

GOVERNMENT OF ODISHA
ST & SC DEVELOPMENT, MINORITIES & BACKWARD CLASSES WELFARE
DEPARTMENT

No. 24280 /SSD Bhubaneswar,
STSCD-RP-CASE 1-0003-2025

Dt. 08.10.2025

From

Smt. Monalisha Panda, OAS(SB)
Deputy Secretary to Government

To

Sri Manash Ranjan Mohanty
Additional Government Advocate,
O/o the Advocate General, Odisha, Cuttack

**Sub: - W.P. (C) No.7674 of 2025 filed by Hiranmayee Nayak & Others -Vrs-
State of Odisha & Others.**

Ref: Your Office Letter No 46446 dtd. 24.09.2025

Sir,

In inviting a reference to the letter on the subject cited above, I am directed to enclose herewith the instructions on behalf of the Opposite Party No 03 in W.P. (C) No.7674 of 2025 filed by Hiranmayee Nayak & Others -Vrs- State of Odisha & Others relevant to this Department for taking further necessary steps at your end.

Yours faithfully,

Mp 8.10.2025
Deputy Secretary to Government

Memo No 24281 /SSD dated 08-10-2025

Copy forwarded to Joint Secretary to Government, Works Department for kind information and necessary action

Mp 8.10.2025
Deputy Secretary to Government

Memo No 24282 /SSD dated 08-10-2025

Copy forwarded to Legal Cell, SSD Deptt for kind information and necessary action. The Assistant Director, Law is requested to appraise the matter to the Addl. Standing Counsel, O/o the Advocate General, Odisha, Orissa High Court, Cuttack

Mp 8.10.2025
Deputy Secretary to Government

**Instructions on behalf of the Opposite Party No 03 in WPC No 7674 of 2025
filed by Hiranmayee Nayak & Ors vrs. State of Odisha & Ors**

**I. WHY CLARIFICATION HAS BEEN ISSUED BY THE SC/ST DEPARTMENT TO ALL
THE DEPARTMENTS EVEN THOUGH A STATUTORY RULE EXISTS**

1. The Odisha Civil Services (Criteria for Promotion) Amendment Rules, 2022, **issued by the GA & PG did not create a new right but merely codified a principle that had been the settled policy of the State Government since 1997.** This is supported by:
 - The ST & SC Development, M & BCW Department Circular No 21666 dated 23.07.1997 (**Annexure-‘A’**), which was issued two years after the Hon'ble Supreme Court judgment in R.K. Sabharwal case. It explicitly stated that **reserved category candidates can compete for non-reserve posts and their appointment to such posts shall not be counted towards the reserved quota.**
 - It was also clarified by the ST & SC Development Department that the said clarification is applicable both in Direct Recruitment as well as in promotion, since the **process of selection is done both in case of promotional and initial appointments. Every promotion conducted in the State of Odisha occurs through a selection process, as outlined in the OCS (Criteria for Promotion) Rules, 1992 (Annexure-‘B’).**
 - This Department issued a clarification vide Circular No 8764 dated 15.03.1999 (**Annexure-‘C’**) to quell doubts and confirm that **the 1997 circular applied to both initial appointment and promotional appointments.**
 - This Department has reiterated the same in subsequent years vide Letters No. 34531/SSD dtd. 31.08.2007, 11894/SSD dtd. 24.03.2008, & 14712/SSD dtd. 29.08.2019) reaffirming this very same **"own merit"** principle. (**Annexure-D’**)
2. The GA & PG Department vide its views dated 21.11.2023 (**Annexure-‘E’**), advised the Finance Department that on earlier occasions, the ST & SC Development Department has already clarified regarding the promotion of a reserved category candidate against the unreserved vacancy/post. Hence, they further advised the Finance Department to consult the ST & SC Development Department for unambiguous views as per the extant rules

and law to avoid a critical legal test, as the said matter (promotion against UR post by the reserve employees) is related to ST & SC Development Department. Consequently, upon endorsement of the matter by the Finance Department, the ST & SC Development, M & BCW Department sought the considered views of the Law Department regarding the concept of own merit as per the current legal position.

3. Taking into consideration various relevant judgments of Hon'ble Supreme Court in cases of R.K. Sabharwal and Ors vs State of Punjab and Ors (10.02.1995) (Para 3 & 4) ii) Akhil Bharatiya Soshit Karmachari Versus Union of India (12.09.1996) and (iii) Jarnail Singh & Ors. -vrs- Lachhmi Narain Gupta & Ors. (28.01.2022) (Para 17) and the Odisha Civil Services (Criteria for Promotion) Amendment Rules, 2022, the Law Department clarified the concept of 'own merit' in the matter of promotion vide their considered views dtd. 27.02.2024 (**Annexure-'F'**).
4. Despite clarifications issued earlier by this department and the 2022 statutory amendment, persistent confusion and requests for clarification were received from various administrative departments regarding the promotion of reserved category employees against unreserved vacancies.
5. As the **nodal department for reservation policy (Point 10 of Rules of Business, ST & SC Development Department) (Annexure-'G')**, it was this department's inherent responsibility to issue a consolidated, clear directive to ensure uniform compliance and implementation of the statutory rule of the state and the latest Supreme Court judgment regarding reservation in promotion across all departments. Therefore, instead of issuing clarifications individually, the ST & SC Development, M & BCW Department issued a clarification vide Letter No 9838/SSD dtd. 06.05.2024.

II. WHETHER THE GA & PG DEPARTMENT HAS ISSUED CLARIFICATION REGARDING ODISHA CIVIL SERVICES (CRITERIA FOR PROMOTION) AMENDMENT RULES, 2022

The Odisha Civil Services (Criteria for Promotion) Amendment Rules, 2022, issued vide Notification dtd. 12.10.2022 (**Annexure-H'**), states that the SC/ST candidates promoted or recruited on their own merit and placed above unreserved candidates shall fill the unreserved vacancies and not be counted towards the reserved quota. The GA & PG Department has issued a clarification regarding Odisha Civil Services (Criteria for Promotion) Amendment Rules, 2022 vide its Department Letter No 10094/Gen. dtd. 10.04.2023 (**Annexure-'I'**), which is similar to the clarification issued by this Department vide Letter No 9838/SSD dtd. 06.05.2024 regarding own merit in promotion.

III. CLARIFICATION REGARDING WITHDRAWAL AND SUBSEQUENT RESTORATION OF ISSUED CLARIFICATION

- a. The clarification was initially issued vide this Department Letter No 9838/SSD dated 06.05.2024 to provide clarity and uniform implementation based on the Law Department's detailed opinion dated 27.02.2024.
- b. The clarification was withdrawn vide this Department Letter No 12105/SSD, dtd. 13.06.2024, as confusion arose regarding its prospective/retrospective applicability, and simultaneously, the views of the Law Department were sought in this regard. The Law Department gave its considered views dtd. 25.07.2024 (**Annexure-J'**), regarding the prospective/retrospective applicability of the concept of own merit in promotion.
- c. Keeping in view the opinions of the Law Department dated 27.02.2024 & 25.07.2024 and the judgment passed by the Hon'ble High Court in W.P.(C) No. 12516 of 2020 (Lalit Kumar Nayak vs State of Odisha & Ors) dtd. 24.07.2024 (**Annexure-'K'**), **the Government in ST & SC Development, M & BCW Department** restored the contents and views of this Department Letter No.9838/SSD, dtd. 06.05.2024 vide this Department Letter No. 19032/SSD, dtd. 11.09.2024.

IV. ISSUANCE OF THE CLARIFICATION DURING THE MODEL CODE OF CONDUCT

The Model Code of Conduct prohibits the announcement of new financial grants, schemes, or projects. The clarification issued vide this Department Letter No 9838/SSD dated 06.05.2024 did not announce any new benefit, scheme, or financial concession but merely directed all departments to correctly implement the existing statutory law (the 2022 Amendment) and judgments of the Hon'ble Supreme Court of India.

It was an administrative instruction for the proper implementation of existing rules, which is a legitimate and ongoing function of the executive, even during the MCC period.



**Deputy Secy. to Govt.
ST&SC Dev. M&BCW Deptt.**

WELFARE DEPARTMENT

No. 21666-Empl (I)(A)-46/1997-W,
The 23rd July 1997

From

Shri M. M. Sabar,
Joint Director-cum-Deputy Secretary to Government

To

The District Welfare Officer, Mayurbhanj, Baripada

SUB :- Clarification regarding the participation of Reserved Categories Candidates against the Unreserved Vacancies.

Sir,

I am directed to invite reference to your letter No. 2122, dt. 24-6-97 on the above subject and to clarify that the reserved categories candidates can compete for the non-reserve posts and in the event of their success in the selection process they could be appointed to the said posts as a general category candidate. Their number is not to be added and taken into consideration for working out the percentages of reservation.

It is further clarified that the unreserved vacancies are to be filled up on the basis of select list prepared for the purpose.

Yours faithfully,

[ILLEGIBLE]

Joint Director-cum-Deputy Secretary to Government.

Memo No. 21667/W,

Dated 23-7-1997

Copy forwarded to the Inspector of Schools, Mayurbhanj, Baripada for information and necessary action.

[ILLEGIBLE]

Joint Director-cum-Deputy Secretary to Government.

Memo No. 21668/W,

Dated 23-7-1997

Copy forwarded to all D.W.Os. for information and necessary action..

[ILLEGIBLE]

Joint Director-cum-Deputy Secretary to Government.

Memo No. 21669/W,

Dated 23-7-1997

Copy forwarded to all Collectors for information and necessary action at their level.

[ILLEGIBLE]

Joint Director-cum-Deputy Secretary to Government.

Memo No. 21670/W,

Dated 23-7-1997

Copy forwarded to all Heads of Department for further necessary action.

[ILLEGIBLE]

Joint Director-cum-Deputy Secretary to Government.

Memo No. 21671/W,

Dated 23-7-1997

Copy forwarded to all Department of Government for information and necessary action.

[ILLEGIBLE]

Joint Director-cum-Deputy Secretary to Government.

THE ORISSA CIVIL SERVICES (CRITERIA FOR PROMOTION) RULES, 1992

GENERAL ADMINISTRATION DEPARTMENT

NOTIFICATION

The 24th July 1992

(Published in Orissa Gazette on 25-7-1992)

No. 29904-2R.-1-60/92-Gen. – In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Orissa is pleased to make the following rules to regulate the criteria for promotion to the State Civil Services and Posts, namely :-

Short Title and
commencement.

1. (1) These rules may be called the Orissa Civil Services (Criteria for Promotion) Rules, 1992.

(2) They shall come into force on the date of their publication in the Official Gazette and shall apply to all cases of promotion made to the State Civil Services and Posts including the cases pending on the date of such publication.

Definition

2. In these rules, unless the context otherwise requires:-

- (a) "Government" means the Government of Orissa.
- (b) "Recruitment Rules" means the rules framed under the proviso to Article 309 of the Constitution of India regulating promotions to different State Civil Services and Posts and includes executive orders and instructions issued by the competent authority in this regard from time to time; and
- (c) "Select List" means the list approved by the Government or the appointing authority, as the case may be, containing the names of officers considered suitable for promotion.

Criteria for
Promotion.

3. Notwithstanding anything contained in the Recruitment Rules :-

- (a) All promotions to the posts or grades of different Services/Civil posts under the State Government shall be made by selection;
- (b) Selection for such promotion shall be made on the basis of merit and suitability in all respects with due regard to seniority and the names of persons included in the Select list shall be arranged in order of seniority in the feeder service or grade :

Provided that any junior officer of exceptional merit and suitability may be assigned a place higher than his seniors and in such cases the assignment of higher position to the junior officer shall be limited to the same batch or year of allotment except where an officer of the earlier batch or year of allotment is found unsuitable for promotion:

Provided further that where promotion is made from different services or posts and no common seniority among such officers exists, their names in the Select List shall be arranged on the basis of their merit adjudged during selection.

¹[**EXPLANATION** – The expression "batch or year of allotment means the calendar year of the select list on the basis of which an officer is promoted to the next higher rank".]

²“(c) In order to judge the suitability of an officer for promotion, the Orissa Public Service Commission, the Departmental Promotion Committee, the Selection Committee or Selection Board, as the case may be, shall scrutinize preceding five available annual Confidential Character Rolls and other documents, if any, having a bearing on the performance and conduct of all eligible officers, unless for reasons to be recorded, it is considered necessary to refer to any earlier record to adjudge an officer's suitability:

Provided the available Confidential Character Rolls (C.C.Rs) taken into consideration for promotion as above shall include C.C.Rs covering at least a period of three years in preceding five years.”

³[Note I – The expression other documents means papers of whatsoever nature having bearing on the performance and conduct of eligible officers like C. B. I. or Vigilance reports, papers relating to departmental action and other confidential reports having nexus with an officer's performances which might have been prepared after giving an opportunity to an officer of being heard and not reflected in his C. C. R's. or service records.

WELFARE DEPARTMENT

No. 8764-Emp(I) A-10/98-W.

The 15th March 1999

To

All Departments of Governments/
All Heads of Departments/
All Collectors.

Sub :- Clarification regarding the participation of reserved categories candidates against the "Unreserved" vacancies.

The undersigned is directed to invite a reference to this Department Memo No. 21671, dt. 23-7-1997, No. 21670, dt. 23-7-1997, No. 21669, dt. 23-7-1997, clarifying the participation of reserved categories candidates against the "Unreserved vacancies" in appointments, in the event of their success in the process of selection. In spite of issue of above clarification, there is still doubts in the mind of some of the Appointing Authorities, as to the applicability of the clarification dt. 23-7-1997, in initial appointment only or both initial and promotional appointments.

2. In this connection two questions arises for consideration -

- (a) Whether the "Unreserved Vacancies" are reserved for a specified class of candidates.
- (b) Whether the process of Selection and issue of appointment, orders are made in initial appointment only.

3. Taking in to consideration of the aspect at Point-2 above, it is answered as follow:-

(i) The unreserved vacancies are not reserved for any general, S.C., S.T., O.B.C. or other specified class of candidates. This has to be filled up strictly on the basis of the "Select list" prepared by the Board of selection or the Departmental Promotion Committee, following the relevant recruitment rules.

(ii) The process of selection is done both in case of initial and promotional appointments and the order of appointments are being issued in both the cases i.e. in initial appointment and promotional appointment, following the select list prepared for the purpose.

