

No.PER.(AP)-C-F(1)-1/95  
Government of Himachal Pradesh  
Department of Personnel (AP-III).

...  
Dated Shimla-171002, the 27.3.97.

From

The Chief Secretary to the  
Government of Himachal Pradesh.

To

1. All the Financial Commissioners/ Commissioners-cum-Secretaries/ Secretaries/ Joint Secretaries/ Deputy Secretaries/ Under Secretaries to the Government of Himachal Pradesh.
2. The Divisional Commissioners, Shimla/ Kangra/ Mandi, Himachal Pradesh.
3. All the Heads of Departments in H.P.
4. All Deputy Commissioners in Himachal Pradesh.
5. All the Chairmen/ Managing Directors/ Secretaries/ Registrars of all the public Sector Undertakings / Corporations/ Boards/ Universities etc. in Himachal Pradesh.

Subject;- Reservation of posts for Scheduled Castes/ Scheduled Tribes/ Backward Classes/ Ex-Servicemen etc. -- Clarification regarding maintenance of rosters and determination of seniorities.

Sir,

I am directed to invite your attention to the instructions issued by the Government vide Department of Personnel circular letter of even number, dated the 27th May, 1996 which inter alia provide for the detailed procedure regarding maintenance of rosters and determination of seniorities in the promoted category(ies) in the light of latest judgements pronounced by the Hon'ble Supreme Court of India;

The Government have been receiving various communications seeking clarifications to the points raised by various quarters in the implementation of these instructions. In the interest of uniformity in the application of these instructions it has been considered necessary to clarify the points as under:-

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Sr.No. Point raisedClarification.

1. Whether seniority list of all categories require change as on 27.5.1996 because it has been held by the Hon'ble Apex Court that promotions attained by the SC/ST candidate, as the case may be, is on the basis of rule of reservation and not on the basis of merit, so as to assign appropriate place with reference to their entry grade position in the respective grade.

No. In view of the instructions referred to above, the issue has been clarified in detail. However, for convenience the following illustrations are given:-

Suppose in a Department on the date of issue of instructions dated 27.5.1996, the cadre of clerks consists of 20 and in the direct line of promotion the cadre of Assistants consists of 10 posts. The seniority of clerks and Assistants as on the date of issue of instructions dated 27.5.1996 stood as under:-

<u>Clerks</u>		<u>Assistants.</u>	
<u>Seniority No.</u>	<u>Name</u>	<u>Seniority No.</u>	<u>Name</u>
1.	A(General)	1.	E(S.C.)
2.	B(General)	2.	A(General)
3.	C(General)	3.	B(General)
4.	D(General)	4.	I(S.T.)
5.	E(S.C.)	5.	C(General)
6.	F(General)	6.	D(General)
7.	G(General)	7.	F(General)
8.	H(General)	8.	L(S.C.)
9.	I(S.T.)	9.	G(General)
10.	J(General)	10.	H(General)
11.	K(General)		
12.	L(S.C.)		
13.	M(General)		

- 14. N(S.C.)
- 15. O(General)
- 16. P(General)
- 17. Q(General)
- 18. R(S.C.)
- 19. S(General)
- 20. T(S.C.)

Suppose immediately after the issue of instructions a Clerk "J" from the general category is promoted to the post of Assistant on 28.5.1996 who is senior to "L" in the entry grade as clerk and "L" being Scheduled Caste promoted earlier by virtue of rule of reservation than his senior General candidate "J" then in such a situation the senior general candidate "J" will regain his seniority over "L" junior reserved candidate. Thus on promotion of "J" the senior General candidate on 28.5.1996, the seniority of Assistant as stood on 27.5.1996 will undergo a change in order to assign proper place in the seniority to "J" and the seniority position of Assistant as on 28.5.1996 will be as under:-

Seniority position of Assistant as on 28.5.96.

<u>Seniority No.</u>	<u>Name</u>
1.	E(S.C.)
2.	A(General)
3.	B(General)
4.	I(S.T.)
5.	C(General)
6.	D(General)
7.	F(General)
8.	G(General)
9.	H(General)
10.	J(General)
11.	L(S.C.)

Change affected in view of instructions dated 27.5.1996.

His seniority position will be further subject to change on promotion of "K" who is senior to "L" in the entry grade. Necessary changes shall continue to be made where necessary on promoted post.

It may be seen that while determining seniority position as on 28.5.1996 as Assistant, the seniority position of "E" the Scheduled Caste candidate and "I" the Scheduled Tribe candidate is being maintained as it stood on 27.5.1996 and only the seniority position of "L" has undergone change in relation to senior general candidate "J" who has been promoted after 27.5.1996. The seniority position of "E" and "I" had remained undisturbed because they were senior to general candidate promoted after 27.5.1996. Since the seniority position of "E" and "I" the reserved candidates as determined on 28.5.1996 is jumped up seniority, as such they will be promoted to the next higher post on the basis of such jumped up seniority if there is short fall in the representation of reserved category of the prescribed percentage in the higher grade/cadre i.e. Superintendent Grade-II. If there is no short fall they will be promoted further only when all the general candidates senior to them in the entry grade are promoted to the next higher post. Further the seniority position of "E" and "I" the reserved candidates which remained undisturbed in the revised seniority list of Assistants determined on 28.5.1996 as given above will undergo a change when they will be promoted to next higher post with reference to their position in entry grade.

