

8.25 PUBLIC SERVICES PREPARATION OF PANEL FOR APPOINTMENT BY PROMOTION/BY RECRUITMENT BY TRANSFER - DETAILED INSTRUCTIONS - ISSUED.

Personnel and Administrative Reforms Department

G.O. (Ms) No. 368

Dated :18.10.1993

Read:-

1. G.O. (Ms) No. 624, Public (services-c) Department, dated 17th March 1967
2. G.O. (Ms) No. 11 Personnel and Administrative Reforms (per.R) Department, dated 5th January 1984
3. G.O. (Ms) No. 603 Personnel and Administrative Reforms (per.M) Department, dated 12th June1985
4. G.O. (Ms) No. 381 Personnel and Administrative Reforms (per.S) Department, dated 28th June1989
5. G.O. (Ms) No. 440, Personnel and Administrative Reforms (per.S) Department, dated 26th October 1990
6. G.O. (Ms) No. 367 Personnel and Administrative Reforms Department, dated 12th Novmber 1992
7. Government Letter No.16013/93-1 Personnel and Administrative Reforms (per.S) Department, dated 8th March 1993
8. Government Letter No. 99628/92-2, Personnel and Administrative Reforms (per.S) Department, dated. 23rd April 1993

ORDER

Instructions have been issued by the Government from time to time in the matter of preparation of estimates of vacancies and drawal of panels on such estimates. In spite of those instructions, proposals are not received in complete shape from the Head of Department.. Incomplete particulars, Personal files without up-to-date reports, non-production of a copy of the latest printed or cyclostyled seniority list published/communicated by the department, etc., are some of the causes resulting in delay in approval of panels causing dislocation of work in offices and also hardship to officers awaiting promotion. Advance action to finanlise the estimate of vacancies and to draw panels is not also taken as per the programme fixed in the G.O. third read above. Copies of updated ad-hoc rules/special rules relating to the posts are also not furnished along with the proposals sent for drawl of panels. A list of defects noticed, causing delay in approval of panels is given in Annexure I. In order to minimize the delay in the approval of panels it has become necessary to consolidate and reiterate the provisions under the General Rules as also the various instructions already issued in the matter.

2. The following instructions are accordingly issued:

1. Preparation of Estimate of Vacancies:

(i) provision in General Rules:- According to Rule 4 (Approved candidates) in part II of the General rules for the Tamilnadu State and subordinate services, the list of approved candidate for

appointment by promotion and by recruitment by transfer to all categories of posts in the Tamilnadu State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year.

(ii) Estimate of vacancies for posts to be filled up by recruitment by transfer /by promotion where consultation with the Tamil Nadu Public Service Commission is necessary:- In the case of recruitment to a State Service by transfer from the normal feeder subordinate services or by promotion from a lower post to a higher post within the same State Service where consultation with the Tamil nadu Public Service Commission is prescribed , the Heads of Department should take advance action to get the approval of the Government for fixing the estimate of vacancies and furnish the approved estimates to the Commission on the appropriate dates specified in column 2 of Annexure III (ii) (Recruitment transfer) to the G.O. third read above. The estimate of the number of candidates required should cover a period of 12 months from the date following the date on which the list of selected candidates is due to be communicated to the appointing authorities by the commission according to the programme in the said Annexure III(ii). The Head of Department should ensure that the proposals for fixing the estimates of vacancies are sent to the government atleast 2 months before the prescribed dates mentioned therein.

(iii) Estimate of vacancies for posts to be filled up by the recruitment by transfer or by promotion where consultation with Tamil nadu Public Service Commission is not necessary:- In respect of appointments by recruitment by transfer or by promotion to posts included in the State Services where consultation with the commission is not prescribed, the estimate should cover a period of 12 months from the date following the crucial date on which the candidates should possess the required qualification prescribed in the Special Rules/Ad-hoc rules for appointment to the higher posts. The Heads of Department should ensure that the proposals for fixing the estimate of vacancies are sent to the Government, atleast 2 months in advance of the crucial date.

(iv) Ingredients for estimate and mode of preparation of estimates:- The estimate of vacancies should be prepared taking into account the total number of permanent posts in a category, the number of temporary posts in existence, the anticipated sanction of new posts during the panel year, the provision for leave reserve (5 per cent of cadre strength) and un-expected contingencies vacancies caused due to retirement, promotion, etc., as envisaged in the first proviso to General rule 4(a). The estimate covering the ingredients should be sent to the Government by the Heads of Department in the format given in Annexure-II to this order. An example of estimates prepared is given in annexure II-A to this order. Provision for un-expected contingencies should be made in accordance with the instructions contained in the government letter seventh read above. The percentage fixed for providing for un-expected contingencies is given in annex ure II.

However, vacancies which are likely to arise after the panel year should not be considered. Such vacancies should be reckoned only in the next panel year. Nevertheless, where a panel is prepared after the relevant panel year, only the actual number of vacancies which really arose should be reckoned.

(v) sNumber of persons to be included for a single vacancy in a post other than the Heads of Department:- According to the instruction issued in the government letter seventh read above

when the estimate of vacancies arrived at is between 1 and 10, provision for unexpected contingency at 50 per cent subject to a minimum of 1 should be made. Hence for a single vacancy estimated, one more number should be added to the estimate in order to meet unexpected contingencies, and a panel consisting of two names should be drawn.

(vi) Proportion to be maintained for selection of persons for a single vacancy or more than a single vacancy:- According to rule 4 of the General rules for preparing panels, to fill up a single vacancy, the claims of the first two qualified candidates in the seniority list in a class, category or service should be considered and the same proportion should be maintained in making selection for more than a single vacancy. If the first 2 qualified candidates, after consideration of their claims are found not suitable for the post, the claims of the next 2 qualified candidates should be considered.

(vii) Filling up of posts of Heads of Department- (1) To fill up a single vacancy in respect of Head of Department, the claims of the first 5 qualified candidates in the seniority list should be considered and a panel of atleast two names should be got approved in order to meet any contingency, According to the orders issued in the Government Order fifth read above, to be eligible for promotion as Head of Department, an Officer should have not less than one year's service left before retirement. Those who do not have such a minimum period of left over service but are otherwise found to be fully qualified, and are fit for promotion as Head of Department and deserve recognition on the crucial date of preparation of panel, should be compensated by appointing them as officers on Special duty with a specific assignment and with the same scale of pay as that of the Head of Department.

(2) Proposals to fill up the posts of Heads of Department (non-IAS) will have to be initiated by the Secretaries to Government themselves 3 months in advance of the prospective date of retirement of the existing incumbent, as all the relevant particulars would be available in the Secretariat. If the initiative to send proposals is left with the Heads of Department themselves there are found to be delays caused by subjective considerations. Such promotion proposals will have to be suitably monitored by the Secretaries to Government themselves so that orders are issued before the retirement of the existing incumbent and the cases of those who have a minimum service of one year from the date of retirement of the previous incumbent are not omitted because of administrative delay.

(viii) Preparation of estimate of vacancies to posts to be filled up by direct recruitment (I) According to the orders issued in the Government Order first read above, the substantive vacancies which should be filled up by direct recruitment shall be calculated covering the following:-

(a) Vacancies that are expected to arise by the retirement of permanent incumbents in the panel year for which recruitment is made; and

(b) Vacancies that had arisen from the following causes during the panel year previous to the date when the vacancies for direct recruitment are due to be estimated:-

- i) Appointment and confirmation of permanent incumbents in another service.
- ii) death of permanent incumbents; and,
- iii) permanent retention of a temporary post.

After arriving at the substantive vacancies as above, vacancies for direct recruitment and other methods of recruitment have to be apportioned as prescribed in the relevant special rules.

(2) The respective appointing authorities nominated for the purpose by the Heads of Department in the case of Tamil Nadu Ministerial Service and Tamil Nadu Judicial Ministerial Service, the Heads of Department in the case of the other Subordinate Services, and the Secretaries to Government in the case of State Services should send to the Tamil Nadu Public Service Commission estimates of the number of candidates to be selected for each service by direct recruitment according to the programme given in Annexure III to the G.O. third read above

(3) When forwarding the estimates to the Commission in the case of direct recruitment, the appointing authorities should, in addition to giving information as to the number of candidates to be selected, send to the Commission their roster relating to reservation of appointment for the Scheduled Castes, Schedules Tribes, Most Backward Classes and Denotified Communities and Backward Classes and the appointments filled by open competition, showing all the appointments made to the service up-to-date.

II. Preparation of Panels:-

(i) Particulars/Documents to be sent to Government for preparation of panels:-Particulars/documents to be sent to Government by the Heads of Departments for preparation of panel should be as shown in Proforma I in Annexure III to this order. Consequently, all panel files should contain particulars/documents as required under the columns in the proforma I given in Annexure III to this order. The panel files should also contain seniority list as per instructions contained in Annexure-IV.

(ii) Opening of sectional notes for preparation of panels:- The cases of persons to be considered for inclusion in the panel should be examined by opening sectional notes in the Proforma II given in Annexure V. There should be an index for the sectional notes in the following proforma:-

Serial No.	Name of Person	Page No.of sectional Note.
(1)	(2)	(3)

iii) Preparation of temporary panels to be avoided:- According to explanation III under General Rule 4, no temporary panel shall be prepared in respect of posts for which consultation with the Tamil Nadu Public Service Commission is not required. Only regular panels in accordance with the rules will have to be drawn. If for valid reasons like non-regularisation of services in feeder category, etc., a temporary panel for promotion has to be drawn, the fact should be clearly indicated in the panel file and the panel has to be drawn in relaxation of the said explanation under General rule 4. In respect of appointment to the posts for which consultation with the concession is necessary. Temporary lists may be drawn and published following the procedures prescribed for drawing regular panels in order to meet exigencies of service and to avoid administrative delay.

(iv) Classification of persons against whom enquires are pending and specific charges have been framed or charge sheet has been filed in criminal cases:- (1) As per orders in the Government order sixth read above, in the case of pending enquiries including Vigilance enquiries and in cases where specific charges have not been framed, promotions and appointments shall be considered

on the basis of the performance of the officers coming under the Zone of selection as on the date of consideration for promotion/appointments as revealed through the Personal Files/Records sheets and the seriousness of the punishments, if any previously imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case, promotion/ appointment of such persons shall be deferred till the proceedings are concluded. They must however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable with reference to all relevant criteria, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

(2) The 'Specific charges' referred to are those framed under rule 17(b) of the Tamil Nadu Civil services (Classification, control and Appeal) Rules or its equivalent. Mere calling for the explanations of a Government Servant under rule 17(a) of the said rules need not be treated as bar for promotion on that score alone. This would equally apply to promotion to ordinary posts/ and Selection Category posts as well as to recruitment by transfer from one service to another.

(3) The case of a Government servant whose promotion, etc has been deferred, should be reopened after disposal of the charges and appropriate orders should be passed on merits ie.(a) giving him his promotion as aforesaid if he was proved innocent and exonerated or acquitted of the charges and if there are no other adverse factors to be reckoned; or (b) denying him the promotion or giving the promotion from a later date depending upon the nature of punishment and other factors to be reckoned, in other cases. In all such cases, the Heads of Department must take suo-moto action within 15 days from the date of issue of final orders in the departmental disciplinary case/criminal case.

(4) Whether the disciplinary proceedings under rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules against Government Employees are merely stayed by a Court/Tribunal, their cases shall be deferred till the proceedings are concluded, unless a contrary order is passed by the Court/Tribunal and it is decided not to challenge the same. If on the other hand, the Court/Tribunal quashes the charge memo, then the name of the Government employee concerned should be considered for inclusion in the panel for appointment to the higher post by promotion/recruitment by transfer if he is otherwise qualified.

(5) If specific charges are framed or charge sheet is filed in the criminal case before actual promotion the person concerned shall not be promoted notwithstanding the fact that his name has been included in the panel. The instructions in para (3) above will apply in his case thereafter.

(v) Consideration of adverse remarks:-

(1) Adverse remarks relating to a period of 3 years or more, prior to the date when the matter is noticed or brought to notice and which were not communicated at all to the officer concerned will have to be wholly ignored while considering promotion as per the instructions contained in paragraph 8(4) (ii) of the consolidated instructions issued in G.O.Ms./No.11 Personnel and Administrative Reforms (per.R) Department, dated 5th January 1984. This is notwithstanding the fact that the officer might have perused the personal file under the open system of maintenance of the same.

(2) Adverse remarks are recorded in the Confidential Reports to enable the officer reported upon to rectify himself of the defects pointed out. Where adverse remarks have been communicated and have not been modified expunged on representation, it shall be the duty of the reporting officer and the scrutinising officer to specifically consider and state in the Confidential report for the following year whether the defects have been rectified or not. Silence on the part of the reporting officer or countersigning officer will be construed to mean that the defects have been rectified (vide para 8(4) of G.O.Ms.No.11 Personnel and Administrative Reforms (per.R)Department, dated 5th January 1984).

(vi) Effect of punishment on promotion/recruitment by transfer:-

(1) The effect of a punishment on promotion/recruitment by transfer, will depend upon;-

(a) the nature of the higher post ie. Whether it is a 'Selection Category' or an ordinary post.

(b) the period during which the irregularity took place; and

(c) the nature of the irregularities (rather than the quantum of punishment), For example, an Assistant tears off the Current File. On the charges framed against him for the above lapse, one officer may merely award him a "censure" taking a "lenient view" while another officer may impose the punishment of "stoppage of increment with or without cumulative effect" holding the lapse as "serious" Yet another officer may even "dismiss" him from service holding the lapse as "grave" Thus different officer may take different views and impose different punishments for one and the same lapse. Therefore the quantum of punishment is not the objective criterion to assess the gravity of the charge.

(2) In S.L.P. (C) No.14612/91 against the Tamil Nadu Administrative Tribunals order in O.A. Nos.2851 and 2604/90 the Supreme Court in its order dated 19th August 1992 has said that it did not subscribe to the view that punishment and non-inclusion in the panel would amount to "double jeopardy" Therefore, the following courses of action are available:-

(a) In the case of "selection category" posts, the inclusion of names in the panel for promotion will be based on merit and ability seniority being considered only when merit and ability of the contesting candidates are nearly equal. Therefore, strict comparison of the cases of the individuals, over a specified period of service (say 5 years) taken up for analysis, is quite necessary before deciding upon the question of inclusion or exclusion as the scope for subjective satisfaction and interpretation is limited for purposes of comparison, the proved irregularities which took place during the said specified period of service have to be taken into consideration, whether or not the person concerned was proceeded against under rule 17(a) or rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules,. The number of individual considered for this purpose should be as per the scales laid down in the General 'Rules particularly General rule 4(a).

(B) The same principles as above will have to be followed in the case of recruitment by transfer from one service to another.

(c) For ordinary promotions, the fitness of the person with reference to all relevant factors has to be considered. The unfit persons have to be eliminated. As far as punishment are concerned, (except where a specific punishment of withholding of promotion for a specified period is awarded), it should be examined whether the proved irregularities took place within the specified

period of service taken up for analysis and whether the irregularities were such as to make the individual unfit for the job in the higher category in the year in which his case is considered for inclusion in the panel for appointment to the higher post by promotion/by recruitment by transfer.

(vii) Consideration of persons outside the general line:-

According to the proviso to rule 9 of the General rules, a member of a service who has been appointed to another service outside his regular line shall not be permitted to hold membership in the second service beyond five years, if he is to be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line even though he is otherwise qualified under the rules for such promotion or appointment, unless he puts in a fresh service for a minimum period of one year in his post in the former service on reversion from the second service. This should be borne in mind while considering the case of those outside the regular line.

(viii) Consideration of appointments to posts as per existing statutory rules-

when temporary posts were newly created and ad'hoc rules are yet to be framed for the posts, appointment to such posts can be made on 'ad-hoc basis. However, in the case of posts governed by rules, when any amendments to the existing rules are to be issued promotion or appointment should not be made on 'ad-hoc basis with reference to the proposed amendment to rules but shall be made only with reference to the existing published (notified) rules. Promotion or appointment cannot be made on the basis of the executive orders seeking to modify the rules, as rules framed under the provision to articles 309 of the constitution cannot be modified by an executive order. Any modification to rules should be by amendment to rules, and they will come into effect only when published by notification in the Tamil Nadu Government Gazette. Therefore, while selecting candidates for appointment, the claims of contesting candidates have to be weighed with reference to the notified rules and not with reference to executive orders or contemplated change

(ix) Appointment of a member to a higher category not be considered if he had been on leave for three years or more continuously:-

(1) A member of a service who had been on leave for a period of three years continuously for any reason except higher studies or for a period of four years continuously for higher studies shall not be considered for appointed to a higher category either by promotion or by recruitment by transfer unless he has completed service for a period of one year from the date on which he joins duty on return from leave, vide rule 36© of the General Rules for the Tamil Nadu State and subordinate services.

(2) All the above aspects shall be considered while weighing the merits and fitness of the Officer concerned coming in the zone of selection for appointment to higher posts.

(ix) Validity period of Panel-

According to the provision contained in rule 4 of the General rules, all lists (panel;s) prepared for a year shall be published in the Tamil Nadu Government Gazette in respect of appointment to State Services and in the Notice Board in the office of the appointing authority in respect of appointment to subordinate services. The list should also be communicated by Registered post to all persons concerned whose names are found in the list as well as to persons senior to the

junior most person included in the list whose names have not been included in the list. The list so published shall be valid for a period of one year from the date of approval by the competent authority. It shall lapse at the expiry of one year. If the estimate of vacancy for any particular year is nil, a "NIL" list should also be published in the aforesaid manner.

3. The above instructions shall be followed scrupulously by all the panel-drawing authorities while preparing /sending proposals for approval of the estimate and panels.

4. The receipt of this order shall be acknowledged.

(By order of the Governor)

T.V.VENKATARAMAN
Chief Secretary to Government