

# IN THE HIGH COURT OF SINDH AT KARACHI

**Before:**

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No.D-2695 of 2019**

Tarruf Ali *versus* Inspector General of Police Sindh and 02 others.

Date of hearing : **16.01.2020.**

Date of decision : **24.01.2020.**

Mr. Muhammad Arshad Khan Tanoli, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General.

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## **JUDGMENT**

**ADNAN-UL-KARIM MEMON, J:-** The petitioner has impugned order dated 19.09.2016 passed by the Acting Superintendent of Police, Police Headquarter, West Zone, Karachi, whereby he has been reverted / demoted from the rank of Police Inspector to his substantive rank of Police Head Constable on account of earning out of turn promotion during his tenure of service. Petitioner is aggrieved by the impugned punitive action whereby he has been demoted with retrospective effect, after attaining the age of superannuation w.e.f. 30.05.2016.

2. Mr. Muhammad Arshad Khan Tanoli, learned counsel for the petitioner, has argued that the petitioner has illegally been reverted from his substantive post of Inspector to the post of Head Constable with retrospective effect i.e. 25.7.2014, more so he has served the department as Inspector till the date of superannuation on 30.05.2016, hence his reversion with retrospective effect after his retirement is absolutely unlawful and arbitrary; that though the petitioner stood retired from service on 30.5.2016 and the impugned order of his reversion was issued after about four months of his retirement which is violative to the law laid down by the Honorable Supreme Court in the case of *Haji Muhammad Ismail Memon (PLD 2007 SC 35)* and fundamental rule 54-A. In support of his contention, he relied upon the case of *the Government of Pakistan vs. M/s. Village Development Organization, V.P.O Landrawn, district Laki Marwat (2005 SCMR 492)* and argued that since the impugned order has adversely affected upon vested rights of the petitioner, thus cannot be applied with retrospective effect; that no disciplinary action can be initiated against a retired civil servant even with retrospective effect. He prayed for allowing this petition.

3. Mr. Ali Safdar Depar, Assistant Advocate General, has argued that the petitioner was promoted up to the rank of Police Inspector without

qualification of pre-requisite departmental promotional courses; that his case was examined by Committee and was reverted/demoted to his substantive rank of Head Constable w.e.f. 25.7.2014 vide order dated 19.9.2016. He lastly prayed for dismissal of the instant *lis*.

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

5. The pivotal question in the present proceedings is whether disciplinary proceedings can be initiated against the petitioner after his retirement from service vide order dated 22.11.2016?

6. The only plea taken by the respondent-police department that he was granted benefit on the basis of performance shown in sports, such benefit was later on declared to be out of turn and this is the reason his name was withdrawn from list "F" and de-confirmation from the rank of Inspector vide letter dated 25.07.2014.

7. We have to see as to whether the aforesaid reasoning is justified under the law to revert / demote the petitioner from the rank of Inspector to the rank of Head Constable vide letter dated 19.9.2016. It appears from the record that petitioner was appointed as Police Constable in the year 1973 in Karachi range and was admitted in promotion list "D" and confirmed as Head Constable in the year 1982, after completion of requisite length of service he was allowed promotion as Assistant Sub Inspector in the year 1986, thereafter he was admitted to list "E" in the year 1987 and was further promoted to the rank of Sub Inspector Police in the year 1988 and was deputed to undergo the Upper School Course for his further promotion which he completed in the year 1989, thereafter his name was admitted in list "F" w.e.f. 01.01.1996 and was promoted to the rank of Police Inspector vide confirmation letter dated 11.01.1998.

8. The department has taken the stance that the aforesaid promotions of the petitioner were without qualification of pre-requisite Departmental Promotional Courses; that all such benefits were declared as out of turn as per judgment rendered by the Hon'ble Supreme Court of Pakistan in *Suo Moto Case No.3 of 2012, Contempt Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752)* and *Ali Azhar Khan Baloch vs. Province of Sindh and others (2015 SCMR 456)*. The Honorable Supreme Court in the aforesaid cases has held that the practice/concept of out of turn promotions is unconstitutional, being against Fundamental Rights as enshrined in the Constitution of the Islamic Republic of Pakistan, 1973. *Prima facie*, the case of petitioner does not fall within the ambit of out of turn promotion for the simple reason that since his

appointment as Police Constable in the year 1973 and his promotion as Inspector in the year 1998 which shows that he has length of service and nothing adverse has been pointed against him during his tenure of service, therefore the decision taken by the respondents against the petitioner is not in consonance with the judgments passed by the Honorable Supreme Court as discussed supra on the ground that the Regular / District Police is required to complete courses A, B and C as prescribed under Rule 19.25 of the Police Rules 1934, as there are six (06) promotion lists maintained in the Police Department as per seniority and qualification (Trainings and Promotional Courses) of the personnel in various ranks i.e.:-

