

IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-8501 of 2018
(*Mushtaq Ahmed 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: 23.05.2025

Mr. Talha Abbasi advocate for the petitioner.
Ms. Wajiha Mehdi, Assistant Attorney General.

O R D E R

Adnan-ul-Karim Memon, J: The petitioner requests this Court to grant the following:

Declare that the respondents' failure to fairly and reasonably consider the petitioner for promotion from BS-21 to BS-22, their decision not to recommend him without providing concrete reasons, and their promotion of his juniors are all illegal, unlawful, unconstitutional, malafide, arbitrary, and discriminatory. These actions violate the principles of natural justice, equity, and fairness. We further request the setting aside of notifications dated November 20, 2018, and November 19, 2018.

Direct the respondents to resubmit the promotion cases of the petitioner and Respondent Nos. 3 and 4 for BS-22 to the High-Powered Selection Board. This reconsideration should be based on the service record available to the board at the time of the initial impugned recommendations.

Grant any other relief deemed just and appropriate given the circumstances of this case.

Award the costs associated with this Petition.

2. This petition challenges the petitioner's non-promotion from BS-21 to BS-22, alleging discriminatory and arbitrary treatment by the respondents. The petitioner, a BS-21 officer in the Pakistan Administrative Service with an unblemished record since 1989, submitted that no reasons were given for his supersession despite requests. The two junior officers, who were promoted over the petitioner. The petitioner asserted that the respondents are legally obligated to act fairly in accordance with law. Petitioner averred that his career includes a previous deferment from BS-20 to BS-21 in 2015 by the Central Selection Board (CSB) for vague reasons, while juniors were promoted. This decision was successfully challenged and overturned by the Islamabad High Court and Supreme Court, leading to his eventual promotion in 2017 with retrospective effect from May 2015. The petitioner highlighted his exceptional performance as Chairman of the Trading Corporation of Pakistan (TCP), where he significantly boosted profits and cut expenses. He also took firm action against misconduct, notably removing Mir Muhammad Raza. A significant point of contention arose when Mohammad Younus Dagha, Secretary, Ministry of Commerce & Textile, allegedly illegally reinstated one Raza. Subsequently, the Secretary initiated a

baseless fact-finding inquiry against the petitioner due to the aforesaid issue. The petitioner claims this was driven by personal vendetta, and that the concerned Secretary had misused his influence to prematurely transfer him to an Officer on Special Duty (OSD) position and promote a junior officer to facilitate one Raza's reinstatement. Despite his superior seniority, qualifications, and performance evaluations (PERs), the petitioner was bypassed for promotion to BS-22 in October/November 2018, while two juniors were promoted. He believed that this was due to the aforesaid secretary's influence and personal grudge, especially since the Secretary Cabinet Division, who was conducting an inquiry against him, was also on the High-Powered Selection Board (HPSB) that denied his promotion. The petitioner submitted that the respondents' failure to provide reasons for his non-promotion, despite his strong record, demonstrated malafide intent, arbitrariness, and discrimination, violating principles of natural justice. He seeks a declaration that his non-promotion was/is unlawful and discriminatory, that the discretionary marks in the promotion process were/are arbitrary, and that he now be considered for proforma promotion to BS-22 after he retires from the date his juniors were promoted. In terms of the decision made by this Court in C.P. No.D-7559 of 2017 vide judgment dated 07.11.2018 whereby the matter was remitted to the competent authority for proforma promotion in BS-22 without discrimination, which decision remained successful in the Supreme Court.

3. Crucially, the petitioner's counsel argued that the High-Powered Selection Board (HPSB) responsible for denying his promotion was compromised. He asserted that members, including former Secretary Mr. Dagha and the Cabinet Secretary (who was also investigating the petitioner), harbored personal biases. This, he contended, meant the promotion decision was not based on merit or objective criteria, but rather on malice. The counsel further claimed his client was unfairly treated compared to similarly situated colleagues and juniors. He challenged the 2017 promotion policy's discretionary marks and the 2021 Service Rules as arbitrary and unlawful, respectively. He emphasized that the petitioner had a legitimate expectation and a vested right to be considered for promotion, given his seniority, qualifications, and performance. Ultimately, he argued that the respondents' actions demonstrated ulterior motives and exploitation. He lastly prayed for allowing the instant petition.

4. The learned AAG (Assistant Attorney General) argued that the petition is not maintainable under Article 212(2) of the Constitution. She contended that promotion matters for civil servants fall under the exclusive jurisdiction of the Federal Service Tribunal, citing Supreme Court rulings that promotion is not a vested right and rests solely within the executive's domain. She asserted that the petitioner was "meaningfully considered" for promotion to BS-22 by the High-Powered Selection Board (HPSB) on two separate occasions in late 2018. This consideration, she stated, was strictly in accordance with the Civil Servants (Promotion to the post of Secretary, BS-22 & equivalent) Rules, 2010, but he was

ultimately "not recommended." Furthermore, she clarified that these rules do not mandate communicating reasons for deferment or non-recommendation. The learned AAG also maintained that the disciplinary inquiry against the petitioner was initiated with the Prime Minister's approval, denying any personal allegations against former Secretary Mr. Dagha due to his non-impleadment in the petition. Finally, she affirmed that the HPSB assessed suitability based on a comprehensive review of service records, not merely on eligibility conditions.

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

6. The petitioner claims a pattern of discriminatory actions prevented his promotion despite his excellent service. Conversely, the respondents argued that they followed established rules and procedures, emphasizing that promotion is not an inherent right and falls outside the High Court's jurisdiction. The petitioner has since retired from service as his cause is over on the issue of regular promotion, which was denied to him during his tenure of service as the High-Powered Selection Board (HPSB) considered his case on March 18, 2019, but did not find him fit for promotion. The HPSB assessed his leadership, experience, and decision-making, concluding he did not meet the required criteria. Furthermore, the FR-17(1) committee, by its function, at the relevant time could not grant promotions; it could only predate them. The petitioner's case also falls outside the scope of this committee as per the revised guidelines issued on September 18, 2015, and the deletion of FR.17 in 2022.

7. Given that the HPSB, the competent authority, determined the petitioner was not fit for promotion to a merit-based selection post, this Court cannot re-evaluate that decision under Article 199 of the constitution at this stage, when we are in 2025. Therefore, there's no basis to invoke Article 25 of the Constitution, especially in light of the Supreme Court's decision in National Bank of Pakistan v Sajjad Ali Khaskheli (2023 PLC(CS) 276), which held that there is no provision for *proforma* promotion in relevant service rules. This is further supported by the fact that the petitioner has retired and received all due benefits.

8. Given the foregoing discussion, we find no merit in this petition that would warrant intervention by this Court. Therefore, the petition is dismissed, along with any pending applications.

JUDGE

Head of the Const. Benches