JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

I.C.A. No.526 of 2016
Federation of Pakistan through Secretary, Establishment Division and another
Versus
Farhad Khan and others

Date of Hearing: 23.08.2017
Appellants by: Raja Ahsan Mehmood Satti, D.A-G,
Respondent No.1 by: Mr. Muhammad Shoaib Shaheen, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra court appeal, the appellants, impugn the order dated 24.10.2016, passed by the learned Single Judge in-Chambers, whereby Writ Petitions No.179/2016 and 3103/2016, filed by respondent No.1 (Farhad Khan), were allowed with the direction to the appellants to place respondent No.1's name for promotion to BS-22 in the meeting of the High Powered Selection Board ("H.P.S.B.").

2. The record shows that respondent No.1 in his writ petition had *inter-alia* prayed for a direction to the appellants to promote respondent No.1 in accordance with the Civil Servants (Promotion to the post of Secretary, BS-22 and equivalent) Rules, 2010. Furthermore, respondent No.1 had prayed for a declaration to the effect that the charge sheet, and the statement of allegations dated 08.01.2016, issued to respondent No.1 is in violation of the law, etc.

3. When Writ Petition No.179/2016 was filed by respondent No.1, he was serving as Military Accountant General, Rawalpindi. The H.P.S.B in its meeting dated 11.01.2016, deferred respondent No.1's promotion from BS-21 to BS-22. According to the parawise comments filed by the appellants, the H.P.S.B did not find respondent No.1 suitable for promotion to BS-22 by observing that disciplinary proceedings had been initiated against him.

4. During the pendency of Writ Petition No.179/2016 another meeting of H.P.S.B. was held on 01.08.2016. In this meeting also respondent No.1's promotion to BS-22 was deferred. Aggrieved

by the said deferment of his promotion, respondent No.1 instituted Writ Petition No.3103/2016 before this Court, praying for his deferment in the two successive meetings of the H.P.S.B., to be set aside. The primary reason as to why respondent No.1 was not promoted, was the pendency of disciplinary proceedings.

5. Vide judgment dated 24.10.2016, the learned Single Judge-in-Chambers allowed Writ Petitions No.179 and 3103/2016 and directed the appellants to place respondent No.1's case for promotion in the next meeting of the H.P.S.B. The said judgment dated 24.10.2016 has been impugned by the appellants in the instant appeal.

6. During the pendency of this appeal, respondent No.1 has retired on attaining the age of superannuation on 05.02.2017. Furthermore, as regards the departmental/disciplinary proceedings against respondent No.1, he has been exonerated from the charges leveled against him.

7. The learned Deputy Attorney-General submitted that the learned Judge in-Chambers could not have allowed respondent No.1's writ petitions, or to have directed the appellants to place respondent No.1's name before the H.P.S.B. for promotion to BS-22; that respondent No.1 could not have promoted to BS-22, because disciplinary proceedings had been pending against him; that even though respondent No.1 was exonerated from the charges leveled against him, he cannot be granted the benefit of *proforma* promotion; and that the pendency of departmental proceedings against a civil servant is a sufficient ground not to consider him for promotion. Learned Deputy Attorney-General prayed for the impugned judgment dated 24.10.2016, to be set aside.

8. On the other hand, learned counsel for respondent No.1 submitted that the appeal has been rendered infructuous. He further submitted that it is well settled that mere pendency of departmental proceedings against an officer cannot be a ground not to consider such an officer for promotion; that the disciplinary proceedings against respondent No.1 were initiated

just three days before he was due to be considered for promotion to BS-22; and that the disciplinary proceedings were initiated against respondent No.1 with a *malafide* intention just to deprive him from promotion to BS-22. Learned counsel for respondent No.1 prayed for the appeal to be dismissed.

9. We have heard the contentions of the learned Deputy Attorney-General as well as learned counsel for respondent No.1 and have perused the record with their able assistance.

10. It is an admitted position that respondent No.1 while serving as BS-21 officer of the Pakistan Audit and Accounts Service was considered for promotion to BS-22 by the H.P.S.B. in its meeting held on 11.01.2016 and 01.08.2016, but on both occasions respondent No.1's promotion was deferred primarily on the ground that disciplinary proceedings had been initiated against him. Perusal of the notification dated 02.02.2017, issued by the Ministry of Ports and Shipping, shows that due to allegations of misconduct, respondent No.1 was proceeded against under Rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973, vide charge sheet dated 08.01.2016; that the Authorized Officer, after considering the recommendations of the Inquiry Officer in the Inquiry Report dated 10.11.2016, came to the conclusion that the charges/allegations leveled against respondent No.1 had not been proved; and that respondent No.1 was exonerated from the charges leveled against him. It is also not disputed that respondent No.1 retired on 05.02.2017.

11. The order sheet of this appeal reveals that vide order dated 06.12.2016, the operation of the judgment dated 24.10.2016 was suspended. That is why respondent No.1 was not considered for promotion to BS-22 by the H.P.S.B. The subsequent events of respondent No.1's retirement, and his exoneration in the disciplinary proceedings, we feel bound to take into consideration while deciding this appeal.

12. It is well settled that mere pendency of disciplinary proceedings against an officer cannot be termed as a valid ground to deprive him from being considered for promotion, or to

defer his promotion. Reference in this regard may be made to the law laid down in the cases of Ziaul Hassan Vs. Naseem Chaudhary (2000 SCMR 645), Muhammad Hanif Vs. Province of Sindh (2011 PLC (C.S) 534), Shama Khan Zafar Vs. District Coordination Officer, Lodhran, (2014 PLC (C.S) 948), and Javed Iqbal Nasir Vs. Managing Director, PEPCO (2012 PLC (C.S) 1043).

13. In the case of "Muhammad Ayaz Khan Vs. Government of Sindh" (2007 PLC (C.S) 716), the Division Bench of the Hon'ble High Court of Sindh held *inter-alia* that even if a case was pending against an officer before the National Accountability Bureau he could not be deprived from being considered for promotion. The Hon'ble High Court remitted the officer/petitioner's case to the department with the direction to decide the petitioner's case for promotion solely on merits and the applicable rules without taking into consideration the pendency of a case against him in the National Accountability Bureau.

14. In the case of "Chief Secretary, Sindh Vs. Riaz Ahmed Massan" (2016 SCMR 1784), it has held *inter-alia* that if a civil servant is denied promotion for no fault on his part and when his promotion to the next higher grade is effected later than promotion and seniority of such a civil servant is counted and reckoned with his contemporary or junior officers who were promoted earlier to him.

15. In view of the law laid down in the cases referred to herein above, and taking into consideration the fact that respondent No.1's promotion to BS-22 was deferred by the H.P.S.B. on the ground that respondent No.1 was facing disciplinary proceedings (from which he has admittedly been exonerated); and that after the judgment dated 24.10.2016, passed by the learned Single Judge-in-Chambers, respondent No.1 was not considered for promotion due to the injunctive order dated 06.12.2016, passed by this Court, we dismiss this appeal with the observation that respondent No.1 was wrongfully deferred by the H.P.S.B. in its meetings dated 11.01.2016 and 01.08.2016, and

that respondent No.1's non-consideration for promotion due to an interim order passed by this Court was something beyond respondent No.1's control and not of his doing. Therefore, it is also observed that respondent No.1 has a fit case for consideration for *proforma* promotion to BS-22 under the *proviso* to FR-17. There shall be no order as to costs.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE) **(JUDGE)**

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