ORDER SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 920 of 2022

Abdul Qayyum Khan VERSUS Pakistan Post & another.

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
1	2	3
	25.03.2022	Mr. Zahir Shah, Advocate.

Through the instant writ petition, the petitioner has prayed a direction to the respondents to refrain from convening upcoming meeting of the Departmental Promotion Committee (‘**DPC’**) on the basis of the Seniority List of the Junior Accountant BS-16 issued on 27.01.2022 till the final decision of the apex Court.

2. Precisely, petitioner’s case is that despite being eligible for promotion to the post of Assistant Account Officer BS-17 (‘**AAO**’) w.e.f. 17.05.2008, he had been placed at the bottom of the Seniority List (‘**List**’)issued vide letter dated 27.01.2022 i.e.below his junior counterparts, who qualified SAS Part-II Examination on 17.06.2021 unlike the petitioner who passed the same on 17.05.2008. It is further asserted that after the judgment of the learned Federal Service Tribunal **(‘FST’**) dated 26.03.2021, petitioner stands at the top of List but the department has delayed his promotion with malafide intention.

3. According to the learned counsel, despite specific direction of the learned FST vide judgment dated 26.03.2021, the respondents are going to convene meeting of the DPC and also challenged the judgment of learned FST before the Hon’ble apex Court wherein leave to appeal has also been granted. The learned counsel on the strength of judgment reported as 2011 SMR 265 contends that this Court in case of a factual controversy could come in aid of an aggrieved person for redressing the wrong if on the basis of admitted facts it had surfaced that the authority had passed the order against the law or without jurisdiction.

4. Heard, record perused.

5. The perusal of record reveals that the petitioner claims seniority as Junior Accountant w.e.f. 13.11.2003 on the basis of Memorandum dated 28.07.2016 as reveals through Para-3 of the memo of the petition, which has been shown to be placed on file as Annexure-A but it is not the case as Annexure-A is letter dated 27.01.2022 regarding convening of DPC wherein the names of Junior Accounts Officers including the petitioners are mentioned. The Memorandum,on the basis of which, petitioner claims sanction of his seniority position from 13.11.2003 by the competent authority has not been annexed with the file.

6. Adverting to the judgment of the learned FST, it's concluding para-8 states that "the respondents are directed to **consider the case of the appellant for appointment/promotion** to the post of AAO (BS-17) within a period of three months from the receipt of this judgment. However, recovery already made by the respondents be refunded to the appellant."(Emphasis supplied)

7. The direction ibid is with regard to consideration of the petitioner for promotion to the post of AAO BS-17 within a period of three months while there is no mention of any direction qua his promotion to the post of AAO on the basis of seniority as claimed by the petitioner.

8. In addition, it is also apparent from the application available at Page-10 addressed to the respondent No.1 with the identical prayer i.e.to postpone the upcoming DPC till the decision of the Hon'ble apex Court, that thepetitioner also sought the same relief till the decision of the learned FST alongside the Hon'ble Apex Court unlike the prayer of the instant writ petition. It was for the reason that the issue of seniority is *subjudice* before the learned FST as reveals through Para-4 of his request for postponement of DPC, available at page-10 of the file, wherein it is mentioned that:-

*"*That on production of a copy of the provisional seniority list by the department to the FST as per order sheet vide MP No.554/2021 in appeal No.1891(R)CS/2018. **The case of seniority is also under trial in Hon'ble Federal Service Tribunal.**(Emphasis added)

9. As noted above, when not only the issue of seniority is *subjudice* before the learned FST but the question qua the consideration of the petitioner for promotion to the post of AAO pursuant to judgment of the learned FST dated 26.03.2021 is also subject matter of CPLA before the Hon'ble Apex Court, it cannot be presumed that case of the petitioner is based on plain and admitted facts. The issue of Seniority is the subject of learned FST and a direction in any of its ancillary matter like stay of the list issued on 27.01.2022 is not permissible while exercising constitutional jurisdiction in terms of Article 199 of the Constitution. The case law referred by the learned counsel entails distinct facts and circumstances; therefore, do not extend any help to the petitioner's case.

10. For reasons mentioned above, instant writ petition fails and accordingly **dismissed in limine.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI*