

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.3771-P/2021

Fazal Raziq

Vs.

**The Government of Pakistan through Secretary
Establishment Division, Islamabad and others**

Date of hearing **18.08.2022**
Petitioner(s) by: **Muhammad Asif Yousafzai, Advocate.**
Respondent(s) by: **Muhammad Habib Qureshi, DAG and
Mr. Aimal Khan Barkandi, Advocate.**

JUDGMENT

IJAZ ANWAR, J. The petitioner through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is seeking the following relief:-

“It is, therefore, most humbly prayed that on acceptance of this writ petition, the august Court may be pleased to:

- I. Declare the memo dated 22.01.2019 and 05.08.2022 as illegal, unlawful, pregnant with malice and against the verdict of legal for a mentioned above, therefore, ineffective upon the rights of promotion of petitioner and the petitioner adverse PERs are to be expunged.*
- II. Direct the respondents to grant promotion to the petitioner w.e.f. 2010 against the available any of three posts w.e.f. 2010 with all back and consequential benefits with further directions to the respondents not to deprive the petitioner from the right of promotion on the basis of un-communicated PERs.*


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III. Any other remedy deemed appropriate that may also be awarded in favour of the petitioner”.

2. In essence, earlier the petitioner has approached this Court by filing W.P. No.2790-P/2017 seeking promotion either to the posts of Protocol Officer or Assistant Director, which was disposed of vide judgment dated 23.10.2018 with directions to the respondents to decide the application/appeals of the petitioner filed for promotion within two months. Subsequently, the Selection Committee-II considered the case of the petitioner and decided that the official has got no relevant experience; besides, his PERs for the last two years reflect that he is unfit for promotion and vide the impugned order dated 22.01.2019, he was conveyed the same. Similarly, petitioner also filed W.P. No.1631-P/2019 before this Court against the communication of adverse entries which was also disposed of vide order dated 07.07.2021 with direction to the respondents to decide the appeal of the petitioner within one month. In compliance of the order of this Court, vide the impugned order dated 05.08.2021, his appeal was rejected. Hence, this writ petition.

3. Learned counsel for the petitioner argued that ever since the appointment of the petitioner in the year, 1985 as Stenographer (BPS-15), he was only once allowed move-over in the year 1994 to BPS-16 and thereafter, till his retirement on 01.03.2022, he remained on the same pay

scale; besides, when specific direction was issued by this Court for decision of his departmental representation/appeal, in the rejection order, it was conveyed that "*his PERs for the last two years reflect that he is unfit for promotion*".

4. On the other hand, learned counsel for the respondents, while making specific reference to para-5 of the comments, stated that petitioner has not availed the departmental remedy; similarly, he was not eligible in terms of the recruitment rules for promotion to BPS-17, besides, his ACRs for the years, 2016 and 2017 were also adverse.

5. Arguments heard and record perused.

6. We, while going through the ACRs of the petitioner for the years started from 01.01.2016 to 31.12.2016 and 01.01.2017 to 31.12.2017, find that the ACRs for the said period were rated as 'average' in the General Assessment by the Reporting Officer; similarly, in Part-IV of the ACR Proforma under the heading "Suitability for Promotion", the Reporting Officer has declared him 'unfit for promotion'; however, the Countersigning Officer has not agreed with the same and given his remarks as under:-

"I agree with the Reporting Officer. However, he may be considered for promotion as per his seniority and qualification".

7. It is by now well settled that the ultimate authority, whose observations are conveyed to the civil servant in the matter of adverse entries, is the Countersigning Officer, thus, while going through the contents of the ACR Proforma, we find that the remarks for the years 2016 and 2017 were recorded merely as 'average' and even the remarks of the Reporting Officer as 'unfit for promotion' were not agreed to by the Countersigning Officer; besides, admittedly, the said remarks were never conveyed to the petitioner. In terms of the ACRs Instructions, 'average ACR', under no circumstances, can be considered as 'adverse' unless the same are conveyed as adverse. Reference can be made to the cases titled "Pakistan Broadcasting Corporation D.G.H.O Vs. Nasiruddin (1997 SCMR 1303), Province of the Punjab Vs. Noor Ilahi Khan Leghari (1992 SCMR 1427), Muhammad Zayauddin Vs. Deputy Collector (Locust), Department of Plant Protection, Sukkur (1995 PLC(C.S) 373)".

