

No. 22/79/95-3GSIII

From

The Chief Secretary to Government Haryana.

To

1. All Heads of Departments,
Commissioners, Ambala, Hisar, Gurgaon & Rohtak Divisions,
All Deputy Commissioners and Sub-Divisional Officers (Civil) in Haryana State.
2. The Registrar,
Punjab and Haryana High Court, Chandigarh.

Dated Chandigarh, the 12th Sept. 1997.

Subject:— Filling backlog in the reserved vacancies—Supreme Court Judgement in Indira Sawhney case.

Sir

I am directed to refer to the instructions to the Haryana Government issued vide No. 22/31/89-3GSIII, dated 7-7-1989 and subsequent instructions issued by the Government regarding the subject mentioned above. Vide these instructions, all the Department had been directed to fill up the vacant posts meant for reserved categories under the special recruitment drive so that backlog of the reserved vacancies could be cleared.

It may be noted that the Supreme Court of India while deciding the case of Indira Sawhney (writ Petition (Civil) 930 of 1990) on 16-11-1992 had made the following observations:—

“The position can be better explained by taking an illustration. Take a unit/service/cadre comprising 1000. The reservation in favour of Scheduled Tribes, Scheduled Castes and other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by members of these classes i.e. 270 by other backward classes, 150 by Scheduled castes and so by scheduled tribes. At a given point of time. Let us say, the number of members of O.B.C's in the unit/service/category is only 50. A short fall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog if sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e. till the quota meant for each of them is filled up. This may take quite a because the number of vacancies arising each year number of years/are not many. Meanwhile, the members of open competition, category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% an year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be”.

98. We are in respectful agreement with the above statement of law. Accordingly, we over-rule the decision in Devadasan. We have already discussed and explained the 50% rule in paras 93 to 96. The same position would apply in the case of carry forward rule as well. We however, agree that an year should be taken as the unit or basis, as the case may be, for applying the rule of 50% and not the entire cadre strength.
99. We may reiterate that a carry forward rule need not necessarily be in the same terms as the one found in Devadasan. A given rule may say that the unfilled reserved vacancies shall not be filled by unreserved category candidates but shall be carried forward as such for a period of three years. In such a case, a contention may be raised that reserved posts remain a separate category altogether. In our opinion however, the result of

application of carry forward rule, in whatever manner it is operated, should not result in breach of 50% rule".

Advice of Law Department was solicited regarding this matter and their advice is reproduced as under:—

"The Hon'ble Supreme Court in Indira Sawhney's case held that reservation was not to exceed 50%. It was further clarified that for the purpose of applying the rule of 50% an year should be taken as unit and not the entire strength of cadre. Commenting upon the carry rule, the Supreme Court further clarified that the result of application of carry forward rule, in whatever manner it is operated, should not result in breach of 50% rule.

According to the aforesaid dictum of Supreme Court, carry forward rule and filling up of backlog reserved category have become redundant. Efforts are now to be made to fill up all the reserved vacancies, occurring in a particular year in the same year itself. If, however, these are not filled up these will be added to the vacancies of next year and 50% of these vacancies in the next year would be reserved. The only way therefore to fill up the unfilled up reserved vacancies can be to advertise these posts again in the same year and try to fill-up as many posts as possible. The instructions therefore have to be revised in the light of the aforesaid judgement of the Supreme Court."

In view of the above quoted decision of the Supreme Court of India and the advice tendered by the Law Department, the matter has been examined afresh and after careful consideration it has been decided by the Government that for the purpose of applying rule of 50% an year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be. If reserved vacancy of any category remains unfilled in the first attempt, then these posts should be re-advertised during and within the same year. However, if the reserved vacancy still remains unfilled at the end of the year, these would not be added as a backlog in the next year. In the next year also, the total posts filled up from the reserved categories shall not exceed 50% in all.

These instructions may kindly be brought to the notice of all concerned working under you for strict compliance.

Yours faithfully,

Sd/-

Joint Secretary General Administration,
for Chief Secretary to Govt., Haryana.