



PBC No. 15 / 2024  
RBE No. 06 / 2024

दक्षिण रेलवे Southern Railway  
प्रधान मुख्य कार्मिक अधिकारी कार्यालय  
Office of the Principal Chief Personnel Officer  
प्रधान कार्यालय, कार्मिक विभाग, चेन्नै-600003  
Headquarters, Personnel Department, Chennai-600003

सं/No: P(R) 113 / P / PWD / Vol.II

दिनांक/Dated: 02.02.2024

All PHODs/ DRMs/ CWMs/ CEWE/ CAO/ CPM/ PDA/ Dy.CPOs/ Sr.DPOs/ Secy to GM,  
Chairman/RRB/MAS,TVC, Addl.Registrar/RCT/MAS, Secretary/RRT/MAS,  
Principal MDZTI/TPJ, SRCETC/TBM, ZETTC/AVD,  
DPOs/SPOs/WPOs/APOs of HQ/Divisions /Workshops/Units.

**विषय/Sub:Reservation in promotion to Persons with Benchmark  
Disability (PwBDs).**

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A copy of Railway Board's letter No.E(NG)/2019/PM4/8.(E-3417344) dated 18.01.2024 alongwith a copy of Office Memorandum No. 36012/1/2020-Estt.(Res-II) dated 28.12.2023 issued by the Department of Personnel and Training on the above subject is enclosed for information, guidance and necessary action.

Railway Board's letters dated 01.07.2022 and 27.02.2019 referred therein have been circulated as PBC No. 107 / 2022 and PBC No. 37 / 2019.

संलग्नक/Encl.04 pages

सहायक कर्मचारी संबंधी अधिकारी/Asst Personnel Officer / IR & Trg.  
कृते प्रमुकाधि/For Principal Chief Personnel Officer

प्रतिलिपि/Copy to: The General Secretary/SRMU  
The General Secretary/AISCTREA  
The General Secretary/AIOBCREA  
The General Secretary/NFIR  
IT Section/PB/HQ - to upload in the SR website.

भारत सरकार/GOVERNMENT OF INDIA  
रेल मंत्रालय/MINISTRY OF RAILWAYS  
(रेलवे बोर्ड /RAILWAY BOARD)

No. E(NG)I/2019/PM4/8.(E-3417344)

New Delhi, Dt. 18.01.2024

**The General Manager (P)**

All Zonal Railways & Production Units  
(As per standard list)

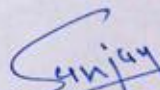
**Sub:** Reservation in promotion to Persons with Benchmark Disability (PwBDs)

- Ref.** i) Board's letter No. E(NG)I/2019/PM4/8 dated 01.07.2022.  
ii) DOP&T's OM No. 36012/1/2020-Estt. (Res.-II) dated 28.12.2023.  
iii) DOP&T's OM No. 36012/1/2020-Estt. (Res.-II) dated 17.05.2022.  
iv) Ministry of Social Justice and Empowerment's notification No. 38-16/2020-DD-III dated 04.01.2021  
v) Board's letter No. E(NG)II/2017/RC-2/1/Policy dated 27.02.2019.

The matter regarding reservation in promotion for Persons with Benchmark Disabilities (PwBDs) had been under litigation before various courts of law for quite some time, and the Hon'ble Supreme Court, in its order, dated 18.07.2023, has directed that "Though it is pointed out that the judgement of this Court of which breach is alleged, has been complied with effect from 15.7.2023, the fact remains that the judgement is of 30.6.2016 directing the respondents to implement the 1995 Act. Therefore, the respondent will have to consider of giving at least notional promotion to those who are eligible from an earlier date."

2. Accordingly, Department of Personnel and Training in consultation with the Department of Legal Affairs have issued detailed instructions vide their OM No. 36012/1/2020-Estt.(Res.-II) dated 28.12.2023 (copy enclosed) for providing notional Promotions to PwDs candidate w.e.f. 30.06.2016, in posts and services of the Central Government, as defined under Section 2(r) of the said Act, notified by the Department of Empowerment of Persons with Disabilities (DEPWD).

3. The matter has been considered by the Board and it has been decided that instructions issued by DOP&T vide their OM under reference may be made applicable mutatis mutandis for grant of notional promotions to the PwD candidates w.e.f. 30.06.2016 in the non gazetted posts of Indian Railways as identified vide Ministry of Social Justice and Empowerment's notification No. 38-16/2020-DD III dated 04.01.2021 and Board's letter E(NG)II/2017/RC-2/1/Policy dated 27.02.2019.

  
(Sanjay Kumar)  
Dy. Director/Estt.(N)  
18/01/24

Railway Board  
Ph. No. 43658/011-23303658  
E-Mail Id - sanjay.kumar6@gov.in



No. 36012/1/2020-Estt (Res-II)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

North Block, New Delhi,  
Dated the 28<sup>th</sup> December, 2023.

**OFFICE MEMORANDUM**

Subject: Reservation in promotion to Persons with Benchmark Disabilities (PwBDs) regarding.

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The undersigned is directed to say that the Hon'ble Supreme Court, vide its Judgement dated 30.6.2016, in the WP(C) No.521/2008, titled '*Rajeev Kumar Gupta Vs. UOI*', had directed the Government to extend three percent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. However, subsequently the Hon'ble Supreme Court, vide its Order dated 3.2.2017, in the Civil Appeal No. 1567/2017 titled '*Siddaraju Vs. State of Karnataka & Ors.*' referred to the prohibition made against reservation in promotion as laid down by the majority in *Indra Sawhney & Others v. Union of India & Others* (1992) and observed and held that its Judgement dated 30.6.2016 in *Rajeev Kumar Gupta* needed to be considered by a larger Bench. However, the Hon'ble Supreme Court finally disposed of the *Siddaraju* matter vide its Judgement dated 14.1.2020 and held that its Judgement in *Rajeev Kumar Gupta* would bind the Union and State Governments and it must be strictly followed.

2. However, the Union of India needed some clarification with regard to the implementation of the Hon'ble Supreme Court Judgement dated 30.6.2016 and 14.1.2020, and, therefore, Application for Clarification was filed by the UOI before the Hon'ble Supreme Court seeking clarification which *inter alia* included whether the vacancies for promotion for PwDs would be computed only on the basis of the vacancies against the identified posts or against the vacancies in both identified and non-identified posts and whether the judgement dated 14.1.2020 needs to be implemented on the basis of PwD Act, 1995 or RPWD Act, 2016. Hon'ble Supreme Court disposed of this Application for Clarification vide its Order dated 28.9.2021 directing the Government of India to issue instructions regarding reservation in promotion as provided in Section 34 of the RPWD Act, 2016.

3. Proviso to Section 34 of the RPWD Act, 2016 provides that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. Accordingly, DoPT vide its OM of even number dated 17.5.2022 issued detailed instructions for extending the benefit of reservation in promotion to PwDs up to the lowest rung of Group 'A' in posts and services under the

Central Government. This OM is effective with effect from the date of its issue i.e. 17.5.2022.

4. However, in a Contempt Petition (Civil) No.873/2023 filed by Shri S. S. Sundaram against Department of Revenue, the Hon'ble Supreme Court vide its order dated 18.7.2023 has directed "*Though it is pointed out that the judgement of this Court of which breach is alleged, has been complied with effect from 15.7.2023, the fact remains that the judgement is of 30.6.2016 directing the respondents to implement the 1995 Act. Therefore, the respondent will have to consider of giving at least notional promotion to those who are eligible from an earlier date*".

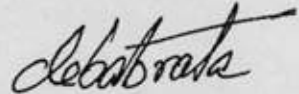
5. The aforesaid directions dated 18.7.2023 of the Hon'ble Supreme Court has been considered in consultation with the Department of Legal Affairs and it has been decided to grant notional promotions to the PwD candidates w.e.f. 30.6.2016 as under:

- (i) PwD employees in posts and services of the Central Government, will be considered for grant of the benefit of reservation in promotion up to the lowest rung of Group 'A' on notional basis w.e.f. 30.6.2016 subject to their fulfilment of the eligibility conditions as laid down in the DoPT OM of even number dated 17.5.2022 regarding reservation in promotion to PwDs. However, the extent of reservation in promotion may be in accordance with the relevant provisions contained in the PwD Act 1995 and RPWD Act 2016. Further, this benefit may be extended after holding Review DPC as per the extant instructions issued by DoPT on the subject. In case the PwD employees are found eligible and suitable for promotion from any date subsequent to 30.6.2016, then the benefit of reservation in promotion may be extended to them from the date they become eligible for promotion. This promotion on notional basis includes promotion on seniority quota as well as Departmental Examination/Departmental Competitive Examination. In case of Departmental Examination/Departmental Competitive Examination, which has already been held during the period from 30.6.2016 to 16.5.2022, the eligibility of the PwD candidates may be assessed on the basis of their performance in the said examination. The concerned Administrative Authorities are given discretion to consider holding of special examination for assessing the suitability or eligibility of PwD employees for such Departmental Competitive Examination.
- (ii) Any such promotion during the period from 30.6.2016 till the PwD employee actually assumes the charge of the post will be only on notional basis and the actual financial benefit of promotion will be effective to them with effect from the date they actually assume charge of the promoted post, meaning that no financial arrear will be admissible to them for the period from the date on which they get the benefit of notional promotion and the date on which they actually assume or have already assumed the charge of such promoted post.
- (iii) Extending the benefit of reservation in promotion to the PwD employees on notional basis between 30.6.2016 and actual assumption of the charge of the

post may affect the inter-se-seniority of the officials in various grades. Due to this, there may be cases in which some officials may have to be placed in a select list/seniority list, subsequent to the year of their existing/present seniority list/select list. This may have a chain effect as it may result in revision in seniority lists in subsequent years in many cases which may cause administrative inconvenience. In order to avoid such situation, supernumerary posts may be created to adjust the lien of such PwD employees with effect from the date on or after 30.6.2016, when they become eligible to get the benefit of reservation in promotion, till the availability of vacancy in which the promotion is to be made or till they vacate the post on their retirement, further promotion etc. whichever is earlier.

- (iv) The creation of supernumerary post, as stated above, will be personal to the PwD employee who is given the benefit of reservation in promotion on notional basis and such supernumerary post will stand abolished on the date when such PwD employee is adjusted against available vacancy in the grade in which the promotion is given or when that PwD employee vacates the post on his/her retirement, further promotion etc., whichever is earlier.
- (v) Ministries/Departments are advised to undertake an exercise to ascertain the requirement of supernumerary posts required by them and submit the proposal for creation of posts to the Department of Expenditure through DoPT. Such proposal shall contain the proposal in respect of the entire Department/Ministry and the proposal in piecemeal shall not be accepted. A certificate to the effect that the proposal is complete in all respects and the requirement of creation of supernumerary posts has been projected in respect of the entire Department may also be furnished along with the proposal. Further, each proposal shall have the concurrence of the Liaison Officer for PwDs of the Department/Ministry concerned and shall be forwarded with the approval of the Secretary of the Administrative Department/Ministry.
- (vi) It is clarified that the benefit of notional promotion, as proposed above, shall not adversely affect those PwD candidates who have already been granted the benefit of reservation in promotion in personam in pursuance of the Orders/judgements of various Courts of Law.

6. This issues with the approval of Department of Expenditure conveyed vide their ID Note No.7(1)/E. Coord.I/2017 Part (V) dated 12.12.2023.



(Debabrata Das)

Under Secretary to the Government of India.

**Distribution:**

- (i) The Secretaries of all Ministries/Departments of the Government of India.