

To

The Secretary,
Rajasthan Public Service Commission,
Ajmer.

Subject : Objection regarding Seniority List of Section Officers issued by you vide your Office Order No. F.2(78)RPSC\65\2972 dated 26-09-12.

Sir,

With reference to your office order No. F2(71)RPSC/65/2972 dated 26-09-2012 where in inter se seniority of the substantive section officers has been published in pursuance of Govt. Notification dated 11-09-11 where in objection regarding inter se seniority is also invited within a period of 1 week from the date of issue of the said order.

I am therefore submitting my objection on the following grounds :-

- 1 That the Notification dt. 11-09-11 is not as per the decision of the H.S.C. dated 29-08-12 where in following direction were given by the H.S.C. to the State Govt. the same is reproduced below :-

“We, accordingly, allow the appeals and set aside the aforesaid judgment, but with the further direction that the State and its authorities act in terms of the Report of the Bhatnagar Committee, in accordance with the decision rendered in M.Nagaraj’s case and in SurajBhanMeen’s case (supra), within two months from the date of communication of this judgment and order.”

- 2 The Govt. has not followed the above direction and kept their previous stand only. The H.S.C. in Suraj Bhan Meena's case had completely upheld the decision of R.H.C. in Bajrang Lal Sharma's case. In its decision dated 05.02.2010, the RHC has categorically decided that the notification dated 01.04.97 could not be withdrawn retrospectively to take away the accrued and vested rights of general category employees. It is evident from the judgment that the general category employees should be given their regained seniority as per notification dated 01.04.97. The HSC has also directed the government on 29.08.2012 to comply with these directions within two months. But you are not providing us our accrued and vested rights of regaining our seniority as per notification dated 01.04.97 which is clearly against the orders of HSC & RHC.

3 That Notification dated 11-09-2011 provide reservation with Consequential Seniority w.e.f. 01-04-1997. In M. Nagraj's decision the Hon'ble SC clearly held that by 85th Constitutional Amendment no Government can provide reservation in promotion with retrospective effect.

4 In addition to above according to SC verdict in M. Nagraj's case :-

“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.”

5 In the Seniority List in question the names figure at sl. Nos. 12 to 14 were initially juniors to me.

6 Hon'ble Supreme Court has held in the case of M. Nagraj :-

“Therefore, in every case where the State decides to provide for reservation there must exist two circumstances, namely, 'backwardness' and 'inadequacy of representation'. As stated above - equity, justice and efficiency are variable factors. These factors are context-specific. There is no fixed yardstick to identify and measure these three factors, it will depend on the facts and circumstances of each case. These are the limitations on the mode of the exercise of power by the State.”

7 In the case of RPSC Gazetted Staff Service The Bhatnagar Committee had not collected data about the backwardness of the employees, inadequacy of representation and overall administrative efficiency(Article 335). As per M.Nagraj's verdict, It is mandatory for the State to collect quantifiable data about the above preconditions "in each case". So reservation in promotions with Consequential Seniority cannot be given in the case of RPSC Gazetted Services.

8 The Notification dated 11-09-11 provides the provision as under :-

“that reservation for Scheduled Castes and Scheduled Tribes employees, with consequential seniority, shall continue till the roster points are exhausted; and adequacy of promotion is achieved.

Once the roster points are complete the theory of replacement shall thereafter be exercised in promotion whenever vacancies earmarked for Scheduled Castes/Scheduled Tribes employees occur.

If on the application of these provisions Scheduled Castes/Scheduled Tribes employees who had been promoted earlier and are found in excess of adequacy level, shall not be reverted and shall continue on ad-hoc basis, and also any employee who had been promoted in pursuance to Notification No. F7(1)DOP/A-II/96 dated 1-4-1997 shall not be reverted.

Notification No.F.7(1)DOP/A-II/96 dated 1-4-1997 shall be deemed to have been repealed w.e.f. 1-4-1997.

Explanation :- Adequate representation means 16% representation of the Scheduled Castes and 12% representation of the Scheduled Tribes in accordance with the roster point.”

9 The provisional seniority list of -26.09.12- and the notification dated 11.09.2011 are clearly against the provisions of Constitution and the law laid down in several verdicts of HSC & RHC, such as Indra Sawhney, M. Nagraj, Suraj Bhan Meena, UP Power Corporation, Bajrang Lal Sharma etc,

10 The persons mentioned at S.No. 12,13& 14 belonging to reserved categories were initially junior to me, where as they have got benefit of reservation in promotion as well as consequential seniority on the post of S.O. but their roster points are exhausted and adequacy of promotion is achived& no any quota is vacant on the post of Assistant Secretary and theory of replacement shall thereafter be exercised in promotion.

In the findings noted above I respectfully submit that please draw a seniority list afresh according to initial recruitment based on 11-04-2010 and declare the persons mention at Sl. Nos.12 to 14 juniors to me and oblige.

Thanking You!

Yours faithfully,

Dated:

(Mahendra Kumar Sharma)
Section Officer