

No. 10-01/2017-SCT (Vol.IV). Pt.II

Government of India
Ministry of Communication
Department of Telecommunications
(SCT Section)

20, Ashoka Road, Sanchar Bhawan
New Delhi, 13th October, 2020.

OFFICE MEMORANDUM

Subject: Clarification on issues relating to reservation in promotion for Scheduled Caste/Scheduled Tribes as per the direction of Parliamentary Committee on the Welfare of Scheduled Castes/Scheduled Tribes- regarding

The undersigned is directed to refer to Lok Sabha Secretariat's Office Memorandum No. 8(211)/SCTC/2017 dated 27.08.2019 (copy enclosed) vide which it was conveyed that Parliamentary Committee on the welfare of SCs & STs has desired that Ministry of Telecom and BSNL may refer the said legal dispute, with all factual details up to date, to Ministry of Law & Justice and Department of Personnel and Training as well as the Attorney General of India to seek their opinion, on the specific points.

2. Accordingly, Department of Personnel and Training and D/o Legal Affairs were requested for their valuable legal opinion/advice on the specific clarification sought by the Parliamentary Committee on welfare of SCs and STs on utmost priority.

3. DoPT vide their ID Note dated 28.04.2020 has furnished the reply to the points raised by Parliamentary Committee on welfare of SCs and STs which has been forwarded through E-mail on 11.05.2020 vide this Department's O.M dated 11.05.2020 (copy enclosed).

4. Now, D/o Legal Affairs after obtaining the opinion of Ld. Attorney General of India in the matter has communicated following point wise replies to the queries relating to reservation in promotion, as per directions of Parliamentary Committee on Welfare of the SCs & STs:

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S No	Queries raised by Parliamentary Committee on Welfare of SCs & STs	Opinion of the Ld. Attorney General for India
i.	Whether on any matter which has already been decided by the Supreme Court-interim or finally, can be stayed by any of the subordinate courts including CAT, and if so, under what provision of law/Rule?	In regard to judgments and orders of the Supreme Court, interim or final, it would be the duty of the Central Administrative Tribunal ["CAT"] to act in accordance with the judgment and / or orders of the Supreme Court and not contrary to it. If any order passed by the Government or any other authority is contrary to the judgment/ order of the Supreme Court on that aspect, it would be open to the CAT, and it would also be its duty to stay the order of the Government or authority which violates the judgment/ order of the Supreme Court.
ii.	Whether the subordinate Courts including CAT can issue contempt order in a matter that has been dealt with in a Supreme Court judgement? If so, under which provision of law/Rule?	So far as the CAT is concerned, it has been conferred the powers of contempt by the Administrative Tribunals Act, 1985. It cannot initiate contempt proceedings if any person or authority has violated a judgment of the Supreme Court. Such violation would be a civil contempt and the Supreme Court alone can initiate civil contempt proceedings for violation of its own orders. If however, for implementation of judgment/ order of the Supreme Court, the CAT itself has passed any directions or orders and those directions or orders are violated, the CAT would be competent to initiate civil contempt proceedings.
iii.	What is the final decision of the Supreme Court in regard to catch up rule and complying with the three conditions as stipulated in N. Nagraj's case in respect of reservation act already passed by the State Government of Karnataka which was upheld by the Supreme Court?	a) The Supreme Court of India, in the case of Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684, para 24 and 25) as upheld by a constitution Bench in Ajit Singh (II) v. State of Punjab [(1999) 7 SCC 209, para 77] held that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post / grade against a reserved vacancy earlier than his senior in the general category / the OBC candidate who is promoted later to the said immediate higher post/ grade, the general category / OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate

higher post/ grade.

b) The Constitution (Eighty – Fifth Amendment) Act, 2001 amended Clause (4A) of Article 16 enabling the State to make a provision for reservation in matters of promotion with consequential seniority. The Supreme Court (Constitution Bench) in **M. Nagaraj and Ors. v. Union of India** [(2006) 8 SCC 212 upheld the validity of the 85th Amendment and held that in case the State desires to exercise the discretion of providing reservation and making provisions for the same, the State has to collect quantifiable data showing backwardness of the class, inadequacy of representation and also copy with Article 335 of the Constitution of India.

c) Thereafter, in 2018 another Constitution Bench of the Supreme Court in **Jarnail Singh v. Lachhmi Narain Gupta** [(2018)] 10 SCC 396], while considering whether the decision in M. Nagaraj (supra) required consideration, held that collection of data to show backwardness was contrary to the decision of 9 judges in **Indra Sawhney v. Union of India** [1992 Supp (3) SCC 217]. It was held however that quantifiable data had to be collected by the State to show inadequacy of representation, which could be tested by the Courts, and the State had to keep in mind the overall efficiency of State administration under Article 335.

d) The decisions of the Constitution Bench in M. Nagaraj (supra) and Jarnail Singh (supra) were applied by a Division Bench of the Supreme Court in **B.K. Pavitra and Ors. v. Union of India and Ors. (B.K. Pavitra-II)** [(2019) 16 scc 129] to test the constitutionality of the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2018. The Supreme Court observed that the State of Karnataka had duly carried out the exercise of collating and analyzing data on the inadequacy of representation and had considered the overall efficiency of administration and therefore the Court upheld the validity of the 2018 Act.

<p>iv.</p>	<p>The Order dated 15.04.2019 of the Supreme Court about maintaining "status-quo as it exists today" apparently means that the earlier decision of the Supreme Court as had been conveyed by DoPT to all Ministries/ Departments vide its OM dated 27.05.2018 should be followed without any deviation.</p>	<p>a) The Union of India has filed IA No. 122323/2019 in SLP (C) No.30621/2011 seeking a clarification of the 'status quo' Order dated 15.04.2019 and sought for '<i>a clarification that the Union of India may continue to make promotions in posts and services in terms of the directions/ orders dated 17.05.2018 and 05.06.2018 passed by this Hon'ble court subject to the final outcome of the case (s)</i>'.</p> <p>b) The Union of India has subsequently filed another application, being IA No. 53895/2020 in SLP (C) No. 5724-25/2016 for clarification of the Orders dated 17.05.2018, 05.06.2018 and 15.04.2019 passed by the Supreme Court, to the effect that the said Orders, when read harmoniously, would permit the Union of India to make ad hoc promotions to the large number of vacant posts subject to the final outcome of the present case and the connected cases.</p> <p>c) It may be noted that the Supreme Court did not pass any orders in the IA's filed by the Union of India and has only directed vide Order dated 22.07.2020 passed in IA No. 53895/2020 that the IA may be considered at the time of final disposal of the main matter, and further directed that the matter, i.e. the <i>Jarnail Singh</i> batch of cases [SLP (C) No. 30621/2011 and other connected matters], may be listed after four weeks. In my (Ld. AG for India) view, therefore, it may not be appropriate to address this query at this stage. The further course of action, if any, may be decided after the decision of the Supreme Court in the <i>Jarnail Singh</i> batch of cases.</p>
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5. This issues with the approval of Competent Authority.

Encl: As above.

Kanaso T-4

(Kanaso T.K)

Under Secretary to the Govt. of India

Tel. 23711239

kanaso.tk@gov.in

To:

Lok Sabha Secretariat,
Parliamentary Committee on the Welfare of SCs and STs
(Attention: Shri V.K. Shailon, Deputy Secretary)
509, Block 'B', Parliament House Annexe Building,
New Delhi-110001.

Copy to:

- ✓ (1) CMD, BSNL, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath,
New Delhi-110001.
- (2) GM(SCT) & Liaison Officer, BSNL.

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Annexure-I 336

LOK SABHA SECRETARIAT

**(PARLIAMENTARY COMMITTEE
ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES)**

Telegram: LOKSABHA, NEW DELHI
Fax: 011-23035359/23010756
Email: comscst@sansad.nic.in

509, BLOCK 'B',
PARLIAMENT HOUSE ANNEXE
EXTENSION BUILDING
NEW DELHI-110001.

Office of Secretary
Dy. No. 418282
28 AUG 2019
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No. 8(211)/SCTC/2017

Dated: 27th August, 2019

OFFICE MEMORANDUM

Subject: Follow-up meeting with the representatives of the Ministry of Communications (Department of Telecommunications) and Bharat Sanchar Nigam Limited (BSNL) on various issues pertaining to representations of SC & ST employees in BSNL held on 22.08.2019.

In continuation of this Secretariat Office Memorandums of even number, dated the 16th August, 2019, 19th August, 2019 & 21st August, 2019 on the subject mentioned above, the undersigned is directed to forward herewith a copy of list of points (Annexure) arising out of the evidence of the representatives of the Ministry of Communications (Department of Telecommunications) and Bharat Sanchar Nigam Limited (BSNL) held on 22nd August, 2019.

2. The Ministry of Communications (Department of Telecommunications), are therefore, requested to furnish 10 copies in English & 5 copies in Hindi and a soft copy on E-mail at comscst@sansad.nic.in of the consolidated replies to this Secretariat by 6th September, 2019 positively for the information of the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes.

3. The receipt of this communication may kindly be acknowledged.

Encl.: As Above.

V. K. Shailon
(V.K. SHAILON)
DEPUTY SECRETARY
TEL: 2303 4494

To
Shri Anshu Prakash
28/8/19

The Ministry of Communications (Department of Telecommunications),
(Shri Anshu Prakash - Secretary & Chairman DCC),
Government of India,
Sanchar Bhawan, Rafi Marg,
New Delhi - 110001.

No. 8(211)/SCTC/2017

Dated: 27th August, 2019

Copy forwarded for information and necessary action to:-

Shri Parveen Kumar Purvor,
Chairman & Managing Director,
Bharat Sanchar Nigam Limited (BSNL),
Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath, New Delhi-110001

8/8/19

V. K. Shailon

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List of Points arising out of Oral Evidence held on 22 August 2019 with DoT & BSNL

1. (i) Please furnish a brief note about the updated status of promotion from AO to CAO in BSNL including roaster based and on-merit cases. Also, give breakup of total employees promoted including both reserved and unreserved as well as SC,ST employees who have been in the zone of promotion and not promoted along with the reasons therefor.

(ii) Please furnish a note about the total promotions made by the BSNL and how many SC/ST employees were promoted under the roaster and 'on merit'. Also, specifically state about the status of 124 posts of SCs/STs 'on merit promotion'. During the sitting of the Committee, it has been informed that only 33 SC/ST officers are left out for promotion on merit. Please specify the exact position in this regard.
2. From the reply of BSNL it is seen that BSNL did not promote the officers who are legitimately entitled to get promotion from AO to CAO in spite of order of the Supreme Court in May 2018 and DoPT O.M. issued in June 2018 to this effect. What are the steps taken to ensure accountability of the officials responsible for not executing legitimate orders in this regard.
3. The Ministry of Telecom and BSNL may refer the above legal dispute, with all factual details up to date, to the Ministry of Law and Justice, Department of Personnel and Training as well as the Attorney General of India to seek their opinion, on the following points:
 - i) Whether on any matter which has already been decided by the Supreme Court - interim or finally, can be stayed by any of the subordinate courts including CAT, and if so, under which provision of law / Rule?
 - ii) Whether the subordinate Courts including CAT can issue contempt order in a matter that have been dealt with in a Supreme court Judgement? If so, under which provision of law / Rule?

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iii) What is the final decision of the Supreme Court in regard to catch up rule and complying with the three conditions as stipulated in N.Nagraj's case in respect of reservation act already passed by the State Government of Karnataka which was upheld by the Supreme Court?

(iv) The Order dated 15 April 2019 of the Supreme Court about maintaining "status-quo as it exists today" apparently means that the earlier decision of the Supreme Court as had been conveyed by DoPT to all Ministries/Departments vide its OM dated 27 May 2018 should be followed without any deviation. Please prepare a detailed case it and seek opinion/clarification from DoPT and Ministry of Law on this issue.

(v) Also send brief of the Judgement of the Supreme Court delivered on 10th May 2019 in regard to B.K.Pavitra and others Vs Union of India.

