

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-5497 of 2019
(*Manzoor Ahmed versus Province of Sindh & others*)

Date	Order with signature of Judge(s)
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Before:
Justice Mohammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

Date of hearing and order: 02.5.2025

Mr. Ali Asadullah Bullo advocate for the petitioner
Mr. Ali Safdar Depar, Assistant AG

ORDER

Adnan-ul-Karim Memon, J. The petitioner requests this court to declare the Respondents' failure to convene the Departmental Promotion Committee (DPC) for his proforma promotion as Assistant (BS-16) illegal and unconstitutional. Furthermore, he seeks this court’s order directing Respondent No.3 to convene the DPC and grant him proforma promotion to the post of Assistant in Government of Sindh Revenue Department, with effect from the date his juniors or batchmates received their promotions, along with all resulting benefits.

2. A retired Senior Clerk has filed a petition claiming the Respondents unfairly denied him a timely promotion and seniority during his service tenure, disregarding Supreme Court rulings that protect civil servants returned to their original posts after repatriation to report their parent department. His career saw him progress from Junior Clerk (1976) to Senior Clerk (2005), followed by a stint as Assistant Mukhtiarkar (after an Revenue Qualified Examination (RQE) exemption in 2008) and promotion to Mukhtiarkar BS-16 (2014). However, a 2016 Supreme Court decision dated 26.5.2016 in Civil Petition Nos.76-K and 77-K of 2015 invalidated the exemptions, resulting in his reversion to Senior Clerk BS-14 in the Revenue Department. The Petitioner submitted that Supreme Court precedents entitled him to the seniority and promotion after repatriation, he would have received had he not been temporarily promoted in another cadre. Despite his appeals and even with NOCs from the Commissioners of Karachi and Hyderabad in 2017, he was denied promotion as Assistant (BS-16) and instead faced a fruitless transfers. He ultimately retired in 2018 vide Notification dated 13.12.2017, without a resolution, while similarly affected colleagues received the benefits he sought.

3. The petitioner's counsel contended that the denial of seniority, promotion, and proforma promotion inflicted financial and emotional distress. He argued that the Respondents' failure to convene a Departmental Promotion Committee (DPC)

constituted misconduct as the petitioner during his tenure of service was entitled for regular promotion in BS-16 and now he demands proforma promotion after his retirement on 13.12.2017. He emphasized the disregard of his established claim despite repeated appeals before retirement and the violation of Supreme Court principles protecting repatriated employees, however, the respondent-department turned their deaf ear compelling the petitioner to approach this court on 27.8.2019. The counsel further asserted discriminatory treatment compared to similarly situated colleagues, the denial of his vested right to be considered for promotion, the ignoring of his unblemished service record, and the arbitrary and mala fide exercise of discretion by the Respondents is the main ground to claim the proforma promotion, which is in line with the Supreme Court rulings on the subject issue. He concluded that these actions violated petitioners' fundamental rights under Articles 4, 9, 18, and 25 of the Constitution and requested the court to allow the petition.

4. learned AAG opposed the petition on the ground that the petitioner was/is not entitled to regular as well as now proforma promotion and this petition is liable to be dismissed.

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

6. The record suggests the petitioner's regular promotion to Assistant BS-16 was not assessed on merit, and his eligibility was not disputed even though his juniors were promoted to the next rank during his tenure of service, perhaps he was inducted in the category of revenue officer and after his repatriation to the original position he opted for regular promotion. The AAG opposed antedated promotion due to his 2018 retirement, a view this court rejects for the reason that no material has been placed on record, even comments of the Revenue Department to suggest that the petitioner was/is not eligible for promotion during his tenure of service. This court emphasized that the right to promotion is substantive, and ignoring eligible officers harms morale of the civil servant. The petitioner had the required service and eligibility for BS-16. It appears from the record that a working paper was prepared by his department, recommending similar benefits before his retirement, with seniority fixed in 2017, and requested the DPC-I to consider his proforma promotion as Assistant from his juniors' 2011 promotion date.

7. Proforma promotion corrects rank and pay loss when a legitimate promotion is denied through no employee's fault, even after retirement, if the promotion was due during service but delayed by departmental reasons, not personal shortcomings. While the working paper suggests the petitioner's department recommended similar benefits and considered proforma promotion

before his 2018 retirement, the respondent-department can formally consider this if the petitioner had no misconduct or disciplinary penalties during service.

8. To understand the issue clearly, the court deemed it necessary to examine Rule 7-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, which states:

(1) The Appointing Authority can approve an officer's or official's promotion from the date the Provincial Selection Board or Departmental Promotion Committee makes its recommendation.

(2) Despite Rule 31 of the Sindh Civil Services Rules, an officer or official who dies or retires after the recommendation for promotion but before the official notification is issued is exempt from formally taking charge of the higher position.

(3) The Accountant General (for officers) or an authorized officer (for officials) will issue a certificate confirming the officer's or official's death or retirement.

9. The provided rule and Supreme Court precedents establish a civil servant's entitlement to pro-forma promotion. The Supreme Court in *Secretary Schools of Education v. Rana Arshad Khan* (2012 SCMR 126) granted proforma promotion to retirees due to unjustifiable departmental delays in their promotion process before retirement. Similarly, *Federation of Pakistan v. Jahanzaib* (2023 PLC (C.S.) 336) held that proforma promotion is applicable when an administrative oversight delays consideration for promotion until after retirement. Furthermore, in *Homeo Dr. Asma Noureen Syed v. The Government of Punjab* (2022 SCMR 1546), the Supreme Court remanded a case back to the Service Tribunal for fresh consideration of proforma promotion for a retired civil servant. These judgments underscore that employees should not suffer due to departmental failings regarding timely promotion consideration.

10. Based on the aforementioned reasons, this constitutional petition is allowed. The competent authority/respondents is directed to consider the petitioner's case for proforma promotion to Assistant BS-16 in the respondent department through circulation within two months, contingent upon the availability of a BS-16 vacancy under the relevant Recruitment Rules. Given the petitioner's retirement, this proforma promotion will not impact the seniority of any currently serving individual, and the petitioner will be entitled to his due emoluments and pension benefits.

11. Petition stands disposed of in the above terms.

JUDGE

HEAD OF CONST. BENCHES

