

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3801 of 2021

Shoaib Ahmad Sethi

Versus

Chairman, Federal Board of Revenue and others

Dates of Hearing: 04.04.2022 & 09.05.2022
Petitioner by: Ms. Neeli Khan, Advocate
Respondents by: Mr. Saeed Ahmad Zaidi, Advocate for
F.B.R.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Shoaib Ahmad Sethi, impugns the letter dated 27.09.2021 issued by the Federal Board of Revenue ("F.B.R.") whereby his application dated 28.08.2021 for proforma promotion under Fundamental Rule-17 ("FR-17") was turned down.

2. The record shows that the petitioner was a civil servant from the Income Tax Group which was renamed as Inland Revenue Service. He was appointed as an Income Tax Officer on 18.11.1989 and over the years, rose to the position of Commissioner Inland Revenue (BPS-20). On 23.07.2020, the petitioner retired upon attaining the age of superannuation.

3. Learned counsel for the petitioner submitted that since the year 2017, the petitioner was eligible for promotion to BPS-21; that officers junior to the petitioner were promoted whereas he was ignored for no valid reason; that the petitioner has received several letters of appreciation and rewards for meritorious service; that the petitioner had legitimate expectation to be promoted to BPS-21; that prior to his retirement, the petitioner was not considered for promotion for reasons beyond his control; that on the basis of the order dated 04.08.2021 passed by this Court in writ petition No.1155/2020, the petitioner filed an application dated 28.08.2021 before the Chairman, F.B.R. seeking for his case for proforma promotion with effect from 25.02.2017 to be placed before the Committee constituted under FR-17; that the impugned letter dated 27.09.2021 mentions the instances when the petitioner was considered for promotion by the Central

Selection Board ("C.S.B.") from 2016 to 2020, but does not set out any valid reasons for not granting proforma promotion to the petitioner; that the F.B.R. has taken a wrong view that the petitioner had not been wrongfully prevented to be considered for promotion; that the preparation of the Performance Evaluation Reports ("P.E.R.s") is the responsibility of reporting and countersigning officers; and that the petitioner could not be penalized for the omission on the part of such officers to timely prepare the petitioner's P.E.R.s for placement before the C.S.B. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making her submissions, learned counsel for the petitioner placed reliance on the judgment dated 21.11.2019 passed by this Court in writ petition No.3019/2019.

4. On the other hand, learned counsel for F.B.R. submitted that promotion is not a vested right of a civil servant; that the petitioner was considered for promotion to BPS-21 by the C.S.B. in its meetings between 13.12.2016 to 16.12.2016 and 19.06.2017 to 23.06.2017 but on both occasions his promotion was deferred; that subsequently, the petitioner was considered for promotion to BPS-21 by the C.S.B. in its meeting between 09.01.2018 to 12.01.2018 but was superseded; that again the C.S.B. considered the petitioner for promotion to BPS-21 in its meetings between 06.12.2018 to 08.12.2018, 27.05.2019 to 29.05.2019 and 27.01.2020 to 29.01.2020 but on all these three occasions, his promotion was deferred; that since he was considered for promotion six months before his retirement, the petitioner cannot assert that he had not been considered for promotion; that the essential prerequisite of wrongfully prevented from being considered for promotion had not been satisfied in the instant case; that furthermore, the criteria for proforma promotion sets out in the revised guidelines issued by the Establishment Division have not been satisfied in the instant case; that the petitioner had deliberately delayed the submission of his P.E.R. forms to the reporting and countersigning officers; that there is nothing on the record to show that the petitioner had submitted his P.E.R. forms to such officers within time; and that the decision of the FR-17 Committee not to grant

proforma promotion to the petitioner does not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for the F.B.R. prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. It is not disputed that the petitioner was eligible to be considered for promotion to BPS-21. It is for this reason that the F.B.R. had forwarded the petitioner's case to the C.S.B. to be considered for promotion. In the cases of Ehsanullah Khan Vs. Federation of Pakistan (2018 PLC (C.S.) Note 89) and Masood Khan Vs. Federation of Pakistan (2021 PLC (C.S.) 1540), it has been held that the question of a civil servant's fitness to be considered for promotion does not fall within the purview of the Civil Service Tribunal. In these cases, writ petitions with respect to a matter placed before the FR-17 Committee were held to be maintainable since they did not involve a matter concerning the eligibility of a civil servant to be considered for promotion. Therefore, the objection taken by the F.B.R. to the jurisdiction of this Court to adjudicate upon the instant writ petition is spurned in terms of the law laid down in the said judgments.

