IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

<u>**C.P No. D-4105 of 2014**</u>

Muhammad Jam *versus* Federation of Pakistan and 05 others.

Date of hearing
& decision: **<u>16.01.2020</u>**

Malik Naeem Iqbal, advocate for the petitioner.
Mr. Ghulam Rasool Korai, advocate for respondents 2 to 6.
Mr. Muhammad Nishat Warsi, DAG.

O R D E R

<u>**Adnan-ul-Karim Memon, J.**</u> Basically the petitioner seeks proforma promotion in Pay Group-10 in Headquarters, Civil Aviation Authority on the premise that during the pendency of the present *lis* he stood retired from the service of Civil Aviation Authority ("**CAA**") in Pay Group-9.

2.   Malik Naeem Iqbal, learned counsel for the petitioner, has argued that the petitioner has been non-suited vide impugned order dated 18th July, 2014 by declining him promotion from PG-9 to PG-10 in Works and Development Directorate, CAA; that nothing adverse was available against the petitioner during his tenure of service not to consider him against the post of PG-10; that previous ACR containing adverse remarks against which appeal was filed however the same has been turned down without assigning any reason; that juniors of the petitioner have been promoted superseding him; that no reason has been assigned for his supersession; that no disciplinary proceedings has ever been taken against the petitioner on any ground of whatsoever nature, therefore, supersession cannot be sustained under the law; that the petitioner was promoted from Pay Group-8 to Pay Group-9 w.e.f. 12.06.1994 vide office order dated 24th September, 1995 and since then he waited for his due promotion in PG-10 which has been withheld without any jutification. Learned counsel for the petitioner pointed out that during the pendency of this petition the petitioner has attained the age of superannuation, therefore, in absence of any adverse entry in his service record he is entitled to be treated along with his colleagues in PG-10; that the benefits of the promotion in PG-10 may be awarded to him in his pensionary benefits.

3.   Conversely, Mr. Ghulam Rasool Korai, learned counsel representing respondents 2 to 6 has controverted the stance of the petitioner and argued that PG-10 is a Selection Post which is based upon the fitness and suitability as prescribed in CAA Service Regulations-2000 and promotion policy dated 1st September, 2010 which are the governing factors to determine suitability of the officers for promotion to a Selection Post or otherwise ; and, since petitioner during his tenure of service was superseded due to adverse entries in his service record, he is not entitled even for proforma promotion after his retirement.

4.   We have heard learned counsel for the parties and perused the material available on record.

5.   The reason assigned for not considering the case of petitioner for promotion in PG-10 is inefficiency and adverse remarks in his previous personal evaluation report. We do not see any justifiable cause for not considering him against PG-10 during his tenure of service even the document dated 18th July, 2014 is silent to that effect as no disciplinary proceedings were initiated against him if at all he was inefficient and had earned adverse entries in his service record which prima facie suggests that he has been superseded on account of career history which action cannot be sustained under the law. Since superannuation of the petitioner has already taken place, the question to determine his suitability / eligibility for the post even after his retirement from service is of no use.

6.   In the light of above facts and circumstances of the case, this petition is allowed in the terms whereby the competent authority of CAA is directed to consider the case of petitioner for his proforma promotion in PG-10, Works and Development Directorate, CAA for the purpose of pensionery benefits within a period of one month from the date of receipt of this order strictly in accordance with law.

       This petition is disposed of in the above terms with no order as to costs.

JUDGE

JUDGE

Nadir/-