

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Zulfiqar Ahmad Khan

C.P. No. D-6452 of 2017

Ghulam Rasool Bhagat
Versus
Federation of Pakistan & others

Date of Hearing: 05.12.2019

Petitioner: Through Syed Ashikue Raza Advocate.

Respondent No.1: Through Mr. Muhammad Nishat Warsi, DAG.

Respondents No.2 & 3: Through Mr. Furkan Ali Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner has filed this petition for his promotion on the basis of his seniority alone, as maintained by the respondents.

2. Petitioner claimed to have joined NICL, which was formerly called National Insurance Corporation, as Departmental Officer in BPS-17 in the year 1990. In the seniority list initially he was placed at Sr. No.45. The Corporation was then converted into company vide National Insurance Corporation (Reorganization) Ordinance, 2000 and the services of the transferred employees from corporation to company were protected under the ibid Ordinance.

3. It is claimed that time and again junior officers were promoted leaving out petitioner's promotion. Lastly a batch of 16 officers in the year 2002 who were junior to petitioner were promoted vide Office Order No.118 dated 20.05.2002 in violation of seniority list. He claimed that throughout the period his record remained unblemished. He only claimed to have been promoted during the pendency of the petition vide Office Order No.167 dated 28.02.2018 in pursuance of committee's

recommendation w.e.f. 16.11.2013 and he was promoted as Assistant Manager. Mr. Ashikue Raza, learned counsel for petitioner, however submitted that the promotion should have been w.e.f. 2008 and that too as General Manager when his promotion was matured in terms of his seniority.

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

5. Undoubtedly the service of the petitioner was secured in terms of Section 4 of ibid Ordinance as he was one of those employees who were transferred from Corporation to Company. The promotion was never dependent on seniority alone. Promotion is an issue, which is dependent not only on seniority but fitness, suitability, availability of post etc. are prerequisite essentials. Thus, the solitary ground of petitioner that since he was senior amongst those who were promoted is out of consideration.

6. Apart from the above proposition, we have also observed that petitioner's career was not unblemished, as claimed. He was charged sheeted on many occasions and was terminated/dismissed. The first charge that we came across is of 12.08.2002 followed by statement of allegations and dismissal order dated 19.09.2002. A brief history further reveals that he was terminated on 19.02.2002 against inquiry held by Mr. A. Sattar Khan, the then General Manager (Technical). On preferring an appeal, the order for re-enquiry was passed and Mr. Nusrat Hussain, General Manager (Crops) was appointed as inquiry officer and petitioner was exonerated. He was reinstated in service in pursuance of Office Order No.211 available at page 105 Annexure 'M' dated 06.07.2009.

7. The petitioner kept on filing applications for fixation of seniority and promotion as per seniority list. Annexure 'Z' at page 247 further reveals that he was terminated on 27.01.2017 and consequently filed a petition bearing No.569 of 2017 for his restoration/reinstatement. He

was then reinstated vide judgment dated 21.04.2017 passed in the aforesaid petition followed by his promotion vide office order No.167 dated 28.02.2018 and that too w.e.f. 16.11.2013.

8. Petitioner has never prayed for his promotion in the earlier petition, which was disposed of by an order of his reinstatement. He could have claimed his promotion in the earlier petition, which option was available to him, but he failed in such an attempt though per learned counsel cause was triggered in the year 2008 since when he is claiming his promotion.

9. Petitioner thus in view of aforesaid facts and circumstances is not entitled for relief, as claimed in the petition i.e. promotion w.e.f. 2008 as it is not his vested right and that too only on the strength of he being a senior in the list. Reliance is placed on the case of Government of Pakistan v. Hameed Akhtar Niazi reported in PLD 2003 SC 110.

10. For the above reasons this petition was dismissed vide short order dated 05.12.2019 and these are the reasons for the same.

Dated:

Judge

Judge