

(SIXTEENTH LOK SABHA)

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

**'Rationalisation of Creamy Layer in Employment for OBCs in Services and Posts under the control of Government of India including Union Territories, PSUs etc.'**

TWENTY FIRST REPORT



LOK SABHA SECRETARIAT  
NEW DELHI

*February, 2019/ Phalgun, 1940 (Saka)*

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### **COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19)**

**(SIXTEENTH LOK SABHA)**

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Services and Posts under the control of Government of  
India including Union Territories, PSUs etc.'**

Presented to the Speaker, Lok Sabha on 9<sup>th</sup> March, 2019

Presented to Lok Sabha on .....

Laid in Rajya Sabha on .....



**LOK SABHA SECRETARIAT  
NEW DELHI**

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## **COMPOSITION OF THE COMMITTEE ON WELFARE OF OBCs (2018-19)**

SHRI GANESH SINGH- CHAIRPERSON

### **MEMBERS**

#### **LOK SABHA**

2. Smt. Santosh Ahlawat
3. Shri A. Arunmozhithovan
4. Shri Santosh Kumar
5. Shri Shailesh Kumar
6. Shri Ravindra Kushawaha
7. Dr. Swami Sakshi ji Maharaj
8. Dr. Banshilal Mahato
9. Dr. Mriganka Mahato
10. Dr. (Smt.) Pritam Gopinath Munde
11. Shri Rodmal Nagar
12. Shri Ram Mohan Naidu Kinjarapu
13. Shri P. Karunakaran
14. Shri Kapil Moreswar Patil
15. Shri Hari Narayan Rajbhar
16. Shri Mullappally Ramachandran
17. Shri Rajeev Satav
18. Shri Rajveer Singh (Raju Bhaiya)
19. VACANT\*
20. Shri Kanwar Singh Tanwar

#### **RAJYA SABHA**

21. Shri Husain Dalwai
22. Shri Ram Narain Dudi
23. Shri B.K. Hariprasad
24. Shri Ahamed Hassan
25. Dr. Vikas Mahatme
26. Shri Vishambhar Prasad Nishad
27. Shri K.K. Ragesh
28. Smt. Vijila Sathyananth
29. Shri Ram Nath Thakur
30. Smt. Chhaya Verma

### **SECRETARIAT**

1.	Shri T.G. Chandrashekhar	-	Joint Secretary
2.	Shri R.R. Kumar	-	Director
3.	Shri Janmesh Singh	-	Deputy Secretary
4.	Shri Vivek Saini	-	Assistant Executive Officer

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\* Vacancy arose vice the sad demise of Shri Ladu Kishore Swain, MP on 06.02.2019

## INTRODUCTION

I, the Chairperson, Committee on Welfare of Other Backward Classes (2018-19) having been authorised by the Committee to submit the Report on their behalf, present this Twenty First Report on 'Rationalisation of Creamy Layer in Employment for OBCs in Services and Posts under the control of Government of India including Union Territories, PSUs etc.' pertaining to the Ministry of Social Justice and Empowerment.

2. The Committee took evidence of the representatives of the Ministry of Social Justice and Empowerment, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) and NITI Aayog on 5<sup>th</sup> September, 2018 and of the representatives of the Ministry of Social Justice and Empowerment, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) and Ministry of Law and Justice (Department of Legal Affairs) on 8<sup>th</sup> October, 2018, 20<sup>th</sup> December, 2018, 7<sup>th</sup> February, 2019 and 13<sup>th</sup> February, 2019. The Committee have also received significant number of representations from the public in response to the Press Communiqué issued by them for eliciting public opinion. The Committee wish to express their thanks to the representatives of the Ministries concerned for appearing before the Committee for evidence and furnishing the information desired by the Committee in connection with the examination of the subject. The Committee also express their thanks to their predecessors for their work on the subject.

3. The Committee, at their Sitting held on the 13<sup>th</sup> February, 2019 considered and adopted the Report and authorized the Chairperson to finalize the same for presentation to the Speaker/Parliament.

4. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in Part-II of the Report.

**NEW DELHI;**  
**28 February, 2019**  
**9 Phalgun, 1940 (Saka)**

**GANESH SINGH**  
**Chairperson,**  
**Committee on Welfare of Other Backward Classes**

## **PART-I**

### **Background Analysis**

#### **CHAPTER-I**

##### **Introduction**

The Preamble of the Constitution of India aims to achieve the objective of securing to its citizens social, economic and political justice, liberty, equality and fraternity. It also indicates the methodology to be followed for reaching this goal of providing social justice. Article 14 of Indian Constitution enjoins upon the States to provide to all persons equality before law and equal protection of the law.

#### **1. Constitutional Provisions for Other Backward Classes (OBCs)**

1.2 The provisions of the Constitution relating to backward classes are as under:

Clause (1) of Article 38 of the Constitution makes a provision that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life".

Article 46 enjoins that "the States shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".

Clauses (4) and (5) of Article 15 of Constitution of India [Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth"] are as follows:

"(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30".

1.3 With the amendment of Article 15 of the Constitution in January, 2006 and enactment of the Central Educational Institutions (Reservation in Admissions) Act in January, 2007, the OBCs have become entitled to reservation in admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions.

1.4 Clause (4) of Article 16 ["Equality of opportunity in matters of public employment"] and amendments thereto are as follows:

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in

the opinion of the State, are not adequately represented in the services under the State.

*(Inserted by the Constitution (Seventy-seventh Amendment) Act, 1995)*

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

1.5 Article 340 of the Constitution provides-

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

1.6 Article 342 A of constitution relating to socially and educationally backward classes provides-

"(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

## **2. The Second Backward Classes Commission (Mandal Commission)**

1.7 The second Commission on Backward Classes (Popularly known as Mandal Commission) was constituted under Article 340 of the Constitution in 1979 which submitted its report on 31.12.1980.

1.8 The Commission evolved 11 indicators/criteria for determining social and economic backwardness. On the basis of socio-educational field survey, Census Report of 1961 (for identification of tribes), field visits and list of OBCs notified by various State Governments, the Commission calculated the OBC population as 52%. The calculation adopted by the Mandal Commission for reaching this figure of 52% is as under:

	<u>Percentage of Total</u>
	<u>Population</u>
Scheduled Castes and Scheduled Tribes	22.56
Non Hindu Communities, Religious Groups etc.	16.16
Forward Hindu Castes & Communities	<u>17.58</u>
Total	<u>56.30</u>

Remaining Hindu castes/groups which are in the category of 'Other Backward Classes' 43.70  
 52% of religious groups may also be treated as OBCs- 8.40  
 The approximate derived population of OBCs including non-Hindu Communities. 52%

1.9 In the light of this Report, the Government of India, vide Department of Personnel & Training O.M. dated 13.8.1990 issued an order providing 27% reservation in the Central Government employment for persons belonging to the Social and Economically Backward Classes also referred to as "Other Backward Classes" or OBCs. The order is placed at

#### **Annexure-I.**

The DoPT, further issued another OM on 25.09.1991 for giving preference to poorer sections while giving reservation to SEBCs which is placed at **Annexure-II.**

#### **3. Indra Sawhney Judgement — 1992**

1.10 Several Writ Petitions were filed in the Supreme Court of India challenging the DOPT's O.M. dated 13.8.1990. These Writ Petitions were disposed of by the Hon'ble Supreme Court on 16.11.1992, by a majority judgment, which is commonly known as the Indra Sawhney case. In this case, the Court upheld 27% reservation for OBCs in civil posts and services under

the Union of India subject to exclusion of the so-called "Creamy Layer" and also issue of Central List of OBCs on the basis of commonality.

1.11 The Department of Personnel and Training on the basis of Judgment of the Supreme Court, issued another Order dated 8th September, 1993 which spoke about the exclusion of the Creamy Layer from the benefit of reservation and also issue of the Central list of OBCs on the basis of commonality in the State List and the List of the Mandal Commission.

### **Expert Committee for Specifying the Criteria for Identification of Socially Advanced Persons among the Socially and Educationally Backward Classes**

1.12 Accordingly, the Government of India, Ministry of Welfare appointed an Expert Committee for specifying the criteria for identification of Socially Advanced Persons among the Socially and Educationally Backward Classes *vide* Resolution dated 22<sup>nd</sup> February, 1993. The said Committee submitted its report on 10-3-1993 which was subsequently tabled in the Houses of Parliament on 16-03-1993. The Report of Expert Committee is placed at **Annexure-III**. The report categorized the list for exclusion of the Socially Advanced Persons/Sections (Creamy Layer). The government then accepted the recommendations of the Expert Committee and the schedule attached to the OM dt. 8.9.1993 was drafted strictly in accordance with the recommendations of the Expert Committee (**Annexure-IV**).

### **DoPT Office Memorandum dated 8-9-1993 for Reservation for OBCs in Civil Posts and Services under the Government of India:**

1.13 Pursuant to the aforesaid Expert Committee Report, the Government of India, Department of Personnel and Training issued Office Memorandum No.36012/22/93 Estt. (SCT) dated 8-9-1993 which is already placed at **Annexure-IV**.

However, the Committee during the examination of subject noticed that even after around 23 years of implementation of reservation for OBCs, the representation of OBCs in the Civil Posts

of the Government of India is abysmally low. As per data received from 78 Ministries/Departments (furnished to the Committee by DoPT), total number of employees and representation of OBCs in the posts and services of the Central Government (Ministries/Departments including their attached/subordinate Officers) as on 1.1.2016 is as below:

<b>Groups</b>	<b>Total number of Employees</b>	<b>Other Backward Classes Employees</b>	
		Number	% age
A	84,705	11,016	13.01
B	2,90,941	42,995	14.78
C (Excluding Safai Karmachari)	28,34,066	6,41,930	22.65
C (Safai Karmachari)	48,951	7,076	14.46
<b>Total</b>	<b>32,58,663</b>	<b>7,03,017</b>	<b>21.57</b>

1.14 During the examination of the subject, the Committee asked as to whether the own merit candidates of OBCs are being adjusted against the reserved quota for OBCs. The DoPT informed the Committee that the own merit candidates are not being adjusted against the reserved quota of OBCs and referred to their OM dated 4<sup>th</sup> April, 2018 wherein they had reiterated their earlier instructions relating to application of own merit in Direct Recruitment for appointment of OBCs (**Annexure-V**).

## CHAPTER-II

### **DETERMINATION OF SOCIALLY ADVANCED PERSONS/SECTIONS (CREAMY LAYER) AMONG SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES**

#### **A. Issue relating to Group B/ Class-II Officers of the Central and State Services**

2.1 The Committee, during the course of examination of the various issues related to the implementation of the reservation for OBCs, received a representation, wherein the representative brought a very pertinent issue associated with the implementation of reservation for the Government OBC employees. The core of the representation relates to the ambiguity in the usage of the word 'Group B officer' and a case was made out regarding an imminent need to categorically specify the same as 'Group B Gazetted officer' in the true spirit of the issue and in the interest of lakhs of employees in the Government set up.

2.2 Based on the issues raised/contents of the representation, the Committee posed the following questions to the Ministries concerned viz:

(i) 'Group A officers' in the Ministerial set up are by default 'Gazetted'. The All India Central Service (through UPSC) and State Civil Services (through PCS) select 'Group A Gazetted Officers'. The same analogy should work in case of 'Group B officers', *i.e.*, they should be considered and taken as 'Group B Gazetted Officers' while interpreting the words 'Group B Officers' in O.M. dated 8<sup>th</sup> September, 1993 and subsequent clarificatory O.M. dated 14<sup>th</sup> October, 2004.

(ii) In this regard, the Committee took note of the fact that the successive Pay Commissions have kept on changing the pay scales of different posts and consequently, the Government has been issuing the Classification of Posts after every decade or so, thus, leading to a constant re-jig in various grouping of posts. There have been instances when many posts in Group C, subsequent to implementation of a particular Pay Commission, have

been merged/upgraded to Group B (non-Gazetted) after Re-classification of Posts. This action had resulted in placement of a large number of Government employees, then working in Group C, to Group B non-Gazetted in the Government set up. Such re-jig/re-classification of posts is likely to continue in future also. The Government has in the meantime abolished Group D in the government set up.

2.3 The Committee received responses from the three Ministries mentioned in the aforesaid para. Broadly speaking, the Ministry of Social Justice & Empowerment, in its response put the onus of taking a call on various issues on the DoPT.

2.4 The DoPT on its part replied vide a written note that the said O.M. was issued based on the draft O.M. prepared and sent by then Ministry of Welfare based on the Expert Committee's (formed subsequent to Supreme Court's ruling to insert the concept of 'creamy layer' in reservations for OBCs) recommendations. DoPT further stated that there is no mention of the term Gazetted in clarificatory O.M. dated the 14<sup>th</sup> October, 2004 as in the present form, the Schedule to the O.M. dated 08.09.1993 does not distinguish Class II (now Group B) officers as Gazetted and Non-Gazetted.

2.5 The Ministry of Law and Justice, Department of Legal Affairs in their written reply furnished to the Committee in this regard stated as under:

*"The OM dated 08.09.1993 has been issued by DoPT pursuant to Expert Committee Report. On the perusal of the Schedule appended to said OM, it is noted that word 'officer' has been used in respect of All India Central and State services (Direct Recruits) (Group A and B)."*

2.6 In this regard, it would be pertinent to state that the Expert Committee which deliberated upon the creamy layer issue threadbare, in its report clearly underlines the inherent principle stand taken by it while recommending creamy layer status for various entities. The para 4 of that Report is reproduced below:

*"It is necessary to bear in mind that the Court has accepted the principle of reservation on the reasoning that the SEBCs on account of their social and educational backwardness are truly in need of reservation. In other words, the dominant consideration for upholding the reservation is the social and educational backwardness and not the income test, although in actual life it mostly happens that economic backwardness is a natural consequence of the social and educational backwardness. It logically follows, therefore, that for determining who from amongst the SEBCs shall be denied the benefit of reservation, the basics again would be the social and educational factors and only when the advancement in this regard is such as to put that person at par with the forward classes that he may be placed in the excluded category. In the majority judgement, it has been observed that only when a person's social and educational advancement is such that it totally snaps the connecting link of backwardness between him and other members of his community, he can then be said to be a misfit in his own class and so ought to be taken out from there and placed in the "Creamy Layer" category. The following passage in the judgement of Hon'ble Justice Sawant (paragraph 522 Judgements Today Vol. VI No.9 30th November, 1992) elaborates the point more succinctly:-*

*"The correct criterion for judging the forwardness of the forwards among the Backward Classes is to measure their capacity not in terms of the capacity of others in their class, but in terms of the capacity of the members of the Forward Classes, as stated earlier. If they cross the Rubicon of backwardness, they should be taken out from the Backward Classes and should be made disentitled to the provisions meant for the said classes".*

*Hence while determining the criteria of exclusion we have kept in mind the guiding principle laid down by the Hon'ble Court as mentioned above. However, if economic betterment flows from social and educational advancement, then this also has to be taken note of."*

In the very next para 5, it has *inter-alia* been stated that –

*"When a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade/profession of high status, as categorised by us below, he, at that stage is normally no longer in need of reservation for himself."*

2.7 It has further been stated through an illustration that such exclusion would not apply to a person himself appointed as a class I officer. However, the illustration goes on to state as to why the rule of exclusion shall apply to their children according to the status of their parents and not their siblings or themselves. An example of a person appointed to Class I officer post has also been given, whereby it has been stated that by virtue of his elevation to socially advanced category he will be in a position to provide the means, the equipment and the

opportunities which are necessary for the uplift of his offsprings from the level of social and educational backwardness.

2.8 Also, the Expert Committee Report in concluding points notes as under:

*"33. In specifying the determinants and prescribing the different formulations therein, we have adopted a pragmatic approach and we have considered it prudent as well as desirable to err on the right side. In other words, where it appeared while defining the criteria that a more strict formulation would have the possible effect of excluding more than it ought to, we have chosen not to adopt such a course. And for this approach of ours, we find support from observations in different judgements of the Special Bench as well as from other sources.*

*34. Reservation has been adopted as a remedy for curing the historical discrimination and its continuing ill effects in public employment. That being the object in view, the denial of reservation to any member of a socially and educationally backward class is, and has to be, treated as an exception. In identifying such an exception, i.e. applying the rule of exclusion, it has to be ensured that the ill-effects have been fully and finally eliminated and no grey zone is discernible. The nature of such an exercise itself makes the rule of caution inherent."*

**B. Application of Rule of exclusion in cases of appointment to Group A/Class I after 40 years of age.**

2.9 While examining the criteria for determining the Creamy layer, the Committee came across an issue that relates to the Son(s) and Daughter(s) of the parents who **get into** Group A Services after attaining the age of 40 years. The provisions contained in the Category II A of the schedule of 1993 OM inter-alia specifies that *Rule of Exclusion will apply to Son(s) and daughter(s) of Group 'A' / Class I officers of the All India Central and State Services (Direct Recruits) in cases where both of the parents are Class I officers; and also where either of the parents is a Class I Officer.*

Further, Category IIB inter-alia states that the *Rule of Exclusion will apply to Son(s) and Daughter(s) of Parents both of whom are class II officers and also if the husband is a Class II officer and he **gets into** class I at the age of 40 or earlier.*

2.10 The Committee sought a clarification from the Ministry of Social Justice and Empowerment whether it means that in case of a candidate's father who enters in Class-I

after attaining 40 years, either by direct recruitment or by promotion, then that candidate will not be reckoned under creamy layer.

2.11 In a written reply, the Ministry of Social Justice and Empowerment submitted that:

*"The report of the expert committee does not elaborate about the father getting into Class I service after the age of 40 years through direct recruitment. However, offspring of Direct recruit Class 1 officer are treated to fall under the creamy layer in terms of the Category II A of the Schedule to the DoPT OM dated 08.09.1993.*

*As regards offspring of male parent, who gets into Class 1 Service by promotion after 40 are treated to fall under the non creamy layer in terms of the Category II B (b) of the Schedule to the DoPT OM dated 08.09.1993."*

2.12 On the same query put forward by the Committee, the DoPT in a written reply stated as under:

"Paragraphs 10 and 11 of the Expert Committee Report read as follows:

*10. If both spouses are Class II Officers then rule of exclusion will apply to their offspring. If only one of the spouses is a Class II Officer it will not apply, but if a male officer from Class II category gets into Class I category at the age of forty or earlier, then the rule of exclusion will apply to his offspring. Where both spouses are Class II Officers and one of them dies, it is better to let the children have the benefit of reservation which means rule of exclusion will not apply; however, if either of the spouses has had the benefit of employment in any international organisation, as indicated above, for a period of not less than five years, then even in the event of death the application of the rule of exclusion will not be taken away. But if by great misfortune both the spouses die, then the rule of exclusion will not apply to the offspring even if one of the spouses has had the benefit of employment in an international organisation.*

*11. Where the husband is a Class I Officer (Direct Recruit or pre-forty promoted) and the wife is a Class II Officer and the husband dies, the rule of exclusion will not apply. Also when the wife is a Class I Officer (i.e. Direct Recruit or pre-forty promoted) and the husband is a 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 on the principle that one of the parents, namely, the mother continues to be a Class I Officer.*

The reading of paragraph 11 suggests that the rule of exclusion would be applied on an officer of Group A Direct Recruit and pre-forty promotee which make amply clear that age limit of 40 years is relevant for promotion cases whereas for Direct Recruits, there is no age limit prescribed in the Expert Committee Report."

2.13 The Committee dealt with the case of one candidate who was appointed as Assistant Commandant under OBC quota in 2014. The same person was declared to fall under creamy layer in Civil Services Examination, 2016 on the plea that his father was selected in a Group A service post, though he went into Group A post after 40 years of age. On Committee's query in this regard, the DoPT in a note replied as under:

*The candidate was treated as falling under 'Creamy Layer' as his father was a directly recruited Group A Officer and could not be allocated to any service as he was not a 'General Merit' candidate."*

2.14 However, in this case (O.A. No. 579/2018) the Central Administrative Tribunal, New Delhi had inter-alia observed in July, 2018 the following:

**Para 8** – *Admittedly, the father of the applicant jointed as a Post Office Clerk, which is Class III/Group "C" post in the pay scale Rs. 260-480 on 07.05.1980. Subsequently, he was selected to a Group "A" post, i.e., Lecturer in Maharani Lalkunwari Post Graduate College, Balrampur under State Government of Uttar Pradesh. At that time, he was 43 years old. The Schedule attached to Annexure A-10 DoPT O.M dated 08.09.1993 deals with such a case, as noticed in paragraph 2.3 above. The rationale behind excluding a candidate whose father is a Class I/Group "A" officer is that such a candidate would have received all facilities and privileges for pursuing his education in a most beneficial manner, and such a candidate would not have suffered vagaries of poverty / economic constraints in any manner. A close reading of this O.M and the Schedule attached to it would indicate that they have taken note of the ground reality that the basic education of a candidate, aspiring to prepare for CSE, would have been over by the time his/her parents cross the age of 40 years. This alone is the plausible reason for prescribing the age limit of 40 years.*

**Para 9** – *In the instant case, admittedly, the applicant's father was a Post Office Clerk, which is a Class III/Group "C" post. His father had continued in this capacity till he attained the age of 40 years. Only at the age of 43 years, he was fortunate enough to get selected to a Group "A" post of Lecturer in a college in Uttar Pradesh. Hence, it*

*is crystal clear that the applicant has suffered the vagaries of economic constraints all through his basic education. Certainly, his parents were not able to provide him the kind of facilities, which the parents in Class I Government services, provide to their children. Hence, we are of the view that the DoPT, in their impugned Annexure A-1 order dated 17.01.2018, has not correctly interpreted the rationale of its own O.M. dated 08.09.1993 as well as the clarification provided in its letter dated 14.10.2004. We have no doubt that in terms of the clarifications provided in DoPT letter dated 14.10.2004 the applicant belongs to non-creamy layer category of OBC. The UPSC and the concerned entities of the Central Government had clearly interpreted 08.09.1993 O.M and the clarifications given in DoPT letter dated 14.10.2004 in considering the candidature of the applicant in CSE, 2013 and offering him appointment to the post of Assistant Commandant, CRPF.*

2.15 Further the Committee came to know that the Delhi High Court also had given the judgement in favour of the candidate. In this regard, the representative of DoPT during the Sitting held on 07.02.2019 informed the Committee that:

*"....The High Court has given verdict in this regard. We have sought advice from Department of Law on the matter and stated to implement the same. A Supernumerary posts would be created for the same. We have prepared the proposal in the matter and have submitted the same to the higher authority. That would be approved. This would be resolved in this way."*

#### **C. Establishment of Equivalence of Posts in Public Sector Undertakings, etc. with posts in Government for establishing Creamy Layer Criteria**

2.16 Sub-Category C of Category II mentioned in the Schedule to 1993 OM deals with the employees of the Public Sector Undertaking etc. On the issue of application of rule of exclusion to such employees, the Category II C states that the criteria enumerated in Category IIA and Category IIB will apply *mutatis mutandis* to officers holding equivalent or comparable posts in PSUs, Banks, Insurance organisations, Universities, etc., and also to equivalent or comparable posts and positions under private employment. Pending the evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in Category VI of the Schedule will apply to the officers in these institutions.

Category VI of the Schedule to 1993 OM deals with Income/Wealth test. It provides that rule of exclusion will apply on the "Son(s) and daughter(s) of

*(a) persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth TaxAct for a period of three consecutive years.*

*(b) Persons in Categories I, II, III and V-A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.*

*EXPLANATION :- (i) Income from salaries or agricultural land shall not be clubbed; (ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less."*

2.17 The committee desired to know about the action taken with regard to establishing equivalence of posts in PSUs, etc. The Ministry of Social Justice and Empowerment in a written reply stated as under:

*"The Department of Social Justice and Empowerment has, in association with the DoPT, DFS, DPE and the Department of Legal Affairs, formulated reference standards for determining equivalence of posts in the PSUs, PSBs, insurance organisations, etc. with posts in the Central Government. Accordingly, this was approved by the Cabinet and thereafter orders have been issued by the Department of Public Enterprises on 25<sup>th</sup> October, 2017 and the Department of Financial Services on 6<sup>th</sup> December, 2017 for PSUs and PSBs respectively."*

2.18 Regarding feasibility of establishing exact equivalence of posts and services in Public Sector Enterprises with that of Government, the Department of Public Enterprises in a note informed the committee as under:

*"Keeping in view that CPSEs are categorized into four Schedules (A, B, C & D) with different levels of pay scales on IDA pay pattern, perks and allowances, variable pay, affordability concept etc. and also number of levels of non-executive level posts are flexible and fixed by respective Boards of CPSEs after wage negotiations with the Unions, the CPSEs are at a completely different footing in comparison to pay pattern and allowances of functionaries of Government of India. The determination of exact equivalence of CPSEs posts with Group A, B, C and D levels posts of Central Government is therefore not feasible. All Executives level posts i.e. Board level executives and below Board level Executives which are managerial level posts subject to proviso that those executives whose annual income as per criterion given in DoP&T's OM of 08.09.1993, as amended from time to time, is less than Rs. 6.00 lakh will not be considered 'creamy layer'."*

2.19 During the examination of the subject, the Committee came through a note of the Ministry of Social Justice and Empowerment (No. 12015/08/2017-BC-II) wherein it was mentioned that:

*"Equivalence in posts has not been established till date. This has resulted in large number of litigations in Supreme Court and the High Courts and also the possibility of OBC candidates being deprived of benefits of reservation. The issue needs to be decided upon expeditiously. The Parliamentary Committee on Welfare of OBCs and the National Commission for Backward Classes have also urged for early decision on equivalence of posts."*

2.20 Following this, the Department of Public Enterprises on 25<sup>th</sup> October, 2017 and Department of Financial Services on 6<sup>th</sup> December, 2017 issued norms to establish equivalence. The copies of the concerned OM are placed at **Annexure VI and VII.**

2.21 The Committee observed that in the compliance of DPE OM dated 25<sup>th</sup> October 2017, a Central Public Sector Enterprise (CPSE)- the Bharat Sanchar Nigam Limited (BSNL) has established exact equivalence vis-à-vis the posts with Government of India, i. e. Group A, B, C and D (copy placed at **Annexure VIII**).

2.22 Similarly, the Committee noticed that a Statutory body under the Ministry of Railways, i.e., Rail Land Development Authority (RLDA) had established equivalency of scales between CDA and IDA pay-scale patterns on 23.1.2013 (**Annexure IX**).

2.23 However, a press release dated 30.8.2017 issued with regard to Cabinet approval of equivalence of posts in Central Public Sector Undertakings (PSUs), Banks, Insurance Institutions with Posts in Government mentions as under:

*"In PSUs, all Executive level posts i.e. Board level executives and managerial level posts would be treated as equivalent to group 'A' posts in Government and will be considered Creamy Layer. Junior Management Grade Scale-1 and above of Public Sector Banks, Financial Institutions and Public Sector Insurance Corporations will be treated as equivalent to Group 'A' in the Government of India and considered as Creamy Layer. For Clerks and Peons in PSBs, FIs and PSICs, the Income Test as revised from time to time will be applicable."*

2.24 During the examination of the subject the Committee found that OBC candidates from various states are facing problems as the DoPT has not been accepting the equivalence established by the States.

The Committee called in various candidates who have cleared Civil Services examination but are being treated to be under creamy layer by DoPT as the equivalence of posts with respect to employees of PSUs, PSBs, etc. were not established by them. One such candidate deposed before the Committee that

*"....Several State Governments have determined the equivalence of posts in PSUs and universities. They have classified the said equivalence into A,B,C,D categories. State Governments have their own list and as per entry 41, they are*

*empowered to make service rules. Now what DoPT is doing that they are not accepting the equivalence of clauses A,B,C and D."*

2.25 In an effort to obtain clarity on the issue of equivalence, the Committee sought written reply from DoPT on this issue. During the sitting held on 05.09.2018 the representatives of the DoPT explained to the Committee that the Ministry of Social Justice and Empowerment, Govt. of India will decide on the equivalence as determined by the states and thereafter DoPT will accept it. On this, the Committee desired to know the basis on which DoPT accepted the equivalence certificates of the states previously and on what grounds and authority it had written the letter to the states to find out the equivalence in respect the Other Backward Classes certificate.

