

8

**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES
(2019-20)**

(SEVENTEENTH LOK SABHA)

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

Action Taken by the Government on the Observations/Recommendations contained in their Twenty First Report (Sixteenth Lok Sabha) 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.

EIGHTH REPORT



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI
*July, 2020/Ashadha, 1942 (Saka)***

EIGHTH REPORT

**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES
(2019-20)**

(SEVENTEENTH LOK SABHA)

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

Action Taken by the Government on the Observations/Recommendations contained in their Twenty First Report (Sixteenth Lok Sabha) 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.”.

Presented to Hon'ble Speaker on 25th July, 2020



**LOK SABHA SECRETARIAT
NEW DELHI
*July, 2020/Ashadha, 1942 (Saka)***

C.O.OBC No.

Price : Rs

@2020 BY LOK SABHA SECRETARIAT

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by Jainco Art India, New Delhi-110005

CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE (2019-20).....	(iv)
INTRODUCTION.....	(vi)

REPORT

CHAPTER I	Report.....	1
CHAPTER II	Observations/Recommendations which have been accepted by the Government.....	15
CHAPTER III	Observations/Recommendations which the Committee do not desire to pursue in the light of the replies received from the Government.....	18
CHAPTER IV	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration.....	19
CHAPTER V	Observations/Recommendations in respect of which final replies of the Government are still awaited.....	39

APPENDICES

I	Extracts of the Minutes of the Sitting of the Committee on Welfare of Other Backward Classes (2019-20) held on 14 th July, 2020.....	43
II	Analysis of the Action Taken by the Government on the Observations/Recommendations of the Committee on Welfare of Other Backward Classes contained in their Twenty First Report (Sixteenth Lok Sabha).....	45

COMPOSITION OF THE COMMITTEE ON WELFARE OF OBCs (2019-20)

SHRI GANESH SINGH- CHAIRPERSON

MEMBERS
LOK SABHA

2. Shri Ramesh Bidhuri
3. Shri S. Jagathrakshakan
4. Smt S. Jothimani
5. Shri Dileshwar Kamait
6. Smt. Raksha Nikhil Khadse
7. Shri Bandi Sanjay Kumar
8. Shri Sadashiv Kisan Lokhande
9. Dr. (Smt.) Pritam Gopinathrao Munde
10. Shri Balak Nath
11. Shri Ajay Nishad
12. Dr. Sanghamitra Maurya
13. Shri Parbhatbhai Savabhai Patel
14. Shri Kapil Moreshwar Patil
15. Shri Mahesh Sahoo
16. Shri Sanjay Seth
17. Shri Ram Shiromani
18. Shri K. Sudhakaran
19. Shri Rajesh Verma
20. Shri Ashok Kumar Yadav

RAJYA SABHA

21. Shri T.K.S. Elangovan
22. Shri Vishambhar Prasad Nishad
23. Dr. Banda Prakash
24. Shri K.K Ragesh
25. Smt. Chhaya Verma
26. Shri Harnath Singh Yadav
27. Vacant*
28. Vacant*
29. Vacant*
30. Vacant#

* Vacancy arose *vide* expiry of the term of Smt. Vijila Sathyananth on 02.04.2020 and that of Shri Ram Narain Dudi and Shri Ram Nath Thakur on 09.04.2020.

#Vacancy arose *vide* expiry of the term of Shri B.K. Hariparasd on 25.06.2020.

SECRETARIAT

1. Smt. Anita B. Panda - Joint Secretary
2. Shri Kusal Sarkar - Director
3. Shri Md. Aftab Alam - Additional Director

INTRODUCTION

I, the Chairperson, Committee on Welfare of Other Backward Classes (2019-20) having been authorised by the Committee to present the Report on their behalf, present this Eighth Report on Action Taken by the Government on the Observations/Recommendations contained in the Twenty-First Report (Sixteenth Lok Sabha) 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 Report was presented to Lok Sabha and laid on the Table of Rajya Sabha on 24th June, 2019. The replies of the Government to all the Observations/Recommendations contained in the Report were received on 1st August, 2019.

3. The replies of the Government were examined and the Draft Report was considered and adopted by the Committee at their sitting held on 14th July, 2020.

4. An analysis of the action taken by the Government on the Observations/Recommendations contained in the Twenty-First Report (Sixteenth Lok Sabha) of the Committee is given in Appendix-II.

NEW DELHI
14th July, 2020
23 Ashadha, 1942 (Saka)

GANESH SINGH,
Chairperson,
Committee on Welfare of OBCs

CHAPTER I

REPORT

This Report of the Committee on Welfare of Other Backward Classes deals with the action taken by the Government on the Observations/Recommendations contained in their Twenty First Report (Sixteenth Lok Sabha) 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 Twenty First Report (Sixteenth Lok Sabha) of the Committee was presented to the Speaker, Lok Sabha on 9th March, 2019, laid in Lok Sabha and Rajya Sabha on 24 June, 2019. The Report contained 13 Observations/Recommendations. Action Taken Notes in respect of all the Observations/Recommendations contained in the Report have been received from the Government. These have been examined and categorised as follows:

i. Observation/Recommendation which has been accepted by the Government:

Recommendation Sl. No. 1.....

(Total - 01)
Chapter-II

ii. Observations/Recommendations which the Committee do not desire to pursue in view of the Government's replies: -NIL-

(Total - Nil)
Chapter-III

iii. Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:

Recommendation Sl. Nos. 2, 3, 4, 5, 6, 7, 8, 12 & 13.....

(Total - 09)
Chapter-IV

iv. Observations/Recommendations in respect of which final replies of the Government are still awaited: Sl. Nos.,9, 10 and 11.....

(Total - 03)
Chapter-V

3. As regards the replies from DoPT, Department of Public Enterprises and Department of Financial Services, the Ministry of Social Justice and Empowerment, in their forwarding letter stated as under:

"In this connection, it is also informed that, after receipt of the above OM (Lok Sabha Secretariat's OM No.25(i)/1/1/OBC/2018-19 dated 13.3.2019 on the Observations/Recommendations contained in their Twenty First Report (Sixteenth Lok Sabha) 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."), this Department vide OM dated 20.3.2019 had requested Department of Personnel and Training (DOPT), Department of Public Enterprises (DPE) and Department of Financial Services (DFS) to furnish their comments on the Recommendations. This was further followed up by reminders dated 15.4.2019, 8.5.2019 and 13.06.2019. DPE sent their reply vide OM No. DPE-GM-/0020/2014-GM-FTS-41680 dated 22.5.2019 and DOPT sent their reply vide OM No. 43011/1/2019-Estt (Res) dated 126.2019. DFS did not send any reply. Accordingly, the ATR has been prepared based on available fact and replies sent by DPE and DOPT."

4. Subsequently, the Committee Secretariat wrote to Ministry of Social Justice and Empowerment on 4.2.2020 desiring to be further apprised of the current status of the Expert Committee headed by Shri B.P. Sharma. However, so far no reply has been received from the Ministry.

5. The Committee desire that Action Taken Notes on the Observations/Recommendations contained in Chapter I of the Report including the observations/recommends contained in the 21st Report on which either no reply has been given or final reply is awaited should be furnished to the Committee within three months of the presentation of this Report.

6. The Committee will now deal with the action taken by the Government on the Observations/Recommendations which need reiteration or merit comments in the succeeding paragraphs.

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

Recommendation Sl. No. 2

7. The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

"Category IIA of the Schedule to the O.M. of DoPT dated 8th 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 8th 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."

REPLY OF THE GOVERNMENT

8. The Ministry of Social Justice and Empowerment in their action taken reply have stated:

"The Mandal Commission was constituted by the Government under article 340 of the Constitution. The Commission in its report of December, 1980 recommended reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India. Following the Supreme Court judgment in the case of Indira Sawhney and others Vs. Union of India and others [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 (OBCs) in civil posts and services under the Government of India. Consequent upon consideration of Expert Committee's recommendations, the Department of Personnel and Training issued the Office Memorandum dated 8.9.1993, in which the criterion for reservation to OBCs was specified. Column 3 of the Schedule to this Office Memorandum, specified the persons/sections to whom the OBC reservation shall not apply. The categories excluded for reservation were based on income, wealth and certain categories of posts in the service sector.

