

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1670 of 2018

Plaintiffs: Liaquat Ali Bhatti & others Through
Mr. Muhammad Ali Lakhani & Mujtaba
Sohail Raja Advocates.

Defendant No.1: PIACL Through
Mr. Khalid Mahmood Siddiqui Advocate

Defendants 3 to 8 Through Mr. Ghulam Rasool Korai,
Advocate.

Defendant No. 2: Society of Aircraft Engineers of
Pakistan, Through
Mr. Mahmud Alam, Advocate.

For hearing of CMA No. 12138/2018.

Dates of Hearing: 09.04.2019, 30.04.2019 & 29.08.2019.

Date of Order: 16.09.2019

ORDER

Muhammad Junaid Ghaffar J. This is a Suit for Declaration and Injunction and through listed application under order XXXIX Rule 1 & 2 CPC, the Plaintiffs seek suspension of the operation of “Minutes” dated 13.08.2018 and Personnel Order bearing No.054 / 2018 dated 15.8.2018, whereby, Defendant No.3 to 8 have been promoted as Chief Engineers (“CE”) and to further restrain the Defendants No.3 to 8 from taking charge, occupying offices and /or in any manner discharge functions as CE’s in pursuance of the above.

2. The precise case as stated are that Plaintiffs and Defendants No.3 to 8 were working in Defendant No.1 as DCE’s and were considered for promotion from Pay Group IX to Pay Group X as Chief Engineers, and through impugned minutes dated 13.8.2018 and personal order No.54/2018 the Defendants No.3 to 8 have

been promoted to such positions which is under challenge by the Plaintiffs.

3. Learned Counsel for the Plaintiffs has contended that the relationship of all Aircraft Maintenance Engineers in PIA are to be regulated through Defendant No.2 on the basis of a Working Agreement ("**Agreement**"), and prior to this they were regulated by virtue of Aircraft Engineers Service Rules of 2001 ("2001 Rules") and these rules have been judicially validated vide judgment dated 18.9.2009 passed in CP No.D-948/2009. He has next contended that in considering the promotions of the Plaintiffs, PIA has violated and deviated from the Rules as well as the Agreement, including Article IV and VI thereof. He has then referred to Article 4.3 and has contended that (a) Seniority of Aircraft Engineers has to be counted from the date of their initial placement in Aircraft Engineers Pay Scale as defined in the Agreement ("**AEPS**"), however, separate seniority list is to be maintained for CE's and DCE's in order of their date of appoint or promotion, as the case may be; (b) For promotion as DCE and CE, seniority shall be counted from their initial placement in AEPS, whereas pursuant to Article 4.4 after initial placement in AEPS, seniority shall not be changed with progressive placement in higher AEPS. He has further argued that since Article IV of the Rules of Seniority makes reference to "AEPS", a person is inducted into "AEPS" upon attaining an Aircraft Maintenance Engineers License in terms of an Air Navigation Order issued by the Civil Aviation Authority ("**CAA**"). According to him a person may be inducted to PIA's "Engineering Division" but cannot act in the capacity of an Aircraft Maintenance Engineer, or be included to "AEPS", unless valid certification is granted by CAA. Per learned Counsel there exists a distinction in between an Aircraft Maintenance Engineer's date of joining and his / her date of utilization, whereas, seniority is a primary consideration for promotion, and transforms into a vested right and must be strictly preserved / observed. According to him all Plaintiffs are senior to the Defendants herein and their right for promotion has been denied without any lawful excuse, whereas, there are no exceptions provided within the Agreement so as to allow seniority to be diminished on account of intended or enforced promotion. In support he has referred to Article 6.4 to the

