

**GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL ::: PERSONNEL (B)
DISPUR ::: GUWAHATI-06**

No. ABP.81/2022/58

Dated Dispur, the 18th January, 2023

OFFICE MEMORANDUM

SUBJECT : Review of Government Policy of Reservation in Promotion with reference to the Hon'ble Gauhati High Court judgments.

The Hon'ble Gauhati High Court in its judgment and order dated 06.06.2022 in WP(C) No. 5005/2016 (Bhagwan Pator-Vs-SOA & Ors) and WP(C) No. 5026/2016 (Equality Forum- Vs-SOA & Ors), at Para7 (IX) of the order, has observed that,

"Para 7 (IX): Article 16(4A) and 16(4B) being enabling provisions, the State is at liberty to implement its policy of giving reservation in promotion with consequential seniority, without consequential seniority or at liberty not to provide any reservation in promotion. However, while implementing such policy, due process of law need to be followed including dicta in M. Nagraj (supra) clarified in Jarnail Singh (Supra)."

The Government of Assam after careful examination of the Hon'ble High Court judgment dated 23-12-2015 in WP(C) No. 1560/2015(Equality Forum-Vs-SOA& 3 Ors.) and the judgment dated 06-06-2022 in WP(C) No. 5005/2016 and WP(C) No. 5026/2016, has reviewed the existing procedure of effecting reservations in promotion with consequential seniority for the reserved categories and accordingly lays down the following guidelines to be followed while considering promotion in any establishment-

- i) The policy of reservation in promotion shall continue.
- ii) Each Establishment while taking up the process of promotion in a particular cadre of a service, shall examine the representation of SC, ST(P) and ST(H) candidates in the cadre in comparison with the prescribed percentage of reservation and calculate shortfall if any, in the cadre with reference to that particular year. Shortfall of reservation of a particular reserved category in cadre means the difference between the total number of reserved posts for that category in the cadre and the number of persons of that category holding the posts in the cadre. While calculating the shortfall, all candidates belonging to the same category [SC or ST(P) or ST(H)] shall be taken into account irrespective of the mode of entry into the cadre i.e. whether on account of seniority-cum-merit or merit cum seniority, as the case may be, or through any other process admissible in law or by way of reservation. If in a particular cadre, SCs and STs are not adequately represented and shortfall is found to exist in the cadre, it may be considered as inadequacy in representation insofar as that particular cadre is concerned. Such shortfall shall be filled up by the concerned category of incumbents within the zone of consideration either on account of seniority-cum-merit/ merit-cum-seniority or by way of providing reservation as the case may be, till the prescribed percentage in respect of the said category is achieved.

iii) If no eligible incumbent belonging to the shortfall category is available within the zone of consideration, this will further substantiate the status of backwardness and inadequate representation of the category in the cadre and therefore the number of posts that are required to meet the calculated shortfall shall be kept vacant and the vacancy shall be carried forward and filled up in the next year. In case, sufficient number of SC or ST(P) or ST(H) candidates, fit for promotion against reserved posts, are not available and if the posts cannot be allowed to remain vacant on grounds of maintaining efficiency in administration, the Appointing Authority may with full justification, refer the vacancy to the Department of Personnel for de-reservation, subject to the condition that no eligible candidate belonging to the category for which the post is reserved, is available within the zone of consideration placed before the annual Selection Committee/ Departmental Promotion Committee for two consecutive years. In other words, the concerned Departments may move proposal for de-reservation in the third year.

iv) (a) In case of promotion in Group-A services, the quantum of reservation for SC, ST(P), ST(H) in promotion shall be as per stipulated percentage of reservation available for these categories. However, SC or ST(P) or ST(H) Government Servants in Group-A services on their accelerated promotion by virtue of rule of reservation, shall not be entitled to consequential seniority. The application of general catch-up rule will allow eligible officers who were senior in the merit list at the entry level in Group A services to regain their seniority in the promotional post, once they are promoted to the same cadre as an officer of reserved category, provided the officer of the reserved category had got his promotion ahead of an officer senior to him in the merit list, by way of accelerated promotion on account of reservation in promotion in a particular cadre. Seniority of Government servants in Group-A services shall be revised accordingly as per above principle.

