ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ PetitionNo. 3596 of 2013

Muhammad Ashraf

versus.

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.05.2022	Raza Ullah Khan & Umair Baloch, Advocates for petitioner. Syed Nazar Hussain Shah, AAG. Mr. Abdur Rehman SO, Establishment Division & Shahzad Zareef, DD. M/o Commerce, Islamabad.

Through the instant writ petition, the petitioner has prayed for the following relief:-

> "the respondents may kindly be directed to count the service of the petitioner rendered as Lecturer (BS-17) in the Education Department, Government of Punjab for the period from 30.08.1994 to 05.11.1996 as well as the service as Probationer (BS-17) in the Postal Group from 05.11.1996 to 06.07.1998 and inconsequence thereof, the petitioner may kindly be promoted to BS-19 with effect from 02.09.2008 (i.e. from the date of the 1st meeting of DSB) as the Mid-Career Management Course (MCMC) is not required/applicable in the case of the petitioner**."**

2. Precisely, the case set up by the petitioner is that on the recommendations of the Punjab Public Service Commission, he joined the Education Department, Government of the Punjab, on regular basis on 30.08.1994. Subsequently, appeared in the CSS Exam-1995 after obtaining the requisite Departmental Permission Certificate, communicated to the FPSC vide letter dated 16.07.1996. Being successful, the petitioner was allocated Postal Group. He relinquished the charge of the post of Lecturer (BS-17), Government Shalimar College on 05.11.1996 and joined the Civil

Services Academy Lahore as probationer (BS-17) on the same day for Common Training Program of Postal Group.

3. The petitioner further maintained that during the period of training as probationer, he again appeared in the CSS Exam-1996 and after being declared successful, allocated Commerce & Trade Group and after completion of training, joined the said Group on 06.07.1997.

4. It is further asserted that the petitioner got promotion in BS-18 on 29.04.2004 and during his service in BS-18, selected for posting abroad in the Embassy of Pakistan, Hague Netherland as "Commercial Secretary" on 31.03.2008. During his posting abroad, meeting of the Departmental Selection Board (**DSB**) was held on 20.09.2008 to consider the cases of promotion of Officers from BS-18 to BS-19 including the petitioner and 20 other officers wherein 16 officers succeeded to get regular promotion in BS-19 while the remaining 5 including the petitioner were given the Acting Charge due to deficient length of service i.e. 12 years in BS-17 and above.

5. The petitioner further asserted that at the relevant time, the post of Commercial Secretary BS-18 at the Embassy of Pakistan, Hague, Netherland was upgraded to Commercial Counselor, BS-19 therefore, he assumed the charge of the post on 07.12.2009. Thereafter, he was repatriated to Pakistan in 2012 and posted as Deputy Secretary in the Ministry of Commerce, Islamabad.

6. According to the petitioner, he was again considered for promotion to be BS-19 in the DSB, held on 18.11.2011 but despite having requisite length of service, deferred on account of not undergoing mandatory Mid-Career Manage Course (MCMC). The petitioner alleges that his consecutive deferments were illegal, unlawful, without lawful authority and in derogation to the instructions issued by the Establishment Division and that his representations against the decisions of the DSB remained

unsuccessful which constrained him to file the instant writ petition.

7. The learned counsel while reiterating the stance taken in the petition argued that the petitioner was inducted in the Government Service on 30.08.1994 as Lecturer in the Education Department, Government of the Punjab and joined the Academy after obtaining necessary permission and then as probationer on 5.11.1996, therefore, had 14 years continuous service in BS-17 at his credit when first meeting of the DSB held on 02.09.2008. Further submitted that the Establishment Division O.M. dated 02.06.1983 clearly prescribes minimum length of service for promotion in BS-19 as 12 years in BS-17 or above. The said O.M, according to the learned counsel, does not provide that the length of service should be in the same group or cadre, therefore, the petitioner had been treated with discrimination as his various counterparts were given the promotion while the petitioner has been denied the same benefit.

8. On the other hand learned AA-G assisted by the representative of respondents while referring parawise comments maintained that the petitioner was not considered for promotion in the year 2008 as he lacked prescribed criteria i.e. 12 years' service and that his subsequent deferment had been due to not undergoing the MCMC, which as per Establishment Davison O.M. 02.06.1983 is mandatory for promotion to BS-19. The two deferments of the petitioner were due to non-fulfillment of prescribed criteria which he never questioned in-time, as such accepted the same. It is also argued that the petitioner has not attributed any malafide of fact or law to the respondents as such not entitled to any equitable relief.

9. In order to appreciate the submissions made by the learned counsel at-bar, the documents made available on file besides the relevant rules and instructions issued by the Establishment Division from time to time have been gone through carefully.

10. In terms of section 9 (1) of the Civil Servant Act, 1973 *"a civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs."*

11. At the time of convening of the first meeting of the DSB on 02.09.2008, the petitioner had 10 years' and 2 moths service at his credit in BS-17 and above while the mandatory requirement of length of service as per Promotion Policy is 12 years. It is the stance of the petitioner that at the relevant time as per Establishment Division O.M date 02.06.1983, minimum length of service for promotion to BS-19 is 12 years and above, while it is not mandatory as per said instructions that the length of the service should be in the same group or cadre therefore, as he had 14 years' continuous service on the date fixed i.e. 02.09.2008, he was eligible for promotion to BS-19.

12. The contention ibid is required to be seen in the light of instructions issued by the Establishment Division vide O.M. dated 18.12.2008. Paragraph 2 of the said O.M. being relevant is reproduced hereunder:-

> *"2.* The question of counting previous service rendered by an officer in any Department/cadre/post towards length of service for eligibility for promotion to higher grade in his present cadre has been examined in the Establishment Division. **It is clarified** that the prescribed minimum length of service for promotion by implication refers to a cadre or service because the Promotion Policy itself provides that an officer will be promoted within his cadre, therefore, **the relevant service rendered only in the present group/cadre of an officer shall count for the purpose of length of service towards promotion to higher scale in the present cadre**.*"*

13. In view of above clarification, the relevant service rendered only in the present group/cadre by an officer shall count for the purpose of length of service towards promotion to higher scale in

the present cadre. At the relevant time, the petitioner had at his credit only 10 years and 2 months service in BS-17 and above in the cadre i.e. Commerce and Trade Group. The application of O.M. dated 02.06.1983, as argued by the learned counsel, is specific for commuting length of service for the purpose of promotion for BS-17 only and not BS -18 and above, it is so clarified by the Establishment Division in the O.M dated 18.12.2008 (ibid) in terms that where first appointment of a person other than a person covered by the proviso (2) was made to government service in grade-16 or below one half of the service in grade 16 and one-fourth in grade 15 below may be counted as service in grade 17 for commuting length of service *for the purpose of promotion in BS-17* ***only.*** The contention of the learned counsel to this effect is misconceived and accordingly repelled.

14. So far as submission to the extent of exemption from MCMC besides applicability of FST judgment dated 29.11.2011 in the case of one Amir Ali Ahmed is concerned, that aspect was looked into by the Establishment Division vide O.M. dated 02.05.2013. The matter has been examined in the light of section 9 (1) of Civil Servant Act, 1973, Rule 8-A, 8-B (1), 8-B (6) and 8-B (7) of the Civil Servants (*Appointment, Promotion and Transfer*) Rules, 1973, besides the Promotion Policy 1985 read with Revised Promotion Policy 2007. It was advised that the contention of the petitioner and his counter-part namely Ms. Fouzia Parveen Ch. that mandatory MCMC is not applicable in their cases as they were already appointed in BS-19 of Acting Charge Basis, is not covered under the law/rules/policy, and hence may not be acceded to. As per the policy-in-vogue, the successful completion of MCMC for promotion to BS-19 was made effective w.e.f. 01.01.2009.

15. Likewise, reference to FST Judgment 29.11.2011 passed in appeal No. 1674/2011 was distinguished from the case of the petitioner and his counterpart as in the referred case, the appellant was already upgraded and was not relieved for MCMC by his controlling Ministry due to exigency of service.

16. The condition of undergoing MCMC was mandatory, made effective from 01.01.2009. The petitioner joined the Commerce and Trade Group in BS-17 on 06.07.1997 and as per Promotion Policy, his mandatory length of service had completed on 06.07.2008. By that time, the petitioner on the principle of length of service had become eligible for promotion but the condition of undergoing MCMC was in field, which was held mandatory in terms of O.M. dated 20.05.2013 made effective from 01.01.2009. The petitioner in order to avail the benefit of promotion had to undergo mandatory MCMC as at the time when he achieved the required length of service i.e. 12 years on 09.07.2010 the mandatory requirement of MCMC was already in field w.e.f. 01.01.2009. The submissions to this effect retain no force.

17. The case of Dr. Yousaf Junaid, was not at-par with that of the petitioner as his previous service of 2 years 3 months and 3 days was counted in terms of Section 9-A of the Compulsory Service in the Armed Forces Ordinance, 1971 unlike the case of the petitioner. In-terms of Rule 8-D (7) of the Civil Servant (*Appointment, Promotion and Transfer)* Rules, 1973, Acting Charge appointment confers no vested right for regular promotion to the post held on acting charge basis. The other references to highlight the point of discrimination mentioned in Para (iii) of the "Grounds" of the petition are without any documentary support.

18. It is also noted that the first meeting of the DSB was held on 02.09.2008 while the second on 18.11.2011 but the petitioner opted not to question his deferments on account of deficient length of service and not undergoing the mandatory MCMC which apparently reflect his acquiesces and thus bars him to question the same at belated stage which even otherwise as discussed above is not backed by any law, rules or regulations.

19. To sum up, the documents on record establishes that at the time of first DSB in 2008, the requisite length of service of the

petitioner in the Group/Cadre was deficient while at the time of subsequent meeting of the DSB in 2011, though the petitioner had crossed the threshold of length of service but could not be promoted due to not undergoing MCMC, made mandatory with effect from 01.01.2009 i.e. much before achieving the requisite length of service by the petitioner in July, 2010. The holding of Acting Charge is not a vested right for regular promotion for which the requisite criteria has to be fulfilled. Neither the petitioner questioned his first deferment at the relevant time in 2008 nor subsequent in 2011 and brought the instant writ petition with the delay of about 3 years which reflects his acquiesces and bars him to question the same under the principle of estoppel.

20. In view of above the instant writ petition fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//