7. The C.S.B., in its meetings between 13.12.2016 to 16.12.2016 and 19.06.2017 to 23.06.2017, considered the petitioner for promotion to BPS-21 but on both occasions, his promotion was deferred. The C.S.B. again considered the petitioner for promotion to BPS-21 in its meetings between 09.01.2018 to 12.01.2018 but on this occasion he was superseded. Aggrieved by his supersession, the petitioner filed writ petition No.1338/2018 before this Court. The said writ petition along with other connected writ petitions was allowed by this Court through the consolidated judgment dated 27.09.2018 and the C.S.B.'s recommendation to defer the petitioner's promotion was set-aside. Furthermore, it was directed that the petitioner shall be considered for promotion afresh in the light of the law laid down in the judgments of the Hon'ble Supreme Court referred to in the said judgment dated 27.09.2018. Thereafter, the petitioner again considered for promotion

by the C.S.B. in its meetings between 06.12.2018 to 08.12.2018 and his promotion was deferred on the ground that his P.E.R.s were not complete. Aggrieved by this, the petitioner filed writ petition No.511/2019 before this Court. The said petition was disposed of vide judgment dated 21.11.2019 with the direction to the respondents in the said petition to complete the P.E.R.s of the petitioner forthwith and to place his name in the next meeting of the C.S.B. if he is otherwise eligible for promotion. It is pertinent to reproduce herein below paragraph 7 of the said judgment is reproduced herein below:-

"In view of the above judgments the respondent department in both the petitions neglected to complete the Performance Evaluation Reports of civil servants / petitioners and it is surprising to note that despite the said fact their cases had been sent to Central Selection Board for promotion. The justification rendered by the learned Deputy Attorney General during the course of arguments for such course of action was that since the department has to send a panel of the names of the civil servants; petitioners' names were added. The referred arguments are without any substance inasmuch as the purpose of sending a panel means that names of eligible persons should be sent. The names of the petitioners in the first instance should not have been sent if their PERs were not complete; that it was due to the fault of the respondents that the Performance Evaluation Reports were not complete and those who are responsible of the same should have been taken to task. For a civil servant promotion is nothing less than a prize for the entire life devoted to service; the monetary gains coming with the promotion are collateral benefits but the honour and pride is utmost importance."

8. The petitioner was again considered for promotion to BPS-21 in the C.S.B.'s meetings between 27.05.2019 to 29.05.2019 and he was again deferred. The petitioner challenged the said decision of the C.S.B. through writ petition No.1155/2020, which was disposed of by the Division Bench of this Court vide order dated 27.07.2020 in terms of the statement made on behalf of the Federal Government to the effect that it had been decided to resubmit the cases of civil servants (including the petitioner) for consideration by the C.S.B. in its next meeting. This Court had also observed that if the petitioner's grievance was not redressed in the next meeting of the C.S.B., he would be at liberty to file an application for the restoration of writ petition No.1155/2020.

9. The petitioner was yet again considered for promotion to BPS-21 by the C.S.B., in its meetings between 27.01.2020 to 29.01.2020, and it

was decided that his promotion be deferred. The petitioner's deferment caused him to file an application for the restoration of writ petition No.1155/2020. The said application was taken up for hearing by this Court on 04.08.2021. By this time, the petitioner had already retired on attaining the age of superannuation. Due to this development, this Court disposed of writ petition No.1155/2020 with the observation that he had an alternative remedy under FR-17 to seek proforma promotion. For the purposes of clarity, paragraphs 4 and 5 of the said order dated 04.08.2021 are reproduced herein below:-

"4. The petitioner had retired from service on 23.07.2020 i.e. prior to the C.S.B's meetings between 04.01.2021 and 06.01.2021. We are of the view that after a civil servant retires from service, he cannot be considered either by a Departmental Promotion Committee or the C.S.B. for promotion. When a civil servant is not considered for promotion prior to his retirement for reasons beyond his control, he can make an application under Fundamental Rule 17(1) to be considered for proforma promotion. Since the petitioner, who is stated to have retired from the service, has an alternate remedy under Fundamental Rule 17(1), this petition has become infructuous, and is therefore, disposed of accordingly.

