

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-184 of 2018

Ghulam Qadir Thebo
Petitioner through : Malik Naeem Iqbal, advocate

Respondents
Through : Mr. Muhammad Nishat Warsi, DAG

Date of hearing
& order : **27.01.2022**

ORDER

The case of the petitioner in nutshell is that Petitioner has been non-suited by the High Power Selection Board {HPSB} for consideration of his promotion in BPS-22, from time to time vide minutes of the meeting of HPSB, held on 9.2.2017, 5.10.2017, and 11.12.2017, 2.5.2018, 12.11.2018, 18.3.2019, 23.11.2019 and 24.6.2020, and was superseded while junior officers were promoted to BPS-22. He filed departmental representation, which was not attended by the respondents; and during the pendency of this petition, the petitioner stood retired from Police Service of Pakistan in BPS-21. Now, the petitioner has prayed for the direction to the Prime Minister of Pakistan/competent authority to grant him pro forma promotion from BPS-21 to BPS-22 with effect from the date his juniors were promoted with all consequential benefits, inter-alia on the ground that no logical consideration was recorded by the HPSB for bypassing the petitioner as per the seniority list, further no justification exists for ignoring the merit; the petitioner has been condemned unheard, which violates Article 10-A and 25 of the Constitution.

2. We have heard the learned counsel for the petitioner, learned DAG, and perused the material available on record and case-law cited at the bar.

3. The Petitioner, had served in the Police Service of Pakistan for about 33 years and stood retired in BPS-21, on attaining the age of superannuation. Petitioner claims unblemished service record, thus was erroneously ignored for promotion in BPS-22 by HPSB.

4. Malik Naeem Iqbal, learned counsel for the petitioner has argued his case with vehemence and contended that the petitioner was fully eligible and fulfilled the requisite criteria for promotion to BPS-22 but was ignored without assigning any reason. The competent authority had no legal justification to ignore the petitioner; that there is no question of fitness involved for the grant of promotion to BPS-22 but

as a general rule where the right to consider a civil servant for promotion has been bypassed in violation of rules; this Court can examine the question of his fitness as well. The petitioner has been ignored in violation of the policy/rules of promotion and therefore, can approach this Court. On merits, he has submitted that the petitioner was ignored for promotion, arbitrarily in utter disregard of promotion rules. The factum of ignoring the petitioner in such manner negates the principle of legitimate expectancy where the petitioner though fully qualified in respect of the length of service, experience and quantification was not promoted by the competent authority without assigning any reason, which is violative of section 24-A of the General Clauses Act, 1897. He rests his case on the Order dated 27.4.2015 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.472/2014 (re-Umer Farooq v. Government of Pakistan), with the assertion that the case of the Petitioner is akin to the aforesaid case as decided by the Hon'ble Supreme Court. Petitioner has taken the plea that he was left out by the respondents without assigning a justifiable reason. He further argued that a civil servant has no right to promotion, yet he is entitled to be considered for promotion in the light of ratio of the judgment of the Honourable Supreme Court in the case of Tariq Aziz-ud-Din 2010 SCMR 1301. The right to be considered for promotion contemplated by section 9 of the Civil Servants Act, 1973 is neither illusory nor a perfunctory ritual. Withholding of promotion is a major penalty under Government Servant E&D Rules, 1973. Therefore, before a civil servant is condemned by withholding promotion from him, he has a right to insist that material based on which he is being deprived of promotion should be disclosed to him and should be allowed an opportunity to clear himself. Withholding of promotion of officer, unless the opinion of the competent authority is backed by some tangible material, would mean that the case was not considered under the law. The consideration of promotion is to be based not only on relevant law and rules but also backed by some tangible material that could be lawfully taken into consideration. He next argued that since the petitioner, during the pendency of this petition has crossed the age of superannuation, he is entitled to proforma-promotion under the provisions of FR 17(1), and the competent authority may if satisfied that a civil servant who was entitled to be promoted from a particular date and for no fault of his own, was wrongly prevented from rendering service to the Federation in the higher post, order that that civil servant would be paid the arrears of the pay and allowances of higher post through pro forma promotion or up-gradation arising from the ante-dated fixation of his seniority. He added that the treatment of civil servants under the law and in a just and fair manner in the matter of advancement of their career is of paramount importance for good governance. Otherwise, his commitment to the job, dedication to duty, his power to make the decision, and even his integrity might be confined to a casualty ward. Learned Counsel in support of his contentions, heavily relied upon the case of Federation of Pakistan Vs. Dr. Muhammad and others 2017 SCMR 969, and prayed for allowing the instant petition.

