

CHAPTER IV

Seniority

1. Importance of Seniority

Seniority is one of the important matters relating to conditions of service, because the seniority has a direct bearing on the question of promotion to the next higher cadre. Where promotion to the next higher cadre is based on the principles of seniority and merit, the seniority of an official is of utmost importance. Where a senior official is suitable for promotion, he is entitled to get promotion on the basis of his seniority in preference to his juniors. Even in cases where promotion is governed by the principles of selection, the seniority has got its own importance. Where persons are selected to the next higher post on the basis of merit and suitability, from among persons of equal merit, senior is entitled to be preferred for appointment.¹ Therefore, the seniority to which a civil servant is entitled to under the rules regulating seniority is a civil right.² The seniority of a civil servant does not depend upon how it is fixed by the authority concerned. It stands automatically determined according to the rules. The preparation of seniority list by the authority concerned is only a formal affair. If the authority commits any mistake in preparing the seniority list and it is found that it is not in conformity with the rules it has got to be corrected.³ Right for consideration for promotion according to seniority and in preference to a junior in the case of promotion according to seniority-cum-merit and along with a junior in the case of promotion by selection is a part of fundamental right of equality of opportunity in matters relating to employment under the State. Therefore, fixation of seniority is the very foundation for complying with Fundamental Right guaranteed under Article 16(1) of the Constitution because without fixation of seniority, there can be no consideration of the case of a civil servant according to his seniority.

2. Principles Governing Fixation

(1) *Seniority—means length of service in similar grade and status* : One of the attributes of regular service is seniority. Seniority in simple English

1 Sant Ram Sharma *V.* State of Rajasthan—AIR 1967 SC 1910 at 1916.

2 S. K. Ghosh *V.* Union of India—AIR 1968 SC 1385.

3 Gaya Prasad *V.* State of Bihar—SLR 1973(1) Patna 1.

means a longer life than of another thing or person taken for comparison. In the case of Government servant, it means "the length of service". If the service of one person is longer than that of another, the first named person is called the senior to the other. The value of the right of seniority is the right for consideration of one's case for promotion to a higher post. In such cases, seniority that is taken into account is the seniority in the grade immediately below the promotional post or in the grade which is described as the grade from which promotions are to be made. It proceeds upon the basis that the comparison for purpose of seniority is between equals or those that are in the same grade or equated grades. Therefore, seniority is a concept which involves a comparison between the length of service in the same grade and not the length of service in different grades. Similarly it is impossible to postulate comparison between the regularly appointed Government servants and irregularly appointed Government servants. Hence a person irregularly appointed though earlier cannot claim seniority as against persons appointed regularly though later.⁴ Any order issued by the Government to count irregular service of persons rendered before they are appointed on regular basis would be illegal.^{4 b-e}

(2) *General principles applicable for fixing seniority*: The seniority is always counted from among persons holding similar posts with similar status. Mere length of service under the Government is never the basis of seniority. *General principles applicable for fixation of seniority are as follows:—*

(i) The first condition for fixing seniority between the officials is that they must be holding the posts in the same cadre or grade.

(ii) The seniority is to be fixed as between persons who are holding similar status *i.e.*, officiating or substantive.

(iii) Persons holding permanent or substantive appointment are always treated as seniors to persons holding appointments on temporary or officiating basis.

(iv) As among persons who are confirmed or substantively appointed, the date of confirmation or substantive appointment is the basis for seniority.

(v) From among persons holding temporary or officiating appointments, the length of service in the cadre or grade is normally the basis for fixation of seniority. While the above stated principles are general principles govern-

4 (a) Chandramouli *V.* State of Mysore—1970(2) *Mys. L. J.* 187.

(b) Hombiah *V.* State —1972 *Mys. L. J.* SN. P. 60.

(c) B. H. Narayanaswamy *V.* The Registrar, High Court of Mysore—W.P. No. 6594/69 DD 29-9-72.

(d) T. Pillappa *V.* State of Mysore—1967(2) *Mys. L. J.* 40.

(e) Chikkalakkiah *V.* State of Mysore—W. P. No. 50/72 DD 7-9-73.

ing seniority which are generally incorporated in the rules regulating seniority, it always depends upon the statutory rules framed for regulating fixation of seniority.

