

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.89 of 2021

Allah Dad

Versus

Secretary, Ministry of Communication, Islamabad and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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15.09.2021

Mr. Khurram Shahzad Janjua, Advocate for the petitioner.

Mr. Nadeem Hasan, Advocate for the N.H.A.

Mr. Arshid Mehmood Kiani, learned Deputy Attorney General.

Through the instant writ petition, the petitioner, Allah Dad, who is presently serving as General Manager (Finance and Accounts) (BS-20) in the National Highway Authority (“N.H.A.”), seeks a direction to the N.H.A. to grant him time-scale promotion to the next grade i.e. BS-21.

2. Learned counsel for the petitioner submitted that the petitioner satisfies all the conditions set out in the National Highway Authority (Appointments and Promotion) Rules, 1995 (“the 1995 Rules”) for being granted time-scale promotion to BS-21; that the petitioner has more than 26 years of experience in BS-17 and above; and that the denial on the part of the N.H.A. to consider the petitioner for being granted time-scale promotion violates his fundamental rights. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for the N.H.A. submitted that there is no provision in the 1995 Rules for an officer in BS-20 to be granted time-scale promotion to BS-21; that the requirement for 22 years of service in BS-17 and above is only for the officers in BS-20 to be considered for regular promotion to a higher post;

that this Court, in exercise of jurisdiction under Article 199 of the Constitution, cannot direct the N.H.A. to do what it is not authorized to do under the applicable rules; that the petitioner was a part of the anomaly committee constituted by the N.H.A. under the 1995 Rules which unanimously agreed that since the requisite length of service for time-scale promotion to BS-21 is not laid down in the said Rules, it means that the Cabinet never gave approval as regards time-scale promotion from BS-20 to BS-21; that the said committee has also decided that officers in BS-20 were not eligible for the grant of time-scale promotion to BS-21; and that the petitioner is estopped from seeking a direction for the grant of time-scale promotion to BS-21. Learned counsel for the N.H.A. prayed for the writ petition to be dismissed.

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

5. On 10.03.1987, the petitioner was appointed as Superintendent (Accounts) (BS-16) in the N.H.A. On 22.08.1995, he was promoted as Assistant Director (Finance) (BS-17), and on 30.05.1999, he was promoted as Deputy Director (Finance) (BS-18). On 08.12.2009, he was promoted as Director (Finance) (BS-19), and on 14.12.2017, he was promoted as General Manager (Finance) (BS-20).

6. The 1995 Rules, as amended through notification dated 19.11.2019 issued by the Ministry of Communications, provides *inter alia* that the minimum length of service for regular promotion of an officer in BS-20 to BS-21 is 22 years in BS-17 and above. The petitioner's length of service in BS-17 and above is more than 26

years. Apparently, there is no vacant post against which the petitioner can be promoted. Therefore, the petitioner is seeking the grant of time-scale promotion to BS-21.

7. On 02.01.2021, the petitioner submitted a representation to the Chairman, N.H.A. for his upgradation from BS-20 to 21. In the said representation, the petitioner placed reliance on provisions for time-scale under the 1995 Rules as amended by the said notification dated 19.11.2019. Till date no response to the said representation has been given.

8. Rule 11 A(1) of the 1995 Rules, as amended by the said notification dated 19.11.2019, provides that all N.H.A. regular employees serving in BS-01 to BS-20 shall be eligible for the grant of time-scale promotion to next rank or grade with pay and allowances attached with that rank or grade on completion of the length of service as mentioned in Schedule-III to the said Rules. The terms and conditions on which such promotion can be granted are also set-out in the said Rule. Schedule-III to the said Rules is divided into two parts. The first part sets out the minimum length of service for regular promotion to a higher post. This part, which does not deal with time-scale promotion, provides for a minimum length of service of 22 years in BS-17 and above for an officer to be considered for regular promotion to BS-21. The second part of Schedule-III sets out the minimum length of service for time-scale promotion to a higher post. The second part of Schedule-III does not provide for a minimum length of service required for an officer in BS-20 to be considered for a grant of a time-scale promotion to a post in BS-21. The requirement of 22 years of service in BS-17 and above for regular

promotion to BS-21 does not apply for time scale promotion to a post in BS-21.

9. The mere absence in the second part of Schedule-III of minimum length of service required for an officer to be considered for the grant of time scale promotion to BS-21, would in my opinion, not mean that an officer in BS-20 cannot be considered for such promotion. The Schedule to the said Rules cannot override the substantive provision i.e. Rule 11A(1) which clearly provides that *“all NHA regular employees serving in BS-01 to 20 shall be eligible for grant of time scale promotion to next rank or grade.”* The petitioner is a regular BS-20 N.H.A. employee and Rule 11A(1) makes him eligible for the grant of a time scale promotion to the next rank or grade i.e. BS-21. The terms and conditions on which such promotion can be granted requires an officer to complete at least one year of service in a substantive post after regular promotion and to successfully complete the probation period. This is explicitly provided in Rule 11A(1)(c) of the 1995 Rules.

10. Now, the anomaly committee (of which the petitioner was a member) constituted pursuant to Rule 11 A(2) of the 1995 Rules, as amended by the notification dated 19.11.2019, appears to have been cognizant of the fact that in Schedule-III to the said Rules, a minimum length of service for an officer in BS-20 to be granted time scale promotion to BS-21 has not been prescribed. The said committee recommended that incumbents holding posts of BS-20 were not eligible for the grant of time-scale promotion. This is apparent from the minutes of the meeting dated 18.05.2020 of the said committee which have been brought on record by the N.H.A. For the purposes of

clarity, the relevant paragraphs of the said minutes are reproduced herein below:-

“As per Para 2, Sub Para A(I) of SRO 1404, dated 19-11-2019, all NHA regular employees serving in BS-01 to 20 shall be eligible for grant of time scale promotion to next rank or grade with pay and allowances attached with that rank or grade on completion of length of service as mentioned in Schedule-III of NHA (Appointment & Promotion Rules).

However, in Schedule-III (2) of SRO 1404, dated 19-11-2019, minimum length of service for time scale promotion from BS-20 to 21 is not prescribed.

Since, the requisite length of service for time scale promotion from BS-20 to BS-21 is not laid down in the SRO 1404, dated 19-11-2019, meaning thereby Cabinet did not approve time scale promotion from BS-20 to 21. Hence, the Committee recommends that incumbents holding the posts of BS-20 are not eligible for grant of time scale promotion.”

11. The said decision taken by the anomaly committee has not been assailed by the petitioner at any material stage. Therefore, he is estopped from taking a position which is contrary to the one taken by the said committee of which he was admittedly a member. I refrain from commenting on the legality of the said decision taken by the anomaly committee since the same has not been challenged in this petition.

12. In view of the above, there is no merit in this petition which is accordingly **dismissed** with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE