

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE
JUDICIAL DEPARTMENT

Service Appeal No.11 of 2021

Muhammad Ameen Shehzad

Versus

Lahore High Court, Lahore through Registrar

J U D G M E N T

Date of hearing: 22.06.2023.
Appellant by: Hafiz Tariq Nasim, Advocate.
Respondent by: Mr. Zubda-tul- Hassan, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J. / MEMBER:-

Through instant appeal, appellant has assailed vires of order dated 15.11.2021, passed by respondent, whereby appellant's representation for grant of proforma promotion as Senior Civil Judge, was declined.

2. Brief facts of the case are that appellant joined the District Judiciary as Civil Judge on 13.11.2000, however, his performance not being up to the mark adverse remarks were recorded in three Performance Evaluation Reports ("PERs") for the period w.e.f 11.05.2009 to 31.12.2009, 02.05.2011 to 31.12.2011 and 01.01.2012 to 26.04.2012 and the same were challenged through Service Appeals No.04 of 2013, 18 and 19 of 2014 and during the pendency of titled appeals, appellant became eligible for promotion to the rank of Senior Civil Judge in December 2014, when the appellant's promotion case was considered along with his juniors but the appellant was deferred and certain others were promoted vide order dated 15.12.2014. Again the appellant's promotion case was considered in the year 2015 but deferred due to the pendency of Service Appeals before this Tribunal. The afore-referred appeals were decided by the Tribunal vide judgments dated 12.02.2016 directing that

for the period commencing from 27.04.2012 onwards, if there is no adverse entry in the PERs of the appellant for the next 3 years, then the impugned remarks recorded in PERs will not stand in the way of consideration of appellant for further promotion. However, the appellant was promoted on 06.12.2019 as Senior Civil Judge. Feeling aggrieved, appellant filed departmental appeal/representation for grant of proforma promotion but the same was rejected through order dated 15.11.2021, hence this Service Appeal.

3. Learned counsel for appellant submits that despite rendering 23 years of unblemished judicial service, appellant is being denied proforma promotion from the date when his juniors / batch mates were granted promotion, which is not only clear violation of applicable law, but same amounts to frustrate the fundamental rights of appellant. He has referred to The Province of the Punjab through the Secretary, Services and General Administration, Lahore v. Syed Muhammad Ashraf (1973 SCMR 304), Iftikharullah Malhi v. Chief Secretary and another (1998 SCMR 736) and Faiz Muhammad and another v. Member (Revenue), Board of Revenue, Punjab and 2 others [1984 PLC (C.S.) 1554]. He adds that appellant's case was considered by the authority and deferred on account of some adverse remarks in PERs, however, after disposal of aforementioned appeals, the appellant was eligible for promotion to the rank of Senior Civil Judge w.e.f. 15.12.2014.

4. Contrarily, learned Legal Advisor of respondent defends the impugned order.

5. Arguments heard. Available record perused.

6. Appellant is seeking proforma promotion as Senior Civil Judge w.e.f. 15.12.2014, when appellant was deferred and his juniors were promoted.

7. Undeniably, temporary hurdle of adverse remarks in the PERs for periods in question remained no more as hurdle in the

way of appellant in the light of judgments dated 12.02.2016 passed in Service Appeals No.04 of 2013, 18 and 19 of 2014. The operative part of the observations in Service Appeal No.19 of 2014 is reproduced as under: -

“4. In the sequel we accept the above noted request of the appellant’s counsel and accordingly direct that for the period commencing from 27.04.2012 onwards, if there is no adverse entry in the Performance Evaluation Reports during the next three years then the impugned remarks recorded in Performance Evaluation Report for the period from 01.01.2012 to 26.09.2012 will not stand in the way of consideration of the appellant for further promotion.

5. Disposed of.”

8. It is evidently clear that if PERs of next three years from 27.04.2012 do not contain any adverse entry, the adverse remarks in PER in question would not be considered while taking up matter of appellant’s promotion. It is not denied that appellant possessed clear PERs for subsequent three years from 27.04.2012, thus appellant is entitled to be granted proforma promotion from the date when his juniors were so promoted i.e. 15.12.2014 as adverse entries in his previous PERs stood removed in the light of afore-referred decision of this Tribunal.

9. Needless to say that proforma promotion means predating of promotion of a civil servant with effect from the date of promotion of his juniors for the purpose of payment of arrears and fixation of pay. It means that a civil servant who was entitled to be promoted from a particular date, but for no fault of his own, was wrongfully prevented from rendering service in the higher post, is entitled for proforma promotion and payment of arrears of pay/allowances and re-fixation of pay. The temporary embargo of adverse remarks was created against appellant’s right for such promotion and the said obstacle has been done away in the light of afore-referred judgment of this Tribunal, hence appellant’s monetary loss and loss of rank are liable to be remedied through proforma promotion. Reliance is

placed upon Arshad Ali v. WAPDA and others [2020 PLC (C.S.) 1226].

10. In view of the above, instant appeal is allowed. Consequently, impugned order is set aside. We direct that appellant be considered for proforma promotion when his juniors were granted such promotion i.e. 15.12.2014.

(Mirza Viqas Rauf) (Muhammad Sajid Mehmood Sethi)
Chairman Member

Announced in open Court on _____

Chairman

Member

Sharif