(3) *Confirmation—secures substantive status* : Generally a person who is directly recruited is placed on a fixed period of probation. The rules also provide for the extension of the period of probation. Similarly a person promoted is normally placed on officiation. During the period of probation or officiation an officer has no right to hold the post and can be discharged or reverted on grounds of unsuitability in accordance with the rules governing the conditions of service. After satisfactory completion of probation or officiation an official is entitled to confirmation against a permanent vacancy existing or arising thereafter. On confirmation, a person secures substantive appointment and gets a right to hold the post until the same is terminated in accordance with law. As among persons who are confirmed or substantively appointed, the seniority has to be reckoned with reference to the date of confirmation or date of substantive appointment. Where the date of confirmation is the same among promoted officers the seniority in the lower cadre prevails and in the case of direct recruits it will be in the same order in which they are selected.⁵ Therefore, when persons are appointed on probation, they secure substantive appointment only on confirmation. A person so confirmed will be junior to persons appointed substantively before that date of confirmation. A probationer though appointed against a substantive vacancy, he acquires substantive status only from the date of confirmation and not from the date on which he was appointed on probation.^{5-b}

(4) *Earlier confirmation gives right for seniority* : Where according to the Recruitment Rules, persons who are directly recruited are required to pass departmental examinations and a person appointed later passes the departmental examinations earlier and so gets confirmed earlier to the person who is appointed earlier, a person so confirmed gets seniority even as against persons appointed earlier to him. Even in the absence of any specific rule applicable to such a case, a person who passes the examination earlier and gets confirmed earlier has to be treated as senior to persons who remain unconfirmed or get confirmed later though appointed earlier.^{5-a}

Similarly in the case of promotees also one who gets confirmed earlier acquires seniority even above his seniors in officiating category who remain unconfirmed.⁶

(5) *Confirmation of direct recruits and promotees* : (a) When recruitment to any class or grade of civil service is made by direct recruitment and

5 (a) B. K. Panduranga Sharma *V.* State of Mysore—1963(1) *Mys. L. J.* 441.

(b) Seenambhat Joshi *V.* State of Mysore—1974(1) *Kar. L. J.* SN, P. 13.

6 Veerabhadraiah *V.* State of Mysore—1971(2) *Mys. L. J.* SN, P. 133.

promotion, the confirmation against permanent posts should be made in accordance with the quota rule applicable during the relevant period. In other words, promotees should be confirmed in the order of seniority as against the promotion quota of permanent posts and direct recruits should be confirmed against the direct recruitment quota of the permanent posts. Therefore, where the confirmation of direct recruits and promotees against permanent vacancies was made in accordance with the quota fixed, complaint by promotees that persons directly recruited after their promotion have been confirmed earlier is untenable.⁷

(b) Where the rules prescribe the manner in which seniority has to be fixed among officers who are officiating, and also further provide that seniority of confirmed officers shall be in accordance with date of confirmation, the seniority of officers in the officiating position should be fixed in the first instance. In fixing seniority in the officiating position seniority of promotees and direct recruits should be fixed having regard to the quota prescribed in the Rule and the confirmation should be made in the same order.⁸

(6) *Cancellation of confirmation* : (a) On confirmation, a person acquires a substantive right to hold the post as against which he is confirmed. Therefore, cancellation of confirmation will have the effect of taking away the substantive right to hold the post. Hence an order of cancellation of confirmation can be passed only after complying with the provisions of Article 311(2) of the Constitution.⁹

(b) *Void orders of confirmation—confers no right* : Where, however, confirmations were ordered against non-existent posts, persons so confirmed do not acquire any right as the confirmations are void. Even creation of supernumerary posts to provide liens for officers so confirmed does not alter the position. In such a case, the order of confirmation itself being devoid of any legal foundation, it confers no right on the civil servant concerned. Therefore, the order of the Government cancelling previous orders of confirmation in such cases do not take away any right. Hence, no notice to show cause is necessary to pass such an order of cancellation and provisions of Article 311(2) are not attracted.¹⁰

(c) *Confirmation made by mistake can be corrected* : An order of confirmation is an administrative order and if an order of confirmation is passed by mistake, it is competent for the authority to revise the order of confirmation and correct the mistake.¹¹

7 Bachan Singh *V.* Union of India—SLR 1972 SC 397.

8 V. B. Badami *V.* State of Mysore—W.P. No. 193/1972 DD 15-12-1972 (Mysore). Mysore Government Servants Seniority Rules 1957—Rule 2(b) and (c) interpreted.

9 Beni Madhab *V.* State of Assam—AIR 1968 A & N 18—SLR 1968 A&N 616.

10 State of Punjab *V.* Jagdip Singh—AIR 1964 SC 521—1964(4) SCR 964.

11 K. B. Sharma *V.* Transport Commr. —SLR 1968 All. 830.

3. Seniority of Direct Recruits

(1) Where according to the seniority rules, the seniority of direct recruits has to be fixed on the basis of the recommendation of the Public Service Commission or the selecting body, the arrangement of names in the order of merit by such authority itself constitutes recommendation regarding the seniority also and the appointing authority has to fix seniority of the officials so directly recruited in the same order. The appointing authority cannot determine the seniority in any other manner.¹²

(2) But in cases where the rules provide that if the direct recruit fails to report for duty within the prescribed time, he has to take seniority from the date of joining duty, by not joining duty within the prescribed time he loses his claim for seniority on the basis of the select list.¹³

(3) Seniority of direct recruits is always determined on the basis of the select list prepared by the Public Service Commission or any Recruitment Committee or authority appointed for the purpose. The circumstances under which the seniority arranged in that manner could be varied is on the basis of the date of confirmation. This may happen on account of a person who has secured a higher rank in the list of selected candidates not completing the period of probation satisfactorily or not fulfilling the conditions of confirmation, within the time allowed and his period of probation is extended. In such cases, the person though placed lower in the list of selected candidates by completing the period of probation satisfactorily and also fulfilling other requirements, such as passing of departmental examination, etc., within the time allowed gets confirmed earlier, the seniority gets altered and the person so confirmed becomes senior.¹⁴

4. Seniority of Promotees

(1) *When promotions are made irregularly* : (a) Seniority of persons who are promoted to the higher cadre is normally according to date of promotion. But where promotions are made irregularly and out of turn without considering the cases of seniors or on the basis of a provisional seniority list, the seniority of the persons promoted on officiating basis is the same as their seniority in the substantive cadre.¹⁵

(2) *When promotion was passed over and given later* : Similarly in cases where the case of a senior official is not considered for promotion as on the date when his immediate junior is promoted, on account of the pendency of

12 M. Savithri V. State of Mysore—1972(1) Mys. L. J. 45.

13 Rule 5 of the Mysore Government Servants Seniority Rules as amended by notification No. GSR 316 dated 1-10-1971.

14 (a) B. K. Panduranga Sharma V. State of Mysore—1963(1) Mys. L. J. 441.

(b) Venkataswamy V. State of Mysore—W.P. No. 2243/1966 DD. 27-9-1968 (Mysore).

15 Giryappa Patil V. State of Mysore—1964 Mys. L. J. Suppl. 573.

departmental enquiry or on account of the senior official being on deputation or such other similar reason, a senior official though promoted later will retain his seniority in the substantive cadre, also in the higher cadre, *i.e.*, the seniority of an officer promoted later unless he was superseded has got to be fixed in the higher cadre just above the junior official though promoted earlier.¹⁶

(3) *Seniority—when juniors and seniors are still officiating in the higher cadre* : Similarly where the rules prescribe departmental examination for promotion and the rule further provides that though the senior official gets promoted later and junior official promoted earlier on account of their earlier passing of Departmental Examination, the seniority in the higher cadre has to be fixed according to the seniority in the substantive cadre so long the juniors promoted earlier have not been confirmed the senior official promoted later gets his seniority in the higher cadre above his junior promoted earlier.¹⁷ But the position will be different when the rules specifically provide that a senior stopped at qualification bar and superseded by his junior who has acquired the requisite qualification and who is promoted, becomes junior to his junior so promoted. In such a case junior promoted to the higher cadre becomes senior to his senior whom he superseded, permanently.¹⁸

(4) *Superseded officer cannot regain seniority* : When senior officers are considered for promotion and are found unfit and the junior officers who fulfil the prescribed qualification are considered for promotion and are promoted, the junior officers acquire seniority above their seniors. To revise the seniority position after the seniors have acquired the qualification or eligibility for promotion, would result in disruption of seniority of all persons who had regularly been promoted and to introduce an element of utter uncertainty for an indefinite period of time regarding the ranking of officers in the higher category. Therefore, seniority once acquired by a junior officer by supersession of his senior cannot be allowed to be upset subsequently.^{19-a} Even if subsequently the junior so promoted is reverted for want of post, etc., still he ranks senior in the lower cadre above his erstwhile senior and will have preference for promotion when occasion arises once again.^{19-b}

(5) *Seniority in selection posts* : As among persons promoted by selection the seniority is always determined with reference to the list of selected

- 16 (a) Mahantayya Maharudraiah Hiremath *V.* Inspector General of Police—1963 Mys. L. J. SN. P. 92.
 (b) T. S. Sundararaja Iyengar *V.* State of Mysore—1969 Mys. L. J. SN. P. 9.
 (c) M. Zameer Hussain *V.* C.T.O. Bangalore—W. P. No. 6160/1969 DD 22-11-72 (Mysore)—Rule 2(c) Explanation of the Mysore Government Servants Seniority Rules, 1957, interpreted.
 (d) H. M. Murudeshwar *V.* State of Karnataka—W. P. No. 722/73 DD 31-7-74 (Mys).
- 17 Gangaram *V.* Union of India—AIR 1970 SC 2178—(1970) 3 SCR 481.
- 18 W. P. No. 1966/1963 (DD 19-9-1966) Mys.—C. K. Narasimhaiah *V.* Divisional Commissioner, Mysore. Mysore Government Servants Seniority Rules, 1957—Rule 2(d) interpreted.
- 19 (a) Sreedharan Pillai *V.* State of Kerala—SLR 1973(1) Kerala 478.
 (b) Bachittar Singh *V.* State of Punjab—SLR 1973(1) P & H 863.

candidates arranged in the order of merit by the competent authority, similarly as in the case of direct recruits.²⁰

(6) *Seniority acquired by selection cannot be altered* : Where a promotion to the next higher cadre is made on the basis of selection after considering the merit and suitability of the officers in the lower cadre, a person selected earlier and appointed earlier gets seniority over the persons selected later. In such a case even a revision of seniority in the lower cadre cannot be taken as the basis for altering the seniority of persons who are selected and appointed.²¹

5. Seniority between Direct Recruits and Promotees

The manner of fixation of seniority as between direct recruits and promotees has given rise to several disputes relating to seniority. The disputes have arisen mainly for the reason that direct recruitments are not made regularly by the appointing authorities. Secondly, it is on account of the fixation of quota as between direct recruits and promotees and the recruitment made in disregard of the quota rule. Persons are promoted even against the direct recruitment vacancies and are continued for several years. Thereafter, when direct recruitment is made, naturally direct recruits claim seniority in accordance with quota rules. The promotees feel that it is humiliation to become juniors to persons appointed after several years to the same cadre and even they will be required to work under such persons who are juniors in service. This can be avoided by making direct recruitment promptly every year as and when vacancies arise. However, as far as the rules are concerned, fixation of seniority of direct recruits and promotees depends on the specific rules framed in that behalf.

(1) *Seniority—adjustment between direct recruits and promotees* : When the recruitment rules prescribe a specific quota for direct recruitment and promotion, persons who are recruited from the respective sources have got a right to be appointed as against the post earmarked for the particular source of recruitment. Once such quota is fixed, the absorption of direct recruits and promotees is required to be done in accordance with the said quota. So long as the quota is not violated and absorption is done within the quota, persons belonging to the other source of recruitment cannot complain that persons appointed later cannot be absorbed earlier or confirmed earlier. Any person who gets confirmed earlier in view of the vacancy earmarked for the concerned source of recruitment acquires seniority over persons belonging to the other source though appointed earlier.²²

20 Mysore Government Servants Seniority Rules—Rule 4.

21 (a) S. K. Ghosh *V.* Union of India—AIR 1968 SC 1385—P & T Manual Volume IV—4th Edition para 153 Appendix 6-A interpreted.

(b) Harikishan Singh *V.* State of Punjab—AIR 1971 SC 1602—SLR 1971 SC 373.

22 Bachan Singh *V.* Union of India—AIR 1973 SC 441.

(2) *Fixation of seniority according to rotation of vacancies* : (a) The seniority rules in some cases provide that seniority as between direct recruits and promotees should be fixed in accordance with the rotation of vacancies irrespective of the date of appointment of direct recruits and promotees. Such a seniority rule is directly linked with the quota rule contained in the Recruitment Rules. Where the Recruitment Rules clearly provide that direct recruitment and promotion should be made in a particular ratio, the vacancies arising after the coming into force of such rules should be arranged in a roster in accordance with such ratio and the appointments by way of direct recruitment and promotion have got to be made in that ratio. Even if it so happens that appointments by way of promotion and direct recruitment have not been actually made on such rotation, still where the rules provide that seniority has got to be fixed on the basis of rotation of vacancies, it is mandatory for the appointing authority to arrange the seniority according to rotation of vacancies.²³

(b) Similarly where Recruitment Rules provide that vacancies arising in a particular cadre should be filled up by way of direct recruitment and promotion specifying the vacancies which should be filled up by direct recruitment and which should be filled by promotion, such a Recruitment Rules should also be considered as prescribing a special rule of seniority. In such a case, a general rule that seniority relating to fixation of seniority as between direct recruitment and promotion according to date of appointment have no application and seniority must be fixed in the order of vacancies reserved for direct recruitment and promotion.²⁴

(3) *Special rule of seniority prevails against general rule* : If the rules of recruitment provide that a particular class of post should be filled up by selection from among persons holding the specified posts on the basis of length of continuous service in such posts, the seniority for purposes of selection has to be fixed taking into consideration the entire length of service irrespective of the fact that the service so rendered is in a temporary or officiating capacity or on permanent basis. The general rules of seniority cannot prevail over such special rules of seniority provided for purposes of selection in the rules of recruitment.²⁵

(4) *Seniority when promotion is provided from a class of posts consisting of heirarchy of posts* : When according to rules of recruitment, promotion is required to be made from a class of posts which consists of several categories

23 (a) S. G. Jaisinghani *V.* Union of India—AIR 1967 SC 1427.

(b) Mervyn Continho *V.* Collector of Customs—AIR 1967 SC 52—(1966) 3 SCR 600.

(c) Annigeri *V.* Union of India—1974(1) *Kar. L. J.* SN. P. 45.

24 D. P. Hiremath *V.* State of Mysore—1971(1) *Mys. L. J.* 216.

25 K. V. Ghorpade *V.* State of Mysore—1973(2) *Mys. L. J.* SN. P. 26.

Mysore Health Services (Collegiate Branch) Recruitment Rules, 1967, interpreted.

or grades, the persons holding the higher posts should be considered as senior to persons holding lower posts and promotions should be made accordingly.²⁶

(5) *Difference between rotational and proportional recruitment* : Where the Recruitment Rules do not specifically provide that appointments by way of direct recruitment and promotion should be made in a particular ratio but only provide that a certain percentage of vacancies should be filled up by direct recruitment and the rest by promotion, it is competent for the appointing authority to make promotion in the first instance in respect of vacancies reserved for promotion and thereafter, fill up the vacancies reserved for direct recruitment by way of direct recruitment or vice-versa.^{27-a} In such a case in the absence of any particular seniority rule providing that seniority should be fixed by rotation of vacancies, the seniority can be fixed only according to date of appointment of direct recruitment and promotion, as the case may be taking into account only such promotions and direct recruitment made within the quota.²⁷⁻²⁸ If promotions have been made in excess of the quota prescribed in the rules for recruitment from that source, persons who are occupying the posts in excess of the quota should give place to direct recruits and direct recruits should be assigned seniority below the last person promoted within the quota.²⁸

(6) *Service rendered by a promotee promoted against a direct recruit vacancy* : Where under the rules of recruitment specified quota is fixed as between direct recruits and promotees, on several occasions it becomes necessary to fill up the direct recruitment vacancies by promotion in order to carry on the administration. But such promotion against vacancies reserved for direct recruitment does not confer any right of seniority.²⁸

(7) *Permanent vacancies alone should be taken to calculate quota* : When the cadre strength consists of both permanent and temporary posts and where the rules prescribe a specific quota for promotion and direct recruitment and the rules also indicate that direct recruits after completion of the period of probation are entitled to be appointed substantively it means that the posts which should be taken into account for calculation of quota and confirmation are the permanent posts in the cadre. Hence vacancies arising in the permanent posts alone should be utilised for fixing seniority and confirma-

26 Venkatanarasappa *V.* State of Mysore—W.P. No. 1884/1967 DD 18-4-68 (Mys.).

27 (a) M. Devarakondappa *V.* Commissioner of Commercial Taxes—W.P. No. 227/1963 DD 9-4-65 (Mysore).

(b) V. B. Badami *V.* State of Mysore—W.P. No. 193/1972 (DD 15-12-1972) Mysore.

(c) Shanthayya *V.* State of Mysore—W.P. No. 1979/66 DD 24-1-1967.

(d) Gurubasappa *V.* Deputy Commissioner, Gulbarga—W.P. No. 5130 of 1969 DD 28-9-1972 (Mysore).

28 (a) Gurubasappa *V.* Deputy Commissioner, Gulbarga—W. P. No. 5130/1969 DD 28-9-72 Mysore.

(b) V. B. Badami *V.* State of Mysore—W.P. No. 193/1972 DD 15-12-72 (Mysore). Mysore State Civil Services General Recruitment Rules 1957—Rule 17 interpreted.

tion particularly for the reason no confirmation is permissible against a temporary vacancy.²⁹

(8) *Period which should be taken as a unit for fixing the quota* : As far as the period which should be taken into account for purposes of adjusting seniority as between direct recruits and promotions when the Recruitment Rules only prescribe a quota by way of fixed proportion, it should be determined with reference to the rules governing recruitment. Where the rules indicate that no promotion should be made against direct recruitment vacancies for a period beyond one year the clear indication is that for adjustment of quota and seniority vacancies arising each year must be taken as one unit.²⁹

(9) *Deemed date of promotion as basis for seniority* : (a) Where junior officials are promoted to the higher cadre ignoring the claims of senior officials wrongly on account of wrong fixation of seniority or other reasons, it is competent for the appointing authority to retrospectively promote the seniors by giving deemed dates of promotion and to adopt the said date for fixing seniority of promotees.³⁰

(b) *Retrospective promotion must not exceed the number of vacancies* : When promotions made ignoring the claims of seniors are taken up for review for giving retrospective promotion such promotions should be limited to the then existing vacancies. If there were no vacancies left after the appointment of the junior officials made earlier then the only course open to the appointing authority is to review the entire position and revert the juniors or give them a later date of promotion, and give earlier deemed dates of promotion to the seniors. The appointing authority cannot resort to a method of restoration of seniority of officers retaining the juniors promoted which results in larger number of promotions than the actual promotional vacancies existed. Such a retrospective promotion or restoration of seniority which results in larger number of promotions than the number of vacancies existed and which affects the seniority of others subsequently appointed is illegal.³¹

(6) *Denial of retrospective confirmation and seniority on retrospective promotion illegal* : When the case of a senior official is overlooked and a junior official is promoted, and subsequently the grievances of the senior official is redressed and he is promoted with retrospective effect from the date when his juniors were promoted, there is no justification for the State to deny confirmation and seniority from the said date. Consequent on the retros-

29 (a) *V. B. Badami V. State of Mysore*—W.P. No. 193 of 1972 DD 15-12-1972 (Mysore).

(b) *Mysore State Civil Services General Recruitment Rules, 1957*—Rule 17.

(c) *Falima Begum V. State of Karnataka*—W.P. No. 368/74 DD 18-6-74 (Kar).

30 (a) *Shanthaiya V. State of Mysore*—W.P. No. 1979/66 DD 24-1-1967.

(b) *Rohini V. Director of Public Instruction*—W.P. No. 1212 to 1215/66 DD 7-7-1969 Mysore.

31 (a) *P. N. Hosalappa V. State of Mysore*—W.P. No. 2293/1967 DD 28-8-1969.

(b) *T. L. Krishnaiah V. State of Mysore*—1971(1) *Mys. L. J.* 168.

pective promotion person so promoted is also entitled to be confirmed in preference to his junior and also to be placed in the seniority list above the junior promoted earlier. The normal process is to promote the senior to the higher cadre and then to promote those who are juniors to him. When in a given case, it is seen that the above process is infringed and a junior is promoted first and the senior is promoted later without any justification a senior is entitled not only to get retrospective promotion but also confirmation and seniority above his junior.³²

6. Seniority on Transfer to a Separate Unit

(1) *Transfer in public interest* : (a) Where persons who are already in Government service are transferred in public interest from one Department to another to an equivalent post, the officials so transferred are entitled to count the entire service rendered in the Department from which they are transferred in the Department to which they are transferred.³³ A rule providing for fixation of seniority taking into account the services rendered in the Department from which an official is transferred gives a just and fair treatment to the officials so transferred and fixation of such seniority in the manner cannot be challenged by the officials in the Department to which an official is so transferred.³⁴

(b) Where a person is absorbed in another Department in public interest a condition imposed by the appointing authority that the service rendered by such officials in the parent department before absorption shall not count for seniority would be illegal. In such a case, the portion of the order which directs non-counting the earlier services for seniority has to be treated as illegal.³⁵

(2) *Transfer on request* : The case of a person who gets transferred to another Department or to another post on his request stands on a different footing. In such a case, he has to take seniority from the date on which he enters the new post. An official who agrees for such a condition and gets himself transferred to another Department cannot subsequently claim that his previous service should be counted for purposes of seniority in the Department to which he is transferred at his own request.³⁶

32 K. P. Srinivasan *V.* Financial Adviser—SLR 1970 (Mysore) 166.

33 (a) Pareschandra *V.* Controller of Stores—SLR 1971 SC 68.

(b) D. V. Kulkarni *V.* State of Mysore—1967 *Mys. L. J.* SN. P. 92.

(c) Lakshman Rao *V.* State of Mysore—W.P. No. 6162/1969 DD 30-11-72 Mysore.

(d) Narayana Seshayya Naik *V.* State of Mysore—1968(2) *Mys. L. J.* 299.

(e) P. K. Menon *V.* State of Mysore—1974(1) *Kar. L. J.* 15.

34 K. Shivappa *V.* State of Mysore—1970(1) *Mys. L. J.* 235.

35 R. N. Sastry *V.* State of Mysore—W.P. No. 2254/1965 DD 31-3-1967.

36 (a) V. S. Parameswaran *V.* State of Mysore—1971(1) *Mys. L. J.* 378.

(b) Shivasharanappa *V.* State of Mysore—1969 *Mys. L. J.* SN. P. 52.

(3) *Transfer on request and option—difference* : Where on account of re-organisation of Departments, the State Government offers an option to the officials either to join the 'A' Department or 'B' Department, giving of an option by an official to join any particular department does not amount to a transfer on his own request. Such a transfer in pursuance to an option given by the Government and accepted by an official has to be treated in the same manner as transfer in public interest and hence the official is entitled to count the past service in the parent Department for purpose of seniority.³⁷

7. Fixation of Seniority

(1) Before fixing seniority of civil servants finally, principles of natural justice require that opportunity should be given to the civil servants concerned to make representations.³⁸

(2) *Cannot be altered without giving opportunity* : Seniority once fixed creates a right in favour of a civil servant. Any alteration of seniority would adversely affect the right of a civil servant. Hence an alteration of seniority without notice to the person so affected would be opposed to the principles of natural justice.³⁹

(3) *Right cannot be taken away with retrospective effect by an executive order* : Once a seniority of an official is fixed on principles evolved in an executive order in the absence of statutory rules, the seniority so fixed confers a right on a civil servant. Such a right cannot be taken away retrospectively by an executive order.⁴⁰

(4) *Seniority principle cannot be given retrospective effect unless provided for* : Where new principles of seniority are evolved and promulgated with specific provision that the new principles apply with prospective effect, the seniority of officers already fixed in accordance with the pre-existing rules cannot be altered applying the new principles for fixation of seniority.³⁸ When according to old rules principle for fixation of seniority was continuous officiation and under the new principles, the principle of fixation of seniority is the date of confirmation, the seniority of officials fixed earlier on the basis of continuous officiation cannot be altered according to dates of confirmation by applying the new rules.⁴¹

37 S. V. Revankar *V.* State of Mysore—1970 *Mys. L. J.* SN. P. 89.

38 Shivasharanappa *V.* State of Mysore—1973(2) *Mys. L. J.* SN. P. 81.
(AIR 1968 SC 850 relied on).

39 (a) Niranjana Das *V.* State of Punjab—SLR 1968 (*pb & Hr*) 183.

(b) S. K. Ghosh *V.* Union of India—AIR 1968 SC 1385.

(c) K. Suryachari *V.* Director of Statistics—W.P. No. 5589/1969 DD 7-8-72 (*Mys*).

40 G. V. B. Naidu *V.* State of Mysore—1970(2) *Mys. L. J.* 296.

41 Union of India *V.* Ravivarma—AIR 1972 SC 670.

(5) *Seniority—principles apply to all persons appointed subsequent to promulgation* : However, in respect of persons who are appointed subsequent to the promulgation of the new principles of seniority and who are confirmed after the coming into force of the new principles, it is impossible to fix their seniority by applying the rules which have been repealed. The seniority of such officials have got to be fixed only according to date of confirmation applying the new principles which have already come into force.⁴²

(6) *Provisional seniority—alteration* : Where a provisional seniority list is published on the basis of the principles set out in the notification and objections were called for only from the aggrieved officials, alteration of the principles of seniority and ranking in the final list prepared to the disadvantage of the officials who were not aggrieved by the provisional list would be opposed to principles of natural justice. In such a case, the principles of natural justice demands that the officers concerned should be given another opportunity to make representations against such proposed adverse decision. A decision taken without giving such an opportunity is opposed to principles of natural justice.⁴³

(7) *Seniority of officers on deputation in a higher post* : The seniority of an officer appointed by selection and sent on deputation outside the regular line or channel of promotion has to be determined with reference to his substantive post. Such promotion may confer certain advantages and privileges so long he is continued in a higher post outside the regular line. The seniority of such an officer has to be maintained only in the parent department and with reference to the date of appointment to particular class or grade concerned.⁴⁴

(8) *Seniority of persons on deputation* : Officers on deputation are entitled to retain their seniority in the parent Department and to get promotion in the parent Department as if the service rendered by them in the deputed post is equal to the service rendered in their parent Department.⁴⁵

(9) *Order determining seniority must be a speaking order* : It is well settled that seniority of a civil servant is his civil right as his very right for promotion depends upon the seniority. Therefore, any order of the competent authority deciding the seniority as between the officials has the effect of deciding the civil rights of the parties and therefore, the order is in the nature of

42 K. Satyanarayana *V.* Central Board of Direct Taxes—1972(2) *Mys. L. J.* 196.

43 (a) Union of India *V.* P. K. Roy—AIR 1968 SC 850.

(b) S. K. Potty *V.* Union of India—1969(1) *Mys. L. J.* 325.

44 (a) G. R. Baqual *V.* State of Jammu and Kashmir—AIR 1970 SC 1376.

(b) J. T. Prakash *V.* BWSSB—1970 *Mys. L. J.* SN. P. 90.

45 (a) State of Mysore *V.* M. H. Bellary—AIR 1965 SC 868.

(b) P. M. Nanjundaiah *V.* State of Mysore—1965(2) *Mys. L. J.* 397.

(c) Chandrasekhara Patil *V.* Inspector General of Police—W. P. No. 2759/67 DD 12-6-72.

a quasi-judicial order. Therefore, it is incumbent on the part of an authority to determine the question of seniority and to pass a speaking order.⁴⁶

46 *M. K. Bakshi V. State of Punjab*—SLR 1971(1) P & H 119.