

VALIDITY PERIOD OF OBC CASTE & NON CREAMY LAYER CERTIFICATE GOVT OM 25.07.2003 & CAT DECISION

No.36033/4/97-Estt.(Res.)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi.
Dated: 25th July 2003

OFFICE MEMORANDUM

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 Penal 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.

(K.G. Verma)

Deputy Secretary to the Government of India

Tele: 23092797

1. All Ministries/Departments of the Government of India.
2. Department of Economic Affairs (Banking Division), New Delhi.
3. Department of Economic Affairs (Insurance 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.
7. Staff Selection Commission, CGO Complex, Lodhi Road, New Delhi.
8. Ministry of Social Justice and Empowerment, Shastri Bhavan, New Delhi.
9. National Commission for SCs and STs, Lok Nayak Bhavan, New Delhi.
10. National Commission for Backward Classes, Trikot-I, Bhikaji Cama Place, R.K. Puram, New Delhi.

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NEW DELHI, NOVEMBER 13: Amidst the raging debate over quotas, the Central Administrative Tribunal (CAT) has for the first time fixed a three-year tenure for non-creamy layer certificates of OBC candidates. This will ensure better implementation of the Supreme Court ruling on keeping the creamy layer out of reservation.

An order to this effect was passed by CAT's Guwahati bench, comprising vice-chairman KV Sachidanandan and administrative member Gautam Ray, while deciding the case of an OBC Railway employee. The Tribunal found that "in the absence of any rule fixing limitation of such certificate and taking confidence from the changing financial status and fast emerging economic scenario, such certificate beyond three years becomes stale."

The Tribunal, however, left it open to the competent authority to make rules reducing or enhancing the three-year period. "Till then, the period of three years could be construed for valid period for non-creamy (layer) certificate for all further purpose," it said.

The non-creamy layer certificate is proof of the candidate's economic status, attestation of the fact that he or she does not belong to the creamy layer which has been kept out of the purview of reservation.

But the very objective of the SC judgment had been watered down due to the absence of any prescribed check period to determine when an OBC candidate who is availing the benefits of reservation in employment, by virtue of his non-creamy layer status, will grow out of it.

So far, the Government has not prescribed any fixed validity period for the certificates. A 2003 Office Memorandum of the Ministry of Personnel, Public Grievances and Pensions had merely left the issue hanging, saying "it is not possible to determine a fixed validity period for the OBC certificate" as the creamy layer status may change any time.

In the instant case, the dispute was between two OBC candidates who had applied for a vacancy in the Railways. Both Bijan Roy Bhowmick and Kshitish Chandra Nath had produced non-creamy layer certificates to support their claim. Bhowmick said he should be preferred for the job as his certificate was the latest as against the one produced by Nath which he claimed was more than a year old.

But the Tribunal came to the conclusion that Nath who fared better in the written and oral examinations was entitled for appointment as his certificate was only one Year..old.