5. At this juncture, the petitioner's prayer for pro forma promotion is misconceived as no case for pro forma promotion is made out in the light of the ratio of the judgment passed by the Hon'ble Supreme Court in the case of the Government of Pakistan and other Vs. Hameed Akhtar Niazi and others (PLD 2003 SC 110). Grant and/ or refusal of promotion falls within the exclusive domain of the executive authority of the Government. Besides that, the fulfillment of the eligibility conditions only establishes the right of a civil servant to be considered for a promotion but this right for consideration is distinguishable from promotion itself which is not a right as clearly laid down in the proviso below subsection (2) of section 22 of the Civil Servants Act, 1973, read with Rules 2010 and 4{1}{d}{ii} of Civil Servants{Appeal} Rules,1977, Thus, a person fulfilling the eligibility condition for promotion cannot claim promotion as a matter of right. Since officers promoted to management level may be called upon to hold independent charge of a Ministry/Division or to head a major Corporation, the Authority to promote such level has to satisfy itself about the officer's maturity, balance, and ability to assume such top management positions. In the present case, the Prime Minister is the competent authority for approving promotion to BPS-22; and, the decision was taken, after taking into account the entire service record of the petitioner, officers, and comparison thereof. An excerpt of the minutes of the last meeting, which are sufficient reasons to discard the point of view of the petitioner, for convenience sake, an excerpt of the minutes of the last meeting are reproduced:-

"PROMOTION OF OFFICERS OF POLICE SERVICE OF PAKISTAN TO THE POST OF BS-22

12. The Board was apprised that two (02) vacancies in Police Service of Pakistan (BS-22) were available for consideration of BS-21 officers of that service for promotion. A panel of eleven (11) officers was presented to the Board in order of seniority. The Board made the following recommendations regarding the officers on the panel:

Sen. No.	Name of Officers	Remarks
		<p>The Departmental Representative apprised that the officer was considered in the meetings of HPSB held on 05.10.2017, 11.12.2017, 02.05.2018, 29.10.2018/12.11.2018, 18.03.2019 and 23.11.2019 but was not recommended. The board was informed that the officer filed C.P No.D-184/2018 in Sindh High Court, Karachi challenging the decision of the HPSB regarding his non promotion to BS-22 which is pending adjudication.</p> <p>The Board deliberated upon the service profile, training reports and performance evaluation reports of the officer and noted that the training report stated that the officer maintained a drawn back outlook. He showed no desire to project his performance during the course. His introvert nature affected his rating amongst peers. The officer battled in projecting his true analytical potentials. He had been advised to be more participative in group assignments. Moreover, he lacked self-assurance and focus and also required improvement in</p>

		application skills and aptitudes.
1.	Mr. Ghulam Qadir Thebo	<p>The Board also assessed the officer on the attributes of integrity, leadership, decision making, competence and spirit of public service and noted that he did not enjoy good reputation on the touchstone of uprightness and competence. He was observed to be less inclined towards public service delivery. He lacked motivation and serious mindedness towards the spirit of public service. The officer was also found to lack empathy inferring from his introvert nature.</p> <p>Further, the officer did not earn PER for the year 2019, hence no fresh recommendation could be drawn by HPSB regarding the performance of the officer and the Board reiterated its earlier recommendations.</p> <p>The Board, therefore, categorized him D in Integrity, D in Leadership, C in Decision Making, C in Competence, B in Training Evaluation and C in Public Service Spirit. Subsequent to detailed discussion the officer was not recommended.”</p>

6. The petitioner's departmental representation could not be taken into consideration under the proviso of subsection (2) of section 22 of Civil Servants Act, 1973 which indicates that no representation lies on the matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade, therefore the respondents have rightly declined his request on the aforesaid analogy, vide Office Memorandum dated 20.11.2019.

7. First and foremost, from the aforesaid extract, we are of the considered opinion, the petitioner's case was considered with due diligence by the competent authority and declined. However, it is well-settled law that a civil servant cannot ask for promotion as a matter of right.

8. In this case, the petitioner's right to be considered for promotion has not been denied to him. Besides that there has been no denial of any fundamental right or violation of any act/law and rules; that denial of promotion to a civil servant cannot be termed as a major penalty as the officer is likely to be considered for promotion again and may also be approved for promotion in future. While considering any officer for promotion, all aspects of his service record are examined including his commitment, dedication, power to make the decision, etc. in comparison with other officers.

9. In principle the promotion to the posts in BPS-22 ought to be filled in Public Interest, besides that the officer must have the requisite length of Service, and availability of vacancy, at least very good reports for during the last six years without stigma, possessing sufficient verity of experience in the secretariat and field office.

Primarily the evaluation made by an Expert Committee as discussed supra, should not be easily interfered with by the Court which does not have the necessary expertise to undertake such exercise that is necessary for such purpose. It is a settled proposition of law that subject to its powers and authority, the HPSB has to assess every proposal for promotion on case to case basis under the law.

10. In our view, to qualify for the promotion, the least that is expected of an employee is to have an unblemished record. This is the minimum expectation to ensure a clean and efficient administration and to protect the public interest. An employee found not fit for promotion cannot be placed at par with the other employees, and his / her case has to be treated differently. While considering an employee for promotion his / her entire service record has to be taken into consideration and if a promotion denies him / her promotion, such denial would not be illegal or unjustified under the service jurisprudence.

11. 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. Here the petitioner has been superseded by the HPSB in its meeting held from time to time as discussed supra on account of a bad reputation. If this is the position of the case, at this stage, we cannot say for and against the petitioner so far as his integrity is concerned, however, since the department has opined against him, therefore in our view, no case for the indulgence of this Court is made out.

12. With the above observations and direction, the petition stands dismissed along with the pending application(s) with no order as to costs.

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