

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-5541 of 2016

Tanveer Ahmed Petitioner

Versus

Federation of Pakistan and 02 others Respondents

Dates of hearing: 11.04.2018 & 16.04.2018

Petitioner, Tanveer Ahmed, present in person.

Mr. Abdul Moiz Jaferii, Advocate for the Respondents No.02 & 03.

J U D G M E N T

ADNAN-UL-KARIM MEMON-J. Through the instant petition, the Petitioner has sought the following relief(s):-

- i. Admit this Petition, Call for the record and para wise comments from the Respondent for hearing and disposal of this Petition.*
- ii. The benefit allowed to seven personals referred in Para-5 and 6 of the facts of the case under the preview of Judgment passed by the Honourable Supreme Court of Pakistan in a case reported in 1996 SCMR 1185 in the interest of Justice.*
- iii. All back benefits may be allowed from 21-05-2010.*

2. Briefly the facts of the case are that Petitioner was appointed as Telephone Operator (BPS-07) on regular basis in

Telephone Department, in the year 1972. Thereafter, the petitioner was promoted as Engineering Supervisor (E.S) (Traffic) in BPS-11 in the year 2005. Subsequent thereof, petitioner qualified pre-promotion course in the year 2006 in accordance with the policy of Respondent-PTCL that having at least 05 (five) years regular service as Engineering Supervisor can be considered for placement in BPS-16 provided they have under gone/passed Pre-promotion Course or Class-II Exam Examination and meet with all other criteria of promotion admissible under the Rules. Petitioner has averred that Respondent-PTCL vide letter dated 31.10.2007, placed four colleagues of the petitioner in BPS-16 and in the year 2008, three more identical cases were promoted to BPS-16 w.e.f the dates as mentioned against each, vide Office Memo dated 15.04.2008. Petitioner has claimed that he is entitled for the same benefit as allowed to his colleagues and other similarly placed employees.

3. Upon notice, Respondents No.02 & 03 filed para-wise comments and denied the allegations.

4. Petitioner, Tanveer Ahmed, present in person has submitted that his case is not only covered under Article 25 of the Constitution of Pakistan 1973 but also covered by the Judgment passed by the Honourable Supreme Court of Pakistan in Civil Appeal No.345 of 1987 (Hameed Akhtar Niazi vs. Secretary Establishment Division Govt. of Pakistan) reported in (1996 SCMR 1185); that petitioner's case is also covered by the judgment passed by the Honorable Supreme Court of Pakistan in a case of Masood Ahmed Bhatti vs. PTCL (2012 SCMR 152); that after failure of local

efforts Petitioner preferred a Departmental Appeal on 04.01.2012 for seeking justice departmentally; that the said departmental appeal remained un-responded despite lapse of considerable period of 90 days. The petitioner then filed a Service Appeal No.02(K)/CS/2012 before the learned Federal Service Tribunal at Karachi on 30-04-2012 for same relief and petitioner's aforesaid Service Appeal which was dismissed vide Judgment dated 28.03.2016 for want of jurisdiction; that the Hon'ble Supreme Court of Pakistan on 15-08-2016 in a case bearing CPLA No.157 K of 2015 (Iqbal Hussain Vs. PTCL) has held that the terms and conditions of employees of Corporation on transfer to Company provided by Section 3 to 22 of Civil Servants Act, 1973 and protected by Section 9(2) of the Act, 1991 and Section 35(2), 36(a) and (b) of the Act, 1996 are essentially statutory and Violation of any of them would thus be amenable to the constitutional jurisdiction of this Court.

5. Mr. Abdul Moiz Jaferii, learned counsel for the respondents No.2 and 3 argued that the instant petition is not maintainable since the petitioner has failed to make out the case of infringement of any fundamental or statutory right. He argued that the petitioner was not promoted since he was a selected batch of individuals who were promoted before training when there was shortage of the staff at that time, whereas the training was done afterwards, hence the case of the Petitioner is not at par with those of the other employees. He stated that the Petitioner never undertook the mandatory pre-promotion course required for employees of the

Respondents No.2 & 3 to train them for a period of one year which would enable them to efficiently carry out their duties; that the prerequisite being that the said officer must have at least 05 years regular service as Engineering Supervisory (departmental) and at least 10 years' as Engineering (outsider) and any other criteria that is required to be met; that the petitioner did not have 5 years experience as an Engineering Supervisory as he was a Telephone Operator in BPS-7 scale before being promoted as an Engineering Supervisor in BPS-11 scale in 2005; that Petitioner has failed to prove that he is of the equivalent position as those who have been given the promotions and requisite benefits; that the employees entitled to be promoted under such a scheme were those employees who were not promoted for the past 12 years of being in service, whereas the petitioner was promoted in BPS-11 in 2005 and thus is not entitled to benefits as prayed by him; that there has been no violation of any fundamental right of the Petitioner; that the departmental appeal filed by the Petitioner was time barred and even the Federal Service Tribunal dismissed the Petitioner's Service Appeal vide judgment dated 28.03.2016. He finally submitted that the instant petition being devoid of any merit may be dismissed.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. As per the record the Petitioner was appointed as Officiating Telephone Operator w.e.f. 22.11.1972, consequent upon successful completion of PO-I /14 courses he joined his unit vide letter dated

08.06.1978. Petitioner also succeeded in completing IGE course vide letter dated 21.7.1997. The entire case of the petitioner is based upon the letter dated 14.07.2005 that he was promoted as Engineering Supervisor (Traffic) w.e.f 20.05.2005 against the vacant post of E.S Traffic (BPS-11) and posted under Divisional Engineer (Phones) Karachi. Petitioner claims that he has completed final exam of PP Course in the year 2006 for his further promotion and has completed five years continuous service in his existence cadre and entitled for grant of BPS-16, in view of benefits given to his colleagues vide letter dated 31.10.2007.

8. We have perused the inter office memo dated 2.8.2005 issued by the respondent-PTCL which reads as under:—

INTER OFFICE MEMO

No.ADMA/15-65/2005.

Islamabad dated 02.08.2005

Subject **GRANT OF B-16 TO ENGINEERING SUPERVISORS (BPS-11)**

The PTCL Management is pleased to allow B-16 to the Engineering Supervisors (BPS-11) with effect from 01.07.2005 in the light of following decisions:-

“The Engineering Supervisors, who have passed prescribed departmental examination and meet all the other criteria as per rules will be given B-16. The same policy would continue in the future also”.

2. With reference to the above following clarification is being issued for information and necessary action to all concerned:-

- a. Engineering Supervisors (BPS-11) having 5 years' service as supervisors (Departmental) and 10 years' service as Supervisors (outsider) be placed in B-16 provided that they have qualified written / qualifying examination regarding their promotion and they meet with other criteria of the promotion as per rules.
- b. Engineering Supervisor (B-16) having 15 years' regular service as supervisor already passed the qualifying

exam will be placed in B-17 and will remain as Engineering Supervisors till availability of the post of AS or SDO for his regular adjustment. Those engineering supervisor (BPS-11) already placed in B-17 on the basis of 15 years of service will remain in B-17 provided that they have passed the qualifying exam prior to this scheme.

- c. Engineering Supervisors (BPS-16) eligible to be promoted in next cadre (BPS-17) as AS/SDO on regular basis will continue to be promoted as usual after observing the other due formalities.

S/d
(MUHAMMAD TARIQ QAMAR)
GENERAL MANAGER
(EMPLOYEES RELATION)

9. Prima-facie the policy issued by the Respondent-PTCL clearly stipulated that petitioner has not completed the 12 years' service in the same scale on or before 31.12.2010 as it is an established principle of law that promotion is made upon eligibility, fitness and availability of vacancy which is the pre-requisite and thus no one including the Petitioner can claim promotion as a matter of right. This view finds support from the case of Secretary, Govt. of Punjab and other vs. Dr. Abid Iqbal and others [2009 PLC C.S. 431] and Government of Khyber Pakhtunkhawa and others vs. Hayat Hussain and others (2016 SCMR 1021).

10. Reverting to the claim of the petitioner that the colleagues of the petitioner were considered for departmental promotion and the petitioner had been left out. We have noticed that the names mentioned at page 21 of the memo of petition the Respondent-PTCL has made statement at the bar and refuted the claim of the petitioner and stated that they completed five years continuous service as Engineering Supervisory (Traffic) in BPS-11 and have

qualified pre-promotion course and also met all other criteria, therefore, were placed in BPS-16 with financial benefits w.e.f 01.06.2007, whereas Petitioner was promoted in BPS-11 w.e.f. 20.05.2005 and he did not qualify pre-promotion course as per policy as discussed supra and merely succeeding in training as pointed out by the petitioner does not mean that the petitioner has become eligible for promotion to the next rank. The Petitioner agitate that he was not considered, for profarma promotion even after his retirement as per his entitlement, in the light of decision rendered by the Hon'ble Supreme Court in the case of Hameed Akhtar Niazi (1996 SCMR 1185). Perusal of the record explicitly show that the case of the petitioner was considered by the respondents before his retirement from service and decided vide order dated 12.07.2011, within parameters of law. So far as proforma promotion is concerned, law provides that a retired Civil/Public Servant cannot be granted promotion from back date as per the dicta laid down by the Hon'ble Supreme Court in the case of Government of Pakistan and other Vs. Hameed Akhtar Niazi and other (PLD 2003 SC 110).

11. In the light of judgment rendered by the Hon'ble Supreme Court in the case of Hameed Akhtar Niazi supra, we are clear in our mind that promotion from back date to the retired Civil/Public Servant cannot be granted, except under certain exceptions as provided under the law which in the present case are lacking, particularly when the Petitioner stood retired from service on attaining the age of superannuation in the year 2012, whereas the

Appeal of petitioner was rejected by the respondents vide Order dated 12.7.2011 and the petitioner has not impugned the aforesaid appellate order passed by the respondents before the competent forum.

12. We, on the basis of contentions of the parties and on the basis of material produced before us, have reached the conclusion that the case of petitioner does not fall within the ambit of the decision rendered by the Honorable Supreme Court of Pakistan in the case of Hameed Akhtar Niazi (1996 SCMR 1185) supra. In absence of the facts noted above, the petitioner in our view has failed to make out a case of proforma promotion as the petitioner has attained the age of superannuation in the year 2012, therefore, no proforma promotion can be granted to him at this stage.

13. In view of the foregoing, the Constitutional Petition in hand is dismissed with no order as to cost along with all the pending application(s).

Karachi
Dated: 20.4.2018.

JUDGE

JUDGE

Nadir P/A