

REFORMATION AND MODERNIZATION OF SERVICE LAWS

(PART – II)

The Pakistan Law Commission undertook a study of the Reformation and Modernisation of Service Laws with a view to bringing these laws in accord with the changing needs and emerging realities of the time. The purpose was to suggest, inter alia, ways and means of improving the terms and conditions of service of the civil servants, so as to giving them more service security and protect them against undue political interference. The Commission sought to examine, in particular, 3 service laws, namely, the Federal Civil Service, Provincial Civil Service and Services of Autonomous Bodies and Corporations. This involved an in-depth examination of various statutes, rules and regulations, particularly, the Federal/Provincial Civil Servants Acts, Service Tribunals Acts, Public Service Commission Statutes and other relevant statutes of the autonomous bodies/corporations.

The Commission in its meeting held on 26 – 31 December 1992, approved only a part of the report, dealing with the Federal Public Service Commission. This part of the study entitled, “Reformation and Modernisation of Service Laws (Part-I)” has already been published as Pakistan Law Commission Report No.13.

In the said meeting, the Commission further approved an amendment in the relevant service statutes to empower the Service Tribunals to entertain petitions and decide complaints/grievances, concerning the promotion of civil servants. The same is now being published as Part-II in the present report. The remaining portion of the study is still awaiting consideration and approval of the Commission.

The issue of promotion is crucial for a civil servant as the denial of promotion deprives such civil servant of an important right. To be elevated/promoted to the higher post becomes a right when the claimant fulfills the requisite criteria such as qualifications, experience, etc and is otherwise fit for the job. This right however, is practically denied to a deserving civil servant, as the relevant statutes prevent him from challenging the same in a Service Tribunal. Such denial is stipulated in at least three statutes, viz Section 22 of the Civil Servants Act 1973, Section 4(1)(b) of the Federal Service Tribunals Act 1973 and Rule 4(1) of the Civil Service (Appeal) Rules 1977.

Section 22 of the Civil Servants Act 1973 stipulates the period within which the civil servant may avail of his right to make an appeal, review or representation against an order. A proviso to this Section further bars the right to representation in matters relating to the determination of fitness of a civil servant to hold a particular post or be promoted to a higher post or

grade. Consequently, an aggrieved civil servant has absolutely no forum whatsoever, where he may complain of discrimination or injustice, in matters determining his fitness for a job or promotion. The only remedy available to him is to allege illegality or malafide but proving such illegality/malafide is undoubtedly a hard task.

The issue of fitness for a job can be objectively determined by evaluating the service record of a civil servant. There are many rules, which regulate the conduct, efficiency and performance of such civil servant and provide for right of appeal in the matter. It means that while elements which constitute fitness are justiciable, fitness is not. This is obviously an anomaly in law/rules and needs to be eliminated. Besides, the provision as presently drafted allows too much discretion to the authority and there are many allegations of the misuse of such power.

The issue of denial of promotion, due to arbitrary action or malafide intention, came up for consideration, several times, before the Supreme Court. A consistent view expressed by the Court has been, that whereas a civil servant may not have vested right to promotion but in situation when the issue is regulated by rules and /or policy, then in cases of breach or deviation from such rules/policy due to malafide intention or arbitrary action, the aggrieved civil servant would be entitled to challenge the same in the court of law. In the case of Ch Mohammad Insha Ullah v Chief

Conservator of Forestⁱ, the Supreme Court observed, “Even if, no vested right exists, if a principle of policy is given effect to and the principle of policy is such which has not matured into a vested right, none can say that in the absence of the vested right, the principle of policy should not be recognised or enforced”. Similarly, in the case of Rana Mohammad Sarwar vs Government of the Punjabⁱⁱ, the Court held that malafide action by the authority would tantamount to a breach of terms and conditions of service of the aggrieved civil servant; and that in case of promotion, such malafide action can be looked into, and if established, appropriate relief may be given.

The Commission having deliberated upon the issue came to the conclusion that a civil servant, having been denied promotion must be enabled to challenge the order of denial of promotion in the Service Tribunal. Accordingly, it suggested appropriate amendments to Section 22(2) of the Civil Servants Act 1973, Section 4(1)(b) of the Service Tribunals Act 1973 and Rule 4(1) of Civil Servants (Appeal) Rules 1977.

THE CIVIL SERVANTS (AMENDMENT) ACT 1993

An Act further to amend the Civil Servants Act, 1973

Whereas it is expedient further to amend the Civil Servants Act, 1973 (Act No. LXXI of 1973) for the purpose hereinafter appearing: -

It is hereby enacted as follows: -

1. Short title and Commencement: - (1) This Act may be called the Civil Servants (Amendment) Act, 1993.
(2). It shall come into force at once.
2. Amendment of section 22 of Civil Servants Act, 1973. In the proviso of subsection (2) of section 22 the words "or to be promoted to a higher post or grade", shall be omitted.

Statement of Object and Reasons

This recommendation of the Pakistan Law Commission seeks to amend the Civil Servants Act, 1973 to give the right of appeal to a civil servant in case of promotion to higher grade or post.

THE SERVICE TRIBUNALS (AMENDMENT) ACT 1993

An Act further to amend the Service Tribunals Act, 1973.

Whereas it is expedient further to amend the Service Tribunals Act, 1973 (LXX of 1973), for the purpose hereinafter appearing;

It is hereby enacted as follows:-

1. Short Title and Commencement:- (1) This Act may be called the Service Tribunals (Amendment) Act, 1993.
(2) It shall come into force at once.
2. Amendment of Section 4, Act LXX of 1973.- In the Service Tribunals Act, 1973 (LXX of 1973), Section 4, in sub-section (1), in the proviso, in clause (b), the words “or to be promoted to a higher grade” shall be omitted.

Statement of Objects And Reasons

This recommendation of the Pakistan Law Commission seeks to amend the Service Tribunals Act, 1973 to give right of appeal to civil servants in cases of promotion to higher grade or post.

CIVIL SERVANTS (APPEAL) (AMENDMENT) RULES 1993

In exercise of the powers conferred by section 25 of the Civil Servants Act, 1973 (LXXI of 1973), the President is pleased to amend the Civil Servants (Appeal) Rules 1977, as follows:

(1) This Amendment may be called the Civil Servants (Appeal) (Amendment) Rule, 1993.

(2) It shall come into force at once.

2. Amendment in rule 4(1)(d) of Civil Servants (Appeal) Rules, 1977. In rule 4(1)(d) second proviso, the words and expression, "or to be promoted to a higher post or grade." shall be omitted.

Statement of Objects and Reasons

This recommendation of the Pakistan Law Commission seeks to amend the Civil Servants (Appeal) Rules, 1977 to give the right of appeal to civil servants in cases of promotion to higher grade or post.

References

- ⁱ. PLD 1988 SC 155
- ⁱⁱ. 1990 SCMR 999