

CHAPTER – 5

CAREER ADVANCEMENT IN PUBLIC ADMINISTRATION IN LEADING DEMOCRACIES AND ROLE OF THE CONCEPT OF SENIORITY

5.1. Overview

Civil Service, all over the world, is that body of government officials who are employed in civil occupations that are neither political nor judicial. In most countries, the term refers to employees selected and promoted on the basis of merit and seniority system, which may include examinations.

The concept of civil service has evolved over time. This is also true for the roles and responsibilities undertaken by the civil servants in the present time. Originally, the members of the royal family did the work of the government. Then, with the development of the cabinet system, the ministers discharged these functions. But with the introduction of the democratic element in the governance of monarchies and other forms and also with the change from the negative state to the positive state it has brought about vast extension in public business, which compelled the ministers to recruit persons for assistance, who came to be known as civil servants. Again, with the growth in the population and with more participants of people in the governance and the governments becoming more responsive to people, the public business became too large to handle. This vast extension in public business forced the ministers not only to appoint more people to assist but also to leave to his officials all but the largest decisions on major policy. This situation traces the growth in the powers of the civil servants and it explains how their importance has gone up over a period of time.

The credit for setting up an organised civil service for the first time should go to the Bourbons. The idea was further spread by Napoleon who formalised the system of Prefects and created the three 'grand corps' which further extended the functions of the civil services and gave them higher position in society. It is perhaps this ancestry that has made the civil service in France the best organised, the best trained and the most

respected of such organisations. It is not by chance that two of the five Presidents of the Fifth French Republic have been eminent civil servants.

No state of any extent can be ruled without a bureaucracy, but organisation of any size have been few until the modern-era. Administrative institutions usually grow out of the personal servants of high officials as in the Roman Empire. This developed a complex administrative structure, which is outlined in the *Notitia Dignatatum* and the work of John Lydus, but as far as we know appointments to it were made entirely by inheritance or patronage and not on merit, and it was also possible for officers to employ other people to carry out their official tasks but continue to draw their salary themselves. There are obvious parallels here with the early bureaucratic structures in modern states, such as the Office of Works on the Navy in 18th century England, where again appointments depended on patronage and were often bought and sold.

The imperial bureaucracy of China which can be traced back to the Qin Dyansty is one of the oldest examples of a civil service system which is based on merit. Military appointments, specifically, were made solely on merit. However, after the fall of the Qin Dynasty, the Chinese bureaucracy regressed to a semi-merit system known as the nine-rank system. The eventual Tang dynasty decreasingly began to rely on the aristocratic recommendations and more and more on promotion based on written examinations. The Chinese Civil service became known to Europe in the mid-eighteenth century and influenced the development of European and American System.

This Chapter, particularly, reflects on the gradation of public administration in some of the developed countries in relation to their career advancement schemes and promotion and the role of seniority or merit in such schemes. The countries that have been taken into consideration are United States of America, United Kingdom, Canada, France, Germany, South Africa, Australia, Japan and China.

5.2. Structure in Public Administration in United States of America, Career Advancement and the Role of Seniority Norm

Bureaucracies are complex institutions designed to accomplish specific tasks. This complexity and the fact that they are organisations composed of human beings, can make it challenging for us to understand how bureaucracies work.

5.2.1. Types of Bureaucratic Organisations in the United States of America

In the United States of America, the government comprises of four general types of bureaucratic organisations: cabinet departments, independent agencies, regulatory agencies and government corporations.

i. Cabinet Departments

There are currently fifteen cabinet departments in the federal government. Cabinet departments are major executive offices that are directly accountable to the president. They include the Departments of State, Defence, Education, Treasury and several others. Occasionally, a Department will be eliminated when government officials decide its tasks no longer need direct presidential and congressional oversight, such as happened to the Post Office Department in 1970.⁴⁶⁶

Each cabinet department has a head called a secretary, appointed by the president and confirmed by the Senate. These secretaries report directly to the president, and they oversee a huge network of offices and agencies that make up the department. They also work in different capacities to achieve each department's mission oriented functions. Within these large bureaucratic networks are a number of undersecretaries, assistant secretaries, deputy secretaries, and many others.

Individual cabinet departments are composed of numerous levels of bureaucracy. These levels descend from the department head in a mostly hierarchical pattern and consist of essential staff, smaller offices and bureaus. Their tiered, hierarchical structure allows large bureaucracies to address many different issues by deploying dedicated and specialised officers. For example, below the secretary of state are a number of undersecretaries. These include undersecretaries for political affairs, for management, for economic growth, energy, environment and many others. Each controls a number of bureaus and offices. Each bureau and office in turn oversees a more focused aspect of the undersecretary's field of specialisation. For example, below the undersecretary for public diplomacy and public affairs are three bureaus: educational and cultural affairs, public affairs and international information programs. Frequently, these bureaus have more specialised departments under them. Under the bureau of educational and cultural

⁴⁶⁶ The Bureaucracy: How is it structured? Available at - <https://courses.lumenlearning.com/americangovernment/chapter/understanding-bureaucracies-and-their-types/> visited on 23-06-2018

affairs are spokesperson for the Department of State and his or her staff, the Office of the Historian and the United States Diplomacy Center.⁴⁶⁷

ii. Independent Executive Agencies and Regulatory Agencies

Like cabinet departments, independent executive agencies report directly to the president, with the heads appointed by the president. Unlike the larger cabinet departments, however, independent agencies, are assigned far more focussed tasks. These agencies are considered independent because they are not subject to the regulatory authority of any specific department. They perform vital functions and are a major part of the bureaucratic landscape of the United States - providing information or services. Some prominent independent agencies are Central Intelligence Agency (CIA), which collects and manages intelligence vital to the national interests and the National Aeronautics and Space Administration (NASA) charged with developing technological innovation for the purpose of space exploration.

The independent regulatory agency emerged in the late nineteenth century as a product of the push to control the benefits and costs of industrialisation. The first regulatory agency was the Interstate Commerce Commission (ICC), charged with regulating that most identifiable and prominent symbol of nineteenth-century industrialism, the railroad. The other regulatory agencies, such as Commodity Futures Trading Commission, which regulates U.S. financial markets and the Federal Communications Commission, which regulates radio and television, have largely been created in the image of the ICC. The Securities and Exchange Commission (SEC) illustrates well the potential power of such agencies. The SEC's mission has expanded significantly in the digital era beyond mere regulation of stock floor trading.

iii. Government Corporations

Agencies formed by the federal government to administer a quasi-business enterprise are called government corporations. They exist because the services they provide are partly subject to market forces and tend to generate enough profit to be self-sustaining, but they also fulfil a vital service the government has an interest in maintaining. Unlike a private corporation, a government does not have stockholders. Instead it has board of directors and managers. The most widely used government corporation is the U.S. Postal

⁴⁶⁷ Available at – <https://www.state.gov/r/pa/ei/rls/dos/436.htm> visited on 6-6-2016

Service. Once a cabinet department, it was transformed into a government corporation in the early 1970s. Another widely used government corporation is the National Railroad Passenger Corporation, which uses the trade name Amtrak.

5.2.2. Political Patronage versus Merit

Throughout much of the nineteenth century, federal workers were a valuable political asset. Patronage was the currency of the political exchange. The right to place the local party faithful into relatively high-paying federal jobs, making them postmasters or customs officers, was coveted by members of the House of Representatives, senators, cabinet members, and local political bosses. The president, who had the constitutional power to staff executive branch positions, traded these positions to members of Congress, local bosses, and other politicians in exchange for their support on legislation and in re-election.⁴⁶⁸ Patronage jobs were known to be temporary, subject to the political fortunes of each worker's benefactor and political party. Not only was patronage an integral part of party politics in the United States, but it was viewed as a mean of democratising the government. Anyone, with the right political connections could obtain a government job, at least for a short while.

Nevertheless, in the late nineteenth century, with the enthusiastic support of the president Congress voted to restrict the number of patronage positions that were available. With the enactment of the Pendleton Act⁴⁶⁹ on 16 January 1883, the process was established by which patronage was to be give way gradually to the merit-based employment. By 1904, only twenty one years after the Pendleton Act was passed, over 50 per cent of the total federal civilian labour force was under the merit provisions⁴⁷⁰.

The shift from patronage to merit in the federal government represented a major institutional change in the hiring and administration of the federal labour force. This shift to merit is commonly portrayed as a victory by reform groups over an unwilling Congress.⁴⁷¹ According to this view, civic minded reformers objected to the inefficiencies and corruption alleged to be inherent in a system of patronage, and they

⁴⁶⁸ Ronald N. Johnson and Gary D. Libecap, *The Federal Civil System and the Problem of Bureaucracy: The Economics and Politics of Institutional Change*, 12 (The University of Chicago Press, Chicago, 1994)

⁴⁶⁹ 22 Stat. 403

⁴⁷⁰ U.S. House of Representatives, 1976

⁴⁷¹ See, Paul P. Van Riper, *History of the United States Civil Service* (Row, Peterson and Company, Illinois, 1958)

worked to deny the re-election of the members of Congress who were supporters of the Spoils system and to replace them with members sympathetic to reform. Although reform groups played a role in mobilising opposition to patronage, we find an explanation that solely emphasises exogenous pressures for institutional change in organisation of the federal labour force incomplete.

The overriding factor that changed the way in which federal politicians viewed patronage was the growth in the size of the federal labour force. Commensurate increases in the number of patronage positions raised the costs of negotiating and administering the distribution of the spoils and of monitoring the performance of patronage employees.⁴⁷²

5.2.3. Legislation of Merit

a. Early Efforts to Adopt Merit: The Jenckes Bill

The most serious effort in Congress to adopt a merit system for hiring of federal employees was made by Congressman Thomas Jenckes of Rhode Island.⁴⁷³ The Jenckes Bill, which was prototype for the Pendleton Act called for the use of competitive examinations for entry into the federal civil service for all positions, except those top level offices named by the president and confirmed by the Senate. The Civil Service Commission was to monitor the selection process. In support of his bill, Jenckes argued that introducing a merit system would ‘save congressmen and executive officers countless hours wasted listening to office seekers’.⁴⁷⁴

Jenckes was a member of the Joint Select Committee on Retrenchment after the Civil War and also believed that a merit system improving government efficiency would allow for a reduction in taxes: “Let us seek to obtain skill, ability, fidelity, zeal and integrity in the public service, and we shall not be called upon to increase salaries or the number of offices. It is safe assert that the number of offices may be diminished by one-third and the corresponding reduction of salaries for discontinued offices, if a, healthy system of appointment and discipline be established for its government”.⁴⁷⁵

⁴⁷² Supra n. 470

⁴⁷³ Ari Hogenboom, *Outlawing the Spoils: A History of the Civil Service Reform Movement, 1865-1883*, 10 (University of Illinois Press, Illinois, 1968)

⁴⁷⁴ Id at 28

⁴⁷⁵ Congressional Globe, 39th Cong., 2nd Sess., 838-39

Jenckes and other civil service reformers looked to Great Britain, where merit-based reforms were being implemented at the time. Indeed, later in 1879, as the campaign for the civil service reform continued, Dorman Eaton of the National Civil Service Reform League, the chief Architect of the Pendleton Act, wrote the *Civil Service in Great Britain* (1880) to extol the rewards of civil service reforms in Britain and their likely beneficial effects in U.S.A.

Despite the growing support for some type of merit system for the federal workers, Jenckes Bill would have resulted in massive cuts in the number of patronage positions. Jenckes failed to through the bill in the House.

b. The Pendleton Act, 1883

After the failure of the Jenckes Bill in 1867, there were various attempts to create a merit-based system for hiring federal workers. The Jenckes Bill was reintroduced in 1868, 1870 and 1871 but it did not pass. Between 1871 and 1874, there was a short lived Civil Service Commission authorised by a rider to an appropriations bill and supported by President Grant. The statute authorised the president to establish rules and regulations for the hiring of the federal workers to best promote the efficiency of government through the use of criteria that stressed knowledge and ability rather than political ties.

