



## ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C. P. No.D-2019 of 2008

Date	Order with signature of Judge
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Petitioner Omer Ali Khan through Mr. Abdul Razzak, advocate.  
Pakistan Steel Mills through Mr. M.G. Dastagir, advocate.


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**MUHAMMAD KARIM KHAN AGHA, J.**, The petitioner claims that he is regular employee of Pakistan Steel Mills and is presently working as Manager since 02.1.1989. The petitioner was promoted to the grade of Executive Engineer on 01.7.1984 and as a Manager (Engineering Cadre) on 02.1.1989.

2. According to the petitioner, he was given adverse remarks in his ACR for the year 2003 by respondent No.3 vide letter No.A&P-ACR-2005/24 dated 05.1.2005 with the wordings "Not yet fit for Promotion". The Incharge (ME7IC), Pakistan Steel Mills endorsed the ACR with the remarks "the officer required to improve vigilance and accuracy of work". Such remarks were given by respondent No.4, who was the reporting officer of the ACR for the year 2003. The petitioner preferred Appeal to the Chairman of respondent No.1 vide his Appeal dated 13.1.2005 followed by reminder dated 28.3.2005 for expunction of the above adverse remarks but no response was received from the respondent No.2.

3. We have heard learned counsel for the respective parties and with their assistance have gone through the material available on the record.

4. Learned counsel for the petitioner has contended that the petitioner was entrusted 14 enquiries of officers and the petitioner gave impartial findings in all the enquiries. This was the reason that the management of respondent No.1 was annoyed with the petitioner. Learned counsel for the petitioner has further contended that for the first time in service, the petitioner was conveyed such highly irresponsible comments in his ACR for the year 2003 and the same are engineered in order to





block future prospects of his promotion. The petitioner is a qualified and experienced person and deserved to be promoted as Deputy General Manager but the officers who were junior to him were promoted and the petitioner was discriminated in such manner.

5. He has further submitted that the petitioner was deprived from his legitimate and overdue promotion to next higher grade of Deputy General Manager on seniority-cum-fitness basis. He has vehemently contended that the petitioner was apprised of the adverse remarks of the ACR for the year 2003 just only seven days before the Departmental Promotion Committee was held in the year 2005. In support of his contentions, learned counsel for the petitioner has relied upon the cases of *SHAHID AMIN HYDER v. SECRETARY, MINISTRY OF HEALTH* (2002 SCMR 870) and *KHUDA BAKHSI v. DEPUTY COMMISSIONER, CAPITAL DEVELOPMENT AUTHORITY* (1999 SCMR 1589). These cases, however, are of little assistance to the petitioner as they are distinguishable on facts and circumstances of his case. This is because their primary concern is with the petitioner's right to be heard in respect of adverse comments in ACRs. Such a right is accepted, however, the petitioner's denial of promotion was not based solely on the adverse comments in his ACR. The decision regarding promotion was largely guided by the applicants' ACR grading over a period of five years and not adverse comments alone.

6. Learned counsel for Pakistan Steel Mills has contended that promotion in Pakistan Steel Mills is governed by Pakistan Steel Officers Service Rules and Regulations. He has drawn our attention to paragraph 2.34 of the Pakistan Steel Officers Service Rules and Regulations which provides that employees for promotion from Manager to Deputy General Manager (as is the petitioner's case) is a Selection Post whereby applicants are to be selected on a best out of best formula other than on seniority-cum-fitness basis by the Selection Board. Learned counsel has referred the case of *GOVERNMENT OF PAKISTAN v. HAMEED AKHTAR NIAZI* (PLD 2003 SC 110), and has drawn our attention to paragraphs 22 to 25 of



the said judgment, which the Court cites below with approval in this case and are reproduced herein below:-

"22. Section 9 of the Act of 1973 deals with "Promotion". It may be regarding "selection post" or "non-selection post". In case of selection post, as involved in these matters, the criterion for promotion is merit, while in case of non-selection post it is done on the basis of seniority-cum-fitness. No civil servant can ask for promotion as a right and the giving or refusal of promotion is a matter, which is within the exclusive domain of the government/executive authority. If a promotion is denied to a civil servant it could not be termed as denial of any fundamental right.

23. Perusal of section 9 of the Act of 1973 unequivocally postulates that criterion for selection for promotion to the higher-grade rest upon decision of the competent authority. No other forum/authority can assume the duties, which specifically have been assigned to the competent authority.

24. The seniority is one of the factor, which is considered for promotion, but seniority alone is not enough. Promotion is not automatic, but it depends upon so many other factors, such as, competence, availability of post and antecedent etc. None of these factors is less important than seniority. For promotion all these factors, on case-to-case basis, are to be determined.

25. On the basis of improved seniority, the benefit of promotion, as a matter of right in selection grade, could not be claimed nor the Tribunal was competent to grant it from back date, as it was explicitly beyond its jurisdiction. The requirements for promotion mentioned earlier were not examined by the competent authority at the relevant time, as such, the same could not be granted by the Tribunal."

7. We have carefully examined the material available on record and considered the arguments of learned counsel. Paragraph 2.34 of the Pakistan Steel Officers Service Rules and Regulations makes it clear that the question of seniority is not an issue for promotion in this case rather the best out of best formula would be applied to the applicants and the promotion would be based on merit. Data on the ACR reports, submitted alongwith the comments of the respondents Nos.2 to 15, clearly indicate that all the applicants who were promoted ahead of the petitioner, had better grading in their ACRs over the five year period 1999 to 2003 than the petitioner. Therefore, it is clear that the promotion criteria adopted was not based solely on adverse remarks rather it was largely based on merit according to average ACR grading of each applicant during the last five years. The petitioner obtained 49.8% average marks for the last five years whilst those appointed in all



cases got a minimum average of over 67.4% for the last five years. The record shows that the petitioner was accorded an opportunity of being heard by the Promotion Board alongwith the other applicants and as such it cannot be said that the petitioner was discriminated against in any way during the promotion exercise.

8. Above are the reasons of our short order dated 11.3.2009, by which we had dismissed the petition in limine.

Karachi,  
March 13, 2009