

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Amir Hani Muslim
Mr. Justice Ejaz Afzal Khan
Mr. Justice Mushir Alam

Civil Petition No.80-Q of 2010

Against the judgment dated
14.4.2010 passed by the Baluchistan
Service Tribunal Quetta in S.A No. 21
of 2006

Amanullah

Petitioner(s)

VERSUS

Government of Baluchistan & 02 others

Respondent(s)

For the Petitioner(s):

Mr. M. Munir Paracha, ASC

For Respondents No.1-2:

Mr. Shaiq Baluch, AAG Baluchistan

For Respondent No.3:

Mr. Hassan Raza Pasha, ASC

Date of Hearing:

25.4.2014

ORDER

Mushir Alam, J.- Instant Civil Petition for leave to Appeal under Article 212(3) of the Constitution of Pakistan, 1973 arises out of an order dated 14.4.2010 passed by the Baluchistan Service Tribunal, Quetta.

2. Brief facts as may be necessary to appreciate the rival contentions of the parties appear to be that the Respondent No.3 Adam Khan was appointed as Risaldar in Levies on 23.12.1993. Appellant, Amanullah was appointed as Jamadar/Naib Risaldar in Levis on 18.12.1993. From the record it seems that Amanullah was favoured with out of turn promotion as Risaldar on 3.6.1999, which action was successfully challenged in Appeal by one Adil Muhammad who was senior to him consequently, Appellant was reverted to his original post as Naib Risaldar and said Adil Muhammad was promoted vide order in appeal dated 12.5.2003. Record show that the then Chief Minister of Balochistan on 9.8.2005 favoured Amanullah, with two stage out of turn promotion to Risaldar Major (B-14), overlooking ban and non availability of vacancy, beside ignoring seniority criteria as laid down in Section 9 of the Balochistan Civil Servants Act, 1974 and also by waiving

condition of consideration and recommendation of his case by the District Promotion Committee as required under Rule 7 of the Balochistan Civil Service (Appointment, Promotion and Transfer) Rule 1979, in negation of Balochistan Levies (B-1 to B-15) Rules 1990, consequently promotion order dated 25.11.2005 was issued by the Government of Balochistan, the Respondent No.1 herein.

3. The Respondent No.3 herein Adam Khan successfully challenged the above Order dated 25.11.2005 of the Respondent No.1 before the Balochistan Services Tribunal, Quetta. Learned Balochistan Services Tribunal, Quetta, in consideration of provisions contained in the Balochistan Civil Servants Act, 1974, Balochistan Civil Servants (Appointments, Promotion and Transfer) Rules, 1979, Balochistan Levies (B-1 to B-15) Rules 1990, and all other relevant laws/policy as in vogue allowed the appeal through impugned order dated 14.4.2010, relevant part of the impugned order is as follows:-

"15. In the instant case, a deviation was made from the rules and the selection was made by the Chief Minister which was arbitrary and without lawful basis. In this regard we are fortified by the Judgment reported in SCMR 1995 P-650, the relevant portion whereof is reproduced here-in-below:

"No doubt the competent authority has the discretion but it was not unfettered, while exercising discretion, the authority should not act arbitrarily, unreasonable and in complete disregard of the rules and regulations. The discretion to be exercised has to be judged and considered in the background of the facts and circumstances of each case. In the present case there is a strong background of ignoring for disapproving the appellant with certain proposes."

16. In view of the above discussion, we are of considered view that the appellant has been granted two steps out of turn promotion illegally for erroneous consideration. We regretfully disapprove such exercise of power by the then Chief Minister of the province. The impugned order dated 25.11.2005 is hereby set-aside being illegal and contrary to law. The respondent is reverted from the rank of Risaldar Major to the rank of Risaldar immediately. The respondent No.1 i.e. Secretary Home and Tribal Affairs is directed to place the case of appellant's promotion as Risaldar Major before the District Promotion Committee being senior most within a period of two months".

4. Mr. Muhammad Munir Paracha, learned ASC for the petitioner, contended that the Petitioner was condemned unheard by the Balochistan Service Tribunal, as the Appellant was not served any notice of Appeal, therefore impugned order is liable to be set-aside and the service appeal be remanded for decision afresh after hearing the Appellant. When attention of learned ASC was drawn to the order of the Balochistan Service Tribunal dated 5.06.2008, recording service of notice on the Appellant (page 71 of the Paper Book) and with copy of Notice of Service Appeal showing same address of

the Appellant as shown in the memo of Appeal, it was vainly argued that postman was not examined to prove service. We are afraid such contentions cannot be considered, sanctity is attached to the order of the Service Tribunal holding service good on the Appellant under given facts and circumstances no exception could be taken on this count.

