

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Sadiq Hussain Bhatti
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-634 of 2013

Muhammad IqbalPetitioner

Versus

Chairman National Accountability
Bureau and others Respondents

Date of hearing: 19.10.2017

Mr. Irfan Mir Halepota Advocate for the Petitioner.
Mr. Muhammad Akram Javed, ASDPG, NAB.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioner seeks direction to the Respondents to promote him in BPS-18 w.e.f. 31.12.2003 along with his batch-mates and he may further be promoted to BPS-19 w.e.f. 29.12.2008 with all back benefits and privileges and admissible under the rules for pension and retirement benefits. With further direction to the Respondent to re-fix pay and pension as per fresh promotion to BPS-18 and BPS-19 as admissible under the rules.

2. Brief facts of the case are that Petitioner was initially appointed as in provincial Secretariat Service Group in the year 1971. Petitioner averred that his services were borrowed on deputation by the National Accountability Bureau vide Notification dated 04.07.2000. It is added by the petitioner that petitioner was absorbed as Assistant Director BS-17 by the National Accountability Bureau vide Notification dated 30.07.2003. Petitioner averred that petitioner was deferred for promotion in the year 2003 whereas his batch-met were promoted to their next grade. As per petitioner he preferred an appeal dated 26.02.2004 before the Chairman National Accountability Bureau requesting therein that in case the petitioner does not have required length of qualifying service in BPS-17 for promotion to be BPS-18, then 1/2 of the BPS-16 service may be computed and even then does not qualify, 1/4th of BPS-15 and below service may be computed as provided under the relevant promotion rules. Petitioner added that he was promoted in BPS-18 w.e.f. 2008 vide Notification dated 04.06.2008. It is asserted by him that the colleagues of the petitioner were promoted to BPS-19 w.e.f. 31.12.2008. Petitioner added that he attained the age of superannuation and retired from service of the Respondent w.e.f. 01.02.2010. Petitioner has further averred that petitioner is entitled to be promoted w.e.f. 31.12.2003 as Deputy Director BPS-18 in view of promotion in its batch-met therefore his past service is required to be counted towards promotion which is not done in the case of petitioner thereby discrimination was meted out with the petitioner. Petitioner claims that he filed representation dated 06.06.2011 followed by reminders dated 09.03.2012 but the same have not been replied.

Petitioner, being aggrieved by and dissatisfied with the impugned in action on the part of Respondents, has approached this court on 12.02.2013.

3. Mr. Irfan Mir Halepota, learned counsel for petitioner has contended that the Respondents are bound by law to treat the petitioner in accordance with law; that the Respondents have opted to treat the petitioner in discriminatory manner which is against the established provision of law and Constitution; that due to illegal, unlawful, discriminatory and bias attitude of Respondents, petitioner is adversely effected and has been deprived from his legal / lawful right; that petitioner is entitled to be promoted with effect from 31.12.2003 in BPS-18 simultaneously in BPS-19 w.e.f 29.12.2008 in view of promotion of his batch-met the past service of the petitioner is required to be counted towards promotion which is not done in the matter of petitioner. He lastly prayed for allowing the petition.

4. Mr. Akram Jawed, learned Assistant Deputy Prosecutor General NAB, representing the Respondents, has argued that the petitioner has retired from service w.e.f. 01.10.2010, therefore, the petitioner cannot be granted profarma promotion; that the instant petition is not maintainable in law which suffers from latches that the petitioner was inducted in service on 30.07.2003 through appointment by way of transfer as he was previously holding the post of Superintendent before the joining the NAB and thereafter he was promoted by his previous department to the post of Assistant Director BPS-17 on regular basis w.e.f. 01.03.2003 during his deputation period in NAB; that did not possess the required length of service that is 5 years' service in BPS-17 as per

Rule 3.25 of NAB terms and conditions 2002; that conditions for promotion in NAB's method and qualification 2002 two seniors of the petitioner also not considered for promotion due to the same reason; that representation of the petitioner was considered and same was regretted; that the officers inducted in the year 2013 were promoted on 15.10.2008 and 29.12.2008 and deferred due to lack of requisite length of service by the selection Board; that the previous service rendered in other departments cannot be counted for promotion against the post in NAB; that no discrimination to the petitioner has been done by the Respondents; that the petitioner does not fulfill the criteria for promotion to the selection Board.

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

6. Perusal of Rule 3.25 of terms and conditions of service Rule 2002 provides as under:-

3.25 Fulfillment of Minimum Service (Annex-IV)

1. *promotion to posts in basic pay scale 18 and above shall be subject to fulfillment of minimum length of service by the employee as specified below:*

<i>For promotion to posts in basic pay scale 18</i>	<i>5 years in basic pay scale 17</i>
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<i>For promotion to posts in basic pay scale 19</i>	<i>12 years' service in BPS 17 and above</i>
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<i>For promotion to posts in basic pay scale 20</i>	<i>17 years' service in BPS 17 and above</i>
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For promotion to posts

in basic pay scale 21

*22 years' service in BPS
17 and above*

Provided that:-

- a) *When initial appointment of a person not being an employee of the NAB takes place in a post in basic pay scale 18, 19 or 20 the length of service specified above shall be reduced for the purpose of promotion to higher posts as specified below:-*

<i>Basic pay scale 18</i>	<i>5 years</i>
<i>Basic pay scale 19</i>	<i>5 years</i>
<i>Basic pay scale 20</i>	<i>5 years</i>

- b) *Where initial appointment of a person already in the employment of the NAB takes place in a post in basic pay scale 18,19 or 20, the length of service specified for promotion shall be reduced for the purpose of promotion to higher posts as in (a) above.*

- c) *When first appointment of a person other than a person in (b) above was made in the NAB in a post in basic pay scale 16 or below; one half service in basic pay scale 16 and one fourth in basic pay scale 15 and below may be counted as service in basic pay scale 17 for computing length of service for promotion only.*

2. *Periods of extra ordinary leave or any other period of service which is not reckoned as service qualifying for pension shall not be counted towards prescribed length of service for promotion.*

3.26. Conditions prescribed for promotion to Selection posts (Annex-IV)

For promotion to selection posts in BPS-19 and above employee must fulfill the following conditions as prescribed from time to time by the Government:

- (i) Quality Service.*
- (ii) Eligibility threshold (minimum score/marks in CRs)*
- (iii) Qualifications as prescribed by Methods of Appointment and Qualification (MAQ)*
- (iv) Relevance of Experience.*
- (v) Quality or output of work and integrity.*
- (vi) Training etc.*

7. We have noted that consequent upon superannuation of the petitioner, he stood retired from the service of Respondent vide Notification dated 03.03.2009.

8. Record reflects that petitioner was inducted on regular service of Respondents in the year 2003 in BPS-17 he was promoted in BPS-18 w.e.f 31.12.2003.

9. The claim of the Petitioner is refuted by the Respondent on the premise that that for promotion to the higher grade in BPS-18 five years' service in grade 17 is qualifying service for promotion, whereas the petitioner has no qualifying service for promotion as he was appointed on 30.07.2003 and his promotion was considered as Deputy Director BPS-18 w.e.f. 23.05.2008, which explicitly shows the lack of qualifying service for promotion for grade 19, twelve years' service in grade 17 and above is requirement of law and petitioner does not meet the said criteria. It is well established principle in service jurisprudence that prescribed length of service for promotion to BS-19 is 12 years in BS-17 and above. The petitioner stood retired from the service on 03.03.2009 and it is well settled law that promotion from the back date to the retire Civil Servant/Public Servant cannot be granted; that the petitioner filed the instant petition 12.02.2013, which suffers from latches, therefore, he is not entitled for the relief claimed in the instant petition. Besides on merit, the petitioner has no case for further consideration. The law on the above proposition is very clear as the Hon'ble Apex Court has already enunciated the

above principle of law in the case of ***Government of Pakistan and others vs. Hameed Akhter Niazi and others (PLD 2003 SC 110)***

10. In the light of above facts and circumstances of the case, the instant petition is meritless, which is accordingly dismissed along with pending applications.

11. These are the reasons of our short order announced in Court, today i.e. 19.10.2017, whereby we dismissed the instant petition.

Karachi
Dated:

JUDGE

JUDGE