

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, C.J.
Mr. Justice Jawwad S. Khawaja
Mr. Justice Sh. Azmat Saeed

CONSTITUTION PETITION NO.33 OF 2013

Asaf Fasihuddin Khan Vardag.

Petitioner(s)

VERSUS

Government of Pakistan and others.

Respondent(s)

For the Petitioner(s)	:	Mr. Asaf Fasihuddin Khan Vardag, ASC (in person)
For Respondents No.1 & 2 (Govt. of Pakistan thr. Secretaries Defence & Establishment Division)	:	Mr. Muneer A. Malik, AGP Mr. Shah Khawar, Additional A.G.P. Qari Abdul Rashid, AOR with Mr. Shahbaz Kirmani, S.O. Estt. Div. (On Court's call)
For Respondent No.3 (Air Marshal (R) Khalid Ch.)	:	Syed Iftikhar Hussain Gilani, Sr. ASC Syed Safdar Hussain, AOR with Air Marshal ® Khalid Chaudhry, DG, CAA
For Respondent No.4 (Ch. Muhammad Munir)	:	Mr. Shahid Hamid, Sr. ASC Mr. M.S. Khattak, AOR
For Respondent No.5 (M/s. Louis Berger)	:	Mr. Uzair Karamat Bhandari, ASC
For CAA		Mr. Afnan Karim Kundi, ASC Mr. Mehmood A. Sheikh, AOR Mr. Obaid ur Rehman Abbasi, Sr. Law Officer
For Aviation Division	:	Nemo
For Technical Associates	:	Mian Gul Hassan Aurangzeb, ASC Mr. M.S. Khattak, AOR
For LTH (JV)	:	Kh. Haris Ahmad, Sr. ASC
For M/s. China State Construction Engineering	:	Syed Ali Raza, ASC Mr. Tariq Aziz, AOR
For FWO	:	Mr. Asad Rajpoot, ASC
For M/s. Sambu Construction & Sachal Engineering	:	Mr. Tariq Aziz, AOR.

For Hussain Construction : Dr. Tariq Hassan, ASC
For Habib Construction : Syed Ali Zafar, ASC

For M/s. Al-Tariq Construction : Mr. Mehmood A. Sheikh, AOR
For M/s. Ciemens : Mr. Imtiaz Rasheed Siddiqui, ASC

For M/s. Xinjiang Beixin : Mr. Shahid Kamal Khan, ASC
For M/s. Gammon Pakistan : Mr. Muhammad Munir Paracha, Sr. ASC
For M/s Izhar (Pvt) Ltd : Mr. Babar Ali, ASC
For M/s Jaffer Brothers : Syed Ishtiaq Haider, ASC
Remaining Contractors : Nemo
Date of Hearing : 12.09.2013.

ORDER

The learned Additional Attorney General for Pakistan, during course of his arguments, stated that CAA is one of the attached department of the Defence Ministry and the then Secretary Defence vide letter dated 12.6.2012 in response to the decision taken in the 140th meeting of the CAA Board dated 14.6.2012 constituted a Committee headed by Lt. General (Retd.) Shahid Niaz, Member Implementation and Monitoring, Planning Commission, to probe into the matter. Subsequent thereto, Civil Aviation Division was separated from the Defence Ministry and as an independent Division (Aviation Division) was created and Mr. Muhammad Ali Gardezi was appointed as Secretary on 27.6.2013 and now he has been transferred and acting charge has been handed over to Ms. Nargis Sethi, Secretary Economic Affairs Division. In the instant case, we inquired from the learned Additional Attorney

General as to whether transfer of the Secretary Muhammad Ali Gardezi has not been made in violation of directions made in our judgment in the case of Syed Mehmood Akhtar Naqvi and another Vs. Federation of Pakistan, generally known as Anita Turab's Case. Paragraph 22 of the same reads as under:-

22. The principles of law enunciated hereinabove can be summarized as under:-

i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder; where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.

ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

iii) Illegal orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record Const. Ps. 23/2012 etc their opinion and, if necessary, dissent.

iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest."

He sought time for instructions and later on confirmed that vide two separate notifications dated 10th September, 2013

Mr. Muhammad Ali Gardezi, BS-22 officer, has been posted as Secretary, Inter-Provincial Coordination Division whereas Mr. Faridullah Khan, Secretary of the said Division has been posted as Secretary Capital Administration and Development Division. He has placed on record two documents i.e. a summary for the Prime Minister dated 6.9.2013 contents whereof reads as under:-

“On retirement of Mr. Shaigan Shareef Malik, A BS-22 officer of Secretariat Group, the post of Secretary Capital Administration and Development Division has become vacant and is required to be filled in by posting suitable BS-22 officer;

2. In this connection, Establishment Division proposes a panel of the following BS-22 officers of Secretariat Group for consideration and posting of any one of them as Secretary, Capital Administration and Development Division:-

a) Mr. Faridullah Khan, presently posted as Secretary Inter-Provincial Coordination Division.

b) Mr. Amjad Ali Khan, presently posted as Secretary, Privatization Division Commission.

c) Mr. Muhammad Ahsan Raja, presently posted as Chairman, Prime Minister's Inspection Commission (PMIC)

(The Individual Career Planning Charts of the Officers are annexed)

3. Approval of the Prime Minister is solicited to the proposal contained at para-2 above.

*(Shahid Rashid)
Establishment Secretary.”*

It may be noted that in the above summary no proposal was sent for transfer of Mr. Muhammad Ali Gardezi, however, a transfer/posting order has been signed by Mr.

Nasir Mehmood Khosa, Secretary to the PM, contents whereof reads as under;-

“ The Prime Minister has approved the following:-

- (i) Posting of Mr. Faridullah Khan, presently posted as Secretary, Inter-Provincial Coordination Division as Secretary, Capital Administration and Development Division.*
- (ii) Posting of Mr. Muhammad Ali Gardezi, presently posted as Secretary, Aviation Division as Secretary, Inter-Provincial Coordination Division, in view of his varied experience having served in the provincial governments of Punjab, Sindh and Balochistan and currently serving in the Federal Government, and his knowledge of and expertise in Inter-Provincial matters.*
- (iii) Assigning of additional charge of Secretary, Aviation Division to Mrs. Nargis Sethi, Secretary, Economic Affairs Division.*

*(Nasir Mehmood Khosa)
Secretary
to the Prime Minister
09.09.2013”*

It is important to note that in absence of any summary as is evident from the summary reproduced hereinabove Mr. Muhammad Ali Gardezi was transferred and Secretary Faridullah Khan was also transferred. We have inquired from the learned Attorney General as to how the Secretary who has recently taken over the charge as the Secretary (Aviation Division) without allowing him to serve his complete tenure and without assigning any exceptional reasons inasmuch as without moving any summary to the

PM, has been transferred. The learned Additional Attorney General could not answer satisfactorily and seeks some time to seek instructions in this behalf. He is allowed to do so. In the meanwhile, we would be hearing the case on merits and after the receipt of his statement, further proceedings shall be held in this context.

2 The learned Attorney General appeared at 4 p.m. alongwith Mr. Shah Khawar, Additional Attorney General and stated that he has taken up the matter with the high-ups. He assures that the matter will be settled in accordance with law and to the satisfaction of this Court. He requests for adjournment of the case till tomorrow which is allowed. Re-list tomorrow i.e. **13.9.2013**.

Chief Justice

Judge

Judge

Islamabad,
12.09.2013
M. Azhar Malik