

IN THE HIGH COURT OF SINDH KARACHI

Before:

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

Constitutional Petition No.D-567 of 2019

Nasir Ahmed
Petitioner through : Abdul Salam Memon, advocate

Respondents
through : Mr. Muhammad Nishat Warsi, DAG

Respondents No.5&6 : Mr. Muhammad Arshad Khan Tanoli, advocate

Date of hearing : **28.01.2022**

Date of announcement : **24.02.2022**

ORDER

Through the captioned Constitutional Petition, petitioner has prayed that he is performing his duties as Stenographer in BPS-15 in respondent-Port Qasim Authority (`PQA`) and his promotion is due in BPS-17, but the respondents 2 to 4 have merged two cadres i.e. Receptionist and Stenographer and made a common seniority list, as such he is deprived of his legitimate right of promotion.

2. Petitioner has averred that he was appointed with PQA on 15-05-1990, as Lower Division Clerk (LDC) in BS-07, thereafter he was promoted as steno-typist in his cadre in BPS-12 on 08-01-1996 and the post held by the petitioner along with other posts in his cadre was up-graded in BS-14, and finally petitioner was promoted as Stenographer BPS-15 on 23-04-2015; those private respondents were appointed as Receptionists (BPS-15), in the year 2007; that the cadre, Job Description, work assignment and working methodology of Stenographer and the Receptionists is altogether opposite, thus could not be merged in any manner of whatsoever nature; that before the framing of the Statutory Service Rules of 2011 by PQA, the Cadre of the receptionists and Stenography was altogether different but through the above referred rules both the cadres were merged malafidely to give undue benefits to the private respondents; and, at the same time it created bottlenecks for the petitioner (Stenographer) for progression in career; that thereafter after the framing of the Rules of 2011, combined Seniority List of petitioner and private respondents was issued, where upon petitioner and his other colleagues filed objections stating therein that since the cadre of the receptionists is altogether different, therefore, it cannot be merged with the cadre of the petitioner and petitioner contended further that seniority cannot be given to private respondents over and above petitioner and his colleagues in the cadre of stenography; that in the acknowledgement of the grievance and seriousness of issue relating to the merger of two distinct cadres, official respondents constituted a committee on 9th June, 2017, to resolve the issue of seniority list

of relevant cadres; that vide office order dated 24-12-2013, petitioner and some of his other colleagues were allowed current charge of post of SGS/PA (BS-17) with immediate effect; that on 21-03-2018, official respondents issued provisional Seniority List, where again private respondents were not only included in the combined and common seniority but were also given Senior position over petitioner and other Stenographers, and against such provisional seniority list, petitioner submitted objections on 05-04-2018, which objections were not responded to and finally on 09-10-2018, petitioner submitted reminder before the respondent No. 02, and very interestingly did not bear any fruit; that despite the above position the official respondents, who are fully poised to conduct the Departmental Promotion Committee, whereby the private respondents would be promoted at the cost of petitioner and the other Stenographers, even though private respondents were/are not qualified to be promoted for the post of Selection Grade SGS / PA (BPS-17).

3. Mr. Abdul Salam Memon, learned counsel for the petitioner, has contended that the merger of the two distinct cadres, cannot be countenanced by the law and the judgments of superior Courts; and, if there is the merger of the departments, still seniority of the different cadres is to be maintained separately, hence, the merger of the cadre of the stenographer and receptionists in PQA and thereafter issuing the Common Seniority is obviously illegal; that the receptionists, neither are qualified nor holding any experience for the job of Stenographers, and nor they were appointed under the requirements prescribed for stenography, therefore, they cannot be promoted to the post of Selection Grade Stenographer (BPS-17); that the adjustment of the private respondents in the cadre of the petitioner is not only creating heart burning and bottle necks for the petitioner and other stenographers but in-fact the entire arrangement of merger of distinct cadres, being unlawful, has been made to accommodate private respondents for political or other considerations; that despite the constitution of the Committee for resolving the dispute of seniority of list of relevant Cadres way back on 09-06-2017, the core issue so far has not yet been resolved which demonstrates the malafide on the part of official respondents; that the respondents to appease the petitioner and other stenographers prepared a purported draft for amendment in the Rules of 2011, for separation of distinct cadres but so far no concrete steps are taken to cure the lawful grievance of stenography, thus their cause is subsisting and because of the lethargic attitude of official respondents; that private respondents are taking advantage and if promoted, which will cause miscarriage of justice; that the petitioner is one of the senior most Stenographer in his cadre and for last many years he is waiting for his due promotion being qualified; and, even on current charge basis, petitioner was allowed the post of SGS / PA, thus he has earned sufficient experience but due to the unlawful merger, petitioner has suffered; that the petitioner rendered services in the PQA for many years quite efficiently, diligently, honestly and to the entire satisfaction of the superiors; besides that no disciplinary proceedings were ever taken place against him during his tenure of service ; that petitioner again and again approached the official respondents and dispatched the applications and appeals for promotion and seniority, as mentioned herein above but they turned their deaf ear and his genuine request was ignored every time, for

