

ABSTRACT

Career development when viewed from organisational standpoint involves 'tracking career paths'. The management (in the form of Government) seeks information to enable it to direct and monitor the progress of employees and to ensure that capable managerial and technical talent is available according to the organisation's needs. In the changing nature of state and the functions of Civil Service and other 'Services under the State', organisational career development has become more important today.

The purpose of career development is to attract and retain men and women of talent and ambition in the government employment. This is ensured by providing equal opportunity for promotion and advancement. Article 16 of the Constitution gives effect to the doctrine of equality in all matters relating to public employment. The equal opportunity for the purpose of seniority, promotion and like matters of employment is available only to the persons who fall substantially within the same class or unit of service.

The seniority principle in government service is widely prevalent as a method of promotion in most countries. The seniority of an employee is required to be determined in a cadre on the basis of relevant principles enunciated either in the statutory rules or in the absence of any rule by administrative instructions, which remain operative in the field. For example, the year of allotment and fixation of seniority in the Indian Administrative Services would be determined under the rules in force at the time of appointment and not at the time of occurrence of vacancy.

The seniority of the Government employees selected through interview or competitive examination or training by a selecting authority shall be determined by the order of merit in which they are selected for appointment. In the absence of statutory rules or administrative instructions the court may evolve a fair and just principle for determination of inter-se seniority of the direct recruits. A post which the rules require to be filled up by direct recruitment, has to be filled up in accordance with the rules existing at the time when the post is advertised for the purpose.

In determining the seniority of promotees, it is laid down by the Supreme Court that the promotees get their seniority only from the date of regular promotion in accordance with rules and within quota. In case of promoted officers the main criteria to be considered for confirmation are (i) availability of substantive vacancy and (ii) suitability for the post. The seniority in the lower grade has no meaning for determining seniority in the higher grade except for determining inter-se seniority of the promotees. In the absence of specific provision in the Service Rules, inter-se seniority of the promotees would be determined on the basis of length of serviced, irrespective of the date of passing the qualifying examination.

The service rendered by an employee on deputation should be counted to entitle him to promotion in the parent department. The service rendered by a deputationist in an equivalent cadre in the parent department cannot be taken away by an executive order, instruction, rule or regulation, while counting his seniority in the deputed post or absorption. However, an officer on deputation is not entitled to promotion in either new or parent department as a matter of right by virtue of his seniority only where promotion is on the basis of seniority-cum-merit.

Normally, the seniority is determined from the date of initial appointment of the direct recruits on the basis of the length of continuous service of the promotees. The direct recruits will rank senior to the promotees when direct recruits are appointed against substantive vacancies and the promotees are appointed on officiating or regular basis thereafter. A direct recruit who comes into service after the promotee who is already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non statutory rules, should not be permitted by any principle of seniority to score a march over a promote, because that by itself being arbitrary would be violative of Arts. 14 and 16 of the Constitution. Once the direct recruits and promotees form one class, discrimination between them at the time of further promotion is violative of Arts. 14 and 16 of the Constitution. In other words, after integration of the employees recruited from two different sources into one grade, discrimination for further promotion is not permissible in law. The Supreme Court has laid down the following three important principles regarding fixation of seniority: (i) the normal rule is that seniority should be measured by length of continuous officiating service unless a contrary intention appears from the rules; (ii) the promotees regularly

appointed during a particular period in excess of their quota for want of direct recruits can claim their whole length of service for seniority even against direct recruits who may turn up in succeeding periods; (iii) the promotees who had exceeded their quota would have to be pushed down to accommodate direct recruits coming after their appointment.

The expression “relative seniority” between a promote and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade, irrespective of the date of joining, would obviously mean the year of regular promotion and not any ad hoc promotion being made contrary to the statutory rules.

It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre, so as to affect others adversely. The promotees cannot be made senior to the direct recruits when the promotees entered into the said service by promotion after entry of the directly recruited officers in the quota of direct recruits.

The date of entry into the particular service is the safest criterion for fixation of seniority and the departure from this criterion by granting notional seniority from the back date must be based on objective consideration or a valid classification, but such preferential treatment should normally be given by means of statutory rules.

The introduction of roster system is well known to service jurisprudence. When a roster is to be introduced it only means that the available number of vacancies is to be ascertained and recruitment is to be made keeping in view the quota of the promotees and the direct recruits. If recruitment is made strictly according to quota, there will be no difficulty in applying the very rule of quota even while giving confirmation.

A study conducted upon employees of government service in various sectors in West Bengal for assessing and evaluating the above principles of seniority reveals that conflicts between seniority and merit are common trends seen in various public services. A well-defined principle adopted by the Government and Managing Bodies 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 and merit-cum-seniority, where 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, and vice-versa, is selected for promotion.