JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 747 of 2022

Hassan Ali Khan Laghari

Versus

Federation of Pakistan, etc.

Date of Hearing	:	21.04.2022.
Petitioner by	:	Hafiz S.A. Rehman & Sheikh Rizwan Nawaz, Advocates
Respondent by	:	Syed Nazar Hussain Shah, AAG. Abdur Rehman, S.O, Estab. Division. Muhammad Javed Abbasi, Law Officer (respondent No.2).

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, petitioner prays for a direction to the respondents to issue notification of his promotion from BS-20 to BS-21 as recommended by the Central Selection Board **("CSB")** in its meeting held on 28th – 30th September, 2021 and approved by the Competent Authority/ Prime Minister.

ACTUAL BACKGROUND

2. As per facts narrated in the memo of the petition, petitioner (*Hassan Ali Khan Laghari*), serving in BS-20 in the Military Land and Cantonment Group, was considered for promotion from BS-20 to BS-21 by the CSB in its meeting held on 28th - 30th September, 2021 and *was recommended for promotion* to BS-21 along with other colleagues belonging to the same group i.e. Military Land and Cantonment Group. The recommendations of the CSB *were duly approved by the Competent Authority/ Prime Minister* as communicated through the Establishment Division O.M. No. F.1/1/2021-CP-4 dated 02.12.2021. The Establishment Division vide O.M. dated 02nd December, 2021 directed the Secretary Ministry of Defence to notify the promotion of officers in terms of Section 6 (2) of the Civil Servant Act, 1973, read with Rule 21 of

Civil Servant (*Appointment, Promotion And Transfer*) Rules, 1973. According to the petitioner, nothing untoward had taken place during intervening period of recommendations of the CSB and approval by the competent authority which renders him disqualified for promotion. The notification of other colleagues of the petitioner had been issued by the Establishment Division, while that of the petitioner has been withheld due to some complaint filed by a lady before the Federal Ombudsman, Harassment of Women at Workplace. It is the case of the petitioner that mere filing of a complaint does not debar the Government functionaries from issuing notification of his promotion, inter alia, due to inapplicability of Rule-7 (i) of the Civil Servant Promotion, (BS-18 to BS-21), Rules 2019 as neither he was '*deferred'* nor '*superseded*' instead he was '*recommended'* by the CSB and also '*approved*' by the Prime Minister.

RESPONSE OF RESPONDENTS

3. **The Establishment Division (*respondent No.1*)** had taken the stance that case of the petitioner along with the other officers belonging to ML&C Group was placed before the CSB meeting held from 28th to 30th September, 2021 against the two available vacancies. The Board recommended the petitioner for promotion to BS-21. The Prime Minister approved the recommendation of the CSB with the following stipulations;-

> *"Certification by the Administrative Secretary/Cadre Controller concerned regarding availability of post in the service(s)/Cadre(e), wherein the officer have been recommended/approved for promotion and that* ***no such development has taken place between date(s) of the CSB meeting and approval of the appointing authority,*** *which rendered the officers ineligible for promotion."*
> ***(Emphasis supplied)***

4. It is further responded that since the harassment case was not shared with respondent No.1, name of the petitioner was sent on 02.12.2021 to the Ministry of Defence/respondent No. 2 for issuance of necessary notification of his promotion. Thereafter,

respondent No.2/Ministry of Defence vide O.M. No. 1/26/D-6(A-VI)/2009 dated 23.12.2021, informed that a complaint under the Harassment of Women at Workplace Act, 2010 is pending against the petitioner before the Federal Ombudsman Islamabad and sought on this aspect of the matter, which was responded vide O.M. dated 09.02.2022 in following terms:-

> *"2. The details provided by the Ministry of Defence vide O.M. Under reference reveals that the complainant filed her complaint in the Ministry of Defence on October, 3, 2021 and Mr. Hassan Ali Khan Laghari was summoned for appearance on 08.11.2021 in the Federal Ombudsman Secretariat for Protection against Harassment of Women at the Workplace and this matter continues to be sub-judice in that Secretariat. Since the harassment proceedings are pending against Mr. Hassan Ali Khan Laghari this case falls within the ambit of rule 7 (i) of the Civil Servant Promotion (BS-18 to BS-21)Rules, 2019 read with the observations of the Prime Minister.*
>
> *"In the circumstances, the Ministry of Defence is advised to initiate a summary containing the relevant details through Establishment Division to seek approval of the Prime Minister for withholding the promotion notification of Hassan Ali Khan Laghari till the disposal of the harassment case by the Federal Ombudsman. The ministry of Defence is further advised to resubmit the Summary through Establishment Division for final orders of the Prime Minister in the instant matter once the decision of the Federal Ombudsman is announced.*

