

Bill No. LXXIV of 2008

**THE SCHEDULED CASTES AND THE SCHEDULED TRIBES
(RESERVATION IN POSTS AND SERVICES) BILL, 2008**

A

BILL

to provide for reservation of appointments or posts in civil services for members of the Scheduled Castes and the Scheduled Tribes in establishments and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Reservation in Posts and Services) Act, 2008.

Short title,
application
and
commence-
ment.

(2) It shall apply to every establishment.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appointing authority", in relation to a service or post in an establishment, means the authority empowered to make appointment to such service or post;

(b) "establishment" means every such establishment owned, established, controlled, managed or financed by the Government and includes—

(i) a Ministry or department or subordinate office or attached office of the Government;

(ii) a public sector undertaking or statutory authority constituted under any Central Act;

(iii) a corporation in which not less than fifty-one per cent. of the paid-up share capital is held by the Government;

(iv) a university established by a Central Act and its affiliated colleges, including medical and engineering colleges and institutions;

(v) a primary or secondary school or any other educational institution;

(vi) an industry, trade or business;

(vii) a Government company as defined under section 617 of the Companies Act, 1956; and

1 of 1956.

(viii) an autonomous body, organisation or institution receiving grant or aid from the Consolidated Fund of India;

(c) "Government" means the Central Government;

(d) "Group 'A' post" or "Group 'B' post" or "Group 'C' post" or "Group 'D' post" means a post which is classified as such by the President in exercise of the powers conferred by the proviso to article 309 of the Constitution or by or under any Act of Parliament and includes an equivalent post in any establishment;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "promotion by non-selection" means promotion made on the basis of seniority-cum-fitness;

(g) "promotion by selection" means promotion made on the basis of merit-cum-seniority;

(h) "recruitment year" means the calendar year for which the recruitment is made;

(i) "Scheduled Castes" and "Scheduled Tribes" shall have the meanings respectively assigned to them in clauses (24) and (25) of article 366 of the Constitution;

(j) "scientific or technical post" include post for which qualifications in natural sciences or exact sciences or applied sciences or technology are essential and the incumbent of such post shall have to use his or her knowledge in such sciences for discharge of duties.

Reservation
in appoint-
ment by
direct
recruitment
and
promotion.

3. (1) The Government shall reserve such percentage of posts for members of the Scheduled Castes and the Scheduled Tribes for appointment in civil services by direct recruitment and promotion, in such manner, as may be prescribed.

(2) The vacancy reserved for members of the Scheduled Castes or the Scheduled Tribes under sub-section (1) shall be filled in such manner as may be prescribed.

No reserva-
tions in
certain cases.

4. (1) Notwithstanding anything contained in section 3, there shall be no reservation where appointments are made—

(i) for a period of less than forty-five days;

(ii) for work charged post required for any emergency relief work;

(iii) to posts higher than the lowest grade of Group 'A' posts and classified as scientific or technical post; and

(iv) to posts higher than the lowest grade of Group 'A' posts in institutions of national importance and Indian Institutes of Management specified in the Schedule.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein or, as the case may be, omitting therefrom, any institution of national importance and Indian Institutes of Management and on the publication of such notification, such institution shall be deemed to be included in or, as the case may be, omitted from, the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

- 5.** In the case of promotion by selection from one Group 'A' post to another Group 'A' post which carries the scale of pay, the maximum of which is equal to or less than the maximum of the scale of pay of a Director in the Central Secretariat Service or equivalent posts in other establishments, the officers belonging to the Scheduled Castes and the Scheduled Tribes, who are fit to hold the post and are relatively senior so as to be within the number of vacancies for which the select list is to be drawn, shall be included in such select list and considered for appointment.
- 6.** (1) Appointment to an unreserved vacancy shall be open to all eligible persons including a person belonging to the Scheduled Castes or the Scheduled Tribes.
- (2) Where such unreserved vacancy is filled by direct recruitment or promotion by a person belonging to the Scheduled Castes or the Scheduled Tribes on the basis of merit, then, such person shall be appointed against the unreserved vacancy:
- Provided that no such appointment shall be made for promotion by non-selection.
- 7.** (1) The maximum age limit fixed for direct recruitment to a service or post shall be increased by five years for members of the Scheduled Castes and the Scheduled Tribes.
- (2) The maximum age limit fixed for promotion to a post, if any, shall be increased by five years for members of the Scheduled Castes and the Scheduled Tribes:
- Provided that no such relaxation shall be available where the maximum age limit for promotion has been fixed above fifty years.
- 8.** The examination fee or application fee, determined for recruitment to a service or post through competitive examination or otherwise, may be reduced to such extent for members of the Scheduled Castes and the Scheduled Tribes, as may be prescribed.
- 9.** (1) Any standard of suitability, excluding the essential and desirable qualifications, required for appointment by direct recruitment to a post may be relaxed for members of the Scheduled Castes and the Scheduled Tribes, if sufficient number of such candidates possessing requisite standards are not available to fill the vacancies reserved for them:
- Provided that no such appointment shall be made where the candidate is found unfit to hold the post.
- (2) The experience required for appointment by direct recruitment to a post may be relaxed for members of the Scheduled Castes and the Scheduled Tribes, if at any stage of selection, sufficient number of such candidates possessing the requisite experience are not available to fill the vacancies reserved for them.
- 10.** (1) Where a qualifying examination is held to determine fitness of eligible persons for promotion by non-selection and sufficient number of members of the Scheduled Castes and the Scheduled Tribes fulfilling the qualifying standards are not available to fill the vacancies reserved for them, such qualifying standards may be relaxed, consistent with the minimum standards of fitness required for appointment to the post, in the case of members of the Scheduled Castes and the Scheduled Tribes.
- (2) Where qualifying examination is held to determine merit of eligible persons for promotion by selection and sufficient number of members of the Scheduled Castes and the Scheduled Tribes fulfilling the qualifying standards are not available to fill the vacancies reserved for them, such qualifying standards may be relaxed, consistent with the minimum standards of merit required for appointment to the posts, in the case of members of the Scheduled Castes and the Scheduled Tribes.
- 11.** The vacancies reserved for members of the Scheduled Castes or the Scheduled Tribes shall respectively be filled by members of the Scheduled Castes and the Scheduled Tribes only.

Inclusion of Scheduled Castes and Scheduled Tribes officers in select list in case of promotion within Group 'A'.

Unreserved vacancies to be open to members of Scheduled Castes and Scheduled Tribes.

Relaxation of age.

Fee concession.

Relaxation in qualifications and experience.

Reservation in case of promotion.

Reserved vacancies to be filled by members of Scheduled Castes and Scheduled Tribes.

Abolition of posts not to affect the representation of members of Scheduled Castes and Scheduled Tribes.

12. Where posts in an establishment are to be abolished and as a result thereof, the services of certain persons are required to be either surrendered or terminated, no such surrender or termination shall be made in respect of members of the Scheduled Castes and the Scheduled Tribes, if it results in lowering their representation in relation to the percentage of reservation fixed for them.

Liaison officer.

13. (1) Every establishment shall designate an officer of such rank, as may be prescribed, to function as a liaison officer for the purpose of ensuring that the provisions of this Act or the rules made thereunder or any direction or instruction issued by the Government regarding reservation are not contravened.

(2) The liaison officer shall, from time to time, inspect and verify the documents, records and reports with respect to appointments of members of the Scheduled Castes and the Scheduled Tribes made by the appointing authority by direct recruitment or promotion.

(3) Where the liaison officer is satisfied that any establishment has contravened the provisions of this Act or the rules made thereunder or any direction or instruction issued, he shall submit a report of such contravention to the head of the establishment.

(4) On receipt of the report of contravention under sub-section (3), the head of establishment shall take disciplinary action under section 18 against the person responsible for such contravention.

Maintenance of documents and records and furnishing of report by appointing authority.

14. (1) Every appointing authority, or an officer authorised by him in this behalf, shall maintain such documents and records, and furnish every year a report on the appointments of members of the Scheduled Castes and the Scheduled Tribes made by direct recruitment and promotion, in such manner and at such time, as may be prescribed.

(2) The appointing authority or any other officer authorised by him shall make available such documents and records for inspection, furnish such information, and render such assistance, to the liaison officer, as may be necessary, to enable him to carry out his functions under this Act.

Training programmes for Scheduled Castes and Scheduled Tribes.

15. The Government shall, subject to the availability of finance and other resources, develop and organise training programmes to advance the competence of members of the Scheduled Castes and the Scheduled Tribes for appointment to services and posts.

Penalty for making false claim.

16. Whoever knowingly makes a false claim that he is a member of the Scheduled Caste or the Scheduled Tribe, as the case may be, shall be liable to punishment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.

Penalty for issuing false caste certificate.

17. Whoever knowingly issues a false Scheduled Caste or Scheduled Tribe certificate shall be liable for punishment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both.

Disciplinary action for contravention of provisions of Act.

18. Where any person responsible for implementing the provisions of this Act or the rules made thereunder, intentionally contravenes any of the provisions thereof, he shall be liable for disciplinary action under the service rules applicable to such person.

Power to issue directions.

19. The Government may, for giving effect to the provisions of this Act or the rules made thereunder, issue such directions to establishments, as it deems fit.

Existing office memoranda to continue.

20. All memoranda issued or purported to have been issued by the Government in relation to reservation of posts in civil services for members of the Scheduled Castes and the Scheduled Tribes, immediately before the commencement of this Act, shall, in so far as they relate to the matters for which provisions have been made in this Act and are not inconsistent

therewith, be deemed to have been issued under this Act as if this Act had been in force on the date on which such memoranda were issued.

21. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the percentage of posts for reservation and the manner of reservation under sub-section (1) of section 3;

(b) the manner of filling vacancies under sub-section (2) of section 3;

(c) the extent of reduction in examination fee and application fee under section 8;

(d) the rank of the officer to be designated as the liaison officer under sub-section (1) of section 13;

(e) the documents and records to be maintained and the time and manner of furnishing report under sub-section (1) of section 14.

(3) Every rule made by the Central Government under this section shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE
(See clause (iv) of sub-section (I) of section 4)

1. Aligarh Muslim University, Aligarh
2. All India Institute of Medical Sciences, New Delhi
3. Allahabad University, Allahabad
4. Banaras Hindu University, Varanasi
5. Delhi University, Delhi
6. Dr. B.R. Ambedkar National Institute of Technology, Jalandhar
7. Imperial War Museum
8. Indian Institute of Management, Kolkata
9. Indian Institute of Management, Lucknow
10. Indian Institute of Management, Ahmedabad
11. Indian Institute of Management, Bangalore
12. Indian Institute of Management, Indore
13. Indian Institute of Management, Kozhikode
14. Indian Institute of Technology, Chennai
15. Indian Institute of Technology, Guwahati
16. Indian Institute of Technology, Kanpur
17. Indian Institute of Technology, Kharagpur
18. Indian Institute of Technology, Mumbai
19. Indian Institute of Technology, New Delhi
20. Indian Institute of Technology, Roorkee
21. Indian Museum, Calcutta
22. Indian War Memorial, New Delhi
23. Jawaharlal Institute of Post Graduate Medical Education and Research, Pondicherry
24. Malaviya National Institute of Technology, Jaipur
25. Maulana Azad National Institute of Technology, Bhopal
26. Motilal Nehru National Institute of Technology, Allahabad
27. National Institute of Technology, Surathkal
28. National Institute of Technology, Agartala
29. National Institute of Technology, Calicut
30. National Institute of Technology, Durgapur
31. National Institute of Technology, Hamirpur
32. National Institute of Technology, Jamshedpur
33. National Institute of Technology, Kurukshetra
34. National Institute of Technology, Patna
35. National Institute of Technology, Raipur
36. National Institute of Technology, Rourkela
37. National Institute of Technology, Silchar
38. National Institute of Technology, Srinagar
39. National Institute of Technology, Tiruchirappalli
40. National Institute of Technology, Warangal
41. National Library, Calcutta
42. Post Graduate Institute of Medical Education and Research, Chandigarh
43. Rajiv Gandhi Indian Institute of Management, Shillong
44. Sardar Vallabhbhai National Institute of Technology, Surat
45. Victoria Memorial, Calcutta
46. Vishwa Bharati, West Bengal
47. Visvesvaraya National Institute of Technology, Nagpur

STATEMENT OF OBJECTS AND REASONS

At present, administrative instructions issued by the Central Government from time to time, provide reservation of appointments or posts for the Scheduled Castes and the Scheduled Tribes in civil services under the control of the Central Government. These instructions have been issued in pursuance of clauses (4) and (4A) of article 16 and the proviso to article 335 of the Constitution of India which empower the State to make provisions for reservation of appointments or posts in favour of the Scheduled Castes and the Scheduled Tribes.

2. Being sensitive to the need for providing adequate representation for the Scheduled Castes and the Scheduled Tribes in civil services under the control of Central Government and to give statutory backing to the instructions in the matter, the Government decided to enact a suitable legislation which will elevate the provisions of the reservation to a statutory right and also instil greater confidence amongst members of the Scheduled Castes and the Scheduled Tribes. It will go a long way in meeting the constitutional goal of securing justice, liberty and equality for all citizens of the country and in promoting fraternity amongst them all.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 19th December, 2008.

PRITHVIRAJ CHAVAN.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 3 of the Bill empowers the Central Government to prescribe the extent and manner of reservation by direct recruitment and promotion in civil services for the members of the Scheduled Castes and the Scheduled Tribes. Sub-clause (2) thereof empowers the Central Government to prescribe the manner of filling such vacancy.

2. Item (iv) of sub-clause (1) of clause 4 of the Bill empowers the Central Government to amend the Schedule, by notification in the Official Gazette, to include or, omit from, such Schedule any institution of national importance and Indian Institutes of Management.

3. Clause 8 of the Bill empowers the Central Government to prescribe the extent of fee concession for the members of the Scheduled Castes and the Scheduled Tribes.

4. Sub-clause (1) of clause 13 of the Bill empowers the Central Government to prescribe the rank of the officer who may be designated as the liaison officer.

5. Sub-clause (1) of clause 14 of the Bill empowers the Central Government to prescribe the manner of maintaining documents and records, and the manner and time of furnishing report on appointments of the members of the Scheduled Castes and the Scheduled Tribes made by direct recruitment and promotion, by the appointing authority.

6. The matters in respect of which rules may be made or notification may be issued are essentially matters of detail or procedure. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

A

BILL

to provide for reservation of appointments or posts in civil services for members of the Scheduled Castes and the Scheduled Tribes in establishments and for matters connected therewith or incidental thereto.

(Shri Prithviraj Chavan, Minister of State in the Prime Minister's Office and Minister of State in the Ministry of Personnel, Public Grievances and Pensions)