

IN THE HIGH COURT OF SINDH, AT KARACHI

Present: Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2076 of 2010

Abdul Hameed PathanPetitioner

Versus

Federation of Pakistan anotherRespondents

Date of hearing: 29.11.2017

Mr. Muhammad Nouman Jamali Advocate for the Petitioner.
Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

O R D E R

ADNAN-UL-KARIM MEMON,J:-The instant petition was disposed of vide order dated 02.03.2011 with the following observations:-

“Learned counsel for the petitioner submits that the petitioner would be satisfied if his representation in respect of his promotion pending before the competent authority, as admitted in para-7 of the comments filed on behalf of the Respondents, be decided within a month from today. With consent, the petition is disposed of along with the pending applications with direction to the Respondent No.2 to decide the pending representation of the Petitioner within a month from today without fail.”

2. On 11.08.2011 Petitioner filed an application under Order XXXIX Rule 1 & 2 read with section 151 CPC (CMA No. 12928/2011). This Court vide Order dated 26.09.2014 disposed of the said Application with the following observations:-

“Considering the facts and circumstances of the case and the dicta laid down by the Hon’ble Supreme Court of Pakistan in the above cited case, we direct the respondents to place the case of the petitioner for his promotion in the next DPC meeting and the case of the petitioner be decided strictly in accordance with law keeping in view the observations made by the Hon’ble Supreme Court of Pakistan in the above referred cases. The respondents are directed to submit compliance report to this Court through MIT-II.

In view of the above, contempt application bearing CMA No. 12928/2011 stands disposed of. However, in case of non-compliance of the order passed today, the petitioner is at liberty to move fresh contempt application, if he so advised.”

3. On 08.05.2015 Petitioner submitted an application (CMA No. 11138/2015) under Article 204 of the Constitution of Pakistan 1973, Read with section 3 and 4 of Contempt of Court Ordinance 2003 for initiation of contempt proceedings against the alleged contemnor on account of his willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court.

4. Mr. Muhammad Nouman Jamali, learned counsel for Petitioner has argued that despite clear directions in the above said Order the contemnor has not complied with the same. He next contended that this Court vide Order dated 26.09.2014 disposed of the earlier Application by directing the Respondents to place the case of the Petitioner for his promotion in the next Departmental Promotion Committee meeting and the case of the Petitioner be decided strictly in accordance with law, keeping in view the observations made by the Hon’ble Supreme Court in the case of

Iftikharullah Malih Vs. Chief Secretary and others (1998 SCMR 736) but the alleged contemnors did not comply with the Order passed by this Court by not considering the promotion of the Petitioner in accordance with the dicta laid down by the Honorable Supreme Court in the casa referred supra; that before the matter of petitioner could have been proceeded for promotion as recommended by the Federal Investigation Agency (FIA) for approval, however, the matter got delayed and in the meantime Petitioner attained the age of superannuation on 19.08.2011; that the Respondents took resort of the retirement of the petitioner from service of FIA and denied the promotion of the Petitioner on the ground of retirement of the petitioner from service by ignoring the facts that the Petitioner is entitled for profarma promotion after his retirement as per his entitlement under the law; that on 05.03.2015 Petitioner was informed regarding the convening of the Departmental Promotion Committee held on 04.05.2015 but Petitioner was not considered for profarma promotion in defiance of direction of this Court vide order 26.09.2014; that Petitioner is entitled for profarma promotion as given to his bathmats from BS-BS-18 to BS-19 as Additional Director FIA. He lastly prayed for taking strict action against the alleged contemnor.

5. Learned Assistant Attorney General for Pakistan submits that Ministry of Interior and FIA has made compliance with the orders of this Court by giving seniority to the petitioner from the date of his initial appointment on the analogy of M/s Munir Ahmed Shah and Khalid Rasool; that the name of Petitioner was fixed at Serial No.4 during the finalization of Provisional Seniority List; that D.P.C. was held on 30th March, 2012 after his retirement on

19.08.2011. Learned Assistant Attorney General has referred to the compliance report vide letter dated 03.07.2015 and argued that the Petitioner was granted antedated seniority as well as promotion as Assistant Director BS-17 w.e.f 26.11.1991 when his juniors were given the same benefits vide Notification dated 30th November 2015; that Government of Pakistan Ministry of Interior has issued Notification dated 21.11.2017 by giving payment of arrears of pays and allowances of BS-18 w.e.f. 12.09.1998 to the Petitioner; that the Orders passed by this Court have been implemented and nothing is pending on the part of the concerned Ministry. He prays for dismissal of the contempt application.

6. We have heard learned counsel for the petitioner as well as learned Assistant Attorney General and perused the material available on record.

7. Perusal of record reveals that the grievance of the Petitioner was that his representation for promotion be decided vide Order dated 02.03.2011 accordingly his representation was decided and Petitioner was granted antedated seniority as well as promotion as Assistant Director BS-17 w.e.f 26.11.1991 when his juniors were given the same benefits vide Notification dated 30th November 2015. Departmental Promotion Committee also recommended, referring the case of Petitioner under Fundamental Rules- 17(1) for deciding his financial benefits. Record further reflects that Government of Pakistan Ministry of Interior has issued Notification dated 21.11.2017 by giving payment of arrears of pays and allowances of BS-18 w.e.f. 12.09.1998 to the Petitioner. This Court vide Order dated 26.09.2014 disposed of the application under Order XXXIX Rule 1 & 2 read with section 151

CPC (CMA No. 12928/2011) with direction to the Respondents to place the case of the Petitioner for his profarma promotion in the next DPC Meeting to be decided strictly in accordance with law and the observations made by the Hon'ble Supreme Court in the cases referred supra.

8. Through the application bearing CMA No. 11138/2015, the Petitioner agitate that he was not considered, for profarma promotion as per his entitlement, in the DPC held on 04.05.2015 in the light of decision rendered by the Hon'ble Supreme Court in the case of Iftikharullah Malhi. Perusal of the said application explicitly shows that the case of the petitioner was considered by the respondents and decided as per law. Law provides that a retired Civil Servant cannot be granted promotion from back date as per dicta laid down by the Hon'ble Supreme Court in the case Government of Pakistan and other Vs. Hameed Akhtar Niazi and other (PLD 2003 SC 110)

9. In the light of judgment rendered by the Honorable Supreme Court in the case of Hameed Akhtar Niazi supra, we are clear in our mind that promotion from back date to the retired Civil Servant cannot be granted, except certain exceptions as provided under the law, particularly in the present case when the Petitioner stood retired from service on attaining the age of superannuation on 19.08.2011, whereas the instant Petition was disposed of vide Order dated 02.03.2011 with direction to the Respondents to decide representation of the Petitioner. Per learned Assistant Attorney General his representation was decided and he was given seniority along with colleagues and he was recommended for antedated profarma promotion to the post of Deputy Director w.e.f.

12.09.1998 along with financial benefits. Learned Assistant Attorney General during the course of arguments produced a copy of Notification dated 21.11.2017 issued by Ministry of Interior Government of Pakistan, which reads as under:-

Notification

“No. 3/34/2002-Estt (FIA).Consequent upon approval of the competent authority i.e Secretary Interior on the recommendations of the meeting of Junior Level Committee on FR-17(1) held on 20.10.2017 in M/O of Finance, Mr. Abdul Hameed Pathan, retired Assistant Director (Inv/BS-17), FIA is granted payment of arrears of pay and allowances of BS-18 w.e.f. 12.09.1998 i.e. the date when his junior Ch. Muhammad Sharif was promoted to BS-18.

10. In the light of above averments, the Petitioner in his Contempt Application has highlighted the violation of the Order dated 26.09.2014 passed by this Court. In the Contempt Proceedings, we cannot enlarge the scope of disposal order dated 02.03.2011 passed by this Court and allow the parties to argue the matter on merits of the case or refer the matter to the respondents for further deliberation on the issue.

11. We are of the view that the Respondent has submitted compliance report as discussed supra. We have also gone through the Contempt Application, the reply of the alleged Contemnor to the effect that it had complied with the aforesaid orders of this Court in its letter and spirit.

12. The explanation offered by the respondents vide Notification dated 21.11.2017, prima facie, is tenable under the law as the petitioner was considered for the promotion and he was granted payment of arrears of pay and allowances of BS-18 w.e.f.

12.09.1998 i.e. the date when his junior was promoted to BS-18 in compliance of order passed by this Court dated 26.09.2014;

13. In view of the facts and circumstances of the case and for the reasons alluded as above, we are satisfied with the explanation furnished by the alleged contemnors that substantial compliance of the order dated 26.09.2014 passed by this Court has been made in its letter and spirit, therefore, at this juncture, no case for initiating contempt proceedings is made out against the alleged contemnors. Thus, we are not inclined to continue with any further on the listed application bearing CMA No.11138/2015, having no merits, is accordingly dismissed.

JUDGE

Karachi
Dated:-29.11.2017.

JUDGE