A permanent institutional structure for merit hiring did not come until the Pendleton Act was passed in 1883. The original Pendleton bill was submitted to Congress by Senator George Pendleton of Ohio in December 1880. It followed the earlier Jenckes bill, creating a strong Civil Service Commission to administer a merit system. Some constitutional issues were raised, and the bill was withdrawn and replaced by one carrying provisions drafted by the members of the New York Civil Service Reform Association and the National Civil Service Reform League. The new bill was reintroduced by Pendleton on 10 January 1881. Although the Committee recommended passage, no action was taken by the Congress during that session. Action awaited the new president.⁴⁷⁶

The assassination of President Garfield in July 1881 reignited the spoils system as an explosive campaign issue. The New York Civil Service Reform Association took advantage of public revulsion over the assassination to the campaign for the passage of

⁴⁷⁶ Supra n. 470 at 31

the Pendleton Act, and the legislation was reintroduced by Pendleton on 6 December 1881. Congressional debate emphasised the efficiency and economy that would come about with a merit system and broad public demand for civil service reform. Even so, no action was taken on the bill. During the summer of 1882, reform groups continued to lobby Congress and generate voter support for enacting the Pendleton bill.⁴⁷⁷

Although political pressure was building for the adoption of some type of merit reform legislation, shifts in the political fortunes of the two parties help explain the exact timing of the passage of the Pendleton Act, 1883. Democrats took control of the House in March 1883, and Republicans began to fear that they would lose the 1884 presidential election since the election of Lincoln. The debate in the Senate over Pendleton Act occurred over the period from 12 December 1882, when it was passed by the Senate; the House vote took place on 4 January 1883.⁴⁷⁸ The bill was voted upon during the lame-duck second session of the Forty Seventh Congress, which was controlled by the Republicans. It provoked considerable debate in the Senate. In the words of Senator Warner Miller of New York' "No party can hope to manage the patronage of this government in its present magnitude and maintain itself before the people. The people demand efficiency in the officers. They only ask of the Postal Department that it shall take their mails and that it shall deliver them in the least possible time with the fewest possible mistakes".⁴⁷⁹

One of the major objectives of the Pendleton Bill was the separation of the federal employees into two groups: classified (merit) and unclassified (patronage). As predicted not all federal employees were placed within the merit system. When the law was implemented, 2573 positions were placed in the classified customs service, 5699 in the classified postal service and 5652 in the classified departmental service in Washington, D.C.⁴⁸⁰ Senior officials, appointed by the president, with the advice and consent of the Senate, were not covered by the act.

⁴⁷⁷ Adelbert Bower Sagesar, *The First Two Decades of the Pendleton Act: A Study of Civil Service Reform*, Volume 34-35, 47-52 (University of Nebraska, Kearney, 1935)

⁴⁷⁸ *Id* at 57-59

⁴⁷⁹ Congressional Record, 47th Cong., 2nd sess., 284

⁴⁸⁰ U.S. Civil Service Commission, Annual Report, 1889, 15

c. Other Legislations

Three relatively recent key elements called the relevance and viability of central human resource management agencies and functions into question. The first was the application of the Civil Rights Act, 1964 to state and local governments by the Equal Employment Opportunity Act, 1972. Following the passage of the latter legislation, there was a great deal of introspection by central personnel agencies, civil service systems, government managers and citizens about relevance of traditional hiring practices and their results as seen in the composition of the U.S. workforces. Numerous charges of unfair recruitment, testing and performance appraisal techniques were brought to light through law suits, consent decrees and the like. Government agencies now forced to defend their respective personnel systems, were obligated to prove their techniques' viability and validity in cases where adverse impact on protected groups was detected. Traditional practices such as the rule of three (hiring restricted to the top three candidates for a position as measured by a civil service examination) and written tests based on scanty or non-existent job analyses came crashing down. When personnel managers were required to justify their methods, in many cases these methods were found to be sorely lacking. This increased scrutiny forced personnel agencies to rethink time-honoured practices and to become acquainted with more readily defensible, sophisticated psychological methodologies: validated assessment centres often replaced written tests, broad banding of test scores replaced strict rules of one or three, performance appraisal systems moved from trait-based systems toward more job-related and interactive measures. In this way, implementation of the Equal Employment Opportunity Act, 1972 helped professionalise and energise a once dormant field. Conversely, it also laid down the groundwork for a more serious questioning of the role that central personnel agencies had in managing modern organisations.⁴⁸¹

The seeds of this questioning began to show evidence of fruition in the Civil Service Reform Act, 1978 (CSRA), the second major event that helped shape the current environment of public human resource management. Whereas the Equal Employment

⁴⁸¹ Stephen E. Condrey (ed.), *Handbook of Human Resource Management in Government*, 3 (John Wiley & Sons, San Francisco, 2005)

Opportunity, 1972 eventually disclosed tried-but-not-true personnel practices, response to the CSRA initiated a steady call to decentralise personnel functions and decisions.⁴⁸²

Enacted during the Carter administration, the Civil Service Reform Act sought to bring businesslike procedures to the federal government, most notably through a merit pay experiment for federal mid-level managers. Espoused as a proven private sector technique, merit pay sought to link managerial performance to compensation, eliminating time-in-grade step increases (which, ironically, were first designed to be associated with individual performance). Although time has proved the federal government's merit pay experiment a failure, merit pay and more important, a view of the private sector as a model for public sector human resource management diffused and continues to diffuse to many state, city and county government organisations.

Merit pay, like many of the provisions of the Civil Service Reform Act, was born out of the idea of that government bureaucracies and the public personnel administrators that had great influence in controlling them had become insulated from executive and political input and control. With the advent of the Reagan administration and a coinciding era of cutback management, government organisations at all levels began to question bureaucratic structures and processes. Organisations were instructed to do more with less and to become more efficient, effective and accountable to executive and public oversight and control. Soon government organisations were called on to reinvent themselves. In many instances, reinvention focused on personnel practices; this, for example, was the case for National Performance Review. Headed by Vice President Al Gore, the National Performance Review called for decentralising many federal human resource management functions and encouraged the empowerment of managers to act with discretion rather than purely through applying rules and regulations.⁴⁸³

5.2.4. The Recruitment Process and the Role of Seniority in the Federal Civil Service System

The central task of recruitment is to “generate a sufficient pool of applicants to ensure that there are enough people available with the necessary skills and requirements to fill

⁴⁸² Ibid

⁴⁸³ A. Gore, *The New Job of the Federal Executive*, *Public Administration Review*, 1994, 54(4), 317-21

positions as they arise.”⁴⁸⁴ Despite its obvious importance to the success of any organisation, government has a poor track record as an effective recruiter.

a. *Inside or Outside*

A critical consideration in the recruitment process is the *inside* or *outside dilemma*. Should the organisation give preference to internal candidates, intentionally seek an outsider (a process termed lateral entry), or declare an open search in which all candidates will be given an equal chance to compete? There is no specific answer to this question. Most organisations have a strong tendency to favour internal candidates over external ones, regardless of their relative qualifications. This predisposition is clearly understandable, given the realities of organisational life. Elevating internal candidates maintains the morale of the other workers by supporting the belief that through dedicated service, they will be rewarded with promotions. And since any promotion will set off a ripple effect in which other workers move up their respective career ladders, a large number of employees can be pleased with just one vacancy. Other arguments for internal recruitment include the facts that it is cheaper, quicker and safer.⁴⁸⁵

The inside or outside dilemma is tempered somewhat by the requirement in many merit systems that all applicants be considered. Recruitment is technically an open process that does not exclude anyone. It is widely known, however, that public agencies commonly make no real effort to attract outside applicants. Many selections have already been made before the job announcements are written or vacancies advertised.

b. *Performance Appraisal System*

A performance appraisal is designed to structure the assessment process positively. By formally focussing a manager’s attention solely on the objective, job-related criteria for assessing performance, an appraisal provides the manager with the means of making appropriate decisions that rationally contribute to the organisation’s and the individual’s effectiveness and well-being. The purpose for which performance appraisal can be employed are numerous. However, they may be grouped into two broad categories –

⁴⁸⁴ J. Hamman and U. Desai, *Current Issues and Challenges in Recruitment and Selection*, in S.W Hays and R.C. Kearney (eds.), *Public Personnel Administration: Problems and Prospects*, 90 (Prentice Hall, New Jersey, 1995)

⁴⁸⁵ Steven W. Hays and Jessica E. Sowa, *Staffing the Bureaucracy: Employee Recruitment and Selection*, in Stephen E. Condrey (ed.), *Handbook of Human Resource Management in Government*, 107 (John Wiley & Sons, San Francisco, 2005)

judgmental and developmental. Although both developmental and judgmental appraisals have enhanced productivity as their goal, they approach it in two quite distinct fashions.⁴⁸⁶

Development focuses on an individual's potential rather than on his/her current level of skills and capacities. Hence, it is essential in such assessments to consider the question, potential for what? Whether viewed from an organisational or an individual perspective, the goal toward which this potential, or growth, is directed needs examination. The organisational need for developing an individual's potential? The human resource aspects of an organisation's strategic planning process should provide the answers to these questions. If an organisation is to provide an employee with enhancement skills and abilities, it is important that the organisation perceive what reward it expects in return.⁴⁸⁷

Judgmental purposes follow the management systems, or command-and-control, model of authority. In fact, the existence and adequacy of a reward structure are important subsidiary questions regarding the effectiveness of appraising for judgmental purposes.⁴⁸⁸ Among public sector agencies, the organisational reward structure has proved on important limitation on judgmental purposes, such as the making of the decisions of regarding promotions and merit pay.

Merit pay is especially in vogue, with many public sector jurisdictions seeing it as a means of enhancing productivity and at the same time cutting costs. However, the reality is somewhat different in that governments regularly refuse to really pay for enhanced productivity.

Promotion entails both developmental considerations (what additional competencies does this individual need, and how can they be provided for?) and pay considerations, yet it is distinct decision. Although the criteria used in assessing performance for pay and in assessing performance for promotion overlap, they also differ. It is suggested that a separate appraisal for promotion may be appropriate.

⁴⁸⁶ Dennis M. Daley, *Designing Effective Appraisal Systems*, in Stephen E. Condrey (ed.), *Handbook of Human Resource Management in Government*, 107 (John Wiley & Sons, San Francisco, 2005)

⁴⁸⁷ Ibid

⁴⁸⁸ J.L. Perry, *Merit Pay in the Public Sector: The Case for Failure of Theory*, *Review of Public Personnel Administration*, 1986, 7(1), 57-69

c. Internal Promotions

Most municipalities give first consideration to current municipal employees when positions become available within the municipality. Some civil service laws require seniority rights to be respected when making promotions.⁴⁸⁹ However, in many jurisdictions promotion decisions are discretionary, and employees have no vested rights to a promotion⁴⁹⁰. Even when internal promotion is not required by law,⁴⁹¹ recruiting internally is desirable because it provides the opportunity for employees to grow within the organization and it improves worker morale. Transferring a current employee to another position within the municipality also ensures that the skills and abilities of employees will not be unnecessarily wasted; and familiarity with the workplace can significantly reduce the time necessary to train an employee for the new position.⁴⁹¹

A denial of a promotion by a municipal employer can result in a violation of the employee's constitutional rights if the failure to promote was the result of wrongful discrimination, or was in retaliation for the employee's exercise of First Amendment rights, whistle-blowing, making complaints of wrongful discrimination, or for filing a worker's compensation claim.⁴⁹²

d. Recruitment Procedure

Job posting—Some municipal charters have specific regulations governing the posting of job announcements; however, absent such regulation, it makes sense to give existing employees first priority at position openings, by posting an announcement of a job opening in places accessible to all qualified employees for five working days before the announcement is made to external sources.

Employee job interest—Regular, full-time employees requesting consideration for job openings should be required to submit an application to the hiring body or individual named in the job posting. If, after serious consideration of current employees' qualifications, the position is still unfilled, then outside recruitment should be considered.

⁴⁸⁹ *Wilson vs. Los Angeles County Civil Service Comm'n*, 229 P.2d 406 (Cal. Dist. Ct. App. 1951)

⁴⁹⁰ *Rutherford vs. City of Portland*, 494 A.2d 673 (Me. 1985)

⁴⁹¹ Deborah L. Markowitz, *A Practical Guide to hiring and Firing Public Employees*, 29(2), *The Urban Lawyer*, 295 (Spring 1997)

⁴⁹² *Montoya vs. City of Colorado Springs*, 770 P.2d 1358 (Colo. App. 1989); *Hopkins vs. City of Midland*, 404 N.W. 2d 744 (Mich. Ct. App. 1987)

Resume files—The supervisor requesting the hire may review current applicant files which contain applications and resumes of individuals who have applied for similar positions previously. The supervisor may then contact any qualified individuals.

Job advertising—Some state and local laws require municipalities to advertise in order to fill job openings. However, whether or not this is the case in your municipality, once a city or town decides to advertise, it must conform to equal opportunity employment requirements. Alternative modes of dissemination must be available to ensure that disabled individuals have equal access to the job information. To be complete, job notices should specify the name and the office of the person from whom applications are to be obtained, the name and office of the person to whom completed applications are to be returned, and the deadline for filing an application.

