

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Constitutional Petition No. D –3405 of 2018**

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Nazim Inayat

*Versus*

National Command and Authority and 07 others

For hearing of CMA No.26586/2019 :

For hearing of CMA No.26587/2019 :

Date of hearing & order : 10.11.2020

Petitioner Nazim Inayat present in person.

Mr. Altamash Faisal Arab, advocate for respondents No.1 to 5.

Mr. Muhammad Nishat Warsi, DAG.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** The present application bearing CMA No.26587 / 2019 for initiating contempt proceedings, against the alleged contemnors, arises out of the order dated 16.5.2019 passed by this Court, whereby direction was issued to respondents 3 & 4 to consider the case of the petitioner for promotion within four (4) months.

2. On 19.09.2019, the petitioner filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No.26587/2019) for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional, and deliberate act of disobeying the above-mentioned order passed by this Court.

3. Applicant, who is present in person has submitted that since the alleged contemnors had failed to comply with the order dated 16.05.2019 passed by this Court in the aforesaid matter, contempt proceedings may be initiated against them.

4. Mr. Altamash Faisal Arab, advocate for respondents / alleged contemnors has referred to the statement dated 06.10.2020 and stated that the order passed by this Court has been complied with in its letter and spirit by allowing the personal hearing to the petitioner vide order dated 06.02.2020. He prayed for dismissal of the listed applications.

5. We have heard the applicant who is present in person and learned counsel appearing on behalf of the respondent-authority on the listed applications.

6. We have noticed that the petitioner through this petition sought declaration to the effect that his supersession was illegal and sought a further direction to the respondents to recommend him for promotion under law. In view of his submission, this petition was disposed of vide order dated 16.05.2019 with direction to the respondents 3 and 4 to consider the case of the petitioner on merits. Learned counsel for respondents-authority has submitted that in compliance with the aforesaid order passed by this Court the Appellate Authority decided the case of the petitioner vide office order dated 06.02.2020 with the following findings:

“4. Promotion of an employee is based on a number of factors and the key factor in promotion of SPS-7 to SPS-8 is fitness. Fitness is determined by the performance of an individual of annual basis evaluated by his seniors on the basis of his assigned tasks, its completion and achievements, which is then reflected in his annual PER/ACR. Other facts which play a vital role include but not limited to availability of vacancy, security clearance, discipline, integrity etc. of the individual. Employee meeting the criteria laid down are then considered by the Departmental Promotion Committee on the basis of merit list prepared keeping the laid down criteria. To provide full justice to Mr. Nazim Inayat his past grading were compared against those who have been promoted declaring those pass and it is observed that no injustice has been done to him; he remained below the threshold level this he could not make the mark on the basis of “Fitness-cum-Seniority” and as such cannot claim to his promotion on the basis of seniority alone. Furthermore, it is settled law that promotion cannot be claimed as a matter of right.

5. During the personal hearing, Appellant provided list of documents in support of his stance. His stance that he is on attachment basis in security Group is not true. Perusal of the record shows that though he was inducted in DESTO but was permanently posted in Security Group. Furthermore, he was considered for promotion by Security Group but could not be promoted due to HSD policy. A in depth analysis of ACR comparison of Mr. Nazim Inayat of these years also reflects that his ACR grading have remained below threshold levels set-in these years and that all employees promoted in these year had higher ACR grading to Mr. Nazim Inayat. This fact clarifies that no injustice has been done to him.

6. It is pertinent to mention here that Appellant and other similar employees whose promotion had been stuck due to service structure and rules of Security Group have not been transferred to NESCOM (main stream) in their own larger interest where they will have fair opportunity of being considered for next promotion in the upcoming promotion boards.

7. That after duly considering the above narrated of the matter, available record and contentions raised in the appeal, Appellate Authority regrets the instant appeal being devoid of merits.”

7. We have also scrutinized the statement dated 06.10.2020 submitted on behalf of the alleged contemnors; prima-facie the explanation offered by them is tenable under the law, therefore no case for contempt is made out. Consequently, applications bearing CMA No.26587/2019 along with stay application (CMA No.26586/2019) are dismissed with no order as to costs.

---

J U D G E

---

J U D G E

Shahzad\*