

File No. 20/29/2013-Welfare
Government of India
Ministry of Finance
Department of Financial Services

2nd Floor, Jeevan Deep Building, Parliament Street,
New Delhi Dtd. 26th September, 2013.

To

The CMD, State Bank of India, Nariman Point, Mumbai.

The CMD, Andhra Bank, Dr. Pattabhi Bhawan, Saifabad, Hyderabad.

The CMD, Bank of Baroda, Bandra Kurla Complex, Mumbai.

Subject: Reservation for SCs/STs in posts filled by promotion-applicability to grades or services in which the element of direct recruitment does not exceed 75%, clarification regarding.

Sir,

This Department has received letters from Bank of Baroda, Andhra Bank, SBBJ and SBT (subsidiaries of SBI), seeking clarification on observations and directions of the Assistant Director, NCSC, State Office for Gujarat, Rajasthan, D&NH and Daman & Diu at Ahmedabad, that Banks ought to have consulted the Commission before implementing the orders regarding 'not applying reservation for SCs/STs where quantum of direct recruitment (in clerical cadre) is more than 75% and that Banks should not proceed further in the matter of promotion to clerical cadre till further orders from the Commission. The Commission also advised that in case bank desires to continue with the existing policy, it should approach NCSC for proper consultation/permission or to go for a change of the promotion policy as it is not in conformity with the Act. It is understood that Commission has already taken up the matter with SBI Hqrs.

2. The matter was taken up with Department of Personnel & Training, Ministry of Personnel, PG and Pension. DOP&T has invited attention to their OM No. 36012/17/88-Estt.(SCT), dtd. 25.4.89, which clarifies that if the percentage, 'in direct recruitment' is more than 75% then reservation is not applicable in promotions.

3. Further, while examining some directions of NCSC to DOP& T (NCSC & ST's letter No. 4/3/98-SSW.II,dtd. Nil refers), a copy of which was also endorsed to other Ministries/Deptts. under the Central Government for compliance, vide its OM No. 36036/2/97-Estt.(Res.), dtd. 30.11.1998, DOP&T clarified that though the NCSC&ST is vested with certain powers to safeguard the interests of SC/STs in order to discharge its role in terms of Art.

338 of the Constitution. However, the NCSC has only advisory powers and it does not have the authority to issue directions in the nature of injunctions.

This view was upheld by the Supreme Court in Appeal (Civil) 13700 of 1996 All India Indian Overseas Bank SC & ST Employees Welfare Association vs. Union of India case and the directions were given as under:

"All the Procedural powers of a Civil Court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a Civil Court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause 8 of Article 338 of the Constitution.

The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated March 4, 1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High Court was justified in taking the view it did. The appeal is dismissed. No costs".

The letter further suggests that Ministries/Deptts. may ignore such instructions issued by the Commission as may purport to either amend or withhold or keep in abeyance the instructions issued by the Government in implementation of the reservation policy for the SCs/STs.

4. All service disputes including those in Public Sector Banks are to be resolved within the four corners of the constitutional provisions and tenets of law.

