

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-5607 of 2025

[Muhammad Arab Mahar, another V. Federation of Pakistan and Others]

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Hasan Akbar

Date of hearing and Order: 19.05.2026

Malik Naeem Iqbal, advocate for the Petitioners.

Mr. Muhammad Akbar DAG

ORDER

Adnan-ul-Karim Memon, J. – Petitioner Muhammad Arab Mahar has filed this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, seeking the following relief:-

- a. *Direct that the failure of the Respondent to consider the petitioners' cases for promotion from BS-19 to BS-20 prior to their retirement is illegal, arbitrary, discriminatory, and violative of Articles 4,9 and 25 of the Constitution;*
- b. *Direct the Respondent to grant proforma promotion to the petitioners to BS-20 with effect from the date their juniors were promoted;*
- c. *Further direct the respondent to release all consequential financial and pensionary benefits, including arrears of pay, revised pension, and seniority adjustment arising from such promotion;*
- d. *To grant any other relief, which this Hon'ble Court deems if and proper.*

2. The case of the Petitioners is that they are former officers of the Police Service of Pakistan (PSP), who served the Federation with distinction, integrity, and dedication throughout their careers. Being civil servants within the meaning of law, they are entitled to equal protection of law and the enjoyment of fundamental rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. Through the instant petition, the Petitioners seek issuance of an appropriate writ in the nature of mandamus directing the Respondent to place their cases before the Central Selection Board (CSB), or any other competent forum, for consideration of proforma promotion to BS-20, as they were unlawfully deprived of such consideration solely due to administrative delays and omissions attributable to the Respondent authorities. It is urged that the Respondent, the Secretary, Establishment Division, Government of Pakistan, is the principal authority responsible for matters relating to the Civil Services of Pakistan, including processing and placement of promotion cases before the

Central Selection Board. It is the statutory and constitutional duty of the Respondent to ensure the timely convening of CSB meetings and the consideration of eligible officers for promotion in accordance with law. However, due to the Respondent's unexplained inaction and negligence, the Petitioners' promotion cases could not be considered within time, thereby causing grave prejudice to their service and pensionary rights.

3. The learned counsel for the petitioners submitted that the Petitioners were initially appointed as Deputy Superintendents of Police (BS-17) in the years 1991 and 1990, respectively, in the Sindh and Baluchistan Police Services. Subsequently, upon fulfillment of all legal requirements, their services were duly encadred into the Police Service of Pakistan (PSP) in the year 2012 under Rule 7 of the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985. Thereafter, the Petitioners continued to serve in various important assignments with exemplary performance records and earned appreciation and commendations from superior authorities during the course of service. He emphasized that owing to their unblemished record and satisfactory performance, the Petitioners were promoted to the rank of Senior Superintendent of Police (BS-19) in the years 2023 and 2019, respectively. Having completed the prescribed length of service, mandatory trainings, and all other codal formalities, the Petitioners became fully eligible for consideration for promotion to the post of Deputy Inspector General of Police (BS-20). It is averred that on 03.10.2024, the Establishment Division initiated the process for convening a meeting of the Central Selection Board for consideration of promotions to BS-20, wherein the names of the Petitioners were duly included in the working papers/panel list at Serial Nos. 24 and 27, respectively. The inclusion of their names in the panel clearly established that the Petitioners had fulfilled all legal and administrative requirements for consideration of promotion. However, despite completion of all requisite formalities, the Respondent abruptly postponed the CSB meetings scheduled for December 2024 through notifications dated 10.12.2024, without assigning any lawful or plausible justification. He submitted that due to such unexplained postponement and administrative delay, the Petitioners retired from service before their cases could be taken up for consideration. Petitioner No.1 retired on 05.02.2025, whereas Petitioner No.2 had already retired on 30.10.2024. It is argued that subsequently, the CSB meeting was reconvened in March 2025 vide communication dated 17.02.2025, and officers who were junior to the Petitioners, and whose names appeared in the same promotion panel, were considered and promoted to BS-20. The Petitioners, however, were excluded from such consideration solely on account of their retirement during the pendency of the delayed process, even though the delay was entirely attributable to the Respondent authorities and not to any fault or deficiency on the part of the Petitioners. Learned counsel submitted that the action of the Respondent is

