

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

Dated Shimla-171002, the 27th May, 1996.

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
Himachal Pradesh.
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 refer to this Department
letter No.PER(AP-II)F(1)-1/87, dated the 31st January, 1989 (copy
enclosed) wherein it has been laid down that percentage of
reservation for Scheduled Castes/Scheduled Tribes / Backward
Classes / Ex-Servicemen and all other reserved categories has to
be reckoned separately category-wise and with reference to the
overall cadre strength of each category of posts. It has clearly
been stated in the aforesaid instructions that percentage
reservation is to be allowed on the basis of rosters as already

prescribed by the Government so long as the prescribed percentage within a Cadre has not been reached. Once however, the prescribed percentage for the reserved category has been reached with reference to the overall cadre strength, the operation of roster for the said category will be suspended till such time the representation of that category falls short of the prescribed percentage. The import of these instructions has also been explained by a hypothetical example in para-3 of the aforesaid instructions.

2. The above instructions shall continue to be in force. However, keeping in view the law laid down by the Hon'ble Supreme Court of India in the cases R.K.Sabharwal and others Vs. State of Punjab and others AIR 1995 Supreme Court 1371 (Civil Writ Petition No. 79 of 1979) and Union of India and Others etc. Versus Virpal Singh Chauhan etc. in Civil Appeal No. 9272 of 1995 decided on 10.10.1995, it has been decided to issue the following clarificatory instructions to supplement the instructions contained in letter No.PER(AP-II)F(1)-1/87 dated 31.1.1989 which shall come into force from the date of its issuance:-

(i) Once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade (Unit for application of rule of reservation) are filled up under the roster then the object of rule of reservation should be deemed to have been achieved. Thereafter the roster cannot be followed except to the extent indicated in para 5 of R.K.Sabharwal case AIR 1995 Supreme Court 1371 which is reproduced for convenience:-

Para-5: " We see considerable force in the second contention raised by the learned Counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year.

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The purpose of "running account" is to make sure that the Scheduled Castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of posts----" are reserved for the members of Scheduled Castes and Backward Classes. In

a lot of 100 posts those falling at serial numbers 1,7,15,22,30,37,44,51,58,65,72,80,87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and Backward Classes are filled the percentage of reservation provided for reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled, the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with the application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The

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operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled caste persons holding the posts at roster points 1,7,15 retire then these slots are to be filled from amongst the persons belonging to Scheduled Castes. Similarly, if the persons holding posts at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be short fall nor excess in the percentage of reservation."

Provided that while determining the said number the candidates belonging to the reserved category but selected/ promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates."

3. Where in a cadre there is only one post, there shall be no reservation with reference to that post either at initial stage or for filling up future vacancy in respect of that post. The law laid down by the Hon'ble Supreme Court of India in the case Dr. Chakradhar Paswan Versus State of Bihar and others (AIR 1988 Supreme Court 959) is beyond doubt. The Hon'ble Supreme Court has held in the above case that "no reservation could be made under Article 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Article 16(1) and 16(2) wholly meaningless and illusory. If there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Article 16(4), pre-supposes the availability of at least more than one post in that cadre."

4. Further, where a cadre consists of only two posts, the roster prescribed shall come into operation and

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according to the roster the first vacancy will go to the share of Scheduled Caste candidate and the second post will fall in the share of general candidate. Normally the operation of the roster in such a cadre will pose no difficulty if both the posts manned by a member of Scheduled Caste and general category candidates are vacated subsequently because the post vacated by general candidate will go to the share of general candidate falling at roster point No.3 and the post vacated by the Scheduled Caste candidate will go to the share of Scheduled Tribe candidate falling at roster point No. 4 but an extra-ordinary situation may arise where the member of Scheduled Caste already manning the post falling at Sr. No.1 of the roster do not vacate the post and subsequently vacancy which arose in the cadre on the vacation of post by general candidate and if according to the roster point No.4 it is given to the share of Scheduled Tribe then it will amount to 100% reservation. The Hon'ble Supreme Court of India in the case Indra Sawhney Vs. Union of India AIR 1993 S.C.477 has laid down that "reservation" being extreme form of protective measure or affirmative action it should be confined to minority of seats. Even though the Constitution does not lay down any specific bar but Constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation, of any manner not to exceed 50%. The Hon'ble Apex Court has further held that the reservation contemplated under Article 16(4) or under Article 16(1) and (4) should not exceed 50% ordinarily in a grade, cadre or service barring certain extraordinary situation but at the same time such reservation made either under Article 16(4) or under Article 16(1) and (4) cannot be extended to the totality of 100%." Thus in a cadre of

