

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 2912 of 2016

Zafar Akbar,  
Petitioner through:

Mr. Jaffar Raza a/w Mr. Asad Iftikhar and Mr. Zakir Leghari.

Respondent No.1.  
Through

Mr. Muhammad Nishat Warsi, AAG.

Respondents No.2 to4  
Through:

Mr. Muhammad Asghar Malik, advocate.

Dates of hearing:

23.09.2019

Date of order:

26.09.2019

## ORDER

**ADNAN-UL-KARIM MEMON, J:** - This Court heard the instant matter at length on 17.4.2019 and directed the Competent Authority of Respondent- Pakistan Television Corporation (PTVC) for appropriate decision on the representation of the Petitioner dated 03.03.2015 in accordance with law. The Deputy Controller, Administration & Personnel-II, PTVC has placed on record compliance report of the aforesaid order, whereby they have declined the request of the petitioner for promotion with certain reasons.

2. Mr. Jaffer Raza, learned Counsel for the Petitioner has objected to the compliance report and has taken the stance that the aforesaid order is not complied with in its letter and spirit as the decision on the representation has not taken by the competent authority as directed by this court in the aforesaid order, however he attacked the appointment of Respondent No.5 to the post of Controller Script, Program Department in Group-9. Per learned Counsel, the Respondent No.5 was accommodated in Group-9 in violation of Service Rules of Pakistan Television Corporation; that he is / was not qualified to be inducted in the Program Department by changing his cadre from `Diesel Mechanic` to `Controller Script` in Group-9. Learned Counsel has drawn our attention to the various documents attached with the memo of petition and demonstrated that, he has recently been

appraised the factual position of the promotion of the Respondent No.5, compelling the petitioner to institute the present lis against the Respondent-PTVC for redressal of his grievances. Be that as it may, we asked the learned Counsel to satisfy this court as to how Respondent No.5's appointment in Group-9 is suffering from inherent disqualification as he was inducted in service in the year 2004 and earned promotion on the aforesaid post on the basis of his qualification and length of service as per PTVC Service Rules.

3. Learned Counsel replied that the Petitioner is the senior most in the cadre and eligible for the aforesaid position. Learned Counsel briefed us that the petitioner had joined Pakistan Television Corporation ["PTV"] in the year 1997 in Group-V as Producer (Script) in Program Department. He was promoted from time to time and finally in Group-VIII as a Script Editor with effect from 31.12.2009 vide Office Order dated 29.3.2010 and thereafter no promotion of the Petitioner was made by the Respondent-PTV on the premise that the Respondent No.5 occupied the post of Petitioner. He pointed out that the Respondent No.5 was appointed as Diesel Mechanic in Group-I, thereafter his post was re-designated and appointed as Controller Script Program Department in Group-9 vide Office Order dated 26.2.2016 on probation of [06] six months in an arbitrary manner and in violation of Statutory Rules of Respondent-PTV promulgated through SRO No. 639(1)/78 dated 24.5.1978 published in the Gazette of Pakistan.

4. On the aforesaid issue, we have scanned the record minutely, and prima-facie do not find any inherent defect in the promotion of the Respondent No.5 on the aforesaid post, since petitioner has failed to point out that he suffers from any sort of inherent disqualification.

5. So far as the promotion of the petitioner is concerned, at this juncture, we confronted him with the record that petitioner was superseded by the Selection Board vide Minutes of the Meeting of Selection Board due to his average ACRs and the recommendation of the Selection Board was approved by the competent. We also pointed out to him that supersession is punishment under the service law for which his representation has now been decided and

he has a remedy to call in question the findings as provided under the law. In reply to the query, he has submitted that the purported allegations of rating of average ACRs, which were never communicated to him. He referred to the Circular dated 30.10.1998 issued by Respondent-PTV and argued that the Management of PTV had decided that the concerned employee should be informed about the rating of below average/average of performance appraisal up to 30<sup>th</sup> September of every year, but nothing could be done, therefore, the Petitioner cannot be saddled with refusal of promotion in next rank.

6. The aforesaid claim of the petitioner is refuted by the learned counsel for the Respondents that the Respondents have acted in accordance with law, Rules and Regulations of the Corporation as such they have not violated any fundamental right of the Petitioner. He next submitted that in pursuance of directions of this Court representation of the petitioner has been considered in depth by the Competent Authority which revealed that he was considered for promotion on 01.03.2014 and 01.04.2015 but not found fit due to his "Average" appraisal ratings, which were conveyed to him by the local management of TV Centre, Karachi verbally. As per rules/policy 'Above Average' is a rating which demonstrates capability for further promotion in the next Rank; that the appraiser, while rating him an average performer, has also signed the statements. He relied upon the Order passed on his representation and documents attached with the order (Page-7 of appraisals), available on all appraisals from 2009 to 2013. He next argued that there is no provision in rules to treat an appraisal ratings upgraded, if an employee is not conveyed in time about the "Average/Below Average" ratings. However, he conceded that as per Circular No.HPP/100/6547 dated 30.10.1998, if the adverse remarks are not conveyed in time it will be expunged automatically. However he defended the appointment of Respondent No.5 as Controller Script Program Department in Group-9 by referring various documents available on record. He next added that the Respondent No.5, did not suffer from any inherent disqualification to hold a public office or to warrant removal from such office; that a writ of quo warranto is not is not warranted

in the present matter; that there was only one post of Controller Script Program and Respondent No.5 was found suitable on the premise that petitioner's performance was average therefore he was superseded permanently as such he cannot claim promotion on the post of Controller Script, Program Department in Group-9.

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

8. On the issue of promotion of the petitioner in next Rank, learned DAG pointed out that the competent authority can take disciplinary action against a civil servant under subsection (2) of Section 13 of the Civil Servants Act, 1973, in the following cases:-

“(a) Where two or more penalties under the Government Servants (Efficiency & Discipline) Rules, 1973, have been imposed on a civil servant.

(b) Where overall grading of the ACRs is Average, and/or where adverse remarks in regard to acceptance of responsibility, integrity, reliability, output of work and behavior with the public were recorded in the ACRs (duly conveyed to the concerned civil servant and his representation against it finalized, as per rules).

(c) Where a civil servant is twice recommended for supersession by the Selection Board/DPC and the recommendation of the Selection Board/DPC is approved by the competent authority.

(d) Where other specific and cogent grounds, including the following, may warrant retirement of a civil servant:--

(i) persistent reputation of being corrupt;

(ii) possessing pecuniary resources and/or property etc. disproportionate to his known sources of income; and

(iii) frequent unauthorized absence from duty.”

9. He next added that the recommendations, as contained in the Establishment Division's OM No. 1/3/2007/CP/ II dated 24th October, 2007 “Promotion Policy”, also prescribed conditions for deferment and also required that the officers superseded/deferred by the competent authority be informed about the reason for his supersession/deferment to enable him to improve his performance and to complete his records or to make up any other deficiency, as the case may be.

10. Learned Counsel for the Respondent-PTVC also pointed out that petitioner was well aware of his recommendation of supersession on the ground that during his service his performance evaluation reports with effect from 01.4.2009 to 31.5.2010 and with effect from 01.04.2010 to 31.03.2011 and for the year 2011 to 2013 were not up to the mark and below average for qualifying for promotion. Finally he made representation vide

letter dated 3.3.2015, but the same was declined vide letter dated 20.5.2019 with the following observations:-

“02. It is intimated that in pursuance of directions of Sindh High Court, Karachi representation of the petitioner has been considered in depth which revealed that he was considered for promotion on 01.03.2014 and 01.04.2015 but not found fit due to his “Average” appraisal ratings, which were conveyed to him by the local management of TV Centre, Karachi verbally. As per rules/policy ‘Above Average’ is a rating under which an appraise demonstrates capability for promotion. It is also added that the appraiser, while rating him an average performer, has also signed the following statements (Page-7 of appraisals), available on all appraisals from 2009 to 2013 (copies attached):

**“I have discussed this appraisal with the Appraise and have told him how he has done during the period covered by this appraisal. I have also pointed out to him his strength and weaknesses.”**

03. Furthermore, there is no provision in rules to treat an appraisal ratings upgraded, if an employee is not conveyed in time about the “Average/Below Average” ratings. However, in accordance with Circular No.HPP/100/6547 dated 30.10.1998, if the adverse remarks are not conveyed in time it will be expunged automatically. As such, his case has no merit in accordance with PTV Service/policy.

04. The position explained above may be presented before the Sindh High Court, Karachi, accordingly.”

11. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to compel the competent authority to promote a Civil/Public Servant against whom prima facie evidence showing his deficiency of achieving the grades / marks was available. Principally, through these proceedings Petitioner claims promotion. In our view, in promotion matters to such post could not be made in a mechanical manner and a variety of factors, such as examination of service records, evaluation reports of training institutions, record of disciplinary proceedings, reputation of integrity and efficiency, suitability for handling particular assignment, etc. had to be taken into consideration. It is also a fact that a substantial amount of subjective evaluation of an officer's capabilities is involved. Therefore, normally questions of determination of fitness of a person to be promoted are not capable of being scrutinized on the basis of judicially manageable standards. Nevertheless, such subjective evaluation is to be premised on an objective criteria with the object of evolving such objective criterion, the Government itself has been issuing promotion policy guidelines and developed methods of quantifying confidential reports which have been treated at par with statutory rules. It may be clarified that the assessment of an officer's

performance during a year may completely depend on the subjective opinion of his Reporting Officer. The weightage required to be accorded to it for the purpose of determining fitness for promotion entails, an objective assessment. Indeed, the Courts will not sit in judgment over subjective evaluation but would indeed be competent to examine whether the required objective criterion was followed. In our view, in the seniority/promotions cases no vested right/fundamental right can be claimed.

12. We have noticed that since the representation of the petitioner has already been decided and prima-facie there is findings against him and the said findings are not impugned before this court, thus cannot be dilated upon. In view of such state of affairs, we without touching the merits of the case on the issue of his promotion in the next Rank, hold that, basically the purpose of filling of this lis is over, thus cannot be stretched further, on the premise that once the Respondent-Pakistan Television Corporation has decided the representation of the Petitioner which provides him fresh cause of action if he at all feels himself aggrieved of such order on his representation, he can file fresh petition if he is so advised, subject to all just exceptions.

13. The upshot of the above discussion is that this petition has served its purpose and the same is, therefore, disposed of in the above terms.

**JUDGE**

**JUDGE**

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