IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Aqeel Ahmed Abbasi

Civil Petition No.3871 of 2024
(On appeal against the order dated 27.06.2024 passed by the Single Bench of Islamabad High Court in WP. No. 2755/2023

And

Civil Petition No.79 of 2024
(On appeal from the Order dated 23.11.2023 passed by the Federal Service Tribunal, Islamabad in Appeal No.626 (R) CS/2023)

Shahid Hussain Mahessar ***... Petitioner***
(In both cases)

Versus

Federation of Pakistan through Office of the Prime Minister, Islamabad and others ***Respondents***
(In both cases)

For the Petitioner: Mr. Shahid Anwar Bajwa, ASC

For Respondent No. 1-3, 5: Ch. Aamir Rehman, Addl. AGP
Mr. Amjad Iqbal, Deputy Director, IB

For Respondent No. 4: Nemo.

Date of Hearing: 23.07.2025

Judgment

Muhammad Ali Mazhar, J:- The aforesaid Civil Petitions for leave to appeal are directed against the Order dated 27.06.2024 passed by the Single Bench of Islamabad High Court in Writ Petition

No.2755/2023 and Order dated 23.11.2023 passed by the Federal Service Tribunal, Islamabad in Appeal No.626 (R) CS/2023.

2. The compendiously and tersely enunciated facts necessary for disposal of these civil petitions are that the petitioner is an officer of BS-20, posted as Deputy Director General Intelligence Bureau. He is aggrieved by an order of de-novo inquiry. According to him, the issue triggered when as Deputy Director General Intelligence Bureau, he, with the approval of Joint Director General, Intelligence Bureau, Sindh submitted a source report on 22.07.2020 that security clearance on a foreign based company, M/s. Hadid International was necessary before the issuance of license to establish, operate and maintain Mehran Lounge at Terminal No. 1 at Jinnah International Airport, Karachi. On submission of this report, he was issued Charge Sheet and Statement of Allegations on September 30, 2020. After submission of reply, the Competent Authority decided to order inquiry. The inquiry was conducted and the report was submitted on 08.03. 2021. After affording an opportunity of personal hearing by the authorized officer i.e. Director General, Intelligence Bureau, the explanation was found satisfactory and the Inquiry was filed. Yet again, another Charge Sheet with Statement of Allegation was issued to the petitioner with the directions to attend de-novo inquiry. Meanwhile, a meeting of Central Selection Board (**CSB**) for promotion from BS 20 to BS-21 was convened from 01.08.2023 to 04.08.2023, wherein the case of petitioner was placed and after consideration, the CSB deferred the case in view of pendency of disciplinary action. The petitioner challenged the order of de-novo inquiry by dint of Writ Petition No. 2755 of 2023 in the Islamabad High Court (**IHC**) which was decided vide the impugned Order dated 24.06.2024, though the writ petition was allowed to the extent of deferment with certain directions but in respect of de-novo inquiry, no findings were rendered and finally it was held that the same issue is already pending in CPLA No.79 of 2024 against impugned judgment dated 23.11.2023, passed by Federal Service Tribunal (**FST**) with regard to the order of de-novo inquiry, therefore, the High Court did not decide the vires of de-novo inquiry order due to above reasons including two divergent

judgments of this Court of equal strength of benches on the one and the same issue.

3. The learned counsel for the petitioner, in the beginning, invited our attention to the ratio of both impugned orders. The learned High Court while setting aside the deferment of the petitioner, directed the CSB to consider the petitioner for promotion in the forthcoming meeting of CSB in accordance with law but no findings were rendered on the challenge to the order of de-novo inquiry due to conflicting judgments of this Court on the issue of challenging order of de-novo inquiry by the civil servant directly in the High Court despite bar of Article 212 contained in the Constitution of Islamic Republic of Pakistan 1973 (**Constitution**). So far as the impugned order of the learned FST is concerned, the service appeal was found misconceived and incompetent under Section 4 of the Service Tribunal Act, 1973 (**STA 1973**) on the notion that only original or appellate order can be challenged before FST. It was further observed that mere initiation of an inquiry against a civil servant on certain allegations cannot be interfered with unless an adverse order is passed and the appellate authority rejects or dismisses the appeal.

4. It was further contended that Article 212 of the Constitution germane to the exclusive jurisdiction of the Courts and Tribunals in respect of matters relating to the terms and conditions of service civil servants including disciplinary matters. Whereas under Section 4 (1) of STA 1973, any civil servant aggrieved by any order, whether original or appellate in respect of any of the terms and conditions of his service may prefer an appeal to the FST/Tribunal, sub-section 4 (2) STA 1973 puts in a nutshell that the appeal may be preferred in the case of a penalty of dismissal from service, removal from service, compulsory retirement or reduction to a lower post or time scale or to a lower stage in a time scale.

5. In the context of challenging de-novo inquiry before FST, the learned counsel cited the case of Yar Muhammad (1999 SCMR 819), wherein this Court held that the scope of the appeal under section 4 is confined against final order but in the case of Shafqat-

ur-Rehman Ranjha (2021 SCMR 153), this Court took the contradictory view. Whereas in the case of Fida Hussain (2023 SCMR 1109), de-novo inquiry was again challenged before the Peshawar High Court and writ petition was allowed by the Peshawar High Court and order was maintained by this Court. According to the learned counsel, the debatable point is which of the judgment on the issue is binding? In this semblance, the learned counsel also cited the case of Muhammad Rafiq Goreja's **(2006 SCMR 1317**), wherein this Court held that the decisions per incuriam do not constitute binding precedent. By the same token, the decisions “sub silentio” have no precedential value. The learned counsel also referred to “Salmond jurisprudence” which regimented that a court is not bound by its own previous decisions if conflict with one another.

6. While averring the factual backdrop, the learned counsel verbalized that the then Director General Intelligence Bureau disposed of the matter on 08.06.2022; despite that, the Prime Minister ordered de-novo inquiry on 13.6.2023; E&D Rules 2020 were promulgated on 11.12.2020 and disciplinary action was initiated on 29.8.2020. Towards the end, the learned counsel rested his case with the prayer that the order of de-novo inquiry be quashed; simultaneously, he sought a further declaration that in the case of de-novo inquiry, writ petition before the High Court is maintainable as no appeal could be preferred to the Service Tribunal against order of de-novo inquiry.

7. Ch. Aamir Rehman, learned Addl. AGP, argued that disciplinary proceedings under Government Servants (Efficiency and Discipline) Rules, 1973 (**E&D Rules 1973**) were initiated against the petitioner with the approval of the Prime Minister of Pakistan. The Director General Intelligence Bureau was appointed as 'Authorized Officer' who issued a Charge Sheet on allegations of misconduct and Joint Director General was appointed as Inquiry Officer, who conducted an inquiry into the charges of misconduct and submitted report on 08.03.2021 to the Authorized Officer. In the meanwhile, the petitioner proceeded on 115th National Management Course from 01.11.2021 to 04.03.2022 and the case was pended to avoid

interruption and distraction to the petitioner in the mandatory training course. On 16.05.2022, the Establishment Division asked for the update on the status of the disciplinary proceedings. Finally, on the advice of the Establishment Division, the matter was referred to the Ex-Director General/Authorized Officer vide letter dated 04.06.2022 for grant of personal hearing to the petitioner. The Authorized Officer, after hearing the petitioner, sent his recommendations of filing the inquiry. Thereafter, the matter was referred to the Prime Minister on 05.08.2022 for final orders with the proposal either to file the case as recommended by the Authorized officer or initiate de-novo proceedings as Authorized officer had given no reason for filing the inquiry despite charges having been proved. Finally, the Prime Minister directed to conduct de-novo inquiry.

8. It was further averred that according to the Rule 5 (1) (iv) of E&D Rules, 1973, 'Authorized Officer' was not empowered to file the inquiry as only the 'Authority' can initiate or file the disciplinary proceedings. He also cited the case of Shafqat-ur-Rehman Ranjha (supra) to insist that as per Rule 5 (iv) of E&D Rules, 1973, the Authorized Officer upon receipt of the report of the inquiry is required to determine whether the charge against the accused is proved and forward the case to the Authority to pass the final order.

9. According to learned Additional Attorney General, the order of de-novo inquiry is included in the terms and conditions of service of a civil servant and under Rule 6A of the E&D Rules, 1973 (since repealed) and Rule 11 & 16 of the Civil Servants (Efficiency and Discipline) Rules, 2020, both empower the competent authority to revise the findings of the authorized officer and direct fresh inquiry. It was further contended that only the orders which attained finality may be challenged in the FST. It was further averred that the order of de-novo inquiry was passed in exercise of revisional powers and after completion of the inquiry, the FST shall have exclusive jurisdiction to hear the appeal. Furthermore, he contended that the matter is once again before the FST in the service appeal filed by the petitioner against imposition of minor

penalty as a result of de-novo inquiry. Therefore, no purpose will be served if the matter is remanded to any Court/Tribunal at this stage. In support of contention, the learned AAG also cited dictums laid down by this Court in the case of Peer Muhammad versus Government of Baluchistan through Chief Secretary and others [**2007 SCMR 54**), Syed Arshad All and others versus Pakistan Telecommunication Company Ltd and others [**2008 SCMR 314**] and Khalid Mehmood Wattoo versus Government of Punjab and others Badshah Khattak versus Government of N-W.F.P and others [**2004 PLC (C.S) 1084**]

10. Heard the arguments. At the start, we would like to preview the literalness of Article 212 of the Constitution in the present backdrop, which accentuates that the legislature may by Act establish one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, "**including**" disciplinary matters. The sub-article (2) activates with non-obstant clause and creates a bar that no other court shall grant an injunction or make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends. While under sub-article (3), a provision of filing an appeal in this Court has been provided against a judgment, decree, order or sentence of an Administrative Court or Tribunal only if this Court satisfies that the case involves a substantial question of law of public importance, it may grant leave to appeal. The paramount aspiration of establishing Administrative Courts or Tribunals is to deal and decide the cases with exclusive jurisdiction in respect of matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, "including disciplinary matters". If we take on the general meaning of the expression "including", it interprets as "illustrative rather than exhaustive", but in legal terminology, it more often than not, suggests all-inclusive without describing widespread inventory of all thinkable remnants within a given taxonomy or delineation. To sidestep opaqueness, the word "including" in general is understood as without limitation.

11. In the case of Don Basco High School vs. Assistant Director, E.O.B.I **(PLD 1989 Supreme Court 128),** this Court held that doctrine of “ejusdem generis” will apply when (1) the statute contains an enumeration by specific words; (2) the members of the enumeration constitute a class; (3) the class is not exhausted by the enumeration; (4) a general term follows the enumeration; and (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires. [Ref: J.G. Sutherlandon, Statutes and Statutory Construction Edn., p. 400]. The Court further cited “Maxwell on the Interpretation of Statutes” 1st Edition, page 297, which explicated that "general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehend in the language of the Legislature; R. V. Cleworth (1864) 4 B. S.927, per Cockburn C.J. at 932. In other words, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expression unless there is something to show that a wider sense was intended. [Ref: R.v Edwardson (1859) 28 L.J.M.C. 213]. In accordance with Corpus Juris Secundum, Volume 82, page 658, the doctrine of 'ejusdem generis' applies where general words follow the enumeration of particular classes of persons or things. The general words, under the rule or maxim of construction known as 'ejusdem generis,' are to be construed as applicable only to persons or things of same general nature or class as those enumerated, unless intention to the contrary is clearly shown. This Court, while relying on and referring the aforesaid jurisprudence, held that the word 'include' is generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statutes.

12. Without a doubt, FST has been constituted under the provisions of STA 1973 to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants, and for the matters connected therewith or ancillary thereto. By means of an indispensable tentacle, a right of appeal has been conferred under Section (4) of STA 1973 to an aggrieved civil servant to assail any order, whether original or appellate,

made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him prefer an appeal to the Tribunal. This is provided the appeal is not against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher grad. However, sub-section (2) of Section 4 of the STA 1973 is quite significant which in fact explicates jurisdiction but also superintends and synchronizes its perimeter with the taxonomy that the aggrieved civil servant may file an appeal against an order or decision of a departmental authority imposing penalty of dismissal from service, removal from service, compulsory retirement or reduction to a lower post or time-scale or to a lower stage in a timescale, and in any other case, to a Tribunal. According to the added explanation, the “departmental authority” means any authority, other than a Tribunal, which is competent to make an order in respect of any of the terms and conditions of civil servants.

13. So for all intent purposes, though the expression “including disciplinary matters” is couched in Article 212 of the Constitution but without further ado, we are mindful and conscious that the exclusive jurisdiction of FST/Tribunal is coordinated and regulated by Section 4 of the STA 1973 to the extent of cause of actions accruing for filing appeal by an aggrieved civil servant with the caution that except specifically provided, no appeal beyond the ambit or sphere of influence of Section 4 is admissible or permissible. What is the bone of contention? Whether the order of de-novo inquiry is a final order, and thus, it could be challenged directly in the writ petition or the petitioner should have invoked the jurisdiction of FST; contrarily, another question which requires to be flicked through or gazed at is that the petitioner had already moved to the FST against the same order of conducting de-novo inquiry but he was nonsuited on the ground that the order of de-novo inquiry is not a final order hence FST declined to entertain the appeal.

14. Right away, the acid test in our sense of duty is to catch on and come to a right decision that whether there is any adequate and expeditious remedy available to an aggrieved person/civil servant if he wishes to challenge the order of de-novo inquiry on some inherent legal flaws/defects in the order of de-novo inquiry or any other substantial legitimate grounds? Or the other way round, should he wait and participate in the de-novo inquiry come what may and after passing final order against him in the de-novo proceedings, he may invoke the jurisdiction of FST from scratch for reparation and recompense ?

15. According to the factual matrix of the case of Muhammad Yar Buttar and 4 others vs Board of Governors, Overseas Pakistanis Foundation, Islamabad and another **(1999 SCMR 819)**, ***(First three members bench judgment of this Court*)** few employees of Overseas Pakistanis Foundation (O.P.F.) were issued show-cause notices and being aggrieved, they invoked the jurisdiction of the FST to assail the said show-cause notices with the prayer that the notices are illegal, arbitrary and issued without lawful authority. The FST held that the show-cause notice was not an order, therefore, the appeals were not maintainable. The appellants pleaded that by virtue of amendment on 10.06.1997 in the Service Tribunals Act, 1973, the word "final" had been omitted from section 4, therefore, after the amendment not only against the final order but against all orders appeals were maintainable. This Court held right of appeal is a statutory right and is conferred upon the person aggrieved and the statutes conferring such right also define its scope. The omission of the word "final" from section 4 of the Service Tribunals Act does not enlarge the scope of the appeal as envisaged by section 4 of the Act. The provision of section 4 lays down the conditions and circumstances in which an appeal is maintainable or not. To illustrate, under section 4(b) and (c), no appeal lies to a Tribunal against an order or decision of a Departmental Authority determining the fitness or otherwise of a person to be appointed or to hold a particular post or to be promoted to a higher post or grade. Under section 4 (a), an embargo has been placed by the legislature on filing an appeal to the effect that if an appeal, review or representation to a departmental authority is provided under the

Civil Servants Act or the Rules, against such orders, then no appeal is maintainable before the Tribunal unless the aggrieved person has preferred an appeal or application for review or representation to such departmental authority and a period of 90 days has elapsed from the date on which such appeal, application or representation was preferred. It was further held that the scope of the appeal under section 4 is confined only where a person has been dismissed or removed from service or has compulsorily retired or has been reduced to a lower post or time-scale or to a lower stage in a time-scale. Section 4 (2) (b) also envisages appeal to the Tribunal in respect of grievances not covered by section 4(a). Finally, this Court summed up that an appeal under section 4 of the Service Tribunals Act is maintainable only when the question relates to enforcement of terms and conditions of service of an employee as envisaged by the Service Tribunals Act and the omission of the word 'final' would not advance the case of the appellants. If in the light of the amendment in section 4 of the Service Tribunals Act, appeals were maintainable against all the above-noted orders, then it would be an endless inquiry and no inquiry can reach its logical conclusion and while interpreting a provision of statute or rules, such interpretation is not to be placed, which would render the object of the statute or rules as futile or which in other words would frustrate the very object of the statute or the rules.

16. Whereas in the case of Federation of Pakistan through Secretary Establishment Division, Islamabad vs Shafqat-ur-Rehman Ranjha and others **(2021 SCMR 153)**, **(*Second three members bench judgment of this Court*)**, according to the facts of the lis, the respondent was suspended and after an inquiry, the inquiry officer recommended that he be exonerated. The Authorized Officer accordingly exonerated the respondent and when the matter was forwarded to the office of the Prime Minister, he ordered a de-novo inquiry. The respondent challenged such action through a constitution petition before the High Court which was allowed to the extent that de-novo inquiry could not have been ordered by the Prime Minister as the petitioner had earlier been exonerated from the same charges. The main contention of learned Deputy Attorney General even in that case was that the matter covered under Article

212 of the Constitution, therefore, constitutional petition was not competent and the jurisdiction of the High Court was barred. This Court held that as per Rule 5 (iv) of the E&D Rules, the Authorized Officer upon receipt of the report of the inquiry Officer or Inquiry Committee is required to determine whether the charge against the accused is proved. Further Rule 6A of the E&D Rules gives the authority power of revision wherein the Authority may call for the record of any case pending before, or disposed of by the authorized officer and pass such order as it deems fit which clarifies that the Authority is fully empowered to examine the record and the Authority while ordering de novo enquiry recorded valid reasons for its action. At the same time, this Court further held that a perusal of Rule 2 (a) (iii) of the Civil Servants (Appeal) Rules, 1977 reflects that an order passed by the Prime Minister is appealable to the President but no such appeal was filed. Instead the respondent chose to file a Writ Petition before the High Court. Consequently, this Court in the aforesaid case, set aside the impugned judgments and dismissed the Writ Petition of civil servant.

17. While the case of Fida Hussain vs. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat and others **(2023 SCMR 1109)** ***(Third two members Bench judgment of this Court)***, a fact finding inquiry was conducted and as a result thereof, the Inquiry Officer found the appointment of respondent No. 07 illegal and recommended disciplinary action. The report was forwarded to the respondent No. 06 but, after due consideration, the respondent No.6 filed the Inquiry Report on the basis that the matter of inter-se seniority between the parties was pending adjudication before the learned Tribunal but the competent authority directed de novo inquiry. The respondent No. 07 challenged the order of de novo inquiry by means of Writ Petition in the Peshawar High Court which was allowed with the observation that direction of conducting de novo inquiry resulted in a miscarriage of justice. This Court held that though the competent authority was not bound to accept the recommendations of the Inquiry Officer; holding inquiry under Civil Servant Laws on the allegation of misconduct is a routine affair and a common phenomenon which is triggered after the issuance of a show cause notice and statement

of allegations, and when Inquiry Report is submitted to the competent authority, then it is their domain, with proper sense of duty, to impose the penalty keeping in mind the gravity of charges, if proved, during the inquiry; in case the competent authority decides to impose a penalty greater than that recommended by the Inquiry Officer, then obviously some reasons are to be assigned with proper application of mind, after providing a right of personal hearing to the accused and there must be some justification to order de-novo inquiry.

