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Bill No. LX of 2004

THE SCHEDULED CASTES, SCHEDULED TRIBES AND OTHER
BACKWARD CLASSES (RESERVATION IN POSTS AND
SERVICES) BILL, 2004

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BILL

to provide for reservation of posts in civil services for members of the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes in establishments and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation in Posts and Services) Act, 2004.

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(2) It shall apply to every establishment.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

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(a) "appointing authority", in relation to a service or a post in an establishment, means the authority empowered to make appointment to such service or post;

(b) "backlog of reserved vacancy" means a vacancy which was earmarked as reserved in an earlier recruitment year but remained unfilled;

Short title, application and commencement.

Definitions.

(c) "creamy layer" means those members of Other Backward Classes who constitute the forward section from amongst such Backward Classes;

(d) "establishment" means—

(i) any office or department of the Government;

(ii) any public sector undertaking or statutory authority constituted under any Central Act; 5

(iii) a corporation in which not less than fifty-one per cent. of the paid-up share capital is held by the Government;

(iv) a university established by a Central Act and its affiliated colleges, including medical or engineering colleges; 10

(v) primary and secondary schools and other educational institutions which are owned or aided by the Government;

(vi) any industry, trade, business or occupation owned, controlled or managed by the Government;

(vii) any Government company as defined in section 617 of the Companies Act, 1956 or any corporation established by or under a Central Act; and 15
1 of 1956.

(viii) any autonomous body or other institution receiving money from the Consolidated Fund of India or grant-in-aid from the Government;

(e) "Government" means the Government of India;

(f) "Group A, Group B, Group C or Group D post" means a post which is classified as such by the President in exercise of the powers conferred by the proviso to article 309 of the Constitution and includes an equivalent post in other establishments; 20

(g) "Other Backward Classes" means the castes and communities notified as Other Backward Classes by the Government; 25

(h) "prescribed" means prescribed by rules made under this Act;

(i) "promotion by non-selection" means promotions made by seniority-cum-fitness;

(j) "promotion by selection" means promotions made by merit-cum-seniority;

(k) "recruitment year" means the calendar year for which a recruitment is made; 30

(l) "reservation" means the reservation in posts and services for the Scheduled Castes, Scheduled Tribes and Other Backward Classes;

(m) "Scheduled Castes" and "Scheduled Tribes" shall have the same meanings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution; 35

(n) "scientific or technical posts" include posts for which qualifications in the natural sciences or exact sciences or applied sciences or in technology are required and the incumbents of such posts have to use that knowledge in the discharge of their duties.

3. (1) There shall be reserved such percentage of posts in civil services as may be prescribed for the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes for appointment by direct recruitment to such posts; 40
Reservation in direct recruitment and promotion.

Provided that the members of the Other Backward Classes falling in the creamy layer shall not be deemed to be as members of the Other Backward Classes for the purpose of this Act.

(2) There shall be reserved such percentage of posts in civil services as may be prescribed for the members of the Scheduled Castes and Scheduled Tribes for appoint- 45

ments by promotion to the grades of such posts where element of direct recruitment does not exceed seventy-five per cent. and where posts are filled by promotions—

(a) through limited departmental competitive examination in Group B, Group C and Group D posts;

(b) by selection from Group B post to Group or A post or in Group B or Group C or Group D posts; and

(c) by non-selection in Group A or Group B or Group C or Group D posts.

(3) In the case of promotions by selection from one Group A post to another Group A post which carries the scale of pay, maximum of which is equal to the maximum of the scale of pay of a Director in the Central Secretariat Service or equivalent posts in other establishments, the Scheduled Caste and the Scheduled Tribe officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list is to be drawn up, shall be included in the select list provided they are not found unfit to hold the post.

(4) All the vacancies reserved for the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-sections (1) and (2) shall be filled in such manner as may be prescribed.

4. Notwithstanding anything contained in section 3, there shall be no reservation where appointments are made—

No reservation in certain cases.

(i) for a period of less than forty-five days;

(ii) for the work charged posts;

(iii) for the posts higher than the lowest grade of Group A post and classified as scientific or technical, which are required for conducting research or for organising, guiding and directing research.

Explanation.—For the purposes of clause (ii), “work charged posts” means such posts which are required for any emergency relief like flood relief work or accident restoration relief work.

5. (1) Recruitment to an unreserved vacancy shall be open to any eligible candidate including a candidate belonging to the Scheduled Castes or Scheduled Tribes or Other Backward Classes.

Unreserved vacancies to be filled by members of the Scheduled Castes, etc.

