

CHAPTER 18

POWERS OF THE NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES TO CALL FOR FILES AND RECORDS AND REPRESENTATIONS FROM SCHEDULED CASTES AND SCHEDULED TRIBES EMPLOYEES

18.1 The Commissioner for Scheduled Castes and Scheduled Tribes was appointed under Article 338 of the Constitution to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution and report to the President upon the working of these safeguards.

MHA O.M. No. 8-2-69 SCT(I) dated 1-10-74 and MHA O.M. No. 17016/1/76 SCT(I) dated 8-4-76 and DP&T O.M. No. 36012/25/92-Est.(SCT) dt. 1-9-92.

18.2 In regard to the question whether the Commissioner can call for the original records and files in specific cases where complaints have been made to him and whether Scheduled Castes and Scheduled Tribes Government servants can write to him direct bringing their grievances to his notice, it was decided as follows :—

- (a) Files relating to the appointment of candidates belonging to the Scheduled Castes and Scheduled Tribes against the reserved quota should, on demand, be made available to the Commissioner for Scheduled Castes and Scheduled Tribes.
- (b) In all other cases, comprehensive notes explaining the position may be furnished to him;
- (c) Should the Commissioner have any reservations or doubts in regard to the explanations given, the matter may be referred to the Home Secretary, who will go through the original records and answer the queries by the Commissioner; where possible he will also send the record with the reply; and
- (d) Scheduled Caste and Scheduled Tribe Government employees may be permitted to write to the Commissioner for Scheduled Castes and Scheduled Tribes direct on matters relating to appointments against the reserved quota. It is not necessary for the Scheduled Caste and Scheduled Tribe Government employees to seek prior permission of the concerned administrative Ministry/Department for sending his representation to the Commissioner for Scheduled Castes and Scheduled Tribes.

NOTE : The expression "reserved quota" will include matters relating to confirmation, promotion grant of other concessions allowed to Scheduled Caste and Scheduled Tribe employees by the Department of Personnel and Administrative Reforms from time to time.

18.3 The Govt. have constituted a National Commission for SCs and STs w.e.f. 12-3-92 in pursuance of the constitution/Sixty fifth amendment Act, 1990 replacing the Commissioner for SCs and STs appointed under Act 338 of the Consultations. All powers exercised by the Commissioner for SCs/STs earlier have been taken over by the National Commission for SCs and STs. Therefore, all references were constitution with the Commissioner for SCs and STs have been prescribed for various purposes connected with reservation in services/posts under Central Government have to be sent to the Nation Commission for SCs and STs.

MHA O.M. No.
16/8/69 Estt.(SCT)
dated 27-4-70 and
DP&AR O.M. No.
36024/1/78 Estt.
(SCT) dated 27-6-
1978.

18.4 Ministries/Departments and Particularly, the Liaison Officers should ensure the extension of necessary assistance to the National Commissioner for investigation of complaints received by the latter in service matters. The communications received from the Commissioner calling for facts comments, etc. in respect of representations on service matters made by individuals should be replied to expeditiously.

DP&AR O.M. No.
36024/1/78-Estt.
(SCT) dated 20-2-
1979. DP&AR
O.M. No. 36034/2/
83-Estt.(SCT)
dated 23-2-83.

18.5 Ministries/Departments should extend necessary assistance required by the Commissioner for conducting special studies of the rosters maintained and of implementation of other orders regarding reservation for Scheduled Castes and Scheduled Tribes by any appointing authority under their administrative control. The follow-up action on the reports/recommendations made by the Commission after such studies, should be completed and action taken reported to the Commission's office *within six months*. Where for any reasons, it is not possible for any Ministry to adhere to this time Scheduled, the reasons therefor should be communicated to the Commission before the expiry of six months indicating the details of the action already taken and also the probable time that would be further needed by them to send their final replies reports.

COPIES OF OFFICE MEMORANDA ETC. ON CHAPTER 18

O.M. No. 8/2/69-SCT (I)	1-10-74
O.M. No. 17016/1/76 ESTT (I)	8-4-76
O.M. No. 36024/1/78 ESTT (SCT)	27-6-78 after Chapter 15
O.M. No. 36024/1/78 ESTT (SCT)	20-2-79
O.M. No. 36034/2/83 ESTT (SCT)	23-2-83
O.M. No. 36012/25/92 ESTT (SCT)	1-9-92

Ministry of Home Affairs O.M. No. 8/2/69-(SCT)(I)
dated 1st October, 1974 to all Ministries etc.

Subject :—Question whether the Commissioner for Scheduled Castes and Scheduled Tribes can call for original records and files in specific cases where complaints have been made to him and whether Scheduled Castes and Scheduled Tribes Government servants can write to him direct.

The Commissioner for Scheduled Castes & Scheduled Tribes has been appointed under article 338 of the Constitution to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution and report to the President upon the working of these safeguards. In regard to the safeguards relating to the appointment of Scheduled Castes and Scheduled Tribes to services and posts, the Commissioner had raised the following two questions :—

- (i) Whether he can call for the original records and files in specific cases where complaints have been made to him so that he can satisfy himself that the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution have not been violated; and
- (ii) Whether Scheduled Caste and Scheduled Tribe Government servants can write to him direct bringing their grievances to his notice.

2. Occasions for consulting the original files of the Ministries or Departments by the Commissioner for Scheduled Castes and Scheduled Tribes would probably be few and far between as usually the full facts of the cases are furnished to the Commissioner for Scheduled Castes and Scheduled Tribes whenever enquiries are made by him in such matters. However, there may be cases where the Commissioner might require to see the original records and files in order to satisfy himself that no injustice has been done. There may, in general, be no difficulty in making files available to him, but in some cases, it may not be possible to show him the files for reasons of public security etc.

3. Taking all aspects into consideration and in the light of the advice given by the Committee of Secretaries on Internal Affairs which has been approved by the High Power Committee set up by the Department of Personnel & Administrative Reforms, it has been decided as follows :—

- (a) Files relating to the appointment of candidates belonging to the Scheduled Castes and Scheduled Tribes against the reserved quota should, on demand, be made available to the Commissioner for Scheduled Castes and Scheduled Tribes;
- (b) In all other cases, comprehensive notes explaining position may be furnished to him;
- (c) Should the Commissioner have any reservations or doubts in regard to the explanations given, the matter may be referred to the Home Secretary, who will go through the original records and answer the queries by the Commissioner; where possible, he will also send the record with the reply; and
- (d) Scheduled Caste and Scheduled Tribe Government employee may be permitted to write to the Commissioner for Scheduled Castes and Scheduled Tribes direct on matters relating to appointments against the reserved quota.

4. The expression "reserved quota" will include matters relating to confirmation promotion, grant of other concessions allowed to Scheduled Caste and Scheduled Tribe employees by the Department of Personnel & Administrative Reforms from time to time.

5. These decisions may kindly be brought to the notice of all the concerned authorities.

Ministry of Home Affairs O.M. No. 17016/1/76-SCT(I)
dated 8th April, 1976 to all Ministries etc.

Subject :—Question whether the Commissioner for Scheduled Castes and Scheduled Tribes can call for original records and files in specific cases where complaints have been made to him and whether Scheduled Caste and Scheduled Tribe servants can write to him direct.

The undersigned is directed to refer to this Ministry Office Memorandum No. 8/2/69-SCT(I), dated 1-10-1974 on the above subject addressed to all Ministries/Departments of the Government of India and to say that this Ministry had been receiving requests for clarification whether the Scheduled Caste and Scheduled Tribe Government employees may be permitted to write to the Commissioner for Scheduled Castes and Scheduled Tribes direct on matters relating to appointments against the reserved quota without seeking prior permission from the Departments concerned. It is clarified for general information that in such cases it is not necessary for the Scheduled Caste and Scheduled Tribe Government employees to seek prior permission of the concerned administrative Ministries/Departments of the Government of India for sending their representations to the Commissioner for Scheduled Castes and Scheduled Tribes direct.

**Deptt. of Personnel and A.R. O.M. No. 36024/1/78-(SCT)
dated the 20th February, 1979 to all Ministries etc.**

Subject :—Follow-up action in (i) special studies of offices/organisations under taken and (ii) complaints received by the Commissioner for Scheduled Castes and Scheduled Tribes in Service matters..

