
(1980) 09 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 4574 of 1977J

S.A. Govindaraj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-09-1980

Acts Referred:

Citation : (1980) 09 KL CK 0027

Hon'ble Judges : Kochu Thommen, J

Bench : Single Bench

Advocate : V. Sivaraman Nair, V.M. Nayanar and K. Kanakachandran, for the Appellant; T.R.G. Warriyer, for the Respondent

Final Decision : Allowed

Judgement

Kochu Thommen, J.—The Petitioner was at the relevant time the Additional Collector of Customs, Cochin. He was one of the candidates for All India Combined Competitive Examination held in September 1958. As a candidate he was required to indicate his order of preference for the various services for which the examination was held. The Petitioner indicated his preference for (1) The Indian Railway Service, and (2) The Indian Customs and Excise Service. His first preference was therefore the Indian Railway Service. The Petitioner was one of the successful candidates. He was considered for the Railway Service but was unfortunately declared medically unfit for the reason that his chest measurement was deficient by half-an-inch. He was, however, found fit medically for the Indian Customs and Excise Services and was accordingly nominated to that service as shown in Ext. R-7 dated 13th September 1959. At the time of examination, although the Service was designated as the Indian Customs and Excise Service, the two wings--Customs and Excise--had not been integrated as one, and they were treated as independent units. Candidates who passed the examination and were chosen for Customs and Excise Service were allotted either to the Customs or to the Excise Wing. It was only on 15th August 1959 that the two wings were integrated into one service called the Indian Customs and Central Excise Service

Class I (See Ext. P-2 dated 12th May 1959). There arose a dispute as to whether the integration took place on 15th August 1959, as declared by the President in his Resolution dated 12th August 1959 (Ext. R-2), or as subsequently ordered by the Government by Ext. P-3 dated 7th April 1970 according to which the integration took place with effect from 1st April 1959. This doubt was resolved by the Supreme Court in S.N. Karkhanis and Others Vs. Union of India (UOI) and Others, . The Court stated that the integration took place on 15th August 1959, as ordered by the President, and not on as earlier date. The decision of the Supreme Court was rendered at the instance of six persons. These six persons had appeared for the examination along with the Petitioner and had been nominated to the Customs and Excise Service. They were immediately senior to the Petitioner according to the ranks assigned to them in the list of successful candidates prepared by the Union Public Service Commission.

2. Ext. P-3 contains the principles on which the integration of the two wings was effected. It refers to the ratio on the basis of which the promotees and the direct recruits were absorbed into the integrated service. Under that ratio 7 vacancies existed for absorption of the direct recruits. Of the 7 persons who were originally nominated for these posts one person viz., Shri Meenakshisundaram decided not to join the service. That vacancy was offered to the Petitioner by nominating him to that service as per Ext. R-7 dated 12th September 1959. Ext. R-8 dated 3rd October 1959 is the formal offer made to him. Ext. R-10 dated 13th November 1959 is the notification regarding the appointment and posting of the Petitioner.

3. It is important to note that, although the Petitioner successfully passed the examination as early as April 1959 along with the six other persons who were directly nominated to the service, he did not actually join the service, until October 1959. The six others had joined earlier. They were already in the service on 15th August 1959 when the two wings of the service had been integrated. The Petitioner joined the service subsequent to the integration. This appears to have loomed large in the controversy which arose regarding the Petitioner's seniority. In the list prepared by the Department subsequent to Ext. P-3, the Petitioner was shown far junior to the six persons referred to above as a result of which the Petitioner was placed at a considerable disadvantage in the matter of promotion. In Ext. P-7 list showing the position of the officers as on 1st May 1977, the Petitioner is allotted rank No. 18 among Deputy Collectors, whereas the six persons are shown among the Collectors," Shri Bhatnagar who was the junior most among the six is shown as 34 among the Collectors, whereas between him and the Petitioner 19 persons appear. This according to the Petitioner was extremely unfair for he ought to have figured immediately after Shri Bhatnagar. The 19 persons who are now senior to the Petitioner as per Ext. P-7 were not even candidates in the examination in 1958. Apart from some of them who were promotees, the direct recruits passed only the subsequent examinations. The explanation for this anomaly, according to the 1st Respondent, is that the Petitioner did not join the service until after the integration, whereas the six persons were "existing officers", for they were

already members of the Service on. 15th August 1959. As per the President's order Ext. R-2 only the existing officers, that is, officers who were already in either wing of the service, were absorbed into the integrated service. Since the Petitioner was not one among them, he could not claim seniority immediately after the six persons. This is particularly so, according to the 1st Respondent, as, subsequent to the absorption of the Petitioner selections had been made by the Departmental Promotion Committee, as a result of which various persons were chosen on the basis of merits.

