

No.PER(AP)-C-E(3)-2/2020-II
Government of Himachal Pradesh
Department of Personnel (AP-III).

From Dated: Shimla-171002, the 27th August, 2024
The Secretary (Personnel) to the
Government of Himachal Pradesh.

To

1. All Administrative Secretaries to the Government of Himachal Pradesh.
2. All Divisional Commissioners in Himachal Pradesh.
3. All Head 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 H.P.

Subject: Reservation in promotion to Persons with Benchmark Disabilities (PwBDs) in the services of the State Government.

Madam/Sir,

I am directed to refer to the subject cited above and to say that the Hon'ble Supreme Court of India, vide its judgment dated 30.06.2016, in the WP(C) No.521/2008, titled as "Rajeev Kumar Gupta versus Union of India, had directed the Government of India to extend three percent reservation to Persons with Disabilities in all identified posts in Group-A and Group-B, irrespective of the mode of the filling up of such posts. However, subsequently the Hon'ble Supreme Court of India, vide its Order dated 03.02.2017, in the Civil Appeal No.1567/2017 titled "Siddaraju versus State of Karnataka & Others" observed and held that its judgment dated 30.06.2016 in Rajeev Kumar Gupta needed to be considered by a larger Bench. However, the Hon'ble Supreme Court finally disposed of the Siddaraju matter vide its Judgment dated 14.01.2020 and held that its Judgment in Rajeev Kumar Gupta would bind the Union and State Government and it must be strictly followed.

2. However, the Union of India needed some clarification with regard to the implementation of the Hon'ble Supreme Court Judgment dated 30.06.2016 and 14.01.2020, and, therefore, Application for Clarification was filed by the Union of India before the

Hon'ble Supreme Court seeking clarification which inter alia included whether the vacancies for promotion for PwDs would be computed only on the basis of the vacancies against the identified posts or against the vacancies in both identified and non-identified posts and whether the judgment dated 14.01.2020 needs to be implemented on the basis of PwD Act, 1995 or RPWD Act, 2016. Hon'ble Supreme Court disposed of this Application for Clarification vide its order dated 28.09.2021 directing the Government of India to issue instructions regarding reservation in promotion as provided in Section 34 of the RPwD Act, 2016.

3. Proviso to Section 34 of the RPWD Act, 2016 provides that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. Accordingly, DoPT, Government of India vide its OM No.36012/1/2020-Estt(Res-II), dated 17.05.2022 and the Department of Personnel, Himachal Pradesh vide its letter No.PER(AP)-C-E(3)-2/2020, dated 06.07.2022 issued detailed instructions for extending the benefit of reservation in promotion to the Persons with Disabilities up to the lowest rung of Group-'A' in posts and services under the Central Government and State Government, respectively. The OM issued by the Government of India and instructions issued by the State Government are effective with effect from the date of their issuance i.e. 17.05.2022 and 06.07.2022, respectively.

4. However, in a Contempt Petition (Civil) No.873/2023 filed by Shri S.S. Sundaram against Department of Revenue, Government of India, the Hon'ble Supreme Court vide its order dated 18.07.2023 has directed "*Though it is pointed out that the judgement of this Court of which breach is alleged, has been complied with effect from 15.7.2023, the fact remains that the judgement is of 30.6.2016 directing the respondents to implement the 1995 Act. Therefore, the respondent will have to consider of giving at least notional promotion to those who are eligible from an earlier date*".

5. The aforesaid directions dated 18.07.2023 of the Hon'ble Supreme Court has been considered by the Government of India in consultation with the Department of Legal Affairs and has decided to grant notional promotions to the Persons with Disabilities candidates w.e.f. 30.06.2016. The matter has also been examined and considered by the State Government in consultation with the Law and Finance Department of Himachal Pradesh and it has been decided to grant notional promotions to the Persons with Disabilities candidates w.e.f. 30.06.2016 as under:-

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- (i) PwD employees in posts and services of the State Government, will be considered for grant of the benefit of reservation in promotion up to the lowest rung of Group 'A' on notional basis w.e.f. 30.06.2016 subject to their fulfilment of the eligibility conditions as laid down in this Department's letter No.PER(AP)-C-E(3)-2/2020, dated 06.07.2022 regarding reservation in promotion to PwDs. However, the extent of reservation in promotion may be in accordance with the relevant provisions contained in the PwD Act 1995 and RPWD Act 2016. Further, this benefit may be extended after holding Review DPC as per the extant instructions issued by Department of Personnel on the subject. In case the PwD employees are found eligible and suitable for promotion from any date subsequent to 30.06.2016, then the benefit of reservation in promotion may be extended to them from the date they become eligible for promotion. This promotion on notional basis includes promotion on seniority quota as well as Departmental Examination/Departmental Competitive Examination. In case of Departmental Examination/Departmental Competitive Examination, which has already been held during the period from 30.06.2016 to 05.07.2022, the eligibility of the PwD candidates may be assessed on the basis of their performance in the said examination. The concerned Administrative Authorities are given discretion to consider holding of special examination for assessing the suitability or eligibility of PwD employees for such Departmental Competitive Examination.
- (ii) Any such promotion during the period from 30.06.2016 till the PwD employee actually assumes the charge of the post will be only on notional basis and the actual financial benefit of promotion will be effective to them with effect from the date they actually assume charge of the promoted post, meaning that no financial arrear will be admissible to them for the period from the date on which they get the benefit of notional promotion and the date on which they actually assume or have already assumed the charge of such promoted post.

- (iii) Extending the benefit of reservation in promotion to the PwD employees on notional basis between 30.06.2016 and actual assumption of the charge of the post may affect the inter-seniority of the officials in various grades. Due to this, there may be cases in which some officials may have to be placed in a select list/seniority list, subsequent to the year of their existing/present seniority list/select list. This may have a chain effect as it may result in revision in seniority lists in subsequent years in many cases which may cause administrative inconvenience. In order to avoid such situation, supernumerary posts may be created to adjust the lien of such PwD employees with effect from the date on or after 30.06.2016, when they become eligible to get the benefit of reservation in promotion, till the availability of vacancy in which the promotion is to be made or till they vacate the post on their retirement, further promotion etc. whichever is earlier.
- (iv) The creation of supernumerary post, as stated above, will be personal to the PwD employee who is given the benefit of reservation in promotion on notional basis and such supernumerary post will stand abolished on the date when such PwD employee is adjusted against available vacancy in the grade in which the promotion is given or when that PwD employee vacates the post on his/her retirement, further promotion etc., whichever is earlier.
- (v) The Administrative Departments are advised to undertake an exercise to ascertain the requirement of supernumerary posts required by them. Further, each proposal shall have the concurrence of the Liaison Officer for PwDs of the Department. One time approval by the Finance (Expenditure) Department, Himachal Pradesh for creation/filling-up of supernumerary posts for the eligible persons with disabilities employees till 31.12.2024 has been conveyed vide their U.O. No.56064571-Fin-F/2024, dated 09.04.2024, and, therefore, Administrative Departments are not required to obtain prior approval from Finance Department till 31.12.2024 and thereafter (w.e.f. 01.01.2025 onwards), these posts, if any, in Department(s), shall have to be created/filled up along-with other posts, through usual mechanism.
- (vi) It is also requested to calculate the requirement of such supernumerary posts in respect of entire Department in one go and it should not be calculated in piecemeal. The Administrative Departments are also requested to fill such posts of entire Department in one go and furnish consolidated details of posts so created/filled up to the Finance (Expenditure Control-II) Department and to the Social Justice & Empowerment Department being Administrative Department in the matters of persons with benchmark disabilities on quarterly basis. A copy of such report shall be endorsed to the Department of Personnel. A certificate to the effect that the

creation/filling-up of supernumerary posts has been in respect of entire Department, may also be furnished.

- (vii) It is clarified that the benefit of notional promotion, as proposed above, shall not adversely affect those PwD candidates who have already been granted the benefit of reservation in promotion in personam in pursuance of the Orders/judgements of various Courts of Law.

6. It is requested that these instructions may be followed strictly and also brought to the notice of all concerned for compliance. The Liaison Officer appointed in the respective departments for implementation and compliance of Government instructions relating to reservation in services or any other designated authority, shall ensure timely compliance of instructions. Kindly acknowledge the receipt.

Yours faithfully,



(Sant Raj Puharta)

Under Secretary (Personnel) to the
Government of Himachal Pradesh.
Telephone No. 0177-2628479

Endst.No.Per(AP)-C-E(3)-2/2020-II Dated: Shimla the 27th August, 2024
Copy forwarded for information and necessary action to:-

1. The Secretary to the Governor, Himachal Pradesh, Shimla-2.
2. The Secretary, H.P. Vidhan Sabha, Shimla-171004.
3. The Registrar, H.P. High Court, Shimla-171001.
4. The Secretary, H.P. Public Service Commission, Shimla.
5. The Secretary, H.P. Rajya Chayan Aayog, Hamirpur.
6. The Special Secretary (Finance-Exp.) to the Government of Himachal Pradesh, Shimla-2 w.r.t. their advice tendered vide U.O. No.56064571-Fin-F/2024, dated 09.04.2024.
7. The Joint Secretary (GAD) to the Government of Himachal Pradesh, Shimla-2 w.r.t. item no.6 of CMM dated 18.06.2024.
8. All the Section Officers in H.P. Secretariat, Shimla-171002.



Under Secretary (Personnel) to the
Government of Himachal Pradesh
