

**Department of Personnel and Training O.M. No.36012/22/93-Estt.(SCT),
dated the 8th September, 1993, to all Ministries/Departments, etc.**

OFFICE MEMORANDUM

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, 1990 and 25th September, 1991 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 others Vs. 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 13.8.90 referred to in para (1) above is hereby modified to provide as follows:

- (a) 27% (twentyseven percent) 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.
(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.
- (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.

Sd/-
(Smt. Sarita Prasad)
Joint Secretary to the Government of India.

To

All Ministries/Departments of Government of India.

Copy:

1. Department of Public Enterprises, New Delhi : It is requested that the said instructions may be issued in respect of PSUs, Public Sector Banks & Insurance Corporation.
2. Ministry of Finance (Banking & Insurance Divisions), New Delhi.

SCHEDULE

→ determination of
creamy layer

Description of category		To whom rule of exclusion will apply
1	2	3
I.	CONSTITUTIONAL POSTS	Son(s) and daughter(s) of (a) President of India; (b) Vice President of India; (c) Judges of the Supreme court and of the High Courts; (d) Chairman & Members of UPSC and of the State Public Service Commission; Chief Election Commissioner; Comptroller & Auditor General of India; (e) persons holding Constitutional positions of like nature.
II.	SERVICE CATEGORY <i>A. Group A/Class I officers of the All India Central and State Services (Direct Recruits).</i>	Son(s) and daughter(s) of (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.
	<i>Not applicable</i>	
	<i>Not Applicable</i>	

1	2	3
---	---	---

- B. Group B/Class II officers of the Central & State Services (Direct Recruitment)
- Son(s) and daughter(s) of
- (a) parents both of whom are Class II X
 - (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. X
 - (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 like UN, IMF, World Bank, etc. for a period of not less than 5 years before such death or permanent incapacitation; X
 - (d) parents of whom the husband is a Class I officer (direct recruit or pre-forty promoted) and the wife is a Class II officer and the wife dies; or suffers permanent incapacitation; and X
 - (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 X

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. X
- (b) 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 Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation. X

C. Employees in Public Sector Undertakings etc.

Not Applicable

The criteria enumerated in A & B above in this Category will apply mutatis mutandi 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.

[Father Group B]
[Mother Group C]

∴ No exclusion
comes for

1

2

3

III. ARMED FORCES INCLUDING PARAMILITARY FORCES
 (Persons holding civil posts are not included)

Not Applicable

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 Para Military 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 artist and other film professional, author, playwright, sports person, sports professional, media professional or any other vocations of like status.
- (II) Persons engaged in trade, business and industry.

Criteria specified against Category VI will apply:-

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 only 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.

1 2 3

V. PROPERTY OWNERS
A. Agricultural holdings

*Statutory limit in V.P
7.3 hectares (12.5 acres)*

*↳ 1 acre ∵ way
below 40% limit*

*∴ does not ~~satisfy~~ Satisfy
area of exclusion*

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 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 conversion formula existing into the irrigated type. The irrigated area so computed from unirrigated 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. Plantations

- (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.

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

Son(s) and daughter(s) of

- (a) Persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

[Total Income

- Salary

- Agricultural income]

VI. INCOME/WEALTH TEST

*↳ Income from other
Sources -*

1	2	3
<p>(b) Persons in Categories I, II, III and V A who are not entitled to the benefit of reservation but have <u>income from other sources of wealth</u> which will bring them within the income/wealth criteria mentioned in (a) above.</p>		

Explanation:

- (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 interrumpum 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.

**Department of Personnel and Training O.M. No.36033/9/95-Estt.(SCT),
dated the 10th May, 1995, to all Ministries/Departments, etc.**

Subject:- Verification/acceptance of caste certificate furnished by candidates 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.

**Department of Personnel and Training O.M. No.36033/4/97-Estt.(Res.),
dated the 25th July 2003, to all Ministries/Departments, etc.**

Subject: Validity period of OBC certificate and verification of Community and 'non-creamy layer' status of OBC candidates.

The undersigned is directed to say that a question has arisen about the validity period of certificates issued to the candidates belonging to other backward classes for the purpose of reservation in services. The OBC certificate consists of two parts – first part indicates that the concerned person belongs to a community listed as OBC and the second part indicates that the candidate does not fall in the creamy layer. While the OBC status of a candidate may change only when the community of the concerned candidate is removed from the OBC list, his/her creamy layer status may change any time. In view of it, it is not possible to determine a fixed validity period for the OBC certificate.

2. Every candidate seeking reservation as OBC is required to submit a certificate regarding his/her 'OBC status and non-creamy layer status' issued by an authority mentioned in Department of Personnel and Training Office Memorandum No.36012/22/93-Estt.(SCT) dated 15.11.1993. The 'OBC status' and /or 'non-creamy layer status' of the candidate, as pointed out in para above, may change after issue of the certificate making him/her ineligible for reservation. In order to ensure that candidates not eligible to get reservation do not seek reservation, a declaration, in addition to certificate issued by the competent authority, may be obtained from the candidates seeking reservation as OBCs in the following format:

"I, _____ son/daughter of Shri _____ resident of _____
village /town/city _____ district _____ state _____
hereby declare that I belong to the _____ community which is recognized as
a backward class by the Government of India for purpose of reservation in services as per
orders contained in Department of Personnel and Training Office Memorandum
No.36012/22/93-Estt.(SCT) dated 8.9.1993. It is also declared that I do not belong to
persons/sections (Creamy Layer) mentioned in Column 3 of the Schedule to the above referred
Office Memorandum dated 8.9.1993."

3. The appointing authority, before appointing a person seeking appointment on the basis of reservation to OBCs should verify the veracity of the community certificate submitted by the candidate and also the fact that he/she does not fall in creamy layer on the crucial date. The crucial date for this purpose may be treated as the closing date for receipt of applications for the post except incases where crucial date is fixed otherwise.

4. It was decided vide this Department's Office Memorandum No.36033/9/95-Estt.(SCT) dated 10.5.1995 that in case of appointments against vacancies reserved for OBCs a clause in the offer of appointment would be inserted to the effect that appointment will be provisional and subject to verification of the community certificate. Since reservation is available only to such OBC candidates who do not fall in the creamy layer, it is necessary that the clause inserted in the offer of appointment should be modified so as to take care of creamy layer status of the candidate also. It is, therefore, decided that the following modified clause may be included in

the offer of appointment in place of clause prescribed vide Office Memorandum dated 10.5.1995:

"The appointment is provisional and is subject to the community certificate being verified through the proper channels. If the verification reveals that the claim of the candidate to belong to Other Backward Classes or not to belong to creamy layer is false, his/her services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of Indian Panel Code for production of false certificates."

5. All Ministries/Departments are requested to bring the contents of this Office Memorandum to the notice of all authorities under them for information and compliance

**Department of Personnel and Training O.M. No.36033/3/2004-Estt.(Res.),
dated the 14th October, 2008, to all Ministries/Departments, etc.**

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 provided that sons and daughters of persons having gross annual income of Rs.1 lakh or above for a period of three consecutive years would fall within the creamy layer and would not be entitled to get the benefit of reservation available to the Other Backward Classes. The limit of income for determining the creamy layer status was raised to Rs. 2.5 lakh vide this Department's OM of even number dated 9.3.2004. It has now been decided to raise the income limit from Rs.2.5 lakh to Rs. 4.5 lakh per annum 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.

Category	Description of Category	To whom the rule of exclusion will apply
VI.	Income/Wealth Test	Son(s) and daughter(s) of (a) Persons having gross annual income of Rs. 4.5 lakh or above or: possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for 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 incomewealth criteria mentioned in (a) above. <u>Explanation:</u> Income from salaries or agricultural land shall not be clubbed.

