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## The concept of 'promotion' in public services: An overview

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### Abstract

Promotion means reducing or raising an employee to a higher rank or post than one the employee was holding or to a higher scale of pay than the on the employee was enjoying immediately before such promotion. The well known methods which are adopted in the recruitment rules for making promotion are- (i) Seniority-cum-merit (ii) Merit-cum-seniority, (iii) Promotion by Merit or selection (iv) Time Bound Promotion. if the senior-most official is unsuitable for promotion, the appointing authority could proceed to consider the case of next senior under 'Merit Promotion Scheme', when an officer gets his promotion strictly on merits, his performance should be commendable throughout and especially during last few years. Where the selection for promotion is based on merit, then seniority takes second place. 'Notional Promotion' is such a promotion which a government servant gets under particular exigencies of situation, which can not claim as of right. So, the pronouncement of Division Bench of Patna High Court in "Ram Twakya Singh –V- State of Bihar", calling the retrospective promotion of a University Professor under merit promotion scheme a 'national promotion' is in our opinion, not a good law. If a person gets notional promotion with retrospective effect, such persons is entitled for arrears of salary for such retrospective promotion even if he has not worked on the said post for the period concerned. Employee of state has a right to be considered for promotion. Non-consideration of the case of a person for promotion will amount to infringement of Article 16 of the Constitution. Thus teaching and/ or research experience for the post of Reader has to be counted from the date of acquiring basis qualification T.E. Pd.D., is obtained. The research experience can not be excluded while considering suitability. Experience can not be a substitute for education qualification. If a person is entitled to promotion, but not promoted, is entitled to invoked writ jurisdiction.

**Keywords:** Promotion, Public Service, Employee

### Introduction

Promotion in the context of law relating to services, means reducing or raising an employee to a higher rank or post than one the employee was holding or to a higher scale of pay than the on the employee was enjoying immediately before such promotion.[1] The higher officer or rank or post or scale is generally referred to as the promotional post or scale as the case may be. The office or rank or post which the employee is promoted is referred to as the 'feeder post'. Every civil servant aspires to promotion not only because of higher salary but also with the object of occupying the superior posts and position. Efficient in administrative, therefore, justifies promotion in all services, whether public or private. A proper promotion policy undoubtedly is a necessary incentive to civil servants.

When a person accepts a new pay scales under the new scheme that was given retrospective effects when there was a change in right to promotion earlier under the old scheme.[2] Therefore, where persons eligible for promotion as Professor under the old scheme and was in fact promoted provisionally, to consider the persons for promotion under the new scheme afresh has been set aside by the courts.[3] It is necessary for the employer state to earmark and reserve the sufficient number of posts in higher cadres for promotion.

### Meaning of Promotion

The 'promotion' ordinary means rise from a lower post to a higher post with higher pay than the feeder post, i.e. the post from which the promotion takes place. Promotion has to be amongst persons who are born on a regular cadre in service. Therefore, officers belonging to a deficient cadre of the State service can not claim promotion to a post required to be filled by promotion of officers belonging to another cadre. The Hon'ble Apex Court in '*Tarsem*

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Singh –V- State of Punjab’ [4] has defined the promotion in these words:-

*“Promotion as understood under the service law jurisprudence means advancement in rank, grade or both promotion is always a step towards advancement to a higher position, grade or honour. Opting to come to a lower pay scale or to lower post can not be considered or promotion, it is rather a demotion.”*

The concept of promotion not only covers advancement to a higher position or rank but also implies advancement to a higher grade.[3] However, when someone is asked to work in a higher post with extra allowance while holding the lower post substantively is not promotion.[4] The promotion, known as *Time Bound Promotion*, however, increases pay scale or grade only without enhancement of rank or posts.[5]

### Method of Promotion

The well-known methods which are adopted in the recruitment rules for making promotion are- (i) Seniority-cum-merit (ii) Merit-cum-seniority, (iii) Promotion by Merit or selection (iv) Time Bound Promotion. While the method of seniority-cum-merit is generally prescribed for promotion in the lower cadres, the method of promotion by selection is adopted in making promotion to the higher echelons of the service. In the process of “seniority-cum-merit, the seniority plays more important role than merit but in the matter of “merit-cum-seniority”, the situation is just reverse. In “merit-cum-seniority”, the merit is the determinative factor.[6]