*i. List-A, maintained in the District for Constables having 3 years' successful completion of probationary period and found fit for promotion to the List-B. (Rule 13.6).*

*ii. List-B, maintained in the District for Constables, who are present in List-A and found eligible to be sent to Lower School Course, which is a promotional training for promotion to the rank of HC. (Rule 13.7).*

*iii. List-C, maintained in the District for Constables, who have qualified Lower School Course and are eligible for promotion to the rank of Head Constable. (Rule 13.8).*

*iv. List-D, prepared in the District and forwarded to the Range DIGP for approval and maintenance of seniority list. This list includes Head Constables eligible for the promotion to the rank of ASI after successful completion of Intermediate School Course. (Rule 13.9).*

*v. List-E, maintained by the Range DIGPs, containing confirmed ASIs, who are eligible for promotion to the rank of Sub-Inspectors. (Rule 13.10).*

*vi. List-F, prepared by CPO on the recommendation of Range DIGPs and maintained by Central Police Office (CPO) on centralized basis, containing confirmed Sub-Inspectors, who have qualified Upper School Course and are eligible for the promotion to the rank of Inspectors. (Rules 13.15).*

9. Under the Police Rules, 1934, the seniority of the Constable and Head Constable is maintained in the District, whereas seniority of ASI and SI is maintained by the Range DIG. The seniority of the Inspector in Police is maintained by the Central Police Office. The training and examination of the Executive Unit is provided in Chapter XIX of the Police Rule. The judgment rendered by the Honorable Supreme Court in the case of *Ghul Hassan Jatoi and others vs Faqir Muhammad Jatoi and others* (2016 SCMR 1254) is providing guiding principle on the issue.

10. Adverting to the main contention of the petitioner that no departmental action can be taken against the civil servant after his retirement. There is no cavil to that proposition however in the present case petitioner was penalized before his retirement vide order dated 30.05.2016, therefore, this proposition

will not help him. Record reflects that petitioner after appointment as a Police Constable was promoted to the rank of Assistant Sub Inspector in the year 1986, his name appeared in the "F" list and was subsequently promoted to the rank of Inspector on 12.01.1998 and finally stood retired from the service against the post of Police Constable instead of Police Inspector, however his retirement notification was issued belatedly with retrospective effect. The respondents are responsible under the Police Rules, 1934 to nominate the candidate for aforesaid courses for further promotion and it was their responsibility to look into the matter in time but they failed and neglected to take care of the same and allowed promotion to the petitioner from time to time and finally raised hue and cry when the petitioner stood retired from police service, for that petitioner cannot be said to be at fault. The plea raised by the learned counsel for the petitioner with respect to Fundamental Rule 54-A that demotion of the petitioner after his retirement is illegal. We are of the view that Honorable Supreme Court has already dealt with this proposition of law in the case of Superintendent Engineer GEPCO Sialkot Vs. Muhammad Yusuf vide Order dated 23.11.2006 passed in Civil Petition No. 1097-I of 2004. In view of the dicta laid down by the Honorable Supreme Court in the case referred supra, we do not agree with the contention of the learned counsel for the petitioner. The Fundamental Rules 54-A is clear and does not support the case of the petitioner, which provides as under:-

*"If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty."*

11. To elaborate further on the issue involved in the present proceedings, it may be observed that an employee who had enjoyed an out of turn promotion pursuant to a law found to be ultra vires the Fundamental Rights, who now stands retired, it would constitute a past and closed transaction inasmuch as it would be a futile exercise to re-open the case of such an employee. On the other hand, employee who was so promoted under such a statute and who continue to remain in service, would be liable to be restored to the position that existed prior to the benefit conferred under the statute found inconsistent with Fundamental Rights. Indeed, once a statute has been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same are to be stopped. Reference in this behalf may be made to the case of *Dr. Mobashir Hassan v. Federation of Pakistan* (PLD 2010 SC 265). However the case of the petitioner is quite different, as

no benefit of out of promotion has been pointed out, merely saying petitioner failed to qualify promotional courses is not justified for the reason that *List-A, List-B, maintained in the District for Constables*, who are present in List-A and found eligible to be sent to Lower School Course, which is a promotional training for promotion to the rank of HC. (Rule 13.7) and List-C, maintained in the District for Constables, who have qualified Lower School Course and are eligible for promotion to the rank of Head Constable. (Rule 13.8). Record does not reflect that the respondents ever objected before his retirement that he failed to qualify the aforesaid courses therefore no adverse inference can be drawn against the petitioner at this stage when he stood retired from service.

12. In view of the foregoing discussion, this petition is allowed whereby the competent authority of respondents is directed to issue retirement order of the petitioner to the rank of Police Inspector and is entitled to be paid his full pensionary benefits as admissible to Police Inspector under the law within a period of one month from the date of receipt of this judgment. Pending application stands disposed of accordingly.

**JUDGE**

**JUDGE**

Nadir\*