

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Miscellaneous Appeal No. S-11 of 2019

(Farhan Yasir Danwar Vs. Federation of Pakistan)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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Date of hearing and Order 13-05-2024

Mr. Tariq Hanif G. Mangi, advocate for the appellant.
Mr. Muhammad Aslam Jatoi, Assistant, A.G, Pakistan.

ORDER.

Adnan-ul-Karim Memon J:- Appellant Farhan Yasir Danwar has assailed the Office Memorandum No.F.7-1/2017(SOPE)-P&PE (OM) dated 08.10.2019 issued by Feral Public Service Commission, Islamabad (FPSC), in review petition dated 14.09.2019, preferred by him against rejection of his candidature, vide Office Memorandum dated 7.6.2018, for the post of Section Officer, under the Promotional Examination (SOPE) 2017. For convenience sake an excerpt of the OM dated 08.10.2019 and OM dated 7.6.2018 are reproduced as under:-

OM) dated 08-10-2019.

“REASONS OF REJECTION

(f) You are employee of in-eligible Department in terms of SOPE Rules 2017”

OM dated 7.6.2018

“Reference your Review Petition on the above subject, it is to inform that mission after due deliberations has rejected your review petition as reasons already conveyed to you vide this office memorandum of even number dated 03.07.2019. Therefore, you have availed all the statutory remedies before FPSC under section 7 (3) of FPSC Ordinance, 1977, hence, no further correspondence on the subject will j.e entertained.

2. It is urged by the learned counsel for the appellant that the appellant cannot be non-suited by FPSC on the premise that he was ineligible to participate in the selection process for the post of section officer under SOPE-2017 having been belonged to other

departments, which have not been declared as attached departments in terms of Schedule-III of Rules of Business, 1973. He emphasized that his appointment letter was issued by office of Controller of Military Accounts (Karachi Command), explicitly show that Pakistan Military Account department is an attached department of Defence Division as per Serial No. 20 of Schedule-III of Rules of Business 1973. He further submitted that FPSC invited posts of Section Officers under Section Officers Promotional Examination-2017; however his candidature was rejected on the wrong premise that appellant belong to ineligible department in terms of SOPE Rules 2015. Learned counsel further submitted that the other candidates who participated in the same recruitment process were considered whereas his candidature was rejected which was/is discriminatory attitude on the part of FPSC. Learned counsel relied upon the judgment passed by the Supreme Court in Civil Appeals No. 599 to 602 of 2014 and submits that the Supreme Court has already set at naught the decision of the FPSC on the subject issue whereby the petitions filed by FPSC against the candidates who belong to Federal Board of Revenue were dismissed vide judgment dated 21-11-2014 and the case of the petitioner is akin as decided by the Supreme Court as such the stance of the FPSC in the present appeal cannot be appreciated at all. Per learned counsel the respondent-FPSC has advisory role for the purpose of qualification of different persons and has not been confer with the powers to determine eligibility or otherwise a candidate in recruitment process of a department. He prayed for allowing the Civil Miscellaneous Appeal with direction to the respondent FPSC to consider his candidature for the subject post as he is eligible candidate to participate in the recruitment process. At this stage we reminded the learned counsel for the appellant that the entire recruitment process has been culminated into its logical end; and the successful candidates have already been appointed as such the purpose of filing this appeal remains now, academic. He submitted that the petitioner was/is entitled to participate in the SOPE-2017, however

due to lethargic attitude on the part of FPSC he has suffered a lot which cannot be compensated; as such the FPSC is liable to account for.

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

4. The question involved in the present proceedings is whether the appellant is eligible in all respect to appear for the post of Section Officer under the Promotional Examination (SOPE) 2017.

5. It appears from the record that Federal Public Service Commission/Respondent No. 01 initiated the process of recruitment of 53 vacancies of Section Officers under Section Officers Promotional Examination 2017. Petitioner claims to be one of the potential candidate and opted to participate in the Examination, however, his candidature was rejected by the Federal Public Service Commission vide memorandum dated 7.6.2018 due to the reasons that the appellant being employee of ineligible Department in terms of SOPE Rules-2015. Appellant being aggrieved by and dissatisfied with the rejection of his candidature, preferred representation to FPSC which was too rejected vide OM dated 3.7.2019. Appellant being aggrieved by and dissatisfied with the both the decisions of FPSC had filed C.P.D-No. 1550 of 2019 which was dismissed as withdrawn to avail his remedy under the law vide order dated 5.11.2019, however, he continued to pursue the legal remedies and filed the instant Civil Miscellaneous Appeal under section 7(3) of FPSC Ordinance 1977.

6. The precise case of the appellant is that the Pakistan Military Accounts Department is attached Department of Ministry of Defense, providing eligibility which has been denied to him apart from his purported discrimination to the treatment of his two colleagues, whose names were referred by him in his review application as they had been called for participation, whereas he has been denied the right to contest for the subject post on meits. Be that

as it may, record reflects that the FPSC had already issued recommendation/allocation of finally qualified and selected candidates of Section Officers Promotional Examination 2017 vide letter dated 14.11.2019 to the employer and administrative Division i.e. Establishment Division for issuance of offer of appointment by them. Moreover, the final recommended candidates had joined the posts after completion of Specialized Training Program. Prima-facie, the recruitment process of Section Officers Promotional Examination 2017 stands completed and appellant wants to reopen his case at this stage without joining the successful candidates as party in the proceedings who have already joined the respective departments, it seems that the matter has become past and closed transaction.

