

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-1832 of 2019

(Muhammad Fakhr-ul-Hasnain v Province of Sindh & others)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 20.01.2025

Syed Shoa-un-Nabi advocate for the petitioner along with petitioner
Mr. Ali Safdar Depar, Assistant AG

ORDER

Adnan-ul_Karim Memon, J: The petitioner Muhammad Fakhr-ul-Hasnain requests this court to order the respondent-Police Department, to promote him as Deputy Superintendent of Police (DSP) in BPS-17 with effect from 04.08.2001 and in BPS-18 from 31.01.2013 since the creation of the post of S.P Technical based on seniority cum fitness, however in the intervening period petitioner stood retired from service on 11.01.2019, now he seeks proforma promotion.

2. The facts of the case are that the petitioner was appointed as Inspector Bomb Disposal Unit Special Branch, Sindh vide order dated 13.08.1998; that he was confirmed as Inspector under Police Rules 13-18 from the date 14.08.2001 vide office order dated 30.04.2010; that petitioner rendered more than 20 years service in the respondent police department till superannuation and retired with effect from 11.01.2019 vide office order dated 12.10.2018; that during service, he submitted an application for issuance of seniority list of Inspectors in Bomb Disposal Unit but the same was neither issued nor replied, however, the Police authorities had withheld his promotion letter on the analogy that no recruitment rules were/are available for such promotion to the rank of DSP amongst Inspectors of Bomb Disposal Unit Special Branch, however, the draft rules were forwarded to the competent authority for finalization as per various letters issued from time time.

3. Learned counsel for the petitioner contends that this refusal is unjustified and discriminatory. Learned counsel argued that despite completing all legal and codal formalities for the post of DSP in the Bomb Disposal Unit, the respondents have deprived the petitioner of his legal and fundamental right of promotion to the next rank despite meeting the criteria for promotion, which is an illegal and unlawful act on their part; even though the petitioner moved applications to the respondents for redressal of his grievances, but they were not bothered to hear the

petitioner. He prayed for a direction to the respondents to allow him a proforma promotion to the rank of S.P. in BPS-18.

4. The learned Additional Advocate General argued that due to a lack of bomb disposal experts in Sindh Police and the increasing use of explosives by terrorists in public places in 1998, Sindh Police recruited retired personnel from the armed forces. Petitioner, a retired Pakistan Air Force official with expertise in Armament Technology, EOD, and missile systems, was selected as an Inspector BDU in 1998 at the age of 39. As per learned AAG petitioner was appointed with age relaxation for a special assignment, making him ineligible for promotions, typically granted to regular service BDU officials. He added that his selection was based on criteria agreed upon in meetings held on June 11th and 13th, 1998. He further argued that the office of IGPSindh submitted a draft of Recruitment Rules/method of appointment for DSP/BDU, Special Branch to the Home Department, Sindh via letter No. 6486-87/E-1, dated 01.06.2016. The Home Department, Sindh, through letter No.POL-1-HD/2-60/2016, dated 19.07.2016, requested copies of the Recruitment Rules for this post from the Home Departments of Punjab, Balochistan, and Khyber Pakhtunkhwa. He added that the Home Department, Government of Sindh, requested certain information/documents under letters dated 02.12.2016 and 28.09.2017. This information was forwarded to the Addl. IGP Special Branch, Sindh, vide this Office letter dated 18.10.2017. The reply from the Addl. IGP Special Branch, Sindh (letter No. SB/HRM/E-IV/795/2018, dated 19.12.2018) was forwarded to the Home Department, Government of Sindh vide this office letter No. 16859/E-1, dated 31.12.2018, therefore the petitioner at this stage cannot claim proforma promotion as a matter of right as there was/is no recruitment rules available for the subject post, therefore he is not entitled to grant his proforma promotion in BPS-18.

5. We have heard learned counsel for the parties and have perused the material available on record with their assistance.

6. The Supreme Court has held in the recent judgment that if a person is not considered due to any administrative slip-up, error, or delay when the right to be considered for promotion is matured and without such consideration, he reaches the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into the field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of the DPC or Selection Board despite having fitness, eligibility, and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits.

7. It is well established now that the provision for proforma promotion is not alien or unfamiliar to the civil servant service structure but it is already embedded in Fundamental Rule 17, wherein it is lucidly enumerated that the appointing authority may if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation/ province in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or upgradation arising from the antedated fixation of his/her seniority.

8. We often noted that unjustified delays in proforma promotion cases trigger severe hardship and difficulty for civil servants and also create a multiplicity of litigation. It would be in the fitness of things that the competent authority should fix a timeline with strict observance for the designated committees of proforma promotions to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention.

9. In the present case, it appears from the record petitioner Muhammad Fakhur-ul-Hasnain was appointed as Inspector of the Bomb Disposal Unit, Sindh Police in 1998 and confirmed in the post in 2001. He retired on 11.01.2019 after 20 years of service. Besides Petitioner, a retired Pakistan Air Force official was appointed in the police department, based on age relaxation, which can hardly be allowed in the disciplined force. Additionally, there are no recruitment rules available for such promotion, and the same is under process the case of the petitioner can only be considered if recruitment rules allow such promotion/proforma promotion.

10. In view of the above facts and circumstances of the case, no case for proforma promotion at this stage, is made out, and this petition stands dismissed along with pending application(s).

JUDGE

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