The undersigned is directed to invite a reference to this Departments Office Memorandum No. 36024/1/78-Estt.(SCT) dated the 27th June, 1978, in which the Ministries/Departments etc. were requested to extend necessary assistance to the Commissioner for Scheduled Castes and Scheduled Tribes in connection with the Special Studies of rosters maintained and implementation of other orders regarding reservation for Scheduled Castes and Scheduled Tribes undertaken by the Organisation of the Commissioner for Scheduled Castes and Scheduled Tribes and also to reports on follow-up action on such studies to him and also send replies to references made by him as expeditiously as possible. While there is no doubt that the Ministries/Departments would be taking all necessary steps to send reports on follow-up action on the Commissioner's study reports and attend to his other reference with due care and promptitude, it has been felt necessary that a specific time-limit should be laid down within which the Ministries should complete the necessary follow-up action on the Study reports/suggestions made by the Commissioner and furnish action taken statements to him, After a careful consideration it has been decided that the necessary follow-up action should be completed and action taken reported to the Commissioner *within six months*, and where for any reasons it is not possible for the Ministries/Departments to adhere to this time scheduled, the reasons therefor should be communicated to the Commissioner before the expiry of 6 months, indicating the details of the action already taken and also the probable time that would be further needed by them to send their final replies reports.

2. Ministry of Finance etc. are requested to bring the above instructions to the notice of all the concerned authorities.

Department of Personnel and A.R. O.M. No. 36034/2/83-Estt.(SCT)
dated 23rd Feb, 1983.

Subject :—Action taken by various Ministries/Departments of the Govt. of India on the complaints in service matters from SC/ST employees through Office of the Commissioner for SC/ST

The undersigned is directed to invite a reference to this Department's O. M. No. 36034/1/78-Estt.(SCT) dated 20-2-1979 (copy enclosed) in which the Ministries/Departments were requested to extend necessary assistance to the commissioner for SC/ST in connection with special studies of the rosters maintained and implementation of other orders regarding reservation for SC/ST undertaken by the Commissioner for SC/ST and also to report on follow up action of such studies to him and send replies to references made by him as expeditiously as possible. It was also provided in the same order that necessary follow up action should be completed and action taken to be reported to the Commissioner within six months and where for any reason it is not possible for the Ministry/Deptt. to adhere to this scheduled, the reasons should be communicated to the Commissioner before the expiry of six months, indicating the details of the action already taken and also the probable time that would be further needed by them to send their final replies and reports.

2. The Commissioner for SC/ST has brought to the notice of this Department that even the limit of six months is not adhered to by many Ministries and Departments and in some cases even a reply is not received from the Ministry/Department. It may be mentioned in this connection, that Office of the Commissioner for SC/ST has been set up under Article 338 of the Constitution to investigate all matters relating to the safeguards provided for SC/ST under this Constitution and report to the President upon the working of those safeguard. Therefore, it may be seen that the Commissioner for SC/ST has to discharge a constitutional obligation to investigate and report matters relating to safeguards provided for SC/ST under the Constitution to the President. It, thus, becomes the duty of the Ministry/Department also to furnish the necessary assistance to the Commissioner for SC/ST by way of replying to his references. Apart from this, the Office of the Commissioner for SC/ST is one of the most important institutional safeguards in the entire reservation Scheme of the Govt. of India to whom a SC/ST employee can go direct regarding his grievance in the service matter. It will, therefore, be unfortunate if the Ministries/Departments do not furnish comments or facts to the Commissioner's Office even within a time limit of six months which this Department considers to be an easily attainable time target in any case, that should set the order time limit, efforts being made to complete the reply within that time perhaps earlier than later. It is, therefore requested that as soon as a reference is received from the Commissioner's Office, it should be given due attention and steps should be immediately taken to apprise the Commissioner of the position of the case. It is also requested that if for some genuine reasons. It is not possible to send a report within six months than an interim reply should be sent to the Commissioner for SC/ST explaining to him the reasons as to why a full reply cannot be sent.

3. Ministry of Finance is requested to bring the contents of this O.M. to the notice of all their attached and subordinate offices.

Department of Personnel and Training, 36012/25/92-Estt. (SCT)
New Delhi, the 1st September, 1992 to All Ministries/Departments

Subject :—Replacement of Commissioner for SCs and STs with the National Commission of SCs and STs.

The undersigned is directed to say that Govt. have constituted a National Commission for SCs and STs w.e.f. 12-3-92 in pursuance of the constitution (Sixty fifth Amendment) Act, 1990 replacing the Commissioner for SCs and STs appointed under Art. 338 of the constitution. All powers exercised by the Commissioner for SCs/STs earlier, have been taken over by the National Commission for SCs and STs. Therefore, all references where consultation with the Commissioner for SCs and STs have been prescribed for various purposes connected with reservation in services/posts under Central Govt. may now be sent to the National Commission for SCs and STs.