

Government of India
Ministry of Human Resource Development,
Department of Higher Education

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No.1-1/2005-U.1.A/847

New Delhi 20th April, 2008

Office Memorandum

As you are aware, the implementation of reservation in admission under the Central Educational Institutions (Reservation in Admissions) Act, 2006 [No. 5 of 2006] in respect of persons belonging to the socially and educationally backward classes (OBCs) had been 'stayed' by the Hon'ble Supreme Court of India, while hearing Writ Petition (Civil) No. 265 and a bunch of other writ petitions. You are also aware that the Apex Court has now finally disposed of the petitions on the 10th April, 2008, upholding the constitutional validity of the 93rd Amendment [Article 15(5)] of the Constitution in so far as the Central Educational Institutions, established, maintained or aided by the Central Government are concerned. The court has also upheld the CEI Act, 2006, with the directions that the OBCs shall not include socially advanced persons (commonly known as the "creamy layer"). Thus, all CEIs other than those mentioned in the Schedule of the CEI Act, have to implement the policy of reservation of 27% of seats for the OBCs apart from 15% seats for the SCs and 7.5% for the STs from the academic session commencing this year, in accordance with the phasing of the expansion of capacity necessitated in order to ensure that the seats available in the unreserved category are not reduced.

2. A detailed programme of phasing of the expansion has already been worked out by CEIs and approved by the Empowered Committee for implementing the recommendations of the Oversight Committee. In view of the 'stay orders' of the Hon'ble Supreme Court of India, the academic session commencing from the calendar year 2008 would, for all practical purposes, be the first year of implementation. This Ministry, after obtaining the approval of the competent authority, would revert on whether any modifications would be required in the programme of phased manner of expansion, if any, in respect of your institution and if so the authorization thereof.

3. This O.M. is intended to clarify the process of implementation of reservation for the OBCs as given below: -

I) The policy of reservation for the OBCs under the Central Educational Institutions Act is to be implemented from the forthcoming academic session itself.

II) This is applicable to all the CEIs, exceptions being only those institutions of excellence, research institutions of national and strategic importance specified in the Schedule to the CEI Act (copy of which is enclosed).

III) The policy of reservation for the OBCs/SCs&STs under the CEI Act is applicable to all programmes / courses of study at the undergraduate, graduate, Post graduate levels, etc. except courses or programmes at high levels of specialization, including at the post-doctoral level within any branch of study which the Central Government in consultation with the appropriate statutory authority (UGC / BCI/ MCI /AICTE, etc) may specify. This is to reiterate that there shall be no exemption from the policy of reservation except where the Central Government so specifies a course or programme covered under clause (d) of Section 4 of the Act.

IV) The reservation for the OBCs and SCs/STs under the CEI Act shall not apply to minority educational institutions as defined in section 2 (f) of the Act as well as on CEIs established in areas coming under 6th Schedule of the Constitution.

V) The Central Government is taking steps to ensure that CEIs are not put to difficulties in phasing of admissions under Section 6 of the Act, due to the deferment of reservation in admissions from the academic session in calendar year 2007, owing to the 'stay orders' of the Supreme Court.

VI) Each Central Educational Institution shall ensure that from among candidates belonging to the OBCs applying for admission against the seats reserved for the OBC category, information is collected from the candidates for exercising due diligence, so that no candidate belonging to the "creamy layer" is given the benefit of reservation for the OBCs.

VII) In order to identify and exclude candidates belonging to the "creamy layer" the criteria of exclusion / rules of exclusion have been provided in OM No. 36012/22/93-(SCT), dated 8th September, 1993 of the Ministry of Personnel, Public Grievance and Pension, Department of Personnel and Training as amended by that Department vide OM NO. 36033/3/2004-Estt. (Res) dated 9th March, 2004 and any other modifications that may take place from time to time in this regard.

VIII) The Socially and Educationally Backward Classes / OBCs who are eligible for availing the benefits of reservation is to be ascertained from the Central lists of SEBCs/OBCs as per Resolution No. 12011/68/93-DCC (C) of the Ministry of Welfare (now the Ministry of Social Justice & Empowerment) as modified from time to time by that Ministry based on the advice of the National Commission for Backward Classes (NCBC). For an updated list of state-wise OBCs eligible for availing the benefit of reservation, please see the list maintained by the NCBC at its website <http://ncbc.nic.in/backward-classes/index.html>. You may also access information in

respect of the creamy layer at <http://ncbc.nic.in/html/creamyayer.html> as well as the clarifications issued by the Department of Personnel & Training on the definition of creamy layer and income criteria at http://persmin.gov.in/WriteData/WMS/ScanDocument/36033_5_2004_01April2005.htm. The Supreme Court judgements are also available at the NIC website <http://www.judis.nic/supremecourt/CaseRes1.aspx>. A copy of the Resolution No. 1-1/ 2005-U.1A/846 dated 20th April, 2008 of the Ministry of Human Resource Development, Department of Higher Education, adopting the Central Lists of SEBCs/OBCs as per Resolution No. 12011/68/93-DCC(C) dated 10.9.1993 of the Ministry of Welfare (now the Ministry of Social Justice & Empowerment) as modified by that Ministry from time to time and the rules/criteria of exclusion of socially advanced persons/sections as per the O.M.No. 36012/22/93-Estt.[SCT] dated 8.9.1993 as amended by O.M.No. 36033/3/2004- Estt.(Res.) dated 9.3.2004 by the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel & Training) and as may be amended by that Ministry from time to time, for the purposes of implementing reservation in admission to Central Educational Institutions as defined in the CEI Act, 2006, is also attached for your reference and use.

IX) CEIs which have completed the process of admission test and selection of candidates in the SC,ST and unreserved categories, should identify the 'creamy layer' on the basis of the above mentioned information from among the successful wait-listed candidates belonging to the OBCs as per the Central List and, thereafter, offer admission to eligible candidates. For the purpose of identification, candidates would be required to furnish information on each of the criteria as per the prevailing rule of exclusion of the socially advanced persons (creamy layer). Please ensure that no ineligible person belonging to the 'creamy layer' derives the benefit of reservation. After completion of this process, information in respect of successful and eligible candidates belonging to the OBC category being offered admission may also be intimated to this Ministry.

X) Each CEI is also authorized to fix cut off marks for admission / selection through admission test, etc. for the OBC candidates with such differential from the cut-off marks for the unreserved category as each institution may deem appropriate for maintaining the standards of education and at the same time ensuring that sufficient number of eligible OBC candidates are available in keeping with the directions / observations of the Hon'ble Supreme Court of India in this regard. This authorization by the Central Government to the CEIs to fix the cut-off marks is in compliance with the Apex Court's direction asking the Central Government to examine the feasibility of determining such cut-off marks. The Central Government believes that each CEI would ensure that the directions / observations of the Hon'ble Court are followed.

XI) CEIs which are in the process of conducting admission tests may decide on the cut-off marks for the OBC category well in time, so that consistent with the standards of education of the CEIs, sufficient number of eligible OBC candidates are available for selection on the basis of inter-se merit against the reserved seats. Such institutions may also obtain information pertaining to the background of students who may have indicated as belonging to the OBC category in the application form, so as to identify those belonging to the 'creamy layer' from among them for exclusion from the counseling / interviews / group discussions / offer of admissions.

XII) CEIs which are yet to come out with application forms for admission may expeditiously insert the rule of exclusion / criteria of exclusion for the creamy layer, so that at the application stage itself the creamy layer could be identified, and only eligible candidates belonging to the OBC category are considered for the subsequent selection process and admissions against the reserved seats.

XIII) Central Educational Institutions which are yet to advertise the process of selection and admissions, shall ensure that the attention of candidates intending to apply against the reserved seats is directed to the mechanism mentioned in the preceding sub-paragraphs.

4. While the above clarification is in respect of reservation in admission against the seats for the OBCs, CEIs may also bear in mind that there may be a proportionate increase in the seats for the categories of SCs and STs also, where the extant procedure of selection or cut off marks for these categories shall continue to be in force.

5. This issues with the approval of the competent authority.

Sd/-

(Sunil Kumar)

Joint Secretary to the Government of India

To all Central Educational Institutions

Government of India
Ministry of Human Resource Development
Department of Higher Education

RESOLUTION

No. F.1-1/2005 – U.1 A/846

New Delhi, the 20th April 2008

Whereas, the Central Educational Institutions (Reservation in Admission) Act, 2006 [No.5 of 2007] (hereinafter referred to as the ‘CEI Act’) provides for the reservation in admission of the students belonging to the Scheduled Castes (SC), the Scheduled Tribes (ST) and the Other Backward Classes (OBC) of citizens to Central Educational Institutions established, maintained or aided by the Central Government.

And whereas, the CEI Act defines the “Other Backward Classes” as the class or classes of citizens who are socially and educationally backward, and are so determined by the Central Government;

And whereas, the Government of India had, recognizing that in our society marked by gross inequalities, early achievement of the objective of social justice as enshrined in the Constitution is a must, and established the Second Backward Classes Commission or the Mandal Commission as a measure pursuant to this purpose;

And whereas, the terms of the reference of the said Mandal Commission included the determination of the criteria for defining the socially and educationally backward classes (SEBC) and recommendation of steps to be taken for the advancement of the socially and educationally backward classes of citizens so identified and examination of the desirability or otherwise of making provision for the reservation of appointments or posts in favour of such backward classes of citizens which are not adequately represented in public services and posts in connection with the affairs of the Union or of any State;

And whereas, the Government carefully considered the Report and the recommendations of the Commission regarding the benefits that shall be extended to the socially and educationally backward classes, which comprehensively included various measures of social justice and social equalisation, including reservation in posts and vacancies under the State and public sector undertakings as well as reservation in educational institutions and, thereafter, came to the view that at the outset certain weightage has to be provided to such classes in the services of the Union and its Public Undertakings;

And whereas, therefore, orders were passed in its O.M. No. 36012/31/90-Estt. (SCT) dated 13.8.1990 of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) providing reservation of 27% in civil posts and services under the Government of India for socially and educationally backward classes, and that the SEBC would comprise in the first Phase, the castes and communities which are common to both the State-wise lists prepared by the Commission and the State Governments' lists;

And whereas, pursuant to the aforesaid O.M. and considering the judgment of the Supreme Court dated 15.11.1992 in its Mandal case (Indra Sawhney and Others vs. Union of India and Others) which upheld the aforesaid O.M. and the principle of commonality laid down in the aforesaid O.M. whereby the SEBC would comprise the castes and communities which are common to both the State-wise lists in the Report of the Mandal Commission and the State Governments' lists;

And whereas, it is clear from the Report and recommendations of the Mandal Commission and from the O.M. referred to above that the identification and listing of SEBC was for all purposes, of Articles including those under Articles 15(4) 16(4) of the Constitution and purposes of all other social justice measures which emerge from the Constitutional mandate of equality as well as the removal of inequality, including social inequality; and that this was always the intention of the Government of India, and it was only as an initial step ("at the outset"), in the situation and context then existing, that reservation under Article 16(4) was taken up, and this should not be misconstrued or

misinterpreted to mean that the Central Lists of SEBCs were intended for the purpose of only Article 16(4);

And whereas, it is not the practice of the Government of India or the State Governments, nor is it practical to identify and list SEBC/OBC or any other category in need of social justice for each purpose separately, and in the case of SC and ST also such has been the principle and practice all along, and in the case of SEBC this is the position in respect of State Lists as noted by the aforesaid Supreme Court judgment which specifically mentions that the State lists of SEBC/OBC were prepared both for the purposes of Article 16(4) as well as 15(4), and in the Indian social reality every genuine socially backward class is also an educationally backward class and it has been pointed out by the Supreme Court in the aforesaid judgment that in the Indian Context social backwardness leads to educational backwardness;

