

**No.36036/2/2007-Estt.(Res.)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training**

New Delhi, Dated the 29th March, 2007.

To

The Chief Secretaries of all the States/Union Territories.

Subject: - Supreme Court judgement in the matter of M. Nagaraj and Others V/s. Union of India and Others – regarding.

Sir,

I am directed to say that the Supreme Court had in some judgements interpreted the Constitution and the law in a manner that seemed to affect the interests of the Scheduled Castes and Scheduled Tribes. For example, the Supreme Court in the case of Indra Sawhney V/s. Union of India had held that reservation in promotion for the Scheduled Castes and Scheduled Tribes was not permissible under the provisions of the Constitution. In the same case, the Hon'ble Court held that the number of vacancies to be filled by reservation in a year including the backlog vacancies would not exceed 50 per cent of the total vacancies. In the case of S. Vinod Kumar V/s. Union of India, the Supreme Court held that lower qualifying marks/lesser level of evaluation were not permissible for Scheduled Caste/ Scheduled Tribe candidates in the matter of promotion. In the matter of Virpal Singh Chauhan, Ajit Singh and some other cases, the Supreme Court had held that if an SC/ST candidate was promoted earlier, by virtue of the rule of reservation roster, than his senior general candidate and the senior general candidate was promoted subsequently on to the said higher grade, the general candidate would regain his seniority over such previously promoted SC/ST candidate.

2. The Parliament, in order to address these issues had passed four amendments namely, the 77th Amendment, the 81st Amendment, the 82nd Amendment and the 85th Amendment to the Constitution. These amendments were challenged in the Supreme Court mainly on the ground that these altered the basic structure of the Constitution. The Hon'ble Supreme Court in the matter of M. Nagaraj & Others V/s. Union of India & Others [Writ Petition (Civil) No.61/2002] has upheld all these four amendments. The Hon'ble Court concluded the judgement with the

following observations:

“The impugned constitutional amendments by which Article 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State Administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in **Indra Sawhney**, the concept of post-based Roster with in-built concept of replacement as held in **R.K. Sabharwal**.

“ We reiterate that the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.

“However, in this case, as stated, the main issue concerns the “extent of reservation”. In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

“Subject to above, we uphold the constitutional validity of the Constitution (Seventy – Seventh Amendment) Act, 1995, the Constitution (Eighty First Amendment) Act, 2000, the Constitution (Eighty Second Amendment) Act, 2000 and the Constitution (Eighty Fifth Amendment) Act, 2001”.

3. This Department has, in consultation with the law officers of the Government, examined whether the above referred judgement introduces the concept of creamy layer for the Scheduled Castes and Scheduled Tribes. This Department has been advised that the observations made in Nagaraj's case regarding creamy layer amongst the Scheduled Castes and Scheduled Tribes are mere obiter dicta, per incurium and do not flow from, and cannot be reconciled with the nine judge bench judgement of the Supreme Court in the matter of Indra Sawhney. The reference to creamy layer in the concluding paragraph and other portions of the judgement does not relate to the Scheduled Castes and Scheduled Tribes.

4. You are requested to bring the contents of this letter to all concerned in the State.

Yours faithfully



(K.G. Verma)
Director

Tele. No.23092158

Copy to: -

1. All Ministries/Departments of Government of India.
2. Department of Economic Affairs (Banking Division), New Delhi.
3. Department of Economic Affairs (Insurances Division), New Delhi.
4. Department of Public Enterprises, New Delhi.
5. Railway Board.
6. Union Public Service Commission/Supreme Court of India/Election Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/ President Secretariat/Prime Minister's Office/Planning Commission/National Commission for Backward Classes.
7. National Commission for Scheduled Castes.
8. National Commission for Scheduled Tribes w.r.t. their letter No. 12/16/2006-C.Cell dated 26.12.2006.
9. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
10. Office of the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.