The Government *vide* O.M. dated 08.03.2019 has constituted an Expert Committee to simplify and streamline the OM dated 8.9.1993 issued by the DOPT with the following composition:

1.	Shri B.P. Sharma, Former Secretary, DoPT	Chairperson
2.	Smt. Latha Krishna Rao, Former Secretary, MSJE	Member
3.	Dr. J.K. Bajaj, Director, Centre for Policy Studies, Chennai	Member
4.	Smt. Anil Katiyar, Advocate and Legal Expert	Member

The Terms of Reference for the Expert Committee are as under:

- a) To examine issues arising from implementation of the OM dated 08.09.1993 and to revisit the criteria evolved by the Expert Committee (Prasad Committee) and thereafter to give recommendations for redefining, simplifying and streamlining the concept of creamy layer while keeping in view the observations of the Supreme Court in the Indra Sawhney case.
- b) If then necessary, to give recommendations for establishing the equivalence of posts of employees in PSUs etc. mentioned in Category II-C of the OM dated 08.09.1993.
- c) To examine the issue of candidates of Civil Services Examination where cases have not been settled.
- d) To examine and recommend whether the Certificates of Equivalence issued by State Governments in respect of posts and services under the instrumentalities controlled by the State Government should be accepted for applying the test of equivalence for comparability vis-a-vis State Governments posts while applying the exclusion criterion of creamy layer; if so, then recommend modalities for issuing such Equivalence Certificates with adequate safeguards and level of authorities of State Government for approving such Certificates.
- e) To examine the specific cases of candidates, who had submitted Equivalence Certificates from various authorities of States, which were not considered in absence of a policy in this regard in Civil Services Examination 2017 and to make specific recommendation on each case, whether to accept the Equivalence Certificate, in consultation with the authorities of the concerned State Governments to satisfy about the veracity of such certificates.
- f) Any other matter that is referred to the Committee by the Competent Authority.

The Committee is yet to submit its report to the Government.

9. The Committee, in their Twenty First Report, had recommended 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. However, in their Action taken reply, the Government has sought to link the recommendation of the Committee with the outcome of an Expert Committee's report, by merely informing that Government has constituted an Expert Committee

headed by Shri B.P. Sharma to simplify and streamline the OM dated 08.09.1993 issued by the DOPT.

Action taken by the Government on the above recommendation, as intimated to the Committee is unsatisfactory. The recommendation of the Committee 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 was in tune with the judgment of the Central Administrative Tribunal which was duly complied with by the Government. The Committee, however, understand that Expert Committee headed by Shri B.P. Sharma has already submitted its report to the Government in September, 2019. The Ministry of Social Justice and Empowerment has remained silent on the matter so far despite the Committee Secretariat writing to them. Hence, reiterating their earlier recommendation regarding non-applicability of rule of exclusion 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, the Committee urge the Government to share the report of Shri B.P. Sharma Committee with them. They also desire that irrespective of the recommendation of the aforesaid Expert Committee in this regard, the Government should implement the recommendation of the Committee at the earliest.

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

Recommendation Sl. No. 5

10. The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

"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 8th 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."

REPLY OF THE GOVERNMENT

11. The Ministry of Social Justice and Empowerment in their action taken reply have stated as under:

"DPE vide O.M. No. DPE-GM/0020/2014-GM-FTS-1740 dated 8.4.2019 have informed that the Central Public Sector Enterprises (CPSEs) are categorized into four Schedules (A, B, C & D). These have different levels of pay scales based on IDA pay pattern with perks and allowances, variable pay, and the concept of affordability. The numbers of levels of non-executive level posts and flexible and differ from CPSE to CPSE. These are fixed by respective Boards of CPSEs after wage negotiations with the Unions. Therefore, the CPSEs are at a completely different footing as compared to the 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 level posts of Central Government is, therefore, not feasible. The employees in CPSEs are broadly categorized as Executives (i.e. Board level functionaries such as CMDs & Directors and below board level Executives (i.e. Managerial level officers of various designations) and Non-Executives such as Supervisors and Workmen. As such, for the purpose of reference standard only the Executives level posts in CPSEs had been proposed for consideration as "Creamy Layer" (except those executives whose annual income as per criteria given in DoPT O.M. 08.09.1993 as amended from time to time is less than Rs.8 lakh).

In view of above all, Non-Executive level posts would fall into the category "Non creamy layer" in terms of DPE O.M. No. DPE-GM/0020/2014-GM-FTS-1740 dated 25.10.2017. As on 31.03.2018, out of a total of 10.87 lakhs employees in CPSEs, 75.56% employees (8.21 lakh) are categorized as Non-Executives. Hence, the reference standard proposed by DPE for determination of creamy layer is likely to provide benefit to the maximum number of OBC employees of CPSEs.