(2) Where an unreserved vacancy is filled by a candidate belonging to a Scheduled Caste or Scheduled Tribe or an Other Backward Class on the basis of merit, either by direct recruitment or by promotion, then such candidate shall not be adjusted against the vacancy reserved for the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes, as the case may be:

Provided that promotions made by the method of non-selection shall not be treated as made on the basis of merit.

6. (1) The maximum age limit fixed for direct recruitment to a service or post shall be increased by five years in the case of a candidate belonging to the Scheduled Castes and Scheduled Tribes.

Relaxation of age, etc.

(2) The maximum age limit fixed for direct recruitment to a service or post shall be increased by three years in the case of candidates belonging to the Other Backward Classes.

(3) The maximum age limit fixed for promotion to a grade, if any, shall be increased by five years in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes:

Provided that the maximum age limit so fixed is not more than fifty years.

7. The examination fee and application fee fixed for recruitment to a service or post through competitive examination or otherwise may be reduced to such extent for the members of the Scheduled Castes and Scheduled Tribes, as may be prescribed.

Fee to be paid.

Relaxation in qualifications regarding experience.

8. (1) The qualification regarding experience required for direct recruitment to a post may be relaxed in the case of members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes, if, at any stage of selection, sufficient number of candidates from such communities possessing the requisite experience are not likely to be available to fill the vacancies reserved for them. 55

(2) Any general standard of suitability for direct recruitment may be lowered in the case of members belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes, if sufficient number of candidates belonging to these communities are not available on the basis of the general standards to fill all the vacancies reserved for them:

Provided that no candidate who is found unfit to hold the post shall be appointed. 10

Operation of reservation in case of promotion by non-selection.

9. (1) Where a qualifying examination is held to determine the fitness of candidates for promotions by method of non-selection but sufficient number of candidates belonging to the Scheduled Caste and Scheduled Tribe with general qualifying standard are not available to fill the vacancies reserved for them, the qualifying standard may be lowered consistent with the minimum standard of fitness for appointment to the post in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes. 15

(2) Where merit is determined by qualifying examination in promotion by selection but sufficient number of candidates belonging to the Scheduled Castes and Scheduled Tribes with general qualifying standard are not available to fill the vacancies reserved for them, the qualifying standard may be lowered consistent with the minimum standard of merit for appointment to the posts in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes. 20

Reservation not to exceed fifty per cent. of the vacancies.

10. Total number of vacancies reserved for the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes in a cadre in a recruitment year shall not exceed fifty per cent. of the total number of vacancies in the cadre: 25

Provided that the backlog of the reserved vacancies for the Scheduled Castes and Scheduled Tribes shall not be counted while determining the aforesaid fifty per cent. of the total number of vacancies in the cadre.

Explanation.—For the purposes of this section, “cadre” means such posts in any grade of a service which are earmarked to be filled by direct recruitment, promotion by selection or promotion by non-selection, as the case may be. 30

Appointments for reserved vacancies to be made by candidates from reserved categories.

11. (1) The vacancies reserved for members of the Scheduled Castes or Scheduled Tribes or Other Backward Classes in the matter of appointments by direct recruitment shall not be filled by candidates not belonging to the Scheduled Castes or Scheduled Tribes or Other Backward Classes, as the case may be. 35

(2) The vacancies reserved for members of the Scheduled Castes or Scheduled Tribes in the matter of appointment by promotion shall be filled only by the candidates belonging to the Scheduled Castes or Scheduled Tribes, as the case may be.

Abolition of posts not to affect the number of reserved posts.

12. Where posts in a cadre are to be abolished and the employees are required to be surrendered or their services are required to be terminated as a result thereof, a Scheduled Caste or Scheduled Tribe or an Other Backward Class employee shall not be surrendered or his services shall not be terminated if it results in lowering the representation of the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes, as the case may be, in relation to percentage of reservation fixed for them. 40

Liaison Officers to be appointed.

13. (1) In every Ministry or Department of the Government, an Officer of such rank as may be prescribed, shall be designated to act as the Liaison Officer to ensure that the provisions of this Act or the rules made thereunder or instructions issued by the Government regarding reservation are not violated in any establishment. 45

(2) In offices under the control of Heads of Department, an officer of such rank as may be prescribed, shall be designated to act as the Liaison Officer to ensure that the provisions of this Act or the rules made thereunder or instructions issued by the Government about reservation are not violated in the office. 50

(3) Where any case of negligence or lapse in relation to providing reservation for members of the Scheduled Castes or Scheduled Tribes or Other Backward Classes come to the notice of the Liaison Officer during the course of the inspection carried out by him, or otherwise, he shall submit his report to the concerned Secretary to the Government or to the Head of the Department, as the case may be, and that Secretary or Head of the Department, shall issue appropriate orders in the matter to the concerned appointing authority.

