

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-4281 of 2016
(Dr. Sarfaraz Ahmed & others v Province of Sindh & others)

Date	Order with signature of Judge(s)
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order 21.4.2025

Mr. Imtiaz Ali Solangi advocate for the petitioners.
Mr. Ali Safdar Depar, AAG.

ORDER

Adnan-ul-Karim Memon, J: A 65-year-old senior citizen, was appointed as a Medical Officer (BPS-17) in 1981 and promoted to Additional Medical Superintendent (BPS-19) in 1996, was allegedly unfairly denied promotion to BPS-20 in 2011. Despite his name being considered, his promotion was deferred due to missing Annual Confidential Reports (ACRs) for 2001-2011, which he claims was the fault of departmental officers, not his. Juniors were promoted while he suffered the loss of promotion and related pension benefits. He argues the High Court has jurisdiction as the issue isn't solely about fitness but also about the non-availability of ACRs. After retirement in 2012 and a continued lack of action on his requests, including a 2016 application, and facing health issues, he now seeks pro forma promotion to BPS-20 with effect from July 7, 2011, when his juniors were promoted. In support of his submission he relied upon the cases of *Federation of Pakistan & others v Jehanzeb & others* 2023 PLC (CS) 336, *Wadhu Mal v Province of Sindh & others* 2023 PLC (CS) 1310 and *Secretry School of Education v Rana Arshad Khan & others* 2012 SCMR 126. He requested to allow this petition.

2. Respondent's reply confirms the Petitioner's promotion to BPS-19 in 1996, with further narration that the Provincial Selection Board-I meeting on 07.07.2011 decided to supersede candidates whose ACRs for the last ten years were missing.

3. Learned AAG submitted that the Petitioner was superseded due to this policy and was also facing disciplinary proceedings. He outlined the procedure for the timely submission of Performance Evaluation Reports (PERs). However, he acknowledged forwarding the Petitioner's post-retirement promotion request to Respondent No. 2 for comments, but they offered no specific comments on the Petitioner's fundamental rights, the timeline of ACR submissions, the alleged fault of departmental

authorities, the Petitioner's fitness for promotion, his retirement, his application to Respondent No. 1, or his health issues.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. The preparation of Annual Confidential Reports (ACRs) or Performance Evaluation Reports (PERs) is linked to a civil/government servant's efficiency and discipline, which falls under the reporting officer's purview. These evaluations are crucial for promotion considerations, although promotion ultimately hinges on eligibility, fitness, and available vacancies. The competent authority should promptly initiate disciplinary action under The Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, against any civil/government servant found to be persistently corrupt, possessing disproportionate assets, or frequently absent without authorization. Furthermore, supersession may be considered if a civil servant has received two or more penalties under these Rules, their overall ACR grading is average or contains adverse remarks (duly communicated and finalized after representation) regarding responsibility, integrity, reliability, work output, and public behavior, and if they have been recommended for supersession twice by the Provincial Selection Board (PSB) or Departmental Promotion Committee (DPC) with the competent authority's approval.

6. Regarding the deferment of a civil/government servant's promotion, Section 13 of the Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975, allows for postponement if their seniority is disputed or undetermined, if they are on deputation, training, or leave, if disciplinary proceedings are pending against them, or for any reason other than their lack of fitness for promotion. In such cases, the Government of Sindh's Competent Authority must ensure that future disciplinary action against government/civil servants facing pending disciplinary and/or criminal proceedings is taken under Rule 5 of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, and that these proceedings are concluded/decided promptly according to the law. It is understood that if the government/civil servant is cleared of the charges, they will be treated as per Rule 8-A of The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, and Rule 13 of The Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975.

7. From our perspective, a fundamental prerequisite for promotion is a clean service record. This is the bare minimum expectation to maintain an efficient and transparent administration and safeguard public interest. An employee found guilty of misconduct cannot be considered equal to

other employees and must be treated distinctly. When evaluating an employee for promotion, their complete service history must be examined. If a promotion committee considers penalties imposed on an employee and subsequently denies them promotion, such a decision would not be deemed unlawful or without merit within the principles of service law.

8. Regarding the present case, the primary purpose of maintaining Annual Confidential Reports (ACRs) or Performance Evaluation Reports (PERs) is to determine an officer's suitability for promotion. This evaluation, beyond performance and eligibility, includes consideration of any major or minor penalties awarded. The Departmental Promotion Committee (DPC), tasked with making the final promotion decision based on this assessment, must conduct a comprehensive evaluation of the civil servant's performance using a working paper prepared by the relevant department. Consequently, the responsibility for preparing and presenting ACRs lies with the concerned department, not the civil/government servant, primarily because ACRs are confidential documents inaccessible to the officer being evaluated. Legal requirements only mandate that officers be informed of any adverse remarks in their ACRs, allowing them an opportunity to improve their performance and address the identified shortcomings.

9. Generally, a court should not readily interfere with an evaluation conducted by an Expert Committee, as the court typically lacks the specialized knowledge required for such assessments. It is an established legal principle that, within its designated powers and authority, the Departmental Promotion Committee (DPC) must evaluate each promotion proposal individually, in accordance with the law. In instances where a disciplinary case or criminal prosecution against a civil/government servant remains unresolved even two years after the initial DPC meeting deferred its findings regarding that individual, the appointing authority may consider granting an ad-hoc promotion, as per legal provisions.

10. A promotion cannot be automatically deferred solely for the pendency of disciplinary proceeding after two years. The Departmental Promotion Committee (DPC) must assess each promotion proposal on a case-by-case basis, considering all relevant factors, including the employee's overall service record.

11. Considering the aforementioned discussion, the Government of Sindh is hereby directed to ensure that, in the future, prior to any meeting of the Provincial Selection Board (PSB) and/or Departmental Promotion Committee (DPC) convened to consider promotion cases for

civil/government servants, the relevant department must provide a complete set of Annual Confidential Reports (ACRs) or Performance Evaluation Reports (PERs) of the officer in question to the PSB/DPC well in advance. This is to ensure that promotion cases are decided without undue delay.

12. We find that the Petitioner is to be granted a proforma promotion to BPS-20, effective from July 7, 2011, the date his juniors were promoted. This petition is disposed of in these terms.

13. Let a copy of this order shall be sent to Chief Secretary Government of Sindh for compliance.

JUDGE

Head of Constitutional Benches