

S. N. Karkhanis and Others

Vs

Union of India and Others

Writ Petition No. 286 of 1970

(CJI A. N. Ray, P. Jagmohan Reddy, S. N. Dwivedi, P. K. Goswami, R. S. Sarkaria, JJ)

14.03.1974

JUDGMENT

JAGANMOHAN REDDY, J. -

1. Six petitioners, of whom the 4th petitioner has since died, challenge the decision of the first respondent, the Union of India fixing the principles of seniority of members of the Customs and Central Excise Service, Class I as if the combined service came into existence on April 1, 1959, instead of August 15, 1959 - the date on which the Presidential Resolution dated August 12, 1959 said that the combined service would come into effect. Petitioners 2, 3, 4 and 6 were appointed as probationary Superintendents of Central Excise, Class I, in the Central Excise Service Class I with effect from July 13, 1959, on the result of the combined competitive examination held by the second respondent, the Union Public Service Commission, in 1958 : [vide of notification of the Government of India (Central Excise Establishment) dated August 4, 1959]. Similarly, petitioners 1 and 5 were appointed on the same date, namely, from July 13, 1959, as probationary Assistant Collectors of Customs in the Indian Customs Service, Class I, on the result of the combined competitive examination held by the second respondent in 1958 : [vide notification of the Government of India (Customs Establishment) dated 4, 1959]. The petitioners say that contrary to the Presidential Resolution of August 12, 1959, creating the combined Service of Customs and Central Excise, Class I, comprising of all the existing members of both the services as from August 15, 1959, the impugned decision of the Government which prescribed the principles of seniority of members of the two individual Services as if the combined service came into existence on April 1, 1959, would affect their seniority as they would be considered to be appointed only after the constitution of the combined Service, when in fact that they were members of one or other of the two services on the date when the combined Service was created. As the combined list of seniority of officers in service was prepared with reference to April 1, 1959 as being the date of the merger, the petitioners complain that they were excluded from the list of officers appointed to the initial constitution of the Indian Customs and Central Excise Services, Class I, even though they had joined the two separate services on July 13, 1959, as a consequence of which persons who would be juniors, if the principles of seniority were made applicable to them, have become senior and have been promoted by overlooking their claims. When the impugned letter dated April 7, 1970, gave time till May 15, 1970, calling on any member of the service to point out any factual mistakes or errors in the application of the principles enunciated in the said letter, it appears all the petitioners made representations in which they asserted that the integration of the two Services having taken place on August 15, 1959, and not on April 1, 1959, they were entitled to be included in the initial constitution of the combined service and on the application of the principles enunciated in the said letter no distinction could be made between the direct recruits appointed to the Indian Customs Service, Class I, and the Central Excise Service, Class I, in the years 1955 to 1958 and the direct

recruits appointed to the said two Services in the year 1959. In their representation the petitioners had claimed that they be placed above respondent 3 and requested that till this matter was decided promotions from the combined seniority list below Serial No. 73 should not be made, but in spite of this request, even before the date calling for representations expired, some officers were promoted on May 11, 1970, without considering their claims.

2. The first respondent in its counter-affidavit stated that the idea of having a separate Class I Service for the Central Excise Department was mooted for the first time in 1944, but the final constitution of the Central Excise Service, Class I took place only with effect from July 1, 1955; that after the idea of constituting a Central Excise Service was mooted in 1944 the first respondent says that training in Central excise work was given to officers recruited to the Indian Customs Service and even right from 1950 the notification issued by the second respondent for the combined I.A.S. Examination stated that the direct recruitment was to the Indian Customs and Excise Service even though there was no such service in existence up to July 1, 1955 and that even after the formation of the service with effect from July 1, 1955, and up to its subsequent integration with the Indian Customs Service in 1959 the notification issued by the second respondent stated that the recruitment was to the Indian Customs and Central Excise Service, Class I, and not to the Indian Customs Service and the Central Excise Service separately, though the actual allocation of the candidates between the two services was made by the Department of Revenue. It was also stated that the order constituting the Central Excise Service, Class I, with effect from July 1, 1955, provided that future vacancies in the grade Superintendent of Central Excise, Class I will be filled up by direct recruitment and promotion in the ratio of 1 : 1 and that when the final decision to merge the Indian Customs Service, Class I, and the Central Excise Service, Class I, was taken by the Government in March, 1959, an official Committee was set up to make recommendations regarding the determination of inter se seniority in the merged service of the officers in position in the two constituent services at the time of integration. As the finalisation of the seniority list was expected to take some time it was felt desirable to freeze the position of officers in the two departments as on a particular point of time so that changes introduced thereafter in one Service did not affect the members of the other Service on a lasting and irretrievable basis. Accordingly the date, April 1, 1959, was chosen though the formal resolution to merge two services was published only on August 12, 1959. The counter of the Union of India further stated that as the seniority principles enunciated by the Government in their letter of January 6, 1960, had raised a controversy, the Government referred the matter to the second respondent under Article 320(3)(b) of the Constitution, and ultimately the letter of April 7, 1970, was issued accepting not only the principles evolved by the second respondent, but also the date April 1, 1959, as the date on which the integration of services were to come into effect as previously indicated in the first respondent's letter of January 6, 1960.

3. An objection was sought to be taken on the ground that there was an inordinate delay in the petitioners' presenting the writ petition after over the ten years even though the letter of January 6, 1960, stated that the decision taken by the Government was final. The petitioners countered this objection by pointing out, firstly, that the letter of January 6, 1960, was addressed to the heads of departments who were asked to communicate the decision to those officers whose names figured in the list and since the petitioners were appointed after April 1, 1959, their names did not appear and the decision was not communicated to them; secondly, the letter of April 7, 1970, itself clearly stated that everything done earlier by the Government was provisional. It is, therefore, urged that as right from the beginning objections had been taken by the Service Associations regarding the principles enunciated in the letter of January 6, 1960, and the Government itself had called upon the Service Associations by its letter of June 20, 1961, to enunciate the principles they considered fair in fixing the seniority, in compliance to which objections were being urged, the petitioners cannot

be held to have committed any laches. Taking into consideration the respective contentions it appears to us that having regard to the stand taken by the Government and the admission made by it by letters subsequently written that the proposals set out in the letter of January 6, 1960, were to be treated as provisional, the petitioners could not have come to this Court earlier till a final decision was made on April 7, 1970. Accordingly the preliminary objection is not sustainable.

4. The petitioners' only objection to the decision of the Government conveyed in the letter of April 7, 1970, is that the date, April 1, 1959, on which the two Services were said to have been merged for the purposes of inter se seniority was an artificial date chosen arbitrarily and is sought to be given effect to without any legal authority. It appears to us that this contention must be upheld. The Presidential Resolution of August 12, 1959, which draws its authority from the proviso to Article 309 of the Constitution is clear and categorical in that it not only shows that the question of integration of the Central Excise Service Class I, and the Indian Custom Service, Class I which was the older of the two services was under consideration of the Government of India for quite sometime, that "The President has now been pleased" to decide that the two services should be constituted into a single service with effect from the 15th August, 1959. It also states that "The Service will initially be formed from amongst all the existing Class I officers of the Customs and Central Excise Services, who will henceforth be borne on a single combined cadre for all purposes". It is not denied that the petitioners were members of the respective services on August 15, 1959, and consequently the rules relating to seniority should be applicable to them in the same way as to those recruited in 1958. The subsequent decision of the Government conveyed in the letter of April 7, 1970, has no legal validity, as it was not purported to have been made in the name or with the authority of the President of India, nor does it in any way seek to amend the Presidential Resolution of August 12, 1959, nor does it purport to change the date on and from which the integration was given effect to. On the contrary, three days after the Presidential Resolution of August 12, 1959, intimating that the President had decided that the two Services should be constituted into a single Service with effect from August 15, 1959, and from henceforth, namely on and from August 15, 1959, all persons borne on the respective Services will be borne on a single combined cadre, the Deputy Secretary to the Government of India, Ministry of Finance, wrote to the President of all India Central Excise Officers Association and the President, Indian Customs Service Association, informing them that the Presidential Resolution was published in the Gazette, this letter further explained the import of that Resolution thus :

"Since it is the Government's intention that so far as possible, the existing normal expectations of promotion of officers in the cadre posts of the two departments should be secured, it is proposed to safeguard a suitable number of cadre posts of the two departments, based on the strength of such posts on a particular date, to the officers of such department, for a limited period. This particular date will be the beginning of the current financial year, viz. 1st April, 1959. What is being safeguarded is the number of posts of particular status irrespective of whether they are actually held by the officers of a department in that department or elsewhere. This safeguard will be necessary only in the supervisory posts of the Deputy Collectors and above of each department. Posts arising in the two departments after April 1, 1959, deputation posts and other ex-cadre posts, can obviously not be the subject of any safeguard. With the merger, the two services will become one and officers of the combined service, as a whole, will be co-sharers of the future prospects and vicissitudes of the combined service."

Even in this letter, 1st April, 1959, has not been shown as the date on which the two Services were

to be integrated, but only that it was proposed to safeguard a particular number of posts in the Department on a particular date, namely, 1st April, 1959. No mention has been made, in supersession of the Presidential Resolution, that 1st April, 1959 will be the date of the merger of the two Services. In any case, it is clear that the Government has no authority to override the Presidential Resolution by any subsequent decision which lacks legal authority and is violative of Article 14 of the Constitution of India.

5. In this view, the petition is allowed with costs. The Government is directed to give effect to the Presidential Resolution of August 12, 1959, in respect of integration of the two Services from August 15, 1959, and to apply the principles of seniority to the petitioners as if they were members of the respective Services which were integrated after their appointment in July, 1959.

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