CHAPTER - V

RESERVATION IN SERVICE

The Indian Constitution lays down the principles of equality before law and equality of opportunity in Articles 14 to 16. Article 14 provides that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16 provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State: "no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State." However Article 16(4) lays down that nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State, is not adequately represented in the service under the State.

The Constitution (First Amendment) Act, 1951, added section 15(4) as follows:

"Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes."
There are also some other provisions related to the scheduled castes and scheduled tribes and other backward and weaker sections of citizens to promote their educational and economic interests and protect them from social injustice. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation. This was an attempt of the makers of our Constitution to uplift those categories and classes of people who had been left out from the mainstream of life. One of the fathers of the Constitution B.R.Ambedkar said, "The values of democracy and socialism could not be built unless there were deliberate attempts to reorganise the power generating structure in society".

Article 335 provides that the claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

In pursuance of the Constitutional provisions, the Government of India and the State Governments provide reservation to scheduled castes and scheduled tribes candidates. The intention is not just to give jobs to some people in the service but to give these as a means to an end i.e. for their social upliftment. Himachal Pradesh, after it became a
state, adopted the policy contained in the instructions issued by the Government of India regarding reservation given to scheduled castes and scheduled tribes as amended from time to time.

The reservation for scheduled castes and scheduled tribes in H.P. is provided as follows:

**Direct Recruitment**

(i) To class I and II & to such class III posts as are filled through Public Service Commission or by open competition by any other authority

(ii) To class III & IV posts as are filled in by inviting nominations from Employment Exchange

<table>
<thead>
<tr>
<th></th>
<th>Scheduled Castes</th>
<th>Scheduled Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promotion</td>
<td>15%</td>
<td>7.5%</td>
</tr>
</tbody>
</table>

**SCHEDULED CASTES**

Scheduled Castes means such castes or parts of groups within such castes, as are notified under article 341 of the Constitution of India to be so.

**SCHEDULED TRIBES**

Scheduled Tribes means such tribes or tribal communities or parts of groups within such tribes or tribal communities as are
notified under Article 342 of the Constitution of India to be scheduled tribes for the purpose of this Constitution.

The notified scheduled castes and scheduled tribes in respect of Himachal Pradesh are listed in Annexure-VIII.

BROCHURE (Manual)

Instructions regarding reservations have been issued from time to time. These have been compiled in a book which is called 'Brochure for Scheduled Castes and Scheduled Tribes' hereinafter referred to as 'Brochure'. This is really a kind of manual. These decisions have been taken at the highest level, i.e. the Cabinet though certain clarification may have been issued at lower levels i.e. at the level of Secretary to the Government. The Government of Himachal Pradesh has been following the Government of India instructions and the 'Brochure' published by the Government of India but Himachal Pradesh has recently (1986) published its own 'Brochure' which is by and large based on the Government of India Brochure.

ROSTER

To give proper effect to the reservations prescribed, model rosters of 40 or 100 points have been introduced. In respect of promotions to which reservations apply, a roster consisting of 40 points has been prescribed. Points 1, 8, 14, 22, 28 and 36 in the roster have been reserved for scheduled castes and points 4, 17 and 31 for the scheduled tribes. These have, however, been amended to include IRDP families as given in the Annexure VIII.
The actual number of vacancies to be reserved for scheduled castes and scheduled tribes in any recruitment year is determined on the basis of points in the roster plus the reservations, if any, brought forward from the previous years. Separate rosters are required to be maintained for determining the number of reservations for appointments made by direct recruitment and by promotion for direct recruitment. There is a 40 point roster for vacancies filled on all India basis and a 100 point roster for vacancies filled on regional basis. The percentage of reservation here is also different as seen earlier. This percentage is based on the population on all India basis and the population in the State of Himachal Pradesh. The rosters are intended to be an aid to determine the number of vacancies to be reserved and not used for determining the order of appointment or seniority. The model rosters prescribed are in Annexure IX.

RELAXATION

It was envisaged that the standard of scheduled castes and scheduled tribes candidates may be lower than the standard of general candidates. Instructions dated August 8, 1975 lays down that the posts for scheduled caste and scheduled tribes should be filled in by competition from amongst the candidates themselves even if the standard is to be relaxed. In order to avoid comparison separate interviews for scheduled castes and scheduled tribes candidates on different dates from the general candidates have also been laid down.

It is specified that:

'Interview for scheduled castes and scheduled tribes candidates should be held on different dates by the selection committee than on the dates fixed for the general candidates. The candidates can be brought upto the general standard after giving them in-service training by the appointing authority within their own offices'.

The Government of Himachal Pradesh reiterated vide instructions dated April 28, 1976 that even where candidates belonging to these communities were not available as per relaxed standard they should be selected and given inservice training by the superior authority to bring them to the required standard.

Certain other exemptions and allowances are also available to the candidates belonging to scheduled castes and scheduled tribes, and are discussed below.

Travelling Expenses

Scheduled castes and scheduled tribes candidates are paid travelling expenses of second class railway fare for interview or written test. This was reiterated by Government of Himachal Pradesh vide instructions dated December 11, 1975 when it was found that in many cases travelling allowances were not being paid.

---

2 Para 24 of Brochure.
Age Relaxation

Based on the hypothesis that it takes a longer time for scheduled castes and scheduled tribes candidates to acquire minimum educational qualifications, relaxation of five years is given in the maximum age limit for scheduled castes and scheduled tribes candidates for recruitment. This is based on the historical background and caste system which was prevalent in the Indian society in which certain castes have suffered by being treated as a lower category of human beings. Their development is thus slow though ever since independence the Government has done a lot for their uplift.

ADVERTISEMENT

In order to ensure that the posts do not remain vacant it has been provided vide letter dated September 25, 1976, that after the employment exchange requisition, advertisement may be given in newspapers regarding reserved posts. It has also been provided vide letter dated October 20, 1976, that these posts may be announced through All India Radio and copies be sent to Associations of Scheduled Castes and Scheduled Tribes before the post is carried forward. It has been provided that simultaneously, the vacancies should be brought to the notice of the scheduled castes and scheduled tribes associations and organisations to advise the candidate about the recruitment.

---

6 Letter No.Per(AP-II)A(7)-1/76 dated 29.10.76.
PUBLIC SECTOR UNDERTAKINGS

Instructions also provide that all instructions on reservation of scheduled castes and scheduled tribes should apply to public sector undertakings. It has also been provided that these instructions will apply to all voluntary agencies receiving grants-in-aid from government provided the recipient body employs more than 20 persons on a regular basis or at least 50% of its recurring expenditure is received as grant-in-aid from the state governments.

DEPUTATION POSTS

There is no reservation for posts filled by deputation or transfer. However, government has instructed that the sponsoring authority should take into consideration the claims of these employees. It has also been provided that where the number of posts to be filled by deputation is substantial, the employing ministry or office should endeavour to see that a fair number of these posts are filled by employees of scheduled castes and scheduled tribes.

GROUPING OF POSTS

Further instructions have also been issued that to ensure due representation, posts should be grouped keeping in view the following factors as mentioned hereafter.

- Designation and number of each post
- Class to which the post belongs (i.e. Class I, II, III or IV)
- Scale of pay of each post
- Method of recruitment of each post as provided in the recruitment rules
- Minimum qualification prescribed for direct recruitment to each post.

Representation, it is felt, can be better provided in larger cadres. Each group so formed should not consist of less than 25 posts. This would help in giving due reservations.

TEMPORARY VACANCIES

It has also been provided that vacancies which are likely to last for more than 6 months in promotion, that is, those cases which are pending in the courts and others where seniority list could not be finalised due to various problems and are likely to take some time, reservation may be provided to scheduled castes and scheduled tribes employees according to seniority subject to rejection of the unfit. In case of direct recruitment reservation should be provided where the vacancy is likely to last more than 45 days.

ZONE OF CONSIDERATION

Normally the zone of consideration is the number of candidates who are considered for promotion. This is described in the Chapter on promotions. It had been decided that promotions would be from the normal zone of consideration for reserved
categories of scheduled castes and scheduled tribes. The reservations made would be the number of vacancies that should go to reserved categories minus those who have come in on the basis of seniority or merit. It was also clarified that scheduled caste candidate could be considered for vacancy of scheduled tribe candidate or vice versa if candidate of relevant categories was not available for two years.\textsuperscript{12} However, in spite of these instructions it was noticed that many posts remained vacant and it was decided that the zone of consideration would extend to five times the number of vacancies. It was also clarified that if sufficient number of candidates were not available any candidate who is eligible in the feeder category could be considered for the reserved category.\textsuperscript{13}

RESERVATION FOR BACKWARD CLASSES

The percentage of reservation prescribed for backward classes is 5\% . The reason to include backward classes for reservation is that reservation based on caste did not take into consideration that there are other economically weak sections in society. In this all families whose annual income was less than Rs.5000/- per year would be classified as backward classes. Also certain low castes, which were not scheduled castes, whose annual family income did not exceed Rs.7500 are backward classes. The categories classified as backward are given in Annexure IX.

\textsuperscript{12} O.M. No.10/41/73-Estt.(SCT) dated 20.7.74.
\textsuperscript{13} O.M.No. 36011(4)2-Estt.(SCJ) dated 15.3.82.
INTEGRATED RURAL DEVELOPMENT PROGRAMME FAMILIES

Integrated rural development programme is a programme to develop the identified poor families in rural area by giving them monetary assistance in agriculture, industry, employment and so on. It has the pattern of 50:50 loan and subsidy. Each family gets two or three benefits. In order to implement the benefit of employment it has been provided that a part of the overall reservation should be given to Integrated Rural Development Programme families. The percentage specified is 15% of reservation of each category is to go to Integrated Rural Development Programme families. Thus in the overall reservation, the following percentage would go to integrated rural development programme families.

<table>
<thead>
<tr>
<th>Reservation provided</th>
<th>Given to IRDP Families</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open (unreserved)</td>
<td>48%</td>
</tr>
<tr>
<td></td>
<td>6%</td>
</tr>
<tr>
<td>Scheduled Castes</td>
<td>22%</td>
</tr>
<tr>
<td></td>
<td>3%</td>
</tr>
<tr>
<td>Scheduled Tribes</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>1%</td>
</tr>
<tr>
<td>Backward classes</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>1%</td>
</tr>
<tr>
<td>Exservicemen</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>2%</td>
</tr>
<tr>
<td>Physically handicapped</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>1%</td>
</tr>
<tr>
<td>Freedom fighters</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td>1%</td>
</tr>
</tbody>
</table>

100% 15%

However, the other issues of reservation, that is, carry forward, dereservation would not apply to this category (IRDP).

14 Letter No.Per(AP-II)D(2)10/83 dated 3.2.86.
EX-SERVICEMEN

For ex-servicemen too, reservation has been provided in Himachal Pradesh. The spirit behind giving reservation to ex-servicemen is that members of the defence forces are at a disadvantage in imparting education to their children since they have to live and serve in difficult places. Also the members of armed forces volunteer to take up a hazardous profession and are subject to early retirement even if they are in the best of their health. Courts have held that they are thus a category in themselves. It has been held that efficiency in government is not only passing an examination but also exercising responsibility and responsiveness to the people. It was held that it cannot be said that efficiency of service will suffer because they do not possess the same experience as others as they are endowed with qualities of discipline, sacrifice, initiative, loyalty and a sense of public duty. Article 16(4) of the Constitution is not an exception to Article 16(1) but is an illustration of one of the methods of achieving equality.16

An Ex-serviceman has been defined as 'a person who has served in any rank (whether as a combatant or as a non-combatant) in the Armed Forces of the Union, including the Armed Forces of the former Indian States but excluding the following undermentioned organisations.

16 Jagdish Rai and others v State of Haryana AIR 1977 P&H (56) (FB)
- Assam Rifles;
- Defence Security Corps;
- General Reserve Engineering Force;
- Lok Sahayak Sena; and
- Territorial Army

for a continuous period of not less than six months after attestation, and,

(i) has been released, otherwise than at his own request or by way of dismissal or discharge on account of mis-conduct or inefficiency, or has been transferred to serve pending such release; or

(ii) has to serve for not more than six months for becoming entitled to be released or transferred to the reserve, or

(iii) has been released at his own request, after completing five years service in the Armed Forces of the Union.

The reservation provided for Ex-serviceman is only in direct recruitment. The percentage of reservation approved for Ex-servicemen has been raised from 10% to 15% vide instructions contained in Government of Himachal Pradesh letter dated September 8, 1981. No reservation has been provided for promotion for them.

The procedure for notification of vacancies for ex-servicemen is that they should get their names registered in the nearest employment exchange. The employment exchange despatches

the duplicate registration card to Ex-serviceman Cell in the Directorate of Employment and Training. The Department Selection Committee then interviews ex-servicemen for various posts and prepares a panel of eligible candidates and sponsors ex-servicemen against the reserved posts.

Only such ex-servicemen are eligible to appear for examination or interview who

- possess the minimum educational qualifications prescribed for the direct recruitment
- at the time of joining military service or training prior to commission did not exceed the maximum of limit prescribed for direct recruitment
- are physically and mentally fit in accordance with the provisions of the service rules applicable to the post applied for.

The approved period of military service rendered after attaining the minimum age for appointment to the service concerned counts towards fixation of pay and seniority, in that service. This benefit, it may be noted, is admissible only to ex-servicemen. With a view to facilitating the grant of benefits, Rules 6 provides that notwithstanding anything to the contrary contained in any other rules of any department, the provision of these rules shall have an over-riding effect.
PHYSICALLY HANDICAPPED AND FREEDOM FIGHTERS

Reservation is also available for physically handicapped persons in the State to the extent of 3%. A special cell for physically handicapped persons has been set up in the Directorate of Employment & Training, H.P. The requisition is supposed to be sent direct to the employment officer after placing it with the Directorate of Employment and Training. The directorate sponsors three candidates for each reserved post.

Besides this 2% reservation is also to be given to the children of freedom fighters in Himachal Pradesh.

OUTSTANDING SPORTSMEN

Outstanding sportsmen have been defined as

- sportsmen who have represented state or the country in a national or international competition in any of the specified games or sports.

- sportsmen who have represented their universities in the inter university tournament conducted by the inter university sports board in any sports or games.

- sportsmen who have represented the state schools team in the national games sports for schools conducted by all India school games federation in any sports or games.

FREEDOM FIGHTERS

Freedom fighter means:

- a person who has been sanctioned or will be sanctioned freedom fighter pension scheme 1972 or 1980 by the Government of India.

- a person who is receiving or will be granted financial assistance under the HP Freedom Fighters financial assistance scheme 1985.

- the children of freedom fighters.

SINGLE VACANCY

The Government of India also issued instructions dated December 4, 1963\(^{20}\) and September 2, 1964\(^{21}\) that in case of a single vacancy reservation would not apply. This obviously was made for small and isolated posts where some time single vacancies occur. However vide instructions dated September 29, 1975, the Government of India while considering Supreme Court judgement decided that a single vacancy in the first recruitment year would not be reserved but in the subsequent years would be considered as reserved as it would be deemed to have been carried forwarded.\(^{22}\) This, however, has been struck down by some courts in individual cases.\(^{23}\) However the guidelines have not yet been changed.

\(^{22}\) OM No. 1/9/74-Estt.(SCT) dated 29.4.1975.
\(^{23}\) SS Kalasi, Supdt.Engineer and others V/s ML Sehgal, Supdt.Engi and other in Punjab & Haryana High Court CWP 836 of 1980.
Total Reservation thus adds upto

DIRECT RECRUITMENT

<table>
<thead>
<tr>
<th>Class of Posts</th>
<th>I</th>
<th>II</th>
<th>III</th>
<th>IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scheduled Castes</td>
<td>15%</td>
<td>15%</td>
<td>22%</td>
<td>22%</td>
</tr>
<tr>
<td>Scheduled Tribes</td>
<td>7.5%</td>
<td>7.5%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Backward classes</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Ex-servicemen</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Physically handicapped</td>
<td>-</td>
<td>-</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Children of freedom fighters</td>
<td>2%</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total: 42.5% 42.5% 53% 53%

Note:

a) 1% Reservation to outstanding Sportsmen for their recruitment to Class III & IV posts as given above is provided only in the two Departments of Education and Police.

b) 15% reservation to IRDP families is from each category.

PROMOTIONS

<table>
<thead>
<tr>
<th>Class of Posts</th>
<th>I</th>
<th>II</th>
<th>III</th>
<th>IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scheduled Castes</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Scheduled Tribes</td>
<td>7.5%</td>
<td>7.5%</td>
<td>7.5%</td>
<td>7.5%</td>
</tr>
<tr>
<td>Backward Classes</td>
<td>-</td>
<td>-</td>
<td>2%</td>
<td>2%</td>
</tr>
</tbody>
</table>

Total: 22.5% 22.5% 24.5% 24.5%
Article 335 of the Constitution provides that reservation in government should be in consonance with maintenance of efficiency in service. After the Supreme Court judgement, the Government of Himachal Pradesh also issued instructions that total reservation should not exceed 50%. However, in Himachal Pradesh, the reservation done in Class III and IV is 51% to 53%. This is generally restricted to 50% in view of the Supreme Court judgement.24 This 50% includes carry forward vacancies.

CARRY FORWARD AND DERESERVATION

If sufficient number of candidates of scheduled castes and scheduled tribes/backward classes/physically handicapped are not available, these vacancies can be filled from those belonging to general categories after following the prescribed procedure for dereservations. For scheduled castes and scheduled tribes, the reservation can be carried forward to three years, for backward classes to two years, and for ex-servicemen to four recruitment years. When a reservation point is carried forward the post is filled in by a general candidate and the next roster point is considered reserved again. In case the reserved candidates are not available even after 3 years of carry forward of vacancies, the posts is to be got dereserved.

A very lengthy procedure is provided for dereservation. The case is to be sent to the department of personnel with the documents as explained below.

24 T. Devadasan V Union of India AIR 1964 SC (179)
For Direct Recruitment Posts

- For posts to be filled through the Public Service Commission a copy of the Commission’s letter containing its recommendations for the de-reservation of the reserved posts along with the list of general candidates recommended against the reserved posts
- For posts to be filled through the employment exchange a certificate from the Head of the Department on the proforma given below to the effect that the de-reservation of the posts in question is necessitated after exhausting all the necessary channels in this regard.

For Promotion Posts

- A copy of the departmental promotion committee proceedings wherein it has been recommended to de-reserve the reserved posts in the event of non-availability of reserved category candidates in the feeder category become eligible in terms of recruitment and promotion rules
- Seniority list of the feeder categories indicating the dates on which the candidates of the reserved category become eligible in terms of recruitment and promotion rules
- A copy of the recruitment and promotion rules of the post
- Roster, registers of the posts requiring dereservation indicating the point number, where the said reservation post fall
- Self-contained note along with the comments of the administrative department
As per the instructions contained in Department of Personnel letter dated August 8, 1980 and September 1, 1981 the proposals for de-reservation should be sent to the Department of Personnel(Aptt-II) alongwith the documents and records listed above after obtaining the orders of minister-in-charge by the administrative department concerned. Only in such cases where it is established that the post is required to be de-reserved because of non-availability of the suitable candidate, the Department of Personnel can agree to dereserve the post and in all such cases approval of the chief minister is to be obtained. The Government has issued detailed instructions for advertisement and re-advertisement of the posts reserved for scheduled castes and scheduled tribes in case of direct recruitment and proper observance of the prescribed procedure is to be ensured before de-reserving any post.

LIAISON OFFICERS

Vide instructions dated December 17, 1973 all heads of departments are required to nominate liaison officers regarding the matter of reservations for scheduled castes and scheduled tribes. Duties of liaison officers are defined in para 112 of the Brochure. The liaison officer is from the existing strength and this task is in addition to his other duties. The liaison officer is mainly to ensure compliance of all orders and instructions regarding reservations to scheduled castes and

scheduled tribes and to ensure that annual statements are sent in
the prescribed proforma and annual inspection of rosters are
maintained.

ANNUAL CONFIDENTIAL REPORTS OF OFFICERS

In an attempt to ensure a positive attitude to scheduled
castes and scheduled tribes a column has been introduced in the
ACR forms of all departments which reflects the attitude of the
officer reported on towards scheduled castes and scheduled
tribes.\textsuperscript{28} The Government of India had introduced a similar column
in the ACR forms of IAS Officers which reads as:

"Attitude towards scheduled castes/scheduled tribes/weaker
sections of society".

IMPLEMENTATION

There is a lot of resentment about reservation inspite of
the fact that it has continued since independence. The following
reasons can be identified:

Lower standards

A survey revealed that in the perception of the
employee the standard of reserved candidates available is
lower than the general category candidates. The responses of
employees are tabulated here.

\textsuperscript{28} Letter No.8-3/63-DP(AP-II) Vo.V dated 24.6.80.
Table V.1

Standard of SC & ST employees

<table>
<thead>
<tr>
<th>No. interviewed</th>
<th>Std. of SC/ST employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>(118) VG G Avg Below Avg</td>
<td></td>
</tr>
<tr>
<td>Class I 25</td>
<td>- - 3 22</td>
</tr>
<tr>
<td>Class II 30</td>
<td>- - 3 27</td>
</tr>
<tr>
<td>Class III 43</td>
<td>- - 9 34</td>
</tr>
<tr>
<td>Class IV 20</td>
<td>- 7 9 4</td>
</tr>
<tr>
<td>Total 118</td>
<td>7 24 87</td>
</tr>
</tbody>
</table>

Though in certain areas it may not matter, in other areas such as medical doctors it is however, very important. This is because lives are entrusted in their hands. This matter regarding recruiting reserved candidates for the posts of doctors became a major issue in 1975 between the H P Public Service Commission and the Government. After due consideration however Government reiterated the instructions in 1975 insisting that the selection should be made by competition amongst the reserved candidates though the Public Service Commission felt that they should be selected only if they are fit. There are certain categories where most people feel that it may not be advisable to have reserved candidates yet reservation continues. In fact there is a provision for exemption for
PERCEPTION OF STANDARD OF SC & ST EMPLOYEES

<table>
<thead>
<tr>
<th>Class</th>
<th>Good</th>
<th>Average</th>
<th>Below Avg.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class II</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class III</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class IV</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
reservation under Para 3.3 of the Brochure which reads as follows

Exemptions

'Only such 'scientific and technical' posts as satisfy all the following conditions can be exempted from the purview of the reservation orders by the Ministries/Departments :

- The posts should be in grades above the lowest grade in Group A (Class I) of the service concerned.

- They should be classified as 'scientific or technical' in terms of Cabinet Secretariat (Department of Cabinet Affairs) O.M. No.85/11/CF-61(1) dated 28.12.1961; and

- They should be posts 'for conducting research' or 'for organising, guiding and directing research'.

Orders of the Minister concerned should be obtained before exempting any post satisfying the above conditions from the purview of the scheme of reservations.

No cases in Himachal Pradesh have been exempted from these orders. Elsewhere too, very few cases have been exempted under these orders. This is specially so in view of the provision for 'conducting research or for organising, guiding and directing research'. In All India Institute of Medical Sciences, New Delhi, too, where lot of research activity is done, there was exemption under this clause till 1971 when reservation was again introduced. However now reservation is being given upto the lowest level of faculty, that is Assistant Professor. In the Post
Graduate Institute of Medical Sciences and Research, Chandigarh, this exemption has not been applied.

To study the perception of employees, they were asked whether there should be reservation for different posts in specialised areas in direct recruitment. The responses are tabulated below.

TABLE V.2

Categories in which reservation is acceptable in direct recruitment.

