

**JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE**

Service Appeal No.14 of 2021

Nazir Ahmed Langah

Versus

Lahore High Court, Lahore through its Registrar

JUDGMENT

Date of hearing: 24.04.2024.

Appellant by: In person.

Respondent by: Mr. Zawar Ahmad Sheikh, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J. / CHAIRMAN:-

Through instant appeal, appellant has assailed order dated 22.11.2021, passed by respondent, whereby appellant's request for grant of proforma promotion as District & Sessions Judge to the extent of pensionary benefits was declined.

2. Brief facts of the case are that appellant was dismissed from service on 28.03.2011, however the said order was set aside by this Tribunal vide judgment dated 17.06.2016, passed in Service Appeal No.25 of 2011. Respondent assailed said decision before the Supreme Court of Pakistan in Civil Appeal No.2364 of 2016, which was accepted and matter was remanded to this Tribunal for decision afresh. In post remand proceedings, this Tribunal vide judgment dated 28.04.2017, converted appellant's punishment of compulsory retirement into censure whereas prayer regarding reinstatement and back benefits was declined. Appellant challenged said decision by way of filing Civil Petition No.1728-L of 2017 (Civil Appeal No.1562 of 2017), and the Supreme Court of Pakistan vide order dated 24.11.2017 directed the authority to decide the question of back benefits in the light of decisions of the Apex Court. Later on, vide Notification dated 15.05.2018, the intervening period of appellant for

which he remained out of service till the date of superannuation was treated as on duty for the purposes of financial back benefits. Vide letter dated 10.09.2018, it was clarified that a vacant post of Additional District & Sessions Judge was available for the intervening period, so appellant was advised to draw the admissible financial back benefits against the said vacant post. Appellant made request for grant of proforma promotion to the rank of District and Sessions Judge for grant of pensionary benefits, however the same was declined and communicated vide letter dated 22.11.2021. Hence, instant appeal.

3. Appellant, in person, submits that impediments i.e. pending disciplinary proceedings and complaints in the way of appellant's promotion had been removed, hence there was no lawful justification to deny proforma promotion and pensionary benefits to appellant. He has referred to *Divisional Superintendent, N.W.R., Lahore v. Muhammad Sharif, Booking Clerk, N.W.R. Gujarat (PLD 1963 Supreme Court 340)*, *Muhammad Sharif and others v. Inspector General of Police, Punjab, Lahore and others (2021 SCMR 962)* and *Muhammad Afzal Khan v. Registrar, Lahore High Court, Lahore and others [2016 PLC (C.S.) 408]*.

4. Conversely, learned counsel for respondent submits that appellant was ignored for promotion on 04.12.2009, however he filed the representation on 17.05.2018, which was barred by time. He adds that even the appeal in hand having been filed in December, 2021 is also barred by time inasmuch as the same is not accompanied by application for condonation of delay.

5. Arguments heard. Available record perused.

6. Perusal of record reveals that appellant was considered for promotion as District and Sessions Judge in the meeting of the then Provincial Judicial Selection Board held on 04.12.2009, however he was ignored, keeping in view the working paper prepared by the respondent which reflected that (i) appellant's PER for the year 2005 was yet to be recorded; (ii) PER for the period from 15.07.2008 to 31.12.2008 contained *adverse remarks qua integrity and fitness for promotion*; (iii) pursuant to order dated 30.04.2009 of the

Administration Committee, disciplinary proceedings, on the charges of using Government money which was in possession of Civil Nazir and for not returning the same, were pending against the appellant; and (iv) three Complaints bearing C.O.Nos.350/2009, 790/2009 and 852/2009 were pending against appellant.

7. We have gone through the record presented before us and it reflects that there was nothing adverse in the PER of appellant up to the year 2004, and PERs for the years 2006, 2007 and for the period from 31.03.2008 to 05.07.2008 were also clear. It has been apprised that PER for the period 01.01.2005 to 03.10.2005 has not been recorded by the Federal Government, however it is not the case of respondent that appellant had any fault in this regard. We are of the opinion that the appellant cannot be penalized by the act of the public functionaries in the light of dictum laid down by the Supreme Court of Pakistan in case reported as Muhammad Yasin v. Secretary, Government of Punjab and others (2007 SCMR 1769).

It is also a matter of record that complaints bearing C.O.Nos.350/2009, 790/2009 and 852/2009 had been filed on 25.01.2012, 05.01.2012 and 05.01.2012, respectively.

The adverse remarks in appellant's PER for the period from 15.07.2008 to 31.12.2008 still exist as appellant's representation in this regard had been declined. Appellant's PER for the period 28.07.2009 to 31.12.2009 is clear. In appellant's PER for the period 01.01.2010 to 31.12.2010, the Reporting Officer declared appellant as an average officer, however the Countersigning Officer observed that discreet inquiry report was against appellant, however no such material qua inquiry is available on record. Later on, appellant was compulsorily retired from service in the year 2011 and he remained under litigation till the age of superannuation, therefore, appellant's PERs for the years from 2011 to 2016 are not available on record and in this regard there is no fault of the appellant especially when the litigation qua disciplinary proceedings and other complaints ended in appellant's favour.

The disciplinary proceedings initiated on the orders of the Administration Committee culminated in passing order of appellant's compulsory retirement from service notified on 28.03.2011, which was finally converted into censure vide judgment dated 28.04.2017, passed by this Tribunal. The intervening period viz., 29.09.2011 to 19.12.2016 (appellant's retirement on attaining the age of superannuation) was declared as on duty and back benefits of the aforesaid period (as Additional District and Sessions Judge) were granted. We feel it appropriate to observe here that under well-settled principles of law, promotion cannot be deferred on the ground of pendency of some disciplinary or departmental proceedings, if otherwise he has fulfilled the criteria for consideration of promotion. Reference can be made to Mohammad Tarique Khan v. Trading Corporation of Pakistan (Pvt.) Ltd. through Chairman and 5 others [2024 PLC (C.S.) 91].

8. It is manifest from available record and preceding discussion that all the hurdles which prevailed upon the then Provincial Judicial Selection Board, detailed in para 6, have been vanished, thus, we are of the view that appellant has vested right to be considered for proforma promotion with consequential seniority and monetary benefits even after his retirement. There is no cavil to the proposition that it is an inalienable right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria. We are fortified from the dictum laid down in cases reported as Abdul Jabbar Khan v. Government of Sindh through Chief Secretary, Karachi and 5 others (1996 SCMR 850) and Wadhu Mal v. Province of Sindh through Principal Secretary Chief Minister and 3 others [2023 PLC (C.S.) 1310].

9. So far as argument of learned counsel for respondent that appellant's representation was time barred, suffice it to say that disciplinary proceedings started against appellant in the year 2009 and remained pending when he attained the age of superannuation, however culminated vide judgment dated 28.04.2017 by way of conversion of compulsory retirement into censure, and regarding back

benefits, the Supreme Court of Pakistan vide order dated 24.11.2017 directed the authority to decide the same. Ultimately, back benefits were granted as reflected from letter dated 12.05.2020, issued by District & Sessions Judge, Rahim Yar Khan and report dated 08.05.2020, issued by the District Accounts Officer, Rahim Yar Khan. In view of peculiar facts and circumstances and our opinion that appellant is entitled to the grant of proforma promotion; the objection qua limitation is not tenable.

10. In view of the above, instant appeal is **allowed** and impugned order is set aside. Appellant is entitled to the grant of proforma promotion and consequent monetary benefits as per law.

(Muhammad Sajid Mehmood Sethi)
Chairman

(Abid Husain Chattha)
Member

(Rasaal Hasan Syed)
Member

APPROVED FOR REPORTING

Chairman

Sultan