

No.A-12018/50/2019-P&AR(GSW)
GOVERNMENT OF MIZORAM
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
(GENERAL SERVICE WING)

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Mizoram Secretariat
Aizawl, the 7th January, 2020

OFFICE MEMORANDUM

Subject: Maintenance of vacancy based roster and matters connected thereto

The Government of Mizoram ordered maintenance of posts based roster for all departments/offices under the Government of Mizoram while calculating vacancies falling under two or more reservations/quotas vide No.A.32012/1/2003-P&AR(GSW) dt. 24.01.2011. Post based roster operates on the total sanctioned posts in a cadre for calculation of the share of different methods of recruitment as per the recruitment rules. This order was made apparently with a view to maintain consistency among different departments and to bring the policy of reservation in line with the law laid down by the Hon'ble Supreme Court in the case of *R.K. Sabharwal vs. State of Punjab* reported in 1995 AIR 1371, 1995 SCC (2) 745 as well as *J.C. Malik vrs. Union of Ministry of Railways* reported in 1996 (1) SLJ 114.

2. The recruitment rules of all Group 'A', 'B', 'C' and 'D' posts were also amended through the Mizoram Group 'A', 'B', 'C' and 'D' Recruitment (Amendment) Rules, 2011 by suitably amending the word "vacancies" appearing in column 10/11 of the First Schedule/Annexure-I of the recruitment rules wherever linked to "quota" by the word "post or posts". Recruitment rules framed subsequently also replaced the word "vacancies" to "posts" with a view to facilitate the maintenance of post based roster while calculating the share of posts between different methods of recruitment appearing in the recruitment rules.

3. In the meantime, the observations of the Supreme Court in the case of *Appeal (Civil) 6446 of 1998 State of Punjab vs Dr. R.N. Bhatnagar and Anr* pertaining to an appeal as to how the quota and rota for recruitment of Professor in a Medical College is to be operated is hereby reproduced as shown below:

"It has, therefore, to be appreciated that when posts in a cadre are to be filled in from two sources whether the candidate comes from the source of departmental promotees or by way of direct recruitment once, both of them enter a common cadre, their birth marks disappear and they get completely integrated in the common cadre. This would be in consonance with the thrust of Article 16(1) of the Constitution of India. No question of exception to the said general thrust of the Constitutional provision would survive as Article 16 (4) would be out of picture in such a case. Consequently the decision rendered by the Constitution Bench in R.K. Sabharwal's case in connection with Article 16(4) and the operation of roster {i.e. posts based roster} for achieving the reservation of posts for SCs, STs and BCs as per the scheme of reservation cannot be

*pressed in service for the present scheme of Rule 9(i) [rule 9(i) of the Punjab Medical College Education Service (Class-I) Rules, 1978 prescribed the method of recruitment to the post of Professor as 75 percent posts by promotion and 25 percent posts by direct recruitment] is not as per Article 16(4) but is governed by the general sweep of Article 16(1). The attempt of learned counsel for the respondent to treat a quota rule as reservation rule would result in requiring the State authorities to continue the birth-marks of direct recruits and promotees even after they enter the common cadre through two separate entry points regulating their induction to the cadre. Therefore, the roster for 3 promotees and one direct recruit is to be continued every time a vacancy arises and there is no question of filling up a vacancy arising out of a retirement of a direct recruit by a direct recruit or on the retirement vacancy of a promotee by a promotee. **Consequently, the question of rotating the vacancies as posts or for treating the posts mentioned in the rules of recruitment as necessarily referable to total posts in the cadre at a given point of time in the light of R.K. Sabharwal's judgment, therefore, cannot survive for in the case of a quota rule between direct recruits and promotees, the same is to be judged on the touchstone of Article 16(1) and the statutory rules governing the recruitment to the posts of Professor constituting the Punjab Medical Education Service (Class-I) and not on the basis of Article 16(4)**"*

4. The Supreme Court in the above case further held that “...the quota rule would apply to the vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota....**The quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time.....** Whenever in the cadre of Professors of Ophthalmology vacancies arise for being filled in at any given point of time, those vacancies in the posts have to be filled in by operating the roster in such a way that available vacancies get filled up by allotting 75% of them to departmental promotees and 25% to direct recruits”. The Supreme Court, thus, effectively held that the decision rendered in the case of *R.K. Sabharwal vs. State of Punjab* in connection with article 16(4) of the Constitution (i.e. pertaining to reservation of appointments or posts in favour of any backward class of citizens) and the operation of roster for achieving the reservation of posts for Scheduled Castes, Scheduled Tribes and Backward Classes as per the scheme of reservation cannot be pressed into service for the scheme of method of recruitment as prescribed in the respective recruitment rules.

