

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL AND TRAINING)

LOK SABHA
UNSTARRED QUESTION NO. 6204
(TO BE ANSWERED ON 04.04.2018)

PROMOTION OF CSS OFFICERS

6204. SHRI CH. MALLA REDDY:

Will the **PRIME MINISTER** be pleased to state:

- (a) whether it is a fact that promotion has not been granted to certain officers of Central Secretariat Service despite availability of vacancies;
- (b) if so, the details thereof and the reasons therefor;
- (c) whether any discrimination has been reported wherein Senior Officers have been superseded by the Junior ones and if so, the details thereof and the reasons therefor;
- (d) whether reservation policy is applied on ad-hoc promotion and if so, the details thereof;
- (e) the action taken by the Government on all of the above issues; and
- (f) whether any financial benefit will be extended to the retired officers who have retired without getting their due promotion and if so, the details thereof?

ANSWER

**MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS AND MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE
(DR. JITENDRA SINGH)**

(a) & (b): Yes. Regular promotion to the grades of Assistant Section Officer, Section Officer, Under Secretary and Deputy Secretary of Central Secretariat Service (CSS) for preparation of fresh Select List has not been undertaken after 30th September, 2016 in view of pending litigations in the matter of reservation in promotion before the Hon'ble Supreme Court and other Courts. Details of these court cases is attached as Annexure-I

(c): The question is not specific. No definite period has been defined. Hence no specific answer can be given. However, promotion in all grades is governed by the extant Service Rules, Regulations and instructions of Government of India issued from time to time on promotional matters. Individual representations, if any in this regard are examined in terms of above Rules and instructions.

(d): The provision of reservation in promotion is applicable in respect of posts of Assistant Section Officer (Group B), Section Officer (Group B), and Under Secretary (Group A) of CSS. Ad-hoc promotion to the above grades of CSS has so far been done in accordance with the guidelines contained in this Department's OM No.36011/14/83-Estt.(SCT) dated 30.04.1983, which entails consideration of the claims of Scheduled Castes and Scheduled Tribes in ad-hoc promotions.

(e): The Government is defending the aforesaid court cases actively before the Hon'ble Courts.

(f): The entitlement to retired officers is governed by the policy formulated by the Government in this regard from time to time.

ANNEXURE-I REFERRED TO IN PART (A) & (B) OF THE UNSTARRED QUESTION NO.6204 FOR ANSWER ON 04/04/2018.

A BRIEF ON COURT CASES IMPINGING UPON THE PROMOTION IN DIFFERENT GRADES OF CSS

1.1 The Department of Personnel and Training's (DoPT) OM No 36012/45/2005-Estt.(Res.) dated 10.8.2010 on the subject of reservation on promotion – treatment of SC/ST candidates promoted on their own merit, was quashed by the Hon'ble High Court of Punjab and Haryana vide its judgement dated 15.07.2011. Against this order an SLP was filed by Jarnail Singh & Ors. The Union of India through Department of Revenue also filed SLP (c) No.6915/2014 in this case.

1.2. The Hon'ble Supreme Court vide Order dated 03.02.2015 passed the following interim order in SLP No.30621/2011-Jarnail Singh & Ors. Vs Lachmi Narain Gupta & Ors:-

“Let the matter be listed in the second week of March 2015 on a non-miscellaneous day. Status quo existing as on today in respect of the promotional matters that are covered by the impugned judgement shall be maintained till the next date of hearing”

1.3. Subsequently Contempt Petition (C) No.314/2016 in SLP(C) 4831/2012 was filed by Samta Andolan Samiti before the Hon'ble Supreme Court alleging that the DoPT and Ministry of Railways have reportedly implemented the provision of OM dated 10.08.2010, in spite of the above said interim order dated 03.02.2015.

1.4. In order to preclude any interim order in the contempt case, as desired by the Supreme Court, an undertaking was given before the Hon'ble Court to the effect that till such time the main matter along with the contempt petition is decided no further promotion of reserve category persons to unreserved post will be made based on the DoPT OM dated 10.08.2010 and Railway Board circular dated 14.09.2010. As per information available on the Supreme Court's website, this case is listed for hearing on 07.05.2018.

2.1 In WP(C) 3490/2010 and CM No.6956/2010 filed by All India Equality Forum Vs Union of India, the Hon'ble High Court, Delhi vide para 15 of its judgement dated 23.08.2017, has held as under:-

“The impugned OM No.36012/18/95-Estt.(Res)Pt.II dated 13.08.1997, issued by DoPT, is quashed and set aside. The respondents are restrained from granting any reservation, in promotion, to Scheduled Castes or Scheduled Tribes, in exercise of the power conferred by Article 16(4A) of the Constitution of India, without, in the first instance, carrying out the necessary preliminary exercise of acquiring quantifiable data indicating inadequacy of representation, of the said categories, in service, and evaluating the situation by taking into consideration the said data, along with the competing considerations of backwardness and overall efficiency in administration, and arriving at an empirical decision on the basis thereof.”

2.2 An SLP vide No.31288/2017 has been filed by this Department against the judgement dated 23.08.2017 of the Hon'ble Delhi High Court.

2.3 Hon'ble Supreme Court vide order dated 14.11.2017 in CA No.4562/2017 in the matter of the State of Tripura & Ors. Vs Jayanta Chakraborty & Ors and vide order dated 15.11.2017 in SLP(C) No.28306/2017 in the matter of the State of Maharashtra & Anr Vs Vijay Ghogre & Ors has referred the case of M. Nagaraj to the Constitutional Bench to examine if the M. Nagaraj judgement needs re-examination.

3.1 In OA No. 1111/2017 filed by Shri Sambhunath Jasra & Ors. Vs Union of India, Applicants had, *inter-alia*, prayed for direction to the respondents to make promotions to the

grade of Under Secretary and above for the select list years, 2003 and onwards without applying rules of reservation. As an interim relief, they also prayed that the respondents may be restrained from making further promotions to the grade of DS and above based on alleged erroneous Under Secretary Select Lists. The Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, on 09.05.2017, passed an interim order, an extract of which is reproduced as below:

*".. ... The Short grievance of the applicants is that the seniority is being conferred upon the promotees, who have been accorded accelerated promotion being from the reserved categories.....
.....Be that as it may, the respondents are directed not to grant benefit of seniority on the basis of accelerated promotion at the level of Under Secretary in contravention to the mandate contained in the judgment in M. Nagaraj's case (supra) to any person from the date of passing of this order...."*

3.2 The OA alongwith the contempt petition has since been disposed off by the Hon'ble Tribunal on 21.03.2018. The Order is awaited.

4. There is one more Court case which is related to the promotion to the Section Officer's grade. The vacancies in this grade are filled up through two modes -. Limited Department Competitive Examination (LDCE) (50%) and Seniority Quota (SQ) (50%). The last LDCE was held by Union Public Service Commission in 2015, but the result has not been declared in view of the pending litigation in W.P. No 1738/2017 filed by the Union of India before the Hon'ble High Court of Delhi against the order dated 16.09.2016 of the Ld. CAT, PB, New Delhi. The next date of hearing in this case is 09.05.2018. The matter involved in this WP is that Direct Recruit Assistants are seeking relaxations in rules by reckoning approved service from 1st July of the year of examination whereas the extant rules provide for reckoning the same from the 1st of July of the following year in which the examination was held.
