

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

**Present**

Justice Muhammad Ali Mazhar  
Justice Syed Hasan Azhar Rizvi

**CPLA No.44 of 2022**

(On appeal against order dated  
17.11.2021 passed by the Federal  
Service Tribunal, Islamabad in Misc.  
Petition No.241/2019 in Appeal  
No.3124(R)CS/2012)

Ahmed Owais Peerzada, Chief ...Petitioner  
Commissioner (Rtd) Federal Land  
Commission, Islamabad

**Versus**

Principal Secretary to the Prime Minister, ...Respondents  
Prime Minister's Secretariat, Islamabad &  
others.

For the Petitioner : Mr. Habib Ahmed Bhatti, ASC

For Respondents : Mr. Ashiq Mahmood, ASC

On Court Notice : Rana Asadullah Khan,  
Additional Advocate General for  
Pakistan  
Along with Sajid-ul-Hassan, S.O.,  
Establishment.

Date of Hearing : 14.01.2025

**Judgment**

**Muhammad Ali Mazhar, J.-** This Civil Petition for leave to appeal is directed against an Order, dated 17.11.2021, passed by the learned Federal Service Tribunal, Islamabad ("**FST**") on Misc. Petition ("**MP**") No.241/2019, moved in Appeal No.3124(R)CS/2012 for the implementation of the FST judgment.

2. The quintessence of the case is that the petitioner joined Federal Land Commission ("**FLC**") in 1976. Thereafter, in 2009, he was promoted to Grade BS-21 as Chief Commissioner, FLC. Subsequently, he was recommended for promotion to BS-22 as Senior Member, FLC, and his dossier was included in the Agenda of the High-Power Selection Board ("**HPSB**") meeting for

consideration under "Item No.6", which was convened on 16.04.2012. However, due to paucity of time, his case could not be considered. Upon attaining the age of superannuation, the petitioner retired from service on 04.06.2012. Due to the department's inaction or delay in considering his promotion, the petitioner invoked the jurisdiction of the FST and filed Service Appeal No.3124(R)/CS of 2012, which was decided *vide* judgment dated 11.07.2013, with directions to the Establishment Division to put up the petitioner's case before the competent forum for consideration of his claim regarding the grant of *proforma* promotion to BS-22 with effect from the date of the HPSB's meeting, i.e., 16.04.2012, in light of the observations in paragraphs 8, 9, 10, 11 and 12 of the FST judgment. The said judgment of the FST attained finality as no appeal was filed against it by the department. Although the Establishment Division submitted a summary to the Prime Minister for approval of the *proforma* promotion, the petitioner's case was again deferred in the HPSB meeting held on 11.04.2014 due to a lack of time. Despite the petitioner filing an MP for implementation, the FST's directions were not acted upon, forcing the petitioner to approach the FST a third time for implementation of the judgment dated 11.07.2013. However, *vide* the impugned order, the FST disposed of the MP without determining whether its own judgment had actually been implemented or not.

3. The learned counsel for the petitioner argued that the Prime Minister's Office advised the Establishment Division to refer the petitioner's case to the FR-17 Committee for approval. *Vide* letter dated 18.11.2013, the Respondent No.2 (Establishment Division) again informed the Respondent No.1 (Prime Minister Office) that, as per Part-III, Paragraph 5 (2) of the Guidelines for FR-17 (1), the case could not be considered by the FR Committee without the approval of the HPSB, and despite approval of the proposal, no action was taken for placing the matter before the HPSB. He further argued that petitioner was not considered for *proforma* promotion on the sole ground that a BS-22 post did not exist in the FLC. He further argued that according to Section 9 (1) of the Civil Servants Act, 1973, a right has been accrued in favour of the petitioner to be considered for promotion because he was eligible on account of possessing the prescribed minimum qualification, and was recommended for promotion after considering relevant laws and rules. Despite repeated FST directions, the respondents did not consider the petitioner for promotion, instead relying on the incorrect plea that the petitioner could not be considered for a post which did not exist. It was further averred that the FST, in dismissing the MP, failed to appreciate that the competent authority exercised its discretion for

extraneous reasons rather than considering the 'fitness' of the petitioner, contrary to prior FST verdicts. He further averred that the required threshold was 70 marks according to the HPSB, whereas the petitioner obtained 86 marks and also met the eligibility criteria provided under Rule 4 of the Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010.