Agreement which states that seniority, merit and compliance with qualification and job specification is necessary. He has further contended that all along in PIA such has always been the usage / custom enforced notwithstanding any other (contractual) suggestions observed through the Agreement. According to him it is the case of the Plaintiffs that Article 6.4 to the Agreement desires grant of promotions through “properly constituted boards” in compliance of “existing rules and regulations” and this condition superimposes itself upon the “existing rules and regulations”, resultantly, no rules and regulations can be amended or adopted beyond the scope of the Agreement without consent of Defendant No.2. He has then contended that on account of vacancies available for CE, PIA shortlisted Twenty Four (24) candidates for promotion, and Plaintiffs were deemed eligible on the basis of a list prepared by PIA itself; however, Plaintiffs No.1 and 2 were not invited to attend the proceedings of the Promotion Board, whereas, Plaintiffs No. 3 to 5 were called but were not considered by the Board. According to him various irregularities have been committed while promoting the Defendants including but not limited to, that neither has seniority been maintained by the Promotion Board nor was Defendant No.2 called in to participate in this process; that Plaintiffs contend that their qualifications are superior to the Beneficiaries which has been ignored under the Recommendation; that certain considerations were accounted for by the Promotion Board, which considerations are alien to the Agreement; that the basic conditions of the Agreement have been violated by the Board; that Defendants No.6 to 8 were never shortlisted, but have been granted promotions, whereas, they do not meet the criteria required for promotion from DCE to CE pursuant to Article 4.3 (d) of the Agreement; that the Promotion Board which was monitoring the promotion process, has acted without adherence to the terms of the Agreement; that the composition of the Promotion Board lacked a representative of the Association; that the Promotion Board has acted to ratify its own recommendations in the absence of an approval from PIA’s Board of Directors, and such approval of its own recommendations demonstrates that the Promotion Board was self-serving; that despite eligibility, the Plaintiffs No.1 and 2 were not summoned to

cause participation; that the Promotion Board has proceeded without objective criteria; that the Promotion Board has failed to identify the reason(s) which has compelled the placement of the Beneficiaries as CE as opposed to the Plaintiffs as mere suggestion of ineligibility based on a subjective assessment is not legally permissible; that the Promotion Board has breached the Rules of Seniority in such a manner that the same cannot be restored to its former glory if in case the Recommendation is allowed to prevail; that the Promotion Board has identified grave failings in the Beneficiaries but has still recommended their promotion on an *ad-hoc* basis; that the Promotion Board offends the law as laid down in Constitutional Petition No.D-948/2009. In support of his contention he has relied upon the cases reported as ***Walayat Ali Mir V. Pakistan International Airlines Corporation through its Chairman and another (1995 S C M R 650)***, ***Sadiq Amin Rahman V. Pakistan International Airlines Corporation through Managing Director and 3 others (2016 P L C 335)***, ***Shariq ul Haq and 5 others V. Pakistan International Airlines Corporation Limited and another (2018 P L C (C.S.) 975)***, ***Shafqat Sultan V. Khursheed Ahmed and 2 others (1992 S C M R 1461)***, ***Ghulam Nabi V. Chairman, Lahore Development Authority, LDA Plaza, Lahore and 3 others (2002 P L C (C.S.) 836)***, ***Saeed Muhammad Zai V. The Secretary, Government of Khyber Pakhtunkhwa, Labour Department and 4 others (2017 P L C (C.S.) 738)***, ***Muhammad Gulshan Khan V. Secretary, Establishment Division Islamabad & others (P L D 2003 SC 102)***, ***Fazali Rehman V. Chief Minister, N.W.F.P. Peshawar and others (P L D 2008 SC 769)***, ***Federation of Pakistan through Secretary and another V. Khushdil Khan Malik (2018 P L C (C.S.) Note 196)***, and an unreported judgment ***Dr. Muhammad Rafique V. Shaheed Mohtarma Benazir Bhutto and others (C.P. No. D-2090/2015)***.

4. On the other hand learned Counsel for PIA has vehemently opposed the listed application and has contended that the impugned order has already been acted upon and Defendants No.3 to 8 stands promoted much before the ad-interim order passed by this Court; hence, no case is made out by the Plaintiffs; that Defendant No.1 always adheres to all laws, rules and regulations

and notifications applicable to it; that Plaintiff have filed instant Suit to pressurize and harass the defendants and should be dismissed being an abuse of the process of this Court; that Defendant No.3 to 8 were promoted through minutes dated 13.8.2018 and Personal Order No. 054/2018 dated 15/08/2018 which clearly states that the said defendants were promoted with immediate effect and have since joined the office and are already serving in the capacity of CE's; hence the listed application is infructuous; that it is true that the promotions are regulated under and through the PIAC-SAEP Working Agreement and it is also true that Defendant No.2 has marked a protest against these promotions; however, no promotion has been wrongly granted to any of the defendants and no terms of the Agreement have been violated, and each and every term of the Agreement and PIA's Policies of promotion have been followed; that it is pertinent to mention that the management can make rules/add qualifications which are over and above of what has been stated in the Agreement and are not in conflict with the same; that there is no deviation from the promotions process, whereas, Seniority is only one of the considerations for promotion for Aircraft Maintenance Engineers and plaintiffs have no vested right for promotion, whereas, it is one of the 4 criteria's mentioned in clause 6.4 of the Agreement; that it is not that seniority translates into a vested right; that Article 6.4 lays equal emphasis on all four requirements (seniority, merit, qualification requirement and job specification) and nothing in the said Article gives any preference to one requirement over the other; that notwithstanding that there are no exceptions in the Agreement to allow the seniority to be diminished on account of enforced promotion; however, the five member Board gives marks to each individual independently by looking at the above mentioned criteria and objectively choose the best suitable candidate for promotion; that eligibility for promotion does not create a right to be promoted, whereas, promotion to the next higher APES is not only based on seniority but also on eligibility (Educational Qualification; Professional Equalization; Service Period and PARs); that Rule 1.3 nowhere restricts the management to not make further rules/add qualifications which are over and above of what has been stated in the Agreement as far as they are

not in conflict with the same; that Twenty one (“21”) candidates were shortlisted out of a total of 36 Deputy Chief Engineers for promotion Board of CE’s and the Board after evaluating credentials of each individual on merits promoted Defendant No.3 to 8 as CE; that Plaintiff No.1 and 2 were not invited for the reason that they did not meet the educational criteria for promotion; therefore were not even shortlisted; that seniority was maintained and considered by the Promotion Board; but since it is not the only requirement for promotion, they were not promoted; that there is no mandatory requirement in the Agreement to call the Defendant No.2 to participate in the Board as in Article 6.4 it has been provided that President SAEP may be included in Promotion Board for all such vacancies as an Observer; that the Promotion Board has been constituted as per the Agreement and Admin Order No. 06/2017 and there is no requirement to get an approval from the Board of Directors of PIA as contended; that each member of the Promotion Board gave points to each applicant based on their knowledge, background and experience, minimum years of service, academics, PAF rating and job description; that seniority of each member was also considered and no rule has been breached by the Promotion Board; that no grievance petition of any of the Plaintiffs was ever received except the one filed by Defendant No.2; that plaintiffs do not have a good prima facie case, and that the balance of convenience also does not lie in their favor; that from a bare reading of the policy and Agreement governing the promotion, it is clear that all laws, rules and regulations have been complied with and Board constituted legally has objectively assessed each of the shortlisted individual for promotion and after a thorough process the best and most suitable candidates were promoted; hence no case is made out, and therefore, the listed application is liable to be dismissed.

5. Learned Counsel for Defendant No.2 i.e. the Association of Aircraft Engineers has contended that he principally agrees with the arguments of Plaintiffs’ Counsel to the effect that Plaintiffs are senior but have not been considered; however, fitness is to be judged by the Management and not this Court, therefore, case must be remanded to PIA’s M.D who must hear all the Plaintiffs and after affording personal hearing pass a reasoned order(s) and if

aggrieved, the Plaintiffs may seek appropriate remedy as may be available in law. According to him if a wrong has been committed, it must be rectified. Lastly according to him the President of the Association was never called in the Promotion Board which is in violation of the Agreement in question.

6. Learned Counsel for Defendants No.3 to 8 has adopted the argument of PIA's Counsel.

7. I have heard all the learned Counsel and perused the record with their able assistance. Insofar as the facts are concerned, it is not in dispute that the Plaintiffs are presently working in the capacity of DCE's in Pay Group-IX, whereas, Defendants No.3 to 8 before their impugned promotions, were also working in the same capacity as DCE's in Pay Group-IX. The Plaintiffs' further case is that seniority of Aircraft Engineers is to be counted from their initial placement in AEPS. However, a separate seniority list is to be maintained for CE's and DCE's in order of their date of appointment or promotion as the case may be. On this premise, it has been contended that Defendants No.3 to 8 are junior to the Plaintiffs from their respective dates of induction into "AEPS". When this contention of the Plaintiff's Counsel is examined vis-à-vis the counter affidavit filed by Defendant No.1, it appears that firstly PIA admits that the promotions are regulated under and through the working Agreement between PIA and Defendant No.2, with the exception that PIA is otherwise competent to regulate the promotion policy by suitably amending it, if it is otherwise not in conflict the Agreement in question. The reply to this effect is contained in Para-8 of the counter affidavit, wherein, Defendant No.1 has admitted the case of seniority being claimed by the Plaintiffs. Though there is no cavil to this proposition that promotion to a higher grade / post is not a vested right of an employee; but at the same time it is also a settled proposition that the promotion Board or the competent authority while considering a promotion case cannot exercise its discretion without following the mandate of law as well as the guiding principles settled by the Courts. Once it has come on record that, if not all, but majority of the Plaintiffs were admittedly senior as against Defendants No.3 to 8, then refusing promotions to them at least required assigning

proper reason(s) for not considering them for such promotion. PIA through its counter affidavit has not placed on record any such document, which could reflect that cases of all employees, who were called for promotion were considered individually as well as independently by the Promotion Board and what prevailed upon the members of the Board to select Defendants No.3 to 8 for promotion as Chief Engineers as against the Plaintiffs, who are admittedly senior to such defendants. The only document, which has been annexed as annexure "A" to the counter affidavit is Minutes of a Meeting dated 13.08.2018, which is stated to be a Promotion Board Meeting for vacant positions of Chief Engineers (PG-X) convened under the policy approved by the President and CEO for five positions of Chief Engineers i.e. Line Maintenance, Airworthiness Management (AWM), Avionics Overhaul (AVOH), Engineer Project & Development (P&D) and Engineer Quality Assurance. It further reflects that interviews were conducted on various dates and the Board consisted of President and Chief Executive Officer, Chief Human Resource Officer, Chief Technical Officer, Chief Engineer Quality Assurance and General Manager HRM. These minutes though state that they are dated 13.08.2018; however, this Court fails to understand as to how these could be considered as minutes of the meeting of the said date without any discussion on the individual eligibility, capacity and otherwise of each candidate and their review by the Promotion Board members. It is so stated in the minutes that Board interviewed eligible individuals on various dates; but surprisingly when a final decision is being taken, it is only the final decision (minus any discussion on it) in respect of six candidates, which has been approved. It is not denied that firstly the Plaintiffs had objected to their exclusion and denial from promotion and so also Defendant No.2 whose grievance application is also a matter of record. In these circumstances, it was incumbent upon PIA to place before the Court the entire decision of the Policy Board as well as its members and as to how they have dealt with the case of each employee individually as apparently PIA has neither replied nor responded to the complaint of the Plaintiffs nor of Defendant No.2. It may be observed that if for some reason, any confidentiality was to be maintained, the same could have been placed before the Court in a sealed envelope

for perusal; however, this has not been done. This resultantly has kept the Court in dark and unguided with lack of proper assistance. This Court is unable to understand as to why such material document has not been placed for its scrutiny by the Court. It further reflects that one of the applicants i.e. Defendant No.3 despite being short of academic qualification has been recommended for promotion conditionally upon providing the requisite equivalence certificate. How this could be done by depriving the other eligible candidate(s) as against Defendant No.3, who at the relevant time, apparently stood disqualified as reflected from perusal of the above minutes. The relevant discussion in the minutes is as follows:

“a. **The education of Mr. Farhan Waheed, P-39678 as per PIA record is Matriculation** (Flag-C). However, he was interviewed by the board on the plea taken by the CTO and seconded by CHRO that he has A-Level qualification and already holds Form-4 approval from PCAA on this basis. **His promotion is conditional upon provision of valid HSSC-II or equivalence certificate** as required (minimum qualification requirement) under the Airworthiness Notice 87 (Version 2.0) dated 27th Nov 2017 (Flag-D).

It further appears that on 13.08.2018 when this meeting was conducted, the Defendant No.3, being short of appropriate qualification, was required to produce equivalence certificate and immediately on 15.08.2018 (notwithstanding that minutes by circulation were approved on 14.8.2018) his promotion order has been issued through Personnel Order No.054/2018 along with other defendants. There is nothing on record to substantiate that in one day he had fulfilled and met the shortcoming of such a nature. Nonetheless, it does not seem to be an appropriate path to first consider a case of an employee who is by their own records is not qualified, and then take a decision in his favor with a rider to fulfill such qualification later on. This conduct amounts to cognitive impairment on the part of and within PIA, as well as the members of the Promotion Board and its proceedings in question.

8. Learned Counsel for PIA has also argued that in addition to the working Agreement, there are various amendments and revisions in the promotion guidelines, and therefore, the Plaintiffs contention that it is only the working Agreement, which controls and regulates promotion of DCE's is not correct; however, once the

criteria as well as evaluation of the Promotion Board, whereby, they have considered the issue of fitness or otherwise of the aggrieved person(s) has not been placed before the Court, then in that situation this Court is unable to give its finding to this effect. It could only be done once the assessment as well as the views of the Policy Board Members individually is placed before the Court which would be reflecting the overall evaluation of the applicants including their disqualification if any.

9. It may also be of relevance and needs to be appreciated that insofar as Defendant No.1 is concerned, it is admittedly a public Corporation under the control and management of the Government of Pakistan who has the major controlling shares and has the authority and mandate to nominate its Chairman and Chief Executive as well members of the Board of Directors. This organizational structure of Defendant No.1 is of pivotal importance and is required to be kept in mind while dealing with the present grievance of the Plaintiffs. It is a matter of fact that Defendant No.1 has its own service regulations as well a Working Agreement with Defendant No.2 which is a representative body or a bargaining agent of Engineers working in PIA. And in this scenario it has to work within the framework of such regulations and the Agreement and not beyond that. It is not that any individual Executive of PIA, be it the Managing Director or a Director or for that matter a member of the Promotion Board, who can act on its own whim and desire and exercise his discretion in violation of the regulations and the Agreement unlike a private organization, wherein, such decisions can be taken by the management on its own. Though at times, this makes the job of the management, onerous and burdensome to work within this limitation and also compete with private airlines as well; but then, this is what the law is for the present purposes, and until so altered or changed. It has to be understood that there is a marked difference in employment with a Government and/or a Statutory Corporation (“**Corporation**”) and a private organization. There may be a situation that an employee of a Corporation can be aggrieved of the conduct and the manner in which his employment has been or is being regulated or dealt with. The element of governance should be there as after all a

Corporation working under the control of the Government has an element of public duty to perform and is required to act within the mandate of its rules be it statutory or otherwise. The norms of good governance being based on reasons and rule of law must be free from nepotism and jobbery. The foundations of good governance are not based on decisions taken what one feels to be right; but on reasons, transparency, consensus, ethics and responsiveness. And this could only have been achieved if the aggrieved plaintiffs were provided with what they were asking for. At least a response to their grievance petitions with some reasons for leaving them out.

10. In the case reported as ***Sadiq Amin Rahman v Pakistan International Airlines Corporation and 3 Others*** (2016 PLC 335) a learned Single Judge has been pleased to dilate upon the relationship of an employee with PIA and has been pleased to hold as under;

18. The learned counsel for the defendants forcefully argued that in the relationship of master and servant, the plaintiff has no right to claim declaratory relief or injunction except damages. Every now and then statutory corporations or institutions those have no statutory rules of service come up with the same plea. In my view, there must be some distinction and differentiation between the relationship of master and servant and master and slave. We are living in Islamic Republic of Pakistan in 21st Century where a range of fundamental rights are guaranteed and secured in our Constitution. **There is no doubt that in PIAC Government has majority shareholding and recently Pakistan International Airlines Corporation (Conversion) Ordinance, 2015 has been promulgated which repealed Pakistan International Airlines Corporation Act, 1956. Despite repeal and conversion of Corporation into public limited company there is no substantial change in substratum and unless assets are transferred wholly and or shareholding is substantially reduced, the government cannot get rid of their obligations towards the employees. It is further provided in the Ordinance that all the guarantees given by Federal Government shall remain in full force and effect as though they were given on behalf of company and under Section 3 of the same Ordinance, the rights of employees and all agreements are also protected.** Under Article 3 of our Constitution it is responsibility of the State to ensure the elimination of all forms of exploitation and the gradual fulfillment of fundamental principle from each according to the ability to each according to his work and under Article 11 there is no concept of slavery which is non-existent and forbidden and no law permits or facilitates its introduction into Pakistan and in any form while under Article 37 (Principles of Policy) it is the responsibility of the State to ensure equitable and just rights between employer and employees and provide for all citizens, within the available resources of the country facilities of work and adequate livelihood with reasonable rest and leisure and now under Article 10-A of the

Constitution, right to fair trial and due process is also a fundamental right of great magnitude

11. Therefore, it may be appreciated that PIA cannot claim any exemption from following the mandate of law, its regulations as well as the Agreement entered into with Defendant No.2, while dealing with its employees in respect of their service issues including their promotions.

12. As to the issue of promotions and the mode and manner in which it has to be carried out, there appears to be no cavil to the proposition that Court in case of promotions which are based on the subjective assessments of an employee must not interfere as it is not equipped with all means to determine and carry out such a subjective analysis, barring exceptions which are dependent on the facts and circumstances and on case to case basis. In fact the Counsel for the plaintiffs while confronted on this, conceded frankly that it is not what he is challenging before the Court. He argued that it is the violation of regulations as well as the Agreement and the procedure adopted which has been impugned in these proceedings. On perusal of the record this contention of his appears to be correct. In this matter it is not the subjective assessment of the Policy Board (which otherwise has not been placed on record conveniently by PIA) which is being examined; rather, it is in fact the process adopted and violation of regulations as well the Agreement by the Policy Board which is being looked into. It is now well settled that subjective assessment by a public authority must rest upon an open and transparent objective criteria. The subjectivity of CSB (or Promotion Board) must filter through clearly defined parameters, criteria and standards. Subjective assessment does not empower or grant a license to a public authority to exercise discretion without first structuring it¹. Here before the Court nothing has been placed on record as to why the Plaintiffs have been superseded by their juniors. They have made a complaint along with Defendant No.2 but were never replied and no reasons have been given to them for such treatment. "If

¹ Liaqat Ali Chughtai v Federation of Pakistan (PLD 2013 Lahore 413)

prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers....In order to protect his interests, the person must also be enabled to controvert, correct or comment on other evidence, or information that may be relevant to the decision and influential material on which the decision maker intends to rely. If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by this, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing²."

