
(1983) 06 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 930 of 1980-I

A.V. Rajan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-06-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1983) KLJ 326

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : T.K. Nambiar and M.C. Nambiar, for the Appellant; T.R.G. Warriar, M.M. Abdul Aziz and Thomas V. Jacob, for the Respondent

Final Decision : Allowed

Judgement

V. Sivaraman Nair, J.—The Petitioners are Preventive Officers of the Customs Department. They entered the service as Preventive Officers Grade II on various dates from 26th October 1959 to 4th, July 1961. They were promoted as Preventive Officers Grade I on various dates from 13th June 1968 and were confirmed in the post on various dates from 14th October 1969 to 9th July 1971. Respondents 3, 4 and 5 entered service as Preventive Officers Grade II on 8th May 1963, 12th February 1963 and 20th August 1970 respectively. The 6th Respondent was directly recruited as Grade I Preventive Officer on 28th September 1974 and the 7th Respondent was promoted as Preventive Officer Grade I on 27th July 1974. The five Petitioners were ranked as numbers 32, 33, 34, 35 and 36 respectively, in the seniority list of Preventive Officers Grade I as on 1st March 1978. In that list Respondents 3 to 7 were ranked as numbers 38, 45, 56, 64 and 67 respectively. The 4th Respondent, however, was assigned rank between the 4th and 5th Petitioners pursuant to a judgment of this Court dated 8th February 1973 in O.P. No. 6386 of 1970. The next promotion post of Preventive Officers Grade I is that of Superintendent.

2. It is common ground that the chances of promotion for Preventive Officers

Grade I as Superintendents in the Customs Department were not very impressive. According to the Second Pay Commission Report, the proportion of promotion posts in the Preventive Branch of the Customs Department was only 10 per cent as against 83 per cent the post of Examiners. In view of the stagnation consequent on the lesser number of promotion posts in the category of Superintendents, the system of upgrading 10 per cent of the posts of Preventive Officers Grade I as Selection Grade Posts with a higher salary was introduced. This proportion of selection grade posts was enhanced to 20 per cent of the permanent posts and still later, on the recommendations of the Second Pay Commission, to 25 per cent. The appointment to these posts were directed to be made on seniority-cum-fitness by a non-selection D.P.C. consisting of the Head of the Department. Consequently, 25 per cent of the permanent posts in the category of Preventive Officers Grade I in each of the Customs Houses was being upgraded as Selection Grade posts, which have been subsequently redesignated as Senior Grade posts. The question arising for determination in this case is as to whether the posting of Preventive Officers Grade I as Senior Grade Preventive Officers is promotion and whether reservation in favour of scheduled castes and scheduled tribes, which as at present is 15 per cent and 7? per cent respectively, should be made for purposes of such posting of Preventive Officers Grade I as Senior Grade Preventive Officers.

3. The Petitioner contends that the upgradation of some of the posts of Preventive Officers Grade I was for purposes of preventing stagnation of Preventive Officers Grade I in view of the comparatively lesser opportunities of promotion available in that cadre and does not constitute promotion as ordinarily understood. It is asserted and it is not controverted by the Respondents that the duties, powers and responsibilities attached to the posts of Senior Grade Preventive Officers and Grade I Preventive Officers are identical. The posts are inter-changeable and the conditions of services are the same for both the categories. It is also submitted that the promotion posts of Preventive Officers Grade I and Senior Grade Preventive Officers alike are that of Superintendents, and the fact that certain persons have been posted as Senior Grade Preventive Officers does not entitle them to any preference in the matter of promotion as Superintendents. It is further submitted that if posting of the Preventive Officer Grade I as a Senior Grade Preventive Officer is a promotion, that will constitute an intermediary category between Preventive Officers Grade I and Superintendents, and that can be done only by amendment of the relevant rules. No such amendment having been introduced and Preventive Officers Grade I are being considered entitled for promotion on the basis of seniority and other relevant factors irrespective of the question as to whether they have been posted as Senior Grade Preventive Officers or not, the contention is, that posting of Senior Grade Preventive Officers cannot be considered as promotion. It is conceded that if the posting of Preventive Officers Grade I as Senior Grade Preventive Officers is a promotion, the reservation of 15 per cent and 7? per cent respectively of the promotion posts in favour of Scheduled Castes and Scheduled

