

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

C.P. No.D-517 of 2024
[Talat Ghani Khan v. Province of Sindh and others]

Before:
JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE RIAZAT ALI SAHAR

Petitioner:	Talat Ghani Khan through Mr. Tahir Nasir Rajput, Advocate
Respondents:	Province of Sindh & another through Mr. Rafique Ahmed Dahri, Assistant A.G. Sindh.
Date of Hearing:	11-11-2025
Date of Judgment:	11-11-2025

JUDGMENT

RIAZAT ALI SAHAR, J: - Through this Constitutional Petition, the Petitioner seeks indulgence of this Court against the arbitrary, discriminatory, and mala fide acts of the Respondents, whereby the Petitioner, despite being the most senior and qualified officer in the Department, has been persistently deprived of his lawful right to promotion from BPS-18 to BPS-19. The instant Petition, therefore, challenges the deliberate exclusion of the Petitioner's name from the relevant seniority and promotion lists, the continued acts of nepotism and favoritism on the part of the departmental authorities, and the resulting violation of the Petitioner's fundamental rights guaranteed under Articles 4, 9, 25 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973. Thus, seeking the following reliefs:

*“a. That this Honourable Court may be pleased to
direct the Respondent No. 1 & 2, The name of
Petitioner for Promotion from BPS-18 to BPS-19,*

place before Provincial Selection Board-II in the upcoming Meeting 29-03-2023, before his Retirement, i.e., 15-04-2024, Retirement of the Petitioner, and strictly ensure the petitioner will not be deprived of promotion before the retirement.

b. That this Honourable Court may be pleased to direct Respondent Nos. 1 & 2, the Matter of the Petitioner put in Emergent Manner and not deprive his fundamental rights given by the Constitution of the Islamic Republic of Pakistan, 1973, and not sustain financial loss to the Petitioner.

c. That this Honourable Court may be pleased to direct Respondent Nos. 1 & 2 to perform the act according to the Law and ensure Petitioner should not be deprived of their hands.

d. That this Honourable Court may be pleased to direct Respondent Nos. 1 & 2, if in any manner the Provincial Selection Board-II, meeting could not be possible / held within a time and prior to the Retirement of the Petitioner, the benefit will be awarded to the Petitioner to the back benefit prior to his retirement.

e. That after the argument, if this Honorable Court is satisfied on the argument that the respondents willfully committed negligence and professional misconduct and deprived the law full fundamental rights from their hands, which is granted by the Constitution of the Islamic Republic of Pakistan, 1973, then to take cognizance offence against them under the Anti-Corruption Law and NAB Ordinance.

f. Any other relief which this Honourable Court deems fit may be awarded to the petitioner under the circumstances of the matter.”

2. Learned counsel for the Petitioner submitted that the grievance pertains to the denial of promotion from BPS-18 to BPS-19. During the pendency of this petition, the Petitioner attained the age of superannuation on 15-04-2024. Throughout his service, the Petitioner has demonstrated merit, competence, and dedication, and at all times remained the most senior officer eligible for promotion. Despite fulfilling all criteria, his name was arbitrarily excluded from the relevant seniority and promotion lists. He submitted that the Petitioner, in good faith, submitted all necessary representations requesting consideration of his promotion before retirement. However, the Respondents failed to convene the Departmental Promotion Committee (DPC) promptly. This inordinate delay, resulting solely from the lethargic and negligent attitude of the Respondents, deprived the Petitioner of the opportunity to have his promotion considered while in service. The Petitioner cannot be penalized for such administrative lapses. He argued that the acts of the Respondents constitute arbitrary and discriminatory conduct in violation of Articles 4, 9, 25, and 27 of the Constitution. The right to promotion, earned based on seniority and merit, is a vested right, and undue delay or denial amounts to a clear infringement of constitutional protections. In such circumstances, settled law provides that an officer should be granted a post-retirement promotion with all consequential benefits. The Petitioner is, therefore, entitled to have his case considered either before or immediately after retirement so as not to be deprived of his rightful promotion and benefits. The consistent exclusion of the Petitioner's name reflects mala fide intentions, favoritism, and nepotism, which cannot be allowed to undermine his statutory and constitutional rights. Given the proximity of his retirement and the undue delay by the Respondents, this Court's intervention is necessary to ensure urgent consideration of the Petitioner's now proforma promotion to prevent financial loss and grave injustice. He prayed to allow the petition.

3. Learned AAG submitted that promotion from BPS-18 to BPS-19 is a matter of administrative discretion and is subject to the rules, procedures, and recommendations of the Departmental Promotion Committee (DPC) and the Provincial Selection Board-II. The process involves scrutiny of qualifications, performance, and merit, and the authorities act in accordance with the law, not arbitrarily. It was argued that the Petitioner, despite being a senior officer, had not been lawfully considered for promotion before reaching superannuation because the DPC process could not be concluded in time due to routine administrative and procedural requirements. The delay, therefore, was not mala fide or discriminatory, but merely a result of procedural constraints inherent in departmental promotions. The learned AAG contended that promotion is not a vested right until officially granted. While seniority and merit are important factors, the final decision is contingent upon the recommendation of the Selection Board. Mere seniority or tenure does not automatically entitle an officer to promotion, particularly when other factors such as vacancies, eligibility, and departmental discretion come into play. He argued that the Respondents acted in accordance with the Constitution, departmental rules, and established procedures. At no point was there any evidence of favoritism, nepotism, or mala fide conduct. It was further submitted that the Petitioner's fundamental rights under Articles 4, 9, 25, and 27 cannot be construed to guarantee an automatic promotion. The authorities' actions were lawful and within the scope of administrative discretion. Mere dissatisfaction with the timing of promotion does not amount to a violation of constitutional rights. The learned AAG argued that post-retirement promotion is an exception, not a rule, and can only be considered if there is clear evidence of negligence or mala fide intent. In the instant case, no such evidence exists; hence, the Petitioner's claim for post-retirement promotion or consequential benefits is not legally sustainable. He prayed to dismiss the petition.

4. The Petitioner, prima facie, while fully eligible for promotion from BPS-18 to BPS-19, could not be considered due to administrative delay, and attained the age of superannuation before his case was placed before the competent authority. It is well-settled that a civil servant loses the right to regular promotion upon retirement but if denied promotion through no fault of their own, is entitled to proforma promotion with all consequential benefits. The Supreme Court has consistently upheld this principle in cases such as *Secretary Schools of Education v. Rana Arshad Khan (2012 SCMR 126)*, *Federation of Pakistan v. Jahanzaib (2023 PLC (C.S.) 336)*, and *Homeo Dr. Asma Noureen Syed v. Government of Punjab (2022 SCMR 1546)*.

5. Moreover, the Honourable Supreme Court in C.P. No. 550-K of 2022 (*Ghulam Qadir Thebo v. Islamic Republic of Pakistan*) has reaffirmed that where an eligible officer is denied timely consideration for promotion due to administrative slip-up, inaction, or delay on the part of the Department despite possessing the requisite seniority, fitness and performance the officer cannot be deprived of the accrued right of consideration merely because he attains superannuation in the meantime. The Honourable Court, while interpreting Fundamental Rule-17, held that proforma promotion becomes a necessary remedial measure where the loss of promotion is attributable solely to the Department and not to the civil servant. It was further emphasized that Performance Evaluation Reports and service record constitute the bedrock of promotion consideration and any departure from objective assessment renders the process arbitrary. The Supreme Court unequivocally observed that delayed or non-consideration not only infringes Articles 4 and 25 of the Constitution but also creates unnecessary hardship and avoidable litigation. The principles laid down in the said judgment fully apply to the present case, where the Petitioner, despite fulfilling all legal prerequisites, was denied timely

placement before the competent forum due to departmental delay.

6. In the present case, the delay in convening the Departmental Promotion Committee and placing the Petitioner's case before the Provincial Selection Board was administrative in nature, and the Petitioner cannot be made to suffer due to no fault of his own. The principle of proforma promotion is designed to remedy such loss and ensure that seniority and eligibility are respected without prejudice to serving officers. The aforesaid exercise shall be undertaken within 60 days by way of circulation, subject to all just exceptions as prescribed under the law.

7. Accordingly, the Petitioner is entitled to have his case reconsidered for proforma promotion to BPS-19, with all consequential benefits, including arrears, pay fixation, and pensionary rights. Such consideration should be completed expeditiously, in line with established timelines, to prevent further hardship and litigation.

8. Petition stands **disposed of** in the terms of Ghulam Qadir Thebo's case [supra] along with pending application(s).

JUDGE

JUDGE

Abdullahchanna/PS