

IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-1398 of 2018
(*Ayaz-ul-Islam v Government 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: 29.04.2025

Mr. S. M. Shujja Abbas advocate for the petitioner.
Ms. Wajiha Mehdi, Additional Attorney General

ORDER

Adnan-ul-Karim Memon, J: The Petitioner, a former diligent employee of Pakistan Broadcasting Corporation (PCB), who retired in October 2016, claims he was the senior-most Store Officer since 10.10.2013 and had a vested right to be promoted to Senior Store Officer (SSO) when the Islamabad post became vacant on 11.11.2013. Despite repeated requests and informing the corporation about his impending retirement and potential pension benefits, he was denied promotion based on his seniority and fitness. He relies on Supreme Court precedents regarding timely promotion and seeks the court's intervention for antedated promotion with consequential benefits, submitting that the denial was unjust. He prayed that the PCB would declare him entitled to promotion as SSO and direct him to grant back benefits.

2. Learned counsel for the petitioner submitted that despite being the senior-most Store Officer (as of October 10, 2013) and the availability of a Senior Store Officer (SSO) vacancy in Islamabad from November 11, 2013, the Petitioner, who served diligently until his retirement in October 2016, was denied promotion. He argued that his repeated appeals to the corporation, even highlighting the impact on his post-retirement benefits, were ignored. Citing his seniority and fitness, along with relevant Supreme Court judgments, he claims this denial was unjust and seeks the court's directive for an antedated promotion to SSO with all associated benefits. He prayed for allowing this petition.

3. Learned AAG contended that the PCB contends the Constitutional Petition is not maintainable due to its non-statutory rules and lack of direct connection to the Federation, citing legal precedents. She argued that the petitioner lacks *locus standi* and cause of action, concealed facts, and that promotion is not a vested right, referencing a Supreme Court ruling. Learned AAG also claims the petition is time-barred. However, she acknowledged the petitioner's earlier promotion to SSO in Islamabad in 2000 but stated it was withdrawn at his request. The PCB asserted that the petitioner refused subsequent SSO opportunities in Islamabad in 2002 and 2009 due to unwillingness to relocate from Karachi (citing "homesickness"), even after initially consenting in 2002. They argue the

petitioner's desire to transfer the SSO post to Karachi was not accepted and that his current petition, filed post-retirement, is *mala fide* to gain inadmissible retrospective benefits. The PCB denies wrongly denying promotion, stating the petitioner was considered but unwilling to move to the vacant positions, and that the cited Supreme Court judgments are inapplicable as he was not ready to join the promoted role in Islamabad. They also dismiss the legal notice's merit and the petitioner's entitlement to promotion due to his unwillingness to relocate, requesting the court to shorten irrelevant parts of the petition.

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

5. We need to decide if the initial promotion withdrawal (occurring twice), the subsequent declined promotion in 2013 during active service, and the post-retirement request for proforma promotion in 2016 are legally sound.

6. The record shows that the petitioner was promoted to Senior Store Officer on May 31, 2000, and assumed the role on August 15, 2000, but this promotion was then rescinded by an order dated August 25, 2000, purportedly at his request, and he continued as a Store Officer. He was later considered for the Senior Store Officer position again in 2002 and 2009, even providing unconditional consent. However, on both occasions, he requested a transfer of the post to Karachi due to personal reasons (as per his letter dated September 24, 2022), which was denied (as per the letter dated January 20, 2009). After retiring in 2016, he filed the current petition seeking proforma promotion benefits.

7. It is well-settled law that once a promotion order is acted upon and the employee has benefited from it, the order cannot be rescinded or withdrawn, especially if it has created vested rights for the employee. This principle, often referred to as *animus revertendi* or *locus poenitentiae*, protects individuals from having their accrued benefits taken away after an order has been implemented. Reference can also be made to the cases of *Pakistan through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi* (PLD 1969 SC 407), *Capital Development Authority Through Chairman, Islamabad And Others v. Shabir Hussain And Others* (2022 SCMR 627) and *Mrs. Zeenat Parveen Jaffery versus Secretary to Government of Sind, Education Department and 4 others* [1983 P L C (C.S.) 1260].

8. Refusing a promotion prevents its effect, leaving the employee in their current role without immediate seniority impact and usually forfeiting benefits. However, the petitioner's 2000 promotion was already implemented before being wrongly recalled. Instead of disciplinary action, his promotion was unjustly blocked until his 2016 retirement, despite the SSO post at PBC Headquarters

being vacant from November 11, 2013, and his seniority as the top Store Officer. The competent authority must now consider his proforma promotion due to his potential eligibility, seniority, and the vacant position at the relevant time. The Supreme Court, in such a situation, in the cases of Ch. Muhammad Siddique (1998 SCMR 88) and the Government of N.W.F.P. vs. Buner Khan (1985 SCMR 1158) both dealt with proforma promotion. In the *Siddique case*, the Supreme Court upheld the Tribunal's decision that the respondent was entitled to seek promotion from the date the post was available or their case was deferred. In *Buner Khan*, the Court modified the Tribunal's order, directing that promotees be considered for promotion from the date vacancies in their quota arose.

9. Based on the arguments presented, this petition is successful. Consequently, the orders imposing a penalty of withholding the petitioner's promotion for a considerable time, with effect from 2000 to 2016, and denying his request for proforma promotion are overturned. The petitioner is now entitled to proforma promotion to the SSO position and the associated financial benefits as legally applicable within three months. This court is disposing of this petition along with pending application(s), if any, in the aforesaid terms.

JUDGE

Head of the Const. Benches