

**IN THE SUPREME COURT OF PAKISTAN**

(Review Jurisdiction)

**PRESENT:**

**MR. JUSTICE ANWAR ZAHEER JAMALI, CJ**

**MR. JUSTICE SH. AZMAT SAEED**

**MR. JUSTICE QAZI FAEZ ISA**

**CIVIL REVIEW PETITIONS NO.43-K TO 45-K OF 2012 IN CIVIL APPEALS NO.189-K TO 191-K OF 2011, CIVIL REVIEW PETITIONS NO.2-K & 3-K OF 2013 IN CIVIL APPEAL NO.189-K OF 2011, CIVIL REIVEW PETITIONS NO.4-K & 5-K OF 2013 IN CIVIL APPEALS NO.190-K & 191-K OF 2011, CIVIL REVIEW PETITIONS NO.6-K & 7-K OF 2014 IN CIVIL APPEAL NO.189-K OF 2011, C.M.A. NO.2238 OF 2014 IN CIVIL REIVEW PETITION NIL OF 2014 IN CIVIL APPEAL NO.189-K OF 2011, C.MA. NO.2242 OF 2014 IN CIVIL REVIEW PETITION NIL OF 2014 IN CIVIL APPEAL NO.190-K OF 2011, C.M.A. NO.2246 OF 2014 IN CIVIL REVIEW PETITION NIL OF 2014 IN CIVIL APPEAL NO.191-K OF 2011**

(On review against the judgment dated 06.11.2012, passed by this Court in C.As. No.189-K to 191-K/2011

CRP.43-K/2012 in  
CA.189-K/2011

Chairman Federal Board of Revenue  
and others Vs. Iqbal Hussain Shaikh

CRP.44-K/2012 in  
CA.190-K/2011

Chairman Federal Board of Revenue  
and others Vs. Dr. Abdul Lateef

CRP.45-K/2012 in  
CA.191-K/2011

Chairman Federal Board of Revenue  
and others Vs. Abdul Hameed  
Anjum

CRP.2-K/2013 in  
CA.189-K/2011

Aisha Farooq and others Vs. Iqbal  
Hussain Shaikh and others

CRP.3-K/2013 in  
CA.189-K/2011

Abbas Ahmed and others Vs.  
Chairman Federal Board of Revenue  
and others

CRP.4-K/2013 in  
CA.190-K/2011

Aisha Farooq and others Vs. Dr.  
Abdul Lateef and others

CRP.5-K/2013 in CA.191-K/2011	Aisha Farooq and others Vs. Abdul Hameed Anjum and others
CRP.6-K/2014 in CA.189-K/2011	Shazia Abid and others Vs. Chairman, Federal Board of Revenue and others
CRP.7-K/2014 in CA.189-K/2011	Abdul Wahid Uqaily and others Vs. Chairman, Federal Board of Revenue and others
CMA.2238/2014 in CRP Nil/2014 in CA.189-K/2011	Irfan Raza, Secretary, FBR and others Vs. Chairman, Federal Board of Revenue and others
CMA.2242/2014 in CRP Nil/2014 in CA.190-K/2011	Irfan Raza, Secretary, FBR and others Vs. Chairman, Federal Board of Revenue and others
CMA.2246/2014 in CRP.Nil/2014 in CA.191-K/2011	Irfan Raza, Secretary, FBR and others Vs. Chairman, Federal Board of Revenue and others

For the Petitioner (s) : Mr. Akhtar Ali Mahmud, ASC  
(in CRPs.43-K to 45-K/2012)

For the Respondent (s) : Mr. Rasheed A. Rizvi, Sr. ASC  
(in CRPs.43-K to 45-K/2012)

For the Petitioner (s) : Mr. Tariq Aziz, ASC/AOR  
(in CRP.2-K/2013)

For Respondent No.1 : Abdul Qadir Khan, ASC  
(in CRP.2-K/2013)

For Respondent No.2 : Hafiz S.A. Rehman, Sr. ASC  
(in CRP.2-K/2013) Mr. M.A. Sheikh, AOR

Respondent No.3 : N.R.  
(in CRP.2-K/2013)

For the Petitioner (s) : Hafiz S.A. Rehman, Sr. ASC a/w  
(in CRP.3-K/2013) Mr. Mehmood A. Sheikh, AOR

For Respondent No.1 : Ms. Misbah Gulnar Sharif, ASC (FBR)  
(in CRP.3-K/2013)

- Respondents No.2-3 : N.R.  
(in CRP.3-K/2013)
- For the Petitioner (s) : Mr. Tariq Aziz, ASC/AOR  
(in CRP.4-K/2013)
- For Respondent No.1 : Mr. Abdul Qadir Khan, ASC  
(in CRP.4-K/2013)
- For Respondent No.2 : Ms. Misbah Gulnar Sharif, ASC  
(in CRP.4-K/2013)
- Respondent No.3 : N.R.  
(in CRP.4-K/2013)
- For the Petitioner (s) : Mr. Tariq Aziz, ASC/AOR  
(in CRP.5-K/2013)
- For Respondent No.1 : Mr. Abdul Qadir Khan, ASC  
(in CRP.5-K/2013)
- For Respondent No.2 : Hafiz S.A. Rehman, Sr. ASC a/w  
(in CRP.5-K/2013) Mr. M.A. Sheikh, AOR
- Respondent No.3 : N.R.  
(in CRP.5-K/2013)
- For the Petitioner (s) : Mr. Tariq Aziz, ASC/AOR  
(in CRP.6-K/2014)
- For Respondent No.1 : Hafiz S.A. Rehman, Sr. ASC  
(in CRP.6-K/2014)
- Respondents No.2 & 3 : N.R.  
(in CRP.6-K/2014)
- For the Petitioner (s) : Mr. Tariq Aziz, ASC/AOR  
(in CRP.7-K/2014)
- For Respondent No.1 : Hafiz S.A. Rehman, Sr. ASC  
(in CRP.7-K/2014)
- Respondents No.2 & 3 : N.R.  
(in CRP.7-K/2014)
- For the Applicant (s) : Mr. Tariq Mehmood, Sr. ASC  
(in CMAs.2238, 2242 and  
2246/2014 in CRPs Nil/2014)
- For Respondent No.1 : Hafiz. S.A. Rehman, Sr. ASC  
(in CMAs.2238, 2242 and  
2246/2014 in CRPs Nil/2014)

Date of Hearing : 11.11.2015

### **JUDGMENT**

**SH. AZMAT SAEED, J.-** Through this judgment, it is proposed to decide Civil Review Petitions Nos.43-K to 45-K of 2012, 2-K to 5-K of 2013, 6-K & 7-K of 2014, C.M.A. No.2238 of 2014 in CRP No.NIL of 2014 in Civil Appeal No.189-K of 2011, C.M.A. No.2242 of 2014 in CRP No.NIL of 2014 in Civil Appeal No.190-K of 2011, C.M.A. No.2246 of 2014 in CRP No.NIL of 2014 in Civil Appeal No.191-K of 2011, which are directed against the Judgment of this Court dated 06.11.2012, whereby Civil Appeals No.189-K to 191-K were allowed.

2. The brief facts necessary for adjudication of the *lis* at hand are that in the year 1993, the Federal Board of Revenue (the then Central Board of Revenue) in an effort to expand its Income Tax Administration decided to increase the strength of its Income Tax Assessing Officers through posting of suitable Officers in BPS-17 on deputation from other Departments. Consequently, at the initiative of the Federal Board of Revenue (FBR), the Establishment Division issued a letter dated 18.12.1993 to the Secretaries

