

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial  
Mr. Justice Yahya Afridi

**CIVIL APPEALs NOs.1219 TO 1222 OF 2015**

(On appeal from the judgment/order dated 30.07.2015 passed by Federal Service Tribunal, Islamabad in Appeal No.460(R)CS to 461(R)CS of 2013)

**&**

**CIVIL APPEALs NOs.248 TO 251 OF 2018**

Chairman, Federal Board of Revenue,  
Islamabad

... Appellant  
(CAs.1219 -1220 of 2015  
& C.As.248-251 of 2018)

Muhammad Mohsin Rafiq & others

... Appellants  
(CAs.1221&1222 of 2015)

**Versus**

Mrs. Naureen Ahmed Tarar and others

... Respondents  
(in CA.1219 & 1221/2015)

Mrs. Ambreen Ahmed Tarar, etc.

... Respondents  
(in CA.1220 & 1222/2015)

Muhammad Junaid Jalil and others

... Respondents  
(in CA.248/2018)

Syed Shakeel Shah & others

... Respondents  
(in CA.249/2018)

Dr. Iftikhar Ahmed & others

... Respondents  
(in CA.250/2018)

Muhammad Saleem & others

... Respondents  
(in CA.251/2018)

For the appellants : Hafiz S.A.Rehman, Sr. ASC.  
(CAs.1219 -1220 of 2015 &  
C.As.248-251 of 2018)

For the appellants : Mr. Mahmood Ahmed Qazi, ASC.  
(CAs.1221 -1222 of 2015)

Respondent No.1 : In-person.  
(CA.1219 & 1221 of 2015)

For respondents (20-21) : Ch. Abdul Sattar, ASC.  
(CA.1219-1220 of 2015)

Respondents (No.3, 5, 7, : Ex-parte  
13, 17-19, 22, 23)  
(CA.1219-1220 of 2015)

For Respondent No.1 : Rana Asif Saeed, ASC.  
(CA.1220 & 1222 of 2015)

For Respondents (No.2, 4, : Mr. Mehmood Ahmed Qazi, ASC.  
6, 8-12, 14-16)  
(CAs.1219-1220 of 2015)

For respondents (11&12) : Ch. Abdul Sattar, ASC.  
(CA.1221 of 2015)

Respondents (No.2-10, 13) : Ex-parte  
(CA.1221 of 2015)

For respondents (10&11) : Ch. Abdul Sattar, ASC.  
(CA.1222 of 2015)

Respondents (No.2-9 & : Ex-parte  
12-14) (CA.1222 of 2015)

For Respondent No.1 : Mr. M. Shoaib Shaheen, ASC.  
(CA.248-251 of 2018)

For Respondents (7-8) : Kh. M. Farooq, Sr. ASC.  
(CA.248-250 of 2018) Syed Rifaqat Hussain Shah, AOR.

For Respondents (5-6) : Kh. M. Farooq, Sr. ASC.  
(CA.251 of 2015) Syed Rifaqat Hussain Shah, AOR.

Date of hearing : 20.02.2019.

### **ORDER**

**UMAR ATA BANDIAL, J. C.M.As. NOs.1560 & 1562**

**OF 2019.** These Misc. Applications for setting aside *ex-parte* order dated 10.12.2012 passed against the respondents mentioned therein are allowed. The respondents may join these proceedings subject to all just and legal exceptions.

2. **CIVIL APPEALS NO.1219 TO 1222 OF 2015.** Leave was granted in these appeals vide order dated 23.11.2015 in the following terms:

"We have read the relevant rules. The question whether determination of seniority could in any way be linked with the passing of exams in first, second and third attempt or it is their qualification

simpliciter, which matters in this behalf. The points raised require consideration. We, therefore, grant leave in these cases."

3. The dispute between the parties concerns the seniority of probationers qualifying in the 25<sup>th</sup> Common Group who have been placed in the Customs & Excise Group. Their terms and conditions of service as probationers is laid down in Section 6 of the Civil Servants Act, 1973 ("**Act**"). Section 25 of the Act empowers the competent authority to frame rules for carrying out the purposes of the Act. The Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990 ("**1990 Rules**") were framed by the competent authority, *inter alia*, for regulating the fixation of the seniority among probationers after their Final Passing Out Examination ("**FPOE**"). At the time when the initial appointment of the members of 25<sup>th</sup> Common Group was notified on 11.07.1998, the 1990 Rules as originally framed were still in vogue. However, during the period of probation of the 25<sup>th</sup> Common Group commencing in July, 1998 and ending on 13.08.2003, these rules underwent amendment on 28.04.2001. A substantial change in the method of reckoning seniority was introduced by the amendment. This was done by including the number of attempts availed by a probationer to clear the three specialized training examinations as one of the criteria for determining seniority. The relevant amendment was made in sub-Rule (2) of Rule 6 of the 1990 Rules which is reproduced below:

(2) A probationer who does not qualify in the Final Passing Out Examination shall:

(a) lose his one increment if he fails in the first attempt.

- (b) be relegated in seniority to the bottom of his batch if he fails in the second attempt; and
- (c) be discharged from the service under clause (a) of sub-section (2) of section 6 of the Civil Servant Act, 1973, if he fails in the third attempt."

4. Prior thereto the seniority of the probationers at the end of successful passing of their training examinations was provided in Rule 7(4):

**7. Seniority.**

...

- (4) For the purpose of determining the *inter-se* seniority of the probationers who commence their training with initial training programme the marks obtained by a probationer in the competitive examination of the Commission or his notional marks, as the case may be, shall be added to the marks obtained by him in the initial training programme, specialized training programme and the marks obtained by qualifying the Final Passing Out Examination in his first attempt.

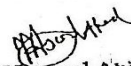
5. The additional criterion of the number of attempts availed by a probationer for fixing his seniority in the batch was implemented in the present case by the provisional seniority list issued on 03.06.2008. The same criteria were adopted again for arriving at the final seniority list issued on 21.12.2012 by the appellant-department. These seniority lists were challenged by respondent No.1 in appeals before the departmental authority and thereafter before the learned Service Tribunal. The Tribunal held in favour of the respondents on the ground that the amendment in the Rules had been applied retrospectively. More particularly, the private respondents in the present *lis* are all members of the

Customs & Excise Group from the 25<sup>th</sup> Common. They were promoted to BS-18 by FBR on regular basis vide notification dated 13.08.2003. Therefore, it is contented that the 1990 Rules which deal with probationers had ceased to apply to them. Consequently, the two seniority notifications referred to above had been wrongly framed. It may be pointed out that the promotion notification dated 13.08.2003 was based solely on the result of the first CSS exam notified by Federal Public Service Commission and made no reference to the results secured by the probationers in the subsequent examinations held during their probationary training to assess their merit and capability.

6. Before us, the only dispute is whether the amendment made on 28.04.2001 in the 1990 Rules ("**2001 amendment**") reproduced above applies to the present case or not? The respondent No.1, who has addressed the Court in-person, however, went further to claim that the 1990 Rules should not be applied to determine *inter se* seniority of the batch mates. Instead the result of the CSS examination should be treated as the basis of seniority of the probationers as already done by notification dated 13.08.2003 pursuant to which the batch as a whole was promoted to BS-18.

