

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-5003 of 2023

(*Khawaja Maqbool Mustafa v. Province of Sindh and another*)

Date

Order with signature of Judge(s)

Before:

Muhammad Karim Khan Agha, J.
Adnan-ul-Karim Memon, J.

Date of hearing and order: 03.09.2025

Mr. Muhammad Arshad Khan Tanoli, advocate for the petitioner.

Mr. Ali Safdar Depar, AAG.

ORDER

Adnan-ul-Karim Memon, J. Through this petition, the petitioner has sought the following relief:

- A) *To direct the respondent No.2 to issue notification for promotion of petitioner to the post of Excise & Taxation Officer (ETO)(BPS-17), in pursuant to the minutes of meeting held on 30.11.2022 and note for Minister dated 19.12.2022, with effect from the date of its approval, within a period of (02) weeks from the date of order passed by this Hon'ble Court.*
- B) *To restrain the respondent No.2 from extracting and circumventing Item—I of the minutes of the meeting held on 30.11.2022 and Note for Minister dated 19.12.2022, pertaining to the promotion of Taxation Officer (ETO)(BPS-17), during the pendency of this petition.*
- C) *To direct the respondents to consider the case of the petitioner for proforma promotion to the post of Excise & Taxation Officer (ETO)(BPS-17), from the date of availability of the vacant post, as he is eligible and fit for the same from the date when the vacant post becomes available in his respective ratio.*

2. The petitioner, an Assistant Excise and Taxation Officer (BPS-16), has filed a petition because the government has not implemented the recommendations of the Departmental Promotion Committee (DPC). The DPC, in a meeting on November 30, 2022, cleared the petitioner and others for promotion to vacant Excise & Taxation Department Officer (BPS-17) positions. The minister approved these recommendations, but no official promotion notification has been issued. The petitioner submits that since he was recommended for promotion against a vacant post, he has a vested right that has been denied without explanation.

3. The petitioner's counsel argued that the petitioner, based on seniority and fitness, was promoted to Assistant Excise & Taxation Officer (BPS-16) on May 23, 2008, following a Departmental Promotion Committee recommendation and official

approval. The petitioner's seniority was confirmed in the final seniority list of May 25, 2016. The counsel contends that because the petitioner is seeking an order to issue a promotion notification and there is no adverse departmental order to appeal, the constitutional bar of Article 212 does not apply, making the petition valid. The counsel requested that the petition be allowed.

4. The Assistant Advocate General argued that the petitioner's initial appointment in 1995 was irregular and that his services were terminated. He was reinstated on November 1, 2001, by a Sindh Service Tribunal decision, but without back benefits. Regarding the current promotion dispute, the DPC meeting on November 30, 2022, was held to consider promotions, but the seniority list used was later challenged by numerous Assistant Excise & Taxation Officers (AETOs). In response to these challenges and this court order from September 14, 2023, the department withdrew the seniority list dated November 16, 2022. A new committee was formed to reassess all seniority appeals and objections to prevent future issues. This committee's recommendations are currently being finalized. Once a new seniority list is prepared and approved, another DPC meeting will be held. Therefore, AAG requests that the petition be dismissed.

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

6. Upon retirement, a civil servant loses the right to be considered for regular promotion but retains the right to claim pension benefits as per established policies. However, a 'proforma promotion' could be granted to compensate a civil servant who was unfairly denied a promotion in his/her tenure of service. However, the Supreme Court has held in the recent judgment that if a person is not considered due to any administrative slipup, error, or delay when the right to be considered for promotion is matured and without such consideration, he reaches the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into the field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of the DPC or Selection Board despite having fitness, eligibility, and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits. The petitioners' case appears to fall within the exceptions, as he was eligible for promotion and DPC cleared him, but the delay in issuing the formal notification, and in the intervening period he retired from service.

7. To appreciate the controversy from a proper perspective, we think it appropriate to have a glance at Rule 7-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 which is reproduced under:-

“7-A -(1) The appointing Authority may approve the promotion of an Officer or official from the date on which the recommendation of the Provincial Selection Board or, as the case may be, the Departmental Promotion Committee is made.

(2) Notwithstanding anything contained in rule 31 of the Sindh Civil Services Rules, the Officer of official who expires or superannuates after the recommendations of the Provincial Selection Board of the Departmental Promotion Committee and before issuing the notification of promotion shall stand exempted from assumption of the charge of the higher post.

(3) The Accountant General in the case of an Officer and an officer authorized in this behalf in the case of an official will give a certificate to the effect that the officer or official has expired or superannuated.]”

8. In the present case, the competent authority has not bothered to ask the parent department of the petitioner to issue the notification of the petitioner for regular promotion and, after his retirement as a proforma promotion, which is apathy on their part.

9. In the light of the position explained above, it is concluded that a civil servant has a fundamental right to be promoted even after his retirement by awarding proforma promotion; provided, the right of promotion accrued during his service but could not be considered for no fault of their own and meanwhile, they retired on attaining the age of superannuation without any shortcoming on their part about deficiency in the length of service or in the form of inquiry and departmental action was so taken against their right of promotion. Thus, we are inclined to entertain the request of the petitioner in this matter for proforma promotion. On the aforesaid proposition, we are fortified by the decisions of the Supreme Court rendered in the cases of Dr. Syed Sabir Ali v. Government of Punjab through Secretary Health Punjab and others, 2008 SCMR 1535, Federation of Pakistan and others v. Amir Zaman Shinwari, Superintending Engineer, 2008 SCMR 1138, and Dr. Muhammad Amjad v. Dr. Israr Ahmed, 2010 SCMR 1466.

10. We, for the aforesaid reasons, allow this constitutional petition and direct the competent authority/respondents to allow the petitioners proforma promotion by way of circulation. As the petitioner has already retired, therefore, his proforma promotion will not affect the seniority of any person already in service and he would be entitled to his emoluments and pensionary benefits.

Judge

Head of Const. Benches