Right to be Considered for Promotion as a Fundamental Right

Mains: *GS II – Governance*

Why in News?

A recent judgment by the Punjab and Haryana High Court has once again brought into focus the nuanced yet crucial principle that while promotion itself is not a fundamental right, the right to be considered for promotion is indeed a constitutionally protected guarantee.

What is the context of promotion in public employment?

- **Constitutional Foundations –** The right to be considered for promotion emanates from two key constitutional provisions:
  - **Article 14** – Guarantees equality before the law and equal protection of laws.
  - **Article 16(1)** – Ensures equality of opportunity in matters relating to public employment.
- Judicial interpretation has expanded the meaning of "employment" to include not just initial appointment but the entire span of service, including promotions and career advancement.
- Thus, denial of fair consideration for promotion amounts to a violation of these fundamental rights.
- **Understanding the distinction –** A critical distinction in service jurisprudence is between:
  - **Right to Promotion** – Not a fundamental right; depends on vacancies, merit, and administrative considerations.
  - **Right to be considered for Promotion –** A fundamental right if the employee meets eligibility criteria.
- This distinction was clearly articulated by the Supreme Court in the landmark case of Ajit Singh vs State of Punjab.
- The Court held that every eligible employee falling within the "zone of consideration" has a fundamental right to be considered for promotion. Denial of this right constitutes a violation of Article 16(1).

What is the Kul want singh case?

- **The case –** The recent case before the Punjab and Haryana High Court exemplifies how this right can be violated in practice.
- **Background** – Kulwant Singh, a junior engineer, was excluded from a Departmental Promotion Committee (DPC) meeting on the grounds that his diploma was obtained

through distance learning.
- The state government argued that he was ineligible under service rules.
- **Interpretation by court** – However, the Court found that the government had misinterpreted its own amended rules, which exempted existing employees like Singh from such requirements.
- As a result:
  - Singh's case was never placed before the DPC.
  - He was denied the opportunity for promotion due to administrative error.
- The Court held that this omission violated his fundamental right to be considered for promotion and it ordered:
  - Notional promotion with retrospective effect
  - Regular conduct of DPCs every three months
- This judgment highlights the judiciary's proactive role in correcting administrative arbitrariness.

What is the Judicial Evolution of the Principle?

- **Early Clarification (1991) –** In a case involving the Orissa-based Lift Irrigation Corporation, the Supreme Court clarified that while promotion cannot be claimed as a matter of right, consideration for promotion must follow established rules.
- **Constitution Bench Affirmation (1999) –** In Ajit Singh vs State of Punjab, the Court elevated the right to be considered for promotion to the status of a fundamental right.
- **Recent Reaffirmation (2024) –** In Bihar State Electricity Board vs Dharamdeo Das, the Supreme Court reiterated that:
  - The right to be considered is fundamental.
  - There is no "vested right" to promotion from the exact date a vacancy arises.
  - This ruling balanced employee rights with administrative realities, emphasizing that delays do not automatically entitle employees to retrospective promotions.
- **Role and Importance of Departmental Promotion Committees (DPCs) –** DPCs are institutional mechanisms within government departments tasked with evaluating eligible employees for promotion.
- Their functioning is critical to ensuring:
  - Transparency in selection
  - Merit-based evaluation
  - Timely career progression
- However, in practice, delays in convening DPCs have become a recurring issue, leading to stagnation and litigation.

What are the challenges in practical implementation?

- **Administrative Delays –** DPCs are often not convened regularly, sometimes delayed for years. This results in:
- Loss of promotion opportunities
- Reduced morale among employees
- **Misinterpretation of Rules –** As seen in Kulwant Singh's case, incorrect interpretation of service rules can unjustly exclude eligible candidates.
- **Litigation Burden –** Employees frequently have to approach courts to enforce their

rights, leading to:
- Judicial backlog
- Delayed justice
- **Retirement Without Consideration –** In many cases, employees retire before their cases are even considered, rendering the right ineffective.

What are the judicial interventions across high courts?

- **The Himachal Pradesh High Court (2025) –** It directed the state to expedite DPCs for senior lecturers nearing retirement, emphasizing that delays cannot defeat fundamental rights.
- **The Manipur High Court (2022)** – It granted notional promotions to police officers whose cases were delayed by over a decade.
- **The Delhi High Court (2024)** – It stressed the need for regular DPCs to prevent stagnation and ensure administrative efficiency.
- These interventions reflect a consistent judicial approach: administrative inefficiency cannot override constitutional guarantees.
- **Concept of Notional Promotion –** Courts often grant notional promotions as a remedy:
    - The employee is deemed promoted from an earlier date.
    - Financial benefits may be adjusted accordingly.
    - It restores seniority and career progression.
- However, notional promotion is a corrective measure, not a substitute for timely administrative action.
- **Balancing Administrative Efficiency and Employee Rights –** While courts uphold the right to consideration, they also recognize practical constraints:
    - Vacancies may not always be filled immediately.
    - Administrative exigencies can delay processes.
- **Balance by judiciary** – Thus, the judiciary maintains a balance:
- Protecting employees from arbitrary exclusion
- Avoiding undue interference in administrative functioning

What should be done?

- **Regular DPC meetings** – Institutionalizing fixed timelines (e.g., quarterly meetings).
- **Clear service rules –** Minimizing ambiguity to prevent misinterpretation.
- **Digitization of records** – Enhancing transparency and efficiency.
- **Accountability mechanisms** – Holding officers responsible for delays.
- **Pre-litigation redressal** – Internal grievance mechanisms to reduce court burden.

What lies ahead?

- The right to be considered for promotion is a vital component of equality in public employment.
- Rooted in Articles 14 and 16, it ensures that every eligible employee receives a fair opportunity for career advancement.
- Judicial pronouncements, including the recent ruling by the Punjab and Haryana High Court, have reinforced this principle while highlighting systemic gaps in

implementation.

- Ultimately, the effectiveness of this right depends not just on judicial enforcement but on administrative commitment to fairness, timeliness, and transparency.
- Ensuring regular and unbiased consideration for promotion is essential not only for individual justice but also for maintaining efficiency and morale within the public service.

Reference

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