ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Writ Petition No. 3155 of 2019

Muhammad Iqbal Khan, etc.

Versus

FOP

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.02.2022	Mr. Ghulam Fareed Ch., Advocate for petitioner. Syed Nazar Hussain Shah, AAG Mr. Abdur Rehman S.O., Establishment Division.

The instant writ petition is a rising out of order dated 13.05.2019, passed by the Establishment Division ('respondent'), wherein claim of the petitioners for grant of ante-dated proforma promotion in BS-20, BS-21 and BS-22 w.e.f. 30.06.1982, 16.11.1988 and 16.05.1994 respectively alongwith consequential benefits, was turned down.

2- The case, set-up by the petitioners, is that initially they filed a service appeal for grant of ante-dated promotion before the learned Federal Service Tribunal ('F.S.T') which was allowed vide judgment dated 27.01.2012, followed by Writ Petition No. 2808/2012 for implementation of the judgment-in-original. During pendency of said writ petition, respondent granted proforma promotion to their junior counterparts namely Dr. Aleem Mehmood etc. but they were not extended the said benefit. In the prayer clause, they also claimed seniority upon one of their counterparts namely Mr. Muhammad Hassan Bhutto, who was granted the said benefit.

3- The respondent in its written comments resisted the claim of the petitioners, both on factual as well as legal aspect and prayed for dismissal of the instant writ petition.

4- Heard, record perused.

5- So far as, the claim of petitioner being senior to their counterparts is concerned, it was mandatory for the

petitioners to substantiate their claim by producing any document/seniority list but no such efforts was made by them.

6- The respondent asserted that Mr. Muhammad Hassan Bhutto joined service in the year 1973; while the petitioners entered into service in 1974 and 1975 respectively and that the former remained senior till his superannuation on 08.04.1998. The petitioners have not produced any document to rebut the stance of the respondent.

7- The counterparts of the petitioners namely Dr. Sheikh Aleem Mehmood and three others were granted promotion pursuant to the judgment dated 13.05.1998 passed by the Hon'ble apex Court reported as 1998 SCMR 1687. According to the respondent, it was a judgment *in personam* and not *in rem* as no principle regarding grant of proforma promotion was laid down.

8- Above all, as per the minutes of the Committee meeting dated 06.11.2016, circulated vide O.M. dated 29.12.2016, petitioners have been granted the benefit of proforma promotion and it is significant to note down the details of the proceedings in case of each petitioner:-

1- *Muhammad Iqbal Khan*

The Committee observed that in the seniority list of BS-19 Officers, as on 30.06.1981, issued on 13.03.2007, Mr. Muhammad Iqbal Khan was assigned seniority at Sr. No.25 while Shahid Hussain was at Sr. No.41. Syed Shahid Hussain was promoted to BS-22 on 04.02.1997 while Mr. M. Iqbal Khan was retired in BS-21 on 02.06.1998. ***Proforma promotion to BS-20 and BS-21 has already been allowed to Mr. M. Iqbal Khan on the basis of revised seniority****.*

In view of Court's orders mentioned above and the provisions given in the revised guidelines, the Committee unanimously recommended that ***Mr. M. Iqbal Khan may be allowed proforma promotion for payment of arrears of pay and allowances of BS-22 w.e.f. the date Syed Shahid Hussain was promoted i.e. 04.02.1997****.*

2- *S. FaroghNaweed*

In view of Court's orders mentioned above and the provisions given in the revised guidelines, the Committee unanimously recommended that ***Mr. S.***

FaroghNaweed may be allowed proforma promotion for payment of arrears of pay and allowances of BS-22 w.e.f. the date Mr. Mohibullah Shah was promoted i.e. 17.02.1995.

3- *M. Sharif Ejaz Ghouri*

The Committee observed that in the seniority list of BS-19 Officers, as on 30.06.1981, issued on 13.03.2007, Mr. Sharif Ejaz Ghouri was assigned seniority at Sr. No.31 while Syed Shahid Hussain was at Sr. No.41. Syed Shahid Hussain was promoted to BS-22 on 04.02.1997 while Mr. Sharif Ejaz Ghouri was retired in BS-21 on 12.01.2004. ***Proforma promotion to BS-20 and BS-21 has already been allowed to Mr. Sharif Ejaz Ghouri on the basis of revised seniority***.

In view of Court's orders mentioned above and the provisions given in the revised guidelines, the Committee unanimously recommended that ***Mr. Sharif EjazGhouri may be allowed proforma promotion for payment of arrears of pay and allowances of BS-22 w.e.f. the date Syed Shahid Hussain was promoted i.e. 04.02.1997***.

