

CHAPTER 4

PROMOTION OF PUBLIC PERSONNEL BY RULES OF SENIORITY IN VARIOUS SERVICES AND PUBLIC INSTITUTIONS: A BIRD'S EYE VIEW

4.1. Overview

Human resource management in Public Institutions has been all about organising the personnel inducted in each of the Departments of these institutions. This has been one of the major issues which have posed numerous challenges in the Courts of law. Position classification has been an important aspect of personnel administration. It involves classification of employees and identifying their position in an administrative set up. The concept has been defined in many ways. By classification is meant the grouping of positions on the basis of similarity of duties and qualification requirements. Marshall E. Dimock has defined it as the systematic sorting and ranking of position in a hierarchy according to comparative difficulty and responsibility. According to L.D. White, "In its final form, a classification plan consists of a number of classes adequate to enable a place to be found for each existing position arranged in orderly fashion with respect to each other, and supplemented by a set of rules and regulations for its administrations, interpretation and amendment."³⁶⁶

In any personnel system, services have to be classified on the basis of the variety of work and different grades and kinds of equipment required for different kinds of grades of work. In this respect, the classification of governmental position is recognised as indispensable to a career service whether based on merit or seniority or both. According to Glenn Stahl, "The foundation of a job oriented career system is a position-classification plan. Such a plan is a prerequisite for any system that regards the nature and content of each position as central to good organisation and to motivation based on the work to be performed." Thus, position-classification is the organisation of all jobs in

³⁶⁶ Mohit Bhattacharya, *Public Administration*, 173 (World Press, Kolkata, 8th ed. 2012)

an enterprise into groups or classes on the basis of their duties, responsibilities and qualification requirements.³⁶⁷

The prevailing bases for position classification are educational qualifications of the incumbents, competence on the job, level of responsibility attached to the job, length of service, rank and personal status of the employee, etc. The precise mix of these depends on a country's administrative value system and culture. There are two well-known systems of classification of positions, viz., rank qualification and duties classification.

a. Rank Qualification – Here the basis of qualification is the rank and personal status of the incumbent rather than the precise duties inherent in the post. In India, we find this system of position-classification in the All India Services. This system is advantageous in the sense that it is easier to understand and promotes mobility by facilitating transfers and it encourages career opportunities. It also attracts competent and promising personnel and at the same time prefers generalists to specialists. However, it violates the principle of equal pay for equal work leading to low morale in the service. Also it overlooks the claims of merit as the basis of holding a particular position, the system being somewhat ascriptive. Moreover, it is not conducive to the formulation of scientific standards on which selection of personnel, training, transfer, posting, promotion, career development may be organised.

b. Duties Classification – Traditionally, the object of 'duties classification' has been to provide 'equal pay for equal work'. In this system, the emphasis is on individual positions in the hierarchy. Each position represents certain well-defined duties and responsibilities; the latter two terms signifying the work assigned to a position and the matters for which an employee is held accountable. A position must remain differentiated from its occupant. The different criteria for evaluation of jobs for purpose of determining their class are: (a) nature of occupational fields, (b) complexity and difficulty in performing duties, (c) scope of responsibility and (d) knowledge and skill needed to do the job.

According to Glenn Stahl, there are four steps in the development of a position classification system: (a) analysing and recording the duties and other distinctive characteristics of the position to be classified (job analysis and description), (b) grouping the positions into classes upon the bases of their similarities, (c) writing such standards

³⁶⁷ Id at 174

or specifications for each class of positions as will indicate its character positions to the class and in recruitment and examination, and (d) installation by allocating individual positions to the classes thus described.³⁶⁸

The present chapter elaborates the position classification under various public institutions and the rules relating to the modes as to how the personnel climb up the ladder of the service taking 'seniority' into consideration. In this chapter, some of the departments of the government service and public institutions have been intentionally chosen for the purpose of elaborate study. Each of the department in the service has been categorised according to hierarchy of its grades and Rules and Regulations have been discussed, according to which personnel is promoted in the upper grades with reference to seniority norms.

4.2. The All India Services and Other Civil Services

There are three categories of the services under the Constitution:

- (a) Services under the Union
- (b) Services under the States
- (c) The All India Services (the IAS, the IPS and the IFS)

Article 309 of the Constitution of India lays down that statutes enacted by the appropriate legislature may regulate the recruitment and conditions of service of the employees as employed under the Services of the State.

Similarly, Article 312 says that parliament may by law regulate the recruitment and the conditions of service of persons appointed to the All India Services. The present research is more concerned with Article 312 of the Constitution.

In the pre-independence period, two services called (i) the Indian Civil Service (ICS) and (ii) the Indian Police Service (IPS) were in existence in India. The Indian Independence Act, enacted by the British Parliament and the promulgation of India (Provisional Constitution) Order, 1947, brought the end of the tenure of the members of these services, contractual as well as statutory. The Viceroy of India issued a proclamation on 30-4-1947 to the effect that as a consequence of transfer of power to the Indian government the tenure of service under the crown comes to an end and that the continuance of persons either in the service of the Indian government or of any state government is left to the desire of the officer concerned and to the decision of the government concerned to continue them in service. The

³⁶⁸ Id at 175

continuance of service of officers was contemplated only in respect of such of the previous servants who had intimated their desire for the continuance of their services under the new government and whose offer in this respect was accepted.³⁶⁹ The effect of the provisions of the notification dated 30-4-1947 and the subsequent offer made by the Government of India to the individual officers concerned was that the discontinuance of service could be brought about by the option of either a member of the service or by the government but the continuance of the service was a matter which depended upon the mutual consent of both the individual servant and the government concerned. The Government of India gave the option to the officers of the ICS and the members of the IPS to continue in the service and out of the persons who exercised their option the government accepted the option of such of the officers whom it thought fit and suitable to continue in service.

Even prior to the independence of the country, in a conference held under the chairmanship of Sardar Vallabhbhai Patel, a decision had been taken to create two all India services such as Indian Administrative Service and Indian Police Service to replace the former Indian Civil Service and Indian Police Service. It was further decided that the recruitment to these two services should be made through Federal Public Service Commission on the basis of annual competitive examination. In the very same meeting, a further decision had been taken that the maximum of 25% of the cadre posts in All India Services should be thrown open to the state civil service officers and state police officers of outstanding merit. In pursuance of the aforesaid decision, the two all India services were formed and they were put on statutory basis under the Indian Civil Administrative Service Cadre Rules, 1950.³⁷⁰ As a result, even prior to the commencement of the Constitution, there were two all-India services, viz.. IAS and the IPS. On adoption of Constitution of India on 26 January 1950, these services were recognized under clause (2) of article 312 of the Constitution. In addition, such members of the former ICS and IPS who had been appointed by the secretary of state in council before independence who continued to serve under the government of India were also given protection regarding their conditions of service vide article 314.³⁷¹ Subsequently, the Parliament passed the All India Services Act, 1951.

³⁶⁹ M. Rama Jois, *Services Under the State*, 393 (Indian Law Institute, New Delhi, 2007)

³⁷⁰ *GudurKishan Rao vs. Sutirtha Bhattacharya*, (1998) 4 SCC 189. See also *State of Madras vs. Raja Gopalan*, AIR 1955 SC 817; *Taraknath vs. State of Bihar*, AIR 1968 SC 1372bid

³⁷¹ *R. P. Kapoor vs. Union of India*, AIR 1964 SC 787 (However, Article 314 was omitted by the Constitution (Twenty-Eighth) Amendment, Act, 1972)

4.2.1. The All-India Services Act, 1951 and Rules and Regulations Appurtenant to It

The recruitment and conditions of services in respect of the All-India Services, vis., Indian Administrative Service, Indian Police Service and the Indian Forest Service, are regulated by the All India Services Act, 1951, and Rules and Regulations made under it. The Constitution has made special provision for the constitution of All-India Services as a service common to the Union and the States, in addition to the services under the respective state government. Article 312 of the Constitution makes specific provision for the creation of the All-India Services by parliament if the council of states has declared by not less than two-thirds of the members present and voting that it is necessary in the national interest that in respect of a particular service an All-India cadre of officers should be constituted, Parliament can do so.

As a result, by exercising the powers conferred under Article 312, the All India Services Act, 1951 was enacted by the Parliament. Before enacting the said law, the necessity of the resolution of the Council of States as required by the under Article 312 was dispensed with by the President of India in exercise of his powers of removal of difficulties under Article 392. Dispensing with the necessity of resolution of the Council of States for the Constitution of All- India Services was within the competence of the President and therefore, it was competent for the Parliament to have enacted the said law without the resolution of the Council of States. The said Act came into force on and from 29 October, 1951 and the Statement of Object of the Act states that the purpose of the enactment of the Act was to “regulate the recruitment, and the conditions of service of persons appointed, to All-India Service common to the Union and the States.”

Section 3 of the said Act empowers the Central Government to make rules for the regulation of recruitment, and other conditions of service like promotion, seniority, retirement benefits, etc. of persons appointed to an All-India Service after consultation with the concerned State Governments including the Government of the State of Jammu and Kashmir.³⁷² Henceforth, all rules, regulations and by-laws made in relation to the

³⁷² Section 3 of the All India Services Act, 1951: **Regulation of recruitment and conditions of service—**
(1) The Central Government may, after consultation with the Governments of the State concerned, [including the State of Jammu and Kashmir [and by notification in the official Gazette] make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All-India Service.

[(1A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any

All-India Services shall may be made in the touchstone of the Section 3 of the All-India Services Act, 1951. In exercise of the power under Section 3 of this Act, the recruitment rules, the cadre rules, the promotion and seniority rules, the All-India Service (Conditions of Service- Residuary Matters) Rules, 1960 have been made the central Government. The cadre rules enable the central government to determine the strength and composition of the cadre in each state by framing regulations and in exercise of such power, the Cadre Strength Regulations, 1955 have been framed by the central government and not only the total authorised strength of the cadre for each state has been indicated but also it indicates the number of posts for different categories of posts within the cadre. Thus, the Act, rules and regulations are a complete set of provisions dealing with different aspects of the service conditions to the Indian Administrative Service and the entire scheme contained in these rules and regulations have to be borne in mind while deciding the issues involved in this case.³⁷³

Apart from the Indian administrative service and Indian police service, three more All-India Services were created, by the All-India Services (Amendment) Act, 1963, namely:

- (i) The Indian Forest Service
- (ii) The Indian Medical and Health Services
- (iii) The Indian Service of Engineers (Irrigation, Power, Building and Road)

After this amendment to the All-India Services Act, recruitment rules have been framed for purposes of recruitment to the Indian forest service. Under these rules, initial recruitment regulations to the Indian Forest Service were also framed in the year 1966 and recruitments have been made.³⁷⁴

Though the rules have been framed for regulating recruitment to the Indian Medical Services, the recruitment to this service has not yet taken place and the said service has not come into existence. Nor has the Indian Service of Engineers been constituted; the relevant rules have not been even framed.

of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.]

³⁷³ Supra n. 370

³⁷⁴ *A.K. Kraipak vs. Union of India*, AIR 1970 SC 150

a. Regulation of Recruitment and Conditions of Service

Article 312, which is a special provision regulating recruitment and conditions of service relating to All-India Services, confers on parliament to make law regulating recruitment and conditions of service of persons appointed to the All India Services. While there is reference to all-India service in articles 310 and 311, there is no reference to it in article 309. Therefore, matters relating to recruitment and conditions of service in relation to all-India services have to be regulated differently than those under Article 309, by legislation by parliament.

Repugnancy between the All-India Services Act and state enactments

It is for the Parliament to control and regulate the conditions of service of all those persons who are appointed to the All India Services. This can be done by enacting laws as envisaged under Article 312 of the Constitution of India. Therefore, disciplinary proceeding against members of all-India services being a matter relating to conditions of service, it can be regulated only by law made by parliament or the rules framed there under. Any law made by the state legislature, which deals with the institution of disciplinary proceedings against members of all-India service, which is repugnant to the discipline and appeal rules, framed under the All-India Services Act, cannot operate against the members of the All India Services.³⁷⁵

b. Method of recruitment

In exercise of the powers conferred by the All India Services Act, 1951, the Government of India has framed the following rules for appointment to the All India Services:

1. IAS (Recruitment) Rules, 1954
2. IPS (Recruitment) Rules, 1954
3. IPS (Recruitment) Rules, 1966

Besides, in exercise of the powers conferred by the above three rules, the Government of India has enacted another set of regulations for appointment to the IAS, the IPS and the IPS by different modes. For example, different modes of appointment to IAS are as follows:

³⁷⁵ *State of Jammu & Kashmir vs. M.S. Farooqui*, AIR 1972 SC 1738

1. Direct recruitment
2. By promotion from the State Civil Services
3. By selection from outside the State Civil Services

The appointment to IPS and IFS is made by direct recruitment and promotion only.

The direct recruitment to IAS, IPS and IFS is governed by the following three regulations respectively:

1. IAS (Appointment by Competitive Examination) Regulations, 1955
2. IPS (Appointment by Competitive Examination) Regulations, 1955
3. IFS (Appointment by Competitive Examination) Regulations, 1966

i. Appointment By Direct Recruitment

Before a person is appointed to the IAS, the IPS and the IFS by direct recruitment through competitive examination conducted by the UPSC, he/she is required to satisfy the following six conditions:

1. He/she must be an Indian national.
2. He/she must be having only one spouse living at the time of appointment.
3. He/she must not be below 21 years of age and above 30 years of age on the first day of August for IAS and IPS and the first day of July for IFS in the year in which the examination is supposed to be held. However, there is an age relaxation of five years in case of SC/ST officers and of three years in case of OBCs in the upper-limit.
4. Educational qualification: For IAS and IPS the candidate must hold a Bachelor's degree of any university or its equivalent as laid down in the notification. In case of IFS, the candidate must hold a Bachelor's Degree with at least one of the subjects, namely, Botany, Chemistry, Forestry, Geology, Mathematics, Physics, Statistics and Zoology, or a Bachelor's degree in Agriculture, or in Engineering of any University.
5. Medical fitness

6. Character and antecedents

7. Non-indulgence in malpractices, which include applying pressure, submitting fabricated documents, making incorrect statements, copying in examinations, using unfair means in examination, misbehaving in examination hall, etc.

ii. Appointment by Promotion

Promotion to IAS from the State Civil Services is governed by two sets of rules: (1) IAS (Recruitment) Rules, 1954 and IAS (Appointment by Promotions) Regulations, 1955. After the vacancies have been determined in terms of the IAS (Fixation of Cadre Strength) Regulations 1955, a quota for direct recruitment and by promotion and selection is fixed in the following manner:

1. 66% per cent of the vacancies by direct recruitment
2. 33¹/₃ per cent of the vacancies by promotion and selection
 - (a) 85 per cent of 33¹/₃ per cent are earmarked for promotion of candidate from State Civil Services; and
 - (b) 15 per cent of the 33¹/₃ per cent are earmarked for recruitment by selection from gazetted officers serving under the State Governments.³⁷⁶

The procedure as laid down in rules can be described under the following sub-heads:

(a) List of Suitable Officers

First of all, a list of suitable officers borne on the State Civil Service cadre is prepared in the order of seniority and fitness of the officers who have not crossed the age of 54 years and whose record is otherwise clean. However, a member of the State Civil Service whose name appears in the select list in force immediately before the date of the meeting shall be considered for inclusion in the fresh list even if he/she has, in the meanwhile, attained the age of 54 years. Also, if a member of the State Civil Service who has attained the age of 54 years on the 1st January of the year in which the Select Committee shall meet shall be considered if he/she was eligible for consideration on the 1st April of the years or of any of the years immediately preceding the year in which such meeting is

³⁷⁶ Rule 9, IAS (Recruitment) Rules, 1954

held ^but could not be considered as no meeting was held during such preceding year or years. In order to select candidates from this list a Select Committee is constituted.

(b) Select Committee

Under regulation 3, there shall be constituted a State Cadre or a Joint Cadre as specified in column 2 of the Schedule a Select Committee consisting of the Chairman of the Union Public Service Commission (UPSC) or where the Chairman is unable to attend, any other member of the Commission representing it and other members specified in the corresponding entry of column 3 of the said Schedule. In Andhra Pradesh, for example, the other members of the committee than the Chairman are as follows:

- (i) Chief Secretary to the Government of Andhra Pradesh.
- (ii) Commissioner of Land Revenue/any other Commissioner to be nominated by the State Government.
- (iii) Principal Secretary or Secretary to the Government of Andhra Pradesh in the Revenue Department to be nominated by the State Government,
- (iv) Any other Commissioner or Secretary to the Government in the supertime scale of pay of the service or above to be nominated by the State Government.
- (v) Two nominees of the Government of India not below the rank of a Joint Secretary.

The chairman or the member of the UPSC shall preside at all meetings of the committee, at which he is present. However, the absence of a member, other than the Chairman or member of the Commission, shall not invalidate the proceedings of the committee if more than half the members of the Committee had attended its meetings.

(c) Estimate of Vacancies

The number of vacancies for promotion, existing as on 1st January of any year, are only considered for promotion in that year. The anticipated forthcoming vacancies of the year, in which selection *is* made, are not counted for the purpose. Thus, it is very clear that only the vacancies that have occurred prior to 1 st January of the year are filled up in the current year for promotion.

(d) The Reserve

Previously, there used to be a reserve of 20 per cent of the estimated vacancies or two vacancies whichever is higher. But, consequent upon the amendment in these regulations, the provision for maintaining a reserve has been deleted with effect from 1 January 1998.

(e) Presumption of a List of Suitable Officers

Regulation 5 of the Indian Administrative Services (Appointment by Promotion) Regulations, 1955 and the Indian Police Service (Appointment by Promotion) Regulations, 1955, lays down the details of the procedure for preparation of the Select List for promotion in the Indian Administrative Services and the Indian Police Service. Members of State Civil Service who are found suitable for promotion are shortlisted and a selection list is drawn accordingly. This list is prepared by the Select Committee which shall ordinarily meet at least once annually.

(f) Zone of Consideration

For preparing the tentative select list, members who are elected from the State Civil Service, shall be considered in the order of their seniority. The total number of member selected must be three times the number of estimated vacancies. If the total number of selected officers is less than three times the maximum permissible size of the select list, then the committee has to consider all the eligible officers.

(g) Minimum Qualifying Service

A minimum of not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government as the minimum qualifying service for promotion to IAS provided that in respect of any released Emergency Commissioned or Short Service Commissioned Officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed no less than four years of actual continuous service, on the 1st of April of the year in which the committee

meets, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

(h) Integrity Certificate

On the basis of the recommendations of the Committee on the Prevention of Corruption, it has been decided that an integrity certificate should be recorded by the Chief Secretary to the State Government, who is the sponsoring authority in respect of all eligible officers whose cases are placed before the Select Committee for consideration.

The Select Committee should also consider the question of suitability of the officers with reference to their integrity and should specially record in their proceeding that they were satisfied from the remarks in the confidential reports that there was nothing against their integrity.

i. Classification of Selected Officers

Regulation 5 of the Indian Administrative Services (Appointment by Promotion) Regulations, 1955 and the Indian Police Service (Appointment by Promotion) Regulations, 1955, lays down the details of the procedure for preparation of the Select List for promotion in the Indian Administrative Services and the Indian Police Service. It states that each Select Committee shall ordinarily meet every year and prepare a list of such members of the State Civil Service or State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service or State Police Service to be included in the list is to be determined by the Central Government in consultation with the State Government concerned and shall not exceed the number of the substantive vacancies as on the first day of January of the year in which the meeting is held in the posts available for them under Rule 9 of the Recruitment Rules.³⁷⁷

The Select Committee shall classify the eligible officers as 'outstanding, 'very good', 'good' or 'unfit' as the case may be, on an overall relative assessment of their service records.

This list is prepared by including the required number of names. The names are classified as 'outstanding' followed by 'very good' and 'good'. Within each of the

³⁷⁷R. 5(1), Indian Administrative Services (Appointment by Promotion) Regulations, 1955 and Indian Police Service (Appointment by Promotions) Regulations, 1955

categories again, the names of the officials are arranged according to their seniority in the State Civil Service.

However, the name of any officer so included in the list, shall be treated as provisional if the State Government withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him/her or anything adverse against him/her has come to the notice of the State Government.³⁷⁸

The list so prepared shall be reviewed and revised every year. It remains valid until the proceedings of the new Select Committee for a succeeding year are approved by the UPSC. In other words, the list is valid only for one year or till such time a new Select Committee finalizes its proceedings. The review and revision can also take place earlier than one year. These select lists are used for making substantive appointments to the cadre posts as well as appointments to IAS.

The State Government shall then forward this list to the UPSC along with:

- (i) records of all members of the State Civil Service included in the list;
- (ii) record of all members of the State Civil Service who are proposed to be superseded by the recommendations made in the list; and
- (iii) the observations of the State Government on the recommendations of the Select Committee.

The State Government shall also forward a copy of the list to the Central Government for obtaining its observations on the recommendations of the Select Committee. After the UPSC accords its approval to the list, the Government of India issues appointment order and allots them to the cadre of the state concerned and also fixes their seniority in accordance with Regulation of 1987.

If in the opinion of the Central Government, it is necessary or expedient so to do in public interest it may not appoint an officer included in the select list. This decision shall be made in consultation with the UPSC.

³⁷⁸ R. 5(4) and 5(5), Indian Administrative Services (Appointment by Promotion) Regulations, 1955 and Indian Police Service (Appointment by Promotions) Regulations, 1955

While preparing the Select List for promotion it is necessary that the cases of members of the State Civil Services or the State Police Service shall be considered in the order of seniority in that service and the number for consideration shall be three times the number referred in R. 5(1).³⁷⁹

Generally, a member who has attained the age of fifty four years shall not be considered to be included in the Select List; but, if he will be considered for inclusion in the List if, on the first day of January of the year of preparation of the Select List of the preceding years, he was eligible for consideration.³⁸⁰

There should be a rational nexus between the facts considered and the conclusions reached. Only in this way, opinions or decisions recorded can be shown to be manifestly just and reasonable.³⁸¹

The same rules as noted above apply to appointment by promotion to Indian Police Service (IPS) and Indian Forest Service (IFS) as well. The only difference is that the feeder category in case of IPS consists of the State Police Service officers and other categories declared equivalent by the Government of India and in the case of IFS the State Forest Service officers and any service in such Central Civil Posts, Class I and II connected with Forestry, as may be approved by the Central Government for the purpose of these rules. As already stated above, there is no appointment by selection to IPS and IFS.

To conclude, it can be stated that in the service law of the All India Services relating to appointments, the possibility of any intervention by the external forces is unlikely in case of direct recruitment. However, in case of promotion, there is a possibility, in a lesser degree, to manipulate the system. This can be achieved by: (i) not convening the Select Committee for a couple of years in a row; and (ii) initiate disciplinary enquiries against the feeder category officers on fictitious grounds and later on dropping the charges after the Select Committee meeting is over.

³⁷⁹ R. 5(2), Indian Administrative Services (Appointment by Promotion) Regulations, 1955 and Indian Police Service (Appointment by Promotions) Regulations, 1955

³⁸⁰ Proviso to R. 5(2), Indian Administrative Services (Appointment by Promotion) Regulations, 1955 and Indian Police Service (Appointment by Promotions) Regulations, 1955;

³⁸¹ *Union of India vs. M.L. Kapoor*, AIR 1974 SC 87

c. Procedure for Selection and Appointment

i. Selection by merit with due regard to seniority

According to Regulation 5 of the IAS Promotion Regulations, all eligible candidates have to face competitive as well as comparative test so that their names may be included in the list of selected candidates. It is not about merely securing a minimum pass marks at an examination. The power to choose the best available talent from amongst the eligible candidates is vested in the selection committee. By assessing the service record of an employee the determination of eligible candidates is made by the Selection Committee. Merit is the governing factor for inclusion in the select list and not seniority. But in making the selection, seniority must play its due role and it should be one of several factors affecting assessment of merit, as comparative experience should be.³⁸² There should be a certain number of marks allotted for purpose of facilitating valuation of each year of experience gained in the service. After the completion of the selection of candidates for inclusion in the list is completed in the above manner the rest of the matter, namely, the arrangement of names has to be in the order of seniority in the said civil service.³⁸³

Thus, a member of the state service can be appointed to the IAS or IPS only if his name appears in the select list. Merely because vacancies exist in the quota allotted to the promotees for appointment among the members of the state civil service, it does not entitle a person to be appointed to the Indian Administrative Service or to the Indian Police Service from the date when the vacancies became available. No member on the select list can claim as of right to be appointed to the Indian Administrative Service. He has the chance of appointment as long as his name remains in the list. Persons included in list II under the IPS scheme as extended to PEPSU had no right to be absorbed in the IPS. All that the scheme provided was that if they were found fit within five years they would be absorbed in the All-India service cadre. They had no right to continue even if the posts become unavailable owing to the return of senior officer.³⁸⁴

³⁸² Regulation 5(2) of the Indian Administrative Service (Appointment by Promotions) Regulations, 1955 and the Indian Police Service (Appointment by Promotions) Regulations, 1955

³⁸³ *K.D. Vasudeva vs. Union of India*, SLR 1971 P & H 487; *Sukhdev Prasad vs. Union of India*, SLR 1971 P & H 895

³⁸⁴ *Gurudev Singh vs. State of Punjab*, SLR 1971 SC 164

i. No right of appointment to senior scale

An officer in the junior scale of IAS has no right to be appointed to senior post as soon as he joins his service. He may be appointed to the senior post only if he is found suitable having regard to the length of service, experience and performance in the junior scale. According to rule 9(1) of the Indian Administrative Service Cadre Rules, a senior cadre post may be filled up by a non-cadre officer if there is no suitable officer available for filling the vacancy. Similar provision is found in para 3 of the memorandum regarding the constitution of the IAS. The cadre officer, therefore, has no right to fill the vacancy if he is not found suitable. The filling up of the vacancy by non-cadre officer under rule 9 does not infringe any right of the cadre officer, nor does it amount to withholding of promotion within the meaning of rule 3 of the All-India Services (Discipline and Appeal) Rules.³⁸⁵

ii. Retrospective appointment impermissible

Neither in the All-India Service Act nor under any of the rules framed there under is there any provision authorizing the central government to make appointment of officers from the select list from a date earlier than the actual date of passing the orders. In the absence of such powers, it is not competent for the central government to ante-date the appointment.

iii. Joint cadre for IAS for the Union Territories

On the coming into force of the Constitution Seventh Amendment Act, 1956 with effect from 1 November, 1956, the President had the power to adopt the laws for the purpose of bringing the provisions of any law in force in India in respect of the union territories. Further, the new clause (58) introduced into section 3 of the General Clauses Act, states that the word 'state' shall as respects any period after the commencement of the Constitution Amendment Act mean 'a state specified in the first schedule to the Constitution and shall include a union territory'. Therefore, it was competent for the President to constitute a joint cadre of IAS for union territory under the provisions of All-India Services Act, 1951. All-India Services Act as also rule 4(5) of the Indian

³⁸⁵ A.P. Saxena, Supra n. 384

Administrative Services Recruitment) Rules providing for constitution of joint IAS for the union territories is intra vires the Constitution.³⁸⁶

d. Regulation of Cadres

i. State Cadre

The services, namely, the IAS, the IPS and the IFS, have a unique feature - though they are called All India Services, after one's selection, he/she is allotted to a particular State or Union Territory, which is called a State Cadre. The allotment and future mobility to other cadre and posts are regulated by the respective rules as under:

1. The IAS (Cadre) Rules, 1954
2. The IPS (Cadre) Rules, 1954
3. The IFS (Cadre) Rules, 1966

Under these rules, apart from three regulations, namely, the IAS (Fixation of Cadre Strength) Regulations, 1955, the IPS (Fixation of Cadre Strength) Regulations 1955 and the IFS (Fixation of Cadre Strength) Regulations 1966, All India Services (Joint Cadre) Rules, 1972 also govern the allocation of All India Service officers to joint cadres.

ii. Constitution of Cadre

According to Cadre Rules, there shall be constituted for each State or a group of states an Indian Administrative Service Cadre that shall be referred to as a State Cadre. At present, there are 24 such cadres for each of the three All India Services, of which, 21 are State Cadres and the remaining three joint cadres.

e. Fixation of seniority

After a person is appointed to IAS either by way of direct recruitment or promotion or selection, he/she needs to be given a year of allotment which constitutes his/her seniority. This procedure is regulated by the IAS (Regulation of Seniority) Rules, 1987, the IPS (Regulation of Seniority) Rules 1998 and the IFS (Regulation of Seniority) Rules, 1997 as the case may be.

³⁸⁶ *Union of India vs. Prem Kumar Jain*, AIR 1979 SC 1856

i. Seniority of Direct Recruits

The year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held. If an officer joins probationary training a year later then he/she shall be assigned that subsequent year as the year of allotment. Rule 3(3) provides that the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held.

The Indian Administrative Service (Regulation of Seniority) Rules, 1954 was repealed and replaced by the Indian Administrative Service (Regulation of Seniority) Rules, 1987, which came into force from November 6, 1987. Rule 3 (3)³⁸⁷ of the Indian Administrative Service (Regulation of Seniority) Rules, 1987 lays down new principles for assignment of year of allotment. They are as follows:

(i) The year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held provided that if a direct recruit officer is permitted to join probationary training under rule 5 (1) of the IAS (Probation) Rules, 1954, with direct recruit officer of a subsequent year of allotment, then he shall be assigned that subsequent year as the year of allotment.³⁸⁸

ii. Seniority of Promoted Officers

The year of allotment of a promoted officer shall be determined with reference to the year for which the meeting of the Select Committee was held and also with reference to the length of continuous service rendered by him in the feeder category up to the 31st December immediately before the year of Select Committee meeting." When an official has rendered his service for 21 years, he/she shall be awarded a weight of one year for every completed three years of service. Beyond the period of 21 years another weight of one year for every completed two years shall be given subject to a maximum of three years provided that he/she shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list.

Under rule 3 of the IAS (Regulation of Seniority) Rules, 1954 the assignment of year of allotment to a member of the service by the central government is final. A decision of

³⁸⁷ Indian Administrative Services (Regulation of Seniority) Rules, 1987, Indian Police Services (Regulation of Seniority) Rules, 1988, Indian Forest Services (Regulation of Seniority) Rules, 1997

³⁸⁸ R. 3(3)(i)

the central government assigning the year of allotment cannot be interfered with unless the decision is found to be capricious or arbitrary.³⁸⁹

A promotee shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list.

(ii) The year of allotment of a promotee officer as well as an officer appointed by selection shall be determined in the following manner:

(a) In the case of a promotee officer, for the service rendered by him in the state civil service upto twelve years, in the rank not below that of a deputy collector or equivalent, he shall be given a weightage of four years towards fixation of the year of allotment. Same is the position even in the case of an officer appointed by selection that he shall be given a weightage of four years towards fixation of the year of allotment for the first 12 years of gazetted service.

(b) Beyond the period of twelve years, a weightage of one year is awarded to an official for every completed three years of service. This is however, subject to a weightage of maximum of five years. In this calculation, fractions are to be ignored. The weightage mentioned in these clauses [i.e., sub-clause (b) of clause (ii) of Rule 3 (3), and sub-clause (b) of clause (iii) of Rule 3 (3)] shall be calculated with effect from the year in which the officerconcerned is appointed to the service.

In the case of a promotee officer, he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list of appointment to the service on the basis of an earlier select list, and in the case of an officer appointed by selection, he shall be not become senior to another non state civil service officer already appointed to the service. Further, that he shall not be allotted a year earlier than the year of allotment assigned to an officer already appointed to the service in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, whose length of class I continuous service in the state civil service is equal to or more than the length of class I continuous service of the former in connection with the affairs of the state.

³⁸⁹ R. 3(3)(ii)

The year of allotment, in terms of these new principles, can be assigned only to those officers appointed to the service after the commencement of these rules (i.e., New Seniority Rules, 1987). But, the year of allotment of an officer in service at the commencement of these rules shall be the same as has been assigned to him or may be "assigned to him by the central government in accordance with the orders and instructions in force immediately before the commencement of these rules.

It appears from rule 3 (3) (b) and rule 4 (4) of the Indian Police Services (Regulation of Seniority) Rules, 1954, that the order in the select list is irrelevant for the purpose of determining the year of allotment and is relevant in determining the seniority, only if the year of allotment of the officers is the same and their date of appointment is also the same. Since the order in the select list is dependent on the seniority in the state service, it follows that the seniority in the state police service is irrelevant for the purpose of determining the year of allotment and is relevant for the purpose of determining seniority only if the year of allotment and the date of appointment of two or more officers are the same. It must, therefore, necessarily follow that an officer who is a junior to another in the state police service, but starts continuous officiation in a senior post from a date earlier than the other may frog - leap and gain seniority by the consequential assignment of an earlier year of allotment.³⁹⁰

Assigning Year of Allotment by the Date of Continuous Officiation

According to the IPS (Regulation of Seniority) Rules, the only basis for the purpose of assigning year of allotment to the members of the service, is the date of continuous officiation in a senior post. The date of appointment to the service constitutes the basis when the date of commencement of continuous officiation in senior post of more than one officer is the same. When the date of appointment of more than one officer is also the same the order in which the names are arranged in the select list constitutes the basis. Whatever be the reason if an officer junior to another in the state service begins to officiate in a senior post earlier than his senior; he is entitled to the assignment of year of allotment on the basis of such continuous officiation. There is nothing in the rules, which deprives the officer the benefits of continuous officiation in a senior post on the ground that an officer senior to him in the state service did not officiate in a senior post from an earlier date.

³⁹⁰ *Harjeet Singh vs. Union of India*, (1980) 3 SCC 205

According to the rules regulating fixation of seniority of the IPS, officers recruited in three different methods are categorised into three separate groups and under the scheme of the seniority rules, officers in group-I are senior to group-II and officers in group-II are senior to group-III. An officer falling in group-III cannot claim seniority over officers in group-II on the ground that his continuous officiation in a senior post was longer. On the same basis, officers recruited to group-II cannot claim seniority over those recruited to Group-I.³⁹¹

Year of allotment - Indian Forest Service

According to rule 3(2)(C) of the Indian Forest Service (Regulation of Seniority) Rules, 1968, the year of allotment in respect of an officer appointed by promotion shall be the same as of the junior most officers recruited to the service in accordance with rule 7. Therefore, the year of allotment made in respect of a person recruited by promotion having due regard to the above rule is valid. In order that the period of officiation should count for purpose of seniority, the post in which the officer was officiating must be a cadre post. If it is found that the post against which the officer officiated was not a cadre post, the officiation against such post does not count for seniority.³⁹²

Further, since the question of year of allotment for the direct recruits and also for the promotees to the Indian forest service are regulated by the statutory rules of all India services relating to the Indian forest service and the central government is the statutory authority to determine such year of allotment, any petition filed before the CAT raising dispute regarding year of allotment, even before such determination of year of allotment by the central government, is said to have been misconceived and premature.

A special proviso has been included in the IPS seniority Rules regarding the assignment of seniority of the officers of the Nagaland Cadre. In relation to the State of Nagaland, the year of allotment and the seniority of officers appointed to the service at the time of the initial constitution of the State Cadre shall be determined by the Central Government in the following manner:

“The year of allotment and seniority shall be determined ad-hoc, in consultation with the Union Public Service Commission and the State Government, after taking into account

³⁹¹ *Tribhuvannath Bhargava vs. Union of India*, SLR 1977 (1) Del 291

³⁹² *A.S. Ananthasubramonian vs. State of Kerala*, SLR 1978 (1) Ker 72

the length of Service and the responsibilities of posts held by the officer as reflected in pay or nature of duties, or in both:

The year of allotment of an officer so arrived at shall be limited to the year to which his immediate senior in the Nagaland State Police Service, who is selected to the Indian Police Service Cadre of Nagaland, at its initial constitution has been allotted.”³⁹³

iii. Arbitrary date cannot be fixed

In assigning the year of allotment it is not open for the central government to fix an arbitrary date and say that service rendered prior to the said date would not be approved by the second proviso to rule 3(3) (b) of the IPS Seniority Rules, 1954. This is true for the other two All-India Services as well. The period of officiation of a particular officer has to be considered and approved or disapproved by the central government in consultation with the commission considering all the relevant facts. But the central government cannot pick out an arbitrary date and say that a period prior to the date would not be deemed to be approved by the government within the second proviso.

f. *Inter-se Seniority*

i. Inter-se Seniority of the Officers

While discussing the position of an officer in relation to his promotion and seniority, the matter of relative seniority between the direct recruits and the promotees has cropped up time and again. The inter-se seniority of the officers serving the Indian Police Service, who are assigned the same year of allotment, shall be in the following order and in each category the inter-se seniority shall be determined in the following manner:

a. Direct recruit officers shall be ranked inter-se in the order of merit as determined in accordance with Rule 10 of the Indian Police Service (Probation) Rules, 1954;

b. Promotee officers shall be ranked inter-se in the order in which their names are arranged by the Commission for the purpose of appointment to the Service by promotion.³⁹⁴

For the officers of the Indian Administrative Services, the inter-se seniority of the officers who are assigned the same *year of allotment* shall be determined in the following manner:

³⁹³ R. 4A, Indian Police Service (Regulation of Seniority) Rules, 1988. Added vide notification No. 14014/16/86-AIS dated 27-01-1989 (GSR No. 58E dt. 27.01.1989)

³⁹⁴ R. 4, Indian Police Service (Regulation of Seniority) Rules, 1988

1. Direct recruit officers shall be ranked inter-se in the order of merit as determined in accordance with rule 10 of the Indian Administrative Service (Probation) Rules, 1954;
2. Promotee officers shall be ranked inter-se in the order in which their names are arranged by the Commission for the purpose of appointment to the Service by promotion,
3. Officers appointed by selection shall be ranked inter-se in the order in which their names are arranged by the Commission for the purpose of appointment to the Service by selection.

g. ***Gradation List***

There shall be prepared every year for each State Cadre and Joint Cadre a gradation list consisting of the names of all officers borne on the cadre arranged in order of seniority.

h. ***Inter-Cadre Transfer***

The seniority of an officer appointed through direct recruitment, promotion or selection will be decided by the year of allotment given to him/her in home cadre and it will not change in spite of his/her transfer to another state. However, the officers shall be ranked inter-se with their respective categories in the state to which they are transferred.

4.2.2. The Civil Services of India

The Civil Services at the Centre are organised into four groups, viz. Group 'A' (which includes All India and Central Services), Group 'B', Group 'C' and Group 'D'. The Central Civil Services, Group A, Group B, Group C and Group D shall consist of the services and grades of services specified in the Schedule provided in the Central Civil Services (Classification, Control and Appeal) Rules, 1965³⁹⁵. This classification broadly is based on the rank, status and degree of responsibility attached to the posts. Group 'A' posts carry higher administrative and executive responsibilities and include senior management positions in Ministries/Departments and field formations. The junior level of Group 'A' along with Group 'B' constitute the middle level in the government. Group 'C' staff perform certain supervisory as well as operative tasks and also renders clerical assistance. Group 'D' posts are meant for carrying out routine duties and other supporting functions. The functions performed by the Group B, C and D officers and staff are varied and range from general administration, to specialized and technical

³⁹⁵ Rule 5, The Central Civil Services (Classification, Control and Appeal) Rules, 1965

functions. There are also intra group variations in each of these categories depending on the ministry, department, organization they are working for and this is reflected in different designations and functions within each group.

The Department of Personnel and Training is the coordinating agency of the Central Government which is concerned with the formulation of policy and the watchdog of the Government ensuring that certain accepted standards and norms, as laid down by it, are followed by all ministries/departments in the recruitment, regulation of service conditions and posting transfers and deputation of personnel as well as other related issues. It solely controls the cadres of the Indian Administrative Service and the Central Secretariat Service. The Department is supervised and controlled by the Ministry of Personnel, Public Grievances and Pensions.

In performing its duties, the Department issues guidelines for the benefit of all Ministries/Departments and it monitors the implementation of these guidelines. It also advises all organisations of the Central Government on issues of personnel management. At a more immediate level, the Department has the direct responsibility of being the cadre controlling authority for the IAS and the three Secretariat Services in the Central Secretariat. The Department also operates the Central Staffing Scheme under which suitable officers from All India Services and Group 'A' Central Services are selected and then placed in posts at the level of Deputy Secretary/Director and Joint Secretary. The Department also deals with cases of appointment to posts of Chairman, Managing Director, full-time functional Director/Member of the Board of Management of various Public Sector Undertakings/Enterprises, Corporations, Banks and financial institutions. It deals with the assignment of Indian experts to various developing countries. It is also responsible for formulation and coordination of training policies of the All India and Central Services and providing support for the capacity building of the State Government Officials.

a. The Central Secretariat Service

Prior to 1947, the Indian Civil Service (known as the 'ICS') was the implementing agency for executing the policy directions of Government. At that time there were secretariat offices, whose origins can be traced back to 1919, when the Imperial Secretariat Service came into being as one of the off-shoots of the Llewellyn-Smith Committee, set up on the eve of the Montague-Chelmsford Reforms. The Committee

envisaged a Secretariat Organization in the nature of a pyramid, the apex of which was the "Secretary" and at the base was a body of "Assistant Secretaries" (today known as Section Officers). After Independence, the Secretariat Offices' evolved into the Central Secretariat Service (CSS), which is spread across various Ministries/Departments.

On the role of the CSS the First ARC commented: "At present the higher Services in the Civil Service are ab initio field Services. Their initial deployment is in the field offices of the Central and State Governments. The work relating to policy formulation claims the administrator's time only from about the middle part of his career. There is no class division per se between the policy-formulator and the executive. The system is so designed that the same set of personnel do executive and policy work at different times. The exception is the Central Secretariat Service which forms a large component in the present pattern of staffing of headquarters organisation of the Central Government, though it has not been designed for any executive work."³⁹⁶

Today, the general administration services in the Central Secretariat, which provide support and continuity to the Central Government Secretariat set up, essentially in the Union Ministries, are as under:

Table 4.1 - The Secretariat Services³⁹⁷

Service	Grade	Strength	Total
Central Secretariat Service	Senior Selection Grade (Director) Group A	110	8423
	Selection Grade (Deputy Secretary) Group A	288 (including in-situ)	
	Grade I (Under Secretary) Group A	766	
	Section Officer	2353	
	Assistant	4906	
Central Secretariat	Senior Principal Private Secretary Group A	58	7117

³⁹⁶ Refurbishing of Personnel Administration – Scaling New Heights, Second Administrative Reforms Commission, Tenth Report, November, 2008

³⁹⁷ Retrieved from <http://persmin.nic.in/dopt>

Stenographer Service			
	Principal Private Secretary Group A	107	
	Private Secretary	1390	
	Stenographer Gr. C (PA)	2776	
	Stenographer Grade D		2786
Central Secretariat Clerical Service	Upper Division Clerk (UDC) Lower Division Clerk (LDC)	5535 5580	11115

The CSS provides the permanent bureaucratic set up in the Union Government. Its officers have been selected through the Civil Services Examinations, as well as the all-India graduate level Assistants Grade Examinations, conducted by the UPSC and the SSC respectively.

While the CSS is a general administration service, there are many ministries/ departments, attached and subordinate offices that have large cadres of their own doing specialised and technical functions. These are in the field of taxation, policing, audit, accounts, archaeology, meteorology etc.

The CSS provides a strong framework for the Secretariat of the Union Government, as well as a delivery system for policy formulation, continuity in policy administration, monitoring & review of the implementation of policies/schemes and a coherent institutional memory, which are germane to good governance. In the fast changing socio-economic scenario, CSS officers have to be suitably equipped to meet the emerging challenges. Some of these challenges include speedier decision making process, adapting to modern technological changes, business process re-engineering etc.

i. Recruitment at Group B Level

There is no direct recruitment at present at the Group B (Gazetted) level for either the general administration services or for the specialised services and employees reach this level only by promotion. This is the cutting edge or the visible face of the government

for most cadres. For example, the Group B Officers for the Taxation Department are the Income Tax Officer, Excise and Customs Superintendent and Customs Appraisers (these were earlier recruited directly, however, the practice has recently been discontinued). Group B Officers for the postal service is the Postmaster Group B and that for the accounts services, it is the Senior Accounts Officer.³⁹⁸

In the General Administration set-up, the key Group B officer is the Section Officer and here also the earlier practice of recruiting them directly has been discontinued. Since all these officers, as mentioned earlier, function at the cutting edge level and have frequent interface with the civil society, it is necessary to ensure that the most suitable persons hold these posts. The Administrative Reforms Commission, in this context, has recommended that each Department, dealing with both the general as well as specialised services, set up Committees to examine what changes are required in the system of recruitment and promotions to these posts. Prima facie, the Commission is of the view that in order to infuse fresh thinking, a certain percentage of vacancies (say 25% every year) at the level of Section Officer as well as for other specialised Group B posts, should be filled through 'Direct Recruitment'.³⁹⁹

Each Department, dealing with both the general as well as specialized Services (Group B), may set up committees to examine what changes are required in the system of recruitment and promotions to these posts. Prima-facie the Commission is of the view that in order to infuse fresh thinking, a certain percentage of vacancies (say 25% every year) at the level of Section Officer as well as for other specialized Group 'B' posts, should be filled through 'Direct Recruitment',

The Estimates Committee of Parliament in its 47th Report (1967-68) recommended the setting up of a Service Selection Commission for taking over recruitment to lower category of posts from the UPSC. Subsequently, the First Administrative Reforms Commission (ARC) also recommended the setting up of a recruitment board. Accordingly, the Staff Selection Commission was constituted in 1977. The Staff Selection Commission has a nationwide network of nine Regional/Sub-Regional Offices. The Regional Offices are located at Allahabad, Bangalore, Chennai, Guwahati,

³⁹⁸ Second Administrative Reforms Commission, Tenth Report on Refurbishing of Personnel Administration – Scaling New Heights (November, 2008)

³⁹⁹ Ibid

Kolkata, Mumbai and New Delhi and two Sub-Regional Offices are located at Chandigarh and Raipur.

Initially recruitment for Group C (non-technical) posts was being done by the Staff Selection Commission. Afterwards the Staff Selection Commission was also entrusted with the recruitment for Group "C" (non-technical) and Group 'B' (non-gazetted - both technical and non-technical) posts in various Ministries/Departments of Government of India, their attached and subordinate offices except those for which recruitment is made by the Railway Recruitment Boards.

i. *Promotions*

The promotion of different categories of Group B and Group C officials is governed by their respective Cadre and Recruitment Rules. The procedure for promotion from LDC to UDC, UDC to Assistant, Assistant to Section Officer and Section Officer to Under Secretary is described below.

a. *Promotion from LDC to UDC*

Promotional avenues are open to the regularly appointed LDCs in Union Ministers / Departments to the post of UDC. The promotion from LDC to UDC is mainly from two streams, one by seniority and the other by qualifying in the Limited Departmental Competitive Examination. In both cases the Departmental Promotion Committee process the Confidential Report Dossier to assess the suitability of the candidate for promotion.⁴⁰⁰

b. *Promotion by Seniority*

LDCs working in the Government of India who have rendered not less than 8 years of approved and continuous service in that grade, have successfully completed their probation period and have either passed the typing test or have been exempted from it are eligible for promotion by seniority to the post of UDC. Promotions are based on an assessment of their Annual Confidential Reports by the DPC for the last 5 years as well as their vigilance clearance. Promotions are made on availability of vacancies in cadre

⁴⁰⁰ Ibid

on the basis of seniority in the select list. In case a person is not considered fit for promotion, the reasons for this are to be recorded in writing.⁴⁰¹

c. *Promotion from UDC Grade to Assistant Grade*

There are two streams for filling up posts of Assistants; one is through direct recruitment by the Staff Service Commission and the second is through promotion of UDCs. In the case of promotion, officials to be promoted should have completed regular and continuous service of not less than 8 years and should be cleared from the vigilance angle. An UDC's performance is assessed by the DPC through the ACRs for the last 5 years. Promotion is made depending on the availability of vacancies in a Cadre. Such appointments are made in order of seniority in the select list except when for reasons to be recorded in writing, a person is not considered fit for such appointment. Presently, the ratio of intake through the two streams is 50:50.⁴⁰²

d. *Promotion from Assistant Grade to Section Officer Grade*

Promotional avenues are open to regularly appointed Assistants in the Union Ministries/Departments to the post of Section Officers. Promotions are given to Assistants from two streams, one by seniority and the other by qualifying in the Limited Departmental Competitive Examination.

1. Promotion by Seniority

Any regularly appointed Assistant who has rendered not less than 8 years approved and continuous service in the Assistant Grade and has successfully completed die probation is eligible for promotion by seniority to the post of Section Officer. The official to be promoted should be clear from the vigilance angle. The official is assessed on the basis of his/her Annual Confidential Reports for die last 5 years. The promotion is made depending on the availability of vacancies in a Cadre. Such appointments are made in order of seniority in the select list except when for reasons to be recorded in writing, the person is not considered fit for such appointment.⁴⁰³

i. The Central Secretariat Service Section Officers' Grade Limited Departmental Competitive Examination

⁴⁰¹ Ibid

⁴⁰² Ibid

⁴⁰³ Ibid

In pursuance of the Central Secretariat Service Rules, 1962, Government of India in the Ministry of Personnel, Public Grievances and Pensions conducts the Central Secretariat Service Section Officers' Grade Limited Departmental Competitive Examination through the Union Public Service Commission. Any regularly appointed Assistant with not less than 5 years approved and continuous service in the Assistant Grade is eligible to appear in the Examination. The UPSC holds Departmental Examinations for promotion from Assistant Grade of the Central Secretariat Service and equivalent in other Services like Railway Board Secretariat Service and Armed Forces Head-quarters Service. On qualifying the examination, the performance of the successful candidates is assessed from their Annual Confidential Reports for the last five years. On the basis of marks obtained by candidates in the written examination and evaluation of ACRs, a merit list of successful candidates is drawn with the recommendation for their appointment as Section Officers.⁴⁰⁴

e. Promotion from Section Officer Grade to Under Secretary Grade

Rule 3 of the Central Secretariat Service Rules, 1962 provide that vacancies in the grade of Under Secretaries (Grade I of CSS) shall be filled by promotion of regular officers of the Section Officers Grade who have been in the service for a minimum of 8 years in that grade. The promotions are made through a duly constituted DPC which considers the candidature of Section Officers by assessment of their Annual Confidential Reports of last 5 years and clearance from the vigilance angle.

From the above it is evident that in case of promotions from LDC to UDC and Assistant to Section Officer, an element of 'Limited Departmental Competitive Examination' is present to provide promotional avenues for deserving officials. However, in case of promotion from UDC to Assistants there is no such provision. This deprives meritorious deserving candidates (UDCs) of a chance for an early promotion. Therefore, the Commission is of the view, that the posts of Assistant in CSS should be filled in the ratio of 40 per cent by promotion from UDCs of CSCS Cadre, 40 per cent by Direct Recruitment and 20 per cent through Limited Departmental Competitive Examination.⁴⁰⁵

⁴⁰⁴ Ibid

⁴⁰⁵ Ibid

i. Seniority of officers holding posts / grades in grades merged in pursuance of recommendations of Sixth Central Pay Commission

Which provides that where all the posts in one or more pre-revised scales are merged with a higher pre-revised scale and given a common replacement scale / grade pay / pay scale, the suitability of the incumbents need not be assessed for granting them the higher replacement scale / grade pay / pay scale. There is also no need for the incumbents to complete any minimum eligibility service in the earlier scale of pay. There will be no change in the inter se seniority of the incumbents in the merged scale which shall be decided based on the general instructions on the subject.

The Sixth CPC in its recommendation contained in sub-para, (vi) of Para. 2.2.13 of the above mentioned Memorandum has stated that the seniority of Government servant will depend on the grade pay drawn. This will invariably be more for a higher level post. References have been received from Ministry of Railways/ Ministry of Defence, etc., regarding fixation of seniority of officers after merger of pay scales in pursuance to recommendation of Sixth Central Pay Commission. The recommendation of Sixth CPC has been accepted on 29-8-2008 and the merger of pay scale(s) of the post has been made effective with effect from 1-1-2006. The issue of seniority has been further examined and it has been decided in consultation with UPSC and Department of Legal Affairs that seniority of officers holding post in grades which have been merged in pursuance to recommendation of Sixth Central Pay Commission will be determined as follows:—

i. The status of a Government servant as on 29-8-2008 including those who have earned promotion between 1-1-2006 to 29-8-2008 will be protected as appointment / promotions are made as per the provisions of statutory Recruitment Rules applicable to the post / grade. The merger of the pay scale(s) of the post(s) as recommended by Sixth CPC have been made effective with effect from 1-1-2006; the seniority of Government servant which existed on 29-8-2008 (date of acceptance of recommendation of Sixth CPC) will be maintained, i.e. the holder of post having higher pay scale or post which constituted promotion post for the posts in the feeder grade, will rank en bloc senior to those holding posts having lower pay scale or the posts in feeder grade.

ii. Where posts having different pay scales prior to Sixth CPC recommendation and now after merger have come to lie in the same Pay Band with same Grade Pay, the inter se seniority of all the employees will be fully maintained with employee in a higher pre-

revised pay scale being placed higher vis-à-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue.

iii. Where recruitment for the posts in different pre-revised pay scale(s) was initiated separately for each posts, prior to acceptance of recommendation of Sixth CPC, i.e. prior to 29-8-2008 but selected individual joined duty on or after 30-8-2008 in the revised pay scale(s) against the posts which have been granted same Grade Pay, such officers will be assigned seniority en bloc below those officers who were in position as on 29-8-2008.

iv. The availability of officers nominated on the basis of panel of promotion given by DPC or selection list given by Selecting Authority will be decided as on 29-8-2008. In case an officer from the panel given by DPC or selection list given by Selecting Authority has joined on or prior to 29-8-2008, then status of all the officers included in panel given by DPC or selection list will be protected and all officers will be considered available and their seniority determined by following the basic principle of seniority i.e. order of panel given by DPC or merit list given by Selecting Authority. In case all the officers included in the panel given by DPC or selection list given by Selecting Authority joins after 29-8-2008 then the seniority of such officers within a grade, will be determined by placing them below all available officers as on 29-8-2008 but maintaining their inter se seniority in order of panel of DPC or merit list given by selecting authority. All the cases of determination of seniority except merged MTS posts will be decided accordingly. The issue of determination of seniority of merged MTS (erstwhile Group 'D') posts would be taken up separately.

ii. Seniority of officers holding posts / grades in grades merged in pursuance of recommendations of Sixth Central Pay Commission

The following guidelines laid down by the Department of Personnel and Training are to be followed in determination of seniority of grade(s) merged in pursuance to recommendation of Sixth Central Pay Commission.

The erstwhile Group 'D' (now merged MTS Grade) having different designation as sanctioned in different Ministries / Departments had following pay scale(s):

Table 4.2 Revised Pay Scales for Group D Employees

SL No.	Pre-revised Pay scales	Revised Pay scales (in Rs.)
1.	2,550-55-2,660-60-3,200	
2.	2,610-60-3,150-65-3,540	
3.	2,610-60-2,910-65-3,300-70-4,000	PB-1 5,200-20,200 1,800
4.	2,650-65-3,300-70-4,000	
5.	2,750-70-3,800-80-4,590	

The issue of seniority of merged MTS Grade (erstwhile Group 'D' post) has been examined in consultation with UPSC. The post(s) in the erstwhile Group 'D' for the purpose of determination of seniority, can be grouped into five different categories as under:

Table 4.3 Categorising Group D Employees D As per Pay Scale

Sl No.	Pre-revised Pay scale of the Post (in Rs.)	Category
1	2,750-70-3,800-80-4,590	Category - I
2	2,650-65-3,300-70-4,000	Category - II
3	2,610-60-2,910-65-3,300-70-4,000	Category - III
4	2,610-60-3,150-65-3,540	Category - IV
5	2,550-55-2,660-60-3,200	Category - V

The determination of seniority of merged grade will be regulated as per following guidelines:—

- i. As on 29-8-2008, holders of posts in Category-I will be en bloc senior to the holder of posts in Category-II, similarly holder of the posts in Category-II will be senior to holder of the posts in Category-III and so on.
- ii. While merging the different grade(s), the inter se seniority in a post which existed as on 29-8-2008 is to be maintained.
- iii. Within same category, where different stand-alone posts have been merged, inter se seniority will be determined based on length of continuous officiation in the post.
- iv. Only the regular service in the grade is to be counted for determination of service and ad hoc service, if any, is to be ignored.

v. Seniority is to be determined based on the substantive post held by the employee irrespective of the fact that such employee has been allowed financial upgradation to the next higher grade under ACP Scheme or any other scheme.

vi. In case of employees who joined an erstwhile Group 'D' post either by promotion or direct recruitment between 1-1-2006 to 29-8-2008, inter se seniority will be determined as per guidelines laid down in this Department's O.M. of even number, dated 13-9-2012.

b. Performance Appraisal

The Performance Appraisal for each group of officers in various Ministries/Departments/ Attached and Subordinate Offices is done on the basis of their Confidential Reports and in the case of Group C technical staff, detailed assessment of their technical functions is obtained and made. The Confidential Reports of the Central Secretariat Services are analysed below.

The Confidential Report proforma at the level of Section Officers/Desk Officers, Under Secretary, Deputy Secretary and Director is common and comprises of 5 parts. Part I seeks personal details, Part II stipulates that the officer give a brief description of duties, the target, objective and goals that were set for the officer, and the areas of priority in work. Achievements on the targets, objectives and goals are to be indicated by the officer. Reasons for shortfalls or commendable higher achievements are also to be indicated by the officer. Part III and IV are required to be filled up by the Reporting Officer who has to assess the officers performance on 15 points which inter alia include nature and quality of work, quality of output, knowledge of sphere of work, and analytical ability communications skill, attitude to work, initiatives, ability to supervise, inspire and motivate, inter-personal relations and team work, relations with public, integrity and health, etc. the Reporting Officer is also required to write a few lines on some key areas of assessment. Part V entails a Reviewing Officer to comment whether he/she agrees with the Reporting Officer and also give general remarks with specific comments about the work of the officer including his/her grading.

There is urgent need to streamline the proforma to make it more focused and also to ensure that the main criteria for assessment should be whether the officer reported upon has achieved his/her targets, objectives and goals. The present proforma is far too

descriptive and the qualities on which the Reporting Officer is required to comment are far too many and often overlap. A better option may be to devise an appraisal form giving the Reporting Officer multiple options on the level of performance against which he/she would indicate numerically the level at which the reported upon officer has performed.

The confidential Report proforma for Assistants and Clerks is divided into four parts which are somewhat similar to those for Section Officers/Desk Officers etc. as indicated in the earlier paragraph. For reasons mentioned above, it is considered necessary that the proforma may be revised to capture in a more precise manner the nature of duties the staff member performs and whether these have been completed within the specified time frame etc. It is also felt that instead of asking for a descriptive account of the staff member on each count it may be advisable to give to the reporting officer multiple options on the level of performance against which he may indicate the level at which the officer reported upon has performed. The Commission is of the view that the proforma of the Confidential Report should also include a column wherein the area/field of interest of the official reported upon (i.e. Health, Information Technology, Finance, Transport, Defence, etc.) is indicated, which may be considered for his/her future postings.⁴⁰⁶

It is common knowledge and has also been brought to the notice of the Commission that there is often considerable delay on the part of Reporting and Reviewing Officers in completing their assessments in the prescribed proforma. It is necessary that the entire process of reporting reviewing and accepting the ACRs is completed within 3 months from the end of the financial year for which the Report is to be recorded. In case of any delay, the Cadre Authorities must, not only take an adverse view, but also action against the Reporting/Reviewing authority which is responsible for the delay. To facilitate this process, a mechanism of acknowledging the receipt of the ACR proforma at various stages may be adopted, which should contain on the first page itself the details of when the ACR was submitted with the self-appraisal to the Reporting Officer, the date when the Reporting Officer gave his/her comments and forwarded the ACR to the Reviewing officer and so on.

⁴⁰⁶ Ibid

4.3. Judicial Service in India

4.3.1. All India Judicial Service

Article 312 (1) was amended by the Constitution (Forty-Second Amendment) Act providing for the constitution of All-India Judicial Service. Clauses (3) and (4) read:

(i) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

(ii) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of chapter VI of part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

In view of clause (3), all-India judicial service would only consist of the cadre of district judges. At present the recruitment to the cadre of district judges is made by direct recruitment and promotion on the recommendation of and in consultation with the high court respectively as provided in article 233. Under article 235 the full administrative control over the district judges is also vested in the high court. For creating an all-India service consisting of the cadre of district judges, amendments to articles 233 and 235 becomes necessary to designate the appointing authority and the controlling authority. Therefore, clause (4) is also added to article 312 to enable parliament to make necessary amendments to chapter VI of part VI (articles 233 to 237) of the Constitution by an ordinary legislation on the lines of articles 3 and 4 of the Constitution. Such legislation would prevail over chapter VI of part VI insofar it relates to the cadre of district judges.

Though article 312 was amended in the year 1976, steps have not been taken to constitute the service. The introduction of official language of the state concerned as the language to be used in courts appears to be one of the hurdles, for, unlike the sufficiency of a limited knowledge of the regional language for administrative officers, discharging the functions of district judge, original as well as appellate, one must be proficient in the regional language. However, serious attempts now seem afoot for the constitution of All-India Judicial Service.

In Chapter VI of Part VI of the Constitution, special provisions for regulating recruitment and conditions of service of persons appointed to judicial services in the

states have been made. The legislature, by making appropriate legislation, as has been empowered by Article 309, can regulate the recruitment and conditions of service of the service personels under the Govrnment. Until provision in that behalf is made by the appropriate legislature, power is conferred on the President or the Governor concerned, as the case may be, or his nominee is given the power to regulate by rules the recruitment and conditions of service of persons appointed to public services. The judicial service also falls within the meaning of the expression 'public services'. The recruitment and conditions of service of persons appointed to judicial service fall within purview of article 309. Apart from article 309, in entry 41 of state list in Seventh Schedule, the topic 'State public service - State public service commission' is included. Therefore, the state could legislate in respect of all matters concerning the members of judicial service. Further, the power to make law, on the topic 'administration of justice' and the constitution and organization of all courts except the Supreme Court and the high court, was exclusively vested in the State legislature by virtue of articles 245 and 246 read with entry 3 of list II of the Seventh Schedule, before the 42 Amendment to the Constitution. After the amendment, both the state legislature and Parliament have the power to make law on the above topic subject to the provisions of articles 245, 246 and 254. (videthe concurrent list entry 11-A). Under entry 3 of list II as it originally stood and entry 11-A of list III after the amendment, the appropriate legislature could legislate in respect of all matters concerning subordinate courts and members of judicial service. But having regard to the importance of judicial service, the founding fathers of the Constitution have taken care to introduce certain special provisions in chapter VI of part VI of the Constitution.

The provisions relate to:

- (1) The appointing authority, the minimum qualification and method of recruitment to the cadre of District Judges [vide article 233];
- (2) The appointing authority and provision for consultation regarding recruitment rules to the cadre of judges other than District Judges[vide article 234];
- (3) Control over the district courts and subordinate courts and in respect of posting, promotion and grant of leave to members of judicial service [vide article 235];

(4) The definition of the words 'District judge' and 'judicial service' [vide article 236]; and

(5) Bringing all the magistrates under the control of the high court to ensure their independence [vide article 237],

To the extent special provisions are made in chapter VI of part VI of the Constitution, the power of the appropriate legislature and also the rule-making power of the President or the Governor concerned, as the case may be, stands curtailed, as that power is subject to the provisions of the Constitution. The scope of specific provisions contained in articles 233 to 237 of the Constitution is discussed in detail under the relevant headings.