Tribes as enjoined by O.M. No. 27/2/71/Estt. (SCT), dated 27th November 1972 will be applicable and Ext. R-I order, providing that such reservation shall be maintained in the posting in Selection Grade also must be observed. The point, however, is as to whether this posting is a promotion or not. It is admitted that the Respondents, who are juniors to the Petitioners, were preferred in the matter of posting as Selection Grade/Senior Grade Preventive Officers only because of the reservation.

4. Representations were made by the Petitioners urging that they are entitled to the posting as Senior Grade Preventive Officers in preference to the juniors and such representations were turned down by Ext. P-2 memo. The Petitioners referred to the genesis of the creation of the posts of Preventive Officers Grade I, initially as Selection Grade Preventive Officers and later Senior Grade Preventive Officers. Paragraph 8 of the Original Petition extracts the recommendations of the Second Pay Commission in following terms:

Above this grade (Preventive Officer, Grade I, and Customs Examiner) there may be a selection grade in the scale of Rs. 325-15-475-EB-20-575 for Customs Examiners and Preventive Officers Grade I. At present the selection grades for both these categories carry 20 per cent of the permanent posts in the basic grade. While we do not propose any change in the present position in respect of Examiners, we consider that in view of the inferior prospects of promotion available to Preventive Officers Grade I, an increase in the proportions of selection grade posts for them will be justified. In the appraising branch the proportions of promotion posts in class 1 to the total number of posts of Examiners is 83 per cent; the corresponding proportion in the Preventive Branch is only about 10 per cent. We recommend that the proportion of selection grade posts for Preventive Officers grade I, should be raised from 20 per cent to 25 per cent.

These recommendations were carried into effect by the issue ,of M.F. (D.R.) F. No. 2(22)/60-Ad. IV, dated 24th February 1961, the relevant portion of which have been extracted in paragraph 9 of the Original Petition as follows:

Reference to the recommendation made by the Second Pay Commission in Para 24 of Chapter XXV of their report for raising the proportion of Senior Grade Preventive Officers from 20 per cent to 25 percent. The Government of India have accepted the recommendation of the Commission in this regard.

2. The sanction of the President is conveyed to the refixation of the strength of senior grade posts of preventive officers at 25 per cent of the permanent strength of Preventive Officers, Grade I in the Custom House with immediate effect in partial modification of the orders contained in this Ministry's letters No. 136-Adm. (Spl.)/48, dated 10th March, 1949 and No. 2-Cochin (13)/57-Ad. IV, dated 29th January, 1958 read with letter No. 13(39)/57-Ad. III-A, dated the 4th August 1958.

It is evident from these expressions that it is not within the contemplation of

either of the Pay Commission or the Government of India that the upgraded posts shall be promotion posts of Preventive Officers Grade I. The very purpose of the creation of these Selection Grade/Senior Grade Posts was to avoid stagnation of Preventive Officers Grade I for unduly long periods of time. This is evident from the observations of the Second Pay Commission extracted in paragraph 3 of the reply affidavit filed in the Original Petition, which reads as follows:

With the object of providing incentive to employees who have no outlets or very limited outlets for promotion to higher posts, we are recommending in a number of cases that a certain percentage of the posts in the grade--usually 10 per cent--should carry a somewhat higher scale of pay even though there will be no change in the duties. Following the terminology in vogue we have described these posts as selection grade posts.

The selection grade was recommended to be continued in the same percentage of Preventive and Central Excise Cadres by the Third Pay Commission. This was made clear by the following observations in the report of the Pay Commission, which is extracted in paragraph 4 of the reply affidavit:

Generally selection grades should be provided for the posts which are filled by direct recruitment where the number of higher posts to which employees in a particular cadre can seek promotion is less than half the strength of that cadre, the percentage of selection grade should be in inverse proportion to the percentage of higher promotion post available.

It is evident from the various extracts of the reports of the Pay Commissions that promotion to higher posts are distinct from posting in Selection Grade Posts. It is also evident that the upgradation of posts does not involve any change in the duties of the officers concerned. It is asserted the posts are interchangeable. It may also be observed that the post of Selection Grade Preventive Officers is not an intermediary promotion category between Preventive Officers, Grade I and Superintendents. It is admitted that for purpose of promotion to the category of Superintendents, the length of service in the category of Preventive Officers, Grade I alone is being taken into consideration along with other facts and not the fact that some of the juniors in the same category had been appointed earlier as Selection Grade Preventive Officers.

5. The position taken up by the Respondents that posting as Selection Grade/Senior Grade Preventive Officers is a promotion and in that case, reservation as is provided in O.M. No. 27/2/71-Estt. (SCT), dated 27th November 1972 should be observed does not seem to be justified in view of the facts and circumstances mentioned above. It is of course true that in Ext. R-1 it has been clarified by the Department of Personnel and Administrative Reforms O.M. No. 8/11/73-Estt. (SCT), that "since appointment to Selection Grade also constitutes promotion, the appropriate orders relating to reservations concessions for Scheduled Castes and Scheduled Tribes in promotions made by "selection" or on the basis of

"seniority subject to fitness" would apply to appointments to the Selection Grade, according as such appointments are made on the basis of "selection" or "seniority-cum-fitness". It is difficult to accept this clarification, since, if the clarification be correct, Senior Grade Preventive Officers alone would be the feeder category for the purpose of promotion to posts of Superintendents. As long as the recruitment rules have not been amended by providing that Selection Grade Preventive Officers, are intermediary category between Preventive Officers, Grade I and Superintendents, the posting of Officers in higher salary which were accorded for purposes of avoiding stagnation among Preventive Officers, Grade I, cannot be considered as promotion. If that be so, the rules of reservation in the O.M., dated 27th November 1972 would not be applicable and the postings may have to be in the order of seniority from among Preventive Officers Grade I, subject of course to fitness of the officers in accordance with the provisions contained in the relevant rules.

6. Necessarily therefore I have to hold that Ext. R-1 clarification in so far as it provides that posting of Preventive Officers, Grade I as Selection/Senior Grade Preventive Officers is promotion and therefore the rules of reservation will apply is unsustainable. Since the posts of Preventive Officers, Grade I and Selection/Senior Grade Preventive Officers are identical and interchangeable having same duties, powers and functions, the appointment of juniors with lesser service earlier to the Petitioners, would be violative of Article 14 and 16 of the Constitution of India. The reservation provided for scheduled castes and scheduled tribes candidates are confined only to promotion posts. In so far as the posts of Selection/Senior Grade Preventive Officers are not promotion posts for Preventive Officers, Grade I as per the relevant Recruitment Rules, it is obvious that the rules of reservation will not apply.

7. In view of the above, I allow this Original Petition. I am informed by counsel appearing on both sides that the Petitioners as well as the Respondents have been appointed in the Senior Grade Preventive Officers Posts by virtue of orders passed during the pendency of this Original Petition. What is now necessary is only to give effect to the posting of the Petitioners and Respondents as Senior Grade Preventive Officers. As the Petitioners are seniors to Respondents, the Petitioners will be preferred in assigning date of posting as Senior Grade Preventive Officers and they will be entitled to all benefits arising from such posting including emoluments in the higher scale of pay from the date on which their juniors were so posted. Orders consequential upon this should be passed by Respondents 1 and 2 within a period of three months from today, and all claims for monetary benefits arising from such appointment as Selection/Senior Grade Preventive Officers shall be given to the Petitioners within that period.

The Original Petition is disposed of accordingly. The parties shall bear their costs.