

## CHAPTER 7

### CONCLUSION AND SUGGESTIONS

*“In the happiness of his subjects lies the happiness of the ruler; in their welfare, his welfare; whatever pleases him shall not consider as good but whatever pleases his subjects, the ruler shall consider as good.”*

---Kautilya in Arthashastra

Administration, as a group effort to accomplish some specific objectives, is a generic process and is ubiquitous. Experts have been critical about the neo-liberal thought of modern state which overemphasises the ‘market’ and has failed to appreciate the critical role of public institutions in the maintenance and development of society. In their recent edition of ‘The New Public Service: Serving, Not Steering’<sup>585</sup>, Denhardt and Denhardt have succinctly put the central role of government as ‘service’. It has been emphasised by them that ‘government should not be run like a business; it should be run like a democracy’. Public interest and democratic citizenship are the hallmarks of the government. As the sense of service and community would be expanding, public employees would be having better self-estimation and sense of dignity and self-respect. They would be reconnected with the citizens. As the public servants would be inviting citizens to participate in the governance process, there will emerge a new culture of co-governance with the administrators and the citizens working together for the common good of the society. This new attitude and new involvement – co-governance - has led to expansion and multiplicity of function of the government.

In fulfilling this dream of forming a co-operative and welfare government, one cannot imagine an administration without a big band of service personnel. In India, the government is the biggest provider of jobs to the people which includes the civil services, the defence services and jobs in the public sector undertakings. According to an estimate, in India, civil services engages about 6.5 million employees at all levels within the Central and State Government. Being the biggest employer in the country, there is a tremendous pressure on it not only to ensure that it provides equal

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<sup>585</sup> Denhardt and Denhardt, *The New Public Service: Serving, Not Steering* (Routledge, New York, 4<sup>th</sup> ed., 2015)

opportunities to all sections of society but also the service delivery mechanism of the government remains efficient and effective in order to meet the demands of governing such a large and diverse population.

Thus, the government has been termed as being a ‘model employer’ and it is required to act fairly giving due regard and respect to the rules framed by it for the welfare of its employees. The Supreme Court in *Balram Gupta vs. Union of India*<sup>586</sup>, observed that, as a model employer the Government must conduct itself with high probity and candour with its employees. In *State of Haryana vs. Piara Singh*<sup>587</sup>, the Court had clearly stated that the main concern of the Court in matter of employment is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. Similarly, in *Secretary, State of Karnataka vs. Umadevi and Others*<sup>588</sup>, the Constitution Bench, while discussing the role of the State in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a model employer. In *Mehar Chand Polytechnic & Anr. vs. Anu Lamba & Ors*<sup>589</sup>, the Court observed that public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India and that the recruitment rules are framed with a view to give equal opportunity to all citizens of India entitled for being considered for recruitment in vacant posts.

At this junction, personnel administration plays a very important role. Personnel administration has been defined as ‘a code of the ways of organising and treating individuals at work so that they will each get the greatest possible realisation of their intrinsic abilities, thus attaining maximum efficiency for themselves and their group, and thereby giving to the enterprise of which they are a part, its determining competitive advantage and its optimum results’. It has been seen that institutions which have been successful in developing their pupil, have become successful organisations/institutions. The general experiment is that a successful manager is one who gets people to work with him, not because he has power over them but because he is the kind of leader for whom the subordinates want to do their best. Personnel administration or human resource management is a staff function whose basic purpose is to help the organisation

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<sup>586</sup> AIR 1987 SC 2354

<sup>587</sup> AIR 1992 SC 2130

<sup>588</sup> AIR 2006 SC 1806

<sup>589</sup> AIR 2006 SC 3074

achieve its goals. Within the broad framework of strategy, policies and structure of the organisation the personnel function is discharged through a number of processes such as recruitment, selection, placement, training, promotion and career management, compensation and other related activities.

Career development is one of the basic considerations in the personnel policy of the government. In the words of Glenn Stahl, the term 'career' denotes "...the progression of an individual in a field of work throughout the employable years of his life. A career in business or in a profession is a commonly understood concept. Sometimes it means devotion to a speciality, sometimes it means a series of employment which are only loosely related to each other. In either case, it usually means some degree of success. The purpose of career development is to attract and retain men and women of talent and ambition in the government employment. In order to establish government career service and to attract the best talent in the service, it is essential to provide equal promotional opportunities and advancement. There should be suitable outlet for career development opportunities to continuously attract new talents and to create enthusiasm in the existing personnel. In order to enhance the morale and efficiency of the public personnel in his/her career, it is highly necessary that the security of tenure and better conditions of service by way of suitable pay scales, promotional opportunities and retirement benefits and a just and fair treatment to public personnel under the State be given. This is of utmost importance to secure honesty, contentment and discipline among the civil servants which form the very foundation for their discharging their duties as expected of them.

Therefore, Promotion, as a condition of service, plays a major role in bringing out the efficiency in public personnel and the expected result that the state wants from them. An employee joins a service in the hope of a satisfactory career of progression. An important factor contributing to the attractiveness of service is the prospect of promotion.

W.F. Willoughby in his book 'Principles of Public Administration', has pointed out the following as the essentials of a sound promotion system<sup>590</sup>:

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<sup>590</sup> W.F. Willoughby, *Principles of Public Administration* (Publications of Institute for Government Research, Washington 1927)

- a. Adoption of standard specifications setting forth the duties and qualifications required for all promotions in the government service.
- b. The classification of these promotions into distinct classes, salaries, grades and service.
- c. The inclusion within this classification of all higher administrative promotions except those having a practical character,
- d. The adoption, so far as possible, of the principle of recruitment from within for filling up of higher posts.
- e. The adoption of principles of merit and seniority in determining the promotion of employees.
- f. The provision of adequate means for determining the relative merits and seniority of employees eligible for promotion.

The constitutional code of equality and equal opportunity is a charter for equals, and hence equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall substantially within the same class.<sup>591</sup> In terms of article 16 of the Constitution, the employees similarly situated cannot be discriminated. Employees having the same qualifications, thus, must be considered equally for promotion.<sup>592</sup> It has been time and again repeated that there is no right to promotion; but only a right to be considered for promotion.

It is already seen that the right to a public employment is a constitutional right under Article 16 (1). All matters relating to employment include the right to continue in service till the employee reaches superannuation or his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution or the rules made under proviso to Article 309 of the Constitution or the statutory provision or the rules, regulations or instructions having statutory favour made there under. But the relevant provisions must be conformable to the rights guaranteed in Part III and IV of the Constitution. Article 21 guarantees the right to life which guarantees the right to livelihood, to a many the assured tenure of service is the source, the deprivation thereof must be in accordance with the procedure prescribed by law conformable to the mandates of Articles 14 and 21 as be fair, just and reasonable but not fanciful, oppressive or at vagary. The need for the fairness, justness or reasonableness of

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<sup>591</sup> *Vijay Lakshmi v. Punjab University*, AIR 2003 SC 3331

<sup>592</sup> *Union of India through Govt. of Pondicherry v. V. Ramakrishnan*, AIR 2005 SC 4295

the procedure was elaborately considered in Maneka Gandhi case and it hardly needs reiteration.<sup>593</sup>

Clause (4) in Article 16 empowers the State to make special provision for the reservation of appointments or posts in favour of any 'backward classes of citizens' which in the opinion of the State are not adequately represented in the services under the State. However, the clause is only an enabling provision and no right or duty can be read into it. But as held in *State of Kerala v. N. M. Thomas*,<sup>594</sup> it is not an exception to the general principle in Article 16(1) but an emphatic statement of equality of opportunity guaranteed under clause (1) which means equality between members of the same class of employees and not equality between members of separate and independent classes. Thus, in the case of the Scheduled Caste and Scheduled Tribes who suffer from socio-economic backwardness, the fundamental right to equality of opportunity justifies separate categorisation for the purpose of "adequate representation in State services." The Courts have however, held that Article 16(4) has got to be read with Article 335 inasmuch as the latter states that while considering SC and ST claims maintenance of efficiency of administration must be kept in view.

In *T. Devadasan v. Union of India*<sup>595</sup>, the Supreme Court when called upon to pronounce on the constitutionality of the 'carry-forward' rule, held the rule ultra vires by a majority of four to one on the ground that the power vested in the State Government under Article 16(4) could not be so exercised as to deny reasonable equality of opportunity in matters of public employment to members of classes other than backward.

The Mandal Commission had in its report recommended 27 per cent reservation for backward classes in view of the limit of 50 per cent imposed by the Supreme Court. In its judgment in *Indra Sawhney v. Union of India*, the Supreme Court decided that there was no reservation in promotion and that the total reserved quota did not exceed 50 per cent except in extraordinary circumstances. To meet this situation, Article 16 (4A) was inserted vide the Seventy-seventh Amendment providing reservation in matters of promotion in services under the State for the Scheduled Castes and the Scheduled Tribes. By adding Clause (4B) to Article 16 it as however clarified that the unfilled reserved vacancies are to be treated as a separate class and are not to be included under

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<sup>593</sup> *Ashok Kr. Gupta vs. State of Uttar Pradesh*; (1997) 5SCC 201

<sup>594</sup> AIR 1976 SC 490

<sup>595</sup> AIR 1964 SC 179

the prescribed ceiling of fifty per cent reservation of vacancies of the year. In 2002, Clause (4B) was further amended vide the Eighty-fifth Constitution Amendment Act, 2002 to include the principle of 'consequential seniority' for the promotees. The Eighty Fifth Amendment came into operation with effect from 17 June, 1995.

Therefore, it can be precisely summed up that promotion based on an equality of opportunity and seniority attached to such promotion are the facets of the fundamental rights guaranteed under Article 16(1) and in matters relating to civil services, under Article 309 of the Constitution.

This also brings us to the two principles upon which the eligibility criteria for promotion can be fixed, vis., seniority and merit.

Seniority is one of the attributes of regular service. The value of the right of seniority is the right for consideration of one's case for promotion to a higher post. In such cases, seniority taken into account is the seniority in the grade immediately below the promotional post or in the grade which is described as the grade from which promotions are to be made. It proceeds upon the basis that the comparison for purpose of seniority is between equals or those that are in the same grade or equated grades. Therefore, seniority is a concept which involves a comparison between the length service in the same grade and not the overall length of service in different grades. Where the rules provide for the computation of the length of service from the date of appointment, it cannot be modified by executive instructions.<sup>596</sup> In calculating the date of appointment, it is the date of substantive appointment that marks the date of entry into the service. Thus, a regular appointment at a later date cannot relate back to an earlier date of ad hoc appointment. Seniority has to be determined from the date of regular appointment under the rules and not from the date of ad hoc or stop gap appointment made earlier to a post earmarked for direct recruitment.

The inter se seniority of persons joining on the same date has also been a matter of dispute. Disputes relating to inter se can arise among direct recruits or direct recruits and promotees or direct recruits and ad hoc promotees or direct recruits and roster point promotees. The courts have held that inter se seniority of candidates would depend on rules governing the same. In the absence of rules, executive instruction could be issued

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<sup>596</sup> *K. Balasubramaniam (Ex-Capt.) vs. State of Tamil Nadu*, (1991) 2 SCC 708

to fill the gap. In the absence of executive instructions, the courts may have to evolve principles of fairness and justness, keeping in mind the prevailing practise to deal with the facts in a given case.<sup>597</sup>

The five-Judge Bench of the Court in *Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra*<sup>598</sup> has clarified that once a person is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of confirmation.

