

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-4596 of 2020

(Muhammad Jam v. Federation of Pakistan & others & others)

Petitioner : through Talha Abbasi, advocate.
Respondents No. 2 & 3 : Sanaullah Noor Ghouri, advocate
Respondent No.1 to 3 : Ms. Zehra Sehar, Assistant Attorney General
Dates of hearing : 12-05-2025
Date of order : 12-05-2025

ORDER

Adnan-ul-Karim Memon, J., Lacking an alternative effective legal recourse, the Petitioner requests this Court to declare the challenged decision dated 13.3.2020 passed in pursuance of the order dated 16.1.2020 null and void. Furthermore, the Petitioner seeks a declaration of his entitlement to proforma promotion to PG-10 and a directive for the Respondents to reconsider his case in strict adherence to this Court's order dated January 16, 2020.

2. Despite the Court's January 16, 2020, order for the petitioner's proforma promotion to PG-10 for pension benefits, a Special Selection Board met on March 6, 2020, and again denied the proforma promotion. The Board cited his past supersessions in 2014, 2015, and 2017 due to being non-competitive on Merit/PAR/Seniority/Suitability. The petitioner, who served CAA since April 18, 1985, now seeks the Court's intervention, arguing the respondents' March 13, 2020, denial disregards the prior order that found the initial supersession grounds without merit.

3. The Petitioner's counsel argued that this refusal defies the Court's order and is an illegal, arbitrary, and discriminatory act that violates his rights and natural justice principles. An excerpt of the order is reproduced as under:-

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

5. The reason assigned for not considering the case of petitioner for promotion in PG-10 is inefficiency and adverse remarks in his previous personal evaluation report. We do not see any justifiable cause for not considering him against PG-10 during his tenure of service even the document dated 18th July, 2014 is silent to that effect as no disciplinary proceedings were initiated against him if at all he was inefficient and had earned adverse entries in his service record which prima facie suggests that he has been superseded on account of career history which action cannot be sustained under the law. Since superannuation of the petitioner has already taken place, the question

of determining his suitability/eligibility for the post, even after his retirement from service, is of no use.

6. In the light of above facts and circumstances of the case, this petition is allowed in the terms whereby the competent authority of CAA is directed to consider the case of petitioner for his proforma promotion in PG-10, Works and Development Directorate, CAA for the purpose of pensionary benefits within a period of one month from the date of receipt of this order strictly in accordance with law.

This petition is disposed of in the above terms with no order as to costs."

4. The AAG opposed the petition, citing the **2016 SCMR 2146** precedent that requires alleging a violation of service regulations, which she claimed the petition lacks. She argued that promotion is not a vested right, making the petition unsustainable and time-barred due to laches since it was filed on September 23, 2020, against a March 13, 2020 letter, especially given the Petitioner's retirement and pursuit of proforma promotion. While acknowledging the Court's order to "consider" the Petitioner, she stated a Special Selection Board did not recommend him, a decision communicated to him, noting he was deemed unfit for promotion four times (2014, 2015, 2017, 2020). She also pointed out the withdrawal of his earlier Contempt Application. Therefore, she concluded the petition lacks a legal and factual basis and may be dismissed with costs.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. The stated reason for denying the petitioner's PG-10 promotion was inefficiency and past adverse remarks. However, this Court previously rejected the respondents' viewpoint and still finds no justification to refuse proforma promotion, especially given the lack of disciplinary action by July 18, 2014. This indicates the supersession was based on career history, which is legally unsustainable. Given the petitioner's retirement, assessing his suitability is now irrelevant.

7. The Supreme Court has ruled that proforma promotion is a remedy for individuals who miss promotion due to administrative errors or delays and subsequently retire. If a qualified and senior employee is denied timely consideration by a DPC or Selection Board due to administrative oversight, they have a legitimate expectation for proforma promotion with related benefits. This concept is rooted in the now-omitted Fundamental Rule 17, which allowed for back pay and allowances through proforma promotion for those wrongly prevented from higher posts through no fault of their own. Unjustified delays in proforma promotion cases cause hardship and unnecessary litigation. Competent authorities should establish strict timelines for proforma promotion committees to

ensure swift and rational decisions, preventing retired employees from having to seek court intervention for their rightful benefits.

8. Considering the facts of the previous case and direction contained therein, this petition is allowed in the said terms. However, the impugned order of March 13, 2020, is annulled for disregarding prior court orders, in violation of Article 204 of the Constitution. The CAA must grant the petitioner's proforma promotion to PG-10 in the Works and Development Directorate for pension benefits within one month.

JUDGE

HEAD OF CONST. BENCHES

SHAFI