

THE HIGH COURT OF SINDH, KARACHI

Before:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No D-3073 of 2020

(Muhammad Misbah Tunio v. Federation of Pakistan & others & others)

Petitioner : through Talha Abbasi, advocate.
Respondents No. 1 Ms. Zehra Sehar, Assistant Attorney General
Dates of hearing : 12-05-2025
Date of order : 12-05-2025

ORDER

Muhammad Kari Khan Agha, J., The Petitioner pleads that this Court nullify the High Powered Selection Board's (HPSB) decision of his non-promotion and mandate his promotion consideration by the HPSB, effective from the dates his juniors were promoted.

2. A senior BS-21 officer of the Pakistan Administrative Service (PAS), holding an unblemished record, served as Managing Director of the National Security Printing Company (NSPC), petitions this Court. He highlighted being repeatedly denied promotion to BS-22 by the HPSB since 2016, despite his seniority and merit. He stated that no reasons were given for these non-recommendations, nor was he granted a hearing in terms of Article 10-A of the Constitution. Fearing potential forced retirement under the Civil Servants (Directory Retirement from Service) Rules, 2020, due to these repeated oversights, the Petitioner submitted that the HPSB's unfair and subjective treatment violated his fundamental rights and principles of natural justice. He asserted a legitimate expectation for career advancement and submitted that the denial of promotion, lacking valid justification, is unlawful and impacted his livelihood. Consequently, he seeks this Court's intervention to nullify the HPSB's decision, mandate his reconsideration for promotion effective from his juniors' promotions, and prevent any adverse actions against him.

3. The petitioner's counsel argued that the Respondent unfairly and unreasonably denied the petitioner's promotion, violating Supreme Court precedents and Article 4 of the Constitution, which requires just and fair actions from public officials. He argued that this denial deprived the petitioner of a vested right and legitimate expectation of career advancement, supported by case law like "**2000 PLC (CS) 103.**" The counsel emphasized that promotion decisions must be objective and impartial, but the petitioner was unjustly denied his due

promotion during his tenure of service. Furthermore, the Respondent's actions violated Section 24-A of the General Clauses Act, 1897, which mandated fair and reasonable exercise of power with stated reasons. This Court in "**2003 PLC (CS) 503**" underscored the importance of fair career advancement for civil servants' morale and integrity. Denying promotion equated to depriving the petitioner of his livelihood and associated benefits, contravening constitutional obligations. Given the 2020 Rules allowing retirement after two non-recommendations, an objective HPSB assessment is crucial, and the current decision lacked reasonableness. The petitioner reasonably fears arbitrary power and hardship due to the ongoing retirement process for those with two non-recommendations.

4. The learned Assistant Advocate General (AAG) argued that promotion to the position of Secretary (BS-22) is based on merit, as outlined in the Civil Servants Act, 1973, and the Civil Servants (Promotion to the Post of Secretary, BS-22 and Equivalent) Rules, 2010. He stated that the High Powered Selection Board (HPSB) thoroughly reviewed the Petitioner's case in several meetings, evaluating his service history, including Performance Evaluation Reports (PERs), training records, leadership qualities, experience, decision-making abilities, integrity, competence, and dedication to public service. The AAG pointed out that the HPSB identified shortcomings in the Petitioner's profile, such as a history of average PERs (with one upgrade), insufficient secretariat experience at the BS-21 level, concerns regarding his integrity and competence, a lack of motivation, and weak decision-making skills. Consequently, the Board rated him poorly in crucial areas and reaffirmed its previous decision during the June 2020 meeting. The AAG stressed that promotion is not an entitlement but rather a matter of consideration, and that the HPSB's evaluation was conducted according to established regulations. Finally, he clarified that the commencement of retirement proceedings under the 2020 Rules is a distinct issue.

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

6. What are the legal consequences when a civil/public servant is recommended for supersession twice by the HPSB/ Selection Board, and these recommendations are approved by the competent authority? Furthermore, is this act of supersession considered a form of punishment?

6. In civil service, "supersession" specifically means selecting a junior for promotion over a senior based on a comparative review of their service records by the appointing authority. This process of comparing merits and overlooking a senior individual is essential for supersession to occur. Such supersession, according to the Peshawar High Court in the Saeed Muhammad Zai case (2017

PLC (CS) 738), inherently implies punishment due to allegations against the civil servant.

7. Section 13(2) of the Civil Servants Act, 1973, allows disciplinary action for civil servants who: (a) received two or more penalties under Efficiency & Discipline Rules, 1973; (b) have "Average" ACRs and/or finalized adverse remarks on key performance indicators; (c) are twice recommended for supersession by the Selection Board/DPC with approval; or (d) have specific grounds for retirement like persistent corruption, disproportionate assets, or frequent unauthorized absence. The Establishment Division's Promotion Policy/Rule 2020 requires informing superseded/deferred officers (including those facing retirement on similar grounds) of the reasons to enable improvement or address deficiencies.

8. The Muhammad Rashid Bhatti case (2018 SCMR 1995) established that supersession, a condition of service, involves deliberate bypassing for promotion based on DPC review, and FR-17 doesn't apply to such cases. Here, respondents justify denying the petitioner's BS-22 promotion based on a merit system and HPSB's repeated non-recommendations (2015-2020) due to issues in his June 2020 assessment (poor training, insufficient experience, questionable integrity/competence, lack of motivation, weak decision-making). Without a 2019 PER, this stood, approved by the authority. However, the petitioner, promoted to BS-21 in 2011 on merit and second in seniority (31.01.2020), submitted that he was wrongly ignored despite a positive 2019 evaluation highlighting his strong performance and contributions. His previous supersession was also converted to deferment by court orders (Islamabad High Court dated 27.09.2018, and Supreme Court dated 25.10.2018).

9. The case's facts suggest that despite multiple considerations for promotion, the petitioner was consistently superseded, subsequently changed into deferment due to various reasons already mentioned.

10. The Supreme Court in the National Bank of Pakistan case 2024 PLC (CS) 276 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.

11. The petition is dismissed. Following the Supreme Court's decision in the National Bank of Pakistan case, supra, reopening this matter after the petitioner's

2022 retirement is not permissible. Furthermore, the petitioner failed to diligently pursue the case before the deletion of Fundamental Rule 17 in 2021 and did not obtain an order to keep the position vacant while the petition remained pending since 2020. Therefore, this issue is now closed.

HEAD OF CONST. BENCHES

SHAFI

JUDGE