As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government."

Recommendation Sl. No. 8

12. The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

"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 8th 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 indicated 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 14th October, 2004 has been brought about to clarify the*

O.M. of September, 1993. The communication of 14th 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 14th 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 judgment 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."

Reply of the Government

13. "As mentioned in reply to Para No. 2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government. DoPT vide O.M. No.43011/1/2019-Estt.(Res.) dated 12.06.2019 have informed that the case relating to interpretation of Para 9 of the clarificatory letter dated 14.10.2004 is pending before the Hon’ble Supreme Court. DoPT is of the view that the outcome of the case should be awaited."

14. The Committee in their report had highlighted the recommendation of Expert Committee regarding implementation of reservation in respect of the persons under II-C Category primarily on the ground that the evaluation of posts on equivalent or comparable basis will take some time and therefore the income/wealth test under Item VI, governing the persons under IIC Category was for an interim period till the process of evaluation of posts on equivalent or comparable basis was complete. However, Committee were constrained to observe that the Ministry of Social Justice and Empowerment have inordinately delayed the process of evaluation and identification of posts of equivalent or comparable basis in PSUs, Banks, Insurance organisations, Universities, etc. and have kept the matter pending for over two decades leading 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 8th September, 1993.

The Committee had also pointed out in their Report that there was a sense of discontentment among the OBC candidates with regard to the 'equivalence' established both by the Department of Public Enterprises (DPE) and Department of Financial Services(DFS). The Committee therefore, recommended that the equivalence set by the DFS and DPE should be revisited keeping in view the Report of the Expert Committee and in the light of DoPT OM of 1993. The Committee also recommended that 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 concerned Ministries, Departments, Governments, on priority and without any further delay.

The Ministry of Social Justice and Empowerment have now informed that despite reminders being issued, Department of Financial Services has not forwarded their comments on the recommendation of the Committee. However, Department of Public Enterprises have informed that the determination of exact equivalence of CPSEs posts with Group A, B, C and D level posts of Central Government is not feasible. The

Committee are constrained to observe that Ministry of Social Justice and Empowerment has not done due diligence in addressing the long standing issue of equivalence of CPSEs posts with central Government posts in coordination with the concerned Ministries. Accordingly, they reiterate earlier recommendation on the issue of establishing equivalence and urge the Ministry to resolve this outstanding issue keeping in view of the recommendation of earlier Expert Committee report as well as in the light of findings of the latest Expert Committee headed by Shri B.P. Sharma. The Committee also desire the Ministry to convey their dissatisfaction to the DFS for showing an absolutely callous attitude towards a Parliamentary Committee recommendations by not responding to the letters of Ministry of Social Justice & Empowerment on this issue.

As regards the matter relating to Para 9 of clarificatory letter dated 14.10.2004 issued by the DoPT which prescribed 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, the Committee had observed 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 had also noted that the DoPT had insisted upon not changing their stand at all before the final judgment is delivered by the Supreme Court in the matter. The Committee had further noted that DoPT has filed affidavit in the Supreme Court based on the impugned Clarificatory Letter dated 14.10.2004 issued by DoPT, although the linked file and notings that guide the rule and 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. Accordingly, the Committee strongly reiterate their earlier recommendation that the affidavit based on Para 9 of the impugned Clarificatory Letter dated 14.10.2004, filed by DoPT should be withdrawn and instructions be issued to the Chief Secretaries of all the State Governments and other related Departments intimating them about the withdrawal of Para 9 of the Clarificatory letter dated 14.10.2004.

The Government in its Action Taken reply has shown indifference to this recommendation of the Committee on the pretext that the Expert Committee headed by Shri B.P. Sharma is seized of the matter and the case relating to interpretation of Para 9 of the clarificatory letter dated 14.10.2004 is pending before the Hon'ble Supreme Court. In this connection, the Committee desire to make it clear that the recommendation of the Committee regarding issue of instructions by the DoPT to the Chief Secretaries of all the State Governments and other related Departments withdrawing Para 9 of the Clarificatory letter dated 14.10.2004 is well within the domain of the Government. The Committee did not intend to infringe upon any matter which might be sub-judice. The Committee therefore reiterate their earlier recommendation on the matter and urge the Government to take appropriate action in order to simplify the process of issuing Non-Creamy Layer Certificates to OBC candidates.

