

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Intra Court Appeal No.241 of 2016
In
Writ Petition No.343 of 2015

Abdul Qadir Hayee.

Vs.

Prime Minister of Pakistan through his Principal Secretary, Prime
Minister Office, Islamabad and another.

Appellant's by : Sardar Muhammad Ghazi and
Shumayl Aziz, Advocates.
Appellant in person.

Respondent's by : Ch. Akbar Ali, learned Assistant
Attorney General.
Mr. Nadeem Arshad, Section
Officer (Litigation),
Establishment Division.

Date of hearing : 16.10.2019.

AAMER FAROOQ, J. - This appeal is directed
against judgment dated 11.04.2016, whereby the writ petition
filed by the appellant was dismissed.

2. The facts, in brief, are that the appellant was a civil
servant, who retired from service in the year 2004. He filed a
representation to respondent No.2 for proforma promotion
from the date when his juniors were promoted. He also filed a
writ petition bearing No.4190 of 2014, which was disposed of

on 30.09.2014 with direction to the respondents to decide the pending representation of the appellant after affording an opportunity of hearing to the appellant. The representation filed by the appellant was turned down by respondent No.2 in November, 2014. The said order was challenged by way of a petition under Article 199 of the Constitution, which has been dismissed vide the impugned order, hence the appeal.

3. Learned counsel for the appellant, *inter-alia*, contended that the matter pertains to fitness of the civil servant, hence this Court has jurisdiction under Article 199 of the Constitution; that matter does not suffer from *laches* and in any case in such like matters *laches* is no consideration for dismissal of a writ petition. It was contended that the Judge-in-Chambers has erroneously observed that since it is a question of eligibility, hence the Federal Service Tribunal (FST) has jurisdiction in the matter; that the order in question is not a speaking one and does not meet the criteria as provided in Section 24-A of General Clauses Act, 1897. Learned counsel further contended that the officers junior to the appellant were promoted and he has been denied promotion to BS-22 without any fault of his own, hence proviso to FR-17 is duly attracted. Reliance was placed on cases reported as "*Syed Muhammad Ashraf Shah Vs. Province of West Pakistan (Services and General Administration Department), Lahore*" (**PLD 1973 Lahore 42**), "*Muhammad Anis and others Vs. Abdul Haseeb*

and others” (PLD 1994 SC 539), “Muhammad Farooq Siddiqui Vs. Water and Power Development Authority through Chairman, WAPDA House, Lahore and another” [2006 PLC (C.S.) 1124], “N.W.F.P. Public Service Commission and others Vs. Muhammad Arif and others” (2011 SCMR 848), “Secretary Establishment Division, Government of Pakistan, Islamabad Vs. Aftab Ahmed Manika and others” (2015 SCMR 1006), “Messrs Friends Technical Engineering Association Muzaffarabad/Rawalpindi and 04 others Vs. Barrister Syed Iftikhar Ali Gillani and 24 others” (2018 CLC 54) and “Bahadur Khan and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and others” (2017 SCMR 2066).

4. Learned Assistant Attorney General, *inter-alia*, contended that the representation suffers from *laches*; that the appellant was duly considered for proforma promotion but his request was turned down as no ante-dated promotion can be granted; that the appellant has no right to be promoted.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. Admittedly the appellant retired from service in the year 2004 and did not take any action for proforma promotion under FR-17. He agitated the matter in the year 2014 almost after 10 years of his retirement and consequent upon the

direction by this Court the matter was taken up by respondent No.2 and his request for ante-dated promotion was turned down. A civil servant who has been denied promotion without any fault of his own can be granted the financial benefits had he been promoted under proviso to FR-17. The referred proviso reads as follows:-

“F. R. 17. (1) Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.

[Provided that the [appointing authority] may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the ante-dated fixation of his seniority.]

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed.”

7. In "Syed Muhammad Ashraf Shah Vs. Province of West Pakistan (Services and General Administration

Department), Lahore” (PLD 1973 Lahore 42), the Hon’ble Lahore High Court reiterated the principles regarding proforma promotion by observing that if a civil servant is deprived of serving on a higher post, for no fault of his own, but this occurs due to the fault or mistake of the Government and subsequently it is found that the civil servant was in fact entitled to serve on the higher post, he would be entitled to salary of the higher post because he has been deprived of rendering services in the higher post for no fault of his own. The sole basis for appellant seeking proforma promotion is that the officers/civil servants junior to him were promoted. The relevant laws for purposes of promotion is Civil Servants Act, 1973 and in case of promotion from BS-21 to BS-22, the Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010. Prior to 2010, the practice was to send the names of the civil servants in BS-21 to the Prime Minister, who being the Competent Authority after considering the merit would recommend for promotion the concerned civil servants in BS-22. It is pertinent to observe that the promotion from BS-21 to BS-22 is on the basis of selection. It is the right of every civil servant to be considered for promotion, however, it is not a vested right to be promoted. The appellant slept over his right even for proforma promotion for a considerable period of time and has been unable to point out the reasons for which he was not promoted and establish that the same were without any fault of his or it was a mistake by the Government; as

noted hereinabove, BS-22 is a selection post and it is not a vested right of every civil servant to be promoted to BS-22. If such was the case then every BS-21 civil servant, who retired in the same scale would make a petition for proforma promotion in BS-22. The appellant failed to establish the essential elements of proforma promotion as provided in the proviso to FR-17. Moreover, the decision impugned in the writ petition clearly stipulates that the appellant is not entitled for ante-dated promotion as his case does not fall within the purview of FR-17 Committee. No exception can be taken to the reasons which prevailed with respondent No.2 in dismissing the representation of the appellant inasmuch as the appellant did not point out any law on the basis of which the said finding could be set-aside.

8. There is no cavil with the proposition that eligibility of a civil servant regarding promotion falls within the terms and conditions of service and the matter regarding the fitness can be agitated before this Court. Reliance is placed on "*Secretary Establishment Division, Government of Pakistan, Islamabad Vs. Aftab Ahmed Manika and others*" **(2015 SCMR 1006)**. The Single Judge-in-Chambers while considering the issue of proforma promotion has placed reliance on an earlier decision handed down by the Division Bench of this Court in case titled "*The Prime Minister, etc vs. Maj. Retd. Mohammad Habib Khan*" **(ICA No.875-W of 2012)**. In the impugned order, it

has categorically been observed that it is the case of the appellant that he is eligible to be considered for proforma promotion, whereas respondent No.2 has held otherwise. This Court cannot consider the eligibility of a civil servant to be promoted, however, can only examine the fitness of a person for promotion. However, as noted above, the appellant failed to spell out the reasons which prevailed with Federal Government is not promoting him to BS-22 and also establish that it was without any fault on his part or it was due to mistake of Government. The judgment impugned does not suffer from any error of law or facts warranting interference.

9. In view of the above, the instant appeal is without merit and is accordingly **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 13th day of January, 2020.

JUDGE

JUDGE

M. Zaheer Janjua