patently discriminatory, arbitrary, and violative of the constitutional guarantees embodied in Articles 4, 9, and 25 of the Constitution. The Petitioners had a vested and legitimate right to fair consideration for promotion once their names had been included in the CSB panel before retirement. Such a right could not lawfully be defeated merely because the Respondent failed to convene the CSB meeting within time. The Petitioners submit that the controversy involved in the instant matter is no longer *res integra*. The Hon'ble Supreme Court of Pakistan, in the case of *Ghulam Qadir Thebo v. Government of Sindh*, has categorically held that where an officer becomes eligible for promotion and is denied consideration due to departmental or administrative delay, and subsequently retires from service, such officer remains entitled to proforma promotion from the date his juniors were promoted, along with all consequential benefits. The ratio laid down by the august Supreme Court squarely applies to the facts and circumstances of the present case. The Petitioners' counsel further submits that under Rule 8 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, it is the mandatory obligation of the competent authorities and the Central Selection Board to evaluate the cases of all eligible officers fulfilling the prescribed conditions for promotion. Failure to discharge such a statutory duty amounts to maladministration, dereliction of duty, and violation of the Petitioners' legitimate expectation of equal treatment. He added that the Petitioners have been subjected to hostile discrimination since their batch-mates and even juniors have been promoted to BS-20, whereas the Petitioners have been denied the same benefit solely because of administrative inertia on the part of the Respondent. Such conduct not only offends the principles of natural justice and fairness but also adversely affects the Petitioners' pensionary entitlements, status, and post-retirement benefits. In these circumstances, it is urged that the Petitioners have no other adequate and efficacious remedy available except to invoke the constitutional jurisdiction of this Hon'ble Court under Article 199 of the Constitution, seeking appropriate directions against the Respondent for the grant of proforma promotion to BS-20 with effect from the date their juniors were promoted, together with all consequential financial, pensionary, and service-related benefits arising therefrom. In support of his contention he relied upon the cases of *Federation of Pakistan v Jahanzeb and others* **2022 SCMR 2020**, *Wadhu Mal v Province of Sindh & others* **2023 PLC (CS) 1310** and unreported order dated 11.11.2025 passed by this Court in C.P. No. D-6294 of 2024. He lastly prayed to allow the instant petition.

4. Learned Assistant Attorney General appearing on behalf of Respondent No.1, the Secretary, Establishment Division, filed a report and para-wise comments opposing the instant petition on both preliminary and legal grounds. At the outset, he submitted that the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019, were validly framed in exercise of powers conferred under Section