5. **The Ministry of Defence *('respondent No.2')*** while acknowledging reply of respondent No.1 further asserted that pursuant to the advice of the Establishment Division, a summary dated 15.03.2022 was initiated for the Prime Minister, to be routed through the Establishment Division/respondent No.1. It has been affirmed by the said respondent that the only impediment in issuance of promotion notification of the petitioner was pendency of an inquiry before the Federal Ombudsman. The complaint made basis to withheld promotion notification was also annexed with the comments, whereby it transpires **that the complaint was filed on 30.10.2021 i.e. after completion of process of CSB and approval of the competent authority.**

6. Heard the learned counsel for the petitioner, learned AA-G and examined the record besides relevant provisions and the law on the subject.

7. The facts of the case have already been elaborated. There is no dispute with regard to consideration of the petitioner for promotion to BS-21 by the CSB, recommendations of the latter in his favour and approval of the competent authority. The controversy is restricted to withholding of notification of petitioner's promotion on the ground, *inter-alia*, "*Since the harassment proceedings are pending against Mr. Hassan Ali Khan Laghari this case falls within the ambit of rule 7 (i) of the Civil Servant Promotion (BS-18 to BS-21)Rules, 2019 read with the observations of the Prime Minister*".

8. Before adverting to the controversy, it would be advantageous to have a glance of the relevant provisions of the Civil Servant Act, 1973 ('**Act of 1973'**). Section 9 (2) of the Act of 1973 provides that a post referred in sub Section (1) may be a selection post or non-selection post to which promotion shall be made (a) *in the case of the selection post on the basis of selection on merit* (b) *in the case of non-selection post on the basis of seniority cum fitness*. As per Section 9 (3) of the Act ibid read with Rule 2 (b) of the Civil Servants, (Appointment, Promotion & Transfer) Rules, 1973 (**'Rules 1973'**), promotion to the post of BS-20 & BS-21 is to made on the recommendations of the Selection Board, to be constituted by the Federal Government, headed by the Chairman, Federal Public Service Commission, consisting of such persons as may be appointed by the Government from time to time.

9. As per *Rule, 6 of the Rules, 1973*, appointing authority for the post in Basic Pay Scale-20 and above or equivalent, is the Prime Minister while Section 22 (2) of the Act, of 1973, provides that no representation shall lie on the matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade. *Rule 8 of the Rules, 1973,* provides that only such persons who possess the qualifications and meet the conditions laid down for the purpose of promotion or

transfer to a post shall be considered by the Departmental Promotion Committee or the Central Selection Board, as the case may be.

10. Sub-section (1) of Section 25 of the Act of 1973, confers power on the President to make such rules as appears to him to be necessary. The President while exercising such powers and in pursuance of the directions passed by the Hon'ble Apex Court in the judgment reported as ***Federation of Pakistan through Secretary Establishment Division & others v. Dr. Muhammad Arif & others*** **(2017 SCMR 969)**, was pleased to promulgate the rules known as the *Civil Servant Promotion (BSP-18 to BPS-21) Rules, 2019* (**'Rules 2091'**) vide SRO No. 120(1)/98 dated 27.02.1998.

11. The treatment afforded to the petitioner is based upon Rule-7 (i) of the Rules, 2019. It would, therefore, be essential to go through said provision which reads as under:-

> "7.**Conditions for deferment**.-On consideration for promotion in order of seniority, a civil servant shall be recommended for deferment, if----
> (a).....
> (b).....
> (c).....
>
> (i) an inquiry, investigation, case or a reference is pending against civil servant in Anti-Corruption Establishment, Federal Investigation Agency, National Accountability Bureau or such other organization by whatever named called for.
>
> Provided that this clause shall not be applicable in such cases, where on the date of consideration of a civil servant for promotion, such an inquiry, investigation, case or reference is pending against him for more than three years and the delay has not been caused by any reason attributable to the officer;

12. To understand the pre-requisites for invoking any of the conditions stipulated in Section 7 ibid, it will be imperative to go through the definition of "***deferment***" contained in Rule 2(h) of the Rules 2019 which reads as under:-

> *"Deferment"" means deferment of a civil servant for promotion, approved by the appointing authority* ***on***

> ***recommendations of the CSB, DSB or DPC,*** *as the case may be, for reasons to be recorded in writing;*

13. The rule ibid articulates in simple terms that deferment of any civil servant can only be made on the recommendations of the Board, whether it be CSB, DSB or DPC with approval of the competent authority and it is mandatory that reasons of deferment should also be reduced in writing. It is thus obvious that the authority of deferment can only be exercised on the recommendations of the Board and not through any other course. It is well settled principle that if law requires something to be done in a specific manner, it should be done in that manner alone and not otherwise. Reliance is placed upon case law reported as **(PLD 2013 SC 255)**.

14. As per Section 24-A of General Clauses Act, 1897 the statutory power is required to be exercised reasonably, fairly, justly and for the advancement of the purposes of enactment with logical reasons. Any action by an executive authority if not supported by principle of natural justice is liable to be struck down, The provision obliges every person exercising power conferred by a statute to act for the advancement of the purposes of the enactment. Guidance is sought from **PLD 2017 SC 194, 2013 SCMR 1159, 2011 PLC (CS) 799.**

15. In the case-at-hand, petitioner was not only recommended for promotion by his parent department, but also recommended by CSB and was accordingly endorsed stood approved by the competent authority. Later on, notification of his promotion was withheld due to pendency of an inquiry in terms of Rule-7 (i) of the Rules, 2019. It is significant to note that the date of the stated inquiry is much after the recommendations by the CSB and approval of the competent authority. Thus, the question of 'deferment' in the attending circumstances does not arise and the process was held in abeyance after the recommendations for promotion and its approval by the competent authority at the stage of issuance of notification which is a ministerial function.

16. In the case of the petitioner there were no recommendations from the CSB contrary to the one already tendered whereby petitioner was recommended for promotion. Therefore, it can be inferred that the impugned action was not in accordance with the rules rather appears to be a transgression of authority particularly when despite persuasion, no reason had been advanced by referring any provision of Law/Rule, whereby it could be said that after recommendations and approval of the competent authority, notification for promotion could be withheld on account of pending inquiry, which otherwise, was not pending at the relevant time i.e. during CSB and approval by the competent authority. As a matter of fact the impugned action does not constitute *'deferment'* for want of pre-requisites contained in Rule 7(i) of the Rules 2019, wherein recommendations of the CSB are ***sine qua non.***

17. The issue of '*withholding of promotion on the ground of pendency of inquiry'* had been dealt with in great detail by the Hon'ble Apex Court in plethora of judgments. For instance, in the case of ***Zia ul Hassan v. Naseem Chaudhry* (2000 SCMR 645)**, the Hon'ble Apex Court has held that *"mere fact that some disciplinary proceedings were pending against the civil servant was not a sufficient ground to disregard the promotion of a civil servant"* if not supported by principle of natural justice.

18. In the case of ***Mumtaz Ali Shah v. Chairman Pakistan Telecommunication Company Ltd, Headquarter, Islamabad & 6 others (PLD 2002 SC 1060)***, the Hon'ble Apex Court graciously allowed appeal in a case where appellant was deferred on account of pendency of a criminal case. The appellant was held entitled to promotion from the date his juniors were promoted. In the case ***Muhammad Hanif v. Province of Sindh* (2011 PLC (CS) 534)** the Hon'ble Sindh High Court imparted directions to the respondents to consider the petitioner for promotion purely on merits without being influenced by the pendency of any civil or criminal case.

19. In the case of ***Zia ul Hassan, Home Secretary and Others v. Naseem Chaudhry (2000 SCMR 645)***, it was held by the

Hon'ble Apex Court that mere pendency of some disciplinary inquiry would not be a sufficient ground for non-consideration for promotion. Law to such an effect has also been laid down in the case of ***Salah ud Din Muhgal v. Province of Sindh (2012 PLS (CS) 1018)***, ***Nazeer ud Din v. Government of Pakistan through Secretary Passport and Immigration Department (2017 PLC (CS) 578)***, ***Muhammad Riaz v. Government of Punjab (2003 PLC (CS)1496)***, ***Muhammad Hanfi V. Province of Sindh (2011 PLC (CS) 534)***, ***Javed Iqbal Nasir v. Managing Director PEPCO (2012 PLC (CS) 1043***), ***Shama Khan Zafar v. District Coordination officer Lodhran (2014 PLC (CS) 948).***

20. The ratio set in by the superior court guides to observe that no one could be punished by denying him his earned right of promotion or consideration for promotion before the charge is established against him. Mere pendency of a case or inquiry is no ground for denying consideration for promotion. However, the authorities concerned wound not be debarred to continue with the disciplinary proceedings if there is anything against the civil servant.

21. In the case of petitioner, there were due recommendations for promotion by the CSB, duly approved by the competent authority, thus a **vested right** has been created in favour of the petitioner, keeping in view the dictum laid down by the Hon'ble Apex Court in case of ***The Chairman, Central Board Of Revenue And Another v. Muhammad Malook And 11 Others*** **(1999 SCMR 1540),** wherein it was held that **"once a person was recommended for promotion by the Departmental promotion committee after having found him fit and the recommendation of the DPC was accepted by the competent authority, a right was created in his favour."** The Hon'ble Apex Court has held that a right was created in favour of an officer, who has once been recommended for promotion by the Board and the same got approved from the competent authority cannot be withheld merely on a flimsy ground of pendency of an inquiry against the officer concerned, as such a right is not a bounty extended to the

petitioner but it is his earned right which he has earned through rendering services and an officer at the verge of his retirement, where he has legitimate expectancy for promotion to an upper grade and after being considered for the same in accordance with law and rules cannot be denied his earned right of promotion, merely due to pendency of an inquiry, which even otherwise has yet to commence.

22. In the matter of ***Zia ul Hassan, home Secretary and Others v. Naseem Chaudhry (2000 SCMR 645)***, the Hon'ble Apex Court had graciously held that **"on the basis of some disciplinary proceedings, the eligible civil servant cannot be deprived of, from promotion because promotion of civil servant would not debar the authorities to continue with the disciplinary proceedings against him in accordance with law."** The matter pertains to deferment of an officer, due to pendency of an inquiry and it was held that the departmental authorities can continue the proceedings of an inquiry against the officer concerned even after his promotion, as the promotion of the officer would not operate as a restraint in way of proceedings conducted by the department or any other competent authority.

23. Keeping in view the law on the subject and the dictums laid down by the Hon'ble Supreme Court, it can safely be held that the promotion cannot be withheld under excuse of any pending departmental inquiry against a civil servant. The wisdom behind such view would be, if the promotion was refused to a civil servant on the justification of any pending departmental or other inquiry that would amount to penalize the civil servant prior to final opinion of the inquiry officer/committee. If the civil servant was promoted on the basis of his merit his promotion would not debar, the competent authority to continue with any such inquiry against him and in case any charges are proved against a civil servant in any proceedings or inquiry conducted against him, appropriate orders could be passed against the civil servant. The inquiry proceedings must be concluded within the specified period and the pendency of an inquiry for an indefinite period would be an

hanging sword on the head of a civil servant in the form of pendency of an inquiry, this would reflect only to deprive him of his lawful right of promotion.

24. Another aspect of the matter would be the pendency of the inquiry before the Federal Ombudsman Harassment of Women at Workplace. As per section 3 of the Federal Ombudsman Harassment of Women at Workplace Act, 2010 there shall be an Inquiry Committee constituted in each organization, and on receipt of the complaint within three days, the same shall be communicated to the accused, who within seven days should file his reply, the Inquiry Committee within 30 days of the initiation of inquiry has to submit its findings to the competent authority for imposing of minor or major penalty as reached by the Inquiry Committee.

25. In the case in hand, as evident from the parawise comments filed by the respondents, the inquiry was received to the Ministry of Defence on 03.10.2021, but the record/parawise comments are silent as to whether any action in that behalf has been taken by the competent authority, and any Inquiry Committee has been constituted/notified as per the requirements of Section 3 of the Federal Ombudsman Harassment of Women at Workplace Act, 2010. Further, respondent No. 2 in Para No. 7 of the written comments has categorically stated that the veracity of the complaint has not yet been decided.

26. The non-issuance of the notification of the petitioner would cast a shadow on the working of CSB and the government as in the instant matter the petitioner has been recommended for promotion by the CSB and the said recommendations got approval from the competent authority. The impugned action would also tantamount to undermine the working of the Central Selection Board, while formulating their recommendations, which are primarily guided by the Promotion Policy. The petitioner is at the verge of his retirement and about to reach age of superannuation on 05.10.2022.

27. So far as objection with regard to objection qua maintainability of the instant writ petition is concerned, Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 gives ample power to the High Court to interfere in a matter where an act or conduct of a public servant or an authority surpasses the law or his act is in violation of the rules and regulations while in the case in hand, the question had been with regard to infringement of a '*vested*' and '*earned right'* by exercising authority in derogation to the rules.

28. As a corollary, it is held that the impugned action of the respondents qua withholding of notification of petitioner's promotion from BS-20 to BS-21 is not legally justifiable being in breach of the rules and the law on the subject. Consequently, instant writ petition is accordingly **allowed**. The respondent No. 2 is directed to issue notification of petitioner's promotion from BS-20 to BS-21, pursuant to the Establishment Division O.M. No. F.1/1/2021-CP-4 dated 02.12.2021 in due course forthwith. No orders as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____04.2022.

JUDGE

ISLAMABAD │09.05.2022
APPROVED FOR REPORTING.

//Kamran//