

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

CP No. D- 10 of 2021

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing
& decision:

03.11.2021

Petitioner:

Dr. Muhammad Nawaz Abbasi through Barrister
Jawad Ahmed Qureshi, Advocate

Mr. Ayaz Ali Rajpar, Asstt: A.G.

ORDER

ADNAN-UL-KARIM MEMON, J: - The petitioner in the instant petition has prayed as under:-

- i. Direct the respondent No.2 to issue notification for promotion of petitioner from BPS-19 to BPS-20 with effect from 31.08.2011 without any failure as the petitioner was illegally deprived of his promotion into BPS-20.
- ii. To hold that the petitioner has the right to be treated equally and accordance with the law like his fellow colleagues who were given proforma promotion.
- iii. To hold that the petitioner is entitled for promotion as seat was reserved by the PSB-1 held on 7.7.2011 but the petitioner was not promoted due to show cause which has been withdrawn vide order dated 9.8.2017.
- iv. To direct respondents to issue notification under Rule 7-A of Sindh Civil Servants (Appointment, Promotion and Transfer Rules) 1974.

2. Barrister Jawad Ahmed Qureshi, learned counsel for the petitioner mainly contended that the petitioner had served in the Health Department Government of Sindh as Senior Medical Officer in BS-19 and stood retired from service in the year 2011 on attaining the age of superannuation; that during his tenure of service, he was served with show cause notice (SCN) dated 26.3.2007 under Section 3 of Removal from Service (Special Powers) Sindh Ordinance, 2000; the said SCN was properly replied, however the disciplinary proceedings initiated against him remained pending till he reached the age of superannuation; that on 9.2.2011 the respondents issued seniority list of doctors (male) in BPS-19 and the name of the petitioner was at serial number 20 for promotion in BS-20; that on

7.7.2011 Provincial Selection Board-1 (PSB) meeting was held approving the promotions of doctors from BPS-19 to 20 wherein the case of the petitioner for promotion was deferred due to pendency of disciplinary proceedings; he being aggrieved by and dissatisfied with the non consideration of his promotion, moved an application to the competent authority on 11.7.2011 for inclusion of his name in promotion list as he was at the verge of retirement; that subsequently on 13.7.2017 after personal hearing to petitioner, the show-cause notice was withdrawn by the competent authority; petitioner emphasized that on 26.9.2017, after withdrawal of show cause notice, he requested the respondents for grant of proforma promotion as his other colleague was also facing the same situation was granted proforma promotion after the order dated 31.03.2018 passed by Honourable Supreme Court of Pakistan; that the case of the petitioner for proforma promotion was forwarded by respondent No.5 to respondent No.3, but who illegally declined to consider his case for proforma promotion; the act of respondents failing to consider the case of petitioner for proforma promotion is illegal and in violation of settled rules of service jurisprudence; and, also against the various judgments of Honorable Supreme Court on the subject issue; that the petitioner has fundamental right to be treated in accordance with law, but the respondents have miserably failed to treat the petitioner in accordance with law.

3. learned counsel for the petitioner, invited our attention towards the order dated 31.3.2018 passed by the Honorable Supreme Court in Cr. Org. P No.15-K of 2016 in C.A. 30-K of 2014 and CrI. M.A 37-K of 2017 in Cr. Org. P No.15-k of 2016 and argued that petitioner stood retired with effect from 1.9.2011, thus the ratio of the aforesaid order passed by the Honorable Supreme Court is fully applicable in the case of petitioner. Learned counsel further argued that the petitioner has been cleared for proforma promotion in BPS-20 with effect from 07.07.2011 when he became entitled to promotion in BPS-20. He prayed for direction to the respondents to grant him proforma promotion accordingly just for pensionary benefits.

4. Mr. Ayaz Ali Rajpar, learned Assistant A.G has conceded the legal position of the case and argued that the action of the respondents was/is not in accordance with the decision of Honorable Supreme Court as discussed supra; that he was erroneously precluded from actual promotion in PSB-meeting held on 7.7.2011 on

account of pendency of disciplinary proceedings, though the same could not be finalized in his tenure of service, however, the competent authority subsequently withdrew the said proceedings in the year 2019, thus he became entitled to claim promotion along with his batch mates as per Rule 7-A of Sindh Civil Servants (Appointment, Promotion, and Transfer Rules) 1974.

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

6. The pivotal point involved in the present case is whether, any civil servant superannuates after the recommendations of PSB-I before issuing the notification of promotion is entitled to proforma promotion under Rule 7-A of Sindh Civil Servants (Appointment, Promotion, and Transfer Rules) 1974?

7. The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own. In the present case petitioner was lastly promoted in BPS-19 in the year 1996; and, his promotion was due in BPS-20 in the year 2011; however, due to lethargic attitude of respondents, the same could not be materialized. Finally, he stood retired from the government service on attaining the age of superannuation with effect from 01.09.2011. In our view, the appointing Authority could have approved the proforma promotion of the Petitioner from the date on which the recommendation of PSB-I was made. Although the Officer, who expires or superannuates after the recommendation of PSB-I is entitled for promotion so as the case of petitioner, as his post was kept reserved, is entitled to the benefit of Rule 7-A of Sindh Civil Servants (Appointment, Promotion, and Transfer Rules) 1974 as well as Fundamental Rule 17(1).

8. We have noticed that the respondents have not complied with the direction of Honorable Supreme Court passed in CrI. Org. P No.15-K of 2016 in C.A. 30-K of 2014 and CrI. M.A 37-K of 2017 in CrI. Org. P No.15-K of 2016 and the petitioner has not been given proforma promotion in BPS-20 with effect from the date when PSB-1 considered the petitioner for promotion on 7.7.2011 and allowed the petitioner to retire from service in the year 2011; thus immediate indulgence of this court is required in the matter. It is well-settled

that proforma promotion can be awarded to retired government servant if there was / is no fault on his part.

9. In the light of the above legal position, we are of the considered view that a civil servant is entitled to proforma promotion, once during service his promotion is approved by the Competent Authority and in the meanwhile, if he superannuates, he is entitled to all benefits as admissible under the law. On the aforesaid proposition, we are fortified by the decisions 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).

10. In view of the facts and circumstances of the case and for the reasons alluded; prima-facie the claim of the Petitioner for proforma promotion is tenable under the law for the simple reason that PSB-1 deferred his case for promotion in BS-20, on account of pendency of disciplinary proceedings, which could not be completed during his tenure of service, however finally the same was withdrawn, in the meanwhile, he reached the age of superannuation, just after the erroneous recommendation made by PSB-I, whereby he was wrongly deferred, though his post was kept reserved; as a consequence, the pay of the petitioner is required to be re-fixed and his post-retirement benefits will be recalculated by allowing his proforma promotion in BS-20 and arrears shall be paid to him with 6% simple interest per annum.

11. In the light of the above facts and circumstances of the case, this petition is allowed. The competent authority of respondents is directed to notify the proforma promotion of the petitioner in BS-20 with effect from 7.7.2011 i.e. the date on which the PSB-1 meeting was held and other ancillary benefits under the law, without discrimination, within 02 weeks, from the date of receipt of the Order of this Court.

JUDGE

JUDGE