the reasons best known to them; that the petitioner has been seriously prejudiced and not treated equally, therefore, the petitioner is entitled to be treated equally in accordance with law, as provided under Articles 4, 5, 9, 18 & 25, of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel for the petitioner referred to Page 129 and submitted that the post of Stenographer (BPS-15) could be filled amongst the Steno typists (BPS-14) having five years' service, whereas the post of Receptionist in BPS-15 is to be filled through initial appointment, thus there is much difference between posts, which could not be amalgamated at all. In support of his contentions, he referred to page 37 and attempted to demonstrate the distinguishing features of the class of Secretary/Stenographer/Receptionist and extensively read the various clauses of the paperwork. He prayed for allowing the instant petition.

4. Mr. Muhammad Arshad Khan Tanoli, learned counsel for the respondents 5 & 6, has submitted that the petition filed by the petitioner is technically and legally not maintainable; and, the same is liable to be dismissed on the legal aspect alone; that up-gradation of the post of steno-typist into BPS-14, had never taken place in the year 2011, same is lying in BPS-14 in the respondent-authority, and more so petitioner has referred Annexure-B, with memo of petition in support of his contentions which is self-created document and the same is not official record, more over Port Qasim Authority is an Autonomous body and is absolutely independent to frame terms & conditions of service of its employees for its interest and carrying out its business and no employee has any vested right to question its suitability in accordance with his choice and will; that the statutory rules was framed vide Notification dated 07.03.2011, under the direction of Hon'ble Supreme Court of Pakistan vide order dated 31.01.2011 in the case of illegal appointments in PQA, with the approval of Government of Pakistan, whereas at the time of approval of said rules petitioner was working as UDC (BPS-07) in the respondent's Authority and presently on account of holding lower position in the seniority list, petitioner cannot attribute any malafide and allowing undue benefits to the respondents No.5 to 7, on the contrary the eligibility criteria for promotion against the post of P.A/S.G.S (BPS-17) includes passing of short hand test, hence it cannot be said that the receptionist are not eligible for promotion. More so rules for further promotion/progression of the petitioner is very much available and he will be considered for further promotion subject to fulfillments the requisite eligibility criteria as provided under the rules, strictly on seniority-cum-fineness basis; that since under the statutory rules of service, petitioner and private respondents are given common channel of promotion and after issuance of common and circulated seniority, when rules which provide a date of the regular appointment in BPS-15 in the common seniority list of stenographer / Receptionist, where under seniority is fixed in a cadre/grade shall be reckoned from the date of regular appointment as provided under the law; that since private respondents have been appointed 15 in the year 2007, whereas petitioner was promoted as Stenographer (BPS-15) on 23.04.2015, hence he cannot be allowed seniority over and above the private respondents; that the competent Authority has constituted the grievance committee to redress the seniority disputes of the employees of respondent's Authority in all the respective categories including the petitioner , and thereafter impugned seniority list was issued only for the purpose of

