

BEFORE DEPARTMENTAL PROMOTION COMMITTEE,  
DISTRICT AND SESSIONS COURTS, SHAHEED BEAZIR ABAD

In the matter of seniority

1. Mr. Sajid Ali Mangi		
2. Mr. Mir Muhammad Abro and		
3. Mr. Qasim Ali Bhatti	.....	Objectors

versus

1. Muhammad Usman Channa		
2. Sabir Hussain Bhatti	.....	Respondents

ORDER

M/s. Sajid Ali Mangi, Mir Muhammad Abro and Qasim Ali Bhatti currently placed at Serial No.3, 4 and 8, respectively, of Junior Clerks (BPS-11) have called in question seniority of Mr. Muhammad Usman Channa and Mr. Sabir Hussain Bhatti currently at Serial No.14 and 15, respectively, of Readers/CoCs/Senior Clerks/Record Keepers/English Clerks/Assistant Accountant (BPS-14) of the proposed seniority list prepared vide order dated 24.11.2021.

2. Facts necessary to decide the objections in question are that vide Letter No.FD(SR-iv)1-53/2016 dated 21.02.2018, Finance Department, Government of Sindh upgraded scales and changed nomenclature of certain posts, created new posts and thereby modified their sanctioned strength in subordinate Courts of Sindh in consequence of which and to extend benefit of such upgradation, Honorable the then District and Sessions Judge, Shaheed Benazir Abad, *inter alia*, upgraded both respondents M/s. Muhammad Usman Channa and Sabir Hussain Bhatti, English Clerk and Deputy Accountant, from BPS-11 to BPS-14 as English Clerk and Assistant Accountant, respectively vide Office Order No.DJ/SBA/ACCTT/2994 of 2018, dated 15.03.2018. The objections were filed after publication of the proposed seniority list vide order dated 24.11.2021. In order to decide the objections in question and to finalize the seniority list, Chairman of this Committee (District & Sessions Judge) being appointing authority

constituted a committee to hear the objections and decide the issue.

3. The gist of objections is that the objectors were appointed as Junior Clerks (BPS-7) in 2006 when both the respondents were Bailiffs (BPS-3). Their case is that both respondents were appointed as Junior Clerks (BPS-7) in 2015 and as such they are juniors to them. According to the objectors, post of junior clerk was upgraded from BPS-7 to BPS-11 vide Notification No.FD(SR-IV)2-35/2014, dated 04.08.2016, by Finance Department, Government of Sindh which benefited the objectors, the respondents and many others. The objectors' grievance is that after Letter U.O. No.FD(SR-IV)1-53/2016, dated 21st February, 2018, by Finance Department, Government of Sindh, the respondents were shown to be 'Deputy Accountant' and 'English Clerk' in Office Order No.DJ/SBA/ACCTT/2994 of 2018, dated 15.03.2018 and were again given benefit of upgradation from BPS-11 to BPS-14. According to them, the respondents never held positions of Deputy Accountant and English Clerk and if at all someone was to be given benefit of the upgradation, the objectors being seniors to the respondents were entitled to the same. They stated that the respondents were on probation and were not even confirmed as Junior Clerks but they were given benefit of a post which could only be filled in by way of promotion. They prayed for correction of seniority list placing the objectors senior to the respondents.

4. On the other hand, respondent Muhammad Usman Channa in reply to the objections submitted that he was appointed Bailiff on 16.06.1996 and thereafter was assigned the job of English Clerk in 2010; he was appointed as Clerk (BPS-7) and due to his satisfactory work he was again assigned the position of English Clerk; it is stated that he was neither promoted nor was wrongly placed but since the post of English Clerk was upgraded from BPS-11 to BPS-14, he benefited from such upgradation vide honourable Sindh High Court Letter No.HC/ADMN/02420, dated 03.03.2018; since he was already upgraded, he did not need to be promoted in 2020 when the DPC

was held; the objections are time barred as the objectors despite knowledge did not challenge his upgradation. Respondent Sabir Hussain Bhatti in reply to the objections submitted that he was appointed Bailiff on 02.09.2002 and in 2008 was assigned the job of Accounts Clerk; he was appointed Clerk (BPS-7) on 17.04.2015 and on account of his satisfactory work he was assigned the job of Deputy Accountant in Accounts Branch; the post of Deputy Accountant was upgraded from BPS-11 to BPS-14 and its nomenclature was changed as Assistant Accountant; since he already enjoyed BPS-14 as Assistant Accountant, he was not promoted in 2020; objections filed by the objectors are time barred as they never challenged his upgradation despite knowledge.

