

## 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-407 of 2012**

Ghulam Akbar Allana ..... Petitioner

Versus

National Bank of Pakistan and others ..... Respondents

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**Date of hearing: 30.11.2017**

Mr. Ahmed Ali Ghumro Advocate for the Petitioner.

Mr.Ch. Muhammad Ashraf Khan Advocate for the Respondents.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON,J:-** In this Petition, the Petitioner has prayed for following relief(s):-

- a) ***Declared that the impugned order/letter dated 20<sup>th</sup> October 2011 issued by the Respondents whereby the appeal of the petitioner for proforma/post facto promotion against the post of Senior Executive Vice President was rejected without any lawful authority, arbitrarily, unconstitutional and discriminatory against the promotion policy of the year 1999.***
- b) ***Direct the Respondents to give proforma/post facto promotion to the petitioner for Senior Executive vice President from 01.01.1999 when seniors as well as juniors colleagues of the Petitioner were considered and promoted by the Hon'ble Federal Service Tribunal against the post of Senior Executive Vice President in the National Bank of Pakistan which was held by the Hon'ble Supreme court of Pakistan.***
- c) ***Direct the Respondents to allow the benefits to the petitioner from 01.01.1999 to 09.12.1999 which are, basic pay after fixation and revision of ay, Annual increment to 1999, all allowances such as house rent, utility***

**entertainment and other allowances admissible under the rules, differences of leave encashment i.e. pay and allowances and other benefits, post retirement/Allowances including security guards six months' salary. Cost of generator, difference of annual bonus cash Award, profit bonus and other benefits, Medical benefits difference of consultation and laboratory charges.**

- d) Profit/interest on the entire amount of different to be calculated with from 10.12.1999 to date.**
- e) Direct the respondents to allow the benefits to the petitioner after retirements.**
  - i. Re-fixation of pension based on revised basic pay.**
  - ii. Commutation on difference of pay**
  - iii. Difference of encashment of 50% pension.**
  - iv. Difference of pension paid w.e.f. 10.12.1999 up to dated**
  - v. Difference of medical facilities consultation laborite's charges.**
  - vi. Re calculation of all the increase on pension paid from time to time.**
  - vii. Profit/interest on the entire amount of different to be calculated with from 10.12.1999 to date.**

2. Brief facts of the case are that the Petitioner joined the Respondent Bank on 8<sup>th</sup> July 1966. With passage of time he earned a series of promotions in officers Grade II, in the year 1973; officer Grad-1 in the year 1976, Assistant Vice President in the year 1981; Vice President in the year 1985; Senior vice President in the year 1989 and lastly executive Vice President w.e.f. 01.01.1994. Petitioner attained age of superannuation and retired from the service of Respondent-Bank on 09.12.1999. After his retirement, Petitioner was re-hired on contract basis, which contract also expired on 09.09.2000. Subsequent to Petitioner's retirement, w.e.f. 01.01.1999 various promotions took place and junior of the Petitioners were promoted as Senior Executive Vice President and it is the grievance of the Petitioner that the Respondent-Bank has Impugned Order / letter dated 20.10.2011, whereby the

representation of the Petitioner for proforma / post facto promotion against the post of Senior Executive Vice President was wrongly rejected by the Respondent-Bank, which is against the promotion policy issued by the Respondent Bank in the year 1999. Petitioners asserted that he is entitled for the benefits of proforma promotion after his retirement w.e.f. 01.01.1999 to 09.12.1999, and all allowances as admissible under the Rules, i.e. differences of leave encashment i.e. pay and allowances and other benefits, post retirement/ allowances including security guard six months salary cost of generator difference of annual bonus, medical benefits of consultation and laboratory charges and profit / interest on the entire amount w.e.f. 10.12.1999.

