

IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

CP No.D-3228 of 2020

Misri Ladhani

Petitioner

: Mr. Saghar Ladhani, advocate.

Respondent No.4

: Mr. Muhammad Khalil Dogar,
advocate.

Federation of Pakistan

: Mr. Muhammad Nishat Warsi, DAG.

Date of hearing

: 20.09.2021

Date of announcement

: 24.09.2021

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. Through instant petition, the petitioner is seeking direction to the respondents to notify his proforma promotion in BPS-21 from 13.02.2014 i.e. date on which the Central Selection Board (**CSB**) recommended him for promotion in BS-21 or from the date the officer junior to him were promoted and notified along with all ancillary benefits.

2. Mr. Muhammad Nishat Warsi, learned DAG, at the outset has submitted that the competent authority i.e. Prime Minister (PM) has been pleased to approve the minutes of the FR-17(1) Committee on 11.03.2021; and, in the light of the approval of the directives of PM the case of the petitioner will be taken to its logical conclusion within a reasonable time. He prayed for appropriate direction to the Competent Authority of the respondent-department to enforce the directives of the Prime Minister of Pakistan on the subject issue.

3. At this stage, learned counsel representing the petitioner has pointed out that the CSB in its meeting dated 13.02.2014 had already recommended the petitioner for promotion from BS-20 to BS-21 on merits. However, the competent authority i.e. Prime Minister was required to approve his promotion but unfortunately he returned the summary vide his endorsement dated 23.04.2014 for re-examination on certain grounds; in the meanwhile, the petitioner reached the age of superannuation on 28.2.2014, just after recommendation made by the CSB in his favour, thus his case could not be placed before the CSB in its forthcoming meeting and, his case for proforma promotion could be made by way of circulation as provided under the Promotion Policy amended from time to time.

4. At this stage learned counsel representing the respondent-FBR has questioned the very maintainability of the instant Petition before this Court on the ground that the jurisdiction of this Court was ousted by Article 212 of the Constitution in matters relating to the terms and conditions of services of the civil servants. Referring to section 3(2) of the Federal Service Tribunal Act, 1973, he contended that the matters relating to the terms and conditions of service of the civil servants fall within the exclusive jurisdiction of the Service Tribunal.

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

6. To attend the preliminary objection raised on behalf of the learned counsel representing respondent-FBR to the

maintainability of the instant Petition under Article 212 of the Constitution. Article 212 of the Constitution and section 4 of the Act 1974, it is evident that the jurisdiction of the Courts is excluded only in respect of the cases in which the Service Tribunal under subsection (1) of section 4 has the jurisdiction. It must, therefore, follow that if the Service Tribunal does not have jurisdiction to adjudicate upon a particular type of grievance, the jurisdiction of this Court remains intact. Besides, that Service Tribunal could not antedate the promotion of retired civil servant, in view of the decision of Honorable Supreme Court in the case of Government of Pakistan Vs. Hameed Akhtar Niazi and others (**PLD 2003 SC 110**). Primarily, the only remedy lies with this Court under Article 199 (1) (a) (ii) of the Constitution, which provides that on an application of the aggrieved person, the court can make an order “declaring that any act done or proceedings taken within the territorial jurisdiction of the Court have been done or taken without lawful authority and is of no legal affect”. Again under Article 199 (1) (c) this Court can make an order giving such directions to any person within territorial jurisdiction of this Court for enforcement of fundamental rights conferred under the Constitution. These are loud reminders of the jurisdictional expanse enjoyed by this Constitutional Court. Worth to add that this Court under Article 199 of the Constitution at all times equipped with the jurisdiction to probe into any public wrong affecting public at large, when the same has come before it through a petition. In the present case, the petitioner is retired civil servant could not approach for proforma promotion under section 4 of

Federal Service Tribunal Act, 1973. In our view, petitioner can invoke the jurisdiction of this court for enforcement of his fundamental right, therefore the objection to the jurisdiction of this Court is uncalled for and hereby rejected.

7. The pivotal points involved in the present case are as under:-

i) Whether, any civil servant superannuates after the recommendations of the Central Selection Board before issuing the notification of promotion is entitled to proforma promotion under the Promotion Policy?

ii) Whether the Petitioner is entitled to be considered for proforma promotion in BPS-21 after his retirement in the year 2014, on the touchstone of Fundamental Rule 17(1)?

8. The concept of Proforma Promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own. It has been explained that the petitioner is retired officer of Inland Revenue Service, Federal Board of Revenue (FBR), his case was considered by the CSB for promotion to BS-21 in its meeting held on 11th -13th February, 2014. CSB recommended him for promotion from BS-20 to BS-21, however, the PM did not approve the recommendations of the CSB and returned his case to CSB for re-examination. Petitioner preferred a representation before Secretary Establishment Division and in response thereto Establishment Division vide O.M. dated 12.1.2016 advised Federal Board of Revenue to take up the aforesaid case with Finance Division for grant of proforma promotion to the petitioner from BS-20 to BS-21. Accordingly, FBR forwarded his case for grant of proforma promotion to BS-21 to Finance Division for consideration

by the FR-17(1) Committee vide letter dated 11.2.2016. Petitioner being aggrieved by and dissatisfied with the aforesaid non-action of the respondents filed the Constitution Petition N-D-2262 of 2014 for grant of proforma promotion to BS-21, which was disposed of in the terms of Supreme Court's order on the subject. Finally, he filled the present Petition on 19.7.2020 and this court vide order dated 15.12.2020 directed the FR-17(1) Committee to consider the case of the petitioner for proforma promotion, however the Junior Level Committee (JLC) on FR17-(1) in its meeting held on 13.1.2021 recommended as under:

“4. In pursuance of Hon'ble Sindh High Court, Karachi order dated 15.12.2020 the Junior Level Committee (JLC) on FR-17(1) considered the case of Mr. Misri Ladhani (Retired IRS/BS-20) in its meeting held on 13.01.2021 vide Minutes and made the following recommendations:

“It is not mandate of the JLC to find out fitness/eligibility of a Civil Servant for promotion, particularly to determine as to whether or not the Civil Servant clear the threshold of integrity/general reputation/perception, which is exclusive domain of respective Selection Board/Committee.

With all above observations and Court directions dated 15.12.2020 and 12.01.2021 the case may be placed before HLC for final recommendations.”

9. However, in the light of aforesaid recommendations of (JLC) on FR-17(1), the case of the petitioner was taken up and considered by the High Level Committee (HLC) on FR-17(1) in its meeting held on 13.01.2021 vide Minutes and made the following recommendations:

- i. The CSB in its meeting dated 13.02.2014 recommended the petitioner (Mr. Misri Ladhani) for promotion from BS-20 to BS-21. However, the Competent Authority to

approve his promotion (Prime Minister of Pakistan) returned the case on 23.04.2014, for re-examination for the point of view of integrity/general reputation/perception by CSB and re-submission.

- ii. The mandate of FR-17(1) Committees is restricted to allow financial benefits once fitness for promotion of a Civil Servant has been determined. However, in this case, fitness/suitability for promotion of Mr. Misri Ladhani has not been determined and therefore the Committee cannot consider this case.
- iii. As such the HLC is of the opinion that the case may be first be re-examined by CSB in the light of observations raised by the Competent Authority (Prime Minister) dated 23.04.2014.

10. The respondent-department submitted the aforesaid recommendation for approval of Hon'ble Prime Minister of Pakistan. The competent authority passed the following order:-

**“PRIME MINISTER’S OFFICER
ISLAMABAD**

Subject: Summary for the Approval of Recommendations of High Level Committee on FR-17(1) in Case of Mr. Misri Ladhani (Retired IRS/BS-20)

9. The Prime Minister has seen and is pleased to approve Para-6 of the summary as endorsed by the Establishment Division.

Sd/-
(Usman Akhtar Bajwa)
Additional Secretary-II
11-03-2021

Secretary, Revenue Division
No.363/SPM/2021

Sd/-
12.03.2021

M(A/HR)”

11. To appreciate and elaborate on the aforesaid issue, it is expedient to have a glance at Fundamental Rule 17(1). An excerpt of the same is as under:-

“F.R. 17. (1) subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties:

“Provided that the appointing authority may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the antedated fixation of his seniority.”

12. Principally, respondent No.1 is not resisting the claim of the Petitioner and rather seeking enforcement of the directives of the PM vide his endorsement on summary dated 12.03.2021 as discussed supra. It is pertinent to mention that it is well settled law that, the appointing Authority may approve the promotion of an Officer or official from the date on which the recommendation of the CSB, notwithstanding, the Officer or official who expires or superannuates after the recommendations of the CSB or the Departmental Promotion Committee (DPC) under the promotion Policy amended from time to time. Even otherwise grant of proforma promotion to the petitioner will affect the seniority, promotion or any other benefit of the serving employees.

13. We have also gone through the recommendation of the CSB in its meeting held on 13.02.2014, who has decided the matter in favor of the Petitioner. Perusal of recommendation of CSB, and observation of the department, prima facie show the following factual position:-

“17. Similarly, with respect to Mr. Misri Ladhani, mentioned at S.No.6 in Para 3 of the summary, the Prime Minister has been pleased to observe that although the officer was in service on 13.02.2014, however, the officer does not clear the threshold of integrity/general reputation/perception in consonance with the spirit of Honorable Supreme Court Judgment in C.P. No.22/2013 and thus the case is returned to CSB for re-examination and thereafter separate resubmission.

18. The Prime Minister has also been pleased to approve the recommendation of CSB regarding deferment and supersession of officers mentioned in Para 4 & 5 of the summary.”

14. Perusal of the above note-sheet depicts his Proforma Promotion was approved by the CSB, however, before its implementation stood retired from service, just after the approval, which triggered cause to file earlier petition before this Court, which was disposed of in view of the judgment of the Honorable Supreme Court of Pakistan, rendered in Civil Petition No.41/2015, reported as (2015 SCMR 1006). Unfortunately, again his case for proforma promotion was placed before the FR-17 Committee in the year 2016 and his case was deferred till receipt of relevant documents from the Administrative Ministry / Division /Department, compelling him to move an application to the Finance Secretary/Chairman FR-17(1) Committee Ministry of Finance, Government of Pakistan, vide letter dated 02.05.2020 explaining the legal as well as factual position of the case, but no action was taken, compelling him to institute present petition before this Court in 2020, whereby direction was given to the Secretary Finance to explain the position as to why matter pertaining to the petitioner’s proforma promotion was pending since last about 07 years when his case was admittedly recommended by the CSB in the year 2014, again situation

remained the same, prima-facie they were adamant not to pay heed towards the orders of this Court; however as an indulgence, 10 days more time was given to the respondents for submitting compliance of the order dated 15.12.2020, but again request was made on their behalf to comply with the above directions, in the intervening period their attitude remained the same, thereafter some more time was given to the Secretary concerned to comply with the directions with warning that if no compliance is made coercive action would be taken against him.

15. Today learned DAG has filed a belated statement and submitted that the competent authority has approved to place the case of the petitioner before CSB in its forthcoming meeting. Prima-facie, the respondents are making mockery of the feelings of petitioner, by showing their callous attitude towards him as well to the system, which needs to be taken care of by the PM on disciplinary side.

16. In our view, the appointing Authority could have approved the proforma promotion of the Petitioner from the date on which the recommendation of the CSB was made. Although the Officer, who expires or superannuates after the recommendations of the CSB is entitled to the benefit of Fundamental Rule 17(1) as discussed supra.

17. In the light of the above legal position, we are of the considered view that a civil servant is entitled to proforma promotion, once during his service, his promotion is approved by the Competent Authority and in the meanwhile, if he

superannuates, he is entitled to all benefits as admissible under the law. On the aforesaid proposition, we are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of *Iftikharullah Malih Vs. Chief Secretary and others* (1998 SCMR 736) and *Askari Hasnain Vs. Secretary Establishment & others* (2016 SCMR 871).

18. In our view the cases of Iftikharullah Malih and Askari Hasnain supra are fully attracted in the present case. The explanation offered by the Respondents vide comments dated 03.03.2021 to place the case of the petitioner in next CSB meeting, prima facie, is fallacious and not tenable under the law as the case of the petitioner was recommended by CSB on 13.02.2014 for the promotion in BS-21 on merit, therefore, he is entitled to the benefit of Fundamental Rule 17(1) as well as Promotion Policy amended from time to time, on the subject point.

19. In view of the facts and circumstances of the case and for the reasons alluded as above; prima-facie the claim of the Petitioner for proforma promotion is tenable under the law for the simple reason that CSB recommended his promotion in BS-21 during his tenure of service, in the meanwhile, he reached the age of superannuation, just after the recommendation made by SCB in his favour, as a consequence, the pay of the petitioner is required to be re-fixed and his post-retirement benefits will be re-calculated by allowing his proforma promotion in BS-21 and arrears shall be paid to him with 6% simple interest per annum.

20. In the light of the above facts and circumstances of the case, this petition is allowed. The competent authority of respondents is directed to notify the proforma promotion of the petitioner in BS-21 with effect from 13.02.2014 i.e. the date on which the CSB recommended his case for promotion in BS-21 and other ancillary benefits under the law, without discrimination, within 02 weeks, from the date of receipt of the Judgment of this Court.

JUDGE

JUDGE

Nadir*