

**Judgement Writ Petition (Civil) No.930 of 1990 – Indira Sawhney
Versus Union of India
And others (16.11.1992)**

THE FOLLOWING DIRECTIONS ARE GIVEN TO THE
GOVERNMENT OF INDIA, THE STATE GOVTS. AND
THE ADMINISTRATION OF UNION TERRITORIES

123. (A) The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.

(B) Within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ('creamy layer') from 'Other Backward Classes'. The implementation of the impugned O.M. dated 13th August 1990, shall be subject to exclusion of such socially advanced persons ('creamy layer').

This direction shall not however apply to States where the reservations in favour of backward classes are already in operation. They can continue to operate them. Such States shall however evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the designated 'Other Backward Classes'.

(C) It is clarified and directed that any and all objections to the criteria that may be evolved by the Government of India and the State Governments in pursuance of the direction contained in clause (B) of Para 123 as well as to the classification among backward classes and equitable distribution of the benefits of reservations among them that may be made in terms of and as contemplated by clause (1) of the Office Memorandum dated 25th September 1991, as explained herein, shall be preferred only before this court and not before or in any other High Court or other court or Tribunal. Similarly, any petition or proceeding questioning the validity, operation or implementation of the two impugned Office Memorandums, on any grounds whatsoever, shall be filed or instituted only before this Court and not before any High Court or other Court or Tribunal.

124. The Office Memorandum dated August 13, 1990 impugned in these writ petitions is accordingly held valid and enforceable subject to the exclusion of the socially advanced members/sections from the notified 'Other Backward Classes', as explained in para 123(B).

Clause (i) of the Office Memorandum dated September 25, 1991 requires – to uphold its validity – to be read, interpreted and understood as intending a distinction between backward and more backward classes on the basis of degrees of social backwardness and a rational and equitable distribution of the benefits of the reservations amongst them. To be valid, the said clause will have to be read, understood and implemented accordingly.

Clause (ii) of the Office Memorandum dated September 25, 1991 is held invalid and inoperative.

The Writ Petitions and Transferred Cases are disposed of in the light of the principles, directions, clarifications and order contained in this Judgement.

No costs.

Sd/- CJI

(M.H. KANIA)

Sd/- J

(M.N. VENKATACHALIAH)

Sd/- J

(A.M. AHMADI)

Sd/- J

(B.P. JEEVAN REDDY)

NEW DELHI,
November 16, 1992

No.12011/16/93-BCC(C)
 GOVERNMENT OF INDIA
 MINISTRY OF WELFARE
 New Delhi, the 22nd February, 1993

RESOLUTION

The Supreme Court, in its Majority Judgement in Writ Petition (Civil) No.930 of 1990, Indra-Sawhney and Others etc. Vs. Union of India and Others etc., delivered on 16th November, 1992 has, inter-alia, directed that “within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (‘creamy layer’) from ‘Other Backward Classes’ and further that the implementation of the impugned O.M. dated 13th August, 1990 shall be subject to exclusion of such socially advanced persons (‘creamy layer’)”.

2. Having regard to the fact that a lot of specialised inputs would be needed to determine the bases viz., socio-economic criteria for identification of the ‘creamy layer’, it has been decided to set up an Expert Committee consisting of:

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|----|---|------------------|
| 1. | Justice Ram Nandan Prasad (Retd.)
High Court Patna | Chairman |
| 2. | Shri M.L. Sahare (Social Scientist)
Former Chairman, U.P.S.C. | Member |
| 3. | Shri P.S. Krishnan
Former Secretary (Welfare), Govt. of India | Member |
| 4. | Shri R.J. Majithia
Former Chairman, Revenue Board
Government of Rajasthan | Member-Secretary |

to make recommendations to the Govt. of India, in regard to the said socio-economic criteria. The Committee will also give recommendations on such other matters relating to the implementation of the judgement of the Supreme Court, as the Government of India may consider necessary.