25 of the Civil Servants Act, 1973, after due consultation with all relevant stakeholders, including the Federal Public Service Commission, the Secretaries' Committee, the Law and Justice Division, and advisors to the Prime Minister. He argued that the said Rules are presently in force and govern the process of promotion to higher posts in the civil service structure. According to him, the Respondent authorities have acted strictly in accordance with the statutory framework, and no violation of any vested or fundamental right of the Petitioners has occurred. Learned AAG further contended that promotion to BS-20 is not an automatic or vested right of a civil servant merely based on seniority or fulfillment of eligibility conditions. He submitted that promotion to senior management positions in the civil service requires assessment of various factors, including competence, integrity, aptitude, leadership qualities, financial probity, service record, and overall suitability for higher responsibilities. In this regard, he referred to the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019, under which the Central Selection Board (CSB) is the competent body mandated to evaluate and recommend officers for promotion after taking a holistic view of their entire service dossiers, including Performance Evaluation Reports (PERs), Training Evaluation Reports (TERs), educational qualifications, professional experience, and posting profile. In support of his submissions, learned AAG placed reliance upon various judgments of the Hon'ble Supreme Court and the Islamabad High Court, including Abid Hussain Sherazi v. Secretary, Ministry of Industries and Production (2005 SCMR 1742), Government of Pakistan v. Hameed Akhtar Niazi (PLD 2003 SC 110), and Muhammad Iqbal v. Executive District Officer (Revenue) (2007 SCMR 682), to contend that promotion is neither a fundamental nor vested right and that the question of fitness and suitability for promotion falls exclusively within the domain of the competent executive authority. He argued that judicial review in such matters is limited and can only be exercised where the authority has acted without lawful authority, in excess of jurisdiction, or in violation of law. Learned AAG also raised a preliminary objection regarding the maintainability of the petition. He submitted that the Petitioners, being civil servants, are governed by the Civil Servants Act, 1973, and their grievance pertains to a service matter falling exclusively within the jurisdiction of the Federal Service Tribunal under Article 212 of the Constitution. He argued that Article 212(2) expressly bars the jurisdiction of the High Court in service matters and, therefore, the instant constitutional petition is not maintainable. Reliance was also placed upon Section 23-B of the Civil Servants Act, 1973, which bars ordinary courts from questioning orders passed under the Act. It was further contended that the Petitioners had admittedly superannuated from service before the convening of the CSB meeting held in March 2025, as Petitioner No.1 retired on 05.02.2025, while Petitioner No.2 retired on 30.10.2024. According to the learned AAG, after retirement, the Petitioners ceased to fall within the definition of "civil servant" as provided under

Section 2(b) of the Civil Servants Act, 1973, and, therefore, were no longer eligible to be considered for promotion by the CSB. Learned AAG submitted that the CSB meeting scheduled for December 2024 had to be postponed due to unavoidable administrative reasons and because the availability of all members of the Board could not be ensured. He explained that the composition of the CSB includes several high-ranking officials, parliamentarians, representatives of FPSC, serving and retired BS-22 officers, as well as departmental representatives, and therefore, meetings are scheduled subject to the availability of all concerned members. He maintained that postponement of the meeting was an administrative necessity and did not constitute mala fide, discrimination, or arbitrariness. Responding to the Petitioners' reliance upon the judgment in *Ghulam Qadir Thebo v. Government of Pakistan*, learned AAG argued that the said case was distinguishable on the facts. He submitted that Mr. Ghulam Qadir Thebo had previously been considered multiple times for promotion to BS-22, and his case stood on a different footing, whereas the present Petitioners had never been considered by the CSB before retirement. He further argued that the judgment rendered in the said case was *persona in personam* and not *in rem*, and the Petitioners could not claim automatic applicability of the same. It was additionally argued that the Petitioners' names were not part of the panel considered by the CSB in March 2025 because by that time they had already retired from service. Learned AAG maintained that the Petitioners cannot seek retrospective promotion as a matter of right and that no discrimination or violation of Articles 4, 9, or 25 of the Constitution had occurred. According to him, the petition was based upon presumptions, hypothetical assertions, and a misconceived interpretation of the law governing promotions in civil service. In conclusion, learned AAG prayed that the instant constitutional petition be dismissed for being non-maintainable, devoid of merit, and misconceived both in law and on facts.

5. We have heard the learned counsel for the parties, examined the material available on record, and considered the case law cited at the bar with their assistance.

6. The controversy involved in the instant petition primarily revolves around the question whether the Petitioners, who admittedly fulfilled the eligibility criteria for promotion to BS-20 and whose names had already been included in the panel/working papers for consideration by the Central Selection Board (CSB), can be denied consideration and consequential proforma promotion merely because the CSB meeting was postponed due to administrative reasons and they retired from service before the meeting could eventually be convened.

7. Before, adverting to the rival submissions, it would be advantageous to define the concept of "proforma promotion." Proforma promotion is a recognized service law concept evolved through statutory interpretation and judicial

pronouncements whereby an officer, who could not be considered or promoted due to circumstances not attributable to him, is granted notional or retrospective promotion from the date his junior was promoted, together with all consequential service and pensionary benefits. Such promotion does not amount to automatic or regular promotion as of right; rather, it is an equitable and lawful remedial measure intended to undo prejudice caused by administrative omission, delay, or illegality on the part of the competent authority. The principle has repeatedly been recognized by the superior Courts of the country to ensure that an officer is not made to suffer for the fault, inaction, or inefficiency of the department.

8. It is by now a settled proposition of law that although promotion itself is not a vested or fundamental right, fair and lawful consideration for promotion in accordance with the governing rules is indeed a legal right of every eligible civil servant. The distinction between a “right to promotion” and a “right of consideration for promotion” has consistently been maintained by the superior judiciary. The Hon’ble Supreme Court held that no civil servant can claim promotion as a matter of right and that promotion depends upon various factors, including competence, suitability, antecedents, integrity, and availability of posts. However, an eligible officer cannot be lawfully deprived even of consideration for promotion due to departmental delay or administrative inaction.

9. In the present case, the admitted position emerging from the record is that the Petitioners had fulfilled all prescribed eligibility conditions for promotion to BS-20 before their retirement. Their names had admittedly been included in the working papers/panel list circulated by the Establishment Division for the CSB meeting scheduled in December 2024. The inclusion of their names in the panel clearly demonstrates that the competent authorities themselves considered the Petitioners eligible for consideration. Therefore, the contention raised by the Respondent that the Petitioners had no enforceable right whatsoever cannot be accepted to the extent that it seeks to negate even their right of lawful consideration.

10. The record further reveals that the CSB meeting scheduled for December 2024 was postponed through notifications issued by the Respondent authorities. No convincing or legally sustainable justification has been placed on record explaining why the meeting could not be convened within a reasonable time despite completion of all codal formalities. Although learned AAG argued that the postponement occurred due to unavoidable administrative reasons and non-availability of members of the Board, such internal administrative difficulties cannot be allowed to defeat substantive rights accruing to civil servants who had already become eligible and were awaiting consideration. Administrative inconvenience cannot override the mandate of fairness, transparency, and equal treatment guaranteed under the Constitution and the service jurisprudence

developed by the superior Courts. However, they are required under the law to convene the meeting in time to avoid such deprivation of promotion in time. Secretary Establishment shall ensure a timely meeting is held in the future, and in case the meeting is postponed, the eligible officer shall be considered for promotion by way of circulation.

11. The argument of the learned AAG that after retirement the Petitioners ceased to be “civil servants” within the meaning of Section 2(b) of the Civil Servants Act, 1973, and therefore became disentitled to consideration for promotion is also devoid of substance in the peculiar facts of the present case. The relevant date for determining eligibility and entitlement to consideration is the date when the promotion process commenced, and the officers were within service and borne on the cadre. Admittedly, the Petitioners were in service at the time when the Establishment Division initiated the process and placed their names before the CSB panel. Their subsequent retirement during the pendency of the delayed process, particularly where the delay was not attributable to them, cannot extinguish the accrued right of consideration.

12. The reliance placed by the Petitioners upon the judgment of the Hon’ble Supreme Court in Ghulam Qadir Thebo v. Government of Pakistan is well-founded. In the said case, the august Supreme Court recognized the principle that where an officer is deprived of consideration for promotion due to departmental delay and his juniors are subsequently promoted, such officer cannot be penalized for the inaction of the authorities and is entitled to appropriate remedial relief, including proforma promotion with consequential benefits. Although learned AAG attempted to distinguish the said judgment on factual grounds by arguing that Mr. Ghulam Qadir Thebo had previously been considered for promotion, whereas the present Petitioners had not yet been considered, such a distinction does not materially alter the governing legal principle. The ratio decidendi of the judgment is that an officer cannot be denied legitimate consideration because of administrative delay attributable to the department. The said principle squarely applies to the present controversy.

