

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 4890 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Gharibdas

Versus

Government of Sindh and 03 others

Date of hearing & order : 18.11.2020

Mr. Bhajandas Tejwani advocate for the petitioner along with Ms. Rabia Kanwal advocate.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh along with Muhammad Zakaria, Section Officer, Irrigation Department, Government of Sindh.

Mr. Rafiq Ahmed Kalwar, advocate for respondent No.4 along with respondent No.4.

ORDER

ADNAN-UL-KARIM MEMON, J. – Petitioner, who is serving at present as Assistant Executive Engineer Mechanical (**‘XEN’**) in BPS-17, is aggrieved by the purported decision of the Departmental Promotion Committee (**‘DPC’**) dated 26.06.2020, whereby his promotion to the post of Executive Engineer Mechanical (**‘EXEN’**) (BPS-18) was deferred on the ground that his Annual Confidential Reports (**‘ACRs’**) for the period 1999, 01.01.2000 to 04.06.2000 and 2001 to 2019 were not available and respondent No.4, who was / is junior to the petitioner, was promoted to the post of EXEN (BPS-18) on regular basis.

2. At the outset, learned AAG has filed compliance report dated 16.11.2020 and submitted that the DPC meeting was held on 12.11.2020, wherein the case of the petitioner was considered and cleared for his promotion to the post of EXEN (BSP-18) against a resultant vacancy, which will be available due to retirement of Najamuddin Memon, Superintending Engineer Mechanical, (BPS-19) on attaining the age of superannuation on 31.12.2020.

3. Mr. Bhajandas Tejwani, learned counsel for the petitioner is satisfied with the statement of learned AAG and seeks disposal of the instant petition in terms thereof.

4. Mr. Rafiq Ahmed Kalwar, advocate has filed power on behalf of respondent No.4, which is taken on record. He submits that he has no objection if the petitioner is promoted to the post of EXEN (BSP-18).

5. The grievance of the petitioner has been redressed, but as it is a common practice of Government departments to defer the cases of promotion on the ground of want of ACRs and due to this reason the aggrieved civil / Government servant is constrained to approach this Court, we are of the view that this issue must be addressed and set at rest. Learned AAG and learned counsel for the parties were directed to assist the Court whether promotion of a civil / Government servant could be deferred merely for want of his / her Annual Confidential Report (ACR) / Personal Evaluation Report (**PER**).

6. It may be observed that preparation of ACR / PER relate to Efficiency and Discipline of a civil / Government servant, which is function of the reporting officer. *Prima-facie* the evaluation reports play a vital role in considering the case of promotion. However, the promotion depends upon eligibility, fitness, and availability of vacancy. It is essential for the competent authority to take prompt disciplinary action against the civil / Government servant under The Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, (**'Rules'**) if he / she is found persistently corrupt ; and/or is possessing pecuniary resources and/or property, etc. disproportionate to his/her known sources of income ; and/or, remains frequently on unauthorized absent from duty. Furthermore, if two or more penalties under the Rules have been imposed on him / her ; and, his / her overall grading of the ACRs was/is average, and/or adverse remarks regarding the acceptance of responsibility, integrity, reliability, the output of work and behavior with the public were recorded in the ACRs duly conveyed to the concerned civil servant and his representation against it finalized, as per rules ; and, if he / she was/is recommended twice for supersession by the Provincial Selection Board PSB/DPC and the recommendation of the PSB/DPC was/is approved by the competent authority.

7. As far as deferment of promotion of a civil / Government servant is concerned, his / her promotion can be deferred under Section 13 of the Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975, if his / her seniority was / is under dispute or was / is not determined ; or he / she was/is on deputation, training or leave ; or disciplinary proceedings were / are pending against him / her, or he / she is not considered for promotion for any reason other than his / her fitness for promotion. In any of the above conditions, the Competent Authority of the Government of Sindh is required to ensure that in future disciplinary action must be taken under Rule 5 of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, against all Government / civil

servants, against whom disciplinary and/or criminal proceedings are pending ; and, in case of disciplinary proceedings against them, the same must be concluded / decided expeditiously in accordance with law. Needless to say if the Government / civil servant is exonerated of the charge(s) leveled against him, he/she shall be given the treatment provided for in Rule 8-A of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, and Rule 13 of The Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975.

8. In our view, to qualify for promotion, the least that is expected of an employee is to have an unblemished record. This is the minimum expectation to ensure a clean and efficient administration and to protect the public interest. An employee found guilty of misconduct cannot be placed at par with the other employees, and his / her case has to be treated differently. While considering an employee for promotion his / her entire service record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him / her promotion, such denial would not be illegal or unjustified under the service jurisprudence.

9. Coming to the issue at hand, the prime object of maintaining ACR/PER is to assess whether the officer under consideration is entitled to promotion or not, and such assessment, in addition to his / her performance and eligibility, would also include whether or not he / she has been awarded any major or minor penalty. The DPC, which is held to finalize the decision with regard to promotion on the basis of the above assessment, is required to make an overall assessment of the performance of the civil servant based on a working paper prepared by the department concerned. Therefore, preparation and presentation of ACRs is the duty of the department concerned and not of the civil / Government servant for the simple reason that ACRs are confidential documents to which the officer concerned cannot have any access. The law only requires that if any adverse remarks are made in ACRs, the officer concerned should be informed so that he / she may be able to improve his / her performance in order to make up the deficiency.

10. Primarily the evaluation made by an Expert Committee should not be easily interfered with by the Court which does not have the necessary expertise to undertake such exercise that is necessary for such purpose. It is a settled proposition of law that subject to its powers and authority, the DPC has to assess every proposal for promotion on case to case basis under the law. In cases where the disciplinary case / criminal prosecution against the civil /

Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC which kept its findings pending in respect of the civil / Government servant, the appointing authority may consider his / her ad-hoc promotion in accordance with law.

11. In view of the above discussion, it is directed that the Government of Sindh shall ensure that in future before convening the meeting of PSB and/or DPC for considering the cases for promotion of civil / Government servants, the department concerned shall provide the complete set of ACRs / PERs of the concerned officer to PSB / DPC well in advance so that the cases for promotion should be decided without any delay. It may be observed that if promotion of any civil / Government servant is deferred or delayed after passing of this order for want of ACR / PER, the Secretary of the department concerned, competent authority and all officials responsible for deferring or delaying the promotion shall be held personally responsible for defiance of the above direction of this Court.

12. With the above observations and direction, the petition stands disposed of with no order as to costs. Let notice be issued for compliance to the Chief Secretary Sindh and the Secretaries of all the departments of the Government of Sindh.

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