of the various Departments seeking Officers from other Occupational Groups to be initially appointed on deputation under Section 10 of the Civil Servants Act, 1973 with the FBR. It was also notified that such Officers were likely to be considered for induction in the Income Tax Group. Apparently, in this behalf, options were invited from various Officers. It appears that the private Respondent Iqbal Hussain Sheikh, who was originally inducted in service in 1986 through 14<sup>th</sup> CTP (Common Training Program) in the Postal Group, private Respondent Dr. Abdul Lateef inducted in 1990 through 18<sup>th</sup> CTP in the Information Group and the private Respondent Abdul Hameed Anjum also inducted in 1990 through 19<sup>th</sup> CTP in the Information Group exercised their options and were among the 72 Officers whose cases for posting on deputation in the Income Tax Group were considered by a Joint Committee constituted in this behalf. The said Joint Committee vide Order dated 19.02.1994 decided that such Officers would undergo intensive Professional Training at the Directorate of Training (Income Tax), Lahore, for a period of four to six months; pass Departmental examinations within two years after completing the

training; would continue to have their lien in their parent Departments for a maximum period of five years; and shall rank lowest viz-a-viz the Officers of the Income Tax Group in BPS-17. However, their *inter se* seniority in their own Cadre and Group would be maintained in their parent Departments. The said decision was approved by the Establishment Division vide Order dated 22.02.1994. Consequently, private Respondents (Iqbal Hussain Sheikh, Dr. Abdul Lateef and Abdul Hameed Anjum) were placed at the disposal of the FBR vide Notification dated 19.03.1994 and posted as Assistant Commissioners of Income Tax (Under Training) in the Directorate of Training, Lahore.

3. In the years that followed the question of permanent induction of the Officers from other Groups into the Income Tax Group remained unresolved, though it appears, various communications were exchanged. Eventually, on 19.12.2000, the FBR made the offer to the Officers on deputation for their induction into the Income Tax Group. Such offer was required to be accepted by or before the end of December, 2000. The private Respondents

(Iqbal Hussain Sheikh, Dr. Abdul Lateef and Abdul Hameed Anjum) exercised their options for their permanent induction in the Income Tax Group. However, no formal Order, in this behalf, was passed. In the above backdrop, the said private Respondents (Iqbal Hussain Sheikh, Dr. Abdul Lateef and Abdul Hameed Anjum) along with other Officers similarly placed invoked the Constitutional Jurisdiction of the learned High Court of Sindh on 15.01.2002 seeking their induction in the Income Tax Department. The said Constitutional Petitions were dismissed by the learned High Court of Sindh vide judgment dated 10.05.2002. Aggrieved, the private Respondents (Iqbal Hussain Sheikh, Dr. Abdul Lateef and Abdul Hameed Anjum) along with others filed a Civil Petition for Leave to Appeal before this Court, which was converted into Appeal i.e. Civil Appeal No.1745 2002 and was allowed vide judgment dated 29.09.2009, reported as Abdul Hameed Anjum and others v. Federation of Pakistan and others (PLD 2010 SC 857).

The aforesaid judgment of this Court was given effect to, whereafter the seniority of the present Respondents

(Iqbal Hussain Sheikh, Dr. Abdul Lateef and Abdul Hameed Anjum) was fixed vide Notification dated 11.8.2010 and their seniority was reckoned from 01.01.2001. The said private Respondents filed Departmental representations, which were rejected on 08.10.2010 whereafter they filed Service Appeals bearing No.153(K)CS to 155(K)CS of 2010 before the learned Federal Service Tribunal, Karachi, which were dismissed vide judgment dated 01.02.2011. Aggrieved, the said private Respondents (Iqbal Hussain Sheikh, Dr. Abdul Lateef and Abdul Hameed Anjum) filed Civil Petitions for Leave to Appeal No.264-K to 266-K of 2011 before this Court against the aforesaid judgment of the learned Service Tribunal in which leave to appeal was granted vide Order dated 29.02.2011 and the same were converted into Appeals i.e. Civil Appeals No.189-K to 191-K of 2011. This Court vide judgment under review dated 06.11.2012 allowed the said Civil Appeals and directed the FBR to notify 26<sup>th</sup> March 1994, as the date from which the seniority of the Appellants would be reckoned.



4. Civil Review Petitions Nos.43-K to 45-K of 2012 have been filed by the Chairman, FBR against the aforesaid judgment, while Civil Review Petitions Nos.2-K to 5-K of 2013 and 6-K & 7-K of 2014 have been filed on behalf of the Officers of the Income Tax Group, who were not a party before this Court in Civil Appeals Nos.189-K to 191-K of 2011 but whose seniority was likely to be affected, as a consequence of the judgment under review.