And whereas, no public purpose is served by identifying and listing SEBC for each purpose each time separately thereby losing time;

And whereas, the mention of the purpose of reservation in Government posts and services in the Resolution of the Ministry of Welfare No. 12011/68/93-BCC (C) dated 10.9.1993 notifying the first Central list of SEBC/OBC was not intended to mean that the identification and listing of SEBC/OBC was only for the purpose of Article 16(4) and was in fact for all purposes including for the purposes of Article 16(4) as well as Article 15(4) of the Constitution of India as elucidated above and the same is the position with the subsequent resolutions notifying Central list of SEBC/OBC issued from time to time, both on the basis of common listing and on the basis of Advices of the National Commission for Backward Classes (NCBC), and this is also the position in respect of the definition of Lists in Section 2 (c) of the NCBC Act of 1993 (No. 27 of 1993);

And whereas, the Central Government is satisfied that the Central Lists of the SEBC/OBCs, was prepared with due care;

And further whereas, the lists of SEBCs/OBCs of different States referred to for arriving at the Central (Common) Lists of SEBCs/OBCs were and are being used by States for extending the benefit of reservation for employment as well as for other measures of advancement such as admission to educational institutions and scholarships and so on;

And whereas, it is clear from the above that the SEBC/OBC referred to in the CEI Act have already been determined for each and every purpose currently in operation as well as those that may be undertaken from time to time in future, including for the purposes of the CEI Act;

And whereas, the Central Lists of SEBCs/OBCs, as modified from time to time on the advice of NCBC adequately reflect the various classes of population comprising the SEBC/OBC for the purpose of public policy decisions as to their welfare by the Central Government for the purposes of reservation of appointments or posts in favour of any backward classes of citizens under clause (4) of Article 16 of the Constitution of India, as well as for the purpose of advancement of socially and educationally backward classes as provided under clause (4) of Article 15 thereof in several States which have similar State Lists as mentioned above, as provided under clause (4) of Article 15 thereof and have already been and are being applied to various development schemes of the Central Government including the grant of scholarships, hostel facilities, coaching for the backward classes of citizens and more such developmental schemes will be taken up from time to time as required;

Now therefore, the Government of India, by way of clarification, reconfirms that the above mentioned Central Lists of SEBCs/OBCs are and have always been for all purposes including reservation in admission to educational institutions as elucidated above, and hereby notifies and adopts the Central Lists of SEBCs/OBCs notified State-wise from time to time by the Ministry of Welfare/Social Justice & Empowerment, subject to such modifications as may be made therein from time to time by that Ministry, excluding, in compliance with the directions of the Supreme Court of India dated

10.4.2008 in W.P (Civil) No. 265 and other related Writ Petitions, the Socially Advanced Persons/sections (commonly referred to as the “creamy layer”) in accordance with O.M. No. 36012/22/93-Estt.[SCT], dated 8.9.1993 of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) as amended by O.M. No. 36033/3/2004 – Estt. (Res) dated 9th March, 2004 and as may be modified by that Ministry from time to time, as applicable for the purposes of implementing reservation in admission to Central Educational Institutions as defined in the CEI Act 2006.

For and On Behalf of the President of India,

Sd/-

(Sunil Kumar)
Joint Secretary to the Government of India

ORDER

Ordered that a copy of the resolution be communicated to all State Governments, Union Territory Administrations, Ministries/ Departments of the Government of India, Statutory Bodies responsible for the maintenance or determination of standards of education, and all central educational institutions under the purview of the Central Educational Institutions (Reservation in Admissions) Act, 2006 [No.5 of 2007].

Sd/-

(Sunil Kumar)