

JUDGMENT SHEET.

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

W.P. No. 821/2020.

Muhammad Hussain Lasi

Versus

Federation of Pakistan, etc.

Petitioner by: Mr. Haroon Rashid and Mr. Atta-ul-Haq Akhtar, Advocates.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Sajid Cheema, Inspector (Legal), Islamabad Police.

Date of Decision: 06.08.2020.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has prayed for the following relief:-

- i. *To direct respondents No.2 and 3 to intimate to respondent No.1 the exact number of posts of BS-18 available on Ex-Cadre quota after deleting the names of already encadred PSP officers for consideration of eligible officers for promotion.*
- ii. *To direct the respondents to place the case of the petitioner along with other eligible officers against the 6 presently available vacancies before the superannuation of the petitioner.*
- iii. *To order an inquiry against the defaulting officers/officials who deliberately submitted wrong and false information regarding number of vacancies to the DPC.*

2. Brief facts referred in the instant writ petition are that petitioner joined the police service in ICT as ASI on 20.03.1984 and while serving as DSP (BS-17) in ICT filed writ petition, wherein he was retired from service on 15.03.2020 by attaining the age of superannuation. Respondents No.1 & 2 convened Departmental Promotion Committee (DPC) meeting whereby respondents No.3 & 4 provided the information that only three vacant seats are available for promotion in BS-18 out of 15 posts reserved for Ex-cadre/ICT officers under Police Service of Pakistan (Compositions, Cadre and Seniority) Rules, 1985.

Resultantly, notification dated 05.03.2020 was issued by Ministry of Interior and five officers were promoted however, petitioner was excluded due to less number of vacancies. The petitioner claims that true number of vacancies were not referred which were 8 in number on the said given date, hence, petitioner has no other option but to claim his legitimate right for declaration of those available seats for PSP officers against the ICT quota.

3. Learned counsel for the petitioner contends that petitioner has legitimate right of expectancy to be promoted for the post of BS-18 as SP under Police Service of Pakistan (Compositions, Cadre and Seniority) Rules, 1985 on reserved PSP quota of 40% meant for Ex-cadre but the true number of seats was not referred when the case was sent to DPC and as such right of petitioner has been jeopardized; that posting of PSP officers in excess of their prescribed quota is illegal and even non-promotion of Ex-cadre officers of ICT is a malicious attempt to deprive the officers of that cadre, the action and orders of respondents are based upon arbitrariness, malafide and colorful exercise of powers with ulterior motives.

4. Conversely, learned AAG in attendance alongwith Inspector (Legal) of ICT Police contends that respondents have given actual strength for the purpose of promotion to the DPC, which were three in number on the given date, however, five persons were promoted through notification dated 05.05.2020, whereby two of the seats were considered for the purpose of promotion from officers who were going to retire in future at that time; that no legal right is available to the petitioner, even otherwise, he has been retired from service during the pendency of this writ petition and writ is not competent.

5. Similarly, learned AAG on behalf of Establishment Division has taken another stance that eight (08) posts were available in the share of ICT for appointment/encadrement of PSP at the given date.

6. Arguments heard, record perused.

7. Perusal of record reveals that entire dispute raised in the instant writ petition is regarding non-observance of quota fixed for ICT Police officers in terms of Police Service of Pakistan (Compositions, Cadre and Seniority) Rules, 1985, whereby 60% of senior posts (BPS-18 and above) are meant for PSP cadre and 40% for Ex-cadre/encadred officers. The para-wise comments submitted by ICT Police department spell out that out of 38 senior posts, 23 posts (60%) are meant for PSP cadre and remaining 15 posts (40%) for Ex-cadre/encadred officers.

