceedings, etc., this would have consequential effect on the subsequent financial upgradation which would also get deferred to the extent of delay in grant of first financial upgradation.

16. On grant of financial upgradation under the Scheme, there shall be no change in the designation, classification or higher status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government accommodation shall be permitted.

17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs. 7600 and above.

18. In the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder.

19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay (grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Therefore, no reservation orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme.

20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.

21. Pay drawn in the pay band and the grade pay allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employee.

22. If Group "A" Government employee, who was not covered under the ACP Scheme has now become entitled to say third financial upgradation directly, having completed 30 year's regular service, his pay shall be fixed successively in next three immediate higher grade pays in the hierarchy of revised pay-bands and grade pays allowing the benefit of 3% pay fixation at every stage. Pay of persons becoming eligible for second financial upgradation may also be fixed accordingly.

§ These provisions have been modified. As such, where the financial upgradation under MACPS also happens to be in the promotional grade and benchmark for promotion is lower than the benchmark for grant of benefits under MACPS, the benchmark for promotion shall apply to MACPS.

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23. In case an employee is declared surplus in his/her organisation and appointed in the same pay-scale or lower scale of pay in the new organization, the regular service rendered by him/her in the previous organisation shall be counted towards the regular service in his/her new organisation for the purpose of giving financial upgradation under the MACPS.

24. ~~★~~ In case of an employee after getting promotion/ACP seeks unilateral transfer on a lower post or lower scale, he will be entitled only for second and third financial upgradations on completion of 20/30 years of regular service under the MACPS, as the case may be, from the date of his initial appointment to the post in the new organization.

25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal.

26. Cases of persons holding higher posts purely on adhoc basis shall also be considered by the Screening Committee alongwith others. They may be allowed the benefit of financial upgradation on reversion to the lower post or if it is beneficial vis-a-vis the pay drawn on adhoc basis.

27. Employees on deputation need not revert to the parent Department for availing the benefit of financial upgradation under the MACPS. They may exercise a fresh option to draw the pay in the pay band and the grade pay of the post held by them or the pay plus grade pay admissible to them under the MACPS, whichever is beneficial.

28. Illustrations

A (i) If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-I in the Grade Pay of Rs.2800 after completion of 18 years (8+10 years).

(ii) In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 28 years (8+10+10).

(iii) However, if he gets 2nd promotion after 5 years of further service in the pay PB-II in the Grade Pay of Rs.4200 (Asstt. Grade/Grade "C") i.e. on completion of 23 years (8+10+5years) then he would get 3rd financial upgradation after completion of 30 years i.e. 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs.4600.

~~★~~ *stands amended.*
Now, ... in case of transfer, including unilateral transfer on request, regular service rendered in previous organization/office shall be counted alongwith regular service in the new organisation for the purpose of getting financial upgradation under the MACPS ... (Val-D) dtd

In the above scenario, the pay shall be raised by 3% of the total pay in the Pay Band and Grade Pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same Grade Pay or in the higher Grade Pay. Only the difference of grade pay would be admissible at the time of promotions.

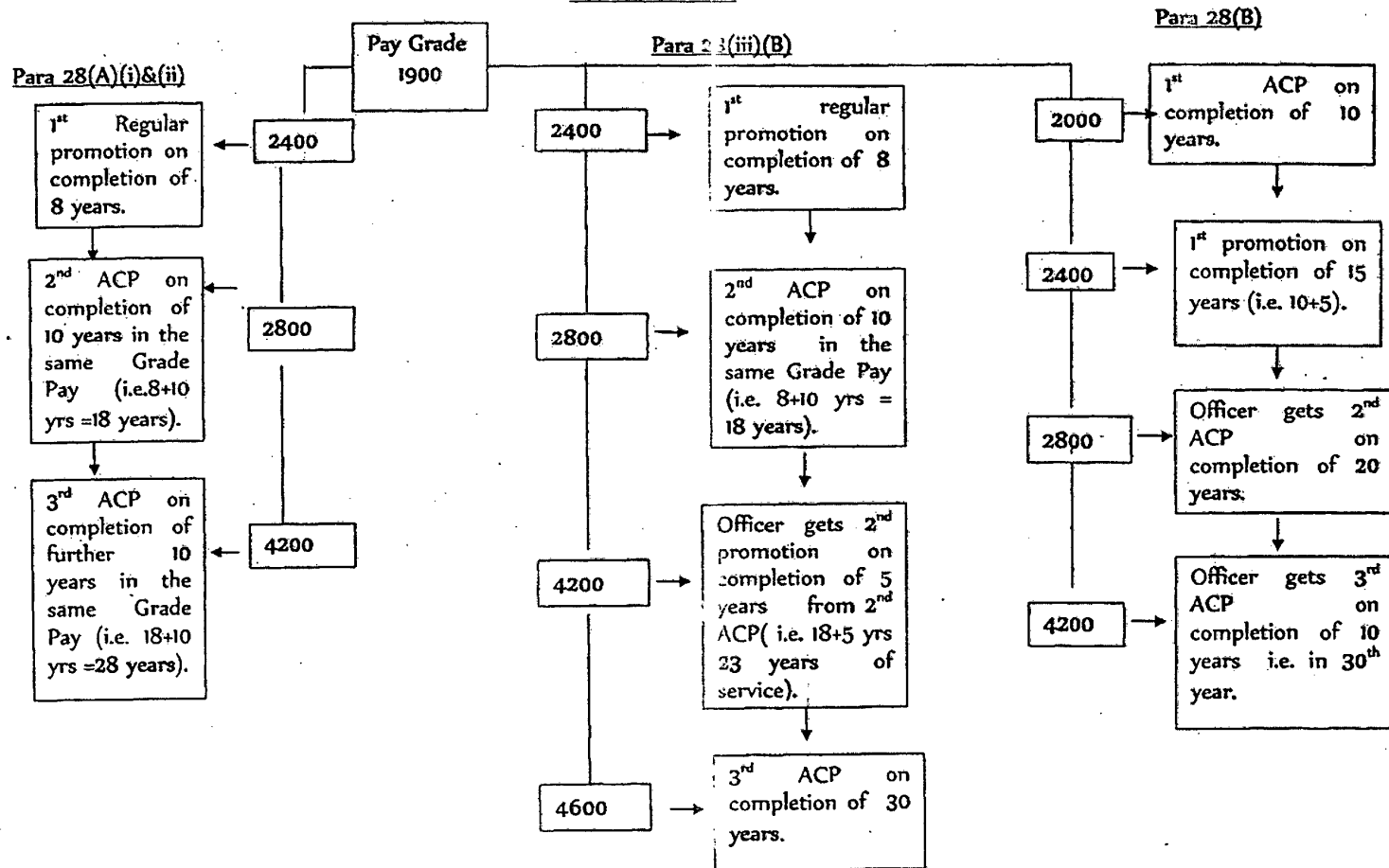
- 13
- B. If a Government servant (LDC) in PB-I in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-I in the Grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion (UDC) in PB-I in the Grade Pay of Rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-I in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs. 4200. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier.
- C. If a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy.

(S. Jainendra Kumar)

Deputy Secretary to the Govt. Of India.

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ILLUSTRATIONS



**FREQUENTLY ASKED QUESTIONS (FAQs) ON MODIFIED ASSURED CAREER
PROGRESSION SCHEME**

	Point of doubt	Clarification
1.	What is Modified Assured Career Progression Scheme (MACPS) ?	The MACP Scheme for Central Civilian Government Employees is in supersession of earlier ACP Scheme . Under the MACP Scheme three financial Up-gradations are allowed on completion of 10, 20, 30 years of regular service, counted from the direct entry grade. The MACPS envisages merely placement in the immediate next higher grade pay as given in Section I, Part -A of the first schedule of the CCS (Revised Pay) Rules 2008, in case no promotion has been earned by the employee during this period.
2.	From which date the MACPS is effective?	The MACPS is effective w.e.f. 01.09.2008 or on completion of 10, 20 & 30 years of continuous regular service, whichever is later. Financial upgradation will also be admissible whenever a person has spent 10 years continuously in the same grade pay. (Para 9 of OM dated 19/5/2009)
3.	Who are entitled for financial upgradation under the MACPS?	The MACPS is applicable to all Central Government Civilian Employees.

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4	What norms are required to be fulfilled while granting the benefits under MACPS	<p>The financial upgradation would be on non-functional basis subject to fitness in the hierarchy of pay band and grade pay within PB-1. Thereafter, only the benchmark of 'Good' would be applicable till the grade pay of Rs.6600 in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs.7600 and above. However, where the financial upgradation under the MACPS also happen to be in the promotional grade and benchmark for promotion is lower than the benchmark for granting the benefits under MACPS as mentioned in para 17 of the Scheme, the benchmark for promotion shall apply to MACP also.</p> <p>OM.No.35034/3/2008-Estt(D) dated 01/11/2010</p>
5.	Whether Pay Band would be changed at the time of grant of financial upgradation under MACPS	<p>Yes.</p> <p>OM.No.35034/3/2008-Estt.(D) dated 09/09/2010</p>
6.	Whether the promotions in same grade would be counted for the purpose of MACPS?	<p>The financial up-gradation under the MACPS is in the immediate next higher grade pay in the hierarchy of recommended revised pay bands and grade pay as given in CCS (Revised Pay) Rules, 2008. However if the promotional hierarchy as per recruitment rules is such that promotions are earned in the same grade pay, then the same shall be counted for the purpose of MACPS.</p>
7.	How will the benefits of ACP be granted if due between 01.01.2006 and 31.08.2008	<p>The revised pay structure has been changed w.e.f. 01.01.2006 and the benefits of ACPs have been allowed till 31.08.2008. Hence, the benefits of revised pay structure would be allowed for the purpose of ACPs. (OM No.35034/3/2008-Estt. dated 9.9.2010).</p>

8.	Whether adhoc appointment would be counted towards qualifying service for MACPS	No. Only continuous regular service is counted towards qualifying service for the purpose of MACPS. The regular service shall commence from the date of joining of a post in direct entry grade on a regular basis. (Para 9 of the MACPS)
9.	Whether State Government service shall be reckoned for the purpose of MACPS	No. Only regular service rendered in the Central Government's Department/Office is to be counted for the purpose of MACPS, as the Scheme is applicable to the Central Government Civilian Employees only. (MACPS , Para 10)
10.	What are the periods included in the regular service?	All period spent on deputation/foreign service, study leave and all other kind of leave, duly sanctioned by the competent authority shall be included in the regular service. (Para 11, MACPS)
11.	How is the MACPS to be extended to the employees of Autonomous and Statutory Bodies.	Procedure prescribed in OM No.35034/3/2010-Estt(D), Dated 03/08/2010 would be followed by the administrative Ministries/Departments concerned for extension of the MACPS to the employees of Autonomous and Statutory Bodies under their control.
12.	Whether the cases of grant of financial upgradation allowed under the ACPS between 01.09.2008 and 19.05.2009, the date of issue of the Scheme are be reviewed?	Yes. Since the benefits of ACPS have been discontinued w.e.f. 01.09.2008, the cases settled between 01.09.2008 and 19.05.2009, in terms of previous ACP Scheme shall be reviewed.
13.	Whether the past continuous regular service in another Govt. Deptt. in a post carrying same grade pay prior to regular appointment in a new Deptt. without a break shall be counted towards qualifying regular service for the purpose of MACPS.	Yes. (Para 9, MACPS)

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14.	Upto what grade pay the benefits under the MACPS is allowed?	The benefits of MACPS are being up-to HAG scale of Rs.67000-79000/ (DOPT's O.M.No.35034/3/2008-Estt.(D) dated 24.12.2010)
15.	How the cases of pre-revised pay scales (Rs.5000-8000 & Rs.5500-9000 and Rs.6500-10500 & Rs.7450-11500) merged w.e.f. 01.01.2006 are to be decided under MACPS?	The cases would be regulated in accordance with para 5 of Annexure-I of MACPS. The Ministries/ Departments are expected to re-organise cadres and frame common RRs for the post in merged scales.
16.	Whether 'Non-functional Scale' of Rs.8000-13500 (revised to grade pay of Rs.5400 in PB-3) would be viewed as one financial upgradation for the purpose of MACPS.	Yes, in terms of para 8.1 of Annexure-I of MACPS dated 19.05.2009.
17.	Whether 'time bound promotion' scheme including 'non-promotion' scheme can run concurrently with MACPS.	No. (Para 13 of MACPS)
18.	Whether Staff Car Driver Scheme can run concurrently with MACPS.	DOPT vide O.M. No.35011/03/2008-Estt.(D),30/07/2010 has extended the benefits of MACPS to Staff Car Drivers as a fall back option.
19.	Whether the placement of erstwhile Gr. D employees as Staff Car Driver, ordinary grade, would count as a promotion?	No. The model RRs for Staff Car Drivers provide deputation/ absorption as a method of appointment for erstwhile Gr. D employees. The placement as staff Car Driver is not in the hierarchy hence the same would not be counted as promotion under MACPS. The regular service for the MACPS would be from the date of appointment as Staff Car Driver.

20.	Whether designation, classification or higher status would change on account of financial upgradation under MACPS	There shall be no change in the designation, classification or higher status on grant of financial upgradation under MACPS, as the upgradation under the Scheme is purely personal and merely placement in the next higher grade pay. (Para 16 of Annexure-I of MACPS refers)
21	If a financial upgradation under the MACPS is deferred due to the reason of the employees being 'unfit' or due to departmental proceedings, etc, whether this would have consequential effect on the subsequent financial upgradation.	Yes, this would have consequential effect on the subsequent financial upgradation, which would also get deferred to the extent of delay in grant of financial upgradation. (MACPS, Para 15)
22.	Whether the stepping up of pay would be admissible if a junior is getting more pay than the senior on account of upgradation under MACPS.	No stepping up of pay in the band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACPS. (Para 10 of OM dated 19/5/2009)
23.	Whether the regular service rendered by an employee if declared surplus in his/her organisation and appointed in the same grade pay or lower grade pay shall be counted towards the regular service in a new organization for the purpose of MACPS.	Yes. (refer para 23 of Annexure-I of MACPS).
24.	In case of transfer including unilateral transfer own request, whether regular service rendered in previous organisation/office shall be counted alongwith the regular service in the new organization for the purpose of MACPS.	Yes. OM No.35034/3/2008-Estt(D) dated 01/11/2010

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Department of Personnel & Training
Establishment D Section

Frequently Asked Questions (FAQs) on Modified Assured Career Progression Scheme (MACPS)

Sl.No.	Doubts	Clarification
26	Whether the benefits of ACPS would be allowed in respect of isolated cases due between 01.01.2006 and 31.08.2008 where the pre-revised pay scales of Rs.5000-8000 & Rs.5500-9000 and Rs.6500-10500 & Rs.7450-11500 have been merged into single grade pay of Rs.4200 and Rs.4600 respectively w.e.f. 01.01.2006?	Yes. Since the pre-revised Rs.5000-8000 & Rs.5500-9000 and Rs.6500-10500 & Rs.7450-11500 (isolated cases) have been merged into single grade pay of Rs.4200 and Rs.4600 respectively w.e.f. 01.01.2006, the benefits of 1st and 2nd financial upgradations under the ACPS should be considered/allowed in the grade pays of Rs.4600 and Rs.4800 in PB-2, as the case may be, due between 01.01.2006 and 31.08.2008 in respect of isolated cases in terms of para 5 of Annexure-I of MACPS dated 19.05.2009.
27	<p>In a hypothetical situation cadre hierarchy was as follows:</p> <p>Rs.5000-8000 (revised GP 4200) Rs.5500-9000 (revised GP 4200) Rs.6500-10500 (revised GP 4600) Rs.7450-11500 (revised GP 4600) Rs.10000-15200 (revised GP 6600)</p> <p>(i) What would be the 1st financial upgradation under the ACPS for a Government employee recruited in pre-revised pay scale of Rs.5000-8000, who has completed his 12 years of regular service on 12.04.2007 (between 1.1.2006 and 31.8.2008);</p>	<p>In terms of clarification given on point of doubt no.3 issued vide DOPT's O.M. No.35034/3/2008-Estt.(D) dated 9.9.2010, the benefits of ACPS would be applicable in the new pay structure adopted w.e.f. 1.1.2006 in the promotional hierarchy.</p> <p>(i): Since the pre-revised pay scales Rs.5000-8000 & Rs.5500-9000 have been merged and placed in PB-2 with grade pay of Rs.4200, 1st financial upgradation would be allowed in the grade pays of Rs.4600, subject to fulfillment of promotional norms as stipulated in condition no.6 of Annexure-I ACPS dated 9.8.1999, in terms of clarification given on point of doubt no.1 of ACPS dated 10.02.2000.</p>

25.	If a regular promotion has been offered but was refused by the employees before becoming entitled to a financial upgradation under the MACPS, whether financial upgradation shall be allowed to such a Government servant.	If a regular promotion has been offered but was refused by the Government employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed and as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal. (Para 25 of MACPS)
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No. AB 14017/66/2008-Estt RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
New Delhi

Dated the 9th March, 2009

OFFICE MEMORANDUM

Subject: - Criteria for assessing suitability of officers where there is revision/upgradation/merger of pay scales.

The undersigned is directed to invite reference to the Department of Personnel & Training OM No. 22011/10/84 - Estt.(D) dated 04.02.1992 wherein the criteria to be adopted for assessing the suitability of incumbents of posts and the date of appointment to the upgraded post, wherever there is a revision of pay scale/upgradation of post, have been laid down.

2 There has been merger of a number of pre-revised scales without any pre-condition for possession of higher qualifications for placement of incumbents in the higher/upgraded scale, in the revised pay structure recommended by the 6th CPC and accepted by the Government. In this context, the instructions of 4.2.92 have been reviewed and it has been decided in consultation with Ministry of Finance (Department of Expenditure) who have issued certain instructions in this regard under OM No. 1/1/2008-IC dated 13.09.2008, and the UPSC that the procedure for assessment of suitability in such cases may be as follows for placement in an upgraded/merged grade

- (i) Where all posts in one or more pre-revised scales are merged with a higher pre-revised scale and given a common replacement scale/grade pay /pay scale, the suitability of the incumbents need not be assessed for granting them the higher replacement scale/grade pay/pay scale, there is also no need for the incumbents to complete any minimum eligibility service in the earlier scale of pay. There will be no change in the inter se seniority of the incumbents in the merged grade which shall be decided based on the general instructions on the subject, and
- (ii) Where all posts in a particular grade have been granted a higher replacement pay scale/grade pay, as per upgradation recommended by the 6th CPC, suitability of the incumbents need not be assessed for granting them the higher replacement scale/grade pay. Here also there is no need for the incumbents to complete any minimum eligibility service in the earlier scale of pay and
- (iii) Where there is a change in the Group (that is classification of the post) consequent upon the merger or upgradation and where there is no higher responsibility or higher qualification involved, assessment of the suitability will not be necessary before the revised grade is allowed. There will also be no need for the incumbents to complete any minimum eligibility service in the earlier scale of pay. However, suitability of the officer who has been placed in a upgraded / replacement pay scale which fall in Group A by recommendation & award of the Pay Commission will continue to be assessed

(ii)	What would be 2 nd financial upgradation for employee recruited in 5000-8000, who has completed 24 years of regular service on 12.04.2007 (between 1.1.2006 and 31.8.2008)	Since the pre-revised pay scales Rs.6500-10500 & Rs.7450-11500 have been merged and placed in PB-2 with grade pay of Rs.4600, 2 nd financial upgradation would be allowed in the grade pay of Rs.6600, subject to fulfillment of promotional norms (after framing of RRs post merger) as stipulated in condition no.6 of Annexure-I ACPS dated 9.8.1999, in terms of clarification given on point of doubt no.1 of ACPS dated 10.02.2000.
(iii)	If a Government servant recruited in the pre-revised pay scale of Rs.5000-8000 has been promoted in the promotional hierarchy in the pre-revised pay scale of Rs.5500-9000 prior to 1.1.2006 (and he has put in 14 years of regular service) then would there be any claim for financial upgradation under ACPS	(iii): The pre-revised pay scales Rs.5000-8000 & Rs.5500-9000 have been merged and placed in PB-2 with grade pays of Rs.4200 w.e.f. 1.1.2006. Hence, the promotion would be ignored as he has completed his 12 years of regular service and the benefit of 1 st ACP would accordingly be allowed in the promotional hierarchy i.e. in the grade pay of Rs.4600 w.e.f. 01.01.2006.
(iv)	If the above Government servant had put in 22 years as on 31.08.2008, then what would be the entitlement in MACP	(iv): As given above, the 1 st ACP would be in PB-2 grade pay of Rs.4600 after ignoring the previous promotion. Thereafter, since employee has completed more than 20 years of regular service on 01.09.2008, he would be entitled for 2 nd financial upgradation under the MACPS in the immediate next higher grade pay of Rs.4800 in PB-2 subject to fulfillment of condition as stipulated in para 17 of Annexure-I of MACPS dated 19.05.2009.

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No. AB.14017/61/2008-Estt. (RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
New Delhi

Dated the 24th March, 2009

OFFICE MEMORANDUM

**Subject:- Sixth Central Pay Commission's recommendations –
revision of pay scales- amendment of Service
Rules/Recruitment Rules**

The recommendations of 6th CPC have been considered by the Government and the CCS (Revised Pay) Rules 2008 have since been notified on 29th August, 2008. Consequently, in place of the pre-revised pay scales, the revised pay structure comprising the Pay Band and Grade Pay/Pay Scale has come into effect. Some of the pre-revised pay scales have been merged and some others are upgraded/likely to be upgraded. In the light of these, it has been decided that the following consequential steps to amend the existing Service Rules/Recruitment Rules shall be undertaken on a priority basis:

- (i) Substituting the existing scales by the Grade Pay alongwith the Pay Band

The existing pay scales have to be substituted by the new pay structure (Pay Band and Grade Pay/Pay Scale) straightaway without making a reference to the Department of Personnel and Training (DOP&T)/Union Public Service Commission (UPSC). The heading of column No.4 of the Schedule on RRs may be modified to "Pay Band and Grade Pay/Pay Scale". In cases where deputation is also one of the methods of recruitment, the field of selection for deputation, which might include various grades, should also reflect the corresponding Grade Pay alongwith the Pay Band/Pay Scale, and the minimum eligibility service as per the revised guidelines, as enclosed in Annexure.

3. Assessment of suitability will continue to be necessary in the following situations arising out of cadre reviews, restructuring etc., not covered in the recommendations of the 6th CPC:

- (i) where the upgradation involves higher responsibilities and higher eligibility service;
- (ii) Where the upgradation or merger is part; where the upgraded post will be the promotion grade for the posts left in the lower grade and the normal DPC procedure will apply.

4. Hindi version will follow.

(S.J.Kumar)

Deputy Secretary to the Government of India
Tel 2309 4504

To

- 1 All Ministries/Departments of Government of India
- 2 Chief Secretaries of All State Governments
- 3 The President's Secretariat, New Delhi
- 4 The Prime Minister's Office, New Delhi
- 5 The Cabinet Secretariat, New Delhi
- 6 The Rajya Sabha Secretariat, New Delhi
- 7 The Lok Sabha Secretariat, New Delhi
- 8 The Comptroller and Auditor General of India, New Delhi
- 9 The Union Public Service Commission, New Delhi

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- 2 Establishment Officer and Secretary, ACC (10 copies)
- 3 All Officers and Sections in the Department of Personnel & Training
- 4 Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshahi Road, New Delhi
- 5 All Staff Members of National Council (JCM)
- 5 All Staff Members of the Departmental Council (JCM), Ministry of Personnel, PG and Pensions
- 7 Establishment (IRR Division) (200 copies)

(S.J.Kumar)

Deputy Secretary to the Government of India

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Note:

For the purpose of computing minimum qualifying service for promotion, the service rendered on a regular basis by an officer prior to 1.1.2006/the date from which the revised pay structure based on the 6th CPC recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay/pay scale extended based on the recommendations of the Commission. For purposes of appointment on deputation/absorption basis, the service rendered on a regular basis by an officer prior to 1.1.2006/the date from which the revised pay structure based on the 6th CPC recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay/pay scale extended based on the recommendations of the Commission except where there has been merger of more than one pre-revised scale of pay into one grade with a common grade pay/pay scale, and where this benefit will extend only for the post(s) for which that grade pay/pay scale is the normal replacement grade without any upgradation.

2. The Recruitment Rules/Service Rules are of statutory nature. Therefore, the changes brought out by other relevant instructions have to be incorporated in the Recruitment Rules/Service Rules by suitable amendments so that the necessary steps like holding of DPC etc. are taken to fill the post carrying the revised Grade Pay/Pay Scale on regular basis. All the Ministries/Departments are, therefore, requested to effect necessary amendments to the Recruitment Rules/Service Rules notified by them after following the normal procedure of furnishing proposals to the Department of Personnel and Training and the UPSC in the format prescribed in the general guidelines on Recruitment Rules circulated by the DOPT OM No. 14017/12/87-Estt. (RR) dated 18.3.1988, and also in consultation with the Legislative Department.

3. Ministries/Departments may initiate action to complete the review in this regard and furnish necessary amendment proposals to the DOPT and the UPSC in the case of Group A and Group B posts within six months from the date of issue of this Office Memorandum. They may also, simultaneously, take similar action in respect of Recruitment Rules for Group C and D posts, which are within their delegated powers. Appropriate action to update the Service Rules for organized Group A, B Services, etc. shall also be taken up with DOPT/UPSC within a period of six months.

(ii) Where there is an upgradation of posts

The instructions issued by Department of Expenditure under OM No. 1/1/2008-IC dated 13th September, 2008 and DoPT O.M. No. AB-14017/66/08-Estt (RR) dated 9th March, 2009 may be applied in such cases.

However, for each of the merged grades, a single set of Recruitment Rules may be formulated and notified.

(iii) Consequential changes

It is necessary to make consequential changes in the Recruitment Rules/Service Rules so as to prescribe eligibility conditions with reference to the revised Grade Pay/Pay scale. It is also necessary to review other columns of the Recruitment Rules /Service Rules, where some minimum service in a particular scale/grade is prescribed for consideration for appointment on deputation/absorption etc., keeping in view particularly the merger of a number of pre-revised scales, upgradation of some scales and the consequential changes in the minimum eligibility service in a grade.

(iv) Department Promotion Committee (DPC)

Where two or more scales have been merged, the existing DPC for the higher/highest grade will be the DPC for the merged grade.

(v) Regulation of regular service rendered in the pre-revised scales

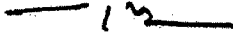
The revised pay structure approved includes a number of 'merged grades' with a common grade pay and the concept of pay bands with grade pay introduced effective from 1.1.2006. Insofar as the issue of regulation of service rendered prior to 1.1.2006 is concerned, while the general rule may be that such regular service be deemed to be service rendered in the corresponding grade pay/pay scale approved effective from 1.1.2006 or from a subsequent date, as the case may be, this formulation cannot apply in cases where there has been merger of more than one grade into one with a single grade pay/pay scale. Since the merger is effective from 1.1.06 only, even notional benefits of the merger cannot be extended for periods falling prior to 1.1.06. A Note to the following effect may, therefore, be inserted under col.12 of the Schedule on RRs, and under relevant provisions in Service Rules, to take care of the requirements:

Copy to:

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
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7. The Union Public Service Commission, New Delhi. (20 copies)
8. The Staff Selection Commission, New Delhi.
9. All Attached Offices under the Ministry of Personnel, Public Grievances and Pensions.
10. Establishment Officer and Secretary, ACC (10 copies).
11. All Officers and Sections in the Department of Personnel & Training
12. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi
13. All Staff Members of National Council (JCM)
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15. Establishment (RR Division) (200 copies)

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4. Hindi version will follow.


(S.J. Kumar)

Deputy Secretary to the Government of India

To

All Ministries/Departments of Government of India, etc.,
(as per standard mailing list)

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HIGH COURT OF DELHI : NEW DELHI

NOTIFICATION

No. 948/Rules/DHC

Dated : 02.12.2013

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with the Government of India, Ministry of Home Affairs Notification No.F27/40/50-NGS dated the 28th October, 1953 and all other powers enabling him in this behalf, the High Court of Delhi, with the prior approval of the Central Government and the concurrence of Hon'ble Lt. Governor of National Capital Territory of Delhi, hereby makes the following rules, namely:-

Delhi District Courts Establishment (Appointment & Conditions of Service)**Rules, 2012****CHAPTER - I****PRELIMINARY****1. Short Title and Commencement:-**

- (1) These rules may be called the "Delhi District Courts Establishment (Appointment & Conditions of Service) Rules, 2012".
- (2) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions:-

In these rules, unless the context requires otherwise,-

- (1) "*Appointing Authority*" in respect of-
 - A. Posts of Administrative Officer (Judicial) and above in Group A means the High Court of Delhi; and
 - B. All other posts in Group A and in other Groups means the District Judge
- (2) "*Cadre*" means the strength of posts specified in Schedule A and includes any temporary post sanctioned by the Government of N.C.T. of Delhi that has remained in existence for the last one year;
- (3) "*Chief Justice*" means the Chief Justice of High Court of Delhi;
- (4) "*Disciplinary Authority*" means the Authority competent under these rules to impose on a Member of the Service any of the penalties specified in Rule 26.
- (5) "*District*" means the Districts constituted under Notification No.24/DHC/Gaz./V.I.E.2(a)/2008 dated 22.10.2008;
- (6) "*District Judge*" means the District & Sessions Judge (Headquarters), Delhi;

