

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. D-4132 of 2017

Present: -
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Agha Faisal

Petitioner : Through Mr. Ahmed Ali Ghumro,
Advocate

For State : Mr. Shahryar Mehar, Assistant
Advocate General.

Date of hearing 07.08.2018
*_*_*_*_*

JUDGMENT

ADNAN-UL-KARIM MEMON, J: - Through the captioned Constitution petition, Petitioner has invoked the Constitutional jurisdiction of this Court under the Article 199 of Constitution of Islamic Republic of Pakistan, 1973 and has sought the following relief(s):-

- (a) To direct the respondent No.2 to issue notification for the promotion of the petitioner to the post of Deputy Director Admin (BPS-18), which was recommended by the Departmental Promotion Committee, held in accordance with law and approved by the competent authority.***
- (b) To hold that the Departmental Promotion Committee, held in accordance with law, has approved the promotion of the petitioner on 30.10.2014 and competent authority has approved the recommendation of the Departmental Promotion Committee on 20.03.2015 for the promotion of the petitioner to the post of Deputy Director (BPS-18) vide letter dated 20.03.2015.***
- (c) To direct the respondent No.2 to issue notification Under Rule 7-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, because the Departmental Promotion Committee approved the promotion of the petitioner on 30.12.2014, therefore, the petitioner is entitled for the promotion from the date of the recommendation of the Departmental Promotion Committee, held in accordance with law.***

2. The relevant facts of the case as spelt-out from the pleadings of the parties are that the Petitioner was initially appointed as Office Assistant in BPS-11 in the Agriculture Extension Wing of Agriculture, Supply and Prices Department, Government of Sindh in the year 1992, and was promoted to the post of Accounts Officer in BPS-17 in the year 2003. Petitioner has submitted that, the Respondents are bound to implement the minutes of meeting of Departmental Promotion Committee (*herein after referred to as 'DPC'*) held on 30.12.2014. Petitioner has submitted that his case was recommended by DPC for promotion to the post of Deputy Director Admin in BPS-18, Agriculture Extension Wing, which was approved by the Chief Secretary/Respondent No.1 vide letter dated 20.03.2015 but the Respondent No.2 avoided issuing the Notification for promotion of the Petitioner. Petitioner has submitted that he approached the Respondent No.2 by moving an application on 29.02.2016 for issuance of Notification for his promotion but no Notification for his promotion was issued by the Respondent No.2. The Petitioner being aggrieved by and dissatisfied with the delaying tactics of the Respondents for issuance of Notification for his promotion has filed the instant petition on 12.6.2017.

3. Upon notice, para-wise comments were filed by the Respondent No.2

4. Mr. Ahmed Ali Ghumro, learned counsel for the Petitioner has argued that act of Respondent No.3 for not issuing the Notification for promotion of the Petitioner to the post of Deputy Director Admin in BPS-18 is based on malafide intention. He next argued that the DPC recommended promotion of the Petitioner after scrutinizing the relevant record; that the Respondent No.2 has to comply with the recommendations of the DPC approved by the Competent Authority. Learned counsel has further added that as per Rule 7-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, the Respondent No.2 cannot withhold promotion of the Petitioner; that during pendency of disciplinary proceedings Petitioner attained the age of superannuation vide Notification dated 30.08.2017. Learned counsel for the Petitioner lastly prayed that the Petitioner is entitled for profarma promotion in BPS-18 after his retirement from service.

5. Mr. Shehryar Mahar learned Assistant Advocate General has submitted that the instant Petition is not maintainable in law, however he admitted the factum of the appointment and further promotion of the Petitioner in BS-18 in Agriculture Extension Wing through DPC in its meeting held on 20.12.2014. The recommendation of DPC was forwarded to the Competent Authority i.e. Chief Secretary, Sindh for approval on 05.01.2015, which was later on approved on 20.03.2015. Learned AAG in support of his contention has taken the plea

that the service of the Petitioner was placed under suspension vide Notification dated 11.03.2015 and enquiry/ Disciplinary proceedings were initiated against him; that on the basis of enquiry report, a Show Cause Notice was served upon the Petitioner and the Petitioner submitted reply thereof and finally he was reinstated in service by the Competent Authority; that the matter was re-enquired by the Competent Authority on the charges leveled against the Petitioner. The Enquiry Officer reported that the Petitioner has admitted that he had issued the challans due to lack of knowledge of ban imposed by the Government of Sindh and requested for pardon. The Enquiry Officer opined that the Administrative Department may take necessary action as deem appropriate but till date no action has been taken by the Competent Authority. The approval of the Competent Authority, conveying his promotion, was received on 20.03.2015, whereas on account of misappropriation and financial loss to the exchequer, Petitioner's promotion could not be notified. He lastly prayed for dismissal of the instant petition.

6. We have considered the submissions of the parties and have also gone through the entire record carefully with their assistance.

7. The basic primordial questions require our determination, which are as follows:

i) Whether, any civil servant superannuates after the recommendations of the Departmental Promotion

Committee before issuing the notification of promotion is entitled for profarma promotion?

(ii) Whether, after recommendation of promotion of the petitioner in BS-18 by the Departmental Promotion Committee and approved by the competent authority his promotion notification can be withheld mere pendency of enquiry proceedings?

8. We have also gone through the Order dated 20.3.2015 of the Respondent No.3 who has decided the matter in favour of the Petitioner and an excerpt of the same is reproduced here for the sake of convenience:

**Government of Sindh
Service General Administration &
Consideration Department**

**Sub:- MINUTES OF THE MEETING OF DEPARTMENTAL
PROMOTION COMMITTEE HELD ON
30.12.2014.**

The Secretary, Agriculture, Supply & Prices Department, Government of Sindh, Karachi may kindly refer to the U.O. No. SO(A-1)1(2)/96(c) (Prov); dated 22.02.2015, on the subject noted above.

2. The Chief Secretary, Sindh has been pleased to approve the recommendation of the Departmental Promotion committee of Agriculture, Supply & Prices Department regarding promotion of Mr. Shahnawaz Kutrio, admin-Cum-Accounts Officer (BS-17) to the post of Deputy Director (Admin) (BS-18), Agriculture Extension Wing of Agriculture, supply & Prices Department.

**(Abdul Razaque Saand)
Section Officer-III**

9. Perusal of the above note-sheet clearly depicts that the promotion of the Petitioner in BS-18 was approved by the Competent Authority and the same was communicated to the Respondent-Department on 20.3.2015.

10. To appreciate the controversy in proper perspective, we think it appropriate to have a glance on the Rule 7-A the Sindh

Civil Servants (Appointment, Promotion and Transfer) Rules, 1974.

“7-A -1) The appointing Authority may approve the promotion of an Officer or official from the date on which the recommendation of the Provincial Selection Board or, as the case may be, the Departmental Promotion Committee is made. (2) Notwithstanding anything contained in rule 31 of the Sindh Civil Services Rules, the Officer or official who expires or superannuates after the recommendations of the Provincial

Selection Board of the Departmental Promotion Committee and before issuing the notification of promotion shall stand exempted from assumption of the charge of the higher post.

(3) The Accountant General in the case of an Officer and an officer authorized in this behalf in the case of an official will give a certificate to the effect that the officer or official has expired or superannuated.]”

11. In the light of above legal position, we are of the considered view that a civil servant is entitled for proforma promotion, once during his service his promotion is approved by the Competent Authority and in the meanwhile if he superannuates, he is entitled for all benefits as admissible under the law. We are fortified by the decision rendered by the Hon’ble Supreme Court of Pakistan in the case of *Iftikharullah Malih Vs. Chief Secretary and others* (1998 SCMR 736) and *Askari Hasnain Vs. Secretary Establishment & others* (2016 SCMR 871).

12. Touching the second proposition as discussed in the preceding paragraph, we have reached at the conclusion that an enquiry proceedings against the civil servant can be initiated and culminated during his tenure of service and after his retirement from service the proceedings abates for the simple

reason that after his retirement he ceased to be a civil servant and departmental/disciplinary proceedings cannot be initiated against non-civil servant. During the course of arguments we have been informed that after reinstatement of the Petitioner in service another enquiry was initiated against him but the same could not be concluded to its logical end and in the meantime Petitioner reached at the age of superannuation, thus we are of the considered view that the department should have taken pains to take action against the Petitioner well within time in accordance with law but no action was taken at the relevant time period, therefore, at this juncture no disciplinary proceedings can be initiated against retired civil servant on the alleged allegations.

13. In the light of above facts and circumstances of the case the matter is remanded to the Competent Authority of Sindh Government for fresh decision on the issue of proforma promotion of the Petitioner in BS-18 in accordance with law, within a period of one month, from the date of receipt of the Judgment of this Court.

14. The Captioned petition is allowed to the aforesaid extent with no order as to costs.

JUDGE

JUDGE

Karachi
Dated: - .13. 08.2018

Shafi Muhammad P.A