

CHAPTER - 1

1. Definition of Scheduled Castes and Scheduled Tribes

Article 341 and 342 of the Constitution of India define as to who would be Scheduled Castes and Scheduled Tribes with respect to any State or Union Territory. The relevant Articles are quoted below:

Article 341 (1): The President may with respect to any State or Union Territory and where it is a State, after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory as the case may be.

Article 341 (2): Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1), any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 342 (1): The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities, which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory as the case may be.

Article 342 (2): Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The inter-state area restrictions have been imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Castes or Scheduled Tribes status only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different States/Union Territories may not necessarily suffer from the same disabilities, it is possible that two persons belonging to the same caste but residing in different States/UT may not both be treated to belong to SC/ST or vice versa. Thus, the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand, it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality.

In the Constitution (Scheduled Castes) Order, 1950 (as amended from time to time), it has been mentioned that no person professing a religion different from Hindu or Sikh religion can be deemed to be a member of Scheduled Castes. By later orders, persons converted into Buddhism (known as neo-Buddhists) are also members of the Scheduled Castes. There is, however, no religious bar for being treated as Scheduled Tribes.

2. Constitutional Safeguards

The main objective for providing reservations for Scheduled Castes & Scheduled Tribes in civil posts and services of the Government is not just to give jobs to some persons belonging to these communities and thereby increase their representation in the services, (though that constituted an important immediate aim) but to uplift these people socially and educationally and make some place for them in the society. This was the more important objective of reservations which included reservation in Legislatures also. With the same end in view, the Constitution envisaged in the Directive Principles of State Policy and elsewhere, economic development of the weaker sections, particularly the SC and ST.

The relevant Articles of the Constitution which govern the entire reservation set up are the following:

Article 16 (4): Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State.

Article 46: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 335: The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration in making of appointments to services and posts in connection with the affairs of the Union or of a State.

Against this Constitutional background, the Central Government has provided for reservation for members of the Scheduled Castes/Scheduled Tribes. Article 16 (4) of the Constitution permits reservation in favour of backward classes of citizens and does not mention anything about Scheduled Castes and Scheduled Tribes specifically. The matter of reservation of SC/ST, to which there is a reference in Article 335, has to be considered with reference to Article 16 (4), which should be read with Article 16 (1) and 16 (2). Article 16 (2) prohibits discrimination against any citizen in respect of any employment or office under the State on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Article 16 is placed under the heading 'Right to Equality' of which Article 14 is the general Article covering the concepts of 'equality before the law' and 'equal protection of the laws'.

The two phrases permit the State to classify persons for some legitimate purposes. While reasonable classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained and the classification cannot be made arbitrarily without any substantial basis.

In this field, Supreme Court judgment in the case of Chiranjit Lal vs. Union of India (1950) SCR 869 is relevant. The relevant Para of the judgment is quoted below:

“The Legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relations to the things in respect of which the classification is made; and classification made without any substantial basis should be regarded as invalid.”

Such reasonable classification has been upheld by the Supreme Court in many cases. Thus, Article 14 prohibits ‘class legislation’ but not ‘reasonable classification’ for the purposes of legislation. Thus, if the State takes care to reasonably classify persons and if it deals equally with all persons belonging to a ‘well defined’ class, it is not open to the charge of denial of ‘equality before law’ or ‘equal protection of laws’, on the ground that the law does not apply to other persons.

It was contended before the Supreme Court as to whether members belonging to Scheduled Castes and Scheduled Tribes can be classified as backward classes in order to entitle them to the benefits of reservation under Article 16 (4) of the Constitution. The Supreme Court held that for the purposes of Article 16 (4), Scheduled Castes and Scheduled Tribes form a class by themselves due to their social, educational and economic backwardness. Hence for the reservation, classifying this group does not violate the test of reasonable classification. The Supreme Court held in the case of Triloki Nath vs. State of Jammu & Kashmir (1969) 1 SCR 103 A 1960 SCJ as follows:

“Article 16 in the first instance by clause (2) prohibits discrimination on the ground, *inter alia*, of religion, race, caste, place of birth, residence and permits an exception to be made in the matter of reservation in favour of backward classes of citizens. The expression “backward class” is not used as synonymous with “backward caste” or “backward community”. The members of an entire caste or community may in the social, economic and educational scale of values at a given time be backward and may on that account be treated as a backward class, but that is not because they are members of a caste or community, but because they form a class. In its ordinary connotation, the expression ‘class’ means a homogenous section of the people grouped together because of certain likenesses or common traits, and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like.”

3. Later Judicial Pronouncements and Constitutional Amendments

RESERVATION IN PROMOTION

In the case of Indira Sawhney’s case The Supreme Court *inter alia* had held that reservation in promotion for the Scheduled Castes and Scheduled Tribes was unconstitutional and not permissible under Article 16 (4) of the Constitution. However, the Court permitted the existing reservation for SC/ST in promotion to continue for five years, beyond which such reservation would not be permissible.

Consequent to the judgment in Indira Sawhney’s case, the Constitution was amended by the Constitution (Seventy Seventh Amendment Act, 1995 and Article 16 (4-A) was incorporated in the Constitution. This Amendment has permitted continuation of reservation in promotion for SC/ST beyond the limit of five years set by the Supreme Court. Article 16 (4-A) is as follows:

“Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotions to any class or classes of posts in

the services under the State in favour of scheduled castes and scheduled tribes which in the opinion of the State, are not adequately represented in the services under the State.”