13. The contention of the Respondent that the judgment in Ghulam Qadir Thebo’s case is *persona in personam* and not *in rem* is also misconceived. Even where a judgment operates *inter partes*, the legal principle laid down therein by the Hon’ble Supreme Court constitutes binding precedent under Article 189 of the Constitution and is required to be followed by all Courts and authorities in analogous matters. Therefore, the Respondent cannot avoid the application of the ratio merely by labelling the judgment as one *in personam*.

14. The objection regarding maintainability of the petition under Article 212 of the Constitution also does not hold the field in the peculiar circumstances of the

present case. The grievance of the Petitioners is not merely against non-promotion simpliciter; rather, it pertains to arbitrary exclusion from consideration caused by mala fide administrative delay and violation of constitutional guarantees of equality and fair treatment. Where a matter involves a violation of fundamental rights, discriminatory treatment, or actions coram non iudice, constitutional jurisdiction under Article 199 of the Constitution may validly be invoked notwithstanding the availability of an alternate remedy. Moreover, the Respondent has failed to point out any efficacious remedy before the Federal Service Tribunal whereby retired officers could seek the precise constitutional and declaratory relief claimed in the instant proceedings.

15. It is also significant that officers junior to the Petitioners, whose names appeared in the same panel, were ultimately considered and promoted to BS-20 after the reconvening of the CSB in March 2025. The Petitioners alone stood excluded because the authorities failed to convene the meeting within time. Such exclusion, in the facts of the case, amounts to hostile discrimination and unequal treatment prohibited under Article 25 of the Constitution. The State and its functionaries are under a constitutional obligation to act fairly, reasonably, and without discrimination. A civil servant cannot be made to suffer adverse civil consequences merely because of delays occurring within the administrative machinery of the Government.

16. At the same time, it must be clarified that the grant of proforma promotion does not imply automatic conferment of substantive promotion irrespective of fitness or suitability. The competent authority retains the power to assess the Petitioners' service record, integrity, PERs, TERs, and other relevant factors in accordance with law and applicable rules. However, such consideration must relate to the date when the Petitioners were otherwise eligible and their juniors were considered. If, upon such assessment, the Petitioners are found fit and suitable in accordance with the applicable criteria, they shall be entitled to proforma promotion from the date their immediate juniors were promoted, along with all consequential benefits, including fixation of pay, pensionary recalculation, and arrears admissible under the rules.

17. For the foregoing reasons, we are of the considered view that the Petitioners were unlawfully deprived of fair consideration for promotion due to administrative delay attributable solely to the Respondent authorities. Consequently, the instant petition is allowed in the following terms:-

i. The competent authority of the Respondents is directed to place the cases of the Petitioners before the competent forum/CSB for consideration for proforma promotion to BS-20 with effect from the date their immediate juniors were promoted;

ii. Such consideration shall be undertaken strictly in accordance with law, applicable rules, and the criteria governing promotion to BS-20 and the law laid down by the Supreme Court on the subject proforma promotion;

iii. In the event the Petitioners are found fit and suitable, they shall be granted proforma promotion with all consequential service and pensionary benefits, including revised pension, arrears of pay, and fixation of benefits in accordance with law;

iv. The entire exercise shall be completed expeditiously, preferably within a period of ninety (90) days from the date of receipt of a certified copy of this judgment.

v. In case the CSB meeting is not convened in the intervening period, the petitioners shall be granted proforma promotion by way of circulation just after the expiry period.

18. All pending application(s) stand disposed of in the above terms.

Let a copy of this order be communicated to the Secretary, Establishment Division, for compliance in time.

JUDGE

JUDGE