

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –3652 of 2018

Ali Murad Sipio

Versus

Employees' Old Age Benefits Institution and 03 others

Date of hearing
& order : 27.10.2020

Mr. Abdul Salam Memon, advocate for the petitioner.

Mr. Ali Asadullah Bullo, advocate for the respondents.

ORDER

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

- a) *Declare and direct that the promotion of petitioner made vide office order No.345/2017, issued on 15.12.2017, after being considered by competent promotion committee in accordance with statutory rules, is not only conditional and is also in accordance with standard and transparent procedure, as was done in the case of other officers from 2009 to 2015, hence legal and lawful.*
- b) *Declare and direct that the modification in Officer Order No.345/2017, through Officer Orders No.346/2017 & 347/2017, to the extent of petitioner, is illegal and unlawful, hence of no legal effect.*
- c) *Declare and direct that the BOT 82nd to the extent of attending training of four weeks for promotion from the post of Assistant Director to the post of Deputy Director, is in direct conflict with statutory rules, hence of no legal effect.*
- d) *Declare that the petitioner has been grossly discriminated qua promotion made in the year 2009 to 2015, without even sending officers for any training despite the prevalence of BOT 82nd resolution.*
- e) *Direct the respondents that salary of petitioner against the post of Deputy Director be released forthwith.*

2. Brief facts of the case are that petitioner was appointed as Executive Officer on ad-hoc basis and his service was confirmed vide office order No.149 of 2003 dated 28.06.2003 with effect from 04.08.1995 in the respondent's Institution (EOBI). Thereafter, Petitioner was further promoted as Assistant Director in 2009, his further promotion to the post of Deputy Director was made on 15.12.2017 with condition that he would undertake requisite training, in which he failed vide result announced on 4.8.2017.

3. Per petitioner his promotion to the position of Deputy Director ought not to have been withheld on account of the condition of certain training, which was / is illegal. He further stated that his promotion should have been actualized as Deputy Director from the date he completed 5 years' service as Assistant Director under the Employees' Old-Age Benefits Institution (Employees Service) Service Regulation, 1980. The petitioner being aggrieved by and dissatisfied with the aforesaid change in office order No.345 of 2017 filed the instant petition on 9.5.2018.

4. Mr. Abdul Salam Memon, learned counsel for the petitioner while referring to annexures with the memo of petition contended that the petitioner was promoted to the post of Deputy Director vide office order dated 15.12.2017. Thereafter, the petitioner went for training twice, nevertheless, could not succeed in the said training and his promotion to the office of Deputy Director was withheld by the Departmental Promotion Committee (DPC). Learned counsel states that as per EOBI rules, the only requirement for promotion is five (05) years' seniority, which the petitioner possesses and there is no mandatory condition of passing aforesaid training in the rules. It is contended by him that the impugned condition is bad in law as well as on facts; that the respondents have withheld petitioner's promotion on account of failure in the capacity building training which condition is illegal in the light of recruitment rules for the subject promotion post. He further argued that the conduct of respondents is discriminatory; that after Petitioner's promotion the respondents cannot call in question his eligibility and fitness for the said post on the premise that the right has been created in favour of the petitioner under the principle of locus poenitentiae; that under the recruitment rules there is no condition precedent to undertaking any training for the post of Deputy Director in Grade-8. It is further contended that the petitioner has been seriously prejudiced and not treated equally under Articles 4, 5, 9, 18, and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He lastly prayed for allowing the instant petition.

5. Mr. Ali Asadullah Bullo, learned counsel for the respondent-EOBI, has mainly objected to the maintainability of the instant petition in para-wise comments filed on behalf of respondents 1 to 4. He argued that the petitioner has failed to get minimum marks as per promotion policy introduced by the respondent-EOBI; that the promotion case of the petitioner was considered by the Departmental Promotion Committee and he was not found eligible for the promotion on the premise that he failed twice in mandatory 'capacity building training'. As per law, the respondent-EOBI is entitled to make regulations in the

interest of exigency of service and removal of anomalies in service rules. Per learned counsel, 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 EOBI; and, interference in such matters is not warranted under the law; that no vested right of petitioner is involved in the matter of promotion or the Rules determining his eligibility or fitness; Per learned counsel the policy framed by the respondents for promotion of regular employees of the EOBI from various grades are based on the criteria that is, seniority service in grade, professional qualification, performance rating, educational qualification, and requisite training. The petitioner has to meet all the above conditions to claim consideration for promotion. Therefore, at this juncture, this Court cannot exercise constitutional jurisdiction to strike down the policy of respondent-EOBI. Hence, the petition deserves to be dismissed.

6. We have heard learned counsel for the parties and perused the material available on record. The minutes of the 28th meeting of the Board of Trustees held on 23.10,2008 provides criteria, weightage, and minimum eligibility for promotion. Excerpt whereof is as under:

“viii. The changes in the Recruitment and Promotion Procedures introducing new qualifications, training, and attending specific promotion related courses to meet the service requirements for officers shall be made. To retain the share of promotion v/s direct recruitment in grades of Director, Deputy Director and Assistant Director in Operation Cadre as approved by the Board in its 80th meeting as the change is to fill most of the position from the qualified, IBA trained and experienced officers of the Institution in the interest of EOBI. The change approved by the Board is as under:-

Operation Cadre	Grade	Promotion	D/Rectt.
A.D (Operation Cadre)	07		100%
D.D (Operation Cadre)	08	90%	10%
Director (Operation Cadre)	09	80%	20%

7. We have noticed that the respondent-EOBI issued a policy decision dated 19.06.2017, whereby the mandatory condition of training was made applicable for promotion in Grade 7 & 8 through the Pakistan Institution of Management (PIM). And, petitioner along with other employees of EOBI was directed to undertake the said training.

8. *Prima-facie*, petitioner participated and secured 48% marks in the EOBI test starting from July 31 to August 4, 2017. And, again another opportunity was given to him vide office letter dated 02.02.2018 to clear the requisite training, but, he failed to secure minimum marks to become eligible for promotion to the post of Deputy Director under the above-stated policy. The petitioner has not been

able to point out any case where other employees(s) having rating equivalent to or lower than him or had failed in the above test was / were promoted by the respondent-EOBI. Therefore, the question of discrimination does not arise. In any event, the petitioner is not justified at this stage to challenge the condition of passing the test especially when he himself appeared in the said test twice by hoping to get promotion in case of success. It was only when he failed on both occasions, the above incentive for promotion became illegal for him.

9. Adverting to the grounds raised by the learned counsel for the petitioner on the point of promotion of the petitioner as discussed supra, we are of the considered view that in the higher rank / promotion case no vested right / fundamental right can be claimed as the promotion depends upon criteria which needs to be fulfilled as per law and on case to case basis.

10. In our view, in service cases there are 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 based on objective criteria. It is for the competent authority to determine seniority, eligibility, fitness, promotion, and other ancillary matters relating to the terms and conditions of the employees as prescribed under the Act and Rules framed thereunder. In the case at hand, it was for the respondent-EOBI to determine the eligibility criteria for the promotion of the petitioner. Further, it is essentially an administrative matter falling within the exclusive policy-making domain of the respondent-EOBI. Therefore, in our view, interference by this Court is not warranted under the constitutional jurisdiction.

11. Regarding the contention of learned counsel for the petitioner that the requirement of passing the test to become eligible for promotion is against the law, he has not been able to cite any law on this point. Further, we do not see any inherent flaw with the policy of the respondent-EOBI under which 50% of qualifying marks were set, to secure promotion in Grade 7 & 8 which is, prima-facie, across the board.

12. In the light of the above facts and the circumstances of the case, the instant petition merits no consideration and stands dismissed along with the listed application(s) with no order as to costs.

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