4. The question which arises is whether the Petitioner was a member of the existing Class I Officers on the date of Ext. R-2. If the answer is in the affirmative, the Petitioner is one of the persons entitled to be absorbed into the Service as on the date of the integration, viz., 15th August 1959.

5. Strangely enough statutory rules do not exist insofar as Customs and Central Excise Service is concerned governing the length of service, seniority and connected questions. There are of course executive orders and instructions which have not been formulated into a single code. The practice in the Service appears to be that seniority and length of service are decided with reference to the competitive examination passed by the respective candidates. The ranking in the list of successful candidates published by the Union Public Service Commission and the merits ascertained in departmental tests determine their relative seniority. The starting point for the purpose of length of service is therefore the competitive examination. Merit ascertained in that examination and subsequent tests governs the relative seniority. In other words persons who passed the same examination are classified together as one class, subject to their seniority being decided by merit. This is the principle which has been adopted under the relevant statutory provisions applicable to the Indian Administrative Service, Indian Police Service and Indian Forest Service. It is this principle which was adopted under Ext. P-3 for the purpose of integration of the two wings of the service. One of the principles adopted by the Government as early as 1960 and which subsequently formed the basis of Ext. P-3 reads:

Direct recruits from the same examination, whether allocated to the Customs wing or to the Central Excise wing, and irrespective of their dates of joining are arranged according to their ranking in the U.P.S.C. Examination results.

(emphasis supplied)

The same principle emerges in Ext. P-3. It says:

(1) Direct recruits to the two Services should be arranged according to the chronology of their selection, officers selected as a result of the same competitive examination being arranged according to their respective ranks in that examination.

(emphasis supplied)

Going by this principle, the competitive examination, as I stated earlier, is the

starting point of the length of service. The Petitioner and the other six persons including Shri Bhatnagar passed the examination conducted in September 1958. Therefore their length of service, for the purpose of seniority at any rate, ought to be determined with reference to the result of that examination which was published in April 1959.

6. Notwithstanding the principle adopted in Ext.P-3, the Petitioner's length of service, unlike in the case of six others, docs not appear to have been determined with reference to the competitive examination for the purpose of seniority. The reason for treating the Petitioner differently for the purpose of determining seniority appears to be that the Petitioner was not a member of the existing class of officers on the date of integration. As per Ext. R-2 only persons who belonged to such class had a right of absorption as a member of the initially constituted Service. Since the Petitioner did not join the service until after the integration he is now treated on a different footing as a result of which his seniority is determined on principles other than what is contained in Ext. P-3.

7. I shall look at Ext. R-2 a little more closely. In paragraph 2 it is stated:

The service will initially be formed from amongst all the existing Class I officers of the Customs and Central Excise Service, who will henceforth be borne on a single combined cadre for all purposes.

The expression "existing Class I Officers" has to be understood with reference to principle of seniority adopted in the various services of the Government on the basis of statutory provisions as well as practice. The I.A.S. Regulations treat all officers who passed the same examination as of one class. This is the practice followed in all the Services of the Government. This is the principle specifically mentioned in the 1960 order which was preparatory to and which formed the basis of Ext. P-3. As early as 1960 the Government stated that the date of appointment was irrelevant. What is relevant is the date of passing the examination. Therefore, notionally a person is treated as a member of the class of officers with reference to the date on which he passed the examination. Once appointed to a vacancy, the length of service, for the purpose of seniority, relates back to the date on which he passed the examination. The date of his appointment or the date on which he was confirmed on successful completion of probation is therefore irrelevant for reckoning service to determine seniority.

8. Once a person is appointed to a particular vacancy, he is deemed to have been a member of the class of officers as from the original date of passing the examination. Ext. R-2 referring to "existing Class I Officers" has therefore to be understood in this special sense. All officers who passed the 1958 examination in April 1959 ought to be treated as members of the class of officers. Judged by that test the Petitioner and the group of six persons including Shri Bhatnagar are of one class subject to the differences in seniority which is determined on the basis of merits. Accordingly the Petitioner is deemed to have been one of the "existing class of officers" on 15th August 1978 and is therefore entitled to all

the consequential benefits. It is so declared.

9. The Union of India, the 1st Respondent herein, is directed to treat the Petitioner as a person entitled to be a member of the initially constituted service and not as a subsequent entrant, and to determine afresh the seniority and other consequential benefits due to the Petitioner on such basis, as urgently as possible.

The O.P. is allowed. No costs.