

CHAPTER-1

Introduction

1.1 In the present complex environment, the State requires a large number of public servants for provision of public services. The quality of governance is critically dependent on the quality of its public servants. Appointment of public servants is a central concept in management of public services. The tone of civil services is set by the recruitment practices and standards. The two often quoted premises of Woodrow Wilson¹ are relevant for public administration: (i) "Men must learn administration, it is not a skill with which they are born" ; (ii) " Take administration out of politics". The first one remains the main philosophy of recruitment of a civil service organized for the job of administration. The second thesis is in response to the spoils system which was prevalent in United States till the concept of permanent career civil servants for manning the administrative organizations evolved in the beginning of present century. In the United Kingdom and continental Europe, the concept of career civil servant in a consistent and well knit hierarchy outside the political parties, reporting to political executive was an administrative principle for long.

1.2 In any governance system the quality of its public servants is critical and in this context recruitment of suitable persons is of great importance. Those aspiring to be civil servants must have not only the required skills and knowledge, but also the right values. Therefore the recruitment process, apart from being transparent, objective, fair and

¹ Woodrow Wilson: The study of Public Administration, Political Science Quarterly 1887. quoted by A. Bhattacharjya in Recruitment Rules and Civil Services, Ch. One, pg3.

equitable should also ensure that the right type of persons join the civil services. The system of recruitment to the civil services in India has evolved over the years. Several changes have been made in the recruitment process, especially after Independence to reflect the needs of the administration from time to time. A number of Committees and Commissions were set up to make recommendations on various aspects of recruitment.

1.3 The present study attempts to explore the constitutional basis and judicial jurisprudence in the process of appointment in Central Civil Services, as deduced from the various judgments of Supreme Court/ High Court, analyze the policy issues involved in the process of public appointment, examine the trend of reforms in the realm of public appointment, with specific emphasis on relevant recommendations of the second Administrative Reforms Commission and Sixth Central Pay Commission. Analysis of the strengths and weaknesses of the existing system of the process of appointments in the backdrop of trend of reforms and some suggestions for the identified weaknesses is an important component of the study.

The Legal Framework

1.4 The framework and character of any civil service is dependent on the direction of supreme government power. The laws and rule laying down the framework of civil services and other administrative set-ups vary from country to country. It is however mostly a rule in all modern democracies that public administration manned by the civil service personnel must derive its authority from an explicitly enacted legal provision.

Constitutional Status of Public Appointments in India

1.5 In India, a democratic republic with a written constitution, the structure and operation of civil services are substantially bounded by the role provided in the constitution and the extent other organs of governmental system participate in administration. Articles relevant to rule making for civil services in the Constitution of India are annexed as Annexure 1. Part XIV of the Constitution deals with the Services under the Union and the States. This part consists of two Chapters, Chapter I deals with Services and provides for matters relating to recruitment and conditions of service (Article 309), tenure of Office of persons serving the Union or State;(Article 310) and dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State (Article 311). The Article 312 deals with All India Services and confers power on the Parliament to provide for the creation of one or more All India Services common to the Union and the States and to regulate the recruitment and conditions of Service for the persons appointed to any such service. Article 313 under Chapter I is a transitional provision and provides for continuation of pre-constitutional laws, so far as consistent with the provision of the Constitution, as applicable to any public service or any post which continues to exist after the commencement of constitution, until other provision is made.

1.6 Chapter II of Part XIV of the Constitution deals with the Public Service Commission. Article 315 provides that there should be Public Service Commission for the Union and Public Service Commission for each State. Articles 316 to 319 provide for appointment

and terms of office of the members of such Commission, their removal and suspension and certain prohibitions regarding holding office under the State after their tenure as Member of a Public Service Commission. Article 320 deals with the functions of the Public Service Commission.

1.7 In the matter of Public Appointments in Central Civil Services, Article 309 of the Constitution is relevant as it provides for the making of rules regulating the recruitment and conditions of the service in relation to the public servant serving under the Union or the State. The scheme of Article 309 provides for regulation of recruitment and other service conditions by the appropriate legislature and the executive law making should be resorted to and remain operative only till legislature has made laws. However in practice the recruitment and service conditions are regulated by a number of rules framed under the proviso to Article 309 or by pre-constitutional rules (continued due to Article 313) or even by administrative instructions in the absence of rules.

1.8 The role envisaged by the Constitution in Article 320 for the Public Service Commission is of relevance regarding the process of appointment in Central Civil Services. The Union Public Service Commission or the State Public Service Commission, is to be consulted on all matters relating to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. The executive decisions contrary to the recommendations of the Commission are subject to

legislative review. Article 323 casts a responsibility on the Commission to present their Annual Report to the President for Union and to the Governor for a State Commission for causing to lay before the respective legislature the cases where advice of the Commission has not been accepted along with the reasons for such non-acceptance.

Fundamental Rights and the process of appointment

Right to Equality and Equality of opportunity in the matters of public appointment as enshrined in Article 14, 15, 16 of the Constitution

1.9 The right to equality contained in Articles 14, 15 and 16 of the Constitution are important tenets of service law and impact all aspects of process of appointment and other service conditions. Article 14 is applicable to employment under the State so as to invalidate discriminatory rules or orders relating to employment from the stage of initial appointment to termination². Article 15 will be attracted if there is discrimination in the matter of employment under the State solely on the basis of religion, race, caste, sex and place of birth. Article 16(1) provides for equality of opportunity in matters relating to employment or appointment to any office under the State. It is now settled³ that the equality of opportunity as enshrined in Article 16(1) is wide enough to include all matters in relation to employment, both prior and subsequent covering initial appointment to all conditions of service up to superannuation. Article 16(2) prohibits discrimination in employment under the state on the grounds of religion, race, caste, sex, descent, place of birth and residence. Article 16(3) empowers Parliament to legislate on requirement of residence within the State or Union Territory for employment to an office in that State or

² Ganga Ram v. Union of India (1970) II SCWR 221 (224)

³ General manager Southern Railway v. Rangachari, AIR 1962 SC 36 (4041)

Union Territory. Article 16(4) and 16(4A) provide for reservation in favour of any backward class in exceptions to Article 16(1) and 16(2).

Civil Services in India

1.10 Government being the largest employer in India, recruits candidates for a wide variety of positions through various institutional mechanisms. The Union Public Service Commission (UPSC), a Constitutional authority, has the mandate to recruit senior public servants for the Union Government. A similar role is played by the State Public Service Commissions for State Governments. The Staff Selection Commission recruits personnel for other lower positions in the Union Government. Government Departments are also authorized to recruit certain categories of personnel.

1.11 The civil services in India can be grouped into three broad categories. Services whose members serve both the Union and the State Governments, are termed as All India Services. Services whose members serve only the Union Government are termed Central Civil Services. Apart from these, the State Governments have their own group of services – State Civil Services. The posts in the Union and the State Governments are arranged into four Groups – Group A, B, C & Group D. This classification broadly is based on the rank, status and degree of responsibility attached to the posts. Group ‘A’ posts carry higher administrative and executive responsibilities and include senior management positions in Ministries/Departments and field formations. The junior level of Group ‘A’ along with Group ‘B’ constitutes the middle level in the government. Group ‘C’ staff performs certain supervisory as well as operative tasks and also renders clerical

assistance. The 6th Central Pay Commission has recommended up-gradation of all Gr. D scales in Gr. C scales and placement of existing officials in Gr. C after training of non-matriculate employees. There are also intra group variations in each of these categories depending on the ministry, department, organization they are working for and this is reflected in different designations and functions within each group. Though each of these groups has a different channel for recruitment, there is generally provision for promotion from Group C to Group B and from Group B to Group A.

1.12 The higher civil service at Centre comprises of the three All India Services i.e. the Indian Administrative Service, the Indian Police Service and the Indian Forest Service and there are 58 Group 'A' Central Services, 15 of which are non-technical, 20 are technical, six pertain to medical and health services and 17 are in other categories⁴. There are 55184 Gr. A officers out of total of approximately 14 lakh Central Government employees belonging to Gr. A, B, C & D.⁵

1.13 The Central Civil posts are either organized in form of closed hierarchical cadres like All India Services, Central Services or spread over various Central Ministries/ Departments. The initial appointment in most of the cadres is on direct recruitment basis with higher posts being filled up through promotion. In All India Services (AIS) and other Gr. A Central Services initial appointment is through direct recruitment from open market and a certain percentage, as defined in rules is filled up by promotion from sub-

⁴ Hota committee Report 2004

⁵ 10th report of Second Administrative Reforms Commission, Ch. 7

ordinate cadres. After initial induction the progression in higher posts in the cadre is through promotion only.