2 posts one post will always have to be reserved to the reserved category candidates in order to maintain balance between the reserved category and general category by extending permissible limit upto 50% reservation provided candidate belonging to Scheduled Caste/ Scheduled Tribe fulfilling the eligibility criteria prescribed in the relevant Recruitment & Promotion Rules are available within the zone of consideration. Provided further that where there is very small cadre consisting of 2 or 3 posts and posts are to be filled up 100% by promotion and no candidate belonging to Scheduled Caste/Scheduled Tribe is available in feeder category for promotion to that cadre, then the posts in such small cadre shall be filled up without resorting to the rule of reservation. If at a given point of time one post is manned by the candidate belonging to Scheduled Caste or Scheduled Tribe candidates by the operation of rule of reservation according to prescribed roster and if any further resultant vacancy arose in such cadre of two posts then notwithstanding the fact that such vacancy according to the roster falls to the share of Scheduled Tribe or Scheduled Caste, shall be filled up from the general category candidate in order to ensure that reservation made either under Article 16(4) or 16(1) and (4) does not extend to the totality of 100%. In such extra ordinary situation, the Scheduled Tribe or Scheduled Caste candidate shall be entitled to the post only when one post in the cadre already manned by reserved category candidate is vacated and till then the point reserved for the Scheduled Caste or Scheduled Tribe according to the prescribed roster shall be deemed to have been carried forward. The similar principle shall be applicable in the cadre of three posts. However, where the cadre consists of four and

above posts, the posts shall be filled-up in accordance with the rule of reservation and the roster prescribed in this behalf by the State Government.

5. So far as the question of determining the seniority in the promoted category as between reserved candidates and general candidates is concerned, the Hon'ble Supreme Court of India in Civil Appeal No. 9272 of 1995, Union of India and Others etc. Versus Virpal Singh Chauhan etc. (decided on 10.10.1995) has laid down that the seniority position in the promoted category as between the reserved candidates and general candidates shall be the same as their inter-se seniority position in the initial entry grade/cadre at any given point of time provided that at that point of time both the general candidate(s) and the reserved category candidate(s) are in the same grade. This rule operates whether the general candidate is included in the same batch of promotees or in subsequent batch. In other words, 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 shall regain 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 shall not confer upon him seniority over the general candidate even though the general candidate is promoted later. The general candidate shall be considered senior and his case shall be considered first for promotion applying either the principle of seniority-cum-merit (subject to rejection of unfit) or merit-cum-seniority as the case may be. This principle of determining the seniority position as between the general candidate and reserved candidate in a promoted category shall be

operative. As such the seniority as stood on the date of issue of these instructions in respect of various categories in the promoted category/ cadre/posts in the direct line of promotion shall be subject to change, if any, in view of the law laid down by the Hon'ble Supreme Court in the case of Ajit Singh Januja and Ors. Vs. State of Punjab and Ors., delivered on 1.3.96. From the date of issue of these instructions and thereafter, the seniority position in the promoted category as between reserved candidates and the general candidates shall be determined strictly in accordance with the law laid down by the Apex Court as explained above. The promotions to the next higher posts/ grades shall be made on the basis of seniority arrived at by applying ratio laid down in the cases R.K.Sabharwal (AIR 1995 SC 1371), Union of India Vs. Virpal Singh Chauhan etc. (AIR 1996 SC 448) and Ajit Singh Januja & Ors. Vs. State of Punjab and Ors. and in the following manner:-

(a) A candidate(s) irrespective of the category to which he belongs including the candidates belonging to the reserved categories shall be entitled for consideration for promotion on the basis of his seniority assigned to him in his entry grade/ cadre, if he has not taken the benefit of reservation at any point of time in promotion.

(b) If a candidate has taken a benefit of promotion on account of reservation at any stage and has gained seniority above the senior general candidate in the promoted post, such reserved candidate will not be entitled to the consideration for the next promotion on the basis of such jumped up seniority till such time the representation of the said reserved category falls short of the prescribed percentage of reservation.

6. For ensuring compliance of para 2(i) and 5 above it is essential that all the cases where the junior

candidate of the reserved category gets promoted earlier than his senior general candidate due to rule of reservation, it shall be made clear in the seniority list of higher post/grade that the seniority of the said reserved category candidate is always subject to change so as to place the senior general candidate above the reserved candidate in the seniority list of promoted post/ cadre in accordance with the principle laid down in para 5 above. For this purpose the following remarks shall be given against the name of such reserved candidate promoted earlier by virtue of rule of reservation than his senior general candidate in the seniority list:-

" Seniority subject to change in accordance with the instructions contained in the Department of Personnel letter No.PER(AP)-C-F(1)-1/95 dated 27th May, 1996."