7. We have heard the learned counsel for the parties. Just to give an idea of the several anomalies that are apparent in the final seniority list dated 21.12.2012, a copy thereof is placed herein below:

S.NO	NAME	CSS	CTP	STP	FPOE'S Marks	TOTAL	FPOE's Attempt (s)
1	Muhammad Mohsin Rafiq	825	374.22	0	696	1895.22	1st Attempt
2	Irfan Javed	839	338.85	0	662	1839.85	1st Attempt
3	Syed Asad Raza Rizvi	848	355.64	0	617	1820.64	1st Attempt
4	Qurat-Ul-Ain Dogar	829	369.42	0	606	1804.42	1st Attempt
5	Rashid Hatib Khan	821	360.15	0	612	1802.15	1st Attempt
6	Sajjad Hyder Jhirjhin	857	321.92	0	621	1799.92	1st Attempt
7	Dr.Tahir Qureshi	786	347.3	0	652	1785.3	1st Attempt
8	Ashraf Ali	827	336.47	0	593	1756.47	1st Attempt
9	Muhammad Jamil Nasir	820	299.63	0	632	1751.63	1st Attempt
10	Shafiq Ahmad Lalki	828	330.12	0	582	1740.12	1st Attempt
11	Enger Riyaz Ahmed	776	312.43	0	651	1739.43	1st Attempt
12	Raza	778	325.95	0	628	1731.95	1st Attempt
13	Dr.Muhammad Nadeem Memon	785	318.45	0	627	1730.45	1st Attempt
14	Samiul Haq	793	313.02	0	604	1710.02	1st Attempt
15	Muhammad Saqif Saeed	822	270.2	0	597	1689.2	1st Attempt
16	Amjad-Ur-Rehman	821	275.34	0	591	1687.34	1st Attempt
17	Abu Nasr Shuja Akram	821	318	0	633	1772	2nd Attempt
18	Naureen Ahmad Tarar	854	299.35	0	595	1748.35	2nd Attempt
19	Faiz Ali	834	319.65	0	576	1729.65	2nd Attempt
20	Asif Abbas	821	315.35	0	587	1723.35	2nd Attempt
21	Imran Ahmad	824	306.45	0	587	1717.45	2nd Attempt
22	Khaleel Ibrahim Yousfani	768	300.1	0	561	1629.1	2nd Attempt
23	Ambreen Tarar	827	323.1	0	594	1744.1	3rd Attempt
24	Hasan Saqib Sheikh	825	327	0	523	1675	3rd Attempt

  
**Masood Ahmed**  
 Secretary (Mgt. Customs-II)  
 Federal Board of Revenue (Hq)

Perusal of the above list reveals that respondent No.1 is at Sr. No.18 thereof. She secured a total of 1748.35 marks in the (CSS, CTP, STP and FPOE) competitive examinations that were held. On the strength of her total marks she ought to be at Sr. No.10 of the list, next after Muhammad Jamil Nasir, who secured a total of 1751.63 marks. However, on account of the weightage attached to the number of examination attempts by the 2001 amendment, the respondent No.1 was relegated to Sr. No.18 because she passed her FPOE in the second attempt. Another respondent, Mrs.Ambreen Tarar, stands at Sr. No.23 of the list having secured a total of 1744.1 marks, but is placed below Mr. Khaleel Ibrahim Yousfani, who secured a total of 1629.1 marks. If the seniority

position was to be based purely on the number of total marks, then Mrs. Ambreen Tarar would have ranked at Sr. No.11 just below Mrs. Naureen Ahmad Tarar. However, she is at Sr. No.23 because she passed the FPOE in her 3<sup>rd</sup> attempt.

8. The learned Service Tribunal has also commented upon the disproportionate weightage given to the number of attempts resulting in a substantial change in the final seniority position of the probationers. However, we are of the considered view that the present matter may be decided on a fair basis solely by considering the legal aspects and implications of the probationary period of the private respondents that started on 11.07.1998 and concluded on 13.08.2003. The 2001 amendment whereby the number of attempts was made a criterion of seniority was promulgated on 28.04.2001 during the term of the probationary period of the private respondents. As a result of the 2001 amendment the seniority position of the private respondents is claimed to have been affected adversely. Seniority in service is a valuable right and the private respondents in the present *lis* had a legitimate expectancy that the probationary service law prevalent at the time when they entered their probation shall remain in force until their confirmation. The principle of legitimate expectancy aims at enforcing fairness and preventing arbitrariness. It was cogently articulated by the UK House of Lords in the case of **Council of Civil Service Unions and others vs. Minister for the Civil Service** [1984] 3 All ER 935 wherein it was held that:

"To qualify as a subject for judicial review the decision must have consequences which affect some person ... either (a) by altering rights or obligations of

that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been given an opportunity to comment or ... advancing reasons for contending that they should not be withdrawn."

