कर्मचारी भविष्य निधि संगठन
EMPLOYEES' PROVIDENT FUND ORGANISATION
श्रम एवं रोजगार मंत्रालय, भारत सरकार
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA
मुख्य कार्यालय/Head Office
भविष्य निधि भवन, 14, भीकाएजी कामा प्लेस, नई दिल्ली-110066
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi-110066
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एच.आर.डी/1(71)/2020/Misc./pt/973 दिनांक: 26 FEB 2024

सेवा में,

All Additional Central P.F. Commissioners (HQ)/Director (PDNASS),
All Additional Central P.F. Commissioners (Zones)/Addl. CPFC(ASD),
All RPFCs/OIC-in-Charge of Region.

विषय: **Reservation in promotion to Persons with Benchmark Disabilities (PwBDs) regarding.**

महोदया/ महोदय,

Please find enclosed herewith an Office Memorandum 36012/1/2020-Estt. (Res-II) dated 28-12-2023 issued by Govt. of India, Ministry of Finance, Department of Expenditure, North Block, New Delhi on the subject cited above for information and necessary action.

भवदीय,

स्वागता
26/2/24
(स्वागता राय)
क्षेत्रीय भविष्य निधि आयुक्त-1 (एच.आर.डी-1)

प्रतिलिपि:

1. केंद्रीय भविष्य निधि आयुक्त के प्रधान निजी सचिव
2. सभी CBT/EC सदस्य
3. वित्तीय सलाहकार एवं मुख्य लेखाधिकारी के प्रधान निजी सचिव
4. मुख्य सतकर्ता अधिकारी के प्रधान निजी सचिव/ सभी उप निर्देशक, सतकर्ता
5. मुख्य अभियंता के निजी सचिव
6. प्रभारी अधिकारी सभी आंचलिक प्रशिक्षण संसथान
7. सभी आंतरिक लेखा परीक्षा अधिकारी
8. मुख्यालय के सभी अधिकारी/ सभी निजी सचिव/ सभी अनुभाग अधिकारी
9. महासचिव, आल इंडिया ई. पी. एफ. स्टाफ फेडरेशन
10. महासचिव, आल इंडिया ई. पी. एफ. एम्प्लाइज संघ
11. सचिव, ई. पी. एफ. ऑफिसर्स एसोसिएशन
12. महासचिव, आल इंडिया ई. पी. एफ. एस. सी/ एस. टी फेडरेशन
13. क्षे. भ. नी. आ.(एन.डी.सी) वेबसाइट पर अपलोड करने हेतु
14. गार्ड फाइल
15. हिंदी अनुभाग

स्वागता
26/2/24
(स्वागता राय)
क्षेत्रीय भविष्य निधि आयुक्त-1(एच.आर.डी-1)

No. 36012/1/2020-Estt (Res-II)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi,
Dated the 28th December, 2023.

OFFICE MEMORANDUM

Subject: Reservation in promotion to Persons with Benchmark Disabilities (PwBDs) regarding.

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The undersigned is directed to say that the Hon'ble Supreme Court, vide its Judgement dated 30.6.2016, in the WP(C) No.521/2008, titled '*Rajeev Kumar Gupta Vs. UOI*', had directed the Government to extend three percent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. However, subsequently the Hon'ble Supreme Court, vide its Order dated 3.2.2017, in the Civil Appeal No. 1567/2017 titled '*Siddaraju Vs. State of Karnataka & Ors.*' referred to the prohibition made against reservation in promotion as laid down by the majority in Indra Sawhney & Others v. Union of India & Others (1992) and observed and held that its Judgement dated 30.6.2016 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 Judgement dated 14.1.2020 and held that its Judgement in *Rajeev Kumar Gupta* would bind the Union and State Governments 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 Judgement dated 30.6.2016 and 14.1.2020, and, therefore, Application for Clarification was filed by the UOI 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 judgement dated 14.1.2020 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 28.9.2021 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 vide its OM of even number dated 17.5.2022 issued detailed instructions for extending the benefit of reservation in promotion to PwDs up to the lowest rung of Group `A' in posts and services under the

Central Government. This OM is effective with effect from the date of its issue i.e. 17.5.2022.

