

Form No: HCJD/C.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No.515 of 2018

**Azra Khaliq
Vs.
Federation of Pakistan**

Petitioner by: Mr. Shabbir Bhutta, Advocate.

**Respondent by: Kh. Muhammad Imtiaz, Deputy Attorney-General.
Azhar Iqbal Hashmi, Deputy Secretary (CP-III) and Maryam Ahmed, Section Officer (CP-IV), Establishment Division.**

Date of Hearing: 13.10.2021

AAMER FAROOQ, J.- The petitioner namely Azra Khaliq is widow of Abdul Khaliq Awan who was a civil servant and retired from service in BS-21 of Secretariat Group. She claims for her husband benefit of promotion in BS-22 by way of proforma promotion to BS-21 w.e.f. 17.12.1988 and BS-22 w.e.f. 17.02.1995 when the other civil servants junior to petitioner's husband were promoted.

2. Learned counsel for the petitioner, *inter alia*, contended that it is settled law that the legal heirs of deceased civil servants can claim benefit of proforma promotion even after the demise of the civil servant. In this behalf reliance was placed on the case titled **Rakhshinda Habib v. Federation of Pakistan and others** (2014 PLC (C.S.) 247), **the Matter of Succession of the Assets, Securities, Properties and Accounts of Late Javed Iqbal Ghaznavi** (PLD 2010

Karachi 153), Zaheer Abbas v. Pir Asif and 6 others (2011 CLC 1528), Mst. S. Yasmin v. Pakistan Railways and others (2017 PLC (C.S.) 1), Dr. Qamar uz Zaman Ch. V Syed Afzal Muhammad Farooq and others (2005 PLC (C.S.) 1424). It was further submitted that the civil servants who were junior to petitioner's husband were granted promotion and in many cases even antedated promotion was afforded, hence the petitioner is also entitled to the same treatment for her deceased husband as the inaction on part of the respondent amounts to discrimination. It was added that in the earlier round of litigation similar prayer was made and on the statement of the respondent the matter was disposed of (W.P. No.1823 of 2014 decided on 10.05.2016); that the contempt application was filed which was also disposed of with the observation that the petitioner may agitate the matter before the competent authority; however, since the competent authority has turned down the request of the petitioner, hence the petitioner is left with no other adequate remedy except the relief under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973.

3. Learned Deputy Attorney-General, *inter alia*, contended that the promotion is not a vested right and especially promotion to BS-22 is only on the basis of certain criteria which calls for merit. It was added that even proforma promotion in the form of financial benefits can only be

granted where the petitioner has been denied promotion without any fault on his part, hence it was requested that the petition be dismissed.

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

5. The grievance of the petitioner is spelt out hereinabove. In the earlier round of litigation, by way of Writ Petition No.1823 of 2014, the petitioner had made the following prayer:

“It is, therefore, humbly prayed that by accepting this Writ Petition with costs the Respondent (Establishment Division) may be directed to extend benefit of judgments of FST Appeal No.1945(R)CS/2011 and 23 others (Mr. Muhammad Iftikhar Ahmed and others v. Establishment Division) and judgment of Ahmed Islamabad High Court in Writ Petition No.2818/2012 (Muhammad Iqbal Khan v. Secretary, Establishment Division) to the petitioner by issuing similar Notifications in his favour by granting him proforma promotion to BS-20 w.e. from 19.05.1983 and BS-21 from 17.12.1988 on the analogy of notifications issued in respect of ten other retired officers and from 17.02.1995 to BS-22 when Mr. Rustam Shah Mohmand, Mirza Qamar Baig and Syed Muhibullah Shah who are also junior too the Petitioner in the 1981 Revised Seniority List of BS-19 were promoted to BS-22 as Secretaries vide

notifications dated 17.02.1995 as the name of the petitioner appears at Serial No.08 in the revised seniority list above the names of the above Petitioner who are far junior to him being at Serial Nos.15, 17 and 23 respectively in the seniority dated 13.03.2007.”

6. The referred petition was disposed of on 10.05.2016 on the statement of concerned Deputy Secretary that the case of the petitioner is in progress and the matter shall be decided within six weeks. When the needful was not done Criminal Original was filed which again was disposed of. The petitioner agitated the matter by way of representation which has been turned down by the competent authority. Before embarking to render opinion on merit, it is appropriate to address the question as to the maintainability of the petition which was raised by respondents on the basis that petitioner is not civil servant in question but rather is one of the legal heirs and seeks relief on behalf of her deceased husband; the case law relied upon by the learned counsel for the petitioner to substantiate his argument that the writ petition is maintainable is instructive. In the recent judgment in case titled **Regional Operation Chief, National Bank of Pakistan, Human Resource Department, Regional Office, Sargodha and others v. Mst. Nusrat Perveen and others** (2021 SCMR 702) the august Apex Court observed that the service disputes were not always attached merely with the person of a civil servant

as an individual but more often than not with some benefits which could be enjoyed by the successors of the civil servant in accordance with law which were contingent on the adjudication of the controversy. It was added that the question where after the death of the civil servant proceedings would abate would primarily depend on the nature of cause of action and the relief claimed in the peculiar facts of each case. Service benefits may be enjoyed by the successors of the deceased civil servant. Some of those were inheritable which formed part of the estate of the deceased while others were grants to be distributed among his family members according to law. Such a claim did not extinguish with the death of civil servant. The Apex Court further observed that under the constitutional scheme, abatement of the proceedings on the death of a civil servant, in a case, where a cause of action carries a survivable interest would unduly deprive the deceased civil servant as well as his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial. Similar views were expressed by this Court in case titled **Rakhshinda Habib v. Federation of Pakistan and others** (2014 PLC (C.S.) 247) as well as **Zaheer Abbas v. Pir Asif and 6 others** (2011 CLC 1528) and **Mst. S. Yasmin v. Pakistan Railways and others** (2017 PLC (C.S.) 1). On the touchstone of the above case law, the instant petition by the petitioner, claiming proforma promotion for her husband is

maintainable.

7. The thrust of the arguments by the learned counsel for the petitioner in seeking the proforma promotion antedated in BS-21 and then BS-22 is basically on the basis of discrimination on account of the fact that his juniors have been so granted. It was also argued vehemently that the petitioner was at serial No.8 of the seniority list but others who had been granted promotion were at serial Nos.11-A, 25, 30, 31 & 32 vide notifications dated 27.06.2016, 25.03.2016 & 04.10.2013. The said arguments of the learned counsel for the petitioner, in my opinion, is misconceived inasmuch as the promotion in the higher scale is based on seniority-cum-fitness. The promotion to BS-21 is within the domain of Central Selection Board and in BS-22 the High Power Selection Board and in neither case it is as of right. Nothing has been mentioned either in the writ petition or in the representation by the petitioner as to the reasons which prevailed with the competent authority in not granting promotion to the petitioner in BS-22 rather, the sole ground agitated is discrimination as juniors have been granted promotion. The facts and circumstances of the civil servants who were junior to the petitioner's husband and were granted proforma promotion in BS-22 and otherwise are not before this Court, hence no observation can be made with respect to the same. However, nothing has been mentioned in the writ

petition or otherwise as to the reasons which prevailed by virtue of which the petitioner's husband was denied promotion to BS-22. As noted above, the promotion to BS-22 is based on certain criteria as provided under the relevant rules and the petitioner has not shown as to whether her husband was considered and not recommended for promotion or otherwise the facts and circumstances which deprived him of his promotion. Though the request to be considered under FR-17 for proforma promotion for the purpose of financial benefits is after the retirement but the criteria for the same is whether the civil servant was denied promotion without any fault of his and mere discrimination or the promotion of the juniors cannot form the yardstick for grant of similar relief to any civil servant. In this behalf the relevant provision is FR 17 (1) which reads as under:

"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 post 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].

8. This Court in case titled The Prime Minister and others Versus Maj. Retd. Mohammad Habib Khan {2016 PLC (C.S.) 621} lucidly examined the law of FR 17 and observed as followed:

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.

The appointing authority in the case of the respondent is the Prime Minister. The latter, from time to time, has laid down guidelines and prescribed a mechanism for processing claims for being considered for extending benefits through proforma promotion. The last revised guidelines for the purposes of processing the cases of eligible civil servants to be considered pursuant to the proviso to FR-17(1) were issued vide office memorandum dated 18-09-2015. The appointing authority has constituted two Committees for considering the cases relating to proforma promotion i.e. the High Level Committee for making recommendations for cases of civil servants in BS-20 and above, and the Junior Level Committee for cases of civil servants in

grades lower than BS-20. The Junior Level Committee is headed by an officer of the rank of a Joint Secretary. The mandate of the High Level Committee is to submit to the appointing authority recommendations for approval. Part-III of the revised guidelines specifies those cases wherein the matter is to be referred to a Departmental Promotion Committee/ Selection Board for consultation before being considered by the Committee. Part-IV enumerates the cases wherein the respective Committee is mandated to consider the cases of civil servants for proforma promotion to the next higher post in their own cadre or service/group and who have been granted antedated seniority within the meaning of the proviso to FR-17(1). The annexure to the office memorandum, dated 18-09-2015, describes the information/papers which are required to be submitted for consideration of the cases by the respective Committees.

The guidelines issued from time to time, therefore, prescribes the mechanism or procedure for processing the cases and making recommendations to the appointing authority. The recommendations are placed before the appointing authority and the latter, after taking the same into consideration, decides whether or not to direct that the civil servant be paid the arrears of pay and allowance of a higher post through proforma promotion. It would be pertinent to refer to the observations made and principles laid down by the august Supreme Court in [PLD 1987 SC 172] "Muhammad Umar Malik and others v. Federal Service Tribunal and others" and reaffirmed in [2005 SCMR 1742] "Abid Hussain Sherazi v. Secretary, M/O Industries and Production, GOP, Islamabad". The relevant portion is as follows;

"There is no cavil to the proposition that 'there is no vested right in promotion or rules determining eligibility for promotion. Where ever there is a change of grade or post for

the better, there is an element of selection involved that is promotion and it is not earned automatically, but under an order of the competent Authority to be passed after the consideration of the comparative suitability and entitlement of those incumbents".

Proforma promotion essentially involves a change of benefits relating to a grade or post, and thus an element of selection; therefore, as settled law, it cannot be earned automatically, rather it is within the exclusive jurisdiction of the appointing authority whether or not to direct through an order, after consideration of the relevant matters placed before him/her in the manner prescribed in the guidelines issued in this regard. In [1991 SCMR 1559] "Muhammad Yousaf v. The Chairman, Railway Board/Secretary, M/O Railways, Islamabad and etc." the august Supreme Court has held that a civil servant can claim that he or she be considered by the appointing authority, but cannot call upon the Service Tribunal to direct such promotion. It is, therefore, obvious that without completing the process, as laid down in the guidelines issued from time to time, a civil servant cannot be declared as being entitled to proforma promotion. It is settled law that where the law requires an act to be done in a particular manner, it ought to be done in that manner alone, and such a dictate of law cannot be termed as a technicality. Reliance has been placed on "Muhammad Anwar and others v. Mst. Ilyas Begum and others" [PLD 2013 SC 255]."

9. The ground of discrimination though has been raised by the petitioner but it had to be demonstrated that the facts and

circumstances of those who were promoted antedated were similar or same to the petitioner's deceased husband and in the said backdrop he had been deprived promotion without any fault of his.

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

(AAMER FAROOQ)
JUDGE

Announced in open Court on the 07th day of January 2022

JUDGE

M.Naveed