

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-5467 of 2019

[Nooruddin Abro v EOBI & another]

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| Date | Order with signature of Judge(s) |
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Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and Order: 15.04.2026

Mr. Aftab Alam, Advocate for the Petitioner.
Mr. Ali Asadullah Bullo, Advocate for Respondent No.1/EOBI.
Ms. Wajiha Mahdi, D.A.G.

ORDER

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

- I. *In view of the above facts and circumstances, it is respectfully prayed that this Hon'ble Court may be pleased to pass order, directing the Respondent No.1, to issue office order for promotion order of the above named Petitioner from the Post of Assistant Director to Deputy Director from the date 24-1-2014 and revise the order No.3/2014 dated 30-1-2014 accordingly.*
- II. *To direct to the Respondent to accumulate the salaries, allowances and pensionary benefits of the above named Petitioner of post of Deputy Director w.e.f 24-1-2014.*
- III. *Any order relief which this Hon'ble Court deem fit and proper in the circumstances of the Petition.*

2. Learned counsel for the petitioner submitted that the petitioner joined the Respondent No. 1 (EOBI) on 19.11.1984 as an Executive Officer (BPS-16) and, on account of his satisfactory and unblemished service, was promoted to Assistant Director (BPS-17) on 01.12.1999, from which post he retired on 08.05.2017. It was contended that throughout his service career, the petitioner performed his duties diligently and efficiently, earning favorable Performance Evaluation Reports (PERs) and recommendations for further promotion. Counsel argued that the petitioner was senior and fully eligible for promotion to the post of Deputy Director (BPS-18); however, his promotion was unjustly deferred by the Departmental Promotion Committee (DPC) in its meeting held on 24.01.2014, primarily on account of an adverse remark recorded in the PER for the year 2012-2013 and the

alleged non-availability of PERs for earlier years. It was contended that the adverse remarks were motivated by bias and mala fide on the part of the countersigning officer and were not reflective of the petitioner's actual performance. Learned counsel further submitted that despite the promotion of other officers, the petitioner's case was ignored, amounting to discrimination and violation of the principles of seniority-cum-fitness. The petitioner challenged the deferment of his promotion through departmental appeals, which were dismissed, culminating in the impugned order dated 02.05.2019, whereby he was advised to approach the appropriate forum. It was argued that the denial of promotion has adversely affected the petitioner's pensionary and retiral benefits, giving rise to a continuing cause of action. The counsel prayed that the petitioner be granted retrospective promotion to the post of Deputy Director with effect from 24.01.2014, along with all consequential monetary and pensionary benefits. In support of his contention he relied upon the case of Ijaz Akhtar v Secretary to Government of Punjab and others **2023 PLC (C.S) 431**.

3. Conversely, the learned Assistant Advocate General, assisted by counsel for the respondents, opposed the petition and raised preliminary objections as to its maintainability. It was contended that the petitioner does not fall within the definition of a "civil servant" under the Civil Servants Act, 1973, but is instead a "public servant" as envisaged under Section 42 of the EOBI Act, 1976; hence, the constitutional petition is not maintainable in the present form. On merits, it was argued that the petitioner did not possess an unblemished service record. During his tenure, he was issued explanation letters, warning letters, and charge sheets. Furthermore, his Performance Evaluation Report (PER) for the year 2012–2013 contained adverse remarks, describing him as "not yet fit for promotion" and as having "average abilities." These adverse entries were duly communicated to him in accordance with the law. The respondents further submitted that the petitioner was not denied promotion; rather, his case was deferred by the Departmental Promotion Committee (DPC) due to the non-availability of PERs for the years 2009–2010, 2010–2011, 2011–2012, and 2012–2013, despite repeated reminders issued by the Human Resources Department. It was also pointed out that, under the EOBI Recruitment Procedure, completion of mandatory training is a prerequisite for promotion to the post of Deputy Director, which the petitioner had failed to fulfill. It was additionally contended that no junior officer was promoted in supersession of the petitioner and that all promotions were made strictly in accordance with the prescribed Recruitment Procedure and the policy of the Federal Government. The respondents emphasized that the petitioner filed his appeal after retirement, and since the EOBI Employees Service Regulations do not apply post-retirement, his claim for promotion was rightly declined. Lastly, it was

argued that the petition is barred by laches and that the petitioner has not approached the Court with clean hands.

