

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D- 5203 of 2026
(Attaullah Bhutto versus Province of Sindh & others)

Date	Order with signature of Judge
	Mr. Justice Adnan-ul-Karim Memon Mr. Justice Muhammad Jaffer Raza

Date of hearing and order:- 20.8.2024

Malik Altaf Hussain, Moeen Khan and Muhammad Arsalan advocates for petitioner
Mr. Zohaib Sarki, AAG

ORDER

Adnan-ul-Karim Memon, J. At the outset, learned counsel was asked to satisfy the Court regarding maintainability, as the petitioner had retired as District Education Officer (BPS-19), after which his departmental proceedings abated. His claim for proforma promotion was subsequently placed before the Provincial Selection Board, but was deferred due to the pending proceedings.

2. It is the case of the petitioner that he was appointed as Head Master (BPS-14) and was subsequently promoted as Deputy District Education Officer (BPS-18) and District Education Officer (BPS-19). He was implicated in NAB Reference No.15 of 2016, and departmental proceedings were also initiated against him. He was, however, honourably acquitted in the NAB reference, while the departmental proceedings were ultimately ordered to be closed upon his attaining superannuation. His case for promotion was not placed before the Provincial Selection Board on the ground of pending proceedings, although he had already been acquitted. The petitioner retired from service upon attaining the age of superannuation. He thereafter sought proforma promotion with consequential benefits and, having received no relief, filed Constitutional Petition No.D-3454 of 2017. The petition was dismissed on 03.12.2020 on the ground that, after retirement, Rule 7(a) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 could not be invoked. The petitioner challenged the order before the Honourable Supreme Court, which, vide order dated 26.04.2023, directed him to submit an application for proforma promotion before the concerned department, which was required to consider the same and pass a speaking order in accordance with law. Pursuant thereto, the petitioner approached Respondent No.3, but his case was rejected vide impugned order dated 21.04.2025. The petitioner contends that the said order is non-speaking, as it merely narrates his service and litigation history without assigning any cogent or lawful reason for rejection, and is therefore contrary to the directions of the Honourable Supreme Court. He further contends that similarly situated and even junior employees have been granted proforma

promotion, whereas he has been denied the same without lawful justification, amounting to arbitrary and discriminatory treatment in violation of Articles 4, 9 and 25 of the Constitution. He therefore seeks setting aside of the impugned order and grant of proforma promotion in accordance with law and the directions of the Honourable Supreme Court.

3. The petitioner's counsel contended that, following his acquittal in NAB Reference No.15 of 2016, he was entitled to proforma promotion. However, his earlier Constitutional Petition No.D-3454 of 2017 was dismissed on 03.12.2020, holding that departmental proceedings were independent of the criminal case and that Rule 7-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 could not be invoked after retirement. His appeal before the Supreme Court was dismissed as not pressed on 26.04.2023, with liberty to approach the department through proper channel, which was directed to pass a speaking order. He added that pursuant thereto, the department passed an order dated 21.04.2025, stating that PSB-I had already considered and unanimously declined the petitioner's proforma promotion to BPS-20. Learned counsel challenged the order as non-speaking and relied upon the Notification dated 20.05.2022 omitting the proviso to Fundamental Rule 17, as well as *Nisar Hussain Shaikh v. Province of Sindh* (2025 PLC (CS) 1084) and prayed to allow this petition.

4. We have heard learned counsel for the petitioner on the question of maintainability and have carefully examined the record, the departmental order dated 21.04.2025, the applicable statutory provisions and the authorities cited at the bar.

5. The petition, in our considered view, is not maintainable and, in any event, the petitioner has failed to establish any enforceable right to proforma or retrospective promotion after his retirement for the reason that the petitioner admittedly retired from service as District Education Officer (BPS-19). Upon his retirement, the departmental proceedings pending against him stood abated. The consequence of retirement is material because promotion is ordinarily a matter arising within the subsisting service relationship and cannot be claimed as of right after cessation of service unless a specific statutory provision preserves or creates such entitlement. Neither the Sindh Civil Servants Act, 1973 nor the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 contains any provision conferring upon a retired civil servant an independent right to proforma, retrospective or notional promotion merely because he was subsequently acquitted in a criminal or NAB case. The petitioner's reliance upon his acquittal in NAB Reference No.15 of 2016 does not, by itself, revive his claim for promotion. The issue had already been considered by this Court in Constitutional Petition

No.D-3454 of 2017, which was dismissed on 03.12.2020 with the specific finding that departmental proceedings are independent of criminal proceedings and that Rule 7-A of the 1974 Rules could not be invoked after retirement. That determination was not set aside by the Supreme Court. Rather, the petitioner's appeal was dismissed as not pressed on 26.04.2023, though liberty was granted to approach the department through the proper channel, with a direction to pass a speaking order. Such liberty did not amount to a declaration that the petitioner possessed a vested right to proforma promotion; it merely enabled the competent authority to examine his representation in accordance with law.

6. Pursuant to the said liberty, the competent departmental authority passed order dated 21.04.2025, whereby it was recorded that PSB-I had already considered the petitioner's case and had unanimously declined his request for proforma promotion to BPS-20. Thus, the competent authority did consider the petitioner's claim and communicated the decision taken against him. The petitioner cannot convert the liberty granted by the Supreme Court into an entitlement to a favourable decision, particularly when the competent forum had already considered and rejected his claim.

7. The challenge to the departmental order on the ground that it is non-speaking is also without substance. The order records the material basis for rejection, namely consideration of the petitioner's case by PSB-I and its unanimous decision not to recommend his proforma promotion. More importantly, even if the order were assumed to suffer from some deficiency of reasoning, such deficiency could not confer a substantive right upon the petitioner which is otherwise absent from the governing law. Judicial review cannot be employed to create a right of promotion where the statute and rules do not provide one.

8. The reliance upon the Notification dated 20.05.2022, whereby the proviso to Fundamental Rule 17 was omitted, does not advance the petitioner's case. The said amendment cannot retrospectively create a right to promotion which had not accrued during the petitioner's service, nor can it override the statutory scheme governing appointment and promotion of civil servants. A subsequent amendment must be applied in accordance with its legal effect and cannot be invoked to revive an otherwise extinguished or non-existent claim after retirement.

9. The judgment relied upon by learned counsel, namely *Nisar Hussain Shaikh v. Province of Sindh* (2025 PLC (CS) 1084), is distinguishable on the facts and cannot be read as laying down an absolute proposition that every retired civil servant, upon acquittal in criminal proceedings, becomes entitled to retrospective or proforma promotion. The entitlement must necessarily flow from the applicable statutory rules and the circumstances in which the

employee remained in service. In the present case, no such enabling provision has been identified. On the contrary, retrospective or proforma promotion cannot be granted in the absence of a clear enabling provision, particularly after retirement. Courts exercising constitutional jurisdiction cannot direct the grant of a benefit which the governing service law itself does not recognize. The governing Sindh Civil Servants Act, 1973 and Rules, 1974 contain no provision conferring a right of proforma or retrospective promotion upon a retired civil servant. The Supreme Court has also held in *Secretary Finance v. Muhammad Anwer* (2025 SCMR 153), *National Bank of Pakistan v. Sajjad Ali Khaskhelli* (2024 PLC (CS) 276) and *Inspector General of Police Punjab v. Waris Ali* (2024 SCMR 1109) that such relief cannot be granted where no enabling provision exists, particularly after retirement.

10. It is also significant that promotion is not a vested right merely by virtue of eligibility or seniority. At the highest, an employee may possess a right to be considered for promotion in accordance with the applicable rules. Such consideration does not necessarily result in promotion, particularly where the competent promotion forum has consciously declined the claim. In the present case, PSB-I considered the petitioner's case and unanimously declined proforma promotion. No material has been placed before us demonstrating that the decision was actuated by mala fide, based on irrelevant considerations, or taken in violation of any mandatory statutory provision.

11. The petitioner, therefore, seeks in substance to obtain through constitutional jurisdiction a benefit which was neither granted to him during service nor preserved by any statutory provision after retirement. His subsequent acquittal in the NAB reference cannot, by itself, retrospectively confer upon him a right to promotion, particularly when his earlier constitutional challenge had already been adjudicated and the Supreme Court had not declared him entitled to such relief.

12. For these reasons, we find that the petitioner has failed to demonstrate any enforceable legal or vested right to proforma promotion to BPS-20. The departmental order dated 21.04.2025 does not warrant interference in constitutional jurisdiction. Consequently, no case for exercise of the extraordinary jurisdiction of this Court under Article 199 of the Constitution is made out.

13. Accordingly, the petition, along with the listed applications, is dismissed in *limine*.

JUDGE

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