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

Recommendation Sl. No. 13

15. The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

"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."

Reply of the Government

16. "As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government."

17. The Committee in their 21 Report had noted that para 29 of earlier Expert Committee's recommendation regarding grant of exemption from application of rules of exclusion to persons working as artisans or engaged in the hereditary occupations, callings, etc. was not implemented and thus the list of the categories on which rule of exclusion are not applicable is not included in the 8th September, 1993. The Ministry of Social Justice and Empowerment in its Action Taken reply has again linked this matter with the outcome of the Expert Committee headed by Shri B.P. Sharma. However, the Committee observe that this matter does not figure in the terms of reference of the Expert Committee. The Committee is, therefore, hopeful that while considering the report of the Expert Committee, this issue would also be given due consideration

CHAPTER-II

OBSERVATION/RECOMMENDATION WHICH HAS BEEN ACCEPTED BY THE GOVERNMENT

Recommendation (SI No. 1)

2.1 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

“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 13th August, 1990 and 25th September, 1991 of the Department of Personnel 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 22nd February, 1993. The said Expert Committee submitted its Report to the Government on 10th 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 13th August, 1990 was

modified, vide OM No. 36012/22/93-Estt/SCT dated 8thSeptember, 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 and Training (DoPT), Government of India had issued orders providing for 27 per 44 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 8thSeptember, 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.

REPLY OF THE GOVERNMENT

2.2 The Ministry of Social Justice and Empowerment in their action taken reply have stated as under:

“As per the advice of the Committee, DoPT has issued instructions on 04.04.2018 relating to application of own merit in Direct Recruitment for appointment of Other Backward Classes (OBCs). This is mentioned in the above recommendation.”

CHAPTER-III

**OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO
PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES**

-NIL-

CHAPTER-IV

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

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

Recommendation Sl. No. 2

4.1 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

"Category IIA of the Schedule to the O.M. of DoPT dated 8th 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 8th 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."

REPLY OF THE GOVERNMENT

4.2 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

"The Mandal Commission was constituted by the Government under article 340 of the Constitution. The Commission in its report of December, 1980 recommended reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India. Following the Supreme Court judgment in the case of Indra Sawhney and others Vs. Union of India and others [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 (OBCs) in civil posts and services under the Government of India. Consequent upon consideration of Expert Committee's recommendations, the Department of Personnel and Training issued the Office Memorandum dated 8.9.1993, in which the criterion for reservation to OBCs was specified. Column 3 of the Schedule to this Office Memorandum, specified the persons/sections to whom the OBC

reservation shall not apply. The categories excluded for reservation were based on income, wealth and certain categories of posts in the service sector.

The Government *vide* O.M. dated 08.03.2019 has constituted an Expert Committee to simplify and streamline the OM dated 8.9.1993 issued by the DOPT with the following composition:

1.	Shri B.P. Sharma, Former Secretary, DoPT	Chairperson
2.	Smt. Latha Krishna Rao, Former Secretary, MSJE	Member
3.	Dr. J.K. Bajaj, Director, Centre for Policy Studies, Chennai	Member
4.	Smt. Anil Katiyar, Advocate and Legal Expert	Member

The Terms of Reference for the Expert Committee are as under:

- a) To examine issues arising from implementation of the OM dated 08.09.1993 and to revisit the criteria evolved by the Expert Committee (Prasad Committee) and thereafter to give recommendations for redefining, simplifying and streamlining the concept of creamy layer while keeping in view the observations of the Supreme Court in the Indra Sawhney case.
- b) If then necessary, to give recommendations for establishing the equivalence of posts of employees in PSUs etc. mentioned in Category II-C of the OM dated 08.09.1993.
- c) To examine the issue of candidates of Civil Services Examination where cases have not been settled.
- d) To examine and recommend whether the Certificates of Equivalence issued by State Governments in respect of posts and services under the instrumentalities controlled by the State Government should be accepted for applying the test of equivalence for comparability vis-a-vis State Governments posts while applying the exclusion criterion of creamy layer; if so, then recommend modalities for issuing such Equivalence Certificates with adequate safeguards and level of authorities of State Government for approving such Certificates.
- e) To examine the specific cases of candidates, who had submitted Equivalence Certificates from various authorities of States, which were not considered in absence of a policy in this regard in Civil Services Examination 2017 and to make specific recommendation on each case, whether to accept the Equivalence Certificate, in consultation with the authorities of the concerned State Governments to satisfy about the veracity of such certificates.

