

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –5909 of 2019

Sajid Jalil

Versus

National Bank of Pakistan and 03 others

Date of hearing
& order : 19.10.2020

Mr. Ahmed Ali Ghumro, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. – - Through this petition, the Petitioner is seeking directions to the Respondent-Bank to adjudge/ascertain his eligibility/entitlement according to promotion rules/policies approved by the Board of Directors/Respondent No.3 and pass necessary order/directions to the Respondents for awarding him due promotion according to his seniority and reschedule the previous promotion along with consequential benefits. Per petitioner, his Annual Performance Appraisal from 2011 to 2018 was up to the mark but awarding him a low rating in Annual Appraisal was/is not only tainted with malice, but is discriminatory.

2. The case of the petitioner is that he is performing his duty in the respondent- Bank without any complaint and was promoted from Officer Grade-III to Officer Grade-II and then to Officer Grade-I based on his outstanding performance. The petitioner claims that he is entitled to further promotion as Assistant Vice President (AVP) with effect from 2013, Vice President in the year 2016, and Senior Vice President in the year 2019. He asserts that due to malafide intention of respondent-bank he was not promoted to the next rank. Petitioner cited various reasons with the assertion that the respondents promoted their blue-eyed but he was left at the lurch. He approached the respondents for up-gradation of his Annual Performance Appraisal for the year 2011 to 2017, but his appeals were rejected without assigning reasons.

3. We have heard the learned counsel for the petitioner and perused the material available on record.

4. 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 petitioner was considered by the Respondent Bank and was not found eligible for the 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 a 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 through 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), the performance rating of last three years and educational qualification, the petitioner has to meet all the above conditions to claim consideration for promotion.

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

6. It is a well-established principle of law that, in service cases there exist two-pronged criteria for the promotion. One being eligibility and the other being fitness, while the former relates to the terms and conditions of service, the latter is a subjective evaluation made based on objective criteria. No doubt in 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.

7. 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 under 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.

8. It is a 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 through 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 a plethora of judgments. Moreover, petitioner has not been able to point out any case where other employee(s), having rating equivalent to or lower than him, was / were promoted by the respondent-bank. Thus, *prima facie* it appears that the policy of the respondent is uniform and without any discrimination at least to the extent of the instant case.

9. In the light of the above facts and circumstances of the case, all the instant Petition merit no consideration and is thus dismissed along with listed applications.

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Shahzad*