

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.2714/2016

Muhammad Ilyas Bhatti

Versus

Secretary, Ministry of Information, etc.

Petitioner by:	In person
Respondents by:	Mr. Shahid Mehmood Khokhar, Advocate for respondents No.1,2 & 5
Date of Decision:	03.05.2017

MOHSIN AKHTAR KAYANI, J:- Through this petition the petitioner

has called in question the APP Selection Board proceedings dated 26.07.2007 conveyed to the petitioner vide letter dated 15.06.2016 whereby he alleged that the unlawful promotion of juniors and incompetent journalists has been made.

2. Brief facts of the instant case are that, petitioner is a retired Chief News Editor of the Associated Press of Pakistan (APP), who served the official news agency for 31 years and retired in March, 2010.

3. The petitioner while serving as Bureau Chief APP in the year 2007, the APP Selection Board promoted respondents No.3 to 5 to Special Grade/BPS-19, whereby petitioner feeling aggrieved, had assailed the said proceedings and filed representation dated 06.08.2007 to respondent No.1, but his representation remained un-responded till the filing of W.P. No.1420/08, which was disposed of on 12.11.2008 with directions to the respondents to decide the representation of the petitioner within a reasonable time. The petitioner was constrained to file a Criminal Original No.164-W/09, wherein this Court issued direction vide order dated 02.06.2016 for implementation of the order dated 12.11.2008 passed in W.P. No.1420/08. The respondent No.2, in compliance of Court's order dated 02.06.2016, processed the representation of petitioner and finally

after elapse of nine years, rejected the same vide letter No.6(13)/2016/P-II. Hence, instant writ petition.

4. The petitioner, in person, argued his case at length by raising the ground that APP Selection Board could not fix the threshold of 75 marks for promotion purposes, whereas under the rules only 60 marks are required for promotion from Grade-18 to Grade-19 and petitioner has qualified the said threshold. The petitioner has relied upon Estacode Clause-23.05 Revised Policy Guideline (May 1985), wherein PER of 60 marks are required for promotion from BPS-18 to BPS-19, i.e., from Grade-I to Special Grade under the 7th Wage Board Award for the newspaper employees. Petitioner further contends that he is the senior most amongst the colleagues and respondents No.4 and 5 are not senior as per the seniority list of the year 2003, however as per Selection Board Minutes, respondent No.4 was shown as senior to the petitioner, which is illegal; that respondents No.3 and 4 have been retired from service but they are receiving the pension from APP, whereas respondent No.5 has been superannuated on April 15, 2018; that petitioner was deferred by the Board, whereas petitioner never fell within the pre-conditions of the deferment; that respondent/Selection Board of the APP could not defer the case of petitioner or to supersede the petitioner under the rules.

5. Conversely, learned counsel for respondents filed written para-wise comments on behalf of respondents and took the stance that the petitioner does not fall within the definition of Civil Servant, rather he is a Public Servant as per Clause-12 of APP Corporation Ordinance, 2002 and the indication of the Estacode regarding PERs as referred by the petitioner, is for promotion of Civil Servants while services of the petitioner, being a Public Servant, do not fall within purview of Civil Servants; that respondents No.3 to 5 were promoted from Grade-I to Special Grade by the Selection Board in a very transparent manner, keeping in view their threshold marks,

on the basis of qualification/ACRs, etc.; that petitioner was also considered for promotion but he could not meet the criteria of earning at least two "Very Good ACRs" and minimum threshold of 75 marks, therefore, petitioner was disregarded for promotion for the next higher grade.

