

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No. D-770 of 2020

**Before:
Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon**

Atta Muhammad Shahani ----- Petitioners

VERSUS

The Secretary Establishment Division
& others ----- Respondents

Date of hearing & Decision: 11.08.2020

Mr. Muhammad Arshad S. Pathan, advocate petitioners.

Mr. Muhammad Humayoon Khan Deputy Attorney General for Pakistan alongwith Ahmed Nawaz Solangi Executive Engineer C.C.D. Pak PWD Hyderabad.

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant petition, the petitioner seeks issuance of direction to the respondents to approve and send his name for 30th MCMC (Mid-Career Management Course).

2. Brief facts of the case are that the Petitioner is serving as Executive Engineer (Civil) (BS-18) in the Pakistan Public Works Department (PWD), Government of Pakistan / Respondent No.2. Petitioner has averred that as a part of promotion policy his name was required to be sent for 30th Mid-Career Management Course (MCMC) under Office Memorandum dated 9.06.2020 by virtue of his seniority for promotion to the post equivalent to (BS-19). Petitioner next contended that he is eligible and qualified to be considered for promotion in BPS-19, but due to lethargic attitude of respondents 2 and 3 his case is not being processed for further consideration for mandatory training, which is illegal. Petitioner being aggrieved by and dissatisfied with the inaction of Respondents 2 and 3 has approached this Court on 23.7.2020.

3. Mr. Muhammad Arshad S. Pathan learned counsel for the Petitioner submits that the Petitioner is required to be dealt with in accordance with law and not on the basis of whims of the executive authorities/ Respondents. He

further contended that the action of Respondents is in blatant violation of the mandate of the fundamental rights of the Petitioner enshrined in the Constitution. It is further contended that Respondents 2 and 3 had delayed matter of consideration for promotion of the Petitioner without any justifiable reason for which Petitioner could not be made to suffer. He also contended on reaching the age of 56 years a legal right had accrued in favour of Petitioner ; that withholding of promotion is a penalty under the rules, which cannot be resorted to without recourse to the proceedings under the relevant rules; that unfortunately the Petitioner has been rendered ineligible by not sending his name for 30th Mid-Career Management Course (MCMC) under Office Memorandum dated 9.06.2020; that he has been discriminated. He lastly prayed for allowing the instant Petition.

4. On the other hand, Mr. Muhammad Humayoon Khan Deputy Attorney General for Pakistan, while agitating the issue of maintainability of instant Petition has argued that the petitioner can only be considered for promotion in next rank on seniority-cum-fitness on successful completion of the said course. He lastly prayed for dismissal of the instant petition.

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

6. As per promotion policy, the Mid Career Management Course (MCMC) is mandatory for promotion to higher rank that is, BS-18 to BS-19. The Petitioner has to meet the criteria as laid down in the Office Memorandum dated 9.06.2020 for undergoing 30th MCMC to be held at NIMS, Karachi from 5.10.2020 to 11.12.2020.

7. We are cognizant of the fact that Petitioner agitated his claim in the instant Petition and also raised voice of concern that his name is not being sent for such course since long though he is eligible for promotion in all respect. Learned counsel for the petitioner has drawn our attention to the correspondence made by him with the respondents and argued that even the respondents are not bothered to decide his representation. Prima-facie the assertion of the Petitioner is reasonable. Record reflects that the Petitioner was appointed in BPS-17 in the year 1990 and his service was regularized in the year 1998 and subsequently promoted in BPS-18 in the year 2015.

8. In the light of above facts and circumstances of the case, the competent authority of Respondents is directed to consider the case of Petitioner and decide his representation dated 6.7.2020 within a period of 15 days from the date of receipt of this order, for sending his name for 30th Mid-Career Management Course (MCMC) under Office Memorandum dated

9.06.2020 strictly in accordance with promotion policy and law and compliance report be submitted through Additional Registrar of this Court.

9. The instant Petition is disposed of in the above terms along with listed applications.

Let a copy of this order be communicated to the respondents for compliance.

JUDGE

JUDGE

Irfan Ali*