4- *Mr. Saleem Maqsood*

The Committee observed that in the seniority list of BS-19 Officers, as on 30.06.1981, issued on 13.03.2007, Mr. Saleem Maqsood was assigned seniority at Sr. No.55 while Mr. M. Younas Khan was at Sr. No.76. Mr. M. Younas Khan was promoted to BS-22 on 13.11.1998 while Mr. Saleem Maqsood was retired in BS-21 on 21.12.1999. ***Proforma promotion to BS-20 and BS-21 has already been allowed to Mr. SaleemMaqsood on the basis of revised seniority***.

In view of Court's orders mentioned above and the provisions given in the revised guidelines, the Committee unanimously recommended that ***Mr. SaleemMaqsood may be allowed proforma promotion for payment of arrears of pay and allowances of BS-22 w.e.f. the date Mr. M. Younas Khan was promoted i.e. 13.11.1998***.

5- *Mr. Muhammad Samiullah*

The Committee observed that in the seniority list of BS-19 Officers, as on 30.06.1981, issued on 13.03.2007, Mr. M. Samiullah was assigned seniority at Sr. No.59 while Mr. M. Younas Khan was at Sr. No.76. Mr. M. Younas Khan was promoted to BS-22 on 13.11.1998 while Mr. M. Samiullah was retired in BS-21 on 14.04.2002. ***Proforma promotion to BS-20 and BS-21 has already been allowed to the officer on the basis of revised seniority***.

In view of Court's orders mentioned above and the provisions given in the revised guidelines, the Committee unanimously recommended that ***Mr. Saleem Maqsood may be allowed proforma promotion for payment of arrears of pay and***

allowances of BS-22 w.e.f. the date Mr. M. Younas Khan was promoted i.e. 13.11.1998.

6- Syed Zafar Ali Naqvi

The Committee observed that in the seniority list of BS-19 Officers, as on 30.06.1981, issued on 13.03.2007, Syed Zafar Ali Naqvi was assigned seniority at Sr. No.60 while Mr. M. Younas Khan was at Sr. No.76. Mr. M. Younas Khan was promoted to BS-22 on 13.11.1998 while Syed Zafar Ali Naqvi was retired in BS-21 on 04.11.1999. ***Proforma promotion to BS-20 and BS-21 has already been allowed to the officer on the basis of revised seniority***.
In view of Court's orders mentioned above and the provisions given in the revised guidelines, the Committee unanimously recommended that ***the officer may be allowed proforma promotion for payment of arrears of pay and allowances of BS-22 w.e.f. the date Mr. M. Younas Khan was promoted i.e. 13.11.1998.***

7- Sh. Muhammad Saleem

The Committee observed that in the seniority list of BS-19 Officers, as on 30.06.1981, issued on 13.03.2007, Sh. Muhammad Saleem was assigned seniority at Sr. No.68 while Mr. M. Younas Khan was at Sr. No.76. Mr. M. Younas Khan was promoted to BS-22 on 13.11.1998 while Sh. Muhammad Saleem was retired in BS-21 on 14.04.2000. ***Proforma promotion to BS-20 and BS-21 has already been allowed to the officer on the basis of revised seniority***.
In view of Court's orders mentioned above and the provisions given in the revised guidelines, the Committee unanimously recommended that ***the officer may be allowed proforma promotion for payment of arrears of pay and allowances of BS-22 w.e.f. the date Mr. M. Younas Khan was promoted i.e. 13.11.1998***.
[Emphasis added]

9- It is thus obvious from the proceedings of the Committee that case of each petitioner was not only deliberated upon but their claim on the ground of discrimination was also addressed. It also emerges from the proceedings that they were already granted benefit of proforma promotion to BS-20 and BS-21 respectively while their claim for further proforma promotion to BS-22 was also accepted and they were accordingly held entitled for the same from the dates their counterparts namely Syed Shahid Hussain, Mr. Mohibullah Shah and Mr. M. Younas Khan were promoted i.e. 17.02.1995, 04.02.1997 and 13.11.1998 while their claim of

entitlement with effect from 1982, 1988 and 1994 is without any substance/documentary proof qua their seniority position.

10- Having examined the case of the petitioners from every angle, no case for exercise of discretion in terms of Article 199 of the Constitution is made out. Consequently, the instant writ petition stands **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

AR. Ansari

Announced in open Court on 03.03.2022.

JUDGE