

INTRODUCTION

Seniority has been considered as an element of an efficient bureaucratic organisation. Famous sociologist Max Weber lists “promotion according to seniority or to achievement” as an important component of an efficient bureaucracy. He argued that, entrance into an office “is considered as an acceptance of a specific obligation of faithful management in return for a secure existence”. Employment security then contributes to the objective administration of duties “where legal guarantees against arbitrary dismissal or transfer are developed, they merely serve to guarantee strictly objective discharge of specific office duties free from all personal consideration.” Thus, secure employment, of which seniority is a major component, provides the officer with protection from political interference and encourages loyalty to goals of the organisation. However, the conflict arises when the question of merit comes into play and the issue which requires detailed introspection is whether a balance between seniority and merit is possible. It is true that the principle of seniority is one of the important incidences of employment rules and an invincible aspect which determines the promotion of an employee; but at the same time merit along with efficiency of service personnel cannot be overlooked. Hence, under these circumstances the challenge that lies before the administration and the government is to formulate promotional and seniority rules in such a way so as to loop in the elements of seniority and merit in a balanced manner. The problem that then arises is the disparity in the modes of fixation of seniority for determining promotion. What all seniority rules say is, a seniority list is valid if it does not violate Articles 14 and 16 of the Constitution of India. The whole process is a complex method which depends wholly on the service records of the person in question and roster of the concerned service.

Our Constitution makers have included the principle of welfare state in the Constitution vide the Preamble, Part III and Part IV and the responsibility to look into public welfare squarely falls upon elected representatives of the people. In the present social and economic condition in this post-liberalised era, the role and function of the government has increased by leaps and bounds. Today administration is ubiquitous and impinges freely and deeply in every aspect of an individual's life. The expectation of the people from their government is not only that it will protect its people from external aggression and internal disturbance, but also that it will take care of its citizens from the cradle to the grave. Today, there is demand from the people, that the government must solve the

problems rather than merely define their rights. It is needless to say that the phenomenal growth in science and technology from the twentieth century has further increased the role of governance by leaps and bounds. The multi-dimensional problems with varied social economic and political ramifications cannot be solved except with the grow administration system and its processes. This leaves no doubt that without good and efficient network of administrators, the job of running a modern democracy based on well economy is not only impossible but also unimaginable.

The efficient administration of the government and the successful execution of all policies, schemes or programs or plans of the state or other authorities substantially fall upon the members of the central and the state services or those who are in the service of local or other authorities. It is worth mentioning here that in India, government is the highest provider of jobs to the people. Maximum number of jobs provided by the government is the in the fields of defence, railways, post offices and banks. This tremendous growth in civil services was mainly due to the fact that without a big army of civil servants, it was not possible to realize the dream of the welfare state which is cornerstone of the Indian Constitution.

The public servants are those persons who are not only expected to execute the policies and programmes of the state into action but some of them holding high positions have also a great responsibility even in the matter of taking of policy decisions. It is the service personnel who are appointed to discharge specific duties and responsibilities in connection with the activities relating to the different departments of the state who come in contact with the people directly.

The common man looks forward to these public servants through whom he asks the assistance to solve his day to day problems which he has a right to get from the state. The success of all policies and programmes of the state substantially depends upon its services of the honest and sincere cadre officers is a pre-condition for achieving the aims and objectives of the Constitution.

The bureaucracy, thus, helps the political executive in the governance of the country. The Constitution, therefore, seeks to inculcate in the civil servants a sense of security and fairplay so that he may work and function officially and give his best to the country. With this objective in view, the Constitution makers incorporated specific provisions

relating to services under the State in the Constitution including the Part III of the Constitution vide Article 16.

Time and again it has been reiterated by the Supreme Court that the civil services confer a status to the employees and it is not merely contractual in nature. [Tulsi Ram Patel vs. Union of India (AIR 1985 SC 1416), Roshan Lal Tandon vs. Union of India (AIR 1967 SC 1889) and Ram Sahan Rai vs. Sachiv Samanaya Prabandhak (2001) 3 SCC 323]. This follows that in public interest, the following qualities should be present in the personnel constituting the services under the state:

1. Suitability and efficiency
2. Fearlessness and Independence;
3. Honesty and contentment;
4. Obedience and teamwork;
5. Discipline and devotion to work.

To manifest these qualities in the service personnel it is essential to provide them with security of tenure and better conditions of services by way of suitable pay scales, promotional opportunities and retirement benefits and a just and fair treatment towards them. This is where the role of Articles 14, 16 and 309 come into play.

Taking its roots from Article 14, Article 16 ensures equality of opportunity in matters of employment under the state. The equality envisaged in Part III of the Indian Constitution outlaws discrimination in a general way and guarantees equality before law to all persons. Equality of opportunity in matters of employment guaranteed under Article 16(1) extends to promotion also but this does not obviously mean that a civil servant can claim promotion as of right. Where provision is made for filling up the specified number of posts in the higher cadre by promotion, the extent of right of equality guaranteed under Article 16(1), in relation to promotion is, that a civil servant holding the lower post from which promotion is provided, is entitled to have his case considered according to his turn in the seniority. Here comes the thrust area of this Research work where it has been sought to find out the modes of fixation of seniority for the purpose of promotion in the Services under the State.

In a service, when an employee is raised to a higher position or rank or he is advanced to a higher position or rank or is preferred to other employees in respect of honour, dignity, grade or rank, he is said to have been 'promoted'. Promotion, thus, not only covers

advancement to higher position or rank but also implies advancement to a higher grade. In Service Law, the expression 'promotion' has also been understood in a wider sense and it has been held that 'promotion' can be either to a higher pay scale or to a higher position.

Efficiency in administration justifies promotion of civil servants; it is also natural that every civil servant aspires to promotions not only because of higher salary but also with the object of occupying superior posts and positions. A proper promotion policy is a necessary incentive to civil servants. An employee must fall within the prescribed zone of consideration for the case to be considered for promotion. This is because a civil servant has only a right to be considered for promotion. It is, therefore, necessary for the state to reserve sufficient number of posts in the higher cadres for promotion.

There are various methods adopted in the recruitment rules for making promotions out of which seniority-cum-merit and promotion by selection are prevalent rules. Seniority in services is one of the most important factors in making promotions.

Seniority, in service law, connotes the precedence or preference in position of an employee over other employees similarly situated. Black's Law Dictionary says that with reference to job seniority, workers with most years of service is first promoted within range of jobs subject to seniority, and is last laid-off, proceeding so on down the line to the youngest in the point of service. The object of assigning seniority is to facilitate the filling of promotional post. Although under most of the statutory rules or administrative instructions seniority is not the sole factor in granting promotion, e.g., when the rules provide for seniority-cum-merit or merit-cum-seniority or promotion by selection, yet it is difficult to find rules or instructions which completely ignore seniority as a determinant of promotion. While the method of seniority-cum-merit is generally prescribed for promotions in the lower cadres, the method of promotion by selection is adopted in the making promotion to the higher echelons of the services. In the seniority-cum-merit method, seniority is given greater importance than merit and in merit-cum-seniority method; merit is of more importance than seniority. Even in the cases of selection posts, the seniority in the feeder grade from which the selection is to be made can be an important factor because employees of a given seniority are treated in the zone of consideration while granting promotion to the selection posts.

Therefore, the seniority under the rules is a civil right (S.K. Ghosh vs. Union of India). The seniority of a civil servant does not depend upon how it is fixed by the concerned authority. It stands automatically determined according to the rules. However, the constitutionality of seniority rules can be challenged on the grounds of their unreasonableness, justness and fairness.

The preparation of the seniority list by the authority concerned is only a formal affair. If the authority commits any mistake in preparing the seniority list and it is found that it is not in conformity with the rules it has to be corrected. The right for consideration for promotion according to seniority and in preference to a junior in case of seniority-cum-merit and along with a junior in the case of promotion by selection is a part of fundamental right of equality of opportunity in matters relating to employment under State. Therefore, the fixing of seniority is the very foundation for complying with fundamental right guaranteed under Article 16(1) of the Constitution, because without fixation of seniority, there can be no consideration of the case of a civil servant according to his seniority. Article 309 confers this power to legislature or the Governor of a state as the case may be to bestow or divest a right of seniority. There is, however, no vested right to seniority, and the determination of rules relating to seniority are essentially a question of policy, and state may vary the seniority, even with retrospective effect if found necessary in the public interest. However, it must be noted that proper determination of seniority is a service right, and wrongful determination of seniority could be challenged. Yet this challenge cannot be raised after a long period of time.

The multiplicity of functions of the government has led to the diversification of work which in turn resulted in division of numerous departments in administration. However, there is no single rule determining the modes of promotion and seniority. Each department in the Central Government as well as in the State Governments draw their own seniority and promotion rules on the touchstone of Articles 14 and 16. Similarly, all the States have their own seniority rules according to which their civil servants are guided.

Determination of seniority in service jurisprudence is a complex process. Thus, the object of carrying on the study in this area of public administration is to find out various modes to making promotion with respect to seniority of service personnel. It is also the intention of this thesis to find out whether framing of a unanimous law will help in

simplification of the method of computation of seniority. This thesis critically reviews and analyses the literature and data so collected for fixing of seniority in public service and systematically summarises the evidence to date of outputs, uptake, influence, outcomes, and impacts of seniority in career advancement of service personnel.

The title of this thesis itself suggests that the hypothesis is to find various ways and means by which seniority can be fixed for the purpose of various services under the State. It also intends to prove that whether 'seniority' is a possible or plausible way for determining promotion or whether at all it is an efficient method of determining promotion? Having proved that, it moves further to determine the ways and means of fixation of seniority and the different modes of application of seniority in case of services under the State. .

Having framed the hypothesis, the proposed research work aspires to answer the following research questions developed for proving the hypothesis and solving the problem set out in the statement of problem:

1) The first and foremost question which arises for the purpose of my research topic is what are the "Services under the State"? This question may seem unimportant to many but it is worth mentioning here that "services under the state" is the pivot around which the research findings will develop.

2) What is promotion? What are the various methods adopted by the State for the purpose of making promotion?

3) What is seniority?

4) How are promotion and seniority related? What is object of assigning seniority for the purpose of promotion?

5) What are the chief principles upon which seniority for promotions are based?

6) It is a known fact that seniority-cum-merit method for promotion is applicable in the cases of lower cadres of the services. Is it possible to follow the same rule in the upper levels of services also? If yes, how?

7) Promotion in the upper echelons of the service is made through the "promotion by selection" method. What role does seniority play in promotion by selection?

8) How do we balance merit with seniority? What are the rationals behind adopting methods like seniority-cum-merit and merit-cum-seniority? What are the situations when these particular methods can be adopted?

9) What are the various methods of fixation of seniority?

10) Whether length of service rendered by an employee in a particular grade or cadre is the only generally accepted determinative factor for fixing seniority in services?

11) What are the various ways of computing the length of services?

12) What are the other principles other than length of services for determining seniority?

13) Is "inter se seniority of recruits from two or more sources" possible? If yes, how?

14) What is Gradation or Seniority List? What are the methods of preparation of Gradation or Seniority List?

15) When Gradation or Seniority Lists are challenged in the Court of Law, what will be the consequences? Can the Seniority be quashed?

The methodology adopted in completion of this thesis is a combination of Doctrinal and Empirical Methodology. The target group for the survey consists of only Government employees in various departments of the State within the territorial jurisdiction of the State of West Bengal, which include-

- (a) The employees in various Services of the State as defined under Article 12
- (b) The Defence Personnel
- (c) The teaching Faculty under the Career Advancement Scheme in Universities, Colleges and Research Institutes
- (d) The employees in Local Bodies

From each of the above groups 25 respondents have been selected for collection of data. The data has been collected by distribution of a structured questionnaire to the respondents with closed questions. The Questionnaire consists of two parts, vis., Part - A and Part - B.

This research work, also being a doctrinal one, heavily focus, if not exclusively, upon the laws and rules relating to seniority itself as an internal self-sustaining setoff principles which can be accessed through reading court judgments and statutes. Deriving

principles and values from decided case and re-assembling decided cases into a coherent framework in the search for order, rationality and theoretical cohesion will be the fodder for the research work.

The Constitution of India is the chief source upon which the structure of the research work will be based. Articles 14, 16, 309 and 311 are the main provisions which relevant to the research topic. All the laws regulating the determination of various conditions of services including seniority for promotion have to conform to the constitutional provisions mentioned above. Any law which does not abide by this rule will be declared as null and void and will not have any effect.

There is no mother legislation, other than the Constitution, which commonly deals with rules for determining seniority for promotion for all sorts of services under the state. It is known to all of us that there are innumerable types of employments provided by the State. Every government department has its own laws regulating the conditions of services of the employees. More so, these laws are not always legislated in the Parliament or the State Legislatures; most of them are legislated by delegated legislation. There are various laws and rules drawn by the respective by the various state governments and the departments of the governments which have been mentioned in the bibliography.

Other than the Constitution of India, there are several books, journals, law reporters, commentaries on case laws, etc. which looks into this subject. No book single-handedly deals with the aspect of fixation of seniority for determining promotion. A few of them have been selected for the purpose of study in completion of this research work.

M. Ramajois, *Services under the States*, Indian Law Institute, 2007

This book is a leading authority on the subject of services under the state. It may be read at the most simplest level as a source of overall understanding of civil services law and service jurisprudence. Chapters 7 and 8 deal with promotion and seniority respectively.

Samaraditya Pal, *Law Relating to Public Service*, LexisNexis Butterworths Wadhwa, Nagpur, 3 ed., 2011

Almost all areas of administrative law and service jurisprudence have been covered by this book. The author has relied principally on the case decided by the Supreme Court

and High Court. The book has looked into the constitutional dimensions also – ranging from equal opportunity and employment, cabinet system of government, the procedural safeguards in favour of government employees especially promotional matters, etc.

Muthuswamy, Brinda, et al., *Swamy's Compilation on Seniority and Promotion in Central Government Services*, Swamy Publishers Pvt. Ltd., 2017:

The Rules and orders on Seniority and Promotion, Confidential Reports and allied matters are present in this compilation. This volume brings in one place all the rules and orders found in numerous instructions, decisions and clarifications, most of them of which are not codified. It is a treasure house for all employees as well as professional and researchers for the lucid appreciation of the entitlements to career advancement.

Mohit Bhattacharya, *Public Administration*, Word Press, Kolkata, 2012:

This is a book on 'administrative theories'. Public administration as a specialised field of study has been growing in importance, especially in the developing countries. Since development in these countries is spearheaded by government, governmental functions have increased manifold and new organisational structures have grown up in response to new functions and responsibilities. The discussions in the different chapters are oriented towards broadgauge generalisations. As a developing body of knowledge, the administrative theories have no doubt many imperfections and limitations. This only emphasises the need for more rigorous studies of administrative phenomenon.

To testify the hypothesis of this research in hand, the Researcher proceeded to discuss different issues under various chapters. Apart from the Introduction, the thesis is divided into Seven (7) chapters.

Since the subject matter of the present research work is 'Services under the State', the first chapter elaborates the meaning and scope of the concept. The expansion of the terminology 'State' with reference to article 12 of the Constitution is the basis on which the whole thesis has been developed. In the context of a general approach to studying the 'Services under the State', it has been suggested that it is best to 'start with a broad canvas and take stock of the public service as a whole, narrowing the focus as appropriate.

Since a government organisation is not a monolithic structure and is primarily hierarchical in nature, career development becomes one of the basic considerations in the personnel policy of the government. In the words of Glenn Stahl, the term ‘career’ denotes “...the progression of an individual in a field of work throughout the employable years of his life. A career in business or in a profession is a commonly understood concept. The aspect of career advancement and its constitutional validity has been the subject matter of chapter two. Special mention of reservation in promotion and its legal and judicial framework has been made in this chapter.

The object of assigning seniority is to facilitate the filling of promotional posts. So, seniority is one of the most important matters relating to conditions of service because it has a direct bearing on the question of promotion to the next higher cadre. Where promotion to the next higher cadre is based on the principles of seniority and merit, the seniority of an official is of utmost importance. Promotion is guaranteed on the basis of seniority, to any official, once he becomes eligible or suitable. Even in cases where promotion is governed by the principles of selection, seniority has its own role to play. Where persons are selected to the next higher post on the basis of merit and suitability, from amongst persons of equal merit, the senior is entitled to be preferred for appointment. Therefore, the seniority under the rules is a civil right. All aspects of seniority and the mode of fixing of seniority in services under the state has been discussed in chapter three of this thesis.

The principles of promotion and seniority so derived from chapters two and three have its application in chapter four. In this chapter, hierarchical structures of a few selected services under the state have been discussed. The chapter looks into the All India Services and other Civil Services, the Judicial Services, the Defence Services in India and Service under Universities, Colleges and Research Institutions under the Career Advancement Scheme of the University Grants Commission, the promotional opportunities in these services and how seniority plays a role in granting promotion in these services.

Chapter five takes into account the service sector in various democracies of the world, their promotional aspects and the role of seniority. Reference to services in developed countries like United States of America, France, Japan, Australia, South Africa, Germany, etc. have been dealt into in this chapter.

To check the authenticity of the theories and facts and to further explore the issues discussed in the abovementioned Chapters, a study has been carried out with the help of primary survey. The survey is conducted by a structured questionnaire and the data received therefrom, have been analysed in Chapter 6.

Finally, the whole research work was rounded off in Conclusion and Suggestions in Chapter 7 of the Thesis.