5. Arguments heard, record perused.

6. From the perusal of record it has been observed that petitioner is a retired Chief News Editor of the Associated Press of Pakistan (APP),

who served the official news agency for 31 years, however during his service APP Selection Board promoted respondents No.3 to 5 to Special Grade/BPS-19 illegal and non-transparent manner, petitioner being aggrieved filed a representation against the promotion. I have gone through the office order dated 28.07.2007, through which Selection Board in its meeting held in Ministry of Information and Broadcasting on 26.07.2007, promoted Usman Hameed, Javed Akhtar and Muhammad Naeem Chaudhry, respondent No.3,4 and 5 respectively, with the approval of Managing Director of APP, whereupon petitioner filed his representation against the said promotion which was not decided until petitioner invoked the jurisdiction of this Court via writ petition No.1420/08 and also filed criminal original No.164-w/09, whereby this Court vide order dated 02.06.2016 issued direction to respondent to decide the representation of petitioner. The respondents/Ministry of Information, Broadcasting & National Heritage, Government of Pakistan while complying with the order passed by this Court in criminal original, issued a letter dated 15.06.2016 stating therein that representation dated 06.08.2007 on the subject of "Promotion and Selection Grade/Foreign Posting" addressed to Federal Secretary/ Chairman APPC BoD, Ministry of Information, Broadcasting & National Heritage, Islamabad has been

decided. The reasons referred in the said impugned letter are as under:-

"As against the APPC promotion criteria dated, 26-07-2007, you did not meet the requirements of quantification of 75 marks and 02 Very Good ACRs during the considered period of 2001-2006."

In view of above referred reasons, the representation of the petitioner was turned down.

7. I have gone through the Selection Board Minutes dated 26.07.2007 for Special Grade held under the Chairmanship of Secretary, Ministry of Information, Broadcasting & National Heritage, who considered the promotion cases of APP Journalists from Grade-I to Special Grade. The meeting was headed by three members comprising of Managing Director APP, Executive Director APP and Manager (A&P) APP, who performed duties of Secretary of this Selection Board. As per the documents available on record, the Selection Board considered and accorded the approval of the criteria and credentials for such promotion; the criteria is as follows:-

- (i) *Minimum 07 years service in Grade-I.*
- (ii) *Masters degree in social sciences, preferably media related.*
- (iii) *Minimum threshold of ACRs: 75*
- (iv) *No disciplinary proceedings over the last 03 or preferably 04 years. At least two very good ACRs over the past 05 years.*

The details of the Selection Board meeting further reveals that the Board had considered 12 incumbents in this meeting, wherein the details of threshold against Muhammad Ilyas Bhatti have not been given but the entire record reveals that cases of the following incumbents have been considered at length.

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|----------------------|---|
| 1. Syed Fawad Hashmi | (APP Special Correspondent, London) |
| 2. Usman Hameed | (English News Service, APP, Islamabad) |
| 3. Liaqat Ali Toor | (APP Special Correspondent, New Delhi, India) |

4. Khan Zaman Malik (Sr.Editor, APP, Islamabad)
5. Miss. Rashida Butt (Sr.Reporter/Sub-Editor, APP, Islamabad)
6. Javed Akhtar (Acting Director News, APP, Islamabad)
7. Masood Sattar Khan (APP Special Correspondent, Beijing, China)
8. Farooq Ahmed (Sr.Sports Editor, APP, Islamabad)
9. Jalaluddin (Incharge Monitoring Section, APP)
10. Muhammad Ilyas Bhatti (Bureau Chief, APP, Rawalpindi)
11. Muhammad Akram Malik (Sr.Journalist, APP, Islamabad)
12. M. Naeem Chaudhry (Acting Director News, APP, Islamabad)

Whereby the Selection Board, for the promotion to Special Grade, had considered the following threshold criteria:-

- Qualification
- Performance Evaluation Report
- On the Job Conduct
- Respective Personal Behavior
- Recent Progress
- Professional Lapses
- Complaints against Skills
- Assessed Talent
- Any Recent Adverse Development and Specific Expertise Endeavours

Whereas, petitioner as evaluated on the abovementioned threshold criteria, failed to achieve the PERs of 75 marks, however petitioner categorically refuted the stance by relying upon Estacode Clause-23.05 Revised Policy Guideline (May 1985) and has taken the stance that under the said rules 60 PERs marks are required for promotion on the formula of seniority-cum-fitness and petitioner has 60 PERs and is senior to the respondents, who have been promoted.

