

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

No. 11/24 /SSD., Bhubaneswar, Dated the 15-3-07

From Dr. Taradatt, I.A.S.
13/07

Dr. Taradatt, I.A.S.
Commissioner-cum-Secretary to Govt.

To

All Departments of Govt.
Heads of Department
Collectors.

Sub:- Reservation in Posts and Services for Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Sir,

Hon'ble Supreme Court in case of M.Nagraj & Others Vrs. Union of India & Others in their judgment delivered on 19.10.2006 have upheld the validity of the 77th, 81st, 82nd and 85th Constitutional amendments and have made it clear that the reservation cannot exceed 50% ceiling in any circumstances. The judgment can be accessed through Internet vide Reference "<http://judis.nic.in/Supreme Court>".

1. The 77th amendment deals with reservation for SC/STs in promotion. The 81st amendment enables the State to treat the backlog vacancies for reserved category carried forward due to non-availability of SC/ST candidates, as a separate class of vacancies to be filled up in any succeeding year or years and not to be considered together with the vacancy of the year in which they are being filled up for determining ceiling of fifty percent reservation on total number of vacancies of that year. The 82nd amendment enables the State to relax the qualifying marks for SC/STs in examinations or lowering the standards of evaluation for reservation in

matter of promotion* to SC/STs. The 85th amendment provides for according consequential seniority to SC/STs on promotion.

2. Following the judgment in R.K. Sabharwal about the concept of post based roster, the Supreme Court has held that the appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that upper ceiling limit of 50% is not violated. The roster has to be post-specific and not vacancy based.

3. Hon'ble Court have further observed that once it is held that each point in the roster indicates a post which on falling vacant has to be filled up by the particular category of candidate to be appointed against it, any subsequent vacancy has to be filled up by that category candidate alone. Thus the question of clubbing the unfilled vacancies with current vacancies does not arise.

4. Hon'ble Supreme Court have further observed that specific slots for OBC, SC and ST as well as General candidates have to be maintained in the roster. For want of candidates in a particular category, the post may remain unfilled. Nonetheless that slot has to be filled up only by the specified category.

* The implication of this judgment is that in case of non-availability of a particular class of candidate, the same cannot be de-reserved to be filled up by other categories of candidates. In other words, exchange of reservation between SC & ST will not be permissible.

5. In Indra Sawhney's case, the Supreme Court had accepted caste as determinant of backwardness and yet it has struck a balance with the principle of secularism which is the basic feature of the Constitution, by bringing in the

concept of 'creamy layer'. Hon'ble Court have again reiterated the above concept, excluding the 'creamy layer' from the benefit of reservation.

6. Hon'ble Supreme Court in Indra Sawhney's case evolved a numerical benchmark like ceiling-limit of 50% based on post-specific roster. This has again been reiterated in the present judgment.

The implication of this judgment is that the extent of reservation cannot exceed the ceiling limit of 50%.

This is for your kind information and necessary action.

Yours faithfully,


Commissioner-cum-Secretary to Govt.