

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D-1369 of 2021

Date	Order with signature of Judge
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Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

1. For orders on office objection at flag `A`
2. For hearing of main case

15-05-2024

Mr. Saifullah Soomro, Advocate for the Petitioner
Ms. Gulnaz Firdous, Advocate for Respondents No.2 to 4
Mr. Dareshani Ali Haider 'Ada', Deputy Attorney General
Israr Hussain Shah Assistant Administrator/Focal Person
Evacuee Trust Property Board, Sukkur

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ORDER

Muhammad Iqbal Kalhoro, J:- We have heard all the parties. The case of petitioner is that he is working as Caretaker BPS-7 in Evacuee Trust Property Board. He was appointed on 30.01.2006 in BPS-5 and in more than 18 years he has been awarded only one time scale promotion to BPS-7. His counsel submits that when he moved an application for up-gradation of his post before the Chairman Evacuee Trust Property Board at Lahore, it was dismissed without assigning a valid reason. He filed an appeal before the Federal Secretary Ministry of Religious Affairs but without a success, hence he has filed this petition.

2. His counsel has drawn our attention to page-77 of the file, which indicates that the Evacuee Trust Property Board in a decision dated 17.01.2018 upgraded the post of Security Assistance from BPS-14 to BPS-15. When we asked the focal person of the Evacuee Board and learned DAG to explain the same, as they have urged that there is no policy of up-gradation in the Evacuee Board to defeat the case of the petitioner. They jointly have submitted that there is a policy of up-gradation but for the post of Security Assistance. This argument does not absolve them of either explicating absence of a policy of up-gradation in respect of post of Caretaker or presence of reasonable classification or criteria to justify such absence in presence of the same policy for the other post. We are of the view that the Board cannot discriminate against one set of employees by denying them an opportunity/right to up-gradation and bestow the same right to the other kind

of employees working thereunder by referring to a policy set up for such purpose, unless there is reasonable classification warranting the same.

3. Learned DAG assisting the court has submitted that there is a proper procedure in terms of Para No.25-B (3) of Esta Code (Establishment Code) Federal, which stipulates that for a particular post to be upgraded, not only the Secretary concerned but the Finance Secretary and the Establishment Secretary have to be taken on board as up-gradation of any post will have financial implications. We therefore are of the view that the application of petitioner for up-gradation of his post shall be reconsidered as if it has not been decided and in this respect, the comments from both the Secretaries in the light of Para No.25-B (3) of Esta Code shall also be obtained.

4. It may be said that when in respect of a particular kind of employees, the Board has framed a policy of up-gradation, then in respect of other set of posts like the one of the petitioner, the policy on the same line could be framed to avoid discrimination between one cadre of the employees against the other cadre of employees working in the Board. Before making any decision on the application of the petitioner, the Board shall take into account equality of all before the law guaranteed under the Constitution, unless exempted on reasonable classification. The fact of discrimination purportedly meted out to petitioner on account of absence of policy of up-gradation, which in the case of other kind of employees already exists, shall also be taken into account while deciding application of the petitioner.

5. We therefore dispose of this petition in above terms and direct the Chairman Evacuee Trust Property Board to take a fresh decision on the application of the petitioner within two months and if a policy for up-gradation is required in this regard, an effort to frame the same shall also be considered. In any case, this exercise shall be completed within a period of three months and such compliance report be submitted.

JUDGE

JUDGE

