

**Agenda Note**

**Sub: Comments of National Commission for Scheduled Tribes requested by Directorate of Higher Education, Govt. of NCT of Delhi on the Delhi Educational Institutions (Reservation in Admission Bill 2009.**

**1. Proposal in brief**

A revised draft Bill 'The Delhi Educational Institutions (Reservation in Admission) Bill 2009 to provide for the reservation in admission of the students belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens, to certain educational institutions established, maintained or aided by the Govt. of National Capital Territory of Delhi was received in the Commission for its comments from the Directorate of Higher Education, Govt. of NCT of Delhi vide their letter dated 16.10.2009 within a weeks time.

The provisions of clauses 3 & 5 of the draft Bill seem to be adaptation of the Central Educational Institutions (Reservation in Admission Act 2006, with some interpretations (underlined).

a) As per sub-section (1) of section 2, under heading Definitions "Scheduled Tribes" means the Scheduled Tribes notified under article 342 of the Constitution of India in relation to any State or Union Territory, migrated in the National Capital Territory of Delhi due to transfer or movement of their father or Guardian on account of business or service.

b) As per clause (ii) of subsection (1) of section 3, under heading Reservation of seats in educational institutions.

Out of the annual permitted strength in each branch of study or faculty, the percentage of seats reserved for Scheduled Tribes, shall be prescribed by the Government from time to time but shall not exceed 7.5 percent of the annual permitted strength.

## **II Implications**

i) As per subsection 2(1), who is authorized to get the benefit of ST reservation and who can be denied, needs to be considered.

In this connection, the Govt. of NCT of Delhi order dated 30.06.2005 may also be referred, wherein it is mentioned that all the SC/ST candidates irrespective of their nativity are eligible for reservation to the civil posts under Government of NCT of Delhi, which are reserved for SC/ST candidates. It is not evident why the benefits of reservation should only be confined to children of migrants (period unspecified).

ii) Only upper limit of reservation for Scheduled Tribes is mentioned in clause 3(1)(ii) of the draft Bill. The Bill has further empowered the Govt. to decide the reservation for STs, anything ranging from 0 to 7.5% , which is likely to lead to arbitrariness and misgivings amongst the eligible students.

## **III Proposed Recommendations of the Commission on the matter.**

The Commission may consider the draft Bill in view of the implications mentioned above. It is for consideration whether the definition of Scheduled Tribes must remain the same, irrespective of the purpose. As of now, the definition of STs as per subject draft Bill is different from that given by Govt. of NCT of Delhi in their order dated 30.6.2005 for service matters.

A copy of the Central Educational Institutions (Reservation in Admission), and the the judgments of Hon.ble Supreme Court of India in CA No.6-7 of 1998 and WP (C) 265/2006 dated 29/03/2007 and 10/04/2008 regarding reservation in Central educational institution is enclosed for reference (relevant portions only).

In CAs 6-7 of 1998, the Hon.ble Supreme Court has held that Union Territories are excluded from the expression "State" and there would be no infarction of Article 16(4) of the Constitution, if a Union Territory by virtue of its position of being governed by the President extends the benefit of reservation even to migrant Scheduled Castes or Tribes who

are not mentioned in the Schedule of the Presidential order relating to the such Union Territory. In WP (C) 265/2006, the Central Educational Institutions (Reservation in Admission) Act, 2006 survived the challenge. The Office Memorandum dated 20.04.2008 issued by Department of Higher Education, Ministry of Human Resource Development for implementation of 27% reservation to OBC is also enclosed for reference.