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No. 36033/5/2004-Estt(Res)
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS
DEPARTMENT OF PERSONNEL & TRAINING

New Delhi, Dated : the 14th October, 2004

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 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 in any 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 officers;
- (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;

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- (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 years;
 - (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

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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?

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(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 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 from 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 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

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.

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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 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 salaries is 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 the sum of the income from salaries and the income from the other sources is more than Rs.2.5 lakh per annum for a 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)

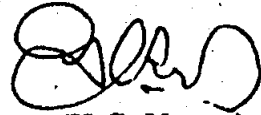
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do not possess wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

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

Yours faithfully,



(K.G. Verma)

Deputy Secretary to the Govt. of India

Copy to:-

1. All Ministries / Departments of Govt. of India
2. Department of Economic Affairs (Banking Division), New Delhi
3. Department of Economic Affairs (Insurances 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/ National Commission for Backward Classes.
7. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
8. Office of the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.

With the request to bring the contents of this letter to the notice of all concerned.