

## **Civil judges of Maharashtra State Judiciary: silent sufferers**

**-Dr Ajay Nathani**

**Introduction** - The purpose of this article is to express concern about delayed promotions of the judges in the cadre of civil judge. The data of State of Maharashtra is analysed, and the Rules of the Bombay High Court are considered and therefore the title refers to the concern of civil judges of Maharashtra, however this may be the concern of all the members of State Judiciary in India who are lingering in the cadre of Civil Judge without promotion for years together. The purpose is not to agitate any member of judiciary but to try to evolve solutions and suggest effective changes in promotion policy to avoid stagnancy in one cadre and increase productivity and efficiency of the judiciary at the level of civil judge, which is the basic level of justice delivery system approached often by the citizens of India and for whom that may be first and the last Court of Justice.

In a dialogue with section of serving judges I was informed that the judges of the cadre of civil judge are not promoted for 15 years and more. First, I thought that it may be a case of a solitary judge and responded by saying that he should visit the District Judge under whom he is working and ask him the Cause and solution for the denial of promotion. Then I was said that the issue is not of an individual judge but the entire batches after batches of civil judges are waiting for promotion to the cadre of senior civil judge. As I am dealing with the issues regarding welfare of judges of district judiciary at the national level, I was not aware of facts and figures of such a situation of civil judges in my state. I therefore decided to analyse the available data and initially find out the problem so that the cause of the problem can be identified and some effective solutions to reduce its gravity can be suggested.

**Essentiality of job promotion** - A proper promotion system is essential for the employees as well as for the institution where the employees are working. The word Promotion originated from a Latin word 'Promovere' meaning 'to move forward.' The dictionary meaning of promotion is to elevate, to advance, etc. So, the definitions show that how an employee is eager to move forward to the next cadre and what joy he receives when is promoted. Scott and Clothier define promotion as "a transfer of an employee to a job which pays more money or one which carries some preferred status." Dr. L. D. White defines promotion as "An appointment from a given position to a position of higher grade, involving a change of duties to a more difficult type of work and greater responsibility, accompanied by a change of title and usually an increase in pay." In the district judiciary promotion of a Civil Judge to the cadre of senior civil judge brings him to preferred status. Being Senior Civil Judge or Chief Judicial Magistrate, he gets an authority to allot work to the civil judges and have the inspection powers as chief judicial magistrate to inspect the courts of magistrates. The Civil Judges work with all efficiency, go on updating their knowledge and experience and acquires all the essentials to earn promotion to the cadre of Senior Civil Judge. The delay in promotion year after year diminish his hopes which may adversely affect his efficiency and reciprocally adversely affect efficiency of the system. Prof. Arthur W. Proctor says "Lack of promotion

system has a marked retroactive effect on all the processes of personnel administration. It has a discouraging effect on recruitment by deterring ambitious and capable people from entering the public service. As a result, it renders difficult the maintenance of high standards of individual and group efficiency.” First national judicial Pay Commission (FNJPC) also expressed concerns about delayed promotions in district judiciary and observed,

“20.1 The adequate promotional opportunity is one of the significant factors in service jurisprudence. Every officer looks forward to reasonable career progression not only because of higher salary but also with the object of occupying a higher position of power and responsibility. It is undeniable that stagnation for a long period would demoralize the officers. It is, therefore, necessary to evolve a proper promotion policy.”

**Recommendations of first national judicial Pay Commission** - FNJPC is the only Commission which has redefined the judicial structure of district judiciary and brought remarkable changes in every aspect of judicial system including promotion policy. Most of the recommendations of the Commission are accepted by the honourable Supreme Court by the judgement in All India Judges Association versus union of India WP number 1022 of 1989. The Commission by its recommendation expected that the civil judge shall get an opportunity for promotion to the cadre of senior civil judge after 5 years of his service in the cadre of civil judge. The Commission observed,

“9.34 We, however, hasten to add that there should be a minimum eligibility for Civil Judge (Jr. Divn.) for being considered for promotion to Civil Judge (Sr. Divn.). Having regard to the rights, duties and responsibilities of the Civil Judge (Sr. Divn.), we consider that the minimum experience of five years as Civil Judge (Jr. Divn.) is a must for earning eligibility for promotion as Civil Judge (Sr. Divn.).”

All India Judges Association and various state associations raised concerns before the Commission regarding delayed promotions of the judges of every cadre and absence of appropriate opportunities of promotion. The Commission after considering the submissions made following recommendations.