3. The Headquarters of the Committee will be located at Delhi.

4. The Committee will devise its own procedures in the discharge of its functions. All the Ministries and Departments of the Government of India will furnish such information and documents and provide such assistance as may be required by the Committee. It is hoped that the State Governments and Union Territory Administrations and others concerned will extend their fullest cooperation and assistance to the Committee.

5. The Committee shall submit its Report on the socio-economic criteria for exclusion of the 'creamy layer' from Other Backward Classes latest by 10th March, 1993.

Sd/-
(M.S. PANDIT)
Jt. Secy. (M&BC)

ORDER

ORDERED that a copy of the resolution be communicated to all Ministries/Departments of the Government of India/State Governments and U.T. Administrations.

ORDERED also that the resolution be published in the Gazette of India for general information.

Sd/-
(M.S. PANDIT)
Jt. Secy. (M&BC)

G.I., Dept. of Per. & Trg., O.M. No.36012/22/93-Est. (SCT) dated 8.9.1993

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

The undersigned is directed to refer to this Department's O.M. No.36012/31/90-Estt. (SCT), dated the 13th August, 1990¹ and 25th September, 1991², regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgement in the Indira Sawhney and other v. Union of India and others case [Writ Petition (Civil) No.930 of 1990], the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India.

2. Consequent to the consideration of the Expert Committee's recommendations, this Department's Office Memorandum No.36012/31/90-Estt. (SCT), dated 13.8.1990, referred to in para (1) above is hereby modified to provide as follows :-

- (a) 27% (twenty-seven per cent) of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.
- (b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
- (c) (i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this Office Memorandum. **(See Appendix 1)**
 - (ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations, callings. A list of such occupations, callings will be issued separately by the Ministry of Welfare.
- (d) The OBCs for the purpose of the aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Governments' Lists. A list of such castes and communities is being issued separately by the Ministry of Welfare.

¹ Appendix 2 to Annexure-IV

² Appendix 3 to Annexure-IV

- (e) The aforesaid reservation shall take immediate effect. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of this order.

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

To

All Ministries/Departments of Government of India.

Copy:

- 1. Department of Public Enterprises, New Delhi }
- 2. Ministry of Finance (Banking and Insurance }
Divisions), New Delhi }

It is requested that the said instructions may be issued in respect of PSUs, Public Sector Banks and Insurance Corporations.

Annexure-I to Appendix-VI**PERSONS/SECTIONS EXCLUDED FROM RESERVATION**

[Schedule TO G.I., Dept. of Per. & Trg., O.M. No.36012/22/93-Estt.(SCT) dated 8-9-1993]

<u>Description of category</u>	<u>To whom rule of exclusion will apply</u>
I. Constitutional Posts	Sons and daughter(s) of – (a) President of India; (b) Vice-President of India; (c) Judges of the Supreme Court and the High Courts; (d) Chairman and Members of UPSC and of the State Public Service Commission; Chief Election Commissioner; Comptroller and Auditor-General of India; (e) Persons holding constitutional positions of like nature.
II. Service Category	Son(s) and daughter(s) of ---
A. Group 'A'/Class I officers of the All India Central and State Services (Direct Recruits).	(a) parents, both of whom are Class I officers; (b) parents, either of whom is a Class I officer; (c) parents, both of whom are Class I officers, but one of them dies or suffers permanent incapacitation; (d) parents, either of whom is a Class I officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International organisation like UN, IMF, World Bank, etc., for a period of not less than 5 years; (e) parents, both of whom are Class I officers die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International organisation like UN,

IMF, World Bank, etc., for a period of not less than 5 years;

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

- (a) Sons and daughters of parents either Of whom or both of whom are Class I officers and such parent(s) dies/die or suffer permanent incapacitation;
- (b) A lady belonging to OBC category has got married to a Class I officer, and may herself like to apply for a job.

B. Group 'B'/Class II officers of The Central and State Services (Direct Recruitment)

Son(s) and daughter(s) of ---

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

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

Sons and daughters of ---

- (a) Parents both of whom are Class II officers and one of them dies or

suffers permanent incapacitation;

Sons and daughters of ---

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

C. Employees in Public Sector

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

III. Armed forces including Paramilitary Forces (Persons holding civil posts are not included).

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

Provided that ---

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

enumerated therein will apply to her independently.

IV. Professional class and those engaged
In Trade and Industry

- | | | |
|------|---|--|
| (i) | Persons engaged in profession as a doctor, lawyer, chartered accountant, income tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artists and other film professional, author, playwright, sports person, sports professional, media professional or any other vocations of like status. | Criteria specified against Category VI will apply. |
| (ii) | Persons engaged in trade, business and industry. | Criteria specified against Category VI will apply. |

EXPLANATION ---

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

V. Property owners

A. Agricultural holding

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

- (a) only irrigated land which is equal to or more than 85% of the statutory ceiling area, or
- (b) both irrigated and unirrigated land, as follows :-
 - (i) The rule of exclusion will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominator) 40% or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the unirrigated portion). If this pre-condition of not less than 40% exists, then only the area of unirrigated land will be

taken into account. This will be done by converting, the unirrigated land on the basis of the converting, the unirrigated land on the basis of the conversion formula existing, into the irrigated type. The irri- gated area so computed from un- irrigated land shall be added to the actual area of irrigated land and if after such clubbing together the total area in terms of irrigated land is 85% or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and disentitlement will occur).

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

B. Planatations

- (i) Coffee, tea, rubber, etc.
(ii) Mango, citrus, apple plantations, etc.

Criteria of income/wealth specified in Category VI below will apply. Deemed as agricultural holding and hence criteria at A above under this category will apply. Criteria specified in Category VI below will apply.

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

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

VI. Income/Wealth Test

Son(s) and daughter(s) ---

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

EXPLANATION :-

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

EXPLANATION :- Wherever the expression “permanent incapacitation” occur in this schedule, it shall mean incapacitation which results in putting an officer out of service.

Annexure-II to Appendix-VI**G.I., Dept. of Per. & Trg., O.M. No.36012/31/90-Est. (SCT), dated 13.8.1990****SUBJECT: 27% Reservation for Socially and Educationally Backward Classes in Civil Posts/ Services.**

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

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

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

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

Annexure-III to Appendix-VI

G.I., Dept. of Per. & Trg., O.M. No.36012/31/90-Est. (SCT), dated 25.9.1991

SUBJECT: Amendment to the 27% reservation in service for Socially and Educationally Backward Classes.

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

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

MINISTRY OF WELFARE

RESOLUTION

New Delhi, the 10th September, 1993

No.12011/68/93-BCC(C).—The Government of India have had under consideration the judgement of the Supreme Court dated 16.11.92 in the case of Indira Sawhney and Others Vs. Union of India and Others (No.930 of 1990) relating to reservation of 27% vacancies in civil posts and services under the Government of India in favour of Other Backward Classes (OBCs).

2. The OBCs for the purpose of the aforesaid reservation as per orders of the Government of India issued vide O.M. No.36012-22-93-Estt. (SCT) of 8th September, 1993 by the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), would comprise, in the first phase, the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Governments' Lists.

3. The Expert Committee on 'Creamy Layer' headed by Justice (Rtd.) R.N. Prasad, was commissioned to prepare the Common Lists in respect of the following States which had notified the list (Appendix Allahabad) of OBCs for the purpose of reservation in State Services as on the date of judgement of the Supreme Court:

1. Andhra Pradesh
2. Assam
3. Bihar
4. Goa
5. Gujarat
6. Haryana
7. Himachal Pradesh
8. Karnataka
9. Kerala
10. Madhya Pradesh
11. Maharashtra
12. Punjab
13. Tamil Nadu
14. Uttar Pradesh

4. The Common Lists prepared by the Committee have been accepted by the Government. The Government has decided to notify the annexed lists of the Other Backward Classes in the context of implementation of the aforesaid O.M. The lists shall be deemed to have taken effect from 8th September, 1993.

5. The National Commission for Backward Classes, set up under the provisions of the National Commission for Backward Classes Act, 1993 in pursuance of the direction of the Supreme Court in the aforesaid case shall entertain, examine and recommend upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of Other Backward Classes of citizens.

ORDER

Ordered that a copy of the resolution be communicated to all State Governments, UT Administrations, Ministries/Departments of Government of India.

Ordered also that the resolution be published in the Gazette of India for general information.

M.S. PANDIT, Jt. Secy.

MINISTRY OF WELFARE

RESOLUTION

New Delhi, the 19th October, 1994

No.12011/9/94-BCC.—The Government of India, vide the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training) O.M. No.36012/22/93-Estt.(SCT), dated the 8th September, 1993 have reserved 27 per cent of vacancies in civil posts and services under the Central Government in favour of Other Backward Classes (OBCs. This O.M. also specifies that the OBCs for the purpose of aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the lists in the Report of the Mandal Commission and the State Government lists.

2. The Common Lists of OBCs in respect of 14 States, namely, Andhra Pradesh, Assam, Bihar, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh, in the context of implementation of aforesaid O.M. were notified in the Ministry of Welfare Resolution No.12011/68/93-BCC (C) dated : 10th September, 1993 and published in the Gazette of India —Extraordinary--Part I, Section I, No.186, New Delhi, Monday, 13th, 1993/Bhadra 22, 1915.

4. The Government of India have also now prepared the Common Lists of OBCs in respect of the following 4 States and 3 Union Territories :-

1. Orissa
2. Rajasthan
3. Tripura
4. West Bengal
5. Dadra and Nagar Haveli
6. Daman and Diu
7. Pondicherry

The Government have decided to notify the annexed Common Lists in respect of the above mentioned 4 States and 3 Union Territories in the Central List of OBCs in the context of implementation of the aforesaid O.M. dated 8th September, 1993 of the Department of Personnel and Training. These lists shall take effect from the date of issue of this Resolution.

Sd/-

GANGA DAS, Jt. Secy.

ORDER

Ordered that a copy of this Resolution be communicated to all State Governments, Union Territory Administrations, Ministries/Departments of the Government of India.

Ordered also that this Resolution be published in the Gazette of India for general information.

Sd/-
(BHAGWATI PARSHAD)
Joint Secretary to the Government of India

Appendix-IX**G. I. Dept. of Per. & Trg. Lr No.3601/22/93-Estt. (SCT) dated 15-11-1993
(to all State Governments and Union Territories)**

Subject:- Certificate to be produced by OBC candidates regarding “Creamy Layer”

I am directed to say that Government of India has issued instructions on 8-9-1993 providing for reservation to Other Backward Classes in the services and posts under the Government of India. The Other Backward Classes for the purpose of the above said reservation would comprise in the first phase, the castes and communities which are common to both the lists in the report of Mandal Commission and the State Government’s list. A list of such castes and communities was notified in Resolution No.12011/68/93-BCC© dated the 10th September, 1993, published in the Gazette of India, Extraordinary Part I- Section I, dated 13-9-1993. For the purpose of verification of the castes and communities, the Government of India has prescribed a certificate from the following authorities as in the case of SC/ST vide this Department’s OM No.36012/22/93-Estt. (SCT), dated 22-10-1993.

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

2. In the light of the Supreme Court’s judgement in the *Indira Sawhney* case, this Department has specified the persons/section (“Creamy Layer”) to whom the benefit of reservation shall not apply vide Column 3 of the Schedule to the Department of Personnel and Training, OM No.36012/22/93-Estt. (SCT) dated 8-9-1993. It has been considered that the same authorities who are notified as competent to certify OBCs status should also be authorised to certify that a candidate does not belong to the “Creamy Layer”. It is therefore, requested that instructions may be issued to the District Authorities under your control to verify and issue the necessary certificate to the candidates regarding his OBCs status as well as exclusion from “Creamy Layer”. To enable the District Authorities to examine the claims of the candidates, a model format has been devised as in Annexure-B. This may be suitably revised if considered necessary. The format of the certificate that may be given by the concerned District Authorities may be as in Annexure-A.

3. It is also requested that wide publicity may be given to the Ministry of Welfare Resolution No.12011/68/93-BCC (C), dated 10-9-1993, published in the Gazette of India, Extraordinary Part-I – Section I, dated 13-9-1993, containing the list of Backward Castes as well as to Dept. of Per. & Trg., O.M. No.36012/22/93-Estt. (SCT), dated 8-9-1993, which specifies the criterion which will determine the persons who belong to the creamy layer and to whom the reservation shall not apply. This will facilitate the candidates to ascertain their eligibility for reservation. It would also be advisable to appropriately brief the certifying Authorities and to provide them with sufficient number of copies of the abovementioned Gazette Notification and the Department, OM, dated 8-9-1993, in order to ensure prompt and correct certification.

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

G.I. Dept. of Per. & Trg. OM No.36012/22/93-Estt. (SCT) dated 22-10-1993, OM of even number dated 15-11-1993 and 29-12-1993

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

The undersigned is directed to refer to this Department's OM of even number, dated the 8th September, 1993, on the above subject and to say that in accordance with the Supreme Court Judgement in the Indira Sawhney case, the reservations contemplated in Clause 4 of Article 16 should not exceed 50%. For the purpose of applying the rule of 50%, an year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be. This position would also apply in the case of carry forward vacancies. Therefore, the Ministries/Departments are requested to ensure that the reservations provided to SC/ST/OBCs put together do not exceed 50% of vacancies arising in an year.

2. In the light of the reservations provided to Other Backward Classes, it is necessary to revise the existing reservation rosters,. In respect of direct recruitment on All India basis by open competition where there is a reservation for 15% for SC and 7 ½ % for ST, the existing 40-point roster has been revised. In respect of direct recruitment on All India basis otherwise than open competition where there is a reservation of 16 2/3 % for SC and 7 ½ % for ST, the existing roster has been revised. The revised roster will come into effect (from 2-7-1997) immediately. Vacancies filled on or after 2-7-1997 should be shown in the new roster now prescribed. The old roster shall be deemed to have been closed from this date. The reservations which had to be carried forward in the previous roster shall now be carried forward to the new roster.

3. There is no change in the existing reservation rosters in so far as promotion is concerned, as there is no reservation for OBCs in promotion.

4. The upper age-limit prescribed for direct recruitment shall be relaxed by three years in respect of candidates belonging to OBCs. In respect of written examinations and interview, in

order to fulfil the quota earmarked to OBCs, relaxation of standards may be provided as in the case of SC/ST candidates.

5. For the purpose of verification of the castes/communities, the certificate (for model form, See Appendix-3) furnished by the candidates for the purpose of benefit of reservation to OBCs from the following authorities only will be accepted:-

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

The same authorities which are notified as competent to certify OBCs status should also be authorised to certify that the candidate in question does not belong to the persons/section (Creamy Layer) mentioned in Column 3 of the Schedule to this Department's OM, dated 8-9-1993

G.I. Dept. of Per. & Trg. O.M. No.36012/22/93-Estt. (SCT), dated 30-12-1993

Subject : - Unfilled vacancies of OBCs should not be de-reserved but carried forward

The undersigned is directed to say that the question of de-reservation and carry forward of unfilled posts reserved for Other Backward Classes has been examined by the Government. It has since been decided that the posts reserved for Other Backward Classes which remain unfilled should not be de-reserved but should be carried forward as such for a period of three recruitment years or till the posts are filled by OBC candidates, whichever is earlier

Govt. of India, Ministry of Welfare Letter No.12011/11/94-BCC(C) dated 8th April, 1994

To

Chief Secretaries of all State Governments and UT Administrations.

Subject: Issuing of Other Backward Class Certificates to migrants from other States/UTs

Sir,

In continuation of the DOPT's letter of 36012/22/93-Estt.(SCT) dated 15th November, 1993, I am directed to say that it has been represented to this Department that persons belonging to OBCs who have migrated from one State to another for the purpose of employment, education, etc. experience great difficulty in obtaining caste certificates from the State from which they have migrated. In order to remove this difficulty, it has been decided that the prescribed authority of a State/U.T. Administration in terms of the DOPT letter No.36012/22/93-Estt.(SCT) dated 15th November, 1993 may issue the OBC Certificate to a person who has migrated from another State on the production of a genuine certificate issued to his father by the prescribed authority of the State of his father's origin except where the prescribed authority feels that a detailed enquiry is necessary through the State of origin before the issue of the Certificate.

2. The Certificate will be issued irrespective of whether the OBC candidate in question is included in the list of OBC pertaining to the State/U.T. to which the person has migrated. The facility does not alter the OBC status of the person in relation to the one or the other State/U.T. The OBC person on migration from the State/U.T. of his origin to another State/U.T. where his caste is not in the OBC list is entitled to the concessions/benefits admissible to the OBCs from the State of his origin and Union Government but not from the State where he has migrated.

3. It is requested that all competent authorities may be advised to issue the OBC Certificate after satisfying themselves of the correctness of the Certificate. The Lists of the Competent Authorities empowered as per DOPT's circular of 15th November, 1993 may be followed strictly. No other authorities may be allowed to issue the OBC Certificates.

Yours faithfully,

Sd/...

(M.S. Pandit)

Joint Secretary to the Govt. of India.

G.I. Dept. of Per. & Trg. O.M. No.36012/27/94-Estt. (SCT), dated 13-05-1994

Subject : - Exemption of Scientific and Technical posts from the purview of reservation orders for OBCs.

The undersigned is directed to refer to this Department's O.M. No.9/2/37-Estt.(SCT), dated 23-6-1975, (see Order No.9 under Section 2) wherein such of the technical posts as satisfying all the following conditions are exempted from the purview of reservation orders.

- (i) The posts should be in grades above the lowest grade in Group 'A' of the Service concerned.

- (ii) They should be classified as 'Scientific' or 'Technical' (in terms of Cabinet Secretariat, Department of Cabinet Affairs) O.M. No.85/11/CF-61(1), dated 28-12-1961 and
- (iii) These should be posts for conducting research or for organizing, guiding and directing research.

Orders of the Minister concerned are required to be obtained before exempting any post satisfying the above conditions from the purview of the scheme of reservations.

2. With the introduction of the Scheme of reservation for Other Backward Classes, doubts have been expressed by certain Ministries/Departments as to whether the above-said provisions of OM, dated 23-6-1975, would be applicable to the reservations for OBCs also. As the reasons for the grant of exemption from the purview of reservation orders in respect of SC/St is equally applicable for the grant of such exemption in the case of OBC, it is clarified that the provisions of OM, dated 23-6-1975, for the grant of exemption from the purview of reservation orders would be equally applicable to reservation for OBCs.

G.I. Dept. of Per. & Trg., O.M. No.36033/9/95-Estt.(SCT), dated 10-5-1995

Subject:- Verification/acceptance of caste certificate furnished by candidated claiming to belong to OBC.

The undersigned is directed to refer to Dept. of Per. & Trg.'s O.M. No. 36012/6/88-Estt.(SCT), dated 24-4-1990, on the subject mentioned above wherein it was indicated that the Appointing Authority should include a clause in the offer of appointment to the candidates belonging to SC/ST to the effect that the appointment was provisional and would be terminated in case the caste certificate produced by them was found to be false.

2. After the issue of reservation orders of OBCs, it is considered necessary to have similarly provision in respect of the caste certificate furnished by candidates claiming to belong to OBC communities.

3. In the offer of appointment to candidates claiming to belong to OBC, the Appointing Authority should include a clause as follows:-

“The appointment is provisional and is subject to the caste certificate being verified through the proper channels. If the verification reveals that the claim of the candidates to belong to OBC is false, the services of such candidates will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificate.”

4. All Ministries/departments are requested to take further action on the above lines.

G.I. Dept. of Per. & Trg., O.M. No.42011/18/96- Estt. (Res.), dated 6-3-1997 and OM of even number, dated 1-10-1997

Subject:- Officer of the rank of Deputy Secretary to be nominated as a separate Liaison Officer for looking after matters relating to the reservation for OBCs.

The undersigned is directed to invite attention to the department's O.M. No.36035/8/92-Estt.(SCT), dated 10-11-1994, according to which the Liaison Officers appointed to look after the reservation matters of SC/ST were also entrusted with the responsibility of looking after reservation matters relating to the OBCs.

2. The matter of having the same LO for the SCs/STs and the OBCs has been re-examined and it has been decided there should be a separate Liaison Officer for looking after matters relating to the reservation for the OBCs, Ministry of Finance, etc., are requested to take immediate steps to appoint a separate LO for the OBCs.

3. Ministry of Finance, etc. may also please bring these instructions to the notice of all the Attached and Subordinate Offices/PSUs under them for compliance.

It has been noticed that the Ministries/Departments have appointed Liaison Officers below the level/status of the deputy Secretary, without taking into consideration the instructions laid down for the appointment of LO for SC/ST, vide OM, dated 10-4-1968.

4. All the Ministries/Departments are requested to nominate the Deputy Secretary in-charge of Administration in the Ministry/Department or another officer of the rank of Deputy Secretary as LO for looking after work relating to matters of reservation for the OBCs in service/posts. The functions of the Liaison Officer will be at par with the LO looking after the work of SC/ST in services/posts.

No.36033/3/2004-Estt(Res)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi.
Dated: 9th March, 2004.

OFFICE MEMORANDUM

Subject: Revision of Income Criteria to exclude socially advanced persons/sections (Creamy Layer) from the purview of reservation for Other Backward Classes (OBCs).

The undersigned is directed to invite attention to this Department's O.M. No. 36012/22/93-Estt.(SCT) dated 8th September, 1993 which inter alia provides that sons and daughters of persons having gross annual income of Rs. 1 lakh or above for a period of three consecutive years fall within the creamy layer and are not entitled to get the benefit of reservation available to the Other Backward Classes. It has been decided to raise the income limit from Rs.1 lakh to Rs. 2.5 lakh for determining the creamy layer amongst the OBCs. Accordingly the following entry is hereby substituted for the existing entry against Category VI in the Schedule to the above referred O.M:

<u>Category</u>	<u>Description of Category</u>	<u>To whom the rule of exclusion will apply</u>
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VI	INCOME/WEALTH TEST	Son(s) and daughter(s) of
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(a) Persons having gross annual income of Rs. 2.5 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

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

Explanation:

Income from salaries or agricultural land shall not be clubbed.

2. The provisions of this Office Memorandum take effect from the 4th February, 2004.

3. All the Ministries/Departments are requested to bring the contents of this Office Memorandum to the notice of all concerned.

Sd/-
(K.G. Verma)
Deputy Secretary to the Government of India
Tele: 23092797

To

1. All the Ministries/Departments of the Government of India.
2. Department of Economic Affairs (Banking Division), New Delhi.
3. Department of Economic Affairs (Insurance Division), New Delhi.
4. Department of Public Enterprises, New Delhi.
5. Railway Board.
6. Union Public Service Commission/Supreme Court of India/Election Commission/ Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/President's Secretariat/Prime Minister's Office/Planning Commission
7. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
8. Ministry of Social Justice and Empowerment, Shastri Bhavan, New Delhi.
9. National Commission for SCs and STs, Lok Nayak Bhavan, New Delhi.
10. National Commission for Backward Classes, Trikoot-I, Bhikaiji Cama Place, R.K. Puram, New Delhi.
11. Office of the Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi – 110002.
12. Information and Facilitation Centre, DOPT, North Block, New Delhi (100 copies).
13. Spare Copies – 400