

LOK SABHA DEBATES

LOK SABHA

Wednesday November, 27, 1991, Agrahayana, 6, 1913 (Saka).

The Lok Sabha met at Eleven of the Clock

[MR. SPEAKER *in the Chair*]

MEMBER SWORN

Shri Sharad Yadav (Madhepura)

11.01 hrs.

ORAL ANSWERS TO QUESTIONS

[*English*]

Reservation of Posts In Civil Services

*81. SHRI RAJNATH SONKAR SHASTRI: Will the PRIME MINISTER be pleased to state:

(a) the details of the notification issued recently on the reservation of posts in the civil services;

(b) whether the notification is in the tune with the provisions of the Constitution and the various judgements delivered by the Supreme Court on the subject from time to time;

(c) if not, the reasons therefor;

(d) whether there is any proposal to provide reservation to the wards of the retiring Government employees also; and

(e) if so, the details thereof?

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (SHRIMATI MARGARET ALVA): (a) to (e). A statement is laid on the Table of the House.

A copy of the Office Memorandum No. 36012/31/90-Estt (SCT) dated 25.9.91 issued by this Ministry is annexed (Annexure - I). This Office Memorandum is by way of modification of the Office Memorandum of same number issued earlier on 13th August, 1990, (Annexure - II). The Office Memoranda dated 13th August, 1990 and 25th September, 1991 are being challenged in the Supreme Court and therefore subjudice.

2. There is no proposal to provide reservation to the wants of retiring Government employees.

No. 36012/31/91 - Estt(SCT)

Government of India
Ministry of Personnel, Public Grievances
and Pensions
(Department of Personnel & Training)

New Delhi, the 25th September, 1991.

OFFICE MEMORANDUM

Subject: Recommendation of the Second Backward Classes Commission (Mandal Report) - Reservation for Socially and Educationally Backward Classes in service under the Government of India.

The undersigned is directed to invite the attention to O.M. 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 received 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 reservation.

(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 O.M. of even number dated the 13th August, 1990, shall be deemed to have been amended to the extent specified above.

Sd/-

(A.K. HARIT)

DEPUTY SECRETARY TO THE
GOVERNMENT OF INDIA.

To

All Ministries/Departments of Govt. of India.

No. 36012/31/90-Eatt (SCT)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Trading)

New Delhi, the 13th August, 1990.

OFFICE MEMORANDUM

Subject: - Recommendations of the Second Backward Classes Commission (Mandal Report) - Reservation for Socially and Educationally Backward Classes in services under the Government of India.

In a multiple undulating society like ours, early achievement of the objectives of social justice as enshrined in the Constitution is a must. The Second Backward Classes. 1. 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 31.12.1980.

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 list 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.

Sd/-
(Smt. Krishna Singh)
Joint Secretary to the Government of
India.

To
All Ministries/Departments of Govt. of
India.

[*Translation*]

SHRI RAJNATH SONKAR SHASTRI: Mr. Speaker, Sir, there is a provision in the Indian Constitution for reservation for socially and educationally backward classes and it was under the same provision that 27 per cent reservation was recommended by the Mandal Commission. The Government headed by Shri V.P. Singh also issued a notification to that effect on 13th. August, 1990. But the present Government issued an amended Notification on 25th September 1991 which provided for reservation on economic basis and not on social and educational basis. In the notification there is provision for 10 per cent reservation for the people who don't enjoy this facility at present. Such a situation has created so many constitutional difficulties for the Supreme Court. So many cases are pending as there is no standard of economic basis. According to the notification issued by the present Government, there would be sixty per cent reservation whereas the Supreme Court does not allow reservation beyond 50 per cent. I want to know whether there will be any amendment in the constitution so as to provide reservation on economic basis? Will

such a direction be given to the Supreme Court after an amendment in the Constitution.

[*English*]

SHRIMATI MARGARET ALVA: Sir, the hon. Member is aware that all matters concerning this Order have been stayed by the Supreme Court expect the progress of identification of the backward classes for the requirements of the order. Therefore, I am not in a position really to say what the hon. Member wants me to say. So, I cannot say that we will amend the Constitution or will do something else. The entire matter is before the Supreme Court. The validity of the Order is before the Supreme Court. It has been challenged.

MR. SPEAKER: Hon. Member has asked to make economic criterion as the basis.