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Schedule- BGroup -A

Srl. No.	Name of the Post	Method of Recruitment	Qualification etc.	Appointing Authority
(1)	(2)	(3)	(4)	(5)
1.	Senior Administrative Officer (Gazetted) PB-III- 15600-39100+7600/-	Selection on the basis of seniority-cum-Suitability from amongst Administrative Officer (Judicial)	Graduate	High Court
2.	Deputy Controller of Accounts (Gazetted) PB-III- 15600-39100+6600/-	<p>i) To be filled by selection on the basis of seniority-cum-merit from amongst Senior Accounts Officers.</p> <p>(ii) By deputation – where no suitable person for the post is available by way of promotion then it shall be filled by way of deputation.</p>	<p>Promotion:- Minimum service of four years as Senior Accounts Officer.</p> <p>Deputation:- (i) Officer of Delhi Administration Accounts Service (Grade-I) with 4 years regular service in the Pay Band-III with the grade pay of Rs. 5400/-</p> <p>Note: the service, if any rendered in the Grade-I of the Delhi Administrative Accounts Service or a higher post prior to the notification of Delhi Administrative Accounts Service (Grade-I) Rules, 1983 on 20.04.1983 shall also be taken into account for the purpose of reckoning the above qualifying service of four years.</p> <p>(ii) Officers from any of the organized Accounts Service holding posts in the Pay Band-II with the grade pay of Rs. 5400/-</p> <p>(iii) Audit/Accounts Officers from any of the organized Central Accounts Department with 7 years service in the Pay Band-II with the grade pay of Rs. 5400/-</p>	High Court

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3.	Administrative Officer (Judicial) (Promotion/ Selection Post) (Gazetted) PB-III- 15600-39100+6600/-	<p>a) 25% of vacant posts by promotion on the basis of seniority-cum-merit from joint seniority list of Senior Judicial Assistants and Senior Personal Assistants in the ratio 1:1 i.e. 1 official from Senior Judicial Assistants and 1 from Senior Personal Assistants and that appointment will be made in the respective ratio of posts going to the share of Senior Judicial Assistants and Senior Personal Assistants, provided that the first post will go to Senior Judicial Assistant.</p> <p>b) 75% of vacant posts by selection on merit on the basis of written test and interview from Senior Judicial Assistants and Senior Personal Assistants.</p> <p>c) In case requisite number of candidates do not qualify for selection on merit in terms of provisions of clause (b) above, by direct recruitment on the basis of written test and interview.</p>	<p>a) Graduate with 5 years service (Law Graduate to be preferred) in any of the posts of Senior Judicial Assistants and Senior Personal Assistants.</p> <p>b) Graduate with 5 years service (Law Graduate to be preferred) in any of the post of Senior Judicial Assistants and Senior Personal Assistants.</p> <p>c) For direct recruits: Law graduate with 5 years service in the grade pay of Rs.4600/-.</p>	High Court
4.	System Analyst Group-I (Executive) (Gazetted) PB-III-15600-39100+6600	<p>By promotion from amongst the post of Programmer with five years regular service in the establishment of District & Sessions Judge, Delhi, failing which by deputation (including) short-term contract), failing both by direct recruitment</p> <p><u>Deputation</u></p> <p>Officers under Central/State Govts./Union</p>	<p>1.) (i) Master Degree in Computer Application /Computer Science/ Master Degree or M.Tech (with specialization in Computer Application) or B.E/B.Tech in Computer Engineering/Computer Science/Computer Technology of a recognized University or equivalent (ii) Five years experience in Electronics Data Processing out of which two years experience should be in actual programming.</p> <p>OR</p>	District Judge

MA

	<p>Territories Recognised Research Institutions/Public Sector Undertakings/ Autonomous Organisations</p> <p>(a) (i) holding analogous post, on regular basis;</p> <p>OR</p> <p>(ii) with five years regular service in the pay scale of Rs.8000-13500 (mention the equivalent new scale) or equivalent post.</p> <p>OR</p> <p>(iii) Eight years regular service in the scale of pay of Rs. 6500-200-10500(mention the new scale) or equivalent and</p> <p>(b) Possessing the educational and other qualifications prescribed under column (4).</p>	<p>2) (i) Degree in Computer application/Computer Science or Degree in Electronics and Communication Engineering from a recognized University or equivalent.</p> <p>(ii) Seven years experience in Electronics Data Processing work out of which at least three years' experience should be in actual programming.</p> <p>OR</p> <p>3) (i) Masters Degree of a recognized University or equivalent or Degree in Engineering of a recognized University or equivalent.</p> <p>(ii) Eight years experience in Electronics Data Processing work, out of which at least four years' experience should be in actual programming.</p> <p>OR</p> <p>4) (i) "A Level Diploma under DOEACC programme or Post Graduate Diploma in Computer Application offered under University Programme/ Post Polytechnic Diploma in Computer Application awarded by State Council of Technical Education or equivalent.</p> <p>(ii) Eight years experience in Electronics Data Processing work out of which at least four years' experience should be in actual programming.</p>	
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			<p><u>Age limit:</u> not exceeding 40 years (relaxable for Govt. Servant upto five years in accordance with the instructions or orders issued by the Central Government.)</p> <p>Note : (1) The crucial date for determining the age limit shall be the 1st day of January of the year in which the process of recruitment is initiated.</p> <p>(2) The qualification and experience are relaxable at the discretion of the District Judge, Delhi, in case of candidates otherwise well qualified.</p>	
5.	Senior Accounts Officer (Gazetted) PB-III- 15600-39100+5400	By promotion/ Selection on the basis of seniority-cum-merit from amongst Accounts Officers.	Minimum service of three years as Accounts Officer	District Judge

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Group-B				
Srl. No.	Name of the Post	Method of Recruitment	Qualification etc.	Appointing Authority
(1)	(2)	(3)	(4)	(5)
6.	Senior Librarian Grade 'A' (Gazetted) PB-II-9300-34800+5400/-	To be appointed by way of promotion from amongst Information Officer-cum-Librarian; but if no suitable candidate is available then by direct recruitment through written test or interview as may be deemed appropriate by the Appointing Authority.	(i) Promotion:- Minimum service of four years as Information Officer-cum-Librarian; (ii) Direct Recruitment:- Masters Degree in Library Science/ Information Science/Documentation OR an equivalent grade of B in the UGC 7 point scale plus a consistently good academic record.	District Judge
7.	Programmer Group -II (Executive) (Gazetted) PB-II-9300-34800+5400/-	By promotion from amongst the post of Assistant Programmer with five years regular service in the establishment of District & Sessions Judge, Delhi, failing which by deputation (including short-term contract), failing both, by direct recruitment <u>Deputation</u> Officers under Central/State Govts./Union Territories (a) (i) holding analogous post, on regular basis in the Parent Cadre/Deptt. OR (ii) with two years regular service in the pay scale of Rs.7500-12000 (mention the equivalent new scale) or equivalent post in the Parent post in the Parent cadre/department.	1) (i) Master Degree in Computer Application /Computer Science/ Master Degree or M.Tech (with specialization in Computer Application) or B.E/B.Tech in Computer Engineering/Computer Science/Computer Technology of a recognized University or equivalent (ii) Four years experience in Electronics Data including experience of actual programming. OR 2) (i) Degree in Computer application/Computer Science or Degree in Electronics and Communication Engineering from a recognized University or equivalent. (ii) Five years experience in Electronics Data Processing work out of which at least two years' experience should be in actual programming.	District Judge

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		<p>(iii) Five years regular service in the scale of pay of Rs. 6500-200-10500(mention the new scale) or equivalent in the Parent cadre/department and</p> <p>(b) Possessing the educational and other qualifications prescribed under column (4).</p> <p>Direct Recruitment</p> <p>In case no suitable candidate is available through promotion/deputation, the post will be filled up by direct recruitment.</p>	<p style="text-align: center;">OR</p> <p>3) (i) Masters Degree of a recognized University or equivalent or Degree in Engineering of a recognized University or equivalent.</p> <p>(ii) Six years experience in Electronics Data Processing work, out of which at least three years' experience should be in actual programming.</p> <p style="text-align: center;">OR</p> <p>4)(i) "A Level Diploma under DOEACC programme or Post Graduate Diploma in Computer Application offered under University Programme/ Post Polytechnic Diploma in Computer Application awarded by State Council of Technical Education or equivalent.</p> <p>(ii) Six years experience in Electronics Data Processing work out of which at least three years' experience should be in actual programming.</p> <p><u>Age limit: not exceeding 35 years</u> (relaxable for Govt. Servant upto five years in accordance with the instructions or orders issued by the Central Government.)</p> <p>Note : (1) The crucial date for determining the age limit shall be the 1st day of January of the year in which the process of recruitment is initiated.</p> <p>(2) The qualification and experience are</p>	
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			relaxable at the discretion of the District Judge, Delhi, in case of candidates otherwise well qualified.	
8.	Accounts Officer (Gazetted) PB-II- 9300-34800+5400/-	By promotion from amongst Assistant Accounts Officer on the basis of seniority-cum-merit	Minimum service of three years as Assistant Accounts Officer.	District Judge
9.	Assistant Accounts Officer (Gazetted) PB-II-9300-34800+4800/-	By Selection on the basis of seniority-cum-merit from amongst Group 'B' or 'C' officials in the establishment of District & Sessions Judge, Delhi, having requisite qualification and experience	Qualification: Officials possessing diploma in Subordinate Accounts Service Part I & II with degree of B.Com and having adequate knowledge in Budget and Cash with 5 years service in the establishment of District Courts.	District Judge
10.	Technical Officer (Gazetted) PB-II-9300-34800+4600/-	By direct recruitment on the basis of interview	<p>Essential Qualification: -</p> <ol style="list-style-type: none"> 1. Possessing a Degree in Mechanical/ Automobile Engineering of a recognized University / Board or equivalent. 2. Two years practical experience in any automobile workshop of repute. <p>NOTE: 1. Qualifications are Relaxable at the discretion of the District & Sessions Judge in case of candidates otherwise well qualified.</p> <p>Note: 2. The qualifications regarding experience is relaxable at the discretion of District & Sessions Judge, in case of candidates belonging to SC/ST, if he is of the opinion that sufficient number of candidates from those communities possessing the required experience are not likely to be available to fill up the vacancies.</p> <p>Age Limit for Direct Recruitment : Not exceeding 30 years (Relaxable for Government Servant)</p>	District Judge
11.	Information Officer-cum-Librarian	To be appointed by way of promotion from amongst Librarian on the basis of	Minimum service of six years as Librarian	District Judge

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	(Non-Gazetted) PB-II-9300-34800+4600/-	seniority-cum-merit.		
12.	Public Relation Officer (Non-Gazetted) PB-II-9300-34800+4600/-	By promotion on the basis of seniority-cum-merit, from the post of Assistant Public Relation Officer.	Minimum six years of service as Assistant Public Relation Officer	District Judge
13.	Senior Judicial Assistant (Promotion/Selection Post) (Non-Gazetted) PB-II-9300-34800+4600/-	a) 50% of the vacant posts by promotion on the basis of seniority-cum-suitability from Judicial Assistants. b) 50% of the vacant posts by selection on merit from Judicial Assistants on the basis of written test and interview, failing which; c) By direct recruitment on the basis of written test and interview.	a) For members of the Establishment of this Court: Graduate with 5 years service and non-graduate with 8 years service in the posts of Judicial Assistants. b) For members of the Establishment of this Court: Graduate with 5 years service and non-graduate with 8 years service in the posts of Judicial Assistants. c) For direct recruits: Graduates.	District Judge
14.	Senior Personal Assistant (Promotion/Selection Post) (Non-Gazetted) PB-II-9300-34800+4600/-	a) 50% of the vacant posts by promotion from Personal Assistants on the basis of seniority-cum-suitability on the basis of shorthand dictation to be transcribed on Computer /Typewriter. b) 50% of the vacant posts by direct recruitment on the basis of written examination comprising of one paper in English language (Essay, Grammar and Translation) followed by a Shorthand dictation to be transcribed on Computer/Typewriter. The short listed candidates would also undergo a viva voce test.	a) For members of the Establishment: 3 years service as Personal Assistant. b) For direct recruits: Graduate with speed of not less than 110 w.p.m. in shorthand and 40 w.p.m. in typewriting.	District Judge
15.	Civil Nazir /District Nazir (Non-Gazetted) PB-II-9300-34800+4600/-	By promotion from amongst Naib Nazirs on the basis of Seniority-cum-Merit.	Minimum service of five (5) years as Naib Nazir in the establishment of the District & Sessions Judge, Delhi.	District Judge

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16.	Assistant Programmer (Non-Gazetted) PB-II-9300-34800+4200	<p>By Direct Recruitment.</p> <p>Vacancies caused by the incumbent being away on deputation or long illness or study leave or under other circumstances for a duration of one year or more may be filled on deputation basis from officers of Central Govt./Govt. of NCT of Delhi holding analogous post on regular basis in the parent cadre/ department possessing the educational and other qualification prescribed for direct recruitment under columns no. (4)</p>	<p>1) Master Degree in Computer Application /Computer Science/ Master Degree or M.Tech (with specialization in Computer Application) or B.E/B.Tech in Computer Engineering/Computer Science/Computer Technology of a recognized University or equivalent</p> <p>OR</p> <p>2) (i) Degree in Computer application/Computer Science or Degree in Electronics and Communication Engineering from a recognized University or equivalent.</p> <p>(ii) Two years experience in Electronics Data Processing work including experience of actual programming.</p> <p>OR</p> <p>3) (i) Masters Degree of a recognized University or equivalent or Degree in Engineering of a recognized University or equivalent.</p> <p>(ii) Three years experience in Electronics Data Processing work including experience of actual programming.</p> <p>OR</p> <p>4) (i) "A Level Diploma under DOEACC programme or Post Graduate Diploma in Computer Application offered under University Programme/ Post Polytechnic Diploma in Computer Application awarded by State Council</p>	District Judge
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			<p>of Technical Education or equivalent.</p> <p>(ii) Three years experience in Electronics Data Processing work including experience of actual programming.</p> <p><u>Age limit: not exceeding 30 years</u> (relaxable for Govt. Servant upto five years in accordance with the instructions or orders issued by the Central Government.)</p> <p>Note : (1) The crucial date for determining the age limit shall be the 1st day of January of the year in which the process of recruitment is initiated.</p> <p>(2) The qualification and experience are relaxable at the discretion of the District Judge, Delhi, in case of candidates otherwise well qualified.</p>	
17.	<p>Assistant Public Relation Officer (Non-Gazetted) PB-II- 9300-34800+4200/-</p>	<p>a) By selection on merit (on the basis of written test and interview) from amongst Group 'C' officials.</p> <p>b) In case requisite number of candidates do not qualify in terms of provisions of clause (a) above, then by direct recruitment on the basis of written test and interview.</p>	<p>a) Group 'C' officials having five years experience in the establishment of District & Sessions Judge.</p> <p>b) Graduate/Bachelor Degree from a recognized University with good knowledge of computer. (Post Graduate Diploma holders in Public Relation will be preferred)</p>	District Judge
18.	<p>Personal Assistant (Non-Gazetted) PB-II-9300-34800+4200</p>	By direct recruitment on the basis of written test and interview.	Graduate with Shorthand speed of 100 words per minute and typing speed of 40 words per minute and having knowledge of Computer.	District Judge
19.	<p>Judicial Assistant (Promotion Post) (Non-Gazetted) PB-II-9300-34800+4200</p>	By promotion from Junior Judicial Assistants on the basis of seniority-cum-suitability alone.	For members of the Establishment of this Court: Graduate with 5 years and non-graduates with 10 years of service from Junior Judicial Assistants.	District Judge

