

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-6833 of 2019
(*Abdul Qadir Shaikh & others 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

Syed Shoa-un-Nabi advocate for the petitioner
Nemo for KDA
Mr. Ali Safdar Depar, Assistant AG

ORDER

Adnan-ul-Karim Memon, J. The petitioners have prayed that the respondents be directed to hold the Departmental Promotion Committee (DPC) to consider their cases for promotion in BPS-18 as Executive Engineers in Karachi Development Authority (KDA).

2. Four Sub-Engineers, appointed in 1982/1983 and later redesignated as Assistant Executive Engineers (BPS-17) in 2002, claimed seniority based on a 2018 seniority list. Despite fulfilling the five-year experience requirement for promotion to Executive Engineer (BPS-18) since 2002 and the existence of vacancies, they have not been promoted. They alleged that the Karachi KDA has avoided holding a DPC, depriving them of promotion, especially as they retired in 2019. Having approached the KDA in April and October 2019 without success, they seek this Court's intervention, submitting that they were not civil servants and thus could not approach the Sindh Service Tribunal. They prayed for a court order directing the respondents to hold a DPC and promote them to BPS-18. Now, proforma promotion.

3. learned AAG submitted that a Pro forma promotion for retired civil/public servants lacks a legal basis under the law, and without a legal provision, the Court cannot order public entities to grant such promotions. Learned AAG cited the cases of Supreme Court in the case of *Secretary Ministry of Finance, Finance Division, Government of Pakistan Versus Muhammad Anwer reported 2025 SCMR 153*, *National Bank of Pakistan through its President Versus Sajjad Ali Khaskhelli 2024 PLC (CS) 276*, and *Inspector General of Police Punjab versus Waris Ali reported in 2024 SCMR 1109*.

4. The respondents admitted the petitioners' initial appointments and redesignation as Assistant Executive Engineers in 2002. Regarding seniority, they partially admitted the 2018 seniority list but stated that certain individuals listed as junior to the petitioners had already been promoted to BPS-18 before this

seniority list. They have initiated verification of these individuals' promotion orders. However, the respondents do not deny the service-related aspects mentioned in paragraphs 4, 5, and 6 of the petition. Importantly, they submitted that the petition was/is not maintainable because the petitioners failed to file a departmental appeal before approaching this court. They concluded that the petitioners' claim against the KDA is not maintainable due to the lack of a prior departmental appeal and requested the dismissal of the petition.

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

6. Proforma promotion entitles eligible retired civil/public servants to the financial benefits of a missed promotion due to administrative issues. Former KDA Assistant Executive Engineers, citing unmet BPS-18 promotion criteria and KDA's inaction on DPC despite seniority and vacancies, sued after unsuccessful applications, claiming non-civil servant status. KDA acknowledged some details but sought dismissal for lack of prior departmental appeal.

7. The Supreme Court in the National Bank of Pakistan case supra ruled that granting pro forma promotion after retirement, especially when the initial supersession was not challenged promptly, lacks legal basis under the relevant service rules. The Supreme Court found the High Court's intervention unsustainable, as the retired employee had already received all due benefits. Consequently, the Supreme Court allowed the appeal, setting aside the High Court's judgment.

8. Promotion to higher posts usually requires the fulfillment of specific minimum educational qualifications prescribed in the relevant service rules or recruitment rules for that particular post. Degree qualifications are often a prerequisite for higher-level engineering positions (like Executive Engineer BPS-18). Service structures often have a hierarchy where diploma holders may enter at a certain level (e.g., Sub-Engineer BPS-11 or similar) with defined promotion paths within their stream. Progression to higher cadres typically necessitates acquiring a degree. However, the specific eligibility criteria for promotion to particular posts within the Karachi Development Authority (KDA) are detailed in the KDA's own service rules or the rules notified by the relevant government department for those engineering cadres. The aforementioned principle is settled by a three-member bench of the Supreme Court, in the case of Maula Bux Shaikh v. Chief Minister Sindh and others (2018 SCMR 2098).

9. Maula Bux Shaikh case supra, challenged a notification reserving BS-18 Executive Engineer promotion quotas for diploma and B. Tech. holders, arguing it prejudiced registered engineers like himself. The Supreme Court held that the government, not the Pakistan Engineering Council (PEC), determines promotion

qualification sufficiency. While PEC assesses qualification equivalency, it cannot prevent the government from promoting specific degree holders. Thus, the notification wasn't ultra vires the PEC Act. The Court dismissed the petition but cautioned against allowing unregistered individuals to perform professional engineering work.

10. Both *Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad* (PLD 1995 SC 701) and *Maula Bux Shaikh* case, supra, confirmed the government's authority to decide promotion qualification sufficiency. However, key questions remain: Can a promotion policy violating the PEC Act or other laws (potentially leading to criminal liability) be valid? And does preventing an Executive Engineer (BS-18) from performing their professional duties create discriminatory classes within the same cadre, violating Article 25 of the Constitution? The issue of whether a promotion policy violates the PEC Act or creates discriminatory classes within the same cadre is valid is currently pending adjudication before the Supreme Court in the case of *Ghulam Abbas Soomro vs The Province of Sindh, etc.* (Civil Appeal No. 84-K of 2023).

11. Given the pending Supreme Court case (*Ghulam Abbas Soomro*), this petition is disposed of based on the existing Supreme Court dicta. The respondent department will revive the petitioners' case if the *Ghulam Abbas Soomro* decision warrants it, subject to the eligibility of the petitioners under the recruitment rules for proforma promotion to the next rank.

JUDGE

HEAD OF CONST. BENCHES

