

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT**

BEFORE:

***Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge***

CPLA Under Objection No. 42/2019

(Against the judgment dated 05.12.2018 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 405/2014)

1. Provincial Govt. through Chief Secretary Gilgit-Baltistan
2. Secretary Home Gilgit-Baltistan, Gilgit
3. Inspector General of Police Gilgit-Baltistan, Gilgit
4. Secretary Services Gilgit-Baltistan, Gilgit

Petitioners

Versus

Muhammad Qayyum s/o Muhammad Karim Rtd (A) Superintendent Police R/o Jutial, Gilgit

Respondent

PRESENT:

For the Petitioners : The Advocate General GB

Date of Hearing : **27.10.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose-of the instant CPLA directed against judgment 05.12.2018 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 405/2014 whereby service appeal filed by the respondent has been accepted.

2. Brief facts gathered from record of the case in hand are that respondent, while serving as Deputy Superintendent of Police (BS-17) in Police Department GB, was granted promotion to the post of Superintendent of Police (BS-18) on 02.01.2012 on acting charge basis. He served as SP on

acting charge basis till attaining the age of superannuation and retired from the post of DSP (BS-17) on 05.10.2013. The respondent claimed that despite availability of posts of SPs (BS-18) and having possessed the requisite criteria for promotion from DSP (BS-17) to SP (BS-18), he was not promoted to the post of SP (BS-18) and with malafide intention of the police department, GB was kept on current charge basis till his retirement. The respondent further claimed that in order to deprive him of the opportunity of promotion, the petitioners deliberately did not convene his promotion DPC rather opted to wait for his retirement. As such, the respondent, after retirement from the post of DSP (BS-17), came up with the claim of proforma promotion from the date of his eligibility for promotion to the post of Superintendent of Police (BS-18) with back benefits. For redressal of his grievances, the respondent claimed to have submitted a departmental appeal to high ups of Police Department, Gilgit-Baltistan, which remained undecided. Leaving with no option but to resort to legal remedy, the respondent filed a service appeal before the learned Gilgit-Baltistan Service Tribunal, which was accepted, hence the instant CPLA by the petitioners.

3. The learned Advocate General Gilgit-Baltistan argued that the impugned judgment passed by the learned Gilgit-Baltistan Service Tribunal (GBST) is not maintainable on the ground that the service appeal filed by the respondent before the learned GBST was time barred and the learned GBST badly failed to consider this legal aspect which is clear violation of provisions of law of limitation. He next argued that the learned Gilgit-Baltistan Service Tribunal failed to advert to legal position of the case that under the Gilgit-

Baltistan Civil Servants Act, 2011, no government servant can claim Proforma promotion after retirement. He maintained that grant of promotion on acting charge against higher post does not confer a legal right upon the incumbent to claim regular promotion against the higher post held by him on current charge basis. He iterated that current/acting charges promotions are granted to officers/officials as stopgap arrangements to run day to day affairs of department which in no way entitles the incumbent to regular promotion to the relevant post. He further argued that admittedly, at the time when the respondent was promoted to the rank of SP on acting charge basis, some posts of SPs were lying vacant but DPC for promotion to the post of SPs (BS-18) could not be convened due to pending litigation before the learned GB Chief Court with regard to a dispute as to the vacancy sharing formula. He added that as per existing seniority list prepared and maintained by the Central Police Office, the respondent being junior to his counterparts was not eligible for promotion. The learned Advocate General, GB next contended that even the charge of the post of Superintendent of Police assigned to the respondent was not the acting charge, rather it was a shoulder promotion on the recommendation of the then Chief Minister, GB, as such the respondent could not claim regular promotion on this score alone. The learned AG, GB prayed that since the judgment by the learned Service Tribunal was not based on cogent reasons inasmuch as it lacked legal backing, hence the judgment so passed is liable to be set aside.

4. On the other hand, the learned counsel for the respondent advanced his arguments in support of the impugned judgment. The learned counsel for the respondent

contended that keeping in view the requisite eligibility criteria possessed by the respondent inasmuch under the provisions of relevant law, the petitioners were bound to promote the respondent from the date of availability of post of SP (BS-18), but the authorities of police department deliberately and with malafide intentions did not promote the respondent and opted to wait for retirement of the respondent on his own post of DSP (BS-17). It was next contended by the learned counsel that the respondent served the police department, GB as SP on acting charge with full devotion and dedication with an unblemished service record, therefore, ignoring him for grant of benefit of promotion to next higher post was unlawful and against the natural justice.

5. We have considered the arguments advanced from both the sides. With the able assistance of the learned counsel for the respective parties, we have also gone through the available record as well as the impugned judgment.

6. It is observed that a number of cases claiming proforma/notional promotions have been decided by this Court. The case in hand is also one of them having similar facts, grounds and legal proposition. Therefore, it would be a futile exercise to explain the same reasoning and legal proposition already discussed in those cases, rather it would be just and proper to refer to a case of Police Department Gilgit-Baltistan having a cause of action exactly in similarity to the case in hand. Therefore, we would like to decide the case in hand in line with the case referred herein. The case is titled as Prov. Government through Chief Secretary & others Vs. Akhtar Hussain Changaizi CPLA Under Objection No. 85/2019 wherein this Court has held as under:

"Before we put our own view on the matter, we would like to advert to the definition of notional promotion which is the issue before us to decide. Clause "h" of Sub Section 1 of Section 2 of GB Civil Servants Act 2011 which deals with granting notional promotion to a retired civil servants reads as under :-

2. Definitions

1. (h) "Proforma promotion" means predating of promotion of civil servant or retired civil servant with effect from the date of regular promotion of his junior, for the purpose of fixation of pay and payment of arrears as may be prescribed"

Sub Section 4 of Section 8 of the GB Civil Servant Act 2011 which recognizes the entitlement of notional promotion to a civil servant from an earlier date, reads as under:

8. Promotion

(4) A civil servant shall not be entitled to promotion for an earlier date except in the case of Proforma promotion (underlines supplied)

7. Now we would like to come to the issue of grant of notional promotion and entitlements of drawing pay and allowances against higher posts on acting/current charge basis. It is to be noted that as per Federal Government policy duly approved by the Prime Minister of Pakistan, the guidelines for FR-17(1) in respect of committees to consider the cases of notional promotion has been amended vide office memorandum F. No.4(6) Imp/FR-17/2013-277 dated 18th September, 2015 wherein Para-I has declared the civil servant to be promoted from a particular date who for no fault of his own has been wrongfully prevented from rendering service to the Federation in the higher post and such civil servant has been held entitled to get the arrears of pays and allowances of such higher post through notional promotion or up-gradation arising from the ante-dated fixation of his seniority. Moreover a new clause (a) (1) has been inserted in Para-iv of the said M.O whereby the Departmental Promotion Committees have been declared under obligation to consider the cases of civil servants for notional promotion to next higher post in their own cadre as

the cases of retired civil servants who could not be considered for promotion for no fault of their own and retired on attaining the age of superannuation. For ease of reference, the relevant rule is reproduced herein below:

“F.R. 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 date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through pro forma promotion or upgradation arising from the ante-dated fixation of his seniority”

The above rule makes an employee, who acts against higher a post, entitle to draw the pay and allowances attached to the said post. The saving clause to the above rule provides that if a civil servant was entitled to be promoted from a particular date but was wrongfully prevented from rendering service in the higher post shall also be entitled to arrears of pay and allowances of such higher post through notional promotion or upgradation arising from the ante-dated fixation of his seniority.

8. Now coming to rules imposing responsibilities on acting charge officer and entitlement to perks and privileges, we for the sake of brevity, reproduce the said rules as follows:

**“Sl. No. 15
APPOINTMENT ON ACTING CHARGE BASIS**

Reference rule 8-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, and to state that a civil servant, on appointment to hold a post on Acting Charge basis, shall—

(a) assume full duties and responsibility of the post and exercise all statutory, administrative and financial powers vested in the regular incumbent of the post; and

(b) during the period of such appointment, be entitled to draw fixed pay equal to the minimum stage of the pay at which his pay would have been fixed had he been appointed to that post on regular basis. Service rendered on acting charge basis in the scale applicable to the post shall not count for purposes of drawal of increments in that grade. It shall, however, count towards increments in the scale of pay held immediately before appointment on acting charge basis so that on reversion from acting charge appointment his pay in the lower grade should be fixed at the same stage which he would have reached, but for appointment to the higher grade.

Provided that if at any time during his appointment on acting charge basis, his substantive pay exceeds his pay fixed on acting charge appointment, he will draw his substantive pay".

9. The Hon'ble Supreme Court of Pakistan is much clear about the issue of acting/ current charge promotions as well as accruing of benefits for holding higher posts by officers/ officials of lower posts. To this effect we rely upon the following judgments of the Hon'ble Supreme Court of Pakistan with reproduction of the relevant paras of each judgment as follows.

PLD 1986 SC 349 Imdad Ali Khan Vs. Pakistan.

"when a civil servant, otherwise, suffering from no ineligibility or deficiency is promoted or called upon to discharge the full duties of the higher post he is entitled to the increments in the pay scale of the higher post for so long as he discharges those duties and holds such as post.

PLD 1978 SC 61

Postmaster General, Eastern Circle (BP), Dacca & another Vs. Muhammad Hashim.

"The Government's own decisions printed in Official compilation of Fundamental and Supplementary Rules themselves would indicate that the rule was not intended to deprive a person of a higher

remuneration if he was assuming duties and responsibilities of greater importance than those attaching to his substantive post”(underlines supplied)

10. The contention of the learned Advocate General, GB that no civil servant can claim promotion after retirement is indeed an admitted fact of law, however situation varies from case to case. The rules governing any issue relating to terms and conditions of service of government servants require to be read and understood as a whole and not on piecemeal basis. The theme of interpretation of legal position regarding grant or refusal of notional promotion to the retired govt. employees would be that if there did not exist any post at the time of retirement of a civil servant, who stood retired from his post on attaining the age of superannuation, he would not be entitled to claim ante-dated/ notional promotion against post which fell vacant or created after his retirement. Contrarily, on the following occasions only i.e. (a) if there existed a post before retirement of a civil servant; (b) he was by all aspects eligible for promotion; and (c) he was not considered for promotion against that post for no fault on his part and was wrongfully prevented from the benefit of promotion, then right would, therefore, on above grounds, accrue to the civil servant to claim ante-dated/ notional promotion against the said post lying vacant prior to his retirement.

11. As far as contentions of the learned Advocate General, GB as to non-availability of posts of Superintendent of Police at the relevant time is concerned, while going through the parawise comments submitted by the provincial government before the learned Gilgit-Baltistan Service Tribunal, we have noticed that it was contended in para 8 of the parawise comments that DPC for promotion of Deputy Superintendents of Police could not be convened due to pendency of a writ petition before the learned Chief Court filed by some direct recruited Deputy Superintendents of Police. This meant that though posts of SP were available but DPC could not be held for the above reasons. If the situation was so, then it was not the fault on the part of the respondent which could be made a base for depriving him from the right of promotion”.

7. So far as the arguments of the learned Advocate General regarding entertaining time barred service appeal by the learned Gilgit-Baltistan Service Tribunal is concerned, it is cleared that in view of the judgment of the Hon'ble Supreme Court of Pakistan, it is the discretion of the learned Service Tribunal to determine the suitability of condonation of delay in view of peculiar circumstances of each case. For the sake of brevity, some of those cases are quoted herein. The Hon'ble Supreme Court of Pakistan in a case titled Chief Executive Officer, Quetta Electric Supply Company (QESCO) Vs. Rana Shamim Akhtar 2010 SCMR 442, has been pleased to hold as under:

"We have not been persuaded to agree with the prime contention of learned Advocate Supreme Court on behalf of petitioner that learned Federal Service Tribunal was not justified to entertain and decide the time barred appeal for the simple reason that question qua condonation of delay squarely falls within the jurisdictional domain of learned Service Tribunal and no restriction whatsoever has been imposed by any law and condonation can be granted in suitable cases and question of suitability is to be assessed by the learned Federal Service Tribunal itself"

The Hon'ble Supreme of Pakistan in another case titled Government of N.W.F.P Vs. Asif Iqbal 2010 SCMR 1345 has also held as under:

"It is well-settled by now that "sufficiency of cause for condonation of delay being question of fact is within the exclusive jurisdiction of learned Service Tribunal."

8. Foregoing in view, we do not find any illegality or infirmity in the impugned judgment. Therefore, leave in the instant CPLA Under Objection No. 42/2019 is refused. In

consequence whereof, the impugned judgment dated 05.12.2018 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 405/2014 is maintained with the direction to the petitioners to implement the said judgment in its true spirit. These were the reasons for our short order dated 27.10.2020 which is reproduced herein below:

"The learned Advocate General, Gilgit-Baltistan vehemently argued the case at some length. We have also gone through the impugned judgment minutely. We did not find any illegality or infirmity in the impugned judgment; therefore, for the reasons to be recorded later, leave in the above CPLA under objection No. 42/2019 is refused. The impugned judgment dated 05.12.2018 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 405/2014 stands maintained"

Chief Judge

Judge

Whether fit for reporting (**Yes / No**)