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20.	Librarian (Non-Gazetted) PB-II-9300-34800+4200/-	Direct Recruitment through an open Competitive Exam.	Qualification: Bachelor Degree in Library Science from a recognized University. Age Limit: Below 27 years (Relaxable for Govt. servants and reservation, as per rules.)	District Judge
21.	Driver/Staff Car Driver (Special Grade) PB-II-9300-34800+4200/-	By promotion on the basis of seniority- cum-merit from the category of Driver/Staff car driver (Grade-I) (5% of the cadre of Driver/Staff car Driver Grade-I having three years regular service may be appointed on the basis of seniority- cum-merit.)	Three years Regular service in the cadre of Driver/Staff Car Driver (Grade-I) in the establishment of the District & Sessions Judge, Delhi	District Judge

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Group-C				
Srl. No.	Name of the Post	Method of Recruitment	Qualification etc.	Appointing Authority
(1)	(2)	(3)	(4)	(5)
22.	Naib Nazir PB-II- 9300- 34800+4200/-	By promotion from amongst Bailiffs /Process servers on the basis of seniority-cum-merit	Graduate with minimum service of five years as Bailiff in the establishment of the District & Sessions Judge, Delhi. Or Graduate with minimum service of eight (8) years as Process Server in the establishment of the District & Sessions Judge, Delhi.	District Judge
23.	Junior Judicial Assistant PB-I-5200-20200+2800/-	a) 80% of posts by direct recruitment on the basis of written test and interview. b) 20% of the vacant posts by promotion from Head Jamadar/Daftri/ Book Binder/ Peon/Orderly/ Dak Peon/ Frash/Frash-cum-Dak Messenger/ Chowkidar/ Maali/ Sweeper/ Safai Karamchari on the basis of written test and interview.	a) Graduate with typing speed of not less than 40 words per minute on Computer. b) By promotion from members of the Establishment of this Court: (i) Matriculation pass or equivalent from a recognized board from the category of Head Jamadar/Daftri (ii) Matriculation pass or equivalent from a recognized board having five years service from the categories of Book Binder/ Peon/Orderly/ Dak Peon / Frash/Frash-cum-Dak Messenger / Chowkidar/ Maali/ Sweeper/ Safai Karamchari. They should have knowledge of English and speed of not less than 35 w.p.m. in typewriting.	District Judge

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24.	Data Entry Operator (Grade-B) PB-I-5200-20200+2800/-	By promotion from amongst Data Entry Operators (Grade-A) on the basis of seniority-cum-merit.	Minimum service of four years as Data Entry Operator (Grade-A) in the establishment of District & Sessions Judge, Delhi.	District Judge
25.	Driver/Staff Car Driver Grade -I PB-I- 5200-20200+ 2800/-	By promotion on the basis of seniority-cum-merit from the category of Driver/Staff car driver (Grade-II)	Six years regular service in the cadre of Driver/Staff Car Driver (Grade-II) in the establishment of the District & Sessions Judge.	District Judge
26.	Gestetnor Operator/Dispatch Rider PB-I-5200-20200+ 2800/-	By promotion, on the basis of seniority-cum merit, from categories:. Head Jamadar/ Daftri/Book Binder/ Peon/ orderly/ Dak Peon/Frash/Frash-cum-Dak Messenger/ Chowkidar/ Maali / Sweeper / Safai Karamchari, in the establishment of the District & Sessions Judge	By promotion from the members of establishment of this court : (i) Matriculation pass or equivalent from a recognized board from the category of Head Jamadar/Daftri (ii) Matriculation pass or equivalent from a recognized board with five years service in the categories of Book Binder/Peon/orderly/ Dak Peon / Frash/Frash-cum-Dak Messenger/ Chowkidar/ Maali/ Sweeper/ Safai Karamchari, in the establishment of the District & Sessions Judge. Note (1): For the post of Gestetnor Operator proficiency in handling of Gestetnor Machine is required. Note (2): For the post of Dispatch Rider, Driving licence of LMV is required. (Preference to be given to the candidates who can also drive the three wheeler van and the motor cycle).	District Judge
27.	Bailiff PB-I-5200-20200+2800/-	By promotion from amongst Process Servers on the basis of seniority-cum-	Matriculation pass or equivalent from a recognized board with minimum service	District Judge

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		merit	of three years as Process Server in the establishment of the District & Sessions Judge, Delhi.	
28.	Data Entry Operator (Grade-A) PB-I-5200-20200+2400/-	By Direct recruitment through an open competitive examination and skill test	<p>a) 12th standard pass from a recognized Institution/board or equivalent (preference will be given to Graduates)</p> <p>b) Diploma/Certificate course in IT/Computer field (Preference will be given to 'O' Level Certificate)</p> <p>c) Knowledge of Data Entry/Computer Operation. (Candidate should have minimum of one year experience in Data Entry Operations).</p>	District Judge
29.	Driver/Staff Car Driver (Grade-II) PB-I- 5200-20200+ 2400/-	By direct recruitment through skill test and interview	<p>Matriculation pass or equivalent from a recognized board/Higher Secondary from a recognized board</p> <p>With valid driving licence of LMV and 2 years unblemished experience in the line.</p>	District Judge
30.	Process Server PB-I -5200-20200+2400/-	a) 50% of the vacant posts by selection on the basis of objective test, driving test and interview, from the incumbents of categories: Head Jamadar/Daftri/Book Binder/Peon/orderly/ Dak Peon /Frash/ Frash-cum-Dak Messenger/ Chowkidar/ Maali/Sweeper/Safai Karamchari in the establishment of the District & Sessions Judge, failing which posts will be filled up from direct quota.	<p>a) By promotion from the members of establishment of this court :</p> <p>(i) Matriculation pass or equivalent from a recognized board from the category of Head Jamadar/Daftri</p> <p>(ii) Matriculation pass or equivalent from a recognized board with five years service in the categories of Book Binder/Peon/orderly/ Dak Peon / Frash/Frash-cum-Dak Messenger/ Chowkidar/ Maali/ Sweeper/ Safai Karamchari, in the establishment of the District & Sessions Judge.</p>	District Judge

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		b) 50% of the vacant post by direct recruitment on the basis of objective test, driving test and interview.	with valid driving licence of LMV and 2 years unblemished driving experience. b) For Direct recruits Matriculation pass or equivalent from a recognized board /Higher Secondary with driving licence of LMV and 2 years unblemished driving experience.	
31.	Head Jamadar/Daftri PB-I- 5200-20200+2400/-	By promotion, on the basis of seniority-cum merit, from categories: Peon /orderly /Dak Peon/ Frash/Frash-cum-Dak Messenger/ Chowkidar /Maali/ Sweeper /Safai Karamchari, in the establishment of the District & Sessions Judge	Matriculation pass or equivalent from a recognized board (Higher secondary to be preferred) with five (5) years experience in any of the categories mentioned in Column 3.	District Judge
32.	Book Binder PB-I- 5200-20200+2400/-	By direct recruitment on the basis of objective test and interview	Matriculation pass or equivalent from a recognized board with knowledge/experience of book binding	District Judge
33.	Peon/Orderly/Dak Peon PB-I- 5200-20200+2000/-	By direct recruitment on the basis of objective test and interview	Matriculation pass or equivalent from a recognized board	District Judge
34.	Chowkidar PB-I- 5200-20200+2000/-	By direct recruitment on the basis of objective test and interview	Matriculation pass or equivalent from a recognized board	District Judge
35.	Maali PB-I- 5200-20200+2000/-	By direct recruitment on the basis of objective test and interview	Matriculation pass or equivalent from a recognized board	District Judge
36.	Frash/Frash-cum-Dak Messenger PB-I- 5200-20200+2000/-	By direct recruitment on the basis of objective test and interview	Matriculation pass or equivalent from a recognized board	District Judge
37.	Sweeper/Safai Karamchari PB-I- 5200-20200+2000/-	By direct recruitment on the basis of objective test and interview	Matriculation pass or equivalent from a recognized board	District Judge

Office

No.28020/1/2010-Estt(C)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)

North Block, New Delhi
Dated the December 26th, 2013

OFFICE MEMORANDUM

Subject: Consolidated Instructions on Technical Resignation and Lien-regarding.

The undersigned is directed to refer to the subject mentioned above and to say that various instructions have been issued by the Government from time to time regarding Technical Resignation, and the service conditions under which a lien of a post of Government employee can be a retained, terminated or transferred. All such instructions issued till date have been consolidated under easily comprehensible headings for the facility of reference and placed as Annexure to this O.M. All Ministries/ Departments are requested to bring the above guidelines to the notice of all concerned.

2. Hindi version will follow.

J. A. Vaidyanathan
(J. A. Vaidyanathan)
Director (Establishment)
Telefax: 23093179

To
All Ministries /Departments.

Copy to:

1. President's Secretariat, New Delhi.
2. Vice-President's Secretariat, New Delhi.
3. The Prime Minister's Office, New Delhi.
4. Cabinet Secretariat, New Delhi.
5. Rajya Sabha Secretariat/Lok Sabha Secretariat, New Delhi.
6. The Registrar General, the Supreme Court of India, New Delhi.
7. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
8. The Comptroller and Auditor General of India, New Delhi.
9. The Secretary, Union Public Service Commission, New Delhi.
10. The Secretary, Staff Selection Commission, New Delhi.
11. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
12. National Commission for Scheduled Castes, New Delhi.
13. National Commission for Scheduled Tribes, New Delhi.
14. National Commission for OBCs, New Delhi.
15. Secretary, National Council (JCM), 13, Ferozeshah Road, New Delhi.
16. Establishment Officer & A.S.
17. All Officers and Sections in the Department of Personnel and Training.
18. Facilitation Center, DOP&T (20 copies)
19. NIC (DOP&T) for placing this Office Memorandum on the Website of DOP&T.
20. Establishment Section (100 copies).

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(19)
Annexure to DOPT O.M.No.28020/1/2010-Estt(C) dated December 26th, 2013

LIEN AND TECHNICAL RESIGNATION

LIEN

Lien represents the right/title of a Government employee to hold a regular post, whether permanent or temporary, either immediately or on the termination of the period of absence. The benefits of having a lien in a post/service/cadre is enjoyed by all officers who are confirmed in the post/service/cadre of entry or who have been promoted to a higher post declared as having completed the probation where it is prescribed, or those who have been promoted on regular basis to a higher post where no probation is prescribed under the rules, as the case may be.

2. The above right/title will, however, be subject to the condition that the junior-most person in the cadre will be liable to be reverted to the lower post/service/cadre if at any time the number of persons so entitled is more than the posts available in that cadre/service. For example, if a person who is confirmed or whose probation in a higher post has been declared as having been completed or one who is holding a higher post for which there is no probation on a regular basis, reverts from deputation or foreign service and if there is no vacancy in that post/service/cadre to accommodate him, the junior-most person will be reverted. If, however, this officer himself is the junior-most, he will be reverted to the next lower post/service/cadre from which he was earlier promoted.

[O.M. No. 18011/1/86-Estt.(D) dated 28.03.1988]

LIEN ON A POST

3. A Government servant who has acquired a lien on a post retains a lien on that post—
- while performing the duties of that post;
 - while on foreign service, or holding a temporary post or officiating in another post;
 - during joining time on transfer to another post; unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;
 - while on leave; and
 - while under suspension.
4. A Government servant on acquiring a lien on a post will cease to hold any lien previously acquired on any other post.

RETENTION OF LIEN FOR APPOINTMENT IN ANOTHER CENTRAL GOVERNMENT OFFICE/ STATE GOVERNMENT.

5. If a permanent employee is selected on the basis of his application for posts in other Central Government Department/Offices/ State Government, his lien may be retained in the parent department for a period of 2 years. If the employee concerned is not permanently absorbed within a period of 2 years from the date of his appointment in the new post, he should immediately on expiry of the period of 2 years either resign from the service or revert to his

Contd..P.3/4

parent cadre. An undertaking to abide by this condition may be taken from him at the time of forwarding of his application to other departments/offices.

6. When a Government servant has joined a department/office where he is not confirmed within a period of 2 years due to some reasons, he may, in exceptional cases, be permitted to retain the lien in the parent department/ office for one more year. While granting such permission, a fresh undertaking similar to the one indicated above may be taken from the employee.

7. Timely action should be taken to ensure extension/ reversion/ resignation of the employees to their parent cadres on completion of the prescribed period of 2/3 years. In cases, where employees do not respond to instructions, suitable action should be initiated against them for violating the agreement/ undertaking given by them as per (3) and (4) above and for termination of their lien. Adequate opportunity may, however, be given to the officer prior to such consideration.

8. Temporary Government servants will be required to sever connections with the Government in case of their selection for outside posts. No lien will be retained in such cases.

[O.M. No. 8/4/70-Estt(C) dated 06.03.1974]

TERMINATION OF LIEN

9. A Government servant's lien on a post may in no circumstances be terminated even with his consent if the result will be to leave him without a lien upon a permanent post. Unless his lien is transferred, a Government servant holding substantively a permanent post retains lien on that post.

10. A Government employee's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne.

11. No lien of a Government servant shall be retained:

- (i) where a Government servant has proceeded on immediate absorption basis to a post or service outside his service/ cadre/ post in the Government from the date of absorption; and
- (ii) on foreign service/ deputation beyond the maximum limit admissible under the orders of the Government issued from time to time.

[Notification No. 28020/1/96-Estt.(C) dated 09.02.1998]

TRANSFER OF LIEN

12. The lien of a Government servant, who is not performing the duties of the post to which the lien pertains, can be transferred to another post in the same cadre subject to the provisions of Fundamental Rule 15.

[Notification No. 28020/1/96-Estt.(C) dated 09.02.1998]

Contd..P.4/4

TECHNICAL RESIGNATION

13. A resignation from the service or post entails forfeiture of entire past qualifying service. The exception is technical resignation which does not result in forfeiture of past service.

14. In cases where a Government servant applied for post in the same or the other Departments through proper channel and on selection, is required to resign the previous posts for administrative reasons, the benefit of past service, if otherwise admissible under rules, is given treating the resignation as a "Technical Formality". Resignation submitted for other reasons or if competent authority has not allowed him to forward his application through proper channel is a resignation and benefit of past service will not be admissible.

15. This benefit is also admissible to Government servants who applied for posts in same or other Departments before joining Government service and on that account the application was not routed through proper channel. The benefit of past service is allowed in such cases subject to the fulfilment of the following conditions:-

- (i) the Government servant at the time of joining should intimate the details of such application immediately on their joining.
- (ii) the Government servant at the time of resignation should specifically make a request, indicating that he is resigning to take up another appointment under Government/ Government organisation for which he applied before joining the Government service and that his resignation may be treated a 'technical resignation'.
- (iii) the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel.

[OM No. 13/24/92-Estt.(Pay-I) dated 22.01.1993]

CONTINUITY OF SERVICE ON TECHNICAL RESIGNATION

16. A permanent Government servant appointed in another Central Government Department/Office has to resign from his parent department unless he reverts to that department within a period of 2 years, or 3 years in exceptional cases. Such resignations shall not be deemed to be resignation for the purpose of pension, if admissible. As a consequence, continuity of service benefits should be allowed to such employees in the matter of pension, leave, LTC, etc. as admissible under the rules.

17. In cases where Government servants, who had originally joined government service prior to 01.01.2004, apply for posts in the same or other departments and on selection they are asked to tender technical resignation, the past services are counted towards pension under CCS (Pension) Rules, 1972.

