

Form No: HCJD/C.

**JUDGEMENT SHEET**

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

**Writ Petition No. 398 of 2017**

*Muhammad Aseem*

*Vs.*

*Federation of Pakistan etc.*

**Petitioner by:** **Mr. Abdul Rahim Bhatti &  
Mr. Zahid Mehmood Raja  
Advocates.**

**Respondents by:** **Mr. Naseem Ahmed Shah,  
Shamshad Ullah Cheema &  
Awais Haider Malik,  
Advocates.**

**Date of Decision:** **30.10.2019**

**AAMER FAROOQ, J.-** The petitioner, in the instant  
petition, has made the following prayers:

- “i) Declare the impugned order of promotion of respondents No.5 & 6 dated 04.01.2017 and Memorandum dated 29.12.2016 whereby approval of promotion has been accorded by deferring/superseding the petitioner by the respondent-DPC and the competent authority as illegal, malafide, unjustified, void ab-initio, whimsical, capricious, arbitrary, without lawful authority, in colourful exercise of discretion virtually coram-non-judice and of no legal effects to the rights of the petitioner.*
- ii) Direct the respondents to grant promotion in BS-9 from the date his batch mates /juniors were promoted with all consequential benefits, through circulation; and*

iii) *Any other relief, which this Hon'ble Court deems just and appropriate in the given circumstances, may also very gracious be granted alongwith costs to the petitioner."*

2. The facts, in brief, are that the petitioner as well as respondents No.5 & 6 are in employment of Chief Commissioner Office, Islamabad. The petitioner is working as *Patwari* whereas respondents No.5 & 6 were promoted as *Girdawar* and *Kanungo*. The petitioner is aggrieved of promotion of respondents No.5 & 6 vide order dated 04.01.2017 and also seeks direction to respondents No.2 to 4 to promote him in BS-9. In this behalf, the petitioner was considered for promotion alongwith respondents No.5 & 6 in the meeting of Departmental Promotion Committee (DPC) held on 16.12.2016 but was not recommended for promotion due to a pending case against him in National Accountability Bureau (NAB), Khair Pakhtunkhwa (KPK).

3. Learned counsel for the petitioner *inter alia* contended that it is an established position of law that mere pendency of criminal case is no bar for an employee to be considered for promotion. It was also submitted that even the petitioner in the pending criminal case has been acquitted/discharged. It was contended that disciplinary inquiries are also pending against the petitioner but even then, it is not a ground for superseding/deferring the petitioner's promotion.

4. Learned counsel for respondents No.5 & 6 contended that the petitioner was not promoted because of pending inquiries and criminal case. It was submitted that respondents No.5 & 6 were promoted after due consideration as they were eligible for promotion.

5. Learned counsel for respondents No.2 to 4 *inter alia* contended that even now the petitioner is suspended and cannot be considered for promotion. It was further contended that due to pending inquiries and criminal cases the petitioner was not recommended for promotion.

6. During the course of proceedings, an application was filed under Order I Rule 10 CPC (C.M. No.3714/2018). The referred application was on behalf of Mirza Saeed Akhtar who is serving as *Kanungo* in Board of Revenue, Punjab but worked in CDA as *Naib Tehsildar* for a short span of time.

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

8. It is a settled position that promotion is not a vested right. However, it is also an established law that mere pendency of criminal proceedings and/or Departmental disciplinary proceedings is no bar for consideration or recommendation for promotion. The minutes of the meeting of the DPC clearly show that the petitioner was superseded only as he was implicated in criminal case by NAB, KPK.

The petitioner though stands exonerated from the referred case, even the pendency of the same at the relevant time was no bar for the petitioner to be promoted. Likewise, the mere pendency of disciplinary proceedings is not an impediment for consideration of promotion. The reasons which prevail with the DPC in superseding the petitioner are erroneous and in violation of the law settled by the Hon'ble Supreme Court of Pakistan. Reliance was placed on the case titled **Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry** (2000 SCMR 645).

9. In view of above, the decision of supersession by the DPC, being not tenable, is set aside. Learned counsel for the petitioner could not point out any irregularity or illegality in promotion of respondents No.5 & 6.

10. For the above reasons, the instant petition is disposed of with direction to respondents No.2 to 4 to consider the petitioner, if he is eligible otherwise and has not been penalized in any Departmental proceedings, for promotion in accordance with law and prevalent rules. All pending applications are disposed of accordingly.

(**AAMER FAROOQ**)  
**JUDGE**

\*M.Naveed\*