

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.1013/2017

Ajmal Mahmood Qureshi

versus

Federation of Pakistan through Secretary, Establishment Division, Islamabad.

and

Writ Petition No.1102/2017

Azfar Shafqat

versus

Federation of Pakistan through Secretary, Establishment Division, Islamabad.

Petitioners by: Mr. Ghulam Fareed Ch., Advocate.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Mehmood Khan Lakho, S.O., Establishment
Division.

Date of Decision: 21.02.2020.

MOHSIN AKHTAR KAYANI, J: By way of this common judgment, I intend to decide the captioned writ petitions as having involved common question of law and facts.

2. In the captioned W.P. No.1013/2017, Ajmal Mahmood Qureshi/petitioner has prayed for the following relief:

"It is therefore, humbly prayed that by accepting the instant writ petition, following relief may kindly be granted:-

The Respondent may kindly be directed as accrued rights, the name of the petitioner be inserted before serial No.48-A before the name of Dr. Abdul Hameed Qureshi in the seniority list of Deputy Secretaries (BS-19) dated 30-06-1981, revised and circulated on 13-03-2007 by counting the petitioner's service of Deputy Chief (BS-19), with effect from 31-05-1981 by giving the similar treatment on the analogy of August Supreme Court of Pakistan orders in the case of Dr. Abdul Hameed Qureshi and one namely, Mr. Ghulam Yazdani (whose name has been inserted at Serial No.63-A in the revised seniority list of BS-19 officers of Secretariat Group as on 30-06-1981 by the Establishment Division vide memorandum dated 21-10-2015), in the interest of justice.

The Respondent may kindly be directed to place the case of the Petitioner before the Committee constituted by the Respondent under FR-17 with the fact that the Petitioner as even senior in BS-20 as Joint Secretary from Dr. Abdul Hameed Qureshi grant the back-dated proforma promotion to the Petitioner w.e.f. 30-06-1982, BS-21 w.e.f. 16-

11-1988 and BS-22 w.e.f. 16-05-1994, from the date when his junior, namely Dr. Abdul Hameed Qureshi was promoted to BS-20, 21 & 22, with all consequential benefits, in the interest of justice and equity, by giving the similar treatment, in view of Articles 4 and 25 of the Constitution and law laid down by the Supreme Court of Pakistan, in its reported judgments i.e. 1996-SCMR-1185, 2009 SCMR 01, in the interest of justice.

Any other relief, which this Honourable Court deems fit and appropriate, may also be awarded.

3. Learned counsel for Ajmal Mahmood Qureshi/petitioner contends that the petitioner retired as Joint Secretary w.e.f. 01.11.2002 and had submitted an application on 03.03.2014 to the respondent authority with the request for fixation of seniority/Proforma promotion mainly on the ground that he was appointed/promoted as Deputy Chief (Grade-19) on 31.05.1981 and he was appointed as Deputy Secretary (Grade-19) on 13.04.1982. Consequently, his appointment in secretariat group and his seniority is to be counted from the date he was promoted to Grade-19, as referred to secretariat group vide OM dated 04.12.1972 and on this request, the petitioner claimed his seniority in secretariat group from the date he was appointed/promoted in Grade-19 and as such, he is entitled for Proforma promotion in subsequent scale with financial benefits; that his request was turned down vide letter dated 10.04.2014 without any legal justification, whereas one Dr. Abdul Hamid Qureshi is getting advantage of his date of induction, got seniority and promotion in BPS-19, 20, 21 & 22 and the respondent authorities have assigned the seniority to other officers in the light of judgment of the apex Court and petitioner was not considered for such relief, therefore, he is entitled for benefit and his case be processed before High Level Committee of FR-17(1).

