

Form No: HCJD/C-121

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**JUDICIAL DEPARTMENT**

**Intra Court Appeal No. 105 of 2022**

Muhammad Israr Minto

Versus

Capital Development Authority and others.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(02)	06.06.2022	Appellant in person.

**TARIQ MEHMOOD JAHANGIRI, J.:**

Through the instant Intra Court Appeal, the appellant in person has assailed order dated 10.02.2022, passed by learned Single Judge-in-Chambers, whereby writ petition No. 3154 of 2019 filed by the appellant was dismissed.

02. Brief facts of the case are that the appellant was appointed as Store Officer (BPS-17) in the C.D.A. On 03.02.1990, after having served as Store Officer (BPS-17) for five years, applied to the Chairman, C.D.A. to be considered for promotion to the post of Deputy Director (BPS-18) in accordance with the provisions of the

Capital Development Authority Service Regulations, 1985 but his request was not considered and consequently, he was retired from service after attaining the age of superannuation on 26.02.2016.

03. After his retirement, he filed writ petition for his promotion to BPS-18, BPS-19 and BPS-20, respectively with effect from the dates when he became eligible for promotion with all back benefits. Writ petition was dismissed vide impugned order dated 10.02.2022 by learned Single Judge-in-Chambers, hence the instant appeal.

04. The appellant in person states that he had been treated most unfairly by the senior management of the C.D.A. by not considering him for promotion to a post in BPS-18 during his entire thirty one years of service; appellant has time and again submitted representations to the Chairman, C.D.A. to consider him for promotion but to no avail; junior officers have been promoted, the appellant ought to be

considered for *proforma* promotion since he was denied consideration for promotion for the reasons beyond his control; impugned order suffers from serious legal infirmities, hence the same is liable to be set aside.

05. We have heard the contentions of appellant and perused the record with his able assistance.

06. After the completion of service as Store Keeper (BPS-17) the appellant submitted an application for inclusion of his name in the seniority list of the executive cadre and complained that officers junior to him had been promoted.

07. Vide letter dated 02.09.1991, the Directorate of Personnel, C.D.A. informed the appellant that he belonged to the Store Cadre, as per the 1985 Regulations, he will be considered for promotion to the post of Deputy Director (Stores) as and when the post will be available. Furthermore, he was informed that

he had no right to claim promotion in the Executive Cadre.

8. Vide letter dated 15.10.1991, the C.D.A. informed the appellant inter alia that the post of Deputy Director (Stores) has been filled by promoting the senior most Store Officer.

9. After a gap of nine years, the C.D.A. informed the appellant that he could not be considered for promotion to the post of Deputy Director (Stores) as the said post had been "liquidated by the competent authority."

10. After a gap of another nine years, the appellant submitted an appeal / representation to the Chairman, C.D.A. seeking his promotion to the post of Deputy Director (BPS-18). In the said appeal, it is mentioned that he had filed appeals on five occasions but the same had not been considered.

11. During the entire thirty one years' service of the appellant in the C.D.A., he had not been promoted. The appellant retired from service on 26.02.2016 on attaining the age of superannuation. Three and a half years after

his retirement, he filed the instant petition praying for a direction to the C.D.A. to promote him to BPS-18, BPS-19 and BPS-20 with effect from the dates when he became eligible for promotion. He has also prayed for all back benefits to be paid to him. Infact, the appellant is seeking proforma promotion.

12. It is admitted by the appellant in para-16 of the writ petition that right of promotion from BPS-17 to BPS-18 was accrued to him in the year 1990, after the completion of five years of service.

13. After twenty nine (29) years when cause of action was accrued to the appellant as well as after three and a half year of his retirement, he has filed the writ petition which was hit by the principle of laches.

14. In a case titled as **"Ahmed and 25 others Vs. Ghama and 5 others" (2005 SCMR 119)**, it is held by the Hon'ble Supreme Court of Pakistan that:

***"There is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition".***

It is further held that:

***"We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumbers after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case".***

The same principle is followed in the cases reported as **2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720, PLD 2016 SC 514 and 2021 PLC(C.S) 951.**

15. Fundamental Rules-17 ("FR-17") deals with the *proforma* promotion. It is admitted that neither the 1985 Regulations nor the C.D.A. Employees Service Regulations, 1992 have any provisions of *proforma* promotion akin to FR-17 which is only applicable to the civil servants. It is also admitted position that employees of the C.D.A. are not civil servants, therefore, FR-17 does not apply to them.

16. Appellant in person has made no submission on the point that under which provision of law he was eligible for promotion. Further he failed to point out that how he can be granted promotion through a writ petition which has been filed after 29 years when the cause of action was accrued as well as after three and a half year of his retirement.

17. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Owais Shams Durrani and others Vs. Vice Chancellor, Bacha Khan University, Charsadda and another", (2020 SCMR 1041)** that:

***"It is trite that where a citizen seeks relief in constitutional jurisdiction he must point to a right statutory or constitutional which vests in him and has been denied in violation of the law."***

18. Intra Court Appeal can be filed when the impugned judgment of the learned Single Judge-in-Chambers is shown to have been delivered against the provisions of law and is the result of conclusions, which are contrary

to any specific provision of law or is the result of misreading, non-reading or same has caused miscarriage of justice, or mistakes of like nature; liable to be corrected by the Division Bench, otherwise, the judgment could not be upset in the Intra Court appeal.

19. In view of foregoing reasons, instant Intra Court Appeal is not maintainable, hence, the same is hereby **dismissed in limine.**

**(BABAR SATTAR)**  
**JUDGE**

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Ahmed Sheikh