

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, HCJ  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITION NO.3455 OF 2020**

(Against the judgment dated 12.10.2020  
Islamabad High Court, Islamabad in  
W.P.No.3200/2013)

Capital Development Authority through its  
Chairman, Islamabad and others.

...Petitioners

**VERSUS**

Shabir Hussain and others

...Respondents

For the Petitioners:                      Hafiz Arfat Ahmad, ASC  
Raja Abdul Ghafoor, AOR

For Respondents:                      N.R

Date of Hearing:                      01.12.2021

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.-** This Civil Petition is brought to challenge the judgment dated 12.10.2020, passed by learned Islamabad High Court in Writ Petition No.3200 of 2020, whereby the writ petition was allowed and the impugned order dated 02.08.2013 issued by CDA for cancelling/withdrawing the promotions of the respondents was set aside.

2. The transient facts of the case are that the respondents No.1 to 7 are the regular employees of CDA. On recommendation of DPC, they were promoted to the post of Assistant Director (BS-17) in Engineering Cadre on acting charge basis vide order dated 13.02.2012. However vide order dated 14.3.2013, they were promoted on regular basis but after some

time, the order of promotion was withdrawn vide office order dated 02.08.2013. Being aggrieved, the respondents filed a Writ Petition in the Islamabad High Court which was allowed and impugned order was set aside.

3. The learned counsel for the petitioners argued that the learned High Court failed to consider that the promotion of the respondents was not legal as the posts were to be filled through direct recruitment after written test and interviews and not through promotion and when the competent authority came to know about the illegal promotions, the same was withdrawn/cancelled. The learned counsel for the CDA in support of his contention also cited a judgment rendered by this Court in the case of Maula Bux Shaikh and others Vs. Chief Minister Sindh and others (2018 SCMR 2098) and argued that the petitioners are in process of amending their service rules/regulations commensurate to the law laid down in the above case.

4. Heard the arguments. Consistent with Section 51 of the Capital Development Authority Ordinance, 1960, the Authority may make Regulations and publish it in the Official Gazette. Section 37 of the aforesaid Ordinance germane to powers of the Authority to appoint officers, experts or consultants on such terms and conditions as it may deem fit, whereas under Section 38, it is the responsibility of the Authority to lay down the procedure for the appointment of its officers, servants, experts and consultants and terms and conditions of their services. In exercise of aforesaid powers conferred on the Authority, the Capital Development Authority Employees (Service) Regulations 1992 were enacted. It is distinctively visible from Regulation No.4.03 that it stipulates three methods of appointment such as (a) by initial appointment in accordance with Part-II; (b) by promotion in accordance with Part-III; and (c) by transfer in accordance with Part-IV. In order to appraise and dwell on the cases of nominated persons for promotion and forwarding recommendations to the competent authority, the Departmental Selection Committees/Departmental Promotion Committees are constituted under Regulation No.4.04 with its composition as described and enunciated in Regulation No.4.05. Part-III of the Regulations, encapsulates "Appointment by Promotion" in different

Basic Pay Scales (BPS) and the procedure for promotion is set forth under Regulation No.4.17. In unison, Regulation No.4.18, commands that an employee possessing such minimum qualification and length of service and fulfilling other conditions specified shall be eligible for promotion to a higher post. So far as the yardstick or touchstone to fulfill the condition of length of service, Regulation No.4.20 spells out in simple terms that no promotion shall be made to the post in BPS-18 and above unless the employee has completed minimum length of service for such promotion and according to the table jot down in this Regulation for promotion to the post in BPS-18, five years of service in BPS-17 was required; whereas for promotion to a post in BPS-19, the threshold of twelve years of service in BPS-17 and above was to be completed and for promotion to the post in BPS-20, seventeen years of service was required in BPS-17 and above.

5. Undoubtedly, the respondents are regular employees of CDA. They were considered for promotion on the basis of their seniority. Their promotion to the post of Assistant Directors in BS-17 was recommended by DPC after due consideration of credentials and ACRs and the Competent Authority, vide office order dated 13.02.2012, approved the promotion of respondents to the post of Assistant Director (BS-17) in Engineering Cadre on acting charge basis with immediate effect. The record reflects that the promotion of the respondents was actualized vide office order dated 14.03.2013 but the said office order was withdrawn/cancelled vide another office order dated 02.08.2013 without assigning any reason or notice.

6. As a rule, the Departmental Promotion Committee is constituted by the Competent Authority to consider promotion and making recommendations. The promotions of employees/civil servants are generally decided on the basis of recommendations made by the Departmental Promotion Committee which is entrusted an onerous and arduous task to judge the suitability of officers for promotions to selection and or non-selection posts after assessment of performance, conduct, aptness and qualification with certain guidelines to standardize and synchronize the assessment benchmarks of all contenders in a fair, unbiased and transparent manner keeping in view the "dossier" (detailed record and information with regard to an officer; a collection

of documents concerning a particular person or matter) or working paper including ACRs of every individual officer/employee.

7. This was not the case that some illegality was committed by DPC members or they did not consider the credentials or antecedents of the each contender prudently and forwarded the recommendation in a slipshod manner for approval. Once the recommendations of DPC were acted upon and respondents were promoted, a vested right was created in their favour which could not have withdrawn in such a inconsiderate and casual manner. In the case of Chairman, Central Board of Revenue and another vs. Muhammad Malook and 11 others (1999 SCMR 1540), this Court in nutshell held that once a person was recommended for promotion by the Departmental Promotion Committee after having found him fit and the recommendation of the D.P.C. was accepted by the competent Authority, a right was created in his favour. Similarly, in the case of Province of Sindh through A.G., Sindh, Karachi. vs. Kazi Siraj Ahmad. (2002 SCMR 862), again this court held that the Departmental Promotion Committee recommended the case of the respondent for promotion and Senior Member, Board of Revenue being the competent authority issued the notification which was not in violation of any rules, so the Service Tribunal had rightly considered the case of the respondent while allowing the appeal. In the instant case, on the face of it, neither any fault or defect of respondents was pointed out by CDA nor any oversight or error on the part of DPC members or its composition or jurisdiction which could result an unceremonious withdrawal of promotion order after considerable period. In these set of circumstances, the doctrine of vested right is quite applicable which conserves that once a right is lawfully created, its existence should be recognized and acknowledged, therefore the benefit of promotions earned on DPC recommendations have become an undeniable and incontrovertible right of the respondents which could not be cancelled or withdrawn. Another shortcoming and unlawfulness is that no prior notice or justification was even shown in the cancellation letter which is flagrant violation of well settled principle of natural justice which is firmly established and deep rooted in the judicial conscience to be entrenched and embedded in every decision making function either judicial, quasi-judicial or administrative which is a fundamental rule of law that no decision must be taken affecting the right of any person without first being informed of the case

and affording an ample opportunity of defence. In the likewise context and perception, due process is also a prerequisite that needs to be respected at all stratum. In our Constitution, right to fair trial is a fundamental right under Article 10-A which constitutional reassurance envisaged the standards that courts must uphold in order to protect peoples fundamental rights of fair trial and due process of law. This Court in the case of Warid Telecom (Pvt.) Limited vs. Pakistan Telecommunication Authority, (2015 SCMR 338) has held that whenever adverse action was being contemplated against a person a notice and/or opportunity of hearing was to be given to such person. Said principle is a fundamental right under Article 10-A in the Constitution. However, both the requirements of a notice and providing an opportunity of a hearing may also be dispensed with in certain type of cases e.g. where such requirement would cause "more injustice than justice" or it was not in the "public interest". The Indian Supreme Court in the case of Karnataka Public Service Commission vs. B. M. Vijaya Shankar (AIR 1992 Supreme Court 952) stated that, when meeting the requirement of notice and providing an opportunity of hearing will cause "more injustice than justice" or it is not in the "public interest" the same may be withheld. In the case of Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others (2015 SCMR 630), this Court held that the exercise of any discretionary power must be rational and have a nexus with the objective of underlying legislation. Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory power is to be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment and further clarifies that an executive authority must give reasons for its decision. Any action by an executive authority which is violative of these principles is liable to be struck down.

8. The existing Rules or Regulation if amended and notified by CDA will obviously come into field prospectively and not retrospectively. No such ground or reason was assigned in the withdrawal/cancellation order, albeit, the alleged intention or idea to amend the rules or regulation could not justify to undo or withdraw the promotion orders of the respondents under the garb of future amendments of rules/regulation which are non est. Even the rules are amended, the CDA would not be

able to upset or disturb the past and closed transaction. It is not the case of CDA that promotion was accorded to the respondents due to some misunderstanding, error, misconception of law or without sanction of competent authority therefore, the principle of locus poenitentiae is also attracted to ameliorate and ventilate the sufferings of the respondents.

9. Though the learned counsel for the petitioners also articulated that the promotion was withdrawn in view of the judgment of Maula Bux Shaikh and others vs. Chief Minister Sindh and others (ibid). In the above case, the petitioner Maula Bux Shaikh in Service Appeal challenged a Notification to be ultra vires to the Pakistan Engineering Council Act, 1976 (PEC Act) on the ground that his chance for promotion as Executive Engineer BS-18 was diminished for the reason that said notification provided 13% promotion quota to Diploma holders and 7% promotion quota to B.Tech (Hons.) Degree holders for the post of Executive Engineer BS-18. This Court held that it is exclusively within the domain of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. Though the petition was dismissed but with a note of caution that Government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act. The judgment in the Maula Bux Shaikh's case (supra) does not suggest or permit in any way to withdraw promotion orders unceremoniously as done by CDA in this case but the premise of the case was altogether different and does not support the contention of CDA in this case. As a matter of fact the above petition was dismissed with a note of caution in the larger public interest that Government shall not allow or permit any person to perform professional engineering work unless he possess accredited engineering qualification and registered as engineer or professional engineer under the PEC Act.

10. In view of what has been discussed above, we are not persuaded to take a view different from the one taken by the learned High Court. Accordingly, this Civil Petition is dismissed and leave refused.

Chief Justice

Judge

ISLAMABAD  
1<sup>st</sup>, December, 2021  
Approved for reporting