Employment agencies and search consultants—Many municipalities use professional employment specialists when ordinary advertising methods do not attract a qualified candidate or when a nationwide or regional search is desired.

The municipality must be very careful when selecting an employment agency or search consultant since the municipality will be held liable in the event that the agency or consultant violates any of the equal opportunity employer requirements.

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d. Merit Principles

It is important at *the* outset to draw a clear distinction between merit principles and civil service or merit systems. There are six merit principles established by Congress in the Intergovernmental Personnel Act. Congress established as national policy:

That the quality of public service at all levels of government can be improved by the development of systems of personnel administration consistent with such merit principles as-

- (1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- (2) providing equitable and adequate compensation;
- (3) training employees, as needed, to assure high-quality performance;
- (4) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;
- (5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, colour, national origin, sex or religious creed and with proper regard for their privacy and constitutional rights as citizens; and
- (6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

It is essential that a collective bargaining system established in the public service assure that the public interest is protected by specifically safeguarding those

⁴⁹³ Supra n. 493

principles. This does not mean civil service systems established to implement the merit principles should be held inviolate and pure and not be changed in any respect when a collective bargaining system is installed.⁴⁹⁴

e. Career Advancement

Promotions of career employees can be another problem area. If recognition is not given to faithful service and the values of organization knowledge and continuity of staff contacts, the morale and effectiveness of an organization may be diminished. This is a strong argument for promoting from within whenever possible. At the same time, if avenues for bringing in new talent from outside the organization are closed, the career service may become inbred and result in organizational stagnation.

The methods used for selecting employees for promotion also are critical factors in organizational effectiveness and employee morale. Where promotions are made on a non-merit basis, employees may criticize the practice as denying them fair consideration.

Most civil service systems provide competitive promotions. Some employee organizations favour promotion primarily on the basis of seniority. Jerry Wurf, president of the American Federation of State, County and Municipal Employees, has made statements in support of merit principles in public employment. However, with regard to promotion, he has indicated:

Promotion on the basis of merit and fitness is necessary, but the rules must be negotiable. Seniority must be the key determination for distinguishing between qualified applicants. Among professional employees perhaps seniority alone is not always enough for distinguishing between candidates for a job—although it remains an important consideration.

This is an area that presents some potential for conflict between collective bargaining and the competitive merit principle—it is of the utmost importance that promotion systems treat employees fairly, respond promptly to management needs and further the public's interest in effective, efficient service. This calls for a proper balancing of seniority and demonstrated competence. It should be noted that seniority can and does

⁴⁹⁴ Douglas I. McIntyre, *Merit Principles and Collective Bargaining: A Marriage or Divorce*, 37 (2), *Public Administration Review*, 187 (March – April 1977)

play a significant role with respect to many employee benefits without raising any issue with merit concepts.⁴⁹⁵

f. Seniority or Merit – The Debate

Those familiar with the history of public personnel administration in the United States know that the debate over whether taking certain personnel actions on the basis of seniority violates the merit principle has been going on for a long time. However, the value of seniority in personnel practices was formally written into the 1964 Civil Rights Act through S. 703(h). It provides that an employer is empowered to induce different terms and conditions or privileges of employment in a bona fide seniority or merit system. However, the terms and conditions so imposed shall not be discriminatory in nature so as to intentionally discriminate on the basis of race, colour, religion, sex or national origin.

Equally long-standing is a self-interested power struggle over seniority between organised labour and management.⁴⁹⁶ The reality of seniority systems in the public sector, of course, is not the issue. Formally and informally, they exist in many jurisdictions on all levels of government, many having been agreed to in negotiated contracts. Unions have been consistent in their demands for seniority as a decision rule that reduces management's arbitrary power over workers and their organizations by establishing a standard that is at once objective and tightly connected with union membership. For public employee unions such as American Federation of State, County, and Municipal Employees (AFSCME), the seniority rule is put forward as a way of making decisions when application of merit standards and mutually acceptable methods and procedures do not yield clear-cut choices, especially regarding promotion actions.⁴⁹⁷ In other areas, and most especially in reductions in force, organized labour is not so willing to finesse the issue in order to avoid a direct confrontation with merit, and seniority is raised from the status of a tie-breaker to a virtually absolute rule. In all cases, the unions' self-interest is obvious, as is that of individual employees who stand to benefit. Public management's position is equally transparent, and workers who are disadvantaged by existing seniority systems (including more recently hired women and

⁴⁹⁵ Ibid

⁴⁹⁶ Lloyd G. Nigro, *Scientific Management: Seniority and Productivity in the Public Sector*, Vol. 10, No. 1, *Public Productivity Review*, 73 (Autumn, 1986)

⁴⁹⁷ Ibid

minorities) may be expected to challenge them on grounds that they violate merit or other "basic" principles.⁴⁹⁸

Seniority systems in the public sector are the products of a very real competition among organized interests. There are winners and losers in this competition, but mostly there is compromise and adjustment. What, however, has been the impact on productivity? For a variety of reasons, including disagreements over definitions and criteria, as well as massive methodological problems, there is very little solid evidence upon which to base a judgment as to seniority's effects on productivity.⁴⁹⁹ Needless to say, more or less convincing arguments defending and condemning seniority have been set forth. To the degree that one is willing to accept the proposition that the merit principle and merit systems are designs for productivity in the public sector, seniority rules are suspect. However, it is unreasonable to evaluate real seniority systems in terms of the standards set by the theory or concept of merit (a criticism often levelled against economists who "assume" a perfect market). In fact, however convincing the logic of merit, its operating technologies (selection devices, performance evaluation methods, incentives, job designs, and so forth) are demonstrably imperfect. Critics of public personnel management, including labour leaders, find many sources of inefficiency and ineffectiveness in the operations of merit systems, which have little if anything to do with seniority.⁵⁰⁰ Those who urge a general rejection of seniority, on the grounds that it is incompatible with productivity, should be required to make their case in more than just logical terms, which require accepting questionable assumptions and causal relationships.

Those who oppose seniority on the grounds that it undermines productivity have very little convincing empirical evidence to call upon. It is relatively easy to demonstrate that seniority systems have a very negative effect on minorities and women who are "last hired, first fired" when reductions in force take place, but productivity, however defined, is another matter. Why, then, the confidence or certainty with which proponents of merit enter into battle with advocates of seniority? The answer, is believed to be found in the

⁴⁹⁸ Jerry Wurf, *Merit: A Union View*, Vol. 34 No. 5, *Public Administration Review*, 431-434 (Sep. – Oct., 1974)

⁴⁹⁹ Steven W. Hays and T. Zane Reeves, *Personnel Management in the Public Sector*, 282-316 (Allyn and Bacon, Boston, 1984)

⁵⁰⁰ Hays and Reeves, *Personnel Management*; Lewin and Horton, "The Impact of Collective Bargaining."

fusion of the civil service reform and scientific management movements that took place during the first quarter of the twentieth century.⁵⁰¹

The New Moral Order

Advocates of civil service reform and scientific management proposed to sweep away what they believed were old, self-serving, and inefficient ways of running organizations and to replace them with a new (more productive) order. For civil service, the elimination of spoils and machine politics, the installation of merit systems, and economy-oriented administration were major elements in a program of governmental reform. Neutral competence, technical expertise, and professionalism were important features of the strategy for implementation and legitimation. Scientific management was to add an extremely influential normative dimension to a public administration that was in the process of structuring itself intellectually around the politics-administration dichotomy—the moral as well as the instrumental primacy of scientific knowledge and rationally structured cooperation in the workplace.⁵⁰²

From the perspective of scientific management, seniority rights are unnecessary, and the concept of seniority is an anachronism. Accordingly, arguments to the effect that seniority is a necessary protection against a potentially (if not actually) exploitative management, or that it contributes to productivity by allowing experience to develop, are holdovers of an old-fashioned way of thinking about organizational knowledge and labour-management relations. No one was more convincing on this point than Frederick Winslow Taylor. By contemporary standards, Taylor was refreshingly candid, and unwilling to compromise his positions. Nevertheless— as chairman of the Special Committee of the House of Representatives to Investigate the Taylor and Other Systems of Shop Management soon discovered—on certain issues, Taylor could be an extremely difficult man to pin down. Taylor's testimony, prompted by the hostile chairman, offers much to those trying to trace the normative roots of the debate over seniority in public employment.⁵⁰³

⁵⁰¹ Martin J. Schiesel, *The Politics of Efficiency*, 111-148 (University of California Press, Berkeley, 1977)

⁵⁰² *Supra* n. 499

⁵⁰³ *Ibid*

g. *Seniority and the Science of Shoveling*

In prepared testimony before the Committee, Taylor stated, "[S]hovelling is a great science compared with pig-iron handling."⁵⁰⁴ While Taylor's use of the term *science* does not meet today's standards, this phrase communicates scientific management's radical denial of worker experience and self-taught technique as sources of organizational productivity. The science of a trade—and, ultimately, the science of productivity—is the province of management. In words not designed to smooth the ruffled feathers of tradesmen and their unions, Taylor asserted: "[T]he science which underlies each workman's act is so great and amounts to so much that the work-man who is best suited to actually doing the work is incapable, either through lack of education or through insufficient mental capacity, of understanding this science."⁵⁰⁵ Having kicked the legs out from under the commonly held notion that doing the work has in itself any relation to understanding how to do it efficiently, Taylor does not leave the worker unattended: "[T]he man who is fit to work at any particular trade is unable to understand the science of that trade without the kindly help and cooperation of men of a totally different type of education, men whose education is not necessarily higher but [of] a different type from his own."⁵⁰⁶

Under scientific management, worker experience and judgment were to be largely replaced by the results of careful observation and experimentation. For the individual worker, trial and error were to be eliminated and replaced by training as the method of improving productivity and wages. As an organizationally meaningful attribute of the individual, seniority disappears—as the chairman discovered in the following exchange with Taylor:

Chairman: Is it not true that under the old system, in determining the length of time that it would take to produce a certain piece of work, ... it was based upon the observation of some man relative to that work over a long period of time, and would not that be just as scientific and just as arbitrary as the method [scientific management] employed in securing this 20 to 27 percent [time]?

⁵⁰⁴ Frederick Winslow Taylor, *Scientific Management*, 50 (Greenwood Press, Westport, Connecticut, 1972)

⁵⁰⁵ *Ibid*

⁵⁰⁶ *Ibid*

Taylor: No, sir.⁵⁰⁷

Taylor went on to reject the idea that experience is in any way equivalent to scientific management as a means to increased productivity. Although he admitted that from time to time workers may discover so-called trade secrets, Taylor dismisses them, because they are usually developed in isolation from the rest of the work process, and they are not shared. Workers do not have the time, money or education needed to develop a science. Management, on the other hand, should have these resources and is obliged to use them to raise organizational output, to select and develop first-class workers, and to increase their wages as productivity improves. In the Taylor system, there is no need for seniority rules (and unions) to protect workers from a self-interested management, because "under scientific management it becomes both the habit and pleasure of those people who are on the management side to try to help their men rise to the highest class of work for which they are fitted."⁵⁰⁸

h. Seniority and the First-Class Worker

Taylor was well aware that he faced a committee created in large part because of the union opposition to efforts to use scientific management techniques at federal arsenals. Therefore, he came prepared to answer two questions particularly relevant to the seniority issue. The first questions had to do with contentions that Taylorism was nothing more than an elaborate speed-up, designed to increase productivity at the expense of the physical and mental health of the worker, who would quickly burn out and be discarded by management. In response to this line of questioning, Taylor first sought to convince the committee that scientific management had the workers' long-range interests at heart. He stated that "one of the first requirements of scientific management is that no man shall ever be given a job which he cannot do and thrive under through a long term of years." Taylor went well beyond this premise to make the point that traits such as seniority should logically have nothing to do with a worker's status or pay because (1) they were simply another way of institutionalizing the practice of "soldiering," or output restriction and (2) under scientific management, the first-class worker would always be equitably rewarded. In a long and sometimes amusing series of exchanges with the chairman and other members of the committee, Taylor was forced to

⁵⁰⁷ Ibid

⁵⁰⁸ Ibid

deal with the suspicions generated by the centrality of the first-class worker to his program.

The chairman first asked Taylor what happens under scientific management to men who are not first-class in their jobs. The following exchange took place:

Taylor: No man who can work and won't work has any place under scientific management.

Chairman: It is a question of a man who is not a first-class man in any one particular line, according to your definition.

Taylor: I do not know of any such line of work. For each man some line can be found in which he is first class... There is no one kind of work, however, that suits all types of men.

Thus, if scientific management is being fully used (and Taylor could find few examples), the second-class worker is self-made: He is able but unwilling. The first-class worker does not need a seniority system; the unproductive second-class worker is protected by one. It is worth noting the importance of the claims made about the technological power or capacity of scientific management. In Taylor's day, organized labour was more than willing to challenge his claims regarding the capacities of scientific management, and it continues to question the capacities of public sector merit systems to produce only first-class workers who have no need for seniority systems. Finally, the nature of organizational governance under scientific management is put forward by some as a major reason why seniority and other protections are unnecessary. For others, the values inherent in Taylorism make such protections absolutely imperative.⁵⁰⁹

i. The Scientific Governance of Organisations

Taylor made a determined effort to answer charges that scientific management could be used by selfish owners and unscrupulous managers to manipulate and exploit workers. Rather than the traditional solution of setting one interest against the other (union versus management), Taylor urged the objective rule of "science":

⁵⁰⁹ Supra n. 499

“The man at the head of the business under scientific management is governed by rules and laws which have been developed through hundreds of experiments just as much as the workman is, and the standards which have been developed are equitable; it is an equitable code of laws that has been developed under scientific management, and those questions which are under other systems subject to arbitrary judgment and are therefore open to disagreement have, under scientific management, been the subject of the most minute and careful study in which both the workman and the management have taken part, and they have been settled to the satisfaction of both sides.”

The unilateralism of scientific management meshes well with that of the merit principle. In both, the worker may trust the system, because the rules and laws are made by an objective (impartial) third party: a civil service commission, or a group of managers and workers, following the methods of science. Historically, the union response has been straightforward: Civil service commissions and personnel departments, however benevolent they might be, are creatures of management, and scientific management is nothing more than an elaborate rationalization for absolute control by management. Seniority systems stand as eloquent testimony to organized labour's preference for negotiated as opposed to legislated and "discovered" rules of the workplace.

Taylor's impatience with negotiation and compromise was revealed in his response to a question having to do with the worker's role in the processes of rule adjudication and change:

[W]hen a workman is given an instruction card asking him to do work in a particular way that until he has attempted to do that work in that way, until he has followed his instructions as they are written, that no protest on his part will be received. In other words, that you do not want to -furnish a man with an instruction card which represents the careful result of years of standardization and of definite laws that have been developed and then without any trial of the method on his part have him start a debating society.

Taylor was quite accurate in his assertion that the core of scientific management is a "mental revolution" through which management and worker will cooperate because they must follow the "non-negotiable" rules of "science." Likewise, the merit principle is set

above the process of negotiation and debate. As ways of thinking about the management of organizations and the enhancement of productivity, they are *correct*.⁵¹⁰

5.3. Public Administration in United Kingdom: Promotion and Seniority

In United Kingdom's (unwritten) Constitution recognises three 'Estates' or independent power bases with the Central Government:

- Parliament,
- The Executive, and
- The Judiciary

The Executive comprises of the government and the Civil Servants. Judges, magistrates and those employed by the Parliament are thus, not civil servants. Nor are the police, the armed forces and those employed in the National Health Service and by Local Authorities.⁵¹¹

Civil Servants are those who are employed by the 'Crown', excluding those who are employed by the Queen herself. The following categories will enlighten about the various types of Public bodies and their employees in the United Kingdom.

1. Those Employed by the Parliament

This first category of public body is comprised of Parliament itself, and the bodies which report direct to Parliament, including the National Audit Office, the Parliamentary Ombudsman and the Electoral Commission.

2. Civil Servants

The second category of public body is comprised mainly of those who work for government departments which report to Ministers (who are always Parliamentarians).

As civil servants are employed by the Crown and not by individual departments, they can be transferred between departments without formality and without losing employment rights. This not only facilitates the free flow of staff between departments, but also greatly facilitates reorganisations within central government. Indeed it is quite

⁵¹⁰ Supra n. 510 at 79

⁵¹¹ Available at <https://www.civilservant.org.uk/information-definition.html> visited on 23-06-2018

common for large numbers of civil servants to find themselves working for an entirely different department at only a few hours' notice.⁵¹²

There are around 45 executive Agencies which constitutionally remain an integral part of their parent department. However, they generally implement established policies so it makes sense for them to be run semi-independently from their department's head offices. Most Members of Parliament who wish to raise constituency matters with such Agencies are content to correspond directly with their Chief Executives, rather than through ministerial intermediaries.

But problems can arise when an agency uses its management freedom in a way which Ministers believe impacts on established policies, especially in highly political areas such as those within the responsibility of the home Office. The Prison Service was accordingly made into an Executive Agency, but then the decision was reversed when the performance of the Service was subsequently criticised. And then there were problems at the Border Agency when the Agency's managers sought simultaneously (a) to manage the scrutiny of ever increasing numbers of travellers and (b) to cut staff by relaxing border controls in ways which were not approved by Ministers.⁵¹³

3. *Non-Ministerial Government Departments*

Some civil servants do not report to the Ministers but work for a number of non-ministerial Government Departments (NMGDs), whose detailed status varies considerably from one to another.

- Senior officials in HM Revenue and Customs work closely with Ministers and its key policies are set each year in the Finance Act. However, neither Ministers nor Parliament can interfere in day to day taxation decisions.
- The Serious Fraud Office is another 'independent government department, operating under the superintendence of the Attorney General'.
- Most NMGDs are bodies which are even more independent of Ministers – such as the Charity Commission, the Competition and Markets Authority, Ofsted and the Economic Regulators.

⁵¹² Ibid

⁵¹³ Ibid

- The Food Standards Agency is a particularly special case in that it is a NMGD which was created by merging two large parts of the Departments of Health and what was then the Ministry of Agriculture, Fisheries and Food. The aim was to reassure the public that the decisions about food safety would in future be taken by an eminent and independent body free of political control.

A large number of civil servants also work in the Developed Administrations in Scotland, Wales and Northern Ireland.

4. Other Public Servants

There are a wide variety of other public bodies which do not generally employ civil servants. The main categories are:

- The Non-Departmental Public Bodies (NDPBs), often known as Quangos (Quasi Autonomous Non-Governmental Organisations)
- The National Health Service
- The Armed Forces
- Public Corporations
- Local Authorities

5. The Civil Service

The civil service has no separate constitutional responsibility. The constitutional and practical role of the civil service in Great Britain is to help the Government of the United Kingdom, the Scottish Executive and the National Assembly for Wales formulate policies, carry out the decisions and administer public services for which they are responsible.

The UK Civil Service commissioners derive their responsibilities to maintain the fundamental principle in recruitment to the Civil Service of selection on merit on the basis of fair and open competition, including the approval of appointments by recruitment to the most senior levels in the Civil Service; and ii) to hear and determine appeals under the Civil Service Code.

The Public Administration in United Kingdom is entirely subject to the law but there is no specific Civil Service Act or legal provision that prescribes specific duties or rights to

public role and responsibilities of civil servants. It was revised in 1999 to take account of the devolution. The Code includes an independent line of appeal to the Civil Service Commissioners on alleged breaches of the Code.

5.3.1. The Civil Service Management Code

The Civil Service Management Code was issued under the authority of Part I of the Constitutional Reform and Governance Act, 2010 under which the Minister for the Civil Service has power to make regulations and give instructions for the management of the Civil Service, including the power to prescribe the conditions of service of civil servants. This Code, on which the recognised trade unions have been consulted, sets out regulations and instructions to departments and agencies regarding the terms and conditions of service of civil servants and the delegations which have been made by the Minister for the Civil Service under the Civil Service (Management Functions) Act, 1992 to ministers and office holders in charge of departments, the First Minister in the Scottish Executive and the Welsh Assembly Government, together with the conditions attaching to those delegations. For convenience, the term “departments and agencies” has been used in the context of delegation throughout the Code. It includes the Scottish Administration and the Welsh Assembly Government. Where departments and agencies are given discretion to determine terms and conditions, the Code sets out the rules and principles which must be adhered to in the exercise of those discretions. It does not of itself set out terms and conditions of service. In the case of agencies, the presumption is that functions delegated to Ministers and office holders will, in respect of agencies, be exercised by Agency Chief Executives, but the precise extent to which Ministers and office holders may wish to allow the exercise of their powers of the Chief Executives is a matter for them to determine.

Ministers and office holders in charge of departments, the First Minister of the Scottish Executive and the Welsh Assembly Government have been given the authority:

- a. To prescribe the qualifications (so far as they relate to age, knowledge, ability, professional attainment, aptitude and potential, health and coping with the demands of the job) for the appointment of home civil servants in their respective departments; and

- b. To determine the number and grading of posts outside the Senior Civil Service in their respective departments and the terms and conditions of employment of civil servants in so far as they relate to the following:
 - i) Classification of staff, with the exception of the Senior Civil Service;
 - ii) Remuneration, with the exception of the Senior Civil Service;
 - iii) Allowances;
 - iv) Expenses;
 - v) Holidays, hours of work and attendance;
 - vi) Part-time and other working arrangements;
 - vii) Performance and promotion;
 - viii) Retirement age, with the exception of the Senior Civil Service;
 - ix) Redundancy;
 - x) Re-deployment and lateral transfer of staff within Civil Service

Section 1 of the Code deals with Appointment and Recruitment. Section 1.1.1 says that within the framework laid down by the Constitutional Reform and Governance Act, 2010 and the Recruitment Principles issued by the Civil Service Commission, departments and agencies have authority to:

- a. Determine their practices and procedures for retirement of staff to the Civil Service; and
- b. Prescribe qualifications for appointment to positions in their organisation relating to age, knowledge, ability, professional attainment, aptitude, potential, health and coping with the demands of the job.

Section 1.5 talks about Fast Stream Development Programme. The Fast Stream Development Programme provides training and development for people with the potential to achieve rapid promotion off the programme (in accordance with the department's own grading procedures) and to progress to the Senior Civil Service. It comprises:

- Central Departments (formerly referred to as the Home Civil Service)
- Diplomatic Service
- Science and Engineering Fast Stream
- Clerkships in Parliament

- Technical Development Officers

All of them together are collectively known as the Graduate Fast Stream. Entry to the Graduates Fast Stream is by open competition. There is a separate In-Service Fast Stream competition for serving civil servants which gives access to the Central Departments or the Ministry of Defence branch of the Science and the Engineering Fast Stream.

The policy of the Equal Opportunities in the Civil Service has been laid down in Section 2 of the Code. The Civil Service equal opportunities policy provides that all eligible people must have equality of opportunity for employment and advancement on the basis of their suitability for the work. There must be no unfair discrimination on the basis of age, disability, gender, marital status, sexual orientation, religion or belief, race, colour, nationality, ethnic or national origin, or (in Northern Ireland) community backward working pattern, employment status, gender identity (transgender), caring responsibility, trade union membership. The Departments and agencies must comply with equal opportunities legislation and with Codes of Practice issued under such legislation. They must also regard to the provisions of the Civil Service Programmes for action to achieve equality of opportunity for people of ethnic minority origin, for women and for disabled people, to the Department for Work and Pensions guidance on age discrimination, and (Northern Ireland) to the guidance on the website of the Equality Commission for the Northern Ireland.

The Senior Civil Service of the United Kingdom comprises of the most senior staff in departments and agencies may determine which posts are included in the Senior Civil Service, provided that they have a job weight (JESP) score of at least 7, and which staff will fill them.⁵¹⁴ Responsibility for management of the Senior Civil Service is principally a matter for departments and agencies. However, some terms and conditions are determined centrally.

The Senior Leadership Committee (SLC) advises the Head of the Home Civil Service on the senior staffing position across the service as well as on individual appointments. The “Top 200” posts are listed by the Secretary of SLC and made available to departments and agencies. In general, they should meet the following criteria:

⁵¹⁴ Section 5 of The Civil Service Management Code

- The post has a job weight (JESP) score of 19 or more;
- The pay of the present incumbent of the proposed pay range is in the top three pay bands; and
- The post reports directly to the Head of the Department (or Second Permanent Secretary as appropriate) or is the Head of the Department or Agency.⁵¹⁵

The Departments and agencies in the Civil Service of the United Kingdom have the sole authority in matter of gradation and classification of the Staff. They can determine the number and grading of posts and the classification of their own staff outside the Senior Civil Service subject to the condition that the Departments and agencies must develop arrangements for the grading of posts which are appropriate to their business needs, are consistent with the Government's policies on the Civil Service and public sector pay, and observe public spending controls.⁵¹⁶

Apart from Permanent Secretary, there are no central grades in the Senior Civil Service. Departments and agencies have discretion to place into pay bands within the broad framework laid down by the Cabinet Office and classify them as they wish.⁵¹⁷

The Departments and the agencies also have the authority to determine 'personal review'⁵¹⁸ arrangements for their own staff outside the Senior Civil Service, subject to the following conditions:

- The means of rating overall performance must be capable of contributing to the organisation's arrangements for making decisions on performance-related pay.
- The performance review systems and reporting arrangements must be capable of clearly identifying performance which is unsatisfactory or unacceptable.
- The design and development of departmental and agency systems for personal review must take account of any principles of good practice issued by Cabinet Office in consultation with departments and agencies.⁵¹⁹

⁵¹⁵ Section 5.2. of the Civil Service Management Code.

⁵¹⁶ Section 6.1.1. and 6.1.2 of the Civil Service Management Code

⁵¹⁷ Sections 6.1.3 and 7.1. of the Civil Service Management Code

⁵¹⁸ The term 'personal review' covers both the appraisal of performance and assessment of individual potential.

⁵¹⁹ Section 6.2 of the Civil Service Management Code

The performance of all the members of the Senior Civil Service is managed by departments and agencies, within a central framework determined by, and available from, the Cabinet Office.

Along with the above powers, the Departments and agencies have authority to determine promotion and lateral transfer arrangements for their own staff.⁵²⁰ The departments and agencies must ensure that:

- All promotions and lateral transfers follow from a considered decision as to the fitness of individuals, on merit, to understand the duties concerned;
- The design and development of their promotion and lateral transfer systems reflect any guidance and principles of good practice issued by the Cabinet Office in consultation with departments and agencies;
- Their own promotion and lateral transfer procedures are clearly set out in departmental and agency staff handbooks;
- Promotion of staff on fixed term appointments is in accordance with the Civil Service Commission's Recruitment Principles.
- They obtain approval from the Senior Leadership Committee before promoting staff into a Top 200 post or moving staff from one post to another within the group.⁵²¹

The Ministers and office holders in charge of departments, the First Minister of the Scottish Executive and the Welsh Assembly Government have a responsibility to ensure that the conditions laid down in Section 6.4. are met. The Heads of the Departments and Agency Chief Executives are responsible for the promotion and lateral transfer arrangements for their staff. Ministers (which includes Scottish Ministers and the First Secretary and Assembly Secretaries of the Welsh Assembly Government) will have a legitimate interest in a small number of posts, outside the Top 200, for example because the post-holder will work directly to them. In filling such posts by promotion or lateral transfer, the Head of Department or Agency Chief Executive is responsible for recommending to the Minister suitable individuals for consideration, selected according to the conditions as provided above.

⁵²⁰ Section 6.4.1 of the Civil Service Management Code

⁵²¹ Section 6.4.2 of the Civil Service Management Code

5.3.2. Promotion in the Civil Service of United Kingdom

Promotion is an important process in the Civil Service of the United Kingdom, as it is in all graded services. It covers both, advancement between grades within the same class as well as between different classes. A civil servant has career prospects within the class to which he is recruited, but transfer to other classes is usually considered exceptional. This situation is certainly modified within the scheme of Treasury Classes: for example, since the war the Clerical Officer's normal promotion outlet has led directly to the Executive Officer grade. The promotion process is part of the greater problem of placement within the Service, the problem so allocating the available personnel that the most efficient result is obtained through the minimum use of existing abilities. Such a result would also have the inestimable advantage of affording the highest satisfaction to the individual officials involved and thus, would considerably enhance the general morale.

The promotion system in the British Civil Service is considerably influenced by the personal rank scheme of organisation which assigns to the several ranks or levels of the hierarchy a wide range of duties of equal responsibility but varying techniques, and the promotion requirements of such a system are bound to be much more complicated and less easily assessed than under the alternative position classification scheme under which posts are determined by detailed analysis, competence for which can be more specifically prescribed as a minimum requirement for appointment or promotion. Under the classified scheme vacancies can be more readily available to those prove their competence, and promotion will not be very different from recruitment. The individual tends to specialise and may have a wide range of similar posts in many quarters open to him, but has diminished prospects of advancement in his own branch. The organisation gains from the inflow of new blood but loses through the loss of invaluable experience.⁵²²

In the words of E. N. Gladden, distinguished author, there are advantages and disadvantages of both the approaches but the general adoption of one should not completely exclude the use of the other. Organisation in personal ranks enhances the integrated-service element, while organisation in classified posts places the emphasis on unit autonomy. Thus, the classified post type is widely used in the highly de-

⁵²² E. N. Gladden, *Civil Services of the United Kingdom: 1885-1970*, 113 (Frank Cass & Co. Ltd, London, 1967)

concentrated local Government Service in Britain and can be useful for promotion between departments, or in such organisations as the Post Office where Head Postmanships are filled partly in this way from specified Post Office grades, whose members regard this as one of their accepted avenues of promotion.

5.3.3. Principles of Promotion

Historically, in all grade services, the practice of arbitrary selection is at an early stage tempered by the emergence of an order of precedence – based upon privilege, heredity, prestige of office and possibly relative power – in accordance with which certain rights, including consideration for other official positions, are decided. Seniority has always been accepted as an important attribute, as indeed it is if merely, as a measure of the experience of the individual official, and promotion in accordance with the seniority list of a grade has for long been a common practice in the Civil Service as elsewhere. Where selection by this method was rigid it led inevitably to the placing of incompetents in high positions and at a time when officials could retain their posts indefinitely, this was a serious drag upon the civil service's general efficiency. It was not surprising, therefore, that under such conditions patronage had a certain virtue in allowing the alternative of direct recruitment from outside in place of routine advancement from within.

a. Appointment of North Cote-Trevelyan Committee

In the middle of the 19 century, when W.E. Gladstone became the Prime Minister of England, he appointed a committee headed by Sir Charles E. Trveelyan and Stafford H. NorthCote to examine the whole matter of appointment of civil servants and whether to continue the patronage system. The NorthCote –Trvelyan Committee recommended conducting open competitive examinations as the centralised way of entrance to civil service. Accepting the recommendations, Gladstone appointed a Civil Service Commission, which was alone empowered to admit persons to civil service, and gradually by its regulation the civil service was divided into several grades or divisions, each of which with the exception of professional and technical appointments – doctors, lawyers, engineers and the like – has its own competitive examination devised to select the best candidates at various stages of their educational careers.⁵²³

⁵²³ Mohammed Ali Rafath, *Bureaucracy and Politics: Growth of Service Jurisprudence in All India Services*, 23 (Rawat Publications, New Delhi, 2012)

The Trevelyan-NorthCote Report, 1853/4, condemned the system of patronage and advocated selection by merit. Each subsequent enquiry supported this view and a dictum of the Plyfair Commission, 1875, is well worth quoting. They wrote: ‘A personnel should be promoted, not because those above him are unfit but because he is the best man for the place. If this course be pursued, no man is branded as unfit, and it would not at all follow that the senior man, passed over for one promotion, might not be the fittest man for the next.’⁵²⁴

To some extent, the principle was tempered for the more junior grades; in which case it was widely agreed that seniority should be given more weight. The general practice was to follow the seniority list, but not slavishly, so that an officer adjudged not suitable for the highest post, could be ‘passed over’. In the main, the seniority principle was supported by the staff who felt that it was the one method not open to favouritism and other underhand influences.

b. The Fulton Committee

In the year 1966-67, the British Government appointed another committee under the chairmanship of Lord Fulton to review the working of the civil service and to re-examine the framework of recruitment designed by the NorthCote Committee. After the lapse of a century, the Fulton Committee had the historic task of rescuing the British Civil Service. The Fulton Committee recommended the setting up of a separate Civil Service Department responsible for the central management of the civil service and also abolition of all classes and adoption of a single unified grading structure covering the totality of the civil service. Further, in order to cultivate high degree of professionalism and provide training in administration and management, a Civil Service College should be set up. The Committee also stressed the importance of career management, expansion of lateral entry programme and interchange of personnel between public administration and private administration.⁵²⁵

5.3.4. Recognition of Seniority for Promotion in Recent Times in United Kingdom

The notion of seniority is not particularly relevant to the U.K. Civil Service in recent times. Promotion is based on merit following fair and open competition and pay is

⁵²⁴ Reported in the Report of the Royal Commission on Civil Service, 1929-31, 79 (Tomlin)

⁵²⁵ Supra n. 524 at 25

related to performance against a set of defined objectives, rather than linked to individuals' length of service. Therefore, a person joining one U.K. Government Department from another - and who is an established Civil Servant – would have his/her seniority recognised for the purpose of calculating his/her pay and pension. Hence, seniority depends largely on previous length of service as an established Civil Servant. The legal nature of any other previous employment relationship would not, therefore, be relevant. However, in some circumstances, an individual who commenced work in the Civil Service on a casual contract could have their length of service recognised if they were later employed on a permanent basis.

Most Civil Servants in U.K. are generalists and formal qualifications are not a prerequisite for selection for most jobs or grades. In other cases – for example the Fast Stream graduate recruitment scheme and specialist posts (e.g., lawyers, scientists) – the formal qualification is more likely to be a condition of recruitment. In view of this, an individual's seniority is not enhanced by his/her qualifications, although specialist staff with relevant skills or professional qualifications may have those recognised through an enhanced salary scale or receipt of an allowance.

There are no centrally defined regulations which govern the recognition of both seniority and professional experience applicable throughout the Civil Service in U.K. The Cabinet Office has overall responsibility for Civil Service issues, but as already discussed earlier, under the Civil Service Management Code, Human Resource Management issues such as pay, promotion, grading and recruitment are delegated to individual Government Departments.

It is worth mentioning here that the Commission for Public Service Appointment in United Kingdom had conducted an Audit of Recruitment and Selection Activity regarding Internal Promotions and Recognition of Service (Seniority) in the Civil and Public Service and had submitted a report entitled 'Transforming Public Services' in 2010 which was published in 2013⁵²⁶. The report states under "People and Leadership" that:

"Higher levels of service delivery and performance are achieved as staff are incentivised and motivated by merit based promotion and the most appropriate person is encouraged

⁵²⁶ Available at www.cpsa.ie/en/Publications/Audits-of-Recruitment-and-Selection-Activity/Internal-Promotions/Appendix-1.html visited on 23-6-2018

and supported to move into a position that best meets their capability and the organisation's needs.”

The Commission's mission is “To support the provision of excellent services by fostering a flexible public appointments process which upholds the principles of probity, merit, equity and fairness in recruitment and selection and related services.”

A key focus for the Commission is on ensuring that high quality and effective recruitment and selection procedures are practiced by Office Holders so that the best people are recruited and selected on merit. This objective supports the continuing development of a high performance culture in the Public Service advocated by the Taskforce on the Public Service.

The requirement placed on all Office Holders to promote on the basis of merit is clearly provided for in legislation. The Commission's emphasis on merit, transparency and fairness is provided for in Section 23 of the Public Service Management (Recruitment and Appointments) act, 2004.

The Commission for Public Services Appointment initiated this thematic audit into the use of 'seniority' for internal appointments on promotion to ascertain precisely the extent of its use. In undertaking this audit the Commission is keen to understand the reasons why the Department and Offices continued to use 'seniority' and examined the changes required to support and encourage Departments and Offices to comply with their obligations under the Public Service Management (Recruitment and Appointments) act, 2004.

As already pointed out in this chapter, that a significant proportion of promotions in the Public Service were awarded on the basis of 'Seniority/Suitability'. This means that a candidate with the longest service in the eligible grade is promoted as long as s/he is deemed fit or 'suitable' for promotion to the position in question. This means that as long as the candidate with the longest service period is not found unsuitable, s/he is promoted without recourse to a competitive merit-based job related assessment. The seniority/suitability method of promotion typically does not provide for any merit based competitive element. The Commission is aware that this approach is also viewed as providing promotional opportunities to 'good offices' who experience difficulties when faced with an interview, to the extent that s/he will not apply.

It is seen that the proportion of promotions that are awarded on the basis of seniority/suitability by the departments and offices have reduced considerably. However, the progress is slow. The “Report of ad hoc Group, Sustaining Progress Civil Service Modernisation Competitive Promotion Systems, February 2004” states “Under Sustaining Progress, the aim is to ensure that all or almost all promotions are competitive and merit-based within a reasonable period” and “In view of the commitments in Sustaining Progress and the need to move towards the best HR practice (which incorporates 100% competitive assessment methods), the Group considered that Departments should take immediately steps to improve existing processes.” In the recently ratified Public Sector Agreement 2010-2014 one of the union’s commitments is for ‘merit based promotions’ and office holders should move quickly and ensure that this is agreed and implemented with immediate effect. That the ‘length of service’ or ‘seniority’ is still a determining factor for the appointment and internal promotion in a considerable number of departments has become a major issue of concern for the Commission. The ‘Seniority/Suitability’ to making appointments falls short of the requirements sets out in the 2004 Act and the Commission’s Codes of Practice.

In conducting the audit by the Commission, a Survey was undertaken upon as many as 37 Organisations and the responses received were 100%. Out of the surveyed organisations, 49% of the organisations use seniority/suitability to make permanent appointments on promotion. It was found out that in determining suitability, under the Performance Management and Development System used in the Civil Service, Civil Servants are subject to an annual review their performance. Their manager must rate their performance and assign a score between 1 (unacceptable) and 5 (outstanding). To be eligible for promotion, a Civil Servant must receive a rating of 3 (fully acceptable) or higher.

In addition to this, the majority of offices and departments supplement this evaluation of suitability with either one or a combination of the following:

- a. Supervisor Assessments – Many organisations use written assessments completed by the first and second line managers to determine suitability for promotion.
- b. Assessment by Head of Office – In a small number of organisations the head of Office has responsibility for determining suitability for promotion. While a number of candidates may be evaluated by the Head of Office, of those deemed

suitable, the promotion is offered to the candidate with the longest service in the grade.

- c. Consistory – A number of organisations convene a group of senior managers to discuss and decide on candidates' suitability. Often this involves evaluation of written assessments by the applicants' line managers. Again, while a number of candidates may be evaluated by the consistory, of those deemed suitable, the promotion is offered to the candidate with the longest service in the grade.
- d. Interview – In some organisations a small group of the most senior candidates are interviewed against defined criteria/competencies applicable to the higher grade.
- e. Sub-panel from competitive process – In some cases a separate seniority/suitability panel is formed following a competitive process. This involves an agreed percentage or number of the most senior staff members, deemed suitable following the competitive process, also being placed on another panel that is formed in order of seniority. Candidates are offered appointment from these panels in order of an agreed sequence within the Department/Office.
- f. Competitive process restricted to most senior staff – Some of the Organisations surveyed hold a competitive process, whereby the candidate pool is restricted to the most senior staff members in the relevant grade. A panel is formed in order of merit.

Some respondents advised that while they do not award promotions on the basis of seniority/suitability, their internal appointments systems allow for additional credit, i.e., score, for length of service in competitive merit based processes. In such cases all other element of appointment process is competitive and merit based.

Thus, it is found that promotion is an important career developmental goal for many staff and is viewed as a legitimate area for engagement with staff. The Public Service Agreement 2010-2014 states “The Parties agree that in order to ensure a high performing high productivity Public Service, appropriately skilled from the outside the Public Service will be recruited to secure scarce and needed skills at all levels. Merit-based promotion will be the norm.”

5.4. Civil Service in France

France is a republic with a strong presidency. The civil service in France includes a large workforce. In France, the teachers including university professors and lecturers are classified as civil servants, which is not the case in countries like India and United Kingdom.

As in India, France has adopted a vertical classification of its civil service. All civil servants are clubbed in four categories – A, B, C and D – corresponding to the level of responsibility entailed and basic academic requirements postulated for entering a particular corps. Category D, as group D in India, is the lowest in the administrative hierarchy and includes janitor, cleaners, etc. Category C includes skilled and semi-skilled workers, clerical personnel, typists, etc. and is superior to category D. Category B includes first-line supervisors comprising administrative secretaries, higher executive officers, etc. the topmost civil servants engaged in policy making and supervision are grouped in category A, which includes the ENA and the EcolePolytechnique graduates on one side, and other graduates sometime civil and the attaches.⁵²⁷

France, similar to the civil service in India, is a stratified and fragmented system. The higher civil service in France comprises three components – administrative generalists, technical generalists, and scientists. The French Public Administration would not permit the generalists to move freely all over the administration system. In departments, which are of a technical and scientific nature, France observes the policy of manning middle and senior level positions by ‘scientific generalists’. These are civil servants who have undergone a common course of instruction at the state run technical ‘Grand Ecole’ (EcolePolytechnique) and a spell of specialisation in technical schools called ‘Ecoles D’ Applications’ (which are separate from EcolePolytechnique).

Though France has over 1500 corps all are not of the same level of gravity or significance. They are known as the Grands Corps de L Etat which consist of the following:

- Corps du Conseild’etat
- Corps de Inspection General des Finances
- Corps des Cour des Comptes

⁵²⁷ Supra n. 525 at 33

- Corps Diplomatique
- Corp des Prefectoral
- Corps des mines
- Corps des ponts et Chausses
- Corps des Ingeneurs des Telecommunications

The structure of the French civil service is characterised by its fragmentation, due to several factors. Firstly, the large number of hiring bodies (ministries, local governments, health facilities, branch offices, establishments publics) and the existence of three different sections of civil service (State, Local governments, Health). Secondly, within the State civil service strictosensu (i.e., with tenure), corps, grading and hierarchy are precisely defined and strengthen the esprit de corps, while contract employees belong to another structure.⁵²⁸

The current French civil service system is based on four civil service laws. Together these form the general civil service statute. The statute consists of a basic law providing for the rights and obligations of all civil servants as well as of three laws that relate to the three civil service groups. These laws concern the French State Civil Servants (la Fonctionpublique de l'Etat), the public servants working in regional and local government (la Fonctionpubliqueterritoriale) and the public servants working in the public hospitals, in particular nursing staff (la fonction public hospitaliere). Civil service law consists further mostly of government decrees.⁵²⁹

The central legal text that organises the career of civil servants in France is the Civil Service General Statute (CSGS). The CSGS applies to all civil servants. It embodies the rights and obligations of civil servants and emphasises the concepts of career and hierarchy. Furthermore, particular statutes have also been developed for each corps. Dispositions include details about categories, classes and steps, promotion, performance evaluation disciplinary, etc. for the corps. Only few particular statutes derogate to the rules of the General Statute.

⁵²⁸ Id at 34

⁵²⁹ Labour relations in Belgian, French, German and Dutch public services (2001)

a. Promotion in the French Civil Service

The Civil servants in France start their career as trainees (stagiaires), generally for a period of of year. At the end of this probation and on-the-job training period, if they properly filled their duties, they are granted confirmation (titularisation) and tenure.

In the course of their career, civil servants may access to superior grades, corps or jobs; or within the same grade or corps, they may take up different jobs. *In all cases, they are guaranteed to climb the steps within a grade, on the basis of seniority.* Civil servants are given a grade within the corps hierarchy. As a rule and a practice, grade (assigned to the individual and confers him/her rights) and job (the function) are different and independent from each other. The career system is valued as protection against political changes.⁵³⁰

The system of career progression within the civil service is based on automatic mechanisms and merit-based selection. There is step progression and class progression. Step progression, as provided under particular statutes which define the minimum seniority required, though flexibility may apply. The process of progression occurs automatically. In most corps, time spent in a step can either be shortened, as a good performance reward, or increased, as a sanction of bad performance. Class progression consist of civil servants who wish to be promoted in the superior grade are registered, each year, in the promotion roster, in order of merit, as agreed within the corps. Merit appreciation is at the discretion of managers, with the joint administrative committee as an appeal court. Some corps can also require a professional exam. Finally, an internal competitive exam can be necessary to access the last class of a corps. As a general principle, class progression means change of job.

For civil servants who wish to change corps, they may opt for mobility procedures such as secondment (detachement) or reassignment out of one's administration (mise a disposition); in practice only, civil servants of Category A use these. There is always the possibility to pass an internal competitive exam, such as the entry exam to civil service schools.⁵³¹ In recent times, the importance of seniority of in career development has been considerably reduced in favour of merit.

⁵³⁰ The World Bank – French Civil Service Management (2005)

⁵³¹ Ibid

The uniqueness of the French Civil Service is that the Senior Civil Servants, who are rather known as, High Level Civil servants, enjoy special conditions that are different from the rest of the civil servants. Though they do not have a legally define status, these high level positions are exceptional and have a special social status, and in particular, they enjoy special conditions in relation to their recruitment and entry, assignment of posts and benefits. The Senior Civil Servants are recruited by a more centralised process than general civil servants. Performance appraisal takes place annually, the Assessment Interview is held between the Programme Manager and the Senior Civil Servant, or at the very top level. There are three core elements in the appraisal: Indicator-based objectives; Operational quality of the service and the Capacity of the Director and the Assessment carried out by the hierarchical leaders.

In France, there are over 5000 senior civil servants in the Central Administration (around 16% of which are female civil servants). Since 2005, career initiatives and the elimination of the 50 years old age limit makes it easier to recruit senior executives via the “tour exterieur”. This procedure, which is open to Category A civil servant with at least eight years of service, is specifically designed to take account of professional experience. Mobility obstacles between the three branches of the civil service have also been removed so that local government and hospital civil servants seconded into the civil administrator’s corps may move there permanently after 2 years of service.

5.5. Public Administration in Germany

Germany’s administrative system is to a large extent framed by the country’s constitutional principles. These are- as far as the public sector is concerned – federalism which defines the state (Lander) as members of the Federation yet retaining a sovereign state power of their own and local self-government which mainly operates on two levels, that of the local authorities and of counties. Due to these prevailing constitutional principles, German public administration is considerably varied and complex. This framework has given rise to a whole variety of subnational peculiarities which diverge more or less in their administrative cultures. Nevertheless, the core elements of the

German civil service are relatively uniform for the public servants at all levels of the Government.⁵³²

The employment of civil servants is governed by legislation, which include the right to determine the legal status of all public servants according to Article 75, paragraph 1. Basic Law, as part of the general legislation (“Rahmengesetzgebung des Bundes”) and to make decisions relating to pay and pensions for civil servants according to Article 74a, paragraph 1 of the Basic Law, as part of concurrent legislation.

Employment in the public service is based on a contract of employment under private law. Most of these conditions are set out in collective agreements negotiated between the public employers and the responsible trade unions. In Germany, three types of employment exist in the performance of public tasks⁵³³:

- i. Statutory civil servants (Beamte), judges and soldiers;
- ii. Contract staff employed under private law (Angestellte); and
- iii. Wage earners (Arbeiter)

Article 33(5) of the Basic Law stipulates that the traditional principles of the professional civil service, i.e., the ranks of professional civil servants as opposed to public employees without civil servant status, should be taken into account when adopting law. They are the standard for all federal and state provisions on civil servants. The principles have emerged in the course of the development of the public service. They are a core of structural principles of the professional civil service which were acknowledged as binding by the Weimar Constitution and which have been respected ever since. The constitutional reform of 2006 revised Article 33(5) of the Basic Law to read that the law governing the public service “shall be regulated and developed with due regard to the traditional principles of the professional civil service.” The previously applicable principles of civil service continue to apply and determine the core values of the professional civil service. A provision under the civil service law cannot violate these principles, but legislators have some discretion to adjust the provisions of civil service law to new challenges and developments in society. The traditional civil service principles include the principle of life tenure, maintenance principle, the principle of

⁵³² Civil service in Germany. Characteristics of Public Employment and Modernisation of Public Personnel Management. Unpublished paper presented at meeting “Modernisation of State and Administration in Europe: A France-German Comparison” (2004)

⁵³³ UN International Profiles of national public administration: Germany and Civil Service in Germany

merit, the career principle, neutrality on party politics, the prohibition of strikes and the employer's duty of care.⁵³⁴

a. Promotion in the German Civil Service

The German career system for civil servants is divided into four standard career structures which are the administrative class (hohererDienst), the executive class (gehobenerDienst), the clerical class (mittlererDienst) and the sub-clerical-class (einfacherDienst). Each career class consists of five grades, each with a rising pay scale within the "Salary Regulation A". The main characteristic of the "Salary Regulation A" is increments on the basis of a seniority allowance. In contrast to the salary system of "Regulation A", top positions in the civil service - which are related to the leading grades in the administrative class - are remunerative according to a special "Salary Regulation B" which does not contain any increments for seniority, i.e., income is irrespective of the officer's age or length of service. In keeping with the basic principles of a merit-based career system, entrance for civil servants to the civil service classes is strictly linked to certain formal qualification requirements.⁵³⁵

Each of the four civil service career groups consists of four grades or offices (Amt) that can be reached through promotion.⁵³⁶ The second and the third grades are normally automatically attained after a certain period regardless of performance level; the performance principle, thus, is actually often replaced by the principle of anciennity. Furthermore, as a rule, every applicant has to enter the initial grade in her or his respective career group, irrespective of professional experience gathered in the private sector.⁵³⁷

Promotions are granted according to aptitude, qualifications and professional achievements, that is, performance. In most cases, they entail a change of post. Before

⁵³⁴ The Federal Public Service: An Attractive and Modern Employer, Federal Ministry of the Interior, Germany

⁵³⁵ Civil Service in Germany: Characteristics of Public Employment and Modernisation of Public Personnel Management, Unpublished paper presented at meeting 'Modernisation of State and Administration in Europe: A France-German Comparison' (2004)

⁵³⁶ This uniformity had been criticised by the civil service reform commission in 1973, too. The classical conception is that each rank/grade corresponds to a specific "office" in the hierarchy; also, grades are related to official titles. Empirically, though, offices within career groups and even between career groups are often difficult to distinguish in terms of job requirements. In this respect, the grading system of employees is more precise and elaborate, thanks to union bargaining.

⁵³⁷ Hans-Ulrich Derlien, *German Public Administration: Weberian Despite "Modernisation"*, Krishna K. Tummula (ed), Comparative Bureaucracy (In Press)

the promotion is granted, the civil servant works in the higher post on probation. Since civil servants are assigned to established posts, promotion requires that a suitable higher post is available.

Performance appraisals of civil servants include an assessment of professional achievements, aptitude and qualifications. In order to gain an informative, objective and consistent picture of civil servants' performance, criteria for the performance appraisals are set out in the guidelines. Performance appraisals are carried out regularly at least every three years or on specific occasions. In order to improve the consistency of performance appraisals, guidelines for assessment grades were established in the federal service in 1997 (quota arrangement). Appraisals serve as the basis for proper personnel decisions and personnel development measures; they thus constitute an important instrument of human resource management. In the framework of defined promotion procedures, qualified civil servants have the possibility to move up the next career path. To this end, they must successfully pass the selection procedure.

The public service essentially depends on the knowledge of its staff. They must be willing to constantly acquire new knowledge to be able to deal with ever changing laws and regulations. So training and qualification are essential to keep the public service up to the mark. Therefore, training is provided by both external and internal institution and the Federal Academy of Public Administration in Bruhl is the central advanced training institution for the federal administration. In addition, each ministry has tailored strategies for advanced training and personnel development.⁵³⁸

5.6. Public Administration in South Africa

In order to achieve a public service which is "representative, coherent, transparent, efficient, effective, accountable and responsive to the needs of all" in the Republic of South Africa, the White Paper on Transformation of the Public Service was released in November, 1995. This White Paper was a coherent guide that informed, managed and drove the transformation process. The goals set out in the Paper were further entrenched in the Constitution 1996. The White Paper advocated the "Batho Pele" which means People First, initiative in 1997.

⁵³⁸ Id at 53

The Public Service Act, 1994⁵³⁹, comprised of 44 sections and 3 Schedules providing for the organisation and administration of the public service, and the regulations of conditions of employment, terms of office, discipline, retirement and discharge of its members. The other binding instrument within the Public Service is a resolution of the Public Service Co-ordinating Bargaining Council (PSCBC), which binds employer alike when agreed to by majority of the trade unions represented by the PSCBC. The Act, the Regulations and the Collective Agreements together make up for the Public Service Management Framework.

b. Promotion in Public Service

The Public Service Act, 1997 and the new public service regulations introduced a new performance management system. The new system is that it establishes clear links between the objectives of the institution and individual work objectives. The new performance management system bases promotion and career advancement on performance, rather than on seniority or qualifications.

5.7. The People's Republic of China

Since 1993, the Chinese Government has taken significant steps to reform the country's civil service system, which is still evolving, service in the public sector carries with it considerable prestige in China and central ministries are staffed with highly competent employees. As a significant outcome of the administrative reform, a civil service system was ushered in 1993. The State Council promulgated the Provisional Regulations on Civil Servants only recently which came into force in October 1993. The civil service system that China has promoted nationwide includes a series of specific sub-systems, such as the categorisation of posts, recruiting through open exams, annual performance appraisals, exchange of posts and dismissal of incompetent officials.⁵⁴⁰

It is stipulated that the governments at all levels recruit civil servants through open and fair competition rather than by appointment. Nearly, all provinces, municipalities and autonomous regions have recruited civil servants through open examination and merit appraisal.

⁵³⁹ No. 103 of 1994, Government Gazette, 03-06-1994, Vol. 348, No. 15791, pp 1-75

⁵⁴⁰ UN – Profile of National Administration (2000)

a. Law of the People's Republic of China for Public Servants

On April 27, 2005, President Hu Jintao by an Order No. 35 promulgated the “Law of the People’s Republic of China on Public Servants” which was adopted at the 15 Meeting of the Standing Committee of the Tenth National People’s Congress of the People’s Congress of the People’s Republic of China. The law came into effect from January 1, 2006. The Law was enacted in accordance with the Constitution and for the purpose of regularising the administration of public servants, safeguarding their lawful rights and interests, improving supervision over them, building up a contingent of public servants with high quality, promoting a diligent and clean government and enhancing its efficiency.⁵⁴¹ Public servants in China are workers who perform official duties according to law, are members of the administrative establishment of the State, and whose salaries and welfare benefits are paid by the government. This law shall be applicable to the duties and rights as well as the administration of public servants. Where there are other provisions contained in the laws governing the election, appointment and removal of, and the supervision over, the leading persons among public servants, and the duties and rights and the administration of judges, procurators, etc., those provisions shall be applicable.⁵⁴² It has been specifically mentioned under Article 4 of this Law that in application of the public servant system, Marxism, Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of ‘Three Represents’ shall be upheld as the guidance, the basic line for the primary stage of socialism shall be implemented, the cadre line and the policy of the Communist Party of China shall be carried out, and the principle that cadres are under the administration of the Party shall be adhered to.

The State administers public servants by grouping them in different categories in order to improve administrative efficiency and raise the level of scientific management.⁵⁴³

The department in charge of the public servants at the central level shall be responsible for the comprehensive administration of public servants nationwide. The local departments in charge of public servants at or above the country level shall be responsible for the comprehensive administration of public servants within the areas under their respective jurisdictions. The department in charge of public servants is conducted by such department at a lower level. The departments in charge of public

⁵⁴¹ Article 1 of the Law of the People’s Republic of China on Public Servants

⁵⁴² Article 3

⁵⁴³ Article 8

servants at various levels shall direct the administration of public servants conducted by various organs at state level.⁵⁴⁴

The State practices the system of categorised posts among public servants. The posts held by public servants shall, according to the nature and characteristics of the post and administrative needs, be categorised as comprehensive administration, professional skills and administrative law enforcement. Where separate administration is required for a post due to its specific characteristics, the State Council may, in accordance with this Law, set up an additional category for such post. The scope covered by the different categories of posts shall be prescribed by the State separately.⁵⁴⁵

The State establishes an order of posts held by the public servants on the basis of categories of such posts.⁵⁴⁶ The posts of public servants are divided into leading and non-leading posts. The levels of the leading posts include: chief and deputy at the Central level, chief and deputy at the Provincial level and ministerial level, chief and deputy at the department and bureau level, chief and deputy at the township and section level. The non-leading posts are set up at or below the department and bureau level.⁵⁴⁷ The leading posts under the category of comprehensive administrative shall be established in accordance with the Constitution, relevant laws, levels of the posts and institutions. The non-leading posts under the category of comprehensive administration include: inspector, deputy inspector, analyst, associate analyst, senior section member, junior section member, section member and office clerk. The order of posts for the public servants under the categories other than the category of comprehensive administration shall be prescribed separately by the State in accordance with this Law.⁵⁴⁸

The government departments shall set up specific posts for the public servants thereof in accordance with the established functions, institutional echelons, limits of the authorised size, the member of posts and structural proportion, and define the official duties and responsibilities as well as the qualifications for holding a post.⁵⁴⁹ The posts of public servants shall correspond with the relevant ranks. The corresponding relations between the posts and ranks of public servants shall be defined by the State Council. The posts

⁵⁴⁴ Article 10

⁵⁴⁵ Article 14

⁵⁴⁶ Article 15

⁵⁴⁷ Article 16

⁵⁴⁸ Article 17

⁵⁴⁹ Article 18

and ranks of public servants provide the basis for determining their salaries and other benefits. The rank of a public servant shall be determined on the basis of the post he holds, his political integrity and professional competence, his achievements in work, and his educational qualifications and seniority. A public servant remaining at the same post may be promoted in rank according to State regulation.⁵⁵⁰

b. Promotion in the Civil Service

Promotion of state civil servants must adhere to the principle of both political integrity and ability, and appointment on merits, and lay stress on work accomplishments. State civil servants can be promoted one grade at a time in accordance with the order for promotion. Individual civil servants who display outstanding political integrity, ability and work performance may skip over one grade in promotion. But the decision must be reported to departments concerned for approval as stipulated.⁵⁵¹

Assessment of public servants shall be conducted in compliance with the limits of authorised administration, and in an all-round way, covering their political integrity, ability, diligence, achievements and incorruptibility, with special attention paid to actual achievements in work.⁵⁵² The assessment of public servants shall be divided into routine and regular assessments. Regular assessments shall be made on the basis of routine assessment. Regular assessment of the public servants who are non-leading members shall be made annually. The public servants themselves shall firstly, give their summaries in light of the duties and representatives of their posts and relevant requirements. After listening to the opinions from the masses, the leading person in charge shall make a proposal concerning the grades of the assessment, and then the leading person of the department or an authorised appraisal committee shall decide on the grades of the assessment. The regular assessment of the leading persons shall be conducted by the department in charge in accordance with relevant regulations.⁵⁵³

The provisions regarding promotion and demotion of public servants are specifically provided under Chapter VII of the Law of the People's Republic of China for Public Servants. A public servant to be promoted to a higher office shall meet the requirements and qualifications in terms of ideological and political quality, work capability,

⁵⁵⁰ Article 19

⁵⁵¹ UNESCAP – Country Report on Local Government System – China (2001)

⁵⁵² Article 33 of the Law of the People's Republic of China for Public Servants

⁵⁵³ Articles 34 and 35, Law of the People's Republic of China for Public Servants

educational level and work experience. Promotion of public servants to higher posts shall be done level by level. For a public servant who is especially excellent or there is a special need for work, he may be promoted by breaking conventions or by skipping one level in accordance with relevant regulations.

Where a public servant is promoted to a leading post, the following procedures shall be used⁵⁵⁴:

- i. On the basis of democratic recommendation, deciding on the candidate for review;
- ii. Arranging for review, studying and setting forth proposals for the post to be assigned to, and deliberating on them within a certain scope, where necessary;
- iii. Discussing and deciding on the candidates within the limits of authorised administration; and
- iv. Completing formalities for appointment in accordance with relevant regulations. For promotion of a public servant to a non-leading post, the procedures specified in the preceding paragraph shall be followed *mutatis mutandis*.

When there is a vacancy for a leading post at or below the level of the chief of the department or bureau or for a non-leading post at or above the level of associate analyst and other corresponding levels, a candidate for such a vacancy may be selected openly from among people in the community.⁵⁵⁵

5.8. Public Administration in Canada

Canada has a vibrant public service system that strives for excellence, that is representative of Canada's diversity and that is able to serve the public with integrity and in their official language of choice. The public service has contributed to the building of Canada, and will continue to do so in future while delivering services of highest quality to the public.

a. The Public Service Employment Act, 2003

The Public Service Employment Act, 2003 received the assent of the Crown on 7 November, 2003, with the object of establishing of employment in the public service.

⁵⁵⁴ Article 44

⁵⁵⁵ Article 45

The Preamble to the Act recognises that the Government of Canada is committed to a public service that embodies linguistic duality and that it is characterised by fair, transparent employment practices, respect for employee efficient dialogue and recourse aimed at resolving appointment issues.

Appointment to the public service of Canada is done on the basis of merit. Appointments by the Commission of Public Service to or from within the Public Service shall be made on the basis of merit and must be free from political influence.⁵⁵⁶ An appointment is made according to merit when⁵⁵⁷:

- a. The Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the Deputy Head, including official language proficiency; and
- b. The Commission has regard to
 - i. Any additional qualification that the deputy head may consider to be an asset for the work to be performed, or for the organisation, currently or in future,
 - ii. Any current or future operational requirements of the organisation that may be identified by the deputy head; and
 - iii. Any current or future needs of the organisation that may be identified by the deputy head.