7. All the instructions issued by the State Government from time to time regarding fixation of seniority/promotion vis-a-vis Scheduled Castes/ Scheduled Tribes and the general category candidates shall stand superseded.

8. The above instructions shall be adhered to strictly.

9. Kindly acknowledge the receipt of the above instructions.

Yours faithfully,

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

Endst. No.PER(AP)-C-F(1)-1/95 Dated, Shimla-2, the 27th May, 1996. Copy forwarded for information and necessary action to:-

1. The Secretary, H.P.Vidhan Sabha, Shimla-171 004.
2. The Registrar, High Court of Himachal Pradesh, Shimla-171 001.
3. The Registrar, H.P.Administrative Tribunal, Shimla-171 002.
4. The Secretary, H.P.Public Service Commission, Shimla-171 002.
5. All Section Officer in H.P.Sectt., Shimla-171 002.

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

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Copy of letter No. PER(AP-II)F(1)-1/87 dated 31st Jan., 1989 from the Chief Secretary to the Government of Himachal Pradesh addressed to all Financial Commissioners / Commissioner -cum- Secretaries / Secretaries / Joint / Deputy / Under Secretaries to the Government of Himachal Pradesh. The Divisional Commissioner, Shimla/ Kangra /Mandi, All Heads of Departments in H.P. and All Deputy Commissioners in H.P. and Copies endorsed to The Secretary, H.P. Vidhan Sabha, The Registrar, High Court of Himachal Pradesh, The Registrar, H.P. Administrative Tribunal and The Secretary, H.P. Public Service Commission.

Subject:

Reservation of posts for Scheduled Castes/ Scheduled Tribes/ Backward Classes / Ex-Servicemen etc.- Clarification regarding maintenance of rosters.

I am directed to say that the question of maintaining rosters with reference to over-all cadre strength of vacancies was under consideration of the Government for some time past. It has now been decided that reservation for Sch. Castes/Sch. Tribes/Backward Classes / Ex-Servicemen and all other reserved categories has to be reckoned separately category wise and with reference to the over-all cadre strength of each category of posts. Thus percentage reservation is to be allowed on the basis of rosters as already prescribed by the Government so long as the prescribed percentage within a cadre has not been reached. Once, however, the prescribed percentage for a reserved category has been reached with reference to the over-all cadre strength, the operation of roster for the said category will be suspended till such time the reservation to that category falls short of the prescribed percentage.

2. In view of the above decision, it is clarified that the rosters will continue to be operative as usual, but the particular roster point of a particular reserved category shall be deemed to have been extinguished in case the prescribed percentage of the said category has already been reached at that point of time. The roster point for the said particular reserved category will, however, be considered for revival at the next point of reservation and in case at that reserved point too there is an excess in percentage reservation, the revival of the roster will be postponed to the next point of reservation and so on, the real revival being at the stage at which actual representation to that category falls short of the prescribed percentage.

3. The import of these instructions may be explained in a hypothetical case, as under:-
Suppose in a cadre of clerk, where the prescribed cadre strength is 100, the prescribed percentage for reserved category 'X' is 10. There are already 10 or more persons belonging to category 'X' in this cadre, and the next roster points for appointment of such persons are 8, 15 and 20. If at the time

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of filling up the vacancy at roster point 8, the number of 'X' category persons is 10, this point will stand extinguished. Suppose at the time of considering roster point 15, the number of 'X' category personnel is still 10, then roster point 15 will also stand extinguished. If one person of this category dies, retires, resigns or is promoted to the next higher post and so on, resulting in the reduction of the number to 9, then roster point 20 will be operated as a reserved point in favour of the 'X' category.

4. This decision will have immediate effect and shall apply both to direct recruitment as well as to promotion. However, if the over-all representation to any reserved category with reference to the over-all cadre strength has already been exceeded prior to the issue of these instructions, no reservation or retrenchment of the incumbent (s) of reserved categories shall be made and the excessive representation already allowed will be adjusted in future promotions / appointments.

5. In case where appointment or promotion are still under process and the appointment/ promotion orders have not been issued and the particular percentage has been exceeded, the position shall be immediately reviewed in the light of these instructions, and action taken to withdraw requisitions from the Public Service Commission or hold review D.P.Cs. etc., as may be necessary.

6. The above decision may be brought to the notice of all concerned for strict compliance.

Please acknowledge receipt.

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