

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. 85/2019

(Against the order dated 05.12.2018 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 508/2014)

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

Versus

Akhtar Hussain Changazi s/o Haji Sher Muhammad retired as Acting SP (PPM), GB, Gilgit..... **Respondent**

PRESENT:

For the Petitioners : The Advocate General Gilgit-Baltistan

For the respondents: Mr. Muhammad Saleem Khan Advocate

Date of Hearing: **10.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose-of the instant CPLA directed against judgment dated 05.12.2018 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 508/2014 whereby service appeal filed by the respondent was accepted.

2. Facts gathered from record of the case are that the respondent while performing his duties as Acting Superintendent of Police retired as DSP BS-17 on 10.10.2013 on attaining the age of superannuation. The respondent

claimed that despite availability of posts of Superintendent of Police (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 Superintendent of Police (BS-18) and was kept on current charge basis till his retirement with malafide intention of the Police Department, GB. The respondent further claimed that in order to deprive him of the opportunity of promotion, the petitioners did not convene DPC and deliberately opted to wait for his retirement. Now after retirement, he came up with the claim of notional 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. Left with no other available option, he resorted to legal remedy by filing 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 opposed the judgment so passed and 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 could claim notional promotion after retirement. He next argued that assigning current/ acting charge of higher post to a staff holding lower post does not confer a right upon the assignee to claim regular promotion against the higher post held by him on current charge basis. He iterated that current/acting charges are assigned to officers/officials as stopgap arrangements to run the day to day affairs of department

which in no way entitles an employee for regular promotion to the relevant post. He next contended that the learned GB Service Tribunal failed to thrash-out a crucial factual point that at the relevant time, no posts of Superintendents of Police were available with the department. He maintained that even if the posts were assumed to be available at that time, how the respondent could be promoted to the post of SP in presence of senior Deputy Superintendents of Police. 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, the judgment so passed deserved to be set aside.

4. On the other hand, the learned counsel for the respondent supported observations made and reasons assigned to the impugned judgment. The learned counsel argued that the petitioners were bound under law to promote the respondent from the date of availability of the post of SP (BS-18), but despite availability of posts and possessing the requisite eligibility criteria by the respondent, 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). He next argued that the respondent served the police department, GB as SP on acting charge with full devotion and dedication with an unblemished service record, therefore, he deserved to be promoted to next higher post of SP (BS-18). At

the conclusion of his arguments, the learned counsel for the respondent prayed for upholding the impugned judgment.

5. Arguments advanced by counsel for the respective parties heard. Record as well as judgment 05.12.2018 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 508/2014 also perused.

6. 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.

12. Without prejudice to our observations regarding the case in hand, we have generally noticed that the government functionaries while assigning acting/ current charges against higher post fail to apply

guidelines/instructions contained in ESTACODE, which gives rise to unnecessary complications in administrative affairs of the government. As such, the employees aggrieved of these complications approach the Courts of law for deciding their issues, which unnecessarily puts burden on the Courts for the fault of the authorities sitting at the helm of affairs of the government. The guidelines/instructions governing grant of acting/ current charge and contained in ESTACODE are reproduced below for application thereof in such like matters in future:

**PART II — APPOINTMENTS BY PROMOTION
OR TRANSFER**

8-B. (1) Where the appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned who is otherwise eligible for promotion does not possess the specified length of service the authority may appoint him to that post on acting charge basis.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for a period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Central Selection Board, as the case may be, save in the case of [post in basic pay scale 22 and equivalent].

13. The upshot of the above observations is that having not been able to find any illegality, irregularity or infirmity in the judgment passed by the learned Gilgit-Baltistan Service Tribunal, we refuse leave in the matter. The impugned judgment dated 05.12.2018 passed by the learned

Gilgit-Baltistan Service Tribunal in Service Appeal No. 508/2014 is maintained. These were the reasons for our short order dated 27.10.2020, which is reproduced below:

"The learned counsel for both the parties have been heard. 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 U/O No. 85/2019 is refused and the C. Misc. Application No. 118/2019 and C. Misc. Application No. 119/2019 stand dismissed. The impugned judgment dated 05.12.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 508/2014 is maintained/upheld".

Chief Judge

Judge

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