



2026:DHC:3262-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 30.03.2026**Judgment pronounced on: 21.04.2026**Judgment uploaded on: 21.04.2026*

+ W.P.(C) 8055/2023

YADAV VIVEK KUMAR PARASNATHPetitioner

Through: Mr. Shashank Ratnoo, Mr.
Vibhav Mishra, Mr. Shantanu
Lakhotia, Mr. Divyaveer Singh
and Mr. Brajesh Pandey,
Advocates.

versus

UNION OF INDIARespondent

Through: Mr. Ripudaman Bhardwaj,
CGSC.**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T****ANIL KSHETARPAL, J.:**

1. Through the present Petition, the Petitioner prays for issuance of a writ in the nature of certiorari to quash the order dated 07.11.2022 [hereinafter referred to as the 'Impugned Order'] passed by the learned Central Administrative Tribunal [hereinafter referred to as the 'Tribunal'] in O.A. No. 3246/2022, whereby the Original Application preferred by the Petitioner came to be dismissed at the threshold, with the Tribunal upholding the decision of the Respondent to treat the Petitioner as falling within the 'creamy layer' and consequently denying him the benefit of reservation under the Other Backward Classes ['OBC'] category for the purposes of service allocation



pursuant to the Civil Services Examination, 2021.

2. The issue which arises for consideration in the present Petition is whether the Impugned Order suffers from any infirmity in law or on facts in upholding the action of the respondent in treating the Petitioner as falling within the 'creamy layer', on account of the income of his father exceeding the prescribed threshold under the applicable Office Memorandum dated 08.09.1993 read with subsequent clarifications, and thereby denying him the benefit of reservation under the OBC (Non-Creamy Layer) category for the purposes of service allocation in the Civil Services Examination, 2021.

FACTUAL MATRIX:

3. In order to appreciate the controversy involved in the present Petition, the relevant facts, in brief, are required to be noticed.

4. The Petitioner participated in the Civil Services Examination, 2021 conducted by the Union Public Service Commission ('UPSC') and secured All India Rank 393 in the final merit list. He applied under the OBC category and, in that regard, furnished the requisite certificates, including the certificate pertaining to his OBC Non-Creamy Layer status, at the stage of submission of the Detailed Application Form as well as during the subsequent stages of the selection process.

5. Having qualified in the Preliminary Examination, the Petitioner was permitted to appear in the Civil Services (Main) Examination.



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Prior thereto, he furnished the requisite details and documents, including those relating to his category status. Upon being declared successful in the Mains Examination, the Petitioner was required to submit further particulars, including details pertaining to the employment and income of his parents for the preceding years. The Petitioner thereafter appeared in the personality test/interview and was declared successful in the said examination.

6. Subsequent to the declaration of the final result, the Respondent issued service allocation lists in respect of the Civil Services Examination, 2021. However, the name of the Petitioner did not find mention in the said lists, and no service came to be allocated to him.

7. Aggrieved by the non-allocation of service, the Petitioner is stated to have submitted a representation to the Respondent seeking clarification. The Petitioner also preferred an application under the Right to Information Act, 2005 seeking disclosure of the reasons for non-allocation of service.

8. In response to the said application, the Petitioner was informed, *vide* communication dated 21.09.2022, that he had been treated as falling within the 'creamy layer' in terms of the provisions contained in the Office Memorandum dated 08.09.1993 issued by the Department of Personnel and Training ['DoPT']. It was indicated that the father of the Petitioner, who was employed in a Government Aided School, was assessed under the income/wealth test, and as his income exceeded the prescribed limit of Rs. 8 lakhs per annum for three consecutive financial years, the Petitioner was held to be



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ineligible for the benefit of reservation under the OBC category in the Civil Services Examination, 2021.

9. The Petitioner, being aggrieved by the aforesaid determination, approached the Tribunal by way of O.A. No. 3246/2022, *inter alia*, contending that he belongs to the OBC category and is entitled to be treated as falling within the Non-Creamy Layer. It was his case that his father was employed as a Teacher in a Government Aided School and, therefore, ought to be treated as equivalent to a Group 'C' Government employee, with the consequence that the criteria applicable to Government servants would apply to his case. It was further contended by the Petitioner that he had been issued a certificate by the competent authority certifying him as belonging to the OBC (Non-Creamy Layer) category, and that he had also been treated as such during the selection process conducted by the UPSC. On this basis, it was urged that the non-allocation of service to him by the Respondent was arbitrary and unsustainable.

10. The Respondent opposed the Original Application, contending that the case of the Petitioner had been examined strictly in accordance with the applicable rules and instructions governing determination of creamy layer status. It was submitted that in terms of the Office Memorandum dated 08.09.1993 issued by the DoPT, the income of the father of the Petitioner exceeded the prescribed limit of Rs. 8 lakhs per annum for three consecutive financial years, and therefore, he was rightly treated as falling within the creamy layer and held ineligible for availing the benefit of reservation under the OBC category.



11. The Tribunal, after hearing the learned counsel for the parties at the admission stage and upon perusal of the material on record, proceeded to examine the applicability of the Office Memorandum dated 08.09.1993, as well as the subsequent clarification issued by the DoPT on 14.10.2004, in the context of the facts of the present case. The Tribunal noted that the said framework specifically provides for determination of creamy layer status in cases where equivalence or comparability of posts *vis-à-vis* Government posts has not been established. It was observed that in such cases, the income of the parents from salary and from other sources was required to be assessed in terms of the income/wealth test, and where such income was found to exceed the notified limit for the stipulated period, the candidate would be treated as falling within the creamy layer.

12. Applying the aforesaid principles to the facts of the present case, the Tribunal recorded that the father of the Petitioner was employed as a Teacher in a Government Aided School and that no material had been placed on record to establish equivalence of such post with any Government post in terms of the applicable instructions. Consequently, in the absence of any determination of equivalence, the case of the Petitioner was examined by the Respondent with reference to the income/wealth criterion, and it was found that the income of his father exceeded the prescribed limit of Rs. 8 lakhs per annum for three consecutive financial years.



CONTENTIONS OF THE PARTIES:

13. Contentions of the Petitioner:

13.1. Learned counsel for the Petitioner assailed the Impugned Order and submitted that the Petitioner admittedly belongs to the OBC category and had duly applied as an OBC (Non-Creamy Layer) candidate in the Civil Services Examination, 2021. The Petitioner had furnished a valid certificate issued by the competent authority certifying him as belonging to the OBC (Non-Creamy Layer) category, which, according to the Petitioner, could not have been disregarded by the Respondent. It was contended that once the competent authority has issued such a certificate, the Respondent has no jurisdiction to sit in appeal over such certification or to independently re-determine the status of the Petitioner for the purposes of denying him the benefit of reservation.

13.2. It was further submitted that the Petitioner was treated as an OBC (Non-Creamy Layer) candidate at all stages of the selection process conducted by the UPSC, including at the stage of interview, and therefore, the subsequent denial of service allocation on the ground that he falls within the creamy layer is arbitrary and amounts to altering the rules of the game after the completion of the selection process.

13.3. It was contended that the action of the Respondent in treating the Petitioner as falling within the creamy layer on the basis of the income of his father is legally unsustainable, inasmuch as income from salary cannot be treated as the sole or determinative criterion in



the manner adopted by the Respondent while applying the income/wealth test. In this regard, it was submitted that a correct interpretation of the Office Memorandum dated 08.09.1993 would indicate that, in cases where equivalence of posts has not been established, determination of creamy layer status ought to be based on income from sources other than salary and agricultural income, and therefore, the reliance placed by the Respondent on the salary income of the Petitioner's father is misplaced.

13.4. Reliance was placed on the decision of this Court in *Ketan v. Union of India & Ors.*¹, which has since been affirmed by the Hon'ble Supreme Court in *Union of India and Others v. Rohith Nathan & Another, Etc.*² and other connected matters, to contend that the determination of creamy layer status cannot be based solely on income, particularly salary income, without due regard to the status and category of the post held by the parents. It was submitted that the Hon'ble Supreme Court has clarified that the Office Memorandum dated 08.09.1993 constitutes the governing framework and that the clarificatory letter dated 14.10.2004 cannot override or alter its substantive scheme. Learned counsel submitted that the income/wealth test operates only as a residual mechanism in cases where equivalence of posts has not been determined, and even in such cases, income from salary cannot be mechanically treated as determinative of creamy layer status. On this basis, it was contended that the action of the Respondent in treating the Petitioner as falling within the creamy layer solely on the basis of the salary income of his

¹ 2018:DHC:1995

² Civil Appeal Nos. 2827-2829 of 2018



father is legally unsustainable.

13.5. It was further contended that the father of the Petitioner is employed as a Teacher in a Government Aided School and ought to be treated as equivalent to a Group 'C' Government employee. Once such equivalence is accepted, the criteria applicable to Government servants would apply, and the Petitioner would not fall within the creamy layer. It was contended that the non-acceptance of equivalence by the Respondent, without issuing any reason or providing an opportunity to the Petitioner, results in violation of Articles 14, 16(4), 19(1)(g), and 21 of the Constitution of India and amounts to arbitrary and discriminatory treatment.

14. Contentions of the Respondent:

14.1. *Per contra*, learned counsel for the Respondent supported the Impugned Order and submitted that the case of the Petitioner has been examined strictly in accordance with the provisions of the Office Memorandum dated 08.09.1993 issued by the DoPT, read with subsequent clarifications issued on 14.10.2004, and all relevant rules and instructions governing the determination of 'creamy layer' status among OBC candidates. It was contended that the said Office Memorandum clearly envisages different criteria for determining creamy layer status depending upon the nature of employment of the parents of the candidate, and specifically provides for application of the income/wealth test in cases where equivalence or comparability of posts *vis-à-vis* Government posts has not been established.

14.2. It was submitted that the Petitioner's father, being employed as



a Teacher in a Government Aided School, did not fall within the category of Government employee for the purpose of determining non-creamy layer status, as equivalence of the post with a Group 'C' Government post had not been established or notified by the competent authority. It was further submitted that in the absence of an equivalence determination, the income of the Petitioner's father from salary and other sources was required to be assessed under the income/wealth criterion prescribed in the DoPT OM of 1993. The income of the father, it was stated, exceeded Rs. 8 lakhs per annum for three consecutive financial years, namely 2017-2018, 2018-2019 and 2019-2020, and therefore, in terms of the OM and its clarifications, the Petitioner falls within the 'creamy layer' and is ineligible for OBC reservation.

14.3. It was contended that the issue of equivalence of posts is within the administrative domain of the DoPT and cannot be presumed on the basis of a State Government notification or a certificate issued by a local authority. The instructions issued by the DoPT specify that until a post is formally declared equivalent, the income/wealth test applies. It was submitted that the action of the Respondents is based on objective criteria, uniformly applied, and does not suffer from any arbitrariness, discrimination or *mala fides*. The Petitioner, having failed to satisfy the prescribed eligibility conditions, cannot claim a vested right to service allocation under the OBC category.

14.4. It was then submitted that the Central Government has, in fact, undertaken an exercise for determination of equivalence in respect of certain categories such as Public Sector Undertakings, Banks and



Insurance Institutions through specific policy decisions; however, no such determination has been made in respect of employees of Government Aided Schools, and therefore, the Petitioner cannot claim parity on that basis.

ISSUES FOR DETERMINATION:

15. Having heard learned counsel for the parties and having perused the material placed on record, the following issues arise for consideration in the present Petition:

I. Whether, in the facts and circumstances of the present case, the Respondents were justified in treating the Petitioner as falling within the 'creamy layer' on the basis of the income/wealth test prescribed under the Office Memorandum dated 08.09.1993, in the absence of any established equivalence of the post held by the Petitioner's father with a Government post?

II. Whether the action of the Respondents in denying the benefit of reservation to the Petitioner under the OBC (Non-Creamy Layer) category, despite the certificate issued by the competent authority and his participation in the selection process as an OBC candidate, is arbitrary, unreasonable or violative of Articles 14 and 16 of the Constitution of India?

III. Whether the judgment of this Court in *Ketan v. Union of India & Ors.* (supra), as affirmed by the Hon'ble Supreme Court in *Union of India and Others v. Rohith Nathan & Another, Etc.* (supra), has any application to the facts of the present case, and if so, to what



effect?

ANALYSIS & FINDINGS:

16. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record.

17. The determination of 'creamy layer' status in respect of candidates belonging to the Other Backward Classes is governed by the Office Memorandum dated 08.09.1993 issued by the DoPT, as subsequently clarified from time to time. The said OM lays down a structured framework for identifying socially advanced persons within the OBC category who are to be excluded from the benefit of reservation.

18. A perusal of the said OM indicates that the determination of 'creamy layer' status is structured through a detailed Schedule appended thereto. The said Schedule does not envisage a singular or linear test, but rather delineates 06 distinct categories for identifying socially advanced persons who are to be excluded from the benefit of reservation under the Other Backward Classes. These categories, as enumerated in the Schedule, are:

- i. Constitutional posts;
- ii. Service category (Group 'A'/'B' and equivalent posts);
- iii. Armed Forces;
- iv. Professional Class and Persons engaged in Trade and Industry;
- v. Property Owners; and



vi. Income/wealth test

Each of these categories constitutes a separate and self-contained basis of exclusion, and the applicability of one is not contingent upon the inapplicability of another. It is important to note that the aforesaid categories do not operate in a hierarchical or sequential manner. The scheme of the Office Memorandum does not postulate that the income/wealth criterion would apply only upon exclusion of all other categories. Rather, if an individual falls within any one of the specified categories, the rule of exclusion is attracted, and such individual is liable to be treated as falling within the ‘creamy layer’. The categories, therefore, operate independently and disjunctively, and not as mutually dependent stages of determination.

19. It would, therefore, be erroneous to construe the income/wealth test contained in Category VI as a provision which is attracted only upon the inapplicability of status-based criteria. The structure of the Schedule makes it abundantly clear that the categories operate in parallel, and if a candidate is found to fall within any one of the specified categories, the rule of exclusion would stand attracted.

20. Insofar as Category VI is concerned, the Office Memorandum expressly provides as follows:

“VI. INCOME/WEALTH TEST

Son(s) and daughter(s) of

- (a) *Persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the Wealth Tax Act for a period of three consecutive years.*
- (b) *Persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth*



criteria mentioned in (a) above.

Explanation:

- (i) Income from salaries or agricultural land shall not be clubbed;*
- (ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.*

Explanation: Wherever the expression "permanent incapacitation" occurs in this schedule. It shall mean incapacitation which results in putting an officer out of service."

A conjoint reading of Clause (a) and Clause (b) of Category VI thus leaves no manner of doubt that the income/wealth test is not merely ancillary in nature, but constitutes an independent and substantive ground of exclusion. The provision is designed to ensure that persons who are economically advanced are excluded from the benefit of reservation, even if they may not fall within the status-based classifications.

21. The Schedule further clarifies that the income criteria is liable to be revised periodically to account for changes in economic conditions. In this regard, it is pertinent to note that while the threshold was originally fixed at Rs.1 lakh per annum under the Office Memorandum dated 08.09.1993, the same has been revised from time to time through subsequent Office Memoranda issued by the DoPT.

22. The said threshold was successively enhanced to Rs. 2.5 lakhs, Rs. 4.5 lakhs and Rs. 6 lakhs, and most recently, *vide* Office Memorandum dated 13.09.2017, the income limit has been revised to Rs. 8 lakhs per annum. The said revision expressly operates in substitution of the earlier threshold under Category VI of the Schedule to the Office Memorandum dated 08.09.1993 and governs the



determination of creamy layer status for the relevant period. Relevant portion of OM dated 13.09.2017 reads as under:

“2. It has now been decided to raise the income limit from Rs. 6 lakh to Rs. 8 lakh per annum for determining the creamy layer amongst the Other Backward Classes. Accordingly, the expression "Rs. 6 lakh" under Category VI in the Schedule to this Department's aforesaid O.M. dated 8th September, 1993 would be substituted by "Rs. 8 lakh".

