

Standing Committee Report Summary

Rationalisation of Creamy Layer in Employment for OBCs

- The Standing Committee on Welfare of Other Backward Classes (Chair: Mr. Ganesh Singh) submitted its report on the ‘Rationalisation of Creamy Layer in Employment for OBCs in Services and Posts under the control of Government of India, including Union Territories, PSUs etc.’ The “creamy layer” refers to the socially and economically advanced members of the Other Backward Classes (OBCs). At present, an Office Memorandum (revised in 2017) released by the Department of Personnel Training (DoPT) includes the criteria based on which OBC government employees can be excluded from reservations and be considered a part of the creamy layer. In its report, the Committee examined various issues related to the implementation of reservation for OBCs in government positions. Key findings and recommendations include:
- **Application of the rule of exclusion to Class I Services:** Category IIA of the DoPT Office Memorandum (OM) provides that the children of parents, either or both of whom are appointed as Class I officers of the All India Central and State Services, shall be excluded from reservations. Category IIB(b) extends this rule of exclusion to children whose father is a Class II Officer of the All India Central and State Services and gets into Class I before or at the age of 40 years. The Committee sought to clarify whether the latter rule of exclusion would apply if a Class II Officer were to enter Class I after the age of 40 years. In response, the DoPT stated that the prescribed age limit would only apply in cases where an individual is promoted from Class II to Class I services, and would not apply to direct recruits.
- The Committee noted that the rationale behind excluding an individual whose parent is a Class I Officer is that they would not have suffered the consequences of poverty or other economic constraints. However, an OBC candidate who may not have had the same privileges, would not stand to benefit from the elevated rank of a parent who begins Class I service after the age of 40 years. The Committee recommended that the rule of exclusion not be applied to children whose parents enter Class I service after the age of 40 years.
- **Application of the rule of exclusion to Class III and Class IV services:** In 2017, the Department of Financial Services established that clerks and peons in public sector banks, financial institutions, and public sector insurance corporations, will be treated as being at par with Class III services employees. The Committee was informed by a representative of the Ministry of Social Justice that the children of clerks and peons who enter into junior management posts at or before the age of 40 years will be excluded and fall under the creamy layer.
- The Committee noted that this provision would go against a judgment passed by the Supreme Court as well as the DoPT OM which sought to exclude such employees from the creamy layer. The Committee recommended that all Class III employees be exempted from the creamy layer.
- **Establishment of equivalence of posts:** Category IIC of the Schedule to the DoPT OM states that the criteria for exclusion of government employees from reservations will also apply to officers holding equivalent posts in public sector undertakings, banks, insurance organisations, universities, and the private sector. The Committee noted that, till now, the Ministry of Social Justice has not shown initiative in identifying equivalent posts in these institutions. This inaction has led OBC candidates to seek judicial intervention. The Committee recommended that necessary steps be taken to identify equivalent posts in autonomous organisations, in co-ordination with the appropriate Ministries and departments.
- **Applicability of the Income/Wealth Test:** The Income/Wealth Test is used to determine whether an OBC individual may be deemed as part of the creamy layer or excluded from it. In its revised 2017 OM, the DoPT stated that children of individuals with a Gross Annual Income of Rs 8 lakh or above shall be excluded from reservations. The Committee noted that the Supreme Court has held that income from salaries or agriculture alone cannot be used as a criterion for determining the creamy layer among OBC individuals. The Committee also observed that individuals falling under Category IIC of the DoPT OM (employees in equivalent posts) should not be disentitled to the benefit of reservation. Hence, the Committee recommended that while applying the Income/Wealth Test, only income only from sources other than salaries and agriculture should be taken into account.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research (“PRS”). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it

