

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.178-2018

Muhammad Aslam

Vs.

Federation of Pakistan etc.

Petitioner by : Mr. Muhammad Umair Baluch, Advocate
Respondents by : Raja Saad Sultan, Assistant Attorney General
with Ishtiaq Ahmad, SO, Finance Division and
Mahmood Khan Lakho, SO, Establishment
Division.
Date of hearing : 21.11.2019

AAMER FAROOQ J. The instant petition calls in question the decisions taken by the two Committees constituted under F.R. 17 dated 17.10.2016 & 04.05.2017.

2. The facts, in brief, are that petitioner is a retired civil servant. He joined Civil Service in the year 1972 and entered Civil Service (Information Group) on 02.12.1985; he was promoted in BS-19 on 02.01.2004 and till his retirement, served as Press Registrar. The petitioner was due for promotion from BS-19 to BS-20 but due to some pending litigation, a restraining order was passed by this Court in W.P. No.76-2011 titled 'Muhammad Rashid Vs. Federation of Pakistan' and as a result thereof, the meeting of Central Selection Board was stayed. The petitioner retired from service on 17.01.2013. In the meeting of Central Selection

Board convened in February, 2013, the petitioner was not considered for promotion due to the fact that he had retired from service. Feeling aggrieved, the petitioner filed a petition under Article 199 of the Constitution (W.P. No.98-2013), which was decided by this Court vide judgment dated 24.02.2016; in the said judgment, it was observed that case of petitioner for proforma promotion may be considered within a period of three months. The needful was not done within the time period as ordered by this Court hence the petitioner filed a contempt petition bearing Crl. Org. No.193-2016. Meanwhile, the matter was considered by the Finance Division and the Junior Level Committee on F.R.17, recommended the case of petitioner for proforma promotion on 28.09.2016, however, High Level Committee, vide its decision dated 17.12.2016, turned down the same, hence the petition.

3. Learned counsel for the petitioner, *inter alia*, contended that during service, the petitioner was denied promotion without any justification or basis; that the fact that the petitioner was not promoted, while in service, is without any fault on his part. It was submitted that parameters, as provided in F.R.17, are attracted in the facts and circumstances of instant case. It was further submitted that decision by the High Level Committee is in violation of dicta of Hon'ble Supreme

Court of Pakistan in a case reported as 'Tariq Aziz-ud-Din Vs. Federation of Pakistan' (2010 SCMR 1301).

4. Learned Assistant Attorney General, *inter alia*, contended that the matter was duly considered by the High Level Committee and it was after due deliberation that case of petitioner was turned down. It was submitted that criteria laid down for awarding of financial benefits of promotion is not met with in the facts and circumstances.

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

6. The High Level Committee has laid down, for its guidance, certain criteria for awarding monetary benefits to any civil servant, who could not be promoted without any fault on his part. The referred criteria is as follows:-

- "a. The civil servant was entitled to be promoted from a particular date during his service;*
- b. He/she was wrongfully prevented from rendering service and there was no fault on his part;*
- c. His/her junior was promoted prior to him; and*
- d. He/she was subsequently promoted to higher post and his/her seniority was re-fixed after his/her promotion at his/her original position with his/her batch mates".*

On the touchstone of above criteria, the case of the petitioner was considered for proforma promotion and following conclusions were reached:-

- “i. All the above pre-requisites are not met in the present case.*
- ii. The officer retired in BS-19 on 17.01.2013.*
- iii. No officer junior to him was promoted to BS-20 prior to his retirement.*
- iv. A restraining order issued by a court of law with regard to meeting of DPC/CSB/HPSB cannot be considered as a wrongful prevention by F.R.17(1) Committees.*
- v. Consideration for promotion is a right, however, after retirement, promotion cannot be claimed as a right as the officer ceased to be civil servant.*
- vi. F.R.17(1) Committees are not empowered to grant promotion the higher post.*
- vii) Determination of eligibility/suitability for promotion is the function of DPC/CSB/HPSB under section 9(3) of Civil Servants Act, 1973.*
- viii) Against one vacancy, a number of officers can claim promotion, hence F.R. 19(1) Committee cannot assume the role of DPC/CSB/HPSB for determination of suitability of a single officer for promotion against this vacancy.*
- ix) In view of above positions, the High Level Committee on FR.17(1) recommended that the case is not covered under F.R.17(1)”.*

7. The reasons, rendered by the F.R.17(1) Committee, are exhaustive and take care of documents and facts and circumstances of case of the petitioner. Though the discretion vests with High Level Committee but it is trite law that discretion should be exercised in a reasonable manner and is to be structured as held by the august Apex Court in case reported as ‘Tariq Aziz-ud-Din Vs. Federation of Pakistan’ (2010 SCMR 1301). The conclusions, mentioned hereinabove, do not indicate, in any manner, that discretion was exercised by High Level Committee in an arbitrary or whimsical manner.

All aspects of the case were duly considered and reasons were provided. The executive decision, under no circumstances, can be termed as 'unreasonable', 'irrational' or in violation of any principles of law.

8. For the above reasons, instant petition is without merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 14.02.2020

JUDGE

Zawar