

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-954 of 2016

Ms. Rehana Parveen

Petitioner

Versus

The Federation of Pakistan and others

Respondents

C.P No.D-955 of 2016

Mr. Shahnawaz

Petitioner

Versus

The Federation of Pakistan and others

Respondents

C.P No.D-956 of 2016

Mr. Muhammad Ayoub Kerio

Petitioner

Versus

The Federation of Pakistan and others

Respondents

Date of hearing: 10.04.2017

Mr. Tarique Hussain, Advocate for the petitioners in all Petitions.
Mr. Malik Khushhal Khan Khattak advocate for the Respondents No.2 to
5.
Mr. Muhammad Shoaib Mirza Standing Counsel.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- In all the above listed petitions, similar points of law and facts are involved, hence the same are being disposed of by this common judgment. Through these petitions, the Petitioners have sought directions to the Respondents to submit/produce entire records with respect to promotions and seniorities from the date of first entitlement of promotion of Petitioners as per rules and promotion policies approved by the Board of Directors/Respondent No.3 and adjudge/ascertain the eligibility/entitlement of the Petitioners according to promotion rules/policies and pass necessary order/directions to the Respondents for awarding due promotions to the Petitioners according to their seniority and reschedule the previous promotions along with consequential benefits.

2. Brief facts of the case are that the Petitioner No.1 joined National Bank of Pakistan (NBP) in the year 1995 as Cashier. She was promoted from the post of Cashier to OG-III in the year 2002 and then to OG-II in the year 2008 and finally OG-I in the year 2010. The Petitioner No.2 joined National Bank of Pakistan in the year 1995 as Cashier. He was promoted from the post of Cashier to OG-III in the year 2002 and then OG-II in the year 2008. The Petitioner No.3 joined National Bank of Pakistan in the year 1990 as Senior Assistant. He was promoted from the post of Senior Assistant to OG-III in the year 1999 and then OG-II in the year 2004. Petitioners have claimed that as per Rules/Policies approved by Board of Directors of NBP, the promotions are granted after every three years but the Petitioners have been discriminated against and

several persons who were junior to them have been promoted to the posts of Assistant Vice President (AVP) and Vice President (VP), which is in violation of (Staff Service) Rules 1973. The claim of the Petitioners is that the issue of promotion of the Petitioners falls within the purview of fundamental rights and that the same cannot be denied as provided under the Constitution. Petitioners have also cited the names of several persons who were promoted regardless to their merits and seniority. Petitioners have asserted that despite several Representations made to the Respondent-Bank to provide the seniority list so that the petitioners may know about their seniority as to whether the same has been maintained by the Respondents properly in accordance with law and Policy of NBP or otherwise but the Representations of the Petitioners were ignored and not replied because out of turn promotions were made in violation of the Rules.

3. Para wise comments were filed on behalf of Respondent No.1 and No.2.

4. Mr. Tarique Hussain, learned counsel for the Petitioners has contended that as per Promotion Policy of the NBP, the Petitioners have not been given due seniority and promotion to the next rank, whereas the Juniors of the Petitioners were given out of turn promotions upto the highest rank in NBP without observing legal and codal formalities, hence, the fundamental rights of the Petitioners were violated. He further contended that the Petitioners made their Representations to the Respondents-Bank several times but no fruitful reply was given by the Management of the Bank, rather Bank discarded the claim of promotion of the Petitioners and he referred to the orders passed by the

