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Judgment Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Writ Petition No.16994/2014
(*Naeem Abbas v. Government of Punjab etc.*)

J U D G M E N T

Date of Hearing	30.11.2015
Petitioner by:	Ch. Abdul Sattar Goraya, Advocate. Mr. Muhammad Masood Bilal, Advocate.
State by:	Mr. Javed Saeed Pirzada, Assistant Advocate General. Mushtaq Hussain, SP Legal. Izhar, S.I. Legal, Branch, Multan.

Atir Mahmood, J.: Brief facts of the case are that the petitioner was appointed as Inspector in the Police Department vide order dated 18.07.1998. On 08.04.2014, the Inspector General of Police-respondent No.2 sought clearance reports of the Inspectors for considering them for promotion as DSP. The RPO, Multan forwarded report of the petitioner, which was submitted by CPO, Multan stating therein that there was no adverse entry against the petitioner. On 02.06.2014, CPO again submitted report to respondent on his desire reiterating his earlier recommendations. Accordingly, the Departmental Promotion Committee after considering case of the petitioner recommended his promotion as DSP whereafter the petitioner was promoted as DSP vide notification dated 15.06.2014. The petitioner was posted as DSP Organized Crime, Muzaffargarh where he took

over charge of the post on 02.07.2014. Afterwards, respondent No.2 rescinded notification dated 15.06.2014 vide notification No.5227/EXEC-II dated 08.12.2014 which is under challenge in this writ petition.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner was promoted after seeking necessary reports from the quarters concerned and considering all aspects of his promotion case; that the petitioner was posted as DSP and he accordingly joined duties meaning thereby the promotion order of the petitioner stood fully implemented; that after promotion, certain rights accrued to the petitioner which could not be brushed aside ordinarily; that alleged show-cause notices were not served upon the petitioner and he remained unaware about the same; that no notice was issued to the petitioner before rescinding his promotion order which is against principles of natural justice, therefore, this writ petition be allowed and impugned notification be set aside. He has relied upon the law laid down in cases reported as **Captain Sarfraz Ahmad Mufti vs. Government of the Punjab and others** (1991 SCMR 1637), **Mrs. Sanjida Irshad, Assistant Director, Nursing, Bahawalpur vs. Secretary to Government of the Punjab Health Department, Lahore and others** (2008 PLC (CS) Lahore), **Chairman, Selection Committee/Principal, King Edward Medical College, Lahore and 2 others Vs. Wasif Zamir Ahmad and another** (1997 SCMR 15), **Tahir Latif Sheikh vs. Federation of Pakistan and another** (2000 PLC (CS) 582 Lahore) and **Muhammad Afzal Khan vs. Government of the Punjab through Secretary to Government of the Punjab, C&W Department and another** (2009 PLC (CS) 40 Lahore).

3. On the other hand, learned Law Officer assisted by Superintendent of Police (Legal) submits that this writ petition since involves terms and conditions of service, therefore, jurisdiction of this Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. He states that there was certain criteria for promotion of the Inspectors laid down in the policy according to which the persons against whom disciplinary proceedings were in progress could not be promoted; that since there were disciplinary proceedings continuing against the petitioner which were deliberately concealed by the petitioner from the competent authority, in connivance with other officers, therefore, his promotion order was rightly rescinded. He prays that this writ petition being without any merit be dismissed.

4. Arguments heard. Record perused.

5. The only allegation against the petitioner is that there were certain disciplinary proceedings continuing against the petitioner which he managed to conceal, therefore, his promotion order was rightly rescinded.

6. According to para 5 of report and parawise comments filed by the respondents, clearance reports in respect of Inspectors was requisitioned on 08.04.2014. The report in respect of the petitioner was sent by RPO, Multan on 17.04.2014 stating therein that there was no departmental proceedings pending against him. This report was undeniably submitted by CPO, Multan to RPO, Multan who forwarded the same with his recommendations. The meeting of Departmental Promotion Committee was held on 12.06.2014. The Committee duly considered the case of the petitioner and recommended him for promotion as DSP. On the recommendations of the DPC, the petitioner was promoted vide order dated 15.06.2014. Afterwards, it came to the notice of the competent authority that

three show cause notices were issued to the petitioner on 23.05.2014 whereupon the petitioner's promotion was cancelled.