2. The provisions of this Office Memorandum take effect from the 3rd October, 2008.
3. All the Ministries/Departments are requested to bring the contents of this Office Memorandum to the notice of all concerned.

**Department of Personnel and Training O.M. No.36033/5/2004-Estt.(SCT),
dated the 14th October, 2004, to all Ministries/Departments, etc.**

To

The Chief Secretaries of all the States/Union Territories.

Subject: Clarifications regarding creamy layer amongst OBCs.

Sir,

I am directed to invite your attention to the Schedule to this Department's OM No.36012/22/93-(SCT) dated 8th September, 1993 which contains the criteria to determine the creamy layer amongst the OBCs. In regard to the children of the persons in civil services of the Central and the State Governments, it provides that son(s) and daughter(s) of:

- (a) parents, both of whom are directly recruited Class I/Group A officers;
- (b) parents, either of whom is a directly recruited Class I/Group A officer;
- (c) parents, both of whom are directly recruited Class I/Group A officers, but one of them dies or suffers permanent incapacitation;
- (d) parents, either of whom is a directly recruited Class I/ Group A officer and such parent dies or suffers permanent in - 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 directly recruited Class I/Group A officers and both of them die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment International Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years;
- (f) parents both of whom are directly recruited Class II/Group B officer;
- (g) parents of whom only the husband is a directly recruited Class II/Group B officer and he gets into Class I/Group A at the age of 40 or earlier;
- (h) parents, both of whom are directly recruited Class II/ Group B officers and one of them dies or suffers permanent incapacitation and 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 year;
- (i) parents of whom the husband is a Class I/Group A officer (direct recruit or pre-forty promoted) and the wife is a directly recruited Class II/Group B officer and the wife dies; or suffers permanent incapacitation; and

(j) parents, of whom wife is a Class I/Group A officer (Direct Recruit or pre-forty promoted) and the husband is a directly recruited Class II/Group B officer and the husband dies or suffers permanent incapacitation shall be treated as falling in creamy layer.

2. The Schedule further provides that sons and daughters of:

(i) parents either of whom or both of whom are directly recruited Class I/Group A officer(s) and such parent(s) dies/die or suffers/suffer permanent incapacitation;

(ii) parents both of whom are directly recruited Class II/Group B officers and one of them dies or suffers permanent incapacitation;

(iii) parents both of whom are directly recruited Class II/Group B officers and both of them die or suffer permanent incapacitation, even though 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 before their death or permanent incapacitation shall not be treated to be falling in creamy layer.

3. The criteria prescribed for determining creamy layer status of sons and daughters of persons in Government service mutatis mutandis applies to the sons and daughters of persons holding equivalent or comparable posts in PSUs, Banks, Insurance Organisations, Universities, etc. and also holding equivalent or comparable posts and positions under private employment. The creamy layer status of the sons and daughters of employees of organizations where evaluation of the posts on equivalent or comparable basis has not been made is determined on the basis of 'Income/Wealth Test' given in the Schedule. The Income/Wealth Test prescribes that the sons and daughters of 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 would be treated to fall in creamy layer. An explanation is given below the Income/Wealth Test which provides that 'income from salaries or agricultural land shall not be clubbed.

4. Following questions have been raised from time to time about the application of the above provisions to determine creamy layer:

(i) Will the sons and daughters of parents either of whom or both of whom are directly recruited Class I/Group A officer(s) and such parent(s) dies/die or suffers/suffer permanent incapacitation after retirement be treated to be excluded from the creamy layer?

(ii) Will the sons and daughters of parents both of whom are directly recruited Class II/Group B officers and one of them dies or suffer permanent incapacitation after retirement be treated to be excluded from the creamy layer?

(iii) Will the sons and daughters of parents both of whom are directly recruited Class II/Group B officers and both of them die or suffer permanent incapacitation after retirement even though either of them has had got the benefit of employment in any International Organisation like UN,

IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation be treated to be excluded from the purview of creamy layer?

(iv) Will the sons and daughters of parent(s) who retire from the service on the basis of which their sons and daughters fall in creamy layer, continue to fall in creamy layer after retirement of the parent(s)?

(v) Will the sons and daughters of parents of whom husband 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 be treated to be falling in creamy layer?

(vi) Will a candidate who himself is a directly recruited Class I/Group A officer or a directly recruited Class II/Group B officer who got into Class I/Group A at the age of 40 or earlier be treated to be falling in creamy layer on the basis of his service status?

(vii) Will a candidate who has gross annual income of Rs.2.5 lakh or above or possesses wealth above the Exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years be treated to fall in creamy layer?

(viii) The instructions provide that a lady belonging to OBC category who has got married to a directly recruited Class I/Group A officer shall not be treated as falling in creamy layer on the basis of her marriage. Will a man belonging to OBC category who is married to a directly recruited Class I/Group 'A' officer be treated as falling in creamy layer on the basis of his marriage?

(ix) How will be the Income/Wealth Test apply in case of Sons and daughters of parent(s) employed in PSUs etc. in which equivalence or comparability of posts has not been established vis-à-vis posts in the Government?

(x) What is the scope of the explanation, 'Income salaries or agricultural land shall not be clubbed', given below the Income/ Wealth Test?

5. It is clarified in regard to clauses (i), (ii) and (iii) of para 4 that the sons and daughters of

(a) parents either of whom or both of whom are directly recruited Class I/Group A officers and such parent(s) dies/die or suffers/suffer permanent incapacitation while in service;

(b) parents both of whom are directly recruited Class II/Group B officers and one of them dies or suffers permanent incapacitation while in service; and

(c) parents both of whom are directly recruited Class II/Group B officers and both of them die or suffer permanent incapacitation while in service, even though either of them has 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 are not treated to be falling in creamy layer. But if the parent(s) dies/die or suffers/suffer permanent incapacitation in such

cases after retirement from service, his/their sons and daughters would be treated to be falling in creamy layer and would not get the benefit of reservation.

6. In regard to clause (iv) of para 4, it is clarified that sons and daughters of parents who are included in the creamy layer on the basis of service status of their parents shall continue to be treated in creamy layer even if their parents have retired or have died after retirement.

7. In regard to clause (v) of para 4, it is clarified that the sons and daughters of parents of whom only the husband is a directly recruited Class II/Group B officer who gets into Class I/Group A at the age of 40 or earlier are treated to be in creamy layer. If the 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 daughters shall not be treated to be falling in creamy layer.

8. In regard to clauses (vi), (vii) and (viii) of para 4, it is clarified that the creamy layer status of a candidate is determined on the basis of the status of his parents and not on the basis of his own status or income or on the basis of status or income or on the basis of status or income of his/her spouse. Therefore, while determining the creamy layer status of a person the status or the income of the candidate himself or of his/her spouse shall not be taken into account.

9. In regard to clause (ix) of para 4, it is clarified that the creamy layer status of sons and daughters of persons employed in organizations where equivalence or comparability of posts vis-à-vis posts in Government has not been evaluated is determined as follows:

Income of the parents from the salaries and from the other Sources [other than salaries and agricultural land] is determined separately. If either the income of the parents from the salaries or the income of the parents from other sources [other than salaries and agricultural land] exceeds the limit of Rs.2.5 lakh per annum for a period of three consecutive years, the sons and daughters of such persons shall be treated to fall in creamy layer. But the sons and daughters of parents whose income from other sources is also less than Rs.2.5 lakh per annum and income from other sources is also less than Rs.2.5 lakh per annum will not be treated as falling in creamy layer even if sum of the income from salaries and the income from the other sources is more than Rs.2.5 lakh per annum for period of three consecutive years. It may be noted that income from agricultural land is not taken into account while applying the Test.