3. Para wise comments were filed on behalf of Respondent-Bank.

4. Mr. Ahmed Ali Ghumro, learned counsel for the Petitioner has contended that the impugned order dated 20<sup>th</sup> October 2011 issued by the Respondent No.2, whereby rejected the appeal of the Petitioner for proforma promotion to the post of Senior Executive Vice President without considering the promotion policy-1999 issued by the Respondent-Bank, which is illegal, discriminatory, unlawful, unconstitutional and in utter violation of the principles of natural justice; that the Respondent No.2 was pre-determined to reject the appeal of the Petitioner without giving due consideration on the promotion policy for the year 1999, which was effected from 1.1.1999, when the Petitioner was in active service of the Respondent-Bank; that the Petitioner was retired on 09.12.1999, whereas the effect of the policy was from 01.01.1999, which is very much clear and supported the case of the Petitioner for the proforma promotion to the post of Senior Executive

Vice President; that two colleagues of the Petitioner, which are mentioned at serial No.5 and 7 of the seniority list dated 31.12.1998 were promoted to the post of Senior Executive Vice President after their retirement, whereas the Petitioner was ignored on account that the Petitioner was retired from the service before the policy announced, which is baseless ground and without lawful authority; that the Respondent No.2 has failed to appreciate that the colleagues of the Petitioner were considered for the proforma promotion to Senior Executive Vice President and they were also given all the back and consequential benefit so the case of the Petitioner is on same footing and the Petitioner is entitled for the proforma promotion to the post of Senior Executive Vice President with effect from 01.01.1999 as per Promotion Policy of Respondent-Bank; that the conduct of Respondent No.2 is discriminatory, while ignoring the Petitioner for the promotion to the post of Senior Executive Vice President, whereas the colleague of the Petitioner who is at serial No.2 of the seniority list promoted after 23 days of his retirement from the service, which is admitted by the Respondent-Bank in the Impugned Letter dated 20<sup>th</sup> October 2011, whereas another colleague of the Petitioner namely Mr. Malik Muhammad Hameed, who was Executive Vice President regional office Lahore retired on 05.04.2003 and was promoted to the post of Senior Executive Vice President on 01.04.2003 without any promotion policy announced by the Respondent-Bank, which is against the Article 25 of the Constitution 1973; that the promotion policy of the year 1999 was not only based on qualification but the Respondents laid down a criteria and evaluation formula containing education qualification, professional qualification, performance service in the grade and recommendations, which was not

considered by the Respondent-Bank, while deciding the appeal of the Petitioner for the proforma promotion, besides that the Petitioner was one of the members, who approved the promotion policy of the year 1999; that the Respondent-Bank, malafidely passed the impugned order dated 20<sup>th</sup> October 2011, which is apparently against the promotion policy for the year 1999 as the Petitioner was fully qualified for the promotion and the service record of the Petitioner speaks that the Petitioner possess unblemished record, which is evident that the Petitioner was re-employed after his retirement on 09.12.1999, on contract basis of a period of six month and further extended three month; that the Impugned Order has been passed in colorful exercise of authority and is not sustainable in the eyes of law. He lastly prayed for allowing the instant petition.

5. Mr. Ch. Muhammad Ashraf Khan, learned counsel for the Respondent-Bank has contended that the promotion is not a guaranteed right and the same cannot be claimed as a matter of right, therefore the petition with the prayers as made is not maintainable; that the Petitioner stood retired on superannuation from the Respondent-Bank service on 10.12.1999, the promotion, which is claimed in the petition for the post of Senior Executive Vice President was announced by the Bank on 21.02.2000; that on retirement the Petitioner received all his retirement dues in full and final settlement without any objection or reservation; that the Petitioner continued with his position of Executive Vice President till his retirement and was offered the same post on contract for 6 months, which was accepted by him, such contractual employment as Executive Vice President was extended, which too also accepted by the

Petitioner; that while in regular employment, the Petitioner never claimed for promotion as he was satisfied and did not had any claim; that since the Petitioner has long ago retired from the Bank's service and has been paid his retirement dues in full and final settlement, therefore he cannot claim promotion after retirement. Per learned counsel that Petitioner was considered for proforma promotion but Respondent-Bank declined the same with cogent reasons; that the seniority is not only criteria for promotion, therefore cannot be agitated on the basis of seniority; that there are several other factors including seniority, regional quota, qualification, number of available posts, conduct, marks obtained in the interview, promotion policy, etc.; that since the Petitioner had already retired before the date of declaration of the promotion policy, therefore he was not eligible for promotion on this ground also. It is further contended by the learned counsel for Respondent-Bank that the directions given by this Court in C.P. No. D-2100/2007 dated 03.11.2010 stood duly and in letter and spirit complied with, which is apparent from the speaking order passed on 20.10.2011 issued by the Respondent-Bank. He lastly prayed for dismissal of the instant petition.

