

**GOVERNMENT OF INDIA
SOCIAL JUSTICE AND EMPOWERMENT
LOK SABHA**

UNSTARRED QUESTION NO:3463
ANSWERED ON:24.08.2006
EXCLUSION OF OBC CASTES
Rathod Shri Harisingh Nasaru

Will the Minister of SOCIAL JUSTICE AND EMPOWERMENT be pleased to state:

- (a) whether the Government has appointed an Expert Committee to fix the criteria for exclusion of the socially advance persons/sections from the benefit of reservations for other Backward Classes in the Government services;
- (b) if so, the recommendations given by the Committee;
- (c) whether the Ministry prepared any list of such persons/categories who are working as artisans or engaged in hereditary occupations, callings from whom rule of exclusion will not apply;
- (d) if so, the details thereof;
- (e) if not, the reasons for not taking any action to prepare the separate list of OBCs for whom rule of exclusion will not apply; and
- (f) the time by which the list will be prepared and notified?

Answer

MINISTER OF STATE IN THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT (SMT. SUBBULAKSHMI JAGADEESAN)

- (a) Yes, Sir. The Expert Committee was appointed vide Resolution No. 12011/16/93-BCC (C) dated 22.02.1993.
- (b) The recommendations of the Committee are appended (Annexure-A). The report of the Committee was submitted to the Government on 10.03.1993 and consequent to the consideration of the Expert Committee's recommendations, Department of Personnel & Training issued OM No. 36012/22/93-Estt. (SCT) dated 09.09.1993 regarding exclusion of socially advanced persons/sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India.
- (c) to (f) The Chairman and Member-Secretary of National Backward Classes Commission, who were earlier Chairman and Member-Secretary of the Expert Committee on 'Creamy Layer', were entrusted with the work of specifying the list of artisans and occupations and callings. The Chairman clarified that the list of artisans and those engaged in hereditary occupations and callings was not going to be a fresh or additional list but it would only be in respect of persons engaged in such callings but already belonging to the castes in the notified OBCs list. He also opined that there was no legal or any other impediment in implementing the reservation scheme in the Central Government Services even if the list of exemptions from the application of the rule of Creamy Layer in respect of persons working as artisans and persons engaged in hereditary callings was not immediately notified.

Annexure-A

Annexure to the Lok Sabha Unstarred Question No. 3463

RECOMMENDATIONS OF THE EXPERT COMMITTEE

1.
 - (i) Constitutional Posts: The constitutional posts like President, Vice-President, Judges of Supreme Court etc. which have fixed tenure may be excluded from the benefit of reservation. However, the constitutional posts of Governor, Ministers, Members of Legislature (which presumably includes MPs) etc. which are in the very nature of things, temporary and often transitory, are not be excluded.
 - (ii) Service Category:

(a) If either of the spouses is a class-I officer, rule of exclusion will apply. Where both spouses are class-I officers and one of them dies the rule of exclusion will still apply. However, exception has been made in respect of those cases where both spouses die or get incapacitated. Even in such a situation where either of the spouses has had the benefit of employment in any international organization like the UN, IMF, World Bank etc. for a period of not less than 5-years, then exclusion from the benefit of reservation will continue to apply.

Another exception which has been provided is in respect of cases where a lady who has got married to a class-I officer may herself like to apply for a job. If she belongs to SEBC category, she will not be disentitled by the rule of exclusion.

(b) If both spouses are class-II officers then rule of exclusion will apply to their off-springs. If only one of the spouses is class-II officer it will not apply. Where both spouses are class-II officers and one of them dies, the rule of exclusion will not apply. However, if either of the spouses has had the benefit of employment in any international organization as indicated above, for a period of not less than 5-years then even in the event of death the rule of exclusion would apply. Conversely, if the wife is a class-I officer and the husband is class-II officer and the wife dies, the rule of exclusion will not apply but if the husband dies, the rule of exclusion will apply.

(c) The criteria enumerated in respect of class I/class II officers will apply mutatis mutandis to officers holding equivalent or comparable posts in public sector undertakings, banks, insurance organizations, universities etc. and also to equivalent or comparable posts and positions under private employment. However, pending evaluation of the posts to see which of the posts can be said to be equivalent or comparable, exclusion may be made on the basis of the income/ wealth test suggested under item (vi) below.

(iii) Armed Forces including Para-Military Forces (excluding persons holding civil posts): Exclusion rule will apply at the level of colonel and above in the army and two equivalent posts in the Navy and the Air Force and the Para-Military Forces. The rule of clubbing of the ranks of husband and wife has not been made applicable in the case of officers in the Armed Forces and Para-Military Forces keeping in view the peculiar nature of these services and hardship faced by the members of these forces.