4. As per the written submissions made by Department of Telecommunications / BSNL, opinion of Ld. ASG and Ld. SG were solicited with regard to the clarity on interpretation, the application of 'Own Merit' concept in reservation in promotion and Ld. SG has opined as under:-

"...2. The queries are based upon the ratio in the case of M Nagraj Vs UOI [(2006)] 8 SCC 212] as considered in Jarnail Singh Vs Lacchmi Narayan Gupta dated 26.9.2018 in SLP © No.30621/2011. The arguments in the said matter of Jrnail Singh (supra) were led by the Ld. Attorney General of India. The queries raised would have far reaching consequences in other sectors also.

In my [Ld.ASG] view, therefore, it is desirable that a considered and valued opinion of Ld. Attorney General of for India is solicited on the aforesaid queries."

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In view of the above please inform whether opinion of Attorney General has been obtained, if so, details thereof. If not, when it is expected?

5. What is the method followed by the DoT/BSNL for diversion and up gradation of posts for the various services in the Department? Also, please inform about how many diversion and up gradation of posts in various services have been done by the BSNL so far.

6. Please furnish total number of persons working in BSNL as 'outsourced' and on 'contract-basis' throughout the country, state-wise and position-wise and the mechanism, if any, developed for giving adequate representation to the candidates belonging to SC/ST community in such engagements.

Clarification on issue related to reservation in promotion in the matter related to Department of Telecommunications

From : AMIT RAJAN <amit.rajan@nic.in>

Mon, May 11, 2020 04:04 PM

Subject : Clarification on issue related to reservation in promotion in the matter related to Department of Telecommunications

