

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D- 8408 of 2018

Present

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Nazir Ahmed Soomro Petitioner

V E R S U S

Federation of Pakistan and others Respondents

Date of hearing: 17.12.2018

Mr. Abdul Ghaffar, Advocate for the Petitioner.

O R D E R

Through the captioned Petition, basically the Petitioner is seeking directions to the Respondent No.2 to grant him ante-dated promotion and seniority in the following manner:

- (i) Traffic Inspector (IInd Grade) w.e.f. 2005**
- (ii) Traffic Inspector (Ist Grade) w.e.f.2009**
- (iii) Traffic Officer BPS-17 w.e.f 2012**
- (iv) Assistant Traffic Manager (BPS-18) in the year of 2016, with all back benefits / seniority to the post attached.**

2. Mr. Abdul Ghaffar, learned counsel for the Petitioner has argued that Petitioner was initially appointed in the year 1986 in KPT on regular basis as Traffic Supervisor (IInd Grade) and was promoted as Traffic Supervisor (1st Grade) and thereafter in the year 2016 he was promoted as Traffic Inspector (IInd Grade) and finally in the year 2017 he was promoted as Traffic Inspector (1st Grade). He next argued that as per Regulation No.6.(e) of KPT Officers Recruitment / Appointments, Seniority and Promotion Regulations, 2011, provides the confirmation of an officer in a cadre or post shall take effect from the date of

occurrence of the permanent vacancy in that cadre or post or from the date of continuous officiating in such cadre or post, whichever is later, therefore, the Petitioner is entitled to be granted / awarded ante-dated seniority and promotion as discusses supra. He next argued that the KPT administration has already granted ante-dated promotion to various officials in various disciplines which he has disclosed in paragraph 12 of the memo of petition; that the Competent Authority of KPT has approved to assign duties on the post of Traffic Officer in BPS-16 on acting charge basis and posted as Traffic Officers of the Fleet Section and T.T.I at East Wharf vide letter dated 24.7.2018; that the Petitioner moved an application to the Competent Authority and claimed his entitlement and sought order on his representation on the aforesaid issue which has not yet been decided; that the promotion of the Petitioner vide letter dated 12.8.2016 and confirmed on 13.3.2017 for the post of Traffic Inspector (IInd Grade) whereas the said post was vacant since 1996 and the Petitioner was fully eligible to be considered and promoted on the said post w.e.f. 1996; that valuable rights of the Petitioner have been adversely affected due to non-action of the Respondent-KPT to grant ante-dated promotion on the aforesaid post; that the Petitioner is entitled for similar treatment as meted out with the other officials of KPT who have already been granted ante-dated promotion.

3. We queried from the learned counsel as to how the instant Petition is maintainable, when this Court vide Judgment dated 1.11.2018 in C.P No.D-4389/2016 has already directed the KPT to decide afresh the matter between the parties. An excerpt of the order is as under:-

“21. We, on the basis of contentions of the parties with the material produced before us, have reached the conclusion that the entire case is based upon the issue of seniority amongst the Petitioners and private Respondents, which cannot be gone into by this Court in exercising of its constitutional jurisdiction and this petition is disposed of with direction to the Respondent No.2 to decide afresh the matter between the parties, within a period of two months from the date of decision of this Court and pass a speaking order after providing ample opportunity of hearing to the Petitioners and private respondents on the Following points:

(i) Regularization of service of Petitioners and Respondents in accordance with the dicta laid down by the Hon’ble Supreme Court of Pakistan vide order dated 11.03.2016 passed in Civil Appeals No. 247-K and 275-K of 2013 (re-Nazir Ahmed Soomro and others Vs. Federation of Pakistan and others) and Khalid Mahmood vs. S.M. Ilyas Zaidi (1993 SCMR 19); and order dated 24.03.2017 passed by the Hon’ble Supreme Court in Civil Petition No. 86-K of 2016.

He in reply to the query has submitted that since no adverse order was passed against the Petitioner, therefore, he has not called in question the order passed by this Court in the aforesaid Petition before the Hon’ble Supreme Court of Pakistan. He next submitted that the Petitioner has simply sought ante-dated promotion and seniority as per the prayer clause (i) of the memo of petition. We are not satisfied with the assertion of the learned counsel for the Petitioner for the simple reason that we have already directed the Competent Authority of the KPT to decide afresh the matter between the parties, as discussed supra, in accordance with dicta laid down by the Hon’ble Supreme Court vide order dated 11.3.2016 passed in Civil Appeals No.247-K & 275-K of 2013. It is noted that the Petitioner was one of the respondent in the aforesaid petition, therefore, the KPT was required to comply with the directions issued by this Court in the aforesaid matter. In support of his contention, the learned counsel relied upon the case of the Province of Punjab vs. Syed Muhammad Ashraf (1973 SCMR 304) and

argued that when a civil servant for no fault of his own was wrongly prevented from rendering service to the employer in higher post to which he was entitled should be given salary for the higher post. He next relied upon the case of Government of Punjab vs. Rana Ghulam Sarwar Khan (1997 SCMR 515) and argued that when the vacancy was available on specified date the Petitioner should have been promoted from that date. He next relied upon the case of Tariq Aziz & others vs. Muhammad Khan and others (2001 PLC (C.S) 1242 and argued that the seniority and promotion of the Petitioner should have been considered from the date when the vacancy occurred. He next relied upon the case of Abdul Hameed vs. Government of Punjab (2008 PLC (C.S) 1260, Khalid Mehmood vs. Chief Secretary & others (2013 PLC (C.S)786), WAPDA through Chairman and others vs. Abdul Ghaffar & others (2018 SCMR 380) and argued that the Petitioner is entitled for the benefit of promotion and seniority when his colleagues were granted the similar relief and further relied upon the case of Government of NWFP vs. Buner Khan and others (1985 SCMR 1158).

4. We have heard the learned counsel for the Petitioner and have perused the material available on record and the case law relied upon by him.

5. Record reflects that the Petitioner, in a very short span of time was granted two consecutive promotions i.e. Traffic Inspector -II (KPT PS-7) w.e.f. 12.8.2016 and Traffic Inspector-I (KPT PS-8) w.e.f. 31.5.2017 respectively. Record further reflects that the request of Petitioner was declined by the Respondent-KPT vide letter dated 12.10.2017 on the aforesaid premise. Though the learned counsel for

the Petitioner has pointed out that his representation vide letter dated 14.11.2018 has not yet been decided by the Competent Authority of KPT and the Respondent-KPT has issued a letter dated 19.11.2018 only, however be that as it may, we intend to decide this matter in the light of findings given by the Hon'ble Supreme Court of Pakistan in Civil Appeal No.274-K & 275-K of 2013 vide order dated 11.3.2016 and the observation made by this Court in C.P No.D-4389 of 2016 vide Judgment dated 01.11.2018, as discussed supra.

6. We have noticed that on the aforesaid issue, this Court vide Judgment dated 03.02.2017 passed in C.P. No.D-6234 of 2014 has already decided the matter of retrospective seniority, which reads as under:-

“31. We have also gone through the Order of the Respondent No.2, who has decided the matter as per the directions of this Court and an excerpt of the same is reproduced here for the sake of convenience:

“Regularization w.e.f the date of induction: The officer was appointed as Trainee Officer on Adhoc basis in Traffic Department w.e.f 28.11.1989, his services regularized w.e.f 01.06.1991 vide BR No. 131 (Item-VI) dated 12.10.1995. Regularization of service from the date of induction (Adhoc basis) is not counted as regular service as per Digest of Service Laws.

Promotion of the petitioner and his eligibility: Posting letter dt. 22.06.2004 issued by Traffic Manager was a stop gap arrangement and there is no rule to consider promotion from retrospective effect, further the said order was issued without following the procedure prescribed in Section 23 and 24 of KPT Act and as per KPT Officers Recruitment/Appointment, Seniority and Promotion Regulations, 2011. “Acting charge appointment shall not confer any right for regular promotion to the post held on acting charge basis.”

32. Admittedly, the Petitioner was appointed as Trainee Officer on adhoc basis on 28.11.1989 and his services were regularized through Resolution No. 131 dated 12.10.1995, with effect from 1.6.1991. We are mindful of the fact that ad-hoc appointments are always made without adopting due process of law and these are virtually made as a stopgap arrangement where selection is made in deviation from the normal course. It is also an established principle that an ad-hoc employee does not carry any vested right to be regularized in service from the date of his induction.

33. Further, there is no ambiguity in our mind that the period of ad-hoc appointment cannot be counted towards service, the seniority in grade is to be taken effect from the date of regular appointment to a post and it cannot be conferred retrospectively. This reduces to the dictum that an ad-hoc appointee would only be entitled to seniority from the date of his regularization and not from the date of initial appointment. Reference is made to the case of Nadir Shah, S.D.O Minor Canal Cell Irrigation Sub-Division, Dera Murad Jamali and 2 others vs. Secretary, Irrigation and

Power Department Baluchistan, Quetta and 7 others (2003 PLC (C.S) 961).

34. We have also noted that the Petitioner on 16.08.2008 was promoted as Assistant Traffic Manager (BPS-18) in Traffic Department and that on 22.06.2004 the Petitioner was given the charge to look after other duties as well. No employee could claim fundamental or vested right with regard to promotion. This view finds support from the case of Secretary, Govt. of Punjab and other vs. Dr. Abida Iqbal and others [2009 PLC C.S. 431] and Government of Khyber Pakhtunkhwa and others vs. Hayat Hussain and others (2016 SCMR 1021).

35. The case law cited by the Petitioner are distinguishable from the facts of the present case.

36. Resultantly, an acting or looking after charge could neither be construed to be an appointment by promotion on regular basis for any purpose including seniority, nor did it confer any vested right for regular promotion from the date of such an appointment. Appointment on current charge basis is held to be purely temporary in nature and a stopgap arrangement, which remains operative for a short duration till regular appointment is made against the post. The Petitioner accordingly is neither entitled for retrospective seniority nor promotion. This view is cemented by the judgment delivered in the case of Province of Sindh and others vs. Ghulam Farid and others (2014 SCMR 1189) and Secretary to Government of Punjab and others vs. Muhammad Khalid Usmani and others (2016 SCMR 2125).

37. So far as the contention of the Petitioner with respect to being eligible for promotion from the date when the vacancy initially occurred is concerned, this contention also in our considered view, cannot be accepted for the reason that in service jurisprudence a direct recruit can claim seniority only from the date of his regular appointment and not from the date when he was borne in the service. This principle has already been settled by the Honourable Apex Court through a plethora of judgments.

38. It is an established principle that in service cases there exists a 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. No doubt in service matters, the promotion depends upon eligibility, fitness and availability of vacancy and no one including the Petitioner can claim promotion as matter of right. It is for the Competent Authority, who could make appointments, determine seniority, 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.

39. The next contention of the Petitioner with respect to the eligibility of the Respondent No.3, we observe that no specific prayer has been made by the Petitioner in this regard. If the intent was to challenge the very appointment of the Respondent No.3, which restricts us from giving any findings on this aspect of the case.

40. To conclude, we are of the considered view that seniority in service, cadre or post to which an official is promoted is to take effect from the date of regular promotion to that service, cadre or post and not from the date of any ad-hoc induction. Thus, the Petitioner's claim was rightly rejected by the Respondent No.2.

41. With regard to the promotion from the date of taking over of acting charge by the Petitioner, as discussed above the acting charge appointments cannot confer any right for regular promotion thus the Petitioner cannot claim promotion from the date when he assumed the acting charge (on 22.06.2004) or from the date when the vacancy occurred, as he was not entitled for the

said post and that too with retrospective effect. Therefore, no case of interference in the impugned order is made out.

42. This Petition is accordingly dismissed alongwith all the listed applications.”

7. The aforesaid Judgment of this Court was assailed before the Hon’ble Supreme Court of Pakistan in Civil Petition No. 86-K of 2016 and the Hon’ble Supreme Court vide order dated 24.03.2017 maintained the Judgment passed by this Court, with following observations:-

“on 28.11.1989, the petitioner was inducted in Karachi Port Trust as Trainee Officer in BPS-17 on ad hoc basis. His services were then regularized with effect from 01.06.1991. Then on 22.06.2004 he was given officiating charge of Assistant Traffic Manager, which is a BPS-18 post. However, he was promoted to BPS-18 in the year 2008. On the other hand, the Respondent No.3 was inducted in KPT on 28.12.1989 as Trainee Officer in BPS-17 on ad hoc basis and his services were regularized on 28.03.1990. He was then promoted to BPS-18 with effect from 01.02.2003 and thereafter promoted to BPS-19 on 15.08.2013 whereas the petitioner is still holding the post in BPS18. The grievance of the petitioner is that when he was inducted on ad hoc basis, a month prior to the respondent No.3, then his services ought to have been regularized along with respondent No.3. As in the departmental proceedings, the petitioner could not succeed in seeking the desired relief, he filed constitution petition before the High court, which was dismissed vide impugned judgment taking into consideration that the seniority is to be reckoned from the date of regular appointment and having been merely inducted as ad hoc prior to respondent No.3 would have no legal effect. Aggrieved by the decision of the High Court, this petition has been filed.

2. learned counsel for the petitioner contended that the inter se seniority of the petitioner and respondent No.3 ought to have been maintained from the date when they were inducted on ad hoc basis and his promotion in BPS-18 ought to have been reckoned from the date when he became eligible for promotion i.e. from 2003 when a vacancy in BPS-18 occurred and not from the date of his actual promotion. The learned counsel has failed to convince us that the seniority is to be reckoned from the date of ad hoc appointment and not from the regular appointment nor that the promotion is to be reckoned when the vacancy occurs. We, therefore, find no legal ground to interfere with the impugned judgment. This petition is dismissed and leave is refused.”

8. On the aforesaid issue, we are further fortified with the decision rendered by the Hon’ble Supreme Court of Pakistan vide order dated 11.03.2016 in Civil Appeals No. 274-K and 275-K of 2013 in the case of

Petitioner (re-Nazir Ahmed Soomro and others Vs. Federation of Pakistan and others) which reads as under:-

“8. In the foregoing circumstances, these appeals are allowed as a result whereof, the impugned judgment is set-aside, only to the extent of respondents who were declared senior in terms of para 3 of the impugned judgment, as regular employees from the date of their ad hoc appointments. These are the reasons of our short of even date.”

9. It is well settled now that the seniority amongst the employees is to be counted from the date of their regular appointment and not from the date of temporary / ad hoc / contract appointment. In our view, the Regularization of service from the date of induction (Adhoc basis) is not counted as regular service as we are mindful of the fact that ad-hoc appointments are always made without adopting due process of law and these are virtually made as a stopgap arrangement where selection is made in deviation from the normal course. It is also an established principle that an ad-hoc employee does not carry any vested right to be regularized in service from the date of his induction. Further, there is no ambiguity in our mind that the period of ad-hoc appointment cannot be counted towards service, the seniority in grade is to be taken effect from the date of regular appointment to a post and it cannot be conferred retrospectively. This reduces to the dictum that an ad-hoc appointee would only be entitled to seniority from the date of his regularization and not from the date of initial appointment. Reference is made to the case of Nadir Shah, S.D.O Minor Canal Cell Irrigation Sub-Division, Dera Murad Jamali and 2 others vs. Secretary, Irrigation and Power Department Baluchistan, Quetta and 7 others (2003 PLC (C.S) 961).

10. In service jurisprudence a direct recruit can claim seniority only from the date of his regular appointment and not from the date when he was borne in the service. This principle has already been settled by the Honourable Supreme Court through a plethora of judgments. In the light of the foregoing, we are of the considered view that seniority in service; cadre or post to which an official is promoted is to take effect from the date of regular promotion to that service, cadre or post and not from the date of any ad-hoc induction. Thus, the Petitioner's claim is not tenable under the law.

11. The case laws cited by the learned counsel for the Petitioner are quite distinguishable from the facts and circumstances of the present case.

12. This Petition is accordingly dismissed in limine along with all the listed application(s).

Karachi
Dated: 17.12.2018

JUDGE

JUDGE