

# **IN THE HIGH COURT OF SINDH AT KARACHI**

## **Suit No.1195 of 2018**

**Plaintiff:** Syed Asif Ali Shah, through Mr. Mujtaba Sohail Raja, Advocate.

**Defendant No.1:** Federation of Pakistan through Secretary to the Cabinet Secretariat (Aviation Division) at Islamabad.

**Defendant No.2:** Pakistan International Airline Corporation Limited, through Mr. Khalid Mahmood Siddiqui and Mr. Ghulam Rasool Korai, Advocates.

**Defendants No.3 & 4:** Syed Inam Akbar Shah and Syed Muhammad Yasir, through Mr. Amir Malik, Advocate.

***For hearing of CMA No.8772/2018.***  
***For hearing of CMA No.8773/2018.***  
***For hearing of CMA No.14947/2019.***

**Dates of hearing:** 12.02.2020, 29.02.2020, 11.3.2020 and 19.3.2020.

**Date of order:** 19.03.2020.

### **ORDER**

**Muhammad Junaid Ghaffar, J.** This is a Suit for Declaration and Permanent Injunction and plaintiff has sought the following relief(s): -

- i. Declare that the Plaintiff is, in terms of "Revised Promotion Policy" notified vide "Administrative Order" No.24/2011 dated 09.08.2011 and "Chapter 30" of the "Personnel Policies Manual", eligible and entitled to be considered for promotion to "Pay Group IX" of the "Procurement and Logistics Department" of the Defendant No.2;
- ii. Declare that the Defendant No.2 has, through the issuance of "Letters of Promotion" dated 10.04.2018 in favor of the Defendants No.3 and 4, violated the terms of "Revised Promotion Policy" notified vide "Administrative Order" No.24/2011 dated 09.08.2011 as also "Chapter 30" of the "Personnel Policies Manual";
- iii. Declare that the conduct of the "Promotion Board" through exclusion of the Plaintiff vitiates the principles of natural justice and the liberty of the due process as enshrined under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973;
- iv. (As consequence thereof) Declare that "Letters of Promotion" dated 10.04.2018 issued in favor of the Defendant No.3 and 4 are illegal; unlawful; without jurisdiction and / or authority; contrary to the provisions of the "Revised Promotion Policy" notified vide "Administrative Order" No.24/2011 dated 09.08.2011 and "Chapter 30" of the

“Personnel Policies Manual”; and ultra vires Articles 2A, 4, 5 of the Constitution of the Islamic of Pakistan, 1973, as also Section 24A of the General Clauses Act;

- v. (Resultantly) Declare that the Defendants No.3 and 4 are not, in terms of “Revised Promotion Policy” notified vide “Administrative Order” No.24/2011 dated 09.08.2011 and “Chapter 30” of the “Personnel Policies Manual”, entitled to supersede the Plaintiff in service;
- vi. (Without prejudice to the foregoing) Declare that “Internal Recruitment Notice” dated 17.01.2018 is indignant to the rights of the Plaintiff and, thus, ultra vires the “Revised Promotion Policy” notified vide “Administrative Order” No.24/2011 dated 09.08.2011 and “Chapter 30” of the “Personnel Policies Manual”;
- vii. Grant a Permanent Injunction suspending the operation of “Letter of Promotion” dated 10.04.2018 issued in favor of the Defendants No.3 and 4;
- viii. (Without prejudice “vi”) Grant a Permanent Injunction restraining the Defendant No.2 (and/or persons acting under it, through it and /or on its behalf) from causing confirmations of the “Letters of Promotion” dated 10.04.2018 issued in favor of the Defendants No.3 and 4 (refer “Clause 30.01.10” of “Chapter 30” of the Personnel Policies Manual);
- ix. (Without prejudice to the foregoing) Grant a Permanent Injunction restraining the Defendant No.2 (and/or persons acting under it, through it and/ or on its behalf) from taking any action(s) adverse to the rights of the Plaintiff, including (but not limited to) (a) suspension from service; (b) dismissal and/or termination from service; (c) transfer from his present posting at Karachi; and /or the likes thereof;
- x. Grant any other relief(s) as may be deemed permissible given the facts and circumstances of the case;
- xi. Grant costs of the proceedings.

2. Application at Serial No.1 bearing CMA No.8772 of 2018 seeks suspension of Letters of Promotion dated 10.04.2018 issued in favor of Defendants No.3 & 4, and through application at Serial No.2 bearing CMA No.8773 of 2018, it has been prayed to restrain Defendant No.2 from taking any coercive action against the plaintiff. Application at Serial No.3 bearing CMA No.14947 of 2019 again seeks a restraining order against Defendant No.2 from fulfilling the post of Deputy General Manager through internal advertisement and promotion and granting the same to any other person. This application has been filed subsequently on 09.11.2019, during pendency of this Suit.

3. Learned Counsel for plaintiff submits that presently the plaintiff works with Defendant No.2 as Manager in the Procurement and Logistics Department in Pay Group VIII (“**PG-VIII**”) and for the present purposes, he is aggrieved by the unlawful and illegal manner in which Defendant No.2 has conducted the Promotion Board from PG-VIII to PG-IX granting undue favor and benefit to Defendants No.3 and 4; that Revised Promotion Policy of Defendant No.2 is presently governed through Administrative Order No.24 of 2011 dated 09.08.2011, which is binding on Defendant No.2; that the policy notified through

this Admin Order requires minimum five years of service in PG-VIII or twelve years in PG-V with minimum two years in the present pay group or fifteen years of total service with minimum two years in present pay group; that the plaintiff and three other persons namely, Obaidullah, Tariq Riaz and Muhammad Athar were called for interview on 29.11.2017, however, without assigning any reason, no further proceedings took place; that thereafter, in violation of policy Internal Recruitment Notice dated 17.01.2018, was circulated through which new list of nominees for promotion to PG-IX was called and plaintiff including Defendants No.3 and 4 another person, with whose promotion the Plaintiff is satisfied, were called as qualified candidates; however, Defendants No.3 and 4 have been promoted leaving out the plaintiff without lawful justification; that the said conduct of the Promotion Board is in violation of the promotion policy, inasmuch as, requirements provided in the policy have not been fulfilled; nor the said Defendants are qualified; that time and again, Defendant No.2 was approached, but plaintiff has been discriminated; that even the Board for promotion was illegally constituted, as against the policy and the manner prescribed therein, and therefore, in view of such position, plaintiff has made out a case for grant of injunction, whereby impugned promotion orders of Defendant No.2 & 3 be suspended till final adjudication of the Suit.

4. Learned Counsel for Defendant No.2 / PIA has argued that the impugned Letters are not promotion orders and the Court has been misled by the plaintiff, inasmuch as, the process was of internal selection pursuant to Chapter 34 of the Personnel Policies Manual and is not covered by Chapter 30 *ibid* as contended on behalf of plaintiff; that the plaintiff has participated in the Internal Selection without any objection and was given an opportunity to make out his case, but he was disqualified and thereafter, he has made an attempt to challenge the said selection in which he had participated; that he was even considered separately under the promotion policy for promotion to the next grade, but again he has failed; therefore, no case is made out; that selection from amongst employees is provided in the policy and the terms of agreement; hence, no objection can be raised; that it is intended to give maximum chance, equally to all employees to get the best of the best from amongst the employees of PIA; that the plaintiff has premised his case by terming the Internal Selection as promotion, which is belied from the facts of this case; that the plaintiff knew while participating in the selection process that he is going through a competitive process and only the best would be selected; that the plaintiff has not come with clean hands; that without prejudice to the stance of Defendant No.2, as and when any future selection and

/or promotion exercise is carried out, he will be considered on his own merits, and therefore, applications filed by the plaintiff are liable to be dismissed.

5. Learned Counsel for Defendants No.3 and 4 has also argued that it is not the process of promotion as contended by the plaintiff; but a selection process in which he himself has participated; that vacancies were available in PG-IX and various persons were summoned out of which three were disqualified and nine were interviewed by a four member board, whereas, plaintiff was declared unsuitable; that during pendency of this Suit, promotion board was conducted, again in which the plaintiff was called, but was disqualified and found unfit; that as plaintiff participated in the selection process; hence, at this stage, after being disqualified, he cannot raise any objection; that this amounts to blowing hot and cold at the same time; that no discrimination has been meted out; that even otherwise, promotion and/or selection is a policy matter, which cannot be challenged before the Court; that insofar as Defendants No.3 and 4 are concerned, the plaintiff has no cause of action and the Suit is even otherwise not maintainable against his clients, and therefore, he has prayed for dismissal of these applications.

6. I have heard all the learned Counsel and perused the record. As stated the Plaintiff is presently working as a Manager in the Procurement and Logistics department of Defendant No.2 in PG-VIII, and claims to be qualified for his promotion to the next PG-IX. It has been further stated that despite being qualified for promotion, he has been left out as against Defendants No.3 & 4. It appears that plaintiff's entire prayer in this matter is a challenge to purported Letters of Promotion ("selection" as contended by Defendants) dated 10.04.2018 available at page Nos.105 and 109. It is the case of plaintiff that this is against Chapter 30 of the Personnel Policies Manual and Revised Promotion Policy notified vide Administrative Order No.24 of 2011 dated 09.08.2011. It is further case of the plaintiff that the conduct of the Promotion Board, whereby, the plaintiff has been disqualified, has violated the principles of natural justice, whereas, Defendants No.3 and 4 were never qualified and ought not to have been promoted. At the same time, in the alternative and without prejudice, he has further prayed that Internal Recruitment Notice dated 17.1.2018 is ultra vires to the Revised Promotion Policy notified through Administrative Order No.24 of 2011. At the very outset it needs to reiterated and emphasized that it is not in dispute that pursuant to this Internal Recruitment Notice in question, the plaintiff has applied for such selection and or Internal Recruitment, (by whatever name one may call it); has participated and appeared for an interview and after having

been considered by the Selection Board; has been disqualified or not found fit. Now this very act of the Plaintiff, whereby, he has acquiesced; has foregone his legal right to challenge it as being ultra vires, leaves no manner of doubt, that at least, this is disqualification for him to seek any injunctive order in this matter. It that be the case as is being now argued, he ought to have challenged the same on this very touchstone at the very outset and before accepting the same as valid by his conduct and participation in the proceedings. He cannot blow hot and cold at the same time, again for seeking an injunction in the manner as has been pleaded. He was not only required to come before the Court with clean hands; but so also at the very initial stage and before the process was initiated or was being proceeded with. One must not lose sight of the fact that if he had been selected in this process, maybe he would have been a Defendant in this matter, and defending the very Internal Recruitment process. Not only this, it is also not in dispute that subsequently, even a Promotion Board was convened, and in that exercise also, he was considered; but once again, was found unfit.

7. The main and primary challenge in this Suit as reflected from prayer clauses (i) to (v) is in respect of the purported Letters of Promotion dated 10.04.2018 as being violative of Administrative Order No.24 of 2011, and in the alternative, it has been prayed to declare that Internal Recruitment Notice dated 17.01.2018 is ultra vires to the Revised Promotion Policy. This stance, as reflected from the above observations and the pleadings, as well as arguments so made before the Court, is self-contradictory. While confronted, plaintiff's Counsel was not in a position to deny this fact that when Internal Recruitment was advertised; he voluntarily participated and has not objected on it as being violative of any other Administrative Order or the policy itself. In that case, at least for the purposes of seeking an injunction, the plaintiff cannot come before the Court and challenge the selection of Defendants No.3 and 4, which he has termed or called as *promotion* in his pleadings and the prayer clause. He knew from day one that is a selection process through an Internal Recruitment, and was never a promotion; but once he was disqualified, he has come with a plea that it was promotion; hence, it was in violation of Chapter 30 of the Policy Manual, notwithstanding the fact that it was never a case of promotion but of Internal Recruitment, more appropriately governed by Chapter 34 *ibid*.

8. It also needs to be borne in mind that if a certain provision is introduced and is part of the Law/ Policy/ Guideline, it remains valid being an integral part of that Law / Policy or as the case may be. Here in this case, the Plaintiff, as noted hereinabove has himself acquiesced to such part of the Policy. It is a settled

proposition of law that until and unless the said Law or Policy as the case may be, or a part of it, has been held or declared to be ultra-vires, the same remains operative for all intents and purposes. And the Plaintiffs applications seeking an injunctive relief are to be decided keeping in view the three main ingredients for passing an injunctive order i.e. prima-facie case, balance of convenience and irreparable loss. Insofar as a prima-facie case is concerned, the plaintiff has been unable to make out any such case, as it is merely a challenge to the validity of the Policy in question, which he himself has recognized as being valid by his participation. It may be that the Plaintiff or his Counsel have a better reading of the law; but that would not make out a prima facie case for them to seek indulgence against a valid and accepted Policy / Administrative Order, which remains in field and is applicable as of today. The grounds urged on behalf of the Plaintiff with regard to the illegality as well as of malafides and discrimination are mere assertions, whereas, he has failed to substantiate it prima facie, with any material or cogent reasons. Similarly, the balance of convenience also does not lie in favour of the plaintiff, and in fact insofar as irreparable loss/injury is concerned, the same would be caused to the Defendants instead of the plaintiffs.

9. Again for the sake of repetition, it may be noted that the Plaintiff may have a better case at the trial of Suit, as to the selection process being ultra vires to the very promotion policy of Defendant No.2; but at the present moment by merely seeking a prayer to that effect, he cannot seek an injunctive relief in a matter wherein he has himself participated. Time and again, learned Counsel for plaintiff was confronted with this aspect of the case and so also with the offer of PIA through their Counsel, without prejudice, that the plaintiff would be considered in any future selection or promotion, and therefore, on 11.03.2020, learned Counsel for the Plaintiff had sought time to seek instructions and today when the matter was taken up, he has pleaded instructions to proceed on merits.

10. In view of hereinabove facts and circumstances of this case, I am of the view that insofar as any injunctive relief is concerned, the plaintiff has failed to make out any prima facie case; nor balance of convenience lies in his favor; and no irreparable loss would be caused to him, inasmuch as, he by his own conduct, is disentitled from seeking any such injunctive relief, once he himself participated and did not challenge the Internal Recruitment when such selection was being conducted and he was participating in it. Accordingly, by means of a short order passed during the earlier part of the day, listed applications filed by the plaintiff were dismissed and these are the reasons thereof.

**J U D G E**

*Faizan PA/\**