[Department of Pension & Pensioners Welfare OM No. 28/30/2004-P&PW(B) dated 26.07.2005]

Yn

(39)

F.No.14034/1/2012-Estt. (D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)

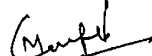
North Block,
New Delhi
Dated the 26th July, 2012

OFFICE MEMORANDUM

Subject: Out of turn promotion for sportspersons.

The undersigned is directed to say that the scheme for appointment of meritorious sports persons under Government is contained in this Department O.M. No. 14015/1/78-Estt. (D) dated the 4th August, 1980 as amended from time to time. This Department has been receiving requests for grant of out of turn promotion to sportspersons employed under various Ministries/Departments. The demand for grant of out of turn promotion for excellence in sports events has been considered by the Government and it has been decided to allow a maximum of three out of turn promotions to a sportsperson/Coach for excellence in sports events as per provisions of the enclosed scheme.

2. This may be brought to the notice of all concerned for information and necessary action. A copy of the order allowing out of turn promotion to sportspersons may be endorsed to this Department.

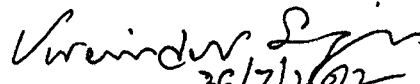

(Mukta Goel)
Director
Tel. No. 2309 2479

To
All Ministries/Departments of Government of India

Copy to:

1. President's Secretariat, New Delhi
2. Vice-President's Secretariat, New Delhi
3. The Prime Minister's Office, New Delhi
4. Cabinet Secretariat, New Delhi
5. Rajya Sabha Secretariat/Lok Sabha Secretariat, New Delhi
6. The Registrar General, the Supreme Court of India, New Delhi.
7. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
8. The Comptroller and Auditor General of India, New Delhi- with the request that they may consider desirability of issuing similar instructions to offices under their control.
9. The Secretary, Union Public Service Commission, New Delhi.
10. The Secretary, Staff Selection Commission, New Delhi.
11. The Secretary, Department of Sports, New Delhi
12. The Secretary, Department of Disability Affairs, New Delhi.

13. All attached offices under the Ministry of Personnel, Public Grievances and Pensions
14. National Commission for Scheduled Castes, New Delhi
15. National Commission for Scheduled Tribes, New Delhi.
16. National Commission for OBCs, New Delhi
17. Secretary, National Council (JCM), 13, Ferozshah Road, New Delhi.
18. Establishment Officer & A.S.
19. All Officers and Sections in the Department of Personnel and Training.
20. Facilitation Center, DOP&T (20 copies)
- ✓ 21. NIC (DOP&T) for placing this Office Memorandum on the Website of DOP&T.
22. Establishment Section (200 copies).


26/7/2022
(Virender Singh)

Under Secretary to the Government of India
Tel. No. 2309 3804



Department of Personnel & Training
Establishment D

SUBJECT : SCHEME FOR OUT OF TURN PROMOTION FOR SPORTSPERSONS

1. OBJECT:

To promote a sportsperson for excellence in sports events by upgradation of the post personal to the sportsperson. Such a post will continue to be upgraded in higher grade till it is vacated by the sportsperson either by his/her subsequent promotion, resignation or on retirement.

2. TO WHOM APPLICABLE

The scheme is applicable to all Central Government Civilian Employees and Central Services except Railways Services and services under the control of the Department of Atomic Energy, the erstwhile Department of Electronics, the Department of Space and the Scientific and Technical Services under the Department of Defence Research and Development.

3. PERFORMANCE TO BE REWARDED BY OUT OF TURN PROMOTION

The medal winning performance in sports events to be eligible for out of turn promotion will be restricted to regular disciplines of

- i. Olympic Games,
- ii. Commonwealth Games,
- iii. Asian Games
- iv. World Championships and
- v. Record breaking medal winning performance in National Games conducted by Indian Olympic Association in the regular disciplines of Olympics, Commonwealth Games, Asian Games and World Championships.

The Scheme will also cover differently abled sportspersons for equivalent events/games organized for them.

4. NUMBER OF OUT OF TURN PROMOTION TO BE ALLOWED

A maximum of three out of turn promotion in the entire service career, subject to following conditions can be allowed to sportspersons for excellence in International/National Sports events:

A. EXCELLENCE IN INTERNATIONAL SPORTS EVENTS.

- i. A sportsperson winning Gold, Silver or Bronze or more than one medal in Olympic Games, Commonwealth Games, Asian Games and World Championships in a particular year will be eligible only for one out of turn promotion in that year.
- ii. Only the medal winning performance in aforesaid sports events will be considered for out of turn promotion. If a sportsperson or more than one sportspersons while competing in a discipline in Olympic Games, Commonwealth Games, Asian Games and World Championships, does not

Department of Personnel & Training
Establishment D

win a medal but gives better performance than the previous national record in the discipline then no out of turn promotion will be allowed.

iii. In case of a team event, a sportsperson will qualify for out of turn promotion only if he has played at least 50% of the matches in the same event. Reserve player, if any, shall not be entitled for any out of turn promotion.

iv. An out of turn promotion be considered for performance as a Coach if he/she has trained a sportsperson or a team which goes on to win a medal in any of the international Games/Championships mentioned in para (i) above. A Coach who is a Government employee will be considered for out of turn promotion even if the sportsperson(s) he/she has trained is not a Government Servant provided he has already intimated his/her office the name of sportsperson(s) or team which have been receiving training from him. In case more than one Coach has trained a sportsperson or a team which eventually wins a medal then only the main Coach, subject to other conditions will be considered for out of turn promotion.

v. The number of out of turn promotions allowed to a Coach will be capped at two with a gap of four years. However, the total number of out of turn promotions allowed to a Coach will not exceed three in the entire career including those given to him/her in the past for performance as a sportsperson.

B. EXCELLENCE IN NATIONAL SPORTS EVENTS

In case of National Games conducted by Indian Olympic Association record breaking medal winning performance in an individual discipline would be considered for one out of turn promotion during the entire service career. In case more than one sportsperson gives better performance than the existing national record in the discipline in the same National Games, then all sportspersons winning medals shall be considered for one out of turn promotion.

5. VACANCY

As out of turn promotion to sportsperson is to be allowed by upgradation of post personal to the sportsperson, no separate post will be created for grant of out of turn promotion to a Sportsperson/Coach. Such a post will continue to be upgraded in higher grade till it is vacated by the sportsperson either by his/her subsequent promotion, resignation or on retirement. No out-of-turn promotion shall be granted during the probation period. The out of turn promotion will be granted only in the hierarchy of the post and no level jumping will be allowed.

6. COMPOSITION OF THE DPC

Out of turn promotion would be allowed on regular basis only. The procedure for regular promotion including vigilance clearance should be followed while considering the cases for out of turn promotion. The composition of DPC for grant of out of turn promotion to the sportsperson will be same as that prescribed in the statutory recruitment rules applicable to the post to which promotion is being made.

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Department of Personnel & Training
Establishment D

7. RELAXATION IN QUALIFYING/ELIGIBILITY SERVICE REQUIRED FOR PROMOTION

The appointing authority for the post prescribed in the relevant recruitment rules shall be competent authority for grant of relaxation from requirement of completing the qualifying service(residency period in the feeder grade), educational qualification, completion of pre-promotion training or any other condition that may be prescribed in the statutory recruitment rules applicable to the promotional post. This shall have prior approval of the Secretary concerned in case of the Ministry/Department and the Head of the organisation in the case of attached and subordinate offices.

8. TIME LIMIT FOR OUT OF TURN PROMOTION

The entitlement of a sportsperson for out of turn promotion may be processed within a period of three months from the date of occurrence of event which entitles him/her for out of turn promotion. It will be responsibility of the concerned administrative Ministry/Department to consider a sportsperson for out of turn promotion within the prescribed time limit.

9. DATE FROM WHICH PROMOTION WILL BE EFFECTIVE

The out of turn promotion will be effective from the date of conclusion of event.

10. FIXATION OF SENIORITY

A sportsperson/Coach appointed to a post/Grade by grant of out of turn promotion in relaxation of provisions of statutory recruitment rules applicable to the post/Grade, will be assigned seniority below all the regular personnel appointed(recruited/promoted) in that particular year.

11. PAY FIXATION

The pay on out of turn promotion of sportsperson will be fixed as in the case of regular promotion.

12. UTILISATION OF SERVICES OF SPORTSPERSON

As far as possible the services of the sportspersons, should be utilised for sports related activities after their active sports career is over, whether it is coaching or other technical areas.

13. POWER TO RELAX

Prior approval of DoP&T is required to be obtained to relax any of the provisions of this scheme.



No.22011/5/2013-Estt.(D)
 Government of India
 Ministry of Personnel, Public Grievances and Pensions
 Department of Personnel & Training

North Block, New Delhi
 Dated the 9th May, 2014

OFFICE MEMORANDUM

Subject:- Procedure to be observed by Departmental Promotion Committees (DPCs) - Assessment of entries and gradings in ACRs/APARs - Reg.

The undersigned is directed to invite reference to this Department's OM No.22011/5/86-Estt.D dated 10th April 1989 as modified from time to time wherein detailed guidelines on Departmental Promotion Committees (DPCs) has been provided. As per extant instructions and rulings of Hon'ble Supreme Court in various court cases, the Departmental Promotion Committees enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of the candidates who are to be considered by them. Para 6.2.1 of the OM dated 10th April 1989 provides that the Confidential Rolls (now APARs) are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs (now APARs) should be fair, just and non-discriminatory.

2. In terms of this Department's OM No.35034/7/97-Estt.(D) dated 8th February 2002, the DPC is required to determine the merits of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' i.e. who meet the prescribed bench-mark by the DPC shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' in terms of prescribed bench-mark by the DPC shall not be included in the select panel. There is no supersession in promotion among those who are graded 'fit' by the DPC.

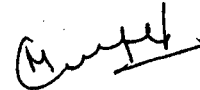
3. Further, all the Ministries/ Departments have time and again been advised by this Department to ensure compliance of instructions on mandatory provisions regarding proper disposal of representations on adverse remarks/below bench-mark gradings contained in the APARs in a quasi-judicial manner as prescribed in this Department's OM No.21011/1/2005-Estt(A) (Pt.II) dated 14.05.2009, OM

No.21011/1/2010-Estt.A dated 13.4.2010 and OM No.21011/1/2005-Estt.A(Pt.II) dated 19.05.2011 before placing the same for consideration of the DPC. These provisions have been reiterated vide this Department's O.M. No.21011/1/2005-Estt.(A)(Part.III) dated 31st January, 2014 and all the Cadre Controlling Authorities, Ministries/Departments have been advised to ensure compliance of these provisions before sending proposals for consideration of DPCs.

4. It has been brought to the notice of this Department that in certain cases the Departmental Promotion Committees while assessing suitability of officers have given recommendations as 'unfit' on grounds including non-fulfilment of procedural requirements of disposal of representations preferred on entries/gradings in APAR.

5. It is reiterated that in discharge of its statutory functions the respective DPCs are required to determine the merits of those being considered for promotion with reference to the prescribed bench-mark, by making its own assessment, on the basis of the entries and gradings contained in the APARs and other relevant material facts placed before it, and accordingly grade the officers as 'fit' or 'unfit'. Relevant material would inter alia include the orders of the competent authority on the representation of the Government servant on the entries/ grading in APAR. In the event of the DPC deciding not to take cognisance of such an order, on the ground that the same is not a speaking order, the DPC shall make its assessment based on the entries in APAR and other material including the representation of the Government servant. The DPCs should substantiate its assessment by giving justifiable and sustainable reasons including the cases where the assessment of the DPC is different from the grading in APAR (original or amended after representation by the Government servant).

6. All the Ministries/Departments are requested to give wide circulation to this OM and to ensure that extant guidelines on the subject are followed scrupulously.



(Mukta Goel)
DIRECTOR (E.I)
Tele: No. 23092479

To

All Ministries/Departments of the Government of India

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- 3 -

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. Cabinet Secretariat, New Delhi.
4. Rajya Sabha Secretariat/ Lok Sabha Secretariat, New Delhi.
5. The Registrar General, The Supreme Court of India.
6. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
7. The Comptroller and Audit General of India, New Delhi.
8. The Union Public Service Commission.
9. The Staff Selection Commission, New Delhi.
10. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
11. National Commissions for SCs/STs/OBCs, New Delhi.
12. Secretary, National Council (JCM), 13, Ferozeshah Road, New Delhi
13. Establishment Officer & A.S. (10 copies)
14. All Officers and Sections in the Department of Personnel and Training.
15. NIC(DOP&T) for placing this Office Memorandum on the Website of DOP&T
16. Establishment (D) Section (20 Copies).



(Pushpender Kumar)

Under Secretary to the Government of India

(49)

NO. 22011/1/2014-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi - 110001

Dated- 14th November, 2014

OFFICE MEMORANDUM

Subject: - Inclusion of eligible officers who are due to retire before the likely date of vacancies, in the panel for promotion-Regarding.

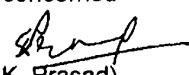
The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum No. 22011/4/98-Estt(D) dated October 12, 1998 regarding consideration of retired employees who were within the zone of consideration in the relevant year(s) but are not actually in service when the DPC is being held. The said OM provides as follows:-

".....There is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places), who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant Year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s) may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-Estt.(D) dated April 9, 1996."

2. Appointment Committee of Cabinet has observed that DPCs often do not consider such eligible officers who are retiring before the occurrence of the vacancy in the panel year. These undesirable trends negate the very purpose of the above said Office Memorandum No. 22011/4/98-Estt(D) dated October 12, 1998 and it is also against the principle of natural justice.

3. All the Ministries/Departments are therefore advised to ensure strict compliance of the instructions of the Department of Personnel & Training issued vide this Department's OM No. 22011/4/98-Estt(D) dated October 12, 1998.

4. These instructions may please be brought out to the notice of all concerned including attached and subordinate offices.


(S.K. Prasad)

Under Secretary to the Govt. of India
Tele. No. 23040340

All Ministries/Departments of the Government of India.

OM No. 22011/1/2014-Estt.(D) dated 14th November, 2014

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Vice-president's Sectt, New Delhi
3. The Prime Minister's Office, New Delhi.
4. The Cabinet Secretariat, New Delhi.
5. Rajya Sabha Secretariat, New Delhi.
6. Lok Sabha Secretariat, New Delhi.
7. The Comptroller and Auditor General of India, New Delhi.
8. The Secretary, Union Public Service Commission, New Delhi
9. The Staff Selection Commission, New Delhi.
10. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
11. All Officers and Sections in the Department of Personnel and Training.
12. Establishment(D) Section, DoP&T (10 copies)
13. NIC for updation on the website.


(S.K. Prasad)

Under Secretary to the Govt. of India
Tele. No. 23040340

(51)

NO. 22011/1/2011-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi - 110001
Dated-23rd April, 2015

OFFICE MEMORANDUM

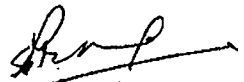
Subject:- Timely and advance action in convening of Departmental Promotion Committee meeting in terms of Model Calendar-regarding.

The undersigned is directed to state that with a view to having the approved select panels for promotion ready in advance in a time-bound manner, this Department has issued a Model Calendar for DPCs vide OM No. 22011/9/98-Estt. (D) dated 8th September, 1998 as modified vide OM No. 22011/4/2013-Estt.(D) dated 28.01.2015. An indicative pattern has been provided in the Model Calendar for various events involved in the pre/ post DPC related actions. All the Ministries/Departments have been impressed upon from time to time by this Department to adhere to the prescribed time-line so as to ensure that the panel is ready in time and is utilised as and when the vacancies arise during the course of the vacancy year.