14. (1) Every appointing authority or any other officer authorised by him in this behalf shall maintain such records or documents, and furnish every year to the Government a report on the appointments made by direct recruitment and promotions, in such manner and at such time, as may be prescribed.

Report to be made by every appointing authority.

(2) The Government may by order authorise any officer to inspect the records or documents maintained under sub-section (1) to verify the report furnished to it in relation to appointments made by direct recruitment or by promotion.

(3) It shall be the duty of the appointing authority or of any other officer authorised by the appointing authority in this behalf to make available such records or documents to the authorised officer to inspect the records or documents and to furnish such information and render such assistance to the authorised officer to inspect as may be necessary for carrying out his functions under this Act.

15. Whoever knowingly makes a false claim that he is a member of the Scheduled Caste or the Scheduled Tribe or the Other Backward Class, as the case may be, and whoever knowingly issues a false certificate to this effect, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to fifty thousand rupees, or with both.

Penalty for making false claim.

16. The Government may, from time to time, give such directions to the establishments as it may deem fit, to give effect to the provisions of this Act, and every establishment shall be bound by such directions.

Power to give directions.

17. All memoranda issued or purported to have been issued immediately before the commencement of this Act by the Central Government in relation to reservation of posts in civil services for the Scheduled Castes, Scheduled Tribes and Other Backward Classes shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been issued under this Act as if this Act had been in force on the date on which such memoranda were issued and shall continue in force unless and until they are superseded by any rule made under this Act.

Existing office memoranda to continue.

18. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the percentage of reservation for the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes for appointment by direct recruitment to posts under sub-section (1) of section 3;

(b) the percentage of reservation for the members of the Scheduled Castes and Scheduled Tribes for appointments by promotion to the grades of posts under sub-section (2) of section 3;

(c) the manner of filling vacancies reserved for the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-section (4) of section 3;

(d) the examination fee and application fee to be paid by the members of the Scheduled Castes and Scheduled Tribes under section 7;

(e) prescribing the carry forward method for reserved vacancies;

(f) prescribing for the rank of the officer in every Ministry or Department and in the offices under the control of Head of Department to be designated as the Liaison Officers under sub-sections (1) and (2) of section 13;

(g) the records or documents to be maintained, reports to be furnished on appointments and promotions made, the time within which and the manner in which the report be furnished by the appointing authority under sub-section (1) of section 14; and 5

(h) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notified order or rule. 10 15

STATEMENT OF OBJECTS AND REASONS

Sensitive to the need for providing adequate representation for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes in civil services and posts under the control of Central Government, the Government resolved to enact a Reservation Act to codify instructions on reservation. At present, administrative instructions issued by the Central Government, from time to time, provide for reservation to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes in civil services and posts under the control of Central Government. Instructions have also been issued to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes and for matters connected therewith and incidental thereto. These instructions have been issued in pursuance of clauses (4) and (4A) of the article 16 and the proviso to article 335 of the Constitution of India which empower the State to make provisions for reservation in favour of the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes to ensure their adequate representation in the services and posts under the State.

Statutory backing to instructions on reservation will elevate the provisions of the reservation to a statutory right and will instill greater confidence amongst members of the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes. It will go a long way in meeting the constitutional goal of securing justice, liberty and equality for all citizens of the country and in promoting fraternity amongst them all.

The Bill seeks to achieve the above objects.

NEW DELHI;

SURESH PACHOURI.

The 18th December, 2004.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill empowers the Central Government to make rules to provide for—

(a) the percentage of reservation for the members of the Scheduled Castes, the Scheduled Tribes and Other Backward Classes for appointment by direct recruitment to the posts;

(b) the percentage of reservation for the members of the Scheduled Castes and the Scheduled Tribes for appointments by promotion to the grades of posts;

(c) the manner of filling vacancies reserved for the members of the Scheduled Castes, the Scheduled Tribes and Other Backward Classes;

(d) the examination fee and application fee to be paid by the members of the Scheduled Castes and the Scheduled Tribes;

(e) the carry forward method for reserved vacancies;

(f) designation of the Liaison Officers; and

(g) the maintenance of records, reports and other documents.

2. The matters in respect of which rules may be made are matters of administrative details and procedure and, it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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BILL

to provide for reservation of posts in civil services for members of the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes in establishments and for matters connected therewith or incidental thereto.

(Shri Suresh Pachouri, Minister of State for Personnel, Public Grievances & Pensions and Parliamentary Affairs)

