

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon

C.P.No.D-2701 of 2022

Abdul Shakoor Abro

Petitioner through

Mr. Ali Asadullah Bullo advocate

Respondent Nos. 1 to 3

through

Mr. Kashif Nazir, Assistant Attorney
General

Respondent No.4

Mr. Ali Safdar Depar AAG

Date of hearing : **16.04.2024**

Date of order : **16.04.2024**

ORDER

Adnan-ul-Karim Memon, J. Through the instant petition, petitioner Abdul Shakoor Abro has challenged his deferment of promotion, in terms of Rule 7(i) and (j) of the Civil Servants Promotion (BS-18 to BS-21) Rules 2019 as illegal. The petitioner seeks direction to the respondents to reconsider his case for promotion against the post of BS-20 with effect from the date when his juniors were promoted i.e. 30.05.2018 along with consequential benefits.

2. Brief facts of the case are that the petitioner was appointed as Section Officer BS-17 in Office Management Group (OMG) in the year 1993 and was promoted in BS-18 vide notification dated 22.05.2008, thereafter his services were placed at the disposal of Sindh Government on deputation; and, again he succeeded in obtaining another promotion in BS-19 vide Notification dated 09.10.2010, in the intervening period a criminal case was registered against him and others before the Special Court, based on Tax Refund Claim, however, his case for further promotion in BS-20 was deferred vide meeting of CSB held on 26.11.2018 to 13.12.2018 and again was deferred vide meeting of CSB held from 27 to 29 May 2019 and the same was the position vide meeting of CSB held on 27 to 29 January 2020 on various grounds, including the pendency of NAB Reference, and by not earning Performance Evaluation Reports (PER) as well as not disclosing the assets. The aforesaid ordeal continued to happen when the petitioner was again deferred by the CSB meeting held in January 2021. Petitioner has urged that he had been acquitted from the criminal case vide order dated 29.03.2022, as such his deferment on the aforesaid grounds is no more in the field.

3. It is vehemently contended by the learned counsel for the petitioner that the petitioner is eligible in all respects to be promoted in BS-20 in terms of qualifying length of service. It is further urged that promotion cannot be deferred on such ground as agitated by the Establishment Division vide letters dated 20.03.2019, 19.07.2019 and 29.07.2020 ; that no one could be punished by denying promotion or consideration for promotion before the charge is established against him whereas in the present case there is no pending proceedings against the petitioner ; that mere pendency of a criminal case / disciplinary proceedings if any was/is no ground for denying consideration for promotion, though the said NAB reference has been culminated into acquittal of the petitioner; he next argued that though Promotion is not the petitioner's vested right, consideration for promotion under the law, indeed is his right; that there cannot be an absolute bar on promotion and findings of the Central Selection Board (CSB) in its Meetings as discussed supra is against the basic sprit of law based on pendency of criminal/disciplinary case; he prayed for a direction to the CSB to re-consider the petitioner's case for promotion in BS-20 purely on merits.

4. Learned AAG has opposed the request of the petitioner and referred to the statement dated 26.10.2022 filed on behalf of respondent Nos. 1,2 and 3 and argued that the petitioner was facing criminal charges in terms of para 1(b)(iii) (iv) of the Revised Promotion Policy 2007 as well as Rule 7(i) and (j) of Civil Servants Promotion (BS-18 to BS-21), Rules 2019 and the recommendation of the CSB has been approved by the Prime Minister. He further argued that under section 22 of the Civil Servants Act 1972, no representation lies on 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. As per learned AAG petitioner failed to earn PERs for the aforesaid period when his services were placed at the disposal of the Sindh Government and thereafter he failed to report to the Establishment Division after his repatriation to the parent department, therefore, he is not entitled to further promotion. He urged that the case of the petitioner was considered by the CSB in its previous meetings held from time to time but was deferred on the same ground. He stressed the word “consideration”, which means that the authority should deliberate with care on the matter and as a result of such careful deliberation pass an order. Per learned AAG such deliberation took place, however, it was deferred due to the reason assigned by the Competent Authority as discussed supra. He prayed for the dismissal of the petition.

5. We have heard learned counsel for the petitioner on the point of maintainability of the instant petition.

6. There is no denial of the factum that the petitioner was facing the NAB reference and he was acquitted under section 265-K Cr. P.C vide order 29.03.2022 by the Accountability Court VI Karachi in Reference No. 23-24/2018 and the law on the point is clear that if any civil servant is facing the enquiry investigation, NAB reference, his case can be deferred. The reasons assigned by the CSB on the aforesaid analogy appear to be reasonable does not call for deliberation on our part. In the meanwhile the petitioner has also failed to earn PERs in the year 2021 and non-submission of his assets declaration for the last about four years. For convenience's sake, an excerpt of Rule 7 (i) and (j) of Civil Servants Promotion (BS-18 to BS-21) Rules 2019 are reproduced as under:-

7. *Condition for deferment. On consideration for promotion in order of seniority, a civil servant shall be recommended for deferment, if-*

(a) *the officer does not meet the eligibility criteria as contained in rule 6;*

(b) *the officer has not submitted Part-I and Part II of his/her performance evaluation report (PER) form to his/her reporting officer;*

