

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-2079 of 2021

(Asghar Ali v. Province of Sindh & others)

Petitioner : through Mr. Ali Asadullah Bullo advocate
Respondent Nos. 1 &2 : Mr. Ali Safdar Depar Assistant A.G
Date of hearing : 19-05-2025
Date of order : 19-05-2025

ORDER

Adnan-ul-Karim Memon, J., The petitioner is requesting a retroactive promotion to BS-20, effective from the date his subordinates were promoted, along with all associated financial benefits. This request is based on the analogy that errors in determining his initial seniority prevented his timely advancement.

2. Starting as a Medical Officer in 1987 and becoming a permanent employee in 1989, the petitioner was promoted to Senior Medical Officer BS-18 in 1995, with his seniority established in 2008. While on deputation in Saudi Arabia from 2010 to 2012, his peers were promoted to BS-19, but he was not. Upon his return, he resumed his duties as a Senior Medical Officer in Sindh. He received a promotion to Senior Medical Officer BS-19 in 2018. However, his name was initially left out of the draft seniority list and then incorrectly placed below a junior in the finalized 2019 list. His seniority was not rectified until 2020. Consequently, he was not considered for promotion to BS-20 in 2019 and retired on May 3, 2020, after which his juniors were promoted to BS-20 in August 2020.

3. The learned Assistant Advocate General (AAG) contended that the petitioner's claims may be dismissed on the premise that the petitioner's initial ad hoc appointment before regularization, his inclusion in the BS-18 seniority list following his 1995 promotion, his ineligibility for BS-19 promotion during deputation according to regulations, his posting as BS-18 in Karachi in 2014, his subsequent promotion to BS-19 in 2018, his inclusion in the BS-19 seniority list in 2019, and his retirement prior to the 2020 PSB-I meeting for BS-20 promotions all negate his current demands. The AAG further asserted that the department adhered to all legal protocols for postings and transfers.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. The right to promotion is neither an illusory nor a perfunctory right that could be ignored casually. Non-consideration of an officer being equally eligible for promotion is a matter that undermines discipline and creates serious bad blood and heartburn among colleagues. Petitioner has required length of service in his credit, besides, there was/is no issue of eligibility of the petitioner to be considered for promotion in BS-20 when his colleagues were considered. It is well-settled that a person is not considered due to any administrative slip-up, error, or delay when the right to be considered for promotion is matured and without such consideration, he/she reaches the age of superannuation before the promotion. The avenue or pathway of proforma promotion comes into the field for his rescue. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of *Federation of Pakistan v. Jahanzaib* (2023 PLC (C.S.) 336).

6. The departmental working paper for the petitioner's promotion was prepared on July 10, 2020, but its delay until July 18, 2020, prevented his timely consideration before his retirement on May 3, 2020. This delay, along with the final seniority being decided after his retirement on May 13, 2020, indicates a departmental lapse for which the petitioner is not responsible.

7. The concept of proforma promotion aims to compensate civil servants for lost promotion opportunities due to no fault of their own. Supreme Court precedents, including *Secretary Schools of Education v. Rana Arshad Khan*, *Federation of Pakistan v. Jahanzaib*, and *Homeo Dr. Asma Noureen Syed v. The Government of Punjab*, establish that retired civil servants are entitled to proforma promotion when administrative delays prevented their timely consideration. This right accrues if promotion was due during service, the delay was not the employee's fault, and retirement occurred without any personal shortcomings or disciplinary issues affecting promotion. Therefore, the petitioner's request warrants consideration, supported by further Supreme Court decisions in *Dr. Syed Sabir Ali v. Government of Punjab*, *Federation of Pakistan v. Amir Zaman Shinwari*, and *Dr. Muhammad Amjad v. Dr. Israr Ahmed* as discussed in the order dated 13.5.2025 in C.P No.4694 of 2019.

8. It appears that following the Supreme Court's Order dated March 31, 2018, in Criminal Original Petition No. Crl. O.P. 15-K of 2016 (related to CA30-K of 2014 & Crl M.A. 37-K of 2017), and based on the recommendations of Provincial Selection Board No. I, as well as the approval of the Competent Authority/Chief Minister Sindh, the Specialists Cadre Doctors (BS-19) in the Health Department were granted proforma promotion from BS-19 to BS-20. This promotion was effective from the day immediately preceding their retirement

from government service upon reaching the age of superannuation, as indicated against each name.

9. For the reasons stated in C.P No.4694 of 2019 vide order dated 13.5.2025, this petition is disposed of on the same analogy. The competent authority of the respondents is directed to reconsider the petitioner's case for proforma promotion to BS-20 within two months via circulation, contingent upon a BS-20 vacancy according to recruitment rules. Given the petitioner's retirement on May 3, 2020, this proforma promotion will not impact the seniority of current employees, and he will be entitled to applicable salary and pension benefits.

JUDGE

HEAD OF CONST. BENCHES

SHAFI