06. We have heard the learned counsel for the parties and perused the material available on record.

7. We have gone through the record of earlier round of litigation and the judgment dated 03.11.2010 passed by this court in C.P. No. D-2100 of 2007 whereby Respondent Bank was directed to consider afresh the application of the petitioner and then decide it by passing a well-reasoned and speaking order. Per learned counsel of Respondent Bank

the Respondent Bank decided the application of the petitioner for post facto promotion as SEVP w.e.f 01.01.1999. The reasons assigned in the order dated 20.10.2011 are as under:-

“Further to our letter No. HRM & AG/P& IRD/PAW/PROM/18824 dated 19.10.2011 in compliance of Hon’ble High Court of Sindh Karachi order dated 03.11.2010 whereby your Appeal for post Facto Promotion was remanded to the Board of Directors of the Bank to consider your case afresh, the matter was placed before the Board HR committee in its 87<sup>th</sup> (09/2011 meeting held on 18.08.2011 for reconsideration of your appeal for promotion.

The Committee, after thorough deliberations forwarded its recommendations for placing the same before the Board of Directors for final decision. Accordingly, the matter was placed before the Board of Directors in its meeting held on 30.09.2011.

The Board of Directors thoroughly examined the contents of your appeal and also perused the promotion policy 1999 and observed that you are not entitled for promotion w.e.f. 01.01.1999 as the promotion policy clearly debars those retired/separated under GHS from Bank’s service/deceased and proceeded on LPR on or before the date of declaration of the promotion policy.

Since you were not in the Bank’s regular service at the time of interviews as you had been relieved with effect from 09.12.1999 you were not considered for promotion w.e.f 01.01.1999.

In addition to the above, the Board also considered the instances quoted by you in your petition, it is observed that M/s Ahmed Ali Khan and Nisarahmed Ansari were in active service of the Bank and better qualified than you whereas Mr. Farooq –ul-Hassan Chishti superannuated on 03.03.2004 when promotion process from EVP to SEVP was in progress and under consideration of the Board since 2003,, which was finalized only 23 days after superannuation of Mr. Chishti. Additionally, Mr. Chishti was also better qualified than you.

In view of the above, the competent authority is of the view that your Appeal for promotion in the next graded w.e.f. 01.01.1999 does not merit consideration.”

8. We have noted that the Petitioner attained age of superannuation and retired on 09.12.1999 and the promotion policy for the year 1999

was introduced by the Respondent Bank on 27.12.1999. The service of the Petitioner was re-hired on contract which contract also expired on 09.09.2000. The promotion policy 1999 does not depict that the Petitioner is eligible for proforma promotion after his retirement.

9. Perusal of the Impugned Letter dated 20.10.2011 explicitly shows that the case of the Petitioner was considered by the Respondent-Bank and decided as per law. Law provides that a retired Civil/Government 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).

10. 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/Government 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 09.12.1999, whereas his earlier petition was disposed of vide Order dated 03.11.2010 with direction to the Respondent Bank to consider afresh the application of petitioner and decide it by passing a well-reasoned and speaking order and the same has been done accordingly.

11. In the light of above averments, the Petitioner through this petition has highlighted his grievance, though this court already passed order dated 03.11.2010 and the Respondent Bank has complied with the order in its letter and spirit, therefore the Petitioner cannot agitate his claim



again and again which has already been set at naught by this Court vide Order dated 03.11.2010, and allow the petitioner to raise the same ground which has already taken by him in earlier round of litigation for further deliberation on the issue is not called for.

12. We are of the view that the Respondent-Bank has submitted compliance report vide letter dated 20.10.2011 as discussed supra. We have also gone through the said order of the Respondent Bank. The explanation offered by the Respondent Bank prima facie, is tenable under the law as the Petitioner was considered for the promotion and he was declined for such proforma promotion under the Respondent Bank Policy of the year 1999.

13. In view of the facts and circumstances of the case and for the reasons alluded as above, we are of the view that Petitioner has failed to make out his case for proforma promotion after his retirement on 09.12.1999 under Respondent Bank policy, therefore, at this juncture, no case for interference of this Court is made out against the Respondent Bank. Thus, the instant petition is dismissed.

14. These are the reasons of our short order dated 30.11.2017.

JUDGE

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