The expression 'date of appointment' is different from 'date of order'. Where appointment order makes it clear that the date of appointment is the date on which a person assumes charge, then the order of appointment is treated as the order of appointment and the date of appointment is the date from which the person assumes charge. However, where the appointment order states that the person is appointed with immediate effect, the date of appointment is made on the date the order is made and the appointment takes immediate effect and does not depend on whether the person assumes charge or not.<sup>599</sup>

Seniority is always calculated from among the persons holding similar posts with similar status. Mere length of service under the government is never the basis of seniority. The general principles applicable for seniority are as follows:

- i. The first condition for fixing seniority between the officials is that they must be holding the posts in the same cadre or grade. A casual labourer is in employment but is not holding a post until he is regularised. Appointment upon regularisation is a fresh appointment. Further, if rules do not indicate that past service will count towards seniority, then such past service would not be so considered.
- ii. Seniority is to be fixed as between persons who hold similar status i.e., officiating or substantive. Officiating normally means that a person has been appointed to discharge work in a post (usually a higher one) where he/she has not been substantially appointed. Normally a person officiates in a post when he performs the duties of a post in which another person holds the lien; however, in certain cases a person may be appointed to officiate in a vacant post on which no

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<sup>597</sup> *Bimlesh Tanwar vs. State of Haryana*, (2003) 4 SCC 65

<sup>598</sup> AIR 1990 SC 1607

<sup>599</sup> M.RamaJois, *Service under the State*, 531 (Indian Law Institute, New Delhi, 2007)

other government servant holds lien. Generally, when a person is appointed to a post, seniority is calculated from the date of appointment and not from the date of confirmation; this rule is not applicable where initial appointment is ad hoc in nature. This is because upon successful completion of probation and confirmation, there is no fresh appointment that takes place, and the appointment is completed upon being appointed on probation. However, where initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till regularisation of his service as per the rules, this officiating period will be counted. Thus, probationary period or the 'in-service period' or the period of officiation could also be calculating towards seniority.

- iii. Persons holding permanent or substantive appointment are always treated as seniors to persons holding appointments on temporary or officiating basis. The period of deputation would also count towards seniority provided that he performs his duty satisfactorily.
- iv. As among the persons who are confirmed or substantively appointed, the date of confirmation or substantive appointment is the basis for seniority.
- v. From among persons holding temporary or officiating appointments, the length of service in the cadre or grade is normally the basis for fixation of seniority. Where a non-cadre officer is officiating for more than six months in a Indian Forest Service cadre post without requisite approval of the central government, the court has held that the officiating appointment is of a fortuitous nature, and such officiating period cannot count towards his calculating his seniority in the service.
- vi. In the case of persons who are recruited through a competitive examination, the inter se seniority is determined on the basis of the rank assigned by the Public Service Commission conducting the examination.

The manner of fixation of seniority as between direct recruits and promotees has given rise to several disputes relating to seniority. The disputes have arisen, firstly, for the reason that direct recruits are not made regularly by the appointing authorities; secondly, the disputes relate to the fixation of quota between direct recruits and promotees and the recruitment made in disregard of the quota rule. Persons promoted even against the direct recruitment vacancies are continued for several years. Thereafter, when direct

recruitment is made, direct recruits naturally claim seniority in accordance with quota rules. The promotees regard this as humiliation. All this can be avoided by making direct recruitment promptly every year as and when vacancies arise. But this does not seem to be a preferred policy with the governments in India; a factor which contributes to the burgeoning service jurisprudence.

***Basic Principles Relevant for Fixation of Seniority of Direct Recruits and Promotees***

*a. Obedience to quota rule:*

The rules of recruitment often fix specific quota for direct recruitment and promotion. The quota cannot be violated at the will and pleasure of the appointing authority. Vacancies must be classified as 'direct recruitment' and 'promotional' vacancies and recruitment must be made from the respective source.

*b. Clear Vacancies for Permanent and Temporary posts should be Classified:*

Generally, in respect of each cadre, permanent as also temporary posts are sanctioned. Permanent posts are sanctioned without the limit of time. Temporary posts are sanctioned for a specified period and continued from time to time. The rules of recruitment which prescribe the qualification and the method for recruitment to any cadre are applicable to both permanent and temporary posts. This being the position, the quota prescribed as between the direct recruitment and promotion cannot be confined to permanent posts. It applies to temporary posts as well. However, the classification of vacancies must be of clear vacancies, and not fortuitous one like leave or deputation.

*c. Fixation of quota when only permanent posts are included in the cadre strength:*

When cadre is required to be filled up by direct recruitment and promotion and it consists only of permanent posts, in calculating the quota, only the permanent posts should be taken into consideration

***The method of fixing seniority***

The method of fixing seniority of direct recruits and promotees in compliance with the recruitment rules fixing the quota and the rules of seniority requiring the fixation of seniority from the date of appointment have been clearly laid down by the Supreme Court in Subraman which is as follows:

- i. The seniority of a civil servant in the cadre concerned will be counted from the date of initial appointment or officiation (on promotion) or probation (on direct recruitment) provided the initial appointment is within the quota;
- ii. The quota rule applies to vacancies in all posts, permanent or temporary included in the sanctioned strength of the cadre, except vacancies which are purely fortuitous or adventitious;
- iii. The validity of appointment from one source does not depend upon the making of appointment from the other source; direct recruits could be validly appointed against direct recruitment vacancies without waiting for promotion and vice versa and so long as the appointment is within quota, the appointee is entitled to calculate seniority from that date. This rule should be distinguished in cases where the rota system of appointment is applicable. Thus, where persons are appointed on a rota basis and are drawn from different registers, such as direct recruits and recruits from other sources, their seniority would count from their date of order of appointment and not from the date of individual appointment.
- iv. If the direct recruits are appointed against promotional vacancies, or promotees are appointed against direct recruitment vacancies, their appointment must be adjusted against clear vacancies becoming available thereafter at any time, and for purpose of seniority it is the date on which the appointment is adjusted against a vacancy available for that source which counts for seniority and not the date of appointment made in violation of the quota.
- v. Once the seniority of direct recruits and promotees when they are on officiation or probation are fixed according to the date of appointment, thereafter the source from which they are recruited is not relevant for purposes of confirmation which has to be made strictly according to seniority fixed in compliance with the quota rule and the date of appointment.
- vi. Finally, before fixing the seniority of the employees, the principles of natural justice require that opportunity should be given to them to make representations. But what would be a fair, just and rational principle will vary according to the facts and circumstances of the case and particularly the historical background of the integration.

The seniority rule of continuous officiation is interlinked with the promotional rule based on equal opportunity and the same cannot be delinked.<sup>600</sup> It has been held that when promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying the principles of equal opportunity stated in Article 16(1). For example, if the promotion is by the rule of “seniority-cum-suitability” the eligible seniors at the basic level as per seniority fixed at that level and who are within the zone of consideration must be first for promotion and be promoted if found suitable.

Every organisation has a system of assessment of performance of its employees periodically for determining their output as well as for deciding on their promotion. A Performance Appraisal Report, in a government service, is a key performance indicator in which quantitative gradation of performance is assessed by awarding scores. It, thus, serves a short term purpose of assessing the usefulness of an employee to the organisation, and in the long run determines his potential for elevation to higher levels.

Personnel administration has acquired a lot of significance, especially during the past three decades in both the government and the private sectors. In examining the various public institutions, their structure and conditions of service, especially promotional aspect, it is revealed that each of the service is based on a ‘cadre’ system. The service conditions of the staff are regulated and governed by a number of rules, regulations, directives and instructions.

The most important aspect of all public institution is recruitment. Recruitment of the personnel can be done in two ways: direct recruitment and promotion. Under the direct recruitment system, the candidates are chosen by direct selection and are appointed to the posts. Under the system of recruitment by promotion, employees working in the lower positions are promoted to the higher level positions. In analysing the Rules, Regulations, Instructions and Government Orders of various public institutions in India, it is found that both of these methods of recruitment are in vogue. Hence, certain percentage of employees is appointed through direct recruitment and some through promotion. As already seen, in this chapter as well as in the previous chapters, promotion is an important ingredient of personnel administration and plays a vital role in efficiency of the employees.

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<sup>600</sup> *Jatinder Pal Singh v. State of Punjab*, AIR 2000 SC 609

On attainment of independence, the Government of India made changes in the structure of the civil service. It created the All India Services, the Central Services and the State Services. According to the new Constitution of India, which came into effect on 26 January, 1950, only two All India Services were recognised, i.e., the Indian Administrative Service and the Indian Police Service. In 1966, the Indian Foreign Service became a part of the All India Service. The IAS replaced the Indian Civil Service and the Indian Police was redesignated as the Indian Police Service in 1951. The All India Services Act was passed in 1951. According to this Act, the union government formulated new rules and regulations to govern the conditions of service of the All India Services. In order to deal with the subjects that are mentioned in the union list, the central services and the central secretariat services were created. The central services grouped under Classes A and B are filled through a combined examination conducted by the UPSC along with the All India Services. Each central service is governed by their own cadre, functions and service rules and regulations.

Generally, 50% of the junior time scale posts are filled by direct recruitment and the remaining are filled through promotions from the respective feeder services. For the posts above the junior time scale level, the method of promotion is used based on the recommendations of the Departmental Promotion Committees. The central civil service is generally divided into Group A, Group B, Group C and Group D. It is to be borne in mind that 33% of the posts to the All India Services are filled by promotion from the state services.

On analysing the rules and regulations governing the promotion system of the All India Services and the Central Civil Services, it is seen that promotion is made according to the principles of seniority, merit as well as seniority-cum-merit. Under the principle of seniority, the length of service is calculated in determining the seniority, in a particular post or scale or grade. The employer who has longer length of service gets the promotion earlier. This principle suits well in the highly hierarchical-based society in India. It is highly democratic as every person is bound to become senior one day or the other. Age and length of service are given preference. For computing the length of service, a 'year of allotment' is assigned in the All India Services. The four principles governing the assignment of 'year of allotment' are:

(i) The year of allotment of the junior-most among the officers recruited to the service by direct recruitment.

(ii) The year from which the claimant officer officiated continuously in a senior post from a date earlier than the date of commencement of like officiation by the junior-most direct recruit of the year.

(iii) The promotee shall be deemed to have been officiating continuously in a senior post even prior to his inclusion in the select list if the period of such officiation is approved by the central government in consultation with the UPSC.

(iv) The deemed continuous officiation in a senior post shall have its genesis on the date from which he continues to hold without any break or reversion a senior post, otherwise than as a purely temporary or local arrangement.<sup>601</sup>

These conditions have to be satisfied for getting a year of allotment even though a person has been working for long in a post, which is equivalent to a cadre post. The service rendered in such a post cannot be taken as the basis for fixing year of allotment unless the post is declared as such, with the approval of the central government by the state government. Further the continuity of service is another important aspect. Once the continuity is disrupted, the claim breaks down. Service for long years becomes uncountable if there had been break however short it may be. The fact that the gap was bridged by counting the period of break, as period of joining duty for other purposes does not cover up the legal ingredient of continuity of service.

However, the question which arises here is: "Are all persons who are promoted by seniority, are fit for promotion?" Thus, the tussle between seniority and fitness arises. This tug-of-war between seniority versus merit has shown its fang again in the recent case of *Supreme Court Advocates-on-Record Assn. vs. Union of India*<sup>602</sup> famously known as the NJAC case. While applauding the postulate of 'seniority' in appointment of Supreme Court and High Court Judges under Section 5(2) of the NJAC Act, J.S. Khehar, J., has shown his concern that consideration of Judges on the basis of their seniority, by treating the same as a primary consideration, would adversely affect the present convention of ensuring representation from as many State High Courts as is

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<sup>601</sup> *Anil Kumar vs. State of Assam*, AIR 1975 SC 1061

<sup>602</sup> (2016) 5 SCC 1

possible for appointment of Judges. However, seniority which has been supplemented and enmeshed with 'ability and merit' has been identified to be the most ideal approach that can be seen to have been adopted.

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 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.<sup>603</sup> 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.

A well-defined principle adopted by the Indian Administration in solving the above problem is the principle of 'seniority-cum-merit'. It is seen in almost all services that greater reliance is being kept upon the dual principle of seniority-cum-merit. It is seen, that in this process, the minimum, length or the years of service (seniority) is fixed and then the fittest and meritorious person, who has completed the minimum length of years of services, is selected for promotion.

In India, on evaluation of various public institutions, their performance and rules and regulations governing the employees, it is seen that the general pattern of promotion is based on certain fixed lines. First, promotions to the highest posts are made on the basis of merit principle only; secondly, promotions to the higher and higher-middle level posts are made on the basis of seniority-cum-merit; and finally, promotions to lower posts are made on the basis of seniority.

However, 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.

To testify the propositions laid down in the previous chapters in various sectors of the 'State', an empirical study has been conducted. The universe for the empirical study has been fixed to be employees serving the 'State'. The universe is purposively segregated

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<sup>603</sup> N.M. Riccucci, *Women, Minorities and Unions in the Public Sector* (Greenwood Press, New York, 1990)

into four sectors which include the Government Departments, Defence Service Sector, Teachers employed by Universities, Colleges and Research Institutes under the Career Advancement Scheme and Employees in Local Bodies. The sample size in each sector is twenty-five and the method adopted for drawing the samples is stratified sampling and purposive sampling. A closed questionnaire had been prepared which was distributed among the respondents for collection of data. The survey has been carried on only upon those employees who hold substantial posts in the 'services under the State'.

***The Findings –***

The result of the survey can be summarised as under –

- a. The only process by which a person in government service would be appointed to a higher post is by direct recruitment or by promotion. When it is shown that a person has been appointed to a higher post otherwise than by direct recruitment, then the appointment could be only by way of promotion. There is a right to be considered for promotion and such right cannot be denied to any employee serving the government.
- b. Promotion of any government employee can be made either by way of considering his/her merit, seniority, merit-cum-seniority or seniority-cum-merit. Conceptually, seniority-cum-merit and merit-cum-seniority must be treated differently. In the former, greater emphasis is placed on seniority even though it is not the determinative factor, while in the latter merit is the determinative factor.
- c. It is seen that sectors in the Higher Education and the Defence majorly apply the principle of merit-cum-seniority for promoting their employees. On the other hand, in the Government Departments and the Local Bodies the principle of seniority-cum-merit is prevalent for promoting their employees.
- d. While the method of seniority-cum-merit is generally prescribed for promotions in the lower cadres, the method of promotion by merit-cum-seniority and selection is adopted in making promotions to the higher echelons of the services.
- e. Before, effecting a promotion, the seniority of every employee has to be considered and be fixed accordingly. Unless, the seniority is fixed, it is impossible to consider the case of employees for promotion. This is because, whatever be the mode of consideration for promotion, be that by seniority-cum-merit or by selection, the promotion process cannot avoid the principle of seniority.

- f. For calculating seniority of an employee, continuous lengths of service and officiation of the employees are taken into account. In both these situations, i.e., lengths of service and officiation, the computation is made from the date of appointment or from the date of confirmation. It has been seen that the calculation of seniority from the date of appointment is the generally accepted norm. Calculating seniority from the date of confirmation of the employment takes place in rare circumstances.
- g. A cadre consists of employees from lower cadre by way of promotion as well as by way of direct recruitment. In such circumstances conflict arises when the question for further promotion crops up. The solution lies in making promotion by inter-se seniority. It is found that the relative seniority of direct recruits and of promotees is determined according to the rotation of vacancies between promotees which again is based upon the quota of vacancies reserved for direct recruitment and promotion. The survey so conducted revealed that except in Local bodies, all the other sectors determine the inter-se seniority by allotting quota fixed for the direct recruits and the promotees.
- h. The rules of recruitment often fix specific quota for direct recruitment and promotion and this quota rule cannot be violated at the will and pleasure of the appointing authority. Vacancies are classified as 'direct recruitment' and 'promotional' vacancies and recruitment is made from the respective source.
- i. There is no uniform rule for fixing the ratio for allotting vacancies for the direct recruits and promotees. It varies from service to service and department to department. Also the fixing of the ratio for the direct recruits and promotees will largely depend upon the requirement of the department or cadre in the service. In the survey conducted for the purpose of this research work, a range of ratio came forth in which the direct recruits and the promotees have been allotted.

It can, therefore, be safely deduced that the rule of seniority for promoting a person to a higher cadre in any 'service' under the 'state' cannot be avoided. Whether a promotion is made by way of merit or by selection or by merit-cum-seniority or by seniority-cum-merit, until and unless an employee has spent a certain period of time in the cadre, he will not be considered for promotion. The logic behind this is that there is a positive correlation between the length of service in the same job and the amount of knowledge and the level of skill acquired by an employee in an organisation. The other reason being

that promotion is also based on the custom that the first in the employment should be given the first chance in all benefits and privileges.

However, to overlook merit absolutely in appointment and promotion in any 'State Service' will tend to infest the hierarchical structure of any 'Services' under the 'State' with nepotism and red-tapism. Hence, a combination of both seniority and merit can be considered as the basis for promotion satisfying both the 'State' mechanism for organisational effectiveness and the employees and their associations for respecting the length of service and experience. A balance between seniority and merit is required to be struck which can be done in the following ways:-

- *Merit-cum-seniority*

In this kind of selection, firstly, a minimum period of service rendered by the employee is taken into consideration and then these employees are shortlisted. Thereafter, merit is taken as the sole criteria for selecting the employee from the eligible candidates.

- *Minimum Merit and Seniority*

In contrast to the earlier method, the minimum requirement of merit is taken into consideration and employees are selected for promotion based on their seniority only from those who are shortlisted as eligible.

Far reaching changes in the global economy have made it imperative for the governments all over the world to improve the quality of their governance structures. The Government of India has developed monitoring and evaluation systems for its development programs, supported by a well-planned institutional framework. It also has a performance appraisal mechanism for its employees. However, it is time to move from measurement of input usage for programs and appraisal of process compliance to assessment of outcomes and impacts through a well designed system of performance management. It is somewhat strange that in a country like India, which for centuries has been managed by large bureaucracies, there is till date no extant competency framework for the recruitment, training and promotion of government servants which is explicit to the employers or employees. When it comes to promotions, the departmental promotion committees base their recommendations on the grades earned by officers in their Annual Confidential Reports/Performance appraisal reports over the past 5-10 years. If one

were to study the formats of the Annual Confidential Reports, there is certainly a mention of the attributes considered important for a government servant, but nothing about the specific competencies necessary for the job for which the performance is assessed.

With the increasing importance of the principle of seniority-cum-merit in recruitment and promotion, performance management in its broader perspective has to be understood. It involves understanding and acting on the performance issues at each level of organisation, from individuals, teams and departments to the organisation itself. These issues include leadership, decision making, motivation, encouraging innovation and risk taking among others.

One thing is clear that competencies with respect to different assignments need to be identified and codified. If we are to proceed in a systematic manner, this must begin with documentation of the job descriptions and responsibilities of different sets of employees. To do a particular job/task effectively, certain competencies are required. These need to be mapped against the job/tasks that employees are expected to do.