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

I.C.A. No.427 of 2015
Federation of Pakistan through Secretary, Establishment Division
Versus
Syed Ejaz Hussain and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	03.05.2017	Mr. Afnan Karim Kundi, learned Additional Attorney-General for the appellant, Mr. Abdur Rehman Siddiqui, Ch. Asghar Ali, and Ms. Naziran Malik, Advocates for respondent No.1.

Through the instant intra court appeal, the appellant, Federation of Pakistan, through the Secretary, Establishment Division, impugns the judgment dated 27.07.2015, passed by the learned Single Bench of this Court, whereby W.P.No.1269/2015 filed by respondent No.1 (Syed Ejaz Hussain), was accepted, and the Establishment Division was directed to place respondent No.1's case for promotion to BPS-22 before the High Powered Selection Board ("H.P.S.B."). Respondent No.1 had filed W.P.No.1269/2015, because the H.P.S.B. had decided to defer respondent No.1's promotion to BPS-22.

2. Vide judgment dated 27.07.2015, the learned Single Judge-in-Chambers, had decided a number of writ petitions filed by civil servants aggrieved by the recommendations of the Central Selection Board ("C.S.B.") to defer their promotion to BPS-21, or to supersede them. Writ petitions were also filed by civil servants in BPS-21 whose promotion was deferred by the H.P.S.B. Vide the said judgment dated 27.07.2015, the learned Single Judge-in-Chambers, had allowed all the writ petitions with

the direction to the Establishment Division to *inter-alia* consider the writ petitioners for promotion by placing their cases before the C.S.B. or the H.P.S.B., as the case may be. The Federation of Pakistan had impugned the said judgment dated 27.07.2015 in a number of intra court appeals, including the instant intra court appeal.

3. After this appeal was filed, it was being heard along with the appeals of the Federation of Pakistan against the said judgment dated 27.07.2015, pertaining to the promotion of civil servants from BPS-20 to 21. During the proceedings, this appeal was de-clubbed from the appeals arising from the said judgment dated 27.07.2015 regarding promotions to BPS-21, so that it is heard separately.

4. The intra court appeals pertaining to the promotion of civil servants to BPS-21 were decided by the Division Bench of this Court, vide judgment dated 08.06.2016, passed in I.C.A.No.368/2016. The said judgment has recently been upheld by the Hon'ble Supreme Court. The learned Judge-in-Chambers as well as the Division Bench of this Court, spurned the appellants' objection to the maintainability of the writ petitions. Since the Federation of Pakistan has also objected to the maintainability of the writ petition filed by respondent No.1, we turned down the said objection for the reasons set out in the said judgment dated 08.06.2016.

5. After the instant intra court appeal was filed by the appellant, this Court, vide ad-interim order dated 02.09.2015, directed *status quo* to be maintained. Therefore, respondent No.1's case for promotion to BPS-22 could not be placed by

the Establishment Division before the H.P.S.B. It was not disputed that in the meeting of the H.P.S.B. in which respondent No.1s' promotion was deferred, it was decided that a special report regarding respondent No.1's performance for six months should be placed before the H.P.S.B. in its next meeting. But for the injunctive order, respondent No.1 would have been considered for promotion to BPS-22 by the H.P.S.B.

6. During the pendency of the instant appeal, respondent No.1 has retired with effect from 08.12.2015 upon reaching the age of superannuation. Learned counsel for respondent No.1 submitted that he appreciated that after respondent No.1's retirement, his case for promotion could not be placed before the H.P.S.B. However, he submitted that since respondent No.1's case for promotion to BPS-22 could not be placed before the H.P.S.B. on account of the *status quo* order dated 02.09.2015, passed by the Division Bench of this Court on the application of the appellant, he was not considered for promotion for no fault of his own. On this account, respondent No.1 asserted that he was entitled to proforma promotion in terms of FR-17. He further submitted that respondent No.1 had already on 19.04.2017 applied to the Secretary, Establishment Division for the placement of his case before the FR-17 Committee for consideration of his proforma promotion with effect from the date when his promotion was deferred by the H.P.S.B., and his junior colleagues were promoted. FR-17(1) reads as follows:-

> *"FR-17(1) subject to any exceptions specifically made in these rules and to the provisions of sub-*

rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.

Provided that the appointing authority may, if satisfied, that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servants shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the ante-dated fixation of his seniority."

7. Indeed the directions passed by the learned Single Judge-in-Chambers in the judgment dated 27.07.2015 requiring the Establishment Division to place respondent No.1's case for promotion to BPS-22 before the H.P.S.B. could not be complied with due to the *status quo* order dated 02.09.2015, passed by the Division Bench of this Court on appellant's application. Therefore, respondent No.1 was not considered for promotion by the H.P.S.B. for no fault of respondent No.1. Since, respondent No.1 has applied on 19.04.2017 for proforma promotion in terms of FR-17, we expect that the said application will be considered, and decided strictly in accordance with law and within a reasonable time.

8. Since respondent No.1 had retired; and since the learned Judge-in-Chambers had not directed the Establishment Division or the H.P.S.B. to promote respondent No.1 to BPS-22, but only to consider his case for promotion, the learned Additional Attorney-General did not raise a serious challenge to the said judgment dated 27.07.2015. He, however, sought the expunction of the remarks made in favour of respondent No.1 in the said judgment. This plea on behalf of

the Federation of Pakistan, in our view, is most uncharitable, and, therefore, turned down.

9. In view of the above, the instant intra court appeal is dismissed. There shall be no order as to costs.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*

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