

# **The Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2002**

KARNATAKA

India

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### **Act 10 of 2002**

- Published on 27 April 1978
- Commenced on 27 April 1978
- [This is the version of this document from 27 April 1978.]
- [Note: The original publication document is not available and this content could not be verified.]

The Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2002(Karnataka Act No. 10 of 2002)Statement of Objects and Reasons. - The Government of Karnataka has introduced the policy of reservation in promotion in favour of the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes as per the Government Order No. DPAR 29 SBC 77 dated 27-4-1978 (henceforth called, "Reservation Order").Paragraph 7 of the Reservation Order stipulates that the inter-se seniority amongst persons promoted in accordance with that order on any occasion has to be determined, in the manner provided in rule 4 or 4-A, as the case may be, of the Karnataka Government Servants (Seniority) Rules, 1957.The Supreme Court of India, in its Judgement dated 1-12-2000, in the case of M.G. Badappanavar and Another Versus State of Karnataka and others in Civil Appeal Nos. 6970-6971 of 2000 with Civil Appeal No. 6972 of 2000 (AIR 2001 SC 260) while dealing with the issue of determination of seniority inter-se between the persons belonging to the reserved categories and the general category, in pursuance of the ratio of the decision of the Constitution Bench in Ajit Singh and Others (II) Vs State of Punjab and others-(1999) 7 SCC 209- has examined rule 2(c), rule 4 and rule 4-A of the Karnataka Government Servants' (Seniority) Rules, 1957 and has observed that there is no specific rule therein permitting seniority to be counted in respect of a person promoted against a (reserved) roster point.While it is true that rules 2(c), 4 and 4A of the Karnataka Government Servants (Seniority) Rules, 1957 do not cover promotions made on the basis of roster, paragraph 7 of the Reservation Order introducing the policy of reservation in promotion stipulates the manner of determining the inter-se seniority amongst persons promoted on any occasion of promotion (on the basis of reservation). This provision is

independent of the said rules contained in the Karnataka Government Servants (Seniority) Rules, 1957 as the Reservation Order is a self-contained code regulating promotions on the basis of reservation. Subsequently, the Parliament has enacted the Constitution (Eighty Fifth Amendment) Act, 2001 with retrospective effect from 17-6-1995 providing for consequential seniority in the case of promotion on the basis of reservation. Therefore, it is considered necessary to remove any ambiguity and to clarify that the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes promoted in accordance with the policy of reservation in promotion contained in the Reservation Order shall be entitled to seniority as it is available to the Government Servants belonging to the other categories. Since the matter was urgent and the Karnataka Legislative Assembly was not in session, the Karnataka Determination of Seniority of the Government Servants Promoted on the basis of Reservation (to the posts in the civil services of the State) Ordinance, (No.2) 2002 (Karnataka Ordinance S of 2002) was promulgated to achieve the above object. This Bill seeks to replace the said Ordinance. Hence the Bill. (L.C. Bill No. 6 of 2002) (First published in the Karnataka Gazette Extraordinary of the fourteenth day of August 2002) An Act for Determination of Seniority of the Government Servants Promoted on the Basis of Reservation to the Posts in the Civil Services of the State: Whereas the Government of Karnataka has introduced the policy of reservation in promotion in favour of the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes as per the Government Order No. DPAR 29 SBC 77 dated 27.4.1978. Whereas paragraph 7 of the Reservation Order stipulates that the inter-se seniority amongst persons promoted in accordance with that order on any occasion has to be determined, in the manner provided in rule 4 or 4-A, as the case may be, of the Karnataka Government Servants (Seniority) Rules, 1957. Whereas the Supreme Court of India, in its Judgement dated 1-12-2000, in the case of M.G. Badappanavar and Another Versus State of Karnataka and others in Civil Appeal Nos. 6970-6971 of 2000 with Civil Appeal No. 6972 of 2000 (AIR 2001 SC 260) while dealing with the issue of determination of seniority inter-se between the persons belonging to the reserved categories and the general category, in pursuance of the ratio of the decision of the Constitution Bench in Ajit Singh and Others (II) Vs State of Punjab and others-(1999) 7 SCC 209- has examined rule 2(c), rule 4 and rule 4-A of the Karnataka Government Servants' (Seniority) Rules, 1957 and has observed that there is no specific rule therein permitting seniority to be counted in respect of a person promoted against a (reserved) roster point. Whereas while it is true that rules 2(c), 4 and 4A of the Karnataka Government Servants (Seniority) Rules, 1957 do not specifically provide for giving seniority in respect of promotions made on the basis of roster, paragraph 7 of the Reservation Order introducing the policy of reservation in promotion stipulates the manner of determining the inter-se seniority amongst persons promoted on any occasion of promotion (on the basis of reservation). This provision is independent of the said rules contained in the Karnataka Government Servants (Seniority) Rules, 1957 as the Reservation Order is a self-contained code regulating promotions on the basis of reservation. Whereas subsequently, the Parliament has enacted the Constitution (Eighty Fifth Amendment) Act, 2001 with retrospective effect from 17-6-1995 providing for consequential seniority in the case of promotion on the basis of reservation. Therefore, it is considered necessary to remove any ambiguity and to clarify that the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes promoted in accordance with the policy of reservation in promotion contained in the Reservation Order shall be entitled to seniority as it is available to the Government Servants belonging to the other categories. Be it enacted by the Karnataka State Legislature in the fifty third year of the Republic of India, as follows:-

## **1. Short title and commencement.**

(1) This Act may be called the Karnataka Determination of Seniority of the Government Servants Promoted on the basis of Reservation (to the posts in the civil services of the State) Act, 2002. (2) It shall be deemed to have come into force on the Seventeenth day of June, 1998.

## **2. Definitions.**

- In this Act unless the context otherwise requires, - (a) "Government" means the Government of Karnataka. (b) "Government Servant" means a person who is a member of the Civil Services of the State of Karnataka or who holds a Civil post in connection with the affairs of the State of Karnataka and includes any person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority, any person or persons whether incorporated or not. (c) "Reservation Order" means the Government Order No. DPAR 29 SBC 77 dated 27th April 1978 containing the policy of reservation in promotion, as modified from time to time.

## **3. Determination of Seniority of the Government Servants Promoted on the basis of Reservation.**

- Notwithstanding anything contained in any other law for the time being in force, the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes promoted in accordance with the policy of reservation in promotion provided for in the Reservation Order shall be entitled to consequential seniority. Seniority shall be determined on the basis of the length of service in a cadre. Provided that the seniority inter-se of the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes as well as those belonging to the unreserved category, promoted to a cadre, at the same time by a common order, shall be determined on the basis of their seniority inter-se, in the lower cadre. Provided further that where the posts in a cadre, according to the rules of recruitment applicable to them are required to be filled by promotion from two or more lower cadres, - (i) the number of vacancies available in the promotional (higher) cadre for each of the lower cadres according to the rules of recruitment applicable to it shall be calculated; and (ii) the roster shall be applied separately to the number of vacancies so calculated in respect of each of those lower cadres; Provided also that the serial numbers of the roster points specified in the Reservation Order are intended only to facilitate calculation of the number of vacancies reserved for promotion at a time and such roster points are not intended to determine inter-se seniority of the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes vis-a-vis the Government Servants belonging to the unreserved category promoted at the same time and such inter-se seniority shall be determined by their seniority inter-se in the cadre from which they are promoted, as illustrated in the Schedule appended to this Act.

#### **4. Protection of consequential seniority already accorded from 27th April, 1978, onwards.**

- Notwithstanding anything contained in this Act or any other law for the time being in force, the consequential seniority already accorded to the Government servants belonging to the Scheduled Castes and the Scheduled Tribes who were promoted in accordance with the policy of reservation in promotion provided for in the Reservation Order with effect from the Twenty Seventh Day of April, Nineteen Hundred and Seventy Eight shall be valid and shall be protected and shall not be disturbed.

#### **5. Power to make rules.**

(1)The State Government, if it deems necessary, may by notification make rules to carry out the purposes of this Act.(2)Every rule made under this Act shall be laid as soon as may be after it is made before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session, immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### **6. Power to remove difficulties.**

(1)If any difficulty arises in giving effect to the provisions of this Act, the Government may by order published in the official Gazette, make provisions not inconsistent with the provisions of this Act as appear to it be necessary or expedient for removing the difficulty:Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.(2)Every order made under this section shall as soon as may be after it is made, be laid before each House of the State Legislature.

#### **7. Repeal and Savings.**

(1)The Karnataka Determination of Seniority of the Government Servants Promoted on the basis of Reservation (to the posts in the civil services of the State) Ordinance (No.2), 2002 (Karnataka Ordinance 5 of 2002) is hereby repealed.(2)Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken Under this Act.

### **Schedule**

(see the proviso to section 3)If three vacancies of Assistant Commissioner are to be filled by promotion at the same time, by a common order, classification of vacancies would be as follows :

**1st.**

...Scheduled Caste

**2nd.**

...Scheduled Tribe

**3rd.**

....UnreservedIf the seniority of persons in the cadre of Tahsildars who are eligible and qualified and whose cases are to be considered at that time is as indicated below,A ... Scheduled CasteB ... UnreservedC ... Scheduled TribeD ... UnreservedE ... Unreservedthen, on promotion, their inter-se seniority in the cadre of Assistant Commissioners, will be as follows :A ... Scheduled CasteB ... UnreservedC ... Scheduled TribeIf on the other hand the seniority of the Tahsildars at that time is as indicated below,A ... UnreservedB ... UnreservedC ... UnreservedD ... Scheduled CasteE ... Scheduled Tribethen their inter-se seniority, on promotion, in the cadre of Assistant Commissioners will be as follows :A ... UnreservedD ... Scheduled CasteE ... Scheduled Tribe