

## OTHER IMPORTANT INSTRUCTIONS

### RESERVATION FOR PWDs

#### **16. INTER SE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF DIRECT RECRUITMENT:**

- (a) Reservation for each of the three categories of persons with disabilities shall be made separately. But if the nature of vacancies in an establishment is such that a person of a specific category of disability cannot be employed, the vacancies may be interchanged among the three categories with the approval of the Ministry of Social Justice & Empowerment and reservation may be determined and vacancies filled accordingly.
- (b) If any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or, for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a 'backlog reserved vacancy' to the subsequent recruitment year.
- (c) In the subsequent recruitment year the 'backlog reserved vacancy' shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled by interchange among the three categories of disabilities. In case no suitable person with disability is available for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. If the vacancy is filled by a person with disability of the category for which it was reserved or by a person of other category of disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with disability in the subsequent recruitment year, reservation shall be carried forward for a further period up to two recruitment years whereafter the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved-vacancy shall be the same as followed in the first subsequent recruitment year.

17. In order to ensure that cases of lapse of reservation are kept to the minimum, any recruitment of the disabled candidates shall first be counted against the additional quota brought forward from previous years, if any, in their chronological order. If candidates are not available for all the vacancies, the older carried forward reservation would be filled first and the relatively later carried forward reservation would be further carried forward.

#### **18. CONSIDERATION ZONE, INTER-SE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF PROMOTION**

- (a) While filling up the reserved vacancies by promotion by selection, the disabled candidates who are within the normal zone of consideration shall be considered for promotion. Where adequate number of disabled candidates of the appropriate category of handicap are not available within the normal zone, the zone of consideration may be extended to five times the number of vacancies and the persons with disabilities falling within the extended zone may be considered. In the event of non availability of candidates even in the extended zone, the reservation can be exchanged so that post can be filled by a person with other category of disability, if possible. If it is not possible to fill up the post by reservation, the post may be filled by a person other than a person with disability and the reservation shall be carried forward for up to three subsequent recruitment years, whereafter it shall lapse.
- (b) In posts filled by promotion by non-selection, the eligible candidates with disabilities shall be considered for promotion against the reserved vacancies and in case no eligible candidate of the appropriate category of disability is available, the vacancy can be exchanged with other categories of disabilities identified for it. If it is not possible to fill up the post by reservation even by exchange, the reservation shall be carried forward for up to three subsequent recruitment years whereafter it shall lapse."

(DOP&T's O.M. No.36035/3/2004-Estt(Res), dated the 29th December, 2005)

#### SAVING CLAUSE

"Saving – Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for Scheduled Castes and Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard."

(Department of Personnel & A.R. O.M. No.36011/9/76-Estt.(SCT), dated the 7<sup>th</sup> March, 1978)

#### RECRUITMENT YEAR

"Note (1): 'Recruitment year' shall mean a 'calendar year' and for purposes of the three years limit for carry forward of reserved vacancies shall mean the year in which recruitment is actually made.

(2): 'Recruitment year' in cases of promotion when the panel prepared by the DPC spreads into more than one calendar year will be the year in which the first recruitment is made from the select list prepared by the Departmental Promotion Committee."

(MHA O.M. No.2/24/63-Estt.(D) dated 4.12.1963 and MHA O.M. No.27/25/68-Estt.(SCT) dated 25.3.1970)

### LAPSING OF POSTS IN CASE OF APPOINTMENT BY PROMOTION

4. In cadres having more than 13 posts, number of posts filled by reservation by any category at any point of time should ideally be equal to the quota determined as per percentage of reservation prescribed for that category. Whenever the posts are filled, efforts have to be made to complete reservation quota for SCs/STs/OBCs in case of direct recruitment and for SCs/STs in case of promotion so that the number of posts filled by reservation by SCs, STs and OBCs, as the cases may be, in the cadre is equal to the number of posts earmarked for them. It means that if reservation quota is not complete, efforts would be made to complete the reservation quota whenever the recruitments are made in the cadre. Thus, reservation would not lapse in case of post based reservation for the reason that reserved posts could not be filled for a specified number of years.