‘Seniority-cum-merit’ promotion is made on the basis of seniority subject to the fitness of the candidate to discharge of the duties of the post among the person eligible for promotion. So, a person can not claim promotion on the basis of seniority alone and if he is not found for promotion, a junior might be considered for promotion.[7] Thus, if the senior-most officials is unsuitable for promotion, the appointing authority could proceed to consider the case of next senior and so, on each occasion for promotion.[8]

Under ‘Merit Promotion Scheme’, an officer gets his promotion strictly on merits and his performance should be commendable throughout and especially during last few years.[9] Merit of a candidate is not only his academic qualification but in fact it is total sum of various qualities but in fact it is total sum of various qualification such as post performance and other relevant constituents.[10] Where the selection for promotion is based on merit, then seniority takes second place.[11]

Under ‘Merit-cum-seniority Scheme’, greater emphasis has to be given on merit and ability and seniority plays a less significant role but seniority has to be given weightage when merit and ability being almost equal. ‘Regular Promotion’ based on merit and ‘Time Bound Promotion’ are different. Under Time Bound Promotion an employee is placed in the next higher grade in terms of emolument only while retaining them in the same cadre.[12] Thus, personal promotion under time bound scheme can not be treated at par with regular promotion from a lower to higher post where not only seniority but even merit has to be examined by a duly constituted committee or Commission.[13] Thus, merit scheme promotion can not be treated at par with Time Bound Promotion scheme because merit promotion is given on the basis of assessment of work and performance.[14]

The lecturer, thus, promoted under merit promotion scheme ranks senior to the lectures promoted under ‘time bound scheme’ as the later receive emoluments only and also does not get regular promotion.[15]

### Notional Promotion

‘Notional Promotion’ is such promotion which a government servant gets under particular exigencies of situation, which can not claim as of right.[16] If a Government employee does not get promotion for not fault of his own, then his promotion can not be called a ‘notional promotion’ and such employee can not forfeit his claim for arrears of salary experience etc. after getting his promotion with effect due date retrospectively.[17] So, the pronouncement of Division Bench of Patna High Court in “*Ram Twakya Singh –V- State of Bihar*, [C.W.J.C. No. 16680/2014, order dated: 18-12-2015] calling the retrospective promotion of a University Professor under merit promotion scheme a ‘national promotion’ is in our opinion, not a good law and the same is *per incuriam*. The Para 43 and 44 of the judgment reads as follows:-

*“43. Such a decision of personal promotion of respondent no.4 to the post of Professor, in terms of the statues, on completion of 16 years experience as a Lecture and Reader, with retrospective effect, may qualify him to claim salary, etc, but his experience of working, on the post of Professor, could commence only with effect from 03.07.2009, when his promotion was notifies.*

*44. As a matter of fact, it would be wholly illogical to allow respondent no.4 to compute his experience on the post of Professor with effect from 21.04.1999 inasmuch as he was working on 21.04.1999, only as lecture and, in fact, his promotion to the post of Reader itself was notified on 06.04.2000. Thus, the petitioner’s experience on the post of Lecture is from 20.04.1983 to 05.04.2000 and his experience, on the post of Reader is from 06.04.2000 to 02.07.2009 leaving his actual period of experience as Professor only from 03.07.2009.”*[18]

If the above noted pronouncements are treated as a good law, then great injustice would be caused to the University teachers of Bihar whose promotions are decided after a long gap due to fault of the University and State Government. Denial of benefit of experience to the University teacher on their retrospective promotion shall cause great injustice and it would amount to rewarding the authorities who caused unreasonable delay in promotions and on the other hand punishing the teachers for their no fault.

The Honb’le High Court has erred in law in construing retrospective promotion as “notional promotion” require the necessity of “actual physical services”, and thereby denying benefit of “experience” to the University teacher relying erroneously on ‘*Union of India –V- M. Bhaskar*, (1996) 4 SCC 416. The finding of Hon’ble Division Bench in “*Ram Tabkya Singh case*” thus is against the laid down by Apex Court in ‘*Union of India –V- K.B. Rajaria*’, [AIR 2000 SC 1819] which reads as follows:-

*“10. Third, the High Court erred in construing the words ‘regular service in the grade’ as ‘actual physical services’. If that were so, then an adhoc appointee who actually services in the post could also claim to be qualified to be considered for the post of Director General. The High Court itself held that “adhoc service rendered by any of the parties would not count towards eligibility.”*

20. Note 1 leaves no room for doubt that the words "service" means "qualifying service", and note 2 makes it clear that in case of supersession actual service for the prescribed period is not required. This is in keeping with Para 18.4.3. of the J.M. quaffed earlier. As the national date of promotion of Krishnamoorti was 22.02.1995, he was eligible to be considered for the post of Director General in 1999.