- f) Any other matter that is referred to the Committee by the Competent Authority.

The Committee is yet to submit its report to the Government.

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

Recommendation (SI No. 3)

4.3 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

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.

REPLY OF THE GOVERNMENT

4.4 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

“As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government.”

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

Recommendation (SI No. 4)

4.5 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

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.

REPLY OF THE GOVERNMENT

4.6 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government.

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

Recommendation (SI No. 5)

4.7 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

“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 8th 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.”

REPLY OF THE GOVERNMENT

4.8 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

“DPE vide O.M. No.DPE-GM/0020/2014-GM-FTS-1740 dated 8.4.2019 have informed that the Central Public Sector Enterprises (CPSEs) are categorized into four Schedules (A, B, C & D). These have different levels of pay scales based on IDA pay pattern with perks and allowances, variable pay, and the concept of affordability. The numbers of levels of non-executive level posts and flexible and differ from CPSE to CPSE. These are fixed by respective Boards of CPSEs after wage negotiations with the Unions. Therefore, the CPSEs are at a completely different footing as compared to the 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 level posts of Central Government is, therefore, not feasible. The employees in CPSEs are broadly categorized as Executives (i.e. Board level functionaries such as CMDs & Directors and below board level Executives (i.e. Managerial level officers of various designations) and Non-Executives such as Supervisors and Workmen. As such, for the purpose of reference standard only the Executives level posts in CPSEs had been proposed for consideration as “Creamy Layer” (except those executives whose annual income as per criteria given in DoPT O.M. 08.09.1993 as amended from time to time is less than Rs.8 lakhs).

In view of above all, Non-Executive level posts would fall into the category “Non-creamy layer” in terms of DPE O.M. No. DPE-GM/0020/2014-GM-FTS-1740 dated 25.10.2017. As on 31.03.2018, out of a total of 10.87 lakhs employees in CPSEs, 75.56% employees (8.21 lakhs) are categorized as Non-Executives. Hence, the reference standard proposed by DPE for determination of creamy layer is likely to provide benefit to the maximum number of OBC employees of CPSEs.

As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government.”

Applicability of Income/Wealth Test

Recommendation (SI No. 6)

4.9 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

“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 8th 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 13th September, 50 2017) for a period of three consecutive years. Sub-Category VI(b) of VI of the Schedule to the DoPT OM dated 8th 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 SubCategory 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 (IIA, 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 disentanglement 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.

REPLY OF THE GOVERNMENT

4.10 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government.

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

Recommendation (SI No. 7)

4.11 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

The DoPT O.M. dated 8th 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 14th 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. 8th 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 14th 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. Move 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.

Reply of the Government

4.12 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government.

Recommendation (SI No. 8)

4.13 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

“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 8th 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 disentanglement 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 14th October, 2004 has been brought about to clarify the O.M. of September, 1993. The communication of 14th 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 14th 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.”

Reply of the Government

4.14 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government.

DoPT vide O.M. No.43011/1/2019-Estt.(Res.) dated 12.06.2019 have informed that the case relating to interpretation of Para 9 of the clarificatory letter dated 14.10.2004 is pending before the Hon'ble Supreme Court. DoPT is of the view that the outcome of the case should be awaited.

Proposal to set up Expert Committee and Compliance of Equivalence Certificates

Recommendation (SI No. 12)

4.15 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

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.

Reply of the Government

4.16 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government.

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

Recommendation (SI No. 13)

4.17 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

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.

Reply of the Government

4.18 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

As mentioned in reply to Para No.2 above, the report of the Expert Committee constituted under the chairmanship of Shri B.P. Sharma is under consideration of the Government. The Expert Committee is yet to submit its report to the Government.

CHAPTER-V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

Creation of Supernumerary Posts

Recommendation (SI No. 9)

5.1 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

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 subjudice 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.

Reply of the Government

5.2 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

DoPT vide O.M. No.43011/1/2019-Estt.(Res.) dated 12.06.2019 have informed that the concern of the Committee has duly been noted and DoPT would enable a suitable solution as and when required.

