

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-8715 of 2017
(Ehsanullah Khan v Federation of Pakistan & others)

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| 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 22.4.2025

Ms. Naila Tabassum advocate along with the petitioner.
Mr. Akbar Khan, Attorney General.

ORDER

Adnan-ul-Karim Memon, J: The Petitioner requests the court to call for his record and direct the Respondents to grant him proforma promotion from BS-20 to BS-21, effective from the date his junior was promoted, along with any other just relief.

2. Appointed as an FIA Inspector in 1976, the Petitioner progressed to Additional Director (BS-19) by 2006. Despite a good service record, his promotion to BS-20 was twice delayed. Initially, lack of SMC led to deferral, a nomination for which was later rescinded but reinstated by this Court (CP No D-274/2010), allowing him to attend in 2010. While on the course, he was falsely implicated in an old murder case, resulting in his BS-20 promotion being deferred in 2011, while a junior was promoted. This was challenged in CP No. D-3157/2011. In 2012, this Court ordered reconsideration of his promotion before retirement. However, he was superseded based on a "chequered service record" and PER evaluations, leading to CP No. 1945/2013. During this time, his junior was promoted to BS-21 in 2013, which the Petitioner sought to include in his petition. In 2017, this Court granted proforma promotion to BS-20 under FR 17 in CP No. 1945/2013, but his BS-21 promotion requests remained unresolved. The Petitioner submitted that despite the BS-20 proforma promotion order, his junior's BS-21 promotion in 2013, coupled with his good record and Tamgha-e-Imtiaz, indicates victimization and denial of his rightful promotion. His 2017 application for proforma promotion to BS-21 went unanswered.

3. The petitioner's counsel argued that her client, a retired civil servant with an exemplary record, was unfairly denied promotions despite a court order for proforma promotion to BS-20 and the subsequent promotion of his junior to BS-21. She asserted malafide intent and a violation of his right to equal treatment, urging the court to review his record and order the respondents to grant him proforma promotion to BS-21, effective from his junior's promotion date, alongside any other appropriate relief.

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

5. Fundamental Rule (FR) 17(1) is the primary provision for pro forma promotion, allowing the appointing authority to grant a civil servant, wrongly denied a timely promotion through no fault of their own, the back pay and benefits of the higher position. This principle seeks to rectify a denied right. However, in this specific case, the petitioner already had this avenue of relief addressed when this court ruled on his C.P. NO. D-1945 of 2013 with a judgment on January 11, 2017. The court, acknowledging the petitioner's retirement, deemed it unnecessary to refer the case back to the Central Selection Board (CSB). Instead, the respondents were instructed to consider the petitioner's promotion under the revised guidelines of the Finance Division's Office Memorandum No. F.No.4(6)imp/FR-17/2013-277 dated September 18, 2015, without being influenced by the CSB's prior decision and strictly following the law. Consequently, the constitutional petition and the related application were resolved with this directive.

6. The initial impression is that **Order II Rule 2 of the CPC** applies in the present case for the reason that the petitioner's complaint of wrongful denial of promotion to BS-20 seems to be a single cause of action. This rule required him to seek all related remedies, including proforma promotion to both BS-20 and BS-21, in his earlier petition (C.P. NO. D-1945 OF 2013). Consequently, he is now barred from claiming a relief not granted previously. Furthermore, even if the petitioner was senior to the BS-21 promotee, that promotion stands if the Selection Board found the junior officer more meritorious. To claim proforma promotion to BS-21, the petitioner must prove not only his eligibility and the injustice of his BS-20 non-promotion but also that he was at least as meritorious as the promoted junior. This is because BS-21 is a selection post where merit, not seniority, is the paramount factor in promotions, ensuring the most capable individuals are elevated.

7. The petitioner seeking proforma promotion to BS-21 is not sustainable under Article 199 of the Constitution. Since promotion to BS-21 is strictly based on merit, the petitioner's claim for proforma promotion at this stage, simply because his junior was promoted to that grade, is without merit. Consequently, this petition and any pending applications are dismissed.

JUDGE

Head of Constitutional Benches