“20.7 Taking all these factors into consideration, we have:

i) Rationalised the cadre structure and accordingly rationalised the pay structure also. Evolved a Master Pay Scale and carved out the required number of pay scales which have been elongated to prevent stagnation.

ii) Recommended Assured Career Progression Scheme for the cadres of Civil Judge (Junior Division) and Civil Judge (Senior Division) by providing two financial upgradations, within the stipulated timeframe.

iii) Recommended Selection Grade and Super-Time Pay Scales for District Judges, consistent with the functional needs and requirements.

iv) Recommended that the cadre of Civil Judges (Senior Division) should be purely a promotional cadre, and no direct recruitment should be made to this cadre.

v) Recommended suitable amendment to Article 233 (2) of the Constitution to provide an opportunity for in-service Judges to compete for direct recruitment to the cadre of District Judges.

vi) Recommended that 'not exceeding 25% of the posts in the cadre of District Judges should be reserved for direct recruitment'. This much of percentage for direct recruitment is considered necessary to promote efficiency, while at the same time, not impairing the interests of the promotees.

vii) Recommended an innovative concept of certain weightage for fixing the inter-se-seniority of the promotees and direct recruits in the cadre of District Judges to minimise if not to remove the constant irritation and imbalance between the promotees and direct recruits.

viii) Suggested that the promotional posts should be filled up at the earliest without being linked to the direct recruits."

In view of these recommendations the civil judges are entitled for First ACP (accelerated career progression) after 5 years of service in the cadre of civil judge and second ACP after 10 years of stay in the cadre of civil judge. The financial upgradation takes care of stagnancy of pay scale, but it cannot heal the wound created because of delay in promotion for several years.

**Analysis of data** - I have collected data from the gradation list of civil judges and senior civil judges available on the official website of Bombay High Court. It may not depict the exact cadre strength as it does not include vacant posts, but the figure may be near to the cadre strength. The data in respect of number of judges waiting for promotion since last more than 10 years is however as displayed in the gradation list. As stated above civil judge who has not

earned promotion till 10 years earn second ACP but his stay in the cadre beyond 10 years doesn't give him any benefit except equivalence of the pay scale to the entry level pay scale of senior civil judge. I have taken the figures of the civil judges waiting for promotion from 2015 and prior to that for analysis. The table displaying numbers is as under,

Year	Number of civil Judges
2001	1
2008	2
2010	53
2012	62
2013	34
2014	44
2015	211

Data shows that from 2010 to 2015 i.e. from last 10 to 15 years almost entire batch members are waiting for promotion to the cadre of senior civil judge.

**Probable causes for stagnancy** - In the quest of searching probable causes I considered the cadre strength of the 3 cadre as can be made out from the graduation list. number of civil judges in the graduation list is 1118, of senior civil judges is 731 and of district judges is 451. All the posts of senior civil judges are to be filled in by promotion from the cadre of civil judge and 75% posts of the cadre of District Judge are to be filled in from the cadre of senior civil judge. The promotional aspects are usually reduced because of the pyramidal structure of the jobs in the institution where jobs in the lower cadre are more and reduce while going on upper side. Here the structure does not become that narrow because almost 65% of civil judge post are available in the cadre of senior civil judge and almost 46% posts of the cadre of senior civil judge are available for promotion to the cadre of District Judge. Considering this percentage there will not be any stagnation in any cadre if there is proper transgression of judges from one cadre to another by way of timely promotion unless there is a clog in the cycle of promotion. Honourable Supreme Court in the case of Malik Mazhar vs U P Public Service Commission Issued guidelines formulating annual timetable of promotion cycle for the cadre of District Judge. If the timelines in Malik Mazhar are adhered the promotional cycle in all the 3 cadres may run smoothly. This is perhaps not happening because of the clog in the cycle of promotion.

**Clog in the cycle of promotion** - Honourable Supreme Court in All India Judges Association vs. Union of India 1022 of 1989 reacting to the recommendations of the FNJPC regarding recruitment and promotion to the cadre of district judges made following observations,

“While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge Cadre from amongst the advocate should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there

should be an objective method of testing the suitability of the Subordinate Judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum- seniority. For this purpose, the High Courts should devise and evolve a test to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case law. The remaining 25 per cent of the posts in the Service shall be filled by promotion strictly based on merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

[1] (a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) based on principle of merit-cum-seniority and passing a suitability test.

(b) 25 per cent by promotion strictly based on merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible Advocates based on the written and viva voce test conducted by respective High Courts.”

Bare reading of these observations discloses that for 50% promotional posts from the cadre of senior civil judge to the District Judge no qualifying service is provided. The qualifying service is only provided in respect of promotion based on limited competitive examination. The observation of 5 years qualifying service is however applied to entire posts of promotion

from the cadre of senior civil judge to the District Judge. Extract of Rule 5 of Maharashtra judicial service rules 2008 interprets and incorporates said observations as under,

#### 5. Method of Recruitment,

##### 1 District Judges

(a) 65% of the posts by promotion from the cadre of Senior Civil Judges based on the principal of merit-cum-seniority and passing a suitability test.

(b) 10% of the posts by promotion strictly based on merit through limited competitive examination from amongst the Senior Civil Judges.

Provided that if any of the posts could not be filled up from this 10% quota for want of eligible Judicial Officers, the same shall be filled up by regular promotion.

Qualification - Must have been in the cadre of Senior Civil Judges after successful completion of officiating period.

Must have been officiating as a Senior Civil Judge for at least five years.

Because of this rule a senior civil judge after his promotion must wait in the same cadre for 5 years and this in my opinion is clogging the promotion cycle. The other high courts are also running their promotion policy on the same line. The All-India Judges Association is trying to seek modification in the said policy, and this was the prominent purpose to file writ petition 643 of 2015.

**Expansion of quantum of promotional posts** - To expand the promotional avenues number of the posts in both promotional cadres are required to be increased. Data available on national judicial grid discloses that 1,08,88,450 civil cases are pending with Maharashtra district judiciary out of which 68.95 percent cases are one year old. 3,45,67,122 criminal cases are pending out of which 73.12% cases are one year old. Though institution disposal ratio shows that disposal is marginally higher than the institution, wiping out the pendency with this existing disposal rate is not possible for several years. Honourable Supreme Court in the case of All India Judges Association versus Union of India WP number 1022 of 1989 issued following directions for increasing strength of the judges in district judiciary. Honourable court observed,

“Mr. F.S. Nariman has drawn our attention to yet another important aspect with regard to dispensation of justice, namely, the huge backlog of undecided cases. One of the reasons which has been indicated even in the 120th Law Commission Report

was the inadequate strength of Judges compared to the population of the country. Even the Standing Committee of Parliament headed by Shri Pranab Mukherjee in its 85th Report, submitted in February 2002, to Parliament, has recommended that there should be an increase in the number of Judges. The said committee has noted the Judge-population ratio in different countries and has adversely commented on the judge-population ratio of 10.5 judges per 10 lakh people in India. The Report recommends the acceptance, in the first instance of increasing the judge strength to 50 judges per 10 lakh people as was recommended by the 120th Law Commission Report.

An independent and efficient judicial system is one of the basic structure of our Constitution. If sufficient number of judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of judges has adversely been commented upon. Not only have the Law Commission and the Standing Committee of Parliament made observations in this regard but even the Head of the Judiciary, namely, the Chief Justice of India has had more occasions than once to make observations in regard thereto. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased, and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the Judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. To have additional judges, not only will the posts have to be created but infrastructure required in the form of additional court rooms, buildings, staff, etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the Subordinate Courts at all levels should be filled, if possible latest by 31 st March 2003, in all the States. The increase in the Judge strength to 50 judges per 10 lakh people should be affected and implemented with the filling up

of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today.”

Taking recourse to these observations and the reports cited by hon’ble Supreme Court efforts can be made to increase the number of judges particularly of the cadre of senior civil judges and district judges and that will resolve the issue of stagnancy for want of promotion in the cadre of civil judge.

The various posts of the tribunal and quasi-judicial authorities can be filled in by appointing the serving judges from the District Judge cadre. This will also create considerable number of vacancies available for promotion to senior civil judges and in due course create vacancies for promotion of civil judges.

**Conclusion** - facts and figures mentioned above certainly disclose that the batches of judges of Maharashtra state judiciary from the cadre of civil judge are waiting from promotion from last 10 to 15 years. This may also be the situation of civil judges in other States too. I have tried to find out the causes and suggest some solutions. I do not claim that these are the best possible solutions. By this article I'm rolling a ball and someone from the institution or the system may come up with a solution which may be more appropriate than the solutions suggested by me. May it be so, the problem requires an immediate attention for increasing productivity and efficiency of the district judiciary at the grassroot level and to strengthen capability of the district judiciary so that it can even more effectively serve the public.