JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1181 of 2019

Altaf Hussain

Versus

Federation of Pakistan and 7 others.

Petitioner by	:	Mr. Yasser Rahim Bhatti, Advocate.
Respondents by	:	Ms. Shaista Altaf, Advocate. Syed Nazar Hussain Shah, AAG
Date of Hearing	:	02.06.2022

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, the petitioner impugns Memorandum dated 13.01.2012 & 15.12.2016 whereby his request for restoration of seniority position as per 2009 was turn down in following terms:-

> The request of M/s. Altaf Hussain ad Muhammad Irshad, Sub-Engineers (now Broadcast Engineers) for restoration of their seniority circulated vide memorandum of even number dated 27.01.2009 has been examined as per order/direction passed by the Islamabad High Court Islamabad on their writ petition. However, there is no merit in their request. The seniority of Broadcast Technicians appointed/promoted as Sub-Engineer has been terminated vide Memorandum dated 05.04.2010 on the basis of their inter-se-seniority in the cadre of Broadcast Technician. The sub engineers declared senior to M/s. Altaf Hussain & Muhammad Irshad, Sub-Engineers (Now Broadcast Engineers) were senior to them in the cadre of Broadcast Technician.

2. Precisely, relevant facts are that the petitioner was appointed as Mechanic (Engineering/Technical Cadre) in respondent-Corporation in the year 1984. Subsequently, the petitioner got

promotion as Sub Engineer under Departmental Quota vide order dated 11.07.1996. Later on, promoted as Broadcast Engineer in the year 2009. The petitioner is aggrieved of re-fixation of seniority position vis-à-vis other batch mates, determined by the respondent No.1 as he was due for promotion to the next higher post of Senior Broadcast Engineer. According to the petitioner, vide order dated 15.12.1994, it was decided by the Board of Directors that 20% of the vacant posts of Sub-Engineer (Scale-4) will be filled through departmental promotion from Mechanics holding three years Diploma in Associate Engineering (Electronics/ Electricity/Radio and TM Technology) from a recognized institution and that the remaining 80% of vacant posts of Sub-Engineer will be filled through direct recruitment in the prescribed manner. The departmental promotees (Sub-Engineers) had been allowed seniority over direct recruits inducted in the year 1995 and the seniority list of Sub-Engineers was prepared, wherein petitioner was placed at serial No.15. He was eligible for promotion as posts of Sub-Engineers were available in Pakistan Broadcasting Corporation (**PBC**) But instead promoting the petitioner, direct recruitments were made on 08.10.1995 and a combined provisional seniority list of promotees and that of direct appointees was prepared and circulated on 23.05.1998. The petitioner was placed at Sr. No.169 of the said list. He objected the same by filing representation but no heed was paid to it. Thereafter, he alongwith batch-mates filed Writ Petition No.5358 of 2010 before the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi for setting aside the impugned provisional seniority list. The said Writ Petition was disposed of vide order dated 23.09.2011 by observing that "*the case of the petitioner be decided strictly in accordance with law without any fear or favour within one month time".* The petitioner approached the respondent-Corporation for implementation of the order but they failed to implement the same which led to filing of Criminal Original Petition No.90-W of 2012 before this Court. The said contempt petition was disposed of vide order dated 20.05.2016 with the observation that *"petitioner may avail appropriate remedy provided in case his grievance persists".* During the said period, respondents passed an

office order dated 06.03.2013 by selecting officers junior to the petitioner for mandatory promotion course. Once again, the petitioner alongwith others filed Writ Petition No.2441 of 2013 before this Court, which was dismissed vide order dated 20.05.2016. The petitioner assailed the said order in Intra Court Appeal No.332 of 2016. During pendency of the said ICA, respondents issued memo dated 15.12.2016, whereby request of the petitioner for restoration of his seniority was rejected. The petitioner through C.M.A placed the above said memo on record of the ICA for consideration. The Hon'ble Division Bench vide order dated 19.12.2018 dismissed the appeal in limine. The grievance of the petitioner is that as per existing promotion rules, promotion quota is to be filled first instead of direct recruitment quota.

3. On the other hand, the learned counsel for the respondent while relying upon parawise comments filed by the respondents stated that the petitioner is in second round of litigation with the respondents. In the earlier Writ Petition No. 2441 of 2013, he was at Serial No.6, of the array of petitioners which was decided vide order dated 20.05.2016. The said order had attained finality. The other important aspects are that the petitioner during pendency of the ICA had agitated this very issue and it has been decided vide order dated 19.12.2018, as such the petitioner is barred to raise his grievance through the instant writ petition.

4. Learned counsel further stated that the post of the Mechanic was an Ex-Cadre post in PBC till the year 1994 having no further avenue for promotion. The next higher post of Sub-Engineer was filled in by 100% direct recruitment having prescribed qualification of DAE (Electrical). In December, 1994, PBC Board of Directors decided to allow 20% quota for promotion as Sub Engineer from amongst Mechanics, who possessed three years Diploma of Associate Engineer (Electrical). By the time, 89 vacancies were available in PBC, out of which 72 vacancies were allocated to direct quota i.e. 80% and 17 were reserved for 20% promotional quota. According to PBC, direct recruitment was finalized in the year 1995

and departmental promotion was finalized in the year 1996. The provisional seniority list of newly recruited Sub-Engineers and departmental promotees was circulated in the year 1998 by placing direct recruited Sub-Engineers above the departmental promotees. The departmental promotees consistently requested the PBC to place them ahead of direct recruits in the cadre of Sub-Engineers. The case of the promotees was referred to the Establishment Division for guidance. On the instructions of the Establishment Division vide O.M. dated 19.09.2008, promotees were awarded seniority over direct recruits vide Office Memorandum dated 27.01.2009. The order dated 27.01.2009 was questioned by the Sub-Engineers, who were senior to the departmental promotees in cadre of Mechanics but were selected as Sub-Engineer against direct quota. The representation filed by some of the Sub-Engineers were considered and it was observed that these Sub-Engineers who had appeared to compete with outsiders for the post of Sub-Engineers and had been appointed against direct quota were also eligible for promotion against departmental promotion quota and in such scenario, there would have been no vacancy for departmental promotion, therefore, it was decided that 17 senior most Mechanics promoted or appointed as Sub-Engineer in the year 1995-96 may retain their inter se seniority of Mechanics in the cadre of Sub-Engineer and accordingly seniority list was circulated on 05.04.2010. The seniority list was challenged by seven Sub-Engineers promoted against departmental quota. Their request was considered by the Authority but was not acceded to as the same was not covered under the rules. The said decision was conveyed to the Sub-Engineers on 16.09.2010, which was challenged by way of filing of writ petition No. 5358/2010 before this Court praying almost same prayer for setting aside seniority list dated 05.04.2010. The said writ petition was decided with the direction to the respondents to decide the cases of the petitioner strictly in accordance with law. The case of the petitioner was placed before the Board and was decided in view of the directions passed by this Court on 23.09.2011 and Memorandums dated 13.01.2012 and 16.01.2012 were issued to the petitioner, whereafter in the year

2013, they filed writ petition No.2441/2013 with the similar prayer and same was dismissed vide order dated 20.05.2016, which also was challenged by filing ICA which met the same fate vide order dated 19.12.2018. Since the matter has already been decided by this Court, therefore, it being past and closed transaction cannot be reviewed while sitting in writ jurisdiction.

4. Arguments heard, record perused.

5. The facts of the case and counter response have been mentioned above in-detail, therefore, need not to be reproduced. The seniority list dated 05.04.2010 had been the subject of writ petition No. 5358/2010 which was disposed of by this Court vide order dated 23.09.2011 with the direction to the respondents to decide the case of the petitioner in accordance with law without any favour or fear within one month.

6. In the light of above direction, the respondents decided the case vide Memorandum dated 13.01.2012, reproduced in operative Para-1 above.

7. Subsequently, Writ Petition No. 2441/2013 was filed which was dismissed vide order dated 20.05.2016, operative Para-10 of the same being relevant is reproduced below:-

> *"On merits, petitioners have mainly emphasized on selection of respondents 4 to 9 for promotion course on the basis of seniority which is disputed. However, the contention is not tenable because it is established on record that through OMs dated 13.01.2012 & 16.01.2012 direction passed in W.P. No. 5358/2010 was complied with. Moreover, petitioners do not deny through rejoinder or counter arguments that respondents 4 to 9 were senior to them in previous list and this seems correct that had promotions been done prior to direct recruitments. Said respondents would have been promoted to next higher grade without competing for direct appointment quota. This being the position revised seniority list vide OM dated 05.04.2010 cannot be considered violative of the rules and law. In addition, criterion set by the department shows that apart from seniority, quantification of PERs was also considered prior to recommendation of promotional course.*

8. Against the decision ibid, an ICA No. 332/2016 was filed which was dismissed in limine by observing that "*in so far as the issue of seniority of the appellant vis-à-vis respondent No. 4 to 9, the appellants had filed a writ petition i.e. W.P. 5358/2010 which was disposed of with direction to act in accordance with law and pursuant thereto office memorandum dated 13.01.2012 & 16.01.2012 were issued. No further challenge was made by the appellant with respect to the referred office memorandum."*

9. The petitioner has prayed for restoration of his seniority position No.15 mentioned in Office Order dated 27.01.2009 by setting aside revised list circulated vide Memo dated 05.04.2010 wherein he was allotted seniority position No.168. The respondent department has advanced justification of said revision in terms that against the Office Order dated 27.01.2009 a few Sub Engineers filed representations which were considered and it was observed that these Mechanics had appeared to compete with outsiders for the post of Sub Engineers and they were selected and appointed. Had they not been appointed against direct quota, they were also eligible for promotion against departmental quota and in that case there would have been no more vacancy for departmental promotion against which some junior mechanics including the petitioner were promoted. Many Sub Engineers who were subsequently promoted had also competed for appointment against direct quota but were not succeeded. It was, therefore, decided that 17 senior most mechanics promoted or appointed as Sub Engineer in 1995/1996 may retain their inter se seniority of Mechanics in the cadre of Sub Engineer, hence seniority list was circulated vide Memo dated 05.04.2010.

10. The petitioner along with batch mate namely Muhammad Irshad filed representation against the above decision which was responded vide Memorandum dated 16.09.2010 in terms that *"request of the petitioner was considered by the competent authority but was regretted on the ground that the first 15 departmental DAE in cadre of Mechanics have given due seniority in the cadre of Sub-*

Engineers as per Establishment Division O.M dated 19.09.2008 and their names were at serial No. 22 and 27 respectively in the seniority list of departmental DAE in cadre of Mechanics, therefore, no injustice has been done to them."

11. In view of above, no case for exercise of jurisdiction in terms of Article 199 of the Constitution as prayed for is made out. Resultantly, instant writ petition fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on 13.06.2022

JUDGE

//*Kamran***//**