The constitutional scheme aims at securing independent judiciary, which is the bulwark of democracy.⁴⁰⁷ Incidental to the requirement of maintaining such independence of the judiciary, it is of importance that the members of the judicial services should not work under apprehension of retaliatory action by the police and the executive whatever forms such action might assume.⁴⁰⁸

Further, justification for such special provisions and differential treatment to members of judiciary was given by the apex court, in *All India Judges Association (II) v. Union of India*⁴⁰⁹, as follows:

“The judicial service is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State power are the Ministers, the Legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions' The council of ministers or the political executive is different from the secretarial staff of the administrative executive, which carries out the decisions of the political executive. Similarly, the

⁴⁰⁷ *A.C. Thalwal vs. High Court of H.P.*, (2000) 7 SCC 1

⁴⁰⁸ *U.P. Judicial Officer's Association vs. Union of India*, (1994) 4 SCC 687

⁴⁰⁹ (1993) 4 SCC 288

Legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the Legislators and the Judges and not between the Judges and the administrative executive. In some democracies like the USA, members of some State judiciaries are elected as much as the members of the legislature and the heads of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on par with the members of the judiciary, either constitutionally or functionally.”

a. *Appointment, posting and promotion of district judges*

Article 233 of the Constitution of India, which deals with the appointment, posting and promotion of district judges, has been reproduced as under:

“Article 233: (1) Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years as advocate or a pleader and is recommended by the High Court for appointment.”⁴¹⁰

This article contains specific provisions relating to the appointment of district judges in respect of the following matters:

- (i) Appointing authority;
- (ii) Mode of recruitment: Promotion and direct recruitment-Qualification and procedure thereof;
- (iii) Consultation with the high courts

i. Appointing authority

The Governor of the state is the authority empowered to appoint to the cadre of district judges either by direct recruitment or by promotion. This being a specific constitutional provision, the power to make appointment cannot be conferred on any other authority, by law or rules made under article 309. There is no substance in the contention that the

⁴¹⁰ This article corresponds to S. 254(1) and (2) of the Government of India Act, 1935

view that the Governor is the appointing authority leads to subservience of the judiciary, and undermines the independence of the judiciary. Article 233, which requires the Governor to make promotions to the cadre of district judges in consultation with the high court and direct recruitment on the recommendation of the high court provide sufficient safeguards against such consequence.⁴¹¹ The Governor, who is the appointing authority, almost carries out a ministerial function of appointing recommended candidates both by the public service commission and the high court at the grass root level and also has to appoint only those candidates who are recommended by the high court for appointment at the apex level of the district judiciary.⁴¹² The power to make appointment or to order dismissal or removal of a member of judicial service is an executive function required to be exercised by him in accordance with the rules of business framed under article 166. Thus, it needs to be exercised on the aid and advice of the council of ministers in accordance with the provisions of the Constitution.⁴¹³

ii. Appointment by Promotion

After the coming into force of the Constitution, the high court is the authority, which has the power of making promotion in respect of persons belonging to the state judicial service holding any post inferior to that of a district judge. There is no requirement that the high court should consult the public service commission in accordance with the provisions of article 320(3(c)).

(a) Qualification and Procedure

Article 233(1) provides for appointment of district judge by way of promotion. Though the article is silent about the cadre of service from which promotion is required to be made to the cadre of district judges, article 233(2) providing for appointment by direct recruitment states that any person who is not in the services of the union or of the state, should be an advocate or pleader of seven years standing; to be eligible for appointment by direct recruitment. However, there is no requirement that seven years standing should be in any particular high court. If total practice of an advocate before various high courts is seven years or more, such a person is qualified for direct appointment. On reading clauses(1) and (2) together, it is clear that promotion to the cadre of district judges is required to be made from among persons in the service of the union or of the state.

⁴¹¹ *M.M. Gupta vs. State of J & K*, SLR 1983(1) SC 160

⁴¹² *State of Bihar vs. Bal Mukund Shah*, (2000) 4 SCC 640

⁴¹³ *Shamsher Singh vs. State of Punjab*, AIR 1974 SC 2192

Article 236 (2) defines the expression "judicial service" to mean a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge. If this definition, instead of appearing in Article 236, is placed as a clause before article 233 (2), there cannot be any dispute that "the service" in article 233 (2) can only mean the judicial service. The circumstances that the definition of "judicial service" finds a place in a subsequent article does not necessarily lead to a contrary conclusion. The fact that in article 233 (2) the expression "the service" is used whereas in articles 234 and 235 the expression "judicial service" is found is not decisive of the question whether the expression "the service" in article 233(2) must be something other than the judicial service, for, the entire chapter is dealing with the judicial service. Thus, though the article has not specified the service from which promotion can be made, the word 'service' used in the article means only 'judicial service'. That is how the word 'service' in the context of the word 'promotion' to the cadre of district judges and also in the light of the definition of the expression 'judicial service' contained in article 236(b) has to be understood.⁴¹⁴

The Constitution has not prescribed any procedure to be followed for promotion in judicial services. It only states that the Governor, in consultation with the High Court, can promote a judge to a higher rank. However, subject to articles 233, 234 and 235, the President or the Governor, is empowered to frame rules in this regard. In *State of Kerala v. M.K. Krishnan Nair*, the apex court, while upholding Kerala Civil Judicial Service Rules, 1973 and Kerala Criminal Judicial Service Rules, 1973, has held that rules providing for bifurcation of state judicial services with different avenues of promotion do not violate Articles 14 and 16 of the Constitution of India.

In *All India Judges Association (III) vs. Union of India*⁴¹⁵, the apex court has directed that the existing two sources of recruitment, viz., promotion and direct recruitment to be replaced by three sources: (i) direct recruitment to 25% of the posts from advocates by competitive examination both by written and viva-voce, (ii) promotion to 50% of the posts on the basis of merit-cum-seniority for which high court should prescribe a test to assess the candidate's legal knowledge and efficiency with adequate knowledge of case law, and (iii) promotion to remaining 25% of the posts strictly on the basis of merit through limited departmental competitive examination from civil judges (senior

⁴¹⁴ *Chandramouleshwar Prasad vs. Patna High Court*, AIR 1970 SC 370

⁴¹⁵ (2002) 4 SCC 247

division) with not less than 5 years service. While directing the high courts to frame rules for this purpose, the apex court observed:

“The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While the Supreme Court has accepted the recommendation of Justice Shetty Commission, which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers become more efficient. There has to be certain minimum standards, objectively adjudged, for officers who are to enter the higher judicial service as Additional District Judges and District Judges. While Justice Shetty Commission is right in recommending that the recruitment to the higher judicial service i.e., the District Judge cadre from amongst the advocates should be 25% and the process of recruitment is to be by competitive examination, both written and viva-voce, it is necessary that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to higher judicial services. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and compete with each other so as to excel and get quicker promotion.”

Confirmation of persons appointed to be or promoted to be district judges is clearly within the control of the high court. When persons are appointed to be district judges or persons are promoted to be district judges the act of appointment as well as the act of promotion is complete and nothing more remains to be done. Confirmation of an officer on successful completion of his period of probation is neither a fresh appointment nor completion of appointment. Such a meaning of confirmation would make appointment a continuing process till confirmation. Confirmation of district judges is vested in the control of the high courts for the reason that if after the appointment of district judges, the Governor will retain control over district judges until confirmation there will be dual control of district judges. Thus, the order of confirmation of district judges and session's judges is to be passed by the high court.⁴¹⁶

As the control over subordinate courts including the district courts vested in the high court by virtue of Article 235, is effective and full control, the power to take decision regarding confirmation of district judges must be held to be vested in the high court.

⁴¹⁶ *High Court of Punjab & Haryana vs. State of Haryana*, (1975) 1 SCC 843

Confirmation of judicial officers promoted to higher cadres by the high court is also vested in the high court. Any rule, which confers such authority on any outside authority, is invalid.

The above position has been consistently reiterated by the Supreme Court in various cases decided so far.

In *Registrar, High Court of Gujarat v. C.G. Sharmait*⁴¹⁷, was held that automatic confirmation cannot be claimed as a matter of right, where in terms of rules the confirmation order can be passed only if there is a vacancy and work is found to be satisfactory which are pre-requisite for confirmation, on the ground that the probationer is allowed to continue even after the expiry of probationary period.

In *H.F. Sangati v. Registrar General, High Court of Karnataka*⁴¹⁸, the apex court has, however, taken the position that the order of discharge passed by the state government on a reference from high court after the administrative committee of the high court had considered all the relevant material and formed an opinion that as to his unsuitability which opinion was accepted by the full court was in accordance with rule 6 of Karnataka Civil Service (Probation) Rules, 1977 and was neither stigmatic nor punitive. Hence, affording opportunity, or holding of departmental enquiry before passing such order was not necessary.

b. According of selection time scale

When according to the rules regulating the conditions of service of district judges, a selection time scale is sanctioned which is required to be given to such number of senior most district judges as specified in the rules, the giving of such pay scale does not involve any promotion. The high court, therefore, cannot withhold the selection time scale of pay to a district judge who is entitled according to the rules.

In *High Court of Judicature for Rajasthan v. P.P. Singh*⁴¹⁹ where a committee of two judges appointed by chief justice of high court recommended names of officers of HJS for grant of selection scale on the basis of criteria different from that laid down by the full court, but which was subsequently approved by the court, it was held, in such

⁴¹⁷ (2005) 1 SCC 132

⁴¹⁸ (2003) 3 SCC 117

⁴¹⁹ (2003) 4 SCC 239

circumstances the recommendations of the committee became the decision of the court. Hence, it was competent for the Governor to act upon it.

c. *Power to Fix Seniority*

Under articles 233, 234 and 235 the power of the Governor in respect of judicial service extends only to three matters, viz., appointment, posting and promotion of district judges and appointment of Members of the subordinate judiciary. In respect of all other matters relating to judicial service the power is vested in the high court. Though it is the high court that is empowered to fix seniority of the judicial officers, it is the Governor who frames the rules regulating seniority. Therefore, the high court is under a duty to fix seniority of judicial officers in accordance with the rules framed by the Governor.⁴²⁰

In view of the fact that there has been a constant discontentment among the members of the higher judicial service in regard to their seniority in service due to which, for over three decades, a large number of cases have been instituted in order to decide the relative seniority between promotees and direct recruits, the apex court, in *All India Judges Association (III)* has directed the high courts to suitably amend and promulgate seniority rules on the basis of the roster principles as approved by it in *R.K. Sabharwal v. State of Punjab* as early as possible with a hope that as a result thereof there would be no further dispute in the fixation of seniority. It was, however, specifically directed that the existing relative seniority of the members of higher judicial service has to be protected and the roster has to be evolved for the future.

Effect of provisions in law relating to reorganisation of states: Any provision contained in any law effecting reorganisation of states which confers power on the central government to fix the seniority of members of judicial service, has overriding effect on the power conferred on the high court under articles 233, 234 and 235 and therefore has to prevail. This is for the reason that under articles 3 and 4, Parliament is given the power to make incidental and ancillary provision while enacting any law effecting reorganisation of states, and the provisions of such law are to be treated as amendments to the Constitution.

⁴²⁰ *State of Bihar vs. Madan Mohan*, AIR 1976 SC 404

Claim for filling up the posts only by promotion

The claim by a member of judicial service that all the posts of district judges should be filled up only by promotion and only in the absence of eligible officers' direct recruitment could be resorted to is plainly untenable. There is nothing to support any such contention as sought to be made out. In *Orissa Judicial Service Association v. State of Orissa*, where promotees challenged the direct recruitment to superior judicial service on the ground that it adversely affects their chances of promotion from subordinate judicial service, the apex court, while negating the contention as untenable, has held that: "Article 233 of the Constitution as well as the statutory rules framed under Article 309, viz.. Rule 5 of Orissa Superior Judicial Service Rules provide for recruitment to the Senior Branch of service by direct recruitment from the members of the Bar. The constitutional mandate cannot be challenged merely because it may to certain extent adversely affect the chances of promotion of the Junior Branch of judicial service". The issue was once again raised in *Delhi Judicial Service Association v. Delhi High Court* where promotees filed writ petition seeking mandamus for filling up certain posts in Delhi Higher Judicial Service by promotion only, the apex court held that the question no longer remains res Integra, the same, having been raised and answered in *Orissa Judicial Service Association* case.

However, where a large number of vacancies in direct recruitment quota in superior judicial service has remained unfilled for a long time and sufficient number of candidates were not available, appointments made in such vacancies by promotion to save judicial works in the district from suffering could not be said to be fortuitous, though such appointment would not confer seniority over the direct recruits of the same year.⁴²¹

iii. Appointment by Direct recruitment

(a) Qualification and procedure

Direct recruitment is prescribed as one of the modes of appointment to the post of district judges. Clause (2) of article 233 prescribes the qualification for direct recruitment to the cadre of district judges. A person to be eligible for such appointment should have been an advocate or pleader for not less than seven years. A person who had

⁴²¹ D. Ganesh Rao vs. State of Jharkhand, (2005) 8 SCC 454
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been an advocate for seven years, but had become a member of state service other than judicial service, is qualified for appointment by direct recruitment. Law officer of central or state government, public corporation or of a body corporate, enrolled as an advocate under exception to rule 49 of the Bar Council of India Rules and practising before courts and tribunals are also eligible to be considered for appointment to the higher judicial service. A person practising in any of the courts within the territory of India is eligible for such appointment. Thus, any rule requiring that the candidates for direct recruitment to the service must be advocates who had practiced in the high court of that particular state or courts subordinate thereto is violative of article 14 and 16 of the Constitution. The Governor is required to make the appointment by direct recruitment of a person who is recommended by the high court. In other words, the recommendation of a person to be appointed as district judge is the very foundation for the exercise of power of appointment by the Governor. The Governor cannot appoint a person as a district judge, unless recommended by the high court though the Governor may not appoint a person recommended. In other words, there is no compulsion on the Governor to appoint a person recommended though he cannot appoint a person not recommended for appointment by the high court. A recommendation made by the high court to appoint a person as district judge is not binding on the Governor and does not confer any right on the candidate so recommended.⁴²²

(b) Members of judicial service not eligible for direct recruitment:

Article 233 prescribes two sources and methods of recruitment to the cadre of district judges: (i) from services, i.e., judicial service by promotion; (ii) from amongst members of the bar by direct recruitment. In case of candidates who are not members of judicial service they must have been advocates or pleaders for not less than seven years and they have to be recommended by the high court before they may be appointed as district judges, while in the case of candidates who are members of judicial service the seven years rule has no application but there has to be consultation with the high court. Such members of subordinate judicial service cannot seek direct recruitment to higher judicial service under article 233 (2) even though they may otherwise have prior seven years standing at Bar. Any other construction would lead to anomalous and absurd

⁴²² *Mani Subrat Jain vs. State of Haryana*, AIR 1977 SC 276

consequences such as junior member of the subordinate judicial service superseding senior members of the judicial service with long records of meritorious service.⁴²³

However, in view of the direction of the Supreme Court issued in *All India Judges Association (III)*, suggesting for the third of recruitment by promotion to 25% of the posts strictly on the basis of merit through source limited departmental competitive examination from civil judges (senior division) with not less than five years service, the above argument that permitting the members of judicial service to seek direct recruitment would lead to anomalous and absurd consequences such as junior member of the subordinate judicial service superseding senior members of the judicial service has lost its cogent force.

(c) Quota for direct recruitment

The Constitution of India though provides direct recruitment as one of the sources of appointment to the cadre of district judges, has not prescribed any fixed quota for it. Different states have different quota system for direct recruitment. In *Delhi Judicial Service Association v. Delhi High Court* provisions dealing with direct recruitment as well as promotion, with a rider that direct recruitment shall not exceed one third of total number of posts were held to be not violative of articles 14, 16 and 233 (2) of the Constitution. In *Sri Kant Tripathi. State of U.P.*, it was, however, held that the prohibition contained in the rules against raising of quota for direct recruitment for making up the shortfall in previous recruitment, beyond 15% of the cadre strength, does not compel the high court to recruit 15% of the vacancies by direct recruitment at every recruitment.

In cases where quota is not fixed under the rule, such statutory rules can be supplemented by administrative instructions and the state government in consultation with the high court is competent to prescribe quota/or two sources of recruitment to the service by administrative orders but it would be desirable and proper to prescribe the quota for recruitment to the service in the rules themselves. Absence of statutory provisions in the rules fixing the quota for the two sources of recruitment, results into a state of uncertainty leading to suspicion and litigation. However, in order to bring uniformity in this regard, the apex court, in *All India Judges Association (III) v. Union of*

⁴²³ *Satyannarayan Singh vs. State of Rajasthan*, (2001) 6 SCC 89

India relying on Justice Shetty Commission's recommendation, has directed that the quota for direct recruitment shall be fixed at 25% of the posts in the cadre of district judges.

iii. Consultation with the high court

1. Object of consultation with the high court

The provision for consultation with the high court is incorporated since the high court is expected to have superior knowledge in regard to the suitability of a person belonging either to the judicial service or to the bar to be appointed as a district judge. The duty to consult with the high court is so integrated with the exercise of the power to appoint a district judge that the power can be exercised only in consultation with the high court. "Consultation" with the high court in this article means on the recommendation of the high court.

The object underlying this provision is to secure and maintain independence of the subordinate judiciary. The high court would be the best judge of the requirements of proper and efficient judicial administration.

2. Manner of consultation with the high court

The consultation required under this article is of utmost importance. Though consultation does not mean "concurrence", it postulates an effective consultation, which involves exchange of mutual viewpoints of each other and examination of the relative merits of the other point of view. Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. Although normally the recommendations made by the high court for any amendment in the rule should be accepted by the state government, but, if in any particular case, the state government for good and weighty reasons, find it difficult to accept the recommendation of the high court and the state government communicates its view to the high court, the high court must reconsider the matter. The high court as well as the state government must approach the question in a detached manner for achieving the true objective of framing rules, which would secure appointment of proper persons to judicial service of the state for proper and efficient administration of justice. If the matter is thus approached, there should not be any difficulty. While considering the recommendations of the high court the state government would proceed on the basis that in such matters

the opinion of the high court is entitled to the highest regard. There must be a full and complete consultation while making appointments as well. If the high court recommends 'A' to be appointed a district judge while the Governor is of the opinion that 'B's claim is superior to that of A, it is incumbent on the part of the Governor to consult the high court in regard to its proposal to appoint B and not A. If the Governor is to appoint 'B' without obtaining the views of the high court in respect of B's claim vis-a-vis the claim of A for appointment, the appointment cannot be said to be in compliance with article 233. Consultation with the high court is not an empty formality. It must be full, complete and effective, the high court being appraised of the entire proposal and its view obtained. It is not open to the government to appoint a person as district judge by promotion unless recommended by the high court. Therefore, the appointment of district judges made disregarding the recommendations made by the high court without further consultation with reference to the contrary view entertained by the government are unconstitutional and invalid. Such an attitude on the part of the executive is sure to undermine the independence of the judiciary. However, order passed by those officers after their appointment till their appointments are set aside should be regarded as valid.

3. Consultation must be with the full court

Every high court consists of a chief justice and such other judges who have been appointed as judges of that high court as a whole. Any rules of recruitment to the cadre of district judges which provide for constitution of a selection committee appointed under the rules and providing that the high court has to recommend from out of the list prepared by such committee would be a travesty of the constitutional provision. Such a procedure does not amount to consultation with the high court nor an action on its recommendation. The consultation in such a case would be really a consultation with the selection committee subject to a kind of veto to be exercised by the high court, which may be accepted or ignored by the Governor. Such rules are invalid being contrary to the provisions of article 233. Such consultation is invalid even if all the members of the selection committee are judges of the high court. The view that the consultation should be with the full court is considerably shaken by the rulings of the Supreme Court in *Tripathi* where it was held that the administrative power vested in a body of persons can for effective exercise of such power be exercised by some of them acting on behalf of

all. In *Yoginath D. Bagde v. State of Maharashtra*⁴²⁴, the division bench of the Supreme Court has, however, expressed its reservation that the view expressed by the constitution bench, in *Tripathi* that the control can be exercised by the committee also, warrants reconsideration in view of the concept of 'wider consultation'.

But, recently the principle laid down in *Tripathi* was endorsed by the three-judge bench of the Supreme Court in High Court of Judicature for *Rajasthan v. P. P. Singh*. In this case it was held that even where the rules required for holding of the meeting of the full court, the chief justice has the requisite jurisdiction to constitute a committee for the purpose of considering the case of eligible judicial officers, and once the report of the committee is placed before the full court and approved by it, the recommendation of the committee would become the decision of the court. It was further held that a meeting of judges having requisite quorum as contemplated under rule 29 would amount to meeting of full court satisfying the requirement of rule 5 for consulting all the judges and non-attendance of some of them at the meeting would not vitiate its resolution.

iv. Power of the Governor to Frame Recruitment Rules

Article 233 prescribes the minimum qualification for appointment of district judges. According to article 233 the qualification required is that the person should have (i) seven years practice as an advocate or (ii) been a member of 'judicial service' under the union or state. But it may be necessary to prescribe other qualifications or disqualifications. It is competent for the legislature or the Governor in exercise of his powers under proviso to article 309 to prescribe other qualifications such as minimum or maximum age limit for appointment subject to article 233 and other provisions of the Constitution, after consultation with the high court. Article 309 is a general provision which prescribes rules for recruitment and conditions of service of those persons who are appointed to public service under the union and the state. The members of judicial service are appointed to public service and, therefore, subject to the provisions of articles 233, 234 and 235. It is for the President or the Governor, as the case may be, to frame rules of recruitment and conditions of service for judicial service. However, if no recruitment rules have been framed, the high court would be the sole authority to decide the criteria concerned on which promotions should be made. It could adopt either

⁴²⁴ (1978) 2 SCC 102

the method of promotion by selection on merit-cum-seniority basis or the method of seniority-cum-merit.

In *State of Bihar v. Bal Mukund Sah*⁴²⁵, the apex court has held that creation of cadres and creation of posts in the cadre comprised in the judicial service of the state can be resorted to by the Governor in the exercise of his rule making power under article 309 or for that matter by any appropriate legislation by the state authorities under the very same article. But once the cadre of district judges and subordinate judiciary are constituted by the aforesaid authorities the posts backed up by suitable budgetary provisions are created and are accordingly made available to be filled in the cadres concerned, the process of creation comes to an end. Thereafter, when in the created posts borne on any judicial cadre, whether at the district level or at the subordinate court level, any vacancies arise by retirement or otherwise non-availability of incumbents due to any other reason, question of filling up of those available vacancies would arise. Such available vacancies of sanctioned posts have to be filled in only after following the procedure laid down by articles 233 and 234 of the Constitution and cannot be subject to any other procedure. Thus, proceeding further, while dealing with the question of power of state legislature to legislate in respect of reservation of vacancies for SCs/STs/OBCs while recruiting district judges and other judicial officers, the court has observed:

While Article 309 deals with recruitment and conditions of service of persons serving the union or the state, recruitment to a particular category of services viz., judicial service of the state has been excepted from the purview of article 309 by the overriding provisions of articles 233 and 235. Reservation of available vacancies is not a stage anterior to recruitment or appointment to such vacancies on the already sanctioned posts in the cadre and therefore, it falls within the scope of Articles 233 and 234. Neither the legislature has power to legislate under Article 309 nor Governor has power to make rules under proviso to Article 309 in that regard bypassing the high court. Recommendation of the high court under Article 233 (2) and consultation with the high court under Article 234 are sine qua non for direct recruitment of district judges at the apex level and other judicial officers at the base level respectively of the state judicial service. High courts role under Articles 233 and 234 is pivotal and meaningful and not merely formal. Article 309 as also Article 245 are subject to other provisions of the

⁴²⁵ (2000) 4 SCC 640

Constitution and hence have to be read subject to Articles 233 and 234 which constitute a complete code.

Thus, the power of the Governor to frame recruitment rules under the proviso to article 309 has to be exercised in conformity with articles 233 and 234 of the Constitution.

v. *Control over subordinate courts*

Article 235 vests the control over subordinate courts in the high court. This is one of the most important provisions designed to insulate the subordinate judiciary against executive interference, and securing its independence at all levels. While the power to make initial appointment of persons to judicial service is vested in the Governor, in respect of all other matters, such as promotions, transfers and postings, sanction of leave, disciplinary proceedings and imposition of penalties, the appropriate power is exclusively conferred on the high court. Even in such matters in which the Governor may make a decision, the decision cannot be taken save in consultation with the high court. The consultation is mandatory and the opinion of the high court is binding on the state government. Such control and consultation are not a matter of mere formality; they are the constitutional power and privilege of the high court, also its obligation, and cannot be diluted by sheer inaction or failing to act when the high court must act. Thus, the members of judicial service are thereby given full protection to enable them to be fearless and independent in the discharge of their duties.

The combined effect of articles 233, 234 and 235 as regards the power vested in the Governor and the high court in relation to the administrative control over the subordinate courts as interpreted by the Supreme Court in various decisions referred to in this chapter can be summarised as follows:

(i) The power to make first appointment either by way of promotion or by-direct recruitment to the cadre of district judges is vested in the Governor, but the appointment has to be made in consultation with and on the recommendation of the high court respectively (article 233).

(ii) The power to make appointments to the cadre of district judges vested in the Governor does not include the power to confirm the service on completion of probation. Confirmation of persons appointed to be or promoted to be district judges is clearly within the control of the high court.

(iii) The power to make first appointment to the initial recruitment cadre of subordinate judicial service is vested in the Governor. The appointment has to be made in accordance with rules framed by the Governor in consultation with the high court and the public service commission (article 234).

(iv) The power to make promotion from the initial recruitment cadre of subordinate judicial service to higher posts below their cadre of district judges is vested in the high court.

(v) The power to impose major penalties such as dismissal, removal, compulsory retirement or reduction in rank against all members of judicial service including district judges is vested in the Governor, but in view of the effective control over them having been vested in the high court, the high court alone is competent to initiate and hold disciplinary proceedings and the penalties could be imposed only in accordance with the recommendation of the high court.' Similarly, the power to adjudge as to whether a member of judicial service should be retired after he has put in the prescribed age or qualifying service and to recommend his retirement under the relevant rule providing for such retirement is vested in the high court. In other words, only formal order of removal or retirement from service of a member of judicial service is required to be issued by the government on the recommendation or advice by the high court. Therefore, in substance and effect the recommendation or advice is peremptory.

(vi) The power to impose all penalties other than major penalties against all members of judicial service including district judges is vested in the high

(vii) All other matters relating to administrative control over the members of judicial service except those, which are specifically conferred on the Governor, are vested in the high court.

4.3.2. Seniority and Appointment of Judges of High Court and Supreme Court

The word 'promotion' is a misnomer while discussing the matter of appointment of Judges of Supreme Court and High Courts. Neither the Constitution nor any other Law, Rules or Regulations has used the term 'promotion' of the Judges at the higher echelons of Supreme Court and High Courts. However, it is a relevant matter for discussion here and we can take appointment to be synonymous to promotion. It can also be pointed out

that an appointment includes within its purview a promotion too(as discussed in previous chapters).

Article 124 provides for the establishment of the Supreme Court with a Chief Justice and 30 other Judges. The Supreme Court Judges are to be appointed by the President “after consultation with such of the Judges of the Supreme Court and of the High Courts as the President may deem necessary”. The proviso to the article says that in case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted. The only obligation for the Government was thus to consult the Chief Justice and other judges. Significantly, the appointment was not required to be made ‘in consultation’ but ‘after consultation’. In actual practice, during the early couple of decades of the Constitution, after receiving the opinion of the Chief Justice, the Cabinet deliberated on the matter and advised the President in regard to persons to be appointed. The President acted on the advice. In case of the Chief Justice, the senior-most judge was usually appointed. The convention, however, was ignored when in the 70s, a couple of Chief Justices were appointed superseding their more senior colleagues.⁴²⁶

It was held in *S.P. Gupta vs. Union of India*⁴²⁷, that consultation must imply exchange of views after examining merits, but that it did not mean concurrence. However, this case was overruled in 1993 in the *Supreme Court Advocates-on-Record Association vs. Union of India*⁴²⁸. In this case, the Supreme Court practically took over the power of the appointment of judges in its own hands. As a safeguard, it mandated the Chief Justice associating two of his senior-most colleagues in the selection process. The procedure for appointment was revised in the light of this judgment in 1994 to the effect that the decisive view in the matter of the appointment of judges shall be that of the Chief Justice and in case of a vacancy in the office of the Chief Justice, the senior-most Judge would be appointed unless the retiring judge reported that he was unfit. However, following the government’s reservations in regard to certain recommendations made by the Chief Justice in the matter of appointment of Judges to the Supreme Court, the matter again became highly controversial and the President made a reference to seek the advisory

⁴²⁶ Subhash C. Kashyap, *Constitutional Law of India*, Vol. 2, 1122 (Universal Law Publishing, Gurgaon, Haryana, 2nd ed., 2015)

⁴²⁷ AIR 1982 SC 149

⁴²⁸ AIR 1994 SC 268

opinion of the Supreme Court under Article 143 of the Constitution.⁴²⁹ The Court confirmed the position in the 1993 judgment but provided some more safeguards. The Chief Justice had to consult four senior-most judges of the Supreme Court and if two of the four disagreed on some names, it could not be recommended. This was known as the ‘collegium system’. In effect, decisions were to be taken by consensus where the Chief Justice and at least three judges of the four had to agree.

The Memorandum showing the Procedure for Appointment of the Chief Justice of India and Judges of the Supreme Court made in pursuance of Article 124(2) read as follows:

“Appointment to the office of the Chief Justice of India should be of the senior-most Judge of the Supreme Court considered fit to hold the office. The Union Minister of Law, Justice and Company Affairs, would at the appropriate time, seek the recommendation of the outgoing Chief Justice of India for the appointment of the next Chief Justice of India.

Whenever, there is any doubt about the fitness of the senior-most Judge to hold the office of the Chief Justice of India, consultation with other judges as envisaged in Art 124(2) of the Constitution would be made for appointment of the next Chief Justice of India.

After receipt of the recommendation of the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs will put up the recommendation to the Prime Minister who will advise the President in the matter of appointment.”⁴³⁰

4.4. The Defence Services

The Defence Service in India has three wings: (i) the Army, (ii) the Air Force and (iii) the Navy and the recruitment and conditions of service of the Defence Personnel are guided by the Army Act, the Air Force Act and the Navy Act. Besides these legislations, the Coast Guards have a separate set of legislations governing their conditions of service.

⁴²⁹ The Third Judges Case, (1998) 7 SCC 739

⁴³⁰ Para 2 of The Memorandum showing the Procedure for Appointment of the Chief Justice of India and Judges of the Supreme Court

4.4.1. Promotion and Seniority in the Indian Army

The Indian Army has a pyramidal structure having most of the officer's vacancies at the bottom and a few at top. According to Major General (Retd.) G.D. Bakshi, the Indian Army has inherited highly functional and effective training methodologies and system for developing its military leadership.⁴³¹ Major Gen. Bakshi also said that India has inherited the Regimental System from the British and it has continued to produce motivated and well bonded units that are effectively led and managed. The Career Management System in the Indian Army is driven primarily by the Annual Confidential Report (ACR) rendered on the officers.⁴³² This carries out a qualitative evaluation of the officer's performance and potential on a nine-point rating scale. Various qualities are tested out and rated on a scale of 1 to 9. The ACR also includes a pen picture and recommendations for promotion and future employment.⁴³³

Promotions in the Indian Army are of two kinds:

- (i) Time scale - where an officer is entitled to promotion because he has put in a given number of years in the service. Presently, promotions from Lieutenant to Captain to Major to Lieutenant Colonel are purely time-scale, subject to clearing promotion exams and training courses;
- (ii) Selection - promotion to the rank of Colonel is both by time-scale and selection. Selection for Colonels (Selection Grade) is done by considering all eligible Lieutenant Colonels' performance.

Those officers who do not get selected are promoted as Colonels (Time Scale) after specified service. Promotions from Colonel (Selection Grade) to Brigadier to Major General to Lieutenant General to General are purely on performance up to and preceding rank.

