

IN THE HIGH COURT OF SINDH KARACHI

Before:

Justice Muhammad Saleem Jessar

Justice Nisar Ahmed Bhanbhro

CP No.D-1333 of 2020

(Riaz Jafar v. the Federation of Pakistan and 03 others)

Petitioner: Mr. Mustafa Ali Khan holds brief for Mr. Abbadul
Hussanain, Advocate a/w Petitioner

Respondents: Mr. Muhammad Azhar Mahmood, Advocate for
PTCL

Zohra Sehr Vaylani, Assistant Attorney General for
Pakistan

Date of hearing and order: 29.01.2026

Date of Reasons: 25.02.2026

ORDER

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioner claims following relief(s):-

“A) Declare that the petitioner is equally entitled for the same treatment that has been extended to the juniors and like his juniors petitioner is also entitled for the BPS-17 in which his juniors have been retired without any discrimination of law and Petitioner is entitled for back date seniority with all back date benefits right from the accrual of the right to the Petitioner and Petitioner has been victimized by superiors.

B) That the impugned orders passed against the Petitioner are liable to be set aside at the strength of the fact and circumstances and at the strength of the documents annexed with the petition

C) Declare that the impugned orders are passed against the settled provisions of law and rights of the Petitioner have been seriously prejudiced and thus they are liable to be dismissed.

D) To admit this petition and call for the relevant records from the Respondents for hearing and disposed of/consider this appeal on Priority basis causing REMAND CASE which has already been declared by the Sindh Labor Appellate Tribunal Karachi on 03-09-2013 Photo Copy available at (Annexure N)

E) The benefits already allowed to the juniors to the appellant i.e. allowing Selection Grade (B-15/6) vide impugned orders dated 28-11-2001 and 29-10-2005 with effect from 13-2-1995 and 31-5-2005 respectively may be extended to the appellant.

F) That declare the appellant is senior to all the juniors in the cadre of UDC(B-7) and Assistant (B-11) and entitled for re-fixation of seniority over and above all the juniors under purview of Respondent No. 1 and 2 orders bearing No. S-17/UDC/VIII/204 dated 13-06-1979 (Annexure R-20)

G) That direct the Respondent No. 1 to issue the promotion order in favour of appellant as Assistant Director (B-17) causing Respondent No. 2 has already been sent the case to the Respondent No. 1 (vide Annexure G).

H) Declare the appellant is entitle for back date benefits, fixation of pay with effect from 12-04-1988, pay and pension for Selection Grade (B-15/16) and Assistant Director (B-17)."

2. Petitioner who is present in person, his counsel Mr. Abbadul Hussanain is reported to be out of station. Petitioner offered to argue the matter in person, which request was allowed and case in hand is decided with the assistance of Petitioner and Learned Counsel for PTCL and Learned Assistant Attorney General for Pakistan .

3. Petitioner contended that he was initially appointed as Lower Division Clerk (LDC) in BPS-5 on 12.11.1966 in the then Pakistan Telegraph and Telephone Department, now Pakistan Telecommunication Company Limited (PTCL); that on the basis of seniority-cum-fitness, he was exempted from the recruitment examination and promoted to Upper Division Clerk (UDC) BPS-7 vide order of the Director General, T&T, Islamabad, and

accordingly assumed charge of the said office on 07.05.1974. It was further argued that pursuant to the decision taken in the General Managers' Conference held in 1997, later confirmed through letter dated 10.02.1998, the powers relating to appointment, promotion, and seniority up to Grade-15 were delegated to the respective regions. In consequence thereof, a duly constituted committee examined the cases of UDCs and submitted its report on 21.05.1997, whereupon eligible UDCs, including the petitioner, were promoted as Assistants in BPS-11 and subsequently granted move-over benefits up to BPS-13. Per petitioner, he consistently maintained satisfactory ACRs and, therefore, became entitled to Selection Grade BPS-15 in the year 1995. However, in utter disregard of settled principles of seniority, a junior was promoted to BPS-16 without assigning any lawful justification, despite the petitioner being senior and otherwise eligible. It was further contended that the impugned promotion order, the seniority list, and the subsequent promotion to BPS-17 dated 08.10.2002, along with the appellate order dated 04.12.2001, were passed without lawful authority, *coram-non-judice*, and in violation of the petitioner's vested rights. Petitioner lastly contended that the order dated 30.09.2019 passed by Full Bench of NIRC in Appeal No.12A(55)/2018-K as well as order dated 19.09.2018 passed by Single Member of NIRC in Case No.4B(11)/2017-K are bad in law and facts and liable to be set aside. He further argued that the petitioner filed Service Appeal before Service Tribunal, which abated in the wake of the judgment of the Hon'ble Supreme Court in the case of Mubeen-ul-Islam (PLD 2006 SC 602) and he was defeated before NIRC on the ground of delay in filing grievance petition. He argued that since he is retired and he was employed in PTCL which was a Government owned entity and upon creation of Pakistan Telecommunication Company Limited, his service were still governed under the statutory provisions applicable to civil servant for all purposes. He argued that on his retirement, he claims proforma promotion, which is his fundamental right, as he was entitled to promotion but denied by the authorities malafiedly through sheer abuse of the process of law. He prayed to allow this petition.

4. Learned Assistant Attorney General for Pakistan, while going through the case file frankly conceded that the Petitioner was discriminated against, he was entitled for selection grade and promotion but he was declined the said benefit without any justification or plausible reasons. She argued that it was a fit case for indulgence of this Court as Respondent Department had

acted in violation of law and rules, and Petitioner has been deprived of a right otherwise available to him. She conceded for grant of the Petition.

5. Learned Counsel for the respondent PTCL, contended that the instant petition is not maintainable and is liable to be dismissed. It was argued that the petitioner, instead of availing the statutory departmental remedy by preferring an appeal against the order dated 28.11.2001 – whereby twenty-three senior-most Assistants were granted Selection Grade in BPS-15 – chose to approach the Special Monitoring Team of the Army through applications dated 22.10.2001 and 04.12.2001, seeking grant of Selection Grade in BPS-15. Thereafter, the petitioner filed a departmental appeal on 20.06.2002, which was hopelessly time-barred and was consequently rejected by the Appellate Authority on 23.10.2002, maintaining the decision dated 28.11.2001. It was further contended that the petitioner did not challenge the rejection order dated 23.10.2002 before the Federal Service Tribunal; rather, he assailed the original Selection Grade order dated 28.11.2001 and additionally sought promotion to BPS-17 as Assistant Director before the Federal Service Tribunal, which, according to learned counsel, was not legally maintainable. Learned counsel further submitted that the grievance petition before NIRC suffered from non-joinder of necessary parties. It was pointed out that although, in Service Appeal No. 469(K)(CS)/2002 before the Federal Service Tribunal, the petitioner had impleaded all those officials whose promotions were under challenge, yet in the subsequent proceedings he failed to implead them, rendering the petition defective. It was next argued that before the Labour Court, the petitioner materially altered his stance by changing the facts, grounds, and relief sought. He challenged the Selection Grade order dated 28.11.2001 along with another promotion order dated 29.10.2005, whereby four senior-most Assistants, being regular employees, were promoted to BPS-16, and further sought his own promotion to BPS-17. It was further contended that when the petitioner approached the NIRC, he failed to serve the mandatory grievance notice under Section 33 of the Industrial Relations Act, 2012, which is a condition precedent for filing a grievance petition. This omission, it was submitted, stands admitted by the petitioner in his own evidence. Learned counsel further argued that the petitioner admittedly retired on 12.02.2008 upon attaining the age of superannuation and received all his service benefits from PTCL. At the time of filing the appeal before the NIRC, he no longer fell within the definition of a “workman” under the law and, therefore, could not claim promotion or grant of Selection Grade after retirement. Lastly, it was contended that the

scheme of grant of Selection Grade and move-over under the Basic Pay Scales for civil servants stood discontinued with effect from 01.12.2001, hence, the petitioner was not entitled to the relief of Selection Grade, particularly when there exists no provision in any law conferring such entitlement upon a workman. He prayed to dismiss the petition.

6. Heard arguments and perused the material made available before us on record.

7. Addressing the issue of maintainability of the instant petition first. From the material made available before us on record it transpired that the petitioner was appointed as LDC BPS-05 in PTCL vide order dated 12.11.1966, he was promoted in Grade-07 as UDC on 07.05.1974 and as Assistant (BPS-11) in the year 1997. The petitioner applied for grant of selection grade in BPS-15 with effect from 1995, which despite recommendation by the departmental committee was not considered by the authority. It is further the case of the Petitioner that his juniors were promoted in Grade-16 in the year 2001, and such super-session was done in violation of rules. Petitioner preferred departmental appeal but remained unheeded, hence filed Service Appeal before the Federal Service Tribunal. The service appeal of the Petitioner abated pursuant to the judgment of Honorable Supreme Court in the case of Muhammad Mubeen us Salam and others V. Federation of Pakistan & others reported as **PLD 2006 SC 602**. Petitioner thereafter filed a Grievance Petition before NIRC, which was declined vide order dated 19.09.2018; his appeal too was declined by the Full Bench of NIRC vide order dated 30.09.2019. From the perusal of judgments of judgments rendered by the NIRC, no exception can be taken to the observations rendered therein that the Petitioner's case was not covered under the labor laws as such NIRC lacked jurisdiction to entertain the grievance of petition, thus, rightly declined to grant relief to the petitioner. When confronted petitioner frankly conceded to the above legal position, however, he contended that since he had retired from service and claimed proforma promotion therefore his case may be examined independent of the observations rendered by NIRC.

8. To assess whether this petition can be entertained independently, without going into the legal question of choice of a wrong forum by the Petitioner. Meticulous perusal of the record led to an ineluctable inference that the petitioner was appointed in Pakistan Telegraph and Telephone

Department (PTCL) which on enactment of Pakistan Telecommunication (Re-Organization) Act, 1996 (Act No. XVII of 1996) was privatized and became PTCL. On taking over of the PTTD by PTCL terms and conditions of the employees of the PTTD did not change as envisaged section 36 of the said Act. As such any action on the part of Respondent Company can be examined by this Court under its writ jurisdiction as the petitioner was employee of the Government owned company and entered into service as a civil servant. It is pertinent to mention that Petitioner was appointed as LDC in Respondent PTCL in year 1966 under PTCL Service Rules, approved by Federal Government, which were statutory in nature. Admittedly after the enactment of Act No XVII the employees of the PTCL inducted in service thereafter were subject to non-statutory service structure as such will be governed by the principle of master and servant, however services of the employees who were appointed prior in time shall be governed by the said Rules, thus employees of PTCL appointed under 1973 Rules shall be deemed to be public servants. Any action taken by the Respondent PTCL against its employees under 1973 Rules shall be amenable to writ jurisdiction of this Court under Article-199 of Constitution of Islamic Republic of Pakistan of 1973. Since the Petitioner claims a relief which was made available for government employees through revision of pay scales by the Federal and Provincial Governments through notification issued in year 1983 whereby the government employees were offered an incentive of higher pay scale on account of their length of service. Since the Petitioner challenged the discriminatory acts of the Respondent company, therefore, on abatement of appeal before Federal Service Tribunal, he ought to have preferred petition before this Court. Since the Petitioner agitates the violation of his fundamental rights as to equal treatment, this Court under its writ jurisdiction has unbridged powers to enforce the fundamental rights, thus this petition is held to be maintainable.

9. Adverting to the core issue regarding claim of the Petitioner for award of selection grade. It is borne out from record that during the pendency of Petition, Petitioner retired from service on attaining the age of superannuation. The concept of Promotion with a retrospective effect to a retired Civil Servant is alien to the scheme of law. The Civil Servants Act 1973 and Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 being governing laws in matters of appointment and promotions do not contain any provision entitling a Civil Servant for Promotion after

retirement. Even no provision in the service rules of the Respondent Company existed to accord promotion retrospectively. In absence of any laws conferring rights of promotion to the retired employees, this Court cannot issue writ, and direct the authority to grant regular promotion to a retired employee retrospectively. After superannuation the government employee may, however, claim a right to be considered for pensionary benefits in accordance with the policy or a scheme adopted by the competent authority. The proviso to FR 17(1) of the Fundamental Rules empowered the competent authority to direct that an employee shall be paid the arrears of pay and allowances of a higher post through proforma promotion, if satisfied that such employee was entitled to be promoted from a particular date, was for no fault of his own, wrongfully prevented from such entitlement. Through Fundamental Rule 17 government obviously intended to compensate a government employee wronged by its hierarchy at the helm of affairs to be considered for the same. The finance Division vide notification No SRO No.965(I)/2022 dated 20.05.2022 omitted the above provision; however, left the room open for consideration of case of Proforma Promotion by orders of judicial forum. Since the petitioner claims proforma promotion, therefore, his case is examined in the said perspective.

10. Selection Grade is not a regular appointment against a post in the mode of promotion. The Selection grade is granted to financially compensate an employee who despite of serving for a long period of time does not have the prospect of being promoted to the higher post. Government of Pakistan framed a policy in year 1983 to compensate the government employees who despite of elongated period of services were not promoted to next higher for want of vacancies in the next higher grade.

11. It is an admitted position on record that the petitioner was appointed as UDC in year 1966 and vide notification dated 02.01.1998 he was promoted to the post of Assistant BS - 11. It appears from the record that vide office order dated 28.11.2001 issued by Deputy General Manager South PTCL 23 Assistants were granted selection grade BS - 15. On representation filed by the Petitioner the probe was made, which revealed that Petitioner along with four other employees though senior and eligible were deprived of the selection grade. The representation of the Petitioner and other employees was turned down by the Director Staff PTCL vide order dated 23.10.2002 (available at page 119 of Court File) holding that the 23 employees granted

selection grade were Senior to the Petitioner. The order rejecting representation of the Petitioner was non speaking and contradictory to the findings rendered by the admn branch of the PTCL Karachi region (available at page 79 of Court File) which revealed that the Petitioner was working as Assistant since year 1988 thus was Senior to other employees who were granted selection grade. The Assistant Legal Advisor PTCL in its legal opinion dated 4th, December 2001 (available at page 123 of Court file) also supported the stance of Petitioner, however, through a subsequent letter dated 20.05.2002 Deputy Legal Advisor advised that the earlier opinion may not treated as final. From perusal of the order dated 23.10.2002 passed by the respondent PTCL, the reasons assigned for declining Selection Grade BS-15 to the petitioner were not plausible in nature. The order dated 23rd October, 2002 is non-speaking in nature, irrational and did not provide any reasonable classification to say that the petitioner was not entitled to Selection Grade.

12. It is settled proposition of law that the promotion is not a vested right of the employee but an employee cannot be denied such right when he was placed equally with the other employees and no distinction was made out for deferring his promotion; as such the action on the part of the authority was not falling within the dominion of law and violated the rights of aggrieved employee guaranteed under Article 4, 9, 14, 25, and 27 of the Constitution of Islamic Republic of Pakistan of 1973, which lay emphasis that a person was subject to the due process of law, his right as to the life, liberty and development and prosperity shall be respected, he shall not be discriminated and given equal treatment of law in all matters including service. In matters of regular promotion authority may promote such number of employees against which vacancies in the higher grade were available but in the matters of award of selection grade this classification was not permissible.

13. To determine whether the Petitioner was entitled for the arrears of pay and allowances of a higher post through proforma promotion, the Petitioner has to establish that he was entitled to be promoted from a particular date and wrongly prevented for no fault of his own, which petitioner succeeded to do. Thus burden shifted on the Respondent to demonstrate that the classification so done depriving petitioner of the right of Selection Grade was rational and reasonable. No material was placed on record to dub petitioner as an inefficient employee or to suggest that he

suffered from any deficiency warranting his demotion or denial of the right to next higher grade. No material was found available that at any point of time, the petitioner was proceeded against in terms of efficiency and discipline rules under the allegation of misconduct. It can be safely held, in view of the above admitted factual position, that the Petitioner was eligible for award of selection grade in BS - 15 but declined such benefit under flawed and extraneous considerations. It has been established on record that Petitioner was prevented to next higher grade with no fault on his part, making petitioner entitled for grant of proforma Selection Grade from the date when his colleagues were awarded the similar benefit.

14. Promotion is a natural progression in the service of an employee. It is an integral incident of service and every employee who fulfills the prescribed criteria of fitness, eligibility and seniority has a legitimate expectation to be considered for promotion within a reasonable time. When its grant is denied without lawful justification, it constitutes arbitrariness and procedural unfairness. The Petitioner has served the department for more than 40 years without getting a regular promotion sans 1998 when he was lastly promoted in grade 11 as Assistant. Petitioner was denied a fair and equal treatment in accordance with law which violated his fundamental rights guaranteed under Articles 4 and 25 of the Constitution and levied a mammoth charge of internal inefficiency against the Respondent PTCL. Such failure cannot be allowed to operate to the prejudice of an employee who was otherwise eligible. Once an employee satisfies the prescribed eligibility criteria, a corresponding duty devolves on the competent authority to convene the promotion process within a reasonable time. Reliance in this regard is placed upon the dictum laid down by Honorable Supreme Court in the case of Province of Sindh v. Ghulam Shabbir reported as 2023 SCMR 686, wherein it has been held that a civil servant is entitled for promotion from the date of the occurrence of vacancy in the next higher grade.

15. The contention of the Learned Counsel for Respondent PTCL that policy of Selection Grade and move-over under the Basic Pay Scales for civil servants stood discontinued with effect from 01.12.2001, is without force as the above referred notification will not apply retrospective and Petitioner's claim for grant of Selection Grade dates back to 28.11.2001 when his other colleagues were accorded such benefit and policy for grant of move over and Selection Grade was in vogue. On careful perusal of the record, it transpires

that the petitioner was entitled to Selection Grade in BS - 15 on 28.11.2001 but he was singled out and denied such right. We are therefore convinced to hold that this is a fit case to exercise the powers of judicial review conferred under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. We find that through notification dated 28.11.2001 the colleagues of the Petitioner were granted selection grade from year 1995, we have examined the scheme of law and find that benefit of selection grade would be available from the date of issuance of notification. Since article 25 does not evolve a concept of negative equality, therefore, Petitioner cannot be granted this benefit retrospectively as claimed by him. The Petitioner has also failed to make out a case for grant of regular promotion in next higher grade.

16. For the aforementioned reasons, this petition is allowed. The respondents are directed to grant Selection Grade /Proforma Promotion to the petitioner from 28.11.2001 and award him benefits so incurred from the said date within a period of two (03) months from the date of this order.

17. These are the reasons for the short order dated 29.01.2026, whereby instant petition was allowed.

Office to send a copy of this order to the respondents for compliance.

JUDGE

JUDGE

HEAD OF CONSTT. BENCHES

Nadir

Approved for reporting
