

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-1400 of 2015

Before: Muhammad Shafi Siddiqui, J
Adnan Iqbal Chaudhry, J

Lieutenant Commander (Rtd.) P.N.
Engineer Abdul Aziz Narejo

Versus

Karachi Port Trust & others

Date	Order with signature of Judge
------	-------------------------------

1. For hearing of CMA No.6145/15
2. For hearing of main case

Date of Hearing: 23.10.2019

Petitioner: Through Mr. Abdul Salam Memon Advocate

Respondents No.1 to 3: Through Syed Yasir Ahmed Shah Advocate

Respondent No.4: Through Syed Abdul Waheed Advocate

ORDER

Muhammad Shafi Siddiqui, J.- Petitioner Lieutenant Commander Engineer Abdul Aziz filed this petition for maintaining his seniority over and above the respondents No.4 and 5 in the seniority list of Assistant Engineer CM&EE-I Department of respondent No.1 and to consider promotion of the petitioner according to his length of service from the date of his appointment till filing of this petition and that respondents be restrained from treating the petitioner as “Ad-hoc” and that his very initial appointment as Ad-hoc in BPS-17 be considered as his appointment in KPT in BPS-18 in accordance with the rules of equivalence of ranks of armed forces to basic pay scales in civil organization.

2. The brief facts are that the petitioner is a retired Lieutenant Commander of Commissioned Engineering Service of Pakistan Navy. After

retirement, he applied through a written application dated 18.8.1996 for the post of Electrical Engineer BPS-18. The Planning and Development Division claimed to have repeated an advertisement in press for recruitment but no one responded. Petitioner claimed to have received information through a letter dated 16.10.1996 that he has been appointed as Assistant Electrical Engineer (BPS-17) in CM&EE's Department on "ad-hoc" basis. It is only claimed in the petition that he was not considered against the vacant advertised posts of Electrical Engineering in BPS-18 as he did not possess the Masters degree in Engineering. Petitioner claims that none of the Electrical Engineer in BPS-18 out of seven, working in respondent No.1 possesses Masters degree. He relied upon the Recruitment and Promotion Rules of Officers of respondent No.1 available at page 109 which regulation apparently framed in 2011. He further claimed that in terms of Office Memorandum No.14/7/78-D-III dated 10.2.1980 of the Establishment Division, the retired officers of rank of Major can only be re-employed in civil department/autonomous or semi autonomous bodies in BPS-18. It is argued that Lieutenant Commander of Pakistan Navy is equivalent to the rank of Major in Pakistan Army. He relied upon Office Memorandum Part-III that deals with the rank of Major/Lieutenant Commander. Petitioner submits that since he was appointed in BPS-17 instead of BPS-18 hence he submitted an appeal immediately after his appointment to the respondent No.2 for adjustment of his seniority, grade and pay, however all in vain.

3. It is claimed that several other commissioned officers of Pakistan Navy of the rank of Lieutenant Commander were appointed in KPT in BPS-18 or above which he claimed to be discriminatory and biased attitude towards petitioner. He was terminated from service in the year 2000 on account of the fact that his recruitment was irregular and he was the only person claimed to have been victimized. The petitioner was reinstated in pursuance of the order passed by the Federal Service

Tribunal since the petition of KPT was dismissed by the Hon'ble Supreme Court for non-prosecution. After reinstatement the petitioner again claimed to have submitted an application for his seniority, grade and pay as well as for regularization of his service yet no decision was taken. The petitioner then filed a petition bearing C.P No.1266/2003 to treat him at par with other officers of Pakistan Navy against the post of BPS-18 and 19 though he was facing pressure to obtain Golden Handshake Scheme and quit from the service. It is claimed that during the period especially in 2004 three posts of "Electrical Engineer" in BPS-18 have fallen vacant, yet other candidates were recruited. The aforesaid petition was disposed of by a Bench of this Court directing the petitioner to approach the Federal Service Tribunal. The petitioner accordingly approached the Federal Service Tribunal, however the judgment in relation to Section 2-A of the Service Tribunal Act, 1973 came and service appeal of petitioner was returned and/or abated. The petitioner consequently filed another C.P. No. D-2141/2006 for same relief i.e. to be treated at par with other candidates who were recruited. He claimed to have been called for an interview but was screened out through a sub-committee consisting of Military Officers inducted in KPT on senior grades. He claimed that other Assistant Electrical Engineers who had equivalent service grade as that of petitioner in KPT were promoted to senior post of Electrical Engineer in the year 2005 and 2007. It is claimed that as a result of citing some of the Naval Officers who were junior to the petitioner, he was victimized as he was booked in a false case of theft of diesel. In view of such charges, the petitioner who filed a petition bearing CP No.2141/2006 was dismissed for non-prosecution on 20.4.2010. Consequently after exhausting all the remedies, insofar as the allegations of theft were concerned, the petitioner filed another petition bearing CP No.D-4010/2012 for his reinstatement as he was dismissed from service on such charges. On 09.9.2014 the petitioner was reinstated. Consequently when he was reinstated in service as against

the charges leveled against him, he has now filed a fresh petition which subject left unattended in CP No.2141/2006 having been dismissed for non-prosecution.

4. We have heard the learned Counsel and perused the material available on record.

5. In order to reach to a just and fair conclusion it is necessary to understand what the petitioner has prayed for in the instant petition and these prayer clauses are reproduced as under:-

- a. Declare that petitioner is senior to the respondents No.3 & 4.
- b. To direct the respondents No.1 to 3 to place the name of the petitioner over and above the names of the respondents No.3 & 4 in seniority list of Assistant Engineer CM&EE-I Department of defendant No.1.
- c. To direct the respondents No.1 to 3 to consider the promotion of the petitioner according to his seniority from the date of appointment of the petitioner till date, with all back benefits.
- d. To restrain the respondents NO.1 to 3 permanently from treating/writing the petitioner as adhoc.
- e. Accept the right of the petitioner to be treated at par with other retired Lieutenant Commanders of Pakistan Navy who have been appointed in KPT in BPS-18 in accordance with Rules of Equivalence of ranks of armed forces to basic pay scales in civil organizations, issued by President of Pakistan in 1980, and Office Memorandum No.14/7/78-D-III of 10.2.1980 of Establishment Division and in the light of Judgment of Hon'ble Supreme Court of Pakistan in the matter of Captain (Retired) Abdul Qayyum, Assistant Executive Engineer Communication & Works Dept. Government of Punjab, as reported in newspaper Dawn of 19th Dec. 2002.
- f. Place the Petitioner in BPS-18 w.e.f the date of his induction in KPT service with all back benefits in the light of positive recommendations of the then Chief Mechanical & Electrical Engineer (vide his Letter dated 23.1.1996, his endorsements dated 27.10.1996 and 22.11.1997 on Petitioner's applications), the then General Manager Administration's recommendation dated 14.2.1998.
- g. cost of this petition.
- h. any other relief this Honourable High Court may deem fit and proper under the circumstances of the case."

6. The relief under Article 199 of Constitution of Islamic Republic of Pakistan is a discretionary relief and hence it is necessary to trace the history of petitioner's recruitment. Petitioner on its own/independently moved an application, as admitted by him, for his appointment in KPT without any advertisement. The one which was relied upon came long time back, a year before. He was/is an Electrical Engineer. Annexure 'C' at page 101 reflects that Manager Personnel, perhaps of Human Resource Department, wrote a summary that at the relevant time (1996) there was no vacancy of Deputy Chief Electrical Engineer/Electrical Engineer that may commensurate to the qualification of petitioner. The Manager Personnel further wrote that they (KPT) were not locally empowered to create vacancies for his absorption. However, an attempt was made to adjust the petitioner since few posts of Assistant Mechanical Engineer in BPS 17 were lying vacant in CM&EE's Department and that he may be considered against one of such posts till vacancy of Assistant Electrical Engineer arises in the said department.

7. The Chairman approved the summary by accommodating him (petitioner) though he was only Electrical Engineer as against post of Assistant Mechanical Engineer. There was no recent publication inviting applications from the public/masses. This was only an ad-hoc appointment. Petitioner however has made an attempt to demonstrate that during the period several vacancies left vacant but he was never considered.

8. These facts would lead us to conclude that his (petitioner's) very initial appointment was not transparent as firstly it was without any codel formalities and secondly he being an Electrical Engineer was accommodated against vacant post of Mechanical Engineer in BPS-17. In the absence of public notice/advertisement, there was no competition amongst the candidates of his class, who may have contested at the relevant time.

9. Insofar as Recruitment, Appointment, Seniority, & Promotion Regulations of 2011, as framed under section 22 of the KPT Act, 1886 is concerned, the petitioner has failed to demonstrate as to how this could have retrospective effect to the appointments made in the year 1996. Even if these regulations were prior to his appointment, there was no post of Electrical Engineer BPS-18 lying vacant and he was only accommodated in the year 1996 by the Chairman.

10. Provisions of Esta Code insofar as it relates to Induction/Re-employment of Officers of Armed Forces of Pakistan in Civil posts are concerned, learned counsel has relied upon Part III of such Code which is available as Annexure 'E' at page 183. Para 12 of Part III of the Code as available on record has been relied upon which shows that the officers of rank of Major and equivalent who may retire or may have retired on completion of the prescribed age or service limit will be eligible for induction in grade 18 on regular basis upto 10% of the annual vacancies in the various groups and cadres in that grade, as may be specified. Para 13 further provides that induction will be made through the High Powered Selection Board in accordance with the procedure laid down in Para 6 (Part-II). Esta Code is primarily meant for civil servants yet the petitioner does not fit in the criteria as framed by it.

11. To understand the applicability of High Powered Selection Board, Para 6 provides that High Powered Selection Board shall be constituted by the President who will determine the occupational groups to which the officers are allocated. This never happened in the recruitment process of the petitioner. Firstly there was no High Powered Selection Board constituted by the President and secondly the appointment was never a regular appointment. He was only appointed on ad-hoc basis in BPS-17 as no post was available commensurating to his rank and credentials.

12. On 05.05.2005 the post of Electrical Engineer BPS-17 has fallen vacant and to fill up this vacancy by way of promotion four employees including the petitioner were not called for interview due to lack of required length of service/ad-hoc appointment.

13. Though he was appointed in the year 1996 on ad-hoc and the appointment apparently was not regular one yet the petitioner has spent more than two decades with a hope that no later, the post would fall vacant, he will be considered. The record reflects that he is still being considered as ad-hoc. This status throughout his career has not earned him anything except that he has faced certain charges which he defended and that he being deprived of further promotion on account of such status. The period of ad-hoc appointment should not have prevailed for such a long period. In case the authority had no complaints as far as the conduct and working of the petitioner is concerned, steps should have been taken by the authority to regularize the services of the petitioner. The authority remained indolent and petitioner continued as ad-hoc. The record shows that the only ground whereby he was deprived of any such promotion is that he was an ad-hoc employee. Thus, while we consider that his very appointment was not made on regular basis in BPS-18, we are also conscious of the fact that the petitioner has served more than two decades without any prospects of promotion.

14. Thus we deem it appropriate to dispose of this petition with directions to respondents to regularize the services of petitioner and so also consider the case of the petitioner for promotion, in case any such vacancy is fallen vacant, that may commensurate to his credentials and experience.

Judge

Dated:

Judge