Further, an officer promoted from Group-B to Group-A service, will also regain his seniority in Group-A service on promotion vis-à-vis his compatriot in Group-B service, provided that the officer was senior to the reserved category officer in the particular Group B cadre, prior to the promotion of the reserved category officer into Group A. Seniority of such Group B Government servant promoted to Group A service shall be revised accordingly in Group A.

If an occasion arises during the promotion process in Group A service, in which stipulated percentage in respect of reserved category is met in the next promotional grade, but in the zone of consideration there are candidates of reserved category who on merit are entitled to the promotions, their cases shall be considered for promotion on merit, if such candidates have not made into zone of consideration by way of any accelerated promotion earlier by virtue of rule of reservation.

(b) In case of promotion in Group B, C and D services, the quantum of reservation for SC, ST(P), ST(H) in promotion shall be as per stipulated percentage of reservation of

these categories. The SC or ST(P) or ST(H) Government servants on their promotion by virtue of rule of reservation shall be entitled to consequential seniority. In other words candidates belonging to General/OBC/MOBC categories promoted later will be placed junior to the Scheduled Castes/ Scheduled Tribes Government servant promoted earlier. Seniority of Government Servants in Group-B, C and D services shall be revised accordingly.

- v) As regards the question of maintaining administrative efficiency as required under Article 335 of the Constitution of India, Hon'ble High Court in WP(C) No.1560/2015 (Equality Forum-Vs-SOA & 3 Ors.) held that ".....it should be assessed applying objective measurable standards". As such, the Annual Confidential Reports (ACR)/ Annual Performance Appraisal Reports (APAR) of the incumbent along with the length of service, participation in training programs concerning job requirements, acquisition of degrees or diplomas on subjects if mandatory to the job, may be considered as the yardstick of measuring efficiency.
- vi) It shall be the responsibility of the concerned appointing authority to provide adequate information concerning the above to the Selection Committee (Departmental Promotion Committee) which shall evaluate all relevant parameters while making its recommendation.

This Office Memorandum is issued in supersession of earlier O.M. No. ABP.59/96/163, dated 12/03/2002 and OM No. TAD/BC/68/2011/Pt-I/207, dated 03/08/2016.

This shall come into force with immediate effect.

Sd/-Tonmoy Pratim Borgohain, IAS
Secretary to the Government of Assam
Personnel Department.
Dated Dispur, the 18th January, 2023

Memo No. ABP. 81/2022/58 -A
Copy forwarded to:-

1. The Principal Accountant General, Assam, Maidangaon, Beltola, Guwahati-29
2. The Chairman, Assam Administrative Tribunal, Guwahati, Assam.
3. The Chairman, Assam Board of Revenue, Guwahati, Assam.
4. All Additional Chief Secretary/Principal Secretary/Commissioner & Secretary/Secretary to the Govt. of Assam.
5. The Secretary to His Excellency the Governor of Assam.
6. The Secretary, Assam Public Services Commission, Khanapara-22.
7. All Deputy Commissioners.
8. The Secretary, Co-ordination, Office of the Chief Secretary of Assam.
9. All Heads of Department
10. All Departments of the Secretariat.
11. The Director, Assam Govt. Press, Guwahati-121.
12. PPS to the Hon'ble Chief Minister, Assam, Dispur.
13. P.S. to the Hon'ble Minister,.....
14. PS to Principal Secretary to the Government of Assam, Personnel Department, Dispur.
15. PS to Chief Secretary to the Government of Assam, Dispur.
16. Guard file.

By order etc.,
18/01/23
Secretary to the Government of Assam
Personnel Department