<table>
<thead>
<tr>
<th>Categories</th>
<th>Doctors</th>
<th>Teachers</th>
<th>Engineers</th>
<th>Drivers</th>
<th>Clerks</th>
<th>Peons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>1</td>
<td>8</td>
<td>5</td>
<td>16</td>
<td>8</td>
<td>24</td>
</tr>
<tr>
<td>Class II</td>
<td>2</td>
<td>25</td>
<td>4</td>
<td>28</td>
<td>26</td>
<td>31</td>
</tr>
<tr>
<td>Class III</td>
<td>12</td>
<td>35</td>
<td>27</td>
<td>32</td>
<td>38</td>
<td>43</td>
</tr>
<tr>
<td>Class IV</td>
<td>14</td>
<td>16</td>
<td>15</td>
<td>18</td>
<td>17</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>29</td>
<td>84</td>
<td>51</td>
<td>94</td>
<td>91</td>
<td>116</td>
</tr>
</tbody>
</table>

The table indicates that out of 118 employees only 29 favour reservation for the posts of doctors and 51 for those of engineers. Even among the supporters of reservation, a large majority in each case belongs to class III and Class IV. On the other hand a vast majority of the respondents favour reservation in posts like those of drivers (94), clerks (91), peons (116) and sweepers (all 118). Teachers seem to fall midway but on the higher side; 84 respondents are of the view that there should be reservation for teacher’s posts.
CATEGORIES FOR WHICH RESERVATION IS ACCEPTABLE IN DIRECT RECRUITMENT

CLASS I

CLASS II

CLASS III

CLASS IV

DOCT. TEACH. ENGR. DRIVER
CLERK PEON SWEEPER

PERCENTAGE
It is notable that in Table V.1 many respondents had stated that the standards of the reserved category of employees was generally low, yet they favour reservation for more technical posts apparently in view of the social and economic factors pertaining to the reserved candidates.

It thus become obvious that reservations though acceptable for lower and non-technical posts the reserved candidates because of the nature of duties are not acceptable at higher or technical posts.

Non-availability of candidates

On 30.11.85, the Department of Personnel, Government of Himachal Pradesh collected data about the whole state and compiled the following figures regarding vacancies against reserved posts.

TABLE V.3

<table>
<thead>
<tr>
<th>Category</th>
<th>I</th>
<th>II</th>
<th>III</th>
<th>IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Total number of vacant posts of Scheduled Castes</td>
<td>49</td>
<td>22</td>
<td>1177</td>
<td>168</td>
</tr>
<tr>
<td>2. Total number of vacant posts of Scheduled Tribes</td>
<td>16</td>
<td>12</td>
<td>460</td>
<td>46</td>
</tr>
</tbody>
</table>

159
Note: This does not include the information in respect of Class I and Class II posts of the Department of Education (Primary & Secondary), Forests, Fire Services, Horticulture and Technical Education.

An M.L.A. asked an assembly question on 7.12.1982 which became an Assurance, and was replied as follows:29

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) How many vacancies of all Classes reserved for Scheduled Castes, Scheduled Tribes communities were dereserved during 1.4.80 to 30.11.83. Category-wise details be given.</td>
<td></td>
</tr>
<tr>
<td>Class of post</td>
<td>SC</td>
</tr>
<tr>
<td>I</td>
<td>18</td>
</tr>
<tr>
<td>II</td>
<td>10</td>
</tr>
<tr>
<td>III</td>
<td>70</td>
</tr>
<tr>
<td>IV</td>
<td>-</td>
</tr>
</tbody>
</table>

Similarly on 29.11.1985, an M.L.A. from Kinnaur asked the Chief Minister an unstarred assembly question which was answered as follows:30

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) How many posts meant for promotion for Scheduled Castes &amp; Scheduled Tribes are lying vacant in different departments as on 30.11.85</td>
<td></td>
</tr>
<tr>
<td>i) S.C.</td>
<td>195</td>
</tr>
<tr>
<td>ii) S.T.</td>
<td>295</td>
</tr>
</tbody>
</table>

29 Assurance No. 457/83 answered on 2.4.1989.
30 Dev Raj Negi from C.M. on 29.11.1985.
b) Steps being taken to fill vacancies have not been filled up for many reasons including non-availability of candidates or filling process is under way.

(Note: Above information does not include post in the Deptts of Agriculture, Education, Forests, Fire Service, Home Guards, Printing and Stationery and Technical Education Department)

Again, on 25.2.86 an M.L.A. asked the Chief Minister who answered:

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) How many persons among HAS and other Class I services belong to Scheduled castes</td>
<td>205</td>
</tr>
<tr>
<td>b) How many persons have been recruited in the 1st three years</td>
<td>246</td>
</tr>
<tr>
<td>c) How many posts have been dereeserved and why</td>
<td>16-due to non-availability of eligible suitable candidates</td>
</tr>
<tr>
<td>d) How many persons in the above category are confirmed and how many still awaiting confirmation</td>
<td>i. confirmed 45 ii. Awaiting none</td>
</tr>
<tr>
<td>e) How many posts in the above categories are still lying vacant</td>
<td>49</td>
</tr>
</tbody>
</table>

31 Kumar Chander (Raj Nagar) from C.M. on 25.2.86.
On getting this reply the MLA, Shri Yog Raj Mahajan, gave a notice under Rule 56 of the Rules of Procedure and conduct of business which read as follows:

"In reply to the above question it has been stated that as many as 16 vacancies meant for Scheduled Castes and Scheduled Tribes have been dereserved. This is a serious matter and prejudicial to this weaker section of the Society and needs clarification from the Government of the circumstances under which these posts could not be filled in by the candidates from these categories."