2. Appointment Committee of Cabinet has viewed it seriously that the DPCs are not being convened in time. Delay in promotion affects the manpower planning and impedes the career progression of the employees. The delays in conduct of DPC negate the very purpose of the Model Calendar for DPCs issued vide Office Memorandum No.22011/9/98-Estt.(D) dated 8th September, 1998 as modified vide OM No. 22011/4/2013-Estt.(D) dated 28/01/2015.

4. The objective of timely promotions of employees in various Ministries/Departments can be achieved only by granting the promotion in time.

5. All the Ministries/Departments are, therefore, once again advised to ensure strict compliance of instructions in order to achieve the desired objectives of timely convening of DPCs/preparation of approved select panels within the prescribed time frame.



(S.K. Prasad)

Under Secretary to the Govt. of India
Tele. No. 23040340

All Ministries/Departments of the Government of India.

Copy to:-

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2. The Vice-president's Sectt, New Delhi
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6. The Lok Sabha Secretariat, New Delhi.
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(S.K. Prasad)

Under Secretary to the Govt. of India
Tele. No. 23040340

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Department
Of
Personnel and Training

“Instructions and Guidelines on Seniority”

SENIORITY OF DIRECT RECRUITS AND PROMOTEEES

(MHA O.M. NO.9/11/55-RPS Dated 22.12.59, O.M. No. 35014/2/80-Estt.(D) Dated 7.2.1986, O.M. No. 22011/7/86-Estt.(D) Dated 03.07.1986, O.M. No. 20011/5/90-Estt (D) Dated 4.11.1992 and O.M. No. 20011/1/2006-Estt.(D) Dated 03.03.2008.

1. These principles shall apply to the determination of seniority in Central Civil Services and Civil Posts except such Services and Posts for which separate principles have already been issued or may be issued by the Government.

2.1. SENIORITY OF DIRECT RECRUITS

The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection. The relative seniority that used to be determined earlier according to the date of confirmation and not the original order of merit, (in case where confirmation was in an order different from the order of merit indicated at the time of their appointment), in accordance with the general principles of seniority, has been discontinued w.e.f. 4.11.1992 (**O.M. No. 20011/5/90-Estt (D) Dated 4.11.1992.**) The general principles of seniority therefore stands modified to that extent.

2.1.1 **Clarification** : Appointment from the Reserve panel at a later date:

The interse seniority of candidates nominated from reserve panel will be fixed as per consolidated merit given by UPSC/SSC/Recruiting agency. However instructions circulated vide this Department's **O.M. No. 41019/18/97-Estt.(B) Dated 13th June 2000** should be strictly followed in operating or requesting for nominations from the reserve panel.

2.1.2 **Clarification** In case if more than one-selection panels received from UPSC/SSC through letter of the same date.

It has been encountered on a number of occasions that UPSC etc. in response to two separate requisitions from the Department on different point of time, sends two panels of direct recruits on the same date. Since the general principles on seniority envisages that the candidates appointed through an earlier selection stand senior to those appointed through a subsequent selection, it becomes difficult to fix the inter-se seniority of the candidates in such cases drawn from two different panels of the same date. Accordingly, it has been decided that, effort would be made by the UPSC and other selecting authorities to avoid recommending the panels on the same date and strive to send the panel for earlier requisition first. However, in case of such an eventuality (i.e. different panels on the same date)



following procedures may be followed for fixation of the inter se seniority of the candidates from the two panels:

- i. Chronology of recommendation letter;
- ii. Where the date of recommendation letter is same, chronology of interview board reports and
- iii. Where both (i) and (ii) are also same, then the chronology of requisition made by the respective Ministries/Departments.

It is also mentioned here than in case of recruitment through examination, the date of publication/announcement of the results shall remain the criteria as has been envisaged in the guidelines of seniority issued by DoP&T vide O.M. No. 22011/5/76-Estt.(D) Dated 24.06.1978.

2.2. SENIORITY OF PROMOTEES

Where promotions are made on the basis of recommendations of a DPC, either by 'selection' or 'non-selection' method as per due procedure, the seniority of an officer assessed as 'fit', in the promoted grade shall be same as in the feeder grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior, such persons shall not, if he/she is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him/her. Persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection. The relative seniority of promotees which earlier used to be determined according to the date of confirmation in the promotion grade and not the original order of merit, (in case where confirmation was in an order different from the order of merit indicated at the time of their appointment), has been discontinued w.e.f. 4.11.1992. (O.M. No. 20011/5/90-Estt (D) Dated 4.11.1992)

2.2.1 Where promotions to a grade are made from more than one grade and quotas have been laid down for each feeder grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades. The officers in each grade, assessed as fit by the Departmental Promotion Committee shall be interpolated in the ratio prescribed for each grade in the recruitment rules for the post.

When eligibility list is to be resorted to?

2.2.2. Where promotions to a grade/post are made from more than one grade and no quota has been fixed for various feeder grades owing to a small number of posts in the promotion grade the aforesaid principle would not be viable. In such cases it would be required to prepare a combine eligibility list of the candidates from various feeder grades with due regard to the inter-se seniority of the candidates of

various feeder grades. Separate instructions have been issued in this connection with regard to framing of recruitment rules in such a situation. Whereas specific criteria need to be issued/incorporated in the Recruitment Rules by the cadre controlling authorities for preparation of combined eligibility list of the candidates from various feeder grades/ broad parameters as under may be kept in view while preparing such list.

- i. Date of completion of the qualifying service prescribed in the relevant recruitment rules, in the feeder grade for promotion.
- ii. If the aforesaid date is same than date of completion of the qualifying service in the feeder-to-feeder grade.
- iii. Inter se seniority of the officers from each feeder grade will be maintained.

2.3 Seniority of SC/ST Government servants on their promotion by virtue of rule of reservation roster

O.M. No.20011/1/2001-Estt. (D) Dated 21st January 2002

SC/ST Government servants on their promotion by virtue of rule of reservation roster will be entitled to consequential seniority also. In other words, the candidates belonging to general/OBC category promoted through a later DPC will be placed junior to the SC/ST Government servants promoted through earlier DPC, even though by virtue of the rule of reservation.

Clarification on reservation roster vis-a-vis seniority:

In case of promotion, vacancies meant and reserved for SC/ST are determined through the roster points in the reservation roster. It is clarified that the said reservation roster/points are meant only for identifying the vacancy that goes to a particular category of officer and in no way acts as a determinant for fixation of seniority of the officer in a panel recommended by the DPC. According to this Department's **O.M. No. 35014/7/97-Estt.(D) Dated 8th February 2002**, the DPC is to grade an officer as 'fit' or 'unfit' and the feeder grade seniority of the officers assessed as fit would be maintained in the promoted grade.

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RELATIVE SENIORITY OF DIRECT RECRUITS AND PROMOTEES**O.M. No. 35014/2/90-Estt(D) Dated.07.02.1986****O.M. No. 22011/7/86-Estt.(D) Dated 03.07.1986,**

2.4 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between available direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.1 If adequate number of direct recruits does not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number of vacancies for direct recruits and promotees as determined according to the quota for that year. The additional, direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent year.

Clarification of the term "availability"**O.M. No.20011/1/2006-Estt.(D) Dated 03.03.2008**

2.4.2. Some references have been received seeking clarifications regarding the term 'available' used the O.M. dated 7.2.86 and 3.7.1986. It is clarified that while the inter-se seniority of direct recruits and promotees is to be fixed on the basis of the rotation of quotas of vacancies, the year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz. year of vacancy/panel or year in which recruitment process is initiated) but get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotees joins the post/service.

Cases of seniority already decided (prior to issue of this O.M. dated 3.3.2008), with reference to any other interpretation of the term 'available' as contained in O.M. dated 3.7.1986 need not be reopened.

Note The seniority of direct recruits and promotees is delinked from the vacancy/year of vacancy. The seniority / inter se seniority of direct recruits and promotees in a particular year is fixed with reference to the availability of the candidates /officers after completion of all pre-appointment formalities and rotation of quota is applicable only among the available direct recruits and promotees. **(O.M. No. 22011/7/86-Esst.D Dated 03.07.1986)** If no direct recruit is available in a particular year, all the promotees are bunched together in accordance with their position in the DPC recommendation. Similarly if no promotee is available in a particular year, available direct recruits are bunched together. In other words, complete rotation of quota is feasible **only** in an ideal situation where adequate/proportionate number of direct recruits and promotees become available in a year for rotation as per the quota prescribed in the recruitment rules.

2.4.3 Starting point in the recruitment roster for the purpose of interse seniority of officers through Direct Recruitment, Promotion, Absorption etc.

DOP&T's OM No. 28011/6/76-Esst, Dated 24th June, 1978

The starting point in the roster should be that mode of recruitment prescribed in the Recruitment Rules for which the selection process had been completed first. For this purpose, the date of the completion of the selection process will be determined as follows: -

<u>Direct Recruitment</u>	<u>Date of completion of selection process</u>
(a) Through examination conducted by UPSC or any other authorities.	Date of publication/ announcement of results.
(b) Through interviews conducted by UPSC or any other authorities	Date of Commission's letters containing their recommendation.
<u>Promotion</u>	
(a) Where UPSC is associated	Date of UPSC's letter containing their recommendations ratifying the promotion
(b) Where UPSC is not associated or its concurrence is not required.	Last date of DPC meeting
(c) Limited Departmental Examination.	Date of announcement of results.

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2.4.4. A new roster will have to be started in the following cases:

- (i) From the date the recruitment rules are notified in the gazette.
- (ii) When there is an amendment to the Recruitment Rules which changes the percentage allotted for the various modes of recruitment.

3. SENIORITY OF ABSORBEES

MHA O.M.No.9/11/55-RPS Dated 22.12.1959

O.M. No. 20020/7/80-Estt(D) Dated 29.05.1986

O.M. No. 20011/1/2000-Estt(D) Dated 27.03.2001

NOTE: *The method of recruitment 'Transfer' has been re-named as 'Absorption' and Transfer on Deputation' as 'Deputation' vide DOP&T's O.M.No.AB.14017/2/97-Estt. (RR) Dated 25.5.1998.*

3.1 The relative seniority of persons appointed by absorption to a Central service from the Subordinate Offices of the Central Government or other departments of the Central or a State Government shall be determined in accordance with the order of their selection for such absorption.

3.2. Where such absorptions are effected against specific quotas prescribed in the Recruitment Rules, the relative seniority of such absorbees vis-à-vis direct recruits or promotees, subject of the provision of para 3.4 below, shall be determined by rotation of vacancies amongst the available direct recruits, promotees and absorbees which shall be based on the quotas reserved for direct recruitment, promotion and absorption respectively in the Recruitment Rules. Where the vacancies in any quota or quotas are carried forward, the principles stated in Para 2.4.1 will apply, mutatis mutandis in determining inter-se seniority of the appointees.

3.3 The principle laid down in para 3.1 above will not present any difficulty where recruitment by absorption is made singly and at intervals but it will be found wanting in cases where two or more persons are selected from different sources on the same occasion and the selection is spread over a number of days. It will, therefore, be necessary for the authorities responsible for approving appointments by absorption to indicate the inter-se order of merit of the selected persons in such cases.

3.4 - Seniority of persons absorbed after being on deputation

O.M. No. 20020/7/80-Estt.(D) Dated 29.5.1986

O.M. No. 20011/1/2000-Estt.(D) Dated 27th March, 2001

3.4.1 In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Deputation/Absorption), his seniority in the grade in which he/she is absorbed will normally be counted from the date of absorption. If he/she has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his/her parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he/she will be given seniority from

- the date he/she has been holding the post on deputation,
- (or)
- the date from which he/she has been appointed on a regular basis to the same or equivalent grade in his parent department.,

Whichever is earlier.

These instructions **(No. 20011/1/2000-Estt. (D) Dated 27th March, 2001)** shall take effect from the December 14, 1999.

3.4.2 The fixation of seniority of an absorbee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

3.4.3 In the original O.M. (1959) there is a provision that, in cases, in which transfers(now absorption) are not strictly in public interest, the transferred(now absorbed) officers will be placed below all officers appointed regularly to the grade on the date of absorption. This provision has been reviewed and now stands deleted since no such situation where absorption is not in public interest, could be envisaged.

3.4.4 It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum **No.14017/27/75-Estt.(D) Dated March 7, 1984**, which lays down the criteria for determining analogous posts, may be followed.

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3.5 Seniority of persons who are transferred and absorbed directly without being on deputation.

Some cases has been received in this department seeking clarification whether the (DOP&T) O.M.No.20020/7/80-Estt. (D) Dated 29.5.1986 and No.20011/1/2000-Estt.(D) Dated 27th March, 2001] in the case of a person who is initially taken on deputation and absorbed later, would be applicable also for persons who are transferred and absorbed directly without being on deputation i.e. where the recruitment rules provide for recruitment through absorption. The matter has been considered and it has been decided that, in such cases also the provision as contained in the afore-said O.Ms would be applicable i.e. the date he has been holding the post on deputation or the date from which he has been appointed on the regular basis to the same or equivalent grade in his parent department, whichever is earlier.

4. SENIORITY IN SPECIAL TYPES OF CASES

O.M. No. 22011/7/86-Estt.(D) Dated 03.07.1986

4.1. In the case of such ex-T.B. or ex-Pleurisy ex-Leprosy patients, as have been declared non-infective and medically fit for Government service, on re-employment in the same posts from which they were discharged the actual previous service rendered by them should be counted for seniority. The seniority of such persons re-employed in other posts will be fixed in consultation with the Department of Pers. & Trg.

4.2.1 Seniority of an officer under suspension and of officers against whom enquiries are pending.

O.M. No. 22011/4/91-Estt. (A) Dated 14.09.1992

An officer under suspension who on conclusion of the departmental proceeding against him/her, is completely exonerated, the suspension being held to be wholly unjustified, should be promoted in the first vacancy that could be made available for the purpose and his/her seniority in the next higher grade fixed as if he/she had been promoted in accordance with his/her position in the select list. In such a case, the period during which any officer junior to the suspended officer concerned was promoted to the higher grade should be reckoned towards the minimum period of service prescribed for purpose of eligibility for promotion to the higher grade.

4.2.2 Seniority of officers who have been recommended for promotion by a DPC during the currency of a penalty.

O.M. No. 20011/2/92-Estt.(D) Dated 03.11.1995

An officer who has been recommended for promotion by a DPC despite imposition of a minor penalty on him/her, will be promoted on the basis of the recommendation of the said DPC, only after expiry of the penalty and his/her seniority would be fixed according to his/her position in that panel.

4.2.3 Fixation of seniority of a Government servant reverted to a lower post/grade/service as a measure of penalty and subsequently promoted to a higher post. (O.M. No.22011/7/86-Estt.(D) Dated 03.07.1986)

4.2.4 An order imposing the penalty of reduction to a lower service, grade or post or to a lower time-scale should invariably specify:-

- (i) the period of reduction, unless the clear intention is that the reduction should be permanent or for an indefinite period;
- (ii) whether on such re-promotion, the Govt. servant will regain his original seniority in the higher service, grade or post or higher time-scale which had been assigned to him prior to the imposition of the penalty.

