

**IN THE SUPREME COURT OF PAKISTAN**  
(ORIGINAL JURISDICTION)

**PRESENT:**

MR. JUSTICE JAWWAD S. KHAWAJA.  
MR. JUSTICE KHILJI ARIF HUSSAIN.  
MR. JUSTICE EJAZ AFZAL KHAN.

**CMA. NO. 4918 OF 2012 AND CMA. NO. 08 OF 2013**

**IN**

**CONSTITUTION PETITION NO. 23 OF 2012.**

(Regarding putting of two Govt. Officers namely Hassan Waseem Afzal and his wife Farkhanda Waseem Afzal as OSD).

For the applicant: Mr. Hassan Waseem Afzal and his wife Farkhanda Waseem Afzal in person.

For the respondents: Mr. Dil M. Khan Alizai, DAG.  
Malik Sher Afzal, Joint Secretary.  
Mr. Abdul Latif, Dy. Secy.  
Mr. Sarfraz Durrani, Dy. Secy.  
Mr. Shahbaz Kirmani, SO (Legal).  
Establishment Division.

Date of hearing: 26.04.2013.

**J U D G M E N T**

**EJAZ AFZAL KHAN, J.** - In the case of **"Syed Mahmood Akhtar Naqvi and others. Vs. Federation of Pakistan and others"** commonly known as Ms. Anita Turab case (**PLD 2013 S.C. 195**), this Court ruled as under :-

*"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."*

2. A news item in daily "The News" was flashed with the heading "The OSD couple, waiting for God's or SC help". This Court's while taking its notice on 31.12.2012 observed as under :-

*"Notice was taken on a news item appearing in the daily 'News' wherein it has been stated that two senior civil servants namely Hassan Wasim Afzal and Farkhunda Wasim Afzal who are officers in BS-21 are posted as officers on special duty (OSD) by the Establishment Division since*

16.6.2008 and 15.11.2011 respectively. This prima facie constitutes a violation of the judgment of this Court in Constitution Petition No.23/2012 (Anita Turab Vs. Federation of Pakistan). Let notice issue to the Secretary Establishment Division for 2.1.2013 to explain as to why contempt proceedings should not be initiated against him and others responsible for violating the Court order.

2. Likewise, notice shall issue to the Chief Commissioner Islamabad to explain as to why orders in the case of Ms. Rabia Aurangzeb were issued by him in violation of the aforesaid judgment in Constitution Petition No.23/12. Furthermore, the Secretary, Ministry of Interior shall explain as to why similar proceedings as noted above for violating the Court orders in Constitution Petition No.23/12 should not be initiated against him in relation to orders for premature transfer/posting of Dr. Khurram Rashid and Maryam Khan.

3. Let this application and connected matters arising from Constitution Petition No.23/12 and CMA 4848/12 be listed for hearing on 2.1.2013".

3. Its follow up culminated in the order dated 2.1.2013 which reads as under :-

"A report has been submitted by the Chief Commissioner Islamabad. The officer Ms. Rabia present in Court has gone through the report and states that facts have not been properly set out in the same. She needs some time to state the correct factual position. Let this be done within this week.

2. Mr. Shahid Hameed, Additional Secretary, Interior is present. The Secretary Interior who is statedly busy in a meeting in the Election Commission, has submitted a report which is perfunctory and unsatisfactory. It does not give full details as to the letter surrendering the services of Dr. Khurram Rashid, SP shortly after he was posted as SP Industrial Area. Likewise, the report in respect of Ms. Maryam Khan sought from the Secretary Interior is unsatisfactory. The Court needs information as to the reasons why the law enunciated in the case of Anita Turab (Constitution Petition No. P.23//12) was not adhered to. A report in this behalf shall be submitted by the Secretary Interior within this week.

3. A report had been sought from the Secretary Establishment Division as to why Mr. Hassan Wasim Afzal and Mrs. Farkhanda Wasim Afzal, both BS-21 officers had been

continued as OSD even after the enunciation of law on the subject vide our order of 12.11.2012 in the case of Anita Turab (supra). The report submitted is wholly unsatisfactory because it merely informs the Court that the two officers have been given posting on 1.1.2013. This report does not respond to the notice issued to the Secretary Establishment Division to show cause why proceedings should not be initiated against him for not complying with the above referred judgment of this Court dated 12.11.2012. A report in this behalf shall be submitted by the Secretary Establishment within this week.

4. CMA No.8/2013 has been filed by Dr. Shafi ur Rehman for being impleaded as a party in this matter. Let it be listed with other matters. Adjourned for **8.1.2013**".

4. On 9.1.2013, this Court observed as under :-

"When the case was first called for hearing in the earlier hours of the day, we were informed by Mr. Khayal Zada Gul, Dy. Secretary, Establishment Division that a notification dated 1.1.2013 had been issued appointing Mr. Hassan Waseem Afzal as Director General Pakistan Museum of Natural History and Mrs. Farkhanda Waseem Afzal as the M.D. National Trust for Disabled. However, we were surprised to note that the aforesaid notification had not actually been delivered/served on the petitioners and as a consequence, they remained uninformed officially of their postings and resultantly did not report for duty at the notified positions. We, therefore, asked the Deputy Director, Establishment Division to file a statement giving reasons as to why the officers named above, were not given any postings and were instead made OSDs since 2008 and 2011 respectively. The statement does not appear to be satisfactory inasmuch as the details of official action since 2008/2011 has not been given and also because there is no reasonable explanation as to why these officers were not given postings until 1.1.2013 or that they have not been given intimation of their postings even after 1.1.2013. For ease of reference, the statement submitted by the Deputy Secretary in Court is reproduced as under:-

"Notification in respect of Mr. Hassan Wasim Afzal (PAS/BPS-21) and Mrs. Farkhanda Wasim Afzal (PAS/BPS-21) to their posting as Director General (BPS-21), Pakistan Museum of Natural History and MD (BS-21) National Trust for Disabled were issued on 1<sup>st</sup> January, 2013, in late hours.

Accordingly the signed notifications were issued to all concerned on 2.1.2013. As per practice, the notifications to the individual officers are sent to the Organization where they are posted and also sent on their last posting address. In the instant case the posting orders have been sent to the Organization where they have been posted and delivered to Admin Wing on 02.01.2013. However, the same could not be further communicated to the officers concerned at their postal address. This is not a deliberate action on the part of any individual official or the Establishment Division, rather a lapse pointed out by any officer for the first time. As per past practice in all such cases the official concerned contact the Establishment Division, obtain their posting orders and relinquish the charge of the post of OSD for processing issuance of Last Pay Certificate (LPC) for regularization of their pay in the other organization (where posted) and taking charge in that organization.

On taking notice by the Hon'ble Supreme Court of Pakistan on 8.1.2013 to the Non-delivery of notifications to the officers concerned, the Establishment Division, took immediate action to send the notifications on home addresses of the concerned officers through UMS/TCS on 08.01.2013. The Establishment Division further shall take serious cognizance of this incident and improve system regarding intimation of posting orders to the officer concerned at their available postal addresses.

(KHALIL ZAD GUL)  
Deputy Secretary  
Establishment Division."

It is a matter of concern that it is only after this Court's notice in the matter, on the basis of a press report, that action appears to have been initiated by the Establishment Division and clear directions in the judgment dated 12.11.2012 (Anita Turab's Case) appear to have been violated. We, therefore, would be justified in issuing notices to concerned government functionaries as to why contempt proceedings should not be initiated against them. However, before doing so we direct the two officers namely Hassan Wasim Afzal and Farkhanda Wasim Afzal to file their statements setting out particulars and identifying the causes/persons who may have been responsible for the failure to give them substantive postings. The incumbent Secretary Establishment Division and the Secretaries of the Establishment Division since 16<sup>th</sup> June, 2008 shall also submit

*their concise statements setting out their reasons as to why these officers were made OSDs and why they were not given substantive postings. The incumbent Secretary Establishment Division shall also file relevant documents including all noting/correspondence which he may consider relevant during this week. The matter shall be listed for hearing on 15.1.2013".*

5. On 16.1.2013, this Court after hearing the parties at some length observed as under :-

*"We had noted that the two officers Hassan Wasim Afzal and Mrs. Farkhanda Wasim Afzal both in BS-21 had been made OSDs since 2008 and 2001 respectively. We had, therefore, directed the Secretary Establishment Division and the Secretaries of the said Division since 16.6.2008 to submit their concise statements setting out their reasons "as to why the aforesaid officers were made OSDs and why they were not given substantive postings". The incumbent Secretary Establishment has filed a concise statement (CMA-173/13). The said concise statement, however, does not contain explanations as to why the aforesaid officers have been kept as OSDs. Furthermore, there were six civil servants who occupied the position of Secretary Establishment from 16.6.2008 till the present incumbent was posted to the position on 28.6.2012. We have inquired about the status of these six persons. It is surprising that four out of these six persons have attained superannuation and have been re-employed on contract basis. This has happened even though the two officers namely Hassan Wasim Afzal and Mrs. Farkhanda Wasim Afzal are OSDs and are being paid their salaries/emoluments out of the public exchequer, although no official work has been assigned to them since 2008 and 2011 respectively.*

*2. The six persons whose names appear on page 100 of CMA. 173/13 shall again be served notice. The office and the Establishment Division shall be responsible for effecting service on them. These persons shall file their concise statements giving details as to why during their tenure no effective steps were taken for postings of the above named two officers. The case shall be listed for hearing on 31<sup>st</sup> January, 2013".*

6. On 27.3.2013, this Court again heard the matter and summed up in paragraph Nos. 3 and 4 which read as under :-

"3. We have gone through the aforesaid summary which, as its subject indicates, was moved for the purpose of appointing one Mr. Abdul Latif Leghari as Additional Secretary, Capital Administration and Development Division. It has been stated in para 2 of the summary that the "Establishment Division proposes a panel of the following BS-21 officers for posting as Additional Secretary, Capital Administration and Development Division". Thereafter the 3 officers and the summaries in respect of them have been recorded as follows:-

"Foregoing in view, Establishment Division proposes a panel of the following BS-21 officers for posting as Additional Secretary, Capital Administration and Development Division.

(i) MR. ABDUL LATIF LEGHARI (Secretariat Group/BS-21)

He joined Government service on 2.9.1980. Presently, he is posted as Senior Joint Secretary, Capital Administration and Development Division. Earlier, he remained posted as Joint Secretary, Capital Administration and Development Division, Joint Secretary, Industries and Production Division; Director General, Pakistan Public Administration and Research Centre; Joint Secretary, Cabinet Division, Director General, National Archives of Pakistan Deputy Secretary, Finance Division and Deputy Secretary, Economic Affairs Division. He is Sindh domiciled and will superannuate on 12.7.2004.

(ii) MR. HASSAN WASEEM AFZAL (PAS/BS-21)

He joined Government service on 8.3.1978. Presently, he is posted as OSD, Establishment Division. Previously, he remained posted as Principal Secretary to the Governor Punjab; Deputy Chairman, NAB Lahore; Secretary, Home Department, Government of the Punjab; Secretary, Health Department Government of the Punjab; Director NIPA Lahore, MD Pakistan Housing Authority, Islamabad; Joint Secretary, Prime Minister's Secretariat; Additional Director General EPB, Lahore and Consul General Montreal. The officer is Punjab domiciled and will superannuate on 26.4.2013.

(iii) MR. SHAHZAD IQBAL (SECRETARIAT GROUP/BS-21)

He joined Government service on 15.11.1980. Presently, he is posted as Senior Joint Secretary, Inter Provincial Coordination Division. Previously, he

*remained posted as Joint Secretary, Inter Provincial Coordination Division, Director General, Privatization Commission, Joint Secretary, Information Technology and Telecom Division, Deputy Secretary, Commerce Division, Deputy Secretary, Environment Division, and Deputy Secretary, Housing and Works Division. The officer is Punjab domiciled and will superannuate on 18.10.2013.*

*The proposal at para 2 above is submitted for kind approval of the Prime Minister.*

4. *This summary which has been mentioned above prima facie, does not conform with the judgment in the case of Ms. Anita Turab supra, because it does appear to be incomplete inasmuch as it has not been stated therein that Mr. Hassan Waseem Afzal has remained OSD for a period of 5 years starting 16.6.2008. And, even after our judgment on 12.11.2012 in Anita Turab's case, the situation was not rectified. We, therefore, require the Secretary Establishment to submit an explanation in terms of section 3 of the Contempt of Court Ordinance, 2003 read in the light of Article 204 of the Constitution. This should be done within 10 days from today. Thereafter based on our consideration of the explanation, we shall consider further action ".*

7. Today when we took up this case for hearing, it was again noted that Mr. Hassan Waseem Afzal had been posted OSD ever since 2008 and Mrs. Farkhanda Waseem Afzal. Their cases were forwarded for promotion but were deferred on the sole ground that they could not earn any PERs because of their being posted as OSDs. When we inquired as to what called for such treatment, no answer much less satisfactorily has been given by the persons at the other end. In fact the two officers of the Ministry, present in Court have accepted that the treatment given to the applicants is not in conformity with the accepted norms. We ourselves also scanned the record but could not find anything which could call for such treatment. Had their past performance or integrity been below the mark, they could have been treated as such but there is nothing of that sort. We were rather amazed and even appalled to see them treated in this way. Yes, as per minutes of meeting dated 02.08.2011, 25.11.2011 and 12.04.2012, they could not earn any PERs one way or the other because of

their posting but this could not be construed to their detriment under any cannons of law and propriety. The more so when their past record had been outstanding throughout. They initiated a contest in the High Court, but called it off when the respondents on the other end assured the High Court that they would be considered for promotion. But nothing in black and white was done towards what was assured, in spite of the fact that this order was also upheld in intra court appeal. We have been told that Mr. Hassan Waseem Afzal is going to retire in a day or so while his spouse is going to retire in a year in grade 21. Their promotion to the next higher scale has been denied for want of PERs and PERs have not been complied on account of their posting as OSDs which is not an act of their own doing. "Let them suffer" may be a command of expediency but we cannot approve it when, "give them their due" is a command of justice, which prima-facie appears to have been denied to them out of indignation and ill will of the high ups. It appears to be a typical case of political victimization, where even a moment's delay could cause irreparable harm and immeasurable loss to the officers whose merit lacks intercessional props and pillars. We have, therefore, no alternative but to direct the Secretary Establishment to convene a meeting of HPSB DSC for passing an appropriate order after considering the aforesaid officers for promotion to the next higher scale but before the sunset today.

Judge

Judge

Judge

**Islamabad.**  
26.04.2013.  
MAZ/\*

'NOT APPROVED FOR REPORTING'