Management of the Bank in the cases of Petitioners available in the case file. Learned counsel further contended that it is the right of the Petitioners to be dealt with in accordance with law and due seniority and promotion is the vested rights of the Petitioners which cannot be denied under the Promotion Policy of 2011-2012, 2013-14 and 2015. He next contended that the Petitioners are eligible to be promoted to the position of AVP/VP in the Respondent-Bank. He lastly concluded that there is nothing adverse against the Petitioners, as neither they are facing any disciplinary proceedings nor any departmental inquiry is pending against them. So far as Petitioner No.3 is concerned, he was downgraded one step and his appeal was rejected but his mercy appeal is pending before the Competent Authority, therefore, the Respondents are required to issue seniority list of the Petitioners and due promotion, which was wrongfully denied to them on the lame excuses regarding changing in the promotion policy etc, the promotion of the petitioners cannot be withheld for indefinite period. The learned counsel, in support of his case, has relied upon the case of Chief Secretary Government of Punjab and others v. Muhammad Arshad Khan Niazi (2007 SCMR 1355), National Bank of Pakistan and others v. Punjab Labor Appellate Tribunal and others (1993 SCMR 105), Askari Hasnain v. Secretary Establishment and others (2016 SCMR 871), Muhammad Tariq Baddar and other v. National Bank of Pakistan and others (2013 SCMR 314), Muhammad IlyasKhokhar and others v. Federation of Pakistan and others (2006 SCMR 1240), Mrs. Imran Adnan and others v. Federation of Pakistan and others (2012 PLC CS 1355), Liaquat Ali Chughtai v. Federation of Pakistan and others (2012 PLC CS 1062), Rasheed Baig and others v. ZaraiTaraqiati Bank Ltd (2013 PLC CS 1244) and argued that since the petitioners service is governed

by statutory Rules of service of the Respondent-Bank, as such they cannot approach the learned Federal Service Tribunal and this Court has jurisdiction to entertain the Constitutional Petition under Article 199 of the Constitution. He further contended that Petitioners met the minimum requirement of aggregate marks as provided under the Promotion Policy of NBP issued from time to time and the Petitioners cannot be superseded by personal opinion and impression of the Members of Board of NBP. He lastly stated that the Respondent-Bank, Management is not competent to alter the terms and conditions of service to the detriment of the employees of the Bank.

5. Mr. Malik Khushhal Khan Khattak, learned counsel for Respondents No.2 to 5 has contended that the instant petitions are not maintainable as there are disputed questions of facts involved in the present petitions. He argued that as per Promotion Policy 2013-14 and 2015 the evolution formula for promotion from OG-1 to AVP and above is based on the following criteria:

<u>Sr. No.</u>	<u>Elements</u>	<u>Maximum Mark</u>
1	Seniority (Service in grade)	10
2	Professional Qualification (DAIBP/JAIB)	05
3	Performance rating of last three years.	15
	Total	30

6. He further argued that as per promotion policy weightage of the seniority has been given to the Petitioner No.1 and she was considered for promotion from OG-1 to AVP under Promotion Policy 2013-2014 and 2015, the Petitioner was lastly promoted as OG-1 w.e.f. 01.01.2011 and she was not eligible for consideration of promotion as AVP w.e.f. 01.01.2013 as the Petitioner was considered for promotion w.e.f.

01.01.2014 and 01.01.2015 as the Petitioner obtained 23 marks, which were short of 9 marks under Promotion Policy 2013-2014 and 25 marks which were short of 6 marks in 2015 policy. Learned counsel further contended that as per above marks obtained by the Petitioner No.1 she could not be considered for promotion as AVP as per Promotion Policy. He next contended that the allegations leveled by the Petitioners against the Management of the Bank are based on malafide intention as none of the bank employee has been given out of turn promotion rather they were promoted on their own merits. He further contended that the promotion is always based on seniority-cum-fitness, education, performance, appraisals of three years and interview and subject to availability of vacancy, as such the Petitioners have no vested right to claim promotion as matter of right or particular post or grade by virtue of seniority. Learned counsel further added that the Management of the Bank rejected the appeal for promotion of the Petitioner No.1 on 5.8.2016. He lastly concluded that the promotion was effective from 01.01.2013, 01.01.2014 and 01.01.2015 and had been approved on 04.02.2016 and in most of the cases approved by the Regions / Group from 8th to 10th February 2016.