For the first thirteen years, in the Indian Army, the promotion is time-scale. On commissioning, eligible candidates are posted in the rank of Lieutenant. After two years of service the eligible personnel is ranked as a Captain and six years from then, he can be promoted as a Major. Commissioned officers of the Indian Army get promotions

⁴³¹ G.D. Bakshi, *Promotion System in the Army: Dealing with Peacetime Atrophy*, Vol.4 No. 4, Perspectives, October, 2010

⁴³² Ibid

⁴³³ Ibid

based on their years of reckonable commissioned service. The following Tables will elucidate the process of promotion in the Indian Army.

i. Rank, Structure And Promotions

a. Types of Promotion

Table 4.4 Acting Promotion in Peace and Field Concessional Areas

Acting Promotion in Peace and Field Concessional Areas	
Substantive Promotion	Time-Scale (up to Lt. Col.), Selection Grade (Col. And Above)
Local Rank	Local ranks appropriate to the appointments held may be granted to the officers if considered necessary in terms of DSR, Para 88

*b. Years of Reckonable Commissioned Service for Acting Promotion*⁴³⁴

Table 4.5 Year of Reckoning

Rank to Which Acting Promotion is made	Total Minimum Service as Commissioned Officer	Remarks
Captain	1 year	-----
Major	4 years	3 years in Fd
Lt. Col.	7 years	With minimum service of one year in the rank of substantive Major
Col.	8 years and 6 months	With minimum service of two years in the rank of Major & above
Brig.	12 years	With minimum service of three years in the rank of Lt. Col. & above
Major General	20 years	-----
Lt. General	25 years	-----

⁴³⁴ SAI 1/S/74 read in conjunction with AO 329/69

- c. *Years of Reckonable Commissioned Service for Substantive Promotion (other than AMC/ADC)*⁴³⁵

Table 4.6 Years of Reckonable Commissioned Service for Substantive Promotion

Rank	Maj. Arms/Service	Vet. Offrs.	MF	SL
Capt.	2	1	2	2
Maj.	6	7	6	6
Lt. Col.	13	17	13	13
Col(TS)	26	-	26	26
Col(Seelction)	15	15	15	15
Brig.	23(22)			
Maj. Gen.	25(24)			
Lt. Gen	28			
Gen.	No Restriction			

4.4.2. Promotion and Seniority in the Indian Air Force

The Regulation for the Air Force are issued under the authority of the Government of India and supersede the “Regulation for the Royal Indian Air Force – (rules) – reprint 1942 ” and “Regulations for the Indian Air Force – Instructions by His Excellency the Commander-in-chief in India, Reprint 1945”. Air and other Officers Commanding are responsible to ensure that these regulations are strictly observed and that local instructions or orders that may be issued from time are in no way inconsistent with these regulations.

These regulations do not supersede or cancel any administrative and departmental regulations. Orders and instructions which are currently in force and which govern certain special categories of officers and men or else contain special provisions of a purely administrative nature and are therefore not repugnant to the spirit of these regulations. Such orders and instructions are supplementary to and in amplification of these regulations.

⁴³⁵ Retrieved from <https://indianarmy.nic.in/writereaddata/documentsPS010113.pdf>

i. Composition of the Air Force

The air force consists of commissioned and enlisted personnel who have undertaken a definite liability for service and comprises⁴³⁶ :-

- a) The Regular Air Force;
- b) The Regular Air Force Reserve;
- c) The Auxiliary Air Force.

*ii. Control*⁴³⁷

- a) The supreme command of the armed forces (of which the air force is a component), is vested in the President of India.
- b) The Chief of the Air staff is responsible to the President through the Central Government for the administration and organisation of air force.

*iii. Lower Formations*⁴³⁸

- a) The lower formations consist of wings, stations or units placed normally under the functional and administrative control of commands, some specialist units are, however, placed under the direct control of Air Headquarters.
- b) At a station where more than one unit is located, the station commander will act as the coordinating authority. The responsibility for exercising functional and administrative control over such units and for providing administrative services to them will be as laid down in the formation orders issued in respect of each unit by Air Headquarters.

vi. Exercise of Command

Generally, the officer posted as the commanding officer of any unit or formation assumes the command of such unit of formation. However, when two officers are holding the same higher rank and the same substantive rank with effect from the same date, the A.O.A (in respect of units directly under Air Headquarters) and A.O.C-in-C.(in respect of units his command) will decide as to who is to be deemed senior for assuming temporary command.⁴³⁹

⁴³⁶ Regulation for the Air Force under the Defence Service Regulations, 3rd January, 1968

⁴³⁷ Reg. 7

⁴³⁸ Reg. 10

⁴³⁹ Reg. 27

v. Relative Seniority of Regular Officers ⁴⁴⁰

a) Officers holding substantive ranks will be senior to officers holding corresponding ranks.

b) Relative seniority of officers holding the same substantive rank (without any higher acting rank) will be determined by the respective dates of appointment or promotion to that rank. Where two officers of the same rank have been gazetted to such rank with effect from, the same date, their relative seniority will be determined by the order in which their names appear in the current air force list. ⁴⁴¹

Forfeiture of seniority, if any, will be taken into consideration in determining relative seniority.

c) Relative seniority of officers holding the same higher acting rank but different substantive ranks will be determined by the substantive ranks held.

d) Relative seniority of officers holding same higher acting rank and same substantive rank will be determined by the date of promotion to the higher acting rank, where the dates of appointment or promotion to substantive rank is the same. Where the dates of appointment or promotion to the substantive rank are different, relative seniority will be determined by those dates.

vi. Retired/Released, officers Re-employed

a) A retired/released officer who is re-employed as an officer in the rank in which he was serving at the time of retirement / release and will retain the seniority in the substantive rank which he held at the time or retirement / release and will take command and precedence with other officers of the regular air force in accordance with that rank and seniority. b) A retired / released officer who is re-employed in a substantive rank lower than that in which he was employed on the active list will take seniority from the date he held that rank substantively prior to retirement / release and will take command and precedence with other officers of the regular air force in accordance with that rank and seniority. ⁴⁴²

⁴⁴⁰ Reg. 28

⁴⁴¹ Reg. 29

⁴⁴² Reg. 92

vii. Reserve Officers

a) Except as provided in sub-para (b) officers of the air force reserve (regular air force reserve and air defence reserve) will rank junior to all regular officers of the same rank.

b) When called up for service with the regular air force, officers of the air force reserve (regular air force reserve and air defence reserve) will take command and precedence with regular officers as if they had been appointed in the regular air force in the reserve rank from the date of their being called up; or, if they are promoted whilst called up, from the date of such promotion.⁴⁴³

*viii. Auxiliary Air Force Officers*⁴⁴⁴

a) Except as provided in sub-para (b) officers of the auxiliary air force are to rank as junior to officers of the regular air force of the same rank.

b) When any portion of the auxiliary air force has been called up for service under clause (c) of section 25 of the Reserve and Auxiliary Air Force Act, 1952, officers of that portion of the auxiliary air force will take command and precedence with officers of the regular air force with whom they are serving as if they had been appointed to the regular air force in their auxiliary air force rank from the date of their being called up for service, or, if they are promoted whilst called up for service, from the date of such promotion.

c) Officers other than those mentioned in sub para (b) will take command and precedence in the auxiliary air force according to the dates of their appointment in their respective ranks in the auxiliary air force. When officers are appointed to the same rank on the same date, their relative seniority will be determined by the order in which their names appear in the air force list.

ix. Inter se Seniority – The Reserve and the Auxiliary Air Force Officers

Officers of regular air force reserve, air defence reserve and auxiliary air force will take command and precedence among themselves in accordance with Rule 36 of the Reserve and Auxiliary Air Force Act Rules, 1953.⁴⁴⁵

⁴⁴³ Reg. 93 of Section 5. Section 5 deals with 'Instructions for Officers of Particular Branches'.

⁴⁴⁴ Reg. 94 under Section 1 of the Regulations for Air Force under Defence Service Regulation. Section 1 deals with Appointment to Commission

The Appointment of Officers in the Air Force service can be made under the following ways:

- i. Short Service Commission
- ii. Permanent Commission
- iii. Temporary Commission

A short service commission may be granted to a candidate from civil life or a serving airman in G.D. Technical and Met. Branches of the air force for the periods indicate below:-

- a) **G.D. Branch:** For a period of 4-5 years extendable to 10 years on successful completion of training.
- b) **Technical Branch:** From the date of commencement of training at the Technical Training College up to the date of expiry of the probationary period subsequent to successful completion of training.
- c) **Met.Branch:** From the date of commencement of the specialised met. Training up to the date of expiry of the probationary period subsequent to the successful completion of training.

A permanent commission may be granted in any of the branches of the air force, other than medical and dental, to-

- a) A candidate from civil life or a serving airman on successful completion of training.
- b) To an officer holding short service commission.

A temporary commission may be granted to an officer of the Army Medical Corps/Army Dental Corps on secondment to the air force for the period of secondment. This commission will be superimposed on the commission in Army Medical Corps/Army Dental Corps.⁴⁴⁶

x. Date of Commission

The Date of Commission in the Air Force service is important for the purpose of calculation of seniority of promotion in the service. The effective date of commissioning

⁴⁴⁵ Reg. 95 under Section 1.

⁴⁴⁶ Reg. 96 under Sec. 1

will be the date promulgated in the Gazette of India. Officers granted permanent commission in the technical branch will be granted an ante date of two years counted backwards from the date of successful completion of training for the purposes of seniority, pay and promotion provided they possess the requisite technical qualifications prescribed for the purpose, or, in the case of airmen, had rendered before commissioning six years in the air force as airman.

The initial appointment to commission except in the technical and meteorological branches will be in the rank of Flying officer on probation and will be confirmed after line prescribed period of satisfactory service with retrospective effect.

xi. Order of Promotion in General Duties in the Indian Air Force

Promotion in the General Duties Branch of the Indian Air Force occurs in the following order:

Figure 4.1 Order of Promotion in General Duties in the Indian Air Force



The Promotional Scheme for the General Duties Branch from the Pilot Officer to the Air Marshall are as under

a. Pilot Officer to Flying Officer⁴⁴⁷

A pilot officer will be eligible for promotion to the rank of flying officer provided he-

1. Has completed one year's commissioned service as a general duties officer;

⁴⁴⁷ Reg. 111 of Sec. 3. Section 3 deals with Promotions of General Duties Branch of the Air Force

2. Has been recommended as in all respects suitable for advancement by his commanding officer; and
3. Is medically fit for duties of his branch.

*b. Flying Officer to Flight Lieutenant*⁴⁴⁸

A flying officer will be eligible for promotion to the rank of flight lieutenant provided he-

1. Has completed four years' service in the substantive rank of flying officer;
2. Has been recommended as in all respects suitable for advancement by his commanding officer;
3. Is medically fit for duties of his branch; and
4. Has passed the prescribed promotion examination.

*c. Flight Lieutenant to Squadron Leader*⁴⁴⁹

A flight lieutenant will be eligible for promotion to the rank of squadron leader provided he-

1. Has completed six years' service in the substantive rank of flight lieutenant as general duties officer;
2. Has been recommended as in all respects suitable for advancement by his commanding officer;
3. Is medically fit for duties of his branch, and
4. Has passed the prescribed promotion examination of the Defence Services Staff College Course.

*d. Squadron Leader to Wing Commander (Time Scale)*⁴⁵⁰

1. A Squadron leader who is not promoted as substantive wing commander (selective) will be eligible for promotion to the substantive rank of wing commander on a time scale basis provided he-

- (i) has completed 24 years' commissioned service before attaining the age of

⁴⁴⁸ Reg. 112 of Sec. 3

⁴⁴⁹ Reg. 113 of Sec. 3

⁴⁵⁰ Reg. 114 of Sec. 3

48;

- (ii) has been recommended as in all respects suitable for advancement by his commanding officer, and
- (iii) is medically fit for duties of his branch.

a. Officers who are promoted as substantive wing commanders (time scale) will be borne on a separate list and will not be shown against the regular vacancies of wing commanders. If, however, such an officer was, on the date of such promotion, acting as wing commander he will continue to be held against an authorized appointment of wing commander.

Substantive promotion to the rank of Wing Commander and above to fill the vacancies in the authorized establishment is made by selection subject to the following conditions⁴⁵¹:

a. *Squadron Leader to Wing Commander*

- i. Has served for a minimum period of three years in the substantive rank of squadron
- ii. Has been recommended as in all respects suitable for advancement by his commanding officer; and
- iii. Is medically fit for duties of his branch

b. *Wing Commander to Group Captain*

- i. Has served a minimum of four years in the substantive rank of wing commander;
- ii. Has been recommended as in all respects suitable for advancement by his commanding officer; and
- iii. Is medically fit for duties of his branch

c. *Group Captain to Air Commodore*

- i. Has served a minimum of three years in the substantive rank of group captain;
- ii. Has been recommended in all respect suitable for advancement by his air officer commanding-in-chief; and
- iii. Is medically fit for duties of his branch

d. *Air Commodore to Air Vice Marshall*

⁴⁵¹ Reg. 115 of Sec. 3

- i. Has served a minimum of three years in the substantive rank of air commodore;
- ii. Has been recommended in all respect suitable for advancement by his air officer commanding-in-chief; and
- iii. Is medically fit for duties of his branch

xii. Promotions of Officers in Ground Duty Branches other than Medical and Dental

a. Flying Officer to Flight Lieutenant⁴⁵²

A flying officer will be promoted to the rank of flight lieutenant provided that he:

1. Has completed four years in the substantive rank of flying officer or six years' total commissioned service;
2. Has been recommended as in all respects suitable for advancement by his commanding officer;
3. Is not placed in medical category Ap.Bp...,and
4. Has passed the prescribed promotion examination or staff college course.

b. Flight Lieutenant to Squadron Leader⁴⁵³

A flight lieutenant will be eligible for promotion to the rank of squadron leader provided that be-

- i. Has completed seven years in the substantive rank of flight lieutenant or thirteen years' commissioned service;
- ii. Has been recommended as in all respects suitable for advancement by his commanding officer;
- iii. Is not placed in medical category
- iv. Has passed the prescribed promotion examination or staff college course.

c. Squadron Leader to Wing Commander (Time Scale)

Conditions are the same as in Reg. 114.

Substantive promotion to the rank of wing commander and above to fill vacancies in the authorized establishment will be by selection subject to the following conditions⁴⁵⁴:

⁴⁵² Reg. 122

⁴⁵³ Reg. 123

⁴⁵⁴ Reg. 125 of Section 4

- a) *Squadron Leader to Wing Commander*
 - i) Has served a minimum of three years in substantive rank of squadron leader;
 - ii) Be recommended as in all respects suitable for advancement by his commanding officer;
 - iii) Be medically fit for all duties of his branch.

- b) *Wing Commander to Group Captain*
 - i) Has served a minimum of four years in the substantive rank of wing commander;
 - ii) Has been recommended as in all respects suitable for advancement by his commanding officer;
 - iii) Be medically fit for all duties of his branch.

- c) *Group Captain to Air Commodore*
 - i) Has served a minimum of three years in the substantive rank of group captain;
 - ii) Be recommended for promotion by his air officer commanding-in-chief;
 - iii) Be medically fit for all duties of his branch

- d) *Air Commodore to Air Vice Marshal*
 - i) Has served a minimum of three years in the substantive rank of air commodore;
 - ii) Be recommended as in all respects suitable for advancement by his air officer commanding-in-chief;
 - iii) Be medically fit for all duties of his branch

xiii. Promotion Examination

An officer who fails to qualify in the promotion examination before completing the prescribed period of qualifying service will be deemed to have passed the promotion examination on the first day of the examination which he qualifies and will be promoted from that date.⁴⁵⁵

A flying officer or flight lieutenant who does not qualify or is not recommended for time scale promotion to the next rank even after the completion of one year from the expiry of the prescribed qualifying period will be subjected to periodical review by the Chief of

⁴⁵⁵ Reg. 131 of Sec. 5

the Air Staff and is to be warned that failure to qualify within a year will involve the consideration of his retention in the service.⁴⁵⁶

*xiv. Reckonable Service for Promotion*⁴⁵⁷

a) For substantive promotion (by time scale) service will reckon from the date of an officers' permanent commission, or the date of seniority for promotion fixed on grant of that commission, including any ante date for seniority and promotion granted under the rules in force from time to time. Periods of service forfeited by sentence of court martial or by summary award under the air force act will not, however, reckon as service for promotion. The period of absence without leave will also not reckon for promotion.

b) The following periods are reckonable as provided above (a) :

- i) Periods during which furlough rates of pay are drawn,
- ii) Periods of captivity at P.O.W. rates of pay.

c. Reckonable service as defined in sub paras (a) and (b) above is also applicable for qualifying limits for promotions to higher ranks.

d. An officer who has lost service qualifying for substantive promotion under the rules in consequence of his having been granted leave without pay, will, if otherwise qualified, be promoted to the next higher rank, but without the pay and allowances thereof with effect from the date on which he would have qualified by service if he had not been granted leave without pay. On completion of the prescribed period of qualifying service on full pay the officer will become entitled to the pay and allowances of his higher rank.

vii. Medical Fitness

Medical fitness plays a crucial role in the determination of seniority and granting of promotion to the officers in the Air Force. A general duties branch officer of the rank of squadron leader or below who is medically unfit or is in a lower medical category at the time he is due for substantive promotion, but is subsequently declared medically fit, will be promoted to the higher substantive rank from the actual date he became due for promotion and not from the date of attaining, the required medical standard. Cases of

⁴⁵⁶ Reg. 132 of Sec. 5

⁴⁵⁷ Reg. 133 of Sec. 5

officers due for promotion to the rank of wing commander and above, but who are in a lower medical category and are recommended for promotion, are to be referred to the medical authorities and their advice sought regarding their fitness to perform the duties in the rank to which they are being promoted. Only when, an officer due for promotion to the rank of wing commander and above, is recommended by the medical authorities for the grant of higher substantive rank and the other conditions laid down for promotion are fulfilled, he will be granted the substantive promotion from the due date and not from the date of attaining the requisite medical standard provided that he was filling on the date an appointment carrying the acting rank to which he is granted substantive promotion.⁴⁵⁸

4.5. Promotion of University Teachers as Laid Down in the Career Advancement Scheme by the Universities Grants Commission

India holds an important place in the global education industry. India has one of the largest networks of higher educational institutions in the world with 850 universities (as of April, 2018)⁴⁵⁹ and 42,026 colleges.⁴⁶⁰ A total of 35.7 million people were enrolled in higher education institutes in 2016-2017. The aim of the government to raise its current gross enrolment ratio to 30% by 2020 will also boost the growth of the distance education in India. As of 2014-2015, a total of 14,73,255⁴⁶¹ teachers have been employed by the universities under various states.