4.2.5 In cases where the reduction is for a specified period and is not to operate to postpone future increments, the seniority of the Govt. servant may, unless the terms of the order of punishment provide otherwise, be fixed in the higher service, grade or post or the higher time scale at what it would have been but for his/her reduction.

4.2.6 Where the reduction is for a specified period and is to operate postpone future increments, the seniority of the Govt. servant on re-promotion may, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service rendered by him/her in the higher service, grade or post or higher time-scale.

4.3.1 Fixation of inter se seniority of the staff rendered surplus and redeployed on different occasions but in the same office.

O.M.No.9/22/68-Estt.(D) Dated 6.2.69.

The surplus employees are not entitled for benefit of the past service rendered in the previous organisation for the purpose of their seniority in the new organisation. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions etc.

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4.3.2 When two or more surplus employees of a particular grade in an office are selected on different dates for absorption in a grade in another office, their inter-se seniority in the latter office will be same as in their previous office provided that –

- (i) no direct recruit has been selected for appointment to that grade in between these dates; and
- (ii) if there are no fixed quotas for direct recruitment and promotion to the grade in question in the new office no promotee has been approved for appointment to that grade in between these dates.

4.3.3 When two or more surplus employees of a particular grade in an office are simultaneously selected for re-deployment in another office in a grade, their inter-se seniority in the particular grade, on redeployment in the latter office, would be the same as it was in their previous office.

4.3.4 The above orders would not be applicable in respect of personnel who are appointed on the recommendations of the UPSC to posts/services recruitment to which is made through the Commission. Seniority of surplus officers appointed on the recommendations of the Commission will be decided on merits in consultation with the Commission.

4.4 Seniority in cases of delay in reporting for duty after selection

O.M. No. 9/23/71-Estt.(D) Dated 6.6.1978

O.M. No. 35015/2/93-Estt.(D) Dated 9.8.1995.

- (i) An offer of appointment issued by different Ministries/Departments should clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period.
- (ii) If, however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted and it may be granted only as an exception where facts and circumstances so warrant and in any case only up to a maximum of six months from the date of issue of the original offer of appointment. An offer on appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment. The candidates who join within the above period of six months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority.
- (iii) If, even after the extension(s), if any, granted by the Ministries/Departments, a candidate does not join within the stipulated time

(which shall not exceed a period of six month), the offer of appointment should lapse.

- (iv) An order of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds of public interest. The Commission (UPSC) should in all cases be consulted before such offers are revived.
- (v) In a case where after the lapsing of the offer, the offer is revived in consultation with the commission as mentioned in sub-para. (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of six months; and if the candidates joins before the candidates of the next selection examination join, he/she should be placed below all others of his batch. If however, the candidates join after some or all the candidates of the next selection examination have joined he/she should be—
 - (a) In case of selection through interview, placed at the bottom of all the candidates of the next batch;
 - (b) In the case of examination, allotted to the next year's batch and placed at the bottom.

4.5 Determination of seniority of re-employed officers for promotion/confirmation

MHA O.M No. 20011/3/80-Estt.(D) Dated 16.6.1980

1. The question of determination of seniority of re-employed officers should arise only in cases where the officers are re-employed before they attain the age of normal superannuation.
2. (1) Officers re-employed after they had retired/discharged, whether from Defence or Civil employment prior to the attainment of the age of superannuation under the civil rules, will, if appointed to civil posts under the provisions of the Recruitments applicable to direct recruits, be treated as direct recruits and their seniority in the grade fixed accordingly.
 - (2) However, where such officers are appointed to civil posts and the Recruitment Rules applicable thereto prescribed re-employment as a distinct mode of recruitment, their seniority will be determined as under—
 - (a) The inter se-seniority of persons so re-employed shall be determined in accordance with the order of their selection.
 - (b) The relative seniority of persons so re-employed in relation to direct recruits and promotes shall be determined—

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- (i) Where the Recruitments Rules prescribed specific quotas for each of the categories, on the basis of rotation of vacancies based on the said quota;
 - (ii) In other cases, on the basis of the chronology of selection.
3. In the case of officers referred to in previous para., their confirmation and promotion to Higher posts would take place with reference to the seniority so fixed.
 4. These instructions would apply subject to any special provisions that may be applicable to particular services/posts in terms of the Recruitment Rules applicable to those services/posts.

4.6 Fixation of seniority of a person who has been transferred to a lower post under FR-15A

When the Government employee is transferred to a lower post on his own request under FR 15(a)(2), it neither, identifies itself as a case of penal action on the employee nor as a case of transfer to a lower post in public interest. As the person already stood promoted to the next higher grade, in case of his/her reoccupying the lower post at the top of the seniority (original position), would affect adversely not only the existing officers in the grade, but would apparently nullify the very purpose of his /her transfer to the lower post. As such an officer seeking transfer to a lower post under FR-15, at his own request, would be placed below all officers appointed regularly to the lower grade on the date of transfer.

4.7 Seniority of meritorious sportsmen appointed in relaxation of recruitment rules

O.M. No. 14015/1/76-Est. (D) Dated 4.8.1980.

Where sportsmen are recruited through the Employment Exchange or by direct advertisement and are considered along with other general category candidates, they may be assigned seniority in the order in which they are placed in the panel for selection. Where recruitment to a post is through a selection made by the Staff Selection Commission, whether by a competitive examination or otherwise, the sportsmen recruited by the department themselves should be placed en bloc junior to those who have already been recommended by the Staff Selection Commission. The inter se-seniority of sportsmen will be in the order of selection.

4.8 Seniority of persons appointed on compassionate ground

DOP&T's **O.M. No.14014/6/94-Estt.(D) dated the 9th October, 1998** provides for the Scheme for Compassionate Appointment in Central Government. Para 15 of the said Scheme provide that:

- (a) The inter-se seniority of persons appointed on compassionate grounds may be fixed with reference to their date of appointment. Their interpolation with the direct recruits/promotees may also be made with reference to their date of appointment without disturbing the inter-se seniority of direct recruits/promotees.
- (b) Date of joining by a person appointed on compassionate grounds shall be treated as the date of his/her regular appointment.

A number of references were received in this Department seeking clarification as to the fixation of seniority of a person appointed on compassionate ground vis-à-vis direct recruits and promotees in a particular cadre. It is observed that while the afore-said principle has been working fine, there has been difficulty in fixation of seniority when two or more candidates come from direct recruitment/promotion joined the service on different dates. The matter has been reviewed and it has now been decided that the person appointed on compassionate ground in a particular year may be placed at the bottom of all the candidates recruited/appointed through direct recruitment, promotion etc. in that year, irrespective of the date of joining of the candidate on compassionate ground.

4.9 Determination of seniority of persons selected for appointment to different posts in the same grade requiring different qualifications.

O.M. No.22011/7/86-Estt.(D) Dated 03.07.1986

According to the Annexure to M.H.A., O.M. No. 9/11/55- RPS, dated the 22nd December, 1959 [Item-I], the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the UPSC or other selecting authority; persons appointed as a result of an earlier selecting being senior to those, appointed as a result of a subsequent selection.

In cases where persons are selected either by the UPSC for appointment to different posts in the same grade with different qualification (e.g., posts of Assistant Lecturer in History, Economics, Physics & Chemistry, etc.), the UPSC should be requested to recommend candidates for such posts in a consolidated order of merit. Similarly, other selecting authorities should also be requested to indicate such an order of merit while making selections for recruitment such posts.

The seniority of persons appointed to posts indicated above will be determined in the order in which their names appear in the consolidated list.

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4.10 Fixation of seniority of Civil Government servants who are permitted to take up military service during emergency and of Civil Government servants who are members of Defence Reserves/Territorial Army/Auxiliary Air Force and are called up for military service during emergency.

O.M. No.22011/7/86-Estt.(D) Dated 03.07.1986

In the case of all such Civil Government servants, the period spent in military service/training will be counted towards seniority in their Civil posts. If such a Government servants is promoted to a higher post in his parent Department/office during his absence on military service, his military service, from the date of such promotion will count for seniority in the higher post.

4.11 Fixation of seniority of Released Emergency Commissioned officer and Short-Service Commissioned officers of the Armed forces of the Union appointed against vacancies reserved for them in Central Civil Services and posts, Group 'A' and Group 'B' (other than Engineering and Medical Services and posts).

O.M. No.22011/7/86-Estt.(D) Dated 03.07.1986

Seniority of such officers shall be determined on the assumption that they entered the Service or the post, as the case may be, as the first opportunity they had after joining the training prior to their Commission where there was only post Commission training that is-

- (a) In the case of services or posts recruitments to which is made on the results of a competitive examination conducted by the Commission, the released Emergency Commissioned Officer or Short Services Commissioned Officers who complete successfully at the first or second available opportunity would be deemed to have passed the examination at the first or second occasion he could have appeared at the relevant examination had he not joined military service and shall be assigned the year of allotment correspondingly; and
- (b) In the case of services or posts recruitment to which is made otherwise than through a competitive examination conducted by the Commission, seniority shall be fixed on the assumption that the Emergency Commissioned Officers would have been appointed on the date arrived at after giving credit for the approved military services as Emergency Commissioned Officers or Short Service Commissioned Officers, as the case may be, including the period of training, if any and shall be deemed

to have been allotted the corresponding year for the purpose of fixation of seniority.

2. Seniority inter-se of candidates who are appointed against the vacancies reserved under sub-rule (1) of Rule 4 of the Released Emergency Commissioned Officers or Short Service Commissioned Officers (Reservation of vacancies) Rules, 1971, and allotted to a particular year shall be determined according to the merit list prepared by the Commission on the basis of the results of their performance at the examination or test or interview.

3. All candidates who have been appointed against the vacancies reserved under sub-rule (1) of Rule 4 of the rules referred to at 2 above shall rank below the candidates who were appointed against unreserved vacancies in the services or posts through the competitive examination or test or interview conducted by the Commission corresponding to the year to which the former candidates are allotted.

4.12 Seniority of released Emergency Commissioned and Short Service Commissioned Officers of the Armed Forces of the Union who are appointed against reserved vacancies in the Engineering and Medical Services and posts of the Government of India Group 'A' and Group 'B'.

O.M. No.22011/7/86-Estt.(D) Dated 03.07.1986

Seniority of these Officers shall be fixed on the assumption that he would have been appointed to the service or post, as the case may be, on the date arrived at after giving credit for his approved military service as Emergency Commissioned Officers or Short Service Commissioned Officer, as the case may be, including the period of training, if any:

Provided that in the case of an officer who competes for the reserved vacancies under proviso to sub-clause (1) of Clause (a) of sub-rule (2) of Rule 5 of the released Emergency Commissioned Officers or Short Service Commissioned Officers (Engineering and Medical Services) Reservation of Vacancies (No. II) Rules, 1971, seniority would be fixed as if he has been directly recruit to the service or post through open competition corresponding to the date and year in which he actually joined.

2. Seniority inter-se of released Emergency Commissioned Officers or Short Service Commissioned Officers who are appointed against technical vacancies reserved for them allotted to a particular year shall be determined according to the merit list prepared by the Commission on the basis of the results of their performance at the viva voce test or interview.

3. All candidates who are appointed against the reserved vacancies will rank below the successful candidates from open competition of the year to which they are allotted.

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4. In case where the released Emergency Commissioned Officers or Short Service Commissioned Officers recruited initially on a temporary basis and given the same year of allotment are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

ANNEXURE**TYPED COPIES OF O.M.s ON SENIORITY ISSUED EARLIER**

(Original O.M.s are available at DoP&T's website www.persmin.nic.in)

No.9/11/55- RPS
Government of India
Ministry of Home Affairs

New Delhi, dated the 22nd December, 1959

OFFICE MEMORANDUM

Subject: General Principles for determining seniority of various categories of persons employed in Central Services.

As the Ministries of the Government are aware, instructions have been issued from time to time regarding the principles to be observed in and the method of determining seniority vide Office Memorandum cited below:-

- i. Office Memorandum No. 30/44/48 - Appts, dated the 22nd June, 1949.
- ii. Office Memorandum No. 65/28/49 - DGS.(Appts.) dated the 3rd February, 1950 and other subsequent Office Memorandum regarding fixation of seniority of ex-employees of the Government of Burma.
- iii. Office Memorandum No. 31/223/50 - DGS, dated the 27th April, 1951 and other subsequent Office Memorandum regarding fixation of seniority of displaced Government Servants.
- iv. Office Memorandum No. 9/59/56 - RPS dated 4th August, 1956.

The instructions contained in this Ministry's Office Memorandum No. 30/44/43 - Appts., dated the 22nd June, 1949, were issued in order to safeguard the interests of displaced Government servants appointed to the Central Services after partition. As it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of persons appointed to Central Services. The principles contained in the 22nd June, 1949 orders were extended to:

- (i) Ex-Government servants of Burma appointed to Central Services, and
- (ii) The employees of former part 'B' States taken over to the Centre as a result of Federal Financial Integration.

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The instructions contained in this Ministry's Office Memorandum No. 32/10/49 - CS, dated the 31st March, 1950 and No. 32/49/CS(C) dated the 20th September 1952 similarly regulate Central Service.

2. The question has been raised whether it is necessary to continue to apply the instructions contained in the Office Memorandum cited above. Displaced Government servants have by and large been absorbed in the various Central Services and their seniority has been fixed with reference to the previous service rendered by them. Similarly, the seniority of ex-employees of the Government of Burma and Part 'B' States as well as of candidates with war service has already been determined in accordance with the instructions cited above. As the specific object underlying the instructions cited have been achieved, there is no longer any reason to apply these instructions in preference to the normal principles for determination of seniority. It has, therefore, been decided in consultation with the UPSC, that hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions should be determined in accordance with the General Principles annexed here to.

3. The instructions contained in the various Office Memorandum cited in para 1 above are hereby cancelled, except in regard to determination of seniority of persons appointed to the various Central Services prior to the date of this Office Memorandum. The revised General Principles embodied in the Annexure will not apply with retrospective effect, but will come into force with effect from the date of issue of these orders; unless a different date in respect of any particular service/grade from which these revised principles are to be adopted for purposes of determining seniority has already been or is hereafter agreed to by this Ministry.

Sd/-

(V.VISHWANATHAN)

Special Secretary to the Government of India.

To,

All Ministries of the Government of India etc.

Annexure

GENERAL PRINCIPLES FOR DETERMINATION OF SENIORITY IN THE CENTRAL SERVICES.

1. (I) These principle shall apply to the determination of seniority in Central Services and Civil posts except such services and posts for which separate principles have already been issued for may be issued hereafter by Government.

Ministries or Departments which have made separate rules or issued instructions on the basis of instructions contained in the Ministry of Home Affairs, OM No.30/44/48 – Apptts. Dated the 22nd June, 1949, are requested to consider modification of those rules or instructions on the basis of those general principles. However, whenever it is considered necessary to follow principles different from those laid down in t his Memorandum, a specific reference should be made to the Ministry of Home Affairs will consult the UPSC. As regards individual cases, the Ministry of Home Affairs. Will decide the cases on which the advice of the Commission should be obtained.

- (II) Notwithstanding anything contained in these General Principles, the seniority of persons belonging to the following categories will, on their appointment to a Control Civil Services, or a Civil posts, continue to be determined by the instructions noted against each such category:-

- | | |
|---|---|
| (a) Ex- Government servants penalized for their patriotic activities. | MHA OM No. 6/4/52- S&NG dated 29.5.57. |
| (b) Central Government employees discharged on account of affliction with T.B., Pleurisy of Leprosy. servants | OM No.37/1/52-DGS, dated 10.7.54 (subsequently extended to ex-Pleurisy/ Leprosy patients vide OM No. 13/4/56—RPS dated 29.9.56 and 13.4.57-RPS dated 14.7.58. |
| (c) Permanent displaced Government servants nominated by the Transfer Bureau to purely temporary Organizations, who consequent on their retrenchment, were absorbed in other offices. | OM No. 30/44/48- Apptts. Dated 22.6.49. |

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2. Subject to the provision of para 3 below, persons appointed in a substantive or officiating capacity to a grade prior to the issue of these general principles shall retain the relative seniority already assigned to them or such seniority as may hereafter be assigned to them under the existing orders applicable to their cases and shall an-bloc be senior to all others in that grade.

Explanation:- For the purpose of those principles (a) persons who are confirmed retrospectively w.e.f. date earlier than the issue of these general principles; substantively vacant in a grade prior to the issue of these general principles, shall be considered to be permanent officers of the grade.

3. Subject to the provisions of para 4 below, permanent officers of each grade shall be ranked senior to persons who are officiating in that grade.

4. Direct Recruit :

Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of subsequent selection.

5. Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

5. Promotees:-

(I) The relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion;

Provide that where persons promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion, seniority shall follow the order of confirmation and not the original order of merit.

(II) Where promotions to a grade are made from more than one grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades. Hereafter, the Departmental Promotion Committee shall select persons for promotion from each list upto the prescribed quota and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade.

NOTES:- Separate quotas for promotion have not already been prescribed in the relevant recruitment rules, the Ministries/ Departments may do so now, in consultation with the Commission wherever necessary.

6. Relative seniority of Direct Recruits and Promotees.

The relative seniority of direct recruits and of Promotees shall be determined according to the rotation of vacancies between direct recruits and Promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

7. Transferees:-

- (i) The relative seniority of persons appointed by transfer to a Central Service from the subordinate office of the Central Government or other Departments, of the Central or state Governments shall be determined in accordance with the order of their selection for such transfer.
- (ii) Where such transfers are effected against specific quotas prescribed in the recruitment rules, the relative seniority of such transferees vis-a-vis direct recruits and promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for transfer, direct recruitment and promotion respectively in the recruitment rules.
- (iii) Where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such transfer in the event of non-availability of a suitable candidate by direct recruitment or promotees, as the case may be, for the purpose of para 6 above. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion.

8. Persons appointed on adhoc basis to a grade without consultation with the UPSC under Regulation 4 of the U.P.S.C (exemption from consultation) Regulation, 1958, are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer, as the case may be. Until they are replaced, such persons will be shown in the order of their adhoc appointments and below all persons regularly appointed to the grade.

EXPLANATORY MEMORANDUM

General Principle 4: The Union Public Service Commission invariably indicate the order of preference at the time of selection and it will not, therefore, be difficult to determine the relative seniority of persons recruited through the Commission. In order to obviate difficulties in determining the relative seniority of direct recruits recruited otherwise than through the U.P.S.C., the selecting authority should indicate the order of merit at the time of selection.



General Principle 5(i): Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior, such persons shall not if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

General Principle (ii): Illustration: Where 75% of the vacancies in the grade of Head Clerk are reserved for promotion from the grade of Upper Division Clerk and 25% from the grade of Store-keeper, the eligible Upper Division Clerks and Store-Keepers shall be arranged in separate lists with reference to their relative seniority in these grades. The D.P.C. will make selection of three candidates from the list of U.D.C. and from the list of store-Keepers. Thereafter the selected persons from each list shall be arranged in a single list in a consolidated order of merit assessed by the D.P.C. which will determine the seniority of the persons on promotion of the higher grade.

General Principle 6: A roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules. Where the reservation for each method is 50% the roster will run as follows:-

(1) Promotion, (2) Direct recruitment, (3) Promotion, (4) Direct Recruitment and so on. Appointment should be made in accordance with this roster and seniority determined accordingly.

Illustration: Where 75% of the vacancies are reserved for promotion and 25% for direct recruitment, each direct recruit shall be ranked in seniority below 3 promotees. Where the quotas are 50% each, every direct recruit shall be ranked below a promotees. If for any reason, a Direct recruit or a promotee ceases to hold the appointment in the grade, the seniority list shall not re-arranged merely for the purpose of ensuring the promotion referred to above.

General Principle 7 (i): The Principle laid down in para 7(i) will not present any difficulty where recruitment by transfer is made singly and at intervals but it will be found wanting in cases where two or more persons are selected from different sources on the same occasion and the selection is spread over a number of days. It will, therefore, be necessary for the authorities responsible for approving appointments by transfer to indicate the inter se order of merit of the selected persons in such cases.

General Principle 8: While the seniority of persons appointed on an adhoc basis will be determined as indicated in para 8 of the Annexure, the seniority list should clearly show that such persons are not eligible for promotion or confirmation.

No.9/22/68-Estt.(D)
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

....

New Delhi-I, the 6th February, 1969
17, Magha, 1890

OFFICE MEMORANDUM

Subject: Preservation of inter-se seniority of the staff rendered surplus and re-deployed on different occasions but in the same office.

...

The undersigned is directed to refer to the Scheme of redeployment of surplus staff forwarded with this Ministry's Office Memorandum No.3/27/65-CS(II), dated the 25th February, 1966 and to say that no benefit of past service is given at present to the surplus staff redeployed under the above scheme, for purpose of fixation of seniority in the grade in which they are redeployed in the recipient organisation. Their seniority in such organisations is determined in accordance with the general instructions contained in this Ministry's Office Memorandum No.9/11/55-RPS dated the 22nd December 1959, i.e. with reference to the date of their selection for redeployment in the recipient organisations. Therefore, the order of inter-se seniority of two or more persons as it existed in the office in which they were declared surplus, may not be maintained if they are selected for deployment in another office on different dates. The question as to whether the order of their inter-se seniority, as it stood in their former office, should be maintained in their new office has been under consideration in this Ministry for some time past. It has now been decided that when two or more such surplus persons of an office are selected on different dates for absorption in a grade in another office, their inter se seniority as it existed in the office in which they worked before being rendered surplus, should be maintained in the grade in which they are absorbed in the new organization provided that

- (i) no direct recruit has been selected for appointment to that grade in between these dates; and
- (ii) if there are no fixed quotas for direct recruitment and promotion to the grade in question in the new office and no promotee has been approved for appointment to that grade in between these dates.

It has also been decided that when two or more surplus employees of a particular grade in an office, are simultaneously selected for redeployment in another office in a grade, their inter se seniority in the particular grade, on redeployment in the latter office, should be the same as it was in their previous office.

2. These orders will not be applicable in respect of personnel who are appointed on the recommendation of the Union Public Service Commission to posts/services recruitment to which is made through the Commission. Seniority of surplus officers appointed on the recommendations of the Commission will be decided on an ad hoc basis in consultation with the Commission.

3. These orders will take effect from the 25th February, 1966, the date of the issue of the Scheme of redeployment of surplus staff. Promotions/confirmations, if any, already made will, not however, be affected.

Sd/-

Harish chandra

Under Secretary to the Government of India

To

All Ministries/Departments etc. of the Government of India (including all Attached and Sub-ordinate offices under the Ministry of Home Affairs.

Commissioner for Linguistic Minorities Affairs.

All Zonal Councils

All Union Territories Governments/Administrations, Directorate General Employment and Training (EEI Sections).

Copy (with 10 spare copies) forwarded to the Union Public Service Commission with reference to their letter No.F.2/37/68-CS.II dated the 26th December, 1968.

Sd/-

Harish Chandra

Under Secretary to the Government of India

Copy to Admn.I, AIS.I, CS(I), CS(II), CS(III), HMT, Delhi, ANI, BS(L), GP, NEFA, Admn.II, Estt.(B), Police-I, Police-II, BS(II), Police III and Police IV Sections.

No.9/23/71-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

....

New Delhi, dated the 6th June, 1978

OFFICE MEMORANDUM

Subject: Candidates recommended by the UPSC for appointment to Central Civil Services and the post – delay in joining – revival of offers of appointment after their cancellation – determination of seniority.

....

The undersigned is directed to refer to the general principles of seniority contained in Ministry of Home Affairs' O.M.No.9/11/55-RPS dated 22nd December, 1959 and to say that relative seniority of direct recruits appointed on the recommendations of the UPSC or any other authority is determined by the order of merit in which they are selected for such appointment, the persons appointed as result of an earlier selection being placed above those appointed as result of the subsequent selection. It has come to the notice of the Government that in certain cases, the candidates recommended by them for appointment take long time to join and there have also been cases where offers of appointment were revived by Departments after they had been cancelled and in spite of the long delay in joining the candidates were allowed the benefit of seniority on the basis of their initial selection. The question whether in such cases it would not be desirable to depress the seniority of the candidates who are appointed on the result of the selections by interviews/examination was considered by the Government in consultation with the UPSC and it has been decided that the following procedure may be adopted now. This procedure will be applicable both in case of (a) selection through interview and (b) examinations.

- (i) In the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the candidates did not join within a specified period not exceeding two or three months.
- (ii) If, however, within the period stipulated, a request is received from the candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months. The candidates who join within the above period of nine months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority.

(79)

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(iii) If, even after the extension(s) if any granted by the Ministry/Departments, a candidate does not join within the stipulated time (which shall not exceed a period of nine months), the order of appointment should lapse.

(iv) An offer of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds of public interest. The Commission should in all cases be consulted before such offers are revived.

(v) In a case where after the lapsing of the offer, the offer is revived in consultation with the Union Public Service Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of nine months; and if the candidate joins before the candidates of the next selection/examination join, he should be placed below all others of his batch. If however, the candidate joins after some or all the candidates of the next selection/examination have joined, he should be:

- (a) In cases of selection through interview, placed at the bottom of all the candidates of the next batch.
- (b) in the case of examination; allotted to the next years batch and placed at the bottom.

The Ministry of Finance are requested to bring the above instructions to the notice of all concerned.

Sd/-
(N. RANGARAJAN)
Deputy Secy. to the Govt. of India

Copy to:-

1. All Ministries/Departments of the Govt. of India including all attached & subordinate offices of Deptt. of Personnel.
2. Union Public Service Commission, with reference to their letter

No.F.2/26/70-S.II dated 27th April, 1978.

Sd/-
(N. RANGARAJAN)
Deputy Secy. to the Govt. of India

No.28011/6/76-Estt.(D)
 Government of India
 Ministry of Home Affairs
 Department of Personnel & Adm. Reforms

.....
 North Block, New Delhi, the 24th June, 1978

OFFICE MEMORANDUM

Subject: Starting point in the recruitment roster for the purpose of seniority –
 procedure regarding.

....

The undersigned is directed to say that from the reference received in the Department and the representations made by the affected individuals, it has been noticed that there is no uniform practice in regard to the starting point in the recruitment roster when recruitment is made by more than one method, namely, direct recruitment/promotion/transfer on deputation etc.

The following are the among the diverse methods being adopted by various departments in regard to the starting point of the roster:

- (a) the mode of recruitment for which action has been initiated first;
- (b) the mode of recruitment through which first appointment was made after the notification of the recruitment rules;
- (c) the mode of recruitment mentioned first in the recruitment rules for the post concerned.
- (d) the mode of recruitment which is the most predominant.

In some other cases, the roster has been maintained according to the illustration given in "General principle (6)" in the annexure to M.H.A.O.M.No.9/11/55-RPS dated 22.12.1959.

2. This question has been examined in detail by this Department in consultation with the UPSC and it has now been decided that the starting point in the roster should be that mode of recruitment prescribed in the Recruitment Rules for which the selection process had been completed first. For this purpose, the date of completion of the selection process will be determined as follows:



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<u>Direct Recruitment</u>	<u>Date of completion of selection process</u>
(a) Through examination conducted by UPSC or any other authorities.	Date of publication/announcement of results.
(b) Through interviews conducted by UPSC or any other authorities.	Date of Commission's letter containing their recommendations.

Promotion

(a) Where UPSC is associated.	Date of UPSC's letter containing their recommendations ratifying the promotion.
(b) Where UPSC is not associated or its formal concurrence is not required.	Last date of DPC meeting.
(c) Limited Departmental Examination.	Date of announcement of results.

3. A new roster will have to be started in the following cases:

- (i) From the date the recruitment rules are notified in the gazette.
- (ii) When there is an amendment to the Recruitment Rules which changes the percentage allotted for the various modes of recruitment.

4. These instructions shall come into force with effect from the date of issue of this Office Memorandum and recruitment rosters already maintained/started need not be reviewed on the basis of the above instructions. However, where the persons concerned have been approved for appointment but the Recruitment roster has not been started this may be started in the light of the instructions.

Sd/-
(N. Rangarajan)
Deputy Secretary

To

All Ministries/Departments.

UPSC with 10 spare copies with referent to letter No.F.2/47/ S.II.

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No.20011/3/80-Estt (D)
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Department of Personnel and Administrative Reforms
(Karmik Aur Prashasnik Sudhar Vibhag).

.....
New Delhi-110001 dated 16 June 1980

OFFICE MEMORANDUM

Subject: - Prematurely Retired and re-employed Officers whether they should be eligible for promotion and confirmation after re-employment.

.....

Ministries/Departments are aware that persons who are in military service retire from service much earlier than persons employed in civil posts. Thus the persons who are employed in military posts render shorter span of service. Government have introduced various schemes for suitable re-employment of these officers. In civil posts two methods of re-employment are possible. The first category comprises of those who had retired after the date of normal superannuation under Civil Rules viz. 58 years-age. The other category comprises of persons who retire at an earlier age from the military service, or are discharged on compensation/invalid pension or otherwise retire from Civil service prior to the attainment of the age of superannuation under civil rules. On re-employment, the latter continue to work against the civil posts till the normal date of superannuation under civil rules viz 58years of age.

2. A question has been raised whether the officers who are re-employed can be promoted or confirmed after their re-employment. The answer to the above question would depend on whether the re-employed officers find a place in the seniority list, since the confirmation or promotion of any officer will depend on his position in the seniority list and his suitability. The manner in which the seniority of the re-employed officers has to be determined, has not been laid down in any of the instructions issued so far. The matter has however, been examined and it has now been decided that for the purpose of determination of seniority of reemployed officers the following procedure should be adopted: -

3. The question of determination of seniority of re-employed officers should arise only in cases where the officers are re-employed before they attain the age of normal superannuation i.e. 58 years of age. Officers who are re-employed after obtaining the age of 58 years would not form part of the cadre at all and would be treated like contractual appointees. Consequently, they can neither be confirmed in the civil post in which they are re-employed nor promoted to the higher post. They may, if the recruitment rules permit, and in exigencies of public service, be appointed to a higher post, again as a freshly re-employed officer.