5. It is contended by the learned counsel for the Review Petitioners that by way of the judgment under review, the provisions of Rule 4 of the Civil Servants (Seniority) Rules 1993, hereinafter referred to as "the Rules of 1993" applicable to the facts of the case have been misinterpreted and misapplied. It is added that the judgments of this Court, the dicta whereof were not attracted to the facts and circumstances of the case have not only been relied upon incorrectly but also misinterpreted. Furthermore, the judgment under review runs contrary not only to Rule 4 of the Rules of 1993 but also to the law as laid down in various judgments of this Court, hence is liable to be reviewed. In support of their contentions, the

learned counsels relied upon the judgments reported as (1) S. Habib Haider v. The Secretary, General Ministry of Interior, Islamabad and 14 others (1991 SCMR 1505), (2) Major Retd Muhammad Matlub Khan, Deputy Director, Intelligence Bureau, Islamabad etc v. Government of Pakistan etc (NLR 1993 Service 33), (3) Muhammad Arshad Sultan Section Officer, Cabinet Division, Islamabad and another v. Prime Minister of Pakistan, Islamabad and others (PLD 1996 SC 771), (4) Mehr Sher Muhammad and others v. Federation of Pakistan (1999 SCMR 185), (5) S. M. Farooq and others v. Muhammad Yar Khan and others (1999 SCMR 1039), (6) Din Muhammad v. Director-General, Pakistan Post Office, Islamabad and 20 others (2003 SCMR 333), (7) Hamid-ul-Hussain and others v. Federation of Pakistan through Secretary, Establishment Division and others (2006 SCMR 832), (8) Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483), (9) Abdul Hameed Anjum and others v. Federation of Pakistan and others (PLD 2010 SC 857), (10) Captain (R) Khalid Zaman v. Government of Pakistan through Secretary, Establishment Division and others (NLR 2011 Service 38)/(2011 SCMR 99), (11) Iqbal Hussain

Sheikh and two others v. Chairman, Federal Board of Revenue and another (2013 SCMR 281), (12) Contempt Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752), and (13) Ali Azhar Khan Baloch and others v. Province of Sindh and others (2015 SCMR 456).

6. The learned counsel for the private Respondents controverted the contentions raised on behalf of the Review Petitioners and contended that all the Civil Review Petitions are barred by limitation, hence liable to be dismissed on this ground alone. It is further added that the Civil Review Petitions filed by the private Respondents, who were not a party to the Civil Appeals whereupon the judgment under review was passed, are not maintainable having been filed by strangers. It was contended that the judgment under review does not suffer from any error apparent from the face of the record and no such error has been pointed out on behalf of the review Petitioners. It is added that the Review Jurisdiction of this Court is not synonymous with its Appellate Jurisdiction and this Court cannot sit in appeal on its own judgments. The learned counsel for the Respondents further contended that even

otherwise the judgment under review is in line with the law laid down in the earlier judgments of this Court, which have not only been mentioned but also the extracts whereof have been quoted *in extenso*, in the judgment under review therefore the Review Petitions are liable to be dismissed. The learned counsel for the Respondents relied upon the judgments reported as (1) Muhammad Arshad Sutlan, Section Officer Cabinet Division, Islamabad and another v. Prime Minister of Pakistan, Islamabad and others (PLD 1996 SC 771), (2) Mehr Sher Muhammad and others v. Federation of Pakistan (1999 SCMR 185) and (3) Din Muhammad v. Director General, Pakistan Post Office, Islamabad and 20 others (2003 SCMR 333) (4) Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483), (5) S. Masood Abbas Rizvi v. Federation of Pakistan through Secretary, Establishment and others (2014 SCMR 799), (6) Muhammad Aslam Awan, Advocate Supreme Court v. Federation of Pakistan and others (2014 SCMR 1289).

