BEFORE THE SINDH SERVICE TRIBUNAL AT KARACHI

PRESENT:
JUSTICE (R) SADIQ HUSSAIN BHATTI, CHAIRMAN
TARIQ MEHMOOD KHOSO, MEMBER
SHAHID ABDUL SALAM KHAN, MEMBER

APPEAL NO. 77 OF 2022

Kashif Naseem S/o Abdul Muqeem,
Muslim, Adult, Senior Clerk,
Presently working as Reader at A.T.C Court, VI,
[redacted]
.....Appellant

VERSUS

1. The Chief Secretary,
   Government of Sindh at Karachi.

2. The Home Secretary,
   Government of Sindh at Karachi

3. The Registrar Special Courts,
   Suppression of terrorist activities
   Home Department Sindh at Karachi.....Respondents

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Date of hearing: 08.10.2024.

Date of Judgment: 16.10.2024.

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Ms. Sana Junjhi, advocate for the appellant alongwith the appellant.
M/s. Asif Hussain Mangi, Addl. AG and Ahmed Khan Khaskheli, Assistant A.G. for the respondents.

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JUDGMENT

TARIQ MEHMOOD KHOSO, MEMBER:

The appellant being aggrieved by and dissatisfied with the impugned original order dated 30.09.2021, passed by respondent No.03 has preferred this appeal under section 4 of the Sindh Service Tribunals Act, 1973.

2. The brief facts are that the appellant was initially appointed as a Senior Clerk (BPS-07) in the office of the Registrar Special Courts for Suppression of Terrorist Activities (STA Courts), Home Department, Government of Sindh (herein after referred as the Registrar), vide order dated 12.03.1991, by Secretary, the Home Department. The appellant was temporarily promoted to the vacant position of Reader (BPS-12) on

09.12.1999 by the Registrar. Similarly, two other colleagues of the appellant namely Aslam Pervaiz and Asif Hussain Talpur, were also temporarily promoted for the same positions on different dates. The post of Reader was later upgraded from BPS-12 to BPS-16 vide order/notification dated 20.06.2019. Subsequently, the appointment and promotion rules for employees of STA Courts were framed through a notification dated 04.02.2020. According to the criteria, set in this notification, for appointment of a Reader is by promotion from amongst the Senior Clerks (BPS-14) with a minimum service of seven years on Seniority Cum Fitness basis. The posts of Sr. Clerk were upgraded from BPS-07 to BPS-09 on 17.08.2007, and to BPS-14 on 04.08.2016. Despite framing of the rules, the Department has not constituted a Departmental Promotion Committee (DPC) to address the issue of promotion of the appellant or regularization of his promotion order dated 09.12.1999. A preliminary seniority list of Readers (BPS-16) dated 23.11.2020, was circulated among all the Readers of STA Courts. In this list, the name of the appellant was placed at serial number 2. The appellant contends that several individuals were appointed after his promotion as Reader in BPS-11, in violation of appointment criteria. Following the issuance of the seniority list, the appellant received two explanations to which he responded. However, objections were raised against the seniority position of the appellant by Zeeshan Ahmed and Sayed Yasir Ali Shah, Readers of the STA Courts. Consequently, the Registrar issued an order on 30.09.2021, stating that the promotion of the appellant and his pay fixation as Reader (BPS-16) were illegal and that he remains a Senior Clerk (BPS-07). Feeling dissatisfied with this decision, the appellant filed a departmental appeal to the respondent No.02 on 25.10.2021, which was not decided within the stipulated period of 90 days, hence, the appellant has filed the instant service appeal.

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3. Respondent No. 01, in his written statement has submitted that on the departmental appeal of the appellant, the department

obtained and considered the opinion of the Regulation Wing of the Services General Administration & Coordination Department (SGA&CD). It was determined that the rules do not accommodate temporary promotions, as such, the departmental appeal of the appellant was regretted and disciplinary proceedings were recommended to be initiated against those responsible for authorizing the temporary promotion. While respondent No.03, representing both himself and Respondent No.02, acknowledges the factual basis of the appellant's claim. It is further stated that rules governing promotions were framed and notified on 04.02.2020. The promotion of the appellant as Reader was unauthorized, as it occurred in absence of the rules and without involvement of a Departmental Promotion Committee (DPC). It is emphasized that the promotion of the appellant was processed without a DPC meeting and was solely ordered by the Registrar. The department is prepared to process promotion cases of the staff in STA/ATA Courts of Sindh Province, including the Office of the Registrar. However, the appeals filed by some assistants have temporarily halted this process. The department also awaits necessary budgetary rectifications by the Finance Department before proceeding with the promotions. The appellant's placement at Serial No.02 in the Seniority List of Readers is acknowledged, but objections have been raised regarding his initial appointment and subsequent temporary promotion. The allegations of the appellant against other Readers, who were directly appointed after due process, are refuted. The appellant's responses to departmental explanations were found unsatisfactory, and the Regulation Wing has advised disciplinary action due to the lack of legal basis for the temporary promotion. The department has followed due process, including a personal hearing. Consequently, the department clarified that the appellant's position and pay fixation as Reader are illegal and instructed, the adjustment of financial benefits received during the

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temporary promotion. The respondent No.2 in his written statement has adopted the written statement of Respondent No.03.

4. The learned counsel for the appellant contended that the impugned order is fundamentally flawed and should be deemed null and void ab initio, as it was issued by an authority lacking the requisite jurisdiction and competence. The order in question is characterized by ambiguity and arbitrariness, devoid of any legal validity or sanctity. It is contended that the order contravenes established legal principles, procedural rules, and the tenets of natural justice. Furthermore, the order dated 30.09.2021, nullifies the appellant's temporary promotion to the position of Reader, mandating an adjustment of the financial benefits previously accorded. This action is perceived as discriminatory, particularly when juxtaposed with the unaltered temporary promotions of Mir Arif Hussain and Mr. Aslam Pervaiz, which were authorized by the Registrar and the Judge of Special Courts for Suppression of Terrorist Activities Hyderabad, respectively. The counsel argues that it was incumbent upon the Department to establish a Departmental Promotion Committee following the promulgation of the relevant rules. The appellant's case should have been duly considered by this committee for the regularization of his promotion or the issuance of a fresh promotion order. The Department's failure to take such action has unjustly deprived the appellant of regularization and promotion to BPS-16, along with the attendant financial benefits, despite his service as a Reader since 1999. This inaction has resulted in prejudice against the appellant. The counsel further contends that the impugned order is the product of a cursory and procedurally flawed process. He has relied upon case laws reported as 1986 SCMR 1206.

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5. The learned Additional AG has contended that the appellant was temporarily promoted to the post of Reader without conducting meeting of DPC, contrary to the law and rules. The temporary promotion

of the appellant has rightly been withdrawn by the departmental authorities which do not call for interference.

6. Perusal of record shows that the appellant was appointed as Senior Clerk in BS-07 in Home Department vide order dated 12.03.1991. While serving in the same post, he was temporarily promoted as Reader (BS-12) by the Registrar vide order dated 09.12.1999. Such office order was issued on the same date and thereafter, the appellant continuously performed his duties as Reader till the impugned order dated 30.09.2021, wherein the Registrar clarified that the appellant was appointed as Senior Clerk (BS-07), thus, his post and pay fixation as Reader (BS-16) till the date of the order were declared illegal. It was further mentioned in the order that the appellant was still a Sr. Clerk (BS-07) in the grade in which he was appointed. However, he was at liberty to claim the up-gradation of the post of Sr. Clerk in terms of up-gradation during the above period. The financial benefits earned by him shall be adjusted accordingly.

7. The first point involved in the present appeal is that whether the appellant was lawfully promoted to the post of Reader on regular basis? As mentioned earlier, the appellant was promoted temporarily as Reader (BS-12) by the Registrar vide order dated 09.12.1999. There is no concept of regular promotion in the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 except the mechanism for such promotion which is provided in Rule 7(2) of these rules, which is reproduced as under:

> *"7. (2) Appointments by promotion or transfer to the post in Basic Scale 3 to [3][Basic Scale] 18 without special pay other than the posts for which Provincial Selection Board has been constituted under rule 6-A shall be made on the recommendations of the appropriate Departmental Promotion Committee."*

Thus, the valid mechanism for a regular promotion provided by the said rules for the post of BS-03 to BS-18 without special pay other than the

posts in which the selection board is constituted under Rule 6-A can only be made on the recommendations of DPC. The record made available before us reveals that neither the meeting of DPC was convened nor any recommendation was made by DPC, to the competent authority, for promotion of the appellant. Therefore, the order dated 09.12.1999 was not in consonance with the law. In this respect we do not find any illegality in the impugned order, whereby it has been clarified that the appellant was still a Sr. Clerk.

8. The second point would be that in which Basic Pay Scale the appellant shall presently be deemed to be serving? In the impugned order of clarification the Registrar has clarified that the appellant was still Sr. Clerk (BS-07). However, he is entitled to claim the upgradations of the post of Sr. Clerk in terms of upgradations during the subject period. We are of the view that instead of burdening the appellant to claim and agitate for the benefit of upgradations of the post of Sr. Clerk during the subject period, obviously through his representations, it would have been more appropriate that the appellant should have been declared to be a Sr. Clerk, in the pay scale his batchmates or immediate junior were working in. It would be unjust to declare that the appellant was still Sr. Clerk (BS-7), the pay scale in which he was initially appointed. The upgradations given for the post of Sr. Clerk from time to time shall be applicable and instead of BS-7, the appellant shall enjoy the Basic Pay Scale the other Sr. Clerks were enjoying at present.

9. The third point for our determination would be that whether the appellant was entitled to pay and other related benefits of the higher post of Reader to which he was promoted on temporary basis? The first proviso to Section 18 of the Sindh Civil Servants Act, 1973, pertains to entitlement of the civil servant to the pay in case of temporary appointment in higher post, which is reproduced as under:

> *"Provided that, when in exigencies of service, the appointment for temporary period is made to higher post the*

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appointing authority may direct that the appointee shall instead of drawing the pay of such higher post, draw the pay of the lower post he held immediately before such appointment, with such special pay as may be prescribed....."

The above provision makes it abundantly clear that if a civil servant is appointed to a higher post for temporary period he shall draw the pay of immediately lower posts instead of drawing the pay of higher post with special pay prescribed by the appointing authority. This provision shall be applicable only to the cases where a civil servant has been so appointed for temporary, short or limited period to meet the exigencies of the service. However, it shall not be applicable to the cases where a civil servant has though been promoted temporarily but has performed his duties for such higher post for about 22 years. The question **whether a civil servant is entitled to pay of higher post though promoted on temporary basis** has been attended to and decided by the Honourable Supreme Court of Pakistan in case of *SARWAR ALI KHAN v. CHIEF SECRETARY TO GOVERNMENT OF SINDH and another*, PLD 1994 Supreme Court 233, the brief facts involved in the cited case were that the appellant of that case while serving as Deputy Registrar (BS-17) Sindh Labour Appellate Tribunal (SLAT) was appointed to the post of Registrar (BS-18) on OPS basis and afterwards he was promoted on regular basis to the said post on the recommendation of the DPC after three years. Thus, he applied for salary of BS-18 from the date he was appointed to the post on OPS basis which was turned down by this Tribunal but ultimately his appeal was allowed by the Honouable Supreme Court of Pakistan. In this case, the Honourable Supreme Court held that, *"No doubt proviso (I) to Section 18 of the Sindh Civil Servants Act, 1973, envisages that if appointment is temporary, then appointing Authority may direct that such appointee, instead of drawing pay of such higher post or grade, draw pay of the lower post or grade he held immediately before such appointment with special pay as may be*

prescribed. It is apparent that this can be done when appointment is for a short period and the vacancy is to be filled on immediate basis in spite of the fact that the appointee does not fulfil necessary requirements. This cannot be stretched to cover the case in hand, where the incumbent has worked against that post on his own pay and status for three years, particularly when there was no legal impediment in his way to be promoted at that time on regular basis when he was inducted on 5-7-1988. In the instant case, since the appellant was eligible and qualified for promotion to B-18, there appears no justifiable reason to deprive him of the salary and other benefits of that post for a period of three years, which he would have received, had he been promoted on regular basis. The appellant had discharged full duties and responsibilities of the higher post and in the absence of some plausible reason, he cannot be deprived of the salary and other benefits connected with the post."

Similar proposition was laid down in case of *ACCOUNTANT-GENERAL PAKISTAN REVENUES, GOVERNMENT OF PAKISTAN, ISLAMABAD v. ARBAB MUKHTAR AHMED, 1986 SCMR 1206.*

10. A civil servant thus is not only entitled for higher pay if he was temporary promoted for a prolonged period but is also entitled to draw the ancillary increments in the pay scale of higher post the duties of which he is required to perform without being formally or regularly promoted. The Honourable Supreme Court of Pakistan in case of *FEDERATION OF PAKISTAN v. SHEHZADA SHAHPUR JAN and 2 others, 1986 SCMR 991*, after examining different categories of cases concluded that the category of the officers who were qualified in every respect to be appointed on higher post were called upon to discharge the full responsibilities of the higher post severing their connections with the lower posts are entitled to draw presumptive pay inclusive of the increments.

11. In the light of above-mentioned case laws when this case is examined it shows that when the present appellant was promoted on

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temporary basis to the post of Reader (BS-12) vide order dated 09.12.1999, there were no recruitment rules for appointments against various posts in STA/ATA Courts and in the office of the Registrar. Such rules were framed on 04.02.2020, which provide that Reader of ATC (BS-16) shall be appointed by way of promotion from amongst the Senior Clerks (BPS-14), having minimum service of seven (07) years as such, on seniority-cum-fitness basis. The appellant was initially appointed as Sr. Clerk (BPS-07) vide order dated 12.03.1991 and was temporarily promoted as Reader in the year 1999. Had the recruitment rules framed in the year 2020, been framed earlier the appellant may have been promoted much earlier on regular basis having already served for the required length. The failure to frame the recruitment rules cannot be attributed to the appellant. It is also not the case of the respondents that the appellant committed any fraud, forgery or misrepresentation for getting such temporary promotion. Therefore, we are of the view that the appellant shall be entitled to the pay, increments and other related benefits of higher post of Reader to which though he was promoted temporarily but served for a prolonged period of almost 22 years.

12. For what has been discussed above, the instant appeal is partly allowed in following terms:

i. The appellant is entitled to higher pay and all other related benefits of the post of Reader from 09.12.1999 to 30.09.2021, hence, no deduction or recovery be made on pretext of adjustment. His future pay shall be fixed as Sr. Clerk at par with his other colleagues/batchmates.

ii. His seniority shall be maintained in the seniority list of Sr. Clerks at his due seniority position in the BPS being enjoyed by his colleagues/batchmates..

iii. The appellant be considered for promotion for the post of Reader and in case he qualifies, he shall be promoted.

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13. The competent authority is directed to expedite the process of promotion of the appellant and complete the same within a period of four months and such compliance report be submitted to this Tribunal for our perusal in Chamber.

Pronounced in open Court on this 16th day of October 2024.

(JUSTICE (R) SADIQ HUSSAIN BHATTI)
CHAIRMAN

(TARIQ MEHMOOD KHOSO)
MEMBER

(SHAHID ABDUL SALAM KHAN)
MEMBER

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