18. If we recapitulate the intricacies and finer points of jurisprudence evolved in the aforesaid edicts, it expounds that in the case of Muhammad Yar Buttar (supra), this Court unequivocally held omission of word **"final"** does not open the flood gate for filling all appeals even beyond the scope of Section 4 of STA 1973 but in the case of Federation of Pakistan through Secretary Establishment Division, Islamabad (supra), this Court without adverting or even considering the dictum laid down by the coordinate bench in the case of Muhammad Yar Buttar (supra), though found the writ jurisdiction barred by Article 212 of the Constitution but divergently held order of holding de-novo inquiry was appealable to the President which in our view cannot be treated a final order and in view of the dicta laid down in the case of Muhammad Yar Buttar (supra) it could not be challenged before the FST.

19. With all humility to our command, the rule relied upon in the case of Federation of Pakistan through Secretary Establishment Division, Islamabad (supra) (Second Bench Judgment) is not attracted whereby the Court held that right of appeal against de-novo inquiry is provided to the President. In fact in exercise of the powers conferred by Section 25 of the Civil Servants Act, 1973, the President was pleased to make the Civil Servants (Appeal) Rules, 1977 and under Rule 2 (a), "Appellate authority" has been defined and according to rule (iii) where the order is made by the Prime Minister, the President is the appellate authority while under clause (c) "penalty" means a penalty provided for in the E&D Rules, 1973. At the same time, Rule 4 (1) of the aforesaid rules is quite

significant which conspicuously lays down that a civil servant shall be entitled to appeal to the appellate authority from an order which alters to his disadvantage, his conditions of service, pay, allowances or pension; or interprets to his disadvantage the provisions of any rules whereby his conditions of service, pay, allowances or pension are regulated; or reduces or withholds the maximum pension, including an additional pension, admissible to him under the rules governing pensions; or terminates his employment or gives notice of such termination otherwise than on his reaching the age of superannuation, or in accordance with the provisions of the Civil Servants Act, 1973. In our view, the survey of aforesaid provisions incorporated under the rules are unambiguously manifesting for all intents and purposes that no right of appeal is virtually provided in the aforesaid rules against an order of de-novo inquiry.

20. In our Constitution, Article 10A envisages that for the determination of civil rights and obligations or in any criminal charge, every person is entitled to a fair trial and due process. Concomitantly, under Article 37 of the Constitution dedicated to “Promotion of social justice and eradication of social evils”, it is one of the responsibilities of the State to ensure inexpensive and expeditious justice. The learned AAG rigorously articulated that keeping in view the bar contained under Article 212 of the Constitution, only FST/Service Tribunals have jurisdiction, even if the order of departmental authority/competent authority is without jurisdiction or with mala fide or coram non judice as cited by case law on this point. But along the lines of our perusal and exploration, all such cited dictums rendered in the case of Khalid Mahmood Wattoo v. Government of Punjab **(1998 SCMR 2280)**; Peer Muhammad v. Government of Balochistan **(2007 SCMR 54)** and Arshad Ali v. Pakistan Telecommunications Co. Ltd. **(2008 SCMR 314)**, though this Court compositely held that the bar contained in Article 212 of the Constitution leaves no manner of doubt that even where the order is mala fide, the said bar is attracted. Even orders without jurisdiction and coram non judice can be challenged only before the Service Tribunal, and jurisdiction of Civil Court, including High Court is specifically ousted.

