

## IN THE HIGH COURT OF SINDH AT KARACHI

**Present: -**

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

### **C.P No.D-5326 of 2016**

Nazeer Ahmed Abro ..... Petitioner  
Versus  
Province of Sindh and others ..... Respondents

### **C.P No.D-4058 of 2016**

Aijaz Ahmed Kalhoro & another .....Petitioners  
Versus  
Province of Sindh and others .....Respondents

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Mr. Shaikh Jawed Mir Advocate  
for Petitioner in C.P. No. D-5326 of 2016  
Mr. Fareed Ahmed Dayo, Advocate  
for Petitioner in C.P. No. D-4058 of 2016  
and Intervener in C.P. No. 5326 of 2016  
Mr. Ali Safdar Depar, Assistant Advocate  
General along with Ms. Naheed Akhtar, State Counsel  
Mr. Naeem Ahmed Sheikh, DIGP Hyderabad along with  
DSP Raza Mian, on behalf of CPO.

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Date of hearing : 09.11.2018

### **JUDGMENT**

**ADNAN-UL-KARIM MEMON, J:** - Both of the above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common question of law and facts are involved therein.

2. Basically, the Petitioner in C.P. No. D-5326 of 2016 has approached this Court for his promotion as Superintendent of Police (SP) in BPS-18, in executive cadre, on the basis that his immediate junior Qazi Muhammad Abbas had been promoted as Superintendent of Police in BPS-18. In this regard, Mr. Shaikh Jawed Mir learned counsel for the Petitioner has contended that the Petitioner on the basis of seniority-cum fitness, deserves to be promoted to the next rank in BPS-18 as his immediate junior Qazi Muhammad Abbas was promoted in high rank in BPS-18 vide Notification dated 13.02.2010. Counsel states that the seniority of the Petitioner is required to be maintained with his batch-mates as per the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975. Per learned counsel, the Respondent No.3, in his abortive attempt, has justified the promotion of the Petitioner in BPS-18 as AIGP / SP-legal and not SP in executive cadre i.e. Regular Police; that the opinion of the Respondent No.3 is contrary to the aforesaid rules as well as under the Police Rules 1934. Learned counsel tried to convince this Court that PDSPs and DSPs can be promoted to the rank of SP, in executive cadre as the Home Department, Government of Sindh is maintaining the combined seniority of all the Provincial Police officers in BPS-17 and BPS-18 and there is no concept of cadre/nomenclature of SP-legal/AIG-legal; that non submission of working papers of the Petitioner in next PSB meeting, headed by the Chief Secretary, Sindh under Rule 6-A of the Sindh Civil Servants(Appointment, Promotion & Transfer) Rules 1974 is contrary to the law as well as against the principle of natural

justice; that there is nothing adverse against the Petitioner, during his entire career; that the Petitioner is eligible and qualifies for the promotion in the next rank, under the law, therefore the case of the Petitioner for consideration of promotion along with his batch-mates is legal and justified. He lastly prayed for allowing the instant petition.

3. At this stage, Mr. Fareed Ahmed Dayo, learned counsel for the Petitioner in C.P. No. D-4058 of 2016 and for proposed intervener in C.P. No. 5326 of 2016 has contended that so far as the basic absorption of the Petitioner in the police department is concerned that has been called into question before the Hon'ble Supreme Court of Pakistan. In support of his assertion, he relied upon the para 4 of the affidavit in support of the application under order 1 Rule 10 CPC (CMA No. 9359 of 2017) of the proposed intervener and submits that he has filed Misc. Application No. 177 of 2016 in Cr. Org. Petition No. 89 of 2011, before the Hon'ble Supreme Court of Pakistan. Per learned counsel notices have been ordered to be issued to the learned Advocate General, Sindh and law Secretary. At this stage, we posted a question to him, under what ground, he has called in question the seniority/promotion of the Petitioner in the present proceedings, in reply to the query he has submitted that Petitioner was transferred from Solicitor Department to Police department vide Notification dated 03.10.1994, and was permanently absorbed in the Prosecution cadre of police department and now he is claiming promotion in the next rank in BPS-18 in executive cadre. Per learned counsel, this is against the basic sprit of law and the Judgment pronounced

by the Hon'ble Supreme Court, in the case of Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456); then, we put to him, next question, whether the Petitioner in C.P. No.D-5326 of 2016 has blocked the promotion of the proposed intervener, he replied in negative and submitted that Petitioner was appointed in the year 1992, whereas the proposed intervener was appointed earlier than the Petitioner in the year 1986, hence he cannot claim seniority over and above the proposed intervener, however he has conceded that the proposed intervener had filed Petition bearing No.D-4574 of 2015 before this Court, which was disposed of vide order dated 09.10.2018 as not pressed on the ground that proposed intervener was promoted in the next rank in BPS-18. He also pointed out that the issue of absorption of the Petitioner is sub-judice before the Hon'ble Supreme Court. In our view if, this being the position of the case then we will not travel into that question of absorption, which is reported to be sub-judice before the Hon'ble Supreme Court and confine ourselves to the extent of issue involved in the present proceedings.

4. Learned AAG has submitted that all PDSPs absorbed in Prosecution branch of Sindh Police were initially assigned the rank of Prosecuting Inspector with certain conditions; that Petitioner was promoted from the rank of Prosecution Inspector (BPS-16) to PDSP (BPS-17) w.e.f. 06.12.2006 and he was assigned seniority over and above Mr. Qazi Muhammad Abbas in the rank of PDSP in BPS-17. Learned AAG has referred to final seniority list issued vide Notification dated 15.02.2017, wherein the name of the Petitioner

has been placed at serial No.14. He concluded his arguments by submitting that the matter may be decided on the basis of facts obtaining in the present petition.

5. We have considered the submissions of the parties and have perused the material available on record. It may be stated that in view of urgency shown by the learned counsels for the Petitioners on the last date of hearing viz. 08.11.2018, these petitions are fixed today for hearing. Today the learned counsels for the parties have argued the entire case on merits.

6. A pivotal question arises in the present proceedings is whether the matter of the Petitioner for his promotion in BPS-18 is required to be placed before the Provincial Selection Board (PSB) for appropriate orders?

7. We have also heard Naeem Ahmed Sheikh, DIGP Hyderabad. He states that seniority of all the Provincial Police officers up to the rank of SP has been fixed on the basis of their date of initial appointments with their batch-mates in terms of the principle laid down by the Hon'ble Supreme Court in the order dated 12.01.2016 passed in Cr. M.A. No. 354 of 2015 in Cr. M.A No. 486 of 2013 and Cr. M.A No. 269 of 2015 in Cr. M.A No. 486 of 2013.

8. Record reflects that all PDSPs were absorbed in Prosecution branch of Sindh Police and they were initially assigned the rank of Prosecuting Inspector on the following terms:-

***a) In the year 1990, the officers while holding the rank of PSI (BS-11) were transferred from Sindh Police to Solicitor's Department and allowed to join as Assistant Attorney (BS-16) after obtaining their willingness. Subsequently, on transfer of***

***Prosecution Agency from Solicitor's Department, Government of Sindh to Police Department, they have reported back and joined as P.I (VS-16) in 1994.***

***b) Some officers were directly appointed by the Solicitor's Department, government of Sindh as Assistant Attorney (BS-16) in the year 1992. They were also transferred from Solicitor's Department to Sindh Police in the year 1994 and they were allowed to join as P.I (BS-16).***

***c) The officers, who opted not to join Solicitor are Department and preferred to stay in Sindh Police as PSI (BS-11), were promoted to the rank of P.I (BS-16) in the year 1993, 1995 and 1996."***

9. The officers shown in (a) category, which was notified to be promoted to BPS-16 w.e.f. 07.03.1990 as per seniority list issued by the Home Department, Government of Sindh vide Notification No. POL-HD/2-78/13 dated 30.12.2013. Record reflects that the date of appointment of the officers as shown in category (b) was January to December 1992 and they were placed below officers in category (a) except Petitioner Nazir Ahmed Abro, who was given seniority to the rank of Prosecuting Inspector from the date of his appointment as Assistant Attorney (BS-16) in the Solicitor's Department w.e.f. 28.12.1992 but the seniority in the rank of PDSP was assigned to him w.e.f. 06.12.2006, although Respondent-department had agitated the claim of the Petitioner with the Home Department Government of Sindh to change his date of promotion as PDSP w.e.f. 03.05.2012 as it was done in the case of other officers of category (b) but his date of promotion as PDSP is still intact without any change. We have noticed that the Home Department, Government of Sindh had issued final seniority list of all PDSPs serving in Prosecution department in Sindh Police vide Notification No. POL-I-HD/02-94/2016 dated 15.02.2017, in which his name was placed at serial No. 14 but his date of

seniority in the rank of PDSP was assigned by the Home Department as 06.12.2006 which has not been changed.

10. In order to understand the concept of the Prosecution cadre in the police department, we seek guidance from the Judgment rendered by the Hon'ble Supreme Court in the case of Gul Hassan Jatoi & others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254), which has clarified the aforesaid point that there is no concept of cadre within the Police, which is one indivisible force. The Police Rules 1934 prescribe three modes in recruiting the Police personnel. The first recruitment mode is appointment of the Executive Police, the second recruitment mode, which has a different set of Rules refer to appointment of technical District Police and the third mode brings the recruitment of the Inspectors / Sub-Inspectors Prosecution (Legal). There can be employees in the Police Department, which are non-uniformed like ministerial staff and / or I.T. Department who are recruited and regulated by the Sindh Civil Servants Act, 1973 and the Rules framed thereunder. The appointments and enrollments of the Police Personnel are regulated by Rule 12 of the Police Rules, 1934 of Chapter XII, which deals with three different sets of recruitment processes described thereunder: -

***“a. Recruitment in Prosecution (Legal Branch), Rule 12.6(3)(C).***

***b. Recruitment of Technical District, Rule 12.3 (B)***

***c. Recruitment of upper subordinate in Police, Rule 12.6.***

***Rules 12.6 (3) (e) suggests that:***

***“(e) After recruitment no Inspector (Legal) shall be allowed change of cadre from Inspector (Legal) to the Executive of any other Branch in the Police Department.”***

11. On the basis of the aforementioned criteria of recruitment and training in terms of the Rules referred to hereinabove, it can easily be concluded that the Sindh Police force has three independent units i.e. Executive, Technical District and Prosecution (Legal). On scanning of the rules, it can further be concluded that the Police personnel appointed in terms of the aforesaid recruitment process cannot horizontally travel to any other unit referred to hereinabove either by way of transfer or otherwise. Our view is supported by the Judgments rendered by the Honorable Supreme Court in the case of Gul Hassan Jatoi & others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254) IGP, Punjab, Lahore and others vs. Mushtaq Ahmed Warraich and others (PLD 1985 SC 159).

12. Now reverting to the main case, we have noticed that the Hon'ble Supreme Court in the case of contempt proceedings against the Chief Secretary, Sindh & others (2013 SCMR 1752), Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) and Gul Hassan Jatoi & others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254) has already decided the issue of inter-se seniority amongst the Provincial Police officials up to the level of the Police inspectors (BPS-16) in different cadres with the following observation:-

**“71. We are clear in our mind that there should be common seniority of Police Personnel serving in all the establishments to be maintained by District Police, the Range DIG and Central Police Office (C.P.O.) strictly as provided by the Rules in Chapter XIII, as discussed in Para 56 supra. Therefore, the Sindh Government and the competent authority under the Police Rules shall prepare the common seniority list of the Police Personnel serving in different establishments within three (03) months of the date of this judgment in terms of Police Rules and report compliance.”**

13. We have seen the final seniority list of PDSPs in BPS-17 vide seniority list dated 20.02.2017. Prime facie the final seniority list of the Petitioners vide Notification 20.02.2017 reflects the factual position of the case. An excerpt of the same is reproduced below:-

S.No.	Name of officers	Date of Birth	Date of entry in police department	Date of promotion as PI or as Assistant Attorney	Date of Repatriation /Transfer to Sindh Police	Date of Regular promotion as PDSP	remarks
04.	Aijaz Ahmed Kalhoro	10.11.1959	15.10.1986	07.03.1990 as P.I	03.10.1994	02.08.2010	--
14.	Nazir Ahmed Abro	28.12.1958		28.12.1992 (Appointed as Assistant Attorney)	03.10. 1994	06.12.2006	The promotion as PDSP ante dated vide Home Department Government of Sindh's Notification No. POL-I-HD/02-71/2015, dated 02.05.2016.