8. As per stance of ICT Police department 12 posts were occupied out of 15 Ex-cadre posts in January, 2020, as such 03 posts were lying vacant which were required to be filled by promotion of senior most eligible DSPs. Resultantly, the case of petitioner alongwith other 05 DSPs was sent to Ministry of Interior for promotion being competent authority vide letter dated 07.01.2020 against three (03) vacant posts of SP. The name of petitioner existed at S.No.6 of the seniority list of DSPs and two names against each vacancy were sent to Ministry of Interior for consideration. The meeting of DPC was held on 28.02.2020, whereby five (05) DSPs were promoted to the rank of SP and notification dated 05.03.2020 was issued. One Fida Hussain Satti, DSP mentioned at S.No.4 was promoted against the post of Abdul Hafeez, SP, who has retired on 29.02.2020 as such his promotion was made beyond the mandate of notified vacancies on the date when meeting of DPC was convened. Similarly, promotion of Arshad Mehmood, DSP against another future vacancy of Jamil Ahmed Hashmi, SP, who has retired on 19.05.2020 was made in violation of basic law. ICT Police department has taken categorical stance that "name of petitioner was at S.No.6, and no post of SP was available on 15.03.2020, so, he could not be promoted to the rank of SP". It has further been mentioned that "petitioner has been retired from Government service on 14.03.2020 on attaining the age of superannuation i.e. 60 years and his retirement notification was issued on 11.03.2020."

9. While considering the above stance in *juxtaposition* with the stance of Establishment Division qua the availability of senior cadre posts on the touchstone of Police Service of Pakistan (Compositions, Cadre and Seniority) Rules, 1985, whereby it has been categorically mentioned that "currently five (5) officers in PSP from ICT Police are serving in PSP cadre and eight (8) posts are still available in the share of ICT for appointment/encadrement for its officer in PSP", it can safely be concluded that on the date of DPC meeting the true picture of available vacancies was not given to the concerned ministry and interior division is not clear on the availability of posts, even though two of the persons/DSPs were promoted against future seats, which were not vacant on the date of promotion, the entire exercise made by the DPC is beyond the legal scope of the rules, nor even they have considered the available vacant seats as such petitioner has been deprived of his legitimate right of expectancy of promotion in BS-18 though no fault of his own.

10. The petitioner has been retired on 15.03.2020, which further curtailed his option to be promoted. The petitioner has filed the instant writ petition on 09.03.2020 before his retirement and even though he is not claiming his promotion in the writ petition which could not be granted due to bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 in the instant proceedings. The information so claimed by the petitioner through instant writ petition is his legitimate right and his claim has been established by the respective department including the Establishment Division in which number of seats were available, therefore, at this stage this Court restrained itself from passing any adverse observation/remarks against working of DPC qua promotion of Fida Hussain Satti and Arshad Mehmood, DSPs, who have now earned their right as they have been adjusted against future posts though such principle, which is not justiciable under any law or having backing of law, therefore, ICT Police department, Chief Commissioner, ICT, Ministry of Interior

and the promotion committee are directed not to promote any officers by considering future promotion seats by actualizing his rank on retirement of some officer.

11. Besides the above referred position, Establishment Division has taken a clear stance regarding the availability of posts, the petitioner earned his right to be considered for promotion, but now he has been retired from service and in view of this scenario, the respondent Department is not in a position to promote the petitioner, although he was not considered for the purpose of promotion at the relevant time by the Department Promotion Committee due to non-availability of post as reflected from record, which in fact has wrongly been asserted by the relevant department qua the availability of post. Such scenario has been dealt with by the superior Courts in the light of view rendered in judgment reported as 2010 SCMR 1466 (Dr. Muhammad Amjad and another Vs. Dr. Israr Ahmed) and 2012 PLC (C.S.) 929 (Secretary School of Education and others Vs. Rana Arshad Khan). The instant matter could have been considered due to the present scenario discussed above in terms of Rule 17(1) of the Fundamental Rules, whereby the proviso to the said rule provided for a situation where the civil servant entitled to be promoted from a particular date, but for no fault of his own was wrongly prevented from rendering services in the higher post, was to be paid the arrears and allowance of such higher post through proforma promotion or upgradation by ante-dated fixation of seniority. Reliance is placed upon 2018 SCMR 1995 (Muhammad Rashid Bhatti vs. Director General FIA). Hence, the case of petitioner should have been considered on the day of DPC meeting held, for his financial benefits under the law. The prayer made in clause (iii) for initiation of inquiry against defaulting officers/officials for providing false information regarding number of vacancies to the DPC is not made out as it is factual error recorded by ICT Police Department in their record

as well as Ministry of Interior, which has to be considered under the statement of Establishment Division/respondent No.2

12. In view of above, instant writ petition stands **DISPOSED OF** with direction to the respondents to place the matter before FR-17 Committee, who shall decide the same within next six (06) months to settle the right of petitioner accordingly.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid