

2023 P L C (C.S.) 336**[Supreme Court of Pakistan]****Present: Sardar Tariq Masood, Amin-ud-Din Khan and Muhammad Ali Mazhar, JJ****FEDERATION OF PAKISTAN through Secretary, Ministry of National Health Services****Versus****JAHANZEB and others**

Civil Petitions Nos. 3157 to 3165 of 2022, decided on 26th September, 2022.

(Against the judgment dated 21.05.2022 passed by the Federal Service Tribunal, Islamabad, in Appeals Nos. 305(R) to 313(R) CS of 2020)

(a) Civil service---

----Move-over policy---Scope---Move-over cannot be construed as promotion to the post of higher Basic Pay Scale, but the higher pay scale is treated to be an extension of the existing Basic Pay Scale of the post held by the employee---If an employee was not promoted and meanwhile reached to the maximum stage of his pay scale then obviously, he could be stagnant in his earlier pay scale due to attainment of maximum stage, therefore, as per erstwhile move-over Policy, the modus of move-over was devised to cope with such situations in accordance with the criteria provided under SI. No. 73 to SI. No. 91, (O.M. 1975 to 1999) incorporated in the Establishment Code 2007.

(b) Fundamental Rules---

----F.R. 17---Proforma promotion---Scope---If a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into field for his rescue---If he lost his promotion on account of any administrative oversight or delay in the meeting of Departmental Promotion Committee (DPC) or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits---Unjustified delay in proforma promotion cases triggers severe hardship and difficulty for the civil servants and also creates multiplicity of litigation---Competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could

otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention.

Ch. Amir Rehman, Additional A.G.P., Iqbal Ahmed, J.S. and G.M. Jakhrani, D.D.(L) for Petitioner.

Nemo for Respondents.

Date of hearing: 26th September, 2022.

JUDGMENT

MUHAMMAD ALI MAZHAR, J.---The aforesaid Civil Petitions for leave to appeal are directed against the common Judgment dated 21.05.2022, passed by learned Federal Service Tribunal, Islamabad ("Tribunal") whereby Service Appeals Nos. 305(R) to 313(R)CS/2020 were allowed with the directions to the department to take steps for grant of move-over to the appellants (respondents herein) from the date on which they became eligible.

2. The short-lived facts of the case are that the respondents were performing their duties in the Population Welfare Department. After retirement, they were allowed proforma promotion from BPS-17 to BPS-18 and BPS 18 to BPS-19 in compliance with the judgments of the learned Tribunal dated 23.10.2008 and 09.07.2010, and the Judgments of this Court dated 30.06.2009 and 24.11.2010. However, the respondents claimed the entitlement of move-over w.e.f. 01.12.2000 on the notion that they had reached the maximum stage of pay scale on 01.12.1999. Their request was forwarded to the concerned Ministry and thereafter, the Move-Over Committee ("Committee") was constituted and a meeting was convened on 31.07.2019. After discussion, the Committee decided that the respondents are not entitled for grant of move-over as requested by them and the decision of the Committee was communicated accordingly. Being aggrieved, the respondents filed representations to the department which were rejected; thereafter the respondents approached the learned Tribunal where their appeals were allowed.

3. The learned Additional A.G.P, argued that the learned Tribunal failed to consider the record with proper application of mind and reached an erroneous conclusion. It was further averred that the respondents were not regularly promoted, hence they were not entitled to the benefit of move-over. It was further contended that the learned Tribunal ignored that the cause of action arose to the respondents in the year 2000, but the appeal was filed in the year 2020 without giving any plausible explanation for the delay.

