

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH KARACHI**

Constitutional Petition No. D –2790 of 2019

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Date	order with signature of Judge(s)
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For direction:

For hearing of CMA No.28398/2021 (Contempt)

**24.02.2022**

Mr. Ali Asadullah Bullo, advocate for the petitioner

Mr. Muhammad Nishat Warsi, DAG along with Shahid, Assistant Director, Trade Development Authority of Pakistan

Mr. M. Riaz holding brief for Mr. Abrar Ahmed Bukhari, advocate

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This petition was disposed of vide order dated 10.03.2020, the relevant paragraph whereof is as under:

*“It is stated on behalf of the respondents that there were other material grounds due to which the petitioner’s case was deferred. We have noticed that except for the ground that the PER of the petitioner was incomplete, no other ground was mentioned in the impugned letter for deferment his promotion. In this view of the matter, learned counsel for the parties and learned DAG have agreed that the case of promotion of the petitioner may be placed before the Central Selection Board for decision afresh through a speaking order by considering all the aspects/grounds strictly in accordance with law and the prevailing rules, regulations, and policy.”*

On 08.11.2021, the applicant filed an application [CMA No. 28398/2021] under sections 3 and 4 of the Contempt of Court Ordinance 2003 read with Article 204 of the Constitution of the Islamic Republic of Pakistan 1973, for initiating contempt proceedings against the alleged contemnors for deliberately flouting order dated 10.03.2020 passed by this Court.

Mr. Ali Asadullah Bullo, learned counsel for the petitioner/applicant, has argued that after passing of the aforesaid order, the alleged contemnors were/are under the obligation to place the case of the petitioner before Central Selection Board (‘CSB’), but they failed and neglected to place the same before CSB. Per learned counsel, in January 2021 the meeting of the Departmental Selection Board (‘DSB’) was convened and the cases of colleagues of the petitioner were considered, however, he was ignored deliberately with mala fide intention just to defeat the very purpose of disposal of the present lis. Learned counsel emphasized that at the time of passing of the order dated 10.03.2020, he was in service, and meanwhile, he stood retired from service on 23.07.2020. Learned counsel relied upon proviso 1 of Fundamental Rule 17, and argued that the petitioner is legally entitled to proforma promotion after his retirement. He prayed for the direction to the alleged Contemnors to comply with the order passed by this Court.

We have noticed that on the issue of proforma promotion, the Hon'ble Supreme Court in an unreported order dated 07.01.2021 passed in Civil Appeal No.506 of 2020, has held as under:

“6. We also note that the respondent has been granted seniority and his encadrement in PSP was refixed on the recommendation of the Departmental Selection Committee in BPS-18 and BPS-19 above his junior, Ghulam Asghar Sheikh, retrospectively with effect from 12.01.1991 and 08.01.2004 respectively by the Notification dated 29.07.2009. The respondent did not challenge this Notification, rather, he seems to have accepted the same. Having retired on 17.08.2008 on superannuation with the service benefits of Notification dated 29.07.2009, the respondent cannot claim i.e. encadrement be again fixed from back date and further promotion be given to him.

7. In any case, the encadrement as PSP Officer once fixed cannot be altered and in this regard this Court has given judgment in the case reported as Muhammad Zafar Ali and others (supra). Nothing illegal was pointed out in the minutes of the meeting of the FR-17 Committee dated 10.11.2010. We note that the High Court did not take into consideration the relevant factors as noted above so also the law laid down by this Court in coming to the conclusion in the impugned judgment.

8. Such being contrary to the law laid down by this Court, is, therefore, not sustainable and is accordingly set aside. The appeal is allowed.”

Learned DAG has referred the compliance report submitted by the Deputy Director (CTG) Ministry of Commerce, Government of Pakistan, Islamabad, and submitted that because of the earlier report submitted before this Court the contempt application bearing CMA No.9459/2021 in the present petition was dismissed vide order dated 04.11.2021, therefore, second contempt application on the same cause of action is not maintainable. Per learned DAG, as and when the order was received by the respondents, the same was referred to the Secretary CSB on 28.10.2021. That the petitioner has not applied to the Chairman or the Secretary of the relevant FR-17(1) Committee of Finance Division for ascertaining his entitlement for promotion under the provision of FR-17. He, therefore, prayed for dismissal of the contempt application on the analogy that no order has been passed in terms of provision of FR-17.

The stance of the learned DAG has been refuted by learned counsel for the petitioner with the assertion that this petition was simply disposed of by consent with direction to place the promotion case of the petitioner before the PSB for decision afresh through a speaking order by considering all the aspects/grounds strictly under the law and the prevailing rules, regulations, and policy. Per learned counsel, since the petitioner has retired from service, therefore, in principle his case needs to be placed before the relevant FR-17 Committee.

*Prima facie*, the assertion of the petitioner and learned DAG is tenable, let the matter of the petitioner for proforma promotion be placed before the relevant FR-17 Committee for decision through a speaking order in the same ratio vide order dated 10.3.2020. Let this order be communicated to the relevant FR-17 Committee through

competent authority of Ministry of Commerce, Government of Pakistan, Islamabad for placing the proforma promotion of the petitioner for decision as discussed supra. This order be also communicated to the Secretary Ministry of Finance, Government of Pakistan, Islamabad, and the Secretary Establishment for compliance.

The aforesaid exercise shall be concluded within three [03] weeks from today. However, it is made clear that if the direction issued by this Court in the aforesaid matter is not complied with within the stipulated period, contempt proceedings shall be initiated against the aforesaid officers of the Federal Government without the further indulgence of this Court. DAG present in Court is directed to communicate this order to the aforesaid officers for compliance and shall submit compliance report.

To come up just **after three [03] weeks.**

**JUDGE**

**JUDGE**

Nadir/-