1 attachment

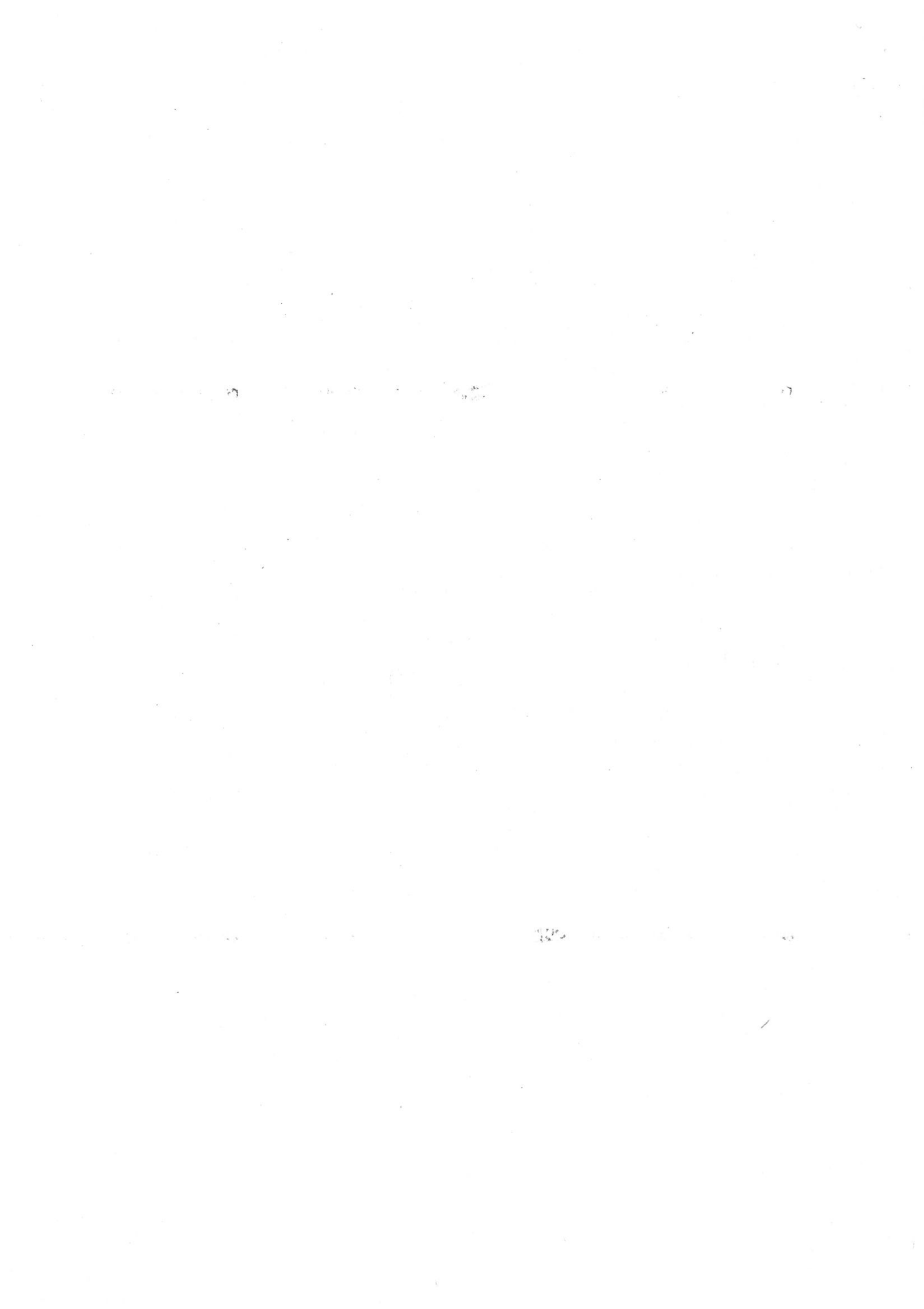
To : comscst <comscst@sansad.nic.in>

Sir please find attached herewith the reply/opinion furnished by DoP&T in the matter related to reservation in promotion as desired by you vide your O.M No. 8(211)/SCTC/2017 dated 27.08.2019.

With regards

Amit Rajan
Section Officer(SCT)
D/o Telecommunications

— **Lok sabha.pdf**
2 MB



No. 10-01/2017-SCT(Vol.IV).
Government of India
Ministry of Communication
Department of Telecommunications
(SCT Section)

20, Ashoka Road, Sanchar Bhawan
New Delhi-110001
Dated 11th May, 2020.

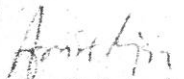
OFFICE MEMORANDUM

Subject: Clarification on issues relating to reservation in promotion for Scheduled Caste/Scheduled Tribes as per the direction of Parliamentary Committee on the Welfare of Scheduled Castes/Scheduled Tribes- regarding

The undersigned is directed to refer to Lok Sabha Secretariat's Office Memorandum No. 8(211)/SCTC/2017 dated 27.08.2019 wherein it was requested to seek the opinion of Ministry of Law & Justice and Department of Personnel and Training on the specific points raised by the Parliamentary Committee.

2. Accordingly, DoPT and D/o Legal Affairs were requested for their valuable legal opinion/advice on the specific clarification sought by the Parliamentary Committee on welfare of SCs and STs on utmost priority.

3. DoPT vide their ID Note dated 28.04.2020 has furnished the reply to the points raised by Parliamentary Committee on welfare of SCs and STs (copy enclosed). Reply from D/o Legal Affairs is still awaited.


(Amit Rajan)
Section Officer

Lok Sabha Secretariat,
Parliamentary Committee on the welfare of SCs and STs
(Attention: V.K. Shailon, Deputy Secretary)
509, Block 'B', Parliament House Annexe Building,
New Delhi-110001.

Copy to: Parveen Kumar Purvor, CMD, BSNL, Bharat Sanchar Bhawan, Harish Chandra Mathur
Lane, Janpath, New Delhi-110001.

No.36028/1/2020-Estt(Res-I)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

Dated the 28th April, 2020.
North Block, New Delhi.

Subject: Clarification on issues relating to reservation in promotion for SCs/STs as per directions of Parliamentary Committee on the Welfare of SCs/STs.

Reference is invited to D.O. letter No.10-01/2017-SCT(Vol.IV) dated the 24th March, 2020 from the Secretary, Department of Telecommunications forwarding therewith a copy of the ID Note dated 21.2.2020 seeking clarifications with respect to specific queries as sought by the Parliamentary Committee on Welfare of SCs/STs and BSNL regarding reservation in promotion for SCs/STs.

2. The queries raised by the Parliamentary Committee/BSNL and the replies on behalf of DoPT are as under: -


Sl.No.	Issues raised	Reply of DoPT
(i)	Whether on any matter which has already been decided by the Hon'ble Supreme Court, interim or final, can be stayed by any of the subordinate Courts including CAT, and if so, under what provision of law/rule?	The issues raised in point (i) and (ii) are the issues involving legal aspects. Hence, Ministry of Law may be consulted on these issues.
(ii)	Whether the subordinate courts including CAT can issue contempt order in a matter that have been dealt with in a Supreme Court Judgment? If so, under which provision of law/Rule?	
(iii)	What is the final position of the Hon'ble Supreme Court in regard to catch-up rule complying with three conditions as stipulated in M. Nagraj case in respect of reservation act already passed by the State Government of	Hon'ble Supreme Court, vide its Judgement dated 10.5.2019 in the matter titled 'B.R. Pavitra & Ors Vs. Uoi & Ors' considered the Constitutional validity of the 'Karnataka Extension of Consequential Seniority to the Government Servants Promoted on the Basis of Reservations (to the Posts in the Civil Services of the State) Act 2018' and

	<p>Karnataka which was upheld by the Hon'ble Supreme Court?</p>	<p>held that the State Government duly carried out the exercise of collating and analysing data on the compelling factors adverted to the Constitution bench in Nagaraj case and that the Reservation Act 2018 also cured the deficiency, which was noticed in the Pavitra I case (i.e. Reservation Act 2002, which did not collect and analyse the relevant data to satisfy the requirements laid out in Nagaraj case). The Hon'ble Supreme Court thus held that the Reservation Act 2018 of the Karnataka Government is Nagaraj and Jarnail compliant and is a valid exercise of the enabling power conferred by Article 16 (4A) of the Constitution.</p> <p>However, the case titled, 'Jarnail Singh Vs. Lachhmi Narain Gupta' is still pending before the Hon'ble Supreme Court.</p>
(iv)	<p>Whether the order dated 15.4.2019 of the Hon'ble Supreme Court maintaining "status-quo as it exists today" apparently means that the earlier decision of the Hon'ble Supreme Court as had been conveyed by DoPT to all Ministries/Departments vide its OM dated 27.5.2018 should be followed without any deviation.</p>	<p>DoP&T, in consultation with Ld. AG, has filed a Miscellaneous Application before the Hon'ble Supreme Court seeking its guidance as to whether, in the light of the Hon'ble Supreme Court's interim Order, dated 15.4.2019, the Union of India can continue to make promotions in Central Government posts and services in terms of its interim Orders dated 17.5.2018 and 5.6.2018. However, the matter is yet to be heard by the Hon'ble Supreme Court.</p>
(v)	<p>Brief of the Supreme Court Judgment dated 10.5.2019 in the matter of B.K. Pavitra & Ors. v/s UOI</p>	<p>As already explained in point (iii) above, Hon'ble Supreme Court, vide its Judgement, dated 10.5.2019, in the Pavitra-II case, held the Karnataka Consequential Seniority Reservation Act 2018 as constitutionally valid on the ground that the State Government duly carried out the exercise of collating and analysing data on the compelling factors adverted to the Constitution Bench in Nagaraj case and also cured the deficiency noticed in the Pavitra I case.</p>

Clarification sought by BSNL and the reply of DoPT are as under: -

<u>S.No.</u>	<u>Query raised by BSNL</u>	<u>Reply of DoPT</u>
(i)	Whether the principle of "Catch-Up" rule will apply in the absence of exercise to be undertaken as per various judgments of the Supreme Court in M. Nagraj, S. Paneer Selvam, Suraj Bhan Meena, B.K. Pavitra cases.	The matter is pending before the Hon'ble Supreme Court. With the main case titled, "Jarnail Singh Vs. Lachmi Narain Gupta", approx. 120 more cases have been tagged.
(ii)	Whether an SC/ST candidate who has once availed of the reservation of SC/ST on previous occasion either in their initial recruitment or subsequent promotion can be counted as 'Own Merit' candidates and can be counted for taking him/her in the ambit of reservation of 15% and 7.5% for SC and ST candidates respectively.	

3. This issues with the approval of Addl. Secy (Estt.).


(Sandeep Saxena)

Under Secretary to the Government of India

Tel. 23093074

Department of Telecommunications
[Shri Vinay Awasthi, Deputy Secretary (SCT)]
Ministry of Communications
Sanchar Bhavan, 20, Ashoka Road, New Delhi-110001.