IN THE PESHAWAR HIGH COURT, PESHAWAR 
JUDICIAL DEPARTMENT

Writ Petition No.3673 of 2012

JUDGMENT

Date of hearing……………………..09.09.2015………………………..

Petitioner (Muhammad Amin) By Shamsul Hadi, advocate.

Respondents (Managing Director, House Building Finance Corporation Head Office, Finance & Trade Center Shahrah-e-Faisal, Karachi and others) By Muhammad Asif Khan, Advocate.

***************

WAQAR AHMAD SETH, J.- The petitioner Muhammad Amin has filed the instant writ petition seeking therein an appropriate writ directing the respondents to give him due seniority and promotion to the post of Chief Manager from the date of impugned promotion order dated 30.05.2005, vide which respondent No.3 has been promoted, with all its back benefits.

2. Brief facts of the case are that the petitioner joined House Building Finance Corporation on 11.04.1984 as Assistant and later on promoted to various posts and lastly to the post of Manager in September, 1999 and during this period he performed his duty at various stations throughout the country. The petitioner during service has earned good ACRs with no entry of adverse remarks and it was on 30.5.2005, when his High-ups promoted respondent No.3 to the post of Chief Manager vide office
order No.379 despite the fact that he was not only junior to him but was also placed at Sr.No.47 of the seniority list and, as such, violated the rules and policy on the subject which compelled him to file the instant writ petition.

3. Respondents were served with a notice and respondents 1 & 2 submitted their comments wherein they denied the stance of the petitioner and claimed that respondent No.3 was appointed under the rules and policy and after the recommendation of departmental promotion committee.

3. Arguments heard and record perused.

4. Petitioner has challenged office order No.379 dated 30.05.2005, whereby respondent No.3 has been promoted to the post of Chief Manager, alongwith fourteen others, despite being lower in the seniority list of Managers at serial No.47, whereas, petitioner was at serial No. 44. The petitioner has to his credit unblemished service record with nothing adverse. Respondent No.3 was summoned properly, but he preferred to remain absent, hence placed ex parte. The contesting respondents No.1 and 2 submitted comments wherein, they relied upon the policy annexed at page-28 to 30, of their comments. The said policy, according to them has been formulated under the House Building Finance Corporation, Service Regulation, 1957.
The careful perusal of this policy annexed at page 28 to 30, which is abstract of page 72, 73 & 74 of the main policy / HR manual, clearly shows the effective date of the same as 1\textsuperscript{st} January 2006, the said effective date is mentioned at the bottom of this policy / pages. Whereas, the impugned promotion order of respondent No.3 is dated 30.05.2005 and for that promotion, meeting of the departmental promotion committee was held on 28.05.2005, hence it is held that the said policy at page 28 to 30 of the comments was not applicable at that time and as per regulation-16 House Building Finance Corporation, Service Regulation, 1957, all promotions to post up to the rank of Assistants, shall be made on the basis of seniority cum-fitness and promotions to all other posts shall be made by “Selection” on grounds of merits. There is nothing on record to show that any ACRs of the petitioner were adverse.

5. One of the plea of respondents is that there was a pending inquiry against petitioner at the time of impugned promotion order of respondent No.3 and as such he was not considered. In this respect at present there are number of judgments of the apex court in which it has been held by the apex court that no one can be punished by denying promotion before establishing the charge and as such pending inquiry is no ground for denying promotion to the petitioner. Moreover, vide office order No. 84 dated
22.01.2008, petitioner has been exonerated from the charges leveled against him, by the competent authority.

In the case of **Maj Ziaul Hassan, Home Secretary etc Vs Miss Naseem Chaudry** reported in **2000 SCMR, 645**, it has been held as under:-

“Promotion Supreme Court had found that civil servant had not been promoted by superseding any senior officer to her, she was entitled to be promoted from the date her juniors were promoted and there was no valid reason not to consider her for the promotion. Mere fact that some disciplinary proceedings were pending against the civil servants was not a sufficient ground to disregard the order passed by the Supreme Court. Promotion of civil servant, however, would not debar the authorities to continue with the disciplinary proceedings against the civil servant, if any, justly, fairly and in accordance with law.

Likewise, in the case of **Hammad Raza Qureshi Vs Departmental Promotion Committee, Punjab, reported in 2008 PLC (C.S) 551 (b)** it has been held that:-

“----Promotion---Principles---
Pendency of disciplinary proceedings against a civil servant is no valid ground for not considering such civil servant for promotion.

6. Since respondent No.3 is not before us, therefore, instead of setting aside his promotion order, we
directed the respondents No.1 and 2 to issue promotion order of petitioner as well, as Chief Manager, w.e.f when junior to the petitioner i.e respondent No.3 was promoted, within one month from the date of receipt of this judgment. Writ petition is allowed in above terms.

Announced: 09.09.2015

JUDGE

JUDGE