13. Though the opinion and or decision of the members of the Policy Board is not before the Court nor any finding is being recorded on their opinion in respect of Plaintiffs and other eligible applicants for promotion; but it may of relevance to note that even the personal opinion of the members of the Board cannot outweigh the law and the regulations required to be followed. In the case of ***Federation of Pakistan v Dr. Muhammad Arif and others*** (2017 SCMR 969) the Hon'ble Supreme Court had the occasion to examine the validity of personal opinion(s) of member(s) of a Selection Board as against the service credentials of an officer for promotion as this option was provided in rules; however, the Hon'ble Supreme Court at Para 21 has been pleased to hold as follows;

21. However, the above amended form, as is evident from its plain reading, instead of providing any evaluation structure, not only left it open for the board to choose either the service dossier of the officer concerned as a source material for the evaluation of the various essential and crucial attributes of the officer, or just to rely upon the personal knowledge of its members for the said purpose, whereas in relation to the candidate's personality profile it was left exclusively to be evaluated on the members knowledge, without any reference to any record, and above all, and more crucially, for an officer to avoid deferment or supersession (one out of two at the option of the board) it is made essential to obtain at least 3 out of the 5 discretionary marks in respect of "integrity/general reputation/perception". ***This created an anomalous situation where an officer who may have otherwise, achieved the required threshold on the basis of evaluation of his service record, may still be superseded by the Board on the basis of the opinion harboured or nurtured by a few of its members, and instead less deserving officer may be recommended, which could result in the degeneration of the civil service, and dissatisfaction and despondency amongst its cadres.*** (Emphasis Supplied)

² DeSmiths Judicial Review. 6th Edition. Pp.389-391 as reproduced in PLD 2013 Lahore 413.

14. In the case reported as ***Tariq Aziz-Ud-Din and others: in re (2010 SCMR 1301)***, the Hon'ble Supreme Court took notice of a complaint made by one officer against the Government alleging that promotions made from BS-21 to BS-22 were in total violation of the Constitutional provisions and principles of merit, seniority and fair play. In a detailed judgment the entire promotions were set-aside and guidelines were enunciated for all. For exercise of discretion by a public authority it was observed as follows;

20. The above principles of structuring of discretion actually has been derived from the concept of rule of law which, inter alia, emphasize that action must be based on fair, open and just consideration to decide the matters more particularly when such powers are to be exercised on discretion. In other words, the arbitrariness in any manner is to be avoided to ensure that the action based on discretion is fair and transparent.....

The Court though came to the conclusion that promotion is not a vested right; however, the officer deserves that his case be considered for promotion in accordance with law. The Court observed that;

.....At this juncture, it may be stated that Mr. Abdul Hafeez Pirzada learned counsel for Federation, though, emphasized that "there is no question of supersession because the officers who are working in BS-21 and have not been promoted to BS-22 would continue to be eligible for promotion (emphasis provided), this argument goes in favour of the officers who have not been promoted because there is no question mark on their eligibility and fitness and since there is no reason available on record to deprive them of their deserved position, contention of Mr. Muhammad Akram Sheikh learned counsel and others that discretion has not been exercised, reasonably, so also the principles set out to structure the discretion in the judgments cited hereinabove, has not been followed rendering the whole exercise in pursuance of which the aggrieved petitioners have been deprived of the promotion is not sustainable, seems to be tenable. In addition to it, once the argument of learned counsel for the federation in respect of non-supersession of the left out BS-21 officers is accepted then we feel no difficulty in concluding that selection on merit would take place after assessment of all relevant consideration including competence and good service record. It is correct that the interpretation of the word 'merit' includes eligibility as well as academic qualifications [Miss Abida Shabqadar v. Selection Committee 1989 SCMR 1585]. It is equally important to highlight another important principle that when promotion is to be made to a selection post it needs to be purely on merit. However, in case there is a tie qua meritorious past record, credibility and confidence among the officers then seniority would play its role [State of West Bengal v. Manas Kumar Chakrabarti (AIR 2003 SC 524)].....

Again at Para 23 the Court reiterated the stance for exercising discretion and held as under;

23. At this juncture, it would not be out of context to make reference to the contention raised by learned Attorney General for Pakistan who placing reliance on section 9(2) of CSA, 1973, emphasized that the eligibility for the purpose of promotion is not the sole consideration as thereafter merit will come, therefore, according to him, all the persons are eligible and their promotion is to be based on merit amongst themselves. He placed reliance on Muhammad Yousaf v. Abdul Rashid 1996 SCMR 1297. We have no cavil with the proposition discussed therein but on posing a question to ourselves i.e. whether the cited judgment confers arbitrary powers upon the competent authority to side track the principle of structured discretion, rule of law, due process of law, equality before law and the criteria highlighted in the Judge made Law noted hereinabove and finding, that the provisions of Articles 4 and 25 of the Constitution have not been adhered to, surely, we could not get affirmative answer to persuade ourselves that fate of the officers be left entirely to the discretion of the competent authority. Thus the argument so advanced by the learned Attorney-General could be acceptable only if it comes up to the well-established principle's for exercising the discretion highlighted in the judgments noted hereinabove.'

15. The Hon'ble Supreme Court had the occasions to examine the issue of wrongful promotions in PIA in the case of **Walayat Ali Mir (Supra)** as relied upon by the learned Counsel for the Plaintiffs. Insofar as exercise of discretion in this context is concerned the Hon'ble Supreme Court went on the hold that;

8-A.The discretion is not be exercised on whims, caprices and moods of the authorities. It is now well settled that exercise of discretion is circumscribed by principles of justice and fairness. The authority exercising discretion should take into consideration and advance the aim and object of the enactment, rule or regulation under which it is authorized to act. It should not act in complete negation of the object of such law, rule regulation or established policy otherwise it will not be fair, reasonable and just exercise of power. The precondition imposed for exercise of discretion should be honored and respected unless from valid reasons they have to be discarded....

As to promotion and it being a vested right or not it was observed as follows;

9. The contention that no employee has a vested right in promotion may be correct but where rules, regulations and policy have been framed for regulating appointment and promotion, any breach or deviation for mala fide reasons or due to arbitrary act of the competent authority, the aggrieved person would be entitled to challenge it.....

16. On perusal of the record and the reply filed by Defendant No.1 & 2, it appears that apparently there no serious issue as to the Plaintiffs being senior to Defendants No.3 to 8; however, they have been left out from promotions perhaps on the ground that they have not been found fit enough for such promotions. This is though not expressly said so anywhere by Defendant No.1; but it

can be easily inferred from scanning the response and the arguments so made by their Counsel. And for that it may be noted that insofar as this aspect is concerned, Defendant No.1 has failed to place on record the material on the basis of which the Plaintiffs, purportedly, have not been found fit for such promotions. At the same time it has also not been informed or for that matter brought to the notice of the Court that what prevailed upon the Board to recommend the promotion of Defendants No.3 to 8. Hence, as noted earlier, no further observations ought to be recorded as to the merits and de-merits of each eligible employee.

17. In view of hereinabove facts and circumstances of this case when the entire material has not been placed before the court either by PIA or the private defendants and in view of the fact that such a subjective analysis ought not to be carried out by the Court as also argued by the learned Counsel for Defendant No.2, I am of the view that this Court is left with no other option but to suspend the Personnel Order No.054/2018 till final disposal of this Suit and as a consequence thereof, Defendants No.3 to 8 are to be relegated to the post of Deputy Chief Engineers, as the Plaintiffs have made out a prima facie case and balance of convenience lies in their favor, whereas, denial of an injunctive relief would cause them irreparable loss . However, if the management of PIA feels that due to exigency, fresh proceedings are necessary for carrying out promotion(s); then they are at liberty to do so but in accordance with the Agreement and the revised policy, if any, and so also keeping in mind the discussion made hereinabove, including consultation with Defendant No.2 as per the Agreement. If any of the eligible candidates is left out, then the aggrieved candidate must be provided with reasons, independently and individually, who shall then be at liberty to seek appropriate remedy in accordance with law, rules and regulations of PIA.

18. The listed application stands allowed / disposed of in these terms.

Dated: 16.09.2019

J U D G E

Ayaz P.s.