

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

Civil Appeal No.559 of 2020

*Against order dated 05.06.2018 of Federal Service Tribunal,
Islamabad passed in R.P.No.75 of 2018 in MP No.3155 of
2017 in Appeal No.1781(R)CS of 2011.*

Secretary Establishment Division, Islamabad.

...Appellant(s)

Versus

Tahawwar Ahmad.

...Respondent(s)

For the Appellant(s): Mr. Sajid Ilyas Bhatti, Additional
 Attorney General for Pakistan.
 Syed Razaqat H. Shah, AOR.

For the Respondent(s): In person.

Date of Hearing: 16.09.2020.

JUDGMENT

IJAZ UL AHSAN, J.- This appeal with leave of the Court arises out of an order of Federal Service Tribunal, Islamabad ("***the Tribunal***") dated 05.06.2018. Through the impugned order, a review petition (R.P.No.75 of 2018) filed by the petitioner was dismissed.

2. Briefly stated the facts necessary for disposal of this appeal are that the Respondent, a Senior Joint Secretary to the Government of Pakistan was deputed with permission of the Government to the United Nations ("***UN***") in August 2000. He resigned from his position in the UN and returned to Pakistan to join service in September, 2005. He sought proforma promotion which was declined. His departmental

appeal was not responded to. He therefore approached the Tribunal claiming that the period during which he was serving with the UN had not been counted towards his seniority and promotion. He sought ante-dated promotion in BS-20, 21 and 22 on the same pattern as others were granted. The Tribunal vide judgment dated 16.02.2012 came to the conclusion that the period on deputation abroad does not create any interruption for seniority and promotion. Consequently, the Respondent was allowed proforma promotion in the following terms:

"In the above circumstances, we allow the appeal and direct that the appellant shall be given ante-dated promotion as prayed for by him."

3. It appears that the Respondent was granted ante-dated promotion as per direction of the Tribunal. However, he filed a Miscellaneous Petition bearing No.654 of 2015 for implementation of the judgment of the Tribunal dated 16.12.2012. On the said MP, the Tribunal issued the following direction vide order dated 19.08.2015:

"Foregoing in view, we all this Miscellaneous Petition with direction to the respondents to implement the judgment of this Tribunal dated 16.02.2012 in letter and spirit by issuing antedated promotion Notification in BS-20, BS-21 & BS-22 of the petitioner/appellant in accordance with the orders of FST with all consequential, financial and other benefits and all privileges attached with the grade/posts within two months to avoid any further delay in dispensation of justice to the petitioner/appellant, who has already suffered a lot due to inaction/apathy of red-tapism."

In compliance of the direction of the Tribunal, the case of the Respondent was considered in FR-17(1) Committee and he was granted ante-dated proforma

promotion to BS-20 with effect from 31.05.2001 to 25.08.2006, BS-21 with effect from 18.12.2007 to 16.03.2009 and BS-22 with effect from 03.08.2011 for the purpose of payment of arrears of pay and allowances only.

4. It is pertinent to mention that the Respondent had retired on 06.08.2011 as a BS-21 Officer of the Secretariat Group. While in service, he never agitated the matter of his seniority and promotion to BS-20, 21 and 22. Thereafter, he filed various applications dated 22.05.2017, 15.06.2017 and 17.07.2017 requesting for allotment of an additional residential plot like other BS-22 officers. The petitioner vide order dated 02.08.2017 declined the applications and informed the Respondent that the officers who are granted proforma promotion are neither entitled to allotment of additional plots under the relevant Policy nor their names can be forwarded to the Housing and Works Division. He therefore filed another Miscellaneous Petition bearing No.3155 of 2017 before the Tribunal seeking initiation of contempt proceedings for non-compliance of the judgment of the Tribunal dated 16.02.2012. The Tribunal disposed of said MP, vide order dated 26.02.2018 with the following direction:

"We are of the considered opinion that it is not justified on the part of the respondent department to again ask the petitioner to establish his claim before an appropriate forum particularly in view of this Tribunal's order above. The petitioner has already suffered a lot by going through the cumbersome, time consuming and expensive procedure to get his due rights. Therefore, the respondent is directed to process the case for allotment of an additional plot attached with the post of BS-22 in favour of the petitioner and submit

a compliance report completed in all respect, to the Registrar, FST within a period of one month, positively."

The petitioner was dissatisfied with the aforementioned order dated 26.02.2018 and thus filed a Review Petition bearing No.75 of 2018 on the ground that allotment of plot cannot be treated as a consequential benefit of proforma promotion granted under FR-17. The Respondent was granted proforma promotion for the purpose of payment of arrears of pay and allowances only on the recommendation of FR-17(I) Committee vide notification dated 05.05.2017. Therefore, the judgment of the Tribunal dated 16.02.2012 had fully been complied with and nothing needed to be done. It was also pointed out that the Tribunal had failed to consider the Policy of the Government regarding allotment of additional plots before passing the impugned order. Such error was floating on the surface of the record and needed to be corrected. However, the Tribunal vide impugned order dated 05.06.2018 dismissed the petition. The petitioner therefore approached this Court by way of a Civil Petition for Leave to Appeal.

5. Leave to appeal was granted by this Court vide order dated 04.05.2020 in the following terms:

"The respondent had filed a Service Appeal bearing No.187(R)CS of 2011 before the Federal Service Tribunal, Islamabad ("the Tribunal") praying for grant of proforma promotion. Vide judgment dated 16.02.2012 of the Tribunal ante-dated promotion as prayed for by the Respondent was granted, but without any other relief. The Respondent filed a Miscellaneous Petition for implementation of the aforesaid judgment. Vide order dated 19.08.2015, such Miscellaneous Petition was decided by the Tribunal whereby it was directed that judgment dated 16.02.2012 be implemented in

letter and spirit by issuing ante dated promotion notification in BS-20, 21 and 22 with all consequential benefits and all privileges attached with the grades/posts.

2. After the petitioners have implemented the judgment of the Tribunal, the Respondent made an application to the department for allotting him an additional plot as a benefit attached to Grade-22 post. Such was denied by the petitioners, vide order dated 02.08.2017, whereupon the Respondent again filed a Miscellaneous Petition before the Tribunal which was decided by it vide order dated 26.02.2018 whereby the petitioners were directed to allot him an additional plot attached to the post of BS-22. It is against this order that the petitioners filed a review petition in which the stand taken by them was that in the judgment dated 16.02.2012 the Tribunal had mainly granted ante-dated promotion to the Respondent without granting him any further benefit. However, such judgment was exceeded to by the Tribunal when it allowed the Miscellaneous Petition filed by the Respondent, vide order dated 26.02.2018.

3. The learned Additional Attorney General for Pakistan has contended that there was no mention for grant of an additional plot to the Respondent in the original judgment of the Tribunal dated 16.02.2012 and the same was never challenged by the Respondent before the appropriate forum. He adds that if any right to allotment of an additional plot had become available to the Respondent the same was a fresh cause of action and he could have filed a separate appeal for the same. He has further contended that pursuant to the judgment dated 16.02.2012 no relief for allotment of an additional plot could have been granted by the Tribunal to the Respondent. He therefore submits that the Tribunal has erred in law while passing the impugned order thereby dismissing the Review Petition filed by the petitioners.

4. The submissions made by the learned Additional Attorney General for Pakistan need consideration. Leave to appeal is therefore granted to consider inter alia the same. Appeal stage paper books be prepared on the available record. However, the parties are at liberty to file additional documents, if any within a period of one month. As the matter relates to service, the Office is directed to fix the same for hearing in Court expeditiously, preferably after three months.

5. *In the meantime, operation of the impugned order dated 05.06.2018 shall remain suspended."*

6. The learned Additional Attorney General for Pakistan has argued that judgment of the Tribunal dated 16.02.2012 was implemented in letter and spirit by granting proforma promotion to the Respondent to BS-20, 21 and 22. He maintains that grant of proforma promotion to retired civil servants are processed/considered by FR-17(I) Committees under Fundamental Rules-17 for grant of arrears of pay and allowances only which were duly granted to the Respondent. He maintains that despite implementation of the judgment in letter and spirit, the Tribunal without looking into the mandate of the FR-17 Committee and the policy of the Government regarding allotment of additional plot went beyond the main judgment while disposing of the Miscellaneous Petition. He further submits that this Court had granted proforma promotion to Umar Farooq, petitioner in Civil Petition No.472 of 2014. However, in a Criminal Original Petition filed by him for grant of a residential plot in light of his proforma promotion to BS-22, this Court did not grant relief and disposed of the petition by observing that, *"no further proceedings are required by this Court, as its order has been complied with"*. He therefore maintains that the Tribunal erred in law in misinterpreting the provisions of FR-17 and the policy of the Government regarding allotment of additional plots and went beyond the original judgment passed by the Tribunal on 16.02.2012. He has also drawn our attention to a letter dated 02.08.2017 whereby the request of the

Respondent for allotment of an additional plot was declined. He has referred to a notification dated 05.05.2017 regarding grant of proforma promotion to the Respondent for the purpose of payment of arrears of pay and allowances only. He finally maintains that no retired civil servant who was granted proforma promotion to BS-22 has been granted an additional plot because the same is not the mandate either of the law or of the policy of the Government.

7. The Respondent, who has appeared in person, submits that the judgment of the Tribunal dated 16.02.2012 allowed his appeal, "*as prayed for*". He maintains that since he had made a prayer for grant of proforma promotion to BS-20, 21 and 22 with all financial and other consequential benefits as well as privileges attached to such higher grades, he was entitled to allotment of an additional plot because the same fell within the definition of consequential benefits and privileges. He further maintains that the Tribunal in its order dated 19.08.2015 passed in MP No.654 of 2015 directed that the judgment of the Tribunal dated 16.02.2012 be implemented in letter and spirit by issuing ante-dated promotion notification granting him promotion to BS-20, 21 and 22. It was also directed that such proforma promotion be granted with all consequential financial and other benefits as well as all privileges attached with the grades/posts within two months. He points out that the Appellant never challenged the said order which had attained finality and the order dated 26.02.2018 passed by the Tribunal was just a

continuation of the same and could not have been challenged in review. He therefore maintains that the impugned order of the Tribunal was within the four corners of the law and is liable to be maintained.

8. We have heard the learned Additional Attorney General for Pakistan, the Respondent in person and have examined the entire record with their assistance. The record shows that the Respondent who retired on 06.08.2011 as a BS-21 Officer of the Secretariat Group sought proforma promotion to BS-20, 21 and 22 from the dates specified by him. He made a prayer in his service appeal (*Appeal No.1781(R)/CS of 2011*) in the following terms:

"It is, therefore, humbly prayed that the Appellant may graciously be ordered to be promoted to BS-20 with effect from May 2001 and BS-21 with effect from December, 2007 with all financial and other consequential benefits and privileges attached to such higher grades in the same manner and at the same time when the Appellant's immediate juniors in the Secretariat Group, i.e., Mrs. Neelam S. Ali and others, were promoted.

It is further prayed that the Appellant may graciously be ordered to be promoted to BS-22 with all financial and other consequential benefits and privileges attached to such higher grade in the same manner and at the same time when Mr. Muhammad Akhtar Buland Rana of 3rd Common, Audit and Account Service, was promoted in BPS-22.

Any other relief deemed appropriate under circumstances of the case may also be granted."

However, it appears from the record that the Tribunal while allowing the appeal of the Respondent granted ante-dated promotion only and did not grant the other reliefs that he had prayed for in his appeal which is evident from the

concluding paragraph of the judgment dated 16.02.2012 which is couched in the following terms:

"In the above circumstances, we allow the appeal and direct that the appellant shall be given ante-dated promotion as prayed for by him."

9. We are therefore in no manner of doubt that only the prayer to the extent of grant of ante-dated promotion was allowed and the other prayers made in the Appeal were declined. The Respondent thereafter filed MP No.654 of 2015 seeking implementation of the said judgment of the Tribunal. The said petition was allowed. However, in allowing the petition the Tribunal effectively modified the original judgment dated 16.02.2012 by directing that the Respondent may be granted proforma promotion with all consequential, financial and other benefits and all privileges attached with the grades/posts within two months.

10. The Tribunal was exercising jurisdiction for implementation of the judgment and it lacked powers as well as jurisdiction to modify or amend its original judgment dated 16.02.2012 which was limited to grant of ante-dated promotion only. In compliance of order dated 19.08.2015 passed in MP No.654 of 2015 and the judgment passed in Appeal No.1781(R)CS of 2011 by the Tribunal, the matter was placed before a high level Committee under FR-17(I) for approval of the competent authority and the Respondent was granted ante-dated promotion to BS-20 with effect from 31.05.2001 to 25.08.2006, BS-21 with effect from 18.12.2007 to 16.03.2009 and BS-22 with effect from 03.08.2011 for the

purpose of payment of arrears of pay and allowances only.

The meaning, tenor and scope of the notification in question was quite clear. The Respondent never challenged the said notification before any competent forum.

11. It appears that the Respondent approached the Establishment Division vide applications dated 22.05.2015, 15.06.2017 and 17.07.2017 requesting that his case be recommended to Ministry of Housing and Works for allotment of Category-I Plot. Such requests were declined by the Establishment Division vide letter dated 02.08.2017 in the following terms:

"I am directed to refer to your applications dated 22.05.2017, 15.06.2017 and 18.07.2017 addressed to Secretary, Establishment Division on the subject noted above and to say that the policy titled "Facilities for Federal Secretaries and other Civil Servants" is meant for officers belonging to Regularly Constituted Occupational Groups/Services who are promoted to BS-22 on regular basis as Secretary to Government of Pakistan and equivalent. The role of Establishment Division is to furnish the service particulars of officers promoted to BS-22 on regular basis to Housing and Works Division for their consideration and further necessary action. As such, the officers who are granted proforma promotion vide policy ibid under FR-17(I) are neither entitled for allotment of an additional plot under the policy ibid nor their names are forwarded to Housing and Works Division/FGEHF. Therefore, your request for allotment under the policy ibid is regretted."

The Respondent never challenged such letter before any competent forum and instead filed yet another MP bearing No.3155 of 2017 in his main Appeal bearing No.1781(R)CS of 2011. The Tribunal took cognizance of the

matter and expanded the scope of its earlier judgment dated 16.02.2012 yet further by directing the Appellant to process the case for allotment of an additional plot in favour of the Respondent within a period of one month. We have found such modification of the original judgment by the Tribunal while exercising powers in miscellaneous petition to be wholly illegal and without jurisdiction. In passing such order, the Tribunal neither considered the meaning and scope of FR-17 nor the policy of the Government for allotment of an additional plot to the retired civil servants who are granted proforma promotion to BS-22.

12. Our attention has been drawn to the policy of the Government which shows that allotment of additional plots was limited to those Federal Secretaries who were promoted/inducted as such and met the eligibility criteria. The revised guidelines for FR-17 Committees to consider the cases of proforma promotion issued by the Establishment Division envisage that:

"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 servants shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the ante-dated fixation of his seniority."

It is therefore clear and obvious from the above that a civil servant who is granted proforma promotion is entitled only to arrears of pay and allowances of such higher post and nothing more. The question of allotment of an

additional plot in terms of the policy adverted to above does not relate to or grant any benefit to the civil servants who have been granted proforma promotion as the same is limited to civil servants who are eligible and have been promoted/inducted as Federal Secretaries.

13. It also appears that a similar matter came up for hearing before this Court in Civil Petition No.472 of 2014 in which the petitioner namely Umar Farooq was found entitled to promotion to BS-22 and he was granted proforma promotion with effect from the date on which his immediate junior was promoted to BS-22. The petitioner in the said CP filed a Criminal Original Petition bearing No.114 of 2017 in which the Respondents were summoned who informed the Court that arrears of pension and other financial benefits had already been granted to him. However, the petitioner, in the said case, claimed that in addition to the pensionary benefits he was entitled to a plot as a matter of right not a mere privilege of which he had been deprived. This Court declined to interfere in the matter and observed that if the petitioner had any other grievance he may seek his remedy before an appropriate forum in accordance with law.

14. In view of the above discussion and having found that the Tribunal modified, amended and extended the reliefs on the basis of prayers made by the Respondent through miscellaneous petitions after his Service Appeal had been allowed to the extent of ante-dated promotion only acted illegally and wholly without jurisdiction. There was no

justification for the Tribunal to dismiss the review petition filed by the Appellant as grave legal and jurisdictional errors were floating on the surface of the record and the Tribunal had clearly failed to notice and interpret material facts, circumstances and documents which were available on the record. Consequently, we have found the impugned order of the Tribunal dated 05.06.2018 to be unsustainable.

15. For the reasons recorded above, while setting aside the impugned order dated 05.06.2018 we allow the review petition bearing No.75 of 2018 filed by the Appellant with the consequence that order dated 26.02.2018 passed by the Tribunal in MP No.654 of 2015 would also stand recalled and set aside. The present appeal is allowed in the aforementioned terms.

ISLAMABAD.

16.09.2020.

ZR/*

'Not Approved For Reporting'