Promotion in Public Service in Canada is made through an assessment. In making an appointment or promotion, the Commission may use any assessment method such as a review of the past performance, and accomplishments, interviews and examinations that is considers appropriate to determine whether a person meets the qualifications.⁵⁵⁸ Thus, seniority alone is not the deciding factor in matters of promotion of the employees. The Act defines promotion as the assignment to an employee of the duties of a position for which the maximum rate of pay is more than the maximum rate applicable to the employee's substantive level immediately before the assignment of the duties, by an amount equal to or greater than

- a. The smallest increment on the pay scale for the new position, if it has more than one rate of pay; or

⁵⁵⁶ Section 30(1), Public Service Employment Act, 2003

⁵⁵⁷ Section 30(2)

⁵⁵⁸ Section 36, Public Service Employment Act, 2003

- b. 4% of the maximum rate of pay for the previous position. If the new position has only one rate of pay.

5.9. Public Administration in Australia

The Public Service System of Australia aims to serve the Government, the Parliament and the Australian Public efficiently and effectively. The recruitment and the conditions of service of the Australian Public Service Employees is provided under the Public Service Act, 1999. This piece of legislation defines the powers, functions and responsibilities of Agency Heads, the Australian Public Service Commissioner and the Merit Protection Commissioner and to establish rights and obligations of the Australian Public Service.

a. The Public Service Act, 1999

Employment Principles of the Australian Public Service

The APS is a career based public service that⁵⁵⁹:

- i. Makes fair employment decisions with a fair system of review;
 - ii. Recognises that the usual basis for engagement is an ongoing APS employee;
 - iii. Makes decisions relating to engagement and promotion that are based on merit;
 - iv. Requires effective performance from each employee;
-
- i. ...
 - ii. Provides workplaces that are free from discrimination., patronage and favouritism;
 - iii. ...

A decision relating to engagement is based on merit if all eligible members of the community were given a reasonable opportunity to apply to perform the relevant duties. The suitability of the candidates are assessed by a competitive selection process. The assessment is basically a qualitative assessment which depends on the capacity of the candidate to perform the relevant duties and on the relative capacity of the candidates to

⁵⁵⁹ Section 10A, Public Service Act, 1999

achieve outcomes related to the relevant duties. This is the primary consideration in making the decision.

5.10. Public Administration in Japan

Japan, heavily influenced by the Chinese models in so many other areas, also adopted a Chinese style bureaucracy as early as the Nara Period (710-794). Bureaucratic organisations emerged in various time periods and geographical areas throughout the country's history. A series of steps taken during the early years of the Meiji government provided the ground work for developing a truly modern national bureaucracy. The model for Japan in much of its government organisation, and especially in its national bureaucracy, was Bismarck's Prussia. By implication this made it, as well, a relatively close approximation of Max Weber's ideal bureaucracy. Under a small core of oligarchs, the national bureaucracy was designed to be an instrument that would take the lead in the nation's modernisation and industrial development. A strong legalistic basis underpinned bureaucracy activity.⁵⁶⁰

The Tokyo Imperial University was created for the explicit purpose of training skilled servants. The Civilian and Military bureaucracies were separated and put on a par. Both were given explicit mandates to serve the emperor and the nation, rather than region or class. Careers in the bureaucracy were accorded security and hence the civil service became a permanent career. Written rules assigned separate responsibilities to different offices.⁵⁶¹

a. The National Public Service Act, 1947

Japan's contemporary bureaucracy is structurally similar to many of its counterparts in Western Europe although it is typically smaller than any other. It is highly meritocratic and typically staffed with the nation's most talented individuals.

The National Civil Service Law titled the National Public Service Act, 1947, provides for the main legal outlines of Japan's national bureaucratic service. In addition, Japan has an extensive local governmental service and about 100 public corporations. Together these three employ over 5 million full-time employees (komuin).

⁵⁶⁰ T.J. Pempel, *Bureaucracy in Japan*, Vol. 25 No. 1, Political Science and Politics, (March 1992)

⁵⁶¹ Ibid

In the early 1990s, there were 12 main ministries (sho) in the Japanese national government. Along with the Prime Minister's Office (Soifu) these form the principal administrative organs of the national government. In addition, there are a number of agencies and commissions, such as the National Archives, the Science Council of Japan, the Department of Imperial Household, the Tax Administrative Agency, the Immigration Service Agency and the like which are collectively referred to as "external organs".⁵⁶²

Each of the 12 main ministers and most important agencies are headed by a minister, with the assistance of one or occasionally two, vice ministers. These top two to three individuals are almost invariably elected parliamentarians and the only politically appointed and responsible officials in a ministry or agency; below them are members of the appointed civil service. The most senior civil servant in each agency is administrative vice-minister, in charge of oversight of all administrative matters within his ministry. Below him stretch a limited number of clean lines of hierarchy. Each ministry is typically divided into six to twelve functionally arranged bureaus (kyoku), and these in turn are either sub-divided into departments (bu) or divided directly into sections (ka).⁵⁶³

Responsibility for overseeing the national civil services in regard to recruitment, promotion compensation and adjudication of disputes lies with the National Personnel Authority, a semi-autonomous body somewhat analogous to the U.S. Civil Service Commission.⁵⁶⁴

b. Career Advancements

Most members of the national bureaucracy remain with a single government agency during their entire careers. Advancement tends to be principally a function of seniority, and groups of individuals hired together tend to be promoted together, with some allowances for different demonstrations of ability or lack thereof. Individuals rarely remain in a single position for more than two or three years, and transfers are designed, among other things, to assure that all senior officials will be broadly familiar with most of an agency's or ministry's complete functions.

The promotion and transfer of officials shall be made by an appointer, based on the personnel evaluation, from among persons who are found to have the ability to perform

⁵⁶² Ibid

⁵⁶³ Articles 2 – 8, National Public Service Act, 1947

⁵⁶⁴ Article 3

the standard duties of the standard government position of the classified job ladder pertaining to the position to be filled and aptitude required for the position to be filled. In cases where an appointer demotes an official, he/she shall appoint the official, based on the personnel evaluation of the said official, to a government position which the said official is found to have ability to perform the standard government position of the classified job ladder pertaining to the position to be filled and aptitude required for the position to be filled. With regard to the promotion, demotion and transfer of an official who has not had personnel evaluation due to circumstances such as having been dispatched to an international organisation or a private enterprise, etc., notwithstanding the provisions of the preceding two paragraphs an appointer may promote, demote or transfer the said official, based on demonstrated abilities other than those demonstrated by personnel evaluation, to a government position in consideration of the ability of the said official to perform the standard duties of the standard government position of the classified job ladder pertaining to the position to be filled and aptitude required for the position to be filled.⁵⁶⁵

Technically, all promotions in civil service are governed by civil service regulations and are not subject to interference by political parties or other partisan considerations. In point of fact, all promotions at the level of bureau chief and above are subject to additional cabinet and LDP scrutiny. As a result, the actual promotion of the individuals to top positions in the bureaucracy is by no means devoid of political sensitivity.

5.11. A Sum-Up

Conflicts between seniority and merit are common trends seen in all national public service systems. The concept of seniority, is frequently viewed negatively in the American context because of perceived conflicts with three other principles of personnel action: merit, political direction and equal employment. Merit is generally defined as the attempt to make employee competence the major criteria affecting employee decisions. Advances obtained by seniority are believed to favour those with lower qualifications for the position over those hired or promoted through comprehensive testing or analysis of skills and accomplishments. Political direction refers to the link between the aims of political leaders and bureaucratic response. The conflict gets aggravated when employees are unionised and when collective bargaining and negotiation influence

⁵⁶⁵ Suprs n. 564

personnel decisions. Union members generally want seniority to influence policies related to promotion and layoff of employees. Merit principles would encourage promotion and layoffs based on performance or objective testing. Union often support application of the merit principle in the hiring of employees but seek to limit its application in promotion and layoffs. Concerns for seniority also conflict with the interests of political leaders. When the spoils system predominated hiring, pay, promotion was determined by the party in power. Thus, unless an employee was politically active and the party was victorious, job security was unlikely. The advent of civil service in U.S.A., of course, limited the extent to which those in power could control appointments. The aim was a bureaucracy guided by those with extensive knowledge and experience in the managing of government. However, the value of seniority in personnel practices was formally written into the 1964 Civil Rights Act through S. 703(h). This provision was placed in the act in response to supporters of seniority. The reference to intentional discrimination and the use of the term “bona fide” were added as a compromise between those who believed that the seniority provision would curtail the ability of excluded groups to challenge employment policy and those who advocated seniority. The presence of S. 703(h) within the legislation designed to enhance the employment rights of excluded group has led to a series of challenges often reaching the Supreme Court. Thus, seniority remains a guiding principle of American personnel policy. Its strict application conflicts with concerns of merit, political direction and equal employment. It stands for stability and continuity against those who want to change employment policy to reflect political and social change.

It is seen in the chapter that closed career systems make appointments through promotion from within the civil service. position-based systems allow more open access, with lateral entry relatively common. Merit criteria in both systems include academic qualifications. To apply for a “general qualification” post, applicants can have any type of university degree, while “specific qualifications” posts require a particular degree (in economics, engineering, law, etc.). Career systems generally accompany this with criteria that specify seniority or length of time in other posts.

The arrangements to ensure that pure political appointments are constrained vary across the OECD. In the United States of America, the numbers are constrained by a simple formula - 10% of all senior executive service appointments (approx. 800) and specified

positions at the “executive schedule” level (approx. 550). In the United Kingdom, numbers are constrained by custom and practice that dictate that “very few” politically appointed advisers are feasible. In France, numbers are limited by hard constraints in the budgets available to ministers to hire within those cabinets. In Germany, there are no pure political appointments.

In most OECD countries, political appointments tend to be concentrated at upper levels of management, or among “sensitive” posts (the secretarial staff of a minister). This contrasts with the reality of parts of the developing world, where political affiliation may be the primary selection criteria for posts throughout the organisational hierarchy. The trend, however, is towards an administrative career based on merit. Civil service laws that require merit-based selection and promotion have been approved or are under discussion in a number of countries.

Closed career systems (France and Japan are clearest examples in the OECD) make appointments through promotion from within the civil service. Position-based systems (Commonwealth OECD countries and USA) allow more open access to positions. But although position-based systems allow lateral entry this rarely implies towards recruitment to mid-and-top-level management positions from outside government. There remains a strong bias against such recruitment in most countries, although some have seen more lateral mobility within government, possibly as a consequence of more centralised regulation of the recruitment procedure.

During the past century, most industrialised countries have created a professional, merit-based civil service system and have consolidated the regulation and supervision of public personnel management through formal institutional arrangements. Traditionally, this has entailed a delicate relationship between three key organisational actors: the independent commission, the central personnel office, and line agencies. Under the independent commission, the central personnel office is part of the executive and accountable to the government (i.e., not independent). It takes responsibility for personnel management activities that are not carried out by the commission. Generally, these activities include position creation and classification, staff training and professional development, determination of terms and conditions of employment and formulation of disciplinary code, salaries and benefits. The degree of personnel

management responsibilities assumed by line agencies initiate selection processes, make requests for salary increases, etc.

Many countries have a significant number of hybrid appointments in which merit, defined by meeting explicit and contestable criteria, is accompanied by subjective political judgments. By contrast with 'pure' political appointments, in which serving members of the government make hiring and firing decisions, in hybrid appointments merit is a necessary but insufficient condition for appointment. Hybrid appointments are generally made at the upper management levels. The Canadian system for appointing Deputy Ministers (equivalent to Permanent Secretaries or Secretaries General) exemplifies the process. These appointments are made by the Prime Minister and have no security, appointments (and dismissals) being made "at the pleasure" of the Crown. These appointments are not purely political because it would be inconceivable (and a source of public outrage) for the PM to make an appointment disregarding the advice of the Clerk to the Privy Council.

There are two problems to be solved in hybrid appointments:

- Attracting the best, given that merit is not a sufficient criterion for appointment and so the best might be deterred by the threat of apparently arbitrary political dismissal
- Balancing two conflicting sets of recruitment criteria

The most common solution is a 'pool system' which places the candidates in a pool upon satisfying the merit criteria. Those in the pool are then considered for political selection or appointment according to seniority. In France, pool management is undertaken by providing a job guaranteed in the career civil service to all discretionary appointees, so that their dismissal will be effectively cushioned. In Germany, approximately 140 most senior positions are all hybrid appointments effectively managed under a pool system. Civil servants who are dismissed from a hybrid position are retained in the pool as "ruhestand" (resting). They receive an allowance but not a pension on the basis that they may be reappointed at any time.