

IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-4604 of 2017
(Nazar Muhammad Gad v Federation of Pakistan & others)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 23.04.2025

Mr. Sharafuddin Mangi advocate for the petitioner
Mr. Ali Safdar Depar, Assistant AG

ORDER

Adnan-ul-Karim Memon, J: Seeking justice, Nazar Muhammad Gad, an Assistant Senior Head Clerk from the Ghotki Jail Department, has filed this petition. He challenges the refusal of his rightful promotion to Deputy Superintendent (B-17) and the subsequent demotion he faced. Petitioner requests that this court overturn the Home Secretary's deferment order and grant him the promotion he deserves based on his seniority.

2. The petitioner has averred that despite being senior and eligible, Mr. Gad's promotion was deferred by the Departmental Promotion Committee (DPC) in September 2016. The reason cited was the Home Secretary's intention to file allegations against him. Mr. Gaad argues this deferment based on assumption violates established law, which states promotion should not be denied even during disciplinary proceedings or with pending charges. Petitioner claimed that he received a show-cause notice regarding the allegations *after* the initial DPC meeting, violating principles of natural justice and service rules. He submitted that the primary allegation against him was/is his involvement in the release of an under-trial prisoner (UTP). However, he vehemently denied this, stating it was the responsibility of the Superintendent/Deputy Superintendent who signed the gate pass and was subsequently promoted. Petitioner claimed his involvement was a minor clerical error of checking a record that was not properly documented. Petitioner further averred that the unfairness of the situation by pointed out that the Deputy Superintendent involved in the UTP's release was promoted, while he faced denial of promotion and later a major penalty for a minor oversight. He added that two senior clerks involved received only minor penalties. Petitioner submitted that he was senior to others who were promoted, further highlighting the injustice of the DPC's decision. He claimed the inquiry officer did not follow proper procedures, such as issuing a charge sheet or providing adequate time for a response. However, he was ultimately given a major penalty of a reduction in rank from Assistant Superintendent (B-16) to Assistant/Head Clerk (B-

16) for two years, which he submitted was/ is excessive and unjust. He prayed for the setting aside of the Home Secretary's order of deferment and grant him his due promotion based on seniority.

3. learned AAG submitted that the order from the Home Secretary detailing the penalty imposed on the petitioner for the wrongful release of the UTP, based on an inquiry that found him responsible for not properly handling the production order. He emphasized that the Home Secretary found his explanation unsatisfactory and upheld the penalty of demotion for two years. Additionally, there is a note about the expunction of adverse remarks from the petitioner's annual confidential report for an earlier period due to the countersigning authority's failure to justify them. He prayed for the dismissal of the petition.

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

5. The petitioner, who previously served as Superintendent Prisons (BPS-16) at District Prison Chotki, faced a major penalty resulting in demotion to Assistant/Head Clerk (BS-16) for two years, effective December 26, 2016. Upon completion of this period, he was automatically reinstated to his original rank of Assistant Superintendent Prisons (BPS-16) on December 26, 2018. A notification dated September 17, 2019, stipulated that while his original seniority would be restored, any junior officers promoted during his demotion would retain their higher rank, consistent with the advice from the Regulation Wing (U.O. No SOR-III(SGA&CD)2-7/2019 dated July 25, 2019). Subsequently, the petitioner, holding the acting charge of Superintendent at District Prison & Correctional Facility Jacobabad (BPS-18), retired from government service on July 2, 2024, upon reaching the age of 60, as per notification dated July 23, 2024. Given that the imposed penalty was completed, the petitioner's original position should have been restored. With the petitioner's subsequent retirement, the challenged action has become ineffective. Therefore, this petition needs to be disposed of with the understanding that the petitioner's deferment is no longer applicable, and he is entitled to proforma promotion in line with promotions granted to his juniors, as per Rule 13 of The Sindh Civil Servants (Probation, Confirmation, and Seniority) Rules, 1975. This petition stands disposed of in the above terms.

JUDGE

Head of Const. Benches