

**GOVERNMENT OF ASSAM**  
**DEPARTMENT OF WELFARE OF PLAINS TRIBES AND BACKWARD CLASSES**  
**DISPUR::: ASSAM**

No. TAD/BC/68/2011/Pt-I/207

Dated Dispur 3<sup>rd</sup> August, 2016.

**OFFICE MEMORANDUM**

**Subject: Review of Government Policy of Reservation in Promotion with reference to the Hon'ble Gauhati High Court judgments.**

As per guidelines laid down by the Apex Court in WP(C) 61/2002 M. Nagaraj & others Vs Union of India and in CA No. 2608/2011 UP Power Corporation Ltd Vs Rajesh Kumar & Ors., the Government of Assam have prescribed procedures as to how to implement the policy of reservation in promotion vide Office Memorandum No TAD/BC/68/2011/Pt-1/146 dated 29/12/14. The Report of the One Man Commission on quantifiable data was accepted by the State Govt. with approval of the State Cabinet. Accordingly, on the basis of the report the Govt. decided to provide reservation in promotion; these provisions for reservation in promotion were also incorporated in the aforementioned Office Memorandum. However, the report of the Commission was challenged in the Hon'ble Gauhati High Court by the Equality Forum in WP (C) No. 1560/2015. The Hon'ble High Court observed that,

*"Para 74 .....though State has made provision for reservation in promotion by enacting the 1978 Act, which was amended in the year 2012, implementation of the same would depend on acquiring of quantifiable data with regard to the 2 (two) compelling reasons, which exercise has to be carried out cadre-wise in the context of the service where the cadre is placed. That having not been done, the report of the One Man Commission would be of no legal consequence and would not enable the State to give effect to the provisions of the 1978 Act as amended in so far reservation in promotion is concerned".*

The Government of Assam, after careful examination of the observations of the High Court contained in the judgment dated 23-12-2015, have come to the conclusion that the High Court has not set aside the Government policy of reservation for reserved categories in promotion; rather it strikes down only the basis on which this policy was adopted. This has not ended the continuation of the Government Policy on reservation in promotion. In its ruling the Hon'ble High Court stressed that,

*"Para 74 .....it is reiterated that if the State desires to give effect to the provisions of the 1978 Act as amended in the year 2012 by providing for reservation in promotion, it would have to justify the same with the help of quantifiable data to show presence of the 2 (two) compelling reasons, backwardness and inadequacy of representation, cadre-wise in the context of the service where the cadre is placed, which would then have to be harmonized with efficiency in administration as mandated under Article 335".*

The basic difficulties in adopting the policy of reservation in promotion were, in fact, in determining the i) backwardness and ii) inadequacy in representation in the cadre. The Hon'ble High Court while explaining the criteria added that-

*"Para 69----- "Backwardness of SCs and STs vis-à-vis promotion would have to be determined cadre-wise. If in a particular cadre, SCs and STs are not adequately represented, they may be considered as backward in so far that particular cadre is concerned. Conversely, if in a particular cadre, SCs and STs are adequately represented, then they may not be considered as backward for the purpose of promotion to that particular cadre. Therefore, it is quite evident that the concepts of backwardness and inadequacy of representation in the context of reservation in promotion are intertwined."*

With a view to bringing the policy of reservation in promotion for reserved categories in line with the directions of the Hon'ble High Court, Government have reviewed the existing procedure of effecting reservation in promotion and accordingly lays down the following guidelines to be followed while considering promotion in any cadre in any establishment-

- i) The policy of reservation in promotion shall continue.
- ii) Each establishment while taking up the process of promotion in a particular cadre of a service, shall examine the representation of SC, ST (P) and ST (H) candidates in the cadre in comparison with the prescribed percentage of reservation and calculate shortfall if any, in the cadre with reference to that particular year. Shortfall of reservation of a particular reserved category in a cadre means the difference between the total number of reserved posts for that category in the cadre and the number of persons of that category holding the posts in the cadre. While calculating the shortfall, all candidates belonging to the same category [SC or ST (P) or ST (H)] shall be taken into account irrespective of the mode of their entry into the cadre i.e. whether on account of seniority-cum-merit or merit cum seniority, as the case may be, or through any other process admissible in law or by way of reservation. If in a particular cadre, SCs and STs are not adequately represented and shortfall is found to exist in the cadre, they may be considered as backward insofar as that particular cadre is concerned. Such shortfall shall be filled up by the concerned category of incumbents within the zone of consideration either on account of seniority-cum-merit / merit-cum-seniority or by way of providing reservation as the case may be, till the prescribed percentage in respect of the said category is achieved.
- iii) If no eligible incumbent belonging to the shortfall category is available within the zone of consideration, this will further substantiate the status of backwardness and inadequate representation of the category in the cadre and therefore the number of posts that are required to meet the calculated shortfall shall be kept vacant and the vacancy shall be carried forward and filled up in the next year. In case, sufficient number of SC or ST(P) or ST(H) candidates fit for promotion against reserved posts are not available and if the posts cannot be allowed to remain vacant on grounds of maintaining efficiency in administration, the Appointing Authority may with full justification, refer the vacancy to

the Department of WPT & BC for de-reservation, subject to the condition that no candidate belonging to the category for which the post is reserved is available within the zone of consideration placed before the annual Selection Committee/ Departmental Promotion Committee for two consecutive years. In other words the concerned Departments may move proposal for de-reservation in the third year.

- iv) If an occasion arises during the promotion process, in which stipulated percentage in respect of reserved category is met, but in the gradation list/ seniority list there are candidates of reserved category who on merit is entitled to the promotion, his/ her case shall be considered for promotion on merit if such candidate has not gained the seniority by way of any accelerated promotion earlier.
- v) As regards the question of maintaining administrative efficiency as required under Article 335 of the Constitution of India, Hon'ble High Court held that, "..... it should be assessed applying objective measurable standards." In that sense, the Annual confidential Reports (ACR)/ Annual Performance Appraisal Reports (APAR) of the incumbent along with the length of service, participation in training programmes concerning job requirements, acquisition of degrees or diplomas on subjects if mandatory to the job, should be considered as the yardstick of measuring efficiency.
- vi) It shall be the responsibility of the concerned appointing authority to provide adequate information concerning the above to the Selection Committee (Department Promotion Committee) which shall evaluate all relevant parameters while making its recommendation.

This shall come into force with immediate effect.

Sd/-

(Rajiv Kumar Bora IAS)

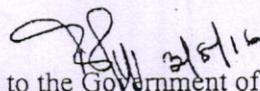
Additional Chief Secretary to the Govt. of Assam,  
WT & BC Department, Dispur .

Memo No. TAD/BC/68/2011/Pt-I/207-A

Dated Dispur 3<sup>rd</sup> August, 2016

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2. The Chairman, Assam Board of Revenue, Guwahati, Assam
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4. The Commissioner & Secretary to the Chief Minister of Assam
5. The Chief Electoral Officer, Assam, Dispur.
6. The Resident Commissioner, Govt of Assam, Assam House, New Delhi
7. The Secretary to His Excellency the Governor of Assam
8. All Commissioners of Divisions ,Assam
9. All Principal Secretaries to the Autonomous Councils
10. All Deputy Commissioners
11. The Staff Officer to the Chief Secretary of Assam
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15. P.S to all Addl. Chief Secretaries to the Govt. of Assam
16. The Director, Assam Govt Press, Guwahati-21.

  
Joint Secretary to the Government of Assam  
WT & BC Department Dispur