

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No.D-1371 of 2025

[Agha Abdul Majeed Pathan v. Province of Sindh & Others]

Before:

JUSTICE ADNAN IQBAL CHAUDHRY

JUSTICE RIAZAT ALI SAHAR

Petitioner:

Agha Abdul Majeed Pathan through Taj
Muhammad Keerio, Advocate.

Respondents:

Province of Sindh and others through Mr.
Rafique Ahmed Dahri, A.A.G. Sindh.

Date of Hearing:

29.04.2026

JUDGMENT

RIAZAT ALI SAHAR, J: - Through this Constitutional Petition, the petitioner seeks declaration that the act of the respondents in deferring and not recommending his case for promotion from BPS-17 to BPS-18 on the ground of non-availability of ACRs/PERs is illegal, arbitrary, unlawful and without lawful authority, particularly when the requisite ACRs/PERs had already been forwarded by the concerned department. Thus, seeking following reliefs: -

- A. To hold the act of the respondents not recommending the name of the petitioner for promotion for want of ACRs as illegal, unlawful and void ab-initio as the petitioner was not responsible to submit the secret document of ACR before the DPC.*
- B. To direct the respondents to promote the petitioner to the next higher rank by giving him proforma promotion and he should not be reprimanded due to non-availability of ACRs/PERs, as due to late submission of the ACRs by his own department he should not be reprimanded.*
- C. Costs of the petition may be saddled upon the respondents.*

D. Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner.

2. The brief background of the instant petition is that the petitioner joined the Police Department on 01.01.1987 as an Assistant Sub-Inspector and, on the basis of seniority-cum-fitness and satisfactory service record, earned promotions from time to time. Ultimately, he retired from service on 31.03.2025 while serving as DSP Complaint, Tando Allahyar. Prior to his retirement, the case of the petitioner for promotion from BPS-17 to BPS-18 was placed before the Departmental Promotion Committee; however, his promotion was deferred on the ground of alleged non-availability of ACRs/PERs for certain years. According to the petitioner, the requisite ACRs/PERs had already been forwarded by the concerned office to the competent authority and any omission or delay on the part of the department could not legally prejudice his vested right of consideration for promotion. The petitioner initially approached this Honourable Court through C.P. No.D-1636 of 2024 and, pursuant to the order passed therein, he approached the Sindh Service Tribunal; however, the appeal was dismissed for want of jurisdiction on the ground that no final order had been passed against him by the department. Soon thereafter, the petitioner retired from service upon the age of superannuation. Left with no alternate and efficacious remedy, the petitioner has invoked the constitutional jurisdiction of this Court seeking proforma promotion with all consequential benefits.

3. Learned counsel for the petitioner, while reiterating the contents of the petition, conceded that the controversy involved in the instant matter is primarily confined to the non-consideration of the petitioner's case for promotion owing to alleged non-availability of ACRs/PERs, despite the fact that the same had already been transmitted by the concerned department. He contended that an employee cannot be made to suffer on account of administrative negligence, procedural lapses, or inefficiency attributable to the department itself, particularly where no

adverse material, disciplinary proceedings, or disqualification existed against the petitioner during service. He further conceded that the petitioner has already retired from service; therefore, the relief now sought is limited to grant of proforma promotion with consequential retiral and pensionary benefits in accordance with law.

4. Conversely, learned Assistant Advocate General Sindh, appearing on behalf of the official respondents, at the very outset raised objection with regard to the maintainability of the instant petition by placing reliance upon Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 which confers exclusive jurisdiction upon the Service Tribunal in matters relating to terms and conditions of service. He contended that the grievance agitated by the petitioner pertains to consideration for promotion and consequential service benefits, which squarely fall within the exclusive domain of the Service Tribunal and, therefore, the constitutional jurisdiction of this Court under Article 199 of the Constitution is barred. Learned A.A.G. Sindh further submitted that merely because the petitioner has retired from service that would not oust the jurisdiction of the Service Tribunal inasmuch as the definition of ‘civil servant’ in section 2(a) of the Sindh Service Tribunals Act, 1973 includes a person who “has been” in Civil Service, or “has held” a civil post.

5. Learned A.A.G. Sindh further referred to the parawise comments filed on behalf of respondent No.3 i.e. Inspector General of Police Sindh, wherein it has been specifically stated that the requisite record, including ACRs/PERs of senior officers, was called from the concerned quarters through various official communications and the working papers were forwarded to the Home Department for consideration by the Provincial Selection Board-II. He submitted that the case of the petitioner was duly considered in the meeting of PSB-II held on 27.09.2024 and 14.10.2024 under the chairmanship of the Chief Secretary Sindh for promotion to BS-18; however, the same was deferred owing to non-availability of PERs for the years 2016, 2017, 2020, 2021,

2022 and 2023 at the relevant time. Learned A.A.G. further contended that although certain original PERs/Certificates were subsequently received from the office of DIGP Hyderabad Range through letters dated 14.10.2024, 17.10.2024 and 22.10.2024, and thereafter forwarded vide letter dated 31.10.2024, the meeting of PSB-II had already been convened and concluded on 14.10.2024; therefore, no illegality, *mala fide* or deliberate omission could be attributed to the respondents.

6. Heard the learned counsel for the parties and perused the available record. This Constitutional Petition calls in question the legality of the respondents' action in deferring, and thereby effectively defeating, the petitioner's consideration for promotion from BPS-17 to BPS-18 on the stated ground that certain ACRs/PERs were not available before the Provincial Selection Board-II, although such material was part of the departmental record and was, according to the respondents' own stance, later received and forwarded. The petitioner seeks, in consequence, proforma promotion with all attendant service and retiral benefits.

7. At the very outset, we need to address the question of maintainability of the instant petition in view of the objection raised by the learned Additional Advocate General regarding the constitutional bar contained under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. No doubt the petitioner "has been" in civil service and thus comes within the definition of 'civil servant' in section 2(a) of the Sindh Service Tribunals Act and, ordinarily, disputes relating to terms and conditions of service fall within the exclusive jurisdiction of the Service Tribunal constituted under the Sindh Service Tribunals Act, 1973. However, the principle is equally well-settled that the constitutional bar under Article 212 cannot be extended to circumstances where the Tribunal itself is unable to assume jurisdiction for want of an appealable or final order, thereby rendering the aggrieved civil servant remediless. In this regard, reference may be made to **S.H.M. Rizvi and 5 others v. Maqsood Ahmad and 6 others (PLD 1981 SC 612)**, wherein the

Honourable Supreme Court held that the right of appeal before the Service Tribunal is attracted only against a final order determining substantive rights and liabilities. Where no such final order exists, the statutory remedy itself does not become available¹. The same principle was reaffirmed in **Abdul Hameed Anjum v. Federation of Pakistan (PLD 2010 SC 857)**.

8. In the present case, the official record placed before this Court reflects that the petitioner had already availed the statutory remedy before the learned Sindh Service Tribunal pursuant to earlier directions of this Court; however, the Tribunal itself declined to entertain the matter on the ground that no final order had been passed by the competent authority regarding the petitioner's deferred promotion case. Consequently, the petitioner stood non-suited before the statutory forum for want of a final order and was effectively left without any alternate, efficacious or adequate remedy under the law. In such peculiar circumstances, to still hold that the constitutional petition is barred under Article 212 would amount to rendering the petitioner remediless altogether, which is neither the object nor contemplation of the constitutional scheme. The constitutional jurisdiction under Article 199 cannot be interpreted in a manner that leaves a citizen without any forum for redress against arbitrary administrative action.

9. Furthermore, the objection raised by the respondents also does not derive assistance from the line of authorities relating to comparative fitness or suitability for promotion. In **Secretary, Establishment Division v. Aftab Maneka (2015 SCMR 1006)**, the Honourable Supreme Court drew a clear distinction between matters concerning comparative assessment of fitness for promotion, which fall outside constitutional scrutiny, and cases involving patent illegality, *mala fide* or procedural impropriety.

¹ Though the word 'final' was subsequently omitted (in 1997) from section 4(1) of the Federal Service Tribunals Act, 1973, it is still part of section 4 of the Sindh Service Tribunals Act, 1973.

10. In the instant matter, the petitioner is not inviting this Court to sit as a Selection Board or to undertake comparative evaluation of competing officers for promotion. The grievance raised by the petitioner primarily concerns procedural illegality and administrative omission on the part of the department in failing to place the requisite ACRs/PERs and relevant record before the Provincial Selection Board-II at the relevant time. The deferment of the petitioner's case, as reflected from the record, was not on account of lack of merit or comparative unsuitability, but allegedly due to non-availability of record, which subsequently appears to have been received and forwarded by the department itself after the relevant meeting of the PSB-II had already concluded. Thus, the controversy before this Court essentially pertains to arbitrary departmental inaction, maladministration and procedural impropriety, rather than comparative fitness or suitability.

11. Even otherwise, the principle that an employee cannot be made to suffer on account of departmental negligence or administrative lapse has repeatedly received judicial recognition. In **Ahmed Owais Peerzada v. Principal Secretary to the Prime Minister (2025 SCMR 819)**, the Honourable Supreme Court recognized that where consideration for promotion or proforma promotion is adversely affected owing to administrative delay or failure attributable to the department, the competent authorities remain under a legal obligation to ensure lawful and fair consideration in accordance with law.

12. Accordingly, in the peculiar facts and circumstances of the present case, where the petitioner has already exhausted the statutory remedy before the Service Tribunal and yet stands remediless owing to refusal of jurisdiction by the said forum for want of a final order, we are of the considered view that the instant petition is maintainable under Article 199 of the Constitution to the limited extent of examining whether the petitioner was denied fair, lawful and meaningful consideration

due to departmental negligence, procedural irregularity and arbitrary administrative inaction.

