

## CHAPTER VII

### SERVICE SAFEGUARDS

#### Introduction

Article 16(4), 16(4A), 320(4) and 335 of the Constitution of India provide for Service Safeguards for the Scheduled Castes and Scheduled Tribes in the country. The framers of the Constitution considered it necessary to have specific provision for providing a share to the backward classes in the governance and administration of the country as well as to overcome socio-economic and educational deprivation and discrimination suffered by them for centuries. Accordingly, Govt. of India has issued administrative orders from time to time, providing for reservations and certain concessions to SC and ST communities in direct recruitment and promotion in services under the government and the Public Sector Undertakings. For monitoring the operation of the Constitutional Safeguards provision was made for an independent constitutional authority and the institution of a Special Officer for SCs & STs under Article 338 of the Constitution was created, which over a period of time developed into the National Commission for SCs/STs.

7.2 Implementation of constitutional safeguards in services is done by the Union Department of Personnel and Training through executive orders issued by them from time to time. In 1997, five orders issued by the DOPT significantly diluted the reservation policy and some of the major benefits available to SCs and STs under the reservation policy were withdrawn. This, in effect, set in motion the reversal of the policy. It is unfortunate that the National Commission for SCs and STs was not consulted by the DOPT while issuing some of these orders, though it is mandatory under Article 338 (9) of the Constitution. Many of the orders issued in this regard have not been able to protect the interests of SCs/STs, as envisaged under the Constitution, due to absence of a clear and uniform legislation on the subject. There is also no clear-cut provision for penalizing the officers responsible for committing errors of omission and commission in implementing the reservation policy which hampers its effective implementation.

#### Present Status

7.3 representation of SCs/STs in various Departments and PSEs of Govt. of India and Public Sector Banks have not yet reached the prescribed level of reservation i.e. 15% for Scheduled Castes and 7.5% for the Scheduled Tribes. Details of representation of Scheduled Castes and Scheduled Tribes in Central Govt. Departments, Central Public Sector Enterprises and Public Sector Banks are given below:-

#### I Central Govt Departments:

The information regarding representation of SCs & STs in Services of Central Ministries/Departments as on 1.1.96 & 1.1.97 has been furnished by the Department of Personal and Training vide its letter number 360/1/99-Estt (Res.) dated 3.12.99 which is given in the following tables: -

**INFORMATION AVAIBALE AS ON 1.12.99**  
**REPRESENTATION OF SCs/STs IN CENTRAL GOVERNMENT SERVICES**  
**FOR THE YEAR (AS ON 1.1.96)**

Group	Total	SC	%	ST	%
A.	57096	6437	11.27	1926	3.37
B.	97176	11560	11.90	2570	2.64
C.	2227006	342525	15.38	125783	5.63
D. (Excluding Sweepers)	973861	207143	21.27	58888	6.05
Sweepers	192777	77221	40.06	14014	7.27
Total (Excluding Sweepers)	3355139	567665	16.92	189167	5.64
Total (Including Sweepers)	3547916	644886	18.18	2.3181	5.73

Note: This information excludes information from 3 Ministries/Departments.

Source: Department of Personnel & Training

**INFORMATION AVAIBALE AS ON 1.12.99**  
**REPRESENTATION OF SCs/STs IN CENTRAL GOVERNMENT SERVICES**  
**FOR THE YEAR (AS ON 1.1.97)**

Group	Total	SC	%	ST	%
A.	60067	6135	10.21	1840	3.06
B.	94111	11649	12.38	2840	3.02
C.	1959477	314995	16.08	122903	6.27
D. (Excluding Sweepers)	818748	176368	21.54	54931	6.71
Sweepers	1551137	61149	39.42	12812	8.26
Total (Excluding Sweepers)	2932403	509147	17.36	182514	6.22
Total (Including Sweepers)	3087540	570296	18.47	195326	6.33

Note: This information excludes information from 7 Ministries/Departments.

Source: Department of Personnel & Training

The above table shows that the representation of Scheduled Castes in Groups 'A' and 'B' has not yet reached the prescribed level of 15% in the Central Government services. In Groups 'C' & 'D' the percentage of reservation of the Scheduled Castes has exceeded 15%, however, in the case of Scheduled Tribes, the percentage in all Groups is below 7.5%. It is a matter of serious concern that even in Group 'C' & 'D' the prescribed percentage of 7.5 % for Scheduled Tribes is yet to be reached. **The Commission recommends that short-term as well as long-terms measures need to be taken up for increasing the representation of SCs and STs in services.**

## **II Central Public Sector Enterprises:-**

Information received from the Department of Public Enterprises about representation of SCs and Sts in services in the PSEs as on 1.1.97 is given in the following table:



### Position In Central PSES as on 1.1.97

Group	Total No. of Employees	No. of SCs	%age of SC	No. of STs	%age of ST
Group A	2,04,756	18,830	9.19	5,111	2.50
Group B	1,64,897	17,142	10.40	6,108	3.70
Group C	11,53,161	2,18,880	18.98	99,437	8.62
Group D (Excluding Safai Karamcharis)	4,73,972	1,07,176	22.61	51,261	10.82
Total	19,96,786	3,62,028	18.13	1,61,917	8.11
Safai Karamcharis	25,134	20,101	79.98	779	3.09
<b>Grand Total</b>	<b>20,21,920</b>	<b>3,82,129</b>	<b>18.89</b>	<b>1,62,696</b>	<b>8.05</b>

It is evident from the above table that there is substantial shortfall of SCs and STs personnel in Groups A and B services in the Central Public Sector Enterprises. This is the position of reservation in services on overall basis. If further analyzed on post-wise basis the percentage of representation is far below the requirement in higher posts.

### III Public Sector Banks

#### Position in Public Sector Banks as on 31-12-1997

	Total Strength	No. of SC	%age of SC	No. of ST	%age of ST
Officers	2,52,072	29,956	11.88	10,098	4.1
Clerk	4,65,780	69,902	15.01	22,416	4.81
Sub Staff (Excluding Safai Karamcharis)	1,83,061	42,567	23.25	11,275	6.16
Safai Karamcharis	43,509	22,864	52.55	2,449	5.63

It may be seen from the above table that the representation of SCs in public Sector banks is still lagging behind in the officers category and that of Scheduled Tribes in all the categories of officers, clerks and subordinate staff. **The National Commission for SCs and STs has been making recommendations in its various reports that special efforts need to be made to make up this shortfall by taking steps such as special training and coaching for SCs and STs, passing of central legislation to enforce reservation in Govt. Services and PSEs, banks, universities, grant-in-aid bodies etc.**

### Functions of the Commission vis-à-vis service safeguards provided for SCs/STs

7.4 Clause 5 (b) of Article 338 of the Constitution provides that the National Commission for SCs/STs shall inquire into specific complaints with respect to the deprivation of rights and safeguards provided to the SCs and STs. While investigating

any matter or inquiring into any complaint, the Commission shall have the powers of a civil court trying a suit under clause (8) of Article 338. Based on a Supreme Court judgment in the case of Indian Overseas Bank versus SC/ST Officers of the Bank, the DOPT issued orders vide their OM. No. 36036/2/97-Estt.(Res) dated 1.1.98 to all the Ministries/Departments stating that the National Commission for SCs and STs does not have the power to grant injunctions, temporary or permanent, nor does it have power to direct the with-holding of the operation of any order issued by the Govt. It further stated that the Departments must consider the recommendations of the Commission in the light of the policies laid down by DOPT. The OM of DOPT was considered in one of the meetings of the Commission and it was decided to clarify the position by addressing a letter to the Secretary, DOPT with endorsement to all the Ministries concerned. The DOPT has taken objection to the commission's letter and has stated that the directions issued by the Commission are contrary to the Supreme Court and that the Commission could issue only findings for appropriate remedial action, and not directions. DOPT have further issued instructions to all the Ministries/Departments to ignore such of the instructions of the Commission which purport to amend/withhold or keep in abeyance instructions issued by the DOPT.

7.5 During the year under report i.e. April,97 to March,1998, more than 4900 complaints were received in the Commission on which action was initiated at the Commission's Headquarter in Delhi and its 16 State Offices. Out of these action on around 900 cases has been completed during the year. In this connection, it is clarified that findings issued by the Commission are with regard to the violation of safeguards provided in the Constitution and other relevant rules. The Commission takes up policy issues with DOPT, and no instructions have been issued to withhold any Govt. orders. The letters sent by the Commission to different Ministries/Depts. are also not in conflict with the Supreme Court orders.

### **Highlights of The Special Report**

7.6 The Commission, for the first time, used the option provided in the Constitution for submission of a Special Report to the President on an important issue which against the basic foundation of reservation policy, envisaged in the Constitution. The benefits that were being enjoyed by the Sch. Castes and Sch. Tribes people for decades have been grossly diluted by the action of the Govt. Before invoking this provision, the Commission had exhausted all available channels of consultations with the Department of Personnel & Training. The Commission had also taken up the matter with the Hon'ble Prime Minister requesting him to intervene to stop the reversal of reservation policy which had been set in motion by issue of OM's dated 30.1.97, 2.7.97, 22.7.97, 13.8.97 and 29.8.97 by the DOPT.

7.7 The OM dated 30-1-97 resulted in down grading seniority of SC/.ST officers who were promoted in pursuance of reservation in promotion. The OM dated 2.7.97 changed the system of maintenance of rosters from vacancy based to post-based, without ensuring prescribed reservation level as laid down by the Supreme Court, thus affecting promotional avenues of SCs/STs. The OM dated 22.7.97 withdrew various relaxations in recruitment and promotion provided to SCs/STs. The OM dated 13.8.97-restricted promotion of SCs/STs to the lowest rung of Group, 'A' which is contrary to the spirit of the 77<sup>th</sup> Constitutional Amendment. The O.M. dated 29-8-97 discontinued special



recruitment drive which was the only means of expeditious filling up of backlog vacancies meant for SCs/STs.

7.8 These official Memoranda severally and adversely affect the service conditions of SCs/STs and their future in services. Hence, the Commission strongly feels that the order dated 30-1-97 should be withdrawn, order dated 22-9-97 and 29-8-97 be struck down, the order dated 2.7.97 be reviewed /revised and the order dated 13-8-97 modified to extend the reservation for SCs/STs to all classes of posts and services under the State in the spirit of 77<sup>th</sup> Constitutional Amendment. The Supreme Court judgment places a precondition on fulfilling the percentage in respective posts before shifting from vacancy based to post based roster system, but the DOPT has issued the O.M. in haste. The OMs have resulted in seriously affecting the employment opportunities of SC/ST candidates. The special recruitment drives have been discontinued. The order now clubs the backlog and current vacancies together. Till now, the practice was to treat backlog and current vacancies separately, permitting up to 50% of the vacancies to be filled by SC/ST candidates to increase their intake in services. It is apprehended that the new policy would not only reduce SC/ST intake substantially but may also leave a large number of unfilled vacancies.

## **Reservation Act**

7.9 Implementation of the Constitutional safeguards in services is done through executive orders issued by the concerned Ministry (presently the DPT). Many of these orders are later adopted as such or mutates-mutandis by other Ministries/Deptts., PSEs, Banks Universities etc. In this contexts, **the Ministry of Social Justice & Empowerment has prepared a Draft Bill on the subject called “Sch. Castes & Sch. Tribes (Reservation of Appointments or Posts and of Seats in Educational Institution Bill 1996”.** The Commission has already sent its comments on the Bill. However, the Bill is yet to see the light of the day. There is an urgent need to get this Bill made into Law and to strictly enforce reservations in Govt. services, PSEs, Banks Universities and other educational institutions of the Central and State Govts.

## **Redressal Of Grievances Of The SC/ST Associations**

7.10 The SC/ST employees have formed registered Associations/Organisations in a large number of Public Sector Enterprises/Bank etc. to safeguard their interests. However, the purpose of forming such Associations will not be served if they are not given an opportunity of being heard by the concerned management. The SC/ST Associations have been pressing for recognition of these bodies. In this connection, the Banking Division, Department of Economic Affairs have already issued instructions on 15-9-89, 20-2-95, and 24-5-96 for giving regular hearing to the Associations formed by the SC/ST employees in the Banks and Financial Institutions. It is felt that providing a forum to these Associations to discuss the general as well as individual grievances of the SC/ST employees would go a long way in redressal of their grievances and will generate a congenial atmosphere for smooth functioning of the offices and organizations.

7.11 In this regard, the National Commission for SC/ST has urged upon all the Govt. Deptts. and Public Sector Enterprises to provide following minimum facilities to the SC/ST employees Associations.

- (i) Quarterly/Periodical meetings at Headquarters and Regional/Project/Field/Zonal level offices with the SC/ST Association may be organized to discuss the individual grievances of the SC/ST employees as also for discussing the general issues pertaining to the service conditions of the employees belonging to these communities.
- (ii) Minutes of these meetings may be recorded and follow up action on the decisions taken. The Associations may be informed about the action taken on the minutes by the Management.
- (iii) The Management/Department may also consider providing appropriate office space, telephone and other facilities for the effective functioning of these Associations at various levels, such as Hqrs. Regional/Project/Zonal/Field etc.

7.12 This Commission had taken up the matter with the Secretary, Deptt. of Public Enterprises and Joint Secretary (Insurance) Deptt. of Economic Affairs in February, 1998 to provided minimum facilities to the SC/ST Employees Welfare Associations. However the response from them was not positively. The Commission again recommends that SC/ST Associations should not be considered as denominations formed on the caste lines in view of the fact that Constitution of India has recongnised them for special efforts for their upliftment. **The National Commission for Scheduled Caste and Scheduled Tribes again recommends that certain minimum facilities for their effective functioning should be provided to the SC/ST Employees Welfare Association.**

### **Appointment of Liaison Officers in the States**

7.13 In order to discharge its Constitutional duties, the Commission both directly and through its State Offices has to correspond with various Ministries/Departments of the Union/State Govts. for monitoring the implementation of Constitutional safeguards and development schemes envisaged for the benefit of SCs and STs. The State offices have brought to the notice of this Commission that in some cases they are not getting the required information/material on a timely basis from the State Govt. for analysis and onward transmission to Hqrs. Moreover, it becomes difficult for the State Officers to contact various departments of the state Govt. for supplying/ furnishing information relating development of SCs/STs. **It was, therefore, felt that it would be better if the State Govts. constitute SC/ST Development Liaison Cells within the States with the responsibility of coordinating with all the Departments of the State Govt. for implementing the development schemes as also to provide the required information to the Commission and its State Offices.** Towards this end the Commission addressed a circular letter to the Chief Secretaries of all State Govts/UT Admns on 15.11.98 requesting them to set up a SC/ST Development Liaison Cell in their respective States which may be headed by a senior Officer.



## Dereservation

7.14 As pointed out in the Fourth Annual Report of the Commission dereservation is not permissible in direct recruitment to services/posts in any group, except in the case of such Group A posts which cannot be allowed to remain vacant in public interest. In such cases the proposals are to be examined by the Commission in the first instance and if agreed, to the same will go to a Committee of three Secretaries D/o Personnel, M/o Social Justice & Empowerment and the Administrative Ministry concerned. The recommendation of the Committee of Secretaries will go to the Union Minister in the DOPT for a decision. As for promotion, there is no ban on dereservation of reserved posts. According to the procedure laid down by the Govt., whenever vacancies reserved for SCs/STs in promotion quota cannot be filled up by the relevant category candidates, these are required to be carried forward to subsequent three recruitment years. But before carrying them forward, a system has been devised according to which it is necessary to seek prior approval of the competent authority with explanation about the steps taken for appointment against the reserved vacancies. In the case of promotions where SC/ST candidates are either not available in the feeder grade or they are not eligible for promotion, the powers of dereservation of reserved vacancies have been delegated to various Ministries/Departments of the Govt. at the level of Joint Secretary. However, in all these cases proposals for dereservation are required to be sent to the DOPT with endorsement to the National Commission for SCs/STs.

7.15 As per the procedure being presently followed in the Commission, after an interim reply is sent to the concerned Ministry/Deptt. The proposals are analysed and examined thoroughly, and many a time, the officers of the Ministry/Department are called for discussion/clarification at the level of Director/Joint Secretary. The Commission has taken a decision that where there is a separate quota for direct recruitment and promotions, there will be no dereservation in the case of promotion, but the reserved posts will be diverted to direct recruitment to be filled up by SC/ST in accordance with the DOPT OM No AB 14017/30/89-Estt/R.R dated 10-7-90. Where the authority desires to keep the reserved posts vacant, no dereservation will be involved. **In order to ensure that dereservation is resorted to only as a last recourse the D/o Personnel and Training should re-examine the entire issue and provide for direct recruitment of Sch. Caste & Sch. Tribes where the post meant for them cannot be filled by promotion. The re-examination would require amendment of rules in many cases. It is felt that the following measures may be taken to ensure that the reserved posts even under promotional categories are filled only by SC/ST persons and such posts may be thrown open to others only under certain compelling circumstances.**

- i) Various Ministries/Departments may be asked to amend their Recruitment Rules to ensure that an element of direct recruitment is introduced at all levels except in certain specific cases where it is not possible to induct direct recruits.
- ii) Where the Recruitment Rules provide for promotions, failing which by deputation and failing both by direct recruitment, the authorities must exhaust other avenues i.e. deputation and direct recruitment before approaching for dereservation.

- iii) Even though there is no reservation in posts filled up on the basis of deputation/transfer, the administrative authorities may be advised to fill up reserved SC/ST posts from other Ministries/Depts having experience in the same field, in case suitable candidates are not available for promotion in the feeder grade and there is no element of direct recruitment.
- iv) Where the Recruitment Rules provide for 100% promotion, and it is not possible for the authority to introduce the element of direct recruitment therein, filling up of an equal number of posts at the lower level through direct recruitment may be ensured.
- v) In case of posts to be partly filled by promotion and partly by direct recruitment, the authorities shall in no case be allowed to divert the promotion quota to direct recruitment. It may also be ensured that adequate no of SCs/STs are available in the feeder grades. Where the Recruitment Rules in such cases are violated, dereservation should not be permitted.
- vi) Where SC/ST candidates are available in the feeder grade but are not eligible for promotion, such of SC/ST candidates who are likely to become eligible during the pendency of the panel, should be included in the panel against reserved posts and promoted after they become eligible for promotion. Till then the authorities can make ad-hoc arrangements if necessary keeping in view the exigencies of work.
- vii) In the case of Scientific/Technical posts in the safety categories in the Railways, Defence Para-Military Organisations and other Organisation having similar requirement, the Commission may agree to the proposal.
- viii) The proforma for dereservation also needs to be modified to include information about the element of direct recruitment, reasons for non-availability of SC/ST candidates etc. DOPT has since revised the proforma for dereservation by adding columns like; sanctioned posts, posts filled up, prescribed percentage of reservation, posts to be filled up as per prescribed percentage, shortfall if any, representation of SC/ST as on 2.7.97 how vacancies which are now proposed to be filled up have arisen viz. whether by retirement or promotion of SC/ST or general candidates; and post based roster as on 2.7.97 with changes, if any. The Commission has written to the various Ministries/Departments to send proposals for dereservations in the revised format, if not already sent.

## Promotions

7.16 The new Article 16 (4A) enables the State to make provisions for reservations in the matter of promotion to any class or classes of posts in services under the State in



favour of the SCs/STs, which in the opinion of the State, are not adequately represented in services under the State. Keeping in view the 77th Amendment of the Constitution, it was expected that reservation in promotion would be extended to other levels and classes of posts, including those above the lowest rung of Group A Services, up to which the present policy of reservation in promotion is restricted. It may be reiterated that even after 50 years of Independence, the representation of SCs/STs in services is not as per the prescribed levels, especially in Groups A and B. By withdrawing the concessions and facilities the promotional avenues of the SC/ST employees have been further reduced. No provision has been made by the DoPT for filling up of vacancies that are now going to remain vacant on account of non-availability of suitable persons.

7.17 In the first report of the Commission for the year 1992-93, the Commission had raised the issue relating to imbalance between the percentage of reservation for SCs/STs at the time of direct recruitment to Group C and D posts filled on local basis and at the time of promotions to these posts which are based on national level percentage. It was recommended that the percentage of reservation for SCs/STs in promotion to groups C and D posts filled up on local basis should be revised so as to correspond with the local percentage fixed for direct recruitment. Since the imbalance in percentage of reservation was adversely affecting the interests of SCs/STs, the Commission had to take up the matter with the DOPT to revise the same. While seeking clarification it was mentioned that while in the case of North Eastern States ST population is about 45%, by implementation of 200 point promotional roster 7.5% reservation will be applicable, whereas the same reservation percentage is applicable in the Southern part of the country where ST population is just 1%. Similar position prevails in the case of the SC population also. This leads to an anomalous situation in implementation of reservation provisions in promotion. The Department of Personnel & Training have informed that they have already sent their comments to the M/o Social Justice and Empowerment on 4.1.95. In respect of recommendation No. 5.23, which pertained to revision of percentage of reservation provided for SC/ST to promotions in Group C and D posts so as to correspond with the local regional percentage provided for them at the stage of direct recruitment, an SLP on this issue was pending before the Supreme Court at that time. The Supreme Court, while delivering the judgement on 8-5-96 on the said SLP, upheld the Government's policy of fixing the uniform percentage of reservation to promotions for the SCs and STs.

### **False Caste Certificates**

7.18 The problem of false caste certificate is a growing menace. The National Commission for SCs and STs has been and continues to be greatly concerned about the problem. The Commission has been drawing the attention of the concerned authorities to this problem both through recommendations made in the Annual Reports as well as by addressing concerned authorities at various levels. The Commission feels that the issue has not been given the attention it deserves and many false caste certificate holders are taking undue advantage of the system, thereby depriving the genuine SCs/STs of their legitimate rights. The Govt. of India has been issuing instructions from time to time regarding the precautions that need to be taken at the time of issue of SC/ST certificates and the action to be taken in cases where the certificates are found to be false. Instructions have also been issued for taking not only disciplinary departmental action against employees who have secured employment on the basis of false caste certificates



but also for taking penal action against them under the relevant provisions of the IPC. The Supreme Court in Civil Appeal No. 5854/94 of Kumari Madhuri Patil and others V/s Additional Commissioner, Tribal Development, Govt. of Maharashtra and others, has laid down a detailed procedure for the purpose, which has been reiterated in Civil Appeal No. 4545/95 in the case of Director of Tribal Welfare, Govt. of Andhra Pradesh Vs/ Lavati Giri and others.

7.19 The Commission addressed letters to the Chief Secretaries of all the States and Administrators of UTs in March, 1999 to ascertain the procedure being followed in their respective States/UT on the issuance, verification and cancellation of SC/ST certificates and for initiating disciplinary and penal action against the false certificate holders. The Commission also wanted to know whether the concerned States Govt./UT Admn. has framed any specific Act/Rules or issued any executive instructions/directions in his regard. The State Govts. were also requested to inform the present status of surveillance on the issuance, verification and cancellation of SC/ST certificates, the number of cases of false caste certificates detected during the last three years, and the disciplinary/penal action taken by the concerned authorities in such cases. In this connection, the following information has been received from the various States/UTs.

### **Andhra Pradesh**

7.20 There is an Act to regulate the issue of Community certificates relating to persons belonging to SC/ST and BCs and matters connected therewith, which came into force on 8<sup>th</sup> September, 1993. Rules in this regard, known as Andhra Pradesh SC/ST and BCs - Issue of Community, Nativity and Date of Birth Certificates Rules, 1997, came into force w.e.f. 16<sup>th</sup> May, 1997. The Act provides that benefits secured on the basis of false community certificate shall be withdrawn forthwith. Any authority performing the functions of the Competent Authority under this Act, which intentionally issues a false community certificate, shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months and may extend up to two years and also be punished with fine which shall not be less than one thousand rupees and may extend upto five thousand rupees. Information regarding number of cases of false certificates detected in the past and penal action taken by the authorities in such cases has however not been furnished by the State Government to the Commission.

### **Assam**

7.21 The caste certificates for the SC persons are issued by the Revenue Authorities in the State, taking help of their field staff as well as various SC organizations for verification. In the case of the ST persons, the Community Certificates are issued by the Revenue Authorities as well as the All Assam Tribal Sangha and Members of Parliament and Legislative Assembly. This position would change soon in accordance with the judgement of the Supreme Court which has specified that only revenue authorities may be empowered to issue community certificates. It has, however, been observed that because of the involvement of Social Organisations of SC and ST people in the matter of identification of bonafide persons, the problem of false certificates has been reduced to a large extent. The cases of false certificates, whenever reported, are inquired into by the Revenue Officers and action is taken as the situation demands. Information regarding



the number of false caste certificates issued and the action taken in such cases is not normally collected in the State.

### **Andaman & Nicobar Administration**

7.22 Guidelines issued by the Govt. of India for issue of SC and ST certificates are being followed by the concerned authorities empowered to issue such certificates. No false certificate is reported to have been detected in this UT so far and, therefore, there is no question of any disciplinary/penal action in such cases.

### **Kerala**

7.23 Kerala is the first State to have implemented the guidelines of the Hon'ble Supreme Court in 1994. Subsequently, the State Legislature passed the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996, relying upon the general guidelines contained in the above judgement. The Scrutiny Committee set up by the State has detected 175 individual bogus SC/ST claim cases. Other than the action proposed in Madhuri Patil's case, in all such cases, the bogus SC/ST status claimants are being prosecuted. Financial benefits, if any availed of by them are recovered and action is taken against other members of the family enjoying the benefits of SC/ST. Correction of caste entries in public record has been initiated and disciplinary action against the concerned revenue authority is being ordered in all such individual cases detected by the Scrutiny Committee.

7.24 Writ petitions are being filed challenging the action of the Revenue Authorities in rejecting applications for SC/ST certificates, which remain pending for years together after issuing interim /stay order, which tantamount to grant of relief claimed in the writ. After 4 or 5 years, when the case comes up for final hearing, the petitioner pleads fait accompli, etc., and in majority of the cases the petition itself becomes anfractuous. Various High Courts have been adopting varying stands in such cases and the Supreme Court directions against grant of interim orders and for speedy disposal of the cases are often not followed. Such misplaced leniency and delaying tactics often negate of effects of the Scrutiny Committee to curb the menace of bogus SC/ST claims. Many such cases are brought to the Supreme Court which adds to the delay.

7.25 Interventions by the courts at all stages and deliberate delaying tactics by the defaulters are the major hurdles faced by the Govt. in rooting out the social evil. This being an issue of vital importance in protecting the interests of members of SC/ST Communities, it has been suggested by the State Govt. that the National Commission may engage senior advocates in the Supreme Court exclusively to handle such bogus SC/ST claims being brought forth by the State Government.

### **Madhya Pradesh**

7.26 Govt. of MP have been issuing instructions for protection of rights and interests of SCs/STs from time to time. In September, 1997, a Committee was set up under the chairmanship of Principal Secretary, Sch. Castes & Sch. Tribes Welfare/Development to enquire into community certificate issued to SCs and STs. In Feb., 1999 District level Committees were set up under the chairmanship of all the District Collectors for checking entry of SC/ST into Govt. services on the basis of false caste certificates. The S.P. of the District has been nominated as one of the members of this committee.

Information regarding cases of false certificates detected during the last three years and action taken in such cases has not been furnished by the State Govt.

## **Manipur**

7.27 The State Government follows the Government of India's guidelines in the matter of issuing Tribal Certificates. The Deputy Commissioners/Distt. Magistrates of the District in Manipur are the issuing authority. Before issue of the Tribe and caste certificates, Deputy Commissioner causes verification through the SDMs and Revenue Officers within the District and on their recommendation, the caste/Tribe certificates are issued.

7.28 In case the Caste or Tribe Certificates issued by the Deputy Commissioners/District Magistrate are challenged by anyone, the Deputy Commissioners are asked to re-verify and if the Deputy Commissioner certifies that the Caste/Tribe certificates issued by them are genuine, the complaints are not entertained. In other words, the Deputy Commissioners are the final authority for issuing Caste/Tribe certificates. Further, the false caste certificate holders, if detected, are taken care of and booked under the relevant sections of Indian Penal Code.

## **Maharashtra**

7.29 Government of Maharashtra has streamlined the procedure for issue of caste certificate to Sch. Castes persons after the Supreme Court judgement in case of Kumari Madhuri patil and others V/s Additional Commissioner, Tribal Development, Government of Maharashtra and others. Detailed instructions have been issued to Collectors/Dy Collectors in the State vide Government Resolution No. CBC 1096/CR-48/BCW-5 dated 3.6.96. The features and contents of the Government Resolution are as follows:

- (i) Caste Certificate should be issued by Revenue Deputy Collector or Collector only.
- (ii) In the case of persons who have migrated to Maharashtra State after 10.8.50, the certificate should be issued by the competent authority in the State of origin of his father, etc.

7.30 As per the directions of the Supreme Court, Government of Maharashtra has set up Six Scrutiny Committees for examining validity of caste certificates in the case of Sch. Caste persons. These committees are assisted by a Vigilance Cell manned by a Deputy Supdt. of Police and eight police sub-Inspectors. The doubtful cases are handled by the Vigilance Cell. If the certificate is not found valid then it is sent to the concerned Collector/District Magistrate for cancellation and also to initiate immediate action as per provisions of IPC. Instructions have been issued to all concerned vide Government resolution No. CBC 1084/74932(283) BCW-5 dated 5-12-85, and are reiterated from time to time.

7.31 Apart from this, the State Government are taking due precautions to see that candidates seeking admission to professional courses have valid certificates, duly verified by the respective Scrutiny Committee. By adopting this procedure the number of cases seeking admission by false caste certificate holders has declined.



7.32 Similarly, Maharashtra Public Service Commission also insists on valid certificate before recommending candidate of reserved category for appointment in Government services.

7.33 As the penal action is to be initiated by concerned Collector, the exact information regarding cases detected during the last three years and also penal action taken is not readily available. However, it is stated that the Government of Maharashtra has set up a Vigilance Cell and also issued instructions for penal and departmental action against candidates and officers who have obtained/issued false caste certificate.

### **Mizoram**

7.34 Issue of Sch. Castes and Sch. Tribes certificates is being done by the first class Magistrates in the State. A prescribed application form has also been devised wherein verification is done either by the concerned village council President/Administrative Officer/Block Development Officer or Gazetted Officer and Staff of the office of the Deputy Commissioner of appropriate rank. A register is also maintained for all such sch. Caste and Sch Tribes certificates issued by the First Class Magistrates. No false certificate has been detected.

### **Nagaland**

7.35 It has come to the notice of the Govt that DCs and ADCs are issuing indigenous inhabitant certificates to outsiders, adopted sons and daughters without even verifying the authenticity and identity of such persons. The State Government has now decided that henceforth only the Dy. Commissioner will be authorized to issue indigenous inhabitant certificates. If any Deputy Commissioner issues such certificate without referring it to the Govt. as per the extant standing order, he will face disciplinary action for non-compliance of Govt order and negligence of duty. Whenever any such application is received, necessary enquiry should be conducted and the enquiry report should be placed before the Dy. Commissioner for claim of issuing indigenous inhabitant certificate before it is brought to the notice of the Government with all facts, for permission.

### **Orissa**

7.36 The procedure laid down by the Hon'ble Supreme Court of India in Civil Appeal No. 5854/94 of Kumari Madhuri Patil V/s Addl. Commissioner, Tribal Development, Government of Maharashtra and others, for issuance, verification and cancellation of social status certificate of SC/ST persons, is now under active consideration of the Government of Orissa. Besides the State Government have framed rules namely. The Orissa Caste Certificate ( for SC/ST) Rules 1980 and the said rules are in-force wherein instructions and guidelines have been indicated for issuance, verification and cancellation of SC/ST certificates. Three cases of false caste certificates have been detected. The State Government have directed the concerned authorities to terminate the services of the concerned employees as per Rule 8(3) of the Orissa Caste Certificate ( for SCs/STs ) Rules 1980 by observing the required formalities.

## **Punjab**

7.37 False Caste Certificates detected at any stage are examined and inquired into by a District level officer or by some designated officer of the Directorate of Welfare of Sch. Caste and Backward Classes. The caste certificates in the State are being issued by the SDM after thorough verification in each case. Whenever any false certificate is detected, the concerned officer who had issued the certificate is approached to cancel the same and concerned educational institutions where such students having false certificates would have got admission or the authorities in whose office such candidates would have got employment are directed to take immediate necessary action against the culprits and to register a case against them. No such case has been detected during the year 1997-98 and 1998-99.

## **Tripura**

7.38 A cell has been established at the Directorate level to monitor and coordinate with all concerned for detection and cancellation of false SC certificate and for further action against these false claimants. In the last three years 19 (Nineteen) false caste certificates have been cancelled and punishment has been imposed on one Government employee. Action by way of disciplinary proceeding is pending against 10 (Ten) Officers/employees.

## **Tamil Nadu**

7.39 A State Committee and the District Committees have been set up to scrutinize the Community Certificates issued by the authorized revenue officers. Cases of Sch. Tribes. Community certificates issued at the District level are verified by District Collector every year almost on 100% basis. The Committees look into cases on a random basis to determine whether caste certificates are issued in the prescribed format, whether the signatures of the officers are genuine and whether the correct community certificate is issued. Enquiries are also conducted by the Revenue Divisional Officers. The District Committees are required to verify at least 100 cases every year. The State Committee also scrutinizes the Sch. Tribe certificates issued by the various Revenue Divisional Officers and the certificates issued by the District Collector.

7.40 The District Committee and the State Committee also monitor the criminal proceedings instituted against the persons who issued false certificate/obtained false certificate.

## **Uttar Pradesh**

7.41 Directions have been issued to the concerned District Magistrates to issue caste certificates to the applicants desirous of obtaining SC & ST Certificates, after proper verification. In view of the detailed procedure laid down by the Hon'ble Supreme Court of India in Civil Appeal No. 5854/94 of Kumari Madhuri Patil and others Vs Additional Commissioner, Tribal Development, Govt. of Maharashtra, a Scrutiny Committee has been constituted under the Chairmanship of Principal Secretary, Social Welfare, Government of UP for issue of Caste Certificates after necessary investigation is carried out as outlined in the Department of Personnel, Govt of UP order No 22/16/92 A-2/1996 TC-3 dated 5<sup>th</sup> Jan. 1996. Moreover, a Vigilance Cell has also been constituted in the



orate of Social Welfare and Backward Classes for looking into complains of false certificate.

### shadweep

The Deputy Collector/Sub Divisional Officer in charge of each sub Division is functioning as Executive Magistrate. The Executive Magistrate of the respective island, after due enquiry, issues the caste certificate in respect of inhabitants of the Islands under their jurisdiction. The caste certificate in respect of children born in the wed-lock of parents belonging to different Islands are issued after strict verification by both the Executive Magistrates. The Amin (Village Officer) helps them in conducting local verification. The UT Administration has not framed any Act or Rules in this regard. No case of issue of false certificate has been detected so far in this Union Territory and hence question of cancellation of the caste certificate does not arise.

7.43 The Union of India and the State Government have prescribed the procedure has entrusted duty and responsibility to Revenue Officers of Gazetted Cadre to issue social status certificate, after due verification. **The Commission is of the view that only revenue authorities may be empowered to issue community certificates. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. The appointing authority should cancel the admission/appointment at the earliest possible by taking effective action expeditiously. The Commission also recommends that the Bill on regulation and issuance of community certificates may be placed before the Parliament at an early date.**

### Modalities finalized by the Govt of India for deciding claims for inclusion/exclusion and other modification notifications required in the lists of SCs/STs

7.44 The M/o Social Justice & Empowerment (erstwhile M/o Welfare) had requested in December, 1996 the Commission's comments on the draft modalities for deciding claims for inclusion/exclusion and other modifications required in the Presidential Orders specifying SCs/STs. The Commission considered the same and sent its comments to the Ministry in May, 1997 recommending that the Govt. should evolve a proper methodology/ mechanism to verify the claims for inclusion/exclusion of communities in the SC/ST lists and there after the Commission should be consulted at the final stage.

7.45 The modalities finalized by the Govt. for deciding claims for inclusion/exclusion in the list of SCs/STs have since been received in the Commission on 14.7.99. The important points highlighted in the modalities are:

- (i) Only cases recommended by both the State Govts. and the Registrar General of India (in their most recent reports) would be referred to the National Commission for SCs/STs for their opinion. These would be forwarded to the Commission individually or in batches.

- (ii) The National Commission while examining these cases, should associate organisation/Institutions/individuals in the fields of anthropology, ethnography and other social sciences. The Commission may also consider holding public hearings in areas relevant to the claims under examination. The Commission would also be requested to give priority to cases in which the courts have given directives regarding decisions within a stipulated time period.
- (iii) Those cases with which the State Govts. And the RGI are in agreement, but which the Commission have not supported, would be rejected at the level of Minister for Social Justice & Empowerment.
- (iv) Claims for inclusion/exclusion or other modifications which neither the RGI nor the concerned State Govts. have supported would not be referred to the Commission. These would be rejected at the level of the Ministry for Social Justice & Empowerment.
- (v) In the case of claims recommended by the concerned State Governments, but not agreed to by the RGI, the State Government would be asked to review or further justify their recommendations in the light of the RGI's comments, before taking up again with RGI
- (vi) Claims recommended suo-moto by the Commission would be referred to RGI and the State Government.
- (vii) Proposal for amending legislation would be processed by the M/o Social Justice & Empowerment for approval of the Cabinet in all cases in which the Commission, RGI as well as the State Government have favored modification.

## **Some of the Cases relating to Service Safeguards dealt with in the Commission**

### **I Relaxation of 5 % marks in direct recruitment.**

An SC candidate represented to this Commission in December, 1994 alleging that Gurunanak Dev University, Amritsar was not allowing 5% relaxation in marks at graduate level for appointment to the post of lecturer, although this relaxation was permitted under the guidelines issued by the University Grants Commission. The applicant had applied for the post of Lecturer (Hindi), but she was not called for interview by the University and was informed that the requirement of 50% marks prescribed by UGC was not relaxable and that the marks (47.25%) obtained by her at graduation level did not come to the prescribed percentage (50%) even after allowing concession of 5% meant for SC/ST candidates.

The matter was taken up by the Commission with the University who informed that condition of 50% at graduation level has been prescribed by the Government of Punjab vide their notification dated 31.12.1990 and they would grant relaxation in marks if the



Govt. of Punjab takes a decision in this regard. The matter was further probed by the Commission and it was found that based on the recommendation of UGC, the Punjab University, Chandigarh had issued an order on 16.11.1995 granting relaxation of 5% marks to SC/ST candidates. This order lay down that candidates belonging to SC/ST, who have obtained at least 45% marks at graduation level or in the subject of Honors might be considered to possess 'Good Academic Record.' When intervened by the Govt. of Punjab, the Guru Nanak Dev University informed that the candidate had secured 47.25% marks in B.A and for granting the relaxation of 5% marks 2.36% marks can be added to the marks obtained by the candidate. This figure of 2.36% was worked out as 5% of 47.25% , the marks obtained by the candidate in B.A. Thus according to Guru Nanak Dev University the total comes to 49.61% (47.25 + 2.36), which was still less than 50%. In this way the Guru Nanak Dev University did not consider the candidate as eligible. The petitioner had obtained 47.25% in her graduation and by adding 5% it should be treated as 52.25% and not 49.61%, as calculated by Guru Nanak Dev University. Therefore, the candidate should have been treated as eligible for the post of Lecturer by giving the relaxation.

After protracted correspondence exchanged between this Commission and Guru Nanak Dev University as well as Govt. of Punjab in the Education Deptt., the Commission issued findings in June, 1997 to the Registrar, Guru Nanak Dev University Amritsar to consider candidature of the applicant for the post of lecturer after granting relaxation of 5% marks. Even after pressing the case with the Registrar, of the Guru Nanak Dev University demi- officially, no fruitful result has come out. The case highlights the extent to which the officials working in the University can go to deprive SCs and STs of their due shares in the teaching posts.

## **II Harassment of SC in Acceptance of Caste Certificate**

A petitioner, belonging to Scheduled Caste who was working as, Despatch Rider/Messenger in Medical Council of India, represented to the Commission against termination of his services. The case was examined in the Commission and it was noticed that the post of Despatch Rider/Messenger in the pay scale of Rs. 750-940 (pre-revised) was published in the various daily newspapers for which the petitioner had also applied. An interview was held on 5&6, April 1997 and he was selected. The Secretary of Medical Council of India stated that the petitioner was given appointment on ad-hoc basis as he did not produce the SC certificate. His services were terminated after 89 days as he failed to submit the caste certificate. The petitioner claimed that he had produced his SC certificate on 17-7-97. The Commission, after detailed examination of the documents, found that the petitioner was allowed to join duty and was allowed to work till the second week of October, 1997. From perusal of the appointment letter no condition about ad-hoc nature of appointment could be observed. The petitioner was in possession of SC certificate. Hence, the Medical Council of India was clearly at fault in issuing temporary appointment order for 89 days to the petitioner while his selection was for a permanent post.

The Commission issued findings on 18-3-1998 stating that the Petitioner be given permanent appointment to the post of Dispatch Rider/Messenger, from the date of termination of his service without any delay, with all the consequential benefits. The Medical Council of India did not agree to the recommendation and no appointment was issued. The Commission has noted with concern that despite its intervention, Medical Council of India has failed to render justice to the petitioner.



### **III Non-maintenance of Reservation Roster**

National Commission for SCs/STs received a complaint from the Super Bazar Karamachari Dalit Sangh alleging that reservation policy has not been followed by the organization. The Commission decided to investigate the matter and interviewed the senior officers of the Super Bazar and of the Ministry of Consumer Affairs. The status of maintenance of rosters and implementation of reservation policy by the Super Bazar was investigated by the Commission and it was found that the organization had not maintained and followed rosters for various categories of posts and had failed to implement the Reservation policy for SCs and STs in recruitment and departmental promotions. No Liaison Officer had been appointed in the Super Bazar as is prescribed in DOP&T's instructions. On the intervention of the Commission the management of Super Bazar agreed to maintain the rosters and assured that they would implement the Reservation policy in totality. The case brings out the fact that despite clear instructions of the Government of India, certain organizations still do not follow the reservation policy for SCs and STs in letter and spirit.

### **IV Delay in Appointment**

A petitioner belonging to District North 24 Paraganas, West Bengal represented to this Commission regarding delay in his appointment as Sorting Assistant in Calcutta Airport Sorting Division in Deptt. of Posts against the vacancies of 1982 (Second half). The Commission took up the matter with the Deptt. of Posts and summoned officers of the Deptt. for discussion in the matter. From the submissions of the Department, it was observed that the petitioner was selected as an outside candidate for Reserved Training Pool in 1983 against outsider quota vacancies of 1982 (Second Half). He had passed his SSC examination in 1972 from the Board of Intermediate and Secondary Education, Dhaka, Bangladesh. Therefore, the Postal Deptt sent copies of marksheet and Admit-card of SSC Examination, Dhaka of 7 selected candidates including the petitioner, to the High Commissioner of India in Bangladesh at Dhaka in December 1983 for verification before giving the petitioner the letter of appointment. The Commission found that the Postal Deptt had not received the verification report in respect of the petitioner till January 1999. It was seen from the records that Postal Deptt. had sent reminders in March 1988, May 1988, and March 1989. Thereafter, the Deptt. did not make any correspondence with the High Commissioner of India at Dhaka for getting the verification reports of the seven candidates. During the discussions the representative of the Deptt. of Posts agreed that the Deptt. should have undertaken the correspondence with the High Commissioner of India in Dhaka, through the Ministry of External Affairs, Govt. of India to get the desired information without delay. The Commission observed that there was delay of about 15 years in getting the verification report from the Bangladesh Government. The petitioner had been made to suffer without any fault on his part. In these circumstances, the Commission recommended to the Deptt. of Posts to offer appointment to the petitioner. The Deptt. of Posts has informed that it had issued appointment letter to the petitioner.

### **V Promotion**

Shri M.B. Bajulge, Scheduled Tribe, Assistant Engineer (Civil) in City & Industrial Development Corporation of Maharashtra Limited (CIDCO) Mumbai brought to the notice of this Commission that his Corporation, had filled up all the four vacancies of Assistant Engineers in the reserved category, from the promotion quota. As per Board's



Resolution No.5565 dated 31.1.92, ratio of recruitment should have been 75% by promotion and 25% by Internal Direct Recruitment. The Commission observed that as per this ratio 3 posts should have been filled up by way of promotion and one by Internal Direct Recruitment. The Commission felt that this action of CIDCO had resulted in injustice to the petitioner who was a degree holder in Civil Engineering and was also the senior most among the Scheduled Tribe candidates at the time of promotion and eligible for the post of AE & AEE in IDR quota.

During the course of investigation, the Commission found that at the time of promotions in 1995, two posts, which were to be filled up through Internal Direct Recruitment, had actually been filled up from promotion quota, adversely affecting the interests of the candidates aspiring for promotion through IDR quota. It was also revealed that CIDCO had a backlog of 3 vacancies for STs. If they had given 2 vacancies to IDR the carried forward ST points could have been operated and the petitioner could have got promotion in the year 1995. On the intervention of the Commission the management of CIDCO agreed to consider the promotion of the petitioner w.e.f. October 1995 with financial benefits from the date of joining.

## **VI Promotion**

Two Income Tax Inspectors, one belonging to SC and the other to ST community, represented to the National Commission for SCs/STs in August, 1997 that they had been ignored for promotions while their juniors had been considered by the DPC. The Commission took up the case with the Chief Commissioner of Income Tax, Rajasthan, Jaipur. On persuasion of the Commission, the Office of the Chief Commissioner of Income Tax, Jaipur informed on 27.1.1998 that a review DPC had been held on 19.1.98 and both the petitioners were promoted to the cadre of Income Tax Officers on 20.1.1998 and they had been given deemed seniority from 6.6.1997 i.e. from the date of last DPC.

## **VII Appointment**

A few instances have come to the notice of this Commission where certain instructions contained in DOP&T's O.M. No. 36012/6/88-Estt.(SCT) dated 25.4.1989 and UGC's Circular No.1-18/89 (SCT) dated 7.10.1992 have been violated by various colleges of the University of Delhi. This O. M. bans de-reservation of vacancies in direct recruitment to ensure that posts reserved for SCs & STs are filled up only by such candidates. UGC's circular dated 7.10.1992 also reiterates that under no circumstances, unfilled reserved vacancies in teaching and non-teaching categories should be filled up by the general candidates. The unfilled vacancies, thus carried forward, will remain unfilled till the candidates belonging to SC & ST who possess the minimum qualification prescribed by the UGC fill these posts.

A Scheduled Caste lady represented to this Commission that Shri Ram College of Commerce, University of Delhi had released an advertisement for filling up two posts of lecturers in Economics. One of the posts was reserved for Scheduled Caste candidates. The representationist had also applied for the reserved post. She was called for interview along with other eligible candidates. She alleged in her representation that instead of asking questions on the subject i.e. Economics, Selection Committee discussed matters relating to her caste. She alleged that without testing her knowledge of subject and ability in teaching, the college authorities, on the recommendation of selection

committee rejected her candidature and decided to re-advertise the post for the reason that none of the reserved candidate had been found suitable for the post. A general candidate was given ad-hoc appointment against the reserved post. The Commission took up the matter with the college authorities. The Principal of the college appeared before the Commission and submitted that two SC candidates had appeared before the selection committee but could not answer even elementary questions on the subject and were out of touch with the subject, hence were not found suitable for the post of lecturer in Economics. Details of qualification and experience of the candidates appointed against these posts were obtained and it was found that they were Ph.D degree holders in the subject but without any teaching experience, whereas both the SC candidates who had applied for the reserved posts were M.Phil, Ph.D, with teaching experience as additional qualification. On the basis of examination of papers and submissions made by the petitioner and college authorities the Commission issued its findings, advising the college authorities to review the case and consider offering appointment to the SC candidate. In response to the findings of this Commission, college authorities have filed a CWP No. 6298/98 in the High Court of Delhi and the matter is under consideration in the Court at present.

### **VIII Maintenance of rosters in Delhi University Colleges**

An association of employees of Delhi University made a representation-dated 22.11.95 to this Commission alleging violation of reservation policy in filling up of the post of Professional Assistant (Library) in Maitrey College, Chanakya Puri, and New Delhi. The post in question was filled by an unreserved candidate.

The scrutiny of the records showed that the college had not been maintaining any reservation rosters for SC/ST either for Direct Recruitment or Promotion. It was seen that the post of Professional Assistant (Library) was filled up on several occasions during 1974 to 1995 and every time an unreserved candidate was appointed.

The Principal of the College has failed to comply with the University of Delhi's instructions as well as DOP&T O.M. No. 36011/5/75-Estt. (SCT) dated 3.8.1975 and O. M. No. 36022/20/76-Estt.(SCT) dated 8.9.1976 which stress the need for strict observance of orders and proper maintenance of rosters for giving effect to reservations for SCs/STs. Accordingly, Commission directed that the appointment of general candidate in the reserved vacancy was unjustified and according to the rosters the post should have been offered to the reserved category candidate. The Principal of the College was asked to take steps to cancel the appointment of unreserved candidate and re-advertise the post exclusively for SC/ST candidate. The College authorities have challenged findings of the Commission by filing a case in the High Court of Delhi.

### **IX Harassment of an SC lady working in the I & B**

A UDC working in the Intelligence Bureau represented to the Commission that there has been discrimination against her on caste consideration while transferring her from Delhi to Jaipur. On enquiry, Intelligence Bureau reported that she was suspected to be involved in certain activities prejudicial to the functioning of a sensitive organisation like Intelligence Bureau and there was no discrimination against her as she was transferred from Headquarters to Jaipur only on administrative grounds.



During the enquiry the Commission was informed that the petitioner was transferred due to the involvement of a friend of her brother in an espionage case. It was brought to the notice of the Commission that the brother of the petitioner, working in Defense Ministry had a friend who had some contact in the Pakistan Embassy. The Commission observed that there was no direct evidence against petitioner but she had been linked up in the case due to suspicion against her brother. When the Commission desired to know the action taken against the brother of the petitioner it was informed that verbal request had been made to Delhi Police, but there was no proper record maintained in IB. The Delhi Police also confirmed during the discussions that there was no written reference received.

In view of the above observation. Commission was unable to agree with the IB for linking petitioner with the activities of her estranged brother against whom also no action had been initiated. The petitioner had been subjected to discrimination and harassment by the department earlier also. The incident of involvement of her brother came handy to the department to further harass the petitioner by transferring her out of Delhi.

For the foregoing reasons, Commission found no justification in the transfer of the petitioner from the Headquarters. Hence, the department was directed to withdraw the transfer order. The Intelligence Bureau informed the Commission vide their letter No.7/Est/CI/76(479)-2766 dated 16.10.98 that the UDC has been transferred back from Jaipur to IB Hqrs. New Delhi.