5. Besides reply to objections and verbal submissions, both respondents also submitted their joint written arguments in which they submitted that under Sindh Judicial Staff Service Rules, 1992 and Sindh Civil Services Seniority Rules, 1975 the objectors have no right to challenge their seniority as they are not from the same cadre and that they have been serving in BPS-14 since 2018; the objectors have nowhere objected to upgradation of the respondents and that the objections have been filed only on account of professional jealousy; there is contradiction in their verbal submissions and written objections; the order whereby the objectors were upgraded was not a confidential one and that being a public document it was lying with the dispatch clerk after signatures by the Honorable District and Sessions Judge with an outward number; the respondents have been tirelessly working day and night and have acquired their positions only on account of their merit and hard work; there are other staff members who are seniors to the objectors but they did not challenge upgradation of the objectors; upgradation has no connection with seniority and despite being juniors to M/s. Ghulam Hussain Bhambhro, Allah Dino Keerio and Shafqat Hussain, the objectors were enjoying perks of BPS-11 whereas the above name seniors were in BPS-10; despite knowledge of upgradation about which the objectors

came to know in 2021, they never challenged the order whereby the respondents were upgraded; nowhere in the proposed seniority list there is any mention of departmental examination and that such examination has no connection with upgradation; in the appointment orders of the respondents it is nowhere mentioned that they would be on probation for a certain period; a number of staff members holding inferior positions have been working on elevated positions but nobody raises any objection against them.

6. We have given due consideration to the submissions made and have carefully gone through the objections, replies thereto, the record and the relevant rules. There are certain points which we need to address before proceeding to decide the controversy. One of the questions that came up for consideration during our deliberations and is of much importance is whether this Committee is competent to decide controversy of upgradation put into effect way back in 2018. After deliberations and detailed discussion, we are of the unanimous opinion the Office Order whereby the respondents were upgraded was an administrative order and when any defect or error is pointed out, the District and Sessions Judge, being appointing authority is competent to rectify such error floating on face of the record. Since he has delegated his powers to this Committee, it is very much competent not only to determine seniority but also to decide a controversy going beyond such as the one involved in the matter under consideration. Another important point is limitation or delay in pointing out the administrative anomaly or challenging seniority of respondents by the objectors. In their replies to objections and, written and oral submissions, the respondents submitted that the objections are time barred. Such argument has not been supplemented by any provision of law. We have been unable to find any stipulation in law fixing a limitation to challenge any administrative action or seniority before the appointing authority. However, we are mindful that such challenge must be within a reasonable time after a challenger has come to know of the anomaly or infringement of his right. According to the

objectors, the alleged anomaly or infringement was committed by issuing order No.DJ/SBA/ACCTT/2994 of 2018, dated 15.03.2018 of which they came to know only when the proposed seniority list was published and circulated. Such list was published on 24.11.2021, circulated thereafter and received in the offices of learned judges and other sections by 27.11.2021. Objectors Mir Muhammad Abro and Sajid Ali Mangi filed objections on 30.11.2021 and Mr. Shahzad Ali Memon on 01.12.2021 and such were received in the office of District and Sessions Judge by 02.12.2021 and, thus, the objections were filed within a reasonable time of publication and circulation of the proposed seniority list.

7. Having been appointed on different dates against different posts, the objectors and the respondents were at par when they were extended benefit of upgradation vide Notification No.FD(SR-IV)2-35/2014, dated 04.08.2016, issued by Finance Department, Government of Sindh whereby, *inter alia*, post of Junior Clerk was upgraded from BPS-7 to BPS-11 and such entries were made in their service books. This also shows that all of them were 'Junior Clerks' at the time of such upgradation. It could also not be denied that at such occasion the respondents, having been appointed Junior Clerks after appointment of the objectors against such post, were admittedly juniors to them. This Committee is, therefore, required to see whether extension of benefit of upgradation to both respondents in view of Letter U.O. No.FD(SR-IV)1-53/2016, dated 21st February, 2018, by Finance Department, Government of Sindh, was in accordance with law and rules or otherwise. It is important to note that such letter was addressed by Finance Department to Secretary, Law Department, Government of Sindh in compliance with directives by honourable High Court of Sindh vide orders dated 27.10.2016 and 21.12.2017 passed in Constitutional Petition No.D-1313 of 2014 alongwith C.Ps. No.D-4286/2013 and 791/2014, and, with the approval of Chief Minister, Sindh, the Finance Department agreed to allow upgradation, change of nomenclature, creation of new posts and sanctioned strength of

posts in sub-ordinate Courts of Sindh. It is equally important to point out that by vide Notification No.FD(SR-IV)2-35/2014, dated 04.08.2016, some posts in judicial staff of District Courts of Sindh were upgraded and subsequent upgradation, change of nomenclature and creation of new posts was consequent upon orders by honourable High Court as some of the staff members were discriminated against and ignored while upgrading certain posts in 2016. Therefore, upgradation and change of nomenclature etc. in 2018 was a continuation of such process in 2016 to redress grievances of those discriminated against. Thus, in our humble opinion the respondents, having already benefited from upgradation from BPS-7 to BPS-11 could not be extended benefit of subsequent upgradation. Moreover, Rule 3(2) of Sindh Judicial Staff Service Rules, 1992 (Rules of 1992) provides that posts in service shall be grouped in different groups from A to G. Rule 6(4), *inter alia*, provides that appointment to group A, B or C shall be made by promotion from the next lower group. This shows that A, B and C are higher groups and appointment to any post from such groups could be made only by promotion. Admittedly, awarding a higher position to the respondents from BPS-11 to BPS-14 was not by way of promotion. It may be reiterated that the objectors and respondents were all 'Junior Clerks' at the time they were extended benefit of upgradation from BPS-7 to BPS-11 in 2016. However, in the Office Order dated 15.03.2018 by then honourable District and Sessions Judge, respondents No.1 and 2 were shown as English Clerk and Deputy Accountant, respectively. How and when they were awarded such positions, does not transpire from any document. According to the respondents, they were 'working' at such positions at the desire of honorable District and Sessions Judges. I am afraid being assigned a particular work would not change their position. Even otherwise, a careful perusal of the Rules of 1992 would show that posts in Group D includes Junior Clerks in the District Court and English Clerks in Karachi Small Causes Court. Similarly, Group C includes Assistant Accountants, English Clerks and Senior Clerks in the District Court. Thus, following Rule 6(4) of the Rules of

1992, any staff member holding a post in Group D may be promoted to any post in Group C. Another aspect of the matter may be seen in view of Letter U.O. No.FD(SR-IV)1-53/2016, dated 21st February, 2018, by Finance Department, Government of Sindh. Items at serial No.46 to 49 deal with English Clerks in BPS-6, 7, 9 and BPS-10. Posts at serial No.46 and 47 were upgraded from BPS-9 and 10 to BPS-14 and their nomenclature was changed from 'English Celrk' to 'English Clerk of the District Court' and the ones at serial No.48 and 49 were upgraded from BPS-6 and 7 to BPS-11 and their nomenclature was changed from 'English Clerk' to 'English Clerk of the Civil Court'. Item No.17 deals with Deputy Accountant BPS-8 and such post was upgraded to BPS-14 and its nomenclature was changed to 'Assistant Accountant'. As has been mentioned above, Rules of 1992 provide that post of Assistant Accountant is in Group C and awarding any post in such group could only be done by way of promotion. Respondent No.2 was neither 'Deputy Accountant' by virtue of his appointment nor in BPS-8. Similarly, respondent No.1 was neither 'English Clerk' by virtue of his appointment nor in BPS-6, 7, 9 or 10. In fact they were Junior Clerks (BPS-11) and had already enjoyed the fruit of upgradation from BPS-7 to BPS-11 earlier in 2016. Even if it is assumed that respondent No.1 was English Clerk, he could at the best be treated at such post at serial No.48 or 49 whose nomenclature was changed to 'English Clerk of the Civil Court' and the post was upgraded to BPS-11. Having already been upgraded, they could not have been extended such benefit again. Another reason is that the posts awarded to them could only be awarded by promotion. One must also keep in mind that upgradation and change of nomenclature by Letter U.O. No.FD(SR-IV)1-53/2016, dated 21st February, 2018, by Finance Department was in continuation of similar benefits vide Notification No.FD(SR-IV)2-35/2014, dated 04.08.2016, by Finance Department, Government of Sindh.

In view of what has been discussed above, benefit of upgradation awarded to respondents Muhammad Usman Channa and Sabir Hussain

Bhatti by Office Order No.DJ/SBA/ACCTT/2994 of 2018, dated 15.03.2018 by honourable then District and Sessions Judge finds no support from service record, Rules and administrative practices, is declared to be to the utter detriment of the objectors and is liable to be struck down with immediate effect. Ordered accordingly. Both respondents No.1 and 2 are, therefore, declared to be holding posts of 'Junior Clerk' (BPS-11). Since the matter of seniority in the said cadre is already sub judice before this Committee the list having not been finalized as yet, inter se seniority of the respondents, the objectors and others would be decided accordingly after appropriate opportunity of hearing. However, seniority list of Readers/ C.O.C/Senior Clerks/Record Keeper/English Clerk/Assistant Accountant (BPS-14) may be finalized accordingly and circulated. A copy of this order be pasted on the Notice Board. Office is directed to comply with the order.

Announced on 01.08.2024.

(Zaffar Hussain Leghari)  
4<sup>th</sup> Additional District & Sessions  
Judge/Member, S.B.A

(Anwar Ahmed Jalbani)  
1<sup>st</sup> Assistant Sessions Judge/  
Member, S.B.A.

(Allah Bachayo Gabol)  
District & Sessions Judge/  
Chairman D.P.C  
Shaheed Benazir Abad