In the reply it was concluded that posts were dereserved due to non-availability of eligible candidates as they cannot be left vacant in the interest of work. Similarly in the supplementary note it was shown that 49 posts reserved for Scheduled Castes are lying vacant. The department-wise break-up is given below.

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Name of Department</th>
<th>Number of SC posts lying vacant</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personnel-I</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Industries</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Public Relations</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>Technical Education</td>
<td>1 (Non-finalisation of R&amp;P Rules)</td>
</tr>
<tr>
<td>5</td>
<td>High Court (Judicial)</td>
<td>2 (Non-availability of suitable candidates)</td>
</tr>
<tr>
<td>6</td>
<td>Home Guards.</td>
<td>1</td>
</tr>
<tr>
<td>7</td>
<td>Town &amp; Country Planning Organisation</td>
<td>1</td>
</tr>
<tr>
<td>8</td>
<td>Horticulture</td>
<td>1 - do -</td>
</tr>
<tr>
<td>9</td>
<td>Health &amp; Family Welfare</td>
<td>39 - do -</td>
</tr>
<tr>
<td>10</td>
<td>Forests</td>
<td>1</td>
</tr>
</tbody>
</table>

|
|-------|
| 49    |

162
It was stated that these reserved posts were vacant previously because of non-availability of suitable candidates. In some cases requisitions to fill up the reserved posts had already been sent to the Public Service Commission. The Government has, however, issued instructions to fill up the reserved posts speedily by adopting the proper procedures.

The complicated procedures prescribed for carry forward and dereservation and the fact that posts are vacant are very strong reasons of resentment against reservation.

Reservation not based on economic considerations

Reservation is not based on economic consideration and hence it often happens that children of well placed parents who belong to these categories get preference for posts having scored much lower marks than those who do not have the same resources or whose parents are not well placed. When the son of an IAS officer in Himachal Pradesh with lower marks was selected as a reserved candidate against the son of a clerical cadre with higher marks, this point became obvious.

Reservation in promotion - reservation twice

In an interview conducted with 30 reserved candidates, all except four seemed satisfied with the promotional avenues that were open to them in any case. But this was not so with the general candidates where an inverse flow seemed to be taking place. General category employees have been representing against reservation in promotion. In some states some changes have also
been made which links reservation with economic considerations. Uttar Pradesh Government amended their rules in 1985 to provide for reservation only where the monthly income was less than Rs.1000. The employees of Himachal Pradesh while pleading for open recruitment have also stated that reservation is meant to uplift those who belong to the weaker sections of society. They quoted Uttar Pradesh Government and said that in H.P. the benefit was being given to those who had already undergone a 'remarkable uplift', that is, employees in government service. They pleaded against reservation in promotion which has been reduced or stopped to a great extent in states like Gujrat.\textsuperscript{32} However, when they went to court in the case of promotion to the posts of superintendents in the Secretariat, the Himachal Pradesh Administrative Tribunal gave a historical judgement.\textsuperscript{33} It held that the roster is a means to an end, that is, is meant to provide adequate representation in the services under the State to any backward class of citizens and that once the percentage is achieved, the application of the roster has to be suspended and can be reviewed again when the percentage of reservation of that category falls below the prescribed level. They held the recruitment and promotions rules for the post of section officer ultra vires. Reservation in promotion was also not acceptable as the employees here compare themselves with other employees and when they see a junior official jump the queue and supersede many employees they feel upset. Ishwar Dayal's theory of an employee

\textsuperscript{32} Memorandum to the Governor and members of Parliament and assembly from non Scheduled Castes Welfare Association dated 12.9.80.

\textsuperscript{33} Bhagat Ram Kaprate & Others V State of HP and others, 1986.
seeing himself as part of a community and a group comes to play.

The case was kept pending for long and it was only after an agitation of secretariat employees in 1988 that government issued instructions for the Superintendents (and not other categories of employees). The price had to be paid by secretary personnel who was transferred out. Both secretary personnel and chief secretary belonged to the reserved category. There is resentment specially amongst employees for promotion where they see that employees much junior to them may get promotion due to reservation.

In our sample survey of 118 employees, 88 employees belong to the non reserved category and 30 to the reserved category. To study the opinion of employees belonging to the non reserved category, they were asked whether the reservation in promotion was fair or unfair. Their responses are given in the table below

<table>
<thead>
<tr>
<th>Class</th>
<th>Fair</th>
<th>Unfair</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>1</td>
<td>24</td>
<td>25</td>
</tr>
<tr>
<td>Class II</td>
<td>3</td>
<td>28</td>
<td>30</td>
</tr>
<tr>
<td>Class III</td>
<td>2</td>
<td>41</td>
<td>43</td>
</tr>
<tr>
<td>Class IV</td>
<td>5</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td><strong>11</strong></td>
<td><strong>107</strong></td>
<td><strong>118</strong></td>
</tr>
</tbody>
</table>

TABLE V.4

Acceptability of the reserved candidates for promotion
ACCEPTABILITY OF RESERVATION IN PROMOTION

TOTAL NO. SURVEYED - 118
CLASS I - 25, CLASS II - 30, CLASS III - 43, CLASS IV - 20
It can be seen that except a small minority (probably belonging to reserved categories themselves), almost all (107 out of 118) believed that reservation in promotion is not fair. Those who believed that it was unfair to give reservation in promotion were further asked whether reservation should be continued or discontinued. The replies were as follows:

**TABLE V.5**

Views on continuance of Reservation in promotion even if unfair

<table>
<thead>
<tr>
<th>Class</th>
<th>Those who felt unfair</th>
<th>Whether it should be continued</th>
<th>Whether it should be discontinued</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>24</td>
<td>2</td>
<td>22</td>
</tr>
<tr>
<td>Class II</td>
<td>28</td>
<td>6</td>
<td>22</td>
</tr>
<tr>
<td>Class III</td>
<td>41</td>
<td>6</td>
<td>35</td>
</tr>
<tr>
<td>Class IV</td>
<td>14</td>
<td>2</td>
<td>12</td>
</tr>
</tbody>
</table>

This shows a logical response—most of those who felt that reservation in promotion is unfair also felt that it should be discontinued.

It became clear that reservation though acceptable at direct recruitment stage, was totally unacceptable for promotion.

A very interesting interview was conducted by a journalist of a retired I.A.S. officer who has been the Chief Secretary and was later a Speaker of Vidhan Sabha. He himself is a tribal and has seen the picture from both sides. He said, looking into the future "Reservations cannot go on indefinitely; some day the
He recommended special coaching and training facilities for uplifting the standard of scheduled castes and scheduled tribes. For this Himachal Pradesh has opened a Centre for coaching scheduled castes and scheduled tribes candidates at Himachal Pradesh Institute for Public Administration. The general candidates however, to press their point, have started asking for reservation for general candidates.

Reservation, it was felt by most government officers who were interviewed, is marked by the typical rigidity which is a characteristic of most of our administrative procedures which Paul Appleby talked about. The roster provides for reservation points. It is possible that a reserved candidate is available on other than the roster point and yet because of the fact that there he does not come in open competition with other general candidates, he is not selected. It is also possible that on the reserved point no candidate is available. It is not possible to interchange the points. Nor is it possible in the first or second year itself to exchange a scheduled caste vacancy with a scheduled tribe vacancy or vice versa (till the 3rd recruitment year when again the candidate may not be available) The roster points are determined by date of creation of a post irrespective of availability of candidates.

34 The Tribune, 16.5.87.
Reservation in service in the Constitution and later as per instructions issued, was an effort to resolve a social problem. However, the general feeling is that it has also become a political issue. The case of announcing an enhanced quota of reservation from 10 to 25% at the time of election in Gujrat and withdrawing it after election shows political motivation.³⁵ It was felt by people who were interviewed that in a country looking forward to the twenty first century, selections should be based on merit and uplift of backward classes should be done by special training and social measures. There was reaction over reservation for other backward classes in Bihar and Gujrat thereby showing the mind and thought process of people. However, I.P.Desai views it differently seen in the background that the constitution did not want to perpetuate the caste system, yet introduced the policy of 'protective discrimination'.³⁶ He saw in the clash and violence an attempt of the higher class to make the former lower castes accept their former low status.³⁷ He saw in the argument of merit, the bigger element of caste. "Competence and merit under the present social structure is nothing short of social Darwinism". I.P.Desai, though not really in favour of caste for reservation for other backward classes, has explained how even Mandal Commission has not been able to

³⁵ Ishwar Prasad, Reservation for Social Equality, New Delhi, Criterion Publications, 1986
³⁶ I.P.Desai, "Should 'Caste' the Basis for Recognising the Backwardness"
³⁷ I.P.Desai, On Reservation Agitation and Structure of Gujrat Surat, Centre for Social Studies, 1985
The plea for reservation has however been developed by Ishwar Prasad who has stated that after independence there were only three methods to adapt ourselves to the political structure that we envisaged - adopting a free market economy, allowing a revolution to take over and rearranging the economic resources to adjust to the new social order required. The reservation system was an attempt to achieve the new social and economic order through the last of these choices. It provided the respective castes a "feeling that it had its own man in the corridors of power that acts as a morale booster". Ishwar Prasad had argued that representative administration is far superior than a meritorious system and that the scheme for reservation involves other criterion for all classes. In any case, he has said, that one cannot say reservation system is not more efficient as the south Indian states have larger proportion of reservation and are accepted as better administered states.

Perhaps, a solution of the problem would be in having an economic criterion for reservation. This principle if extended would also mean no reservation in promotion and reduce a lot of resentment and heart burning. Reservation may achieve the purpose for which it was meant if it is used as a tool for social and economic change and not for a political one.

38 Mandal Commission 1978-82 to identify socially and educationally backward classes in Gujrat
39 Mandal Commission, p57
40 Ishwar Prasad, Reservation - action for social equality, Criterion Publications, New Delhi, 1986