21. In the context of this case, the High erred in equating the word "regular service" with actual experience relying on the decision of "Union of India –V- M. Bhaskar, (1996) 4 SCC 416. In that case the eligibility criteria expressly were of "completion of 2 years" experience in Grade II. The case is therefore entirely distinguishable.

22. The national promotion was given to Krishnamoorti to right the wrong that had been done to him by supersession in 22<sup>nd</sup> January, 1995. If Krishnamoorti is denied the right to be considered for promotion to the post of Director General on the basis of such national promotion, particularly when the relevant provision so provided, it would result in perpetuating the wrong done to him. That is exactly what the High Court has done.

23. We therefore allow the appeal and set aside the impugned order the High Court, in so far as the findings regarding Krishnamoorti were concerned. There will no order as to cost."

(Underline for emphasis)  
(Para 10, 20, 21, 22, 23)

However, if a person get notional promotion with retrospective effect, such persons is entitled for arrears of salary for such retrospective promotion even if he has not worked on the said pos for the period concerned.[19]

### Right to Promotion

It is well settled that public employment can be by way of direct recruitment or by promotion. Promotion is a normal incidence of service and not a fundamental right, but a employee of state has a right to be considered for promotion. Non-consideration of the case of a person for promotion will amount to infringement of Article 16 of the constitution.[20]

No junior can be promoted or confirmed until the seniors are confirmed or promoted.[21] If junior employee is given promotion without considering his senior, the employee can claim the right to be considered for such promotion from the dated the junior was protected. [22]

### Factors to be considered

Promotion may be on the basis of "seniority-cum-merit" or "merit-cum-seniority" or "merit alone" or "selection" etc. Eligibility norms for promotion must be defined on realistic basis so as to provide a system to choose the best available talent. There may be several factors forming basis for promotion such as (i) zone of consideration, (ii) qualification (iii) seniority (iv) merit (v) past record, and (vi) other factors.

When qualification has been prescribed for a post, that can not be obliterated by posting those din not have the qualification as against those who have that qualification.[23] The candidate for promotion must possess the requisite qualification on the date of recommendation of DPC.[24] If the rules provide for two fold qualification namely educational and practical

experience, it is not permissible to say that a better educational qualification would obviate the need for the prescribed practical experience.[25] Experience can not be substitute for educational qualification prescribed by rules.[26] Absence of experience in substantive capacity is not a mare irregularity and if it is the eligibility criterion for the purpose of promotion to higher post, it must be strictly complied with.[27] the period of experience has to be considered and computed from the date of actual promotion and not from any retrospective date of notional promotion.[28]

For the post of promotion as a Reader, the teaching experience as lecturer of affiliated college can not be excluded totally.[29] Merit of a candidate is not only his academic qualification but is the sum total of various qualities.[30]

When experience has been prescribed in addition to qualification, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining the basis qualification.[31] Thus, teaching and/ or research experience for the post of Reader has to be counted for when qualification for the post of Professor is both teaching and research experience, the research experience cannot be excluded while considering suitability.[33] Experience cannot be a substitute for education qualification.[34]

### Delay in Promotion

If there is any delay on the part of the employee in considering or releasing promotion without and reasonable ground. The employee would be entitled to claim that his promotion should be effective from the date when ought have been promoted. The court can also grant such other consequential or compensatory relief having regards to the facts and circumstances.

A person is entitled to promotion, but not promoted, is entitled to invoked writ jurisdiction. A writ of mandamus may be issued to the employee state directly to considered the promotion of such employee.[35]

The writ can be issued only directing the authorities to consider. The case of promotion if the same is wrongly delayed or denied. But in a case where it is established the even after issuing a writ considering the case of an official for promotion the authority has arbitrarily denied the promotion to him, a writ to promote will be issued.[36]

When selection for appointment by promotion is made after due consideration of the confidential and other service record of the official, such administrative decision can not be interfered by the Court.[37] Courts should not interfere with the selection for appointment or promotion made by experts in selection committee, unless *mala fide* alleged, and there is as presumption that Selection Committee Acts fairly and has taken into account all relevant consideration.[38]

### Conclusion

An employee has right to be considered for promotion, if eligible, but not right to be promoted. The person desirous of promotion must full fill the eligibility criteria prescribed in the statute. In case the promotion in not considered or inordinately delay, the employee may seek are writ of mandamus for the same.

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