

SENIORITY

7.1 Fixation of Seniority on Appointment and Promotion is a very important function of the Establishment Section. Correct seniority fixation facilitates smooth functioning of the organization and avoids unnecessary litigation.

7.2 **Seniority to be determined by the order of merit indicated at the time of initial appointment**

7.2.1 The seniority of government servants is determined in accordance with the general principles of seniority contained in M.H.A. O.M. No.9/11/55-RPS, dated the 22nd December, 1959 as amended from time to time. One of the basic principles enunciated in the said OM is that, seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in that grade.

7.2.2 This principle came under judicial scrutiny in a number of cases in the past. In one of the important judgments delivered by the Apex Court on 2.5.1990, in the case of Class II Direct Recruits Engineering Officers' Association Vs. State of Maharashtra, the Court held that once an incumbent is appointed to a post according to a rule, seniority has to be counted from the date of his appointment and not according to the date of confirmation.

7.2.3 Accordingly, in modification of the 1959 OM the seniority of a person regularly appointed to a post is now determined by the order of merit indicated at the time of initial appointment and is not based on the date of confirmation.

7.3 **Seniority of Direct Recruits and Promotees**

7.3.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority. Persons appointed as a result of an earlier selection will be senior to those appointed as a result of a subsequent selection.

7.3.2 Where promotions are made on the basis of selection by a DPC, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior, such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

7.3.3 Where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation.

7.3.4 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

7.3.5 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.

7.4 **Seniority of Absorbees**

7.4.1 The relative seniority of persons appointed by absorption to a Central service from the subordinate office of the Central Government or other departments of the Central or a State Government will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department whichever is earlier.

7.4.2 Where such absorption is effected against specific quotas prescribed in the Recruitment Rules, the relative seniority of such absorbees vis-a-vis direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for absorption, direct recruitment and promotion respectively in the Recruitment Rules.

7.4.3 Where a person is appointed by absorption in accordance with the provisions in the Recruitment Rules providing for such absorption in the event of non-availability of suitable candidate by direct recruitment or promotion, such absorbee shall be grouped with direct recruits or promotees, as the case may be. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion.

7.4.4 In case the dates of absorption of two or more persons, selected from different sources on the same occasion are the same and the seniority is given from the date of absorption, then their inter-se seniority will be determined in accordance with their inter-se order of merit^[1].

^[1] See judgment dated 14.12.1999 of Apex court in case of Sh.Roopal & others vs. Lt.Governor of Delhi and also DP&T OM No.20011/1/2000-Estt.(D) dated 27.03.2001

7.5 **Seniority in Special Types of Cases**

7.5.1 **Fixation of seniority of a government servant reverted to a lower post/grade/service as a measure of penalty and subsequently promoted to a higher post**

In cases where a government servant is reduced to a lower service, grade or post, or to a lower time-scale, the order imposing the penalty of reduction to a lower service, grade or post or to a lower time-scale may or may not specify the period of reduction. Where the order does not specify the period of reduction and there is coupled with it an order declaring the government servant permanently unfit for promotion, the question of re-promotion will, obviously, not arise. In other cases where the period of reduction is not specified, the government servant should be deemed to be reduced for an indefinite period, i.e., such date as, on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion. On re-promotion the seniority of such a government servant should be determined by the date of promotion. In all such cases, the person loses his original seniority in the higher service, grade or post in entirety. On re-promotion, the seniority of such a government servant should be determined by the date of re-promotion irrespective of the service rendered by him in such service, grade or post prior to his reduction.

7.5.2 The more common course is to specify the period of reduction and except when it is intended to debar a government servant from promotion permanently, it is the preferable course. An order imposing the penalty or reduction to a lower service, grade or post or to a lower time scale should invariably specify:

(i) the period of reduction, unless the clear intention is that the reduction should be permanent or for an indefinite period.

(ii) whether on such re-promotion, the government servant will regain his original seniority in the higher service, grade or post or higher time-scale which had been assigned to him prior to the imposition of the penalty.

7.5.3 In cases where the reduction is for a specified period and is not to operate to postpone future increments, the seniority of the government servant may, unless the terms of the order of punishment, provide otherwise, be fixed in the higher service, grade or post or the higher time-scale at what it would have been but for his reduction.

7.5.4 Where the reduction is for a specified period and is to operate to postpone future increments, the seniority of the government servant on re-promotion may, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service rendered by him in the higher service, grade or post or higher time-scale.

7.6 **Fixation of inter-se seniority of the staff rendered surplus and re-deployed on different occasions but in the same office**

7.6.1 When an employee is declared surplus in a particular grade in an office and is re-deployed in a grade in another office, he is not allowed to count his service in his previous office towards seniority in the office where he is re-deployed^{2[2]}. Such employees are to be treated as fresh entrants in the matter of their seniority, promotion etc.