CARRY FORWARD RULE AND 50% LIMIT

In the DOP&T OM no. 36012/5/97-Estt (Res) dated 29.8.97, which was based on the carry forward rule as interpreted by the Supreme Court in Indira Sawhney's case, it was provided that backlog vacancies will also be included for application of the 50% limit along with the current or fresh vacancies.

Consequently, Article 16 (4-B) has been incorporated in the Constitution by Constitution (Eighty First Amendment) Act, 2000, which is as follows:

“Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on number of vacancies of that year.”

In view of the Amendment, DOP&T OM no. 36012/5/97-Estt (Res.) Vol II dated 20.7.2000 restored the status quo inasmuch as backlog vacancies for SC/ST will not be counted under the 50% limit.

POST vs. VACANCIES

The Constitution Bench of the Supreme Court, in the case of R. K. Sabharwal vs. State of Punjab as well as J. C. Mallick vs. Ministry of Railways has held that the reservation of jobs for backward classes SC/ST/OBC should apply to **posts and not vacancies**.

The Court further held that the vacancy-based rosters can operate only till such time as the representation reaches the prescribed percentages of reservation. Thereafter, the rosters cannot operate and vacancies released by retirement, resignation, promotion, etc. of the persons belonging to the general and reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained.

Consequent to the decision of the Supreme Court, post based rosters have been introduced with effect from 2.7.97 vide DOP&T OM no. 36012/2/96-Estt (Res) dated 2.7.97.

LOWER QUALIFYING MARKS/STANDARDS IN PROMOTION

The provisions for lower qualifying marks/lesser standards of evaluation in matters of promotion for candidates belonging to the Scheduled Castes and Scheduled Tribes had been withdrawn vide DOP&T OM no. 36012/23/96-Estt (Res) dated 22.7.1997 in view of the decision of the Supreme Court in the case of S. Vinod Kumar vs. Union of India.

Subsequently, Proviso to Article 335 has been incorporated in the Constitution by the Constitution (Eighty Second Amendment) Act, 2000, which is as follows:

“Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering of the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or a State.”

4. Important Aspects of the Scheme of Reservation for SC/ST

On the attainment of independence, instructions were issued on 21.9.1947 providing for reservation of 12 ½ % of vacancies for SC in respect of recruitment made by open competition. In case of recruitment, otherwise than by open competition, this percentage was fixed at 16-2/3%.

After the Constitution was promulgated, MHA, in its resolution dated 13.9.1950, provided 5% reservation for ST, apart from the percentage fixed for SC already in force. **[Copy at Annexure – 1]** The 1951 Census showed that the percentage of SC in the total population was 15.05% and that of ST was 6.31%. The percentages were not revised at that time, as a comprehensive Bill revising the lists of SC and St was under consideration. The other reason for not revising the percentage was that reservation had already been provided for SC in posts filled otherwise than by open competition to the extent of 16-2/3% and instructions had also been issued for following regional and local percentage for Class III and Class IV posts attracting candidates from a locality and region. [These instructions are still applicable in respect of Group ‘C’ and ‘D’ posts]

The 1961 Census revealed that the population of SC and ST in proportion to the population of India stood at 14.64% and 6.80% respectively. Accordingly, the percentage of reservation for SC and ST was increased from 12 ½ % and 5% to 15 and 7 ½ % respectively on 25.3.1970. **[Copy at Annexure – 2]** In view of the enhanced percentages of reservations, new rosters were prescribed on 22.4.1970. **[Copy at Annexure – 3]**

Reservations have been extended to other modes of promotion in stages. In 1957, reservation was provided to SC & ST in promotion by Departmental Competitive Examinations. Reservations in promotion by selection in Groups ‘C’ and ‘D’ were provided in 1963 and in the same year, reservation in promotion by Limited Competitive Examination was limited to Group ‘C’ and ‘D’ only. The position was slightly changed in 1968 when reservation in promotion by Limited Competitive Examination to Group ‘C’ and ‘D’ and in promotion by Selection in Group ‘C’ and ‘D’ were made subject to the condition that element of direct recruitment in the grade should not exceed 50%.

Reservation in Promotion by Seniority Subject to Fitness came in 1972 subject to the condition that the element of direct recruitment does not exceed 50%. In 1974, reservations in Promotion by Selection from Group ‘C’ to Group ‘B’, within Group ‘B’ and from Group ‘B’ to the lowest rung of Group ‘A’ were introduced provided the element of direct recruitment in the grade does not exceed 50%.

The condition of direct recruitment not exceeding 50% was raised to 66-2/3% in 1976 and to 75% in 1989.

The rule regarding carry-forward of reservation for SC/ST has also undergone change in these years. In 1952, the unfilled reservations for SC/ST were required to be carried forward to one subsequent recruitment year, which was raised to two subsequent recruitment years in 1955. However, from 1970, carried forward reservations for SC/ST are to be carried forward to three subsequent recruitment years except in Promotion by Selection from Group 'C' to group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A', where the principle of carry forward did not apply.

Along with the principle of carry forward, the provision regarding exchange of reservation between SC and ST has also changed. The position in 1955 was that carried forward reservations between SC and ST were to be exchanged in the same year of recruitment. The position was rescinded in 1962 in pursuance of recommendations of Scheduled Areas and Scheduled Tribes Commission. However, from 1970, carried forward reservations could be exchanged between SC and ST in the third and final year of carry forward except in Promotion by Selection from Group 'C' to Group 'B', within group 'B' and from Group 'B' to the lowest rung of Group 'A', where such exchange was permitted in the same year of recruitment.

6. Apart from providing reservations, the Government has also extended numerous concessions to SC/ST in direct recruitment as well as promotion and an infrastructure has also been built up over the years, which contains Procedural Safeguards and Institutional Safeguards. These have been described in brief in the subsequent paragraphs.

5. Concessions to SC/ST Applicants:

Age relaxation: The maximum age limit prescribed for direct recruitment to a service or post is increased by five years in the case of candidates belonging to SC/ST.

(Copy at Annexure – 4)

Fee Concession: Scheduled Castes and Scheduled Tribes candidates are exempted from payment of fees prescribed for recruitment/selection. **(Copy at Annexure – 5)**

6. Relaxation of Standards and Other Steps taken for filling Reserved Posts in Direct Recruitment:

Relaxation of standards of suitability: In case of direct recruitment whether by examination or otherwise, if sufficient SC/ST candidates are not available on the basis of general standard to fill all the posts reserved for them, candidates belonging to these communities may be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. **(Copy at Annexure – 6 & Annexure – 7)**

Relaxation of ‘experience’ qualification in direct recruitment: UPSC or the Competent Authority, in cases where recruitment is made by other authorities, at its discretion, relax the qualification regarding ‘experience in the case of SC/ST candidates if at any stage of selection, the UPSC or the Competent Authority is of the opinion that sufficient number of SC/ST candidates possessing the requisite experience are not likely to be available for appointment against the vacancies reserved for them. The possibility of relaxation of ‘experience’ qualification should be clearly stated in the advertisement so that the SC/ST candidates, with less experience than prescribed, are aware of the possibility of relaxation in ‘experience’ qualification at the time of submission of application form. **(Copy at Annexure – 8)**

Separate interview of SC/ST candidates: In direct recruitment through interview or through examination along with interview, candidates belonging to the Scheduled Castes and Scheduled Tribes would be called for interview on a separate date or a separate sitting of the Selection Committee. **(Copy at Annexure – 9)**

Further relaxation of standards in non-technical and quasi-technical Group ‘C’ and ‘D’ posts: Where requisite number of SC/ST candidates fulfilling even the relaxed standards are not available to fill the vacancies reserved for them in non-technical and quasi-technical Group ‘C’ and ‘D’ services/posts filled by direct recruitment otherwise than by written examination, the best among the available SC/ST candidates who possess the minimum educational qualifications prescribed for such a service/post would be selected to the extent of the vacancies reserved for such categories. In order to bring such candidates up to the minimum standard necessary for the maintenance of efficiency of administration, they would be given in-service training.

7. Other Concessions in Posts filled by Promotion:

Promotion by Selection within Group 'A': In promotion by selection within Group 'A', there is no reservation. However, in this segment of promotion to posts which carry an ultimate salary of Rs.18300/- P. M. or less (pre-revised), the Scheduled Castes and Scheduled Tribes officers who are senior enough in the zone of consideration so as to be within the number of vacancies for which the Select List is drawn, are to be included in the Select List irrespective of 'bench mark' provided they are not considered unfit for promotion.

Relaxation of standards in Departmental Examination: In promotion made through Departmental Competitive Examinations, the Scheduled Castes and Scheduled Tribes candidates who have not acquired the general qualifying standards in the examination could also be considered for promotion against the reserved vacancies provided they are not found unfit for promotion. Similar relaxation has also been provided for Scheduled Castes and Scheduled Tribes candidates in Departmental Examinations prescribed for determining the suitability of candidates for confirmation and in Departmental Qualifying Examinations, if any, for promotion.

Age Relaxation in Promotion Posts: The concession of relaxation of maximum age limit by 5 years in the case of Scheduled Castes/Scheduled Tribes candidates which is admissible in posts filled by direct recruitment has also been extended to posts filled by promotion inasmuch as where an upper age limit not exceeding 50 years is prescribed for promotion to a service/post, it shall be relaxed by five years in favour of Scheduled Castes and Scheduled Tribes except in posts which have arduous field duties or are meant for operational safety or are in paramilitary organizations.

Safeguard against supersession of Scheduled Castes and Scheduled Tribes in Promotions: In order to safeguard the officers belonging to the Scheduled Castes and Scheduled Tribes being rejected for promotions to reserved vacancies despite their eligibility and availability, instructions have been issued that their cases may be submitted or reported

8. Procedural and Institutional Safeguards

Model Rosters for Reservation: At present, reservation has been provided for Scheduled Castes, Scheduled Tribes and Other Backward Classes in Direct Recruitment. In promotion, reservation exists only for Scheduled Castes and Scheduled Tribes. The following rosters have been prescribed for various methods of appointments: (**Model Rosters at Annexure to OM dated 2.7.97 – Copy at Annexure – 11**)

A. Direct Recruitment on All-India basis by Open Competition:

- i. 200 point roster having the following number of points for various categories:

Scheduled Castes:	30
Scheduled Tribes:	15
Other Backward Classes:	54
- ii. Roster for cadre strength up to 13 posts.

B. Direct Recruitment on All-India basis otherwise than by Open Competition:

- i. 120 point roster having the following number of points for various categories:

Scheduled castes:	20
Scheduled Tribes:	9
Other Backward Classes:	31
- ii. Roster for cadre strength up to 13 posts

C. Direct Recruitment to Group ‘C’ and ‘D’ posts normally attracting candidates form a locality or a region in proportion of population of Scheduled Castes, Scheduled Tribes and Other Backward Classes in the respective States/Union Territories except offices located in Delhi. For this purpose 100 point rosters have been prescribed for each State and Union Territory.

D. Posts filled by Promotion:

- i. 200 point roster having the following number of points for various categories

Scheduled Castes:	30
Scheduled Tribes:	15

Liaison Officers and Special Cells: Officers of the rank of Deputy Secretary/Director are to be nominated to work as Liaison Officers, whose responsibility will be to oversee the implementation of reservation orders and for ensuring that the instructions in this regard are strictly complied with in their respective organizations. It has been made the special responsibility of the Liaison Officers to conduct annual inspection of rosters maintained in the offices under his charge, and also to scrutinize the proposals for dereservation of reserved vacancies in the event of non-availability of reserved category candidates. Special cells are required to be set up within the organization under the direct control of the Liaison Officer. The function of the cell is mainly to assist the Liaison Officer to discharge his duties effectively.

Annual Statements: Annual Statements showing particulars of recruitment made such as the number of vacancies filled and the number of Scheduled Castes and Scheduled Tribes appointed have been prescribed for submission by the appointing authorities to the administrative Ministries.

9. Reservation for Other Backward Classes

Constitutional Provisions: Article 340 – Appointment of a Commission to investigate the conditions of Backward Classes:

Article 340 (1): The president may, by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

Article 340 (2): A Commission so appointed shall investigate the matter referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

Article 340 (3): The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

In pursuance of Article 340 of the Constitution, Government of India established the Second Backward Classes Commission under the Chairmanship of Shri S. N. Mandal (also known as Mandal Commission), which submitted its report to the Government of India on 31.12.1980. The Commission, following the yard-sticks evolved by it, prepared a list of Socially and Educationally Backward Classes, and also came to the conclusion that the population of Socially and Educationally Backward Classes constituted 52% of the total population. However, the Commission recommended 27% reservation for the Socially and Educationally Backward Classes in view of the 50% limit imposed by the Supreme Court.

The Government of India introduced 27% reservation for the Socially and Educationally Backward Classes in posts filled by Direct recruitment on 13.8.1990. This order was challenged in the Supreme Court the case of Indra Sawhney vs. Union of India. Following the judgment of the Supreme Court, the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the 'creamy layer' i.e. the socially advanced persons sections from the benefit of reservation for Other Backward Classes in civil posts and services under the Government of India. After consideration of the Expert Committee Report, the Government of India issued revised instructions for 27% reservation for Other Backward Classes vide DOP&T OM no. 36011/22/93- Estt. (SCT) dated 8.9.1993 and OM no. 36012/53/93-Estt (SCT) dated 13.1.1995. **[Annexure – 10]**

In order to be eligible for reservation, the candidates belonging to the Other Backward Classes have to fulfill the following conditions:

- They do not fall within any category mentioned in the Excluded Category (Creamy Layer) as per Schedule to DOP&T OM no. 36012/22/93-Estt (SCT) dated 8.9.1993;
- The community they belong to are included in the list of Other backward Classes as per Ministry of Social Welfare Resolution no. 12011/68/93-BCC (C) dated 10.9.1993, published in the Gazette of India, Extraordinary, Part-I, Section 1, No. 186, dated 13.9.1993 read with DOP&T OM no. 36033/5/2004-Estt (Res.) dated 14.10.2004;
- They submit certificates in the form prescribed as per DOP&T OM no. 36033/28/94-Estt (Res.) dated 2.7.1997;
- They make declaration as prescribed in DOP&T OM no. 36033/4/97-Estt (Res.) dated 25.7.2003;
- They fulfill the income criteria as prescribed in DOP&T OM no. 36033/3/2004-Estt (res.) dated 9.3.2004 effective from 4.2.2004;

10. Other features of Reservation for Other Backward Classes:

Rosters: Roster points for following the prescribed percentages for the Other Backward Classes have been prescribed in the model post- based 200point, 120 point and 14 point rosters as in the Annexure to DOP&T OM no. 36.12/2/96-Estt (Res.) dated 2.7.97. The number of points meant for Other backward Classes have been indicated in the Annexure to the OM dated 2.7.1997. **(Copy at Annexure – 11)**

Relaxation of Upper Age Limit: The upper age limit prescribed for direct recruitment shall be relaxed by three years in respect of OBC candidates.

Relaxation of Minimum Standards: In order to fill the quota earmarked for Other backward Classes, the minimum standards can be relaxed in appointments by written examinations as well as by interview in respect of OBC candidates as in the case of SC/ST candidates. The OBC candidates who come in the general merit list will not be adjusted against the reserved posts.

Liaison Officers: A separate Liaison Officer of the rank of Deputy Secretary or equivalent shall be nominated for overseeing the work relating to matters of reservation for the Other Backward Classes in service/posts.

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CHAPTER – 2

1. Post-Based Rosters

The scheme of reservation was operated through various model rosters which were ‘vacancy-based’. In other words, the vacancy-based rosters were being operated on the principle of “running account” inasmuch as vacancies were plotted on the subsequent points of the roster (i.e. after the earlier vacancies) for the purpose of determining the reservation component on each recruitment occasion. Further, by plotting the vacancies, as and when they arose, if the end of the cycle was reached, a new cycle of the roster from point 1 was started.

The Department of Personnel & Training, vide their OM no. 36012/21/96 –Est. (Res.) dated 2.7.1997 [**Copy at Annexure – 11**] have replaced the vacancy-based rosters by post-based rosters. [**Model Rosters prescribed for various modes of appointments are at the Annexure to the OM dated 2.7.1997**]

2. Principles for Operating Post-Based Rosters

The principles for making and operating post based rosters as provided in the OM dated 2.7.97 are as follows:

- As hitherto, these rosters are only an aid to determine the entitlement of different categories with regard to the quota reserved for them. **They are not to determine seniority;**
- The model rosters have been drawn up keeping in mind two fundamental principles;
 - the reservation for the entitled categories is to be kept within the prescribed percentage of reservation;
 - the total reservation should in no case exceed 50% of the cadre;
- There should be separate rosters for direct recruitment and for promotion, where reservation in promotion applies;
- The number of points in each roster shall be equal to the number of posts in the cadre;

- While the cadre is generally to be construed as the number of posts in a particular cadre, for the purpose of preparation of roster, it shall comprise of posts required to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. To illustrate – in a cadre comprising of 200 posts, the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, the roster for direct recruitment shall have 100 points and that for promotion shall have 100 points, thus making a total of 200 posts;
- As indicated in the model roster, the method for making a roster is to multiply each post by the prescribed percentages of reservation for the different reserved categories. The point at which the multiple for a community obtains a complete number or oversteps the number is to be reserved for that community, while taking care to evenly space out the different reserved categories;
- Since reservation does not apply to transfer/deputation, where rules prescribe a percentage of posts to be filled by this method, the corresponding proportion of posts should be excluded while drawing up the rosters.
- Whenever there is any increase or decrease in the cadre strength, the roster shall be correspondingly expanded or contracted. The same roster shall be correspondingly expanded or contracted. The same shall also apply whenever there is a change in the recruitment rules, which affects the proportion of posts to be filled by a particular mode of recruitment;
- **The roster is to be operated on the principle of replacement and not as a “running account” as hitherto.** In other words, the points at which reservation for different categories applies are fixed as per the roster and **vacancies caused by retirement etc. of persons occupying those points shall be filled by appointment of persons of the respective categories.**
- While operating the roster, persons belonging to communities for whom reservation has been made, **but who are appointed on merit and not owing to reservation, should not be shown against reserved points. They will occupy the unreserved points.**

- In the case of small cadres (up to 13 posts), all the posts shall be earmarked on the same pattern as in the model post-based rosters. Initial recruitment against these posts shall be by the category for which the post is earmarked. **Replacement of incumbents of posts shall be by rotation as shown horizontally against the cadre strength as applicable. While operating the relevant roster, care will have to be taken to ensure that on no occasion the percentage of reserved category candidates exceed 50 percent. If such situation occurs at any time, the relevant reserved point occurring as a result of rotation will be skipped.**

3. Guidelines for Initial Operation of Post-Based Rosters

The OM dated 2.7.1997 provides the guidelines for operating the roster, which are as follows:

- At the point of initial operation of the roster, it will be necessary to determine the actual representation of the incumbents belonging to different categories in a cadre vis-à-vis the points earmarked for each category viz. SC/ST/OBC and General in the roster. This may be done by plotting the appointments made against each point of the roster starting with the earliest appointee. Thus, if the earlier appointee in the cadre happens to be a candidate belonging to the Scheduled Castes, against point no. 1 of the roster “utilized by SC” shall be entered. If the next appointee is a general category candidate, the remark “utilized by general category” shall be made against point no. 2 and so on and so forth till all the appointments are adjusted in the respective roster.
- In making these adjustments, **Scheduled Castes/Scheduled Tribes/Other Backward Classes candidates on merit, in direct recruitment (now also in promotion), shall be treated as general candidates.**
- After completing the adjustments as indicated above, a tally should be made to determine the actual percentages of representation of appointees belonging to the different categories in the cadre.

- *If there is an excess representation of any of the reserved categories, or if the total representation of the reserved categories exceeds 50 percent, it shall be adjusted in the future recruitment. Vacancies arising from retirement etc. of candidates belonging to such categories shall be filled by appointment of candidates belonging to the categories to which the relevant roster points, against which the excesses occur, belong.*

4. Dereservation, Carry Forward and Exchange of Reserved Vacancies

The principles of Dereservation, Carry Forward and Exchange of Reserved vacancies, after the introduction of Post-Based Rosters, are governed by DOP&T OM no. 36012/17/2002-Estt. (Res.) dated 6.11.2003. [**Copy at Annexure – 12 & Annexure – 13**]

The OM dated 6.11.2003 has brought about the following important changes in the area of Dereservation, Carry Forward and Exchange of Reserved Vacancies:

- Backlog reserved vacancies will be carried forward indefinitely till they are filled up by the relevant reserved category candidates;
- Backlog reserved vacancies will not lapse after three subsequent years as was the practice for the vacancy-based rosters;
- Exchange of reserved vacancies between SC and ST and vice versa is not permissible;
- The limit of 50% is applied to current vacancies for SC/ST and not to the backlog vacancies for SC/ST;
- The limit of 50% is applied to current vacancies and backlog vacancies taken together for vacancies reserved for Other Backward Classes.

The procedure prescribed by the OM dated 6.11.2003 applies in different manners in the following categories:

- A. Posts filled by Direct Recruitment;
- B. Posts filled by Promotion;
- C. Posts filled in cadres having the number of posts up to 13.