7. The learned counsel contended that so far as the Petitioner No.2 is concerned, he was lastly promoted as OG-2 with effect from 1.1.2008 and he was not found eligible for consideration of promotion under Promotion Policy 2011-2012 and 2013-14 and 2015 as he obtained following marks under the above promotion policy:

<u>Year</u>	<u>Total Marks</u>	<u>Marks Attained</u>	<u>Cut-off</u>
2011	40	19	23
2012	40	22	23
2013	40	20	26

2014	40	21	27
2015	40	22	27

8. The learned counsel further contended that there are several factors which require consideration for promotion from OG-1 and AVP and above and the Petitioner did not meet the evaluation formula given in the Promotion Policy and hence was not found eligible for promotion as OG-1.

9. Learned counsel further contended that so far as Petitioner No.3 is concerned, he was promoted as OG-3 with effect from 1.1.1999 and thereafter he was further promoted to OG-II with effect from 1.1.2004. He further contended that the Petitioner was demoted by one step in pay scale on account of misappropriation of Rs.1,609,530 in Customer Account and advances at NBP, Kotri Branch and he was not promoted as OG-I as per President Office Circular 3/2009 dated 18.2.2009. Learned counsel further contended that Petitioner was considered for promotion as OG-I under promotion policy 2011-2012, 2013-2014 and 2015 and he obtained the following marks:

<u>Year</u>	<u>Total Marks</u>	<u>Marks Attained</u>	<u>Cut off</u>
2011	40	20	23
2012	40	21	23
2013	40	24	26
2014	40	22	27
2015	40	22	27

10. Mr. Muhammad Shoaib Mirza, learned Standing Counsel has adopted the arguments of the learned counsel for the Respondents No.2 to 5. However, he has stated that in terms of Section 11(10) of Banks (Nationalization) Act, 1974 all Selections, Promotions and Transfers of employees of Banks except (President) to be made in accordance with the

evaluation criteria and personnel policies determined by the Board. He further states that the Respondent-Bank has framed the policy for such purpose and they have right to evaluate the employees for the purpose of promotion to the next rank. He further stated that the Petitioners cannot challenge the policy and they have no vested right to claim promotion.

11. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

12. With respect to the maintainability of the instant petitions, we would like to determine whether Service Rules relating to the National Bank of Pakistan are statutory or not? In the year 1973, the National Bank of Pakistan (Staff) Service Rules, 1973 (the "1973 Rules") were made by the Central Board under Bye-Law 18(a)(iii) of the National Pakistan Bye-Laws, with prior approval of the Central Government. Importantly, under Rule 4 of the 1973 Rules, the Central Board was given powers to amend, modify or omit all or any of the 1973 Rules, with the prior approval of the Federal/Central Government, as may be found necessary from time to time.

13. We are of the view that the National Bank of Pakistan (Staff Services) Rules 1973 are Statutory Rules and the same envisage the terms and conditions of Service of Bank employees, and were not repealed, replaced or annulled by the National Bank of Pakistan (Staff Services) Rules 1980, which were non-statutory. Guidance has been sought from the case of Shafique Ahmed Khan and others vs. NESCOM through Chairman, Islamabad & others (PLD 2016 SC.377) wherein the Honorable Apex Court has determined the test of whether

rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the nature and efficacy of such rules and regulations, Court had to see whether the rules/regulations dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute and matters of crucial importance, in which event they would be statutory. Reference is safely made to the case of Muhammad Zaman and others vs. Government of Pakistan and others (2017 SCMR 571). Reference is also made to the case of Muhammad Tariq Baddar and other (supra). In view of the dicta laid down by the Apex Court in the above referred judgments, the Petitions are maintainable and can be heard and decided on merits.

14. On merits, the Respondent Bank has taken the main objection that the petitioners have failed to meet the threshold marks as per promotion policy, the promotion case of the petitioners were considered by the Respondent Bank and were not found eligible for promotion. As per law the National Bank of Pakistan is entitled to make Rules in the interest of exigency of service and to remove anomalies in service Rules. It is the Service Rules Committee, which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy making of the National Bank of Pakistan and the interference with such matters by the Courts is not warranted and that no vested right of bank employee is involved in the matter of promotion or the Rules determining their eligibility or fitness, and at this juncture this Court has no jurisdiction by means of Writ to strike down

the policy of Respondent Bank, as such the policy framed by the Respondents for promotion of regular employees of the bank from clerical to OG-III or above up to EVP which is based on the criteria viz. seniority service in grade, professional qualification (DAIBP), performance rating of last three years and educational qualification, the petitioners have to meet all the above conditions to claim consideration for promotion.

15. We have also gone through the contents of the Rejoinder filed by the petitioners in the case of Muhammad Ayub Keerio Petitioner No. 3 and there is certain statement of allegations against him that he was awarded punishment of downgrade in pay by one step and his appeal against such punishment was also rejected in the year 2011. His appeal for promotion was also declined by the Management of Bank on 5.8.2016. So far as Petitioner No.1 and 2 are concerned, Respondent-Bank has declined the requests of the Petitioners for promotion for the obvious reasons elucidated above. Keeping in view the above facts, it is for the Respondent-Bank to decide as to whether the Petitioners meet the criteria set forth for promotion or not, further more in this case the petitioners have failed to point out any malice on the part of Respondent Bank to warrant interference in the promotion matter of the Petitioners by this court in Constitutional jurisdiction.

16. Reverting to the plea taken by the Petitioners that several officer/staff of the Respondent-Bank were granted unlawful promotions regardless of their merits/seniorities, we are of the view that the Petitioners have not made them party in the present proceedings so we refrain ourselves to dilate upon this aspect of the matter as they are not party before this Court. The second point raised by the learned counsel

for the Petitioners that the policy framed by the Board of Directors of the Respondent No.3 is discriminatory on the ground of personal opinion of the Board's members while awarding the marks to the Petitioners. On this aspect, the Petitioners have not highlighted the personal views or opinion of the members of the Board of Directors, regarding this performance. Record does not reflect such assertions of the petitioners have been established through any tangible evidence. The petitioners failed to substantiate their claim that the policy framed by the Respondent Bank has infringed their fundamental right as such this plea of the petitioners is not tenable in the eyes of law. However, it must be mentioned that It is well settled law that it is the domain of the competent authority to enhance the qualification of certain posts.

17. We are of the view that in the seniority/promotions case no vested right/fundamental right can be claimed as the promotion depends upon the various factors, which require consideration for promotion of the employees.

18. It is well established principle of law that, in service cases there exists two pronged criteria for promotion. One being eligibility and other being fitness, while the former relates to the terms and conditions of service, the latter is a subjective evaluation made on the basis of objective criteria. No doubt in service matters, the promotion depends upon eligibility, fitness and availability of vacancy and no one including the Petitioners can claim promotion as matter of right. It is for the Competent Authority, who could make appointments, determine seniority, eligibility, fitness and promotion and other ancillary matters

relating to the terms and conditions of the employees as prescribed under the Act and Rules framed thereunder.

19. We are of the view that in terms of Section 11 (10) of Banks (Nationalization), Act, 1974 all selections, promotions and transfer of employees of banks (except that of the President) and decision as to their remuneration and benefits have to be made by the President of the Respondent-Bank in accordance with the evaluation criteria and personnel policies determined by the Board. The Respondent-Bank has framed the promotion policy for regular employees of the Bank from clerical to OG-III and above up to EVP with certain criteria.

20. It is well settled proposition of law that the Competent Authority is entitled to make rules in the interest of exigency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Respondent-Bank and the interference with such matters by the Courts is not warranted as no vested right of a Bank employee is involved in the matter of promotion, or the rules determining their eligibility or fitness, and in Bank Cases the High Court has no jurisdiction by means of Writ to strike it down, except in the cases in which policy framed is against the public interest. This proposition of law has already been settled by the Hon'ble Supreme Court in plethora of judgments.

21. The case laws cited by the learned counsel for the petitioners are distinguishable from the facts and circumstances of the present case.

22. In the light of above facts and circumstances of the case, all the instant Petitions merit no consideration and are thus dismissed along with listed applications.

JUDGE

JUDGE

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