4. With a view to over coming such doubts it is further clarified that the circular dt. 23-7-97 shall be made applicable in both the cases i. e. in initial appointment and promotional appointments.

5. It is requested that the clarification may please be brought to the notice of all appointing authorities working under their Administrative control for information and necessary guidance.

[ILLEGIBLE]

Director (SC/ST) and Ex-officio
Addl. Secretary to Government

Memo No. 8765/W,

Dated. 15-3-1999

Copy to O.P.S.C., Cuttack/Orissa Sub-Ordinate Staff Selection Board, Cuttack/Secretary to Governor/Registrar, Utkal, University, Vanivihar, Bhubaneswar/Registrar of Berhampur, University Bhanja Vihar/Registrar of Sambalpur University, Jyotivihar/Registrar of Orissa High Court, Cuttack/ Govt Advocate General, Cuttack and Registrar, O.U.A.T., Bhubaneswar for necessary action.

[ILLEGIBLE]

Special Officer-cum-Under-Secretary to Government

Memo No. 8766/W,

Dated. 15-3-1999

Copy to all Sectional Officers/all Departmental Officers for information and necessary action.

[ILLEGIBLE]

Special Officer-cum-Under Secretary to Government

Memo No. 8767/W,

Dated. 15-03-1999

Copy to all D.W.Os. /Director, THRCTC, Bhubaneswar/A.T.D.C./M.D., T.D.C./Managing Director, SC/ST, D.F.C.C./Poultry Officer/all Joint Director (Welfare)/all Circle Inspectors of Schools/all D.I. of School (Welfare)/all I.T.D.P./ all A.D.W.Os. for information and necessary action.

[ILLEGIBLE]

Special Officer-cum-Under-Secretary to Government

Government of Orissa
ST & SC Development DepartmentNo. EMP-1-A-07/07 34531 /SSD dt. 31/8/07

From

Sri B. Mishra, IAS,
Addl. Secretary to Government.

To

The District Magistrate and Collector, Angul.

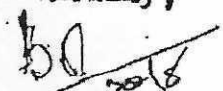
Sub: Clarification on implementation of post based reservation as per principle enunciated in R.K. Sabharwal Judgment of Hon'ble Supreme Court of India.

Sir,

With reference to your letter No. 1774/Estt. dt. 21.08.07 on the subject cited above I am directed to say that the circular No. 11124/SSD dt. 15.3.07 issued from this Deptt. should be followed in the DPC. In a cadre the percentage of representation of ST & SC employees at 22.5% and 16.25% respectively should be maintained. Besides as per judgment of R.K. Sabarwal, the reserve category candidates can compete for non-reserve posts and in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation.

Thus if any reserved candidate is found to be senior to general candidates, his case should be considered for appointment against general quota, if he is otherwise, suitable.

Yours faithfully,


Addl. Secretary to Government.Bks/

30/8

**GOVERNMENT OF ORISSA
ST & SC DEVELOPMENT DEPARTMENT**

No. 11894 /SSD., Dated, Bhubaneswar the, 24.3.08.
EMP-I-A-97/07

From

Shri Biswajit Mishra, IAS
Addl. Secretary to Govt.

To

The DWO,
Ganjam, Chhatrapur

Sub: Clarification on ORV Act & Rules.

Sir,

With reference to your L. No. 181 dtd. 06.02.08 on the above subject I am directed to clarify that the post reserved for ST in the cadre of Head Clerk should be 13 instead of 12. Besides, it may be clarified whether, reserved candidates, who are in the cadre have come to the cadre by merit or by reservation. Even if adequate representation of SC/ST candidates have been achieved in the cadre, the reserved category candidates can compete for post meant for U.R category candidates by virtue of their merit / seniority in the gradation list and in the event of their selection, that should not be counted towards the quota meant for reserved category candidates.

Yours faithfully,

B.R.
Addl. Secretary to Govt.

**GOVERNMENT OF ODISHA
ST & SC DEVELOPMENT DEPARTMENT**

No. 147 12 /SSD BHUBANESWAR, Dt. 29-08-2019.
Emp-J-A-05/2019
STSCD-RP-PG1-0001-2019

From

Shri Pabitra Mandal, IAS,
Additional Secretary to Government

To

The District Welfare Officer
Koraput

Sub:- Representation of Sri Haladhar Sethy, President, Odisha SC, ST Youth & Students Council, Bhubaneswar regarding promotion of suitable & Senior ST candidates against UR vacancy in the District.

Sir,

In inviting a reference to your letter No.1460 dt.13.03.2019 on the above mentioned subject, I am directed to say that a series of clarifications have been issued to different quarters regarding the procedure to be followed while giving promotion to the employees belonging to ST & SC categories. Some of the clarifications issued by this department at different point of time in this regard are given as below along with the contents for better appreciation.

(1). **Letter No. 8764 dt.15.03.1999 :-**

3(i) The unreserved vacancies are not reserved for any general, SC, ST, OBC or Other specified class of candidates. This has to be filled up strictly on the basis of the "select list" prepared by the Board of Selection or by the Departmental Promotion Committee following the relevant recruitment rules.

(ii) The process of selection is done both in case of initial and promotional appointments and the order of appointments are being issued in both the cases i.e. in initial appointment and promotional appointment, following the select list prepared for the purpose.

4. With a view to overcoming such doubt, it is further clarified that the Circular dt.23.07.1997 shall be made applicable in both the cases i.e. initial appointment and promotional appointment. The same is provided as follows:

PTO

"It is clarified that the reserved category candidates can compete for the non-reserved posts and in the event of their success in the selection process they could be appointed to the said post as a general category candidate. Their number is not to be added and taken into consideration for working out the percentage of reservation. It is further clarified that the unreserved vacancy are to be filled up on the basis of select list prepared for the purpose".

(2). Letter No.10457 dt. 09.03.2007 :-

5. If a member from reserved category gets selected in general category due to his merit, his selection will not be counted against the quota limit provided to his class.

(3). Letter No.39807 dt. 15.11.2008 :-

4. In case ST/ SC candidate is found suitable based on merit with due regard to seniority, he cannot be superseded by a general candidate.

(4). Letter No.6958 dt. 15.02.2007 :-

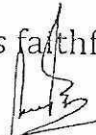
5. If a member from reserved category get selection in general category due to his merit, his selection will not be counted against the quota limit provided to his class.

(5). Letter No.34531 dt. 31.08.2007 :-

If any reserved candidate is found to be senior to general candidate, his case should be considered for appointment against general quota if he is other-wise suitable.

Hence, you are requested to follow the above mentioned instructions/clarifications issued from time to time strictly while giving promotion to the employees belonging to ST/SC category.

Yours faithfully,


28/08/2018
Addl. Secretary to Government

Noting 19

Sashank Sekhar Dash (Additional Secretary, General Administration and Public Grievance), 24-Jul-2023 11:12:10

Noting 20

Kali Ch. Hembram (Deputy Secretary, General Administration and Public Grievance), 26-Jul-2023 11:54:27

Noting 21

GA & PG DEPARTMENT

The A/D have endorsed the file to this Department seeking considered views on the prayer of Miss Minati Soren, AAO, FE&CC Deptt. 27770/FIN/2023 L no . 3691'Page1 regarding her promotion to the post of Audit officer.

The entire matter is regarding the promotion of reserved category candidate against the unreserved vacancy/post (UR). It is understood that the ST & SC Development Department have clarified in many occasions regarding participation of the reserve category candidates in UR posts in promotion and selection which are tagged here with for kind reference (Clarification of Welfare Department(SC & ST) Development Department regarding clarification of UR Category and how the senior reserve employees are eligible promotion against UR posts (30 Compilation of Circulars on ORV Act'Page1). Clarification SC & ST Development Department after post base roaster in terms of the judgement of M. Nagraj (31 Clarification of SCST Department after post base roaster'Page1), (2 Clarification of ST and SC Development Department'Page1).

However, the GA & PG Department Notification No. 28629/Gen., Dated 12.10.2022(27770/FIN/2023 L no . 3691'Page3) i.e. amendment of Criteria for Promotion Rule 1992 under proviso article 309 of Constitution of India have specified that ***"the Scheduled Caste or Scheduled Tribe candidates appointed on their own merit either by direct recruitment or by promotion (as per the concept of R.K. Sabharwal Judgment in the Hon'ble Apex Court of India i.e. Law of Land) and placed above the unreserved***

Date:14-Dec

u, Assistant

Section Officer on 14-Dec-2023 22:38:02

candidates in the merit list shall be considered and adjusted against the unreserved vacancies and such candidates are not to be counted within the percentage earmarked for reservation of their category".The Criteria for promotion Rule is the domain chapter of GA & PG Department.

As per Rules of Business, the said matter (**promotion against UR post by the reserve employees**) is also related to ST & SC Development Department, as such the A/D are advised to consult the ST & SC Development Department on the above matter with above observations for an unambiguous views as per the extant rules and law to avoid critical legal test.

Deputy Secretary to Govt.

Finance Department

(Orders obtained in General Administration and Public Grievance Department File No. GAD-SC-GCS-0249-2023)

Kali Ch. Hembram (Deputy Secretary,General Administration and Public Grievance),21-Nov-2023 15:13:18

Noting 22

Asha Jyoti Jena (Section Officer,General Administration and Public Grievance),21-Nov-2023 17:15:47

Noting 23

Vishal Kumar Dev (Principal Secretary,Finance),22-Nov-2023 19:20:17

Noting 24

Ashok Kumar Joshi (Officer on Special Duty,Finance),23-Nov-2023 11:09:04

Noting 25

Sarat Chandra Pati (Deputy Secretary, Finance),23-Nov-2023 11:18:10
Noting 26
Shesadeva Khatua (Under Secretary, Finance),23-Nov-2023 11:26:48
Noting 27
The proposal for consideration of promotion in case of Minati Soren from AAO to A.O was submitted to G.A & P.G Deptt. for views on considering her case for promotion either on the basis of her merit in the gradation list or as per the zone of consideration being a ST candidate. The endorsement to this effect may be seen at (<u>Notings: 16</u>) r/w (<u>Notings: 15</u> & <u>Notings: 8</u>). Now, the G.A & P.G Deptt. have advised to seek the views of ST & SC Dev. Deptt. in the matter. Therefore, it may be considered to endorse the proposal to ST & SC Dev., M & B.C.W Deptt. for their considered views in the matter. Submitted for kind orders.
Jayamati Nayak (Section Officer, Finance),02-Dec-2023 13:15:09
Noting 28
Notes above. As per advice of GA&PG Department have advised <u>Notings: 21</u> to consult in ST&SC Dev. Department for promotion of reserved category candidate against the unreserved vacancy/post (UR).The file may be endorsed to ST&SC Dev. Department for their considered views in the matter.
Shesadeva Khatua (Under Secretary, Finance),04-Dec-2023 14:44:21
Noting 29
The suggestion at Noting -27 read with 28 may be considered.
Sarat Chandra Pati (Deputy Secretary, Finance),04-Dec-2023 15:31:59
Noting 30

Date:14-Dec

Section Officer on 14-Dec-2023 22:38:02

J, Assistant

As proposed
Ashok Kumar Joshi (Officer on Special Duty, Finance),05-Dec-2023 11:20:00
Noting 31
Sarat Chandra Pati (Deputy Secretary, Finance),05-Dec-2023 12:18:14
Noting 32
Shesadeva Khatua (Under Secretary, Finance),05-Dec-2023 14:59:22
Noting 33
Jayamati Nayak (Section Officer, Finance),06-Dec-2023 11:17:49
Noting 34
As advised by GA & PG Department <u>Notings: 21</u> , the file may be considered for forwarding to ST&SC Dev. Department for their considered views.
Ashok Kumar Joshi (Officer on Special Duty, Finance),06-Dec-2023 11:34:48
Noting 35
As proposed.
Vishal Kumar Dev (Principal Secretary, Finance),09-Dec-2023 00:41:20
Noting 36
May like clarification on "own merit".Pl discuss
Roopa Roshan Sahoo (Commissioner cum Secretary, ST & SC Development,

Date:14-Dec-2023

Section Officer on 14-Dec-2023 22:38:02

Assistant

Minorities & Backward Classes Welfare),11-Dec-2023 16:27:27
Noting 37
Soojata Mishra (Additional Secretary,ST & SC Development, Minorities & Backward Classes Welfare),12-Dec-2023 12:34:00
Noting 38
Rajkishore Tudu (Assistant Section Officer,ST & SC Development, Minorities & Backward Classes Welfare),14-Dec-2023 00:07:33

NOTE SHEET

Spl. Secretary Law

LAW DEPARTMENT

The A/D has endorsed the file seeking views of this Department to clarify the present status of own merit in direct recruitment/promotion in light of Para-3, 4 of the judgment rendered by Hon'ble Supreme Court of India in R.K. Sabharwal & others Vrs. State of Punjab & others and the recent clarifications issued by DoPT after taking into account the latest judgment rendered by Hon'ble Supreme Court in the case of Jarnail Singh & others Vrs. Lachhmi Narain Gupta & others.

The current position of law as is as given as below:

In Indra Sawhney v. Union of India, Hon'ble Constitution Bench of Hon'ble Supreme Court held that "Reservation of appointments or posts under Article 16(4) is confined to initial appointment only and cannot extend to providing reservation in the matter of promotion", 1992 Supp (3) SCC 217.

Parliament through Constitution (Seventy -Seventh Amendment) Act, 1995, and Constitution (Eighty-First Amendment) Act, 2000 inserted Articles 16(4-A) (Reservation in matters of promotion with consequential seniority) and 16 (4-B) (Carry forward rule) respectively. The above-mentioned amendments were held constitutional by Hon'ble Apex Court in the case of M. Nagaraj v. Union of India, (2006) 8 SCC 212... In the case of Jarnail Singh Vrs. Lachhmi Narain Gupta decided vide Order dtd.26.09.2018 in SLP No.30621 of 2011, Hon'ble Apex Court again held that the judgment in Nagaraj Case does not need to be referred to a seven-judge bench.

27/2/2024

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NOTE SHEET

The five Judges Constitutional Bench of Hon'ble Supreme Court of India in the case of R.K.Sabharwal & others Vrs. State of Punjab & others have observed the followings:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. 1995 AIR 1371.

To the question " Are reserved category candidates free to contest for vacancies in general category", Hon'ble Supreme Court in the case of M.Nagaraj & Others vs Union Of India & Others observed that,

"In Indra Sawhney, Reddy, J. noted that reservation under Article 16(4) do not operate on communal ground. Therefore, if a member from reserved category gets selected in general category, his selection will not be counted against the quota limit provided to his class. Similarly, in R.K. Sabharwal the Supreme Court held that while general category candidates are not entitled to fill the reserved posts; reserved category candidates are entitled to compete for the general category posts. The fact that considerable number of members of backward class have been appointed/promoted against general seats in the State service may be a relevant factor for the State Government to review the question of continuing reservation for the said class." (2006) 8 SCC 212

In Akhil Bharatiya Soshit Karmachari Versus Union of India, Hon'ble Supreme Court have held that "That apart in a particular cadre after following the roster meant for reserved category

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candidate, there is absolutely no bar to fill up the vacancies in the general category even in favor of the reserved category candidate in a particular cadre after following the prescribed roster for the reserved category candidate, if the said reserved category candidate is entitled for the same. The same is true on the basis of his general seniority."AIR 1996, Supreme Court 3534.

In the case of Jarnail Singh vs Lachhmi Narain Gupta Hon'ble Apex Court held that :

"Two points came up for consideration before this Court in the said judgment, the first being that in case more than 14 per cent of the Scheduled Caste candidates are appointed/promoted in a cadre on their own merit/seniority, then the purpose of reservation having been achieved in the said cadre, the Government instructions providing reservations would become inoperative. The second point on which arguments were heard is that roster cannot operate once the posts earmarked for the SCs, STs and Backward Classes are filled. Any post falling vacant in a cadre, thereafter, is to be filled from the category - reserved or general - due to retirement etc. of whose member the post fell vacant. The first point raised by general category candidates was rejected by this Court by holding that reserved category candidates can compete for non-reserved posts and in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. This Court was of the opinion that Article 16(4) of the Constitution of India enables the State Government to make provision for reservation in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the services. The percentage of posts reserved for Backward Classes, as prescribed by the State has to be strictly followed and cannot be varied or changed simply because some members of the Backward Class have already been appointed/promoted against the general seats". SLP 30621 of 2011 Order dtd.26.09.2018.

27/9/2024

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Government of Odisha in GA & PG Department vide Gazette Notification dt.12.10.2022 amended the OCS (Criteria for Promotion) Rules, 1992 to include the following:

"3-A Notwithstanding anything contained in the relevant recruitment rules, where the promotion is to be considered as per the post-based reservation (by way of replacement theory), the separate zone of consideration shall be applicable.

Provided that the Scheduled Caste or Scheduled Tribe candidates appointed on their own merit either by direct recruitment or by promotion and placed above the unreserved candidates in the merit list shall be considered and adjusted against the unreserved vacancies and such candidates are not to be counted within the percentage earmarked for reservation of their category".

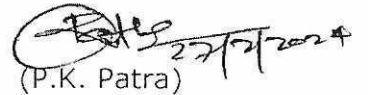
In view of the above discussion the followings are emerged:

- i) Reserved category employees who have availed reservation in appointment and falling in seniority/merit above the last unreserved candidate could be promoted against unreserved vacancy treating them as own merit.
- ii) Reserve category candidates appointed on their own merit can be considered for promotion and adjusted against the unreserved vacancies. Similarly, reserve category candidates who have availed reservation in appointment and falling in seniority above the last unreserved candidate could be promoted against unreserved vacancy.
- iii) Senior reserved category candidates (not appointed on their own merit) in the gradation list would be considered in zone of consideration for unreserved vacancies.

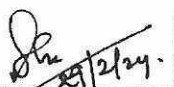
For the above reasons, if the reserved category candidate is on the top of the gradation list over a general category candidate, the general category candidate cannot be promoted to the next unreserved category vacancy by-passing the reserved category candidate.

The A/D is advised accordingly.

ST & SC DEV. DEPTT.


(P.K. Patra)

L.R-Cum-Spl. Secretary to Govt.
Law Department,
Odisha, Bhubaneswar


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^{2/1}XIX SCHEDULED TRIBES & SCHEDULED CASTES DEVELOPMENT DEPARTMENT

Branch	Subject
1	Scheduled Tribes Welfare
	Union Subjects
	1 Welfare of ex-Criminal Tribes. 2 Inclusion and exclusion in the Schedule list for tribes. 3 Prevention of atrocities so far as it relates to Scheduled Tribes.
	State Subjects
	1 Welfare of Scheduled Tribes- Execution of Special Schemes and Coordination of the works undertaken by other Departments of the Government in this direction 2 Submission of annual reports to the President regarding administration of Scheduled Areas 3 All matters relating to Tribes Advisory Council. 4 Application of laws to the Scheduled Areas. 5 Regulations for peace and good Governments of Scheduled Areas. 6 Problem of shifting cultivation. 7 Organisation and control of Tribal and Harijan Research-cum-Training Institute. 8 Central Grants under Article 275 (I) of the Constitution of India. 9 Sub-Plan for tribal regions and matters related thereto. 10 Matter relating to the Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and rules framed thereunder. 11 Matters relating to Tribal Development Co-operative Corporation. 12 Education of Scheduled Tribes. 13 Matters relating to Academy of Tribal Dialect and Culture. 14 Rehabilitation and resettlement of tribals. 15 All Plan, Non-plan, Central and Centrally Sponsored Schemes concerning tribals. 16 The entire field establishment and matters relating to Education under the erstwhile Harijan & Tribal Welfare Department except the Educational Institution for Scheduled Caste.
2	Scheduled Castes Welfare
	Union Subjects
	1 Removal of untouchability. 2 Inclusion and exclusion in the scheduled list for Scheduled Castes and Backward Classes 3 Prevention of atrocities so far as it relates to Scheduled Castes

1 Substituted vide Notification No. 21058, dated the 22nd September 1994.2 Substituted vide Notification No.5616-RB-2/99-Gen. dated 22nd February 1999.

^{2/1}XIX SCHEDULED TRIBES & SCHEDULED CASTES DEVELOPMENT DEPARTMENT

Branch	Subject
	State Subjects
	1 Welfare of Scheduled Castes including execution of Special Scheme and co-ordination of the works undertaken by other Departments of the Government in this direction.
	2 All matters relating to State Harijan Welfare Board.
	3 Matters relating to the Scheduled Castes and Scheduled Tribes Development Finance Co-operative Corporation.
	4 All Plan, Non-plan, Central and Centrally Sponsored Schemes concerning Scheduled Castes.
3	⁶ []
4	^{6/3} []
	State Subjects
	4 ^{6/4} []
	5 ^{6/5} []

3 Inserted Vide Notification No. 9428, dated the 9th April 1996.

4 Inserted Vide Notification No. 18204, dated the 16th July 1998.

5 Inserted Vide Notification No. 25057, dated the 3rd September 1998.

6 Deleted Vide Notification No. 10444-RB-4/99-Gen, dated the 13th April 1999.

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2890 CUTTACK, WEDNESDAY, OCTOBER 12, 2022 / ASWINA 20, 1944

GENERAL ADMINISTRATION & PUBLIC GRIEVANCE DEPARTMENT

NOTIFICATION

The 12th October, 2022

No.28629-GAD-SC-RULES-0001/2020/Gen.— In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Odisha is pleased to make the following rules further to amend the Odisha Civil Services (Criteria for promotion) Rules, 1992, namely:—

1. Short title and commencement.— (1) These rules may be called the Odisha Civil Services (Criteria for Promotion) Amendment Rules, 2022.

(2) They shall come into force on the date of their publication in the *Odisha Gazette*.

2. In the Odisha Civil Services (Criteria for Promotion) Rules, 1992, after rule 3, the following rule shall be inserted, namely:—

“3-A Notwithstanding anything contained in the relevant recruitment rules, where the promotion is to be considered as per the post based reservation (by way of replacement theory), the separate zone of consideration shall be applicable:

Provided that the Scheduled Caste or Scheduled Tribe candidates appointed on their own merit either by direct recruitment or by promotion and placed above the unreserved candidates in the merit list shall be considered and adjusted against the unreserved vacancies and such candidates are not to be counted within the percentage earmarked for reservation of their category.”

By Order of the Governor
SURENDRA KUMAR
Principal Secretary to Government

Government of Odisha
General Administration & Public Grievance Department

ANNEXURE - 'D'

No. 10094 /Gen., Bhubaneswar,

Dated, the 10th April, 2023

GAD-SC-GCS-0064-2023

To

The Special Secretary to Govt.,
Water Resources Department.

Sub: Clarification on "zone of consideration' & criteria for promotion " for compliance of court orders passed in favour of Assistant Engineers (Civil) belonging to Scheduled Caste Category of this Department regarding their promotion to the rank of Assistant Executive Engineer (Civil) against unreserved vacancy on merit-cum-seniority basis.

Sir,

In inviting reference to your letter No. 3821/WR, dated 13.02.2023 on the subject cited above, I am directed to clarify the following points:-

Sl. No.	Question	Clarification
1	A detailed description on " post-based reservation (by way of replacement theory)" and how it works .	The concept of post based reservation and replacement theory has been derived from R. K. Savarwal Case and subsequently re-affirmed by the Hon'ble Supreme Court in M.Nagaraj Case. The post based reservation implies that the total Cadre strength shall be taken as one unit and shall be filled up by specified categories on the basis of the posts earmarked for each category. On the initial stage for conversion from vacancy based roster to post based reservation , the men in position in each category has to be deducted from the post earmarked for the said category for the purpose of arriving the reservation breakup for recruitment . As and when the representation of each category against the posts earmarked for them is achieved then and there after the replacement theory shall come into operation. That means at that time, when the post/ s of a particular category shall fall vacant , the said vacancy shall be filled up by that category person only. It is reiterated that UR is not a category in

	itself and it is open to all the so-called reserve categories. Even an SC/ST/OBC candidate can be considered under the unreserved post on his/her own merit/seniority. It is prominent to mention here that the direction of Hon'ble Apex Court in the said cases have not objected the merit and seniority of an employee irrespective of categories. Rather they have opined that the posts in reserved category roster are to be filled up from amongst the members of reserve categories and the candidate belonging to the General category are not entitled to be considered for such reserved posts. However, reserve category candidates can compete against Un-reserved posts on merit and in the event of their appointment /promotion to the said posts, this number cannot be added and taken into consideration for working out of the percentage of reservation. The same have been clarified in Rule-3(A) of Promotion for Criteria Rule, 1992 that the Scheduled Caste or Scheduled Tribe candidates appointed on their own merit either by direct recruitment or by promotion and placed above the unreserved candidates in the merit list shall be considered and adjusted against the unreserved vacancies and such candidates are not be counted within the percentage earmarked for reservation of that category".
2	A detailed description on "separate zone of consideration" and whether separate zones of consideration for employees belonging to SC & ST category shall be prepared or a common zone of consideration shall be prepared taking into account all the employees belonging to General Caste, Scheduled Caste & Scheduled Tribe categories available in a grade. Where promotion is to be made on the basis of selection. There shall be a separate zone of consideration for Scheduled Castes and Scheduled Tribes candidates in respect of promotions to Class III(C) Posts and within Class III (C) posts. There shall be a common zone of consideration in respect of promotion other than those specified in clause (a) i.e. within Class II (B) posts, from Class II(B) posts, to Class I(A) posts, and from posts in the lowest rung to class I(A) in terms of Rule-11 of ORV Act, 1975.

		If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1) in their (SC) opinion i.e. expressed by the Apex court in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, Ajay kumar Shukla & Others(1 Shukla Case'Page40). Further stated that after rule-3 of Criteria for promotion 1992, 3A is an addition. In this respect, the considered views of Law Department has been received as at (NIL Noting 9 10'Page1) which is reproduced below:
3	A detailed description on "own merit by direct recruitment and own merit by promotion" and how to determine the merit between two employees: - i. When they belong to same batch in same grade i.e., one employee belonging to SC/ST category appointed against UR vacancy and placed above another employee belonging to General Caste category appointed against UR vacancy. ii. When they belong to two different batches in same grade i.e., one employee belonging to SC/ST category appointed against SC/ST vacancy from earlier batch and placed above another employee belonging to General Caste category appointed against UR vacancy from later batch.	i) The reserved category officers who have availed reservation in appointment and falling in seniority/merit above the last unreserved candidate could be promoted against unreserved vacancy treating them as 'own merit'. ii) Scheduled Caste/ Scheduled Tribe candidates appointed on their own merit can be considered for promotion. and adjusted against the unreserved vacancies. Similarly, SC/ST candidates who have availed reservation in appointment and falling in seniority/merit above the last unreserved candidate could be promoted against unreserved vacancy. iii) Senior reserved category candidates (not appointed on their own merit) in the gradation list would be considered in zone of consideration for unreserved vacancies. It is mentioned here that where junior vertical reservation candidates like SEBC, Ex-Service men & General R.A. appointees(who are Junior in feeder Cadre to SC & ST candidates) avail UR posts in promotion. Now it is prudent enough to say the senior/merit SC & ST

candidates can avail the UR post in promotion because UR is not a category in itself and it is open to all the so-called reserve categories, even an SC/ST/OBC candidate can be considered under the unreserved post on his/her own merit/seniority.

It is well articulated in Criteria for Promotion Rule, 1992. that (a) All promotions to the posts or grades of different Services/Civil posts under the State Government shall be made by selection;

(b) Selection for such promotion shall be made on the basis of merit and suitability in all respects with due regard to seniority and the names of persons included in the Select list shall be arranged in order of seniority in the feeder service or grade : Provided that any junior officer of exceptional merit and suitability may be assigned a place higher than his seniors and in such cases the assignment of higher position to the junior officer shall be limited to the same batch or year of allotment except where an officer of the earlier batch or year of allotment is found unsuitable for promotion.

Merit List

A merit list is a list of candidates who have been assessed and ranked by relative suitability(basing on marked secured in the examination, interview, skill test and other aspects as deemed proper in a recruitment process) to fill the vacancy. Candidates can only be selected to fill a vacancy in the order they are ranked on the merit list in that particular year of recruitment. Seniority is a part of merit is well settled by the five Judges constitutional Bench of Hon'ble Apex Court in the case of Ajit Singh & Ors .

Select List

Select List means the list of candidates prepared in the order of their position in which candidates are selected.

Definitions of merit list, gradation list and select list and which list is to be opted while considering promotion of employees from a lower grade to the higher grade and the grounds thereof.