Further there may be another situation, i.e. in a Department on the date of issue of these instructions, there is a cadre of 15 clerks and in the direct line of promotion the cadre of Assistants consists of 10 posts out of which 8 posts have been filled up and the seniority position of

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clerks and Assistants as on 27.5.1996 stood as under:-

<u>Clerks</u>		<u>Assistants</u>	
<u>Seniority No.</u>	<u>Name</u>	<u>Seniority No.</u>	<u>Name</u>
1.	A(General)	1.	K(S.C.)
2.	B(General)	2.	A(General)
3.	C(General)	3.	B(General)
4.	D(General)	4.	O(S.T.)
5.	E(General)	5.	C(General)
6.	F(General)	6.	D(General)
7.	G(General)	7.	E(General)
8.	H(General)	8.	L(S.C.)
9.	I(General)		
10.	J(General)		
11.	K(S.C.)		
12.	L(S.C.)		
13.	M(S.C.)		
14.	N(S.C.)		
15.	O(S.T.)		

If immediately after the issue of instructions dated 27.5.1996, the remaining two posts of Assistants are filled up on 28.5.1996 and "F" and "G" clerks from general category are promoted to the posts of Assistants who are senior to "K" "O" and "L", the reserved candidates in the entry grade of clerks but were promoted earlier by virtue of rule of reservation than senior general candidates "A" to "E", in such a situation the senior general candidates shall regain their seniority over the junior reserved candidate even if promoted earlier in the promoted category of Assistants and their seniority as on 28.5.1996 shall be determined as under:-

Seniority position as Assistant on 28.5.1996.

1. A(General)
2. B(General)
3. C(General)
4. D(General)
5. E(General)
6. F(General)

7. G(General)
8. K(S.C.)
9. L(S.C.)
10. O(S.T.)

Seniority position <sup>of</sup> "K", "L" and "O" has under gone change in view of the instructions of Department of Personnel dated 27.5.1996 being junior in entry grade of Clerks. The seniority of "K" "L" and "O" shall be further subject to change as soon as the senior general candidates "H" to "J" are promoted to the posts of Assistants.

This is clear that there is only prospective effect of the instructions dated 27.5.1996, the seniorities as stood on 27.5.1996 will undergo required changes consequent upon promotions ordered after 27.5.1996 and such changes shall be limited to the extent as may be considered necessary to assign appropriate place in the seniority to the general candidates over the junior reserved candidates promoted earlier with reference to their seniority position in entry grade. The Hon'ble Supreme Court of India in Ajit Singh Januja and Other Vs. State of Punjab and others (AIR 1996 Supreme Court 1189) has laid down that rules of reservation gives accelerated promotion, but it does not give the accelerated "consequential seniority". As such the seniority positions attained by the members of Scheduled Caste and Scheduled Tribes in the seniorities as stood on 27.5.1996 by way of accelerated promotions can not be a basis of further promotions. However, their promotions to the next higher posts shall be subject to clarification given hereinbefore and also contained in the instructions dated 27.5.1996.

2. The words 'accelerated consequential seniority' is being largely mis-interpreted by different quarters.

This issue has already been clarified in para 5 of the instructions dated 27.5.1996. However, in order to elaborate this issue, the crux of the

Judgment of the Hon'ble Supreme Court in Ajit Singh Juneja's case is reproduced :-

'The members of the Scheduled Caste or Backward Classes who have been appointed/promoted on the basis of policy of reservation and system of roster, cannot claim promotion against general category post in the higher grade, on the basis of their seniority in the lower grade having been achieved because of the accelerated promotion or appointment by applying the roster. The equality principle requires exclusion of the factor of extra weightage of earlier promotion to a reserved category candidate because of reservation alone, when he competes for further promotion to a general category with a general category candidate, senior to him in the panel.'

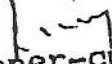
It is also clarified that once the quota is full and the roster has stopped for the reserved category candidate, their case for promotion to still higher grade against general category post have to be considered not treating them as members of the reserved category "on any crutch." The rule of reservation gives 'accelerated promotion' but it does not give 'accelerated consequential seniority'. The meaning assigned to the word 'consequential' in The New Shorter Oxford Dictionary (1993) Vol. I is 'as an immediate or eventual effect, or as a logical inference by logical sequence or consistency'.

3. At the time of initial recruitment 22% Sch. castes candidates are inducted whereas 15% are promoted to the higher grade against prescribed percentage of reservation. Doubts have been raised as to the gap of 7% created in promotion.

It is clarified that out of 22% Scheduled Caste candidates inducted at the time of initial recruitment against the vacancies reserved for them, only 15% of such Scheduled Caste candidates can be considered for promotion to next higher posts against the quota reserved for them in promotion and the remaining who fails to get promotion against the quota reserved for them has to be


considered for further promotion against general posts with reference to their original seniority in the entry grade.

Yours faithfully,

  
Financial Commissioner-cum-Secretary(Pers.)  
to the Government of Himachal Pradesh.

Endst.No.PER(AP)-C-F(1)-1/95, Dated Shimla-2, 27.3.1997.  
Copy forwarded for information and necessary action to:-

1. The Secretary, H.P. Vidhan Sabha, Shimla-171004.
2. The Registrar, High Court of Himachal Pradesh, Shimla.
3. The Registrar, H.P. Administrative Tribunal, Shimla-2.
4. The Secretary, H.P. Public Service Commission, Shimla.
5. All Section Officers in Himachal Pradesh Secretariat Shimla-2.

  
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to the Government of Himachal Pradesh.