8. The Superior Courts have also held in numerous judgments that ACRs, not communicated to the civil servants, cannot be utilized to his prejudice. Reference can be made to the cases titled "Muhammad Saleem Khan Vs. Secretary, Ministry of Defence, Government of Pakistan (2009 SCMR 117), Asghar Ali Shah Vs. Government of N.W.F.P. (1998 PLC (C.S) 1402), Ali Zaman, Quarter

Master, DHO Office, Muzaffarabad Vs. Director General, Health Department, Azad Government of the State of Jammu & Kashmir, Muzaffarabad (2003 PLC(C.S) 1092) and Abdul Jabbar Khan Vs. Government of Sindh (1996 SCMR 850)". Similarly, in the case titled "Engineer Jameel Ahmed Malik Vs. Pakistan Ordinance Factories Board, Wah Cantt (2004 SCMR 164)", it has been held that where there is a conflict between the remarks of the Reporting Officer and the Countersigning Officer, the remarks, given by the Countersigning Officer, shall be given weight.

9. It, thus, appears that the case of the petitioner was not properly considered by the Selection Committee, wherein, it was observed that "*his PERs for the last two years reflect that he is unfit for promotion*", because, the record speaks otherwise and as stated above, the remarks, recorded by the Countersigning Officer, are to be given weight and the entries pertaining to 'unfit for promotion', given by the Reporting Officer, lost its efficacy.

10. Though, there is observation regarding eligibility of the petitioner for promotion allegedly on the ground that he cannot be considered either for the posts of Reproduction Supervisor, Protocol Officer or the Assistant Director on the ground that he has got no relevant experience. It has been admitted by the respondents that the petitioner, ever since his appointment as Stenographer

(BPS-15) in the year, 1985 and then his move-over to BPS-16, remained in that capacity till the year, 2007 when he was subsequently re-designated and adjusted as Caretaker Hostel (BPS-16), albeit, the case of the petitioner was a case of hardship as ever since his appointment, he throughout remained in the same pay scale while serving for more than 37 years. Similarly, promotion cannot be withheld on the basis of earning average ACR. Reference can be made to the cases titled “Pakistan Broadcasting Corporation Vs. Vasiruddin (1997 PLC(C.S) 931), Muhammad Anwar Vs. Secretary, Establishment Division (1992 PLD SC 144) and Muhammad Sadiq Vs. Post Master, Central Punjab, Lahore and others (2007 PLC (C.S) 511) and 2000 T.D. (Service) 374”.

11. In view of the above, we find that the case of the petitioner for promotion has not been dealt with even handedly, because, the moment this Court directed the respondents vide order dated 23.10.2018 for decision of his departmental representation, average ACRs were recorded on 07.11.2018 for the years 2016 and 2017 which are even against the PERs Instructions which requires that finalization of such ACRs by Reporting Officer as 20th July and Countersigning Officer by 31st July. While in the instant case, the ACRs were belatedly written which speaks volume about the treatment so meted out to the petitioner. Reference

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can be made to the reported judgments titled "Chief Secretary, Government of Punjab, Lahore and others Vs. Muhammad Saeed Zafur and another (1999 SCMR 1587) and Ch. Saeed Ahmed Vs. Federation of Pakistan through Secretary, Finance Division, Islamabad and 02 others (1996 SCMR 256)".

12. For the reasons stated above, this writ petition is partially allowed. The impugned orders are set-aside and the respondents are directed to place the case of the petitioner before the Selection Committee for consideration of proforma promotion in accordance with law within a period of two months positively.

Announced
Dt:18.08.2022



JUDGE



JUDGE

(DB) **Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Fazal Subhan**