4. Heard the arguments. The bone of contention between the petitioner and private respondents is whether, before the proforma promotion, the respondents had already reached the maximum stage of BPS-19 and, hence, were entitled for grant of move-over to BPS-20. The controversy triggered when, on 19.11.2019, a memorandum was communicated to the respondents with regard to the decision arrived at in the meeting of the Committee from BPS-19 to BPS-20 to the ex-employees of the defunct Ministry of Population Welfare Department, whereby they were denied the benefit of move-over from BPS-19 to BPS-20. The minutes of

meeting are on record which demonstrate a duly incorporated table showing the names of respondents at Serial Nos.1 to 6 and 9 to 11 (Appellants before the Tribunal), and in Paragraph No. 3 of the same minutes of meeting it is noticeably and unambiguously elucidated that the AGPR, Accounts offices, Punjab and KPK have confirmed that the officers mentioned in the minutes of the meeting had already reached maximum of BPS-19 before the date of their proforma promotion, hence they are entitled for grant of move-over to BPS-20 but said recommendations were not accepted by the Committee and, in Paragraph No. 6, certain observations were made that proforma promotions were granted under the directions of the Courts as in some cases juniors were granted proforma promotion and on the basis of this wrong act a large number of petitioners accrued their right for promotion. Seemingly, the Committee rejected the request of move-over with the resentment and exasperation that the proforma promotion was granted under the orders of the Courts which displeased them and, instead of deciding the issue of move-over on its merits, the request was turndown without proper application of mind which deprived the respondents of their right of move-over which accrued before the date of proforma promotion.

5. It is a well settled exposition of law that a move-over cannot be construed as promotion to the post of higher Basic Pay Scale, but the higher pay scale is treated to be an extension of the existing Basic Pay Scale of the post held by the employee. Though the Government Policy for extending move-over was discontinued which has also been mentioned by the learned Tribunal with the cutoff date as 01.07.2002, but the fact remains that the respondents were not claiming their move-over after its discontinuation or revision of the policy but they were pursuing the entitlement of proforma promotion accrued in the next higher grade before the cut-off date. If an employee was not promoted and meanwhile reached to the maximum stage of his pay scale then obviously, he could be stagnant in his earlier pay scale due to attainment of maximum stage, therefore, as per erstwhile move-over Policy, the modus of move-over was devised to cope with such situations in accordance with the criteria provided under SI. No.73 to SI. No.91, (O.M. 1975 to 1999) incorporated in the Establishment Code 2007. The respondents were deprived of the benefit vide memorandum dated 19.11.2019 and being aggrieved, they approached to the learned Tribunal for relief, thus we do not subscribe the arguments of the learned Additional Attorney General that the appeals were time barred before the learned Tribunal which plea has already been dealt with adequately by the Tribunal in the impugned judgment.

6. If a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of DPC or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits. The provision for proforma promotion is not alien or unfamiliar to the civil servant service structure but it is already embedded in Fundamental Rule 17, wherein it is lucidly enumerated 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 servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or upgradation arising from the antedated fixation of his seniority. We often noted that unjustified delay in proforma promotion cases trigger severe hardship and difficulty for the civil servants and also creates multiplicity of litigation. It would be in the fitness of things that the competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention.

7. The learned Tribunal has also referred to the Office Memorandum dated 7.10.1999 in which, according to the policy instructions of 1986, civil employees of the Federal Government were allowed to move-over to the next highest basic pay scale with effect from 1st December of the year following the year in which they reach the maximum. It was further mentioned in the same office memorandum that these instructions were inferred erroneously to imply one year's stay at the maximum before entitlement to move-over, and the term "following year" used in the instructions of 1986 in fact means the next calendar year. When the present respondents were granted proforma promotion to BPS-19 with effect from 29.12.1999 vide notification dated 15.01.2018, they had already reached the maximum stage of BPS-19, therefore, they were entitled to be moved-over to BPS-20. After considering the pros and cons, the learned Tribunal rightly set aside the decision of the Committee dated 31.7.2019, whereby the respondents were denied the benefit of move-over which was accrued to them before the date of proforma promotion. All factual and legal aspects have already been considered and dealt with by the book in the impugned judgment of the learned Tribunal.

8. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned Tribunal. The Civil Petitions are dismissed and leave is refused.

MWA/F-15/SC Petitions dismissed.

;