

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-5102 of 2021

(*Manzoor Ali 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: 27.05.2025**

Mr. Ali Asadullah Bullo advocate for the petitioner.

Mr. Khalid Mehmood Siddiqui advocate for respondents.

Ms.. Wajiha Mehdi Assistant Attorney General.

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**O R D E R**

**Adnan-ul-Karim Memon, J:** The petitioners are requesting the court to:

1. Declare the impugned Letter dated 26.07.2021 and the act of Respondents regarding non-consideration for promotion as illegal, violative of the fundamental rights as guaranteed under the Constitution of the Islamic Republic of Pakistan 1973 and set aside the same.
  2. Direct the Respondents to consider the case of petitioner on proforma promotion basis under fundamental Rule 17 along with consequential benefits.
  3. Any other relief(s) this Hon'ble Court may deem fit in given circumstances and in the great interest of justice.
2. The petitioner, an Electronics Engineer with the Civil Aviation Authority (CAA) since 1987, claims that he was unjustly denied a promotion to Additional Director, despite a long and satisfactory career. He was initially appointed in 1987, promoted to Senior Electronic Engineer in 2000, and his post was re-designated as Senior Joint Director in 2014.
3. Learned counsel argued that he was overlooked for promotion in January 2021, with junior officers being promoted instead, despite his 2020 Performance Appraisal Report (PAR) being submitted for consideration. He filed a departmental appeal in March 2021, highlighting his impending retirement in August 2021. The respondents, however, issued a seniority list placing him at serial No. 1, which confirmed his retirement date, and subsequently informed him his PAR score was below the required threshold for promotion. The petitioner's counsel contended that the respondents failed in their duty by not considering his 2020 PAR score, acting with *mala fide* intent to favor others, and causing him undue hardship and financial loss. He cited Fundamental Rule 17 of the ESTA Code, which provides for *proforma* promotion when an employee is wrongfully denied promotion. He asserted that he is entitled to *proforma* promotion after his

retirement in 2021 as his PAR score was, in fact, higher than the requirement. He argued that the respondents' inaction and discriminatory treatment of his case, compared to his juniors, warrant this court's intervention based on principles of natural justice, equity, and fair play. He emphasized that while promotion is not a vested right, consideration for promotion is, and he was denied this without lawful justification. He requests this court to declare the non-consideration of his promotion illegal, set aside the impugned order dated 26. 7.2021, and direct the respondents to grant him *proforma* promotion with consequential benefits. He prayed to allow the petition.

4. The respondents, counsel in turn, seek dismissal of the petition, arguing it is barred by laches as the petitioner was informed of his low PAR score in May 2021, seven months before filing this petition. He asserted that the CAA, lacking statutory rules, operates under the master-servant relationship, making the petition non-maintainable. He denied any violation of service regulations and emphasized that promotion is not a vested right. He stated that the petitioner was considered but did not meet the minimum PAR score of 13 for promotion to EG-07, and that higher posts are filled based on merit and suitability, not seniority alone. He further contended that the petitioner's request for *proforma* promotion was solely for financial gain, with no prior allegations of bias or discrimination. He further argued that Rule 35 of revised CAA 2019 rules governs promotions for EG-07 and above. This rule requires employees to meet service, qualification, and experience standards, maintain a satisfactory performance record, and have no disciplinary issues. He next submitted that on the subject position the selection is based on merit and suitability, with seniority as a tie-breaker. He argued that the Promotions to EG-07, EG-09, and EG-10 are vacancy-dependent, while EG-08 time-bound promotions are effective upon Selection Board recommendation. However the petitioner failed to meet the eligibility criteria as such was found not fit to be promoted on the subject position. He prayed for dismissal of the petition.

5. Learned Assistant Attorney General is of the same view and prayed for dismissal of the instant petition.

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

7. The Supreme Court has repeatedly held that promotion is not a guaranteed right for civil/public servants. We observe that the respondent CAA acted lawfully in the Petitioner's case, adhering to the relevant regulations. The Petitioner's counsel failed to demonstrate any deviation from these rules by the Respondents. Therefore, given this legal precedent and the Department's lawful actions, no declaration can be issued in the Petitioner's favor as the subject post is the selection post based on pure merit as such no vested right can be claimed based on the aforesaid analogy.

8. In the case of National Bank of Pakistan through its President Versus Sajjad Ali Khaskhelli and another (2024 PLC (CS) 276), the Supreme Court held in Paragraph 3 that the Respondent's unchallenged supersession in 2010 rendered his subsequent constitutional petition before the High Court time-barred (suffered from laches). Furthermore, the Respondent's claim for pro forma promotion lacked basis in the relevant service rules. Considering his retirement and receipt of all due benefits, the Supreme Court found the High Court's intervention unsustainable under the relevant law and rules governing the Bank's employees. Consequently, the petition was converted into an appeal, allowed, and the Peshawar High Court's judgment was set aside.

9. This court rejects the petitioner's reliance on Fundamental Rule (FR) 17(1) for pro forma promotion, which was omitted by the Finance Division through SRO No 965(I)/2022 dated May 20, 2022, as such no reliance can be placed on such repealed proviso of the fundamental rule. While FR 17(1) previously allowed back pay for wrongly denied promotions, the petitioner's case was/is different as he failed to meet the minimum PAR score of 13 for EG-07 promotion as reported by the CAA and we have no material placed on record to contradict it. This court emphasized that higher posts are filled by merit and suitability, not solely seniority. Given the petitioner's retirement in 2021, this court find it unnecessary to refer the case back to the Selection Board (SB) in 2025. Besides the current legal framework does not recognize pro forma promotion for retired public servants. Without a legal basis, this court cannot compel the CAA to take an action impermissible by law. Guidance on this matter can be found in the judgments of the Supreme Court in the cases of Secretary Ministry of Finance, Finance Division, Government of Pakistan Versus Muhammad Anwer (2025 SCMR 153), National Bank of Pakistan through its President Versus Sajjad Ali Khaskhelli and another (2024 PLC (CS) 276), and Inspector General of Police Punjab versus Waris Ali (2024 SCMR 1109).

10. Based on the aforementioned discussion and keeping in view the legal position of the case, we find no merit in this petition that justifies intervention by this Court. Consequently, the Constitution Petition and any pending applications are dismissed.

JUDGE

Head of the Const. Benches