		Gradation List Gradation list is required to be finally published each year before D P C and the gradation list should be prepared on the basis of seniority from feeder grade. Gradation list is mandate to be opted while considering promotion of employees from a lower grade to the higher grade.
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Yours faithfully



Additional Secretary to Govt.

NOTE SHEET

LAW

LAW DEPARTMENT

The A/D have resubmitted the file to this Department soliciting views on the clarification sought for by the Finance Department in the matter of one Ms. Minati Soren, Asst. Audit Officer, F.E. & C.C. Department by putting forth a specific poser as to whether the earlier view of this Department dtd.27.02.2024 (dealt in this Department file No. Legal Cell file No. 56/2024) is to be followed retrospectively or prospectively.

The Finance Department has sought clarification in a case where Ms. Minati Soren, AAO, F.E. & C.C. Department was not considered for promotion as she belonged to the scheduled tribe category but the unreserved candidates who were 3 years junior to her (1999 batch) were promoted against UR vacancies on the basis of "post based roster" principle as per earlier standing instructions issued by the A/D vide letter No.11124 dtd.15.03.2007.

Be it stated here that on an earlier occasion, the A/D had endorsed the file to this Department for views regarding the present status of own merit in direct recruitment/promotion in the light of Para 3 & 4 of the judgment rendered by the Hon'ble Supreme Court in the matter of R.K. Sabharwal and others Vrs State of Punjab and others AIR 1995 SC 1371 and so also in the matter of Jarnail Singh & Ors Vrs Lachhmi Narain Gupta & others decided on 26.9.2018 in SLP(C) No.30621/2011. On that occasion, this Department (dealt in legal cell file No. 56/2024) submitted its elaborate view regarding the present status of own merit in direct recruitment/promotion. Now again, the A/D have endorsed the file to

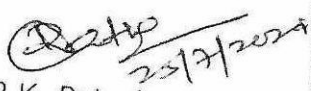
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this Department by posing a specific query as to whether the said view given by this Department is to be followed prospectively or retrospectively. It is a matter of concern that on numerous occasions, similar type of questions are repeatedly being asked to this Department even though on various occasions, this Department has clarified the position of law in this regard in no uncertain terms. The law governing the field have been introduced vide Article 16 (4-A)(reservation in matters of promotion with consequential seniority) and Article 16(4-B)(carry forward rule) in the Constitution of India vide the Constitution (77th Amendment) Act, 1995 and the Constitution (81st Amendment) Act, 2000 respectively. The said amendments holds the field since then, the constitutional validity whereof have been upheld by the Hon'ble Supreme Court in the matter of M. Nagaraj vrs. Union of India (2006) 8 SCC 212. In view of such matter, the law governing the field in respect of the status of own merit in direct recruitment/promotion is there to be observed since then.

Ergo, when it goes without saying that the law governing the field is in force since then, there is no question of only prospective applicability of the view given by this Department with effect from 27.02.2024 wherein the proposition of law has only been replicated.

The A/D is accordingly apprised.

ST & SC DEV. DEPARTMENT


(P.K. Patra)
L.R.-Cum-Spl. Secretary to Govt.
Law Department,
Odisha, Bhubaneswar

pl. peruse and do
the needful.
RVS



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12516 of 2020

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Lalit Kumar Nayak

....

Petitioner(s)

-versus-

State of Odisha and Others

....

Opposite Party (s)

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s)

:

*Mr. Amiya Kumar Chhatoi, Adv.**For Opposite Party (s)*

:

Mr. Dhananjaya Mund, AGA

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-03.07.2024DATE OF JUDGMENT:-24.07.2024Dr. S.K. Panigrahi, J.

1. In this Writ Petition, the Petitioner seeks a Writ of Mandamus from this Court to quash the promotion of Opposite Parties Nos.3 and 4 and declare the promotion of junior general candidates over senior reserved candidates as unconstitutional and illegal.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:



- (i) The petitioner, belonging to the Scheduled Tribe (ST) category, has been working as an Amin since 2010. In contrast, opposite Parties No. 3 and 4, who belong to the general category, were appointed as Amins in 2012.
- (ii) The opposite party no. 2 vide his office letter dated 06.09.2018 circulated draft gradation list of Amins. In the said list, the petitioner was placed at serial no. 7, while opposite parties No. 3 and 4 were placed at serial Nos. 20 and 21, respectively.
- (iii) The Odisha District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 (ODRS Rules, 1983) govern the service conditions and promotions for the petitioner and opposite parties Nos. 3 and 4. Rule 11 prescribes that promotions to Revenue Inspector are based on merit, suitability, and seniority. Eligible candidates are Amins and ARIs with at least five years of service by January 1st of the promotion year and who have passed required exams.
- (iv) The District Office sought clarification from the government on whether ST and SC category employees could be considered for promotion in the UR category vide a letter dated 16.08.2018.
- (v) Following that, the Revenue and Disaster Management Department, Odisha, clarified on 11.01.2019 that the state follows a post-based reservation policy. As per this policy, specific slots are earmarked for different categories, and vacancies for certain categories may remain unfilled if suitable candidates are unavailable. The government, further clarified that since there was an excess number of reserved category



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candidates, their promotion against UR category posts could not be considered.

- (vi) Concurrently, two general category of Amins, one Rushinath Mahanta and one Sushanta Kumar Dwibedi, who were lower in seniority to the petitioner, were promoted to Revenue Inspectors on 19.01.2019. This led to petitioner and other senior reserved candidates filing O.A. 363/2019 with OAT, Bhubaneswar, which is currently sub-judice.
- (vii) Another issue arose when seven Job Contract employees, initially adjusted in regular Group-D posts in 2009 and later absorbed as Amins in 2017/18, were placed above the petitioner in the gradation list. This led to the petitioner and another Amin, Rabindra Naik filing W.P. (c) No. 18244/2019, which is also sub-judice.
- (viii) Subsequently, opposite parties Nos. 3 and 4 were also promoted to the post of Revenue Inspector on 11.12.2019 against unreserved (UR) vacancies.
- (ix) Aggrieved by the promotions of opposite parties Nos.3 and 4, petitioner approached this Court, requesting to quash the promotion order dated 11.12.2019 for opposite parties No.3 and 4, directing the State opposite party no. 2 to consider his promotion to the post of Revenue Inspector with all consequential benefits. He has also requested the Court to direct the concerned Authorities to convene a review Departmental Promotion Committee (DPC) within a stipulated period to address the petitioner's promotion case.



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II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

- (i) The petitioner submitted that the promotion of opposite parties nos. 3 and 4 to the posts of RI against UR vacancies, despite the petitioner being senior in the gradation list, violates Articles 14 and 16 of the Constitution of India.
- (ii) He further submitted that the petitioner has completed 5 years of service in the post of Amin and has passed the departmental examination as required by the ODRS rules, making him eligible for promotion to the post of Revenue Inspector.
- (iii) He further submitted that a reserved candidate can compete for unreserved posts based on seniority and suitability, as per the settled position of law. Accordingly, the petitioner should not be deprived of promotion to an unreserved post solely based on his reserved category status.
- (iv) The petitioner cited the instruction dated 28.05.2020 of the Home Department, Govt. of Odisha, stating that it supports the petitioner's claim that seniority, irrespective of category, should be considered for unreserved posts.
- (v) The petitioner contended that there have been several clarifications from the ST and SC Development Department (dated 31.08.2007, 15.11.2008, 29.08.2019, 21.06.2022 and 30.06.2022) indicating that if a reserved candidate is senior and suitable, they should be considered for promotion against general quota vacancies.