2.26 On this issue, the representative of DoPT during evidence held on 05.09.2018 stated

*"The decision to accept the equivalence established by the States in the instrumentalities of the State Governments, has to be taken by the Ministry of Social Justice and Empowerment with the approval of the appropriate authority. Once a policy decision is taken by the Ministry of Social Justice and Empowerment with appropriate authority, because we have never said that we shall not follow. But a decision is necessary on the issue."*

The Secretary DoPT mentioned:

*"DoPT does not have the powers to make this equivalence on its own. As you have suggested, the State has made a recommendation."*

and further added that:

*"I will take this suggestion which the hon. Members have made. Whatever references which have come from the State, I shall take appropriate action immediately to see that equivalence in these cases is laid down. Then, we will accept it and go ahead. As Madam has very clearly pointed out, for whatever cases they have given the equivalence, we have accepted it and we are going by that. Where the equivalence has not been given, we will move to get that equivalence established. As you have suggested about the States like Rajasthan, Uttar Pradesh, Maharashtra and some other States, we will take immediate action to have it referred to the appropriate Ministry and get that equivalence established immediately".*

2.27 The communications made between the Ministry of Social Justice and Empowerment and DoPT in this regard, as furnished by the Ministries, are placed at **Annexures X and XI.**

2.28 As per the Ministry of Social Justice and Empowerment OM dated 14<sup>th</sup> December, 2018 (**Annexure XII**), on the issue of acceptance of equivalence certificates issued by State Public Sector Undertakings/Universities, etc., the Ministry of Social Justice and Empowerment informed that:

*"As regards the subject issue (ii), the DoPT had in the note submitted by them on the methodology followed in determination of Creamy Layer stated that income test as laid out in the OM of 8.9.1993 was being followed".*

In the same OM, it has been stated that:

*"However, Hon'ble Minister, SJE mentioned during the meeting that a representation has been received from one successful OBC candidate whose equivalence certificate issued by State body was not being accepted by DoPT. As advised by HMSJE, while considering the cases of the 6 candidates which were referred to this Department for comments, DoPT may comply with their OM of 08.09.1993 for determination of Creamy Layer, however, they may also keep in view of the instances quoted in the representation, of rank holder 621 and rank holder 723 of CSE 2015, wherein they may have accepted equivalence certificates issued by State Bodies".*

Regarding equivalence established by the Government with respect of the posts and positions in PSUs, PSBs, Insurance Companies, etc., questions were raised in Lok Sabha.

2.29 The Committee sought clarifications on Lok Sabha Unstarred Question No. 3592 which was replied to on 02-01-2019. The Ministry of Finance (Department of Financial Services) furnished the following clarifications in this regard :

Clarification sought	Comments
1(b) If Junior Management category-I of the Public Sector Banks, Financial Institutions and Insurance Corporations has been treated equivalent to the Group-A of Government of Indian and the Clerks and Peons have been treated equivalent of Group-C of Government of India, then what are the reasons of not establishing equivalence of posts of Group-'B' officers of Public Sector Banks, Financial Institutions and Insurance Corporations with the post of Government of India?	(b) The DoP&T vide O.M. No. 36012/22/93-Estt.(SCT) dated 08.09.1993, directed exclusion of creamy layer in OBC reservation and to work out equivalence of employees and officers in PSBs, PFIs and PSICs to Group 'A', Group 'B' and Group 'C' category of employees and officers in Government of India/State Governments. In PSBs, PFIs and PSICs, the posts were categorized as officer and clerical/peon and no categorization has been drawn as Group 'A', Group 'B' or Group 'C' and Group 'D' as in the Government. However, the PSBs, PFIs and PSICs had been following income criteria to determine creamy layer in absence of such categorization as required to be worked out as mentioned in the said O.M. dated 08.09.1993 of DoP&T. The

	<p>Government has approved principles for determining the equivalence in respect of PSBs/PFIs/PSICs, as conveyed vide DoP&amp;T's O.M. No. 41034/5/2014-Estt.(Res.) Vol.IV-Part dated 06.10.2017, which, inter-alia, provide as follows:</p> <p>(i) Junior Management Scale-I of PSBs/PFIs/PSICs will be treated as equivalent to Group A in the Government of India and</p> <p>(ii) Clerk and Peons in PSBs/PFIs/PSICs will be treated as equivalent to Group C in the Government of India.</p>
<p>1(c) If the DoPT have suo moto clarified in section (five) of para 4 of their letter dated 14.10.2004 that such children (sons and daughters) whose parents are employees of class three/Group-C or Class-IV/Group-D and if he/she becomes officer of Class-I/Group-A at the age of 40 years or before that, then his/her children (sons and daughters) would not be treated within the creamy layer and the First Expert Committee had the same opinion. In this context, under which Rule such sons and daughters whose parent are clerks and peons in the Public Sector Banks, Financial Institutions and Insurance Corporations should be treated within the Creamy Layer, if he/she achieves junior grade scale-I or grade-A, in the Public Sector Banks, Financial Institutions and Insurance Corporations?</p>	<p>(C) DoP&amp;T vide OM No. 41034/5/2014-Estt.(Res.) Vol.IV-Part dated 06.10.2017 referred to DoP&amp;T OM No. 36012/22/93-Estt.(SCT) dated 08.09.1993 regarding reservation for OBCs in civil posts and services under the Government of India informed that Government had examined the proposal for establishing equivalence of posts in Central Public Sector Undertakings (PSUs), Banks, Insurance Institutions with Posts in Government for establishing Creamy Layer criteria amongst Other Backward Classes. The Cabinet in its meeting held on 08.08.2017, inter-alia, approved the general principles for determination of equivalence in respect of PSUs, Banks and Public Insurance Organisations as per the following details:</p> <p>(a) Junior Management Grade Scale-I of PSBs, PFIs and PSICs will be treated as equivalent to Group A in the Government of India and</p> <p>(b) Clerks and Peons in PSBs, PFIs and PSICs will be treated as equivalent to Group C in the Government of India.</p> <p>Accordingly as per OM No. 36012/22/93-Estt.(SCT) dated 08.09.1993, officers belonging to Junior Management Grade Scale-I and above will be considered as creamy layer. For Clerks and Peons in PSBs, PFIs and PSICs the income criteria</p>

	<p>i.e. Rs. 6.00 lakhs (now Rs. 8.00 lakhs) per annum as revised from time to time will be applicable. These will be applicable with an exception being provided vide OM dated 08.09.1993 of DoPT as under:-</p> <p>(i) Son(s) and daughter(s), if the father/mother is Clerk and Peon of PSBS, FIs and PSICs employee and he gets Junior Management Grade Scale-I of PSBs, FIs and PSICs at the age of 40 or earlier,</p> <p>(ii) Son(s) and daughter(s) of parents either of whom or both of whom are in Junior Management Grade Scale-I and above of PSBs, FIs and PSICs, and such parent(s) dies/die or suffer permanent incapacitation.</p> <p>(iii) A lady belonging to OBC category has got married to a person of Junior Management Grade Scale-I and above of PSBs, FIs and PSICs and may herself like to apply for a job.</p> <p>All the PSBs, PFIs and PSICs, etc. have been informed accordingly.</p>
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2.30 While examining the issue of equivalence, the Committee note that as per 1993 OM if equivalence had been done, only particular group of son(s) and daughter(s) of persons in II-C category (persons directly recruited to posts equivalent to Class I/Group A officers in Government; and son(s) and daughter(s) of persons directly recruited to posts equivalent to Class II/Group B Gazetted officers of government and gets into posts equivalent to Class I/Group A before the age of 40 years) would have been disentitled. Son(s) and daughter(s) of Persons recruited in category II-C to posts equivalent to Class III/IV or Group C/D posts of government would not be disentitled under category II-C and would have been tested by test mentioned in VI-B. Also, son(s) and daughter(s) of persons working in posts of Group A and who gets into Group A after 40 years of age and son(s) and daughter(s) of only parent working in Group B would also have been not disentitled and would have been tested by VI-B.

#### **D. Public Opinion on Creamy Layer Issues**

2.31 The Committee received number of representations in response to the press communiqué inviting views of the public/organisation/stakeholders on the issue.

A brief summary of the issues raised and Observations/suggestions made in the Representations particularly with regard to the issue of equivalence is as follows:

- BSNL has done a classification on the basis of Group A, B, C and D. If BSNL has done it, such classification is also possible for other CPSUs. It is clear that employees who are Group B have been given Executive designation. 'Executive' designation is misleading and restricts the scope of OBC reservation.
- The 25<sup>th</sup> October, 2017 OM is a contravention of DoPT's 1993 OM which specifically says that salary income should not be considered for calculation of the creamy layer.
- Pay Scales (E8 to E9) in CPSEs. Broadly staff is recruited at the three levels as follows:-

Non-executive staff (Group C & D)

Junior and Middle level Executive (Group B)

Management Trainee (Group A)

- Department of Public Enterprises and Department of Financial Services has got no mechanism for establishing equivalence of posts such a thing should have been done by the NCBC/Ministry of Social Justice and Empowerment which is equipped to decide on these matters.

- Group B is missing in Department of Financial Services OM.
  - Group A is equivalent to scale IV. It is unfair for the employees of the Public Sector Banks that it has been made equivalent with scale-I. Scale I to III corresponds to Group B of the Government Posts.

## **E. Income/Wealth Test mentioned in the Schedule to DoPT OM of 8.9.1993**

2.32 Category II of the Schedule to the 8.9.1993 OM, identifies some of the persons/sections on the basis of the Employment/Service of the parents of such persons.

The Service Category consists of sub categories i.e. A, B and C.

- Sub- category A deals with the application of Rule of Exclusion in respect of Son(s) and Daughter(s) of Group A/ Class I Officers of All India Central and State Services (Direct Recruits)
- Sub-Category B deals with the application of Rule of Exclusion in respect of Son(s) and Daughter(s) Group B/Class II Officers of Central and State Services (Direct Recruits)
- Sub category C deals with application of Rule of Exclusion in respect of Son(s) and Daughter(s) of Employees of Public Sector Undertakings etc.

Sub-Category C of Category II (service category) mentioned in the Schedule to the DoPT OM issued in 8.9.1993 states that: -

"The criteria enumerated in Category II-A and Category II-B will apply *mutatis mutandis* to officers holding equivalent or comparable posts in PSUs, Banks, Insurance organisations, Universities, etc., and also to equivalent or comparable posts and positions under private employment. Pending the evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in Category VI of the Schedule will apply to the officers in these institutions."

The provisions of Income/Wealth Test as mentioned in Category VI of the Schedule to the 1993 DoPT OM are as under:-

*"Income/Wealth Test: - Rule of exclusion will apply on Sons(s) and daughter(s) of*

*(a) persons having a gross annual income of Rs. 8 lakh above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.*

*(b) Persons in Categories, I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.*

*Explanation:*

- Income from Salaries or Agricultural land shall not be clubbed;*
- The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less."*

2.33 DoPT in a note took the following stand on the issue of applicability of Income/Wealth Test on category II C employees:-

*"The explanation given below category VI of instructions dated 08.09.1993 that income from salaries and agricultural land shall not be clubbed would be applicable in respect of candidates covered under Category VI(b) only as brought out in para 27 of the Expert Committee Report. Hence as per provisions of OM dated 08.09.1993, the salary of the parents of the candidates, who are working in PSUs, PSBs, etc., is taken into account for determining their creamy layer status."*

2.34 Regarding the interpretation of applicability of Income/Wealth Test on Category II-C employees, the representative of DOPT, during the sitting held on 5.9.2018, accepted before the Committee as:

*"I admit that there is a grey area. It is being interpreted in different ways. Its clarification is very necessary."*

2.35 In the light of the foregoing, the Committee emphasised on seeking legal opinion from the Ministry of Law and Justice, Department of Legal Affairs on the issues relating to Category VI and applicability of Explanation (i) and (ii) mentioned in 1993 OM.

2.36 In this regard the representative of DoPT during the evidence held on 08.10.2018 stated before the Committee as under:

*"We have only said that whatever stand DoPT had taken, it is in the Court. Whether it is right or wrong, we'll get it seen and whatever Law and Law Officers will advise, we'll take action accordingly..... We will consult whatever the Law Officer says if he gives the same opinion, then we'll work accordingly."*

2.37 Pursuant to the above, on advise of the Committee the DoPT and the Ministry of Social Justice and Empowerment sought legal opinion on certain points relating to Category VI and applicability of Explanation (i) and (ii) mentioned in 1993 OM (copy of questions is placed at **Annexure XIII).**

2.38 The Department of Legal Affairs opined as under (copy of Legal opinion furnished to the Committee is placed at **Annexure XIV**):

*"It is evident that the Explanation (i) & (ii) under the Category VI (INCOME/WEALTH TEST) are given after the sub category (a) and (b) of the same and there is no specific indication regarding its applicability with regard to particular sub category. In absence of any specific indication regarding applicability of the Explanation (i) & (ii) with regard to particular sub category, the same, in general sense, seems to be applicable in respect to whole Category VI."*

The Department of Legal Affairs further added-

*"However, it is relevant to mention here that in pursuance of the judgment/order passed by the Apex Court in the matter of Indira Sawhney versus Union of India popularly referred to as "Mandal" case, based on recommendations of the said Expert Committee and after wide consultation and approval of the competent authority, O.M. dated 08/09/1993 had been issued by the DoPT on the subject.*

*The Expert Committee in Para 12, 13, 26, 27, 28 & 29 of its report states that:*

*"II-C. Employment in Public Sector Undertakings etc.*

*12. The service category is not confined to employment under the Government only, whether at the Union or at the State level. The criteria enumerated above will apply mutatis mutandis to officers holding equivalent or comparable posts in public sector undertakings, banks, insurance organisations, universities etc. and also to equivalent to comparable posts and positions under private employment.*

*13. The evaluation of posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of the persons under this category, it is made clear that so long as the process is not completed and made operative, the income/wealth under Item VI, will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI.*

*26. ...Hence, persons having gross annual income of Rs. 1 lakh (now 8 lakh) or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act will be excluded from the benefit of reservation. Only when such level of income or wealth has a consistency for a reasonable period will it be justifiable to regard a person as socially advanced on the basis of income. We consider a period of three consecutive years to be a reasonable period for the purpose of the application of the criteria under consideration.*

#### *VI. INCOME/WEALTH TEST*

*27. In addition to the above, we have to say that the income/Wealth test governs categories IV, V-B and V-C as stated earlier. For the remaining categories, namely, I, II, III & V-A, specific criteria have been laid down; however, if in these categories, any person, who is not disentitled of the benefit of reservation, has income from other sources or wealth,*

which will bring him within the criterion under Item No. VI, then he shall be disentitled to reservation, in case his income-without clubbing his income from salaries or agricultural land- or his wealth is in excess of cut off point prescribed under the income/wealth criteria.

28. Since the rupee value is bound to undergo change the income criterion in terms of the rupees as stated above will accordingly stand modified with change in its value. The modification exercise may, normally speaking, be undertaken every three years but if the situation so demands the interregnum may be less.

29. Persons working as artisans or engaged in the hereditary occupations, callings, etc., like potters, washermen, barbers, etc., are exempted from application of the rule of exclusion."

Thus, the expert committee states that in the even absence of equivalence, category II-C cannot be disentitled from availing reservation benefits as such and that, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI i.e. income/wealth test."

In backdrop of the above, we are of the opinion the criteria(s) prescribed under the DoPT's O.M. dated 08/09/1993 may be understood in light of the terms stated in the report of the Hon'ble Expert Committee.."

2.39 However, DoPT had its own set of explanations . In a written reply to the Committee, the DoPT expressed that –

*"The rule of exclusion (b) in the Category VI is for situations involving "Persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income / wealth criteria mentioned in (a).*

*2. The Category II-C though mentioned as part of category II but is different as in the absence of equivalence the income/wealth test is to be applied.*

*3. The factual matrix of each case is different and provisions of policy are applied after having holistic appreciation of all facts and the decision of the competent authority in respect of creamy layer status is on case to case basis, based on complete facts available on record.*

2.40 Further, the Committee desired to know whether the spirit of the Expert Committee on application of explanation given with Category VI (a) and VI (b) of the original memorandum of 1993 applies equally to VI (a) and VI (b), both.

The DOPT in written reply furnished to the Committee, stated:

*"Paragraphs 27 and 28 of the Expert Committee Report are as under:*

*"27. In addition to the above, we have to say that the income/wealth test governs categories IV, VB and VC as stated earlier. For the remaining categories, namely, I, II, III and VA, specific criteria have been laid down: however, if in these categories, any person, who is not disentitled to the benefit of reservation, has income from other sources or wealth, which will bring him within the criterion under Item No. VI, then he shall be disentitled to reservation, in case his income - without clubbing his income from salaries or agricultural land – or his wealth is in excess of cut-off point prescribed under the income/wealth criteria.*

*28. Since the rupee value is bound to undergo change the income criterion in terms of the rupee as stated above will accordingly stand modified with change in the value. The modification exercise may, normally speaking, be undertaken every three years but if the situation so demands the interregnum may be less."*

*2. From the reading of the above paragraphs, it seems that the following phrase in paragraph 27 forms the basis of the Explanation (i) of the Category VI of the Schedule to Office Memorandum dated 08.09.1993*

*"..... in case his income – without clubbing his income from salaries or agricultural land – or his wealth is in excess of cut-off point prescribed under the income/wealth criteria"*

*3. The Explanation (ii) of Category VI is based on the paragraph 28 of the Report.*

*4. However, as the Office Memorandum dated 08.09.1993 was issued on the basis of the draft forwarded by the Ministry of Welfare (now Ministry of Social Justice & Empowerment), they have been requested to forward a reply to the Hon'ble Committee."*

2.41 Consequently, after receiving legal opinion, during the sitting held on 07-02-2019, the Committee enquired:

*"In the context of 'category II C' employees, while applying income and wealth test, income from other sources only should be taken into account under category VI and salary or income from agricultural land should not be included. Do you agree with it or not?"*

On this, the representative of the Ministry of Law and Justice stated that:

*"We have mentioned this in our opinion."*

2.42 Further, when the Committee enquired the stand of DOPT on this issue, the representative of DOPT stated as:

*"This should be read in the context of Expert committee's report. After going through it I feel that they have also held it valid."*

2.43 In this connection the Committee noted that in reply to the letter No. NM/OBC/CL/245 dated 21.02.2002 addressed to the then Minister of State for Personnel, Public Grievances and Pensions, Government of India and also to a letter dated 29.03.2002, the then Joint Secretary, Ministry of Social Justice and Empowerment has clarified vide D.O. No. 20011/1/2001-BCC dated 26.04.2002 that candidates whose parents are working in the Public Undertakings, Banks, Insurance companies and Universities etc. under Central and State Governments, can't be debarred from the reservation on the basis of parents' salaries and income from agricultural land. The letter is given at **Annexure XV**.

2.44 In this regard the Department of Personnel and Training in their letter No. 43011/9/2011-Estt. (res.) dt. 03.02.2010 have stated that income from salary is not the criterion for determining Creamy Layer status amongst OBCs. This is given at **Annexure XVI**.

2.45 As per DoPT Office Memorandum No. 36012/22/93-Estt (SCT) dt. 15.11.1993, Column No. 12 (G), annual family income will be calculated without including income from salary and agricultural land for getting OBC certificate. The laid down format is being followed till date. This is given at **Annexure XVII**.

## CHAPTER-III

### CLARIFICATION ON CRITERIA FOR DETERMINING CREAMY LAYER

#### A. Clarifications issued by DoPT vide letter dated 14 October, 2004

3.1 During the course of the examination of the subject, the Committee found that the DoPT had issued clarifications on various queries being raised by the stakeholders from time to time about the application of the provisions contained in the DoPT OM dated 8<sup>th</sup> September, 1993 regarding determination of creamy layer amongst OBCs, on 14<sup>th</sup> October, 2004 in the form of a letter issued to the Chief Secretaries of all the States/Union Territories (copy placed at **Annexure XVIII**).

3.2 While examining the issues raised in the clarificatory letter issued in 2004, the Committee found that para 9 and para 10 of this letter have produced different explanations for applying the provisions of Income/Wealth Test under Category-VI of the Schedule to the 1993 OM in case of the employees of PSUs, etc. and for the rest .

3.3 The Committee intended to know about the background and basis of issuing clarifications by DoPT in 14.10.2004. The Committee were informed that the related files and documents were not traceable in DoPT.

3.4 The Chairperson during the sitting held on 05-09-2018 enquired

*"Perhaps your clarificatory letter of 2004 was lost. It was revealed in a RTI reply. Where is that? That file is required by the Committee. File of 2004 is required by the Committee. OM of 1993 which has been interpreted in different way in 2004, that file is required by the Committee."*

On this, the Secretary, DoPT during evidence held on 05.09.2018 stated as under:-

*"My colleague is telling that the file is not traceable in our department. We will try to find it by putting more efforts."*

3.5 The Committee also desired to know the date and level at which the decision for issuance of the clarification dated 14-10-2004 was taken. The DoPT in a written reply stated as under:-

*"As Hon'ble Committee is already aware that the file bearing number 36033/5/2004-Estt.(Res.) relating to the issue of DoPT's letter dated 14-10-2004 on the subject of 'clarification on Creamy Layer amongst OBCs' is not traceable, therefore, the level of decision making for issuance of the clarification dated 14-10-2004 could not be ascertained."*

Asked about the action taken in this regard, the DoPT in a written reply informed as under:-

*"As already submitted before the Hon'ble Committee in its last sitting, the file bearing No.36033/5/2004-Estt.(Res.) relating to the issue of DoPT's letter dated 14-10-2004 on the subject of "Clarification on Creamy Layer amongst OBCs" is not traceable. A circular has been issued to all Sections/Desk in the Department on 18-09-2018 requesting for helping in search of the missing file."*

3.6 The Committee asked the Ministry of Social Justice and Empowerment as to whether they were consulted by the DoPT while issuing the clarification in 14.10.2004. The Ministry of Social Justice and Empowerment in a written reply stated as under:

*"...there is nothing on record to establish that the Department of Social Justice and Empowerment was consulted by DoPT before issue of their clarification of 2004."*

3.7 On the query of the Committee as to whether legal opinion was taken by the DoPT from the Department of Legal Affairs while issuing clarifications in 2004, the Department of Legal Affairs in a note informed as under:

*"It is submitted that no opinion of this Department was obtained with respect to Clarification Letter issued by the DoPT in the year of 2004...."*

3.8 In order to seek clarity on 1993 and 2004 OM, the Chairperson enquired from the representatives of DoPT:

*"Order of the year 1993 was notified, then why was its different interpretation done in year 2004?"*

The representatives of DoPT replied:

*"Putting aside both the orders of the year 1993 and 2004, I wish to refer to the Expert Committee's original recommendation and the O.M. of year 1993 was issued literally as per recommendations of the Expert Committee. That is our original O.M. There are clarifications issued in the year 2004, but if we talk about the original O.M. then it would be more appropriate for us."*

3.9 During the course of examination of the subject, the Committee came across a fact that DoPT in response to NCBC DO Letter dated 28-10-2003 regarding determination of creamy layer amongst OBCs had, inter-alia, replied:

*"The Explanation –I given below the Income/Wealth Test states that income from salaries/agricultural lands shall not be clubbed is interpreted by different persons/authorities in different ways. While some persons interpret it to mean that the income from salaries and the income from agricultural lands shall not be clubbed together to determine the "creamy layer status" others interpret it to mean that the income from salaries as well as income from agricultural lands shall be treated "zero", while applying the income/wealth test on persons in the services or engaged in agriculture/other vocations. The department of Personnel and Training (and the Ministry of Social Justice & Empowerment) have interpreted the Explanation to mean that, in the case of persons in service or engaged in agriculture, the income from salaries and income from agricultural lands would be treated as "zero" while applying income/wealth test on them; the language of the Note needs to be modified in order that there is no scope for more than one interpretation of the provision."*

3.10 Some of the significant developments, in this regard, during the various Sittings of the Committee are as under:

1. In the sitting of the committee held on 08.10.2018 the representative of DoPT had stated that the category VI has two portions i.e. paragraph 6(a) and 6(b), and whether the explanations are applicable on both the portions or on a single portion... this is based on the para 27 of the Expert Committee report.
2. On 08.10.2018, the representative of DoPT had assured the Committee that we will take all this into account when we get the opinion from the Law Officer and we had sought one

month time for this. It was also stated that first we will get opinion from the Law Ministry and then we will seek opinion from Law Officers also.

3. In the sitting of the Committee held on 05.09.2018 and 08.10.2018, the DoPT had clarified that equivalence of posts in States will be determined by the Ministry of Social Justice and Empowerment, Government of India and after that DoPT will follow it.
4. In the sitting of the Committee held on 08.10.2018, the representative of the DoPT had stated that the Expert Committee's report issued in 1993 is sacrosanct for us and on the basis of that the O.M. of 1993 was issued, and we work on the basis of the same.
5. In the sitting of the Committee held on 08.10.2018, representative of the DoPT had stated that whether the explanations are applicable to both the portions of the paragraph 6(a) and 6(b) or to a single portion is based on the para 27 of the expert committee's report and said that the income and wealth test will be applicable to the categories IV, V B and V C. Categories I, II, III and VA are those categories which hold constitutional posts or Group A posts or they are government servants. But in I, II, III and V A categories, it says: "However if in these categories any person who is not disentitled to the benefit of reservation" they are not ineligible under that criteria. For example, they are not in Group-A, both of the parents are also not in Group-B, however there is a situation where they are not ineligible. But if they are not ineligible, it means if we apply status test on them, the benefit could be given to them. But if they have such income, which is from other sources of wealth which will bring them within the criterion under item No. 6 in that case they will be declared ineligible. The explanation is that we will not club salary income and income from other sources together; agricultural income is neither included in the case of salaried class nor in non-salaried class. But where the equivalence has not been established, defining their salary as income does not fit as per Committee's spirit. Therefore it is our compulsion that we are drawing such type of explanation.
6. The representative of the Ministry of Social Justice and Empowerment had categorically stated before the Committee during evidence held on 08.10.2018 that the Ministry of Social Justice and Empowerment were not consulted on the clarifications issued in 2004. The Ministry had forwarded only expert committee's report of 1993 to DoPT. Actually, the Ministry of Social Justice and Empowerment formulates the overall policy, but the implementation is done by the DoPT. Till now DoPT was handling the matters related to State Government's equivalence but they have now brought the issue before us for establishing equivalence. But for establishing equivalence, we will see as to what methodology DoPT was following till now, when State Governments were giving them some equivalence certificates.
7. During the Committee's sitting dated 08.10.2018, the Ministry of Social Justice and Empowerment had upheld the report of the Expert Committee and 1993 Office

Memorandum but had expressed oblivion of the origin of the clarifications dated 14.10.2004 with regard to Creamy Layer.

## **B. Application of clarification issued by DoPT in 2004**

3.11 On 05.09.2018 many candidates from Other Backward Classes (OBCs) who were selected for the Civil Services Examination 2015, 2016 and 2017 personally met the Chairperson of the Committee and apprised him of the fact that they had submitted the non-creamy layer OBC certificate before appearing in the mains examination and then Union Public Service Commission had allotted them ranks and, hence, they were entitled to the allotment of IAS, IPS, IRS and other services on the basis of non-creamy layer OBC certificate, but they were excluded on the basis of clarification letter of the Department of Personnel and Training dated 14<sup>th</sup> October, 2004 (No. 36033/5/2004-Estt.-Res). The post and ranks held by their parents were compared with the post of Class-I/Group A officer or Class-II/Group B officer although the comparison on establishment of equivalence about the posts of their parents in respective departments was not done by any Expert Committee or DoPT. On the basis of the anomalous clarificatory letter regarding Creamy Layer issued by DoPT on 14.10.2004, about 56 OBC candidates (4 from Madhya Pradesh, 10 from Tamil Nadu, 8 from Maharashtra, 2 from Karnataka, 4 from Kerala and 2 from Andhra Pradesh) who were selected in the Civil Services Examination 2015, 2016 and 2017 were not allotted services while parents of these candidates were working in Central and State Governments Undertakings, Banks, Insurance organisations, Financial Institutions and Universities etc. and most of them were Clerks, Peons and Labourers. For the first time in 70 years, a daughter of Class-III employee of Vanjari Caste was selected in the Civil Services Examination under OBC quota but she was considered as Creamy Layer candidate by DoPT and, hence, service had not been allotted to her. Many of these aforementioned OBC candidates had also submitted equivalence certificates issued by

State Government/Departments, but no service had been allotted to them despite that. Taking this issue seriously, the Committee had given them an opportunity to present their view point.

3.12 One such candidate explained his plight to the Committee as follows:-

*"I secured 688<sup>th</sup> rank in the Civil Services Examination, 2015. At the time of allocation we came to know that we have not been allocated any service. We also came to know that it is clearly written in the Expert Committee Report that until the equivalence is properly established, category 2(c) mentioned in the para 12 and 13 will be considered under para 27..... Para 27 very clearly says that until equivalence is there till then (Creamy Layer status) will be considered as per other source (of income)... This is proved on the basis of several documents and the document of the year 2010 belonging to a DoPT Under Secretary. This is proved on the basis of the documents of the Ministry of Social Justice and Empowerment and various judgements of the Courts till date have also validated us. Two High Courts and CAT have given their judgement. After that, we were shown 2004 OM passed in 2004 which brought out an artificial distinction, which brought a new kind of distinction and said that income limits for income from other sources for PSU category employees and income from salary will be calculated separately. In this way two separate income limits are imposed, but agricultural income is not added. Where it is written that agricultural income will not be added, at the same place it is also written that salary income will not be added. we asked for the file noting of year 2004 and we were told that the said file noting is not traceable..... after that we went to the court and we got favourable decision in the CAT also. We also went to a different Court in Madras. We directly approached the Supreme Court and the Hon'ble Supreme Court finding out case important, transferred the case to Delhi High Court as writ so that all the investigation can be completed at the High Court level and the case is not taken directly to the Supreme Court. Delhi High Court's judgement came in March, 2018 which was explicit and was in our favour. Prior to that, Madras High Court's judgement came in September, 2017. That judgement was even more clear..... Delhi High Court said that until the equivalence is established, income from other sources will be considered as per the 1993 Rule and not as per 2004 rule....."*

## **C. Legal Remedy Sought by the Candidates**

3.13 (i) The successful candidates of CIVIL SERVICES EXAMINATION 2015 challenged their non allocation of service on the ground of arbitrary application of Creamy Layer criteria & filed a Writ Petition before Hon'ble Supreme Court seeking a relief that they should be allocated service as OBC non creamy layer candidate as per the 1993 OM without taking salary into the account.

The Supreme Court transferred the said case to the Delhi High Court.

3.14 The Committee also noted in this regard the orders of the Delhi High Court dated 22 March, 2018, which inter-alia states as under:-

*"First respondent in its counter affidavit maintains that impugned communication of 14<sup>th</sup> October, 2004 has been brought about to clarify the OM of September, 1993. The communication of 14<sup>th</sup> October, 2004 takes into account salary of parents of OBC candidates whereas as per OM of September, 1993, the income from other sources is the basis to determine the creamy layer status of OBCs in case of PSUs, where equivalence has not been established. Undisputedly, equivalence has not been established in case of PSUs viz-a-viz the posts in Government. In such a situation, I find that no rationale or justification is spelt out in the impugned communication of 14<sup>th</sup> October, 2004 or in the counter affidavit filed by first respondent, to make the salary of OBC employees in PSUs as the basis to determine their Creamy Layer Status..."*

*In the considered opinion of this court, there is no basis to rely upon impugned clarification of October, 2004. Thus, impugned communication is set at naught and first respondent is directed to verify the Creamy Layer Status of petitioners while solely relying upon the OM of September, 1993."*

The Delhi High Court vide order dated 22.03.2018 directed that salary is not a criterion as per 1993 OM, hence, re-iterated the fact that only the income from other sources should be seen.

3.15 Regarding compliance of the aforementioned order of Delhi High Court, DOPT in a written reply submitted to the Committee stated that:

*"this Department has complied with the directions of Hon'ble High Court of Delhi by passing a speaking order on 22.05.2018 i.e. within prescribed time limit."*

However, the Committee observed that the order of Delhi High Court was not complied in letter and spirit.

3.16 (ii) Other similarly situated candidates filed O.A before the CAT Chennai wherein vide order dated 12.01.2017 it was held by the Tribunal that salary is not a criteria for determination of OBC creamy layer.

3.17 The order dated 12.01.2017 of the CAT was challenged before the Madras High Court wherein the Court dismissed the petition filed by the DoPT vide order dated 31.08.2017 and upheld the order passed by the CAT and clearly stated that salary is not the criteria for determining creamy layer.

3.18 The Ministry of Law and Justice, Department of Legal Affairs in their note forwarded to DoPT in response to legal opinion sought by DoPT stated as under:

*“...being aggrieved regarding the criteria prescribed for the Creamy Layer status for the sons and daughters of parents employed in Public Sector Undertakings (PSUs) etc., in which equivalence or comparability of posts has not been established vis-a-vis the posts in Government. The Hon’ble Tribunal vide its common order dated 12.01.2017 allowed the OAs with the following directions to DoPT:*

*“We direct the DoPT to withdraw the clarifications in para 9 of the OM dated 14.10.2004 to the extent it is made applicable to II-C and reformulate it appropriately in the light of the observations made herein within a period of three months. The respondents are also directed to reallocate the service of the two applicants of the basis of their OBC status within a period of three months from the date of receipt of a copy of this order. OA is disposed of accordingly.”*

*The above mentioned order of Ld. Tribunal has been challenged by the DoPT before Hon’ble High Court of Madras by filing WPI(C) No. 6389/17. The Hon’ble High Court vide its order dated 31.08.2017 dismissed the above mentioned WP filed by the Department on the following two grounds, which are as under:*

*“Conclusion: As a result, these writ petitions fall on two scores. Firstly, the failure of the writ petitioners in not formulating the equivalence and comparable test has put the sons and daughters of Public Sector Undertakings etc., employees in disadvantage position compare to their counterparts In Government service. Secondly, when salary income of the parents serving under State/Central Government in Group C and D cadre post or who have entered Group B and A post, after attaining the age of 40 years, is not a criteria to assess Creamy Layer, salary of a Public Sector Undertaking employee as a test for identifying Creamy Layer brings in the element of hostile discrimination.*

*Therefore, we find no error in the common order passed by the Tribunal. Hence, these Writ Petitions are liable to be dismissed. Accordingly, these Writ petitions are dismissed. No costs.”*

3.19 The Committee enquired how the DoPT would adjust the non allocated OBC candidates if their stand is held to be right.

On this, the representative of DoPT clarified during the evidence:

*"Supernumerary post will be created for them."*

3.20 The Committee in order to understand how the issue of candidates who are seeking legal remedy could be resolved by course correction.

In this regard, in a written reply, the Ministry of Law and Justice, Department of Legal Affairs submitted to the Committee that:

*"It is submitted that as per practice of this Department, we refrain our-self to offer any opinion/advice in sub-judice matters. However, the Government is always at liberty to take a policy decision in respect of a sub-judice matter. If a policy decision is taken, the Court will be apprised with policy decision so taken."*

3.21 During recent times various questions have been raised in Lok Sabha on these issues which are as under:

In reply to the Unstarred Question No. 139 asked in Lok Sabha on 16.11.2016, it has been stated that an unsigned typed copy of English version of office memorandum dated 14.10.2004 was uploaded on the website of DoPT in which there were some discrepancies in comparison to the uploaded Hindi version on the website of this department with respect to Para 9 of the same. Subsequently a signed copy of the said office memorandum was uploaded on the website of the department. The Committee noted that the DoPT called it an Office Memorandum whereas it was an anomalous clarificatory letter.

In the reply to the question raised in Lok Sabha on 12.12.2018 it was stated that a discrepancy relating to the explanation under category VI (b) of Hindi version of Office Memorandum dated 08.09.1993 was found. A corrigendum was, therefore, issued on 05.12.2016. When the DoPT identified discrepancies in the original Office Memorandum dated 08.09.1993 on 05.12.2016 only, it is quite clear that on which Office Memorandum the persons belonging to OBCs were getting reservation prior to 05.12.2016 and how arbitrarily the appointments were being made. The DoPT informed the Committee that on 13.12.2018 the Hon'ble Minister of Social Justice and Empowerment had held a meeting with Additional Secretaries of the Ministry of Law and Justice and Department of Personnel and Training and Joint Secretary of the Ministry Social Justice and Empowerment and the matter was

discussed in the meeting. In the Seventh Schedule of the Constitution of India, the List-II deals with the State List. Therefore, the subject of services of State Government and their equivalence is related to the federal structure of the Constitution. So, the right to decide the equivalence of the services of category-II C of State Government is vested in the State which is contained in the Seventh Schedule of the Constitution. As the Department of Personnel and Training was accepting the equivalence certificates of the States, the Hon'ble Minister directed the Secretary, Department of Personnel and Training to continue doing so. (The Rank holder 621 and 723 of Civil Services Examination 2015 were cited as example.)

## **Chapter-IV**

### **REVISION OF INCOME CEILING FOR DETERMINING CREAMY LAYER**

4.1 The schedule to the DoPT OM dated 08.09.1993 spelt out six categories which would constitute the creamy layer. The last of the six categories was based on Income/Wealth Test and said that persons having gross annual income of Rs. 1 lakh for a period of three years would fall in the creamy layer. The Expert Committee while specifying the criteria for application of the Rule of Exclusion of socially advanced persons amongst OBCs, inter-alia, recommended for review of income criteria after 3 years. The Committee in para 28 of their report observed – “Since the rupee value is bound to undergo change, the income criteria in terms of the rupee as stated above will accordingly stand modified with change in the value. The modification exercise may normally speaking be undertaken every 3 years but if the situation so demands, the interregnum may be less.”

4.2 Accordingly, the Ministry, with the approval of Union Cabinet and in consultation with the then Prime Minister had entrusted the work relating to review of the income criteria to exclude the “Creamy Layer” from OBCs to NCBC on 06.10.2003. NCBC presented its report to the Ministry of Social Justice and Empowerment in January, 2004. Based on the recommendations of NCBC and subsequent approval by the Cabinet, the income ceiling was enhanced from Rs. 1 lakh to Rs. 2.50 lakh vide DoPT orders dated 9<sup>th</sup> March, 2004.

4.3 Further, the NCBC in its report of July, 2008 had recommended inter-alia for enhancement of the ceiling of Creamy Layer from Rs. 2.5 lakh to Rs. 4.5 lakh and barring the formula for periodic revision of income ceiling on changes in the economy viz. changes in consumer price index, per capita, net national product, cost of living price index, change in value of rupee, etc. The ceiling was subsequently enhanced by the Government from Rs. 2.5 lakh to Rs. 4.5 lakh on 14.10.2008.

4.4 The NCBC submitted its next report on 14.09.2011 for enhancing the creamy layer limit from Rs. 4.5 lakh to Rs. 12 lakh in urban areas i.e. metropolitan cities and Rs. 9 lakh in the rest of the areas. However, the Government enhanced the income limit from Rs. 4.5 lakh to Rs. 6 lakh w.e.f. 15.05.2013.

4.5 The Ministry of Social Justice and Empowerment in a note informed as under:

The erstwhile NCBC was requested on June 27, 2014 to examine the various issues relating to the creamy layer. They were:

- (i) Understanding of the initial OM issued by the DoPT dated 08.09.1993 and the clarification letter dated 14.10.2004 as also the proposals which modified from time to time raising the income limit,
- (ii) Streamlining the complicated issues by simplifying the schedule to the Descriptions of Categories and Exclusion of Creamy Layer,
- (iii) Whether to club the agricultural income with salary and other sources.
- (iv) Determine/evaluate the equivalent or comparable posts in PSUs, Banks, Insurance Organisations, Universities, etc. and also the posts and positions under the Private Employment and whether rule of exclusion will apply to sons and daughters of persons holding Constitutional positions of like nature including Ministers, MPs, MLAs and MLCs, etc.

4.6 The erstwhile NCBC submitted its report on 02.03.2015, which was sent to DoPT for comments. DoPT also submitted their comments vide O.M. dated 15.10.2015. In the meantime, the Parliamentary Committee on Welfare of Other Backward Classes held a sitting on revision of Creamy layer limit to Rs. 10.5 lakh. The Committee made suggestions regarding conditions of the creamy layer viz. to exclude certain categories like MLAs, MLCs, exemption of agriculture holdings, revision in creamy layer etc. After the meeting of the Committee on 14.10.2015, the NCBC submitted a supplementary report on 26.10.2015, on income criteria for creamy layer, after taking into account various inputs received by them and also modifications

the income limit from Rs. 6.00 lakh to Rs. 1500 lakh per annum. Subsequently, Government revised the monetary ceiling for non-Creamy Layer of OBCs from Rs. 6.00 lakh to Rs. 8.00 lakh w.e.f., 01.09.2017, calibrating the hike in the Consumer Price Index (268 points in March, 2016 vis-a-vis 197 points in December, 2011.)

4.7 On being asked by the Committee as to why the recommendations of the NCBC in this regard was not taken into consideration while fixing the income limit, the Ministry of Social Justice and Empowerment, in a written reply, stated as under:-

“...the erstwhile NCBC vide its supplementary report dated 26.10.2015 inter-alia recommended Rs. 15.00 lakh per annum for non-Creamy ceiling for OBCs taking into account parameters such as salary of Class I/Group A officers in the Government, Defence and Para Military Officers. The exceptionally large hike in the ceiling was not found acceptable by the Government and the Consumer Price Indexation was adopted for enhancing the income limit from Rs. 6.00 lakh per annum to Rs. 8.00 lakh per annum w.e.f. 01.09.2017. This was similar to the mode adopted in 2013, when the income limit was raised to Rs. 6.00 lakh from Rs. 4.50 lakh using the same parameter of Consumer Price Index.”

However in another written reply, the Ministry of Social Justice and Empowerment stated as under:

“The erstwhile NCBC Act prescribed the role of the NCBC as confined to Central List i.e. inclusion and exclusion thereof. The NCBC was not considered as expert on Creamy Layer monetary ceiling.”

4.8 Summary of revision in income criteria for determination of Creamy Layer in OBCs as mentioned in Category VI of the Schedule to the 1993 OM issued by DoPT is shown below:-

<b>S. No.</b>	<b>Date of fixation/revision</b>	<b>Annual Income Ceiling</b>
1.	08.09.1993	Rs. 1 lakh
2.	09.03.2004	Rs. 2.5 lakh
3.	14.10.2008	Rs. 4.5 lakh
4.	16.05.2013	Rs. 6 lakh
5.	01.09.2017	Rs. 8 lakh

## CHAPTER-V

### SETTING UP AN INTER-MINISTERIAL HIGH LEVEL COMMITTEE

5.1 The Committee desired to know about the action taken/proposed to be taken by the Ministry of Social Justice and Empowerment and the DoPT to resolve the anomalies and to mitigate the scope of misinterpretation of the DoPT OM of 1993 as also to resolve the controversies with respect to the 2004 clarifications issued by the DoPT. The Secretary, DoPT during evidence held on 20-12-2018 informed the Committee as under:-

*"As you had directed earlier and as you had suggested on 8<sup>th</sup> October on that, we had written to the Ministry of Law and Justice accordingly. As a result of that, the Minister of Social Justice and Empowerment called a meeting and took a good decision to constitute an expert committee to address all the issues relating to equivalence and creamy layer, because the issue of the missing file has been raised repeatedly. We have also admitted that the file is missing. It was enquired and the file is not traceable in both of the Ministries. We have told many times in this regard that the file is missing and having discussion on that, if you order something, in my opinion that will be another thing, but nothing concrete is coming out of that. We are getting no results. That is why Hon'ble Minister has decided to constitute an expert committee consisting of all the stakeholders of the concerned Ministries and after taking decision on the issues, a policy decision may be taken at the level of the Government."*

5.2 On being asked as to how long it will take to constitute the proposed Expert Committee, the Secretary, DoPT informed that-

*"As per your direction we have consulted the Ministry and the Hon'ble Minister was also a part of it, and as he has taken the decision, I can assure that this committee shall be constituted shortly and all the issues raised shall be placed before it. As the file is missing, it would be wrong to tell what happened in 2004 or in 1993, and I don't want to give you any wrong information."*

5.3 On this issue, the Secretary, Ministry of Social Justice and Empowerment replied while tending evidence on 20.12.2018 as under:-

*"I want to submit that what Hon'ble Minister has told regarding the decision on the expert committee, it will go up to the PM. It is not going to be straightforward in the sense that the decision shall be taken instantly. As you are suggesting, what would be its terms of reference, we had started with the issue of equivalence only and if all the issues including creamy layer issue are to be included, it would be constituted in a*

*different manner and if the issue of only equivalence is to be taken up, it would be constituted in another manner. I want to submit this."*

5.4 During further evidence held on 13<sup>th</sup> February, 2019, the Committee desired to know about the progress made in setting up the proposed expert Committee. The representative of DoPT informed as under:

*"Expert committee shall be constituted in two-three days. The competent authority shall take decision on the suggestions and recommendations given by you. I want to draw your attention towards the decision taken by you on 10.07.2017 and thereafter the Government Order on equivalence was issued on your suggestion. I want to submit that you had asked to establish the equivalence. We got it done on your initiative only. After that, you had told to increase the income limit, we also acted upon that. You are also asking to find complete solution in the subject. All these matters have been discussed at Minister's level. They have decided to constitute an expert committee to implement this and action in this regard has been taken. The formalities will be completed in a day or two and the expert committee will be constituted."*

5.5 However, the committee took note of the Schedule VII of the Constitution of India which deals with the scheme of distribution of powers between the Union and states. Entry 41 of List II of the Schedule VII to the Constitution of India explicitly mentions state government and state public service commission to be in the domain of state government.

Further, the definition of State as mentioned in Article 12 of the Indian Constitution is:

*"Definition In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India"*

5.6 Keeping the foregoing in the background, the Hon'ble Chairperson, during the sitting held on 13.02.2019, asked the representatives of DOPT and MSJE:

*"The List II contains State List under Seventh Schedule. For this, the services of the State Government and issue relating to their equivalence are associated with the federal structure of the Constitution. Hon'ble Supreme Court in its decision in the Keshavanand Bharti case had held that the federal structure is part of the basic structure of the Constitution. How can you set up an expert committee to establish equivalence in State Services?"*

The representatives of the concerned ministries remained silent on the query.

## PART – II

### Observations/Recommendations of the Committee

1. The Second Backward Classes Commission popularly known as Mandal Commission constituted under Article 340 of the Constitution of India had submitted its Report in 1980. In the light of the Report *vide* Office Memorandum dated 13<sup>th</sup> August, 1990 and 25<sup>th</sup> September, 1991 of the Department of Personnel and Training (DoPT), Government of India had issued orders providing for 2 per cent reservation in Central Government posts for persons belonging to the Socially and Educationally Backward Classes, also referred to as "Other Backward Classes". Consequently, a number of Writ Petitions (Civil) were filed in the Hon'ble Supreme Court challenging the Government Orders. These Writ Petitions were disposed by the Hon'ble Supreme Court in 1992 by its landmark judgement in Case of **Indra Sawhney & Ors. Vs. UOI &Ors.**, AIR 1993 SC 477: 1992 Supp (3) SCC 217. In this judgement, the Supreme Court held that the said OMs are valid and enforceable subject to exclusion of socially advanced members/sections from the notified Other Backward Classes, while giving preference to more backward classes on the basis of degree of social backwardness.

Accordingly, the Government of India, Ministry of Welfare appointed an Expert Committee for specifying the criteria for identification of Socially Advanced Persons amongst the Socially and Educationally Backward Classes *vide* Government of India, Ministry of Welfare, Resolution No.12011/16/93-BOC(C) dated 22<sup>nd</sup> February, 1993. The said Expert Committee submitted its Report to the Government on 10<sup>th</sup> March, 1993 and subsequently it was laid on the Table of the both Houses of Parliament of India. The Government had decided to accept the recommendations contained in the said Report. In compliance of the Supreme Court judgement and Expert Committee Report for applying the relevant and requisite socio economic criteria for exclusion of the socially advanced persons/sections (Creamy Layer) from Other Backward Classes in Civil Posts and Services under Government of India, the DoPT O.M. dated 13<sup>th</sup> August, 1990 was modified, *vide* OM No. 36012/22/93-Estt/SCT dated 8<sup>th</sup> September, 1993 to provide, inter-alia, reservation of 27 per cent of vacancies for OBC candidates in Civil Posts and Services under Government of India to be filled through direct

recruitment subject to the exclusion of the socially advanced persons/sections (creamy layer). The determining factors for identification and exclusion of the creamy layer were laid down in the DoPT O.M. dated 8<sup>th</sup> September, 1993. The stipulations of the OM *inter-alia* provide for excluding from OBC category, the children of such persons holding (I) Constitutional posts and the persons holding Constitutional positions of like nature; (II) Service Category i.e. (A) Group A/Class I Officers of the All India Central and State Services (Direct Recruitment); (B) Group B/Class II Central Services and State Services (Direct Recruitment); (C) Employees of Public Sector Undertakings, etc., holding equivalent or comparable posts of Group A and Group B; (III) Personnel of the Armed Forces including Paramilitary Forces at the level of Colonel and above; (IV) Professional Classes and those engaged in trade, business and industry having the income limit specified therein; (V) Property Owners i.e. (A) holders of agricultural land, (B) Plantations and (C) Vacant land and/or buildings in urban areas or urban agglomeration and (VI) Prescribed income/wealth limit etc.

The Committee expressed their satisfaction that on the advice of the Committee, the DoPT has issued fresh instructions on 04.04.2018 relating to application of own merit in Direct Recruitment for appointment of Other Backward Classes. *The instruction issued by the DoPT states that "in direct recruitment to Central Government jobs and services, the reserved category i.e. OBC/SC/ST candidates who are selected on the same standard as applied to general candidates will not be adjusted against reserved vacancies. Only when a relaxed standard is applied in selecting a reserved candidate, for example in the age limit, experience, qualifications, permitted number of chances in written examination etc., such candidates will be counted against reserved vacancies.*

#### **Rule of exclusion applicable to persons above 40 years of age appointed to Group A/Class I Services**

2. Category IIA of the Schedule to the O.M. of DoPT dated 8<sup>th</sup> September, 1993 provides *inter-alia* that rule of exclusion will apply to the son(s) and daughter(s) of the parents, both of whom or either of whom is/are appointed as Class I officers of the All India Central & State Services as direct recruits. Besides, category IIB (b) provides that rule of exclusion will also apply to the son(s) and daughter(s) of the

parents of whom only the husband is a Class II officer of the Central and State Services as direct recruit and he gets into Class I at the age of 40 or earlier. This provision gives the impression that the rule of exclusion will not apply to the son(s) and daughter(s) of a parent (father) who is a Class II officer and gets into Class I after the age of 40 years by direct recruitment. When the Committee sought clarification in this regard, DoPT informed that the rule of exclusion would be applied on an officer appointed to Group A as a Direct Recruit; and the stipulations pertaining to promotion to Group A before 40 years age limit is applicable only for promotion cases, whereas for Direct Recruits, there is no age limit prescribed in the Expert Committee Reports.

The Committee in this regard concur with the views expressed by the Central Administrative Tribunal, Principal Bench, New Delhi vide Case No 579/2018 that the rationale behind excluding a candidate whose parent is a Class I/Group A officer is that such a candidate would have received all facilities and privileges for pursuing his/her education in a most beneficial manner, and such a candidate would not have suffered vagaries of poverty, economic constraints and social discrimination in any manner. A close reading of the OM dated 8<sup>th</sup> September, 1993 and the Schedule attached to it indicates that the age limit of 40 years has been fixed in Category IIB after taking care of the ground reality that the basic education of a candidate aspiring to pursue a prestigious career would have been over by the time his/her parents cross the age of 40 years. The Committee are of the opinion that if an OBC candidate suffering the vagaries of economic and social constraints all through his/her basic education and the parents being not able to provide the kind of facilities, which the parents in Class I Government services provide to their children, the OBC aspirant will have no benefit of the elevated status of his/her parents in case they get into Class I/Group A Service by whatever means after the age of 40 years. The Committee, therefore, recommend that the rule of exclusion should not be applied to the children of the parents who get into Class I/Group A Service either by direct recruitment or by means of promotion etc., after the age of 40 years. This would be in the spirit of the Expert Committee's Recommendation as well as the compliance shown by the DoPT in the case referred above.

**Criteria applicable to Group C/ Class III and Group D/ Class IV services entering into Group A/class I services at age of 40 years**

3. The Committee note that as per the equivalence of posts vis-à-vis posts under the Government as established by the DFS in 2017, Clerks and Peons in Public Sector Banks (PSBs), Financial Institutions (FIs) and Public Sector Insurance Corporations (PSICs) will be treated at par with Group C employees in the Government. According to the Department of Financial Services as also expressed by the Representative of the *Ministry of Social Justice and Empowerment before the Committee that the income criteria of Rs.8 lakh per annum as revised from time to time will be applicable for Clerks and Peons in PSBs, FIs and PSICs. Also, the son (s) and daughter (s) of the parents working as Clerk and Peon in PSBs, FIs and PSICs who get into junior management grade Scale-I at the age of 40 or earlier will fall under creamy layer.* The Committee note in this regard that the representative of Ministry of Social Justice & Empowerment had stated before the Committee that these provisions may not be in consonance with the O.M. of DoPT dated 8.9.1993 but *were taken at the level of the Cabinet itself.*

The Committee however note that *in pursuance of the judgment/order passed by the Apex Court in the matter of Indra Sawhney versus Union of India popularly referred to as "Mandal" case and O.M. dated 08/09/1993 issued by the DoPT based on recommendations of the Expert Committee and after wide consultation and approval of the competent authority, the Class III/Group-C employees have not been included in the rule of exclusion at any stage. The Committee express their concern as to how the Note for the Cabinet could be prepared against the spirit of the Expert Committee Report and 1993 O.M., which the Ministry of Social Justice and DoPT claim to follow in letter and spirit.*

The Committee in this regard wish to refer to the DoPT clarificatory Letter dated 14.10.2004 regarding Creamy Layer issue, which makes it clear vide Para 7 that "if father is directly recruited Class III/ Group C or Class IV/ Group D employee and he gets into Class I/ Group A at the age of 40 or earlier, his sons and daughter shall not be treated to be falling in Creamy Layer." The Expert Committee on the Creamy Layer had reflected the same view and the Committee, too, endorse it. Against this backdrop, the Committee are compelled to express the opinion that the Cabinet Note may not have been prepared *in the spirit of the judgment/order*

*passed by the Apex Court in the matter of Indira Sawhney versus Union of India popularly referred to as "Mandal" case and O.M. dated 08/09/1993 issued by the DoPT based on recommendations of the Expert Committee and after wide consultation and approval of the competent authority, which stipulates that the Class III/Group-C employees may not be included in the rule of exclusion at any stage. The Committee feel that the provisions of 1993 O.M. were incorrectly interpreted while preparing the Cabinet Note. This aspect, the Committee feel needs to be further probed.*

*The Committee strongly recommend that officials of rank/ grade **below Class II/Group B Officers (Direct Recruitment)** i.e. **Class III/Group C employees should be exempted from income criteria for determination of creamy layer. Also the rule of exclusion should not be applied if Class III/Group C employees get into Class I/Group A Service at any stage as per the essence of the Expert Committee Report and the provisions of the 1993 O.M. of DoPT.***

#### **Issue relating to Group B/Class-II Officers of the Central and State Services**

4. The Committee note that sub category B of Category II of the Schedule to the 1993 OM deals with the application of rule of exclusion on the son(s) and daughter(s) of Group B/Class II Officers of the Central and State Services (Direct Recruitment). However, it does not distinguish between Group B gazetted officers and non-gazetted officers. There exist a number of grades and posts in Group B service with a wide range of variation with respect to the pay scales and responsibilities as well as prestige attached to these posts, as also the number of years one is required to serve in the lower post, to move up to the higher post of the same Group i.e. Group B. Therefore, to keep the son(s) and daughter(s) of parents joining any of the posts under Group B service without the demarcation of gazetted and non-gazetted category under the creamy layer would be sheer injustice to such candidates as both the gazetted and non-gazetted officers under Group 'B' Central and State Services cannot be placed on the same pedestal for assessing one's social and economic status or advancement.

Keeping in view the true spirit deliberated upon in *paras 3, 4, 5, 33 and 34* spelt out in the Report of the Expert Committee constituted to draw up the exclusion of Socially Advanced Persons/Sections (creamy layer) the Committee

strongly recommend DoPT and Ministry of Social Justice & Empowerment to issue a clarification that by 'Group B/Class II officer' in O.M. No. 36012/22/93-Estt. (SCT), dt. 8.9.1993, implies 'Group B/Class II Gazetted officer' and that son(s)/daughter(s) of parents who both are directly recruited Class II/Group B non-Gazetted officials would not be treated to be falling under the creamy layer.

**Establishing Equivalence of Posts for the Employees of PSUs, etc.**

5. Category II-C of the Schedule to the DoPT O.M. dated 8.9.1993 stipulates that the criteria enumerated in the Service Category IIA and Category II B will apply *mutatis mutandis* to officers holding equivalent or comparable posts in PSUs, Banks, Insurance organisations, Universities, etc., and also to equivalent or comparable posts and positions under private employment. Pending evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in Category VI of the Schedule will apply to the officers in these institutions.

*The Expert Committee report states that: "The evaluation of posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of the persons under II-C Category, it is made clear that so long as the process is not completed and made operative, the income/wealth under Item VI, will govern the persons under IIC Category."*

The Committee observe that the Ministry of Social Justice and Empowerment have shown lack of initiative on their part in evaluation and identification of posts of equivalent or comparable basis in the aforesaid institutions and have kept the matter pending for over two decades for reasons best known to them. This omission or lack of action on the part of the Ministry has inadvertently led to a situation where a number of bonafide OBC candidates have been compelled to seek judicial intervention due to arbitrary interpretation of the provisions of Income/Wealth Test under Category VI of the Schedule to the OM dated 8<sup>th</sup> September, 1993.

Moreover, as per the 'equivalence' established by the Department of Financial Services Junior Management Scale-I of PSBs/PFIs/PSICs, which is a low

rank post in the hierarchy as compared to the Government of India Group A posts, will be treated as equivalent to Group A in the Government of India. Simultaneously, in the order issued by the Department of Public Enterprises, all the Board level Executives and other subordinate ranks, which are managerial level posts are to be considered as part of the creamy layer, with the exception that such Executives, whose annual income as per criteria given in DoPT OM of 1993 is less than Rs. 8 lakh, as amended from time to time, will not fall under the creamy layer. The Committee feel that treating Board Level Executives and below board level executives on the same pedestal would not be easily acceptable to the people in general and the stakeholders in particular. The Committee have, in the course of examination of the subject, felt the reverberations of dissatisfaction being experienced on account of the 'equivalence' established both by the DPE and DFS. The public opinion is, by and large extent, against it. They, therefore, recommend that the equivalence set by the DFS and DPE should be revisited in letter and spirit of the Expert Committee Report and the DoPT OM of 1993.

The Committee also recommend that necessary steps be taken with requisite initiative and the large quantum of pending work of establishing equivalence of posts in a wide range of organisations, such as autonomous organisations, Universities, Government aided as well as private schools/colleges, Judiciary, Local Self Government Bodies like Municipal Corporations, etc., with the Government be accomplished in co-ordination with the appropriate Ministries, Departments, Governments, on priority and without any further delay.

#### Applicability of Income/Wealth Test

6. *The Committee note that as per the submissions made by the representatives of DoPT & Ministry of Social Justice & Empowerment income from salary of employees of Category II-C has been taken into consideration by DoPT under Sub-Category VI(a) of Category VI on the basis of Para 27 of the Expert Committee Report.*

*Sub-Category VI(a) of Category VI of the Schedule to the DoPT OM dated 8<sup>th</sup> September, 1993 regarding Income/Wealth Test inter-alia provides that rule of exclusion will apply to the son(s) and daughter(s) of persons having Gross Annual Income of Rs. 8 lakh or above (as revised vide DoPT OM dated 13<sup>th</sup> September,*

*2017) for a period of three consecutive years. Sub-Category VI(b) of VI of the Schedule to the DoPT OM dated 8<sup>th</sup> September, 1993 regarding Income/Wealth Test inter-alia provides that "Persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation, but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in VI (a) above."Explanation given below Category VI [Sub-Category 6(a) and Sub-Category VI(b)] is as follows: (i) Income from salaries or agricultural land shall not be clubbed; (ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less."*

The Committee note that the various Courts have specifically held that Income from salaries is not the criteria for determining creamy layer among OBCs for salaried class employees. Para 9 of Clarificatory letter issued by the DoPT dated 14.10.2004 is an incorrect or ill-conceived interpretation and Para 10 is the correct interpretation of 1993 O.M. For category II-C, in the absence of equivalence, income from salaries cannot be taken into account (For II – C category also, Income from other sources alone is the criteria, as is the case for whole category II, including category II – A and II – B). The explanation (i) and (ii) given below the income/wealth test, specified in category VI, applies to the whole category VI [that is both category VI (a) and VI (b)]. The persons specified in category II-C, in the absence of equivalence, will fall under category VI-b alone, as the category VI-b explicitly mentions that those from the entire category II (II-A, II-B and II-C), who have not been disentitled from criteria mentioned in category II will fall under category VI-B. The court have clearly held that, wrongly counting salary for II-C category has resulted in a "hostile discrimination" vis-à-vis other categories.

The Committee further note that Income from Salary and Income from Agriculture shall be excluded from income criteria, to identify Creamy Layer among OBCs, has been held as the right interpretation of 1993 O.M. by the Supreme Court, already in three cases – 3 Judges Bench in Siddharth Saini Vs. State of Haryana and others and 2 Judges Bench in Nair Service Society Vs. State of Kerala, 2007 Case no. WP (civil) 598 of 2000 and 5 Judges Bench in Ashok Kumar Thakur Vs. State of Bihar and Others, 1995(5) SCC 403.

On the advice of the Committee, the DoPT and the Ministry of Social Justice & Empowerment sought the Legal Opinion from the Ministry of Law & Justice, Department of Legal Affairs for explanation given below Category VI. On 06.02.2019, the Department of Legal Affairs opined that "*the Explanation (i) & (ii) under the Category VI (INCOME/WEALTH TEST) are given after the Sub-Category (a) and (b) of the same and there is no specific indication regarding its applicability with regard to particular Sub-Category. In absence of any specific indication regarding applicability of the Explanation (i) & (ii) with regard to particular sub category, the same, in general sense, seems to be applicable in respect to whole Category VI.*

The Committee note that the Sub-Category VI(a) and VI(b), in fact, both prescribe the same methodology for performing Income/Wealth Test. This is amply clear from category VI(b), which reads "*Persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation, but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in VI (a) above.*" Thus category VI(b) also prescribes the same test as given category VI(a). Hence, Income / Wealth test cannot be applied differently for VI(a) and VI(b) and should be applied in a uniform manner for the whole category VI. The explanation (ii) under category VI, which relates to periodic revision of Income limit for identifying creamy layer, is applicable to both clause VI (a) and VI (b) of category VI. Thus the explanation (i) and the explanation (ii) given under category VI, are applicable to category VI as a whole.

Clarification given in Para 10 with regard to clause (x) of Para 4 in 14.10.2004 clarificatory letter (clarifying 1993 OM) is the rightful clarification of 1993 O.M. Para 10 of Clarificatory Letter of DoPT dated 14.10.2004 clarifies the scope of explanation (i) which reads as "income from salaries or agriculture land shall not be clubbed", given under category VI. It clarifies that the explanation (i) applies to the whole of category VI (Both VI (a) and VI (b)). Therefore, while performing Income / Wealth test to determine the creamy layer status of any candidate, income from salaries and agriculture land shall not be taken into account.

The Expert Committee in para 13 of its report, states that: "The evaluation of posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of the persons under this category, it is made clear that so long as the process is not completed and made operative, the income/wealth under Item VI, will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI". Thus, the expert committee states that in the event of absence of equivalence, category II-C cannot be disentitled from availing reservation benefits as such and that, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI. In specific, category II-C falls under category VI (b), as category VI (b) explicitly mentions that the whole category II (including II C) ought to be examined under provisions stated in category VI(b). Hence, in the absence of equivalence there will be no disentitlement from category II-C and as the whole category cannot be disentitled, everyone from category II-C would fall under category VI (b)

*Accordingly, the Committee observe that the employees under Category II-C should not be treated to be disentitled to the benefit of reservation and therefore, their income only from other sources should be taken into account without clubbing the income from salaries and agricultural land while applying the income/wealth test in case the equivalence of their posts vis-à-vis Government posts has not been established. The report of the Expert Committee is clear and specific without any ambiguity and any interpretation of the provisions of the rule of exclusion that stretches beyond the spirit of the Expert Committee Report is not acceptable. The Committee strongly recommend that the Ministry of Social Justice and Empowerment and DoPT act strictly in accordance with the Legal Opinion while applying Income/Wealth Test for determination of creamy layer.*

**Clarificatory letter dated 14.10.2004. issued by DoPT regarding determination of Creamy Layer amongst OBCs**

7. The DoPT O.M. dated 8<sup>th</sup> September, 1993 specifies in detail the criteria to determine the creamy layer amongst the OBCs. The Committee understand that several queries were raised from time to time about the application of the provisions contained in the OM. To address the queries, the DoPT issued clarifications on 14<sup>th</sup> October, 2004 regarding creamy layer amongst OBCs. During the course of examination of the subject, the Committee found that some of the clarifications given in the letter addressed to the Chief Secretaries of all the States/Union Territories, especially the ones relating to clubbing salary or income from agricultural land while calculating the Gross Annual Income for the purpose of determining creamy layer status of OBC candidates have only caused further controversies thereby infusing allegations and charges of misinterpretation and wrongful application of the provisions of the DoPT OM dt. 8<sup>th</sup> September, 1993. The Committee interacted with some of the OBC candidates who had qualified the Civil Services Examination, 2015 but were denied 'OBC status on the basis of the clarifications issued by DoPT on 14<sup>th</sup> October, 2004. The candidates have been compelled to seek judicial intervention in the matter.

The Committee in this regard desired to know the rationale or basis on which these clarifications were issued and whether the Ministry of Social Justice and Empowerment and the Ministry of Law and Justice were consulted before issuing the clarifications. The Committee have been informed that the files relating to the clarifications issued on 14.10.2004 were not traceable from the DoPT Secretariat. The Committee take a serious view of it. More serious is the fact that the Ministry of Social Justice were not consulted in regard to the clarifications issued; and even the Ministry of Law and Justice are not clear whether or not the DoPT had consulted the Ministry in the matter. Consequently, nothing substantial could be established with regard to the issuance of the controversial clarifications by DoPT on 14.10.2004. The Committee have been informed that every effort has been made to locate the relevant files/notes. Yet, no credible progress in tracing the files/notes has been made. The Committee observed and found that it is difficult to understand the basis, and rationale of the clarificatory letter dated 14.10.2004 issued by the DoPT in the absence of the originating file noting. The Committee are

of the considered opinion that the Competent Authority should fix responsibility and take appropriate action against the officer(s) found responsible for the lapse in accordance with the law of land.

8. The Committee do not find any reasoning for applying a different yardstick or interpretation of the provisions listed in Category-VI of the Schedule to the OM dated 8<sup>th</sup> September, 1993 with respect to the sons and daughters of persons employed in such organizations/PSUs/PSBs, etc. where equivalence of posts vis-à-vis posts in Government has not been established while determining their creamy layer status. DoPT has not been in a position to give any reasonable justification and explanation with regard to the apparent contradiction in the contents of Para 9 and Para 10 of the clarificatory letter dated 14.10.2004 issued by the DoPT purportedly on account of the fact that the files relating to formulation of these clarifications were missing. As indicted earlier, the Ministry of Social Justice and Empowerment, which is the nodal Ministry with regard to determination of creamy layer status amongst OBCs and the Ministry of Law and Justice as well have expressed unawareness in regard to the origination of or the basis on which the clarifications were issued by DoPT.

The Committee note that Para 9 of clarificatory letter dated 14.10.2004 issued by the DoPT prescribes that income from salaries can be taken into account for wards of employees in PSUs, PSBs and University, etc. and income from agriculture land is not considered while applying the income/wealth test, till such time, equivalence of posts is established. This stance of selectively taking the income from salary and excluding the income from agriculture land, cannot in anyway, be justified as it is nowhere mentioned in the Expert Committee Report. In fact, the Income/Wealth test should apply in the same way to all the categories as explained in para 10 of the clarificatory letter of DoPT. Therefore, the Committee are of the opinion that while applying, the income/wealth test, the income from agriculture and the income from salary cannot and should not be taken into account for any of the categories including II-C category. Hence, para 9 of 2004 clarificatory letter (clarifying 1993 O.M.) with regard to clause (ix) of Para 4 would be an incorrect or inappropriate interpretation of Income/Wealth test as mentioned in category VI of the 1993 O.M.

The Committee note that Para 10 clarifies the scope of explanation which reads as: "income from salaries or agriculture land shall not be clubbed", given under category VI. It clarifies that the explanation (i) applies to the whole of category VI (Both VI (a) and VI (b)). And hence, while applying the Income / Wealth test to determine the creamy layer status of any candidate, income from salaries and agriculture land shall not be taken into account. The Committee note that this clarification is in consonance with the para 27 of the Expert Committee Report. Based on such rationale, Clarification given in Para 10 with regard to clause (x) of Para 4 in 14.10.2004 clarificatory letter (clarifying 1993 OM) would be the right and legal clarification of 1993 O.M.

The Expert Committee in Para 13 of its report, states that: "The evaluation of posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of the persons under this category, it is made clear that so long as the process is not completed and made operative, the income/wealth under Item VI will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI". Thus, the Expert Committee expressed that even in the absence of equivalence, category II-C cannot be disentitled from availing reservation benefits as such and that, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI. In specifics, category II-C falls under category VI (b), as category VI (b) explicitly mentions that the whole category II (including II-C) ought to be examined under provisions stated in category VI(b). Hence, in the absence of equivalence there will be no disentitlement from category II-C and as the whole category cannot be disentitled, everyone from category II-C would come under the purview of category VI (b).

The Committee further note the orders of the Delhi High Court dated 22 March, 2018, which *inter-alia* states: "*First respondent in its counter affidavit maintains that impugned communication of 14<sup>th</sup> October, 2004 has been brought about to clarify the O.M. of September, 1993. The communication of 14<sup>th</sup> October, 2004 takes into account salary of parents of OBC candidates whereas as per OM of*

*September, 1993, the income from other sources is the basis to determine the creamy layer status of OBCs in case of PSUs, where equivalence has not been established. Undisputedly, equivalence has not been established in case of PSUs viz-a-viz the posts in Government. In such a situation, I find that no rationale or justification is spelt out in the impugned communication of 14<sup>th</sup> October, 2004 or in the counter affidavit filed by first respondent, to make the salary of OBC employees in PSUs as the basis to determine their Creamy Layer Status...In the considered opinion of this court, there is no basis to rely upon impugned clarification of October, 2004. Thus, impugned communication is set at naught and first respondent is directed to verify the Creamy Layer Status of petitioners while solely relying upon the OM of September, 1993." The Delhi High Court vide order dated 22.03.2018 directed that salary is not a criterion as per 1993 OM, hence, reiterated the fact that only the income from other sources should be seen. Regarding compliance of the afore mentioned order of Delhi High Court, DoPT in a written reply and also during the Oral Evidence before the Committee stated that: "DoPT has complied with the directions of Hon'ble High Court of Delhi by passing a speaking order on 22.05.2018 i.e. within prescribed time limit." The Committee are of the view that the Order of Delhi High Court should be implemented in the letter and spirit.*

The Committee note that there are various Court judgments and Orders which indicate that the clarification in Para 9 of the DoPT Clarificatory letter dated 14.10.2004 is incorrect. The Committee note that the DoPT has insisted upon not changing their stand at all before the final judgement to be given by the Supreme Court in the matter.

The Committee note that DoPT has filed affidavit in the Supreme Court based on the impugned Clarificatory Letter dated 14.10.2004 issued by DoPT, even if the linked file and notings of it which guides the rule-regulations under which the services like IAS are allocated, are not traceable in DoPT even after sustained efforts and the Para 9 of DoPT Clarificatory Letter dated 14.10.2004 has been declared naught by Delhi High Court and complied by DoPT. The Committee strongly recommend that the affidavit based on Para 9 of the impugned Clarificatory Letter dated 14.10.2004, filed by DoPT should be withdrawn. DoPT should issue instructions to the Chief Secretaries of all the State Governments and

other related Departments intimating them the position that Para 9 of the Clarificatory letter dated 14.10.2004 has been withdrawn. The process of issuing Non-Creamy Layer Certificates to OBC candidates should be simplified and smoothened.

#### **Creation of Supernumerary Posts**

9. The Committee desired to know during the examination about the course of action that would be required in the event of the Supreme Court favouring the OBC candidates in its judgement. The DoPT, in this regard, have assured the Committee that in such a scenario, supernumerary posts would be created for accommodating the affected candidates. The Committee find that the recruitment for the Central Government posts is being carried out year after year by following the same interpretation of Income/Wealth Test as has been applied by the DoPT in the sub-judice cases relating to determining the creamy layer status of the OBC candidates. In the given circumstances, considering the fact the OBC candidates have a strong case, the Committee wonder as to how many supernumerary posts will be created for accommodating all such candidates who continue to be subjected to the 'same' interpretation of Income/Wealth Test as was done for those candidates who have sought judicial intervention. Against this backdrop, the Committee are of the view that any decision taken by the DoPT with regard to creation of supernumerary posts in future will have its own cascading effect by severely disrupting the service allocation and also the seniority within these services. Therefore, it would be desirable that the scope for a just and reasonable solution, pending judgments in these cases is kept by the DoPT in order to preclude these complications.

#### **Income ceiling for determining creamy layer**

10. The Committee note that as per the income criteria originally stipulated in the DoPT OM dated 8<sup>th</sup> September, 1993 under Income/Wealth Test category, the rule of exclusion had to be applied on the son(s) and daughter(s) of the persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Act for a period of three consecutive years. It was also stipulated in the Schedule to the said OM that the income criteria will be modified taking into account the change in its value every three years. Further, if the situation so demands, the interregnum may be less.

However, the Committee find that the income ceiling for identification of creamy layer was revised for the first time after a lapse of more than ten years, i.e. on 9<sup>th</sup> March, 2004, when the income ceiling was raised from Rs. 1 lakh to Rs. 2.5 lakh per annum. The ceiling limit was subsequently revised to Rs. 4.5 lakh on 14<sup>th</sup> October, 2008 and to Rs. 6 lakh with effect from 16<sup>th</sup> May, 2013. As per the latest revision made vide DoPT OM dated 13<sup>th</sup> September, 2017, the income limit has been enhanced from Rs. 6 lakh to Rs. 8 lakh per annum for determining the creamy layer amongst the OBCs. The revised ceiling has been made effective from 1<sup>st</sup> September, 2017. Thus, the Committee observe that the provisions laid down in the DoPT OM dated 8<sup>th</sup> September, 1993 on the basis of the Expert Committee report for modifying the income ceiling at three yearly intervals or less, as may be needed, is not being followed by the Government and the revisions are being made at larger intervals, which is not in consonance with and, therefore, violative of the norms set by the Government themselves. With a view to ensuring justice for the OBCs, the Committee desire that the revision in the income ceiling for determining the creamy layer category amongst the OBCs should be effected as per the periodicity stipulated.

**11. The Committee note that in spite of four revisions of the income criteria, the 27 per cent vacancies reserved in favour of OBCs are not being filled up which is amply clear from the data received from 78 Ministries/Departments regarding representation of OBCs in the posts and services of the Central Government (Ministries/Departments including their attached/subordinate Offices) as on 01.01.2016 as shown below:**

Groups	Total number of Employees	Other Backward Classes Employees	
		Number	% age
<b>A</b>	<b>84,705</b>	<b>11,016</b>	<b>13.01</b>
<b>B</b>	<b>2,90,941</b>	<b>42,995</b>	<b>14.78</b>
<b>C (Excluding SafaiKarmachari)</b>	<b>28,34,066</b>	<b>6,41,930</b>	<b>22.65</b>
<b>(SafaiKarmachari)</b>	<b>48,951</b>	<b>7,076</b>	<b>14.46</b>
<b>Total</b>	<b>32,58,663</b>	<b>7,03,017</b>	<b>21.57</b>

This leads to the inference and also apprehension that when stringent conditions or restrictions are imposed for determining the creamy layer, the objective of the Government to fill up 27 per cent of the vacancies by OBCs may not be achieved. Also, in the course of the examination of various subjects taken up by the Committee, they have often been told that the shortfall in filling up OBC vacancies is due to non-availability of suitable OBC candidates. Against this backdrop, the Committee feel that there is a limit to which the income of a person can be taken as measure of his social advancement. Therefore, policy decisions should not prescribe unusually rigid income limits because such restrictions have the effect of taking away with one hand what is given with the other. They, therefore, observe that the economic criteria prescribed should be a realistic one.

In view of the foregoing, and taking into account, the trend of rise in GDP, inflation, per capita income, all round economic growth, rise in cost of living, increased costs of health care, transport and education, the Committee recommend that the Ministry of Social Justice and Empowerment ensure a judicious and realistic enhancement of the 'income ceiling' for determining the 'creamy layer' category amongst OBCs to a reasonable level; and also to ensure that the income ceiling prescribed is periodically revised consonance with the stipulations of the DoPT OM dated 8<sup>th</sup> September, 1993.

#### Proposal to set up Expert Committee and Compliance of Equivalence Certificates

12. During the course of examination of the subject, the Committee had suggested that the Ministry of Social Justice and Empowerment and DoPT work in tandem for addressing issues pertaining to establishing equivalence of posts in PSUs/PSBs/Universities, etc. with those in Government. The

Committee had also suggested taking legal opinion from the Ministry of Law and Justice wherever required. The Committee have now been informed that the Hon'ble Minister of Social Justice and Empowerment has decided to set up an Expert Committee to resolve all the matters relating to establishing equivalence of posts and determination of creamy layer amongst OBCs comprising of the representatives of the related Ministries and all the stakeholders. The Committee acknowledged the initiative taken by the Government in this regard. However, on the issue of establishing equivalence in PSU's universities, educational and medical institutions etc. under State Governments, the Committee had enquired during the Oral Evidence held on 13.02.2019, whether Central Government is empowered to constitute the Expert Committee on the State Subject under List II in Seventh Schedule of the Indian Constitution as well as in light of a landmark judgment delivered by the Hon'ble Supreme Court in case of Keshwanand Bharti. The representatives of the Ministry of Social Justice & Empowerment were found to be non-committal on this issue.

*The Committee were informed that Hon'ble Minister for Social Justice & Empowerment held a meeting held on 13.12.2018 with representatives of DoPT, Department of Legal Affairs & Ministry of Social Justice & Empowerment. During the meeting, the Hon'ble Minister mentioned that a representation was received from one successful OBC candidate whose equivalence certificate issued by State body was not being accepted by DoPT. The Hon'ble Minister for Social Justice & Empowerment advised that while considering the cases of the 6 candidates which were referred to the Ministry of Social Justice & Empowerment for comments, DoPT may comply with their O.M. of 08.09.1993 for determination of Creamy Layer and also keep in view of the instances quoted in the representation, of rank holder 621 and rank holder 723 of CSE 2015, wherein DoPT may have accepted equivalence certificates issued by State Bodies"*

*In view of the foregoing, the Committee strongly recommend that as in the case of rank holder 621 and rank holder 723 of CSE 2015, wherein*

***DoPT have accepted equivalence certificates issued by State Bodies, henceforth in the same way all the equivalence certificates issued by the State Bodies and submitted by the candidates as on date should be accepted by DoPT itself.***

**Compliance of Para 29 of Expert Committee Report (Artisan Class)**

**13. The Committee note that the Ministry of Law & Justice, Department of Legal Affairs had referred to para 29 of the Expert Committee report which envisages that persons working as artisans or engaged in the hereditary occupations, callings, etc. like pottery makers, washermen, barbers, etc. are exempted from application of the rule of exclusion. As the said list of the categories on which rule of exclusion are not applicable is not included in the 1993 OM, the stipulations of para 29 of the Expert Committee report do not find a place in the 1993 OM. The Committee feel that it is imperative to sensitise the concerned authorities including those engaged in issuing OBC (Non-creamy layer) certificates to be aware of the contents of the Expert Committee Report to make them understand the categories and classes on which the rule of exclusion will not apply. The Ministry of Social Justice and Empowerment and DoPT should take initiative in this regard. The Committee should also be apprised about the action taken in this regard on urgent basis.**

**NEW DELHI;  
28 February, 2019  
9 Phalgun, 1940 (Saka)**

**GANESH SINGH  
Chairperson,  
Committee on Welfare of  
Other Backward Classes**

**Annexure I**  
**(Refer Para 1.9 of Part-I of the Report)**

Annexure-I

G.I., Dept. of Per. & Trg., O.M. No. 36012/31/90-Est. (SCT), dated 13.8.1990

**SUBJECT:** 27% Reservation for Socially and Educationally Backward Classes in Civil Posts/ Services.

In a multiple undulating society like ours, early achievement of the objective of social justice as enshrined in the Constitution is a must. The Second Backward Classes Commission, called the MANDAL COMMISSION, was established by the then Government with this purpose in view, which submitted its report to the Government of India on 31st December, 1980.

2. Government have carefully considered the report and the recommendations of the Commission in the present context regarding the benefits to be extended to the socially and educationally backward classes as opined by the Commission and are of the clear view that at the outset certain weightage has to be provided to such classes in the services of the Union and their Public Undertakings. Accordingly orders are issued as follows:—

- (i) 27% of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC;
- (ii) The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.
- (iii) Candidates belonging to SEBC recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
- (iv) The SEBC would comprise in the first phase the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Governments' lists. A list of such castes/communities is being issued separately.
- (v) The aforesaid reservation shall take effect from 7.8.1990 However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders.

3. Similar instructions in respect of public sector undertakings and financial institutions including public sector banks will be issued by the Department of Public Enterprises and Ministry of Finance respectively.

**Annexure-II**  
(Refer Para 1.9 of Part-I of the Report)

**Department of Personnel and Training O.M. No.36012/31/90-Estt.(SCT),  
dated the 25<sup>th</sup> September, 1991, to all Ministries/Departments, etc.**

**Subject: Recommendations of the Second Backward Classes Commission (Mandal Report)—Reservation for Socially and Educationally Backward Classes in services under the Government of India.**

The undersigned is directed to invite the attention to O.M. of even number dated the 13th August, 1990, on the above mentioned subject and to say that in order to enable the poorer sections of the SEBCs to receive the benefits of reservation on a preferential basis and to provide reservation for other economically backward sections of the people not covered by any of the existing schemes of reservation, Government have decided to amend the said Memorandum with immediate effect as follows:—

2. (i) Within the 27% of the vacancies in civil posts and services under the Government of India reserved for SEBCs, preference shall be given to candidates belonging to the poorer sections of the SEBCs. In case sufficient number of such candidates are not available, unfilled vacancies shall be filled by the other SEBC candidates.  
(ii) 10% of the vacancies in civil posts and services under the Government of India shall be reserved for other economically backward sections of the people who are not covered by any of the existing schemes of reservations.  
(iii) The criteria for determining the poorer sections of the SEBCs or the other economically backward sections of the people who are not covered by any of the existing schemes of reservations are being issued separately.
3. The O.M. of even number dated the 13th August, 1990, shall be deemed to have been amended to the extent specified above.

Sd/-  
(A.K. HARIT)  
DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA

To,

All Ministries/Departments of Govt. of India.

REPORT  
OF  
THE EXPERT COMMITTEE

FOR SPECIFYING

THE CRITERIA FOR IDENTIFICATION OF  
SOCIALLY ADVANCED PERSONS

AMONG

THE SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES

The 10th March, 1993,

MINISTRY OF WELFARE

Justice Ram Nandan Prasad  
Former Judge,  
Patna High Court,  
CHAIRMAN

Expert Committee on  
Socially & Educationally  
Backward Classes

New Delhi-110001.  
Dated 10th March, 1993

Dear Hon'ble Minister,

I have the privilege of presenting the Report of the Expert Committee constituted under Resolution No. 12011/16/93-BCC(C), dated 22nd February, 1993 of the Ministry of Welfare, Government of India. I and the other Members of the Committee, namely, Dr M.L. Shahare, Shri P.S. Krishnan and Shri R.J. Majithia, assumed charge on 23rd February, 1993 and from day one, we got down to serious work, as all of us were fully conscious that the Report has to be completed and presented by the 10th March, 1993.

2. Needless to say, all of us had to work very hard to complete the Report and in this difficult and daunting task, we received full cooperation from you as well as all the officers and staff of the Ministry of Welfare. We justifiably feel happy that we have completed the work within the targetted time.

3. We hope that our labour will serve the purpose and our Report will enable the Government to commence implementation of the policy of reservation for Socially & Educationally Backward Classes at the earliest, fulfilling the directions of the Supreme Court.

With regards,

Yours sincerely,  
Sd/-  
(Ram Nandan Prasad)

Shri Sitaram Kesari,  
Minister of Welfare,  
Government of India,  
New Delhi-110 001

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Report of the Expert Committee for specifying the criteria for identification of socially advanced persons among the socially and educationally backward classes.

The 9-Member Constitution Bench of the Supreme Court of India delivered its historic judgement in the Reservation case relating to Socially and Educationally Backward Classes (Indra Sawhney and Others vs. the Union of India and Others) on the 16th of November, 1992. The case arose out of several Writ Petitions filed to challenge the Office Memorandum dated 13th August, 1990 and the office Memorandum dated 25th September, 1991 issued by the Government of India for implementing, according to the respective models prescribed in the two office Memoranda, the recommendations for reservation for Socially and Educationally Backward Classes (SEBCs) in public employment, made by the Second Backward Classes Commission appointed under Article 340 of the Constitution, popularly known as the Mandal Commission.

2. The Supreme Court while upholding by majority the basic principle of reservation for the SEBCs, have at the same time, directed that the socially advanced persons of the SEBCs category ought not to be given the benefit of reservation. In order to carry out this directive and specifying and determining as to who from amongst the SEBCs would be liable to be excluded from the benefit of reservation, the Government has appointed the Expert Committee as per Resolution No. 12011/16/93-BCC(C), dated the 22nd February, 1993 of the Ministry of Welfare, Government of India. The Court has also directed that the reservation shall not become operative till the criteria to exclude the socially advanced persons are ascertained and specified.

3. Four Hon'ble Judges who were members of the Special Bench, namely, the then Hon'ble Chief Justice Shri M.H. Kapur, Hon'ble Justice M.N. Venkateshwaran (now Chief Justice), Hon'ble Justices A.M. Ahmadi and Hon'ble Justice B.P. Jeevan Reddy, delivered a common Judgement written out by Hon'ble Justice B.P. Jeevan Reddy and this is known as the majority judgement and we shall refer to it as such in our report. Hon'ble Justice S.R. Pandian and Hon'ble Justice P.B. Sawant have, no doubt, written out separate judgements of their own, but they have in substance supported most of the conclusions of the majority judgement and we will refer to the judgements of these two Hon'ble Judges by their respective names. The dissenting judgements separately written out by Hon'ble Justice T.K. Thirumurti, Hon'ble Justice Kuldip Singh and Hon'ble Justice R.M. Sahai have a common operative order and this is known as the dissenting judgement and we shall refer, if need be, to the same in the above terminology. When we refer to the ratio decidendi of the entire judgement we will be referring to it as the judgement of the Court.

4. It is necessary to bear in mind that the Court has accepted the principle of reservation on the reasoning that the SEBCs on account of their social and educational backwardness are truly in need of reservation. In other words, the dominant consideration for upholding the reservation is the social and educational backwardness and not the income test, although actual life it mostly happens that economic backwardness is a natural consequence of the social and educational backwardness. It logically follows, therefore, that for determining who from amongst the SEBCs shall be denied the benefit of reservation, the basics again would be the social and educational factors and only when the advancement in this regard is such as to put that person at par with the forward classes that he may be placed in the excluded category. In the majority judgement, it has been observed that only when a person's social and educational advancement is such that it totally snaps the connecting link of backwardness between him and other members of his community, he can then be said to be a misfit in his own class and so ought to be taken out from there and placed in the "Creamy Layer" category. The following passage in the judgement of Hon'ble Justice Sawant (paragraph 522 Judgements Today Vol. VI No. 9 30th November, 1992) elaborates the point more succinctly:—

"The correct criterion for judging the forwardness of the forwards among the Backward classes is to measure their capacity not in terms of the capacity of others in their class, but in terms of the capacity of the community to which they belong."

of the capacity of the members of the Forward Classes, as stated earlier. If they cross the Rubicon of backwardness, they should be taken out from the Backward Classes and should be made disentitled to the provisions meant for the said classes".

7. Hence while determining the criteria of exclusion we have kept in mind the guiding principle laid down by the Hon'ble Court as mentioned above. However, if economic betterment flows from social and educational advancement, then this also has to be taken note of.

8. Before specification of the actual determinants is taken up, it will be useful, nay necessary, to indicate and explain what exactly the term 'Creamy Layer' or the Rule of Exclusion in actual application would imply. When a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade/profession of high status, as categorised by us below, he, at that stage is normally no longer in need of reservation for himself. For example, if a person gets appointed as a Class I Officer either on open competition basis or reservation basis, the question of excluding him on the ground that he forms part of the 'Creamy Layer' does not at all arise. But since he himself has come into the socially advanced category he will be in a position to provide the means, the equipment and the opportunities which are necessary for the uplift of his offspring from the level of social and educational backwardness. As such, the question of applying the Rule of Exclusion will arise only in the case of his offspring. In the present social set-up, when the joint family system, particularly among the upper strata of society, has been breaking up, we are regarding the family to constitute husband, wife and children and on that basis applying the exclusion principle. In other words, even if a person, say Mr. "X", has become a Class I Officer, this will not deprive his brother and sister of the benefit of reservation on the basis that Mr. "X" has become a Class I Officer. The question as to whether the brother or sister of Mr. "X" will or will not get the benefit of reservation shall depend upon the status of their parents.

6. Now we proceed to indicate and define the criteria for application of the Rule of Exclusion. The rise in social and educational status may result from different kinds of positions and placements in life and we shall deal with them one by one as noted below. To the categories listed below, the Rule of Exclusion will apply unless exceptions are specifically indicated.

#### I. CONSTITUTIONAL POSTS

7. President, Vice-President, Judges of the Supreme Court and High Courts, Chairman/Members of the Union Public Service Commission and State Public Service Commissions, Chief Election Commissioner Comptroller and Auditor General of India and persons holding Constitutional positions of like nature

The Constitutional posts of Governor, Minister, and Membership of Legislatures, are, in the very nature of things, temporary and often transitory. Further, in most cases such persons would be covered in one or the other categories which have been enumerated in this report. Hence such persons have not been separately categorised.

#### II. SERVICE CATEGORY

##### A. Group A/Class I Officers of the All-India, Central and State Services (Direct Recruits).

8. 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 situation remains unchanged and the rule of exclusion will apply. However, if both of them die then obviously, the offspring are not only left to suffer mental agony and hardships in different ways but they are also denied the benefits and status resulting from the posts of their parents, and due to this disadvantage thrust upon them, the children shall not be denied the benefits of reservation, i.e., the rule of exclusion will not apply to them. It may be noted that if permanent incapacitation occurs which results in putting an officer out of service, then it shall be treated as equivalent to death so far as the application of rule of exclusion to the offspring is concerned. Hereafter, wherever death has been mentioned it shall include permanent incapacitation as stated above.

To the unfortunate situation of death or permanent incapacitation of the only spouse who is in this category of service, or of both spouses who are in this category of service, an exception has to be recorded. If before the unfortunate event of death of either of or both such spouses occurs, either of the spouses has had the benefit of employment in any international organisation like the UN, IMF, World Bank, etc., for a period of not less than five years then exclusion from the benefit of reservation will continue to apply to the offspring.

9. It sometimes may happen that 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. The reason for saying so is that originally having been a member of SEBC, she carries with her the attributes of backwardness even after she is married to a Class I Officer and though she may economically be in a better position, the initial attributes of social backwardness continue to linger on and will not get shaken off during the short period (in view of the age limit) which will be available to her for getting into any service employment. Therefore, we consider that such a person, more so because she is a lady (which in our society may be generally regarded as a weaker class) should not be denied the benefit of reservation. Therefore, to such a lady rule of exclusion will not apply.

#### B. Group B/Class II—Central Services and State Services (Direct Recruitment)

10. If both spouses are Class II Officers then rule of exclusion will apply to their offspring. If only one of the spouses is a Class II Officer it will not apply, but if a male officer from Class II category gets into Class I category at the age of forty or earlier, then the rule of exclusion will apply to his offspring. Where both spouses are Class II Officers and one of them dies, it is better to let the children have the benefit of reservation which means rule of exclusion will not apply; however, if either of the spouses has had the benefit of employment in any international organisation, as indicated above, for a period of not less than five years, then even in the event of death the application of the rule of exclusion will not be taken away. But if by great misfortune both the spouses die, then the rule of exclusion will not apply to the offspring even if one of the spouses has had the benefit of employment in an international organisation.

11. Where the husband is a Class I Officer (Direct Recruit or pre-forty promoted) and the wife is a Class II Officer and the husband dies, the rule of exclusion will not apply. Also when the wife is a Class I Officer (i.e., Direct Recruit or pre-forty promoted) and the husband is a 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 on the principle that one of the parents, namely, the mother continues to be a Class I Officer.

#### C. Employment in Public Sector Undertakings etc.

12. The service category is not confined to employment under the Government only, whether at the Union or at the State level. The criteria enumerated above will apply mutatis mutandis to officers holding equivalent or comparable posts in public sector undertakings, banks, insurance organisations, universities, etc. and also to equivalent to comparable posts and positions under private employment.

13. The evaluation of the posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of persons under this category, it is made clear that so long as the evaluation process is not completed and made operative, the income/wealth test under Item VI will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation, and if any exclusion is to be made it shall be on the basis of the criterion under Item VI.

#### III. ARMED FORCES INCLUDING PARA MILITARY FORCES (this will not include persons holding civil posts)

14. The exclusion rule will apply at the level of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Para Military Forces. If the wife of an Armed Forces 665 Welfare/93—7

Officer is herself in the Armed Forces (i.e., the category under consideration) the rule of exclusion will apply only when she herself has reached the rank of Colonel; the service ranks below Colonel of husband and wife shall not be clubbed together. Even if the wife of an officer in the Armed Forces is in civil employment, this will not be taken into account for applying the rule of exclusion, unless she falls in the service category under Item No. II in which case the criteria and conditions enumerated therein will apply to her independently. In making these recommendations, we have borne in mind the peculiar nature of the service and hardships faced by the members of the Armed Forces and the Para Military Forces. It has also to be remembered that there is no reservation in recruitment to the Armed Forces, which means that a person at the stage of recruitment in these services is denied the benefit of reservation even though he may otherwise be entitled to it.

#### IV. PROFESSIONAL CLASS AND THOSE ENGAGED IN TRADE, BUSINESS AND INDUSTRY

15. This will include persons not in service employment either Government or private, but those who are engaged in professions as a doctor, lawyer, chartered accountant, income-tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artiste, and other film professional, author, playwright, sports person, sports professional, media professional, or any other vocations of like status. All these persons for the purpose of determining whether they will fall in the disentitlement category or not will be governed by the income/wealth criterion as noted in Item No. VI. Likewise, persons engaged in trade, business and industry will be governed by the income/wealth criterion.

16. In a situation where the husband is in some profession and the wife is in a Class II or lower grade employment, the income/wealth test will apply only on the basis of the husband's income; in other words, the wife's employment will not be taken into account. If the wife is in any profession and the husband is in employment in a Class II or a lower rank post, then the income/wealth criterion will apply only on the basis of the wife's income and the husband's income will not be clubbed with it. The rationale is to avoid discouragement of women entering service or professions in a gender-discriminating society such as ours.

#### V. PROPERTY OWNERS

##### A. Agricultural Land Holdings

17. It may not only be difficult but hazardous to prescribe any criteria on the basis of income from agricultural land holdings and this is borne out by the following observations in paragraph 809 of the majority judgement (Judgements Today) :—

"Further, income from agriculture may be difficult to assess and, therefore, in the case of agriculturists, the line may have to be drawn with reference to the extent of holding. While the income of a person can be taken as a measure of his social advancement, the limit to be prescribed should not be such as to result in taking away with one hand what is given with the other."

So we proceed to indicate the criteria on the basis of the extent of land holding.

18. If a person belongs to a family (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, then the disentitlement will occur. It generally happens that a person holds different types of irrigated land. In such a situation, the different types of lands should, on the basis of the conversion formula existing, be brought into a single type of irrigated land as a common denominator and on the basis of such denominator, the above cut-off point of 65% will have to be determined.

19. The rule of exclusion will not disentitle persons belonging to families owning only unirrigated land irrespective of the area of such land. This is on account of the constraints imposed on and implicit in unirrigated cultivation.

20. In the case of members of a family owning both irrigated and unirrigated land, the exclusion rule will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominator) is 40% or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the unirrigated portion). If this pre-condition of not less than 40% exists, then only the area of unirrigated land will be taken into account. This will be done by converting the unirrigated land on the basis of the conversion formula existing, into the irrigated type. The irrigated area so computed from unirrigated 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 and disentitlement will occur.

21. On the basis of data supplied to us, we find that there is no Ceiling Law in the States of Nagaland, Mizoram, Meghalaya, Arunachal Pradesh and Goa and in the Union Territories of Andaman & Nicobar Islands, Lakshadweep, Daman & Diu. Apparently this is on account of the peculiar situation prevailing in these areas including topography, climatic conditions, etc. Under the circumstances the exclusion rule on the basis of land holding will not be applicable here. However, if at a future date Ceiling Law is enacted for any of such States or Union Territories, it would then have to be considered and determined if the rule of exclusion on the basis of land holding criterion will be made applicable or not and if so, in what manner.

#### B. Plantations

22. The plantations like coffee, tea, rubber, etc. which are not regarded as agricultural holdings will come under this category. Since they are not regarded as agricultural holdings, they are not covered by ceiling laws. Therefore, the criterion at 'A' above cannot apply to them and there is no alternative but to apply the criterion of income/wealth under Item No. VI.

23. From the data supplied to us, it appears that mango, citrus, apple plantations, etc., are regarded as agricultural holdings and they will be covered by the criterion at 'A' above.

#### C. Vacant land and/or buildings in urban areas or urban agglomeration

24. To identify those who come under this category the criterion of income/wealth under Item No. VI will apply. When we refer to a building it is made clear that the building may be used for residential, industrial or commercial purposes and the like, or two or more such purposes.

#### VI. INCOME/WEALTH TEST

25. This criterion is on the basis of income or wealth. We are conscious of the fact that in the Majority judgement and the judgements of Pandian and Sawant, JJ it has been clearly emphasised that when placing a person in the excluded category, it should be unmistakably evident that social backwardness has come to an end. Their Lordships have emphasized that unless there is social advancement to such a degree as to bring a member of the SEBC more or less at par with the members of the forward classes, he should not be denied the benefit of reservation.

26. Since the people of this country are engaged in innumerable types of vocations and callings, it is simply not possible to assess the degree of social backwardness or advancement by specifying each one of such vocations for callings and under these circumstances, we have to take recourse to the only dis-

terrible criterion available, namely the criterion of income or wealth. As such, this category may be said to be the residuary category. However, while prescribing the limit for this category, it has been kept in view that improvement in economic condition is so marked as to necessarily imply social advancement. Thus, here the rise in social status is presumption based indicating that it has followed necessarily from the economic betterment. This aspect of treating social advancement on the basis of presumption has been kept in mind in prescribing the limit of gross income. In this connection, the following passage occurring in paragraph 809 of the majority judgment may be usefully quoted:

"The basis of exclusion should not merely be economic, unless of course the economic advancement is so high that it necessarily means social advancement."

(Vide Judgement Today Vol. VI, No. 9, Nov. 30, 1992)

Hence, 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 will be excluded from the benefit of reservation. Only when such level of income or wealth has a consistency for a reasonable period will it be justifiable to regard a person as socially advanced on the basis of income. We consider a period of three consecutive years to be a reasonable period for the purpose of the application of the criteria under consideration.

27. In addition to the above, we have to say that the income/wealth test governs categories IV, VB and VC as stated earlier. For the remaining categories, namely, I, II, III and VA, specific criteria have been laid down; however, if in these categories, any person, who is not disentitled to the benefit of reservation, has income from other sources or wealth, which will bring him within the criterion under Item No. VI, then he shall be disentitled to reservation, in case his income—without clubbing his income from salaries or agricultural land—or his wealth is in excess of cut-off point prescribed under the income/wealth criteria.

28. Since the rupee value is bound to undergo change the income criterion in terms of the rupee as stated above will accordingly stand modified with change in the value. The modification exercise may, normally speaking, be undertaken every three years but if the situation so demands the interregnum may be less.

29. Persons working as artisans or engaged in the hereditary occupations, callings, etc., like potters, washermen, barbers, etc., are exempted from application of the rule of exclusion.

30. The Supreme Court Judgement indicates that classifying the socially and educationally backward classes into two or more categories (backward, more backward, most backward and if necessary, further sub-categorisation) is not only desirable but perhaps actually necessary. As and when such categorisation is done we feel that for those fall in the two lowest strata at the bottom, i.e., the strata having the maximum backwardness, the application of the rule of exclusion may be kept in abeyance on the reasoning that the process of "creamy layer" formation will take more time in their case. While doing so the Government may examine its legal permissibility in terms of the Supreme Court Judgement.

31. We are aware of the strain imposed on candidates who seek certificates of caste, etc. The strain for them and the existing administrative machinery will be all the more where certification is required not only of caste but that the candidate is or is not affected by any of the criteria of exclusion. In order that SCBC candidates are not put to any harassment in this regard, we recommend that Government may make smooth and satisfactory arrangements for the issue of such certificates without delay and without any difficulty. Government have created a single window system for entrepreneurs applying for certificates and facilities for setting up new industries. Similarly, an appropriate single window system needs to be created at State/District level and necessary guidelines to be issued to see that correct certificates are issued promptly, and without harassment to the applicants.

IV  
VB  
VC  
I  
II  
III  
VA

Income/  
wealth  
test

32. We are also aware of the fact that in some cases, false certificates of caste are issued to candidates who do not belong to the reserved categories. In order to prevent this and to ensure that certificates of caste as well as exclusion/non-exclusion criteria are factually correct, innovative arrangements such as transparency through steps like publication in the village/mohalla/panchayat/raj offices, etc., may be considered.

#### CONCLUSION

33. In specifying the determinants and prescribing the different formulations therein, we have adopted a pragmatic approach and we have considered it prudent as well as desirable to err on the right side. In other words, it appeared while defining the criteria that a more strict formulation would have the possible effect of excluding more than it ought to, we have chosen not to adopt such a course. And for this approach of ours we find support from observations in different judgements of the Special Bench as well as from other sources.

34. Reservation has been adopted as a remedy for curing the historical discrimination and its continuing ill-effects in public employment. That being the object in view, the denial of reservation to any member of a socially and educationally backward class is, and has to be, treated as an exception. In identifying such an exception, i.e., applying the rule of exclusion, it has to be ensured that the ill-effects have been fully and finally eliminated and no grey zone is discernible. The nature of such an exercise itself makes the rule of caution inherent.

35. Hon'ble Mr. Justice Pandian does not subscribe to the "creamy layer" theory. Dealing with the oft-repeated criticism that the reserved posts are lapped up by the socially advanced ("creamy layer") among the socially and educationally backward classes, Pandian J. has quoted with approval the observation of Chianappa Reddy J. in the case of Vasant Kumar. The relevant passage is given below :—

".....That a few of the seats and posts reserved for backward classes are snatched away by the more fortunate among them is not to say that reservation is not necessary. This is bound to happen in a competitive society such as ours. Are not the unreserved seats and posts snatched away, in the same way, by the top creamy layers amongst them on the same principle of merit on which the non-reserved seats are taken away by the top layers of society. How can it be bad if reserved seats and posts are snatched away by the creamy layer of backward classes, if such snatching away unreserved posts by the top creamy layer of society itself is not bad?"

Pandian J. says "The above observation, in my view is an apt reply to such a criticism with which I am in full agreement."

(Paragraph 229 and 230 Judgements Today)

36. Another passage from the judgement of Hon'ble Mr. Justice Pandian justifies the rule of caution and of erring on the right side adopted by us. The passage is as below :

"It is after 42 years since the advent of our Constitution, the Government is taking the first step to implement this scheme of reservation for OBCs under Article 16(4). In fact, some of the States have not even introduced policy of reservation in the matters of public employment in favour of OBCs."

(Paragraph 225 Judgements Today)

37. In the above context would it not be proper, nay desirable to let there be acceleration and let some distance be covered before we apply the brakes ?

38. What the Supreme Court has directed is identification of the "creamy layer". This obviously means that we have not to take note of sprinklings of cream or the mere appearance of cream at, the surface. Only when the "creamy layer" is substantial and stable, formed after crossing the Rubicon of social backwardness, then and then alone can it be made the basis for disentitlement. In such a situation, can it be said that adopting a rule of caution and erring on the right side is not justified? Apprehension has been expressed, and rightly, that applying the rule of exclusion on the ground of social advancement may be counter-productive, inasmuch as by excluding those who have become capable of facing the fierce competition for appointment in the services what will remain are those of the socially backward who are simply not equipped and ready to face the competition and this will have the effect of many of the reserved seats being left vacant. The well-known writer and columnist, Mr. S. Sahay is one among many who have expressed such an apprehension. In an article entitled "A Moment of Truth" published in the Hindustan Times, Patna Edition dated 26-II-1992, this is what he has to say

"...Approval in principle of the concept of backward and more backward is rational and so is the exclusion of the creamy layer. However, the consequences in the immediate future of the exclusion of the creamy layer, even though desirable and necessary, are not going to be happy. .... The poor remain both poor and uneducated. Count the cost of education today and realise for yourself whether the boy or girl from the chaupal has ever the chance of getting a higher appointment under the Central Government. Even now the reserved jobs for the Scheduled Castes and Tribes are not fully filled. Would the lot of the OBCs be any better, especially after excluding the creamy layer?"

39. We can cite many more such quotations and also give more reasons in support of the approach which we have adopted, but in our opinion what we have said above is sufficient to highlight the point under consideration.

40. We are happy to say that all the Members of this Expert Committee have worked day and night in a spirit of cooperation and understanding with each other. There has been free and frank exchange of views on almost every point dealt with in this Report and thereafter the Committee has arrived at a consensus on the basis of which the criteria have been laid down.

41. For its deliberations, the Committee had to gather and examine a large volume of literature and documents including the judgement under consideration (Indra Sawhney & Others), various other related judgements on the subjects, report of the Mandal Commission, report of the Chinappa Reddy Commission, reports of the various State Commissions on OBCs/SEBCs. We have had also to look into a large amount of data furnished by the Ministry of Welfare itself or by other Ministries/Departments through the Ministry of Welfare which had relevance to or threw light on the points under consideration.

42. It is not out of place to mention that formulation of the criteria for ascertainment of the socially advanced among the SEBC (termed Creamy Layer by the Supreme Court) in the manner it required to be done for practical application, is unique in the sense that to our knowledge, such an exercise has been taken up in this country for the first time. Though we find that in the Report of the Third Backward Class Commission for Karnataka, 1990, there is a mention at page 174 Vol. I, of categories among socially and educationally backward classes who should not be entitled to reservation, but we have undertaken an elaborate exercise to make the formulations as far-reaching and comprehensive as possible. Of course, it may be desirable, perhaps even necessary at a future date, to give a second look to the criteria evolved by us and make suitable changes on the basis of experience of implementation and other relevant factors.

43. We are happy to place on record our gratitude for the unstinted cooperation extended to the Committee in the discharge of its work by the Hon'ble Minister of Welfare, Government of India, Shri Sitaram Kesari and by the Secretary and all other officers and staff of the Ministry of Welfare, and it is because of this, we have been able to complete this difficult task within the allotted short time.

Sd/-  
(RAM NANDAN PRASAD)  
Chairman  
10-3-1993

Sd/-  
(M.L. SHARMA)  
Member  
10-3-1993

Sd/-  
(P.S. KRISHNAN)  
Member  
10-3-1993

Sd/-  
(R.J. MAJITHIA)  
Member  
10-3-1993

MGIPRRND—665 Welfare/93—Sec. IV—16—3—93—1000

**Annexure-IV**  
**(Refer Para 1.12 of Part-I of the Report)**

**No.36012/22/93-Estt. (SCT)**  
**Government of India**  
**Ministry of Personnel, Public Grievances & Pensions**  
**(Department of Personnel & Training)**

**New Delhi, the 8<sup>th</sup> September, 1993**  
**OFFICE MEMORANDUM**

**Subject:-** Reservation for Other Backward Classes in Civil Posts and Services under the Government of India – Regarding.

The undersigned is directed to refer to this Department's O.M. No. 36012/31/90-Estt. (SCT), dated the 13<sup>th</sup> August, 1990 and 25<sup>th</sup> September, 1991 regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgment in the India Sawhney and others Vs. Union of India and others case [Writ Petition (Civil) No. 930 of 1990] the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India.

2. Consequent to the consideration of the Expert Committee's recommendations this Department's Office Memorandum No. 36012/31/90-Estt. (SCT), dated 13.08.90 referred to in Para (1) above is hereby modified to provide as follows:

- (a) 27% (twenty seven percent) of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.
- (b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
- (c) (i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this office memorandum.  
(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations, callings. A list of such occupations, callings will be issued separately by the Ministry of Welfare.
- (d) The OBCs for the purpose of the aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the report of the Mandal Commission and the State Government's Lists. A list of such castes and communities is being issued separately by the Ministry of Welfare.
- (e) The aforesaid reservation shall take immediate effect. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of this order.

3. Similar instructions in respect of public sector undertaking and financial institutions including public sector banks will be issued by the Department of Public Enterprises and by the Ministry of Finance respectively effective from the date of this Office Memorandum.

Sd/-  
(Smt. Sarita Prasad)  
Joint Secretary to the Government of India.

To  
All Ministries/Department of Government of India.

Copy:

1. Department of Public Enterprises, New Delhi. : It is requested that the said instructions may be issued in respect of PSUs, Public Sector Banks & Insurance Corporation.
2. Ministry of Finance (Banking & Insurance Divisions), New Delhi. :

**SCHEDULE**

<b>Description of Category</b>		<b>To whom rule of exclusion will apply</b>
1	2	3
<b>I. CONSTITUTIONAL POSTS</b>		Son(s) and daughter(s) of (a) President of India; (b) Vice President of India; (c) Judges of the Supreme court and of the High Courts; (d) Chairman & Members of UPSC and of the State Public Service Commission; Chief Election Commissioner; Comptroller & Auditor General of India; (e) Persons holding Constitutional positions of like nature.
<b>II. SERVICE CATEGORY</b>		Son(s) and daughter(s) of
A. Group A/Class I officers of the All India Central and State Services (Direct Recruits).		(a) parents, both of whom are Class I officers; (b) Parents, either of whom is a Class-I officers; (c) Parents, both of whom are a Class-I officers, but one of them dies or suffers permanent incapacitation. (d) Parents, either of whom is a Class-I officers and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International Organisation like UN, IMF, world Bank, etc. for a period of not less than 5 years. (e) Parent, both of whom are class I officers die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any Inter-national Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years.  Provided that the rule of exclusion shall not apply in the following cases: (a) Sons and daughters of parents either of whom or both of whom are Class-I officers and such parent(s) dies/die or suffer permanent incapacitation. (b) A lady belonging to OBC category has got married to a Class-I officer, and may herself like to apply for a job.

(Contd...2)

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1	2	3
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*B. Group B/Class II officers of the Central & State Services (Direct Recruitment)*

Son(s) and daughter(s) of

- (a) Parents both of whom are Class II officers.
- (b) Parents of whom only the husband is a Class II officer and he gets into Class I at the age of 40 or earlier.
- (c) parents, both of whom are Class II officers and one of them dies or suffers permanent incapacitation and either one of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years before such death or permanent incapacitation:
- (d) parents of whom the husband is a Class I officer (Direct Recruit or pre-forty promoted) and the wife is a Class II officer and the wife dies; or suffers permanent incapacitation; and
- (e) parents, of whom the wife is a Class I officer (Direct Recruit or pre-forty promoted) and the husband is a Class II officer and the husband dies or suffers permanent incapacitation

Provided that the rule of exclusion shall not apply in the following cases:

Sons and daughters of

- (a) Parents both of whom are Class II officers and one of them dies or suffers permanent incapacitation.
- (b) Parents, both of whom are Class II officers and both of them die or suffer permanent incapacitation, even through either of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation:

*C. Employees in Public Sector Undertakings etc.*

The criteria enumerated in A&B above in this Category will apply mutatis mutandi to officers holding equivalent or comparable posts in PSUs, Banks, Insurance Organisations, Universities, etc. and also to equivalent or comparable posts and positions under private employment. Pending the evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in Category VI below will apply to the officers in these Institutions.

**(Contd..3)**

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1	2	3
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**III. ARMED FORCES INCLUDING  
PARAMILITARY FORCES**  
(Persons holding civil posts are not included)

Son(s) and daughter(s) of parents either or both of whom is or are in the rank of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Para Military Forces;

Provided that:-

- (i) if the wife of an Armed Forces Officer is herself in the Armed Forces (i.e., the category under consideration) the rule of exclusion will apply only when she herself has reached the rank of Colonel;
- (ii) the service ranks below Colonel of husband and wife shall not be clubbed together;
- (iii) If the wife of an officer in the Armed Forces is in civil employment, this will not be taken into account for applying the rule of exclusion unless she falls in the service category under item No. II in which case the criteria and conditions enumerated therein will apply to her independently.

**IV PROFESSIONAL CLASS AND THOSE  
ENGAGED IN TRADE AND INDUSTRY**

(I) Persons engaged in profession as a doctor, lawyer, chartered accountant, Income-Tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artists and other film professional, author, playwright, sports person, sports professional, media professional or any other vocations of like status.

Criteria specified against category VI will apply:-

(II) Persons engaged in trade, business and industry.

Criteria specified against Category VI will apply:

Explanation :

- (i) Where the husband is in some profession and the wife is in a Class II or lower grade employment, the income/wealth test will apply on the basis of the husband's income.
- (ii) If the wife is in any profession and the husband is in employment in a Class II or lower rank post, then the income/ wealth criterion will apply only on the basis of the wife's income and the husband's of the wife's income and the husband's income will not be clubbed with it.

**(Contd..4)**

**V. PROPERTY OWNERS**

*A. Agricultural holdings*

Son(s) and daughter(s) of persons belonging to a family (father, mother and minor children) which owns

(a) only irrigated land which is equal to or more than 85% of the statutory area, or  
(b) both irrigated and un irrigated land, as follows:

(i) The rule of exclusion will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominator) 40% or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the un irrigated portion). If this pre-condition of not less than 40% exists, then only the area of un irrigated land will be taken into account. This will be done by converting the un irrigated land on the basis of the conversion formula existing, into the irrigated type. 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 80% or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and disentitlement will occur.

(ii) The rule of exclusion will not apply if the land holding of a family is exclusively un irrigated.

*B. Plantations*

(i) Coffee, tea, rubber, etc.

Criteria of income/wealth specified in Category VI below will apply.

(ii) Mango, citrus, apply plantations etc.

Deemed as agricultural holding and hence criteria at A above under this Category will apply.

*C. Vacant land and/or buildings in urban areas or urban agglomerations*

Criteria specified in Category VI below will apply.

*Explanation:* Building may be used for residential, industrial or commercial purpose and the like two or more such purposes.

**VI. INCOME/WEALTH TEST**

Son(s) and daughter(s) of

(a) Persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the Wealth Tax Act for a period of three consecutive years.

**(Contd...5)**

(b) Persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

Explanation:

- (i) Income from salaries or agricultural land shall not be clubbed;
- (ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.

*Explanation:* Wherever the expression "permanent incapacitation" occurs in this schedule. It shall mean incapacitation which results in putting an officer out of service.

**Annexure-V**  
**(Refer Para 1.14 of Part-I of the Report)**

F. No. 43011/4/2018-Estt.(Res.)  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training  
Establishment (Reservation-I) Section  
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North Block, New Delhi  
Dated April 4, 2018

OFFICE MEMORANDUM

**Subject** Reiteration of instructions relating to application of own merit in Direct Recruitment for appointment of Other Backward Classes (OBCs)- regarding

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The undersigned is directed to say that the Hon'ble Supreme Court in its judgment in the 'case of R. K. Sabharwal vs. State of Punjab, had, inter-alia, observed that "the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation."

2. As per instructions issued vide this Department's OM No. 36012/2/96-Estt.(Res) dated 02.07.1997, in direct recruitments to Central Government jobs and services, the reserve category candidates who are selected on the same standard as applied to general candidates will not be adjusted against reserved vacancies. As per instructions issued vide DOP&T OM No. 36011/1/98-Estt.(Res) dated 01.07.1998, only when a relaxed standard is applied in selecting a reserved candidate, for example in the age limit, experience, qualification, permitted number of chances in written examination, etc., such candidates will be counted against reserved vacancies.

3. It has been brought to the notice of this Department by the Hon'ble Parliamentary Committee on Welfare of OBCs that these instructions are not being followed in some cases in direct recruitments to Central Government jobs and services. It is, therefore, reiterated that while making Direct Recruitments, guidelines issued vide this Department's OM No. 36012/2/96-Estt.(Res) dated 02.07.1997 and OM No. 36011/1/98-Estt.(Res) dated 01.07.1998 may be kept in view by all concerned.

4. All Ministries/ Departments are requested to bring the contents of this O.M. to the notice of all concerned for information and compliance.

*R. Saraswat*  
(Raju Saraswat)  
Under Secretary to the Government of India  
Tel.: 23092110

To:

1. The Secretaries of all Ministries/Departments of the Government of India.
2. Department of Financial Services, New Delhi

...2/

3. Department of Public Enterprises, New Delhi
4. Railway Board, Ministry of Railways, Rail Bhavan, New Delhi
5. Department of Social Justice and Empowerment, New Delhi
6. Supreme Court of India/ Election Commission of India/ Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Secretariat/ Vice President's Secretariat/ Prime Minister's Office/ Niti Ayog
7. Union Public Service Commission / Staff Selection Commission
8. National Commission for Scheduled Castes, Lok Nayak Bhawan, New Delhi
9. National Commission for Scheduled Tribes, Lok Nayak Bhawan, New Delhi
10. National Commission for Backward Classes, Trikoot-1, Bhikaji Cama Place, R. K. Puram, New Delhi
11. Office of the Comptroller and Auditor General of India
12. Information and Facilitation Center, DoPT, North Block, New Delhi.
13. Director, ISTM, Old JNU Campus, Olof Palme Marg, New Delhi 110067
14. NIC, DoPT – to upload the same on DoPT website.
15. Hindi Section for providing a Hindi translation

**Annexure VI**  
**(Refer Para 2.20 of Part-I of the Report)**

DPE-GM-/0020/2014-GM-FTS-1740

Government of India

Ministry of Heavy Industries & Public Enterprises

Department of Public Enterprises

Public Enterprises Bhavan,  
Block No. 14, CGO Complex,  
Lodhi Road, New Delhi-110 003.

Dated: 2 October, 2017

**OFFICE MEMORANDUM**

**Subject: Establishing equivalence of posts in Central Public Sector Enterprises (CPSEs) with Posts in Government for establishing Creamy Layer criteria – regarding.**

The undersigned is directed to refer to DoPT OM No. 41034/5/2014-Estt. (Res.) Vol. IV-Part dated 6<sup>th</sup> October, 2017 (copy enclosed), vide which the decision of the Government has been conveyed on the general principles for equivalence of posts in CPSEs with posts in Government for determination of creamy layer criteria in terms of DoPT O.M. No. 36012/22/93-Estt. (SCT) dated 08-09-1993 on the subject of reservation for Other Backward Classes (OBC) in civil posts and services under the Government of India.

2. As the pay pattern, perks and allowances of posts in Central Public Sector Enterprises (CPSEs) are completely different from the posts in Government, determination of exact equivalence of CPSEs posts with Group A, B, C & D level posts in Government is not feasible. However, in view of the Government decision referred to in DoPT OM dated 06-10-2017, for determination of creamy layer criteria in CPSEs, the general principle would be that all the Executive level posts in CPSEs i.e. Board level Executives and below Board level Executives which are managerial level posts, will be considered as "creamy layer" subject to the proviso that those Executives whose annual income as per criteria given in DoPT OM 08-09-1993 is less than Rs. 8 lakhs (as amended vide DoPT OM No. 36033/1/2013-Estt.(Res) dated 13-09-2017), will not fall under creamy layer criteria.

Contd. on page-2

3. All administrative Ministries / Departments concerned with CPSEs are requested to bring the contents of this OM to the notice of CPSEs under their administrative control for compliance and issuing necessary orders in accordance with the principles approved by the Government for determination of Creamy Layer criteria in respect of posts in the CPSEs.

4. This issues with the approval of Hon'ble Minister (HI&PE).

Encl. As above.



25/10/2017  
(J. N. Prasad)  
Director

**To:**

All Administrative Ministries / Departments concerned with CPSEs.

**Copy to:** (i) Chief Executive of all CPSEs.

(ii) Secretary, M/o Social Justice & Empowerment.

(iii) Secretary, DoPT.

(iv) NIC, Cell DPE, for placing this OM on DPE web-site.

**Annexure-VII**  
**(Refer Para 2.20 of Part-I of the Report)**

**No.19/4/2017-Welfare**  
Government of India  
Ministry of Finance  
Department of Financial Services

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2<sup>nd</sup> Floor, Jeevan Deep Building,  
Parliament Street, New Delhi, the 06<sup>th</sup> December, 2017

**OFFICE MEMORANDUM**

**Subject:** (i) Establishing equivalence of posts in PSUs, Banks, Insurance Institutions with posts in Government for establishing Creamy Layer Criteria.  
(ii) Revision of income criteria to exclude socially advanced persons/sections (Creamy Layer) from the purview of reservation for Other Backward Classes (OBCs)-reg.

The undersigned is directed to refer to this Department's letter No.14/1/93-SCT(B) dated 28.9.1993 forwarding therewith DoP&T's O.M. dated 08.9.1993 regarding reservation for Other Backward Classes in civil posts and services under the Government of India. Category II C of Schedule to DoP&T's O.M. No.36012/22/93-Estt.(SCT) dated 08.9.1993 envisaged that equivalence will be established between the posts in PSUs, Banks, Insurance organizations etc. vis-à-vis posts in Government.

2. Government had recently examined the proposal for establishing equivalence of posts in Central Public Sector Undertakings (PSUs), Banks, Insurance Institutions with Posts in Government for establishing Creamy Layer principles amongst Other Backward Classes. The Government has approved principles for determining the equivalence in respect of Public Sector Banks (PSBs), Public Financial Institutions (PFIs), Public Sector Insurance (PSICs), as conveyed vide DoP&T's O.M. No.41034/5/2014-Estt.(Res.) Vol.IV-Part dated 06.10.2017 (copy enclosed), which inter-alia, provide as follows:

*Issued  
by mail  
& by post  
07/12/2017*

- (a) Junior Management Scale-I of PSBs/PFIs/PSICs will be treated as equivalent to Group A in the Government of India and
- (b) Clerks and Peons in PSBs/PFIs/PSICs will be treated as equivalent to Group C in the Government of India.

3. Further, the income limit for determination of creamy layer amongst the OBCs have been raised from Rs.6 lakhs to Rs.8 lakhs with effect from 01st September, 2017 vide DoP&T's O.M. No.36033/1/2013-Estt.(Res.) dated 13.9.2017 (copy enclosed).

4. The above instructions may please be brought to the notice of all concerned under your organisation for strict compliance under intimation to this Department.

5. This issues with the approval of Secretary(FS).



(Arun Kumar)

Under Secretary to the Government of India  
Tel.:23748725

Encls. : As above.

To

1. The Managing Director & Chief Executive Officer of all Public Sector Banks.
2. The Chairman, Public Financial Institutions/Public Sector Insurance Companies.
3. The Chairman, State Bank of India, H.O. Mumbai.
4. The Chief General Manager (HRDD), RBI, Mumbai.
5. The Chairman, Pension Fund Regulatory and Development Authority (PFRDA), H.O. Hyderabad.
6. The Chairman, Insurance Regulatory Development Authority (IRDA), H.O. Hyderabad.
7. The Chairman, IBA, Mumbai.

Copy to :

1. I.R. Section.
2. All Government Nominee Directors of PSBs/PFIs/PSICs.
3. R.R.B. Section for issuing similar instructions to RRBs.
4. Department of Personnel & Training (Shri G. Srinivasan, Dy. Secretary) w.r.t. O.M. No.36033/1/2013-Estt.(Res.) dated 13.9.2017 and O.M. No.41034/5/2014-Estt.(Res.) Vol.IV (Part) dated 06.10.2017.
5. The Joint Secretary (Shri B.L. Meena), Ministry of Social Justice & Empowerment, New Delhi.
6. C.L.O./L.O. of SC/ST/OBC of DFS.
7. Notice Board of DFS.
8. NIC Cell of DFS with a request to upload it at the website of this Department.
9. Guard File.



(Arun Kumar)

Under Secretary to the Government of India

**Annexure-VIII**  
**(Refer Para 2.21 of Part-I of the Report)**

07/06/2018 15:27 FAX

001

SCT Cell, Room No. 221,  
Eastern Court, Janpath  
New Delhi – 110001



**भारत संचार निगम लिमिटेड**  
(भारत सरकार का उपकरण)  
**BHARAT SANCHAR NIGAM LIMITED**  
(A Govt. of India Enterprise)

No. 116-3/2018-SCT / 718

Date 07/06/2018

**OFFICE CIRCULAR**

**Sub: Establishing equivalence of posts in central Public Sector Enterprises(CPSEs) with posts in Govt. for establishment Creamy Layer criteria – regarding**

Kindly refer to DPE Itr. no. GM/0020/2014-GM-FTS-1740 dtd 25/10/2017 and DoP&T No. 41034/5/2014 – Estt. (Res.) Vol. IV – Part dtd 06.10.2017 regarding the approval of Cabinet note as proposed by Ministry of Social Justice and Empowerment for establishing equivalence of Posts in Central Public Sector Undertakings(PSUs), Banks etc with posts in Government for establishing Creamy layer criteria amongst OBCs. In this regard, the following are the information related to equivalence of existing below Board Level posts in BSNL with Central Government Level Posts (Group A, B, C & D):

SN	Stream in BSNL	Groups	Post / Designation in BSNL	Equivalent Level in Govt. of India	Remark (Old name of post)
1)	Telecom	Executive	Chief General Manager / Pr. General Manager / Sr. General Manager/ General Manager / Telecom District Manager / Dy. General Manager /Jt. General Manager/ Addl. General Manager / Asstt. General Manger/Divisional Engineer / Principal Private Secretary	Group A	
			Sub Divisional Engineer/ Deputy Manager/Assistant Director		
			Junior Telecom Officer (JTO) / Assistant Manager / Private Secretary /Personal Assistant / AD (OL)		Group B
			Junior Engineer (JE)	Group C	TTA
			Telecom Technician		TM
		Non-Executive	Assistant Office Superintendent (G)/ Assistant Office Superintendent (P)/ Assistant Office Superintendent (T)/ Assistant Office Superintendent (TG)		Sr. TOA(G) / Sr. TOA(P) / Sr. TOA(T) / Sr. TOA (TG)
			Cable jointer / Driver Gr-I/ Driver Gr-II/Driver Ordinary Grade / Special grade Driver/ Daftary / Jamadar / Lineman / Line Inspector/Phone Inspector		
			Junior Hindi Translator / Senior Hindi Translator		
			Office Superintendent / Office Superintendent(G)/ Office Superintendent(P)/ Office Superintendent(T) / Office Superintendent (TG)		Sr. TOA/Sr. TOA(G)/ Sr. TOA(P)/Sr. TOA(T) / Sr.

Page 1 of 4

			Senior Office Associate (G) / Senior Office Associate (P) / Senior Office Associate (T) / Senior Office Associate (TG)	TOA(TG)
			Sports Assistant / Sports Inspector/ Sports Co-ordinator/ Sports Supervisor/ Sr. Sports Assistant / Stenographer	Sr. TOA)(G) / Sr. TOA(P) / Sr. TOA (T)/ Sr. TOA(TG)
			Sub Inspector / Sub Inspector (OP) / Section Supervisor (OP)/ Technical Supervisor (OP) / Technician (Telecom) / Telecom Operating Assistant(G)/ Telecom Operating Assistant (P)/Telecom operating Assistant (Telegraphy) /Telecom operating Assistant (TG) / Telegraph Man (Indoor) / Telegraph Man (Outdoor)/ Telegraph Overseer/ Transmission Assistant/ Wireman	
			Assistant Telecom Technician	RM
			Ayah / Chowkidar / Farash / Gateman / Office Peon/ Safaiwala/ Sweeper/ Junior Sports Assistant	Group D
2)	CSS	Executive	Deputy General Manager/ Asst. General Manager/ Sr. Principal Private Secretary /Principal Private Secretary	Group A
		Non-Executive	DM/ AM/ PS /PA	Group B
			LDC /UDC	Group C
			Stenographer	
			Peon	Group D
3)	Accounts	Executive	PGM / GM / DGM /AGM /CAO	Group A
			Sr.AO/ AO/ Asstt. AO / JAO	Group B
		Non-Executive	Jr. Acctt. / Sr. Acctt.	Group C
4)	Electrical	Executive	Chief General Manager / Pr. Chief Engineer / Chief Engineer / Superintendent Engineer / Executive Engineer	Group A
			Junior Telecom Officer (Electrical) / Sub Divisional Engineer (Elect)	Group B
		Non-Executive	Draftsman Gr-I/ Wireman / AC Mechanic/ Pump Operator/Lift operator/ AC operator/ Technician-II(electrician)	Group C
			Khallasi	Group D
5)	Civil	Executive	CGM / PGM /Pr. Chief Engineer /Sr. CE/ Sr. GM/ Chief Engineer / GM/ Addl. Chief Engineer/ Addl. General Manager/ JT. Chief Engineer/ Jt. GM/ Executive Engineer /AGM	Group A
			Junior Telecom Officer (Civil) /Assistant Manager /Sub Divisional Engineer (Civil)/Dy Manager /PS /PA	Group B

		NON-Executive	LDC/UDC/Draftsman/Office superintendent / Assistant Office Superintendent /Senior office Assistance /Telecom Technician / Driver	Group C	
			Plumber/Carpenter/Assistant Telecom Technician /Peon /Beldar /Sewerman	Group D	
6)	Architecture	Executive	CGM(Arch)/ChiefArchitect/ Senior Architect / DGM /Architect / Deputy Architect SDE(Arch)/ AE(Arch) / JTO( Arch)	Group A	
7)	Telecom Factory	Executive	CGM/ GM / Dy. GM / Chief Medical Officer/ Asstt. General Manager / CAO	Group A	
		Non-Executive	SDE / AO/ Jt. Officer/ Jr. Accounts Officer/Private Secretary/ Personal Assistant	Group B	
			Office Superintendent/ Assistant Office Superintendent / Senior Office Associate / Telecom Office Asstt. / Draftsman / Sanitary Inspector/ Pharmacist/ Motor Driver / Security Officer/ Inspector ( Watch & ward) / Sub Inspector (Watch & Ward)/ Canteen Clerk / Chemist / Hind Translator / Industrial Relation Assist./ Head Cook / Salesman/ Coupon Clerk	Group C	
			Bearer / Wash Boy / Asstt. Cook / Peon/Peon Jamadar / Safaiwala / Mali / Chowkidar / Dresser / Fireman / Duftry / Farash/ Ferro Printer/ Gestner Operator	Group D	
		Non-Executive (Industrial)	Technician-I/Technician-I (Auto Truck Drivers) / Technician-I (Electrician)/ Technician-II / Technician-II(Auto Truck Driver) / Technician-II (Electrician) / Chargeman	At par with Group C	
			Sharmik / Assist. Technician	Group D	

Encl : Abbreviations

  
 Surendra Singh, ITS 7/6/18  
 GM & Chief Liaison Officer (SCT)  
 Phone No. 011-23734131  
 FAX No. 011- 23766143

## Copy to:

1. PPS to CMD, BSNL
2. All Directors of BSNL Board
3. All CGMs, BSNL Circles
4. DDG (SR) Dot, Sanchar Bhavan, New Delhi
5. Shri G. Srinivasan, Dy. Secretary, Department of Personnel & Training, North Block, New Delhi.
6. Shri J.N Prasad, Director, Department of Public Enterprises, Public Enterprises Bhavan, Block No. 14, CGO Complex, Lodhi Road, ND.
7. All CGM BW/EW/Arch/PGMs/ Sr GMs/ GMs, BSNL Corporate Office New Delhi
8. Intranet Portal, BSNL

**Abbreviation:**

CGM : Chief General Manager  
PGM : Principal General Manager  
GM : General Manager  
TDM : Telecom District Manager  
DGM : Deputy General Manager  
PPS : Principal Private Secretary  
AGM : Assistant General Manager  
DE : Divisional Engineer  
CAO : Chief Account Officer  
AO : Account Officer  
PS : Private Secretary  
PA : Personal Assistant  
SDE : Sub-Divisional Engineer  
AD : Assistant Director  
AE : Assistant Engineer  
DM : Deputy Manager  
AM : Asst. Manager  
AD(OL) : Assistant Director(Official Language)  
JTO : Jr. Telecom Officer  
JAO : Jr. Account Officer  
JE : Junior Engineer  
TTA : Telecom Technical Assistant  
TM : Telecom Mechanic  
TOA : Telecom Operating Assistant  
P : Phones  
G : General  
T : Telegraphy  
TG : Telegraphy General  
OP : Operation  
UDC : Upper Division Clerk  
LDC : Lower Division Clerk  
RM : Regular Mazdoor  
Acctt. : Accountant  
Pr. : Principal  
Sr. : Senior  
Jr. : Junior  
Arch : Architecture  
Jt. : Joint  
Dy. : Deputy  
Asstt : Assistant

**Annexure-IX**  
**(Refer Para 2.22 of Part-I of the Report)**

**RAIL LAND DEVELOPMENT AUTHORITY**

(A Statutory Authority under Ministry of Railways, Govt. of India)  
 Near Safdarjung Railway Station, Moti Bagh - I,  
 New Delhi - 110021

No. RLDA/HRD/POLICY/2010

Dated 23.01.2013

OFFICE ORDER No. 02 of 2013

Sub: Adoption of equivalency of scales between CDA and IDA patterns in RLDA

RLDA Executive Board have considered the above matter in the 19<sup>th</sup> RLDA Board meeting held on 29.10.2012 and approved the equivalent pay scales between CDA and IDA scale. The same have been adopted w.e.f 29.10.2012 in RLDA and tabulated below.

S.No.	Cadre/Posts	Pay Scale in IDA pattern (Rs.)	Equivalent CDA scales (Rs.)
1.	Joint General Manager	36600-62000	37400-67000 (PB-4) GP 8700/-
2.	Chief Vigilance Officer	36600-62000	37400-67000 (PB-4) GP 8700/-
3.	Secretary	32900-58000	15600-39100(PB-3) GP 7600/-
4.	Dy. General Manager	32900-58000	15600-39100(PB-3) GP 7600/-
5.	Manager	29100-54500	15600-39100(PB-3) GP 6600/-
6.	Principal Private Secretary-I	29100-54500	15600-39100(PB-3) GP 6600/-
7.	Asstt. Legal Advisor	29100-54500	15600-39100 (PB-3) GP 6600/-
8.	Principal Private Secretary	24900-50500	9300-34800 (PB-2) GP 5400/-
9.	Asstt. Manager	24900-50500	9300-34800 (PB-2) GP 5400/-
10.	Accounts Officer	24900-50500	9300-34800 (PB-2) GP 5400/-
11.	Sr. Executive Officer	20600-46500	9300-34800 (PB-2) GP 4800/-
12.	Accounts Assistant	16400-40500	9300-34800 (PB-2) GP 4800/-
13.	Office Assistant	12600-32500	9300-34800 (PB-2) GP 4600/-
14.	Private Secretary	12600-32500	9300-34800 (PB-2) GP 4600/-
15.	Personal Assistant	12300-28600	9300-34800 (PB-2) GP 4200/-
16.	Draughtsman	12300-28600	9300-34800 (PB-2) GP 4200/-
17.	UDC	10000-22900	5200-20200 (PB-1) GP 2400/-
18.	LDC cum Typist	6100-13200	5200-20200 (PB-1) GP 1900/-
19.	Peon and TA/DK	5800-12000	5200-20200 (PB-1) GP 1800/-

*(Signature)*  
 (Sagarika Patnaik)  
 Jt. General Manager/HRD

Copy to:

PPS to VC/RLDA  
 All Members, GMs and JGMs  
 JGM/IT  
 DGM/Finance  
 Secretary

- for kind information of VC please
- for kind information
- for uploading in the intranet of RLDA
- for information and necessary action
- for kind information

**Annexure X**  
**(Refer Para 2.27 of Part-I of the Report)**

सौ चंद्रमौली, मा.प.से.

Dr. C Chandramouli, IAS  
SECRETARY

File No. 163640/DS/1  
Dated: 19.9.2018

D. O. No. 43011/4/2018-Estt(Res)



मानव संकार

कार्मिक और प्रशिक्षण विभाग  
कार्मिक, लोक शिक्षण तथा पेशन मंत्रालय

नई दिल्ली-110001

GOVERNMENT OF INDIA  
DEPARTMENT OF PERSONNEL & TRAINING  
MINISTRY OF PERSONNEL, PUBLIC GR.AVANCES  
AND PENSIONS

NORTH BLOCK NEW DELHI-110001  
September 17, 2018

Dear Madam,

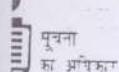
16/9/2018  
17/9/2018

This has reference to the discussions held in the meeting of the Parliamentary Committee on Welfare of Other Backward Classes held on 05.09.2018 in the Parliament House Annex. As you are aware, the Hon'ble Chairman and Members of the Committee have expressed serious concern over delay in establishing the equivalence of posts in respect of officials holding posts in several organisations under the Central or State Governments, such as Universities, Government Aided Schools/Colleges, Autonomous Bodies, Public Sector Undertakings (PSUs), etc.

2. At present, this Department is determining the non-creamy layer status of OBC candidates for various open and other examinations/tests including Civil Services Examination (CSE) over the years in accordance with the terms and conditions specified in OM dated 8.9.1993 (copy enclosed).

3. The Government has recently made efforts to establish equivalence in case of CPSUs and Banks/Insurance companies and Financial Institutions. The guidelines issued by the Departments of Public Enterprises and Financial Services in this regard are also enclosed herewith. However, the equivalence in respect of a wide range of organisations, such as autonomous Organisations, Universities under both Central and State Governments, Judiciary, State PSUs, Government-aided Schools/Colleges, Private Schools/Colleges, Local Self Government Bodies like Municipal Corporations etc. is yet to be carried out.

4. The subject matter of establishing equivalence and determining 'creamy layer' criteria for OBC reservations falls under the domain of the Ministry of Social Justice and Empowerment. I, therefore, request you to kindly consider this matter and take appropriate action so that the long pending issue of establishing equivalence of posts of left out organisations as stated above is finally settled. The Hon'ble Parliamentary Committee's suggestions to factor in the extant circulars already issued by some State Governments on the matter of equivalence of posts under their domain, may also be taken into account and appropriately clarified whether such equivalence established by the State Governments is acceptable or not.



Please visit Our Website <http://www.moj.gov.in>

4. I hope that a final decision in this regard will be arrived at an early date so as to enable this Department to use equivalence criteria from ensuing Civil Services Examination. I would be happy to provide any kind of assistance required from my Department.

With kind regards,

Yours sincerely,

  
(Dr. C. Chandramouli)

End: As above

Ms. Nilam Sawhney,  
Secretary,  
Ministry of Social Justice & Empowerment,  
Shastri Bhavan,  
New Delhi.

## Annexure XI (Refer Para 2.27 of Part-I of the Report)

म. साहनी, मा.प्र.से.  
का.  
NILAM SAWHNEY, IAS  
Secretary

tel 23382683  
23389184  
ax 23385180  
e-mail secywal@nic.in  
Website: <http://www.socialjustice.nic.in>



भारत सरकार (308)  
सामाजिक न्याय और अधिकारिता मंत्रालय  
सामाजिक न्याय और अधिकारिता विभाग  
शास्त्री भवन, नई दिल्ली-110 001

Government of India  
Ministry of Social Justice and Empowerment  
Dept. of Social Justice and Empowerment  
Shastri Bhawan, New Delhi-110 001

D.O. No. 12015/08/2017-BC-II  
October 11, 2018

Dear Shri Chandramouli,

Please refer to your D.O. Letter No. 43011/4/2018-Estt (Res) dated 17<sup>th</sup> September, 2018 apropos the issues raised in the Parliamentary Committee on Welfare of OBCs held on 5<sup>th</sup> September, 2018 with regard to establishment of equivalence of posts in the Central Government with that of posts in Universities, Colleges, State CPSUs, Autonomous Bodies etc.

2. With regard to autonomous bodies under the Central and State Governments are concerned, it is possible that the DoPT may have taken a policy decision in the context of judicial proceedings or litigations. The Department of Social Justice and Empowerment is not aware of the position that may have been adopted or the methodology followed by the DoPT in all such cases and you may kindly apprise this department of the same.

3. So far as State CPSUs are concerned, following the meeting of the Parliamentary Committee on Welfare of OBCs on 05.10.2018, Secretary, DPE, was addressed vide my D.O. letter of even no. dated 01.10.2018, copy of which was endorsed to you, seeking comments of the DPE on the norms for establishing equivalence of employees of State PSUs with that of the Central Government.

4. A comprehensive view would need to be taken for formulating reference standards for equivalence from the point of view of commonality of standards and methodology of arriving at such standards. Since the matter would need to be examined in detail, I would request you to kindly send us a note on the methodology adopted by the DoPT in determining applicability of the provisions of the 08.09.1993 O.M. in the past for all those categories for which equivalence is now being sought. It is also possible that the DoPT is in receipt of proposals etc. from State Governments/stakeholders regarding establishing equivalence standards of Central Government posts with that of posts in various organizations under the Central and State Governments. The note explaining the methodology that has been followed so far by the DoPT in the matter, may also include the issue of OBC candidates who have represented to the Parliamentary Committee on the issue of the applicability of the rule of exclusion in respect of employees of State PSUs.

5. Given the urgency in the matter expressed by the Committee in its meeting on 08.10.2018, I request that the information may please be furnished by 16/10/2018, so that the matter can be examined at the earliest.

With regards,

Yours sincerely,

*Nilam Sawhney*

(Nilam Sawhney)

Dr.C. Chandramouli,  
Secretary  
Department of Personnel and Training,  
Room No. 112, North Block, New Delhi - 110001

**CONFIDENTIAL**

No. 12015/8/2017-BC-II  
Government of India  
Ministry of Social Justice and Empowerment  
(Department of Social Justice and Empowerment)

\*\*\*\*\*

Shastri Bhavan, New Delhi  
14<sup>th</sup> December, 2018

**OFFICE MEMORANDUM**

**Sub: (i) Issue of equivalence of posts in State bodies vis-à-vis post under Central Government and  
(ii) Equivalence certificates issued by State Public Sector Undertakings / Universities etc.**

The undersigned is directed to refer to the correspondence resting with Secretary, DoP&T's D.O. letter no. 43011/4/2018-Estt.(Res). dated 17.09.2018, Secretary, SJE's D.O. letter of even number 11.10.2018, DoP&T's O.M. No. 13015/1/2018-AIS-I(Part-III) dated 05.10.2018 and O.M. No. 29062/11/2018-AIS-I dated 26.10.2018 on the above subject and to say that the subject issues were discussed in a meeting held by Shri Thaawarchand Gehlot, Hon'ble Minister Social Justice and Empowerment on 13.12.2018 at 11.15 am in his office in Parliament House. The meeting was attended by Secretary, SJE, Shri Sudhi Ranjan Mishra, Additional Secretary, Department of Legal Affairs, Smt. Sujata Prasad, Additional Secretary, DoP&T, Shri G. Tripathi, Joint Secretary, DoP&T and Shri B.L. Meena, Joint Secretary, SJE.

2. On the subject issue (i), the constitution of an expert committee to revisit the parameters set out in DoP&T's O.M. of 8.9.1993 was discussed. Hon'ble Minister, SJE advised that the Committee should have representation from all the relevant Departments and that terms of reference need to be drawn up appropriately.

3. As regards the subject issue (ii), the DoP&T had in the note submitted by them on the methodology followed in determination of Creamy Layer stated that income test as laid out in the O.M. of 8.9.1993 was being followed.

A.t.o.

However, Hon'ble Minister, SJE mentioned during the meeting that a representation has been received from one successful OBC candidate whose equivalence certificate issued by State body was not being accepted by DoP&T. As advised by HMSJE, while considering the cases of the 6 candidates which were referred to this Department for comments, DoP&T may comply with their O.M. of 08.09.1993 for determination of Creamy Layer, however, they may also keep in view the instances quoted in the representation, of rank holder 621 and rank holder 723 of CSE, 2015, wherein they may have accepted equivalence certificates issued by State Bodies.

 14/11/18  
(J.P. Dutt)

Director  
011-23073552



To,  
**Dr.C. Chandramouli**  
Secretary,  
DoP&T, New Delhi

Copy for information to :

**Shri Sudhi Ranjan Mishra,**  
Additional Secretary,  
Department of Legal Affairs,  
New Delhi

**Questions on which DoPT/MSJE have sought legal opinion on advice of the Committee**

1. Whether the clarification given in Para 9 with regards to clause (ix) of Para 4 in 2004 clarificatory letter (clarifying 1993 OM) is the right and legal clarification of 1993 OM or not.
2. Whether the clarification given in Para 10 with regards to clause (x) of Para 4 in 2004 clarificatory letter (clarifying 1993 OM) is the right and legal clarification of 1993 OM or not.
3. Whether both the explanations, explanation (i) and explanation (ii), given under category VI (INCOME/WEALTH TEST) of the 1993 OM apply to whole category VI or not.
4. Whether in the absence of equivalence the whole of category II-C in the 1993 OM shall be disentitled to reservation benefits and not fall under Category VI (b).
5. Whether in 1993 OM, the persons in Categories I, II, III, V A who are not disentitled to the benefits of reservation but have the income from other sources of wealth are also tested by Income/Wealth criteria mentioned in category VI (a) or Not.

## Annexure XIV

(Refer Para 2.38 of Part-I of the Report)

### **Legal Opinion furnished by Ministry of Law and Justice to DoPT/Ministry of Social Justice and Empowerment**

#### **Ministry of Law & Justice Department of Legal Affairs**

Dy. No. 323827/LS/2019

##### Reference notes on pre-pages

In the present matter, Lok Sabha Secretariat (Committee on Welfare of Other Backward Classes Branch) vide their OM No. 25(I)/1/1/OBC/2018-19 dated 21.01.2019 has requested to this Department, as desired by Hon'ble Chairperson of the Committee, to furnish legal opinion to DoPT and Ministry of Social Justice & Empowerment on the issues raised by the Hon'ble MP (Shri B.K. Hariprasad, Member of the Committee) attached therewith on the subject : Committee on Welfare of Other Backward Classes (2018-19) – Examination of the subject "Formulation and Implementation of Reservation Policy and Rationalisation of Creamy layer in employment for OBCs in Posts and services under the control of Government of India and Union Territories and Welfare measures for them."

It is also desired by the Hon'ble Chairperson of the Committee that a copy of the same may also be forwarded to the Hon'ble Committee for its kind consideration.

2. Further, in pursuance of the aforesaid O.M., the DoPT, vide File No. 36033/3/2018-Estt.(Res.)-C.No. 3142617, has also sought legal opinion of this Department on the issues raised by the Hon'ble MP (Shri B.K. Hariprasad, Member of the Committee) attached therewith for furnishing a reply at their end to the Hon'ble Committee.

3. We have gone through the Report of the Hon'ble Expert Committee for specifying the criteria for identification of socially advanced persons among the socially and educationally backward classes, DoPT's O.M. dated 08/09/1993 & DoPT's Clarificatory Letter dated 14/10/2004. The opinion on the issues raised by the Hon'ble MP (Shri B.K. Hariprasad, Member of the Committee) is attempted as follows:-

(I) With regard to point no. 1 & 2, it is relevant to mention here that during the Sitting of the Hon'ble Committee convened on 20/12/2018, M/o of Social Justice & Empowerment and DoPT apprised the Hon'ble Committee that the Hon'ble Minister of Social Justice & Empowerment has agreed to constitute an Expert Committee to examine and resolve all the issues raised by the Hon'ble Committee on the subject and the Hon'ble Committee has also expressed its concurrence in this regard. It has come to notice that formation of an Expert Committee is under process at the level of concerned Ministry/Department which will examine all the issues pertaining to the subject under reference.

In backdrop of the above, it seems to be more appropriate that all the issues may be referred to the said Committee for examination and proceed further in accordance with the conclusion made by the said Committee.

In *Ashok Kumar Thakur versus State of Bihar & Others*, 1995(5) SCC 403, the Hon'ble Supreme Court has upheld the DoPT's O.M. dated 08/09/1993 which was issued in pursuance of the judgment/order passed by the Apex Court in the matter of *Indira Sawhney versus Union of India* popularly referred to as "Mandal" case. In the year 2004, when several queries were raised to the DoPT regarding the determination of Creamy Layer amongst OBC's, the DoPT

It may be recalled that the clarification given in Para 9 with regards to clause (ix) of Para 4 in clarificatory letter dated 14/10/2004 and clarification given in Para 10 with regards to clause (x) of Para 4 of the same has been examined by the Ld. CAT, Madras Bench in O.A. Nos. 1132, 1133 & 1375/2014 as well as by the Hon'ble Madras High Court in W.P. Nos. 6387 to 6389 of 2017 and they expressed doubt regarding correctness of the same. Presently, the judgment/order dated 31/08/2017 passed by the Hon'ble Madras High Court in W.P. Nos. 6387 to 6389 of 2017 is under challenge & sub-judice before the Hon'ble Supreme Court in SLP(C) Nos. 25622-25624/2017 wherein stay has been granted by the Hon'ble Supreme Court against the impugned judgment/order dated 31/08/2017 passed by the Hon'ble Madras High Court in the aforesaid Writ Petitions.

As regards, whether the same is right and legal clarification of 1993 OM or not is concerned, the final disposal of the matter by the Hon'ble Supreme Court would finally comment upon the correctness and legality of the said clarifications.

(II) With regard to point no. 3, 4 & 5, Category II-C & Category VI of the O.M. dated 08/09/1993 reads as under:

**II-C. Employees in Public Sector Undertakings etc.** - The criteria enumerated in A&B above in this Category will apply mutatis mutandi to officers holding equivalent or comparable posts in PSUs, Banks, Insurance Organisations, Universities, etc. and also to equivalent or comparable posts and positions under private employment. Pending the evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in Category VI below will apply to the officers in these Institutions.

**VI. INCOME/WEALTH TEST - Son(s) and daughter(s) of**

(a) Persons having gross annual income of Rs. 1 lakh (now 8 lakh) or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years,

(b) Persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

**Explanation:**

(i) Income from salaries or agricultural land shall not be clubbed;

(ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.

It is evident that the Explanation (i) & (ii) under the Category VI (INCOME/WEALTH TEST) are given after the sub category (a) and (b) of the same and there is no specific indication regarding its applicability with regard to particular sub category. In absence of any specific indication regarding applicability of the Explanation (i) & (ii) with regard to particular sub category, the same, in general sense, seems to be applicable in respect to whole Category VI.

**However,** it is relevant to mention here that in pursuance of the judgment/order passed by the Apex Court in the matter of Indira Sawhney versus Union of India popularly referred to as "Mandal" case, based on recommendations of the said Expert Committee and after wide consultations

— 3/N —

and approval of the competent authority, O.M. dated 08/09/1993 had been issued by the DoPT on the subject.

The Hon'ble Expert Committee in Para 12, 13, 26, 27, 28 & 29 of its report states that:

**II-C. Employment in Public Sector Undertakings etc.**

12. *The service category is not confined to employment under the Government only, whether at the Union or at the State level. The criteria enumerated above will apply mutatis mutandis to officers holding equivalent or comparable posts in public sector undertakings, banks, insurance organisations, universities etc. and also to equivalent to comparable posts and positions under private employment.*

13. *The evaluation of posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of the persons under this category, it is made clear that so long as the process is not completed and made operative, the income/wealth under Item VI, will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI.*

26. .... Hence, persons having gross annual income of Rs. 1 lakh (now 8 lakh) or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act will be excluded from the benefit of reservation. Only when such level of income or wealth has a consistency for a reasonable period will it be justifiable to regard a person as socially advanced on the basis of income. We consider a period of three consecutive years to be a reasonable period for the purpose of the application of the criteria under consideration.

**VI. INCOME/WEALTH TEST**

27. *In addition to the above, we have to say that the income/Wealth test governs categories IV, V-B and V-C as stated earlier. For the remaining categories, namely, I, II, III & V-A, specific criteria have been laid down; however, if in these categories, any person, who is not disentitled of the benefit of reservation, has income from other sources or wealth, which will bring him within the criterion under Item No. VI, then he shall be disentitled to reservation, in case his income – without clubbing his income from salaries or agricultural land – or his wealth is in excess of cut off point prescribed under the income/wealth criteria.*

28. *Since the rupee value is bound to undergo change the income criterion in terms of the rupees as stated above will accordingly stand modified with change in its value. The modification exercise may, normally speaking, be undertaken every three years but if the situation so demands the interregnum may be less.*

29. *Persons working as artisans or engaged in the hereditary occupations, callings, etc., like potters, washermen, barbers, etc., are exempted from application of the rule of exclusion."*

Thus, the expert committee states that in the even absence of equivalence, category II-C cannot be disentitled from availing reservation benefits as such and that, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI i.e. income/wealth test.

— 4/N —

- 4 -

4. In backdrop of the above, we are of the opinion the criteria(s) prescribed under the DoPT's O.M. dated 08/09/1993 may be understood in light of the terms stated in the report of the Hon'ble Expert Committee.

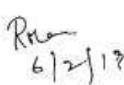
5. The opinion on the issues raised by the Hon'ble MP (Shri B.K. Hariprasad, Member of the Committee) as stated above are being submitted for kind perusal & approval. If approved, we may communicate the same to the Hon'ble Lok Sabha Secretariat (Committee on Welfare of Other Backward Classes Branch) as well as DoPT.

May kindly see.

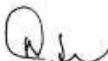
  
06-02-19  
Surendra Kumar

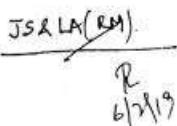
ALA  
06/02/2019

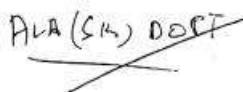
JS&LA (Dr. Rajiv Mani)

  
R Mani  
6/2/19

Law Secretary

  
6/2/19

JS & LA (RM)  
  
R  
6/2/19

ALA (SK) DoPT  


  
06-02-19

**Annexure XV**  
**(Refer Para 2.43 of Part-I of the Report)**



**SWAPNA RAY**  
Joint Secretary  
Tele. No. : Office : 3381641  
Fax No. : 3388152

D.O.No.20011/1/2001-BCC

भारत सरकार  
सामाजिक न्याय एवं  
अधिकारिता मंत्रालय  
शास्त्री भवन  
नई दिल्ली-110001  
GOVERNMENT OF INDIA  
MINISTRY OF SOCIAL JUSTICE  
AND EMPOWERMENT  
SHASTRI BHAWAN  
NEW DELHI-110001

Date 26.4.2002

Dear Shri Mahata,

Kindly refer to your letter No.NM/OBC/CL/245, dated the 21<sup>st</sup> February, 2002 addressed to Smt. Vasundhara Raje, Minister of State for Personnel, Public Grievances and Pension, Government of India, regarding the revision of income criteria for determining Creamy Layer amongst the OBCs and clubbing of income from salary and agricultural land for the purpose of calculation of annual income for issue of OBC certificate.

As already informed, the Government of India is in the process of setting up an Expert Committee to review the income criteria for determining the Creamy Layer amongst the OBCs. The income criteria will be revised as soon as the proposed Review Committee submits its recommendations in this regard.

As regards treatment of income from salaries and agricultural land for the purpose of calculation of annual income for exclusion of Creamy Layer, it is already clarified by way of an explanation under category VI specified in DOP&T OM No.36012/12/93-Estt.(SCT), dated 8.9.1993 that the income from salaries or agricultural land shall not be clubbed. In serial No.12 of the application form prescribed by the Government of India, Ministry of Personnel, Public Grievances and Pension, for certificate of eligibility also, the annual income is defined as the income excluding salaries and income from agricultural land. Accordingly, the employees in Government Departments, Public Sector Undertakings, banks, insurance organizations and universities etc. will not fall under the category of Creamy Layer unless income from other sources alone (without clubbing the income from salaries or agricultural land) exceeds the prescribed limit i.e. Rs.1.00 lakh or above.

In other words, the income from salaries and agricultural land should not be taken into account for the purpose of calculation of annual income for exclusion of Creamy Layer for issue of OBC certificate. (This also disposes of your letter No.NM/OBC/CL/255(DO), dated 29.3.2002).

With regards,

Yours sincerely,

  
(Swapna Ray)

Shri Nepal Singh Mahata,  
Member, West Bengal Legislative Assembly,  
Room No.1/20, MLA Hostel,  
2 KYD Street,  
Calcutta

## Annexure-XVI

(Refer Para 2.44 of Part-I of the Report)

NCBC

No.43011/9/2011-Estt. (Res.)  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

North Block,  
New Delhi-110001  
Dated the 3<sup>rd</sup> February, 2010.

To

✓ Shri Asok Kumar Sarkar,  
General Secretary,  
All India Reserve Bank Other Backward Classes  
Employees' Welfare Association,  
15, N.S. Road, Kolkata-700 001.

Subject: Letter from Shri Asok Kumar Sarkar, General Secretary,  
All India Reserve Bank Other Backward Classes Employees'  
Welfare Association, Kolkata seeking clarification regarding  
'creamy layer' status amongst OBCs.

Sir,

I am directed to refer to your letter No.AKS/RBI/246 dated 16.12.2010, addressed to Minister of State for Personnel, Public Grievances and Pensions, on the subject noted above and to say that income from salary is not the criterion for determining 'creamy layer' status amongst OBCs. As per para 7 of this Department's OM No.36033/5/2004-Estt.(Res.) dated 14.10.2004 that if the father is directly recruited Class III/ Group C employee and he gets into class I/ Group A at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in 'creamy layer'. Article VI (b) of Scheduled to the OM No.36012/22/93-Estt.(SCT) dated 8.09.1993 clarifies about the income/ wealth.

Yours faithfully,

(Sharad Kumar Srivastava)  
Under Secretary to the Government of India  
Tele: 2309210

Copy to :-

✓ Shri Nepal Mahata, MLA, Village & Post Office Ichag, P.S. Jhalda,  
Distt. Purulia-723202(Kolkata) w.r.t. his letter No. NM/OBC/260 dated  
22.12.2010.

**Annexure XVII**  
(Refer Para 2.45 of Part-I of the Report)

Department of Personnel and Training O.M. No.36012/22/93-Estt.(SCT),  
dated the 15<sup>th</sup> November, 1993, to all Ministries/Departments, etc.

To

The Chief Secretaries of  
all the State Governments/Union Territories.

Sub: Reservation for Other Backward Classes — exclusion of Creamy Layer for the purpose of  
appointment in services and posts under the Government of India — Certificate to be produced  
by the candidates.

Sir,

I am directed to say that the Government of India has issued instructions on 8.9.93 providing  
for reservation to Other Backward Classes in the services and posts under the Government of India  
(A copy of this O.M. is enclosed). The Other Backward Classes for the purpose of the above said  
reservation would comprise, in the first phase, the castes and communities which are common to both  
the lists in the report of the Mandal Commission and the State Government's list. A list of such castes  
and communities was notified in Resolution No. 12031/68/93-BCC(C), dated 10th Sept. 1993  
published in the Gazette of India, Extraordinary Part I Section I dated 13.9.93. For the purpose of  
verification of the castes and communities the Government of India has prescribed a certificate from  
the following authorities as in the case of SC/ST vide this Department's O.M. No. 36012/22/93-Estt.  
(SCT), dated 22.10.93 (copy enclosed):

- (a) District Magistrate/Additional District Magistrate/Collector/Deputy Commissioner/Additional  
Deputy Commissioner/Deputy Collector/1st Class Stipendiary Magistrate/Sub-Divisional Magis-  
trate/Tahuka Magistrate/Executive Magistrate/Extra Assistant Commissioner (not below the  
rank of 1st Class Stipendiary Magistrate).
- (b) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate.
- (c) Revenue Officer not below the rank of Tehsildar; and
- (d) Sub-Divisional Officer of the area where the candidate and/or his family normally resides.

2. In the light of the Supreme Court's judgement in the Indira Sawhney case, this Department has  
specified the persons/section ("Creamy Layer") to whom the benefit of reservation shall not apply  
vide column 3 of the Schedule to the Department of Personnel and Training O.M.No. 36012/22/93-  
Estt. (SCT), dated 8.9.93. It has been considered that the same authorities who are notified as  
competent to certify OBCs status should also be authorised to certify that a candidate does not belong  
to the "Creamy Layer". It is, therefore, requested that instructions may be issued to the District  
Authorities under your control to verify and issue the necessary certificate to the candidates regarding  
his OBCs status as well as exclusion from the "creamy layer". To enable the District Authorities to

FORM OF CERTIFICATE TO BE PRODUCED BY OTHER BACKWARD CLASSES  
APPLYING FOR APPOINTMENT TO POSTS UNDER THE GOVERNMENT OF INDIA

This is to certify that \_\_\_\_\_  
son of \_\_\_\_\_ of village \_\_\_\_\_  
District/Division \_\_\_\_\_ belongs to the \_\_\_\_\_ community which is recognised as a backward class under the \_\_\_\_\_  
Government of India, Ministry of Welfare Resolution No. 12011/68/93-BCC(C) dated 10th Sept.  
1993 published in the Gazette of India Extraordinary Part I Section I dated 13th Sept 1993.  
Shri \_\_\_\_\_ and/or his family ordinarily resides in the \_\_\_\_\_ District/Division of \_\_\_\_\_  
State. This is also to certify that he/she does not belong to the persons/sections  
(Creamy Layer) mentioned in column 3 of the Schedule to the Government of India, Department of  
Personnel & Training O.M. No. 36012/22/93-Estl (SCT), dated 8-9-95.

District Magistrate,  
Deputy Commissioner etc

Dated :

Seal

NB: (a) The term 'ordinarily' used here will have the same meaning as in Section 20 of the Representation of the Peoples Act 1950.

(b) Where the certificates are issued by Gazetted Officers of the Union Government or State Governments, they should be in the same form but countersigned by the District Magistrate or Deputy Commissioner (Certificates issued by Gazetted Officers and attested by District Magistrate/Deputy Commissioner are not sufficient).

examine the claims of the candidates a model format has been devised as in Annexure B. This may be suitably revised if considered necessary. The format of the certificate that may be given by the concerned district authorities may be as in Annexure A.

3. It is also requested that wide publicity may be given to the Ministry of Welfare Resolution No. 12011/68/93-BCC(C), dated 10-9-93 published in the Gazette of India/Extraordinary Part I Section I, dated 13-9-93 containing the list of Backward Classes as well as to DOPT O.M. No. 36012/22/93-Estt. (SCT), dated 8-9-93 which specifies the criteria which will determine the persons who belong to the creamy layer and to whom the reservation shall not apply. This will facilitate the candidates to ascertain their eligibility for reservation. It would also be advisable to appropriately brief the certifying Authorities and to provide them with sufficient number of copies of the above mentioned Gazette Notification and the Dep't. O.M. date 8-9-93 in order to ensure prompt and correct certification.

4. A copy of the orders issued by your Government in this regard may also be endorsed to this Department for information.

Yours faithfully,

Sd/  
(Smt. Sarita Prasad).  
Joint Secretary to the Government of India.

## ANNEXURE B

APPLICATION FORM FOR A CERTIFICATE FOR ELIGIBILITY FOR RESERVATION OF JOBS FOR OTHER BACKWARD CLASSES IN CIVIL POSTS AND SERVICES UNDER GOVERNMENT OF INDIA.

(This form, however, should be used only as a model. Additional items, if necessary, may be incorporated to suit to the local situation in the form.).

To

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

357

I request that a certificate in respect of reservation for other Backward Classes in Civil Posts and Services under Government of India be granted to me.

I give below the necessary particulars:—

1. Full Name of the applicant :  
(in Block letters).
2. Date of birth :
3. Complete Residential Address :
  - (a) Present
  - (b) Permanent
4. Religion :
5. Caste :
6. Sub-caste :
7. Occupational Group :
8. Serial Number of the Caste in the  
Central List of OBCs.
9. Name of Father :
10. Name of Mother :
11. Name of Husband :
12. Status of Parent (s)/Husband

Father                      Mother

(A) Constitutional Posts.  
(i) Designation  
(B) Government Services.  
(i) Service (Central/State).  
(ii) Designation

(iii) Scale of Pay, including classification, if any.

(iv) Date of appointment to the post.

(v) Age at the time of promotion to Class I Post (if applicable)

II. Employment in International Organisation e.g. UN, UNICEF, WHO.

(i) Name of Organisation

(ii) Designation

(iii) Period of service.  
(indicate date from ..... to .....).

III. Death/Permanent Incapacitation (Omit if not applicable).

(i) Date of death/Permanent incapacitation putting an officer out of service.

(ii) Details of Permanent incapacitation.

(C) Employment in Public Sector Undertakings etc.

(i) Name of Organisation

(ii) Designation

(iii) Date of appointment to the Post.

(D) Armed Forces including Para-military Forces  
(This will not include persons holding civil posts.)

(i) Designation.

(ii) Scale of Pay.

(E) Professional class (other than those covered in Items Nos. B & C) and those engaged in trade, Banking and Industry.

(i) Occupation/Profession.

(F) PROPERTY-OWNERS.

(F) I. Agricultural Land Holding: owned by mother, father & minor children.

(i) Location.

(ii) Size of holding

(iii) (a) Irrigated  
(Type of irrigated land).  
(i)  
(ii)  
(iii)  
(b) Unirrigated.

To be certified (iv) Percentage of irrigated land holding to statutory ceiling limit under State land by District Ceiling laws.

Revenue Officer (v) If land holding is both irrigated/unirrigated total irrigated land holdings not lower than the on the basis of conversion formula in State land Ceiling law.

rank of Tehsildar. (vi) Percentage of total irrigated land holding to statutory ceiling limit as per. (iv).

(F) II. Plantation:

(i) Crops/Fruit.

- (ii) Location
- (iii) Area of Plantation.

(F) III. Vacant land and/or building in urban areas or urban agglomeration.

- (i) Location of Property.
- (ii) Details of Property.
- (iii) Use to which it is put.

(G) Income/Wealth.

- (i) Annual family income from all sources  
(excluding salaries & income from agricultural land.)
- (ii) Whether Tax Payer (Yes/No.)  
(If yes, a copy of the last three years return be furnished).
- (iii) Whether covered in Wealth Tax Act (Yes/No.)  
(if so furnish details)

13. Any other remarks.

14. I certify that above said particulars are true to the best of my knowledge and belief and that I do not belong to the Creamy Layer of OBCs and eligible to be considered for posts reserved for OBC's. In the event of any information being found false or incorrect or ineligibility being detected before or after the selection, I understand that my candidature/appointment is liable to be cancelled and I shall be liable to such further action as may be provided under the law and/or Rules.

Yours faithfully,

Place:

Signature of the candidate.

Date:

No. 36033/5/2004-Estt(Res)  
GOVERNMENT OF INDIA  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS  
DEPARTMENT OF PERSONNEL & TRAINING

\*\*\*\*\*

New Delhi, Dated : the 14<sup>th</sup> October, 2004

To

The Chief Secretaries of all the States /Union Territories.

**Subject:** Clarifications regarding creamy layer amongst OBCs.

Sir,

I am directed to invite your attention to the Schedule to this Department's OM No.36012/22/93-(SCT) dated 8<sup>th</sup> September, 1993 which contains the criteria to determine the creamy layer amongst the OBCs. In regard to the children of the persons in civil services of the Central and the State Governments, it provides that son(s) and daughter(s) of:

- (a) parents, both of whom are directly recruited Class I/Group A officers;
- (b) parents, either of whom is a directly recruited Class I/Group A officer;
- (c) parents, both of whom are directly recruited Class I/Group A officers, but one of them dies or suffers permanent incapacitation;
- (d) parents, either of whom is a directly recruited Class I/Group A officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International Orgainsation like UN, IMF, World Bank, etc. for a period of not less than 5 years;
- (e) parents, both of whom are directly recruited Class I/Group A officers and both of them die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International Orgainsation like UN, IMF, World Bank, etc. for a period of not less than 5 years;
- (f) parents both of whom are directly recruited Class II/Group B officers;
- (g) parents of whom only the husband is a directly recruited Class II /Group B officer and he gets into Class I//Group A at the age of 40 or earlier;

- (h) parents, both of whom are directly recruited Class II/ Group B officers and one of them dies or suffers permanent incapacitation and either of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years;
- (i) parents of whom the husband is a Class I/ Group A officer (direct recruit or pre-forty promoted) and the wife is a directly recruited Class II /Group B officer and the wife dies; or suffers permanent incapacitation; and
- (j) parents, of whom wife is a Class I/Group A officer (Direct Recruit or pre-forty promoted) and the husband is a directly recruited Class II/Group B officer and the husband dies or suffers permanent incapacitation

shall be treated as falling in creamy layer.

2. The Schedule further provides that sons and daughters of:

- (i) parents either of whom or both of whom are directly recruited Class I/Group A officer(s) and such parent(s) dies/die or suffers/suffer permanent incapacitation;
- (ii) parents both of whom are directly recruited Class II/Group B officers and one of them dies or suffers permanent incapacitation;
- (iii) parents both of whom are directly recruited Class II/Group B officers and both of them die or suffer permanent incapacitation, even though either of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation

shall not be treated to be falling in creamy layer.

3. The criteria prescribed for determining creamy layer status of sons and daughters of persons in Government service mutatis mutandis applies to the sons and daughters of persons holding equivalent or comparable posts in PSUs, Banks, Insurance Organisations, Universities etc. and also holding equivalent or comparable posts and positions under private employment. The creamy layer status of the sons and daughters of employees of organizations where evaluation of the posts on equivalent or comparable basis has not been made is determined on the basis of 'Income/Wealth Test' given in the Schedule. The Income/ Wealth Test prescribes that the sons and daughters of persons having gross annual income of Rs.2.5 lakh or above or possessing wealth above the exemption limit as prescribed

in the Wealth Tax Act for a period of three consecutive years would be treated to fall in creamy layer. An explanation is given below the Income/Wealth Test which provides that 'income from salaries or agricultural land shall not be clubbed.'

4. Following questions have been raised from time to time about the application of the above provisions to determine creamy layer:

- (i) Will the sons and daughters of parents either of whom or both of whom are directly recruited Class I/Group A officer(s) and such parent(s) dies/die or suffers/suffer permanent incapacitation after retirement be treated to be excluded from the creamy layer?
- (ii) Will the sons and daughters of parents both of whom are directly recruited Class II/Group B officers and one of them dies or suffer permanent incapacitation after retirement be treated to be excluded from the creamy layer?
- (iii) Will the sons and daughters of parents both of whom are directly recruited Class II/Group B officers and both of them die or suffer permanent incapacitation after retirement even though either of them has had got the benefit of employment in any International Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation be treated to be excluded from the purview of creamy layer?
- (iv) Will the sons and daughters of parent(s) who retire from the service on the basis of which their sons and daughters fall in creamy layer, continue to fall in creamy layer after retirement of the parent(s)?
- (v) Will the sons and daughters of parents of whom husband is directly recruited Class III/Group C or Class IV/Group D employee and he gets into Class I/Group A at the age of 40 or earlier be treated to be falling in creamy layer?
- (vi) Will a candidate who himself is a directly recruited Class I/Group A officer or a directly recruited Class II/Group B officer who got into Class I/Group A at the age of 40 or earlier be treated to be falling in creamy layer on the basis of his service status?
- (vii) Will a candidate who has gross annual income of Rs.2.5 lakh or above or possesses wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years be treated to fall in creamy layer?

— 6 —

(viii) The instructions provide that a lady belonging to OBC category who has got married to a directly recruited Class I/Group A officer shall not be treated as falling in creamy layer on the basis of her marriage. Will a man belonging to OBC category who is married to a directly recruited Class I/Group 'A' officer be treated as falling in creamy layer on the basis of his marriage?

(ix) How will be the Income/Wealth Test apply in case of sons and daughters of parent(s) employed in PSUs etc. in which equivalence or comparability of posts has not been established vis-à-vis posts in the Government?

(x) What is the scope of the explanation, 'Income from salaries or agricultural land shall not be clubbed', given below the Income/ Wealth Test?

5. It is clarified in regard to clauses (i), (ii) and (iii) of para 4 that the sons and daughters of:

- (a) parents either of whom or both of whom are directly recruited Class I/Group A officers and such parent(s) dies/die or suffers/suffer permanent incapacitation while in service;
- (b) parents both of whom are directly recruited Class II/Group B officers and one of them dies or suffers permanent incapacitation while in service; and
- (c) parents both of whom are directly recruited Class II/Group B officers and both of them die or suffer permanent incapacitation while in service, even though either of them has had the benefit of employment in any International Organization like UN, IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation

are not treated to be falling in creamy layer. But if the parent(s) dies/die or suffers/suffer permanent incapacitation in such cases after retirement from service, his/their sons and daughters would be treated to be falling in creamy layer and would not get the benefit of reservation.

6. In regard to clause (iv) of para 4, it is clarified that sons and daughters of parents who are included in the creamy layer on the basis of service status of their parents shall continue to be treated in creamy layer even if their parents have retired or have died after retirement.

7. In regard to clause (v) of para 4, it is clarified that the sons and daughters of parents of whom only the husband is a directly recruited Class II/Group B officer who gets into Class I/Group A at the age of 40 or earlier are treated to be in creamy layer. If the father is directly recruited Class III/Group C or Class IV/Group D employee and he gets into Class I/Group A at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layer.

8. In regard to clauses (vi), (vii) and (viii) of para 4, it is clarified that the creamy layer status of a candidate is determined on the basis of the status of his parents and not on the basis of his own status or income or on the basis of status or income of his/her spouse. Therefore, while determining the creamy layer status of a person the status or the income of the candidate himself or of his/her spouse shall not be taken into account.

9. In regard to clause (ix) of para 4, it is clarified that the creamy layer status of sons and daughters of persons employed in organizations where equivalence or comparability of posts vis-à-vis posts in Government has not been evaluated is determined as follows:

Income of the parents from the salaries and from the other sources [other than salaries and agricultural land] is determined separately. If either the income of the parents from the salaries or the income of the parents from other sources [other than salaries and agricultural land] exceeds the limit of Rs.2.5 lakh per annum for a period of three consecutive years, the sons and daughters of such persons shall be treated to fall in creamy layer. But the sons and daughters of parents whose income from salaries is less than Rs. 2.5 lakh per annum and income from other sources is also less than Rs.2.5 lakh per annum will not be treated as falling in creamy layer even if the sum of the income from salaries and the income from the other sources is more than Rs.2.5 lakh per annum for a period of three consecutive years. It may be noted that income from agricultural land is not taken into account while applying the Test.

10. In regard to clause (x) of para 4, it is clarified that while applying the Income/Wealth Test to determine creamy layer status of any candidate as given in Category-VI of the Schedule to the OM, income from the salaries and income from the agricultural land shall not be taken into account. It means that if income from salaries of the parents of any candidate is more than Rs. 2.5 lakh per annum, income from agricultural land is more than Rs. 2.5 lakh per annum, but income from other sources is less than Rs. 2.5 lakh per annum, the candidate shall not be treated to be falling in creamy layer on the basis of Income/Wealth Test provided his parent(s)

—6—

do not possess wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

11. You are requested to bring the contents of this letter to all concerned in the State.

Yours faithfully,

  
(K.G. Verma)

Deputy Secretary to the Govt. of India

Copy to:-

1. All Ministries / Departments of Govt. of India
2. Department of Economic Affairs (Banking Division), New Delhi
3. Department of Economic Affairs (Insurances Division), New Delhi
4. Department of Public Enterprises, New Delhi,
5. Railway Board,
6. Union Public Service Commission / Supreme Court of India / Election Commission / Lok Sabha Secretariat / Rajya Sabha Secretariat / Cabinet Secretariat / Central Vigilance Commission / President's Secretariat / Prime Minister's Office / Planning Commission/ National Commission for Backward Classes.
7. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
8. Office of the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.

With the request to bring the contents of this letter to the notice of all concerned.

**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19)**

**Minutes of the Eighth Sitting of the Committee on Welfare of Other Backward Classes (2018-19) held on 5<sup>th</sup> September, 2018 from 1115 hrs to 1400 hrs in Committee Room 'D', Parliament House Annexe, New Delhi**

**PRESENT**

Shri Ganesh Singh — Hon'ble Chairperson

**MEMBERS**

*Lok Sabha*

2. Dr. Swami Sakshi ji Maharaj
3. Dr. (Smt.) Pritam Gopinath Munde
4. Shri Rodmal Nagar
5. Shri P. Karunakaran
6. Shri Hari Narayan Rajbhar
7. Shri Mullappally Ramachandran
8. Shri Ladu Kishore Swain
9. Shri Kanwar Singh Tanwar

*Rajya Sabha*

10. Shri Ram Narain Dudi
11. Shri B.K. Hariprasad
12. Shri Ahamed Hassan
13. Dr. Vikas Mahatme
14. Shri Vishambhar Prasad Nishad
15. Shri K.K. Ragesh
16. Smt. Vijila Sathyananth
17. Shri Ram Nath Thakur
18. Smt. Chhaya Verma

**SECRETARIAT**

1. Shri N.C. Gupta	-	Joint Secretary
2. Shri R.R. Kumar	-	Director
3. Shri A.S.K. Das	-	Deputy Secretary
4. Shri Janmesh Singh	-	Under Secretary

## **WITNESSES**

### **DEPARTMENT OF PERSONNEL AND TRAINING (DoPT)**

1.	Dr. C. Chandramouli	Secretary
2.	Shri V.K. Singh	Joint Secretary
3.	Shri G.D. Tripathi	Joint Secretary

### **UNION PUBLIC SERVICE COMMISSION (UPSC)**

1.	Shri Rakesh Kumar Gupta	Secretary
2.	Shri Rajkumar Gathwal	Additional Secretary
3.	Shri R.K. Sinha	Additional Secretary
4.	Shri Dhananjay Kumar	Additional Secretary
5.	Shri Rakesh Kumar Tiwari	Additional Secretary
6.	Shri Rahul Singh	Joint Secretary

### **STAFF SELECTION COMMISSION (SSC)**

1.	Shri Manoj Kumar Pandey	Member
2.	Shri Deen Bandhu Singh	Secretary-cum-Controller of Examinations
3.	Shri Mohan Lal Hirwal	Director

### **MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT**

1.	Ms. Nilam Sawhney	Secretary
2.	Ms. Upma Srivastava	Additional Secretary
3.	Shri B.L. Meena	Joint Secretary (BC)
4.	Ms. T.M. Ganai	Director (BC)

### **DEPARTMENT OF PUBLIC ENTERPRISES**

1.	Smt. Seema Bahuguna	Secretary
2.	Shri Rajesh K Chaudhry	Joint Secretary
3.	Shri A.K. Khurana	Director

### **NITI AAYOG**

1.	Shri Shri yaduvendra mathur	Special Secretary
2.	Shri Vikram Singh Gaur	Joint Secretary
3.	Shri Yogesh Suri	Adviser
4.	Shri V.B. Singh	Director

2. At the outset, the Committee called in some of the candidates belonging to OBC category who after having qualified Civil Services Examination conducted by UPSC are facing difficulties in getting appointment/service allocation due to alleged non-uniform application of creamy layer formulation and resultant ambiguity in establishment of equivalence of posts and services and heard their grievances.

*The invitee candidates then withdrew.*

3. Thereafter, official witnesses were ushered in. The Chairperson formally welcomed the members of the Committee, the representatives of the Department of Personnel and Training (DoPT), Ministry of Social Justice and Empowerment, Department of Public Enterprises, Union Public Service Commission, Staff Selection Commission and NITI Aayog to the Sitting of the Committee convened to take evidence on the subject 'Formulation and implementation of Reservation Policy and Rationalisation of Creamy Layer in employment for OBCs in the posts and services under Government of India and Union Territories and Welfare measures for them'. In his opening remarks, the Chairperson highlighted some of the core concerns related to the subject. Thereafter, the representatives of the DoPT, Ministry of Social Justice and Empowerment, Department of Public Enterprises, UPSC, SSC and NITI Aayog shared their views on the subject with the Committee.

4. Some of the major issues/points raised by the Chairperson and Members of the Committee in the sitting were as under:-

- (i) Poor representation of OBCs at various levels in the overall strength;
- (ii) Filling up the vacancies reserved for OBCs in different categories;
- (iii) Reasons for backlog vacancies for OBCs and efforts made to fill them up;
- (iv) Reasons for delayed recruitment to various posts;

- (v) Interpretation of some of the provisions of the OM issued in the year 1993 and clarification thereto issued in 2004 by DoPT with respect to implementation of creamy layer criteria;
- (vi) Establishment of equivalence of posts and services in Public Sector Undertakings, Public Sector Banks, Financial Institutions, etc. vis-à-vis posts and services under Government of India for the purpose of determining creamy layer status and need for establishing equivalence of posts and services in Universities and State PSUs, without any further delay;
- (vii) Speedy disposal of the cases of the candidates belonging to OBC category who after having qualified Civil Services Examination conducted by UPSC are facing difficulties in getting appointment/service allocation due to alleged non-uniform application of creamy layer formulation and resultant ambiguity in establishment of equivalence of posts and services;
- (viii) Clarification regarding reservation of OBC candidates in various recruitments conducted by UPSC/ Staff Selection Commission;
- (ix) Comments of NITI Aayog on the issues relating to creamy layer, etc. with regard to OBCs;
- (x) Representation of OBCs in various Selection Committees/Boards;
- (xi) Scholarship programmes for OBC students.
- (xii) Measures for promoting overall welfare of OBC employees;

5. The Chairperson directed the representatives to furnish written replies to the queries which were not responded to by them during the sitting or on which the requisite information was not readily available with them, to the Committee at the earliest. The witnesses then withdrew.

*The Committee then adjourned.*  
A copy of the verbatim proceedings of the sitting has been kept.

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**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19)**

**Minutes of the Tenth Sitting of the Committee on Welfare of Other Backward Classes (2018-19) held on 8<sup>th</sup> October, 2018 from 1100 hrs to 1300 hrs in Committee Room 'D', Parliament House Annexe, New Delhi**

**PRESENT**

Shri Ganesh Singh — Hon'ble Chairperson

**MEMBERS**

*Lok Sabha*

10. A. Arunmozhithovan
11. Dr. Swami Sakshi ji Maharaj
12. Shri Rodmal Nagar
13. Shri P. Karunakaran

*Rajya Sabha*

6. Shri Husain Dalwai
7. Shri Ram Narain Dudi
8. Shri B.K. Hariprasad
9. Shri Ahamed Hassan
10. Dr. Vikas Mahatme
11. Shri Vishambhar Prasad Nishad
12. Shri K.K. Ragesh
13. Smt. Vijila Sathyananth
14. Shri Ram Nath Thakur
15. Smt. Chhaya Verma

**SECRETARIAT**

5. Shri T.G. Chandrasekhar	-	Joint Secretary
6. Shri R.R. Kumar	-	Director
7. Shri A.S.K. Das	-	Deputy Secretary

## **WITNESSES**

### **DEPARTMENT OF PERSONNEL AND TRAINING (DoPT)**

1.	Dr. C. Chandramouli	Secretary
2.	Shri Vijoy Kumar Singh	Joint Secretary
3.	Shri G. Dev Tripathi	Joint Secretary
4.	Shri Mukul Ratra	Joint Secretary

### **MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT**

1.	Ms. Nilam Sawhney	Secretary
2.	Ms. Upma Srivastava	Additional Secretary
3.	Shri B.L. Meena	Joint Secretary (BC)
4.	Shri J.P. Dutt	Director (BC)

### **MINISTRY OF LAW AND JUSTICE**

Shri Suresh Chandra	Secretary
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### **UNION PUBLIC SERVICE COMMISSION (UPSC)**

1.	Shri Rakesh Kumar Gupta	Secretary
2.	Shri Rajkumar Gathwal	Additional Secretary
3.	Shri R.K. Sinha	Additional Secretary
4.	Shri Dhananjay Kumar	Additional Secretary
5.	Shri Rakesh Kumar Tiwari	Additional Secretary
6.	Shri Rahul Singh	Joint Secretary
7.	Shri Raj Kumar	Joint Secretary
8.	Ms. Ruchiika Gupta	Joint Secretary

2. At the outset, the Chairperson welcomed the members of the Committee and informed them that on a written request of Shri Dharmendra Yadav, MP, he has permitted Shri Yadav, who was not a member of the Committee, to attend the sitting of the Committee as a special invitee and present his views on the subject “Rationalisation of Creamy Layer in employment for OBCs in the posts and services under Government of India and Union Territories and welfare measures for them” in the agenda of the sitting as per established past practice. The Committee welcomed Shri Yadav and he presented his views and suggestions before the Committee. He also explained about the difficulties being faced by the candidates who have qualified Civil Services examination conducted by UPSC in getting appointment due to alleged non-uniform application of creamy layer formulation and resultant ambiguity in establishment of equivalence of posts and services.

3. Thereafter, the Chairperson welcomed the representatives of the Department of Personnel and Training (DoPT), Union Public Service Commission, convened to take evidence on the subject ‘Formulation and implementation of Reservation Policy and Rationalisation of Creamy Layer in employment for OBCs in the posts and services under Government of India and Union Territories and Welfare measures for them’. In his opening remarks, the Chairperson informed that the evidences on the subject held during the previous sittings were not conclusive and highlighted some of the core concerns related to the subject. Thereafter, the representatives of the DoPT, UPSC, Ministry of Social Justice and Empowerment and Ministry of Law & Justice shared their views on the subject with the Committee.

4. Some of the major issues/points discussed during the sitting of the Committee were as under:-

- (i) Establishment of equivalence of posts and services in Public Sector Undertakings, Public Sector Banks, Financial Institutions, etc. vis-à-vis posts and services under Government of India for the purpose of determining creamy layer

status and need for establishing equivalence of posts and services in Universities and State PSUs, without any further delay;

- (ii) Interpretation of some of the provisions of the OM issued in the year 1993 and clarification thereto issued in 2004 by DoPT with respect to implementation of creamy layer criteria;
- (iii) Speedy disposal of the cases of the candidates belonging to OBC category who after having qualified Civil Services Examination conducted by UPSC are facing difficulties in getting appointment/service allocation due to alleged non-uniform application of creamy layer formulation and resultant ambiguity in establishment of equivalence of posts and services;
- (iv) Clarification regarding reservation for OBC candidates in various recruitments conducted by UPSC;
- (v) Reasons for delayed recruitment to various posts;
- (vi) Filling up the vacancies reserved for OBCs in different categories;
- (vii) Measures for promoting overall welfare of OBC employees;

5. The Chairperson and Members then sought clarification regarding ambiguity relating to the applicability of provisions of creamy layer leading to the confusion in establishment of equivalence of posts and services. The representatives of DoPT assured the Committee that legal opinion would be sought within specified time frame on this issue. The Committee granted fifteen days' time to DoPT to apprise them of the same.

6. The Chairperson directed the representatives to furnish written replies to the queries which were not responded to by them during the sitting or on which the requisite information was not readily available with them, to the Committee at the earliest. The witnesses then withdrew.

*The Committee then adjourned.*  
A copy of the verbatim proceedings of the sitting has been kept.

**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19)**

**MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19) HELD ON 20<sup>TH</sup> DECEMBER, 2018 IN COMMITTEE ROOM No. 62, PARLIAMENT HOUSE, NEW DELHI**

The Committee sat from 1500 hrs. to 1630 hrs.

**PRESENT**

**SHRI GANESH SINGH- Chairperson**

**MEMBERS  
LOK SABHA**

2. Smt. Santosh Ahlawat
3. Shri Santosh Kumar
4. Shri Ravindra Kushawaha
5. Dr. Swami Sakshi ji Maharaj
6. Dr. Banshilal Mahato
7. Shri Rodmal Nagar
8. Shri Kapil Moreshwar Patil
9. Shri Harinarayan Rajbhar
10. Shri Rajeev Satav
11. Shri Kanwar Singh Tanwar

**RAJYA SABHA**

12. Shri Husain Dalwai
13. Shri B.K. Hariprasad
14. Dr. Vikas Mahatme
15. Shri Vishambhar Prasad Nishad
16. Smt. Vijila Sathyananth
17. Smt. Chhaya Verma

**SECRETARIAT**

1. Shri T.G. Chandrasekhar	-	Joint Secretary
2. Shri R.R. Kumar	-	Director
3. Shri A.S.K. Das	-	Deputy Secretary
4. Shri Janmesh Singh	-	Under Secretary

## **WITNESSES**

### **DEPARTMENT OF PERSONNEL AND TRAINING (DoPT)**

1.	Dr. C. Chandramouli	-	Secretary
2.	Ms. Sujata Chaturvedi	-	Additional Secretary
3.	Shri V.K Singh	-	Joint Secretary
4.	Shri G.D Tripathi	-	Joint Secretary
5.	Shri G. Srinivasan	-	Director

### **MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT**

1.	Ms. Nilam Sawhney	-	Secretary
2.	Shri B.L. Meena	-	Joint Secretary (BC)
3.	Shri K. Narayan	-	MD, NBCFDC
4.	Shri J.P. Dutt	-	Director (BC)

### **MINISTRY OF LAW AND JUSTICE**

1.	Dr. Alok Srivastava	-	Secretary
2.	Shri T.K. Malik	-	Deputy Legal Adviser
3.	Shri Surendra Singh	-	Assistant Legal Adviser

2.	XXXX	XXXX	XXXX	XXXX
3.	XXXXX	XXXX	XXXX	XXXX

*The witnesses were called in*

4. At the outset, the Chairperson informed the Committee that on a written request of Shri Dharmendra Yadav, MP, he has permitted Shri Yadav, who was not a member of the Committee, to attend the sitting of the Committee as a special invitee and present his views on the subject "Rationalisation of Creamy Layer in employment for OBCs in the posts and services under Government of India and Union Territories and welfare measures for them" in the agenda of the Sitting, as per established past practice.

5. Thereafter, the Chairperson welcomed Shri Yadav and the representatives of the Department of Personnel and Training (DoPT), Ministry of Social Justice and Empowerment and Ministry of Law & Justice to the Sitting of the Committee. In his opening remarks, the Chairperson informed that the evidences on the subject held during the previous sittings were not conclusive and highlighted some of the core concerns related to the subject. Thereafter, the representatives of the DoPT, Ministry of Social Justice and Empowerment and Ministry of Law & Justice informed the Committee about the developments after previous sittings of the Committee. With the permission of the Chair, Shri Dharmendra Yadav, MP also presented his views and suggestions on the subject before the Committee.

6. Some of the major issues/points discussed during the sitting of the Committee were as under:-

- (i) Establishment of equivalence of posts and services in PSUs under State Governments, Universities and private sector employment vis-à-vis posts and services under Government of India for the purpose of determining creamy layer status, without any further delay;
- (ii) Interpretation of some of the provisions of the OM issued in the year 1993 and clarification thereto issued in 2004 by DoPT with respect to implementation of creamy layer criteria and seeking legal opinion thereon from the Ministry of Law and Justice;
- (iii) Speedy disposal of the cases of the candidates belonging to OBC category who after having qualified Civil Services Examination conducted by UPSC are facing difficulties in getting appointment/service allocation due to alleged non-uniform application of creamy layer formulation and resultant ambiguity in establishment of equivalence of posts and services;
- (iv) Filling up the vacancies reserved for OBCs in different categories;
- (v) Measures for promoting overall welfare of OBC employees;

7. The Chairperson and Members then sought clarifications on the subject and the representatives of the respective Ministries replied to the queries raised by the Hon'ble Members.

8. The Chairperson directed the representatives to furnish written replies to the queries which were not responded to by them during the sitting or on which the requisite information was not readily available with them, to the Committee at the earliest. The witnesses then withdrew.

*The Committee then adjourned.*

A copy of the verbatim proceedings of the sitting has been kept.

**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19)**

**MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19) HELD ON THURSDAY, THE 7<sup>TH</sup> FEBRUARY, 2019 IN COMMITTEE ROOM 'B', PARLIAMENT HOUSE ANNEXE, NEW DELHI**

The Committee sat from 1600 hrs. to 1700 hrs.

**PRESENT**

**SHRI GANESH SINGH- CHAIRPERSON**

**MEMBERS**

**LOK SABHA**

2. Smt. Santosh Ahlawat
3. Dr. Swami Sakshi ji Maharaj
4. Shri Rajveer Singh
5. Shri Kanwar Singh Tanwar

**RAJYA SABHA**

6. Shri Husain Dalwai
7. Shri Ram Narain Dudi
8. Shri B.K. Hariprasad
9. Shri Ahamed Hassan
10. Dr. Vikas Mahatme
11. Smt. Vijila Sathyananth
12. Smt. Chhaya Verma

**SECRETARIAT**

1.	Shri T.G. Chandrasekhar	-	Joint Secretary
2.	Shri R.R. Kumar	-	Director
3.	Shri A.S.K. Das	-	Additional Director

## **WITNESSES**

### **MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (DEPARTMENT OF PERSONNEL AND TRAINING)**

1.	Ms. Sujata Chaturvedi	Additional Secretary
2.	Shri Vijoy Kumar Singh	Joint Secretary
3.	Shri G.Dev Tripathi	Joint Secretary
4.	Shri G. Srinivasan	Director

### **MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT**

1.	Ms. Nilam Sawhney	Secretary
2.	Sh. B.L. Meena	JS(BC)
3.	Ms.Tasneem Maajid Ganai	Dir(BC-I)
4.	Sh. Sandeep Kumar Gupta	Dir(BC-II)

### **MINISTRY OF LAW AND JUSTICE**

1.	Dr. Rajiv Mani	Joint Secretary and Legal Adviser
2.	Shri T.K. Malik	Deputy Legal Adviser
3.	Shri Surendra Singh	Assistant Legal Adviser

### **MINISTRY OF HUMAN RESOURCE DEVELOPMENT**

1.	Shri R. Subrahmanyam	Secretary (Higher Education)
2.	Shri Madhu Ranjan Kumar	Joint Secretary
3.	Smt. Ishita Roy	Joint Secretary
4.	Shri Girish C. Hosur	Commissioner, NVS

### **UNIVERSITY GRANTS COMMISSION**

1.	Prof. D.P. Singh	Chairman
2.	Prof. Rajnish Jain	Secretary
3.	Dr. D.K. Tripathi	Joint Secretary

2. At the outset, the Chairperson, welcomed the Members of the Committee to the sitting. The Committee decided to defer taking evidence of the representatives of the Ministry of Petroleum and Natural Gas, ONGC Ltd., GAIL India Ltd., HPCL, BPCL, IOCL, Ministry of Steel and MSTC Ltd. and decided to call in the representatives of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Ministry of Social Justice and Empowerment, Ministry of Law & Justice, Ministry of Human Resource Development and University Grants Commission to take evidence on the subjects, "Rationalisation of Creamy Layer in employment for OBCs in the posts and services under the control of Government of India including Union Territories, PSUs, etc.," and "Measures undertaken to secure representation of OBCs and for their welfare in Universities and other higher educational/technical Institutions".

*The witnesses were called in*

3. The Chairperson welcomed the witnesses to the sitting of the Committee. In his opening remarks, the Chairperson informed that the evidences on the subject held during the previous sittings were not conclusive and highlighted some of the core concerns related to the subject. Thereafter, the representatives of the DoPT, Ministry of Social Justice and Empowerment, Ministry of Law & Justice, Ministry of Human Resource Development and University Grants Commission informed the Committee about the developments after previous sittings of the Committee.

4. Some of the major issues/points discussed during the sitting of the Committee were as under:-

- (i) Establishment of equivalence of posts and services in PSUs under State Governments, Universities and private sector employment vis-à-vis posts and services under Government of India for the purpose of determining creamy layer status;
- (ii) Interpretation of some of the provisions of the OM issued in the year 1993 and clarification thereto issued in 2004 by DoPT with respect to implementation of creamy layer criteria and seeking legal opinion thereon from the Ministry of Law and Justice;
- (iii) Speedy disposal of the cases of the candidates belonging to OBC category who after having qualified Civil Services Examination conducted by UPSC are facing difficulties in getting appointment/service allocation due to alleged non-uniform and arbitrary application of creamy layer formulation and resultant effect on the candidates whose cases are not pending in the court;

- (iv) Implementation of reservation in recruitment to faculty posts in Universities and developments after latest Supreme Court orders on it;
- (v) Maintenance of reservation roster in the past and effecting changes as per orders of implementation of 13 point roster system in Universities;
- (vi) Impact of the latest order on reservation policy in faculty recruitment; and
- (vii) Remedial action taken/proposed to be taken in this regard.

5. The Chairperson and Members then sought clarifications on the subject and the representatives of the respective Ministries replied to the queries raised by the Hon'ble Members.

6. The Chairperson directed the representatives to furnish written replies to the queries which were not responded to by them during the sitting or on which the requisite information was not readily available with them, to the Committee at the earliest. The witnesses then withdrew.

*The Committee then adjourned.*

A copy of the verbatim proceedings of the sitting has been kept.

**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19)**

**MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19) HELD ON THURSDAY, THE 13<sup>TH</sup> FEBRUARY, 2019 IN COMMITTEE ROOM 'B', PARLIAMENT HOUSE ANNEXE, NEW DELHI**

The Committee sat from 1030 hrs. to 1100 hrs.

**PRESENT**

**SHRI GANESH SINGH- CHAIRPERSON  
MEMBERS**

*Lok Sabha*

2. Shri Ravindra Kushawaha
4. Dr. Swami Sakshi ji Maharaj
5. Shri Rodmal Nagar
6. Shri P. Karunakaran
7. Shri Harinarayan Rajbhar

*Rajya Sabha*

8. Shri Ram Narain Dudi
9. Dr. Vikas Mahatme
10. Shri Vishambhar Prasad Nishad
11. Smt. Vijila Sathyananth
12. Shri Ram Nath Thakur

**SECRETARIAT**

1. Shri T.G. Chandrasekhar	-	Joint Secretary
2. Shri R.R. Kumar	-	Director
3. Shri A.S.K. Das	-	Additional Director

## **WITNESSES**

### **MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT**

1.	Ms. Nilam Sawhney	Secretary
2.	Sh. B.L. Meena	JS(BC)
3.	Sh. Sandeep Kumar Gupta	Dir(BC-II)

### **MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (DEPARTMENT OF PERSONNEL AND TRAINING)**

1.	Dr. C. Chandramouli	Secretary
2.	Ms. Sujata Chaturvedi	Additional Secretary
3.	Shri Vijoy Kumar Singh	Joint Secretary
4.	Shri G.Dev Tripathi	Joint Secretary
5.	Shri G. Srinivasan	Director

### **MINISTRY OF LAW AND JUSTICE**

1.	Dr. Alok Srivastava	Secretary
2.	Dr. Rajiv Mani	Joint Secretary and Legal Adviser
3.	Shri Surendra Singh	Assistant Legal Adviser

2. At the outset, the Chairperson, welcomed the Members of the Committee and representatives of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Ministry of Social Justice and Empowerment and Ministry of Law & Justice to the sitting of the Committee convened to take evidence of the subject, “Rationalisation of Creamy Layer in employment for OBCs in the posts and services under the control of Government of India including Union Territories, PSUs, etc.”
3. In his opening remarks, the Chairperson informed that the evidences on the subject held during the previous sittings were not conclusive and highlighted some of the core concerns related to the subject. Thereafter, the representatives of the DoPT, Ministry of Social Justice and Empowerment and Ministry of Law & Justice updated the Committee about the developments after previous sittings of the Committee.

4. Some of the major issues/points discussed during the sitting of the Committee were as under:-

- (viii) Need for establishment of equivalence of posts and services in PSUs under State Governments, Universities and private sector employment vis-à-vis posts and services under Government of India for the purpose of determining creamy layer status;
- (ix) Reinterpretation of some of the provisions of the OM issued in the year 1993 and clarification thereto issued in 2004 by DoPT with respect to implementation of creamy layer criteria and seeking legal opinion thereon from the Ministry of Law and Justice;
- (x) Speedy disposal of the cases of the candidates belonging to OBC category who after having qualified Civil Services Examination conducted by UPSC are facing difficulties in getting appointment/service allocation due to alleged non-uniform and arbitrary application of creamy layer formulation and resultant effect on the candidates whose cases are not pending in the court; and
- (xi) Remedial action taken/proposed to be taken in this regard.

5. The Chairperson and Members then sought clarifications on the subject and the representatives of the respective Ministries replied to the queries raised by the Hon'ble Members.

6. The Chairperson directed the representatives to furnish written replies to the queries which were not responded to by them during the sitting or on which the requisite information was not readily available with them, to the Committee at the earliest. The witnesses then withdrew.

*The Committee then adjourned.*

A copy of the verbatim proceedings of the sitting has been kept.

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**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19)**

**MINUTES OF THE SIXTEENTH SITTING OF THE COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES (2018-19) HELD ON WEDNESDAY, 13<sup>TH</sup> FEBRUARY, 2019 IN COMMITTEE ROOM 'B', PARLIAMENT HOUSE ANNEXE, NEW DELHI**

The Committee sat from 1730 hrs. to 1800 hrs.

**PRESENT**

Shri Ganesh Singh — Hon'ble Chairperson

**MEMBERS**

*Lok Sabha*

- 14. Shri Ravindra Kushawaha
- 15. Dr. Swami Sakshi ji Maharaj
- 16. Shri Rodmal Nagar
- 17. Shri P. Karunakaran
- 18. Shri Harinarayan Rajbhar

*Rajya Sabha*

- 19. Shri Ram Narain Dudi
- 20. Dr. Vikas Mahatme
- 21. Shri Vishambhar Prasad Nishad
- 22. Smt. Vijila Sathyananth
- 23. Shri Ram Nath Thakur

**SECRETARIAT**

5. Shri T.G. Chandrasekhar	-	Joint Secretary
6. Shri R.R. Kumar	-	Director
7. Shri A.S.K. Das	-	Additional Director

## **WITNESSES**

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2. At the outset, the Chairperson welcomed the Members of the Committee to the Sitting of the Committee and took up the draft Report on the subject “Rationalisation of Creamy Layer in Employment for OBCs in Services and Posts under the control of Government of India including Union Territories, PSUs etc.” for consideration. The Committee discussed the Draft Report and authorised the Chairperson to finalise the Report with such changes/modifications as may be felt necessary and present the Report to the Hon’ble Speaker as per the prescribed Rules.

*The witnesses were then called in.*

3.           XXXX                   XXXX                   XXXX

4.           XXXX                   XXXX                   XXXX

5.           XXXX                   XXXX                   XXXX

The Committee then adjourned.

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