5. The Gauhati High Court in the case of *WP(C) No. 225 of 2016 Lalhangkimi & 106 Ors vs State of Mizoram & 4 Ors* pertaining to maintenance of posts based roster while calculating the share of posts between different methods of recruitment for recruitment of Health Supervisor also ruled as follows:

“It is settled that in the Rules of 2011, the word ‘post’ is given, but the difficulty is whether to read it as the total strength of the cadre or the vacancies that arises from time to time. Rules have to be read to give meaning and purpose to the extension of the legislature. In this case, it is an admitted fact that the posts of Health Supervisor were filled up as per the Rules, i.e. Rules of 1987 and the amended Rules of 2006. In both the Rules, it is provided that the post of Health Supervisor is to be filled up,

100% through promotion. Now with the coming of the new Rules {which prescribed 75% by promotion and 25% by limited departmental examination}, if the percentage of posts to be filled up has to be counted against the total sanctioned posts, it would be quite unreasonable because of 2 reasons:

- i) the first reason being that persons who are eligible in future for promotion would be deprived of the chance of being promoted to the post of Health Supervisor.
- ii) because it would mean giving retrospective effect to a law.

Generally, laws are to be given prospective effect unless it is specifically mentioned in the Rule or Act itself. **Therefore, the word 'post' has to be understood or read as 'vacancy' that arises from time to time"**

6. Further, the ruling of the Gauhati High Court in the case of *WP(C) No. 51 of 2018 Rotluangi Chawngthu & Anr vs State of Mizoram & Ors* pertaining to the application of post based roster for filling up of vacancies in the post of Principal, Government Higher Secondary School is reproduced below for which the recruitment rules of 2017 prescribed 50% by promotion and another 50% by limited departmental examination:

*"Further, this Court does not find any force in the submission made by the respondents' counsel that post based roster would have to be applied in the present case and for that to happen, the post will have to be filled up through LDE. **The question of applying roster based reservation, as held by the Apex Court in R.K. Sabharwal and Others is with regard to the issue of reservation, to provide adequate representation to Schedule Caste/Tribes and Other Backward Classes in services.** The roster based reservation was one of the mechanisms provided to achieve that end. Roster based reservation indicates the reserve points in respect of posts in a particular cadre, wherein the reserve points are to be filled up from that particular reserved categories and candidates belonging to the general category are not entitled to be considered for the reserved posts. It is in that context that the roster points reservation mechanism has been dealt with by the Apex Court in R.K. Sabharwal and Others. The above case is not applicable to the case in hand, as there is no reserved posts for reserved categories..... The quota-rota rules can be applied only on the coming into force of the 2017 Rules. Thus, the decision of the State respondents to fill up the 2 (two) vacant posts of Principals only by way of LDE as per the 2017 Rules, as reflected in the "Question and Answer No. 6" of the letter dated 25.04.2018, issued by the SPIO and the Under Secretary to the Government of Mizoram, School Education Department is unsustainable and the decision taken by the State respondents in that regard is set aside.... In view of the above reasons, this Court directs the respondents to fill up one vacant post, out of the 2 (two) vacant posts of Principal of Government HSS, by way of promotion and the other remaining one post by way of LDE."*

7. In view of the judicial pronouncements stated above and in supersession of notification No.A.32012/1/2003-P&AR(GSW) dt. 24.01.2011 which prescribed maintenance of post based roster, the State Government hereby ordered as follows:

- a) Vacancy based roster shall be maintained with immediate effect for filling up of vacancies in case different methods of recruitment are prescribed in the recruitment rules/service rules. Vacancy based roster ensures preparation of roster points based on the cyclical rotation of vacancies between different methods of recruitment which in turn is based on the quota prescribed by the recruitment rules between the different methods of recruitment

Illustration No. 1: Suppose the recruitment rules for the post of an Assistant Engineer, with a total sanctioned strength of 100 posts, provide the methods of recruitment as 75% by direct recruitment and 25% by promotion and suppose there are 10 vacancies for the year 2019-20, the vacancy based roster may be made as follows:

Vacancy based roster for recruitment of Assistant Engineer, assuming that the starting point in the roster is the method of direct recruitment

Methods of recruitment: Direct recruitment : 75%
Promotion : 25%
Total vacancies for the year 2019-20 : 10

| Roster point | Method of recruitment |
|--------------|-----------------------|
| 1. | Direct recruitment_1 |
| 2. | Direct recruitment_2 |
| 3. | Direct recruitment_3 |
| 4. | Promotion_1 |
| 5. | Direct recruitment_4 |
| 6. | Direct recruitment_5 |
| 7. | Direct recruitment_6 |
| 8. | Promotion_2 |
| 9. | Direct recruitment_7 |
| 10. | Direct recruitment_8 |

Illustration No. 2: Suppose the recruitment rules for the post of a Medical Officer, with a total sanctioned strength of 250 posts, provide the methods of recruitment as 60% by direct recruitment and 40% by promotion and suppose there are 10 vacancies for the year 2019-20, the vacancy based roster may be made as follows:

Vacancy based roster for recruitment of Medical Officer, assuming that the starting point in the roster is the method of promotion

Methods of recruitment: Direct recruitment : 60%
Promotion : 40%
Total vacancies for the year 2019-20 : 10

| Roster point | Method of recruitment |
|---------------------|------------------------------|
| 1. | Promotion_1 |
| 2. | Promotion_2 |
| 3. | Direct recruitment_1 |
| 4. | Direct recruitment_2 |
| 5. | Direct recruitment_3 |
| 6. | Promotion_3 |
| 7. | Promotion_4 |
| 8. | Direct recruitment_4 |
| 9. | Direct recruitment_5 |
| 10. | Direct recruitment_6 |

- b) The word 'post' or 'posts' appearing in the recruitment rules/service rules with reference to the quota prescribed for different methods of recruitment has to be understood or read as 'vacancy' that arises from time to time.
- c) Vacancies which are left unfilled as on the date of issue of this Office Memorandum but which fell vacant in previous vacancy years shall also be filled up by following the vacancy based roster in case there are more than one methods of recruitment to a post/grade as per the relevant recruitment rules.
- d) Past cases wherein vacancies were filled up based on the application of posts based roster between different methods of recruitment need not be re-opened on account of implementation of the vacancy based roster.

8. The starting point in the roster should be that method of recruitment prescribed in the recruitment rules for which the selection process had been completed first. The method of recruitment which is written first in the recruitment rules may not necessarily be the starting point in the roster unless the selection process had been completed first. For this purpose, the date of the completion of the selection process will be determined as follows:

| Sl. No. | Method of recruitment | Date of completion of selection process |
|----------------|--|---|
| 1. | Direct recruitment | |
| (a) | Through examination conducted by MPSC/MSSSB or any other recruiting authorities | Date of publication/ announcement of results |
| (b) | Through interviews conducted by MPSC/MSSSB or any other recruiting authorities | Date of issue of the letter of the MPSC/MSSSB conveying their recommendation |
| (c) | Through interviews conducted by DPC as constituted by the Government from time to time | Date of meeting of the DPC or last date of meeting of the DPC, in case meeting is spread over more than a day |

| | | |
|-----|--|---|
| 2. | Promotion | |
| (a) | Through the MPSC or MSSSB | Date of issue of the letter of the MPSC/MSSSB conveying their recommendation |
| (b) | Through the DPC as constituted by the Government from time to time | Date of meeting of the DPC or last date of meeting of the DPC, in case meeting is spread over more than a day |
| 3. | Limited departmental examination | |
| (a) | Through the MPSC or MSSSB | Date of publication/ announcement of results |
| (b) | Through the DPC as constituted by the Government from time to time | Date of publication/ announcement of results |

9. A new roster will have to be started in the following cases:

- a) From the date the recruitment rules are notified in the Gazette
- b) When there is an amendment to the recruitment rules which changes the percentage allotted for the various methods of recruitment.

10. When recruitment is made vacancy based, it is possible that at any given point of time, the share of direct recruitment may increase and the share of promotion may correspondingly decrease or vice versa. In such cases, the cadre strength for direct recruitment and cadre strength for promotion would change from year to year. The term 'cadre strength' in this context implies the number of posts required to be filled up by a particular method of recruitment in terms of the applicable recruitment rules.

Illustration No. 3: Suppose the sanctioned strength of the post of Assistant is 800 and the recruitment rules provide the methods of recruitment as 40% by direct recruitment, 40% by promotion and the remaining 20% by limited departmental examination. Suppose all the 800 posts were vacant and filled in the year 2018-19, then, the cadre strength for the three methods of recruitment shall be as under:

| | |
|----------------------------------|-------|
| Direct recruitment | : 320 |
| Promotion | : 320 |
| Limited departmental examination | : 160 |

Suppose in the year 2020-21, a total of 200 vacancies arises in the post of Assistant of which 60 posts were vacated by candidates from the direct recruitment quota, 80 posts were vacated by candidates from promotion quota and another 60 posts were vacated by candidates from the limited departmental examination quota, the number of incumbents against the three methods of recruitment during the year 2020-21 before making new recruitment shall be as under:

| | |
|----------------------------------|-------|
| Direct recruitment | : 260 |
| Promotion | : 240 |
| Limited departmental examination | : 100 |

Since the recruitment rules provide the methods of recruitment as 40% by direct recruitment, 40% by promotion and the remaining 20% by limited departmental examination, the number of vacancies to be filled by the three methods of recruitment for the year 2020-21 and the cadre strength for the three methods of recruitment after making recruitment shall be as under

| Sl. No. | Method of recruitment | Vacancies to be filled in the vacancy year 2020-21 | Cadre strength after recruitment in the recruitment year 2020-21 |
|---------|--|--|--|
| 1) | Direct recruitment (40%) | 80 | 260+80 = 340 |
| 2) | Promotion (40%) | 80 | 240+80 = 320 |
| 3) | Limited departmental examination (20%) | 40 | 100+40 = 140 |
| | TOTAL | 200 | 800 |

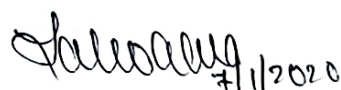
Sd/- LALRINSANGA

Joint Secretary to the Govt. of Mizoram
Aizawl, the 7th January, 2020

Memo.No.A-12018/50/2019-P&AR(GSW)

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(LALROHLUA)

Deputy Secretary to the Govt. of Mizoram
Deptt. of Personnel & Administrative Reforms
(General Service Wing)