

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.D-143 of 2013

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhary

Syed Abbas RazaPetitioner

Versus

Federation of Pakistan and others.....Respondents

Date of hearing: 23.10.2017

Syed Shamim Raza Advocate for the Petitioner.

Mr. Sheikh Liaquat Hussain, Assistant Attorney General.

Mr. Shehryar Mehar, AAG along with Mr. Khalilullah Jakhro,
interne of A.G. Office.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through the instant Petition,
the Petitioner has prayed for the following relief(s).

- i) Direct the Respondent No.1 to ensure and secure implementation of its recommendation dated 19.09.2008 which relates to the seniority, promotion and benefits of the petitioner.
- ii) Declaration that the decision of FR-17 Committee dated 10.11.2010 is illegal and void. The committee may further be directed to grant Proforma Promotion to the Petitioner and also the financial benefits which the Petitioner is entitled to on his promotion to BPS-20.

2. Brief facts of the case as per pleadings of the parties are that Petitioner was appointed as Deputy Superintendent of Police (DSP) in the Sindh Police in BPS-16-17 vide Notification dated 10.09.1974, thereafter he was promoted to the post of Superintendent of Police in BPS-18 vide Notification dated 28.04.1991 and the same was actualized on 21.06.1993. The basic

grievance of the Petitioner is that his service was encadred in Police Service of Pakistan (PSP-cadre) vide notification dated 7.8.2001, w.e.f. 01.01.1994/15.12.1994, and subsequently promoted in BPS-19 on 8.1.2004. Petitioner has submitted that in pursuance of the judgment dated 12.5.2005 passed by the learned Federal Service Tribunal in Service Appeal No 343-K (CS)/01 and Order dated 23.2.2006 passed by the Honorable Supreme Court in Civil Petition No.1986 of 2006, Mr. Saeed Rehmani's encadrment was antedated in BPS-19 by the Respondents vide Notification dated 29.5.2007, with effect from 11.5.1999. Petitioner has submitted that when he came to know that his immediate junior Ghulam Asghar Sheikh was encadred in the year 1992 his case should have been considered before the encadrement of Ghulam Asghar Sheikh, resultantly the case of the Petitioner was put up and reconsidered, resultantly his encadrement in PSP cadre was antedated with effect from 12.01.1991 vide Notification dated 29.07.2009, which is after his retirement i.e. 17.08.2008. Petitioner has further submitted that his case for proforma promotion in the next higher grade along with financial benefits was considered and recommended by the Departmental Selection Committee (DSC) vide Minutes of the meeting dated 19.9.2008, finally working was prepared by the Respondent department, with wrong data under Fundamental Rule-17 (1), which was considered by the committee and the committee observed that since the date of encadrement of the Petitioner had been antedated as 12.01.1991, now it is a case of benefits of fixation of pay in BPS-18 from 12.01.1991 to 07.01.2004 (without arrears) not the

antedated promotion case in terms of FR-26-C. Petitioner being aggrieved by and dissatisfied with the decision of FR-17 committee filed the instant petition on 24.12.2012.

3. To support the stance of the petitioner, Syed Shamim Raza, learned Counsel for the Petitioner has mainly contended that the only grievance of the Petitioner is that his case may be remanded to the FR-17 committee for reconsideration of the case of the Petitioner as per recommendation of DSC more particularly with reference to the proforma promotion of Mr. Ghulam Asghar Sheikh junior to the Petitioner to BPS-19 and BPS-20. He concluded his arguments by saying that the decision of the FR-17 committee on 10.11.2010 is erroneous as the case of the Petitioner was not submitted before the committee in accordance with his seniority as per recommendation of DSC, which needs to be resubmitted to the committee for decision afresh on proforma promotion of the Petitioner in BPS-20 along with financial benefits in accordance with law. He lastly prayed for allowing the instant Petition.

4. Mr. Sheikh Liaquat Hussain, Assistant Attorney General has argued that the Petitioner was encadred in PSP Cadre in 2001 with effect from 01.01.1994; that later on account of antedated encadrement of Mr. Muhammad Saeed Rehmani, his date of encadrement was changed as 15.12.1994; that Petitioner was senior to Mr. Ghulam Asghar Sheikh in Sindh Police, however at the time of encadrement of Mr. Ghulam Ashghar Sheikh in 1992, case of the Petitioner could not be recommended for encadrement

as his seniority was not determined at that time; that thus Petitioner was encadred in 2001 w.e.f. 15.12.1994, while his immediate junior in Sindh Police, Mr. Ghulam Asghar Sheikh was encadred in 1992 having the date of encadrement as 12.01.1991. He has further contended that after his promotion to BPS-19, the petitioner made another representation to the Establishment Division on 12.03.2004 for antedation of his encadrement w.e.f. 12.01.1991. He has further contended that under the direction of this Court the Departmental Selection Committee (DSC) meeting was held in the office of the Secretary(Services), Government of Sindh under the Chairmanship of Additional Secretary-II Establishment Division on 19th September 2008, the committee recommended to revise the date of encadrement of the Petitioner from 15.12.1994 to 12.01.1991 besides recommending issuance of Petitioner's Notification of antedated encadrement; that the Government of Sindh S&GAD department subsequently issued Notification on 29th April, 2009 allowing seniority to the Petitioner as Superintendent of Police in (BS-18) above his juniors vide Establishment Division Notification bearing No. 07.5.2007-E-3 (Police),dated 19.10.2010.