7.6.2 When two or more surplus employees of a particular grade in an office are selected on different dates for absorption in a grade in another office, their inter se seniority in the latter office will be same as in their previous office provided that-

- (i) (i) No direct recruit has been selected for appointment to that grade in between these dates; and
- (ii) (ii) If there are no fixed quotas for direct recruitment and promotion to the grade in question in the new office and no promotee has been approved for appointment to that grade in between these dates.

7.6.3 When two or more surplus employees of a particular grade in an office are simultaneously selected for re-deployment in another office in a grade, their inter-se seniority in the particular grade, on deployment in the latter office, would be the same as it was in their previous office.

7.6.4 The above orders would not be applicable in respect of personnel who are appointed on the recommendations of the UPSC to posts/services, to which recruitment is made through the Commission. Seniority of surplus officers appointed on the recommendations of the Commission will be decided on merits in consultation with the Commission^{3[3]}.

7.7 **No loss of seniority of promoted SC/ST employees by virtue of rule of reservation/roster**

7.7.1 The seniority of a person appointed to a post is determined according to the general Principle 5 (i) contained in MHA O.M. No.9/11/55-RPS dated 22.12.1959 and Para 2.2 in DoP&T O.M. No.22011/7/86-Estt. (D) dated 3.7.1986 read with DP&T, O.M. No.20011/5/90-Estt. (D) dated 4.11.1992. Seniority of such persons is determined by the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades is determined in the order of selection for such promotion. Thus, as per the aforementioned instructions, persons appointed through an earlier selection would en bloc be senior to those promoted through subsequent selection.

^{2[2]}MHA OM No. 9/11/55-RPS, dated the 22nd December, 1959.

^{3[3]}Also see G.O.I., M.H.A. O.M. Nos. 10/1/63-Estt(D), dated the 30 November, 1963 and 9/22/68-Estt.(D), dated the 6th February, 1969.

7.7.2. This position was reviewed subsequent to the judgment of the Supreme Court, dated 10.10.1995 in the case of Union of India v. Virpal Singh Chauhan, etc. [JT 1995 (7) SC 231] and it was decided vide DP&T, O.M. No.20011/1/96-Estt.(D), dated 30.1.1997, to modify the then existing policy by addition of the proviso to general Principle 5 (i) contained in MHA (now DP&T), O.M. No.9/11/55-RPS, dated 22.12.1959 and Para 2.2 in DP&T, O.M. No.22011/7/86-Estt.(D), dated 3.7.1986, which stipulated that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade.

7.7.3. The Government have now decided to negate the effects of the DoP&T, O.M., dated the 30th January, 1997 by amending Article 16(4-A) of the Constitution right from the date of its inclusion in the Constitution, i.e., 17th June, 1995, with a view to allow the government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation. In other words, the candidates belonging to general/OBC category promoted later will be placed junior to the SC/ST government servants promoted earlier even though by virtue of the rule of reservation.

7.7.4. Therefore, in pursuance of the aforementioned Constitution (Eighty-Fifth) Amendment Act, 2001, it has been decided as follows:

i. (a) SC/ST government servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and

(b) the above decision shall be effective from 17th June, 1995.

ii. The instructions contained in DoP&T, O.M. No.20011/1/96-Estt.(D), dated 30.1.1997 as well as the clarifications contained in DoP&T, O.M. No.20011/2/97-Estt.(D), dated 21.3.1997 shall stand withdrawn with effect from 30.1.1997 itself.

iii. Seniority of government servants determined in the light of O.M., dated 30.1.1997 shall be revised as if that OM was never issued.

iv. (a) On the basis of the revised seniority, consequential benefits like promotion, pay, pension, etc., should be allowed to the concerned SC/ST Government servants (but without arrears by applying principle of 'no work no pay')

(b) For this purpose, senior SC/ST government servant may be granted promotion with effect from the date of promotion of their immediate junior General/OBC government servant.

(c) Such promotion of SC/ST government servant may be ordered with the approval of Appointing Authority of the post to which the government servant is to be promoted at each level after following normal procedure of DPC (including consultation with UPSC).

v. Except seniority, other consequential benefits like promotion, pay, etc., (including retiral benefits in respect of those who have already retired) allowed to general/OBC government servant by virtue of implementation of O.M. dated 30.1.1997 and/or in pursuance of the directions of CAT/Court should be protected as personal to them^{4[4]}.

^{4[4]}G.I., Dept. of Per. & Trg., O.M. No.20011/1/2001-Estt.(D), dated the 21st January, 2002.