

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE KHILJI ARIF HUSSAIN

CIVIL APPEAL NOS.825, 826, 1020 AND 1021 OF 2015

(Against judgment dated 12.5.2015 of the Federal Service Tribunal, Islamabad passed in Service Appeal No.983(R)CS/15, 984(R)CS/15, 442(P)CS/11)

Dr. Ehsan-ul-Haq Khan	(In CA 825/15)
Dr. Maqbool Ahmed	(In CA 826/15)
Dr. Muhammad Ilyas	(In CA 1020/15)
Dr. Abdul Majid Khan	(In CA 1021/15)
	... Appellants

Versus

Federation of Pakistan and others	... Respondents (In all cases)
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For the appellants:	Mr. Tariq Mehmood, Sr.ASC
(In CA 825 & 826/15)	Syed Rifaqat Hussain Shah, AOR

(In CA 1020/15)	Mr. Shoaib Shaheen, ASC
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(In CA 1021/15)	Mr. Ishtiaq Ahmed Raja, ASC.
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For the respondents:	Syed Nayab Hussain Gardezi, ASC
No.1 and 2	Qari Abdul Rasheed, AOR.

Date of hearing	03.11.2016
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ORDER

MAQBOOL BAQAR, J.-The respondents No.3, 4 (who is appellant in connected CA No.1021/15) and respondent No.5, were selected by Federal Public Service Commission (FPSC) as Veterinary Officer (BS-17) in the year 1990, and were so appointed the same year. The FPSC as per merit placed respondent No.3 and 4 senior to respondent No.5. However, in the seniority list, issued by the department on 15.10.1992, the above order of seniority was altered and respondent No.3 and 4 were placed junior to respondent No.5. It was on the basis of the said seniority list dated 15.10.1992, that in the year 1995, respondent No.5, was considered for promotion to BS-

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18, and was accordingly promoted by the departmental promotion committee.

2. In July 1999, respondent No.3, challenged the seniority of respondent No.5, before the Federal Service Tribunal, through Appeal bearing No.835(L) of 1999, and though he also sought to be promoted to BS-18 in place of respondent No.5, however, the learned Tribunal through its judgment dated 10.12.2002, directed the official respondents to determine the seniority of the parties strictly in accordance with the seniority assigned to them by the FPSC, and to place the respondent No.3 at the position, as was assigned to him by FPSC, but declined to pass any order regarding the promotion of respondent No.5. No appeal was preferred against the said judgment, the same thus attained finality.

3. On 06.2.2000, while the above appeal was pending, FPSC invited applications for the post of Quarantine Officer (BS-18). The appellant, and respondents No.3, 4, and 6 (who is appellant in CA No.826 of 2015), applied for the post. The appellant and respondent No.6 passed the test, but respondents No.3 and 4 failed. The appellant and respondent No.6 were thus, on 13.12.2007, appointed as Quarantine Officer (BS-18). Having been appointed subsequent to respondent No.5, both were ranked junior to the said respondent. It may be crucial to note here that although, the appellant and respondent No.6 had been appointed as above, during the pendency of the aforesaid appeal No.835(L)/99, however they were not impleaded as respondents in the said proceedings nor was any relief thereby sought against them.

4. In compliance of the tribunal's afore noted judgment dated 10.12.2002, and at the request of respondents No.3 and 4, the respondent department ultimately issued final seniority list

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pertaining to BS-17 Officers on 17.8.2006, whereby respondents No.3 and 4, were placed at positions senior to respondent No.5.

5. In the year 2007, departmental promotion committee promoted respondent Nos. 3 and 4 to BS-18, whereupon they claimed seniority over respondent No.5 in BS-18 also. On 12.10.2010, a Provisional Seniority List was issued whereby respondent No.3 and 4 were placed as senior to respondent No.5, and to the appellant and respondent No.6 also. The appellant and the respondent No.6, challenged the said list before the learned Lahore High Court. The High Court through its judgment dated 23.11.2010, directed the department to issue the seniority list afresh after hearing the parties. In pursuance of which order a seniority list dated 6.9.2011, placing the appellant and respondent No.6 senior to respondent No.3 and 4, and keeping them all senior to respondent No.5 was issued. Such arrangement was challenged by respondent No.5. However, his objection was rejected and the position maintained. The respondent No.5 thus approached the Federal Service Tribunal, but the tribunal suspended the proceedings on the ground that similar issue was sub-judice before the High Court of Sindh, where respondents No.3 and 4 had challenged the aforesaid seniority list through a constitution petition. The said petition, was through judgment dated 08.3.2013, allowed by the High Court directing that fresh seniority list making respondent Nos.3 and 4 senior to respondent No.5 as well as the appellant and respondent No.6 be issued.

6. The suspension of proceedings in the appeal before the Tribunal, was challenged by respondent No.5 before this Court through Civil Petition bearing CPLA No.955 of 2013, whereas the judgment dated 08.3.2013, was challenged by the appellant through CPLA No.705 of 2013. Both the petitions for leave to appeal were, by

consent, converted into appeals and allowed through order dated 28.6.2013, whereby the impugned judgment of the learned High Court was set-aside with direction that the petition filed by respondent Nos.3 and 4 be remitted to the Services Tribunal and be treated by the Tribunal as a service appeal, and the same and so also respondent No.5's appeal pending before the Tribunal be decided expeditiously.

7. It was in terms of the impugned judgment that the above three appeals were disposed of by the learned Tribunal whereby, although the Tribunal declined to backtrack the promotion of respondent No.5, yet held the respondent Nos.3 and 4 to be senior to respondent No.5. The Tribunal further held that since respondent No.3 was, as per the merit list assigned by FPSC, senior to respondent No.5 and thus deserved to be promoted in place of the latter, the said respondent should be granted promotion by creating a superannuery post so that he may be entitled to the benefits of promotion from the date respondent No.5 was promoted.

8. We have heard the learned counsel for the parties and perused the record of the case.

9. Admittedly, the seniority list dated 15.10.1992, whereby the seniority assigned by FPSC to respondent No.3, 4 and 5 was altered by ranking respondent No.5 senior to respondent Nos.3 and 4, was upon circulation, duly signed by respondent Nos.3 and 4 without any protest. It was on the basis of the said seniority list that respondent No.5 was considered for promotion and was thus promoted to BS-18 in the year 1996. It was only after such promotion and in fact about three years thereafter that respondent No.3 filed an appeal before the Tribunal in July 1999 whereby he challenged the seniority assigned to respondent No.5 through the aforesaid seniority

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list dated 15.10.1992, and also challenged his promotion to BS-18. However, the Tribunal through its judgment dated 10.12.2002 though directed the official respondents to rectify the seniority list but declined to pass any order regarding the promotion of respondent No.5 for lack of jurisdiction. The respondent No.3 felt content with the order and did not pursue his further relief regarding the said promotion. Even respondent No.4 who too had filed an appeal before the Tribunal, being appeal No.786 of 1999 in this regard, in view of the aforesaid judgment of the Tribunal, did not press his appeal. As noted earlier also, although it was during the pendency of respondent No.3's appeal that the appellant and respondent No.6 were directly inducted in BS-18, however, neither were they impleaded in the appeal nor was any relief sought against them by respondent No.3. It is also crucial to note that in the examination held for the post to which appellant and respondent No.6 have been appointed, the respondent No.3 and 4 also participated but failed. The respondent Nos.3 and 4 never challenged the appointment of the appellant and respondent No.6 and it was atleast about seven years of the said appointment, that respondent No.3 and 4 sought seniority over appellant and respondent No.6 also, which in the facts and circumstances of the case they were/are not entitled to as appellant and respondent No.6 were appointed in BS-18 about seven years prior to the promotion of respondent Nos.3 and 4 in the said cadre, and had in fact failed in their attempt for their appointment along with the appellant and respondent No.6.

10. It may be recalled that the respondent Nos.3 and 4 signed the seniority list dated 15.10.1992 without any protest, and it was, (as can be read from the memo of appeal bearing No.835(L)/1999, filed by respondent No.3 before the Tribunal), as late

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as on 20.6.1996 that representation against the aforesaid seniority list was made by the said respondent, more than three years after the date of the seniority list dated 15.10.1992, and thus it was on the basis of the said seniority list, that respondent No.5 was considered for promotion and was promoted to BS-18 vide letter dated 17.9.1996. Though through the judgment dated 10.10.2002, the Tribunal directed the department to revive the seniority of the parties as was assigned by the FPSC, but declined to pass any order with regard to the promotion of respondent No.3 from the date the respondent No.5 was promoted. No appeal was filed against the said judgment and thus the promotion of respondent No.5 to BS-18 prior to respondent Nos.3 and 4, remained intact, and in the meanwhile the appellant and respondent No.6 were, in the year 2000 selected by the FPSC for the post of Quarantine Officer (BS-18) and were so appointed accordingly. It was only in December 2007 that the respondent Nos.3 and 4 were promoted to BS-18. Indeed in terms of proviso (3) of Rule 3 of the Civil Servants (Seniority) Rules, 1993, respondent Nos.3 and 4, being senior to respondent No.5, were, upon promotion to BS-18, entitled to their original seniority but having remained indolent in the matter and not having challenged the change in the seniority list for more than three years as noted above, and further having remained satisfied with the judgment of the Tribunal and by not challenging the same, has contributed to the creation of an anomalous situation, where, in the event they are now ranked senior to respondent No.5 in BS-18, the appellant and respondent No.6, who having been appointed in BS-18 more than three years later than the promotion of respondent No.5, are certainly junior to the said respondents, and are senior to respondent Nos.3 and 4 by virtue of the latter's promotion in BS-18 subsequent to their

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appointment, shall be ranked junior to respondent No.3 and 4 which would be wholly unfair and unjust, and certainly contrary to the provision of sub-section (4) of Section 8 of the Civil Servants Act, 1973, which prescribes that seniority in a post, service of cadre, to which a civil servant is promoted shall take effect from the date of regular appointment to that post. Furthermore, the Tribunal's judgment dated 10.12.2002, whereby it declined relief of promotion to respondent No.3 from the date the respondent No.5 was promoted, operates as res-judicata in respect of the said issue, and no such relief could have subsequently been granted, as done through the impugned judgment. In any event, as noted earlier, since although it was during the pendency of appeal No.835(L)/1999, that the appellant and respondent No.6 were appointed in BS-18, but respondent No.3 neither joined them in the appeal, nor sought any relief against them and therefore they cannot now seek to be ranked senior to them through any means. More so, when, as noted earlier, the said two respondents had participated in the selection process along with the appellant and respondent No.6, but had failed.

11. In view of the foregoing, we would dispose of the captioned appeals by directing that the seniority of the appellant and respondents Nos.3,4, 5 and 6 be assigned in the order of their promotions/appointments in BPS-18.

Judge

Judge

Judge

Announced in open Court on _____
At Islamabad

Judge

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'NOT APPROVED FOR REPORTING'
(Aamir Sh.)