14. The fundamental query that finalizes the controversy in hand is: -

***Whether the seniority of the Petitioners in both the cases can be reckoned from the date of their induction in service as Prosecution inspector and Assistant Attorney in solicitor department Government of Sindh or from the date when they were absorbed in prosecution cadre of police department as regular appointee?***

15. In the above context, we refer to Sub-Section (4) of Section 8 of the Sindh Civil Servants Act, 1973 reproduced herein below: -

***“Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment of such civil servant to that post, service cadre: Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter seniority as in the lower post”***

16. Perusal of the Notification dated 03.10.1994 issued by the Secretary Services & General Administration Department, Government of Sindh; explicitly shows that the Prosecution Agency along with its officers mentioned in column 2 of the Schedule were

transferred from the Solicitor's Department to Police department. The officials on their transfer were required to be posted against the new posts as per schedule; however it was made clear that the transferred employee would be governed by the respective rules applicable to them.

17. Record further reflects that the Home department, Government of Sindh vide Notification dated 20.02.1995 changed the cadre of the Petitioner from Prosecution side to Executive side and absorbed him as Police Inspector (BPS-16) in Sindh Police Department on regular basis and subsequently he was promoted to the rank of Deputy Superintendent of Police in BPS-17 vide Notification dated 27.10.2007 and was assigned the seniority vide Notification dated 21.10.2010, however in pursuance of the Judgment dated 12.06.2013 passed by the Hon'ble Supreme Court of Pakistan, the Competent Authority vide Notification dated 2<sup>nd</sup> July 2013 withdrew the absorption of the Petitioner and he was reverted back as Prosecuting Inspector in Sindh Police. Petitioner moved representation for assigning seniority from the date of appointment i.e. 28.12.1992 and promotion as PDSP and SP in BPS-18.

18. We have noticed that the Respondent-department issued working paper for consideration of promotion of the Petitioner to the rank of Prosecuting Deputy Superintendent of Police in BPS-17 by way of circulation and one of the signatory opined that Petitioner may be promoted with effect from 03.05.2012, when his immediate junior was promoted. The Respondent-department, vide

Notification dated 02.05.2016 assigned seniority to the Petitioner w.e.f. the date of initial appointment in the rank of Prosecuting Inspector i.e. 28.12.1992 and he was placed above Qazi Muhammad Abbas subsequently he was promoted to the rank of Prosecuting Deputy Superintendent of Police in BPS-17 w.e.f. 06.12.2006, on which date his junior Qazi Muhammad Abbas was in the aforesaid rank and subsequently he was promoted as Superintendent of Police /equivalent BPS-18 vide Notification dated 13.02.2010.

19. Record also reflects that the Respondent Home Department vide letter dated 05.05.2016 requested to the Services, General and Administration and Co-ordination department, Government of Sindh to place the case of the Petitioner for promotion before the Provincial Selection Board-II for consideration of promotion to the rank of Superintendent of Police in BPS-18, but subsequently they changed their mind vide letter dated 17.06.2016 and suggested that the case of the Petitioner may be placed before the Provincial Selection Board-II for consideration of his promotion to the rank of AIGP/SP Legal in BPS-18. During the course of argument we have been informed that there is no further venue of promotion of PDSP cadre, therefore Provincial Government sanctioned certain posts of SP / equivalent to BPS-18 for considering the cases of PDSP for further promotion.

20. To appreciate and elaborate further on the aforesaid factual position of the case, we deem it appropriate to have a closer look into the issue of inter-se Seniority amongst the officials of

Prosecution cadre in police department. In this regard, we are fortified by Rule 10(1) and (2) of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975, which provides as under: -

***“10 (1) subject to the provision of rule 11, the seniority of a civil servant shall be reckoned from the date of his regular appointment.”***

21. The above provision of law clarifies the legal proposition that the seniority of the Civil servant shall be reckoned from the date of his regular appointment in that cadre, therefore the Petitioners’ regular appointment starts from the date of their absorption in the prosecution cadre of Sindh police i.e. 03.10.1994 as discussed above thus, the question of counting seniority from the date of initial appointment in another department in our view is not available to them. Our view is supported by the decision rendered by the Hon’ble Supreme Court in the case of Iqbal Hussain Shaikh and 2 others Vs. Federal Chairman Board of Revenue & others ( 2013 SCMR 281). The Hon’ble Supreme Court has held at paragraph 298 that **“date of absorption/ induction in a new serviced/department might not necessarily be the date from which the seniority in that service/department had to be reckoned. Seniority might be reckoned from the date of transfer/deputation and not from the date absorption”** **(Emphasis Added)**. We are further fortified with the Rule 9-A of APT Rules, 1974, that a person who has been rendered surplus on account of abolition of a post of the Government or any autonomous body or on account of permanently taking over the administration of such autonomous body wholly or partially by the

Government may be appointed to any post in any Department of the Government with the following conditions:

**“(i) Such persons possess each qualification as are laid down under rule 3(2), for appointment to such post;**

**(ii) Such person shall be appointed to a post of equivalent or comparable Basic Scale and if such post is not available, then to a post of lower Basic Scale;**

**(iii) Seniority of such person in the new cadre shall be reckoned from the date of appointment in that cadre; and**

**(iv) Previous service, if not pensionable, shall not count for pension and gratuity unless Government directs otherwise]. (Emphasis Added)”**

22. So far as the contention of the Petitioner with respect to being eligible for promotion is concerned, it is an established principle that in service cases there exist a two pronged criteria. One being eligibility for promotion and the other being fitness for promotion. No doubt in the service matters, the promotion depends upon eligibility, fitness and availability of vacancy and no one, including the Petitioner, can claim promotion as a 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. No employee could claim fundamental or vested right with regard to promotion. This view finds support from the case of Secretary, Govt. of Punjab and other vs. Dr. Abida Iqbal and others [2009 PLC C.S. 431] and Government of Khyber Pakhtunkhawa and others vs. Hayat Hussain and others (2016 SCMR 1021).

23. To conclude the above, we are of the considered view that seniority in service; cadre or post to which an official is promoted

is to take effect from the date of regular promotion to that service, cadre or post. Therefore, we cannot endorse the assertion of the learned counsel for the Petitioner that the Petitioner is entitled for promotion as SP (BPS-18) in executive cadre of Police department, however we make it clear that the case of Petitioner for his promotion as SP/equivalent (BS-18) in his parent cadre, which needs to be considered by the Competent Authority in the light of Rule 13 of the Sindh Civil Servants (Probation, Confirmation & Seniority) Rules, 1975 along with his batch-mates and the aforesaid Principle is also applicable in the case of other officials as shown senior to the Petitioner in the seniority list vide Notification dated 15.02.2017. Our view finds support from the Police Rule-12.6 (3) (e) of 1934 suggests that:

***“(e) After recruitment no Inspector (Legal) shall be allowed change of cadre from Inspector (Legal) to the Executive of any other Branch in the Police Department.”***

24. In the light of above discussion, we dispose of the captioned petitions along with the all pending application(s) with directions to the Competent Authority of the Respondent- department to place the case of the Petitioner in C.P. No. D-5326 of 2016, on his due turn, for consideration of his promotion to the rank of SP/equivalent to BPS-18 in his parent cadre, strictly in accordance with law and the observation made by this Court in the preceding paragraphs, within a period of two months from the date of receipt of this Judgment.

JUDGE

Karachi  
Dated:- 16.11.2018.

JUDGE