13. Coming to the merits of the controversy, the record *prima facie* reflects that the deferment of the petitioner's promotion case was not attributable to any fault, misconduct, inefficiency, or disqualification on the part of the petitioner himself; rather, the same occurred solely owing to non-placement and delayed transmission of the requisite ACRs/PERs by the concerned departmental authorities. Admittedly, the preparation, maintenance, custody, preservation and timely forwarding of ACRs/PERs are matters falling exclusively within the administrative domain of the department and superior officers concerned, over which a civil servant has neither physical control nor supervisory authority. Once the petitioner had admittedly attained eligibility for consideration for promotion on the basis of seniority-cum-fitness, any procedural lapse, administrative oversight, or departmental inefficiency in forwarding confidential reports could not legally be employed to defeat, impair, or prejudice his accrued right of fair and lawful consideration for promotion. The respondents themselves have candidly admitted that the requisite record was subsequently received through official channels and forwarded only after the meeting of the Provincial Selection Board had already concluded. Such admission is, in itself, decisive of the controversy. The petitioner's case was neither deferred on account of any communicated adverse entry, nor because of any penalty, disqualification, inefficiency, or want of fitness attributed to him; rather, the only impediment was the respondents' own failure to timely place the requisite material before the competent forum. The petitioner, therefore, cannot legally be made to suffer adverse consequences for omissions attributable exclusively to the department itself. Such action is *ex facie* arbitrary, unreasonable and violative of the guarantees embodied under Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, which mandate fair treatment, equality before law, and protection against arbitrary executive action.

14. In **Federation of Pakistan through Secretary, Ministry of National Health Services v. Jahanzeb and others (2023 PLC (C.S.) 336)**, it was authoritatively observed by the Supreme Court that where a civil servant loses promotional consideration due to administrative slip-up, departmental delay, procedural oversight, or institutional inefficiency despite possessing the requisite eligibility, fitness and seniority, then the doctrine of proforma promotion becomes available so that the employee may not suffer for no fault attributable to him. The Honourable Supreme Court further recognized that where, during the subsistence of such administrative delay, the employee reaches the age of superannuation, denial of proforma promotion would amount to grave injustice. The ratio of the said judgment directly governs the present controversy, because the petitioner's right of consideration had matured during service, yet before the respondents could rectify their own omission, he retired from service. The hardship identified in *Jahanzeb* is precisely the hardship suffered by the petitioner herein.

15. There is yet another aspect of the matter which cannot be ignored. Administrative action must stand or fall on the reasons actually recorded and disclosed by the department itself. In the present case, the only reason shown for deferment was non-availability of ACRs/PERs. Once that reason is admittedly traced back to departmental default and institutional delay and once no adverse material, penalty, inquiry, or lawful disqualification has been pleaded or established against the petitioner, the respondents cannot be permitted to defeat the petition through vague appeals to administrative discretion. Discretion in service matters is never unfettered or absolute; rather, it remains structured and controlled by statutory rules, constitutional guarantees, and the doctrine of fairness. A lawful discretion cannot be utilized to perpetuate an admitted administrative wrong or to discriminate against an employee whose contemporaries were duly considered and promoted.

16. We are mindful of the settled proposition that promotion, in the abstract, is not an indefeasible vested right. However, the right to fair, lawful, transparent and non-arbitrary consideration for promotion is unquestionably a constitutionally protected right recogniszd by the superior Courts. Once it stands established from the record that the only obstacle in the petitioner's consideration was a departmental lapse entirely beyond his control, and once no adverse material has been shown disentitling him from promotion, the relief sought by the petitioner cannot be characterised as an unearned concession or undue favour. Rather, the Court is merely restoring the legal position which ought to have existed had the respondents discharged their statutory and administrative obligations in accordance with law. In these circumstances, denial of relief would amount to allowing the respondents to take benefit of their own wrong, which is impermissible in law and equity alike.

17. For the foregoing reasons, the action of the respondents in deferring the petitioner's case for promotion from BPS-17 to BPS-18 on the sole ground of non-availability of PERs/ACRs is declared to be illegal, arbitrary, without lawful authority and of no legal effect.

18. Consequently, the petition is allowed by directing the Respondents to place the petitioners case, along with his ACRs/PERs, before the Provincial Selection Board-II or the DPC, as the case may be, to consider whether he was fit for promotion to Superintendent of Police (BS-18) at the time his promotion was deferred due to unavailability of PERs. If said Board/Committee determines that the petitioner was otherwise fit for promotion, the Respondents shall accord him proforma promotion with effect from the date his immediate junior was promoted, along with financial benefits accruing from such promotion.

JUDGE

JUDGE