SHRIMATI MARGARET ALVA: Sir, the economic criterion is within the 27 per cent. Originally, it was 27 per cent reservation for the backward classes. We have said that among the 27 per cent, preference will be given to those who are economically weaker. If they are not filled-up by them, then the others would come among the SEBCs.

MR. SPEAKER: According to you the amendment is not necessary.

SHRIMATI MARGARET ALVA: Sir, what we are saying is that the identification on the basis of economic criterion would mean that there should be an economic criterion.

The Prime Minister has already written to all the Chief Ministers for working out a consensus on the economic criteria. He has asked for their opinion and for their criteria so that there could be a meeting of the Chief Ministers and the consensus on the economic criterion to be adopted could be worked out.

MR. SPEAKER: Excuse me, the Member wants to know whether the Constitution

will have economic criterion mentioned in it and will you amend the Constitution for that purpose. If you think it is not necessary, then you can say so.

SHRIMATI MARGARET ALVA: We have not considered it necessary as yet.

[*Translation*]

SHRI RAJNATH SONKAR SHASTRI: It is very strange that the Government is working out a consensus on the economic criterion but it is not going to amend the constitution. That means reservation is just an excess, which the Government is not going to provide actually.

MR SPEAKER: It is not necessary that all the reservations should come from the constitution itself..

SHRI RAJNATH SONKAR SHASTRI: Supreme Court believes that economic basis is no criterion, so we do not say anything about the notification.

MR. SPEAKER: We must not say anything about the judgement.

SHRI RAJNATH SONKAR SHASTRI: My second question is that the Government has prepared a roster system for promotion in the reserved categories, and the people who are covered under this system are promoted. Since a person's name is placed at bottom in the list, an official from the Civil Services cannot get any further promotion. The employees already there (from back door) get two promotion and go ahead of the people who get only one promotion because they don't have any other promotion opportunity. Has any separate system been evolved for socially and educationally backward people? If so, what are the criteria will be?

[*English*]

MR. SPEAKER: I have also not followed your question.

[*Translation*]

SHRI RAJNATH SONKAR SHASTRI: The Government has promised that 27 per cent reservation would be provided to the backward classes. This reservation would be given to the people on economic basis. Along with this, it is said that there will be 10 per cent reservation for those who have never been able to get any reservation, and in the reply it was said that a criterion will be fixed for them I want to know the criterion fixed for those 10 per cent people?

[*English*]

SHRIMATI MARGARET ALVA: Sir, I would like to point out that I made it very clear in the beginning that the criteria have not been worked out. We are trying to work out a national consensus on this. In fact, the amended order of 25th September says very clearly at paragraph 3 that the criterion for determining the poorer sections of SEBCs or the other economically backward sections of the people who are not covered by any of the existing schemes of reservation, are being issued separately. That means after it is finalised, we will issue it separately. It has not yet been finalised.

SHRI SHARAD DIGHE: Mr. Speaker, Sir, I have followed that they are going to decide it afterwards, after taking consensus from the Chief Ministers as to what would be the criteria as far as poorer sections of SEBCs and other economically backward sections are concerned. I would like to know whether there is any thinking of the Central Government on this point and if so, what is that thinking.

SHRIMATI MARGARET ALVA: Sir, as the moment we have with us the criteria as laid down by the Chinnappa Reddy Commission which is broad-based, which is being studied, which covers most of these issues. But as I said, we have asked each State to send us their recommendations and each Chief Minister to tell us what is in operation in their States at the moment, if at all, so that

we could work out a consensus in consultation with everybody.

SHRI INDRAJIT GUPTA: Sir, my question has been half-answered. I was trying to point out the contradiction between what is stated in paragraph 3, which the hon. Minister has just read out, of the Office Memorandum dated 25th September, namely that the criteria for determining who is less poor or who is more poor and the meaning of it. It is said that the criterion are being issued separately. It is not said here that they are going to carry out a big exercise with all the Chief Ministers of all States and all that, and then have a consensus, *discussion here and so on*. Earlier she had said that that is the procedure they are going to follow. I want to seek a clarification on that. It is wrong to say that they are being issued separately. They are not ready at all.

Finally, one aspect on which I want to ask the Government on this question of who is less poor or more poor etc., is whether it refers to somebody's salary or income or land holding or property holding or whatever it may be. Has the Government considered the possibility and risk of a great amount of corruption creeping into this in the form of people wanting to get certificates from various people to testify that they are less poor or more poor, and that this will open the floodgates to something which was not visualised in the constitutional provision at all?

SHRIMATI MARGARET ALVA: There is a possibility of any measure being issued by some people for their own benefit. I would not blindly say that everybody is going to do this. Even when it comes to other kinds of certificates, these things do happen at some level. Therefore, only because people may issue it, I do not think we should say the whole measure is wrong.

SHRI RAM NAIK: The third paragraph, which has been read by the hon. Minister and also referred by her says that the criteria for reservation is being issued separately. This is very specific statement. But the things vary, and as a part of this Office Memorandum

they are being issued separately. The English grammar says very clearly that this is ready and is being issued. I want to know as to why such information is not being given even after so much of time. This was of 25th September.

MR. SPEAKER: No, no, Shri Naik. She has made it very clear. She wants to discuss with other Ministers.

SHRI RAM NAIK: I will reframe my question.

MR. SPEAKER: Why should we quarrel over the word? Let us go to the substance.

SHRI RAM NAIK: What is the basis? The consensus be arrived when something is given as the basis. What is that basis?

MR. SPEAKER: The hon. Minister said that she is in the process of evolving it.

SHRI RAM NAIK: There should be some proposal which can be circulated and then the consensus can be evolved. I want to know whether the Government has thought of any such proposal and what are the salient features of that proposal?

SHRIMATI MARGARET ALVA: Of all the criterion which we have studied here, we have found that - as I said earlier - the Chinnappa Reddy Commission's criteria has been found to be wide enough. If you want me to read it, I will do so. It is a two-page report.

MR. SPEAKER: You can send it to him, if you can.

SHRIMATI MARGARET ALVA: I can send it to the hon. Member. (*Interruptions*).

MR. SPEAKER: It can be laid on the table of the House, if it can be.

SHRIMATI MARGARET ALVA: I can lay on the table of the House the Chinnappa Reddy Commission's recommendation for the criteria and send a copy to the hon.

Member. Besides that we have asked the States also, if they are following some criteria, or if they have some ideas to sent all of them to us. We can consolidate them and later a meeting of the Chief Ministers could go into this.

MR. SPEAKER: Very good.

SHRI P. C. CHACKO: The Government has taken a very wise and scientific decision on this matter which was agitating all the sections of the society, thereby setting at rest a very basic issue which concerns everybody. There are some States where reservation is implemented - as hon. Member Shri Shonkar Shastri said - by more than 50 per cent, if my information is correct. Having taken a very good decision, will the Government now write to those State Governments who have not implemented this reservation policy, to implement the reservation policy in the light and spirit of the decision taken by the Government?

SHRIMATI MARGARET ALVA: We are only thinking, in these orders, about the employment in the Central Government public sector undertakings and banks. We are not thinking about giving any directions at the moment to the State Governments.

There are some States which have gone far beyond 50 per cent. Some have other figures - for instance, Tamil Nadu has 60 per cent, Karnataka has got 72 per cent. There are various levels at which the State Governments are implementing their own reservation policy. At the moment, this is not under our control.

[*Translation*]

SHRI SHARAD YADAV: Mr. Speaker, I want to seek clarification on one more point. The principle of reservation in the constitution is based on the principles of social status. It is not a programme of economic upliftment. If it is a programme of economic upliftment, I would like to know as to what would be done with regard to the remaining 40 per cent posts as 50 per cent have

already been filled. It is upto the court to give the decision, but I want to know what would be done for the remaining 40% posts, because the Government has developed tremendous love for poor people?

Secondly, I would like to know whether this question is associated with social status or not, is it not at all concerned with economic development? It is associated with respect, history and esteem. In this case the economic criteria of 27% has not been fixed. Instead, there is a long history of this fight in the Constitution which has been scrapped. It is also suspected whether the same economic criterion would be applied to the reservation for scheduled tribes. I urge upon its implementation as well. The people have not a right after a great struggle, that too has been scrapped.

MR. SPEAKER: Please ask the question.

SHRI SHARAD YADAV: May I know from the hon. Minister whether it will be reconsidered. There is a long history, that is, the struggle started from the Poon Pact, and it has become possible after a great struggle till now since that day. Would the Government reconsider about the economic criterion which has been fixed at 27%, and for which people have struggled so much in spite of so many odds.

[*English*]

MR. SPEAKER: Are you going to reconsider?

SHRIMATI MARGARET ALVA: Yes.

MR. SPEAKER: Yes. Now, the lady Member.

DR. (SMT.) K.S. SUNDERAM: Mr. Speaker, Sir, will the Minister be pleased to come forward to implement the 30 per cent reservation for women as Tamil Nadu Government has done?

SHRIMATI MARGARET ALVA: Sir, this

issue has been raised at various levels. It is being looked at. The question is whether 'women' can be a reasonable classification, and that is the question which is being studied. So, at the moment I cannot say 'yes' though I would very much like to say 'yes'.

[Translation]

SHRI RAM VILAS PASWAN: Mr. Speaker, Sir, today I am very happy that at least Congress party and B.J.P. both have supported the recommendations of Mandal Commission. A big agitation was launched against it but they are supporting it now. . . (Interruptions)

[English]

SHRI RAM NAIK: We have put it in the manifesto. (Interruptions). We have not done it. It is a wrong statement and they are making this allegation outside the House, we are replying. But in the House such a false allegation is being made.

SHRI DIGVIJAYA SINGH: Sir, the Congress has never opposed reservation for backward classes. (Interruptions).

SHRI HARIN PATHAK: In the Ninth Lok Sabha BJP is the only party which put it in the manifesto.

[Interruptions]

SHRI RAJNATH SONKAR SHASTRI: It was made clear that B.J.P. is not supporting the Mandal Commission. (Interruptions) Paswanji has said that there is pandemonium because somebody is supporting it and somebody is not . . . (Interruptions)

MR SPEAKER: Please be seated.

[English]

If you create confusion, reservation will suffer.

[Translation]

SHRI RAM VILAS PASWAN: I am happy

to see that all the people have accepted the reservation in principle. I also know that it was against your dignity to implement the order of our Government so a little changes were made here and there . . . (Interruptions).

MR. SPEAKER: Please ask the question.

. . . (Interruptions) . . .

SHRI RAM VILAS PASWAN: This is a constitutional question. I have a small quarry. There are three Articles of the constitution which are relevant here. I know about it because when we implemented the Mandal Commission, we said that we are not against providing reservation to backward classes on economic criteria. They too should be given at least 5 to 10 per cent reservation and we were about to moot a proposal in this regard. . . (Interruptions). . . Provision of reservation has been under Article 340, 15(4) and 16(4) of the Constitution. In these Articles provision has been made for backward classes purely on the basis of educational and social background. We are not against providing 10 per cent reservation on the basis of economic criteria, but under which Article is this being done?

[English]

SHRIMATI MARGARET ALVA: We are going by the provisions of the Constitution which provide that special provisions can be made for weaker sections of the community.

SHRI RAM VILAS PASWAN: Under which Article?

SHRIMATI MARGARET ALVA: Under the Directive Principles. . .

SHRI A. CHARLES: If I understand correctly, the main problem for implementing the reservations under this Order is that so far, the list of communities that are eligible for this 27 per cent reservation is not prepared. The former Prime Minister, Shri. V.P. Singh when he made a *suo motu* statement on reservation failed to produce such a list of

communities. Now we are in the process of making this list. But there is one danger. It has been said that those communities which are common in the list of the Mandal Commission's Report and in the State's list will be prepared first.

MR. SPEAKER: Please come to the question.

SHRI A. CHARLES: Just one minute Sir. Now in Kerala 'Pulaya' is a Scheduled Caste. But in the Mandal Commission's Report, 'Pulaya' is classified as a backward community. In Kerala people are agitated over this issue. Therefore, may I know from the hon. Minister that when the list is prepared whether the Scheduled Caste communities will continue to get the benefit as Scheduled Castes or not? While implementing the Mandal Commission's Report the Minister must ensure that the benefits of the Scheduled Castes are not effected and that they should continue to get the same benefits that they are enjoying now.

SHRIMATI MARGARET ALVA: The first criteria that has been accepted is that the communities which are common to the Mandal Commission's list and the State's list would be accepted. This is the basis on which we are processing. The other communities and classes which are to be included would be identified as we go along.

[Translation]

SHRI RAVI RAY: Sir, Madam Minister has told categorically in reply to Shri Sharad's question that she does not have any doubt the Articles of Constitution and whether is being done in accordance with the spirit of the constitution. I fully agree to this but I would like to submit that the Centre has to provide 27 per cent reservation of the backward classes on the basis of education and their social status. If we include the economic criteria also, the things will go haywire. Instead of shifting the responsibility on State Government, it should be the moral responsibility of the Central Government. I would like to know why there is delay in

identifying the backward classes which would get benefit of 27 per cent reservation? Besides, by what time the work would be completed?

[English]

THE MINISTER OF STATE IN THE MINISTRY OF POWER AND NON-CONVENTIONAL ENERGY SOURCES (SHRI KALP NATH RAI): We will look into the matter; (Interruptions)

SHRIMATI MARGARET ALVA: It has been ably answered on my behalf by the Minister;

There are two issues which are being raised. One is the identification of the economically weaker sections within the 27 per cent and the 10% poor among the other communities.

The other is the identification of the Backward Classes for the 27 per cent itself. As far as the 27 per cent of Backward Classes are concerned, I have said that we are starting with the original commitment which you had also made when in Government that the lists which are common both the Mandal Commission and the States would be accepted. But in this I want to point out that there are several states and all the Union Territories who have no lists at all as far as the State lists are concerned. Therefore, they would have to go into the process of preparing their own lists because they do not exist at the moment. As far as the economic criteria is concerned, I mentioned that we are trying to work out a consensus by consulting all the Chief Ministers and putting forth our own views on this. The meeting of the Chief Ministers is going to be called. The Supreme Court has been told that before the 26th of January, 1992 we should be in a position to come before it and give them some commitment about the exact criteria which is to be adopted. (Interruptions).

[Translation]

SHRI RAM VILAS PASWAN: Mr.

Speaker, Sir, identification was done by us about a year back (Interruptions)

SHRI RAVI RAY: Mr. Speaker, Sir, my question was that if a State Government insists that they would not implement 27 per cent reservation, how would the Central Government be able to fill the quota in Central services? If the State Government does not identify the backward classes, I would like to know by when the Central Government will do it? This was my question and Madam Minister did not reply to it (Interruptions)

[English]

SHRIMATI MARGARET ALVA: I have repeated three times that one set as what is common to both the Mandal Commission and the States, but where it does not exist, the question of identification has started. We are in the process of identification because there we have to start the scratch since the States have no lists at all. This work is going on. They may have prepared some list and somebody also might have prepared some other list but today it is our responsibility to prepare a proper list and present it as the consolidated and final list. (Interruptions).

MR. SPEAKER: I have given nearly half-an-hour to this question. Now we go to the next question. Shri Ram Badan.

[Translation]

Setting Up Of A Model Industrial City

*82. SHRI RAM BADAN: Will the Minister of Planning and Programme Implementation be pleased to state:

(a) whether the Union Government have taken any decision to set up of a Model Industrial City in the country as a result of the meeting of the Indo-Japan Committee held in November, 1990;

(b) if so, the steps taken to set up the proposed Model Industrial City; and

(c) if not, the reasons therefor?

[English]

THE MINISTER OF STATE OF THE MINISTRY FOR PLANNING AND PROGRAMME IMPLEMENTATION (SHRI H.R BHAR DWAJ) (a) to (c). A Sub-committee under chairman, Exim Bank has been set up by the India-Japan Study Committee in the Planning Commission to consider the investment, technology transfer and feasibility aspects of setting up an Industrial Model Town. The Sub-Committee is yet to submit its report.

(Interruptions)

MR. SPEAKER: Please understand that I have given half-an-hour to one question; other questions are also important and other Members will also complain.

(Interruptions)

SHRI E. AHMED: Sir, we are also Backward and we may also be given an opportunity to put a question.

MR. SPEAKER: Please do not shout like this.

(Interruptions)

MR. SPEAKER: Please take your seat.

Now, please take your seat. Please understand, this is Question Hour.

SHRI K.P. REDDIAH YADAV: We are from the backward (Interruptions)

MR. SPEAKER: Do not shout like this. I will name you and I will take action against you. It is not like this. You cannot browbeat like this. Half-an-hour is given for this question. You cannot shout like this.

If you want to discuss this, please find out the method of discussing it. You can-