The Process of Appointment

1.14 There is a clear distinction between the concept of recruitment and appointment. The term recruitment connotes and clearly signifies enlistment, acceptance selection or approval for appointment. In contradiction, the word 'appointment' means an actual Act of posting a person to a particular office. Recruitment is just an initial process that may lead to eventual appointment in a service.⁶ In the present study the process of appointment encompasses legal framework of recruitment rules and processes for recruitment in Central Civil Services.

1.15 The quality of civil service is essentially a reflection of efficacy of its recruitment operation. Glen Stahl⁷ while emphasizing the importance of merit system in recruitment to Public Administration system has observed: "It is the cornerstone of whole personnel structure. Unless recruitment policy is soundly conceived, there can be little hope of building a first rate staff. The merit system implies, above all else, a particular system of recruitment and selection" In modern States the principle of recruitment have evolved in essence as opposed to the patronage approach or as widely known as spoils system. This is true especially for the democratic states where mostly the underlying principles of equality and opportunity to all without any discrimination on the grounds of race,

⁶ Prafulla Kumar Swain v. Prakash C. Misra, 1993(1) SLR565(SC)

⁷ D. Glen Stahl: Public personnel Administration, (Oxford and IBH Publishing Company, New Delhi, Indian Edition,1966, cited by A. Bhattacharjya in Recruitment Rules and Civil Services, pg 52)

language, religion and sex have emerged as the legal foundation for recruitment in government. The Constitution of India explicitly provides for nondiscrimination in the matter of public appointments and the recruitment system in government reflects such ethos.

1.16 The predominant methods of appointment in Central Civil Services in general are:

(a) direct recruitment from open market (b) promotion of officials from lower feeder level or grade from within a service or cadre (c) deputation of officials from different civil service or posts on a tenure basis and (d) absorption of officials from different civil service or posts on permanent basis. Besides the regular mode of appointments, ad-hoc appointment can also be resorted in case of administrative exigencies. There are also provisions for Compassionate appointments under a well defined scheme. However the focus of research is proposed to be on regular appointments in Central Civil Services. The All India Services are governed by a separate Act and are not covered in present study.

1.17 The process of recruitment involves determining the sources of recruitment; laying down qualifications and other eligibility criteria, inviting applications incase of direct recruitment and deputation / absorption and making selection to the post. The appointment to a post could also be through well defined internal method of promotion. Achieving a sense of balance in organizational structure through judicious prescription of various methods of appointments at different levels requires a thorough understanding of

organizational functioning, requirement of expertise at different levels, source of expertise etc.

1.18 For regular appointments, the recruiting agencies follow a well defined drill which includes notification of vacancies through appropriate publicity system for inviting response from the eligible candidates except for promotion. Except for promotion, the free choice is a prerequisite in other methods of appointment with recruiting agencies considering candidates who have applied on their own. In some cases of senior appointments, the selection committee may approach candidates who may not have applied. The prospective eligible candidates are assessed through written test, interview or mix of both.

Objectives of the Study

1.19 The present study is an attempt to critically examine and contribute towards understanding the judicial jurisprudence, strength and weaknesses and various nuances of the process of appointments in Central Services in the backdrop of trends of reforms. The objective of the study is basically exploratory in nature and is geared up towards achieving the following:

- (i) To study and correlate the Constitutional provisions relating to Fundamental rights of equality as enshrined in Article 14, 15 and 16, role of Public Service Commission as given in Article 320, relevance of recruitment rules and case laws given by the Supreme Court / High Courts in the realm of Central Civil Services appointments, with the administrative process.

- (ii) To study and analyze the trend of reforms in the realm of public appointments with emphasis on the recommendations of the expert bodies namely second Administrative Reforms Commission (ARC) and 6th Central Pay Commission (CPC).
- (iii) To study and evaluate the existing process of appointment in Central Civil Services for its strength and weaknesses in the backdrop of trend of reforms and attempt certain prescription for identified weaknesses.