8. I have gone through each and every aspect of this case wherein it has been observed that the Associated Press of Pakistan Corporation

Employees Service Rules, 2004 have been created U/S 21 of APPC Ordinance, 2002 with the approval of the Federal Government hence, it borrows the status of statutory rules, whereas part-II of the same deals with the promotion and Rule-6(2) read as:-

"A post referred to in sub-rules(1) may either be a selection post or a non-selection post to which promotions shall be made as may be prescribed:-

a) In case of a selection post, on the basis of selection on merit and

b) In the case of a non-selection post, on the basis of seniority-cum-fitness.

Explanation

Post in BS-19 or equivalent are selection posts and posts in BS-18 and below are non-selection posts."

However, the Selection Board has to consider the case of eligible employees in order of their seniority and other criterion.

9. It has further been observed that the petitioner, primarily, has two grievances, firstly, his case has been deferred for promotion and secondly, the PERs marks are 60 instead of 75, hence, it can safely be concluded that the threshold fixed by the Selection Board has been assailed but it is the job of the Selection Board to evaluate a person including other 11 contestants whereas the Selection Board, on the basis of their own criteria, evaluated all 12 incumbents and promoted respondents No.3 to 5 and dropped the name of petitioner, whereas the reasons referred through the impugned letter clearly demonstrate that petitioner failed to meet with the threshold of 75 PERs and two "Very Good ACRs", whereas after his retirement, he could not be evaluated in any manner even for that matter, he was considered and dropped by the Selection Board in the year 2007 and petitioner has been retired from service in March 2010, whereafter he was assailing the matter since then before the Judicial Forums.

10. In view of above, it has been settled by different pronouncements of Superior Courts that the case of anti-date promotion could not be considered when the employee has already been retired from the service.

Reliance is placed upon **2014 PLC (CS) 982 (Liaqat Ali vs. Government of NWFP through Secretary and others)** wherein it is held that:-

"As observed in the preceding para, the petitioner has also got retired from the post of Sub-Inspector, attaining the age of superannuation and in this eventuality, he could not be considered for promotion with retrospective effect. Wisdom may be drawn from the judgment of apex Court in case titled 'Abdul Hameed v. Ministry of Housing and Work, Government of Pakistan, Islamabad' (PLD 2008 SC 395). The issue of retrospective promotion to a retired employee cropped before the apex Court in case titled 'Government of Pakistan through Establishment Division v. Hameed Akhtar Niazi, Academy of Administration, Islamabad (PLD 2003 Supreme Court 110), wherein at page 121 of the judgment, the retrospective, pro forma promotion in respect of retired civil servant was held not admissible under the rules, in the following words:---

"Virtually, it is not a case of antedation, but of granting promotion from back date to the retired officer, which could not be allowed under the law."

The same view was reiterated by the august Supreme Court of Pakistan in case titled Ashiq Ali Bhatti v. Federation of Pakistan through Secretary Establishment Division and others (2006 SCMR 1324).

11. In view of above, I am of the considered view that instant writ petition is not maintainable at this stage as the Selection Board is the only competent authority, who can fix the promotion criteria and the threshold wherein petitioner did not fall within the said threshold. As per petitioner's own version he admits that he did not achieve 75 PERs marks, therefore, petitioner could not claim his promotion as a matter of right. Reliance in this regard is placed upon **2016 SCMR 1021 (Government of Khyber Pakhtunkhwa through Chief Secretary vs. Hayat Hussain and others)** wherein it is held that:-

"It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a

Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down as held by this Court in the case of The Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (PLD 1960 SC 81)."

12. By considering all aspects of the instant case and for what has been discussed above, this Court could not sit in capacity of appellate authority above the Selection Board who had evaluated the petitioner and others on the basis of criteria, given its fact finding on the basis of its own evaluation, after considering each and every individual contestants for the promotion, wherein petitioner could not meet the threshold, therefore, instant petition is devoid of merits and same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.