4. However, in a Contempt Petition (Civil) No.873/2023 filed by Shri S. S. Sundaram against Department of Revenue, the Hon'ble Supreme Court vide its order dated 18.7.2023 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 18.7.2023 of the Hon'ble Supreme Court has been considered in consultation with the Department of Legal Affairs and it has been decided to grant notional promotions to the PwD candidates w.e.f. 30.6.2016 as under:

(i) PwD employees in posts and services of the Central 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. 30.6.2016 subject to their fulfilment of the eligibility conditions as laid down in the DoPT OM of even number dated 17.5.2022 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 DoPT on the subject. In case the PwD employees are found eligible and suitable for promotion from any date subsequent to 30.6.2016, 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 30.6.2016 to 16.5.2022, 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 30.6.2016 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 30.6.2016 and actual assumption of the charge of the

post may affect the inter-se-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 30.6.2016, 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) Ministries/Departments are advised to undertake an exercise to ascertain the requirement of supernumerary posts required by them and submit the proposal for creation of posts to the Department of Expenditure through DoPT. Such proposal shall contain the proposal in respect of the entire Department/Ministry and the proposal in piecemeal shall not be accepted. A certificate to the effect that the proposal is complete in all respects and the requirement of creation of supernumerary posts has been projected in respect of the entire Department may also be furnished along with the proposal. Further, each proposal shall have the concurrence of the Liaison Officer for PwDs of the Department/Ministry concerned and shall be forwarded with the approval of the Secretary of the Administrative Department/Ministry.

(vi) 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. This issues with the approval of Department of Expenditure conveyed vide their ID Note No.7(1)/E. Coord.I/2017 Part (V) dated 12.12.2023.

Debabrata

(Debabrata Das)
Under Secretary to the Government of India.

Distribution:

(i) The Secretaries of all Ministries/Departments of the Government of India.

(ii) The Secretary, Department of Financial Services, Ministry of Finance, Jeevan Deep Building, Parliament Street, New Delhi, with a request to issue similar instructions for compliance by Public Sector Banks/Financial Institution/Insurance Companies.

(iii) The Secretary, Department of Public Enterprises, CGO Complex, Lodhi Road, New Delhi, with a request to issue similar instructions for compliance by all Central Public Sector enterprises.

(iv) The Secretary, Railway Board, Rail Bhavan, New Delhi.

(v) The Secretary, President Secretariat, Rashtrapati Bhavan, New Delhi.

(vi) The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

(vii) The Secretary, Central Vigilance Commission, A-Block, GPO Complex, Satarkata Bhavan, INA, New Delhi, Delhi 110023.

(viii) The Secretary, Staff Selection Commission, CGO Complex, Lodhi Road, New Delhi.

(ix) The Registrar (Administration), Supreme Court of India, New Delhi.

(x) The Joint Secretary (Administration), Prime Minister's Office, South Block, New Delhi.

(xi) The Sr. Principal Secretary, Election Commission of India, Nirvachan Sadan, New Delhi.

(xii) The Joint Secretary (Administration), Lok Sabha Secretariat, Parliament House Annexe, New Delhi.

(xiii) The Joint Secretary (Administration), Rajya, Sabha Secretariat, Parliament House Annexe, New Delhi.

(xiv) The Joint Secretary (Administration), Cabinet Secretariat, Rashtrapati Bhavan, New Delhi.

(xv) The Joint Secretary (Administration), Niti Aayog, Parliament Street, New Delhi.

(xvi) The Deputy C&AG, Office of the Comptroller & Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi.

(xvii) Officer of the Chief Commissioner for Persons with Disabilities, 5th Floor, NISD Building, Plot No.G-2, Sector-10, New Delhi-110075.

(xviii) All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate Offices of this Ministry.

(xix) The Director, NIC, DOPT - with the request to immediately place this OM on the website of this Department ("what's new" tab) for information of all concerned.

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