(iv) Professional Class and those engaged in Trade, Business and Industry: This category includes persons not in service employment, either Government or private, but those who are engaged in professions as a Doctor, Lawyer, Chartered Accountants and Income-tax Consultants etc. In their case exclusion will be governed by the income/wealth criterion suggested in item (vi) below. Likewise, persons engaged in Trade, Business and Industry will be governed by the income/ wealth criterion.

In a situation where the husband is in some profession and the wife is in a Class-II or a lower grade employment, the income/ wealth test will apply only on the basis of husband's income. Conversely, if the wife is in any profession and the husband is in employment in class-II or lower rank, post then the income/ wealth criterion will apply only on the basis of wife's income and the husband's income will not be clubbed with it. This has been suggested in order to avoid discouragement of women entering service or professions.

(v) Property owners

(a) Agricultural Land Holdings

If a person belongs to a family (defined as father, mother and minor children) which owns only irrigated land and the extent of irrigated land is equal to or more than 65% of the statutory ceiling area

(for that State/ UT), then the rule of exclusion will apply. In a situation where a person holds different types of irrigated lands, the aggregate land would be converted into a single type of irrigated land as a common denominator on the basis of the conversion formula existing in the relevant land ceiling law. If the extent of irrigated land so worked out is above a cut off point of 65% the rule of exclusion will apply.

Where the entire land holding of a person is unirrigated, the rule of exclusion will not apply, irrespective of the area of such land.

In the case of a family owning both irrigated and unirrigated land, the rule of exclusion will apply in the following manner:

(1) If the total irrigated area brought down to a single type under a common denominator is less than 40% of the statutory ceiling limit for irrigated land, the rule of exclusion shall not apply.

(2) If the total irrigated land as worked out under (1) above is 40% or more of the statutory ceiling limit for irrigated land then the total un-irrigated land owned by the person shall be converted on the basis of the existing conversion formula into irrigated type.

(3) The irrigated area so computed from un-irrigated land shall be added to the actual area of irrigated land and if after such clubbing together the total area in terms of irrigated land is 65% or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply. In the case of States of Nagaland, Mizoram Meghalaya, Arunachal Pradesh and Goa and the Union Territories of Andaman and Nicobar Islands, Lakshadweep, Daman & Diu where no ceiling laws of land exist it has been suggested that the rule of exclusion may not be made applicable on the basis of agricultural land holdings.

(b) Plantations

The Plantations such as Mango, Citrus, Apple Plantations which are recorded as agricultural holdings will be covered by the criterion at (a) above. Since the Plantations of Coffee, Tea, Rubber are not recorded as agricultural holdings, they are not covered by ceiling laws. In these cases, it has been suggested the criterion of income/ wealth under item

(vi) may be applied.

(c) Vacant Lands & Old Buildings of Urban Agglomeration.

It has been suggested that the criterion of income/ wealth under item no. (vi) will apply.

(vi) Income / Wealth Test

Persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act may be excluded from the benefit or reservation. The caveat has been added that this criterion should be applied only if the person concerned has had such level of income or wealth consistently for a period of three consecutive years. If in any of the categories mentioned by the Expert Committee any person who is not disentitled to the benefit of reservation has income from other sources of wealth, it will bring him within the criterion under item no.

(vi), then he shall be disentitled to reservation. Income in such cases shall be calculated without clubbing his income from salary or agricultural land.

2. Other Recommendations of the Expert Committee:

(i) Revision of Income Ceiling

The Committee has suggested that in view of change in rupee value the income criterion in terms of rupee as stated above may be suitably modified from time to time. The norms for this purpose may be revised every three years but if the situation so demands the norms may be modified sooner.

3. Exemption in favour of hereditary occupations

Persons engaged in the hereditary occupations such as Washer men, Barbers etc. may be exempted from the rule of exclusion.

4. Exemption of most Backward Classes from the rule of Exclusion:

The Committee has also suggested that in the event the Government takes a decision to categorize the Other Backward Classes into two or more categories (Backward, More-Backward and Most-Backward etc.) those who fall in the two lowest strata at the bottom i.e. the strata having the maximum backwardness may be exempted from the rule of exclusion, pending the formation of `Creamy Layer` in their case.

Note: Gross annual income limit of Rs. 1 Lakh has subsequently been raised to Rs. 2.5 lacs vide Department of Personnel Training OM No. 36033/3/2004-Estt. (Res.) t5dated 09.03.2004.