5. In cadres having 13 or less number of posts where 14 point L-shaped rosters are applied, if a reserved vacancy is filled by a candidate belonging to other community after dereservation, the reservation will be carried forward for subsequent recruitment year. Such carry forward of reservation would be permitted for three subsequent recruitment years. In the third year of carried forward of reservation, the vacancy will be treated reserved for the concerned category, but if it cannot be filled by reservation in the third year of carried forward of reservation by a candidate of the concerned category, reservation will be treated as lapsed and it will be filled as an unreserved vacancy.

6. It is possible that some posts reserved for STs might have been filled by SC candidates by exchange of reservation or vice versa before issue of this OM. Such cases need not be reopened. However, if number of SC or ST candidates appointed by reservation including by exchange of reservation between SCs and STs is in excess of reservation prescribed for them, such excess representation may be adjusted in future recruitment."

(DOP&T's O.M. No.36012/17/2002-Estt.(Res), dated the 6th November, 2003)

### CONCESSION IN PROMOTIONS WITHIN GROUP 'A' POSTS

#### **"5. Concession in Promotions within Group 'A':**

There is no reservation in case of promotions by selection from a Group 'A' post to another Group A post. But when promotions by selection are made from a Group 'A' post to a Group 'A' post which carries an ultimate salary of Rs.18,300/- (pre-revised), or less, the Scheduled Caste and Scheduled Tribe Officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be same as assigned to them by the Departmental Promotion Committee on the basis of their record of service.

Note: Fitness of the SC/ST officers in such cases would be assessed keeping in view the duties and responsibilities attached to the post and not on the basis of benchmark, if any, prescribed for promotion to the post.”

(DOP&T's O.M. No.36011/6/2010-Estt.(Res) Dated: the 25 June, 2010)

#### Adjustment of Compassionate/Surplus Cell Appointees:

If an SC/ST/OBC candidate is appointed on compassionate grounds or on recommendations of the Surplus Cell against an unreserved vacancy, such appointment shall not be adjusted against reserved point occurring in future recruitment years. For example, if an unreserved vacancy is filled by an SC candidate on compassionate grounds, the SC candidate's appointment against unreserved vacancy shall not be adjusted against reserved vacancy which may occur in future.

If a reserved vacancy for SCs is filled up by a compassionate or a surplus cell appointee who happens to be an SC candidate, the reservation will be deemed to have been consumed. Even if such a reserved vacancy happens to be the single vacancy of a year, it will not be treated as unreserved but, in view of beneficiary being in fact an SC member, will be treated as reserved. Likewise for reserved vacancies for STs and OBCs.

When general category candidate(s) are appointed on compassionate grounds or on recommendations of the Surplus Cell against reserved vacancies, reservation would be completed in the subsequent recruitment year. When the initial reserved vacancy against which a compassionate or surplus cell appointment has been made, the subsequent vacancy would be treated as reserved, even if it happens to be a single vacancy in that recruitment year.

#### DIRECT RECRUITMENT – A CASE LAW

“When recruitment is not open to the candidates from the open market, it can not be described as direct recruitment.”

(CAT, Chennai Bench Judgement dated 1.3.2007 in O.A. No.163/2006 in the case of Ravichandaran & Ors. Vs. Union of India represented by Post Master General, Chennai City Region & Ors.)

## Chapter I

### Introduction

The Minorities Commission which was set up in January 1978 by a Resolution issued by Ministry of Home Affairs, Government of India became a statutory body with the enactment of the National Commission for Minorities Act, 1992 and renamed as National Commission for Minorities. The first Statutory National Commission was set up on 17<sup>th</sup> May 1993. Vide a Gazette notification issued on 23<sup>rd</sup> October 1993 by Ministry of Welfare, Government of India, five religious communities viz. the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities. As per the 2001 Census, these five religious minority communities constitute 18.42% of the country's population. The educational and economic development of this section of the society and their mainstreaming are crucial for achieving the major national goals. It is necessary to create conditions in which the minorities are assured that their constitutional and legal rights are safeguarded and educationally and economically they are at par with the mainstream. The main functions of the National Commission for Minorities (NCM) are to monitor the implementation of the Constitutional and legal safeguards provided to the five notified religious communities by the Union and State Governments, to make recommendations to them to ensure effective implementation and enforcement of such safeguards and to look into specific complaints regarding deprivation of such safeguards.