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

6. The pivotal points involved in the present case are as under:-

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 the Petitioner is entitled to be considered for proforma promotion in BPS-20 in PSP cadre after his retirement in the year 2008, on the touchstone of Fundamental Rule 17(1)?

7. We are cognizant of the fact that the Honorable Supreme Court vide its Judgment dated 15th December, 2014 passed in the case of Asim Gulzar and others Vs. Attaullah Khan Chandio and others (2015 SCMR 365) has decided the issue of antedated seniority in PSP cadre. But the issue before us is quite different, which relates to the proforma promotion and ancillary benefits accrued thereon, therefore we intend to decide the instant matter on merits.

8. To appreciate and elaborate on the aforesaid issue it is expedient to have a glance on Fundamental Rule 17(1). An excerpt of the same is as under:-

“F.R. 17. (1) subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties:

“ Provided that the appointing authority may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the antedated fixation of his seniority.”

9. The Respondent No.1 has resisted the claim of the Petitioner and relied upon the decision of FR-17 committee. An excerpt of the same is as under:-

“ A meeting of the committee constituted under FR-17 was held at 10.00 A.M on 10th November, 2010 in the office of the Joint Secretary (Regs) Finance Division to consider the case of Syed Abbas Raza, PSP (Retd) for antedated promotion, referred by the Establishment Division.

2. Mr. Munir Ahmed, Senior Joint Secretary (CP-II) explained the case before the committee. He informed that Syed Abbas Raza was encadred into PSP w.e.f 15.12.1994 and subsequently promoted in BPS-19 on 08.01.2004. In pursuance of Sindh High Court’s direction, government of Sindh revised his seniority as SP/BPS-18 above his juniors Mr. Ghulam Asghar & two others. The officer has retired from Government service on 17.08.2008. The Departmental Selection committee in its meeting held on 19.09.2008 recommended that Syed Abbas Raza may be given antedated

encadrement w.e.f. 12.01.1991 and after notification of antedated encadrement and revised seniority in the PSP the case be referred to FR-17 committee. Establishment Division issued Notification dated 29.07.2009 to change the date of encadrement of Syed Abbas Raza, as 12.01.1991 instead of 15.12.1994.

3. The committee observed that since the date of encadrement of Syed Abbas Raza has been antedated as 12.01.1991, it is a case of fixation of pay in BPS-18 from 12.01.1991 to 07.01.2004 (without arrears) not the antedated promotion case in terms of FR-26(c). The committee therefore decided to advise the Department to take up the case with Regulation Wing of Finance to allow benefit of pay fixation."

10. The aforementioned assertion of the Respondents is not born out of record for the simple reason that the case of the Petitioner was not forwarded to the F.R-17 Committee according to the Petitioner's correct re-fixation of seniority in PSP cadre in BPS-19 as depicted in the working paper prepared for consideration of his antedating promotion as per recommendation of Department Selection Committee (DSC), more particularly with reference to the promotion of his junior Mr. Ghulam Ashgar Sheikh to BPS-19 and BPS-20 with effect from 28.08.1999 and 21.12.2006 respectively. This proposition has been conceded by the Respondents in the comments that Mr. Ghulam Ashgar Sheikh a retired PSP officer was junior to the petitioner and was promoted to BPS-20, whereas the petitioner was left in the lurch in BPS-19 and allowed him to retire on the same scale without fault on his part.

11. We have also gone through the recommendation of the Departmental Selection Committee in its meeting held on 19.09.2008, who has decided the matter in favour of the Petitioner.

12. Perusal of recommendation of DPC prima facie show the following factual position:-

“The committee, keeping in view the spirit of the judgment of the Court in case of Mr. Muhammad Saeed Rehmani (PSP/BS-19-Retd) regarding grant of antedated encadrement over his junior, recommended that Syed Abbas Raza may be given antedated encadrement w.e.f 12.01.1991 as was given to his immediate junior Ghulam Asghar Sheikh subject to provision of notified copy of the seniority of Sindh Police wherein Syed Abbas Raza is shown senior to Mr. Ghulam Asghar Sheikh in BS-18.

The committee also recommended that after notification of antedated encadrement, case may be referred to CP Wing for determining the seniority of the officer in the PSP and then it may be forwarded to proforma promotion committee (FR-17 Committee) set up in the Finance Division for proforma promotion and evaluation of financial benefits.”

13. Perusal of the above note-sheet clearly depicts that the seniority of the petitioner in the PSP cadre and his Proforma Promotion was approved by the Competent Authority and the same was communicated to the Respondent-Department for implementation. In our view the appointing Authority could have approved the proforma promotion of the Petitioner from the date on which the recommendation of the Departmental Selection Committee was made. Notwithstanding the fact that the Officer, who expires or superannuates after the recommendations of the Departmental Selection Committee.

14. 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).

15. In our view the cases of Iftikharullah Malih and Askari Hasnain supra are fully attracted in the present case. The explanation offered by the Respondents vide comments dated 21.03.2014, prima facie, is not tenable under the law as the case of the petitioner was recommended for the proforma promotion and other ancillary benefits, through DPC on 19.09.2008.

16. In view of the facts and circumstances of the case and for the reasons alluded as above; prima-facie the claim of the Petitioner is tenable under the law.

17. In the light of above facts and circumstances of the case the matter is remanded to the Competent Authority of Respondents for afresh decision on the issue of proforma promotion of the Petitioner and other ancillary benefits in accordance with law, without discrimination, within a period of one month, from the date of receipt of the Judgment of this Court.

18. The Petition is accordingly disposed of along with all the listed application(s).

JUDGE

JUDGE

Karachi
Dated:- 31.10.2018.