The present system of higher education dates back to Mountstuart Elphinstone's minutes of 1823, which stressed on the need for establishing schools for teaching English and the European sciences. Later, Lord Macaulay, in his minutes of 1835, advocated "efforts to make natives of the country thoroughly good English scholars". Sir Charles Wood's Dispatch of 1854, famously known as the Magna Carta of English Education in India, recommended creating a properly articulated scheme of education from the primary school to the university. Subsequently, the universities of Calcutta, Bombay (now Mumbai) and Madras were set up in 1857, followed by the University of Allahabad in 1887.

⁴⁵⁸ Reg. 134 of Sec. 5

⁴⁵⁹ <https://www.ibef.org> visited on 8/07/18 at 20:00

⁴⁶⁰ *ibid*

⁴⁶¹ <https://data.gov.in> visited on 8/07/2018 at 20:30

The Inter-University (later known as the Association of Indian University) was established in 1925 to promote university activities, by sharing information and cooperation in the field of education, culture, sports and allied areas.

The Report of the Central Advisory Board of the Education on Post-war Educational Development in India, also known as the Sergeant Report, recommended the formation of a University Grants Committee. As a result, the UGC was formed in 1945 to oversee the working of the three Central Universities of Aligarh, Banaras and Delhi, in 1947, the Committee was entrusted with the responsibility of dealing with all the existing Universities.

The UGC was, however, formally established only in November, 1956 as a statutory body of the Government of India through an Act of Parliament for the coordination, determination and maintenance of standards of university education in India.⁴⁶²

In view of the object for the establishment of the UGC, the Committee has been vigilant and remained updated about the performance of the teachers. For the purpose of ‘maintenance of standards of university education’ the UGC had promulgated the Career Advancement Scheme to look into the matter of promotion of university teachers.

a. *Career Advancement Scheme*

The promotion of teachers of University under the Career Advancement Scheme (CAS) is made in the following manner⁴⁶³:

- A. Assistant Professor (Stage 1 / Entry Level) to Assistant Professor (Stage 2/ Senior scale)
- B. Assistant Professor (Stage 2/ Senior Scale) to Assistant Professor (Stage 3)
- C. Assistant Professor (Stage 3) to Assistant Professor (Stage 4)
- D. Assistant Professor (Stage 4) to Professor (Stage 5)
- E. Professor (Stage 5) to Professor (Stage 6)

⁴⁶² Object of the University Grants Commission Act, 1956

⁴⁶³ The University Grants Commission (Minimum Qualifications for Appointment of Teachers and the Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) (4th Amendment), Regulations, 2016 vide UGC Notification No. F.1-2/2016(PS)/Amendment. The UGC framed these regulations

i. Promotion of Assistant Professor (Stage 1/ Entry Level) to Assistant Professor (Stage 2/ Senior scale):

An Assistant Professor (Stage 1 / Entry Level) will be eligible for placement in Assistant Professor (Stage 2/ Senior scale) provided he/she has:

- a. Completed 04 (four) years of Continuous service as Assistant Professor after regular appointment and possesses a Ph.D degree in the concerned or an allied / relevant discipline; or
- b. Completed 05 (five) years of Continuous service as Assistant Professor after regular appointment and possesses an M.Phil. / L.L.M / M.Tech / MD etc. or equivalent relevant degree; or
- c. Completed 06 (six) years of Continuous service as Assistant Professor after regular appointment if he / she do not possess an M.Phil or Ph.D degree or a Master's Degree in the relevant professional course.
- d. Participated in one Orientation programme and one Refresher Course / Research Methodology Course of 2/3 weeks duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the UGC.
- e. Attained minimum API scores using PBAS scoring proforma developed by the university (see relevant table in the application form).
- f. Completed 01(one) year's regular service as a member of the CUHP faculty and has been confirmed upon successful completion of probation.

Promotion of Assistant Professor (Stage 1 / Entry Level) to Assistant Professor (Stage 2/ Senior scale) will be made on the recommendations of a Screening cum Evaluation Committee, consisting of the following:

- a. The Vice-Chancellor as the Chairperson of the Selection Committee ;
- b. The Dean of the concerned Faculty ;
- c. The Head of the Department / Director of centre.
- d. One subject expert in the concerned subject nominated by the Vice-Chancellor from the University panel of experts.

Three members of the Committee including one subject expert shall constitute the quorum.

Promotion will be due from the date of eligibility or date of appointment in the University whichever is later.

ii. *Promotion of Assistant Professor (Stage 2/ Senior Scale) to Assistant Professor (Stage 3):*

An Assistant Professor (Stage 2/ Senior Scale) will be eligible for placement in Assistant Professor (Stage 3) provided he / she has:

- a. Completed 05 (five) years of service in the Assistant Professor (Stage 2/ Senior Scale).
- b. Participated in one Course / Programme of 2/3 weeks duration from amongst the categories of Refresher Courses, Methodology workshops, Training Programmes, Teaching-Learning-Evaluation Technology Programmes, Soft Skills Development Programmes, and Faculty Development Programmes.
- c. Attained minimum API scores using PBAS scoring proforma developed by the University (see relevant tables in the application form).
- d. Completed 01 (one) year's regular service as a member of the CUHP faculty and has been confirmed upon successful completion of probation.

Promotion of Assistant Professor (Stage 2/ Senior Scale) to Assistant Professor (Stage 3) will be made on the recommendations of a Screening cum Evaluation Committee, consisting of the following:

- a. The Vice-Chancellor as the Chairperson of the Selection Committee;
- b. The Dean of the concerned Faculty;
- c. The Head of the Department / Director of Centre.
- d. One subject expert in the concerned subject nominated by the Vice-Chancellor from the University panel of experts.

Three members of the Committee including one subject expert shall constitute the quorum.

Promotion will be due from the date of eligibility or date of appointment in the University whichever is later.

iii. *Promotion of Assistant Professor (Stage 3) to Associate Professor (Stage 4):*

An Assistant Professor (Stage 3) will be eligible for placement in Associate Professor (Stage 4) provided he / she has:

- a) Completed 03(three) years of service in the Assistant Professor (Stage 3).
- b) Attained minimum API scores using PBAS scoring proforma developed by the University (see relevant tables in the application form).
- c) Participated in one Course / programme of minimum one week duration from amongst the categories of Refresher Course, Methodology Workshops, Training Programmes, Teaching – Learning – Evaluation Technology Programmes, soft skills Development Programmes, and Faculty Development Programmes.
- d) Completed 01 (one) year's regular service as a member of the CUHP faculty and has been confirmed upon successful completion of probation.
- e) The Candidate will submit three best publications which will be got evaluated from three outside subject experts before the interview. Each publication shall be evaluated out of 100 marks by each outside subject expert.
- f) The outcome of evaluation of the publications by the experts shall be placed before the Selection Committee while finalizing the outcome of selection as per the provisions stipulated in Table – II (A) of Appendix – III of UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010.

Promotion of Assistant Professor (Stage 3) to Associate Professor (Stage 4) will be made on the recommendations of the Selection Committee, consisting of the following:

- a) The Vice-Chancellor to be Chairperson of the Selection Committee;
- b) The nominee of the Visitor;
- c) Three experts in the concerned subject / field nominated by the Vice-Chancellor out of the panel of names approved by the EC;
- d) Dean of the school;
- e) Head of the Department / Director of the Department / Centre.
- f) An academician representing SC / ST / OBE / Minority / Women / Differently - abled categories, if any candidates representing these categories is the applicant,

to be nominated by the Vice – Chancellor, if any of the above members of the selection Committee do not belong to that category.

At least four members, including two outside subject experts, shall constitute the quorum. Promotion will be due from the date of eligibility or date of appointment in the University whichever is later. The experts for evaluation of publications shall be other than the expert of Selection Committee.

iv. *Promotion of Associate Professor (Stage 4) to Professor (Stage 5):*

An Assistant Professor (Stage 4) will be eligible for placement in Professor (Stage 5) provided he / she has:

- a) Completed 03(three) years of service in the Associate Professor (Stage 4).
- b) A Ph.D. degree in the concerned or an allied / relevant discipline.
- c) Attained minimum API scores using PBAS scoring proforma developed by the University (see relevant tables in the application form).
- d) Completed 01 (one) year's regular service as a member of the CUHP faculty and has been confirmed upon successful completion of probation.
- e) The Candidate will submit five best publications since he/ she was placed in the Assistant Professor (stage 3), which will be got evaluated from three outside subject experts before the interview. Each publication shall be evaluated out of 100 marks by each outside subject expert.
- f) The outcome of evaluation of the publications by the experts shall be placed before the Selection Committee while finalizing the outcome of selection as per the provisions stipulated in Table – II (A) of Appendix – III of UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010.

Promotion of Associate Professor (Stage 4) to Professor (Stage 5) will be made on the recommendations of the Selection Committee, consisting of the following:

- a) The Vice-Chancellor to be Chairperson of the Selection Committee;
- b) An academician who is the nominee of the Visitor;

- c) Three experts in the concerned subject / field nominated by the Vice-Chancellor out of the panel of names approved by the relevant statutory body of the University Concerned;
- d) Dean of the faculty, wherever applicable.
- e) Head of the Department / Director of the Department / Centre.
- f) An academician representing SC / ST / OBE / Minority / Women / Differently - abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice – Chancellor, if any of the above members of the selection Committee do not belong to that category.

At least four members, including two outside subject experts, shall constitute the quorum. Promotion will be due from date of eligibility or date of appointment in the University whichever is later. The experts for evaluation of publications shall be other than the experts of Selection Committee.⁴⁶⁴

v. *Promotion of Professor (Stage 5) to Professor (Stage 6):*

A Professor (Stage 5) will be eligible for placement in Professor (Stage 6) provided he / she has:

- a) Maximum of 10(ten) years of teaching and research experience.
- b) Attained minimum API scores using PBAS scoring proforma developed by the University (see relevant tables in the application form).
- c) Has postdoctoral research of high quality / Has received awards / honours / recognitions / patents and IPR on products and processes developed / technology transfer achieved / Has additional research degree like D.Sc., D.Litt., LID etc.
- d) Completed 01 (one) year's regular service as a member of the CUHP faculty and has been confirmed upon successful completion of probation.

Promotion of Professor (Stage 5) to Professor (Stage 6) will be made through assessment process through Expert – Committee evaluation. No separate interview will be conducted for this category. Promotion will be due from the date of eligibility or date of appointment in the University whichever is later.

⁴⁶⁴ A professor already appointed under direct recruitment will not be eligible for consideration under the Career Advancement Scheme (CAS).

b. Screening Committee for Promotion

There shall be a Screening Committee for screening and verification of the claims of incumbents for promotion under **Stage 3 to Stage 4 and from stage 4 to Stage 5**. The Committee shall comprise.

- i. Pro-vice-Chancellor or a Professor nominated by the Vice- Chancellor
Chairman
- ii. Dean of the concerned school...Member
- iii. Head / Director of the concerned Department / Centre Member⁴⁶⁵

c. Counting of Past Service

Previous service, whether national or international, as Assistant Professor, Associate Professor or Professor, or equivalent, in a University, College, national laboratory, or any other scientific / professional organization, e.g. CSIR, ICAR, DRDO, UGC, ICSSR, ICMR, DBT, etc. should be counted for direct recruitment or promotion under CAS of a teacher in the various stages of Assistant Professor, Associate Professor, as the case may be provided that:

- a) The essential qualifications for the post held were not lower than the qualifications prescribed by the UGC for the Assistant Professor, Associate Professor, or Professors, as the case may be.
- b) The post is/was in an equivalent grade / scale of pay or pre-revised scale of pay as the post of Assistant Professor, Associate Professor or professor.
- c) A candidate already in service has applied through proper channel.
- d) The post was filled in accordance with the prescribed selection procedure as laid down by the UGC / State Government / Central Government / Concerned Institutions, for such appointments.
- e) The previous appointment was not as guest lecturer for any duration, or ad hoc or in a leave vacancy of less than one year's duration. Ad hoc or temporary service of more than one year's duration can be counted provided that:
 - i) The period of service was of more than one year duration.
 - ii) The incumbent was appointed on the recommendation of a duly constituted Selection Committee.

⁴⁶⁵ In case Dean / Head / Director is a candidate for promotion under CAS, the Vice Chancellor shall nominate any other Professor in his / her place.

iii) The incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.

f) No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/ government) for counting past services under this clause.

A teacher who wishes to be considered for promotion under CAS may submit in writing to the University with three months in advance of the due date, that he / she fulfils all qualifications under CAS and submit to the University the Performance Based Appraisal System proforma as evolved by the University duly supported by all credentials as per the API guidelines set out in these Ordinance. In order to avoid delays in holding Selection Committee meetings in various positions under CAS, the University should immediately initiate the process of screening / selection, and shall complete the process within six months from the date of application.

The Screening cum Evaluation Committee on verification / evaluation of API score secured by the candidate through the 'PBAS' methodology designed by the university as per the minimum requirement specified in the application form shall recommend to the Executive Council of the University about the suitability for the promotion of the candidate(s) under CAS for implementation.

All the selection procedures outlined above, shall be completed on the day of the Selection Committee meeting, wherein the minutes are recorded along with PBAS scoring pro-forma and recommendation made on the basis of merit and duly signed by all members of the Selection Committee in the minutes.

Candidates who do not fulfil the minimum score requirement under the API scoring system proposed in the Ordinance or those who obtain less than 50% in the expert assessment of the selection process will have to be re-assessed only after a minimum period of one year. The date of promotion shall be the date on which he / she has successfully got re-assessed.

CAS promotion being a personal promotion to the incumbent teacher holding a substantive sanctioned post, on superannuation of the individual incumbent, the said post shall revert back to its original cadre. If a candidate applies for promotion on completion of the minimum eligibility period or date of confirmation, whichever is later

and is successful, the date of promotion will be from that of minimum period of eligibility or date of confirmation whichever is later. If, however, the candidates find that he / she fulfils the eligibility conditions at a later date and applies on that date and is successful, his / her promotion will be effected from the date of application fulfilling the criteria. If the candidate does not succeed in the first assessment, but succeeds in the eventual assessment, his / her promotion will be deemed to be from the later date of successful assessment.

d. Inter-se seniority between the direct recruited and teachers promoted under CAS

The inter-se seniority of a direct recruit shall be determined with reference to the date of joining for the teachers promoted under CAS with reference to the date of eligibility as indicated in the recommendations of the selection committee of the respective candidates. The rules and regulations of the respective Central / State Government shall apply, for all other matters of seniority.

4.6. A Sum Up

"To enquire into the best form of government in the abstract, as it is called, is not a chimerical, but a highly practical employment of scientific intellect; and to introduce into any country the best institutions, which, in the existing state of the country, are capable of, in any tolerable degree, is one of the most rational objects, to which practical effort can address itself."

Thus, 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.

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.

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.

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.