

# Bihar Administrative Service Association

North of Income Tax Golamber, Nehru Marg, Patna-800001

(Registration No-663/2003)

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Memo No ...05.....

Date ..29.01.2022

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To,  
**The Chief Secretary,**  
Govt of Bihar, Patna

**The Additional Chief Secretary,**  
General Administrative Department,  
Govt of Bihar, Patna

**Subject:** To initiate the promotion of Bihar Administrative Officers by quashing the GAD order no.5066 dated 11.04.2019

**Ref.:** Order dated 28.01.2022 of Hon'ble Supreme Court of India in the matter of Jarnail Singh vs L N Gupta, SLP ( C ) 30621/2011 read with Civil Appeal No.-4880/2017 arising out of order dated 30.07.2015 in LPA 1066/2015 of Hon'ble Patna High Court.

Sir,

1. With reference to above mentioned subject, the issue of promotion is pending for more than last four years because State of Bihar has put a blanket prohibition on all kinds of promotions in the State in purported compliance of the order passed by the Hon'ble Patna High Court in Contempt Petition. It is respectfully submitted that there is no law or judicial order prohibiting the regular promotions in the State Services. Instead of filing show cause, State of Bihar preferred an appeal against the order passed in concerned Judicial Contempt Case.

However, before any order passed by Hon'ble Supreme Court in the above referred Contempt Petition, the State Government vide GAD order no.5066 dated 11.04.2019, has stopped all kind of promotions in the State causing serious prejudices to the members of the Bihar Administrative Officers Association of the State government.

2. That in view of the order dated 11<sup>th</sup> April 2019, all promotions in the State have virtually come to a standstill. As a consequence, no person, whether from the reserved or unreserved category, has been promoted. These employees are suffering on account of stagnation and are not in a position to enjoy any promotional benefits. Many of the government employees who are a part of the Association are even nearing their age of retirement. These employees have diligently and assiduously discharged their duties over the years and would have had a legitimate expectation of being considered for promotion.

3. All the matters of reservation in promotion pending and under consideration in Hon'ble Supreme Court were tagged with Special Leave Petition (C) No. 30621/2011, Jarnail Singh v Lachhmi Narayan Gupta. It includes Civil Appeal No.-4880/2017 filed by Bihar Government.

4. Hon'ble Supreme Court of India on 28.01.2022, in the matter of Jarnail Singh Vs L N Gupta SLP (C) 30621/2011, has grouped the issues of reservation in promotion under following points and laid down the speaking principals on issue of reservation in promotions:

**I. Yardstick for Arriving at Quantifiable data:** Court stated that as per Jarnail Singh and Nagaraj cases, no such yardstick is being laid down for determining the adequacy of representation of SC/ST in promotional posts for the purpose of providing reservation by the Court. It has to be decided by the State itself.

**II. On quantification of data:** It is the obligation of the State to collect the data. Such collection of SC and ST data has to be on the



basis of grade/category of posts for which promotions are sought. Lest such data is meaningless.

**III. Proportional Representation as test of adequacy:** It is for the state to assess the inadequacy of representation of SC/ST in promotional posts, by taking into account relevant factors.

**IV. Review of data:** Review of data on SC and ST representation must be held periodically by the State but the period of time must be reasonable.

**V. Operation of Nagaraj Judgment:** It will have prospective effect. The BK Pavitra II judgment which approved the collection of data on groups rather than cadre has been quashed.

**VI. Quantifiable data and sampling method:** It has been held that the conclusion of the Supreme Court in B.K. Pavitra II approving the collection of data on the basis of 'groups' and not cadres is contrary to the laid down principle by this court in M. Nagaraj (Supra) and Jarnail Sing (Supra).

5. That Hon'ble Supreme Court has been pleased to draw the principles of reservation in promotion and has left the working part of policy of promotion to be farmed by the respective states.

6. This is pertinent to draw your kind attention about the fact that Bihar Govt had filed a Civil Appeal no. 4880/2017 in the Hon'ble Supreme Court of India arising out of order dated 30.07.2015 in LPA 1066/2015 of Hon'ble Patna High Court. This Civil appeal too has been tagged by Hon'ble Supreme Court with SLP (C) 30621/2011 in which order has been passed on 28.01.2022. Therefore, the force of order passed by Hon'ble Supreme Court on 28.01.2022 is applicable in case of Bihar too.

7. That in view of the above mentioned facts and circumstances and the new opportunity arising out of 28.01.2022 verdict, you are requested that GAD order no. 5066 dated 11.04.2019 need to be quashed immediately so



that the promotions may be granted to the employees of the Bihar Administrative Officers with immediate effect.

  
29/11/22  
(Anil Kumar)