promotion against the posts of P.A/S.G.S (BPS-17); that as per approved policy guideline for promotion of officer and staff dated 29.02.2016 and 06.04.2016, senior officers are required to be nominated for their requisite trainings; that under law allowing current charge or additional charge to an employee does not confers any vested right for claiming regular promotion against any post; that since under the statutory rules of service petitioner and private respondents are given common channel of promotion; and, after merger of Stenographer / Receptionist both are in equivalent grade and performing identical duties, therefore common seniority list is prepared and circulated in accordance with the rules; that petitioner has less then (06) years length of service as Stenographer and as such is not eligible for consideration for promotion; and, as such he has no vested right under law to claim for a particular seniority position and promotion against a particular post, hence he is not an aggrieved person and as such has no locus standi to file the instant petition. In support of his contentions, he relied upon the judgments rendered by the Hon'ble Supreme Court of Pakistan in the cases of Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Hayat Hussain and others, 2016 SCMR 1021 and Executive District Officer (Revenue), District Khushab at Jauharabad and others v. Ijaz Hussain, 2012 PLC (C.S) 917. He prayed for dismissal of the instant petition.

5. Mr. Muhammad Nishat Warsi, learned DAG, has adopted the arguments advanced by the learned counsel of respondents 5 and 6.

6. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with the capable assistance of learned counsel for the parties.

7. The prime question involved in this matter is whether the private respondents are not qualified to hold the post of SGS (BPS-17), thus could not be promoted in the cadre of Stenography, And whether the right of promotion of private respondents could be taken away, qua, whom recommendations have already been implemented by respondent-PQA.

8. From the above, it appears that the cadre strength of the stenographer and receptionist as portrayed by the petitioner to have merged ought not to disturb the petitioner, so far as their promotion to next rank on the post of P.A/S.G.S (BPS-17) is concerned, it is well settled that the selection for promotion to a selection post shall be made on the basis primarily on merits and the selection post shall be filled by a positive act of selection made by Selection Board of respondent-PQA, amongst the staff eligible i.e. stenographer and receptionist, for P.A/S.G.S (BPS-17), thus no fundamental right of the petitioner has been at stake as depicted by the petitioner, therefore, it could be pertinent to reproduce here the relevant portion of the rules to settle the dispute between the parties:

CONDITIONS FOR PROMOTION (OFFICERS)

Promotion to the posts in column 2 below shall be made by selection from amongst the persons who hold the posts specified in column 3 on a regular basis and possess the qualification and experience prescribed in column 4:

Sr. No.	Designation and BPS of the post	Persons eligible	Conditions of eligibility
95	P.A/S.G. Stenographer BPS-17	Stenographer/ Receptionist BPS-15	06 years service in BPS-15 and subject to qualifying shorthand/typing test

09. In principle promotion of the private respondents is an administrative decision involving public interest. In the instant case, since respondent-PQA has to run the affairs Port, interference at this stage by this Court under the writ of mandamus would jeopardize their affairs and which is not in the public interest. In stating the above No doubt, that the overarching requirement of the Constitution is that every action of the State must be informed with reason and must be in the public interest, thus, under the abovementioned rule position of the case, the private respondents being employees of PQA have been included in the hierarchy of the post-P.A/S.G.S (BPS-17) to be eligible for the promotion. Prima-facie, there is no arbitrariness nor malafide intention in the decision of the respondent-PQA to consider the private respondents for promotion in the next grade as discussed supra.

10. In the facts and circumstances of the case and in the light of arguments advanced by the parties, this court cannot strike down rules as discussed supra regarding the promotion of the private respondents. The stance of the petitioner is unjustified, thus discarded for the simple reason that PQA is competent to make rules in the interest of exigency of service, thus no vested right of the petitioner is involved in the matter of promotion of the rules, determining the eligibility or fitness of the respondents. On the aforesaid proposition, we seek guidance from the decision of the Hon'ble Supreme Court of Pakistan rendered in the case of Central Board of Revenue, Government of Pakistan v. Asad Ahmed Khan, PLD 1960 SC 81.

11. Hence, from the above, it is evident that there is no merit in the instant petition from the perspective of rules as well as law, and hence, the same is dismissed, with no order as to costs.

JUDGE**JUDGE**