

**IN THE HIGH COURT OF SINDH, KARACHI**

**Constitutional Petition No.D-1019 of 2023**

*[Inayatullah versus Province of Sindh and others]*

Before:

**Justice Muhammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

**Date of hearing & Order: 02.10.2025**

Mr. Ali Asadullah Bullo, advocate for the petitioner.

Mr. Ali Safdar Depar and Mrs. Saima Imdad, AAGs, along with Jabir Jabbar, Assistant to Addl. Director Law, SGA&CD.

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**ORDER**

**Muhammad Karim Khan Agha, J.** Through this petition, the petitioner seeks the following relief(s):-

*“i) Declare the impugned seniority list dated 17-10 2022 as illegal only to the extent of Respondent Nos 4 to 60 and set aside the same.*

*ii) Direct the Respondent No. 3 to place the name of the Petitioner above the names of Respondent No. 4 to 63 under the law of inter-se seniority.*

*iii) Direct the Respondent Nos 2 and 3 to grant the effect of promotion in BS 17 to the Petitioner from the date of recommendations of the departmental promotion committee, along with consequential benefits*

*iv) Direct the Respondents to consider the case of Petitioner for promotion against the post of BS-18 in accordance with the law.*

*v) Direct the Respondents not to take any coercive action against the Petitioner and should conduct themselves strictly in accordance with the law.”*

2. The Petitioner was initially appointed as Tax Superintendent (BS-11) in 1993 and was promoted to BS-16 in 2010. In 2011, a Departmental Promotion Committee (DPC) recommended his promotion from BS-16 to BS-17, but this was not officially notified until June 6, 2019. The delayed notification, however, was later approved to take effect from the date of the 2011 DPC. Despite the approved retrospective promotion, a seniority list dated July 23, 2019, unlawfully placed him at the bottom of the list, in violation of his seniority. The Petitioner submitted a representation seeking correct seniority along with his batchmates. However, the Respondents not only maintained the incorrect seniority but also promoted junior colleagues in September 2020 and again in November 2021 (from BS-17 to BS-18). The Petitioner is challenging the latest impugned seniority list dated October 17, 2022, which places him at Serial No. 67 instead of his rightful place at Serial No. 7 based on the principle of *inter se* seniority, alleging continuous injustice and discrimination by the Respondents.

3. The counsel contends that the Respondents acted with malafide intent in issuing the seniority list dated October 17, 2022, which unlawfully relegates the Petitioner below his juniors. He argued that the Respondents maliciously denied the Petitioner the effect of his BS-17 promotion from the date of the 2011 DPC recommendation, causing him hardship and financial loss. As the senior-most BS-17 officer since 2011, he is still serving in that grade while his batchmates and even juniors have been promoted to BS-18 and BS-19 (some now serving as his immediate bosses). Counsel argues that the law of

equity and fair play demands that an officer whose promotion is deferred must be granted inter-se seniority with his batchmates upon the next promotion, but the Petitioner has been wrongfully placed at the bottom, permanently blocking his further promotion. Counsel asserts that the Respondents' actions are a colorable exercise of power and a misuse of authority, violating the Petitioner's vested and valuable rights as a civil servant. The impugned orders are ab initio void, mala fide, and without lawful authority. He next submitted that the acts are in gross violation of the fundamental rights guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973. The counsel concludes by arguing that the competent authority's discretion is not unbridled but must be exercised fairly, justly, and honestly, which the Respondents failed to do, acting arbitrarily and capriciously. Relying on Supreme Court judgments, specifically **1995 SCMR 650** and **2005 SCMR 25**, counsel prayed for the petition to be allowed.

4. The AAG opposed the petition, arguing that the Petitioner's initial promotion to BPS-17 recommended by the DPC on October 1, 2011, did not materialize because the required approval note for the Minister of Local Government was never returned. He argued that the Petitioner's promotion to BPS-17 was only granted after a second note was approved on March 8, 2019. The Competent Authority approved this promotion on a regular basis, specifically denying the request for the promotion to be effective from the date of the 2011 DPC. He added that the Petitioner's BPS-17 promotion was formally ordered on June 6, 2019, regular. He, however, conceded that the only officer granted retrospective effect from the DPC date in that order was Mr. Sadaqat Ali Manganhar, under Rule 7(A) of the APT Rules, 1974. Based on these points, the AAG prayed for the dismissal of the petition.

5. We have heard learned counsel for the parties and considered the record.

6. The dispute revolves around whether the Appointing Authority's decision to deny the retrospective effect under the discretion of Rule 7-A was arbitrary, malicious (*mala fide*), or based on lawful justification.

7. The petitioner is not a civil servant; his service is governed by the Sindh Councils Unified Grades (Service) Rules, 2020. The appointing authority for BS-17 under the Rules is the Minister of the Administrative Department, who declined to endorse the DPC meeting held on October 1, 2011. Subsequently, with his approval, he has been allowed the benefits of promotion from BS 16 to BS 17 in SCUGC Service (admin branch) on a regular basis vide order dated 6.6.2019.

8. Rule 7-A of APT Rules grants the Appointing Authority the power to approve the promotion of an officer with retrospective effect. The rule typically states that the Appointing Authority *may* approve the promotion of an officer from the date on which the recommendation of the Provincial Selection Board (PSB) or Departmental Promotion Committee (DPC) was made. It means the civil servant is placed in the higher grade for seniority, pay, and pension benefits from an earlier date, even though they physically assumed the charge much later. The AAG specifically mentioned that one officer, Mr. Sadaqat Ali Manganhar, was promoted from BPS-16 to BPS-17 "from the date of DPC under rules 7(A) of APT Rules 1974," while the Petitioner was promoted only on a "regular basis" from the notification date issued in 2019. The Petitioner is submitting for

the benefit of Rule 7-A that since the DPC recommended his promotion in 2011, he is entitled to the BS-17 promotion effective from that date for seniority and consequential benefits. The AAG claims that the Competent Authority exercised its discretion under the rule and specifically approved the Petitioner's promotion only on a regular basis from the 2019 notification date and not retrospectively. The discretion to grant retrospective effect under Rule 7-A rests with the Appointing Authority, and the AAG argues that this discretion was not exercised in the Petitioner's favour because the 2011 approval note was not returned.

9. The main points regarding a Departmental Promotion Committee (DPC) recommendation and the specifics of the petitioner's case, primarily, a Departmental Promotion Committee's recommendation is not binding on the competent authority. The DPC assesses an employee's suitability based on objective criteria (service record, performance, etc.). The competent authority must consider the recommendation but can accept, reject, or defer it. However, the decision to reject or defer cannot be arbitrary, discriminatory, or illegal, and the Courts will interfere only if the authority's decision violates statutory rules or is otherwise unlawful. There is no absolute right to promotion, especially when valid reasons, like pending misconduct charges, exist to withhold it. The Minister of the Administrative Department (the appointing authority for BS-17) initially declined to endorse the DPC recommendation from October 1, 2011. Subsequently, the petitioner was granted the promotion benefit from BS-16 to BS-17 in the SCUGC Service (admin branch) on a regular basis via an order dated June 6, 2019. This action is considered to have awarded the petitioner the benefit of Rule 7A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

10. Since the promotion has already been granted, the petition is not feasible at this stage and is liable to be disposed of as its purpose has been served.

11. This petition stands disposed of accordingly with the application(s).

HEAD OF CONST. BENCHES

JUDGE