

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-3616 of 2025
[Syed Salman Hussain v. Federation of Pakistan & others]

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Hassan Akbar

Date of hearing and Order: 25.03.2026

Mr. Shoaib Khatyan advocate for the petitioner
Mr. Abdul Jalil Zubedi AAG
Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon, J. – Petitioner has filed this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, seeking the following relief:-

- i) *To declare that the impugned decision of the DPC made in its meeting held on 12.08.2024 is illegal, unlawful and against the settled principle of service laws;*
- ii) *To declare that the petitioner's appointment/encadrement in PSP Cadre vide notification dated 1st August 2016 shall take effect from the date of his deferment i.e. 13.11.2012 along with his batch mates;*
- iii) *Grant any other relief which is deemed appropriate under the circumstances of this case as may be necessary to protect and give effect to the rights and interests of the petitioner.*

2. The case of the petitioner is that he being a direct recruit Deputy Superintendent of Police (DSP) (BS-17), appointed in 1995 and subsequently promoted to SP (BS-18), was recommended by the Provincial authorities for encadrement into the PSP cadre in the year 2012 along with his batch mates. However, his case was deferred by the Departmental Promotion Committee (DPC) in its meeting held on 13.11.2012 on the ground of missing/deficient PERs and his colleagues were encadred and he was left in lurch, which triggered the cause to file the instant petition.

3. The learned counsel for the petitioner submitted that the petitioner's complete PER/ACR record had in fact been forwarded by the Provincial authorities and the deferment was not attributable to the petitioner. He further submitted that several junior officers and batch mates of the petitioner were encadred in PSP in 2012 and 2015, whereas the petitioner was encadred much later on 01.08.2016, thereby adversely affecting his seniority and further promotion prospects. Learned counsel argued that the petitioner challenged this action before the Federal Service Tribunal (FST), which vide judgment dated 06.11.2023 directed the respondents to consider the case of the petitioner for

encadrement with effect from the date of his deferment i.e., 13.11.2012, as had been done in the case of his batch mates who were granted backdated encadrement. Learned counsel submitted that despite the clear directions of the FST, the respondents, in the DPC meeting held on 12.08.2024, declared the petitioner “misfit” for ante-dated encadrement without issuing any speaking order and without providing an opportunity of hearing to the petitioner. He contended that the action of the respondents is discriminatory, mala fide, and in violation of Articles 4, 9, 10-A and 25 of the Constitution, as well as settled principles of service law that where an officer is deferred due to deficiency in record, he is to be reconsidered and granted promotion/encadrement from the date his juniors were promoted once the deficiency is removed. He therefore prayed that the impugned decision of the DPC be set aside and the petitioner be granted encadrement in PSP with effect from 13.11.2012 along with his batch mates.

4. On the other hand, learned Assistant Attorney General as well as learned Assistant Advocate General (AAG) for the respondents, including the Establishment Division, raised preliminary objections regarding maintainability and submitted that the matter relates to terms and conditions of service and therefore falls within the exclusive jurisdiction of the Federal Service Tribunal under Article 212 of the Constitution. It was further contended that the petitioner had already approached the Federal Service Tribunal and direction had already been issued, therefore the present petition is barred by the principle of constructive res judicata.

5. On merits, learned Assistant Attorney General submitted that the petitioner was first considered for encadrement in PSP in the DPC meeting held on 13.11.2012 but was deferred due to deficient PER record for more than one year. She added that his complete record was later received in 2016 and he was accordingly encadred in PSP with effect from 22.06.2016, i.e., from the date of the DPC meeting in which he was recommended. It was argued that under the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985 and the law laid down by the Supreme Court of Pakistan in Asim Gulzar Case, encadrement/appointment in PSP is to take effect prospectively and not retrospectively, and retrospective encadrement can only be considered for limited purposes of inter se seniority in specific circumstances. Learned AAG further submitted that the case of the petitioner was duly considered by the DPC in compliance with the FST judgment, and the Committee, in light of the factual position and the law laid down by the superior courts, decided that the petitioner was not entitled to ante-dated encadrement from 13.11.2012. Therefore, according to the learned AAG, the petitioner has already been granted encadrement strictly in accordance with the rules and applicable law, and no illegality has been committed by the respondents. She prayed to dismiss the petition.

6. After hearing learned counsel for the parties and perusing the record, it appears that the core grievance of the petitioner relates to grant of ante-dated encadrement in the Police Service of Pakistan (PSP) cadre with effect from 13.11.2012, i.e., the date on which his case was deferred by the Departmental Promotion Committee (DPC) due to deficiency in his PER record.

7. Petitioner Syed Salman Hussain was first considered for appointment to the Pakistan Police Service (PSP) in the DPC meeting held on 13-11-2012 along with sixty-six other officers. However, his case was deferred due to a deficient PER record exceeding twelve months. Notifications for appointment of 39 other officers were issued in December 2012, and the CR dossiers of 36 officers, including petitioner, were returned to the Government of Sindh. However, in 2016, the Government of Sindh resubmitted his case, and the DPC meeting of 22-06-2016 recommended him for appointment in PSP. His notification was issued on 01-08-2016 with effect from 22-06-2016, and he was later promoted to BS-19 on 27-07-2023. Now he wants his encadrment with his batchmates in terms of Notification dated 28.4.2021 issued by the Establishment Division whereby his batch mates were given seniority with effect from 2012.

8. The main contention of the petitioner is that since his juniors and batch mates were encadred earlier, he is entitled to ante-dated encadrement from the date of his deferment. In this regard, reliance has been placed upon the judgment of the Federal Service Tribunal dated 06.11.2023, whereby the respondents were directed to consider the case of the petitioner for encadrement with effect from the date of his deferment.

9. The record reflects that in compliance with the aforesaid judgment, the case of the petitioner was placed before the DPC in its meeting held on 12.08.2024, and the DPC, after considering the matter in the light of the relevant rules and the law laid down by the Supreme Court of Pakistan, declined the request of the petitioner for ante-dated encadrement.

10. It is settled law that once the reasons for deferment cease, even in promotion case, should follow from the date juniors are promoted. The Supreme Court has held that a civil servant cannot be penalized for administrative lapses or delayed service records. If an officer is otherwise eligible, promotion or encadrement in PSP or any service cannot be deferred solely for missing or delayed ACRs/PERs. The department is responsible for maintaining records, and courts may intervene timely for equitable relief, including proforma/backdating, to prevent prejudice. In a major ruling involving Sindh Police officers, the Supreme Court declared that restoration of seniority is a constitutional right of affected officers. The Court held that once seniority was restored, it could not be ignored, and officers were entitled to promotions accordingly.

11. However, the learned AAG argued that the petitioner's case differs from nine officers whose PSP encadrement was revised w.e.f. 2011/2012 via notification dated 28-04-2021. Unlike them, the petitioner was deferred in the DPC meeting of 13-11-2012 due to a missing PER record for over a year, and his complete case was only forwarded in 2016, resulting in his PSP appointment w.e.f. 22-06-2016. In contrast, the nine officers had initially been appointed to PSP but were later reverted by the Government of Sindh. Their seniority was restored from their earlier appointment date, but actual PSP service counted only from their Grade-18 service irrespective of seniority.

12. Record reflects that Following the FST, judgment dated 06-11-2023, a DPC meeting was held on 12-08-2024 at the Establishment Division, Islamabad, to consider the petitioner's request for ante-dated PSP encadrement w.e.f. 13-11-2012. The DPC unanimously decided that ante-dated encadrement could not be granted in view of the factual position.

13. While encadrement into PSP is generally prospective in terms of ratio of the judgment rendered in the case of *Muhammad Zafar Ali vs. Asim Gulzar, 2015 SCMR 365*, this does not prevent relief where delay is caused by administrative lapses. The Supreme Court has held that officers should not be prejudiced in seniority due to inaction or delay beyond their control. In cases like *Ghulam Qadir Thebo*, proforma or backdated promotion has been allowed where eligibility was met but encadrement was deferred by official oversight. Similarly, *FBR vs. Noreen Ahmed*, confirmed that officers in comparable circumstances must be treated equally and seniority cannot be manipulated to their disadvantage. Courts have emphasized that seniority should reflect actual service and eligibility, not mere technical dates, and equity under Articles 4 and 25 supports granting relief where administrative delays, such as defective PER records, unjustly postpone promotion. Therefore, seniority should be fixed from the date juniors were promoted in similar circumstances. However, it is settled law that once the reasons for an employee's deferment cease, promotion should follow from the date when juniors are promoted.

14. In this case, the petitioner's 2012 deferment was due to a missing PER record an administrative lapse, not personal unfitness. Once the record was complete in 2016, he became eligible. He should not be disadvantaged by the delay, and his seniority should be reckoned from the date his juniors were promoted, as he was otherwise eligible when the vacancy arose. It is well settled that seniority is a fundamental service right, affecting promotions, postings, and career benefits. Once lawfully established, it cannot be arbitrarily altered, and equity and service law principles support the petitioner's claim for its protection with his batchmates as prima facie there is no other impediment in his case.

15. In view of the above, this Court finds that the petitioner has highlighted illegality and procedural impropriety in the DPC's decision dated 12-08-2024. The petitioner's encadrement in PSP in 2012 was erroneously deferred and subsequent in 2016 followed completion of PERs, which were beyond his control. His eligibility was never in dispute, and he was deferred solely due to missing PERs. In fairness, he should have been treated like his batchmates, whose seniority was fixed with effect from 13-11-2012. Such treatment is reasonable and sustainable in law under Supreme Court precedent.

16. Accordingly, the petition and pending applications are disposed of, directing the competent authority of the respondents to reconsider their decision in accordance with law and the observations recorded herein above, within one month, and communicate the outcome to the petitioner, by way of circulation.

JUDGE

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