A. POSTS FILLED BY DIRECT RECRUITMENT: In case of non-availability of SC/ST/OBC candidates, the procedure is as follows:

- There is a ban on dereservation in case of non-availability of SC/ST/OBC candidates against reserved vacancies;
- If the first advertisement fails to get sufficient number of SC/ST/OBC candidates for appointment against vacancies reserved for them, second attempt shall be made by re-advertising the reserved posts;
- In case of non-availability of SC/ST/OBC candidates, even after re-advertisement, such reserved posts will be kept unfilled until the next recruitment year. **These vacancies will be treated as “backlog vacancies.”**
- In the next recruitment year backlog vacancies will be divided into two categories – one for OBC and the other for SC/ST, as follows:
 - For OBC – Current and backlog vacancies will be will be treated as one group and 50% limit will be applied to the both form of vacancies;
 - For SC/ST – All the backlog vacancies reserved for SC/ST will be filled up by the candidates belonging to concerned category without any restriction whatsoever as they belong to a distinct group of backlog vacancies of SC and ST.
- If vacancies reserved for SC/ST/OBC cannot be filled up and are carried forward as backlog vacancies and remain unfilled in the following recruitment year also, they will be carried forward as backlog vacancies for subsequent years(s) as long as these are not filled by candidates of the category for which these are reserved;
- Dereservation in direct recruitment is banned. However, **in rare and exceptional cases in Group ‘A’ services, where posts cannot be allowed t remain vacant in public interest, dereservation may be resorted to provided the following steps are taken:**
 - The concerned Ministry/Department shall make a proposal for dereservation giving full justification for such action;
 - Consult the national Commission for SC/ST/OBC, as the case may be, and obtain the comments of the concerned Commission on each proposal;

- The proposal for dereservation shall be placed, along with the comments of the concerned Commission, before a Committee of Secretaries comprising of Secretaries in the Department of Personnel & Training, in the Ministry of Social Justice & Empowerment and in the Ministry/Department under which the recruitment is being made, for consideration and recommendation;
- The recommendation of the Committee shall be placed before the Minister in charge of the Department of Personnel & Training for a final decision;
- If dereservation of the vacancies is approved, these can be filled by the candidate of other communities.

B. POSTS FILLED BY PROMOTION:

- i. In cases of promotion including promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A', if sufficient number SC/ST candidates fit for promotion against reserved vacancies are not available, such vacancies may be dereserved as per prescribed procedure and filled by candidates of other communities.
- ii. If sufficient number of SC/ST candidates fit for promotion against reserved vacancies, are not available and such vacancies can also not be dereserved for reasons like non-availability of candidates of other categories to fill up the posts etc., the vacancies shall not be filled and will remain unfilled until the next recruitment year. **These vacancies will be treated as “backlog vacancies.”**
- iii. In the subsequent recruitment year when recruitment is made for the vacancies of that year (called the current vacancies), the backlog vacancies of SC and ST will also be filled up, keeping the current vacancies and the backlog vacancies of Sc and ST as two distinct groups. **The limit of 50% shall apply to current vacancies and the backlog vacancies shall be filled up without any such restriction.**

- iv. If backlog vacancies reserved for SC/ST cannot be filled up by reservation and can also not be dereserved in the subsequent recruitment year as well, such backlog vacancies will be carried forward as backlog reserved vacancies for subsequent recruitment year(s) as long as these are not filled by candidates of the category for which these are reserved or by candidates of other communities after dereservation.

C. POSTS FILLED IN CADRES HAVING THE NUMBER OF POSTS UP TO 13:

The procedure to be followed in such cases has been laid down in Para 5 of the OM dated 6.11.2003, reproduced below:

“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 treated as lapsed and will be filled as an unreserved vacancy.** [Emphasis supplied]

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CHAPTER – 3

1. Reservation in Statutory/Autonomous Bodies, Public Sector Undertakings and Voluntary Agencies Receiving Grants in Aid from the Government

Various instructions have been issued from time to time to provide reservations for Scheduled Castes, Scheduled Tribes and Other Backward Classes in Statutory and Autonomous Bodies, Public Sector Undertakings, Voluntary Agencies receiving grants in aid from the Government in the lines of the reservations for SC/ST/OBC in services under the Government.

Autonomous bodies such as Statutory and Semi-Government Bodies, which are under the control of the Government should also make reservations for Scheduled Castes and Scheduled Tribes in their services on the lines of the reservations in the services under the Government vide instructions issued in Ministry of Home Affairs OM no. 16/2/54-SCT dated 23.11.1954 (**Copy at Annexure – 14**) read with OM no. 17/4/69-Estt. (SCT) dated 3.2.1970 (**Copy at Annexure – 15**)

Reservations for Other Backward Classes have been extended to Autonomous Bodies, Statutory and Semi-Government Bodies and Voluntary Agencies receiving grants in Aid from the Government. (**Copy at Annexure – 16**)

Instructions were issued to Ministries and Departments to provide reservations for the reserved categories in the services of the Public Sector Undertakings under the control of various Ministries and Departments. (**Copy at Annexure – 17**)

Autonomous Bodies/Institutions including Municipal Corporations, Cooperative Institutions, Universities, etc. are required to take suitable action to provide for reservations in the services of the Autonomous Bodies/ Institutions which are receiving grants in aid from the Government of India by making suitable provisions in the relevant statutes or in the Articles of Association of the respective bodies.

A clause providing for reservations being made in favour of the reserved categories in the services under the voluntary agencies should be included in the terms and conditions under which such voluntary agencies/organizations, etc. are given grants in aid by Government, on the following lines:

“..... (Name of the Agency, etc) agrees to make reservations forin the posts/services under its control on the lines indicated by the Government of India.”

Such voluntary agencies etc. would be required to follow the broad features of the scheme of reservation. The Ministries/Departments should insist on the above provisions relating to reservations being followed by the voluntary agencies etc. as a precondition to the sanction of grants in aid to the agencies where:

- The recipient body employs more than 20 persons on a regular basis and at least 50% of its recurring expenditure is met from grants in aid from the Central Government; and
- The body is a registered society or a cooperative institution and is in receipt of general-purpose annual grants in aid of Rs.2 lakhs and above.

The above conditions should be kept in view while sanctioning grants in aid to various voluntary agencies and the progress made by such agencies in employing reserved category candidates in their services should also be kept in view by the administrative Ministries/Departments while sanctioning future grants to them. The voluntary agencies etc. should also be informed that the progress in respect to the employment by them of reserved category candidates in the services under them would be taken into account by the Government while sanctioning future grants in aid to them.

2. Reservation in Services/Posts in All India Institute of Medical Sciences (AIIMS)

In view of the orders/instructions cited above, it is clear that reservation and other related orders issued by the Government of India for the Scheduled Castes, Scheduled Tribes and Other Backward Classes are applicable to the Service/Posts in the All India Institute of Medical Sciences. The existing orders, in the absence of any specific exemptions as per the instructions, apply to ‘Teaching’ as well as ‘Non-Teaching’ posts.

3. Exemption from Reservation of Teaching Posts in AIIMS

The question whether Teaching posts in AIIMS could be exempted from the purview of the reservation orders and the extent of exemption requires consideration.

At present, the following categories are exempted from reservations:

- Armed Forces of the Union;
- Personal Staff of the President and Ministers;
- Posts filled by transfer and deputation;
- Temporary appointments of less than 45 days;
- Posts filled by promotion beyond the lowest rung of Group 'A' in promotion by selection and in Group 'A' in Limited Departmental Competitive Examination;
- Work-charged posts required for emergencies, like flood relief work, accident restoration and relief etc.;
- Posts in Department of Space, Department of Electronics and in recruitment of trainees to the Training School under the Department of Atomic Energy.

4. Orders/Instructions for Exemption of Scientific and Technical Posts

Scientific and Technical posts in organizations other than Department of Space, Department of Electronics and in recruitment of trainees to the Training School under the Department of Atomic Energy are governed by Department of Personnel and A. R. OM no. 9/2/73-Estt. (SCT) dated 23.6.1975 for Scheduled Castes and Scheduled Tribes **(Copy at Annexure – 18)** and Department of Personnel & Training OM no. 36012/27/94-Estt. (SCT) for Other Backward Classes **(Copy at Annexure – 19)**

These orders permit exemption from the purview of reservations subject to fulfillment of the following conditions:

- i. The post should be in grades above the lowest grade in Group 'A' of the service concerned;
- ii. They should be classified as 'Scientific' or 'Technical' (in terms of Cabinet Secretariat, Department of Cabinet Affairs) O. M. No. 85/11/CF-61 (1), dated 28.12.1961 **(Copy at Annexure – 20)**; and
- iii. These should be posts for **conducting research or for organizing, guiding and directing research**;
- iv. Orders of the Minister concerned are obtained before exempting any post satisfying the above conditions from the purview of the scheme of reservations.

It may be seen from the provisions of the OM mentioned above that in case of AIIMS the Posts of Assistant Professors are in the lowest grade of Group 'A' of the service concerned (Entry level). Therefore, reservations should be applicable to the Posts of Assistant Professors as per the OM dated 23.6.1975 and dated 13.5.1994.

As regards Posts of Associate Professors, Additional Professors and Professors, these posts could be exempted provided they are required for **conducting research or for organizing, guiding and directing research**. Therefore, such posts as are meant for 'conducting research or for organizing, guiding and directing research' should be identified.

The question whether all teaching posts in AIIMS above the grade of Assistant Professors could be included in the category Scientific and Technical posts deserving exemption requires to be considered in terms of Cabinet Secretariat OM dated 28.12.1961, which was basically for the purposes of granting extensions of service beyond the prescribed age of retirement. The Cabinet Secretariat OM enumerates the following categories as 'Scientific or Technical':

- The incumbents have to use a knowledge of the exact/natural sciences or of technology in discharge of their duties;
- The incumbents are engaged in research, development, designing, construction, production, inspection, survey, testing or teaching;
- All posts for which qualifications in the natural/exact sciences, or applied sciences or in technology are prescribed.

It may be seen that the OM dated 23.6.1975 and 13.5.1994 providing for exemption from reservation orders have limited such exemption only to posts required for 'conducting research or for organizing, guiding and directing research' and not to all teaching posts.

Therefore, before the case for exemption from the purview of reservation orders is considered, it is essential to identify such posts which are primarily meant for 'conducting research or for organizing, guiding and directing research' apart from teaching only.

5. Applicability of Reservation Orders to Grades Consisting of One Post

It will be pertinent to consider the question of applicability of reservation orders to grades/cadre consisting of only one post in view of the switch over from ‘vacancy-based’ rosters to ‘post-based’ rosters and also in light of developments in this area.

The procedure for application of reservations in single vacancy occurring in small grades/cadres was governed by Department of Personnel and A. R. OM no. 1/9/74-Estt. (SCT) dated 29.4.1975. **(Copy at Annexure – 21)** This OM was issued in pursuance of Supreme Court judgment in a case pertaining to Ministry of Railways. The operative portion of this OM is reproduced below:

“.....while in cases where only one vacancy occurs in the initial recruitment year and the corresponding roster point happens to be for a Scheduled Caste or Schedule Tribes, it should be treated as unreserved and filled accordingly and the reservation carried forward to subsequent three recruitment years as hitherto, in the subsequent year(s), even if there is only one vacancy, it should be treated as “reserved” against the carried forward reservation from the initial recruitment year and a Scheduled Caste/Scheduled Tribe candidate, if available, should be appointed in that vacancy, although it may happen to be the only vacancy in that recruitment year(s).”

After the introduction of post-based rosters, the issue relating to applicability of reservation orders to grades consisting of single post has been considered by the Supreme Court in the case of Postgraduate Institute of Medical Education and Research vs. Faculty Association and another [AIR 1998 SC 1767]. It has been held by the Supreme Court that there cannot be any reservation in a single-post cadre. The ruling of the Supreme Court has been applied in subsequent cases holding that reservation is not applicable to cadres consisting of single post. **(Copy at Annexure – 22)**

The Department of Personnel & Training has prescribed 14-point rosters for small cadres along with the OM dated 2.7.1997 introducing post-based rosters. The notes below such rosters are reproduced below:

“Note – 1: For cadres of 2 to 13 posts, the roster is to be read from entry 1 under column Cadre Strength till the last post and then horizontally till the last entry in the horizontal row, i.e. like “L”.

Note – 2: All the posts of a cadre are to be earmarked for the categories shown under column Initial Appointment. While initial filling up will be by the earmarked category, the replacement against any of the post in the cadre shall be by rotation as shown horizontally against the last post of the cadre.

Note – 3: The relevant rotation by the indicated reserved category could be skipped over if it leads to more than 50% representation of reserved category.

In view of the explanation contained in the notes below the 14 point rosters, the following inference could be drawn:

- That reservation cannot be applied to cadres consisting of single post;
- Even if reservation is applied through the 14 point roster cadres consisting of single post, every time the reserved point by rotation has to be skipped as reservation will be 100% if it is reserved by rotation as per the roster point.

It is pertinent to mention that the Department of Personnel and Training has not issued any order categorically stating that reservation is not applicable to cadres consisting of single post.

However, the following question was posed to the DOP&T with reference to the issue of single post:

“Orders dated 2.7.1997 provide for rosters for large cadres and small cadres – defined as 2 to 13 posts. What about single post cadres.”

The clarification of DOP&T to the query posed as above in relation to applicability of reservation orders to single-post cadres is as follows: **(Copy at Annexure – 23)**

“Attention is invited to Supreme Court judgment in the case of PGIMER, Chandigarh, which provides that there will be no reservation in single post cadres.”

It could be inferred from the advice of the DOP&T that though they have not issued any specific order categorically stating that reservation is not applicable to single-post cadres for some reasons best known to them, they are inclined to follow the decision in the PGIMER case and the reflection of this inclination is also evident from the Notes below the 14 point rosters.

In view of the above, it may not be advisable to apply reservation for SC/ST/OBC to single posts cadres as it could not be sustained in the Court, if challenged. [However, rosters have been framed for such single post cadres also in the Part – 2 of the Report, in case it is decided to follow reservation orders in such cases.]

6. Grouping of small number of posts in various cadres for applying reservation rosters

As per the existing orders, grouping of posts in direct recruitment for maintaining a common roster is permissible in Direct Recruitment. However, the question assumes significance in view of introduction of Post-Based rosters where the principle of ‘replacement’ is to be followed.

Grouping of posts for following a combined roster in Direct Recruitment under the ‘Post-Based Roster’ scheme may pose certain difficulties, such as:

- One pertinent question will be the sequence of the posts to be reflected in the roster as there will be a possibility that some posts are reflected against unreserved points and, therefore, remain unreserved forever due to the principle of replacement under the post-based roster scheme;
- On the other hand, some post may get reflected against reserved points and, therefore, they will have to be treated as reserved every time such post is vacant due to the operation of the post-based roster rule;
- Such problem will be further complicated in case single post of different Departments of the Institute are grouped for following a combined post-based roster. It may lead to an anomalous situation inasmuch as certain Departments will have the post reserved for all the time to come, whereas, some other Departments will have such posts filled by unreserved category candidates, every time a vacancy occurs.

It is, therefore, not advisable to group small number of posts for following a combined roster, particularly when the OM dated 2.7.97 has prescribed 14 point rosters to take care of cadres having small number of posts, which were not existing hitherto.

The view expressed above also finds support from the advice of the DOP&T to the office of C & AG, as is evident from the excerpts quoted below:

“Grouping of isolated individual posts and small cadres for the purpose of reservation orders is permissible only in the cases of direct recruitment and not in the posts filled by promotion. **However, notwithstanding the instructions on grouping of posts, it would be advisable to maintain separate rosters for each small cadre as per the model rosters/instructions contained in DOP&T OM dated 2.7.97.**”
[Swamy’s Compilation on Reservations and Concessions, Ninth edition, pages 23-24]

7. Applicability of Reservation Orders in Teaching Posts Filled by Promotion

Reservation orders for SC/ST may not be applicable to Teaching Posts filled by Promotion for the following reasons:

- The Institute follows the APS scheme for promotion where all the incumbents including SC/ST are promoted subject fulfillment of qualifying service and standards of suitability. Therefore, no roster is required to be maintained as the number of posts are not fixed;
- The incumbents move up along with their posts held in the lower grade and, thus the concept of ‘sanctioned strength’ is not applicable;
- Assuming that the promotion is by selection for the sake argument, as per the existing instructions, there is no reservation in promotion by selection within Group ‘A’ beyond the lowest rung of Group ‘A’.

8. Applicability of Reservation Orders for SC/ST/OBC to Non-Teaching Posts

All orders on reservation and other relaxations and concessions issued by the DOP&T are applicable to all Non-Teaching posts. Important provisions on the subject have been discussed in various Chapters. A 'Background Note' giving the provisions in detail has been placed at **APPENDIX – 1**

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