

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P.NO.D-2732 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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BEFORE:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Muhammad Faisal Kamal Alam

1. For orders on office objection.
2. For hearing of main case.

12.11.2018.

Petitioner Hayat Muhammad present in person.

Lieutenant Colonel Mir Muhammad, Deputy Director PASB Hyderabad for Respondent No.5 is present.

Mr. Lutufullah Arain, Deputy Attorney General

Mr. Allah Bachayo Soomro, Additional A.G

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J:- The Petitioner has challenged the decision of his retirement in BPS-13 and sought the following relief:-

- a) *That this Honourable Court may be pleased to pursue the case of the petitioner sympathetically and resolve the longstanding case in the presence of GOD under the rule. And direct the respondents to implantation the orders in Original Gazette Notification No.SRO No.394(I)/89 dated 25th April, 1989 in which the post of Assistant Secretary, DASB, PASB Department is already Notified in BPS-16 and direct the respondents to pay all benefits i.e. of BPS-14, 15, and BPS-16 during service from the date of promotion as Assistant Secretary till date of their retirement under the rule of law.*
- b) *Costs of the petition may be saddled upon the respondents.*
- c) *Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner may be granted.”*

2. As per the averments of the petition, the Petitioner was appointed as Head Clerk in Respondent No.6, vide an appointment letter dated 09.03.1986 (Annexure "A" with the memo of the petition), after his retirement from Pakistan Army. Later, the Petitioner was promoted as Assistant Secretary, District Armed Services Board (DASB), vide an order dated 27.09.1997 (Annexure "B" with the petition, Page-25 of the Court file). Subsequently, the Petitioner retired from the service as Assistant Secretary (DASB) in BPS-13 (on attaining the age of superannuation).

3. According to the Petitioner, the latter should have been given BPS-16 because in the intervening period vide a notification issued by Respondent No.2 (Ministry of Defence, Defence Division), the position of Assistant Secretary (DASB) was up-graded to BPS-16, although subsequently it was again reverted to BPS-13, by a subsequent Notification issued by the Respondent No.1, viz. S.R.O. 100 (KE)/95.

4. On the other hand, learned Assistant Attorney General alongwith Additional Advocate General, Sindh, have controverted the claim of the Petitioner. The Respondent side while denying the allegation of meting out any discriminatory treatment to the Petitioner, has mainly laid emphasis on the undisputed factual and legal position; that the up-gradation notified in 1989 by the Notification-SRO 394(I)/89 (dated 25.04.1989) was subsequently withdrawn by another notification (*ibid*) in the year 1995 and when the Petitioner was promoted as Assistant Secretary (DASB) on 30.12.1997, the said post of Assistant Secretary was of BPS-13.

5. Arguments heard and record perused.

6. Undisputedly, the position of Assistant Secretary (DASB) was up-graded to BPS-16 by virtue of the above referred Notification S.R.O.394(I)/89 dated 25.04.1989 (available at Page-31 of the Court file), issued by the Respondent No.1. However, the said notification was amended by a subsequent (afore-referred) Notification of 05.06.1995 (SRO 100 (KE)/95), by which the post of Assistant Secretary (DASB) was reverted to BPS-13. From the record, it is apparent that this subsequent Notification (S.R.O. 100 KE/1995) was never challenged by the Petitioner or any other employee if at all they were aggrieved of such subsequent decision. Secondly, when the Petitioner was promoted as Assistant Secretary (DASB) in the year 1997, vide an Office Order / Correspondence dated 27.09.1997, issued by Respondent No.2, the post of Assistant Secretary at that relevant time was in BPS-13. The record is silent as to whether the Petitioner ever raised any objection or otherwise made any representation, when the Petitioner was in service of Respondents, about the grievances he has now highlighted in the present petition. Thirdly, when the Petitioner retired from his service on 24.03.2011 as Assistant Secretary (DASB), as stated above, the said post was in BPS-13. The relevant document evidencing his retirement has been appended with the petition at Page-29.

7. From the record, it is apparent that after protracted deliberation, the Respondents took the decision to up-grade the post of Assistant Secretary from BPS-13 to BPS-15 and eventually in this regard a sanction of the President was conveyed by the office of Respondent

No.1, vide correspondent dated 09.07.2012, which is as Annexure “O” with the petition, according to which other posts besides the post of Assistant Secretary was up-graded from BPS-13 to BPS-15; *whereas*, this petition has been filed on 13.10.2016, that is, after four years.

8. In the intervening period, the Departmental Representation of Petitioner (available in the record) was considered by the Respondents and they have decided the same by communicating their decision dated 16.06.2016 to Petitioner, declining his request for up-gradation after his retirement from the service. The relevant portion of the decision is relevant and reproduced hereunder:-

“2. The appeal/petition of Mr. Hayat Muhammad, Ex-Assistant Secretary PASB for review of effective date of up-gradation of post of the Assistant Secretary has already been considered in this Division at appropriate level. The case for up-gradation of the post of Assistant Secretary from BS-13 BS-15 was initiated during the year 2011 and finally up-graded vide this Ministry’s letter No.4/7/D-24/2011/01321/PASB-2 dated 9th July, 2012 with the concurrence of Establishment & Finance Divisions.

3. Since Mr. Hayat Muhammad had already retired from service as Assistant Secretary (BPS-13) on 24th March, 2011 on attaining the age of superannuation, therefore, he was not entitled to the benefit of the up-gradation of the post notified and affected after the date of his retirement.

4. The request of the applicant is not covered under the existing rules/policy. Therefore, the same was not agreed to and the Ex-official was communicated accordingly vide Ministry of Defence letter No.1/2/D-11/2016 dated 9th March, 2016 (copy enclosed).”

9. Admittedly, the post of Assistant Secretary (DASB) was downgraded to BPS-13 from BPS-16 in the year 1995, when the present Petitioner was not working as Assistant Secretary (DASB), therefore, he cannot be aggrieved of by the subsequent Notification of 05.06.1995.

Similarly, when the Petitioner retired from the service (on **24.03.2011**), the post of Assistant Secretary (DASB) was admittedly in BPS-13, which was subsequently up-graded on 09.07.2012, therefore, the decision of the Respondents (referred to hereinabove) passed on the Representation of Petitioner does not suffer from any illegality. It is not the case of Petitioner that through some subsequent Notification, the terms and conditions of service of the Petitioner was adversely affected and the post of Assistant Secretary, on which the Petitioner was working, suffered downgrading. The Petitioner has also failed to point out that he was ever discriminated against.

10. The upshot of the above discussion is that the Petitioner has failed to point out any illegality in the actions of the Respondents, thus, the petition is devoid of merits and is accordingly dismissed. Parties to bear their costs.

JUDGE

JUDGE