5. It was next contended that in terms of Section 20 of the General Clauses Act 1956 read with other enabling provision of Section 39 (1) of the Government of Balochistan Rules of Business read with Schedule VII and Section 23 of the Balochistan Civil Service Act, 1974, the Chief Minister being the executive head of the Province, had all the authority and discretion to relax the Rules, and no exception to exercise of such authority could be taken. Arguments seemingly persuasive, when examined, is denude of any legal sanctity on more than one counts; firstly in terms of Article 240 read with Article 260 and 2A of the Constitution of Pakistan, 1973; terms and conditions of service of a person in the service of Pakistan and or Province right from very inception of appointment till its termination or retirement including all matters incidental and or falling in between are determined by or under the Act of Parliament or Provincial Assembly, as the case may be. Right to be consider for promotion of an employee is one of the essential term and condition of service. Secondly, section 23 of the Balochistan Civil Servant Act, 1974 does not confer any power on the Government of Balochistan, which could be exercised through the executive authority of the Province, to relax any rules framed under the Act, 1974 governing promotion of a Civil Servant. Even otherwise, Section 23 of the Balochistan Civil Servant Act, 1974 only empowers the Government of Balochistan to, deal with the case of any civil servant in such manner as may appear to it to be just and proper. Even than such discretion is not unfettered but is shackled and controlled by the Proviso to section 23 *ibid*; which *inter-alia* provides that “*where this Act or any rules is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favourable to him than that provided by the Act or such rule.*” Now examining the case in hand, appellant is in the service of Province of Balochistan. His terms and conditions of service are governed by special enactment namely Balochistan Civil Servant Act, 1974 and Balochistan Levies (B-1 to B-15) Rules, 1990. His promotion is regulated and controlled by Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979. In the matter of terms and conditions of services, Rule 7 thereof, mandates that promotion and transfer to the post in basic pay scale 2 to 16 and equivalent are to be made on the recommendation of the appropriate Departmental Promotion Committee and any promotion to higher grade is to be made on the recommendation of Provincial Selection Board. Section 9 of

the Balochistan Civil Servants Act, 1974 mandates promotion against non-selection post on the basis of seniority cum fitness. In instant case it is quite disturbing to note that the then Chief Minister, not only ordered out of turn promotion of the Appellant on purported meritorious service, but also waived off requirement of provisions of Rules 1979, bypassing District Promotion Committee. The act of extending favour and conferring benefit of promotion is not only against the fundamental rights of promotion of his peers on merits but, is also a glaring example of nepotism and undue favour, which act is also opposed to Oath of office of the Chief Minister, whereby he pledged to the people of his province to *"discharge my duties, and perform my function, honestly, to the best of my ability, faithfully in accordance with the Constitution of Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity solidarity, well being and prosperity of Pakistan...."* That in all, circumstances, I will do right to all manner of people, according to law, without favour, affection or ill-will" thus favouring the Petitioner with out of turn promotion as Risaldar by passing all those in deserving and waiting for promotion is against all cannon of norms and law, and in abdication of Oath of office thus cannot be sustained.

6. In a very recent case reported as Abdul Malik and others vs. Government of Balochistan through Secretary, Home and Tribal Department and others (2013 PLC (C.S.) 736), learned Division Bench of Balochistan High Court disapproved, for valid reasons, ad-hoc appointment of Risladars in the Provincial Levies Force on the directive of the Chief Minister. In the cited case, the High Court thoroughly examined the authority of the Provincial Government to relax rules. It was held therein Provincial Legislature had not granted the Provincial Government any power to 'relax' any rule. No provision existed in the *Balochistan Civil Servants (Appointments, Promotion and Transfer) Rules, 2009*, which may enable the Provincial Government to do any thing in the purported 'Relaxation of Rules.' It was further held that if persons were appointed as Levies Officers on the personal whims of a Minister or on the basis of 'sifarish' the fundamental rights of those aspiring to such post were transgressed (Article 18), to be considered equal before the law (Article 25(2) of the Constitution of Pakistan, 1973. The Court not only set aside the ad-hoc appointment of the Risaldar, declaring the same to be *void-ab-initio* but also directed them to refund all salaries and benefit received by them. In number of cases including Abdul Shakoor and others vs. Azad Government of the State of Jammu and Kashmir through Chief Secretary and others (2004 PLC (C.S.) 208), and in the case of Muhammad Sadiq and another vs. Federal Service Tribunal, Islamabad and others (2003 PLC (C.S.) 1029), this Court

disapproved practice of relaxing Rules by the executive authority to extend favour to dole out favour to blue eyed.

7. Under facts and circumstances of case, no exception to the well considered and reasoned decision dated 12.4.2010 of the Balochistan Service Tribunal could be taken. Leave is declined and petition is dismissed.

Judge

Judge

Judge

ISLAMABAD, THE
25th April, 2014
arshed

Approved for Reporting