10. In regard to clause (x) of para 4, it is clarified that while applying the Income/Wealth Test to determine creamy layer status of any candidate as given in Category-VI of the Schedule to the OM, income from the salaries and income from the agricultural land shall not be taken into account. It means that if income from salaries of the parents of any candidate is more than Rs.2.5 lakh per annum, income from agricultural land is more than Rs.2.5 lakh per annum, but income from other sources is less than Rs.2.5 lakh per annum, the candidate shall not be treated to be falling in creamy layer on the basis of Income/Wealth Test provided his parent(s) do not possess wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

11. You are requested to bring the contents of this letter to all concerned in the State.

No.42011/22/2006-Estt.(Res)
Ministry of Personnel, P.G & Pensions
Department of Personnel & Training
Government of India

New Delhi, Dated: the 29th March, 2007

OFFICE MEMORANDUM

Subject: Action against Government servants who get appointment on the basis of false SC/ST/OBC certificates.

Respondent no.1 in Civil Appeal No. 2294/1986 [State of Maharashtra Vs Milind & Ors] before the Supreme Court had got admission as a Scheduled Tribe candidate to MBBS degree course for the year 1985-86 on the strength of a Scheduled Tribe Certificate issued to him by the competent authority. The Supreme Court held him not to belong to a Scheduled Tribe but did not annul his admission or affected his degree. The Hon'ble Court observed that about 15 years had passed since he took admission and had already completed the course. At that length of time it was for nobody's benefit to annul his admission inasmuch as any action against the candidate might lead to depriving the society of the service of a doctor on whom public money had already been spent. The Court in that case also held that the admissions and appointments that had become final would remain unaffected by the judgement.

2. A question has been raised whether in view of the above referred judgement, the appointments made against the vacancies reserved for SCs/STs/OBCs on the basis of false SC/ST/OBC certificates shall not be disturbed if such appointments have been made final or are continuing for a long time.

3. The matter has been examined in consultation with the Department of Legal Affairs and it has been found that admissions and appointments of some candidates in the case of Milind and in some other similar cases were not annulled by the Supreme Court as a special case keeping in view the special circumstances of those cases. The relief accorded by the Supreme Court was specific relief provided only to the candidates who were party in those cases. The cases other than those protected by the specific order of the Apex Court should be dealt with in

accordance with the instructions contained in this Department's OM No.11012/7/91-Estt(A) dated 19.5.1993 which provides as follows:

"Wherever it is found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc, for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If, he is a probationer or a temporary Government servant, he should be discharged or his services should be terminated. If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS(CCA) Rules, 1965 may be held and if the charges are proved , the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed".

4. The above referred instructions are strengthened by the observations of the Supreme Court in Milind Kumar's case (SUPRA) to the effect that if the benefits of reservation are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their suffering will continue. Allowing the candidates not belonging to the reserved categories to have the benefit of reservation either in admissions or appointments would lead to making mockery of the very reservation against the mandate and scheme of Constitution.

5. Contents of this OM may be brought to the notice of all concerned.



(K.G. Verma)
Director

1. All Ministries/Departments of the Government of India.
2. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of the Ministry.
3. Department of Economic Affairs (Banking Division), New Delhi.
4. Department of Economic Affairs (Insurance Division), New Delhi.
5. Department of Public Enterprises, New Delhi.
6. Railway Board.
7. 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.
8. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
 9. Ministry of Social Justice and Empowerment, Shastri Bhavan, New Delhi.
 10. National Commission for SCs, Lok Nayak Bhavan, New Delhi.
 11. National Commission for STs, Lok Nayak Bhavan, New Delhi.
 12. National Commission for Backward Classes, Trikoot-I, Bhikaji Cama Place, R.K. Puram, New Delhi.
 13. Office of the Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi – 110002.
 14. CBI, LBSNAA, ISTM, PESB, Central Sectt. Library, MHA Library.
 15. Information and Facilitation Centre, DOPT, North Block, New Delhi.

Copy to:

The Chief Secretaries of all States/UTs.