7. Astonishingly, there was no disciplinary proceedings pending against the petitioner till 17.04.2014 when the report was sent by RPO, Multan to respondent No.2 stating therein 'NIL' inquiry proceedings were pending against the petitioner. After dispatch of this report, the petitioner was issued three Show Cause Notices on one and the same day, i.e. 23.05.2014 just after one month of report submitted by RPO and few days prior to DPC meeting. This smacks malafide on part of the respondents to disentitle the petitioner from his promotion. Had there been any complaints against the petitioner, the Show Cause Notices might have been issued to him much earlier. The petitioner has taken plea that no such show cause notice was received by him. The respondents could not show from the record that the said show cause notice was in fact received by the petitioner. Furthermore, learned Law Officer has raised allegation that the report was submitted in connivance with the officers without saying that these were CPO and RPO Multan. In my view, an Inspector cannot manoeuvre his clearance report or manage collusion with CPO and RPO as such Officers are not supposed to be approached by the Inspectors and they were required to submit the report as per record. Even otherwise, the report and parawise comments are reflective of the fact that the Show Cause Notices were prepared after the date when the clearance report in favour of the petitioner had already been sent by the CPO and RPO Multan to respondent No.2. Meaning thereby, there was no disciplinary proceedings pending against the petitioner at the time when his clearance report was submitted by the CPO and RPO, Multan, as such, no question of collusion or concealment of facts arises.

8. In addition, mere pendency of disciplinary proceedings against any person or even imposing of minor penalties could not debar the promotion of a civil servant. According to the respondents, only three show cause notices were issued to the petitioner but there is no allegation of the respondents that the petitioner was punished in any case. The promotion order of the petitioner was rescinded in light of policy of the department according to which mere issuance of three show cause notices could be made basis for deferment of promotion of any officer but the law speaks otherwise. It is settled law that the law has to take precedence over the policy. Since according to law, the petitioner's promotion could not be deferred merely on the basis of allegations contained in the show cause notices, the impugned notification was illegal and without any lawful authority, as such, it could not sustain.

9. Learned Law Officer has taken plea that the petitioner, if aggrieved should have approached the service tribunal being a civil servant and the High Court has no jurisdiction to deal with the matter. I am afraid that this argument lacks force as the matter pertains to the fitness or otherwise of the petitioner. Reliance is placed on the judgment of the Hon'ble Supreme Court of Pakistan in case titled **Ali Azhar Khan Baloch and others v. Province of Sindh and others** (2015 SCMR 456). Relevant portion therefrom is reproduced below:

“150. The High Court of Sindh has completely overlooked the intent and spirit of the Constitutional provisions relating to the terms and conditions of service, while entertaining Civil Suits and constitutional petitions filed by the civil servants, which are explicitly barred by Article 212. The expression ‘Terms and Conditions’ includes transfer, posting, absorption, seniority and eligibility to promotion but excludes fitness or otherwise of a person, to be appointed to or hold a particular post or to be promoted

to a higher post or grade as provided under section 4(b) of the Sindh Service Tribunals Act, 1973.

(Emphasis provided)

10. Another aspect of the case is that the petitioner was promoted as DSP after due process of law whereafter his promotion order could not be rescinded without giving him proper opportunity of defence. When confronted with, learned Law Officer frankly admits that no notice prior to rescinding order was given to the petitioner. This is against the golden principle of *audi alteram partem* that no one should be condemned unheard. Even if there was any occasion for recalling of promotion order, the respondents were required by law to issue show cause notice to the petitioner and afford him opportunity to defend his case but no such exercise was done by the respondents before issuing the impugned notification. Therefore, the impugned notification being in violation of settled principles of law is liable to be struck down on this score alone.

11. The epitome of whole discussion is that this writ petition involving matter pertaining to violation of law and having far reaching effects on service structure is maintainable. Nobody can be deprived from promotion merely on the basis of disciplinary proceedings or on account of minor penalties. The petitioner after having been promoted as DSP and his promotion order having been implemented could not be reverted to the post of Inspector without affording him opportunity of defence. Therefore, this writ petition is **allowed** and the impugned order is set aside.

(ATIR MAHMOOD)

Judge

*Akram**

Approved for reporting.

Judge