

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 4633/2018.

Muhammad Islam Khan

Versus

ZTBL through its President, Islamabad, etc.

Petitioner by: Mr. Muhammad Aurangzeb Khan, Advocate.

Respondents by: Mr. Rashid Mehmood Ansari, Advocate.

Date of Decision: 07.10.2019.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has assailed the order dated 19.10.2018, passed by the Human Resource Operations Department ZTBL whereby petitioner was not granted promotion w.e.f. 30.10.2007.

2. Learned counsel for the petitioner contends that petitioner was compulsorily retired from service of respondent/ZTBL on 13.01.2007, however, in the light of order passed by the Appellate Authority, petitioner was reinstated into service vide office memorandum dated 24.07.2007 and intervening period between compulsory retirement and reinstatement was treated as leave of any kind available at his credit; that respondent authority has wrongly relied upon the clause 8 of promotion policy 1999 and as such petitioner is entitled for getting benefit of promotion from 30.10.2007 instead of 04.02.2010 when the petitioner was granted promotion; that period from date of retirement and reinstatement has to be given effect with reference to back date as right has already been approved in favour of petitioner without any condition.

3. Conversely, learned counsel for ZTBL contends that petitioner was awarded punishment of compulsory retirement due to his misconduct, however, his appeal was allowed by the appellate authority and he was reinstated into

service; that petitioner was involved in the embezzlement of huge amount and on his request an amount of Rs.5.6 Million was paid under VR to the NAB and due to the said act he was not given promotion, nor he is able to get benefit due to clause 8 of promotion policy, 1999.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner was compulsorily retired by the respondent department after due process vide order dated 13.01.2007 on ground of misconduct, however, his appeal was allowed vide order dated 24.07.2007 by the Appellate Authority/Secretary Finance, whereby petitioner was reinstated into service w.e.f. 16.07.2007 after treating the gap period as leave.

6. The petitioner after his reinstatement into service claims his right of promotion but the same has been denied by the respondent department, however his representation has also not been decided by the respondent's authority which persuaded him to file writ petition No.1764/2018, which was decided on 27.06.2018 with direction to the respondent to pass speaking order after hearing the petitioner within period of two months, in compliance of said order impugned order dated 19.10.2018 has been passed by ZTBL authorities, the extract of the order is reproduced as under:-

SUBJECT:- PERSONAL HEARING OF MR. MUHAMMAD ISLAM KHAN, PP. NO. 45320, SVP IN COMPLIANCE OF JUDGMENT OF ISLAMABAD HIGH COURT IN WP NO.1764/2018

In compliance of judgment dated 27.06.2018 in WP No.1764/2018, you, Mr. Muhammad Islam Khan, PP No. 45320, SVP appeared before the President ZTBL on 02.10.2018 at Head Office, Islamabad for personal hearing regarding promotion as SVP w.e.f 30.10.2007. You were given full opportunity to explain your promotion case.

As, Major penalty of compulsory retirement was imposed upon you vide DPD OM dated 13.01.2007. Lateron, in pursuance to order of secretary (Finance, Appellate Authority) you were reinstated in Bank service vide DPD Om 24.07.2007 w.e.f 16.07.2007.

Earlier, you were also considered for promotion as SVP w.e.f 30.10.2007 by Special Departmental Promotion Committee during the year 2017, under promotion policy, 1999 based on seniority cum fitness criteria. Said committee also recommended to drop you from promotion by relying on clause No.08 of Promotion Policy, 1999 (Statutory) which provides that:-

"Those who have joined on reinstatement after termination of service or on punishment of down gradation will be considered for promotion if they have atleast served three years after reinstatement or down-gradation provided they fulfill the promotion criteria."

It is also pertinent to mention here that Supreme Court of Pakistan in CP. No.2223 of 2017 titled ZTBL VS Fazle Malik has also dismissed the promotion case of Mr. Fazle Malik by relying on clause 08 of promotion policy, 1999.

Keeping all above in view, competent authority finds that you do not fulfill the required criteria for promotion as you are required to serve atleast 03 years after re-instatement as per clause 08 of said policy. Accordingly, OM dated 22.12.2017 wherein your promotion as SVP w.e.f 30.10.2007 has also been declined is legal, lawful and requires no inference.

By order of the competent authority

(KHURRAM SAEED KHAN)
SVP (HROD)

7. I have gone through the above impugned order, however, the position has been explained by the respondent department, whereby rejection of petitioner for the purposes of promotion is based upon clause 8 of Promotion Policy, 1999. It is trite law that the wording and phrases used in rules and enactment has to be given its actual meaning which have been considered as straight and plain for the purpose of interpretation, even otherwise, it is duty of the Court to perform its legal obligations to discover the true intent of legislature while interpreting the statute and meaning has to be understood in its ordinary sense. Reliance is placed upon 2018 CLD 1470 (M/s Hani Trading Company Vs. Ministry of Commerce).

8. By virtue of the above referred principle of interpretation clause 8 of the promotion policy, 1999 explained the application of said provision in a simple manner, whereby it has categorically been settled by the ZTBL authorities that any person will be considered for promotion if he has at least served 03 years after his reinstatement. The petitioner was reinstated into service on 16.07.2007 while considering his integrum period as leave and as such he would be entitled for consideration of promotion after service of 03 years from the date of reinstatement into service. Even otherwise, petitioner has been promoted w.e.f

04.02.2010 but he feels aggrieved with the said order, therefore, he has challenged the said order in W.P No.1764/2018, whereas petitioner has not challenged the vires of clause 8 of promotion policy, 1999, therefore, this clause is applicable in case of promotion of petitioner.

9. Even otherwise, the plain reading of the said clause left no other interpretation for the purpose of consideration and same is applicable. There is no denial to the proposition that petitioner was given promotion after 03 years as per clause 8 of the promotion policy and petitioner has failed to demonstrate from the record as to how and under what circumstances he has been considered for the purpose of promotion from back date i.e. 30.10.2007 especially when he himself has made a request for VR before NAB authorities in matter of corruption inquiry and deposited the amount of Rs.5.6 Million to avoid his unnecessary departmental as well as criminal proceedings.

10. Keeping in view the above background when clause 8 of promotion policy, 1999 has not been challenged, the order passed under the said provision could not be considered as vires of the clause 8 is not subject matter of this writ petition, neither the petitioner is aggrieved with the clause 8 of the promotion policy, even its status is statutory in nature, hence, instant writ petition is misconceived and the same is hereby **dismissed** as the respondent authority has already adjudicated upon the matter while considering each and every aspect of the case.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid