

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

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

Dated Dispur 3rd 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 74though 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 74it 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".