

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D 6169 of 2020

(*Abbas Ali Bhutto v Federation of Pakistan & others*)

Date	Order with signature of Judge
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Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Order: 20.06.2025

M/s. Moiz Ahmed & Zubair Ali Butt advocates for the petitioner.

Ms. Wajiha Mehdi Assistant Attorney General.

Mr. Shumail Ahmed Cheema, Legal consultant PCSIR for respondent No.2, along with Syed Zahir Hussain Superintendent PSTC Karachi.

ORDER

Adnan-ul-Karim Memon, J: The petitioner requests this Court to nullify the Promotion vide Office Memorandum (O.M) dated May 11, 2018. He further requests this Court to direct the Respondents- Pakistan Council of Scientific and Industrial Research (PCSIR) to promote the Petitioner to BPS-17 (from BPS-16) with retrospective effect from June 10, 2010, as is legally due and in the interest of justice.

2. The petitioner, an employee of Pakistan Council of Scientific and Industrial Research since April 1988, claims his seniority has been unfairly disregarded by the respondents, leading to deny his promotions and the illegal promotion of his immediate juniors. He highlights conflicting seniority lists, where his position dropped from serial No. 3 to 6 and then 7. He alleges discriminatory seniority policies based on pay grade and joining date, favoring some of his colleagues. Specifically, a junior colleague, Javed, was promoted to Superintendent (BPS-16) in 2009 while the petitioner was overlooked. Although he was "promoted" to Superintendent (BPS-16) in 2018 vide impugned O.M, he submits that this was merely a cadre change, not the deserved BPS-17 grade, he believed was due since 2010. He asserted that these "out-of-turn" promotions violated PCSIR Regulations 1981, which mandated promotions based on seniority and fitness, and that situation negatively impacts his future benefits, like gratuity and pension.

3. The petitioner's counsel argued that the petitioner was appointed as a Junior Assistant in April 1988, began work at PCSIR's Head Office on April 25, 1988. Following the relocation of the Head Office from Karachi to Islamabad, the petitioner was transferred to the Pak Swiss Training Centre (PSTC) in Karachi as an Assistant, effective December 16, 2004. Unaware of his seniority status after this transfer, he requested and received a seniority list from PCSIR, dated October 23, 2009 and subsequent promotion of his junior colleagues leaving him in the lurch finally he was promoted in 2018 though his junior colleagues were promoted and he was ignored. He further submitted that the

promotion would only be made based on seniority cum fitness, he further added that respondents failed to consider his length of service and performance as stipulated under the rules. He lastly argued that promotion of the petitioner was merely change of cadre but no grade was changed with remained BS-16 as such petitioner is entitled for promotion with effect from 10.06.2010. Based on these points, the counsel requests that the petition may be granted in terms of prayer clauses.

4. The respondents' counsel contended that the petitioner's claims of promotion and seniority are baseless. He argued that the petitioner's promotion was governed by a uniform policy implemented due to the PCSIR Head Office's relocation from Karachi to Islamabad in 2004. He submitted that employees in the Head Office strength were required to transfer to Islamabad. He further argued that to manage staffing, the Governing Body established a policy on August 31, 2007, stating that promotions for employees who chose to remain in Karachi would only be considered if they committed to joining the Islamabad Head Office upon promotion. The counsel emphasized that the petitioner failed to provide this undertaking, resulting in the promotion of those who did join the Islamabad office. Employees who did not submit the undertaking and were transferred to Karachi units were placed at the bottom of existing employees in their grades to safeguard the seniority of others. He noted that the petitioner was offered an option in July 2009 to join the Islamabad Head Office or accept the revised seniority, but he did not respond. Regarding seniority, the counsel clarified that the list given to the petitioner on October 23, 2009, was a draft, not the final version. The final seniority list was circulated on November 17, 2009, in line with the Governing Body's decision. He asserted that his colleague Javed's promotion was legitimate, based on this final seniority list and the Departmental Promotion Committee's (DPC) recommendations. Finally, the respondents' counsel maintained that PCSIR did not violate any statutory rules and that the competent authority acted lawfully under Regulation 15 of the PCSIR Employees (Service) Regulations 1981. He also pointed out that the petitioner did not exhaust all departmental appeal procedures. He concluded that the petitioner's 2018 promotion to Superintendent (BPS-16) was appropriate, as the Assistant post was upgraded, and Superintendent is a BPS-16 position; further up-gradation to BPS-17 require three years of satisfactory service in BPS-16. The learned counsel for PCSIR supports this, citing an Islamabad High Court ruling that these Regulations have no statutory force as such this petition is not maintainable under Article 199 of the Constitution. He further contended that even if considered, per Supreme Court precedents, *Muhammad Zaman*, 2017 SCMR 571; *Shafiqu Ahmad Khan*, PLD 2016 SC 377, these Regulations pertain only to PCSIR's internal management and do not qualify as statutory

rules, thus cannot be enforced under Article 199 of the Constitution. He prayed for dismissal of the instant petition.

5. The learned AAG argued that the letter of July 17, 2009, was based on a Governing Body decision from August 31, 2007. This policy required employees from the old Karachi Head Office, now working in Karachi units, to undertake to join the PCSIR Head Office in Islamabad upon promotion for their promotion to be considered. She stated that no such undertaking was received from the petitioner. The policy was created to ensure a smooth transfer of Head Office employees to Islamabad while preventing disruption of seniority for existing employees in Karachi units during the relocation. The AAG requested the petition's dismissal based on the respondents' submitted comments while adopting the argument of the counsel representing the PCSIR.

6. We have heard the learned counsel for the parties and perused the record and case law on the subject issue, with their assistance.

7. Thus, the main issue before this Court for adjudication is the status of the Pakistan Council of Scientific and Industrial Research Employees (Service) Regulations, 1981 ("Regulations"), being statutory and enforceable by a Constitutional Court in case of any violation thereof.

8. The Pakistan Council of Scientific and Industrial Research was established in 1953 to advance science and technology in this country, now operating under Section 3 of the Pakistan Council of Scientific and Industrial Research Act, 1973 (amended 1984). Its Chief Executive is the Chairman, appointed by the Federal Government. The 21-member Council, responsible for policymaking, includes the Chairman, three Governing Body members, three PCSIR Lab Directors, four ministry representatives, four provincial Directors of Industries, and six industry representatives. The Governing Body, PCSIR's executive arm, consists of the Chairman and three government-nominated full-time members: Member (Science), Member (Technology), and Member (Finance).

9. The core issue revolves around the statutory status of PCSIR's regulations. While Section 19 of the Act allows the Council to frame regulations, it explicitly requires prior sanction from the Federal Government. Similarly, Section 18 grants the Federal Government the power to make rules. The Council also has the authority to appoint staff under Section 12(1), setting its own terms. The respondents' counsel contend that neither the Federal Government nor the Council, with proper sanction, created rules or regulations specifically for employee disciplinary proceedings. Consequently, even if PCSIR adopted other government rules, these function merely as internal guidelines, lacking statutory force. However, the Supreme Court judgments in

Pakistan Defence Officer Housing Authority vs. Lt. Col. Syed Jawaaid Ahmed (2013 SCMR 1707) and Shafiqu Ahmad Khan vs. NESCOM (PLD 2016 SC 377) stated that regulations framed by a competent authority without government intervention can be enforceable under peculiar circumstances in terms of Article 199(5) of the Constitution. However, in the present case, petitioner is not seeking enforcement of PCSIR Service Regulation 1981 but only seeking directions in terms of Article 25 of the Constitution as he claims to have been discriminated in his right for consideration for his promotion. Therefore this Court can look into the merits of the case on the aforesaid analogy in terms of Article 199 (5) of the Constitution.

10. For effective administration, the PCSIR employee seniority lists are compiled as follows:

Grades 1-16 (Technical & Non-Technical): Separate lists for Head Office and each Laboratory/Unit.

Grade 17+ (Non-Technical Officers): One overall list.

Grade 17+ (Technical Officers): Discipline-specific lists.

11. The Governing Body of PCSIR discussed the matter thoroughly and decided on 31.08.2007 that the employees of the former Head Office, who were working at other locations, their promotion would be subject to a specific condition: they would provide written confirmation of their willingness to join the PCSIR Head Office in Islamabad upon promotion.

12. As per the pleadings of the parties, the petitioner's transfer from the PCSIR Head Office in Karachi to PSTC Karachi was initiated by PCSIR, not at the request of the petitioner. This transfer occurred when the Head Office moved to Islamabad, with the initial understanding that the petitioner would eventually join the PCSIR Head Office in Islamabad. However, a subsequent decision from the Governing Body Meeting on August 31, 2007, clarified that all employees of the old Head Office, even those working in various Karachi units, would remain part of the Head Office's official strength. However, the office objected to the petitioner remaining at PSTC Karachi, on the analogy that it would give him two unfair advantages: avoiding transfer to Islamabad and maintaining his current seniority over other BPS-14 Assistants already at PSTC. To prevent this, the petitioner was given three days to choose: either join the PCSIR Head Office in Islamabad or accept a revised seniority order, placing him at the bottom of his grade within PSTC. According to PCSIR, the petitioner did not provide the required undertaking. Consequently, employees who joined the Islamabad office were promoted, while those who did not submit the undertaking and transferred to Karachi units were placed at the bottom of their respective grade's seniority list. This action was taken to safeguard the seniority of existing employees. The list are as follows:-

Mr. M. Jawed Mukhtar (Promoted as Assistant, BPS-11 on May 30, 1994)

Mr. Jawed Siddique (Promoted as Assistant, BPS-11 on April 1, 2002)

Mr. Mirza Ejaz Baig (Promoted as Assistant, BPS-11 on January 7, 2003)

Mr. S. Zakir Hussain (Promoted as Assistant, BPS-11 on January 7, 2003)

Mr. Hassan Mehdi Mirza (Promoted as Assistant, BPS-11 on December 2, 2004)

Mr. Abbas Ali Bhutto (Joined PSTC Karachi as Assistant, BPS-11 on December 20, 2004)

Mr. Rafiquddin (Promoted as Assistant, BPS-11 on December 3, 2007)

13. The Competent Authority of PCSIR approved the petitioner's promotion and streamlining from Ex-cadre to Regular Cadre, effective May 11, 2018. However, this action is being challenged. The petitioner submitted that his transfer from the Head Office to PSTC in 2004 (Order No. 512(810)2004 dated 16-12-2004) was in the Council's interest. He was promoted on December 29, 2001, yet several colleagues promoted later were listed as senior: Jawaid (April 1, 2002), Mirza Ejaz Baig (January 7, 2003), Syed Zakir Hussain (January 7, 2003), and Mr. Hassan Mehdi Mirza (December 2, 2004). Furthermore, the petitioner highlighted that his junior colleague, Jawaid, was promoted to Superintendent (BPS-16) on June 10, 2010. He cited a similar case of Ashiq Ali Sangi, who, despite facing initial objections to his promotion to BPS-16 during the same June 10, 2010 DPC, was later promoted with a backdated effect to that date after appealing to the Chairman (Head Office letter No. PCSIR-7(35)/85(P-II)/8250 dated 22-10-2010). Based on these points, the petitioner requests promotion to Superintendent (BPS-16), backdated to June 10, 2010, and further promotion in line with his colleagues.

14. The petitioner's case prima facie constitutes discrimination under Article 25 of the Constitution, which guarantees equal protection under the law. He was involuntarily transferred from Head Office to PSTC due to relocation, yet was later penalized for not moving to Islamabad. Despite his earlier promotion date, he was placed below juniors, indicating an inconsistent application of seniority rules. PCSIR's submissions of "unfair advantages" for staying in Karachi unfairly blames him for a situation he did not choose. Crucially, an identical case involving Mr. Ashiq Ali Sangi saw his promotion backdated after an appeal, this has been pointed out. This differential treatment, where two similarly transferred individuals face different outcomes regarding seniority and promotion, strongly suggests an arbitrary application of rules and a violation of the principle of equal protection. The petitioner submitted that placing

involuntarily transferred employees at the bottom of the seniority for not relocating, especially when a similar case was rectified, is arbitrary and lacks a rational basis. If this is the position of the case this Court deem it proper to remit the case to the competent authority of PCSIR to take afresh decision on the subject issue.

15. Considering the factual inconsistencies, the disparate treatment of similar cases (like Mr. Ashiq Ali Sangi's), and the petitioner's claim of unfair seniority deprivation due to circumstances beyond his control, this petition demonstrates elements of discrimination. Therefore, it is admissible under Article 25 of the Constitution. This Court directs the competent authority of PCSIR to re-examine the petitioner's case immediately. This review must ascertain if the policy applied to him was reasonable, non-arbitrary, and consistently implemented. This entire exercise must be completed within three months, following a meaningful hearing provided to the petitioner.

16. In view of the above, this petition is disposed of in the aforesaid terms.

JUDGE

Head of the Const. Benches