

No. AB.14017/79/2006-Estt. (RR)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

New Delhi

Dated the 6th September, 2007

OFFICE MEMORANDUM

Subject:- Suggestion of one-time method of recruitment in special circumstances by the Union Public Service Commission – Clarification on.

Attention is invited to para 6 of this Ministry's OM No. 39021/5/83-Estt. (B) dated 9th July, 1985 communicating that where the Ministries/Departments are not in a position to make regular appointments for the reason that the recruitment rules therefor are still to be framed, they could make an immediate reference to the UPSC for deciding the mode of recruitment to the post alongwith their suggestions, and that on receipt of such a reference, the Commission would advise on the mode of recruitment and that the appointment made according to the advice given by the Commission would be treated as regular appointment. Based on the enabling provision as above, the Commission has till recently been suggesting one time method of recruitment in the following circumstances:-

- (i) When a new post is created and there is the necessity of filling the post urgently in the absence of Recruitment Rules;
- (ii) When existing RRs become inoperative on account of the same being inconsistent with the guidelines on educational qualifications, experience etc. laid down by the concerned agencies like AICTE, UGC and MCA;
- (iii) Where there is a change in the pay scales (based on the recommendations made by Pay Commission, etc.) resulting in change in qualifying service for consideration of officers for appointment; and
- (iv) Where RRs have been approved by the Commission and there is the likelihood of delay in notification.

2. The Supreme Court in Civil Appeal No. 6332 of 2005 – Union of India through Government of Pondicherry and Anr. Vs. V. Ramakrishnan and Others has made *inter alia* the following observations in its judgment passed on 7.10.2005:-

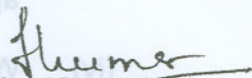
“ A rule does not become inoperative only because the UPSC says so. A rule validly made even if it has become unworkable unless repealed or replaced by another rule or amended, continues to be in force.”

“Valid rules made under proviso appended to the Article 309 of the Constitution of India operates so long the said rules are not repealed and replaced. The draft rules, therefore, could not form the basis for grant of promotion, when rules to the contrary is holding the field.”

3. The observations of the Apex Court have been examined in consultation with the UPSC. The stand of the Apex Court is unexceptionable as RRs are statutory and they will not cease to operate unless they are repealed. In this context, it has been decided that it will not be feasible or advisable for the UPSC to suggest one time method of recruitment in cases where Recruitment Rules exist even if they are perceived as unworkable. In such situations, the administrative Ministries/Departments will have to process necessary amendments required in the Recruitment Rules and, thereafter, initiate the recruitment process. Only where no Recruitment Rules exist or where the existing Recruitment Rules are repealed as per the prescribed procedure, the option of approaching the UPSC for one time method would, henceforth, be available.

4. The various administrative Ministries/Departments are requested to note the guidelines as above for compliance and ensure that no superfluous proposals for suggestion of one time method is referred to the Union Public Service Commission. Wherever Recruitment Rules have become inoperative for any reason whatsoever, immediate action to carry out necessary amendments, thereto, shall be taken, in consultation with the DOPT and the UPSC, wherever necessary.

5. Hindi version will follow.


(Smita Kumar)
Director

To

All Ministries/Departments of Government of India

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6. The Comptroller and Auditor General of India, New Delhi.
7. The Union Public Service Commission, New Delhi.
8. The Staff Selection Commission, New Delhi.
9. All Attached Offices under the Ministry of Personnel, Public Grievances and Pensions.
10. Establishment Officer and Secretary, ACC (10 copies).
11. All Officers and Sections in the Department of Personnel necessary action
12. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi
13. All Staff Members of National Council (JCM)
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(S.J.Kumar)

Under Secretary to the Government of India