

NATIONAL INDUSTRIAL RELATIONS COMMISSION
FULL BENCH AT KARACHI

BEFORE: Mr. Justice (F) Abdul Rasool Memon, Chairman
Mr. Shabbir Hussain Awan, Member
Mr. Abdul Ghani Mengal, Member

Appeal No. 12A(05)/2022-S

Khalid Hussain Vs. Pakistan Railways

Present: Mr. Zaffar Ali Shah advocate learned counsel for the
appellant
Mr. Jaffer Hussain advocate learned counsel for the
respondent

ORDER
12.09.2023

Learned counsel for the appellant has taken us to order dated 10-03-2022 wherein the respondents were directed to redress the grievance of the petitioner by "*considering his case for promotion in next grade i.e. Office Superintendent. The promotion in each and every department is granted on the basis of senior cum-fitness*". Therefore, the respondent department may consider his promotion in the next departmental promotion committee, if the petitioner is fit for his promotion. Learned counsel for the appellant further submits that this order was not complied with by the respondents therefore, a contempt petition was filed which was dismissed vide order dated 21-07-2022 wherein ^{vide} para -4 the learned Single Member has held as under:-

"After hearing the counsel for both parties, I have come to the conclusion that the Complainant has not undergone for course P-32 for at Pakistan Railway Academy, Walton, Lahore which is minimum requirement for promotion from Head Clerk BPS-16 to Superintendent BPS-17. Further I am of the considered view that the promotion is being granted to the employees on seniority



cum fitness. Although the petitioner is senior as per seniority list his name is mentioned at serial No. 3 but he has not attained that required training P-32 course, therefore, he is not fit for promotion, therefore, the Railway Headquarter, Lahore has considered the case of complainant as advised by this Bench of Commission and Complainant does not fulfill the condition as required for promotion. Therefore, this complaint stands dismissed."

2. Learned counsel for the appellant has placed on record copy of Notification dated 29-12-2020 issued by Government of Pakistan Cabinet Secretariat Establishment Division wherein it is mentioned as under:-

*"In Rule 3 (condition for promotion) after table, following proviso shall be inserted namely:
Provided that, subject to prescribed eligibility criteria, an official who is likely to retire, within two years from service, on attaining the age of superannuation, shall be exempted from the mandatory training of NITB."*

3. Learned counsel submits that the matter of present appellant comes within the meaning of Notification dated 29-12-2020, therefore, the order of the learned Single Member is not in accordance with law and is in contravention of the Notification dated 29-12-2020.

4. Learned counsel for the respondent submits that the case of the appellant comes beyond two years of the date of attaining the age of superannuation. Further submits that the appellant does not come within the meaning of workman and fall within the definition of Civil Servant, therefore, the order, if any, passed by the learned Single Member is coram non judice. Further submits that the case of the appellant was considered within the meaning of order dated 10-03-2022, therefore,

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learned counsel for the appellant when confronted with this arguments of the learned counsel for the respondent, he submits that he would be satisfied and would not press this appeal, if the case is remanded to the learned Single Member with the direction to decide the matter afresh in the light of Notification dated 29-12-2020 and so also to see whether the case of the present appellant comes within the meaning of workman or otherwise. Order accordingly. File be consigned to the record room after due completion.

Announced.

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