

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D-6211 of 2021**

*(Asad Khan v. Federation of Pakistan and 05 others)*

M/S Mukesh Kumar G. Karara and Nabi Bux Laghari,  
advocates for the petitioner

Mr. Muhammad Nishat Warsi, DAG

Syed Masood Ahmed Shah Bukhari, advocate for  
respondent No.6

Mr. Muhammad Shahid Khan, Law Officer, Pakistan  
Railways

Date of hearing  
& order : **20.05.2022**

## **ORDER**

**Adnan-ul-Karim Memon, J.** Through this petition, the petitioner is seeking promotion to the rank of Sub-Inspector in Pakistan Railways Police, inter-alia on the ground that in cases of promotion of government servants/employees cannot be withheld against whom disciplinary/criminal proceedings were pending or whose conduct was under investigation. The Pakistan railways had alleged that the petitioner had committed acts of misconduct during his employment and therefore because of the charges of misconduct, the respondent could not be promoted to the post of Sub-Inspector in Pakistan Railways. The petitioner was issued a memorandum of charges. However, they added that now the petitioner has crossed the aforesaid clog and the respondents are ready to consider his case for promotion subject to the availability of vacancy.

2. Mr. Mukesh Kumar G. Karara learned counsel for the petitioner has submitted that pending disciplinary proceedings cannot be the sole ground for denying promotion to a government employee in the case where a charge sheet is not issued or no disciplinary proceedings lie against the government servant. He added that the consideration of promotion cannot be withheld merely on the ground of departmental proceedings. He next submitted that the fundamental right of consideration for promotion is satisfied when his case is forwarded to the Departmental Promotion Committee DPC for consideration and the DPC considers his eligibility, merit, and fitness without being influenced by the fact of a pending inquiry.

3. At this stage we reminded him that promotion as it is understood in service jurisprudence is advancement in rank or grade or both; that promotion is always a step forward towards a higher position and power. Promotion is a positive act of elevation in status conveyed by the employer by a written order issued in favor of the person

promoted and communicated to him. It entails duties of higher responsibilities and it must satisfy the test of a selection, in the manner prescribed either in the statute, or administrative instructions. It is also a settled position that there is no right to promotion. He replied that an employee has a right to be considered for promotion if he satisfies the prescribed or required eligibility conditions. Learned counsel argued that mere pendency of inquiry is no ground even for deferment.

4. Syed Masood Ahmed Shah Bukhari, learned counsel representing respondent No.6 has raised the question of maintainability of the instant petition in terms of Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and prayed for dismissal of the instant petition, however, he submitted that in terms of the orders passed by this Court compliance report has been submitted and show cause notice issued to the petitioner was already decided as stoppage of increment for one year. So far as his promotion is concerned, presently there is no vacancy in the rank of Sub Inspector, however, he agreed that as and when a vacancy occurs, his request for promotion will be considered by the DPC subject to fulfillment of all terms and conditions prescribed for the said post.

5. Learned DAG has adopted the arguments of learned counsel for the respondent Pakistan Railways.

6. We have heard learned counsel for the parties on the subject issue and perused the material available on record.

7. On the maintainability question, it is settled principle that any civil servant aggrieved by any order regarding terms and conditions of service may prefer an appeal to the Tribunal under Section 4 of the Federal Service Tribunal Act 1973 while Section 4(1) (b) expressly bars the Tribunal from the entertaining appeal against the decision of a departmental Authority determining the fitness or otherwise of a person to be promoted to a higher grade. The Tribunal is not competent to examine whether or not a civil servant is fit for promotion to a higher grade. Article 212(2) of the Constitution ousted the jurisdiction of this Court in a matter falling within the exclusive jurisdiction of the Tribunal. As the determination of fitness of a civil servant for promotion has been excluded from the jurisdiction of the Tribunal, therefore, the jurisdiction of this Court in terms of Article 199 of the Constitution is not ousted in the matters about promotion /up-gradation of a civil servant to a particular post. In the instant case, the petitioner has assailed his 'deferment'; therefore, it is maintainable on this score. Reliance is placed upon case laws reported as **2015 SCMR 1006**, **2010 SCMR 1301**, and **2012 PLC (CS) 566**.

8. On merits, in our view, the promotion to a post depends upon several circumstances. To qualify for the promotion, the least that is expected of an employee is to have an unblemished record. An employee found guilty of misconduct cannot be placed on par with the other employees, and his case has to be treated differently. While considering an employee for promotion his entire service record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into

consideration and denies him the promotion, such denial cannot be termed as arbitrary, discriminatory, illegal, or unjustified. In our view, the evaluation made by an Expert Committee should not be easily interfered with by this Court which does not have the necessary expertise to undertake the exercise that is necessary for such purpose.

9. It is a settled proposition that the DPC, within its power to make its assessment, has to assess every proposal for promotion, on case to case basis. In cases where disciplinary case / criminal prosecution against the Civil / Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC which kept its findings in respect of the Government servant the appointing authority may consider the desirability of giving him an ad-hoc promotion. This view is fortified by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Mst. Ifat Nazir v. Government of Punjab & others (2009 SCMR 703).

10. It is well-settled law that in case of promotion vested/fundamental right cannot be claimed, besides above, the Honorable Supreme Court in the case of Muhammad Akbar Khan v. Inspector General of Police, NWFP Peshawar & 04 others (2000 SCMR 36) held that the petitioner was charge-sheeted on the charges of having received illegal gratification, a criminal case was registered against him under Section 419, 420, 468 and 471 PPC as such he was not held entitled to be considered for promotion till the inquiry is finalized.

11. In the present case, though no departmental proceedings are pending against the petitioner, however, the petitioner has not crossed the clog of punishment of stoppage of increment for one year vide letter dated 11.03.2022, therefore, in such a situation, this Court cannot sit in appeal against the aforesaid office order dated 11.03.2022 passed by the competent authority of Pakistan Railways Karachi.

12. We, for the aforesaid reasons, and in the given circumstances direct the competent authority of Pakistan Railways to place the case of the petitioner before DPC for consideration of his promotion to the next rank, subject to completion of the period of departmental punishment awarded to the petitioner vide letter dated 11.03.2022 and availability of subject vacancy for promotion.

13. The petition is accordingly disposed of in the above terms along with pending applications with no order as to costs.

**J U D G E**

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