SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 1477 of 2018

Khalid MehmoodAkhtar
Versus
Federation of Pakistan & 3 others.

Petitioner by	:	Mr. Abdul Rahim Bhatti, ASC.
Respondents by	:	Syed Nazar Hussain Shah, AAG with Iftikhar Ahmad Khan DD, FIA.
Date of hearing	:	06.01.2022

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ARBAB MUHAMMAD TAHIR, J: Through the instant writ petition, petitioner has challenged his deferment and also prayed for promotion to the post of Additional Director (BPS-19) with consequential benefits.

2- Relevant facts are that the petitioner, working as Deputy Director Admn/Accounts (BPS 18) in the Federal Investigating Agency (‘**respondent department’**) was considered for promotion to the post of Additional Director (BPS 19) but was deferred on account of pending Criminal Enquiry No.55/2017 FIA CCC Islamabad, by the Departmental Promotion Committee (‘**DPC**’) vide Minutes dated 30.3.2018. The petitioner filed the instant writ petition on 17.04.2018 while he also filed Service Appeal No. 666(R) CS-2018 before the learned Federal Service Tribunal (‘**FST**’) for restoration of Seniority List dated 17.09.2011 of the Deputy Directors (BPS-18) and for promotion as well. The learned FST allowed the said Appeal vide Judgment dated 30-12.2019 which has been assailed by the respondent department through CA No.421-2020 and the Hon’ble Supreme Court of Pakistan vide Order dated 04.11.2020 remanded the matter to the

learned FST for deciding the appeal afresh, in accordance with law.

3- Record further reveals that at the time when the petitioner was considered for promotion, Revised Promotion Policy 2007 (‘**Policy-2007’**) was in-field which was superseded by the Civil Servant Promotion (BPS-18 to BPS-21) Rules, 2019 (‘**Rules, 2019’**). According to Clause 1(b) (iv) of the Policy-2007, a civil servant shall be deferred on account of pending disciplinary proceedings and as per Clause-2, civil servant held entitled for reconsideration as soon as the reason of deferment ceases to exist.

4- In Rules, 2019, relevant provisions are Clause-7(e) &7(i). As per Clause 7(e), a civil servant shall be recommended for deferment on account of pendency of disciplinary or departmental proceedings while its Proviso states that said clause shall not be applicable in cases where on the date of consideration of the civil servant for promotion such proceedings are pending for more than a year and the delay has not been caused by any reason attributable to the officer.

As per Clause-7(i), a civil servant shall be recommended for deferment on account of an inquiry, investigation, case or a reference pending in Anti Corruption Establishment, Federal Investigating Agency, National Accountability Bureau or such other organization by whatever name called for, while as per Proviso, said 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.

5- It is clear that in Policy, 2007, a civil servant was held entitled for reconsideration as soon as the reason of deferment ceases to exist while as per Rules, 2019 in

case of departmental inquiry, a civil servant is held entitled for reconsideration when the said inquiry is pending for more than a year from the date of consideration while on account of pendency of criminal inquiry before any investigating agency for more than three years and the delay, in both the cases, is not attributable to civil servant.

6- In the present case, the reason of deferment is pending Criminal Enquiry before FIA that pertains to the year 2017. No details whatsoever of said pending Enquiry has been made part of record by the respondent department.

7- Learned counsel for the petitioner argued that mere pendency of enquiry is no ground for deferment and that he does not press prayer of promotion being out of the jurisdiction of this Court. Learned counsel placed reliance upon case laws reported as 2003 PLC (CS) 503, 2003 SCMR 645, 2002 PLC (CS) 1018, 2013 SCMR 1006, 2014 SCMR 817 and 2010 SCMR 1301.

8- On the other hand, learned AAG opposed the petition on the grounds taken in written comments and also objected upon its maintainability.

9- It is settled principle that any civil servant aggrieved by any order regarding terms and conditions of service may prefer an appeal to the Tribunal under Section 4 of the Federal Service Tribunal Act 1973 while Section 4(1) (b) expressly bars the Tribunal from entertaining appeal against the decision of a departmental Authority determining the fitness or otherwise of a person to be promoted to a higher grade. The Tribunal is not competent to examine whether or not a civil servant is fit for promotion to a higher grade. Article 212(2) of the Constitution ousted the jurisdiction of this Court in matter falling within the exclusive jurisdiction of the Tribunal. As the determination of fitness of a civil servant for promotion has been excluded from jurisdiction of the Tribunal,

therefore, the jurisdiction of this Court in terms of Article 199 of the Constitution is not ousted in the matters pertaining to upgradation of a civil servant to a particular post. In the instant case, petitioner has assailed his 'deferment'; therefore, it is maintainable on this score. Reliance is placed upon case laws reported as **2015 SCMR 1006, 2010 SCMR 1301 and 2012 PLC (CS) 566.**

10- The deferment of the petitioner was on account of pending Criminal Enquiry No.55/2017. The said Enquiry is pending for more than four years and in the light of proviso to Clause-7(i) of Rules, 2019, petitioner is to be re-considered subject to the condition that the delay, if any, in conclusion of said Enquiry, is not attributable to him. However, it is important to mention that the Judgment dated 30.12.2019 passed by the learned FST in favour of the petitioner has since been set aside by the Hon'ble Supreme Court of Pakistan vide order dated 04.11.2020 and the appeal was remanded for decision afresh, in accordance with law, keeping in view the two points i.e. absorption of the petitioner in FIA and Rule 3(b)(a) of the Civil Servants (Seniority) Rules 1993.

11- The service appeal bearing No.666(R) CS/2018, has since been decided by the leaned FST vide Judgment date 14.12.2021, paragraph 14 whereof is relevant:-

> *"As the record indicates that the appellant was absorbed and promoted within the same year just after 04 months and 22 days of absorption on 29.05.1999 during the probation period. No reasons were given for curtailment of probation period as well as mandatory period of promotion to grade-17 from grade-16. It was in violation of service rules as well as FIA Rules. The appellant was promoted to BS-18 on 04.02.2006. He filed yet another appeal in Service Tribunal and while it was pending he was promoted antedated to BPS-18 w.e.f. 20.01.2002. Again no reasons were cited for antedated grant of BS-18 and the*

resultant seniority in BS-18. Now the appellant has prayed for promotion on the basis of seniority list dated 25.7.2009 instead of the revised seniority list dated 07.9.2011 promotion w.e.f. 29.7.2012 and he wants promotion to grade-19 on the basis of his earlier promotion from BS-16 to BS-17, within a period of 4 months and 22 days and grade-17 to grade-18 within a period of 2 years 7 months and 22 days. Both the promotions were in violation of service rules as admitted by the respondents in parawise written comments".

13- The consecutive promotions of the petitioner from BS-16 to BS-17 and then from BS-17 to BS-18 within short span of time have been held to be in violation of service rules as well as FIA Rules, therefore, superstructure on the basis of which petitioner intends to climb another stair has fallen on the ground. The instant writ petition thus, has lost its efficacy as any right cannot be claimed in violation of rules as observed by the learned FST in paragraph No.15 of the judgment by placing reliance upon case law reported as **2013 SCMR 1752 (para 174)**

14- In view of above, the instant writ petition fails and is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE,

Announced in the open court on: 11.02.2022.

JUDGE

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