4. The Additional Advocate General for Pakistan argued that in compliance with the FST judgment, the petitioner's case was placed before the HPSB on 11.11.2014, but it could not be considered due to paucity of time. Yet again, the Prime Minister ordered consideration by circulation among the HPSB members, who recommended the petitioner for the BS-22 post with effect from 12.04.2012. However, the Establishment Division moved a summary to the Prime Minister, stating that the BS-22 post did not exist in the FLC. He further argued that the FLC is a statutory body and its employees are eligible for promotion as indicated in Schedule (III) of its Rules, while promotion to BS-22 pertains to Regular Service Groups and Services, and the petitioner does not fall in the category of a regularly constituted occupational group or service.

5. Heard the arguments. The bare bones of the *lis* show that the petitioner filed Service Appeal No. 3124(R)(C.S)/2012 before the FST on 25.10.2012, against the respondents, for extending him the benefit of earlier judgments dated 23.07.2009, 22.07.2008, 03.12.2011, 22.09.2011, and 30.01.2012 passed by the FST in Appeals No. 352(R)CS/2007, 829(R)CS/2005, 870(R)CS/2011, 893(F)CS/2011 and 1805(R)CS/2011, as well as the judgment of this Court rendered in Civil Appeal No. 426-428 of 2008 for the grant of *proforma* promotion, as other officers were granted *proforma* promotion with retrospective effect *vide* order dated 02.04.2010, in compliance of the aforementioned judgments. The petitioner's appeal was allowed by the FST and the Establishment Division was directed to put up the case before the competent forum for consideration of *proforma* promotion, within a period of two months, to the post of BS-22, with effect from the date of the meeting of the HPSB, i.e., 16.04.2012 in light of the observations made by the FST in paragraph 8 to 12 of its judgment. For the ease of convenience, the said paragraphs of the FST judgment are reproduced as under:-

8. We have perused the case of Tariq Aziz-ud-Din reported as 2010 SCMR 1310 as referred to by the appellant in his rejoinder in which the apex Court directed that promotion to Grade-22 be considered afresh. It did not mean that the officers who had already qualified to be promoted could not be re-considered for any reason including their subsequent retirement. Moreover this Tribunal has already decided a number of cases that

retirement is no bar for consideration of promotion of an officer who was already qualified to be promoted and could not be considered for any reason after his retirement. It is an admitted fact that the name of the appellant was recommended for promotion and was included in the agenda of the HPSB meeting as item No.6 held on 16.4.2011 but was not considered due to paucity of time which is not justifiable. Since the appellant was fully eligible for consideration of promotion to the Post of BS-22 that's why his name was included in the agenda of HPSB for consideration, therefore he could not be deprived of his right for consideration of promotion for the reason of paucity of time and in this regard we do not agree with the contention of respondents No.3 and 4 that the post of Senior Member FLC (BS-22) cannot be filled by promotion as they are failed to quote any specific rule in support of their contentions. Since the respondents have not given any cogent reasons for not granting the benefit of the judgments of the Tribunal and the judgments of the Hon'ble Supreme Court as referred to by the appellant. In our view, the main issue is about the implementation of the Supreme Court decision in respect of retired officers who were given proforma promotion under the judgment passed in favour of Hameed Akhtar Niazi by this Tribunal after 12 years of his retirement.

9. We have perused the judgment of Hon'ble Supreme Court dated 1.4.2010 passed in Civil Appeals No. 426-428 of 2008 whereby the other colleagues of the appellant were granted proforma promotion with all financial benefits and we do not agree with this argument of the respondents that the appellant was deferred by the HPSB for promotion to BS-22 as he was ignored due to paucity of time, therefore, he cannot be granted pro forma promotion despite the fact that he was fully eligible for consideration of promotion which was not made due to inordinate delay on the part of the respondents who deliberately not to consider the appellant at appropriate time which is flagrant violation of the rules as laid down by the Apex Court in the case reported as 2010 SCMR 1310. Prima facie the promotion case of the appellant appearing at Sr. No.6 while taking up subsequent items of the agenda of the HPSB is unjustified which the respondents have also failed to controvert with cogent reasons.

10. We have also perused the Judgments of the Tribunal as referred by the appellant. On perusal, it is revealed that if a civil servant is unjustly denied promotion and he reached the age of superannuation, he can also be provided relief after superannuation under the SRO No. 1/18/2002-CP-11 dated 20.2.2002 and in this regard his non-consideration or deferment by the SB/DPC or appointing authority, for reasons other than non-fulfilment of eligibility conditions of promotion and on account of reasons, could not be considered as fault on his part.

11. As Article 25 of the Constitution of Islamic Republic of Pakistan guarantees equal treatment of law to all. It was not only for Mrs. Neelam S. Ali, Mr. Nazar Hussain Mahar, Mr. Muhammad Zafeer Abbasi who had been granted ante-dated proforma promotion w.e.f. 4.9.2009 vide Notification dated 19 September, 2012 but also Dr. Sheikh Aleem Mehmood alongwith others who had been granted antedated promotion vide order dated 2.4.2010. Once the respondents had opted to grant proforma promotion to these officers, the same relief could not be refused to the appellant since he was also placed with the said officers. Thus, he could not be discriminated.

12. Since the respondents have not been able to point out any difference in the claim made by the present appellant before us and the claim of the appellants in Appeals No. 352(R)CS/2007, 829(R)CS/2005, 870(R)CS/2011, 893(R)CS/2011, 1805(R)CS/2011, 893(R)CS/2011, 572(R)CS/2011 2007(R)CS/2012 and 2174(R)CS.2012, therefore, the rules of justice and consistency require that the same treatment should be given to the present appellant. This claim could not be refused on the grounds taken by the respondents, mentioned above. It is a well-established law that the benefit of the judgments of Hon'ble Supreme Court and the Federal Service Tribunal have to be extended even to non-litigating parties. Such parties cannot be compelled to indulge into litigation. It is the duty of the Government to grant relief to the claimants where relief is given to other evenly placed Government officers. Reliance in this regard is placed on the case of Hameed Akhtar Niazi vs Secretary Establishment Division, Government of Pakistan and others (1996 SCMR 1185).

6. The main purpose of reproducing the aforesaid passages from the main judgment of the FST is to accentuate that the case of *proforma* promotion was to be considered within the parameters set down by the FST, taking into account the FST's prior judgments as well the judgment of this Court that was quoted by the FST. However, while disposing of the MP, the FST, rather than adverting to whether the case was considered in accordance with the directions or not, held that it was not competent to reopen the main judgment unless it is reviewed as per the parameters and grounds for review. It was further observed in the impugned order that on a summary moved to the Prime Minister, the P.M. Secretariat, *vide* letter dated 22.10.2018, raised certain legal issues with regard to the powers of the HPSB in the case of a retired person and directed the Establishment Division to remove the legal defects in consultation with the Finance Division in view of the Civil Servants Act, 1973, and the FR-17 Committee constituted for redressing grievances of retired civil servants. It was further observed in the impugned order that pursuant to the judgment of the FST, the case of the petitioner had been considered at the Secretary (HPSB) level and the jurisdiction of the FST for deciding the issue of fitness for promotion was legislatively ousted. Ultimately, the FST observed in the impugned order that the competent authority had duly considered the case and provided reasons for not promoting the petitioner, hence the MP was disposed of accordingly.

7. If we look into the main judgment of the FST, various issues were taken into consideration and decided. It cannot be said that the judgment was *ex-parte* and the respondents were not provided any opportunity to defend the appeal and present their point of view. The bone of contention was proficiently mulled over and deliberated upon by the learned FST which was not challenged by the respondents in this Court. Therefore, for all intents and purposes, the judgment of the FST attained finality. The overall structure of the judgment congregates certain dominant characteristics that paved the way for the service appeal to be decided in favour of petitioner. These can be recapitulated as follows: retirement is not a bar for consideration of promotion of an officer who was already qualified to be promoted but could not be considered for any reason after his retirement; the petitioner's name was recommended for promotion and his case was also included in the agenda of the HPSB meeting as Item No.6, but he could not be considered due to paucity of time; since the petitioner was fully eligible for consideration of promotion to the post of BS-22, his name was included in the agenda of HPSB for consideration;

no specific rule was cited before the FST to indicate that the post of Senior Member FLC (BS-22) could not be filled by promotion; the FST relied on the judgment of this Court in Civil Appeals No. 426-428 of 2008 whereby the other colleagues of the petitioner were granted *proforma* promotion with all financial benefits; the petitioner was eligible for consideration of promotion which was not made due to inordinate delay on part of the respondents who deliberately failed to consider the petitioner/appellant at the appropriate time; if a civil servant is unjustly denied promotion and subsequently reaches the age of superannuation, relief can be granted after superannuation under the SRO No.1/18/2002-CP-11, dated 20.02.2002; the FST identified various officers by name who were granted antedated promotion and, while referring to Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, held that the same relief could not be refused to the petitioner/appellant and he should not be discriminated against.

8. It is an onerous duty of the FST, being the first judicial fact finding forum provided for the civil servants, to ensure the implementation of its orders/judgments, come what may, unless it is set aside by this Court. It is the function of the FST to execute its orders and judgments in letter and spirit. In the case at hand, the FST was obligated to examine whether the case of the petitioner was considered in light of the observations made in paragraphs 8, 9, 10, 11 and 12 of its judgment, dated 11.07.2013. The case of the petitioner for grant of *proforma* promotion should have been considered within the parameters and directions set out by the FST in the aforesaid paragraphs. Until the order or judgment is properly executed and implemented, it cannot attain finality. If the department had any reservations or was dissatisfied with the FST's main judgment, it could have challenged it before this Court. However, once the judgment attained finality, there was no lawful justification to prolong the matter rather than implement it in accordance with the directions provided in the FST judgment.

9. According to Section 5 of the Service Tribunals Act, 1973, the Tribunal has the powers to confirm, set aside, vary, or modify the order appealed against and for the purpose of deciding any appeal, it is deemed to be a Civil Court with all powers as are vested in such court under the Code of Civil Procedure, 1908 ("**CPC**") including the powers of (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents; and (c) issuing commission for the examination of witnesses and documents. A significant aspect of its powers is further

provided under Sub-section (3), wherein the Tribunal has been conferred the powers to execute its decisions in accordance with the procedure, as may be prescribed. Examining this in juxtaposition, the Federal Government, pursuant to Section 8 of the Service Tribunals Act, 1973, may make rules for carrying out the purposes of the Act and in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely: (a) requirements as to the number of members of the Tribunal necessary for hearings before, or order or decision by, a Tribunal or a Bench thereof; (b) filling for a specified period any vacancy in the office of the Chairman or a member of the Tribunal caused by the absence on leave or other-wise of the Chairman or, as the case may be, a member; (c) execution of decision of a Tribunal. [Emphasis applied].

10. Though the Service Tribunals (Procedure) Rules, 1974, have been framed by the Federal Government but no specific Rule has been dedicated to the execution of a Tribunal's decision. However, certain Establishment Division Office Memorandums are accessible on the official website of the FST regarding implementation of its judgments and orders, including a letter from the Attorney General of Pakistan on the subject. For ease of reference, these Office Memorandums are reproduced as under:-

**“SI. 5.1 Implementation of Judgments/Orders Passed by the Federal Service Tribunal**

On acceptance of an appeal by the Federal Service Tribunal, a written order is communicated to the parties and respondent Ministries/ Divisions/ Departments concerned. On receipt, the judgment is to be examined on top priority basis with a view to filing a Civil Petition for Special Leave to Appeal (CPSLA) before the Supreme Court of Pakistan for which 60 days' time is available to the aggrieved parties. In case it is decided, in consultation with the Law and Justice Division, that an order passed by the Tribunal does not involve 1049 any substantial question of law of public importance for moving a CPLA before the Supreme Court of Pakistan, the order should be implemented forthwith under intimation to the Registrar, Federal Service Tribunal, Islamabad.

2. The Ministries/Divisions are also requested kindly inform the departments under their administrative control to follow the above instructions.

**[Authority.- Estt. Division O.M.No.F.10/14/92-Lit.I, dated 4-5-1993]**

**SI. 5.2 Implementation of Orders of the Federal Service Tribunal and High Courts Appealed Against in Supreme Court of Pakistan.**

Copy of letter No. 1(5)2006-AGP, dated 2-3-2006, received from the Attorney General of Pakistan is enclosed herewith with the request that the instructions contained in the enclosed letter may be complied with in letter and spirit.

2. The above instructions may also be circulated to the attached departments/ organizations under the administrative control of each Ministry/Division.

[Authority - Estt. Division O.M.No.9/4/2006 -Lit-4, dated 16th March, 2006]

**Sl. 5.3 Letter of Attorney General of Pakistan Regarding Implementation of Orders of the Federal Service Tribunal and High Courts Appealed Against in Supreme Court of Pakistan.**

It has been observed that orders passed in service matters by the Federal Service Tribunal decided against the government are not implemented as per directions given in the respective orders. The government departments postpone the implementation of the orders of the Federal Service Tribunal on the grounds that CPLA is preferred against the order and wait for the disposal of the matter by the honourable Supreme Court of Pakistan. The government departments are hereby informed that unless the order of FST is suspended specifically by an order of the Supreme Court, the same must be implemented forthwith. However, a clause may be added in the implementation orders that it shall be subject to the final decision of the matter by the honourable Supreme Court of Pakistan. This eventuality of informing the government departments has arisen because recently the honourable Supreme Court of Pakistan has started taking a very serious note of this fact and in some of the cases, heavy costs up to Rs. 50,000/- has been imposed by the honourable Supreme Court of Pakistan simply for the reason that the government department has not implemented the orders during the pendency of the CPLA, without there being any order of suspension of the orders appealed against. The matter must be attended to urgently in order to avoid any further financial loss to the national exchequer. Thus all the matters which are decided by the FST or which are pending in the honourable Supreme Court of Pakistan or which may be instituted before the honourable Supreme Court of Pakistan against any order passed by the FST, directing the reinstatement or granting some other relief to a civil servant, be complied with forthwith, unless the order appealed against is specifically suspended by the honourable Supreme Court of Pakistan.

2. The Secretary Establishment is further requested to convey this message to all the departments concerned of the government in respect of which the service matters crop up before the FST or before the honourable Supreme Court of Pakistan for necessary action.

[Authority:- Office of the Attorney General for Pakistan's DO No. 1(5)2006-AGP, dated 2-3-2006]

**Sl. 5.4 Implementation of Federal Service Tribunals Order Wherever Appeals Not Filed**

1. .... Omitted.....

2. It is brought to the notice of the Ministries/ Divisions/ Departments that the Federal Service Tribunal was constituted in 1973 and enjoys the powers of a civil court under the Civil Procedure Code and can, if it so desires, initiate proceedings against the defaulting Ministries/Divisions/ Departments for non-implementation of its orders if they have not been appealed against in the higher courts. It is, therefore, mandatory for the Ministries/Divisions/Departments to implement the Federal Service Tribunal's orders wherever appeals have not been filed and strict compliance with this legal provision is requested forthwith.

3. The Tribunal has also complained about the lack of assistance being rendered by the Ministries/Divisions/Departments by having their viewpoints represented by officials of the contesting Ministry/Division/Department at very low level and for not contacting government counsel/advocate who is supposed to defend the government position. Many instances relating to some Ministries and Departments have been cited by the Chairman, Federal Service Tribunal which are being separately addressed on the subject.



4. In view of the above, the attention of the Ministries/Divisions/ Departments is invited to the Establishment Division's policy O.Ms. No.10/14/92-Lit.1, dated 4.5.1993, 2/19/93-Lit.3, dated 28.5.1994 and 1/23/94- Lit.2, dated 3.11.1994 which stress that:

(a) the government departments should assure that no case goes unrepresented before any court/tribunal. A responsible officer well conversant with the case, alongwith government counsel should always be deputed to represent the government and assist the court/tribunal on the basis of departmental record and the policy stand taken in the case;

(b) where a judgment is passed against the government the possibility of filing an appeal against it should be examined well within time in consultation with the Law & Justice Division; and

(c) where a judgment is not desired to be challenged the same should be implemented forthwith.

5. The Ministries/Divisions/Departments are requested to strictly comply with the government instructions referred to above. The government functionaries, found negligent or responsible for mishandling the cases, should invariably be proceeded against under the E&D Rules, 1973.

**[Authority.- Paras 2 to 5 of Estt. Division O.M.No.1/1/95-Lit.2/Misc. dated 30-8-1995]".**

**[Emphasis Applied]**

Ref: [https://fst.gov.pk/fst-panel/uploads/tribunal\\_act/63d0e919e36e3-1674635545.pdf](https://fst.gov.pk/fst-panel/uploads/tribunal_act/63d0e919e36e3-1674635545.pdf)

11. From the record, it is evident that the petitioner's case was not considered in accordance with the directions contained in the FST's judgment, and instead of advertng or exploring this rudimentary facet, the FST nonsuited the petitioner and dismissed the MP on the notion that the judgment has been implemented. In our understanding , before dismissing the MP, the FST should have considered the compliance report, if submitted by the department, to assess whether the directions contained in the judgment have been properly complied with or not. A fundamental principle of jurisdiction is that neither should a Court or Tribunal assume jurisdiction not vested in it by law, nor should it abdicate or renounce jurisdiction conferred upon it by law. Even in the absence of a specific rule governing implementation or execution of FST judgments, the Tribunal is not stranded, helpless, or incapacitated. To ensure timely and proper execution and implementation of its judgments and orders, the FST, while exercising its jurisdiction under Section 5 of the Service Tribunals Act, 1973, is always deemed to be a Civil Court with all powers as are vested in such court under the CPC for execution. In case of delay or evasion, it should take all necessary steps to enforce compliance with its judgments or orders to alleviate the suffering of the recipient of the judgment or order, rather than divesting itself of jurisdiction or simply disposing of the MP without ensuring proper implementation. If the meaningful execution or implementation of a judgment or order is delayed or dragged on

indefinitely, it not only causes undue frustration and vexation, but may also lead to the judgment losing efficacy. The finality of judgments ensures the culmination of the judicial process, and the importance of this is aptly articulated in the Latin maxim, "*interest reipublicae ut sit finis litium*", meaning thereby that it is in the interest of the state that there should be an end to the litigation. The conventional policy of law commands fair-minded and moderate efforts to enforce its judgments, orders, and decrees, rather than adopting mechanical ways and means to deprive or disallow the successful litigant from reaping the fruits of his decree. In the case of Ravinder Kaur Vs. Ashok Kumar (**AIR 2004 SC 904**), the Apex Court of India held that the Courts of law should be careful enough to see through such diabolical plans of the judgment debtor to deny the decree holders the fruits of the decree obtained by them. These types of errors on part of the judicial forum only encourage frivolous and cantankerous litigations, causing delays and bringing a bad name to the judicial system.

12. By means of our short order dated 14.01.2025, we converted the Civil Petition into an appeal and allowed it, whereby the impugned order of the FST was set aside and the matter was remanded to the HPSB to consider the petitioner's case for *proforma* promotion to BS-22 within a period of two months in light of the observations made in paragraphs 8, 9, 10, 11 and 12 of the original judgment of the FST, dated 11.07.2013, passed by it in Appeal No.3124(R)CS/2012. Above are the reasons in support of our short order.

**Judge**

**Judge**

Islamabad  
14.01.2025  
Khalid  
Approved for Reporting.