

IN THE HIGH COURT OF SINDH, KARACHI

C. P. NO. D-2927 / 2019

(Dr. Ghulam Murtaza Khuhro Vs. Federation of Pakistan & Others)

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

Date of hearing and order: 17.08.2026.

Petitioner: Dr. Murtaza Khuhro, in person.

Ms. Wajiha Mehdi, Deputy Attorney General.

Mr. Piya Ali Lakho, Deputy Secretary, Establishment Division,
Government of Pakistan.

Adnan-ul-Karim Memon, J. The Petitioner has filed this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan seeking the following reliefs: -

- “1. To set aside the impugned recommendations of the Central Selection Board (CSB) taken in its meeting held during January 2018 and during its meeting held from 26th November to 13th December, 2018 for promotion of the petitioner by declaring the same illegal, unlawful, unconstitutional and void ab initio;
2. To recommend the petitioner's promotion based on his PERS and TERS as were available during the CSB meeting held in June 2017 and may grant the same with all consequential and back benefits w-e-f from the CSB recommendation of December 2016 when batch-mates of the petitioner junior in seniority were recommended for promotion thereafter. and were promoted

2. The petitioner, appearing in person, submitted that his case for promotion from BS-19 to BS-20 had repeatedly been deferred/superseded by the Central Selection Board (CSB) on shifting and contradictory grounds. He contended that while no adverse issue regarding his fitness, competence or conduct was raised in the earlier CSB meetings, subjective adverse remarks were introduced in January 2018 after he had complied with the Board's direction to submit an additional PER. He maintained that the CSB failed to disclose the basis of its observations, the alleged “70 marks” threshold, or any adverse material relied upon against him. He further submitted that his PERs were available and that any deficiency in the record was attributable to the department, not to him. He alleged that an adverse TER was never communicated to him, denying him an opportunity of representation, and that the author of the TER subsequently participated in the CSB proceedings, giving rise to a conflict of interest. He also argued that the CSB acted contrary to the Supreme Court's directions requiring a dossier-based assessment and disclosure of exact reasons for supersession. The petitioner argued that his entire batch, including officers junior to him, was promoted, whereas he was repeatedly superseded despite an unblemished service record. He contended

that the impugned decisions were arbitrary, discriminatory and violative of Articles 4, 9, 10-A, 25 and 27 of the Constitution. He emphasized that he does not claim promotion as an absolute vested right, but seeks fair, lawful and non-arbitrary consideration of his promotion case. He lastly submitted that, having retired during pendency of the petition, he could no longer obtain regular promotion and was therefore entitled to pro forma promotion to BS-20 from the date his juniors were promoted, with consequential pensionary and financial benefits. He relied upon the cited superior-court precedents to contend that retirement does not extinguish a promotion right which had matured during service and was frustrated due to departmental lapse or arbitrary action.

3. Learned AAG, assisted by the representative of the Establishment Division, submits that the petitioner, Dr. Ghulam Murtaza Khuro, retired from the Inland Revenue Service in BS-19 on 31.01.2020. His case for promotion to BS-20 was considered by the Central Selection Board (CSB) on various occasions. He was initially deferred in 2015 for want of mandatory training, again in 2016 due to non-availability of a PER in BS-19, and subsequently considered in 2017 and 2018. Upon evaluation of his record, PERs, performance and other relevant material, the CSB found that he did not meet the prescribed threshold for promotion and recommended his deferment/supersession. Learned AAG submits that fitness and suitability for promotion fall within the exclusive domain of the competent departmental authority, and promotion to a higher post is not a vested right of a civil servant. The CSB is required to assess an officer in accordance with the applicable rules, policies, PERs, training requirements, experience and performance, while the appointing authority has the power to approve, reject or remand its recommendations. Reliance is placed upon the judgments of the Hon'ble Supreme Court. It is further submitted that the petitioner was considered along with other eligible officers strictly in accordance with the applicable law, rules and policy, and his case was recommended for deferment/supersession on merit. The plea regarding violation of Articles 4, 8 and 10-A of the Constitution is misconceived, as Article 10-A does not apply to executive decisions concerning promotion, and no vested or fundamental right to promotion is involved. Learned AAG submitted that the proviso to FR-17(1), which provided the statutory basis for pro forma promotion where a civil servant was wrongfully prevented from promotion for no fault of his own, was omitted with effect from 20.05.2022 through S.R.O. No.965(I)/2022, whereafter the FR-17(1) Committees and the 2015 guidelines were also withdrawn. Consequently, the earlier administrative mechanism, being dependent upon the repealed provision, cannot be invoked as an independent source of jurisdiction for entertaining a fresh claim by a retired civil servant. Since the petitioner retired on 31.01.2020, no subsisting service relationship or operative statutory provision now exists under which he can be promoted to BS-20 or granted pro forma promotion. Although he may challenge

the legality of the CSB recommendations made during his service, such challenge does not, by itself, create a continuing right to post-retirement pro forma promotion or consequential pensionary benefits. The promotion of his juniors likewise does not confer an automatic entitlement, as promotion depends upon fitness and suitability to be determined by the competent forum. Thus, in the absence of a subsisting statutory or regulatory provision authorizing such relief, this Court cannot revive the repealed FR-17 mechanism or direct the CSB to consider a retired civil servant for pro forma promotion. Accordingly, learned AAG submits that the petition is devoid of merit and liable to be dismissed with costs.

4. In rebuttal, the petitioner strongly controverted the submissions of the learned AAG and contended that the respondents have failed to answer the core illegality in the impugned CSB recommendations. He submitted that the issue is not a claim to promotion as an absolute vested right, but the respondents' obligation to consider his case fairly, transparently, objectively and in accordance with the applicable rules and the binding directions of the superior Courts. He maintained that the shifting reasons assigned by the CSB for his successive deferment and supersession first want of mandatory training, then absence of PER, and subsequently alleged deficiencies in communication, analytical capacity and performance demonstrate inconsistency and arbitrariness, particularly when the alleged adverse material and the basis of the purported "70 marks" threshold were never disclosed to him. He further asserted that the department cannot take advantage of deficiencies in PERs or other service record attributable to its own failure, nor can an adverse TER be relied upon against him without its prior communication and an opportunity of representation. The petitioner emphasized that the participation of the officer who authored the adverse TER in the CSB proceedings further tainted the process and offended the principles of fairness and natural justice. He argued that the respondents' reliance on the proposition that promotion is not a vested right is misplaced, as he seeks judicial review of an arbitrary and unlawful decision-making process, not a direction for automatic promotion. He also submitted that the respondents failed to explain why his juniors and other batch-mates were promoted while his case was repeatedly superseded despite his otherwise unblemished service record. According to the petitioner, the impugned recommendations were therefore based on undisclosed, shifting and subjective considerations, contrary to the governing rules and judicial directions, and violative of the constitutional guarantees of fair treatment, due process and equality. He lastly reiterated that his retirement during the pendency of the proceedings cannot defeat a claim arising from an unlawful denial of promotion during his service, and therefore sought appropriate pro forma promotion to BS-20 from the date his juniors were promoted, together with all consequential pensionary and financial benefits.

5. We have heard the petitioner and learned AAG and perused the record with their assistance.

6. There is no cavil with the proposition that fitness and suitability for promotion are to be determined by the competent promotion forum and that this Court, in exercise of constitutional jurisdiction, cannot substitute its own assessment for that of the Central Selection Board. Nevertheless, it is equally well settled that an eligible civil servant has a legal right to be considered for promotion in accordance with the applicable rules, objectively, fairly and on the basis of the material forming part of his service record. Where the decision-making process is shown to be arbitrary, based on undisclosed material, inconsistent reasons or considerations extraneous to the prescribed record, such decision is amenable to judicial review.

7. In the present case, the record, as placed before us, discloses that the petitioner was repeatedly considered by the CSB and was successively deferred/superseded for different reasons. Initially, the reason assigned was non-completion of mandatory training; subsequently, the alleged non-availability of a PER in BS-19 was relied upon; whereas, in the later proceedings, adverse observations concerning his communication, analytical ability and performance appear to have been introduced. The petitioner asserts that he complied with the directions of the Board, that the requisite PERs were available or their non-availability was attributable to the department, and that the adverse TER relied upon against him was never communicated to him. These assertions acquire significance because an adverse service report, if relied upon for denying promotion, ordinarily cannot be used behind the back of the officer without affording him the opportunity available under the applicable service regime to represent against it. Likewise, where the formal PERs forming part of the dossier do not contain the adverse assessment subsequently appearing in the CSB minutes, the promotion forum is required to demonstrate the material upon which such adverse conclusion was founded.

8. The principle emerging from the superior Courts is that the promotion authority undoubtedly possesses a wide area of discretion in assessing fitness, but such discretion is not an unstructured or unfettered power. The assessment must remain connected with the prescribed criteria and the material forming part of the officer's record. It is well settled that where an eligible officer loses the opportunity of promotion because of administrative oversight or delay, despite fitness, eligibility and seniority, the concept of pro forma promotion may arise. More recently, in *Ghulam Qadir Thebo v. Islamic Republic of Pakistan*, decided on 04.6.2025 in Civil Petition No.550-K/2022, the Supreme Court dealt with a substantially analogous situation involving repeated supersession, outstanding PERs and adverse observations appearing in the minutes without supporting material. The matter was remanded

for de novo consideration of pro forma promotion with fair, impartial and meaningful consideration of the entire PER record.

9. The petitioner, therefore, cannot be non-suited merely by observing that he has no vested right to promotion. His case is that he was wrongfully denied a lawful and fair consideration for promotion during his service, and that, as a consequence of the impugned process, he ultimately retired on 31.01.2020 without obtaining the higher grade while officers junior to him were promoted. This raises a distinct question from whether he possessed an automatic right to promotion. The former concerns the legality of the decision-making process; the latter concerns the merits of the ultimate promotion assessment. The Court can examine the former without assuming the function of the CSB in relation to the latter.

10. The position regarding Fundamental Rule 17(1), however, prior to its amendment, the proviso to FR-17(1) in 2022, empowered the appointing authority, where satisfied that a civil servant entitled to promotion from a particular date was, for no fault of his own, wrongfully prevented from serving in the higher post, to grant arrears of pay and allowances through pro forma promotion or by antedated fixation of seniority. The underlying object was compensatory: a civil servant should not suffer pecuniary and pensionary loss because he was wrongfully prevented, without fault on his part, from obtaining the benefit of promotion. The Supreme Court has also emphasized that pro forma promotion is conceptually distinct from regular promotion.

11. It is also an admitted legal development that, by S.R.O. No.965(I)/2022 dated 20.05.2022, the proviso to FR-17(1) was omitted with immediate effect. On the same date, the Finance Division withdrew the 2015 revised guidelines and dissolved the FR-17(1) Committees. However, the Finance Division's consequential instructions specifically provided that cases already received before 20.05.2022 would continue to be processed under the previous guidelines; that in-service cases involving wrongful prevention could be placed before the relevant Selection Board/Promotion Committee; and, significantly, that cases of retired civil servants could, on specific orders of a Court, be placed before the relevant Selection Board/Promotion Committee for consideration strictly in accordance with the applicable rules and law.

12. Thus, the omission of the proviso to FR-17(1) does not, by itself, furnish a complete answer to a claim which had its genesis in an alleged wrongful denial of promotion during the petitioner's service. The legal effect of the 20.05.2022 amendment has to be examined in the context of the date on which the petitioner's right to consideration arose, the date of his retirement, the nature of the relief claimed and, most importantly, whether any wrongful act or omission on the part of the department or the promotion authority prevented him from obtaining a

lawful consideration before retirement. The Supreme Court has recently reiterated that although the proviso was omitted in 2022, pro forma promotion remains a distinct remedial concept and, where the Court finds a legally sustainable basis for such relief, the matter may be placed before the competent promotion forum in accordance with the applicable procedure.

13. At the same time, the petitioner cannot be declared by this Court to have been automatically promoted to BS-20 from the date on which his juniors were promoted. Fitness for promotion was required to be determined by the CSB, and this Court cannot itself undertake that assessment. It is well settled that the judicial forum cannot itself declare a civil servant "qualified for promotion" by bypassing the statutory promotion process; nevertheless, consideration for pro forma promotion through the competent forum remains legally distinguishable from an impermissible judicial grant of regular promotion.

14. The more substantial question, therefore, is whether the petitioner's repeated supersession can legally stand. If the respondents are unable to demonstrate from the original CSB record the material upon which the adverse observations were founded, or if the record establishes that the reasons for deferment/supersession were successively changed without lawful justification, or that material PERs/TERs were ignored or relied upon without communication, the impugned recommendations cannot be protected merely under the cloak of the CSB's discretion. Equally, if the alleged deficiency in the PER record was attributable to the department and not to the petitioner, such departmental omission could not fairly be converted into a ground for prejudicing his promotion prospects. The participation of an officer who authored or materially contributed to an adverse report, particularly where the petitioner had no opportunity to controvert that report, is also a circumstance requiring careful examination while assessing the fairness of the decision-making process.

15. The fact that the petitioner was repeatedly considered, rather than completely omitted from consideration, does not by itself defeat his claim. The question is whether each consideration was a genuine, objective and dossier-based assessment. If an officer is formally considered but is repeatedly superseded on reasons which are shifting, undisclosed, unsupported by his PERs or otherwise attributable to administrative failure, the mere fact of consideration cannot cure an unlawful process. The constitutional guarantees of lawful treatment and equality require that similarly placed officers be treated according to a rational and ascertainable criterion. The fact that juniors were promoted is not, by itself, sufficient to establish entitlement to promotion, but it becomes relevant where the respondents are unable to disclose a lawful and objective basis for treating the petitioner differently.

16. We are also conscious that the petitioner's case is complicated by the fact that he retired on 31.01.2020. After retirement, he cannot seek a regular promotion involving actual assumption of duties of BS-20. His surviving claim, if otherwise established, can only be considered in the nature of pro forma/notional promotion for consequential pensionary and financial benefits, subject to satisfaction of the competent authority regarding his entitlement from the relevant date. The purpose of such relief is not to confer upon a retired officer a post which he can now occupy, but to neutralize the financial and pensionary prejudice resulting from a wrongful denial of promotion during service. The Supreme Court has expressly recognized this distinction between regular promotion and pro forma promotion.

17. We are further of the view that the 2022 omission of the proviso to FR-17(1) cannot retrospectively validate an otherwise unlawful promotion decision taken in 2017-2018, nor can an amendment subsequent to the petitioner's retirement be used to defeat a claim founded upon an alleged wrongful act committed during his service, without first determining whether such wrongful denial in fact occurred. At the same time, since the FR-17 proviso and the 2015 Committee guidelines stood withdrawn on 20.05.2022, any consequential relief cannot simply be granted under the repealed mechanism as though it were still operative. The appropriate course is to have the petitioner's claim examined by the competent promotion forum under the legal regime and judicial directions applicable to his case. The Finance Division itself contemplated that, after dissolution of the FR-17 Committees, retired officers could be placed before the relevant Selection Board/Promotion Committee pursuant to a specific Court order.

18. Consequently, in the peculiar facts of the present case, we are not persuaded to uphold the impugned CSB recommendations merely on the respondents' generalized assertion that the petitioner did not cross the prescribed threshold. If the record does not disclose the basis of the alleged "70 marks" criterion, the material supporting the adverse observations, or a rational explanation for the departure from the petitioner's PER record, such unexplained material cannot constitute a lawful substitute for objective assessment. The respondents are required to demonstrate that the petitioner's case was considered on the basis of the complete and relevant dossier and that no undisclosed or extraneous material was used against him.

19. We would, however, refrain from declaring the petitioner promoted to BS-20 ourselves. The proper and legally sustainable relief is to set aside the impugned CSB recommendations to the extent they relate to the petitioner, and direct the competent authority/relevant Selection Board to undertake a de novo consideration of his case for pro forma promotion to BS-20, treating the petitioner's claim as one arising from his service period and not as an application

for regular promotion after retirement. Such reconsideration shall be based upon the PERs/TERs and other service record lawfully available for the relevant period, the applicable promotion policy, his seniority and eligibility as they stood at the relevant time, and the material actually forming part of his dossier. Any adverse report or material which could not lawfully be relied upon against him shall not be treated as a ground for supersession without following the applicable law and principles of fairness.

20. The competent forum shall also specifically determine whether the petitioner was otherwise eligible and fit for consideration for BS-20 from the date claimed by him, whether his juniors were promoted from such date, whether any deficiency in his service record was attributable to the petitioner or to the department, and whether his successive deferments/supersessions were founded upon lawful and consistent reasons. If, upon such objective reassessment, it is found that the petitioner was entitled to promotion from a particular date and that, for no fault of his own, he was wrongfully prevented from obtaining the benefit thereof, his case shall be dealt with in accordance with the law governing pro forma promotion and consequential pensionary/financial benefits.

21. The submissions of the learned AAG overlook the distinction between the accrual of the petitioner's grievance during service and the subsequent omission of the proviso to FR-17(1) with effect from 20.05.2022. The petitioner's claim arises from his alleged wrongful supersession and denial of promotion while he was in service, when the relevant provision was admittedly in force; therefore, its subsequent omission cannot retrospectively extinguish an accrued claim unless the amending instrument expressly so provides. Retirement on 31.01.2020 likewise does not, by itself, obliterate rights or liabilities accrued during service, particularly where the relief sought is not actual restoration to service but notional/pro forma promotion for consequential pensionary benefits. The withdrawal of the FR-17 committees and guidelines cannot retrospectively validate an earlier decision allegedly suffering from arbitrariness, discrimination, inconsistent reasons or procedural irregularity. Nor does the promotion of juniors create an automatic right to promotion; rather, it is a relevant circumstance requiring the respondents to justify the petitioner's differential treatment and demonstrate that his case was fairly and objectively considered. The Court is not being asked to substitute its judgment for that of the CSB, but only to ensure that the petitioner's case is examined in accordance with the rules and principles applicable when his claim arose. The respondents cannot take advantage of a subsequent repeal or of the petitioner's retirement to defeat a grievance allegedly caused by their own wrongful action. Thus, while the omission of FR-17(1) may prevent creation of a fresh right after 20.05.2022, it cannot, without retrospective effect, extinguish an accrued claim arising from the petitioner's service period;

consequently, the objection that no relief can now be granted merely because the petitioner has retired or the provision has been repealed does not, by itself, render the petition devoid of merit.

22. We clarify that nothing contained herein shall be construed as a direction for automatic promotion or as a declaration that the petitioner had already acquired a vested right to BS-20. The direction is confined to ensuring that the petitioner's claim is adjudicated by the competent forum through a lawful, transparent, objective and meaningful process and that the respondents do not defeat the claim merely by relying upon the fact of his subsequent retirement or upon the 2022 omission of the proviso to FR-17(1). The competent forum shall pass a reasoned order dealing with each material objection raised by the petitioner and shall communicate the outcome to him.

23. In view of the above, the petition is accordingly allowed to the extent of setting aside the impugned recommendations insofar as they concern the petitioner and remanding his case to the competent Selection Board/Promotion Committee for de novo consideration for pro forma promotion to BS-20, in accordance with the applicable law, promotion policy and the principles elucidated herein. The exercise shall be undertaken expeditiously, preferably within a period of two months from receipt of a certified copy of this order. In case the petitioner is found entitled, the competent authority shall determine the appropriate date of pro forma promotion and consequential pensionary and financial benefits in accordance with law. There shall be no order as to costs.

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