

**COMMITTEE ON THE WELFARE OF
SCHEDULED CASTES AND SCHEDULED TRIBES
(2001-2002)**

(THIRTEENTH LOK SABHA)

SIXTEENTH REPORT

**MINISTRY OF PERSONNEL PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL AND TRAINING--(DOPT)--
EXAMINATION OF ORDERS PERTAINING TO RESERVATION
FOR SCHEDULED CASTES AND SCHEDULED TRIBES IN SERVICES.**

Presented to Lok Sabha on 27.8.2001

Laid in Rajya Sabha on

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2001/ Agrahayana 1923(Saka)

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**COMPOSITION OF THE COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND
SCHEDULED TRIBES (2001-2002)**

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Shri Kariya Munda - Chairman

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3. Shri Mahendra Baitha
4. Shri Padmanava Behera
5. Shri Ananda Mohan Biswas
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13. Shri Salkhan Murmu
14. Shri Ashok Pradhan
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19. Shri Ramji Lal Suman
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26. Shri Nagendra Nath Ojha
27. Shri Raju Bhai Parmar
28. Dr. Alladi P. Rajkumar
29. Shri Shyam Lal

SECRETARIAT

1. Shri B.R. Kanathia, Joint Secretary
2. Shri Shiv Singh, Under Secretary
3. Shri K. Jena, Committee Officer

INTRODUCTION

I, the Chairman, Committee on the Welfare of Scheduled Castes and Scheduled Tribes having been authorised by the Committee to finalise and submit the Report on their behalf, present this Sixteenth Report (Thirteenth Lok Sabha) on the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training (DOPT) – Examination of orders pertaining to Reservation for Scheduled Castes and Scheduled Tribes in services.

2. The Committee took evidence of the representatives of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) on 5-1-1999 and those of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training (DOPT) on 31-3-1999. The Committee wish to express their thanks to the officers of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) and those of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training(DOPT) for placing before the Committee the material and information the Committee desired in connection with the examination of the subject.

3. The Report was considered and adopted by the Committee on 21 August, 2001.

4. A summary of conclusions/recommendations contained in the Report is appended (Appendix).

KARIYA MUNDA

CHAIRMAN

COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES

NEW DELHI;

August, 2001

Bhadrapada, 1923(Saka)

CHAPTER – I

Historical Background of Reservation

- 1.1 Realising the inequitable distribution of posts in the administration between different castes and communities, the rulers of some of the then Princely States, who were genuinely interested in the upliftment of disadvantaged sections of the society, took initiatives and introduced reservations in the administrative posts in favour of the backward castes and communities in their States as early as in the first quarter of the 20th century. Mysore and Kolahpur were amongst the first to do so. Because of the movement for social justice and equity started by the Justice Party, the then Presidency of Madras initiated the reservation in Government employment in 1921. It was followed by Bombay Presidency comprised of the major portion of present States of Maharashtra, Karnataka and Gujarat. Thus, the first quarter of the 20th century saw reservations in Government employment in almost whole of Southern India. These reservations were not only in favour of the depressed classes which were rechristened as Scheduled Castes in the Government of India Act, 1935, but also in favour of other backward castes and classes including what were then known as intermediate castes. To identify the backward classes in the State of Mysore, Justice L.C. Miller Committee was appointed in 1918-20. Similarly in the Princely State of Travancore and Cochin, Justice C.D. Nokes Committee was appointed in 1935.

Poona Pact 1932

- 1.2 Before the Poona Pact 1932 the representation of depressed classes in public service was negligible except for a few pockets of old presidency of Madras and princely State of Mysore. In the Poona Pact under Clause 6 a provision was made under which Government should make every endeavour to secure fair representation of the depressed classes in elections to local bodies and appointments to public services.

Reservation Prior to 1947 – British India

- 1.3 For the first time instructions were issued in 1934, without providing a formal reservation that candidates belonging to depressed classes and possessing the requisite qualifications should not be deprived of fair opportunities of appointment merely because they could not succeed in open competition. The term Scheduled Castes was used for the first time in the Government of India Act, 1935. In August, 1943, Government of India provided reservation at the rate of 8.1/3 per cent for the Scheduled Castes in the vacancies filled up by direct recruitment through open competition. The relaxation in the upper-age limit and concessions in examination fee prescribed for appointment to a service or post were announced in favour of the Scheduled Castes candidates.

Reservation after Independence

- 1.4 Soon after independence, orders were issued by Government on 21.9.1947 providing for reservations in services for Scheduled Castes at the rate of 12.5% of vacancies in respect of direct recruitment through open competition. In the case of recruitment otherwise than by open competition separate reservation at the rate of 16 2/3% was provided in favour of Scheduled Castes. The question of providing reservations for the Tribal Communities in the Central Services also came up before the Government and instructions were issued in December, 1947, that the appointing authorities should consider as far as possible desirability of recruiting suitably qualified candidates from amongst the tribal communities. However, a

decision to reserve a definite percentage of vacancies at the rate of 5% for candidates of Scheduled Tribes was taken only after the promulgation of the Constitution in 1950.

Constitutional provisions for Reservation

- 1.5 The framers of the Constitution felt that unless special provisions were made for the protection of the right of Scheduled Castes and Scheduled Tribes to secure fair representation in public employment in proportion to their population, it would never be possible to catch up and compete successfully for securing public employment. Therefore, to secure fair representation of Scheduled Castes and Scheduled Tribes in services and posts under the State, special provisions of reservation under Article 16(4), Article 46 and Article 335 of the Constitution were made. Article 16(4) empowers the State for making any provision for the reservation of appointment or posts in favour of any backward class of citizens which in the opinion of State, is not adequately represented in the services under the State.
- 1.6 Article 16(4A) enacted by a Constitutional Amendment removes any misunderstanding of the meaning and scope of reservations. The Article 16(4A) reads as under.
- Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State”.
- 1.7 “Articles 46 says that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation”.
- 1.8 Article 335 imposes upon the State a responsibility that the claims of the members of the Scheduled Castes / Scheduled Tribes shall be taken into consideration consistent with the maintenance of efficiency of administration, in making of appointments to the services and posts in connection with the affairs of the Union or of a State.
- 1.9 Under these constitutional backgrounds the Central Government provided reservation only for members of the Scheduled Castes and Scheduled Tribes. After the Constitution was promulgated, Ministry of Home Affairs in its Resolution of 13.9.1950 provided 5% reservation for Scheduled Tribes apart from the percentage fixed for Scheduled Castes already in force. The Census of 1951 showed that the percentage of Scheduled Castes in the total population was 15.05 per cent and that of Scheduled Tribes 6.31 per cent. The 1961 Census revealed that the Scheduled Castes and Scheduled Tribes population in proportion to the India’s population stood at 14.64 per cent and 6.80 per cent respectively. Accordingly, the percentage of reservation for Scheduled Castes and Scheduled Tribes was increased from 12-1/2 per cent and 5 per cent to 15 per cent and 7-1/2 per cent respectively on 25.3.1970. The

1971 Census did not warrant any such review. As the census of 1981 could not be carried out in the State of Assam the actual impact of 1981 Census figures on all India percentages could not be known.

- 1.10 Since special provisions of reservations in services were required to overcome the socio-economic and educational deprivation and discrimination suffered by the Scheduled Castes and Scheduled Tribes in the past the founding fathers of the Constitution made provisions of reservation for SCs/STs in the Constitution for giving opportunities to them to have a share in the governance and administration of the country. Accordingly, various orders providing for reservation and necessary relaxations in direct recruitment and in promotions were issued by the Government from time to time.
- 1.11 It has been observed that even after 50 years of independence and with the facilities of aforesaid provisions, the representation of Scheduled Castes and Scheduled Tribes in various Departments and PSUs of Government of India has not reached the prescribed level of reservation i.e., 15 per cent for Scheduled Castes and 7.5 per cent for Scheduled Tribes. A substantial shortfall of Scheduled Castes in Group A and B category and Scheduled Tribes in almost all categories of posts is noticed; the post basis analysis has indicated that percentage of representation of these communities in higher posts is far below the requirement.
- 1.12 The implementation of the constitutional safeguards to Scheduled Castes and Scheduled Tribes in services is done through executive orders issued by the competent Ministry presently by Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training) from time to time. While these Executive Orders on reservations were to show their result in due representation of Scheduled Castes and Scheduled Tribes in services, the spate of five Office Memoranda issued by DOPT in 1997 have completely turned aside the reservation policy and withdrawn a number of facilities that were available to these communities. These five memoranda have withdrawn the facilities enjoyed by the Scheduled Castes and Scheduled Tribes employees for the last 50 years.
- 1.13 The Committee note that keeping in view the social, economic and educational backwardness of SCs and STs the framers of the Constitution had felt that unless special provisions were made for the protection of their rights to secure representation in public employment in proportion to their population, it would never be possible for these communities to catch up and compete successfully for securing public employment. Therefore special provisions for reservation in services and posts under the State in favour of SCs and STs were made under Article 16(4), Article 46 and Article 335 of the Constitution. The Committee also note that the term Scheduled Castes was used for the first time in the Government of India Act, 1935 and in August, 1943, the Government of India provided reservation at the rate of 8.1/3 per cent for SCs in the vacancies filled up by direct recruitment. After Independence, orders were issued on 21.9.47 providing for reservation in services for SCs @ 12.5 per cent in respect of direct recruitment through open competition. In the case of recruitment otherwise than by open competition

this percentage was fixed at 16.2/3 per cent. The Committee further note that after the Constitution was promulgated Ministry of Home Affairs in its resolution of 13.9.1950 provided 5 per cent reservation for Scheduled Tribes apart from the percentage fixed for SCs already in force. As the census of 1961 revealed that the SC and ST population stood at 14.64 per cent and 6.80 per cent respectively, and accordingly the percentage of reservation for SCs and STs was increased from 12.1/2 per cent and 5 per cent to 15 per cent and 7.1/2 cent respectively.

- 1.14 The Committee are constrained to note that even after 50 years of independence, the representation of Scheduled Castes and Scheduled Tribes in various Departments and Public Sector Undertakings of the Government of India has not reached the prescribed level of reservation, i.e., 15 per cent for SCs and 7.5 per cent for STs. The Committee observe that there is substantial shortfall of SCs in Group A and B category and STs in almost all categories of posts in various Departments and Public Sector Undertakings of the Government. In higher posts the percentage of representation of these communities is far below the required level. The Committee note that the implementation of the Constitutional safeguards provided to SCs and STs in services is done through the executive orders issued by the competent Ministry (Presently by Ministry of Personnel, Public Grievances & Pensions Department of Personnel and Training (DOPT) from time to time. The Committee are perturbed to note that while the reservation policy in force has yet to show results in achieving adequate representation of Scheduled Castes and Scheduled Tribes in services, the spate of five office memoranda issued by DOPT in 1997 on the basis of certain Supreme Court judgements have withdrawn a number of facilities that were available to Scheduled Castes and Scheduled Tribes and completely turned aside the reservation policy. In the opinion of the Committee these Office Memoranda are anti-reservation and, therefore, unconstitutional in toto. The Committee strongly recommend that Government should immediately withdraw these anti-reservation O.M.s. The Committee also recommend that in order to avoid recurrence of such incidents, the Government should bring out a Comprehensive Legislation – Reservation Act to fulfil the prescribed percentage of reservation for SCs and STs in all grades and cadres. The Reservation Act should be included in the 9th Schedule of the Constitution so that the judiciary has no access to it.

The Committee will now deal with these five Office Memoranda issued by DOPT in the year 1997 in succeeding Chapters.