7. As per learned AAG the appellant submitted his online application for Section Officer Promotional Examination 2017 on the premise that that he had been working as Senior Auditor (BS-16) in Pakistan Military Accounts Department with effect from 15.5.2009, however he was cautioned that if an online application was received incomplete or wrongly filled in or its hardcopy not accompanied with any one of the documents mentioned at sub-rule (7), it will be rejected. He added that rule-4 (7) (vii) & (viii) of rules *ibid*, explicitly provides that candidate must send copies of Notifications (s) /Office Order (s) of each appointment/ promotion as claimed and Departmental Permission Certificate (DPC) as per Annex-A of Application Form, for proof of working in Ministry/ Division/ Attached Department in terms of Rules of Business, 1973 otherwise his/her application would be rejected. As per AAG the appellant failed to comply with above referred rules. He sent incomplete Department Permission Certificate (DPC) according to which he was/ is an employee of office of the Controller Local Audit (Defense Services), Lahore Cantt. Which was/is neither part of Federal Secretariat nor its attached department as per Rules of Business 1973. Therefore, his candidature was rejected and conveyed to him vide memorandum dated 6.2018 due to the following reasons:-

“i. Did not submit DPC & Office orders of appointment to determine eligibility

ii. He is employee of ineligible Department in terms of SOPE Rules-2015.”

8. As per learned AAG the appellant filed representation on 26.6.2018 without complete DPC in all respect to defend his rejection. He was heard in person on 26.8.2019 by the FPSC and he failed to provide any justification in support of his claim. Hence his representation was turned down by the FPSC vide letter dated 2.9.2019. He then filed review petition again without complete DPC and the same was rejected by the FPSC and conveyed to him vide memorandum dated 8.10.2019.

9. On the point of discrimination, learned AAG pointed out that candidate namely Mr. Khalid Saeed (Roll No.997), claimed in his online application to have been working as Auditor/ Senior Auditor with effect from 16.7.2001 to 31.1.2018 in FBR Ministry of Finance. His DPC was issued by the Commissioner (HRM) Regional Tax Office, Faisalabad. However, he did not submit office order of his appointment in terms of rule-4 (7) (vii) of Rules for Section Officers Promotional Examination, therefore, his candidature was rejected by the Commission on the following grounds:-

i) Office orders of appointment.

ii) The appellant is working in Regional Tax Office Faisalabad which is a sub ordinate office and not part of Federal Secretariat Hence, he is an employee of ineligible department. Therefore, his candidature is not in order as per Advertisement conditions and SOPE Rule-2015.

10. learned AAG pointed out that the aggrieved candidate filed representation along with fresh DPC issued by Secretary FBR Islamabad and office orders of appointment and his case was found in order as per rules SOPE-2015 as he was an employee of FBR, Islamabad and working at Faisalabad, and employees of FBR performing function as field officers are eligible for Section Officers

Promotional Examination, 2017 as such his candidature was restored by the FPSC.

11. Primarily, Clause (a) to Sub-section (3) of Section 7 of the Federal Public Service Commission Ordinance, 1977 deals with the Representation to be filed by any candidate against any decision of FPSC, whereas clause (b) relates to the filing of Review Petition against the decision of FPSC made under clause (a). Clause (d) provides an appeal to be filed before High Court against the decision made by FPSC, while hearing Review Petition under clause (b). It would be advantageous to reproduce hereunder the said provisions of Federal Public Service Commission Ordinance, 1977 for the sake of convenience:

“7 (3) (a) A candidate aggrieved by any decision of the Federal Public Service Commission may, within thirty days of such decision, make a representation to the Commission and the Commission shall decide the representation within fifteen days after giving the candidate a reasonable opportunity of hearing. The decision of the Commission, subject to the result of review petition, shall be final.

(b) A candidate aggrieved by the decision of the Commission made under paragraph (a) may, within fifteen days of the decision, submit a review petition to the Commission and the Commission shall decide the review petition within thirty days under intimation to the petitioner.

(c)

(d) Any candidate aggrieved by a decision of the Commission under paragraph (b) may, within thirty days of the decision, prefer an appeal to the High Court.”

12. From the above, it is inferred that under clause (d) it was incumbent upon the appellant to challenge the findings of FPSC before this Court within thirty days, if he was at all aggrieved, however he preferred C.P.D- No. 1550 of 2019 before this Court, which was dismissed as withdrawn to avail his remedy under the law vide order dated 5.11.2019. On 6.11.2019, he filed the present Civil Miscellaneous Appeal. As such it can safely be held that such finding has attained finality coupled with the reasoning that the candidates have already been appointed on the subject posts as much water has flown under the bridge and the appellant wants this court to reverse the entire process and direct the FPSC to accept his

candidature for that learned AAG has already pointed out that the appellant was/is ineligible to participate in the recruitment process under SOPE-2015. Prima-facie, the respondent FPSC has assigned valid reasons to reject the candidature of the appellant on the premise that he had been working as Senior Auditor (BS-16) in Pakistan Military Accounts Department with effect from 15.5.2009, however he failed to submit his DPC & Office orders of appointment to determine his eligibility; besides he belonged to ineligible Department in terms of SOPE Rules-2015 to participate in the examination 2017 under the rules.

13. This being the position coupled with the fact that exercise of jurisdiction by this Court under section 7(3) of FPSC Ordinance 1977 is statutory dispensation to foster the cause of justice and fair play, however in the present case I do not find any valid reason for indulgence and upset the findings of FPSC at this stage for the aforesaid reasons. Consequently, the this Civil Miscellaneous Appeal merit no consideration and stand dismissed with no order as to costs.

J U D G E