

SOUTH CENTRAL RAILWAY


Headquarters Office  
Personnel Branch  
Secunderabad.  
Date: 21.05.2018

No. P[R]535/XI

ALL CONCERNED

PERSONNEL BRANCH SERIAL CIRCULAR No. 91/2018

Copy of Board's letter No.E[NG]I/2001/PM1/56 C.C./Vol.II dated 17.12.2017 is forwarded for information, guidance and necessary action.

  
[K.RAVI KUMAR]  
Secy. to PCPO

For Principal Chief Personnel Officer

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Copy of Board's letter No. E[NG]I/2001/PM1/56 C.C./Vol.II dated 17.12.2017  
addressed to SECR

*Sub: Reservation in promotion for employee with disabilities in Group  
'C', Group 'B' and Group 'D' over Indian Railways.*

*Ref: SECR's letter No. P-HQ/RUL/123/1/31 dated 18.9.2017.*

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South East Central Railway vide their letter quoted above has sought guidelines regarding applicability of reservation in promotions for persons with disabilities. It is mentioned in this regard that with reference to mandate of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection and Rights and Full Participation) Act, 1995, Ministry of Railways has identified posts to be manned by Persons with Disabilities at the recruitment stage to honour the mandate of the PWD Act. Prior to this, DoP&T had issued instructions for providing 3% reservation for Persons with Disabilities in the posts filled by promotion also. These orders were not implemented by Ministry of Railways in view of operational requirements. However, it has been ensured that no discrimination is caused to persons with disability in case of promotion by manual provision contained in para 213 of IREM, Vol-I, which inter-alia provides that staff with physical disability will be considered for promotion in their turn based on their eligibility and suitability along with others in the selections/suitability/trade test, for promotion to higher grade post.

2. Further, attention is drawn towards Hon'ble Supreme Court's judgment dated 09.07.2009, in the matter of Union of India Vs. Devendra Kumar Pant (an employee of RDSO of Ministry of Railways) & others, wherein the Hon'ble Supreme Court has observed that:

*"Section 32 refers to identification of posts which can be reserved for persons with disability. Section 33 deals with reservation of posts for persons with disability. Sections 32 and 33 therefore apply to pre-employment situation, that is where persons with disability are yet to secure employment. Section 47 applies to a post-employment situation, that is to those who are already in government employment. Section 47 contains two distinct provisions. The first is a provision for non-discrimination when an employee who is already in government employment acquires a disability during his service. Sub-section 91 extends the following*



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protection to the employees in government service who acquire a disability during service:

- (a) their service shall not be dispensed with or reduced in rank on the ground that they acquired a disability during service; and
- (b) if an employee who acquires a disability during service is not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits, and if it is not possible to adjust the employee against any post, he should be kept on a supernumerary post until a suitable post is available or until he attains the age of superannuation whichever is earlier".

Further the Hon'ble Supreme Court has observed that:

"Sub-section (2) of section 47 deals with non-discrimination in promotion and provides that no promotion shall be denied to a person merely on the ground of his disability. This would mean that a person who is otherwise eligible for promotion shall not be denied promotion merely or only on the ground that he suffers from a disability. Thus section 47(2) bars disability per se being made a disqualification for promotion. To give an example, a person working as a Lower Division Clerk (LDC) suffering from the disability of low vision, cannot be denied promotion to the post of Upper Division Clerk (UDC) merely because of his disability. This is because the efficiency with which he functioned as a LDC will be same while functioning as a UDC also and the disability as such will not affect his functioning in a higher post. But the position is different if the disability would affect the discharge of functions or performance in a higher post or if the disability would pose a threat to the safety of the co-employees, members of the public or the employee himself, or to the assets and equipment of the employer. If promotion is denied on the ground that it will affect safety, security and performance, then it is not denial of promotion merely on the ground of his disability, but is denial of promotion by reason of the disability plus something more, that is adverse effect of the disability upon the employee's performance of the higher duties or functions attached to the promotional post. It is significant that section 47(2) does not provide that even if the disability comes in the way of performance of higher duties and functions associated with the promotional post, promotion shall not be denied. Section 47(2) bars promotion being denied to a person on the ground of disability, only if the disability does not affect his capacity to discharge the higher functions of a promotional post. Where the employer stipulates minimum standards for promotion keeping in view safety, security and efficiency, and if the employee is unable to meet the higher minimum standards on account of any disability or failure to possess the minimum standards, then section 47(2) will not be attracted, nor can it be pressed into service for seeking promotion. In other words where the disability is likely to affect the maintenance of safety and security norms, or efficiency, then the stipulation of standards for maintaining such safety, security and efficiency will not be considered as denying a person with disability, promotion, merely on the ground of his disability".

Finally, Supreme Court has concluded that:-

"Therefore, we are of the view that the section 47(2) only provides that a person who is otherwise eligible for promotion shall not be denied promotion merely on the



*ground that he suffers from disability. The use of the words 'merely on the ground' shows that the section does not provide that if the disability comes in the way of performing the higher duties and functions associated with the promotional post, promotion shall not be denied. In other words promotion shall not be denied to a person on the ground of his disability only if the disability does not affect his capacity to discharge the higher functions of a promotional post".*

3. It would not be out of place to mention that in case of Jagmohan Singh Vs UOI, which is being referred alongwith Supreme Court's judgment dated 09.10.2013 passed in case of National Federation of Blind, as base for the claim of applicants, benefit of reservation in promotion has been extended to the applicant in the individual capacity only. While the judgement of Hon'ble Supreme Court was implemented in case of Jagmohan Singh by providing the relief to individual case only, the scope of providing reservation in promotion has been taken up by the Court and Law Officers subsequently that nowhere in any judgement the Hon'ble Courts have directed the Government to provide reservation in promotion. The case of Jagmohan Singh has also been referred in which benefit of reservation in promotion has been extended to the applicant in the individual case.

4. The National Federation of Blind filed a Contempt Petition in the Hon'ble Supreme Court against Secretary (Personnel), GOI. This petition was dealt with by the Hon'ble Court in their order dated 01-09-2015, and dismissed. The arguments brought before the Hon'ble Court by the two senior most Law Officers of the Government were emphatic. The learned Attorney General drew attention to Section 47 of the Act, which nowhere says that there will be provision for dealing with promotions and that it cannot be contended that the Act provides for reservations in the matter of promotion. On the other hand, the Solicitor General stated that in regard to reservation in promotions, nowhere in the Judgement dated 08-10-2013 did the Hon'ble Court have any occasion to deal with the issue, nor had any directions been issued, concluding that the Court's orders are not capable of being construed in the manner the arguments on behalf of the petitioners had been framed.

5. Since no case of reservation in promotion has been made out and in view of fact that Railways never adopted the policy of reservation in promotion as well as in terms of Allocation of Business Rules, Railway is not bound to adopt the rules made by DoPT.

sd/-

[P.M.Meena]/DD-II/E[NG]

INDEX No. 1060 PROMOTION RULES	S.C.No.
<p><u>Reservation in promotion for employee with disabilities in Group 'C', Group 'B' and Group 'D' over Indian Railways:</u> [1] Board have advised that DoP&amp;T's orders for providing 3% reservations for PWDs in posts filled by promotion were not adopted by Railways in view of operational requirements as well as in terms of Allocation of Business Rules.</p> <p>[2] However, it should be ensured that no discrimination is caused to persons with disability in case of promotion and they will be considered for promotion in their turn based on their eligibility and suitability along with others for promotion to higher grade post [para 213 of IREM].</p>	91 /2018