

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-797 of 2023

[Mrs. Fouzia Basharat Samo versus Federation of Pakistan and others]

Before:

Justice Muhammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

Dates of hearing & Order: 22.09.2025

Mr. Muhammad Nasir, advocate for the petitioner.

Malik Altaf Hussain, advocate for the respondent No.5

Mr. Samiullah Shah, advocate for Pakistan Railway

Ms. Wajiha Mehdi, Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J. Through this petition, the petitioner has filed south following relief(s):-

Declare that the interference in seniority of the Petitioner settled in the year 2004 vide Letter dated 26.01.2023 is in violation of the judgments of Honorable Supreme Court reported in 2019 SCMR 349 and PLD 2014 SC 338, as such, is illegal, unlawful, unconstitutional, discriminatory, contemptuous, arbitrary, whimsical, mala fide, and against the principles of good governance and natural justice, and of no legal effect.

Restrain the respondents, their representative nominees, agents, subordinates, or any person acting on their behalf from considering promotions of officers in BS-19 to BS-20 based on the provisional seniority list issued vide Letter dated 26.01.2023.

2. This petition outlines the seniority dispute between the petitioner and private respondent No. 5. The Petitioner claims that he was appointed to the Railways (C&T) Group in early 2002 and completed his mandatory training with the 29th Common Training Program (CTP) batch. Respondent No. 5 was also appointed later in 2002 and trained with the 30th CTP batch. According to rules and Supreme Court judgments, seniority is based on marks from various exams and is determined by the CTP batch with which a candidate passes the final exam. In 2004, a seniority list was issued placing the Petitioner above Respondent No. 5, a list that was not challenged at the relevant time. This seniority was confirmed multiple times in subsequent lists and promotions. In 2017, Respondent No. 5 belatedly challenged the seniority list, and the objection was initially accepted without due process or a hearing to the Petitioner. The Petitioner then successfully appealed this decision, and her seniority was restored, accordingly respondent No. 5 did not challenge this new order and even withdrew a related Petition in 2023. Despite the established seniority, just before a promotion Board meeting in 2021, Respondent No. 5 filed a fresh petition, leading to the court order that reserved a promotion post and prevented the Petitioner from being considered. The petition was later withdrawn by Respondent No. 5. The Petitioner claims that in January 2023, just before the Chairman's retirement, a new, revised seniority list was

approved that placed Respondent No. 5 above her. The Petitioner submitted that this was done to ensure Respondent No. 5's promotion and was a violation of established service rules, Supreme Court precedent, and principles of natural justice. Since no final order has been issued, as her representation dated 09.02.2023 is pending as such she cannot approach the service tribunal, she is asking the court to intervene.

3. The counsel for the petitioners argued that the revised provisional seniority list, issued on January 26, 2023, is illegal and unconstitutional. The main points of his argument are that the previous Chairman acted in bad faith by changing the long-standing seniority list just before his retirement. He did this without giving the petitioner a chance to be heard, and the new list was issued right before a promotion meeting to prevent her from being considered; the new list goes against established legal principles and Supreme Court rulings. Specifically, it violates Rule 7 of the Occupational Groups & Service (Probation, Training and Seniority) Rules, 1990, which states that seniority is determined by the batch with which a person passes the Final Passing Out Examination (FPOE), not their Civil Superior Services (CSS) batch; that The petitioner passed FPOE with the 29th Common Training Program (CTP), while the respondent passed it with the 30th CTP. Therefore, the respondent was correctly placed junior to the petitioner since 2004, a position that was settled in 2017. The petitioner joined service on February 11, 2002, whereas the respondent joined on July 15, 2003. According to settled law, seniority cannot be claimed from a date before one has joined service. The seniority list, which was settled in 2017, was changed without hearing the petitioner, which is a violation of Section 24-A of the General Clauses Act of 1897. He relied upon the cases of Mrs. Rashida Asif v. Mrs Aasa Gondal and others (2010 SCMR 450), Naveed Ahmed v. Federation of Pakistan (2012 SCMR 1133), Deedar Hussain Jakhrani and others v. Federation of Pakistan (2011 PLC (CS) 2023), Atiqullah Khan v Chief Secretary Sindh and another (2008 PLC (CS) 783), Sarosh Haider v Muhammad Jved Chundrigar & others PLD 2014 SC 338 Chairman FBR through Member Administration v. Muhammad Asfandiyar Janjua and others (2019 SCMR 349) and Kashif Aftab Ahmed Abbasi v. Federation of Pakistan (2022 SCMR 1618 that have established the principles of seniority for civil servants. Based on these points, the counsel requested that this court allow this petition and set aside the revised seniority list.

4. The Assistant Attorney General (AAG) and the counsel for the private respondents opposed the petition, presenting the arguments that the matters of seniority for federal government employees are governed by the Civil Servants Act 1973, specifically Section 8. They referenced Supreme Court judgments that state seniority rules apply at the time of initial appointment, but after promotion, Section 8(4) of the Act becomes applicable. They also cited the Zaigam Abbas

and others Vs AGP case as a precedent to support their contention. The learned AAG also emphasized that promotion to a higher post is not a vested right. Under Section 9(2) of the Civil Servants Act, 1973, promotions from BS-19 and above are based on selection on merit, not just seniority. The Central Selection Board (CSB) determines an officer's eligibility and fitness for promotion based on their record. The petitioner was considered for a BS-20 promotion in August 2022 but was not selected due to a lack of vacancies. She argued that as per the Civil Servants Promotion (BPS-18 to BPS-21) Rules 2019, it is the responsibility of the concerned ministries and departments to prepare and submit promotion cases to the CSB with accurate and complete information. The CSB's recommendations, once approved by the competent authority, are considered final. Based on these points, the learned AAG in support of her contention has relied upon the cases of *Abdul Hameed Salangi and others v Government of Sindh* **2020 PLC (CS) 345**, *Khaliullah Kakar v Provincial Police Officer Balochistan and others* **2021 PLC (CS) 1030** and *Syed Ghulam abbas Shah v Province of Sindh and others* **2019 PLC (CS) 1114**. The AAG and the private respondents' counsel requested that this petition be dismissed.

5. We have heard learned counsel for the parties and considered the record, as well as case law on the subject issue.

6. Since the petitioner claims to be civil servant, primarily under Section 8 of the Civil Servants, 1973, the issue of seniority as raised through this petition cannot be examined under Article 199 of the Constitution, which is part and parcel of the terms and conditions of service in lieu of law laid down by the Supreme Court in Ali Azhar Kha Baloch case 2015 SCMR 456. Section 4 of the Services Tribunal Act, 1973, the issue of seniority between the parties is to be dealt with by the Service Tribunal as such; no final findings can be given under Article 199 of the Constitution, which may prejudice the case of the parties. Besides, seniority and promotion are not the vested rights of the civil servant; therefore, the petitioner is not entitled to claim any relief from this court under Article 199 of the Constitution. Reliance can be placed on the cases of *Chief Secretary, Government of Punjab, Lahore, and others v. Ms. Shamim Usman*, **2021 SCMR 1390**; *Federation of Pakistan through Secretary Establishment, Islamabad v. M.Y. Labib-ur-Rehman and others*, **2021 SCMR 1554**; *Khalillah Kakar and others v. Provincial Police Officer, Balochistan, and others*, **2021 SCMR 1168**; *Shafi Muhammad Mughal v. Secretary, Establishment Division and others*, **2001 SCMR 1446**, and *Zafar Iqbal v. MGO, MGO Branch, GHQ Rawalpindi, and 3 others*, **1995 SCMR 881**.

7. In view of the above, the petition stands disposed of along with the listed applications, in the above terms however, the petitioner is at liberty to challenge

the findings of the respondent department before learned Service Tribunal if so advised. However if the representation of the petitioner is pending before the competent authority, the same shall be decided within three months after hearing the parties.

JUDGE

HEAD OF CONST. BENCHES

SHAFI