5. Learned A.A.G. submitted that in the event an application is filed by the petitioner for proforma promotion under Fundamental Rule 17(1), the same shall be considered and decided in accordance with law."

10. FR-17(1) is reproduced herein below:-

"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 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."

11. The said provision has been interpreted by the Division Bench of this Court in the case of Prime Minister Vs. Muhammad Habib Khan (2016 PLC (C.S.) 621) in the following terms:-

"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."

12. Now, the Establishment Division has issued revised guidelines for FR-17(1) Committee to consider cases of proforma promotion. These guidelines have been brought on record with the written comments filed by the F.B.R. It sets out the type of cases not to be considered by the FR-17 Committee and those which are to be considered by the said Committee. Paragraph 6(a) of the said revised guidelines provides that the respective Committee shall consider the cases of civil servants for proforma promotion to the next higher post in their own cadre or service / group who have been granted ante-dated seniority within the meaning of the proviso to FR-17(1) where *"a civil servant who was deferred for any of the reason indicated in the promotion policy but subsequently it is found that the said reason was wrongfully mentioned."*

13. The F.B.R.'s impugned letter dated 27.09.2021 shows the following reasons why the petitioner's promotion was deferred in the last meeting of the C.S.B. held between 27.01.2020 to 29.01.2020:-

"The DR informed the Board that the officer had still not submitted the requisite P.E.R., which was required for assessment of the officer after supersession as per rules. Subsequent to the above discussion, the Board recommended the officer for deferment in line with Rule 10(5) of the Civil Servants Promotion (BS-18 to BS-21) Rules, 2019."

14. Now, it appears that it had escaped the F.B.R. that the petitioner's supersession on the basis of the recommendation made by the C.S.B. in January 2018 had already been set-aside by this Court vide judgment dated 27.09.2018 passed in writ petition No.1338/2018. Additionally, the F.B.R. also appears to have ignored the fact that this Court, in its judgment dated 21.11.2019 passed in writ petition No.511/2019, had clearly held that it is the responsibility of the department to complete the P.E.R.s of the civil servant concerned.

The relevant portion of the said judgment dated 21.11.2019 has been reproduced in paragraph 7 above.

15. At no material stage had this Court determined as to whether the petitioner's deferment in January 2020 was wrongful or not. This is because the petitioner superannuated during the pendency of his writ petition. Given the requirements of paragraph 6(a) of the revised guidelines of the FR-17(1) Committee issued by the Establishment Division, it was incumbent for the FR-17 Committee who has to determine as to whether the ground on which the petitioner's promotion was deferred in January 2020 was wrongfully mentioned *i.e.*, the non-submission of his P.E.R.s. There is nothing on the record to substantiate the contention of the learned counsel for the F.B.R. that the petitioner had delayed the submission of his P.E.R. forms. Whether it was the petitioner who delayed the submission of his P.E.R. forms or whether it was his reporting and countersigning officers who had not prepared the petitioner's P.E.R.s was to be determined by the FR-17 Committee so as to ascertain whether the petitioner's deferment in January 2020 was wrongful or not. Since this exercise was not undertaken by the FR-17 Committee, this petition is allowed, and the impugned decision of the FR-17(1) Committee sets out in the F.B.R.'s letter dated 27.09.2021 is set-aside. The matter regarding the petitioner's application for proforma promotion shall be placed before the FR-17 Committee for a decision afresh in the light of the revised guidelines for the FR-17(1) Committee issued by the Establishment Division as well as the observations of this Court in its judgment dated 21.11.2019 passed in writ petition No.511/2019.

16. The instant petition is allowed in the above terms. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 20/05/2022