4. After hearing the learned counsel for the parties and perusing the available record, it emerges that the petitioner seeks retrospective promotion to the post of Deputy Director (BPS-18) with consequential monetary and pensionary benefits from 24.01.2014. However, the claim of the petitioner does not merit acceptance for the following reasons:

5. The petitioner was an employee of the Employees' Old-Age Benefits Institution (EOBI). Under Section 42 of the EOBI Act, 1976, employees of EOBI are deemed to be public servants and not civil servants within the meaning of the Civil Servants Act, 1973. Promotions within EOBI are governed by its own Service Regulations and Recruitment Procedures, approved by the Board of Trustees and the Federal Government. Therefore, the petitioner cannot claim promotion as a matter of right under the Civil Servants Act, and his case is to be examined strictly in accordance with the applicable EOBI rules.

6. The record reflects that the Departmental Promotion Committee (DPC), in its meeting held on 24.01.2014, considered the petitioner's case but deferred his promotion due to the non-availability of mandatory Performance Evaluation Reports (PERs) for the years 2009–2010, 2010–2011, 2011–2012, and 2012–2013. The respondents have demonstrated that reminders were issued to the petitioner for submission of these PERs. In service jurisprudence, the availability of complete PERs is an essential prerequisite for consideration of promotion; therefore, the decision of the DPC cannot be termed arbitrary or unlawful.

7. The petitioner's PER for the year 2012–2013 contained adverse remarks, including the assessment that he was "not yet fit for promotion" and possessed "average abilities." These adverse entries were duly communicated to the petitioner, thereby fulfilling the requirement of due process. The petitioner has not placed on record any material to show that such remarks were successfully expunged by a competent authority. In the absence of expunction, the DPC was justified in taking these remarks into consideration while assessing his suitability for promotion.

8. The EOBI Recruitment Procedure prescribes mandatory training as a prerequisite for promotion to the post of Deputy Director. The record indicates that the petitioner had not completed the requisite training at the relevant time. It is a settled principle of law that an employee who does not fulfill the prescribed eligibility criteria cannot claim promotion as a matter of right. Consequently, the petitioner's request for retrospective promotion lacks legal foundation.

9. The petitioner has alleged discrimination and supersession; however, the respondents have categorically stated that no junior officer was promoted in supersession of the petitioner. Promotions were made strictly in accordance with the Recruitment Procedure and the principle of seniority-cum-fitness. In the absence of any concrete evidence to the contrary, the allegation of discrimination remains unsubstantiated.

10. The petitioner retired from service on 08.05.2017, whereas his appeals were pursued thereafter. As a general rule, promotion cannot be claimed after retirement unless the employee was wrongfully superseded despite fulfilling all eligibility conditions at the relevant time. Since the petitioner did not meet the essential prerequisites for promotion, his post-retirement claim for notional promotion and consequential benefits is not maintainable.

11. The impugned office order was issued on 30.01.2014, while the final departmental rejection occurred on 02.05.2019. The constitutional petition was filed after a considerable lapse of time. Even though representations were made, such correspondence does not extend limitation. The doctrine of delay and laches is therefore attracted, rendering the petition liable to dismissal on this ground as well.

12. It is well settled that in exercise of jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the High Court does not sit as an appellate forum over the decisions of departmental authorities. Interference is warranted only where the impugned action is shown to be mala fide, arbitrary, or without lawful authority. In the present case, the petitioner has failed to establish any such illegality or mala fide on the part of the respondents.

13. For the foregoing reasons, the petitioner has failed to establish any illegality or arbitrariness in the decision of the Departmental Promotion Committee or the impugned order dated 02.05.2019. The deferment of his promotion was based on valid and lawful considerations, including non-availability of PERs, adverse remarks, and non-fulfillment of mandatory training requirements. The claim for retrospective promotion and consequential monetary and pensionary benefits is therefore untenable. The petition is also hit by delay and laches and lacks merit.

14. Consequently, the instant Constitutional Petition is dismissed, being devoid of merit, with no order as to costs.

JUDGE

JUDGE