

**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-2657of 2016**

Naveed Ahmed Awan

Petitioner

Versus

Province of Sindh & another

Respondents

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**Date of hearing: 27.11.2017**

Mr. Waleed Khanzada Advocate for the Petitioner.

Mr. Abdul Jalil Zubedi, learned AAG along with Sohail Ahmed Qureshi, Additional Secretary SGA&CD, Government of Sindh.

**O R D E R**

**ADNAN-UL-KARIM MEMON, J:-** The instant petition was disposed of by this Court vide Order dated 09.09.2016 with the following observations:-

*“The working paper of the petitioner ACRs is available at page-33, which is commencing from 1999 to 2015. We have seen that mostly the performance of the petitioner is rated good and at one place it is excellent. However, in the same working paper two ACRs are not available for the year 2007 and 2012, but in the reply of the respondent No.2 three ACRs are said to be missing. We have also seen the reply; the main reason for the deferment is opinion of some Board Members that the petitioner did not possess the required capability or efficiency to hold a higher independent post of BS-20. Nothing is mentioned in the*

*reply to substantiate this type of allegation in the Provincial Selection Board meeting while the case of promotion is considered on the basis of ACRs and not on the basis of personal opinion of members otherwise the purpose of ACR would be redundant.*

*Since the learned AAG submits that the case of the Petitioner will be considered in the next Provincial Selection Board meeting, therefore, this petition is disposed of with the directions to the respondents to consider the promotion case of the petitioner from BS-19 to BS-20 in the forthcoming meeting of Provincial Selection Board which shall be convened within six months. Copy of this order shall be transmitted to the Chief Secretary Sindh and Secretary, Service, General Administration and Coordination Department, Government of Sindh for compliance.”*

2. On 17.04.2017, the Petitioner filed an Application (CMA 11539/2017) under Order Section 151 CPC r/w Order XXXIX Rule 2 (3) read with section 3 and 5 of the Contempt of Court Ordinance 2003 read with Article 204 of the Constitution of Pakistan 1973, praying therein to initiate the Contempt Proceedings against the alleged Contemnors, who willfully disobeyed and disregarded the Order dated 09.05.2016 and 09.09.2016, passed by this Court.

3. The alleged Contemnors filed comments and denied the allegations with the assertion that the Selection Board-I was appraised of the fact that during the last meeting of the Provincial Selection Board-I, held on 04.05.2016 some of the Board Members, under whom the petitioner had worked, observed that the Petitioner did not possess the required capability and efficiency to hold a higher independent post of BS-20. Hence, the Provincial Selection Board-I did not give him required marks for promotion, as per Rules/policy. Accordingly, the Board unanimously decided

to defer the Petitioner for promotion, in Order to give him more chance to improve his efficiency.

4. Mr. Waleed Khanzada, learned counsel for the Petitioner argued that the alleged Contemnors, despite clear directions have not complied with the above Orders passed by this Court in its letter and spirit. He further contended that the alleged contemnors failed to consider the petitioner for promotion from BS-19 to BS-20 on the same grounds which were turned down by this Court vide order dated 9.9.2016; that the petitioner had been rated as very good and excellent and obtained more marks than all other promotes, which is evident from the overall grading sheets, which speaks volumes of the malafide intentions of the contemnors; that the contemnors in collusion with each other delayed the promotion of the petitioner for ulterior motives to accommodate their blue eyed officers, especially junior most officer namely Khalid Chachar, real brother of the member of the promotion committee, despite the fact that his ACRs were not completed; that the respondents / contemnors in disregard of the orders dated 09.05.2016 and 09.09.2016 did not promote the petitioner form BS-19 to BS-20 by taking the same plea which has already been discarded by this court, therefore the contentions of the contemnors are untenable. learned counsel emphasized that this Court vide order dated 13.09.2017, by discarding the version of the contemnors, directed them to place the case of the petitioner before the Provincial Selection Board-1 afresh and Provincial Selection Board was further directed to consider the case of the petitioner in the light of

the Judgment passed by the Hon'ble Supreme Court rendered in the case of Federation of Pakistan Vs. Dr. Muhammad Arif (2017 SCMR 969) within a period of 45 days. Learned Counsel next contended that the respondents again deferred the petitioner for promotion till December 2017, without any plausible explanation. Learned counsel asserted that all steps taken by the respondents/ alleged contemnors are in violation of orders passed by this Court and no compliance report has been submitted by the alleged contemnors. He lastly prayed for strict action is required to be taken against the alleged contemnors.

5. Mr. Abdul Jalil Zubedi, learned AAG has submitted statement duly signed by Chief Secretary Sind, which is taken on record. learned AAG argued that the case of the Petitioner was placed before the Provincial Selection Board-I afresh in its meeting held on 16.11.2017 headed by the Chief Minister, Sindh to consider the case of the Petitioner, in view of the Judgment passed by the Hon'ble Supreme Court, discussed supra; that the Selection Board-I considered the case of the petitioner in view of revised objective assessment forms / policy circulated by the Establishment Division Government of Pakistan; that the Board Members examined the service profile of the Petitioner and observed that he did not possess the required capability and efficiency to hold a higher management independent post of BS-20; that his quality and output of work and the performance of the current year requires to be assessed; that the Board placed him in category "C" in line with prescribed profarma of objective

assessment and bringing the total marks to 68.76 which is below the requisite qualifying score of 70 , as per promotion policy; that Board unanimously decided to defer the petitioner instead of superseding him for promotion till December 2017 and a post for him is kept reserved; that Petitioner's performance report for the year 2017 shall be evaluated / assessed by the PSB-I and his promotion can be considered in the next meeting. Learned AAG lastly prayed that the orders passed by this court in the instant Petition have been fully complied with in its letter and spirit, therefore, no contempt proceeding can be initiated against alleged contemnors at this stage.

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

7. This Court while disposing of the instant Petition vide order dated 09.09.2016, directed the respondents to consider the promotion case of the Petitioner from BS-19 to BS-20 in the forthcoming meeting of Provincial Selection Board.

8. Perusal of record shows that the Respondents did not challenge the order dated 09.09.2016 passed by this Court before any forum under the law and the same has attained finality. However, this Court passed several orders for compliance, but nothing could be done. The respondents submitted statement on 27.11.2017 before this Court and attempted to justify their action by placing on record minutes of the meeting of the Provincial

Selection Board- 1 held on 04.10.2017 and 16.11.2017 under the Chairmanship of the Chief Minister, Sindh to consider the promotion case of the petitioner from BS-19 to BS-20. Record further reflects that Petitioner was superseded on 11.04.2017 for promotion to BS-20 in view of the observations that Petitioner did not possess the required capability and efficiency to hold an independent post and still needs to improve his performance, the SMC course report contained remarks that the petitioner has limited potential for promotion within his own service group. The Board members examined the service profile of the petitioner discussed his variety of work and relevant experience, professional expertise, his functional ability and leadership and observed that he did not possess the required capability and efficiency to hold a higher management independent post of BS-20 and his quality and output of work and performance of the current year requires to be assessed, therefore, he was awarded four marks and his case was placed in "C" category bringing the total marks to 68.76, which is below the requisite qualifying scores of 70 as per promotion policy, however the Board unanimously decided to defer the petitioner instead of superseding him for promotion till December 2017 and a post for him has been kept reserved to evaluate / assess his performance for his promotion in the next meeting.

9. In the light of above averments, the Petitioner in his Contempt Application has highlighted the violation of the order dated 09.09.2016 passed by this Court. Now, the question before us as to whether in the Contempt Proceedings, we can enlarge the

scope and allow the parties to argue the matter on merits of the case?

10. We have also gone through the Contempt Application, the reply of the alleged Contemnors to the effect that it had complied with the aforesaid orders of this Court in its letter and spirit.

11. We are cognizant of the fact that this Court while disposing of the matter directed the respondents to consider the promotion case of the petitioner from BS-19 to BS-20 and the Department considered the request of the petitioner and declined the same.

12. We are of the view that in promotion cases there is two pronged criteria, one being eligibility for promotion and the other being fitness for promotion, while the former relates to the terms and conditions of service, the latter is a subjective evaluation made on the basis of objective criteria. We are conscious that the promotion depends upon eligibility, fitness and availability of vacancy and no one including the Petitioners can claim promotion as matter of right. It is for the Competent Authority, who could make appointments, determine, eligibility, fitness and promotion and other ancillary matters relating to the terms and conditions of the employees as prescribed under the Act and Rules framed there under.

13. The explanation offered by the respondents vide statement dated 27.11.2017, prima facie, is tenable under the law as the petitioner was considered for the promotion from BS-19 to BS-20

in the Provincial Selection Board-1 on 04.10.2017 and 16.11.2017 in compliance of order passed by this Court dated 09.09.2016. The Petitioner failed to point out any malice on the part of alleged contemnors or infringement of his fundamental right in promotion, warranting interference of this Court to take action against the alleged contemnors under Article 204 of the Constitution.

14. In view of the facts and circumstances of the case and for the reasons alluded as above, we are satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 09.09.2016 and 13.09.2017 passed by this Court has been made in its letter and spirit.

15. It appears from the statement filed by the alleged contemnors that the question of promotion of the petitioner is still under consideration before the provincial selection Board-1, as the same has been deferred till December 2017 and a post for the petitioner has been kept reserved to evaluate / assess the performance of the petitioner for his promotion in the next meeting, therefore, at this juncture, no case for initiating contempt proceedings is made out against the alleged contemnors.

16. Thus, we are not minded to proceed with any further on the listed application bearing CMA No.11539/2017, having no merits, is accordingly dismissed. CMA No.11541/2017 under Section XXXIX Rule 1 & 2 CPC is also disposed of accordingly. However if the petitioner is aggrieved by and dissatisfied with the decision of



the provincial selection board-1, he is at liberty to avail the remedy as provided in law.

JUDGE

JUDGE

**Shafi Muhammad P.A**