

PER(AP)-C-B(12)-1/2013
Government of Himachal Pradesh
Department of Personnel (AP-III)

From Dated: Shimla-2, the 25th February, 2019

To The Addl. Chief Secretary (Personnel) to the
Government of Himachal Pradesh

1. All the Administrative Secretaries to the Government of Himachal Pradesh
2. All Divisional Commissioners in Himachal Pradesh
3. All Heads of Departments in Himachal Pradesh
4. All Deputy Commissioners in Himachal Pradesh
5. All the Chairmen/ Managing Directors/ Registrars/ Secretaries of various Corporation/ Boards/ Universities etc. in Himachal Pradesh.

Subject: - Special Leave Petition (Civil) No. 8710 of 2009- R.K. Barwal & ors. versus State of H.P. & ors.

Madam/Sir,

I am directed to refer to this department's letters No. PER(AP)-C-B(19)-3/96-VOL-VII dated 30.01.2018 and 10.08.2018 on the subject cited above. The instructions dated 30.01.2018 were issued in compliance to the judgment dated 29.12.2008 passed by the Hon'ble High Court of Himachal Pradesh in CWP No.488/2001 further upheld by the Hon'ble Supreme Court of India vide judgment dated 25.08.2017 in Civil Appeal No. 011060 of 2017 arising out of the Special Leave Petition (Civil) No. 8710 of 2009. As per these instructions, the seniority lists in all cadres are to be reframed showing position as on 29.12.2008 when the Hon'ble High Court of Himachal Pradesh had read down and declared the rule 5(1) of the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-technical Services) Rules, 1972 unconstitutional in so far as it gives benefit of counting of past army service towards seniority in civil employment in case of Ex-Servicemen who have not joined the Armed forces during the period of emergency.

2. A number of references are being received for clarification whether benefits of counting past army service towards seniority in first civil employment against reserved vacancy in the case of Ex-servicemen

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who have not joined the Armed forces during the period of emergency, are required to be withdrawn even prior to the date of the judgment of Hon'ble Court i.e. 29.12.2008 and seniority is to be reassigned since inception/ applicability of the Rules since when the ex-servicemen have been given the benefit of seniority?

3. The matter has widespread legal as well as financial implications and was again placed before the Council of Ministers for consideration and appropriate decision on the issues involved. It has been observed that:

(i). It would be a cumbersome, intricate and tedious process to convene review Departmental Promotion Committee meetings in order to re-assign seniority positions to the affected ex-servicemen by following the prescribed procedure.

(ii). A voluminous and decades old record is required to be scrutinized subject to its availability.

(iii). While quashing the Rule 4 (1) of the Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in H.P. Administrative Service) Rules, 1974, the Hon'ble High Court of H.P. has upheld the seniority assigned to some ex-Servicemen officers and even the Hon'ble Supreme Court of India has protected benefits extended to individual officers. The judgment dated 16.11.2007 passed in the CWP number 1352 of 2006 – Rajinder Singh & Ors. versus State of HP and ors. along with similar Civil Writ Petitions has been adduced in the case wherein the Rule 5(1) of the Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-Technical Services) Rules, 1972 has been quashed by the Hon'ble Courts.

(iv). There is no adverse order against the provisions of the Rule 5 (1) of the Ex-servicemen (Reservation of vacancies in Himachal Pradesh Technical Services) Rules, 1985.

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- (v). In most of the cases, the settled seniority positions have not been challenged by filing claims and objections through administrative channels or resorting to judicial remedy.
- (vi). Further, there seems to be no justification to determine a specific date for re-fixation of seniority of retired and in-service officers/officials of Ex-servicemen category.
- (vii). The relevant Rules have been amended in the year 2018.

4. Hence, for sake of administrative convenience and in order to implement the directions of the Hon'ble Courts as well as the spirit of the judgments, the State Government has decided to withdraw the instructions dated 30.01.2018 forthwith.

5. Further, apart from ADA cadre in Prosecution Department wherein the judgment has already been implemented in toto with retrospective effect and in case of specific court directions, if any, all departments/boards/corporations may take action as under: -


- (i). No change is required in the seniority of those Ex-servicemen who have been given the benefit of seniority under the extant rules. Therefore, the seniority positions of Ex-servicemen before the date of judgment of High Court i.e. 29.12.2008 may be maintained.
- (ii). In the cases pending for decision before and after 29.12.2008, the benefit of counting the past service rendered in the armed forces towards seniority in first civil employment against reserved vacancy in the case of Ex-Servicemen who have not joined the Armed forces during the period of emergency may not be given. However, the benefit of counting past service rendered in the armed forces towards pay fixation may be given.
- (iii). In view of the points (i) and (ii) above, besides Prosecution Department, if positions of Ex-servicemen have been altered in the seniority lists in accordance with the instructions dated 30.01.2018; the status quo ante may be restored.

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6. These instructions may kindly be adhered to strictly and brought to the notice of all concerned.

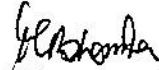
Yours faithfully,



(Om Prakash Bhandari)
Deputy Secretary (Personnel) to the
Government of Himachal Pradesh

Ends.No.PER(AP)-C-B(12)-1/2013 Dated: Shimla-2 the, 25th February, 2019
Copy is forwarded to: -

1. The Secretary to the Governor, Himachal Pradesh, Shimla-2.
2. The Secretary, H.P. Vidhan Sabha, Shimla-4.
3. The Registrar, H.P. High Court, Shimla-1.
4. All Section Officers in H.P. Secretariat, Shimla-2.
5. Spare copies (100).



Deputy Secretary (Personnel) to the
Government of Himachal Pradesh
