

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-2714 of 2022

(*Jawaid Akhtar Memon v Federation of Pakistan & 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: 23.05.2025

Mr. Faizan Hussain Memon advocate for the petitioner.

Mr. Faisal Mehmood Ghani advocate for NBP.

Ms. Wajiha Mehdi, Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J:

The petitioner requests this Court to:

Declare the respondents' failure to promote him from the date his juniors/batch mates were promoted as unjust, unlawful, and unconstitutional.

Declare the 40-mark discretionary power in promotion boards as arbitrary and against natural justice.

Direct the respondents to consider him for promotion as Assistant Vice President based on the 2016 Promotion Policy.

Set aside Bye-Law 51 of the NBP Bye-Laws 2015 and consequently the NBP Staff Service Rules, 2021, as being ultra vires and unlawful.

2. The petitioner, who asserts that he is an experienced and law-abiding professional with 26 years in banking and finance, is claiming his fundamental rights under the Constitution of Pakistan, 1973, particularly highlighting his right to due process, livelihood, and protection from exploitation. The petitioner averred that the respondent National Bank (NBP) must exercise their authority fairly and not arbitrarily, ensuring proper working conditions and the safeguarding of his livelihood. His career at NBP commenced in 1996 as an Assistant and led to a steady rise to Officer Grade I by 2009. Despite his unblemished record and consistently meeting promotion criteria since 2012, including receiving appreciation letters and exceeding targets, he submitted that he was repeatedly overlooked for promotion, while his juniors and batchmates advanced. He cited a 2011 charge sheet alleging a failure to take custody of vouchers, which led to a reprimand in 2013. The petitioner submitted that this was a deliberate strategy to hinder his promotion. He also emphasized that subsequent promotion policies in 2015 and 2016 similarly dismissed him despite his eligibility.

3. The learned counsel for the petitioner argued that the respondents' actions were discriminatory, as they failed to treat his client at par with similarly situated employees. He challenged the legality of the NBP (Staff) Service Rules, 2021, asserting they are void because they violate the NBP Ordinance, 1949, by removing the requirement for federal government approval in determining service terms. He further argued that the respondents' conduct is illegal, unconstitutional,

discriminatory, and arbitrary, thus violating fundamental rights. Specifically, he highlighted the petitioner's unblemished record and met the promotion criteria, yet he was denied promotion while his junior colleagues advanced. The counsel emphasized that the discretionary marks allotted in the 2017 promotion policy were/are arbitrary, and the 2021 Service Rules are ultra vires the 1949 Ordinance. He also submitted that the petitioner had a vested right to be considered for promotion under the 2016 policy and to be promoted from the same date as his juniors and batchmates. Finally, the counsel asserted that the respondents' actions demonstrate ulterior motives and exploitation. A key argument from the petitioner's counsel was/is against the 2017 promotion policy. He contended that this policy, which allocated 40 discretionary marks for interviews, was applied retroactively and lacked objective criteria. This, he suggested, allowed it to be used to unfairly favor certain individuals. The counsel also pointed out that the petitioner's promotion application in January 2018 received no response. He prayed to allow the petition.

4. Learned counsel for the respondent bank raised the question of maintainability of the petition and argued that no legal question is involved, no specific impugned order or unfairly promoted junior is named, and the petitioner has come with unclean hands. He asserted that promotion is not a vested right but depends on vacancy, seniority, competency, and criteria. He denied the petitioner's vague claims and factual controversies. He stated that promotion is based on seniority, fitness, and overall performance, and the petitioner was not recommended. He clarified that the promotion policy revisions and that interviews followed these interviews. He denied any infringement of legal rights, stating the petitioner did not meet the cut-off marks under the prevailing policies. He maintained that the promotion criteria are set by the Board of Directors, not government policy, and there was no discrimination. He concluded by saying that the petition lacks merit and may be dismissed with costs. In support of his contentions, he relied upon the cases of Kashif Aftab Ahmed Abbasi v Federation of Pakistan & others **2022 SCMR 1618**, Naseem Khan and others v Government of Khyber Pakhtunkhwa & others **2024 SCMR 1341**, Government of Khyber Pakhtunkhwa v Hayat Hussain and others and unreported order dated 12.11.2020 in Civil Petition No. 109 of 2019 and argued that this petition is liable to be dismissed on the analogy that as per prevailing rules the petitioner cannot claim benefit from the previous rules. He prayed for dismissal of the instant petition.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. This Court emphasizes the Competent Authority's established legal right to formulate rules for efficient service and resolve inconsistencies within the Service Rules. Setting promotion eligibility criteria is the responsibility of the Service Rules Committee and is fundamentally an administrative function within

the Respondent-Bank's exclusive policy-making authority. Therefore, this court generally finds intervention in such promotion matters unwarranted, as bank employees lack a guaranteed right to promotion or the rules defining their eligibility and fitness. Moreover, in banking promotion cases, the High Court typically lacks the jurisdiction to invalidate such policies via a writ petition, except when the policy contradicts public interest or the Supreme Court intervenes and deliberates on the cases.

7. In this case, the counsel cited the Supreme Court's order dated 18.03.2025 in CP No. 292-K of 2022, which states that upon being presented with an unreported judgment, the respondent's counsel agreed to consider the petitioners' case under the 2016 Promotion Policy within two months, leading to the disposal of that petition based on this agreement, an excerpt whereof is reproduced as under:-

“When we confronted this unreported judgment to the learned counsel for the respondent, he agrees that the case of the petitioners will be considered in accordance with the 2016 Promotion Policy in the light of the aforesaid judgment and the entire exercise will be completed within a period of two months and the order will be communicated to the petitioners. In view of this consensual statement, this petition is disposed of in the aforesaid terms. “

8. The counsel also referred to the Supreme Court's decision in Civil Petition No. 1763 of 2019, and related cases, which dismissed the National Bank of Pakistan's petitions on May 17, 2022, by discussing the 2016 promotion policy. It is a settled legal principle that a High Court order cannot serve as a binding precedent when the Supreme Court has ruled on the same matter. Nonetheless, given the bank's commitment to apply the Supreme Court's precedent (considering similarly situated employees under the 2016 policy), no further discussion is needed on this commitment made before the Supreme Court.

9. This petition is disposed of in accordance with the Supreme Court's directives mentioned earlier. However, the respondent Bank is at liberty to reassess the petitioner's promotion issue, considering the 2016 policy and any other prevailing policy, without discrimination. Any decision made must align with the Supreme Court's directives on this matter.

JUDGE

Head of the Const. Benches