(c) *the CSB, DSB or DPC considers that service record of the officer is incomplete in any aspect;*

(d) *the CSB, DSB or DPC wants to further watch performance of the officer for any reason to be recorded in writing;
Provided that period of performance to be watched under this clause shall not exceed twelve months;*

(e) *disciplinary or departmental proceedings are pending against the civil servant:*

Provided that this clause shall not be applicable in cases, where on the date of consideration of the civil servant for promotion, such proceedings are pending for more than a year and the delay has not been caused by any reason attributable to the officer;

(f) *the civil servant is for a period of not less than one year on deputation to a foreign government or international agency irrespective of whether it is located abroad or within the country.*

Provided that this clause shall not be applicable to those civil servants who have been appointed or nominated for deputation to international organizations against reserved and specified posts, as defined in the relevant rules and are representing Government of Pakistan therein;

(g) *the civil servant is availing ex-Pakistan leave including extra ordinary leave or study leave as well as similar leave within Pakistan for a period of not less than one year;*

(h) *the civil servants who have availed ex-Pakistan leave including extra-ordinary leave or study leave as well as similar leave within Pakistan for a period of not less than one year and have not earned one full year PER on return from such leave;*

- (i) *an inquiry, investigation, case or reference is pending against any civil servant in Anti-Corruption Establishment, Federal Investigation Agency, National Accountability Bureau or such other organization by whatever name called for:*

Provided that this clause shall not be applicable in such cases, where on the date of consideration of a civil servant for promotion, the total period of pendency comprising inquiry, investigation, case or reference is more than three years and the delay has not been caused by any reason attributable to the officer;

- (j) *the civil servant has not submitted his/her annual declaration of, assets forms for the last five years; or*

7. During arguments it has been informed that this Court vide order dated 18.03.2024 in C.P. No. D-6222/2023 passed the following order:-

“9. We have noticed that the main purpose of the aforesaid Petition has been achieved and the petitioner has been repatriated to his parent department as per the Notification dated 30.09.2023, which has been resisted by the petitioner as he intends to retain his present position in Sindh Government though he is well aware of his status that his services belong to Federal Government and not Sindh Government. So far as the impugned order is concerned which falls within the ambit of terms and conditions of his service, the FST has exclusive jurisdiction under Article 212 of the constitution of the Islamic Republic of Pakistan 1973.

10. In the light of the foregoing, we are of the considered view that the petitioner cannot be allowed to be permanently posted in Sindh Province at his wish and will.

11. As regards the contention of the learned counsel for the petitioner that he was not provided an opportunity of hearing before passing of the impugned action, it is stated that there is no cavil to the proposition that the principle “audi-alteram partem” has always been considered to be embedded in the statute even if there is no implied or express provision because no adverse action can be taken against anyone yet at the same time the principle could not be treated to be of universal nature. Because before invoking/applying the said principle one has to specify the infringement of a vested right. In the present case, the petitioner has failed to establish that he has a vested right to remain on deputation, by way of transfer from the Federal Government, therefore, the argument that the petitioner was not heard before the issuance of impugned action is of no importance, as he has defied the directives of the competent authority which action falls within the ambit of disciplinary proceedings under the law.

12. In the light of the foregoing, we direct Respondent No.2 to repatriate the petitioner to his parent department forthwith, non-compliance whereof shall entail penal consequences.

13. The captioned petition stands dismissed along with pending applications.

14. These are the reasons for our short order dated 18.3.2024 whereby we have dismissed the petition.”

8. From the above it shows that the petitioner managed to retain his deputation with the Sindh Government despite the issuance of a repatriation letter dated 30.09.2023 issued by the Establishment Division as informed but he remained adamant as such prima facie he has defied the directives of the competent authority which action falls within the ambit of disciplinary proceedings under the law as observed in the cited case.

9. Admittedly the petitioner was considered for promotion in the CSB meetings but was deferred on account of many factors, including the reason as discussed supra. In this context, it may be observed that the writ jurisdiction of

this Court is not meant to be exercised to compel the competent authority to promote a Civil Servant against whom prima facie involvement in serious charges of misconduct was available, for the reason that any such direction would be disharmonious to the principle of good governance and canons of service discipline causing undue interference to hamper the smooth functioning of the departmental authorities. This view is fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Mst. Ifat Nazir vs. Government of Punjab and others, **2009 SCMR 703**. It is a well-settled law that in case of promotion vested / fundamental rights cannot be claimed.

10. We have observed in a number of cases that disciplinary proceedings initiated against government / civil servants are not decided or concluded within a reasonable time, and due to this reason, the cases of their promotion are deferred. Such unreasonable delay on the part of the department(s) concerned causes hardship for the government / civil servants, uncertainty within the department and unnecessary litigation before the Courts, which needs to be taken care of by the department concerned.

11. In view of the legal position discussed above, we are of the view that the case of the petitioner for promotion was rightly deferred by the competent authority /CSB and such decision does not call for any interference by this Court at this stage. However, his further deferment if any shall be subject to the ceasing of reasons based on which the deferment took place. Accordingly, the petition stands disposed of along with the pending application with no order as to costs.

JUDGE

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