

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-5049 of 2016

Muhammad Shamsheer Safdar.....Petitioner

Versus

Federation of Pakistan and othersRespondents

Date of hearing: 11.12.2017

Mr. Rana Muhammad Ahmed Khan, Advocate for the Petitioner.
Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

ORDER

ADNAN-UL-KARIM MEMON,J:-The instant petition was disposed of vide order dated 14.03.2017 with the following observations:-

“After arguing the case at some length, the parties have agreed that the instant petition may be disposed of in the following manner:-

“That it has been agreed that the cases of Assistant Film Producers (BS-18) would be considered for promotion to Director (Films) BS-19 (Ex. Cadre Post) shortly and that the case of the Petitioner would also be considered for promotion from Assistant Film Producer (BS-18) to Director Films BS-19 subject to his eligibility and fitness and in accordance with law. The said promotion of the Petitioner would be without prejudice and without subject to his retirement.

Respondent No.5 despite service is called absent, hence the service upon Respondent No.5 is hereby held good.

Through this application, a review has been sought in respect of the order passed by this Court on 17.01.2017 whereby a cost of Rs. 10,000/- was imposed upon Respondent No.3 for not filing the comments in a timely manner. Learned Assistant Attorney General states that due to certain reasons and non-availability of the high officials, the comments could not be filed in a timely manner for which an apology has been tendered by Respondent No.3 and has assured that she will be careful in future.

We have heard the parties and would like to clarify that the order of imposing cost was only made when time was sought by Respondent No.3, even after providing last chance, therefore, this application of review of the order is hereby rejected. However, this order would not, in any way, be construed to be punitive against Respondent No.3.

The petition stands disposed of along with pending applications.”

On 25.08.2017 Petitioner filed application bearing CMA No. 23862/17 under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 3 of the Contempt of Court Act 1976, for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the above mentioned Order passed by this Court.

Mr. Rana Muhammad Ahmed Khan, learned counsel for the Petitioner has argued that despite clear directions in the above said Order, the contemnors have not complied with the same and waited for retirement of the Petitioner. He next contended that the contemnors agreed to consider case of the Petitioner for his next promotion from the post of Assistant Film Producer (BPS-18) to Director (Films) in BPS-19 (Ex. Cadre Post); that the contemnors were well aware of the fact that Petitioner is going to retire from service, which fact is also mentioned in the Order dated 14.03.2017 passed by this Court; that the contemnors have failed and neglected to consider case of the Petitioner for promotion as stated above which was ought to have been considered without prejudice; that the Respondents vide letter dated 03.08.2017 declined promotion of the Petitioner on the premise that Petitioner's case was placed before Departmental Selection Board which did not recommend his case due to retirement on 26.03.2017. Learned counsel for the Petitioner has placed reliance on Office Memorandum dated 30.09.2015 with respect to exemption policy from mandatory trainings (MCMC). He next contended that the Departmental Selection Board (DSB) in its meeting held on 27.07.2017 did not recommend the case of the Petitioner for promotion with observation that promotion of retired officer did not come under its purview; that as per promotion policy from BS-18 to BS-19 Mid-Career Management Course (MCMC) is mandatory training for promotion and the Petitioner did not attend the said mandatory training during service, thus not entitled for further promotion. Learned counsel invited our attention to the office memorandum dated 30.12.2015 mentioned

supra and argued that the exemption has already been extended to professional and technical cadres and the mandatory course of MCMC will not come in the way of the professional / technocrats who are undertaking their specialized training separately; that the post of Assistant Film Producer and Director Films are technical posts. Therefore, the ground taken by the Respondents is not tenable in the eyes of law.

Mr. Shaikh Liaquat Hussain, learned Assistant Attorney General has contended that Order dated 14.03.2017 passed by this Court has been complied with in its letter and spirit. He next contended that the promotion case of the Petitioner was placed before DSB in its meeting held on 27.07.2017 but the Board did not recommend the Petitioner for promotion from BS-18 to BS-19 due to attaining the age of supputation on 26.03.2017. He further added that for promotion from BS-18 to BS-19, MCMC is mandatory training under the promotion policy but, Petitioner did not attend the said course during his service therefore, Petitioner is not entitled for further promotion in BS-19. In support of his contention he placed reliance upon the minutes of meeting of DSB held on 27.07.2017.

Upon perusal of order dated 14.03.2017 passed by this Court a clear cut direction was issued to the Respondents to consider case of the Petitioner for promotion from Assistant Film Producer BS-18 to Director Film BS-19 subject to his eligibility and fitness in accordance with law. However, it was made clear that the said promotion of the Petitioner would be without prejudice and without subject to his retirement. The alleged contemnors have taken plea that the Petitioner stood retired on 26.03.2017,

therefore, the promotion of retired officer did not come under its purview. It is hardly a ground to decline promotion of the Petitioner rather a lame excuse. Therefore, we do not sanctify action of the Respondents which amounts to disobeying above said order dated 14.03.2017.

The second plea taken by the Respondents is that the Petitioner did not attend the mandatory course (MCMC) during his service. We have noticed that under previous promotion policy of the Government there was exemption from mandatory trainings on the basis of age. The perusal of Office Memorandum dated 30.12.2015 clearly spells out that the exemption already extended to professional and technical cadres will continue as the professional / technocrats undertake their specialized training separately. We are cognizant of the fact that Petitioner agitated his claim in the instant petition and also raised voice of concern that he is going to retire within a span of few days that is, on 26.03.2017. On 14.03.2017, the Petitioner and the official of the Respondent Ministry were present in Court and by consent of the parties the instant petition was disposed of with observations reproduced supra. Hence, the reasons assigned by the alleged contemnors are not justified under the law, thus discarded. We are fortified with the observations made by the Hon'ble Supreme Court in the case of *Iftikharullah Malhi Vs. Chief Secretary and others* (1998 SCMR 736)

Looking through the above perspective and keeping in view the factual position of the case, we hereby infer that the Petitioner ought to have been considered for promotion from BS-18 to BS-19

by the Respondents in the light of decision rendered by the Hon'ble Supreme Court in the case of Iftikharullah Malhi supra. The explanation offered by the alleged contemnors, prima facie, is not tenable under the law.

In view of the facts and circumstances of the case and for the reasons alluded above Petitioner has made out a case for initiation of contempt proceedings against the alleged contemnors. Thus, we are inclined to continue with the proceedings on the listed application bearing CMA No.23863/2017 and issue notice to the alleged contemnors for further proceedings under the law.

Office is directed to issue show cause notice to the alleged contemnors within a period of 15 days.

The matter is adjourned to be fixed after 15 days.

JUDGE

Karachi
Dated:-12.12.2017.

JUDGE

Shafi Muhammad P.A