

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D –6752 of 2016

Date	order with signature of Judge(s)
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1. For hearing of CMA No.21277/2017
2. For hearing of main case

10.03.2022

Mr. Sanaullah Noor Ghouri, advocate for the petitioner
Mr. Muhammad Nishat Warsi, DAG
Mr. Suleman Huda, advocate for respondents No.2 and 3/NBP

Petitioner seeks proforma promotion in line with promotion policy 2013, 2014, and 2015, inter-alia on the ground that the issue of promotion of the Petitioner falls within the purview of fundamental rights and that the same cannot be denied as provided under the Constitution. Petitioner has also cited the names of several Senior Vice Presidents (SVP) including those Executive Vice Presidents (EVP), who were posted outside Pakistan, were promoted in the year 2015 having lesser threshold marks. Petitioner has asserted that despite several representations made to the Respondent-Bank to consider his case for promotion during his tenure of the service as done with the officers who were already on secondment; the representations of the Petitioner were ignored and not replied in violation of the Bank Rules. Per petitioner, he was on secondment as per the direction of the respondent-bank; his performance remained outstanding for the year 2012 to 2015; that he is entitled to the promotion to the post of EVP; that there was nothing adverse against the Petitioner during his tenure of service, as neither he was facing any disciplinary proceedings nor any departmental inquiry was pending against him; that since the petitioner's service is governed by statutory rules of service of the Respondent-Bank, as such he cannot approach the learned Federal Service Tribunal (FST) and this Court has jurisdiction to entertain the Constitutional Petition under Article 199 of the Constitution; that Petitioner met the minimum requirement of aggregate marks as provided under the Promotion Policy of NBP issued from time to time and the Petitioner could not be superseded by his batchmates/juniors. Petitioner submitted that the Management of Respondent-Bank is not competent to alter the terms and conditions of service to the detriment of the employees of the Bank. Petitioner lastly submitted that his case for promotion to the next rank with his batchmates is his service right under Circular No.7 of 2015 dated 3.6.2015.

Mr. Sanaullah Noor Ghouri, learned Counsel for the petitioner, has submitted that the Respondent-bank has failed to appreciate that the colleagues of the Petitioner were considered for the proforma promotion to SVP and EVP, and they were also given all the back and consequential benefits so the case of the Petitioner is on the same footing and the Petitioner is entitled to the proforma promotion after he retired from service on 16.01.2016 to the post of EVP as per Promotion Policy of Respondent-Bank as discussed supra; that the conduct of Respondent-bank is discriminatory while ignoring the Petitioner for the proforma promotion to the post of EVP, whereas the colleagues of the Petitioner, who were on secondment were considered for proforma promotion under Promotion Policy 2013, 2014 and 2015. Learned counsel referred to various pages attached with the memo of the petition; that throughout his career of service, he has remained excellent. He lastly prayed that petitioner is required to be promoted from the post of EVP from the date when it had become due as per promotion policy dated 03.06.2015 by way of circulation like other officers who were also serving overseas/secondment to abroad and were promoted to the post of EVP. Learned counsel relied upon the order dated 11.08.2015 passed by this court in CP No.D-3120/2011 and submitted that under similar circumstances this court directed the respondent bank to grant proforma promotion on the issue of secondment and the case of the petitioner is akin to the case decided by this court discusses supra; that petitioner was wrongly deprived of his right of promotion he is entitled to proforma promotion as EVP from the date when his juniors were promoted to the post of EVP as the petitioner has already retired.

Mr. Suleman Huda, learned counsel for the Respondent-Bank, has contended that the promotion is not a guaranteed right and the same cannot be claimed as a matter of right, therefore the petition with the prayers as made is not maintainable; that the Petitioner stood retired on superannuation from the Respondent-Bank service, the promotion, which is claimed in the petition for the post of Senior Executive Vice President is based on performance as he was on deputation in a foreign country thus under the policy 2015 he was not entitled to promotion; that on retirement the Petitioner received all his retirement dues in the full and final settlement without any objection or reservation; that the Petitioner continued with his position of Executive Vice President till his retirement; that since the Petitioner has long ago retired from the Bank's service and has been paid his retirement dues in the full and final settlement, therefore he cannot claim promotion after retirement. Per learned counsel that Petitioner was considered for a proforma promotion but Respondent-Bank declined the same with cogent reasons; that the seniority is not only criteria for promotion, therefore cannot be agitated based on seniority; that there are several other factors including seniority, regional quota, qualification, number of available posts, conduct, marks obtained in the interview, promotion policy, etc.; that since the