4. Similarly, in the captioned W.P. No.1102/2017, Azhar Shfqat/petitioner has prayed for the following relief:

"It is therefore, humbly prayed that by accepting the instant writ petition following relief may kindly be granted:-

The Respondent may kindly be directed to place the case of the Petitioner before the Committee constituted by the Respondent under

FR-17 to consider/grant the back-dated proforma promotion to the Petitioner with the equally placed person namely, Mr. Akbar Hayat Khan Gandapur at par in BS-20 w.e.f. 19.05.1983, BS-21 w.e.f. 25.02.1991 and BS-22 w.e.f. 04.02.1997, from the date when his junior was promoted in BS-20, 21 & 22, with all consequential benefits, in the interest of justice and equity, by giving the similar treatment, in view of Articles 4 and 25 of the Constitution and law laid down by the Supreme Court of Pakistan, in its reported judgments i.e. 1996 SCMR 1185, 2009 SCMR 01, in the interest of justice.

Any other relief, which this Honourable Court deems fit and appropriate, may also be awarded."

5. In support of above referred prayer, the learned counsel for Azhar Shafqat/petitioner contends that the petitioner on reaching the age of superannuation retired as Senior Joint Secretary on 09.10.2003 and he came to know that Supreme Court of Pakistan in CPs No.426, 428 & 430 of 2008 together with C.P. 31-P of 2009 allowed the ante-dated/Proforma promotion in BPS-20, 21 & 22 to different officers, whereas one officer namely Muhammad Hayat Khan Gandapur was junior to the petitioner and he was promoted in BPS-20, BPS-21 and BPS-22 on 19.05.1983, 25.02.1991 and 04.02.1997, respectively, but the petitioner's promotion case from BPS-21 to BPS-22 was ignored without any reason. The petitioner filed representation for grant of ante-dated and proforma promotion for similar treatment from the date when his junior was promoted in BPS-20, 21 & 22, but his request was turned down vide OM 21.10.2016 despite the fact that his case was similar such officer.

6. Conversely, learned AAG in attendance along with S.O. Establishment Division contended that the cases of the petitioners do not fall within the required standards of FR-17(1) Committee and even they have been considered under the law and their cases have been regretted.

7. Arguments heard, record perused.

8. Perusal of record reveals that Ajmal Mehmood Qureshi/petitioner retired after attaining the age of superannuation on 01.11.2002 as Joint Secretary BPS-20, whereas Azhar Shafqat/petitioner retired as Senior Joint Secretary on 09.10.2003. The former petitioner agitated the matter of his proforma promotion for the first time on 03.03.2014 while the latter did vide undated application, which was responded on 21.10.2016 by the Establishment Division.

9. Both the officers/petitioners claim their ante-dated seniority and proforma promotion on the strength of orders passed in favour of other officers by the apex Court, although their cases for promotion were considered by the promotion board at the relevant time i.e. at least 20 years ago and they have not agitated their non-promotion at that time, when they were actually aggrieved with such order of non-promotion, although they are equipped with remedy to challenge those actions and they kept silent by their own choice, even they have not assailed those actions before any forum in a manner provided under the law and as such, their cases fall within the concept of closed and past transaction, especially when they have been retired from their services in the year 2002 and 2003, i.e. at least 17/18 years ago.

10. In order to resolve the controversy, FR-17(1) is reproduced as under:

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 post and shall cease to draw them as soon as he ceased 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.]

11. Keeping in view the above provision, this Court has been guided by 2019 PLC (CS) Note 126 (Muhammad Rashid Bhatti v. The Director General FIA, Islamabad) and 2018 SCMR 1995 (Muhammad Rashid Bhatti v. The Director General FIA, Islamabad), whereby it has been held as under:

“5. We have gone through the provision of FR-17 and are unable to agree with the counsel for the petitioner for that the provision of FR-17 deals with the case of drawing pay and allowances attached to tenure of a post with effect from the date when the duties are assumed of that post and shall cease to draw them as soon as he ceases to discharge those duties. The proviso to this Rule provides for a situation where the civil servant who was entitled to be promoted from a particular date but for no fault of his own wrongfully prevented from rendering services in the higher post shall be paid the arrears of pay and allowances of such higher post through proforma promotion or upgradation by ante-dated fixation of seniority. The case before us is neither of a tenure post nor is a deferment case nor that of petitioner being not promoted from a particular date for no fault of his own. The petitioner was deliberately superseded and such supersession was also endorsed by the Departmental Promotion Committee. The Rule FR-17 as relied upon by the counsel for the petitioner therefore, is not applicable to the facts and circumstances of the present case.”

12. Similar view has also been discussed in 2016 SCMR 1784 (Chief Secretary, Sindh v. Riaz Ahmad Massan) and it has been held that:

“A Civil Servant who is not promoted on his turn on the ground inter alia; (i) his seniority is under dispute or is not determined; (ii) he is on deputation, training or on leave; or disciplinary proceedings are pending against him; or (iii) he is not considered by the selection authority inadvertently. The moment cause as noted in rule 13 *ibid* for deferment of promotion of a Civil Servant is removed, in as much as dispute as to his seniority is resolved in his favour, deputation, training or leave is over, disciplinary proceedings culminated in his favour or where inadvertence for his non consideration is remedied, only then on subsequent promotion, such civil servant would rank and be deemed to have been promoted in the same batch at par with his contemporary batch mates who were promoted earlier to him. In the instant case, Respondent No.1's promotion was not deferred for impendent in Rule 13 *ibid* but he was superseded for lack of qualification. Furthermore, in terms of Rule 31 of the Civil Services Rules, 1950 (Volume 1), promotion takes effect from the date on which a Civil Servant assumes the charge of higher post. Only exception to grant antedated promotion by the competent authority to a superannuated or deceased Civil Servant, has been carved out by grafting Rule 7-A of the Sindh Civil

Servant (Appointment, Promotion and Transfer) Rules, 1974 (with effect from 18.3.2006), in a situation where a Civil Servant who was in fact recommended for promotion to next high post by the Provincial Selection Board or the Departmental Promotion Committee as the case may be but before issuance of his notification for promotion, such Civil Servant either passes away or retires, in such eventuality pre-condition to assume charge as mandated under Rule 31 ibid is done away under Rule 7-A(2) of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974 (with effect from 18.3.2006). Respondent. No.1's case does not fall within the exception provided under Rule 7-A of the Rules 1974, in as much as he was not recommended for promotion by the PSB from BPS-17 to BPS-18 in its meeting dated 28.8.2003, to which he took no exception. (See also Muhammad Yousuf v. Chairman Railway Board etc 1991 SCMR 1559 and Abid Hussain Sherazi v. Ministry of Industry and Production, Government of Pakistan) 2005 SCMR 1742).

13. While considering the above law and parameters of FR-17(1), the cases of the petitioners could not be considered for the purpose of proforma promotion at this stage as their rights stood settled when they had been considered for promotion at the relevant stage, whereby they have not acquired the required standard in the relevant time to be considered by the promotion board, even otherwise, they have approached this Court after passing of 14 years of their retirement and even after more than two decades of their grievance. There is no cavil to proposition that there is no vested right in promotion or rules determining eligibility for promotion and wherever there is change of grade or post for the better, there is an element of selection involved in the promotion, which could not be earned automatically. The order of competent authority has been passed after consideration of comparative suitability and entitlement of those incumbents. Reliance is placed upon 2005 SCMR 1742 (Abid Hussain Sherazi v. Secretary Ministry of Industries and Production, Government of Pakistan, etc.) and PLD 1987 SC 172 (Muhammad Umar Malik vs. Federal Service Tribunal).

14. The proforma promotion has certain characteristics to be considered in terms of Fundamental Rules i.e. FR-17(1) referred above and the petitioners have

failed to demonstrate that their cases fall within the said required standards and guidelines. It is settled law that where law requires an act to be done in a particular manner, the same has to be done in that manner alone as held in **PLD 2013 SC 255 (Muhammad Anwar vs. Mst. Ilyas Begum)**.

15. The ground argued by the petitioners on the strength of judgment of the apex Court for consideration of petitioners' cases is not applicable as it does not include any determination or direction regarding grant of entitlement of proforma promotion, even otherwise, direction for extending benefit through proforma promotion is within exclusive domain of appointing authority, who has to be satisfied that the conditions are fulfilled for passing an order or direction. Reliance is placed upon **2016 PLC (CS) 621 Islamabad (The Prime Minister v. Maj. R. Muhammad Habib Khan)**.

16. Keeping in view the above position, both the captioned writ petitions are misconceived and the same are hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.