

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -6666 of 2015

Mohsin Furqan

Versus

National Bank of Pakistan and another

Date of hearing
& order : 27.01.2021

Mr. Faizan Hussain Memon, advocate for the petitioner.
Mr. Khalid Mahmood Siddiqui, advocate for the respondents.

ORDER

ADNAN-UL-KARIM MEMON, J. - In essence, through this petition, the Petitioner is seeking directions to the respondent-bank to adjudge/ascertain his eligibility/entitlement according to promotion rules/policies and pass necessary order/directions to the competent authority of respondent-bank for awarding him the promotion in the rank of Senior Executive Vice President (SEVP).

2. The case of the petitioner is that during his tenure of service with the respondent-bank he was promoted from Senior Vice President to Executive Vice President vide office letter dated 26.02.2005. He claims that he was/ is entitled to further promotion as SEVP. He asserts that due to malafide intention of the respondent-bank he was not promoted to the above rank. Petitioner cited various reasons with the assertion that the respondents promoted their blue-eyed and junior officers but he was left at the lurch; and, in the meanwhile he stood retired from service, now he claims proforma promotion for just pensionary benefits.

3. Mr. Faizan Hussain Memon, learned counsel for the petitioner, mainly contended that petitioner joined respondent-bank in the year 1986 as Assistant Vice President and during his tenure of service he earned his promotion as Executive Vice President in the year 2005, however, he was ignored for the position of SEVP and the junior officers were promoted vide Circular dated

27.02.2015 with malafide intention. Learned counsel further argued that the impugned action of respondent-bank was/is illegal, unlawful, and unconstitutional. He next argued that as per promotion policy announced by the respondent-bank he had fulfilled all the requirements, but was overlooked without assigning any reason; that discriminatory treatment was meted out with the petitioner as they preferred the most junior/ineligible officers over him despite his outstanding service record. He asserted that the case of the petitioner was placed before the promotion committee and was deferred without reasons, therefore the impugned office order passed by the respondent-bank was/is in sheer violation of his fundamental rights. He emphasized that the petitioner had a right to be considered for promotion against the post of SEVP under promotion policy-2011&2012 and the petitioner could not have been condemned for the inaction on the part of the respondent-bank. He explained his case by submitting that much before the retirement of the petitioner, his case for promotion was placed before the respondent-bank but the matter was delayed without any justifiable reason and in the meanwhile, petitioner attained the age of superannuation as such he cannot be made to suffer on account of the lapse of respondent-bank. He prayed for directions to the respondents to consider his case for promotion as Senior Executive Vice President based on his service record and performance. In the alternative, he prayed for the direction to the respondent-bank to consider his case for proforma promotion for the aforesaid position in the light of order dated 19.11.2018 passed by the learned Division Bench of this Court in C.P. No-D 1279 of 2014. In support of his contention, he relied upon the cases of Dr. Muhammad Amjad and another v. Dr. Israr Ahmed and others, 2010 SCMR 1466, Federation of Pakistan through Secretary, Establishment Division and others Versus Dr. Muhammad Arif and others, 2017 SCMR 969, Muhammad Zafeer Abbasi, Deputy Secretary, Ministry of Kashmir Affairs and Northern Areas And Safron, Government Of Pakistan, Pak Secretariat, Islamabad Versus Government of Pakistan through its Secretary, Establishment Division (Cabinet Secretariat), Cabinet Block, Constitution Avenue, Islamabad and 4 others, 2003 PLC (CS) 503, Ehsanullah Khan v. Federation of Pakistan through Chairman and 2 others, 2018 PLC (CS) Note 89, M.Y. Labib-ur-Rehman v. Federation of Pakistan and others, 2018 PLC (CS) 65, Dr. Syed Sabir Ali v. Government of Punjab through Secretary, Health Punjab and others, 2008 SCMR 1535, Muhammad Hussain v. Secretary to Government of the Punjab S&GAD Lahore and 03 others, 2006 PLC (CS) 849, Muhammad Saleem Khan v. Secretary, Ministry of Defence, Government of Pakistan and others, 2009

SCMR 117, Director-General Intelligence Bureau, Islamabad and others v. Amir Mujahid Khan and others, 2011 SCMR 389, Secretary School of Education and others v. Rana Arshad Khan and others, 2012 SCMR 126 and unreported order dated 13.10.2016 passed in CP No.D-1945/2013.

