

CHAPTER -2

Historical Perspective

2.1 A historical perspective on Civil Service is relevant in appreciating the form of present day Civil Service as also some of the substantive principles of law relating to Civil Services.

Legal Background of the Civil Services in India

2.2 Civil Services in India as is now known had its origin in late 18th century when by the Act of 1793, power was conferred on the Crown to remove or recall any person holding any office of employment or commission under the East India Company. The Government of India Act 1858 vested the control of territory under East India Company in the British Crown and conferred upon the Secretary of the State in council the power to make regulations for admission of candidates to the civil service of India and matters connected therewith. Three years later the Indian Civil Service (ICS) gained statutory recognition with the Indian Civil Service Act of 1861. The Government of India Act 1915 repealed the above two Acts and conferred power on Secretary of State in council to make rules for the ICS examination. The Government of India Act 1919 introduced the concept of tenure of members of civil service in India. It also provided for redressal of grievances by the civil servant and authorized Secretary of State in Council to make rules for regulating the classification of the civil service in India, the method of their recruitment, their condition of service, pay and allowances and discipline and conduct.⁸

⁸ Ch. 3 Samaraditya Pal, Service Law 2nd edition 2004

2.3 The 1919 Act was repealed by the Government of India Act 1935. Part X of the 1935 Act dealt with the services of the Crown of India. It provided for tenure, safeguards for the persons employed in the civil capacities in India as also the recruitment and conditions of service. It also provided for setting up of a Federal Public Service Commission and a Public Service Commission for each province.⁹

2.4 With the independence of India, the recruitment and other service conditions of persons employed in civil capacities with the Union and States, came to be regulated according to the constitutional provisions in Part XIV of the Constitution, which are substantially modeled on the provisions of 1935 Act. Moreover Article 313 under Part XIV, Chapter I 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.

Indian civil service system through the ages

2.5 In India Kautilya's Arthashastra stipulates seven basic elements of the administrative apparatus. These elements are embodied in the doctrine of the Prakrits. They are: Swamin (the ruler), Amatya (the bureaucracy), Janapada (territory), Durga (the fortified capital), Kosa (the treasury), Danda (the army), and Mitra (the ally). According to Arthashastra, the higher bureaucracy consisted of the mantrins and the amatyas. While the mantrins were

⁹ Samaraditya Pal, ibid

the highest advisors to the King, the amatyas were the civil servants. There were three kinds of amatyas: the highest, the intermediate and the lowest, based on the qualifications possessed by the civil servants.

2.6 A new stage in the evolution of the administrative order came at the time of Delhi Sultanate. The Sultanate was initially a classical conquest state and it was necessary for the rulers to establish and consolidate their authority and control over the newly conquered territories. This was done by assigning land on a temporary basis to the followers, who became the civil servants, while, at the same time, by transferring the holders of these assignments as frequently as possible to establish control over them. Such a system – the system of simultaneously appropriating a sizeable part of the social surplus and distributing it to the members of the ruling elite – so successfully introduced by the Delhi Sultanate – was adopted by contemporary states outside the Sultanate such as in Orissa and Vijayanagara. This system was responsible for bringing about a new conception of civil service and the structure and role of public bureaucracies in later years. The Mughal bureaucracy, for example, was based on the mansabdari system. Every mansabdar was invested with a mansab (a rank or a command) which determined his position in the Mughal bureaucracy. The mansabdari system was essentially a pool of civil servants available for civil or military deployment. The mansabdari system, as it finally evolved, became a combination of the higher civil service, the peerage and the army, all rolled into an omnibus civil service organisation.

2.7 The civil service system in India during the British times was based essentially on the Mughal system, albeit with certain refinements. But the big changes came with the implementation of Macaulay's Report. The Macaulay Report recommended that only the best and brightest would do for the Indian Civil Service. The Report said, 'It is undoubtedly desirable that the civil servants of the Company should have received the best, the most liberal, the most finished education that the native country affords'. The Report insisted that the civil servants of the Company should have taken their first degree in arts at Oxford or Cambridge. The interests of the Empire itself demanded that the civil service of colonial India attract the best talents of the British universities. The Report suggested that the educational background of the colonial administrator should be even more comprehensive than that of the civil servant in England. In the words of the Committee, 'Indeed, in the case of the civil servant of the Company, a good general education is even more desirable than in the case of the English professional man; for the duties even of a very young servant of the Company are more important than those which ordinarily fall to the lot of a professional man in England'' At the time that the Macaulay Committee reported, British political supremacy in India had matured into a paramount sovereign power capable of imposing its will through its bureaucratic agency. From Wellesley through the Marquis of Hastings to Dalhousie, the political authority of the British in India kept growing; and the scope of operations of the Empire had increased substantially. Clearly, the services of the best and brightest were called for to sustain the Empire, maintain its territorial integrity and impose order. The ICS men were trusted agents of the British Government even though there were also patriots among them. The ICS was the instrument of the imperial power, and the leaders of the Indian National

Congress had made it clear during their struggle for independence that they wanted to abolish the ICS and all it stood for. After independence, the All India Services Act became the genesis for creation of All India Service and Indian Police Service.(10th report of second ARC) Other Central Services were regulated according to the rules based on the provisions of Constitution.¹⁰

2.8 It is evident from above that as long as the concept of State exists, the administrative apparatus of civil service has also been in existence in one form or other, throughout the history. However the existence of civil service was mostly based on the patronage granted by the authority in power. The evolution for the existing system of civil service in India, with merit orientation and a strong legal basis is rooted in the British colonial system of administration. After independence the judicial review in the realm of public appointments and interpretation and application of provisions of Constitution, especially Fundamental Rights relating to equality to the process of appointment has contributed substantially in the evolution of administrative processes. The judicial approach in public appointments and the role and functions of UPSC will be highlighted in the next chapter.

¹⁰ Preface to tenth report of second ARC: Refurbishing of Personnel Administration.