

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD
JUDICIAL DEPARTMENT
I.C.A. No. 875-W of 2012.

The Prime Minister, etc.

Versus

Maj. Retd. Mohammad Habib Khan.

Date of hearing: **03.12.2015.**

Appellants by: ***Raja Khalid Mehmood Khan, DAG.***

Respondent by:- ***Sahibzada Ahmed Raza Kasori and Syed Pervaiz Zahoor Gillani, advocates.***

Athar Minallah, J:-

The instant Intra Court Appeal is directed against judgment dated 13-11-2012, passed in W.P. No. 2991 of 2011, whereby the learned Single Judge in Chambers declared the respondent to be entitled to pro forma promotion to BS-22 w.e.f. 01-04-2004 with all back benefits.

2. The facts, in brief, are that the respondent had invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "***Constitution***") seeking implementation of judgment dated 12-06-2006, passed by the learned *Federal Service Tribunal*. The learned *Federal Service Tribunal*, vide its judgment

dated 12-06-2006, had accepted the appeal of the respondent and the operative part is as follows:

"As such, we convert the appellants' supersession into deferment from the same date i.e. 06-09-2002. The respondents are further directed to antedate the promotion of the appellants accordingly and restore their original seniority as it existed prior to 06-09-2002. As a result of this action, the appellants would be entitled to all the back benefits".

3. The judgment of the learned *Federal Service Tribunal* was implemented by issuing memorandum dated 19-06-2012, whereby the supersession dated 06-09-2002 in case of the respondent was converted to deferment, while through another memorandum, dated 20-09-2012, the seniority of the respondent as on 20-02-2003 had been restored. To the extent of the judgment dated 12-06-2006, passed by the learned *Federal Service Tribunal*, the same stood implemented pursuant to issuance of the aforesaid two memorandums. The question, therefore, for our consideration is whether the learned *Single Judge in Chambers* had rightly declared the respondent to be entitled to proforma promotion in BS-22 w.e.f. 01-04-2004?

4. The learned *Deputy Attorney General* has contended that; proforma promotion is not a vested right; the respondent was not entitled to proforma promotion, since till his retirement, after reaching the age of superannuation, no officer junior to him nor one step senior was given promotion in BS-22. The officer senior to the respondent had retired after reaching the age of superannuation while being in BS-21; whereas his junior was promoted to BS-22 on 20-04-2006 i.e. after the retirement of the respondent, the petition was filed for the implementation of the judgment passed by the learned *Federal Service Tribunal*, dated 12-06-2006, and the same does not include any declaration or direction regarding the granting of proforma promotion; the law provides for considering officers for the purposes of proforma promotion, and without fulfilling the requirements thereof, no person can claim to be entitled to proforma promotion.

5. The learned counsel appearing on behalf of the respondent has argued that; declaring the latter to be entitled to proforma promotion in BS-22 was within the power and jurisdiction of this Court, while exercising its powers under Article 199 of the Constitution; the judgment delivered by the learned *Federal Service Tribunal* makes it obvious that the respondent was deprived of his right to be promoted, and thus after his retirement he was entitled to proforma promotion; the respondent has been treated differently as other similarly placed officers have been extended the benefit of proforma promotion, and thus it is a case of discrimination; the denial of proforma promotion in the case of the respondent is in violation of the principles of legitimate expectations.

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 servants 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].

9. It is, therefore, evident that proforma promotion entitles a civil servant to payment of arrears of pay and allowances of a higher post. It is not a vested right and is within the exclusive jurisdiction of the 'appointing authority' to direct, if satisfied that the conditions prescribed in the proviso to FR-17 are fulfilled, that the prescribed benefits through proforma promotion are extended to a civil servant. The conditions required to be fulfilled for being eligible to be considered by the appointing authority in respect of the benefits of proforma promotion are; (i) the person must be a civil servant and, (ii) he/she was entitled to promotion from a particular date and, (iii) was wrongfully prevented from rendering service to the Federation in a higher post for no fault of his/her. Only if the appointing authority is satisfied that these three conditions are met then a direction may be issued for extending the benefits of pay and allowances through proforma promotion.

6. The learned *Deputy Attorney General* and the learned counsel for the respondent have been heard and the record perused with their able assistance.

7. It is not denied that the judgment dated 12-06-2006, passed by the learned *Federal Service Tribunal*, was implemented vide memorandums dated 19-06-2012 and 20-09-2012 respectively. However, the question for consideration is whether the learned *Single Judge in Chambers*, while exercising powers under Article 199 of the Constitution, could have declared the respondent to be entitled to proforma promotion in BS-22 w.e.f. 01-04-2004, particularly when no such direction or determination had been issued or made by the learned *Federal Service Tribunal*.

8. The Fundamental Rules (hereinafter referred to as the "***Fundamental Rules***") refers to proforma promotion. FR-17(1) of the Fundamental Rules, and more particularly the proviso thereto, deals with proforma promotion and the same is as follows:

"FR-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

10. The appointing authority in the case of the respondent is the Prime Minister. The latter, from time to time, has laid down guidelines and prescribed a mechanism for processing claims for being considered for extending benefits through proforma promotion. The last revised guidelines for the purposes of processing the cases of eligible civil servants to be considered pursuant to the proviso to FR-17(1) were issued vide office memorandum dated 18-09-2015. The appointing authority has constituted two Committees for considering the cases relating to proforma promotion i.e the High Level Committee for making recommendations for cases of civil servants in BS-20 and above, and the Junior Level Committee for cases of civil servants in grades lower than BS-20. The Junior Level Committee is headed by an officer of the rank of a Joint Secretary. The mandate of the High Level Committee is to submit to the appointing authority recommendations for approval. Part-III of the revised guidelines specifies those cases wherein the matter is to be referred to a Departmental Promotion Committee / Selection Board for consultation before being considered by the Committee. Part-IV enumerates the cases wherein the respective Committee is mandated to consider the cases of civil servants for proforma promotion to the next higher post in their own cadre or service / group and who have been granted antedated seniority within the meaning of the proviso to FR-17(1). The annexure to the office memorandum, dated 18-09-2015, describes the information / papers which are required to be submitted for consideration of the cases by the respective Committees.

11. The guidelines issued from time to time, therefore, prescribes the mechanism or procedure for processing the cases and making recommendations to the appointing authority. The recommendations are placed before the appointing authority and the latter, after taking the same into consideration, decides whether or not to direct that the civil servant be paid the arrears of pay and allowance of a higher post through proforma promotion. It would be pertinent to refer to the observations made and principles laid down by the august Supreme Court in [PLD 1987 SC 172] "Muhammad Umar Malik and others versus Federal Service Tribunal and others" and reaffirmed in [2005 SCMR 1742] "Abid Hussain Sherazi versus Secretary, M/O Industries and Production, GOP, Islamabad". The relevant portion is as follows;

"There is no cavil to the proposition that 'there is no vested right in promotion or rules determining eligibility for promotion. Where ever there is a change of grade or post for the better, there is an element of selection involved that is promotion and it is not earned automatically, but under an order of the competent Authority to be passed after the consideration of the comparative suitability and entitlement of those incumbents'".

12. Proforma promotion essentially involves a change of benefits relating to a grade or post, and thus an element of selection; therefore, as settled law, it cannot be earned automatically, rather it is within the

exclusive jurisdiction of the appointing authority whether or not to direct through an order, after consideration of the relevant matters placed before him/her in the manner prescribed in the guidelines issued in this regard. In [1991 SCMR 1559] "Muhammad Yousaf versus The Chairman, Railway Board/Secretary, M/O Railways, Islamabad and etc" the august Supreme Court has held that a civil servant can claim that he or she be considered by the appointing authority, but cannot call upon the Service Tribunal to direct such promotion. It is, therefore, obvious that without completing the process, as laid down in the guidelines issued from time to time, a civil servant cannot be declared as being entitled to proforma promotion. It is settled law that where the law requires an act to be done in a particular manner, it ought to be done in that manner alone, and such a dictate of law cannot be termed as a technicality. Reliance has been placed on "*Muhammad Anwar and others versus Mst. Ilyas Begum and others*" [PLD 2013 S.C. 255].

13. In view of the above, we are not persuaded to agree with the learned counsel for the respondent that the learned *Single Judge in Chambers* could have made a declaration regarding the entitlement of the respondent regarding proforma promotion w.e.f. 01-04-2004. Firstly, the petitioner had approached this Court by invoking the jurisdiction of this Court under Article 199 of the Constitution for implementation of the judgment passed by the learned *Federal Service Tribunal*, which did not include any determination or direction regarding grant or entitlement of proforma promotion and, secondly, a direction for extending benefits through proforma promotion is within the exclusive domain of the appointing authority, who has to be satisfied that the

conditions are fulfilled for passing an order or direction. The learned counsel appearing on behalf of the respondent has not disputed that the judgment of the learned *Federal Service Tribunal*, for the implementation of which the constitutional jurisdiction of this Court had been invoked, stood implemented and that no direction or declaration was made therein with regard to proforma promotion.

14. For what has been discussed above, we **allow** the instant Intra Court Appeal and set aside the impugned judgment dated 13-11-2012, passed by the learned *Single Judge in Chambers* in W.P. No. 2991 of 2011. We have been informed that the claim of the respondent for the grant of proforma promotion has been forwarded to the relevant Committee for consideration. It is, therefore, noted that the acceptance of the instant Intra Court Appeal or any observation made in this judgment shall not in any manner influence or prejudice any right of the respondent or the proceedings which may be pending before a competent forum for consideration / grant of proforma promotion.

(Shaikat Aziz Siddiqui)
Judge

(Athar Minallah)
Judge

Announced in the open Court on 01-02-2016.

Judge.

Judge.

Approved for reporting.