Rationale of the Study

1.20 Recruitment process and appointments in higher organized civil services through Civil Service Exam conducted by UPSC has been a matter of study and scrutiny by many a committees, more important being D. S. Kothari Committee, Satish Chandra Committee, Y.K. Alagh Committee & Hota Committee. However the general scheme of appointment in Central Civil Services, Constitutional and case laws of Supreme Court and High court in the matter of process of appointments, role of recruitment rules and problems of the process of appointments in Central Civil Services in general is comparatively an un-chartered territory. It needs to be appreciated that reforming the higher civil service is no substitute for reforming governmental processes and administrative structures. The focus of the study is on exploration towards this end. The understanding of various facets of process of appointment is important from the point of view of effectiveness in the governance system. The reforms advocated by expert Committees and Commissions towards effective system of appointments are an important component of the study. There is hardly any previous research on the topic of general

process of appointments in Central Civil Services and therefore the scope of available literature is restricted.

The Key Issues and Questions

1.21 Keeping in view the objectives of the study, the following key issues and questions have been dealt with in the present study.

(i) Whether the administrative process of appointment in Central Civil Services is in consonance with the provisions of Constitution concerning Fundamental Rights of equality and role of the Public Service Commission in the public appointments?

ii) What are the basic principles of process of appointment as established by case laws given by Supreme Court and High Court?

iii) What is the trend of reforms in the field of Central Civil Service Appointments?

iv) What are the factors affecting the process of appointment and whether the existing process of appointment is geared up towards effective system of appointment in Central Civil Services?

Methodology and Scope of Research

1.22 The present study on process of appointment in Central Civil Services is mainly exploratory in nature with a view to critically examine the strengths and weaknesses of the system against the general backdrop of reform process in the civil services. The main feature of the study is exclusive reliance on secondary sources. Department of Personnel and Training (DoP&T) is the nodal Department under Central government on personnel Issues. The study would depend on the instructions issued by DoP&T, report of the

Union Public Service Commission and the recommendations of some expert Committees like Administrative Reforms Commission, 6th Central Pay Commission etc on the subject of appointments. For understanding of legal framework and service law, reliance has been placed on constitutional provisions, statutory provisions and cases decided by the High Courts and Supreme Court. The reliance has been placed on various secondary sources of literature and website of World Bank for understanding the trends of reforms in the civil services. It may not be out of context to point out that the posting of the researcher in DoP&T as Director (Establishment) for three and half years prior to joining IIPA, has also helped in better appreciation of appointment process in Central Civil Services.

1.23 The study is limited to the study of regular method of appointments in Central Services. All India Services and other schemes like Central Staffing Scheme, compassionate appointment scheme etc. and instructions on ad-hoc / temporary/ compassionate appointments are not the points of emphasis for this study though some have been referred in context of understanding the reforms process in the realm of public appointments. It may not be out of place to mention that the study is not in the nature of legal treatise or an authority on reforms in the process of appointment in Central Civil Services, but is from the point of view of a practicing administrator in pursuit of legal jurisprudence and effectiveness in the process of appointment in Central Civil Services.

Overview of Literature

1.24 There is hardly any previous research on the topic of general appointments in Central Civil Services and therefore the scope of available literature is restricted. The basic literature in the present field of enquiry consists of the official instructions issued by the Department of Personnel and Training on the systems and procedures of appointment. However reports of Administrative Reforms Commission, 6th Central Pay Commission and annual report of the Union Public Service Commission on the subject of appointments and also secondary sources of literature on public administration relevant to the subject have been reviewed. Important Judgment of high Courts and Supreme Court defining tenets of Service Law relating to appointments have been studied in context of judicial jurisprudence.

Limitations and Constraints

1.25 The issues relating to process of appointment are numerous and varied. Given the paucity of time frame and in the interest of manageability, only a select few important broad issues have been investigated. Absence of statistical data relating to appointments under different methods or any other documented source of problems and success rate of various methods of appointment in different Ministries and Departments is a major constraint. The study is mainly exploratory in an area which has not been investigated and it is hoped that the specific issues and themes would be subjected to in-depth investigations by interested researchers in future.

Scheme of the Presentation of Dissertation

1.26 Chapter 1 is introductory and will give background on organization of civil services, constitutional status of appointments, process of appointments in Central Civil Services and enunciates the objectives, rationale, key issues and questions, scope and methodology and limitations of the present study. Chapter 2 would outline the historical perspective. Chapter 3 would examine the legal issues, role of UPSC and analyze important case law given by High Courts Supreme Court on the process of appointments. Chapter 4 would analyze the policy issues in recruitment process and the trend of reforms in the matter of Public Appointments. Chapter 5 would focus on the strengths and weaknesses of the existing system and attempt some suggestions for the identified weaknesses. Chapter 6 would conclude the dissertation.