

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-4255 of 2023

(Muhammad Faheem Soomro v. Province of Sindh and another)

Date

Order with signature of Judge(s)

Before:

Muhammad Karim Khan Agha, J.
Adnan-ul-Karim Memon, J.

Date of hearing and order: 10.09.2025

Mr. Talha Abbasi advocate for the petitioner

Mr. Sandeep Malani AAG

ORDER

Muhammad Karim Khan Agha, J. This petition challenges the decision of the Provincial Selection Board-II (PSB-II) to defer the promotion of an Executive Engineer (BS-18) in the Sindh Irrigation Department to the post of Superintending Engineer (BS-19).

2. The petitioner submitted that he is eligible and has a clean service record, but was illegally denied promotion on August 9, 2023. The PSB-II cited two reasons for the deferral: a pending NAB (National Accountability Bureau) reference and missing PERs (Performance Evaluation Reports). The petitioner contends that both reasons are baseless and were fabricated to deny him a legitimate promotion. He asserts the PERs were submitted and that the NAB reference, which has been pending for over two years, falls under a rule that should not impede his promotion. The petitioner believes the PSB-II overstepped its authority and acted with malice to favor a junior officer, violating his fundamental rights to due process and equal protection under the law. The petitioner seeks to have the PSB-II's decision declared illegal and set aside. He requests the court to direct the respondents to reconsider his case for promotion immediately and, if approved, to promote him retroactively from the date his juniors were promoted.

3. Learned counsel for the petitioner submits that the petitioner's promotion ought not to be withheld based on the pendency of NAB Reference No 02/2021 (Munawar Ali Bozdar and others vs The State), which includes the petitioner and is pending before the Accountability Court No. III, Sindh at Hyderabad. According to learned counsel for the petitioner under Rule 7(1) of the Sindh Civil

Servants Promotion (BPS-18 to BPS-21) Rules, 2022, the petitioner is entitled to have his case for promotion considered after the lapse of the requisite period.

4. The Assistant Advocate General argues against the petitioner's promotion, stating it was rightfully deferred due to ongoing legal issues. The petitioner faces an Anti-Corruption FIR transferred to the National Accountability Court and a separate departmental inquiry for allegedly causing a significant financial loss by refunding a contractor's security deposit without authorization. The AAG contends that promotion cannot be considered until these criminal charges and departmental proceedings are resolved, despite both having been pending for over two years. The AAG asks the court to decide the present lis on the basis of these facts.

5. We have heard learned counsel for the parties and considered the record.

6. We find that the petitioner was rightly deferred by the Departmental Promotion Committee (DPC) held on 09.08.2023, as at that time, he was indeed facing criminal charges. However, we have noted that the NAB Reference involves a total of 41 accused persons, and the proceedings have been ongoing for over four years. Practically speaking, it is unlikely that the trial will conclude even within the next five years, given that each of the 41 accused will potentially cross-examine each of the P.Ws.

7. In deciding this issue, we are also cognizant of the fact that an accused is innocent until proven guilty. In the present case, the petitioner has not been found guilty of any offence to date and may even be acquitted upon conclusion of his trial before the Accountability Court.

8. We also note from the comments filed by the Secretary, Irrigation Department, Government of Sindh/respondent No 3 that departmental proceedings were initiated against the petitioner on 12. 10.2020, which are pending for finalization for more than 05 years, seemingly due to the pendency of the NAB Reference. More than 04 years have already passed, and the proceedings before the Accountability Court will still take a long time. It is not reasonable to indefinitely deny the petitioner consideration for promotion merely on account of a prolonged trial without a finding of guilt.

9. The main grievance of the petitioner is that despite the pendency of the NAB trial, he should be considered for promotion. He has not been able to participate in the departmental inquiry due to his incarceration, which is not attributable to any fault of his own.

10. Accordingly, we direct the competent Authority to complete departmental proceedings initiated against the petitioner on 12.10.2020 with final show cause notice issued on 05.7.2023 with regard to serious allegation of misappropriation of Rs.30.229 million on account of mobilization from the contractors, which should be culminated into its logical conclusion without fail in accordance with law within 03 months of the date of this order. The petitioner, if he has been released on bail, shall fully cooperate with the inquiry and the petitioner shall be provided an opportunity of being heard. It is clarified that the outcome of the inquiry, shall be placed before the next Provincial Selection Board for consideration of his case for promotion, if need be, as per law.

11. Instant petition is disposed of in the above terms along with the listed/pending application(s).

A copy of this order shall be sent to the Secretary, Irrigation Department, Government of Sindh, Karachi, for compliance.

Head of Const. Benches

Judge