9. This rule of fairness and non-arbitrariness is recognised in our jurisprudence to mean that an advantage or benefit derived from a competent legal dispensation, departmental practice or established procedure that has been extended to and enjoyed by a person may legitimately be expected to remain available unless notice or opportunity to defend or adjust his position is given to that person. Discussion on the subject is available in Regarding pensionary benefits of the Judges of Superior Courts (PLD 2013 SC 29 at p.1008) and Al-Jehad Trust vs. Federation of Pakistan (PLD 1996 SC 324). A useful discourse is also made in Union of India vs. Hindustan Development Corporation (AIR 1994 SC 988).

10. There is no doubt that the ranking of passing probationers on the basis of the number of their attempts made to clear the prescribed examinations imposes a penal liability through loss of seniority. The change in law by the 2001 amendment therefore causes adverse consequences for the probationers. These consequences infringe the legitimate expectancy of the serving probationers by altering the legal dispensation under which firstly, their service rights are determined for the future and secondly, for changing the rules under which private respondents commenced



their probationary training. Though procedural in content, the 2001 amendment affected a substantive right of the probationers, namely, their seniority in the batch and in this respect by altering an accrued status, the said amendment had retrospective effect. Resultantly it is burdensome to implement the 2001 amendment upon the probationers who had already entered their probationary period prior to the enforcement of the said amendment.

11. There is also the additional fact that one of the examinations envisaged in the 1990 Rules, namely, the STP, could not be held. This failure makes the categorization of the total result on the basis of number of examination attempts to be irrational and lopsided. The existing circumstances of incomplete examinations to test the probationers and the enforcement of the disputed 2001 amendment to an ongoing probationary course, have resulted in harsh and untenable consequences both in law and fact. This in itself provides justification to exclude the 2001 amendment from application in the present case. However, it cannot mean, as opined by the learned Tribunal, that the 1990 Rules should as a whole cease to apply to determine the *inter se* seniority of probationers on the eve of their confirmation. The 1990 Rules are specially framed to deal with service terms and conditions of probationers. Their application is necessary for determining the rights and ranking of probationers at the time of their confirmation. Therefore, these Rules being a special law cannot be excluded from operation. However, on the principle of legitimate expectation and for the fact of the failure by the administrative authorities to complete the examination process

envisaged in the 1990 Rules, it is harsh and unfair to implement amended Rule 6 of the 2001 amendment in its totality.

12. As a result, we hold that the 1990 Rules in their (unamended) form as at the commencement of the probationary period in July, 1998 shall remain applicable for reckoning the seniority of the private respondents on the completion of their probation in BS-17. The judgment of the learned Service Tribunal is accordingly modified to the foregoing extent. The observations made by the learned Service Tribunal about the workability of the 1990 Rules post the 2001 amendment are endorsed and for this purpose, the Federal Government needs to apply its mind to remove the salient anomalies highlighted by the learned Tribunal that exist in the application and implementation of the said rules. These appeals are partially allowed in above terms.

11. **CIVIL APPEALS NOs.248 OF 251 OF 2018.** Since distinct questions of law and facts, as compared to the one raised and decided herein above, are involved in these appeals, therefore, they are adjourned to be heard separately.

JUDGE

Islamabad,  
20.02.2019.  
Irshad Hussain/\*

JUDGE

**APPROVED FOR REPORTING.**