7. Heard and the available record perused.

8. Before proceeding to dwell upon the arguments canvassed at the bar by the learned counsel for the parties, it would perhaps be appropriate to recapitulate the relevant facts of the case so that both, the rival contentions of the learned counsels and the judgment under review can be examined in their true perspective, while exercising our limited Review Jurisdiction.

9. The private Respondents, it is an admitted fact, were initially recruited, appointed and were serving in the Postal Group and in the Information Group. Pursuant to the decision of structural expansion of the Income Tax Group of the FBR, it was decided to solicit options from the Officers serving in various other Departments, for joining the Income Tax Group on deputation. In terms of the aforesaid decision, a letter was issued by the Establishment Division on 18.12.1993 to the Secretaries of the various Departments. The private Respondents expressed their willingness to join the Income Tax Group. Their case was considered by the Joint Committee constituted in this behalf and 72 Officers including the private Respondents vide Order dated 19.02.1994 of the said Joint Committee

were selected subject to, *inter alia*, the conditions that they would undergo training, pass the Departmental examination and would serve on deputation with the Income Tax Group for initial period of five years and were likely to be absorbed and inducted in the said Group. It was also clarified that such Officers would rank lower than the Officers already serving in the Income Tax Group in the same grade i.e. BPS-17. The said decision of the Joint Committee was also approved by the Establishment Division vide Order dated 22.2.1994.

10. It is in the above back ground the private Respondents were appointed on deputation in the Income Tax Group vide Notification dated 19.3.1994. After the lapse of the initial period of five years a formal decision was eventually taken to seek option from the said Officers serving on deputation in the Income Tax Group for their absorption and induction in the said Group. However, the said decision was not implemented and some of such Officers including the private Respondents sought their absorption and induction in the Income Tax Group by unsuccessfully invoking the Constitutional Jurisdiction of

the learned High Court. The Constitution Petitions filed in this behalf were dismissed vide judgment dated 10.5.2002, whereafter, the private Respondents along with others filed Civil Petitions before this Court, which were eventually decided in their favour vide judgment dated 29.9.2009 reported as Abdul Hameed Anjum and others v. Federation of Pakistan and others (PLD 2010 SC 857), in the terms reproduced herein below:-

- (i) This appeal is accepted on behalf of appellants Nos.1, 2, 3 and 6; the appeal on behalf of other appellants is dismissed as not pressed.
- (ii) Appellants Nos.1, 2, 3 and 6 are declared to have been inducted w.e.f. 01.1.2001 in the Income Tax Group of CBR pursuant to the acceptance of offers by them under CBR's decision dated 21.7.2000; The appellants Nos.1, 2, 3 and 6 are also declared to have been accordingly absorbed in the Income Tax Group;
- (iii) Establishment Division O.M. dated 25.1.2001 is declared to have been issued without any lawful authority hence of no legal effect.
- (iv) For the purpose of record and for all other requirements, respondents shall issue necessary notifications, orders or memos in terms of the declaration above granted to appellants Nos.1, 2, 3 and 6.
- (v) Costs throughout shall be paid by the respondents to appellants Nos.1, 2, 3 and 6.

**(emphasis supplied)**

11. Subsequently, the private Respondents sought fixation of their seniority in the Income Tax Group from the date when they initially joined Income Tax Group on deputation from their parent Departments. Upon failure of the representation/Departmental appeals and subsequent dismissal of their appeals by the learned Federal Service Tribunal, the jurisdiction of this Court was invoked, which culminated into the judgment under review.

12. It is an admitted fact that the Petitioners are civil servants, who were initially sent on deputation from their parent Departments to the Income Tax Group wherein they were eventually absorbed and inducted.

13. The question of seniority both *inter se* the present Respondents as well as with respect to other Officers, who were already serving in the Income Tax Group is covered by Rule 4 of the Rules of 1993. For the ease of reference the said Rule is reproduced hereunder:-

**"4. Seniority on appointment by transfer. -**  
Seniority in a service, cadre or post to which a civil servant is appointed by transfer shall take effect from the date of regular appointment to the service, cadre or post :

**Provided that-**



(a) persons belonging to the same service, cadre or post selected for appointment by transfer to a service cadre or post in one batch shall, on their appointment, take inter se seniority in the order of their date of regular appointment in their previous service, cadre or post; and

(b) persons belonging to different service, cadre or posts selected for appointment by transfer in one batch shall take their inter se seniority in the order of the date of their regular appointment to the post which they were holding before such appointment and, where such date is the same, the person older in age shall rank senior."

14. A perusal of the judgment under review reveals that it is primarily based on three previous judgments of this Court reported as (1) Muhammad Arshad Sutlan, Section Officer Cabinet Division, Islamabad and another v. Prime Minister of Pakistan, Islamabad and others (PLD 1996 SC 771), (2) Mehr Sher Muhammad and others v. Federation of Pakistan (1999 SCMR 185) and (3) Din Muhammad v. Director General, Pakistan Post Office, Islamabad and 20 others (2003 SCMR 333). The law laid down in the aforesaid judgments must necessarily be examined in the context of the aforesaid admitted facts and the applicable law i.e. Rule 4 of the Rules of 1993 referred to above.

15. With the help of the learned counsel for the parties, we have examined the judgments reported as Muhammad Arshad Sultan (*Supra*) (PLD 1997 SC 771). After trawling through the entire judgment, we find that there is no reference, at all, to the Rules of 1993. The said judgment is entirely based on the interpretation of the Esta. Code, various Office Memorandums, (OMs) periodically issued and some statutory provisions and the Rules other than the Rules of 1993, hence the basis of the decision of the said judgment is not the Rule 4 of the Rules of 1993, which is admittedly applicable to the case at hand. It is in the above perspective, primarily on the interpretation of said Office Memorandum and the Esta Code, certain observations were made by this Court, which have been quoted *in extenso* in the judgment under review. However, eventually, through the said judgment the matter was remanded for fixation of the seniority of the Applicants therein. The interpretation of Rule 4 of the Rules of 1993 admittedly applicable in the instant cases is conspicuous by its absence.

16. The second judgment whereupon the judgment under review is based, is the case of Mehr Sher Muhammad and others (*Supra*). It appears that pursuant to the judgment passed in Muhammad Arshad Sultan, Section Officer and another (*Supra*), the seniority of some of the Officers of OMG was fixed. However, the other Officers, feeling aggrieved, invoked the jurisdiction of the learned Service Tribunal and eventually to this Court, which culminated into the judgment passed in Mehr Sher Muhammad and others (*Supra*). We have also examined the said judgment and find that the law laid down therein, which has been relied upon and quoted *in extenso* in the judgment under review is again based upon the interpretation of the various Office Memorandums, the Esta Code and Practice of the Department. However, it appears that the provisions of Rule 4 of the Rules of 1993 were brought to the notice of this Court. In respect whereof, it was observed as follows:-

"14. ... We would like to elucidate here that Federal Government has now framed Civil Servants Seniority Rules vide S.R.O. No.163(1)/93, dated 28<sup>th</sup> February, 1993 (PLD 1993 Central Statutes, page 281) which are prospective in character and would supersede all practices, instructions

and Office Memorandums in the sphere of fixing the seniority of civil servants from the date of its promulgation and all other methods existing till then shall cease to be operative."

(emphasis supplied)

17. The aforesaid observations make it clear and obvious that the law laid down in this judgment is not applicable to the subsequent cases to which Rule 4 of the Rules of 1993 is applicable. The said Rules of 1993 were not applied as the same could not be given retrospective effect. In this case, the entire process commenced on 18.12.1993, when the Establishment Division called for options from the Officers of the various Departments to join the Income Tax Group on deputation, while the Rules of 1993 came into force on 28.02.1993. Thus, at all material events in the instant case from the exercise of the option to the reckoning of the seniority and the dispute in relation thereto occurred after the Rules of 1993 had come into force and were covered squarely by Rule 4 thereof. Hence, there was no question of retrospective application involved in the instant case unlike the judgment of Mehr Sher Muhammad and others (*Supra*) (1999 SCMR 185).

18. In view of the above, it is clear and obvious, as has been held in the case of Mehr Sher Muhammad and others (*Supra*) in no uncertain terms that the said judgment and the judgment of Muhammad Arshad Sultan (*Supra*) (PLD 1996 SC 771) at best pertained to the various Office Memorandums, the Esta Code and the Departmental Practice and are not relevant for the purpose of interpretation of Rule 4 of the Rules of 1993. In fact, the said judgments and the law laid down therein are not relevant for adjudication of a case pertaining to the seniority of the deputationists arising after coming into force the Rules of 1993 including the cases at hand, hence, could not form the basis of the judgment under review.

19. It appears that this aspect of the matter escaped the attention of this Court, while erroneously passing the judgment under review and holding that the private Respondents were entitled to the seniority from the date earlier than the date of their formal induction into the Income Tax Group. This error unfortunately materially, significantly and adversely affects the adjudicatory process resulting in an obvious error of law.

20. Rule 4 of the Rules of 1993, which has been reproduced hereinabove on its plain reading leaves no room for doubt that the seniority of persons on deputation is to be reckoned from the date of their regular appointment in the transferee Group or Department and not from their posting or transfer or any earlier date. The wording in the said provision is clear and obvious and leaves little room for any other contrary interpretation.

21. The said Rule 4 of the Rules of 1993 has come up for interpretation before this Court in a number of cases. In the case reported as S.M. Farooq and others v. Muhammad Yar Khan and others (1999 SCMR 1039), it has been held as follows:-

"12. ... Besides rule 4 of Civil Servants Seniority Rules, 1993 promulgated by Notification S.R.O. (1)/93, dated 28<sup>th</sup> February, 1993 lays down that seniority in service, cadre or post by transfer shall take effect from the date of regular appointment of civil servant to said service, cadre, or post. Therefore, necessary corollary would be that such civil servant on his appointment by transfer would rank junior to those who were already serving in permanent capacity in the same grade. This is in consonance with principle of justice and fair play because service rights of employees in the absence of any rules cannot be normally affected by outside introduction. The respondent No.1 Muhammad Yar Khan till date of his absorption continued to be member of his parent

service or cadre. Therefore, unless transferred and absorbed on account of conscription; the seniority of above respondent in Tourist Services Department had to be reckoned from the date of his regular appointment against permanent post. It may be mentioned here that respondent No.1 had option to refuse and in such eventuality, he would be entitled to seniority reckoned in the parent Department."

22. In the case reported as Hamid-ul-Hassain and others v. Federation of Pakistan through Secretary, Establishment and others (2006 SCMR 832), it was held as under:-

"9. Rule 4 in so many words lays down that seniority in service, cadre or post to which a civil servant is appointed by transfer shall take effect from the date of regular appointment to the service, cadre, or post. Undisputedly the petitioners were appointed on regular basis vide notification dated 17-11-1999 and they were not correct in claiming their seniority from any earlier date on the ground that they ought to have been absorbed or inducted into O.M.G. in the year 1992 or before that. ..."

**(emphasis supplied)**

23. It appears that the aforementioned judgments of this Court had escaped notice, while passing the judgment under review, which runs contrary thereto as well as to the provisions of Rule 4 of the Rules of 1993.

24. At this juncture, it may be appropriate to refer to the 3<sup>rd</sup> judgment relied upon and quoted *in extenso* in the judgment under review i.e. Din Muhammad v. Director General, Pakistan Post Office, Islamabad and 20 others (2003 SCMR 333). Even in this judgment, the general principle that the seniority of deputationists would be reckoned in the transferee Department from the date of issue of order of absorption therein has been reiterated. In this behalf, it has been held as follows:-

“...We having carefully considered the contention raised by the learned Deputy Attorney-General find that crucial date for determination of the seniority of appellant would be the date of permanent absorption of appellant in the office of Post Master General, Northern Circle, Rawalpindi...”

**(emphasis supplied)**

In the said case, the Appellants therein had been transferred without any option being exercised by them and there was some issue regarding the date of their induction into the parent Department. In the instant case, the date of induction of the private Respondents in the their transferee Department i.e. the Income Tax Group had been finally settled by this Court upon an appeal filed by



the private Respondents in the judgment reported as Abdul Hameed Anjum and others (*Supra*) (PLD 2010 SC 857), and it has clearly been held that the date of induction of the private Respondents will be 01.01.2001 and it is obviously from such date their seniority in terms of Rule 4 of the Rules of 1993 must necessarily be reckoned. To ante-date the induction of the private Respondents in the Income Tax Group from 01.01.2001 would amount to a review of the judgment of this Court reported as Abdul Hameed Anjum and others (*Supra*) (PLD 2010 SC 857), which has attained finality and its findings could not be disturbed or varied in the subsequent proceedings as has apparently been done, by necessary implication by way of the judgment under review. This aspect of the matter too had escaped the notice of this Court resulting in an error apparent on the face of the record, requiring rectification.

25. In view of the above, there is little room for doubt that the seniority of the private Respondents was to be determined in terms of Rule 4 of the Rules of 1993 and to be reckoned from the date of induction and the regular appointment in the transferee Department i.e. Income Tax

Group, a fact conclusively determined by this Court in an earlier judgment. By way of the judgment under review, it has been held to the contrary, initially by relying upon the judgments of this Court, which pertained to the interpretation of the various Office Memorandums, Esta Code and the Departmental Practice and not Rule 4 of the Rules of 1993. It is mentioned in the said judgment in no uncertain terms that the law laid down therein would not be applicable to the cases covered by Rule 4 of the Rules of 1993 (as is the instant case). Furthermore, the judgment under review in fact reviewed the earlier judgment of this Court passed in appeal filed by the private Respondents i.e. Abdul Hameed Anjum and others (*Supra*) (PLD 2010 SC 857). Consequently, the aforesaid legal error has crept into the adjudicatory process and requires rectification to further the ends of justice and uphold the law.

26.           Adverting now to the objections of the private Respondents that the instant Review Petitions are barred by limitation and some of them are not maintainable having been filed by the persons who were not party to the Appeals wherein the judgment under review was passed.

Civil Review Petitions Nos.43-K to 45-K of 2012 have been filed by the Department, which was admittedly the Respondent in the aforesaid Appeals. Hence, the question of their maintainability does not arise. No doubt, these Review Petitions have been filed 11 days beyond the period of limitation prescribed for filing thereof. The said Review Petitions are accompanied by applications for condonation of delay i.e. Civil Misc. Applications No.456-K to 458-K of 2012. It appears that the learned counsel for the Department, who had appeared in the Appeals, whereupon the judgment under review was passed, was on general adjournment and had gone abroad and the Review Petitions could not be filed in his absence as he alone could have given a Certificate in terms of the Rule 4 of Order XXVI of the Supreme Court Rules, 1980. The learned counsel upon being instructed to file a review cut short his visit abroad returned to Pakistan and made an application for recall of his general adjournment and thereafter filed the Civil Review Petitions in question. In the circumstances, the delay in filing of the Review Petitions was beyond the control of the Review Petitioners. Hence, the said delay is condoned and the Civil Misc.

Applications No.456-K to 458-K of 2012 are allowed. Since the Civil Review Petitions Nos.43-K to 45-K of 2012 filed by the Department have been held to be maintainable and the delay has been condoned, hence the question of maintainability and limitation in other Review Petitions is not material.

27. These are the reasons of our short Order of even date, which is as follows:-

"We have heard the arguments of the learned ASCs. For the reasons to be recorded separately, Civil Review Petitions No.43-K to 45-K of 2012, 2-K to 5-K of 2013 and 6-K & 7-K of 2014 and the other three Civil Review Petitions which are yet to be numbered along with listed Civil Misc. Applications are allowed. The judgment under review dated 06.11.2012 is set aside and the Civil Appeals No.189-K to 191-K of 2011 are dismissed."

Chief Justice

Judge

Judge

Islamabad, the  
11<sup>th</sup> November, 2015  
Approved For Reporting  
*Safdar/\**