

**Government of Odisha**  
**General Administration & Public Grievance Department**

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No. 10094 /Gen., Bhubaneswar,

Dated, the 10<sup>th</sup> 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

		<p>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.</p> <p>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.</p> <p>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".</p>
2-	<p>A detailed description on "separate zone of consideration" and whether separate zones of consideration for employees belonging to SC &amp; 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 &amp; Scheduled Tribe categories available in a grade.</p>	<p>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.</p> <p>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.</p>

		<p>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 &amp; Others( 1 Shukla Case'Page40 ).</p> <p>Further stated that after rule-3 of Criteria for promotion 1992, 3A is an addition.</p>
3	<p>A detailed description on "own merit by direct recruitment and own merit by promotion" and how to determine the merit between two employees: -</p> <p>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.</p> <p>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.</p>	<p>In this respect, the considered views of Law Department has been received as at ( NIL Noting 9 10'Page1 ) which is reproduced below:</p> <p>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'.</p> <p>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.</p> <p>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.</p> <p>It is mentioned here that where junior vertical reservation candidates like SEBC, Ex-Service men &amp; General R.A. appointees( who are Junior in feeder Cadre to SC &amp; ST candidates ) avail UR posts in promotion. Now it is prudent enough to say the senior/merit SC &amp; ST</p>

		<p>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.</p> <p>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;</p> <p>(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.</p>
4	<p>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.</p>	<p style="text-align: center;"><b>Merit List</b></p> <p>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 &amp; Ors .</p> <p style="text-align: center;"><b>Select List</b></p> <p>Select List means the list of candidates prepared in the order of their position in which candidates are selected.</p>

		<p style="text-align: center;"><b>Gradation List</b></p> <p>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.</p>
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Yours faithfully



Additional Secretary to Govt.