

## NATIONAL COMMISSION FOR SCHEDULED TRIBES

*File No. HCC/Maha/1/2013/RU-IV*

Proceedings of the Sitting of the Commission on the representation dated 18.12.2012 of Shri Harish Chandra Chavan, Hon'ble MP (Lok Sabha) for cancellation of DoPT OM No. 36011/2/10-Estt.(Res.) dt 10<sup>th</sup> August, 2010 conferring benefits to candidates of Halba Koshti/Halbi Koshti/Koshti community to continue to occupy vacancies reserved for genuine Scheduled Tribes.

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**Venue:** Conference Room, NCST, Lok Nayak Bhawan, New Delhi

**Date:** 25<sup>th</sup> June 2014 at 1200 PM.

**In the Chair:** Dr. Rameshwar Oraon, Hon'ble Chairperson

**Participants:** As per list at Annex 1.

Following upon the Sittings held in the Commission on 30.08.2013 and 04.09.2013 and acting on the representation of the Hon'ble MP seeking cancellation of OM No. 36011/2/10-Estt.(Res.) dt 10<sup>th</sup> August, 2010 issued by the Department of Personnel & Training, Govt of India (DoPT), that conferred benefits, restricted to Scheduled Tribes, to employees in Government and PSUs etc belonging to non-ST, Halba Koshti/Halbi Koshti/Koshti community of Maharashtra State, this Commission has examined the information and records furnished by DoPT with their letters dated 23.04.2013, 09.09.2013, 24.09.2013, 12.01.2014 & 13.01.2014, by the Department of Legal Affairs in their letter dated 20.09.2013, and by the Government of Maharashtra with their letters dated 15.05.2013, 02.09.2013 & 25.10.2013, along with associated correspondence and Court decisions relevant to the issue and the principles contained therein.

2. Since the essential issue remained unresolved, a detailed position paper was prepared in this Commission as in Annexure II, setting out the series of Court decisions and interventions by the Government of Maharashtra and by the DoPT, the processes that took place leading to these interventions including the OM mentioned above which is the subject disputed by petitioner, the gaps and lack of clarity in information and views that remained without reply or clarification. This paper was sent under this Commission's letter of even number dated 05.03.2014 through Speed Post and emails to the Secretary, DoPT (Speed Post sent on 5/3/2014, Agenda Notes emailed on 5/3/2014 ), Secretary, MTA (Speed Post sent on 5/3/2014, Agenda Notes emailed on 5/3/2014 ), Secretary, Department of Legal Affairs, Ministry of Law & Justice (Speed Post sent on 5/3/2014, Agenda notes emailed to [pk.malhotra@nic.in](mailto:pk.malhotra@nic.in) on 5/3/2014 ) and the Chief Secretary, Govt. of Maharashtra (Speed Post on 5/3/2014 and Agenda Notes emailed on 5/3/2014), and to Central Govt agencies/PSUs namely, PNB (Speed Post sent on 6/3/2014, emailed Agenda Notes on 6/3/2014 ), Secretary, Ministry of Power, (Speed Post sent on 6/3/2014, Agenda Notes emailed on 6/3/2014), Chairman & ex-officio Secretary, CEA (Speed Post sent on 6/3/2014, Agenda Notes emailed on


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6/3/2014), CMD, FCI (Speed Post sent on 6/3/2014, Agenda Notes emailed on 6/3/2014), and Governor, RBI (Speed Post sent on 6/3/2014, Agenda Notes emailed on 6/3/2014, to respond to the analysis and conclusions arrived; further, to fill out the gaps in information and provide relevant clarifications so as to conclude the examination and advise the petitioner. In the absence of any reply from any of the parties or requests for clarification or missing enclosures, this Commission decided to conduct a Sitting to ascertain the views of the various principal departments and to take a view on progressing with the matter by various options: in relation to the petitioner's demand for withdrawal of the impugned OM by the DoPT; alternately for approaching the Supreme Court to quash the OM; for intervening with the Supreme Court and other Courts to remedy the consequent damage to safeguards provided under the Constitution to Scheduled Tribes; and for appropriate action to deter its recurrence in similar instances in future. The position paper mentioned above was adopted as the Agenda Note for this Sitting.

3. The Hon'ble Chairperson NCST underscored the central issue for the Sitting which was the need to cancel and withdraw DoPT's OM No. 36011/2/10-Estt.(Res.) dated 10<sup>th</sup> August, 2010 conferring benefits limited to Scheduled Tribes, to employees of Government and PSUs, etc belonging to Halba Koshti/Halbi Koshti/Koshti community which are Non-ST and thereby denying jobs to Scheduled Tribes applicants and in effect, illegally dereserving such vacancies that were reserved for the STs. He, therefore, requested the Secretary, NCST to lead the discussions on the matter.

4. The Secretary, NCST mentioned that the matter has been discussed in Sittings of the Commission on 30.08.2013 and 04.09.2013 and on the basis of information received, a detailed Note (Agenda for the meeting) was sent to DoPT, Dept of Legal Affairs, and Maharashtra Government, as described above, setting out the issue in detail along with various court cases, outcomes and interpretations and the consequences of the analysis. The analysis clearly highlighted the lack of any bases for the said OM issued by DoPT and its dangerous implications and consequences not only in violating the Constitutional provisions but also the damage to the safeguards enshrined in the Constitution for genuine Scheduled Tribes. While insisting on the need to withdraw *ab initio*, the OM issued by DoPT allegedly issued on the basis of Supreme Court orders, for its wholly incorrect basis, the note also highlighted the violations of procedure established by statute for consultations with MTA and NCST, the direct approach by various agencies to DoPT without routing through their administrative departments, and the lack of powers with the Joint Secretary, DoPT, who approved and issued the said OM when these powers for major clarification benefiting 20,000 employees (as informed by the Government of Maharashtra) were only with the Prime Minister who then headed DoPT. Secretary/NCST referred to the note which pointed out that the Milind judgment had actually and in very explicit terms held that the petitioners

  
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were not Scheduled Tribes and were not entitled to any benefits meant for STs. The Court however, took a view under Article 142 of the Constitution after considering the fact that the petitioner had completed studies and was practicing as a doctor. Therefore, it felt that cancellation of his medical degree would benefit no one. On this basis, the Supreme Court, which alone is endowed with powers under Article 142, moulded relief in the peculiar circumstances of the petitioner. These powers were not given to any other Court or for that matter, the DoPT. For all these aspects pointed out in the Note, clarifications and specific response had been sought from the Govt of Maharashtra, DoPT, Dept of Legal Affairs, PNB, CEA, RBI and FCI. Details of officers who dealt with the matter and passed orders were also sought in order that the authority, or lack of it, for issue of the OM could be pinpointed.

5. To commence the discussion, Secretary, NCST requested the Principal Secretary, Tribal Welfare Department Maharashtra Government to clarify the various gaps identified in the Agenda note and to explain especially, the position of the Government of Maharashtra on the conflict in application between GR of 1995 and State of Maharashtra Caste Certificate Act of 2000, the defacto dereservation of opportunities for Scheduled Tribes that was a consequence, their current views on the OM of DoPT, and their legal options.

6. The Principal Secretary, Tribal Welfare, Govt of Maharashtra said that disputes occurred and orders in the State had issued from various departments and the Tribal Welfare department would need to contact them and take a unified view. On the basis of the note, there was a clear indication of overlap between the GR of 1995 and the Caste Certificate Act of 2000 but how this has been viewed by different departments would need to be studied and response provided to the various aspects raised in the Agenda note. However, upon receipt of information on the DoPT OM dated 10.08.2010, the Government of Maharashtra had consulted the State's Advocate General and written with all details to the DoPT by letter No.STC-1010/C.R.221/D.10 dated 23.09.2010, and enclosed the detailed and categorical opinion of the Advocate General that the OM was not in consonance with judgments of the Supreme Court. However, there was no response despite all efforts. On the defacto dereservation, he said that he would have to verify the correct situation of restoration of job vacancies and recruitment, which he estimated at about 5000 based on the number of Special Backward Class inclusions, but agreed that academic enrolment gained by fraudulent means could not be restored. He also explained the plans of the State Government to pursue the matter with Courts so that a uniform approach was adopted in different Courts. He said that transfer of officials dealing with the issue had delayed filing of affidavits and he would adopt information in the Agenda note for this purpose.

7. The Secretary DoPT submitted to the Commission that the OM dated 10.08.2010 had been issued after consultations with the Department of Legal Affairs, Ministry of Law & Justice. He further mentioned that the case filed by the All India Adivasi Federation (mentioned in the Note) in SLP (C) No. 9574/2013 was reserved for judgment and that final pleadings were over on

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07.03.2014. He explained that since the matter was *sub judice*, the OM could not be cancelled at this stage and the department would have to wait for the judgment of the Court. The Secretary DoPT offered no response on any of the matters raised in the note including the lack of consultations with NCST before issue of OM dt 10.8.2010 or the authority for issue of the OM. Secretary, NCST inquired as to whether the views and analysis of NCST contained in the Note circulated to DoPT on 5.3.2014 had been incorporated in the final pleadings. Secretary/NCST also expressed doubts about the position of the DoPT lawyer in the Supreme Court since there was a clear contradiction between the consent noted as having tendered by the Government lawyer in Deepak vs. Union of India before the Supreme Court. In the absence of any response from the Secretary, DoPT on both these aspects, Secretary/NCST inquired as to how the department planned to take up the matter with the Supreme Court. He referred to the analysis which showed that this OM had effectively dereserved posts reserved for Scheduled Tribes and had fitted non-STs to the job vacancies. This situation differed from the approach of the Govt of Maharashtra which had created a category of Special Backward Class and had accommodated the ineligible employees accordingly. In the case of the Govt of India, no such steps had been taken and therefore, the constitutional safeguards for Scheduled Tribes had been violated. He explained that the Commission could also take up the matter before the Supreme Court as it was not a respondent in these cases but that might well place all concerned in an embarrassing situation with the Commission being directly in conflict with the Government. He, therefore, wanted to know what legal steps could be taken by the department other than of seeking review of the Supreme Court orders or of taking the appeal to a full Bench of the Supreme Court.


8. Secretary, Dept of Legal Affairs said that he had only received the covering letter from the Commission and not the Agenda note and therefore, a detailed response including details of staff who were involved in issue of the impugned OM of DoPT were not given. On this alleged lapse, Secretary, DoLA was shown details of the receipt and email sent to the department and was also provided a copy of the Agenda note to provide a detailed response. However, on the issue of cancellation of OM proposed in the Note and as discussed, Secretary DoLA agreed with Secretary, DoPT that that matter was *sub judice* since pleadings were completed and any decision on cancellation was a policy decision of DoPT that would have to await the Supreme Court judgment in the pending case. He did not express any opinion on how the arguments of Govt of India in the case would contrast with the 'consent' given by the Government lawyer in Deepak vs. UOI and reiterated that this was a policy decision.

9. The Secretary, NCST pressed the issue by pointing out that in the Milind case, the Supreme Court had only moulded relief under Article 142 which power did not lie with the DoPT, let alone the Joint Secretary or with any lower Courts. Therefore, no harm or contempt would lie if the said OM was withdrawn especially since petitioners had argued against the OM and sought its cancellation. A discussion arose on the nature of the Supreme Court orders under Article 142 which had been utilized by the Joint Secretary, DoPT to provide undeserved and unlawful benefits to an estimated (by Govt of Maharashtra) 20,000 employees. Agreeing that the relief was provided in the

form of an order, Secretary, NCST insisted that this relief was particularly moulded for one individual and did not apply to all petitioners. He cited opinions of legal scholars to assert that no legal principle was laid down by the exercise of relief under Article 142 by the Supreme Court and this could not be adopted for other cases especially by lower courts as also by the executive including officers of DoPT.

10. Concluding the Sitting, the Hon'ble Chairperson advised the DoPT, DoLA, and Govt of Maharashtra to respond with all details and for DoPT to act promptly based on the analysis in the Agenda Note, once orders have been passed by the Supreme Court. Meanwhile, the Commission would proceed internally on related matters with whatever replies that have been or are, received.

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**LIST OF PARTICIPANTS**

**NCST**

1. Shri Ravi Thakur, Hon'ble Vice Chairperson
2. Shri R. Vijaykumar, Ph.D, Secretary
3. Shri Santosh Kumar, Joint Secretary
4. Smt. K.D. Bhansor, Director

**Department of Personnel and Training**

1. Dr. S.K. Sarkar, Secretary
2. Smt. Mamta Kundra, Joint Secretary

**Department of Legal Affairs**

1. Shri P.K. Malhotra, Secretary
2. Dr. R.J.R. Kasibhatla, Director

**Ministry of Tribal Affairs**

1. Shri Rajeev Prakash, Director
2. Shri R. S. Mishra, Investigator

**Government of Maharashtra**

Shri Mukesh Khullar, Principal Secretary, Tribal Dept

**Petitioner**

Shri Harish Chandra Chavan, Member of Parliament (Lok Sabha)

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