3. The provisions of this office memorandum have effect from 1st September, 2017”

In the backdrop of the aforesaid framework, it is evident that determination of ‘creamy layer’ status is not confined to an assessment of the status of the post held by the parents alone, but extends equally to the economic criteria embodied in Category VI. The said category applies independently and can be invoked wherever the factual foundation for its application is established.

23. In the facts of the present case, it is not in dispute that the father of the Petitioner is employed as a Teacher in a Government Aided School. The principal contention advanced on behalf of the Petitioner is that such a post ought to be treated as equivalent to that of a Group ‘C’ Government employee, and consequently, the criteria applicable to Government servants ought to govern the determination of his ‘creamy layer’ status.

24. However, a perusal of the material placed on record reveals that no document, notification or determination by the competent authority has been brought to the notice of this Court to establish that the post of a Teacher in a Government Aided School has been declared equivalent to any post in Government service for the purposes of application of the Office Memorandum dated 08.09.1993. The



assertion of equivalence, as urged by the Petitioner, remains unsupported by any cogent material.

25. It is trite that the question of equivalence of posts, particularly for the purposes of extending or denying the benefit of reservation under a central policy framework, is a matter falling within the domain of the competent authority and is ordinarily required to be determined through an express policy decision or notification. In the absence of any such determination, equivalence cannot be presumed on the basis of functional similarity or on the strength of a certificate issued by a local authority.

26. In the present case, therefore, in the absence of any established equivalence of the post held by the Petitioner's father with a Government post, the Respondents were justified in proceeding to examine the case of the Petitioner under the income/wealth criterion, as contemplated under the Office Memorandum dated 08.09.1993.

27. Once the case of the Petitioner is assessed under the income/wealth test, the factual position, as borne out from the record, is that the income of the Petitioner's father exceeded the prescribed threshold of Rs. 8 lakhs per annum for three consecutive financial years, namely 2017-2018, 2018-2019 and 2019-2020. In terms of Category VI, as amended from time to time, such a finding is sufficient to attract the rule of exclusion, and the Petitioner would consequently be liable to be treated as falling within the 'creamy layer'.

28. The next contention advanced on behalf of the Petitioner is that



he had been issued a valid certificate by the competent authority certifying him as belonging to the OBC (Non-Creamy Layer) category, and that such certification ought to have been treated as conclusive by the Respondents. It was further urged that the Petitioner was permitted to participate in all stages of the selection process as an OBC candidate, and therefore, the subsequent denial of service allocation amounts to altering the rules of the game after the selection process had concluded.

29. This Court is unable to accept the aforesaid submission. The certificate issued by the competent authority is undoubtedly a relevant document for the purposes of establishing eligibility; however, such certification cannot be construed as conclusive so as to foreclose the power of the Respondents to verify the correctness of the claim in accordance with the applicable rules and instructions. The determination of 'creamy layer' status, particularly in the context of a centralised selection process such as the Civil Services Examination, is required to be undertaken with reference to the governing policy framework, and the Respondents cannot be precluded from examining whether the candidate satisfies the prescribed criteria.

30. Insofar as the contention relating to alteration of the rules of the game is concerned, it is to be noted that the applicable criteria for determining 'creamy layer' status were in existence prior to the initiation of the selection process and continued to govern the field throughout. The mere fact that the Petitioner was provisionally permitted to participate in the selection process on the basis of the documents furnished by him does not confer upon him a vested or



enforceable right to be treated as falling within the OBC (Non-Creamy Layer) category, in the event it is subsequently found that he does not satisfy the prescribed conditions.

31. It is well settled that eligibility conditions, including those relating to reservation, are subject to verification at appropriate stages of the selection process, and where a candidate is found ineligible upon such verification, the denial of the corresponding benefit cannot be said to be arbitrary or violative of Articles 14 or 16 of the Constitution of India. In the present case, the action of the Respondents in examining the claim of the Petitioner with reference to the applicable criteria, and in denying the benefit of reservation upon finding that he falls within the 'creamy layer', cannot be faulted on this ground.

32. The Petitioner has placed considerable reliance upon the decision of this Court in *Ketan* (supra), as affirmed by the Hon'ble Supreme Court in *Rohith Nathan* (supra), to contend that the determination of 'creamy layer' status cannot be founded solely upon income, particularly income from salary, and that primacy must be accorded to the status-based criteria envisaged under the Office Memorandum dated 08.09.1993.

33. At the outset, it is necessary to observe that the OM dated 08.09.1993 postulates a multi-faceted framework comprising distinct and independent categories for determining exclusion from the benefit of reservation. As already noticed hereinabove, Categories I to V provide for status-based exclusions, while Category VI embodies the



income/wealth test. These categories are not hierarchical in nature, nor are the applicability of one contingent upon the inapplicability of another. The scheme of the Office Memorandum makes it abundantly clear that if an individual falls within any one of the specified categories, the consequence of exclusion from the OBC (Non-Creamy Layer) category ensues.

34. In this backdrop, the ratio of *Rohith Nathan* (supra) must be appreciated in its proper factual and legal context. The said decision does not lay down an absolute proposition that income, or more particularly salary income, is irrelevant for the purposes of determining 'creamy layer' status. Rather, it underscores that the structured framework of the OM dated 08.09.1993 must be adhered to, and that the income/wealth test cannot be invoked in a manner that dilutes or overrides the status-based classifications where they are clearly applicable.

35. The present case, however, stands on a materially different footing. As already held hereinabove, the Petitioner has failed to establish that the post held by his father in a Government Aided School is equivalent to any recognised category of Government service so as to attract the application of Category II or any other status-based classification under the Office Memorandum. In the absence of such equivalence, the case of the Petitioner does not fall within the ambit of the status-based categories, thereby necessitating recourse to the income/wealth test under Category VI.

36. Once Category VI is attracted, the determination is required to



be undertaken strictly in terms of the criteria prescribed therein. Clause VI(a) of the Schedule stipulates that sons and daughters of persons having gross annual income above the notified threshold for a period of three consecutive years would fall within the ‘creamy layer’. Clause VI(b) further clarifies that even in cases where a person falling within Categories I to V is not otherwise disentitled on the basis of status, the existence of income from other sources, satisfying the threshold prescribed under Clause VI(a), would nonetheless attract exclusion. The Explanations appended thereto, including the stipulation that income thresholds are subject to periodic revision, reinforce the dynamic and self-contained nature of the income/wealth criterion.

37. In the considered view of this Court, therefore, the reliance placed by the Petitioner on *Rohith Nathan* (supra) is misconceived. The said judgment does not preclude the application of the income/wealth test in cases where the status-based categories are inapplicable or where equivalence of posts has not been established. On the contrary, a harmonious reading of the Office Memorandum, as affirmed in *Rohith Nathan* (supra), supports the conclusion that the income/wealth test operates as an independent and determinative criterion in such cases. The present case squarely falls within this framework, and the action of the Respondents in applying the income criterion cannot be faulted on the basis of the said decision.

CONCLUSION:

38. In view of the foregoing discussion, this Court is of the



considered opinion that the determination made by the Respondents, as affirmed by the learned Tribunal, does not suffer from any infirmity in law or on facts. The Petitioner has failed to establish that the post held by his father has been recognised as equivalent to any Government post for the purposes of application of the OM dated 08.09.1993. In the absence of such equivalence, the application of the income/wealth criterion by the Respondents cannot be faulted.

39. This Court is also mindful of the limited scope of judicial review in matters relating to administrative determinations based on policy frameworks such as the one governing identification of 'creamy layer' among OBC candidates. Unless such determination is shown to be manifestly arbitrary, contrary to the governing rules, or vitiated by *mala fides*, interference under Article 226 of the Constitution is not warranted. No such ground has been made out in the present case.

40. Accordingly, finding no merit in the present Petition, the same is dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

APRIL 21, 2026

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