Income ceiling for determining creamy layer

Recommendation (SI No. 10)

5.3 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

The Committee note that as per the income criteria originally stipulated in the DoPT OM dated 8th 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 9th 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 14th October, 2008 and to Rs. 6 lakh with effect from 16th May, 2013. As per the latest revision made vide DoPT OM dated 13th 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 1st September, 2017. Thus, the Committee observe that the provisions laid down in the DoPT OM dated 8th 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.

Reply of the Government

5.4 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

Recommendation (SI No. 11)

5.5 The Committee in their Twenty First Report (Sixteenth Lok Sabha) had recommended as under:

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
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
Total	32,58,663	7,03,017	21.57

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 inconsonance with the stipulations of the DoPT OM dated 8th September, 1993.

Reply of the Government

5.6 The Ministry of Social Justice and Empowerment in their action taken reply have stated:

The concern of the Committee has duly been noted and D/o SJE would enable a suitable solution as and when required.

**NEW DELHI;
14th July, 2020
23 Ashadha, 1942 (Saka)**

**GANESH SINGH,
Chairperson,
Committee on Welfare of OBCs**

**COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES
(2019-20)**

**MINUTES OF THE TWENTY SIXTH SITTING OF THE COMMITTEE ON WELFARE OF
OTHER BACKWARD CLASSES (2019-20) HELD ON 14TH JULY, 2020 IN COMMITTEE
ROOM B, PARLIAMENT HOUSE ANNEXE, NEW DELHI**

The Committee sat from 1100 hrs. to 1110 hrs.

PRESENT

SHRI GANESH SINGH - CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Ramesh Bidhuri
3. Smt S. Jothimani
4. Dr. (Smt.) Pritam Gopinathrao Munde
5. Shri Balak Nath
6. Shri Ajay Nishad
7. Dr. Sanghamitra Maurya
8. Shri Ram Shiromani
9. Shri Rajesh Verma

RAJYA SABHA

10. Shri T.K.S. Elangovan
11. Smt. Chhaya Verma
12. Shri Harnath Singh Yadav

SECRETARIAT

- | | | |
|------------------------|---|---------------------|
| 1. Smt. Anita B. Panda | — | Joint Secretary |
| 2. Shri Kusal Sarkar | — | Director |
| 3. Md. Aftab Alam | — | Additional Director |
| 4. Shri Janmesh Singh | — | Deputy Secretary |

2. At the outset, the Chairperson, welcomed the Members to the sitting of the Committee. The Committee, thereafter, considered the following draft Reports for adoption:

- i “Measures undertaken to secure representation of OBCs in employment and for their welfare in Rashtriya Chemicals & Fertilizers Limited” pertaining to the Ministry of Chemical and Fertilizers.
- ii “Measures undertaken to secure representation of OBCs in employment and for their welfare in National Fertilizers Limited” pertaining to the Ministry of Chemical and Fertilizers.
- iii “Measures undertaken to secure representation of OBCs in admissions in Ph.D. and appointment of teachers in Delhi University” pertaining to the Ministry of Human Resource Development (Department of Higher Education).
- iv Action Taken on the Twentieth Report (Sixteenth Lok Sabha) of the Committee on the subject “Measures undertaken to secure representation of OBCs in employment and for their welfare in Central Public Works Department (CPWD)” pertaining to the Ministry of Housing and Urban Affairs.
- v Action Taken on the Twenty First Report (Sixteenth Lok Sabha) of the Committee 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” pertaining to the Ministry of Social Justice and Empowerment.

3. The Committee adopted the aforesaid draft Reports after a brief discussion and authorized the Chairperson to present the Reports to Parliament or to the Hon’ble Speaker, Lok Sabha.

The Committee then adjourned.

APPENDIX II

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONS CONTAINED IN THE TWENTY FIRST REPORT OF THE COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES.

(SEVENTEENTH LOK SABHA)

(Refer Para 4 of Introduction)

- (i) Total No. of Observations/Recommendations: 13
- (ii) Observation/Recommendations of the Committee which have been accepted by the Government:
- Recommendation Sl. No. 1
- Total : 1
Percentage-7.69%
- (iii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from the Government
- Nil-
- Total : Nil
Percentage-0%
- (iv) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:
- Recommendation Sl. Nos. 2, 3, 4, 5, 6, 7, 8, 12 and 13
- Total : 9
Percentage-69.23%
- (v) Observations/Recommendations in respect of which final replies of the Government are still awaited:
- Recommendation Sl. Nos. 9, 10 and 11
- Total : 3
Percentage-23.07%