

JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE
JUDICIAL DEPARTMENT

Service Appeal No.01 of 2016

Anjum Mumtaz Malik
Versus
Registrar, Lahore High Court, Lahore & others

JUDGMENT

Date of hearing: 15.11.2024.
Appellant by: Mr. Bilal Bashir Mian, Advocate.
Respondent by: Mr. Zawar Ahmad Sheikh,
Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J. / CHAIRMAN:-

Through instant appeal, appellant has assailed vires of order / letter dated 02.02.2016, issued by respondent, whereby appellant's request for grant of proforma promotion as Additional District & Sessions Judge was declined due to adverse remarks in his PER for the period from 01.01.2009 to 06.05.2009.

2. Brief facts of the case are that vide Notification dated 06.04.2010, as many as eight Senior Civil Judges were promoted as Additional District & Sessions Judges on officiating basis, however the appellant was deferred due to adverse remarks in his PER for the period from 01.01.2009 to 06.05.2009. Later on, appellant was promoted as Additional District & Sessions Judge vide Notification dated 15.12.2014, however with immediate effect. Appellant challenged letter dated 24.08.2010, whereby adverse remarks in the PER of afore-referred period were communicated, by filing Service Appeal No.08 of 2011, which was disposed of vide judgment dated 22.01.2016 with the observation that if there existed no

adverse entry in PERs of next three years from 07.05.2009, the adverse remarks appearing in PER for the period from 01.01.2009 to 06.05.2009 would not stand in the way to consider appellant for further promotion. Pursuant to said decision, appellant approached respondent with the request to grant him proforma promotion from the date when the next junior Judicial Officer to him was promoted as Additional District & Sessions Judge. However, his request was declined by way of impugned order / letter dated 02.02.2016, which is under-challenged through this appeal.

3. Learned counsel for appellant submits that when a civil servant is deferred for promotion and his batch-mates are promoted, his subsequent promotion must be from the date when his juniors were promoted and esteemed judgments of Hon'ble superior Courts on the subject have been ignored while declining appellant's request for grant of proforma promotion. He has relied upon *Deputy Inspector-General of Police, Gujranwala and others v. Anwar Saeed, Inspector Police and others [1997 PLC (C.S.) 584]* and *Managing Director (Power), WAPDA and others v. Muhammad Luqman (PLD 2003 Supreme Court 175)*.

4. Contrarily, learned Legal Advisor of respondent defends the impugned order and submits that adverse remarks in the PER became hurdle in his way to next promotion at relevant time. He adds that owing to adverse remarks, appellant cannot claim to have flawless and unblemished service record and proforma promotion is granted on the basis of clean service. He further submits that colleagues of appellant were promoted on officiating basis subject to assumption of charge of the post, therefore, appellant was not eligible at that time owing to adverse remarks in his PER, therefore, he cannot claim

proforma promotion from the date when his colleagues were promoted.

5. Arguments heard. Available record perused.

6. The sole allegation / excuse for not granting promotion to appellant as Additional District & Sessions Judge from due date i.e. 06.04.2010 is the adverse remarks appearing in his PER for a period of almost 04-months commencing from 01.01.2009 to 06.05.2009, legality and validity of the adverse remarks recorded therein are not the issues to be determined by us. However, the respondent has not shown to us if there are any adverse entries in the PER(s) of the appellant prior or after the afore-referred period. It is also not the claim of respondent that appellant was even otherwise not eligible for promotion at the relevant time.

7. A perusal of the record shows that the appellant agitated the matter regarding the adverse remarks in his PER by filing Service Appeal No. 08 of 2011, which was disposed of by a judgment dated 22.01.2016, referencing a ruling of the Hon'ble Administration Committee of the High Court dated 24.05.2014. In that ruling, it was resolved that adverse remarks concerning the integrity of an officer could be ignored, provided he earned three consecutive satisfactory PERs. Undeniably, the appellant successfully met the condition of earning three consecutive satisfactory PERs and thereby overcame the hurdle. Therefore, he has the right to be considered for proforma promotion from the date when his juniors were promoted. In cases where a temporary embargo has been placed on a civil servant's right to promotion, or legal restraint has been imposed on his/her claim, the removal of such obstacles entitles the officer to remedy the monetary loss and loss of rank through proforma promotion. There is no dispute with the proposition that it is an inalienable right of every civil servant to be considered for promotion along

with his batchmates once he fulfills the eligibility criteria. Reliance is placed upon Abdul Jabbar Khan v. Government of Sindh through Chief Secretary, Karachi and 5 others (1996 SCMR 850), Chairman, State Life Insurance Corporation of Pakistan, Karachi and others v. Siddiq Akbar (2013 SCMR 752), Chief Secretary, Sindh v. Riaz Ahmed Massan and another (2016 SCMR 1784), Arshad Ali v. WAPDA and others [2020 PLC (C.S.) 1226] and Wadhu Mal v. Province of Sindh through Principal Secretary Chief Minister and 3 others [2023 PLC (C.S.) 1310].

8. The argument of the learned counsel for the respondent, that the promotion of the appellant (w.e.f. 15.12.2014) as well as his colleagues (w.e.f. 06.04.2010) was on an officiating basis, subject to assumption of charge, and that the appellant cannot claim proforma promotion from the said date, is misconceived. No doubt, an officiating promotion is inherently temporary, intended for situations where posts are vacant due to deputation, suspension, or leave of the incumbent, and does not confer a substantive right to the promoted position. However, in the instant case, the promotion of the appellant's colleagues as Additional District & Sessions Judges was made in accordance with the eligibility criteria for substantive posts, after fulfillment of all legal requirements, and their promotion was not rescinded at any subsequent stage. Officiating promotions cannot permanently preclude civil servants from receiving proforma promotions if they satisfy all criteria and their juniors have been promoted to substantive posts. The Punjab Judicial Service Rules, 1994, mandate that promotions to posts such as Additional District and Sessions Judges must adhere to the principles of seniority-cum-fitness. The appellant, having fulfilled the necessary conditions for promotion, is entitled to proforma promotion from the date his juniors were promoted.

These rules ensure transparency and fairness in promotions, protecting the rights of senior officers. Needless to say, an appointment by promotion on an officiating basis, under Rule 13(1) of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, can be made against posts that fall vacant due to the circumstances mentioned in the said Rule. We specifically asked the learned Legal Advisor for the respondent whether the posts against which the appellant's colleagues were promoted had fallen vacant as a result of any of the situations mentioned in Rule 13(i) of the said Rules. He frankly conceded that this was not the case, and that the respondents were promoted against regular vacancies. It is further noted that, vide Notification dated 21.04.2010, the posting and transfers of the appellant's colleagues were made, requiring them to assume charge of their new place of posting on or before 26.04.2010, without passing any fresh order for their regular promotion, and they assumed charge accordingly.

Even otherwise, the issue has been settled by the Supreme Court of Pakistan in the case reported as *Secretary to Government of Punjab, Communication and Works Department v. Muhammad Khalid Usmani & others [2017 PLC (C.S.) 373]*, wherein it has been observed that the device of officiating promotion is used by government departments to keep civil servants under their influence, which creates a constant source of insecurity, uncertainty, and anxiety for them. Such a practice should be discouraged. It was further observed that promotion on an officiating basis should be resorted to only under the circumstances outlined in Rule 13(i) *ibid.*

9. Needless to say, the principle of proforma promotion seeks to ensure fairness in cases where administrative inefficiency or procedural delays result in a senior civil servant being bypassed. Adverse ACRs, once resolved or mitigated

through subsequent satisfactory reports, lose their impact on the civil servant's promotion eligibility. Officiating promotions cannot permanently preclude civil servants from receiving proforma promotion if they satisfy all criteria and their juniors have been promoted to substantive posts. Failure to grant proforma promotion in such cases would contravene the principles of fairness and equity.

10. In view of the above, instant appeal is **allowed**. Consequently, impugned order / letter dated 02.02.2016 is set aside with the observations that Departmental Authorities should proceed to consider the case of appellant for proforma promotion in accordance with law.

(Muhammad Sajid Mehmood Sethi)
Chairman

(Abid Husain Chattha)
Member

(Rasaal Hasan Syed)
Member

APPROVED FOR REPORTING

Chairman

Member

Member

Sultan