- (vi) He further contended that the OAT, Bhubaneswar, in O.A. 1311 of 2013, held that reserved candidates should not be deprived of promotion against unreserved posts if found suitable.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:
- (i) It is submitted that the petitioner's promotion was not considered due to the post based reservation policy, which earmarks specific slots for different categories and does not allow for the consideration of excess reserved category candidates for UR posts.
 - (ii) It is further submitted that the government's clarification on 11.01.2019 indicated that the excess number of reserved category candidates precluded their promotion against UR category posts, irrespective of their seniority in the gradation list.
 - (iii) It is contended that the clarifications issued by the ST and SC Development Department in 21.06.2022 and 30.06.2022 which indicate that SC/ST candidates within the zone of consideration should be treated as general category candidates for promotion to unreserved posts. However, these clarifications were not issued to the opposite party no. 2 directly.
 - (iv) It is further contended that the promotions of opposite parties nos. 3 and 4 were in compliance with the post-based reservation policy as clarified by the government. The DOC did not violate any rules or misinterpret the law in not considering the petitioner's promotion.





IV. COURT'S REASONING AND ANALYSIS:

5. Heard the Learned Counsels for both parties and meticulously examined the documents submitted before this Court. As per Rule 11 of the Orissa District Revenue Services (Method of Recruitment and Conditions of Service) Rules, 1983, promotions to Revenue Inspectors are based on merit, suitability, and seniority among Amins and Assistant Revenue Inspectors. They need to have at least five years of service and have passed required departmental exams/tests.
6. Furthermore, the Orissa Civil Services (Criteria For Promotion) Rules, 1992 state that promotions are based on merit, suitability, and seniority, with the select list arranged by seniority. The 2022 amendment clarifies that SC/ST candidates promoted or recruited on their merit and placed above unreserved candidates will fill unreserved vacancies and not be counted towards the reserved quota.
7. Now, let us peruse the relevant judicial precedents that elucidate this issue. In the case of *Indra Sawhney v. Union of India*¹ the Apex Court, while referencing the intent of Article 16(4) of the Constitution opined that "In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."



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8. In the case of *R.K. Sabharwal v. State of Punjab*², a Constitution Bench of the Supreme Court addressed the issue of appointments, promotions, and the use of roster points in relation to reservations. It held in para 5 as under:
- “When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand, the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State.”
9. Similarly, in the case of *Union of India v. Virpal Singh Chauhan*³, the Apex Court has held that when calculating the number of posts reserved for Scheduled Castes and Scheduled Tribes, candidates from these categories who are selected or promoted based on merit (rather than reservation rules) should not be counted as reserved category candidates.
10. This jurisprudential position has been emphatically reinforced by the Allahabad High Court in the case of *UP Power Corporation Limited v.*

(1995) 2 SCC 745
3. (1995) 4 SCC 684





*Nitin Kumar*⁴ where it held that "...where a candidate is meritorious enough to be placed within the zone of selected candidates independent of any claim of reservation and purely on the basis of the merit of the candidate, the candidate ought not to be relegated to a seat against the reserved category. The simple reason for this principle is that reservation is a process by which a certain number of posts or seats is carved out for stipulated categories such as OBC, Scheduled Castes and Scheduled Tribes. Unreserved seats do not constitute a reservation for candidates belonging to categories other than the reserved categories. An unreserved post or seat is one in which every individual irrespective of the category to which the person belongs can compete in open merit.."

11. Likewise, in the case of *Sanjeev Kumar Singh v. State of U.P.*⁵, the Allahabad High Court, while deliberating on the issue of 'open competition with general candidates,' articulated its position in paragraph 53 as follows:

"53..In a selection which can be termed as open competition with general category candidates, the candidature of the reserved category candidates as well as the general category candidates is to be tested on the same merit and if in that case a reserved category candidate succeeds in the open competition with general category candidates, he would be placed amongst the general category candidates.."

12. Thus, no law mandates reservation for general category candidates in public employment. Consequently, the issue of reserved category candidates occupying or being selected for the general seats does not



15) All LJ 162
17 (2) ADJ 150 (DB)

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arise. Since the concept of reservation does not apply to general category candidates, the notion of them having "fixed seats" is inherently flawed.

13. Furthermore, numerous judgments have consistently affirmed that if an individual meets the prescribed merit criteria, there is no justification for preventing them from being recruited or promoted to unreserved positions. The relaxations provided are solely to ensure that reserved category candidates have a level playing field, which aligns with the intent of Article 16(4) of the Indian Constitution.
14. Upon scrutinizing the aforementioned facts in conjunction with the judicial precedents, it can be conclusively inferred that the clarification issued by the Revenue and Disaster Management Department, Government of Odisha, on 11.01.2019 is devoid of legal soundness.
15. The denial of promotion on the premise that there exists an "excess number of reserved category candidates" represents a profoundly erroneous interpretation of the prevailing laws and inflicts egregious injustice upon meritorious candidates from the reserved category.
16. In the present case, the Petitioner, having completed five years of service as an Amin and successfully passed the requisite departmental examination in accordance with ODRS Rules, is unequivocally eligible to be considered for promotion to the post of Revenue Inspector. Denying him promotion solely on the basis of his reserved category status constitutes a violation of his right to equality enshrined under Article 14 read with Article 16 of the of the Constitution India.



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17. Accordingly, the Writ Petition is allowed and the concerned Authority is hereby directed to re-evaluate their promotion policies and promulgate appropriate rules to ensure the advancement of meritorious candidates, irrespective of their reservation status within one month.
18. Accordingly, this Writ Petition is allowed.

18/7-24 34 1221222222, J

Orissa High Court, Cuttack,
Dated the 24th July, 2024/





IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12516 of 2020

Lalit Kumar Nayak

....

Petitioner(s)

Mr. Amiya Kumar Chhatoi, Adv.

-versus-

State of Odisha and Others.

....

Opp. Party(s)

Mr. Dhananjaya Mund, AGA

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

ORDER

24.07.2024

11.

1. This matter is taken up through hybrid arrangement.
2. Learned counsel for the parties are present. Judgment prepared in separate sheets is delivered and pronounced in open Court in the presence of learned counsel for the parties and the order is passed accordingly as follows:
3. Accordingly, the Writ Petition is allowed and the concerned Authority is hereby directed to re-evaluate their promotion policies and promulgate appropriate rules to ensure the advancement of meritorious candidates, irrespective of their reservation status within one month.
4. Accordingly, this Writ Petition is allowed.

Ed/- Dr. S.K. Panigrahi

B. Shankar



*Can by
M.A. to
Tb 18/24*

Date of Application :- 16
 Date of Notification :- 16
 Date of Supply :- 16
 Date of Ready :- 16
 Date of Delivery :- 16

C.A. No- 69220/2024

MEMO OF COSTS

	Rs.	P.
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Searching Fee.....		
Folios / No. Pages... 12 x 2	24	00
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 HIGH COURT OF ORISSA
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 Bharatiya Sakshya Adhiniam, 2002