

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-1450 of 2017

(Khalid Ahmed Bablani v. Federation of Pakistan & others)

Petitioner : through Mr. Talha Abbasi, advocate.
Respondents No. 4 Mr. Ali Asadullah Bullo advocate
Respondent No. 1 to 3 Ms. Zehra Sehar Assistant Attorney General
Date of hearing : 14-05-2025
Date of order : 14-05-2025

ORDER

Adnan-ul-Karim Memon, J., The Petitioner prays that this Court declare the Impugned Order dated 07-02-2017 illegal, unconstitutional, and void due to its mala fide, arbitrary, and discriminatory nature, as well as its violation of natural justice and fairness. Consequently, the Petitioner seeks the annulment of the Impugned Order and a declaration of his seniority over Respondent No. 4 based on older age and/or earlier date of joining.

2. The Petitioner, a BS-19 officer, submitted that despite he along with respondent No.4 applying for Deputy Director (Electronics) in 2007, neither was appointed to that role. Instead, the Petitioner accepted the position of Deputy Director (Instrumentation) (BS-18), joining on 14-09-2007, while Respondent No. 4 took the Deputy Director (Conformity Assessment) (BS-18), joining on 21-09-2007. Born earlier (14-08-1972 vs. 09-09-1974) and joining sooner, the Petitioner asserted seniority under the 1993 Rules, submitting that Rule 2(2) is irrelevant as neither got the Electronics post. Initial seniority lists (2008-2012) favored the Petitioner without Respondent No. 4's objection. However, shortly before a promotion committee (DPC) in 2013, Respondent No. 4 sought seniority based on alleged merit for the Electronics position. The Petitioner submitted that this is baseless. Subsequently, Respondent No. 2, without notice, declared Respondent No. 4 senior to the petitioner (05-04-2013), ignoring the Petitioner's appeal and issuing a new list reflecting this. The Petitioner challenged this in this court (CP No.D-3084/2017). Despite this, the DPC proceeded, promoting Respondent No. 4. While this court directed a rehearing, the resulting Impugned Order (07-02-2017) again favored Respondent No. 4 without proper hearing or justification.

3. The Petitioner's counsel argued that the Impugned Order is flawed because it: contravenes seniority rules for similarly appointed individuals; wrongly considers initial merit for a position neither party received; ignores Respondent No. 4's prior acceptance of the Petitioner's seniority; was issued unfairly without notice or hearing, indicating bias; misapplies the concept of merit; infringes upon the Petitioner's fundamental rights under several constitutional articles; was issued hastily and without due process; lacks proper

reasoning, violating principles of natural justice and relevant legal provisions; demonstrates arbitrary action by public officials; violates the right to a fair trial; and that a specific constitutional bar for civil servants does not apply here. Consequently, the counsel requested the Court to grant the petition.

4. Learned counsel for respondent No.4 relied upon the statement dated 14.05.2025 and supported the impugned order dated 07.02.2017 and prayed for dismissal of the instant petition. The learned Assistant Attorney General endorsed the arguments presented in the respondents' filed comments and requested that the petition may be dismissed based on the analogy put forward by the counsel for the respondent No.4.

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

6. Respondent No. 4 applied for the position of Deputy Director (Electronics) (BPS-18) advertised on June 9, 2007, and was the principal by the DSC on August 10, 2007. The Petitioner was an alternate who was later considered for another Deputy Director role. Despite this, Respondent No. 4 accepted the Deputy Director (Conformity Assessment) (BPS-18) position on September 12, 2007, the same day the Petitioner took the role of Deputy Director (Instrumentation) (BPS-18). Respondent No. 4 claimed seniority based on his principal selection, and subsequently, the competent authority declared him senior via a notification (challenged in CP No. 3084/2013). While earlier seniority lists showed the Petitioner as senior, this Court directed a departmental resolution. Following hearings, the DG PSQCA ultimately found Respondent No. 4/Ali Bux senior to the Petitioner/Khalid Bablani.

7. Neither the Petitioner nor Respondent No. 4 were selected for the Deputy Director (Electronics) (BPS-18) post they applied for in response to the June 9, 2007 advertisement. Instead, they were offered and accepted different, unadvertised Deputy Director roles on September 12, 2007, joining on different dates. This raises the question of their seniority claims on posts that were never advertised, and the validity of their appointments to these unadvertised positions.

8. In such circumstances, we are of the view that both parties were appointed to unadvertised positions, and were accommodated on the post which were not put up for competitive process, as such the respondents can not curcmvent the legal procedure through their minuts of Departmental Seclection Committee (DSC) held on 10th and 30th August 2007 as the department had already received 20 applications and after scrutiny only 12 applications were shortlisted as per required qualifications, experience and domicile and all short listed candidates were called for interview and DSC interviewed the petitioner and respondent No.4 found suitable on their performance for the post of

Deputy Director (Electronics) but the situation is quite different when they were offered the different position i.e. Deputy Director (Instrumentation) and conformity assessment rather the post of Deputy Director (Electronics) which is direct conflict with the recruitment rules, vide offer letter dated 12.09.2007, as such this Court is inclined to direct the Respondent-PSQCA to either regularize both their positions based on a similar principle of seniority in terms of ratio of the judgment of Supreme court in the case of *Sarosh Haider Vs Muhammad Javed Chundrigar* PLD 2014 SC 338 or re-advertise the relevant positions afresh within a reasonable timeframe. Consequently, the parties promotion and seniority claims in this context become irrelevant.

9. This petition stands disposed of in the aforesaid terms.

JUDGE

HEAD OF CONST. BENCHES_

SHAFI