Petitioner had already retired, therefore he was not eligible for promotion on this ground also. Learned counsel referred to his counter-affidavit and submitted that petitioner was on secondment with National Exchange Company Abdu Dhabi (UAE), hence, as per promotion policy petitioner is not eligible for promotion; that petitioner was not singled out in any manner. However, he categorically stated that those who were on deputation, secondment/attachment were not considered for promotion in terms of the policy. He lastly prayed for the dismissal of the instant petition.

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

It is settled law that where the law requires an act to be done in a particular manner, it ought to be done in that manner alone, and such a dictate of law cannot be termed as a technicality. Reliance has been placed on *Muhammad Anwar and others v. Mst. Ilyas Begum and others* (PLD 2013 SC 255). The petitioner has based his case on discrimination that on the issue of secondment the colleagues of the petitioner have been promoted in the next rank as EVP, whereas the Respondent Bank has not only deprived the Petitioner of his vested right to be considered for a promotion but it has also caused him the permanent loss of pensionary benefit of higher grade and he cannot be made to suffer on account of the departmental lapse. If this is the position of the case, on the subject issue, the Honorable Supreme Court of Pakistan in the case of *Secretary Schools of Education and others v. Rana Arshad Khan and others* (2012 SCMR 126) while granting Proforma promotion to retired public servant held as under:-

“Much before the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason and in the meanwhile, respondents attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse.”

It is a settled principle of law that if service, benefits have accrued to an employee but for one reason or the other such benefits could not be awarded to such an employee, then, irrespective of the fact of his/her having retired from service, the department concerned shall still have to further consider her/his case for such a promotion and to allow him/her benefits of such a promotion, even after retirement from service.

Promotion is generally an advancement in rank, which is granted based on acquiring extra qualifications or enhancement of skills or awarded in lieu of longstanding services of the employee as a token of satisfaction and appreciation

over services rendered by him. 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 and in cases where a temporary embargo was created against his right for such promotion or a legal restraint was posed against his claim owing to any departmental proceedings inquiry etc. against him and the said obstacle is done away with ultimately then in such a situation, his monetary loss and loss of rank is remedied through proforma promotion.

The Honorable Supreme Court in the case of Regarding Putting of Two Government Officers Namely Hasan Waseem Afzal and his Wife Farkhanda Waseem Afzal as OSD (2013 SCMR 1150), also held that the public/civil servants who were not promoted for want of required PERs because of their posting as OSD was not an act of their own doing and thus could not be left to suffer for the very reason. It was observed that:

“Their promotion to the next higher, the scale has been denied for want of PERs and PERs have not been complied on account of their posting as OSDs which is not an act of their own doing. “Let them suffer” may be a command of expediency but we cannot approve it when, “give them their due” is a command of justice, which prima facie appears to have been denied to them out of indignation and ill will of the high ups.”

No doubt promotion is not the vested right of a civil/public servant but where he is fully qualified for the promotion and there is no tangible clog in his service record, he has a right to expect that his case will be considered for promotion under law, rules, regulations and eligibility criteria/policy formulated for regulating promotion by the Government. Any breach or deviation therefrom for mala fide reasons or due to arbitrary act of his superiors or peers or the competent authority is not warranted in law.

In view of the position explained above it is to conclude that a public servant has a fundamental right to be promoted even after his retirement through awarding pro forma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and he is retired on attaining the age of superannuation without any shortcoming on his part pertaining to deficiency in the length of service or in the form of inquiry and departmental action was so taken against his right of promotion.

In view of what has been discussed above, the instant petition is disposed of with a direction to the competent authority of Respondent Bank to award the

petitioner proforma promotion as EVP by way of Circulation within one week, however, that arrangement is subject to the condition that if the colleagues/batchmates/juniors of the petitioner were promoted in next rank based on secondment/attachment with other organizations.

Let a copy of this order be communicated to the President, National Bank of Pakistan, for compliance in time.

JUDGE

JUDGE

Zahid/*