4. Conversely, Mr. Khalid Mahmood Siddiqui, learned counsel representing the respondent-bank has contended that petitioner was promoted from time to time to the level of Executive Vice President in 2004, but was not considered for the post of Senior Executive Vice President in the year 2015 & 2017 because he was not found fit for further promotion. He further submitted that in the promotion matters no vested right of the petitioner is involved. In support of his contentions, he cited various reasons for discarding the version of the petitioner. He lastly prayed for dismissal of the instant petition.

5. We have heard the learned counsel for the parties and perused the material available on record as well as the case law cited at the bar.

6. On merits, the respondent-bank has taken the main objection that the petitioner had failed to meet the threshold marks as per promotion policy 2011 & 2012; the promotion case of the petitioner was considered by the respondent-bank and was not found eligible for the position of Senior Executive Vice President, consequently his candidature for the aforesaid senior position was rejected. As per law, the National Bank of Pakistan is entitled to frame policy in the interest of exigency of service. It is for the respondent-bank 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 until and unless policy offends the fundamental rights of individuals; and, essentially no vested right of a bank employee is involved in the matter of promotion or the Rules determining his eligibility or fitness as such the policy framed by the respondents for promotion of regular employees of the bank from clerical to OG-I or above up to AVP, which is based on the criteria viz. seniority service in grade, professional qualification (DAIBP), the performance rating of last three years and educational qualification; and, the petitioner had to meet all the above conditions to claim consideration for promotion to the post of Senior Executive Vice President for which he failed to achieve.

7. It is well settled that in promotion matters, the overall assessment of an officer's performance during a year may completely depend on the subjective opinion of his Reporting Officer; and, the weightage required to be accorded to it to determine his fitness for promotion, which entail an objective assessment. The Courts cannot play the role of assessing body and sit in judgment over subjective evaluation; however, can examine whether the required objective criterion for promotion was followed or otherwise in a suitable case. On the aforesaid proposition, we are fortified with the decisions of the Honorable Supreme Court in the cases of *Khan M. Muti Rahman and others 2006 PLC (C.S) 564 2010 SCMR 1301 and Tariq Aziz-Uddin in Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 143309-G of 2009.*

8. Coming to the main issue, primarily in promotion cases there are certain conditions/criteria for consideration for promotion in the next rank i.e. seniority-cum-fitness, length of service, eligibility for the post and availability of the post; and, 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. 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. In our view, neither any seniority nor any promotion can be claimed or granted without fulfilling the promotion criteria under the relevant promotion policy/law. On the aforesaid proposition, we are fortified by the decision rendered by the Hon'ble Supreme Court in the case of *Chairman FBR v. Muhammad Asfandyar Janjua and others (2019 SCMR 349).*

9. Basically, it is for the respondent-bank 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 promotion policy matters, at this stage, is not warranted on the premise that no vested right of a Bank employee is involved in the matter of promotion, or the rules determining his eligibility or fitness.

10. Reverting to the arguments that the petitioner was eligible for promotion to the post of SEVP, suffice it to say that eligibility for promotion does not

mean the same as a vested right to be promoted under all circumstances. This is also evident from the promotion policy which has been annexed with the instant constitutional petition by the petitioner; that also envisages that the criteria which lay down the minimum condition for eligibility do not imply that those who meet them become automatically entitled to be promoted; and, this is couched in the promotion policy-2011 & 2012. Further, it has been provided in that policy that promotion for the position of SEVP will be considered after the interview which will carry 20 marks in addition to the aforesaid criteria, for which prima-facie the petitioner failed to meet at the relevant point in time. Thus in our opinion, the impugned action taken by the competent authority of the respondent-bank was proper and based on reasonable grounds as well as in the terms of the promotion policy in vogue.

11. The case law cited above are not helpful to the case of the petitioner, which are essentially on the different proposition of law; and, are distinguishable from the facts obtained in the present case.

12. Adverting to the issue of proforma promotion, it is a well-established principle in service jurisprudence that promotion from the backdate to the retired Public Servant cannot be granted until and unless he meets the criteria prescribed under the law; and, after his retirement from the respondent-bank in the light of the decision of Honorable Supreme Court rendered in the case of Government of Pakistan and others v. Hameed Akhter Niazi and others (PLD 2003 SC 110).

13. In the light of the above facts and circumstances of the case, the instant petition is meritless, which is accordingly dismissed along with pending applications.

14. These are the reasons for our short order announced in open Court on 27.01.2021, whereby we dismissed the instant petition.

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Shahzad*