21. The survey of aforesaid cited judgments of this Court indisputably decrypted that all legal proceedings were initiated against the final orders in the High Courts and not against the interlocutory orders, therefore, the invocation of writ jurisdiction was found to be barred under the rigors and severities of Article 212 of the Constitution. In the present case, an inquiry was originally conducted but culminated without proposing or recommending any disciplinary action and directed to be “filed” but the competent authority instead of accepting recommendations, directed the de-novo inquiry which seriously perturbed the petitioner. Hence, he filed writ petition and simultaneously an appeal also before the FST but could not succeed. The High Court simply nonsuited him due to contradictory dictums of this Court, while FST dismissed the appeal because it was not preferred against any final order.

22. In view of the fact that no right of appeal or any expeditious or adequate remedy is available under the STA 1973 for challenging the order of de-novo inquiry which otherwise cannot be considered a final order to be assailed before the FST/Service Tribunal in view of the dictum laid down by this Court in the case of Muhammad Yar Buttar (supra), (First Judgment) therefore, in our well-thought-out point of view, the High Court under its Writ Jurisdiction can determine whether the order of de-novo inquiry is in accordance with the law and relevant rules or it is hit by law or abuse of process which means to exploit the legal process for an improper purpose incompatible with the lawful function or with an ulterior motive. Whereas coram non judice is a Latin word meant for "not before a judge," it is a legal term typically used to indicate a legal proceeding that is outside the presence of a judge or with improper venue or without jurisdiction. Seemingly, the Order of de-novo inquiry cannot be equated with the original order of inquiry which triggers and culminates to some logical outcome in which either the major or minor penalty is imposed on the delinquent or he is acquitted/discharged from the allegations of misconduct and inquiry is simply filed. As soon as the inquiry is completed in

accordance with the command and dictates of rules, the matter is over but here, de-novo inquiry was ordered and according to the petitioner it was without any rhyme or reason but it occurred in a haphazard, incongruous, or chaotic line of attack without any good reason or rationalization. To cope up with such set of circumstances, we have no hesitation in our mind to hold that the delinquent must have a right to challenge the order of de-novo inquiry if he feels and can prove without any elaborate inquiry that the action against him is nothing but an abuse of process, violation of law and relevant rules, mala fide, without jurisdiction or coram non judice or it is hit by some other substantial legal grounds, rather than forcing him to face up to de-novo inquiry. Nevertheless, whether it is lawful or unlawful and hang around till its final culmination with any result and if he is found aggrieved then he may embark upon the jurisdiction of FST/Service Tribunal. Obviously in the writ jurisdiction, the High Court cannot decide the factual or disputed question of facts but it may consider the available documents/record and in case of any violation of law, rules and regulation demonstrated, it can easily reach to the just conclusion whether the action challenged before it is in accordance with law or it is contrary to the provision of any law including the right to fair trial and due process embedded in the Constitution and may cure the defect and rescue the contestant from departmental illegalities of conducting de-novo inquiry in genuine and infallible cases and in such cases, the invocation and jurisdiction of High Court, cannot be treated “Shajra Mamnu" or Shajar-e-Mamnu” (Forbidden Fruit or Forbidden Tree) but to protect and advance the free flow of administration of justice, the High Court can intervene in the like cases where apparently, the statute does not provide any right to challenge the order of de-novo inquiry at interlocutory stage before any forum even if it is found illegal.

23. Last but not least, the most crucial point which directly goes to the root of the case is two contradictory judgments. It is clear beyond any doubt that the Yar Muhammad case was not considered in the case of Shafqat-ur-Rehman Ranjha which resulted an apparent contradiction in the ratio of both the

judgments. The doctrine of *"sub-silentio"* accentuates a legal principle where a judgment is rendered without specifically and precisely avowing or attending to the exact question of law raised for determination. In legal milieus, it points towards an incidence where the Court decides a *lis* without appreciating or deliberating the particular point of law raised before it, which disturbs the precedential value of the judgment. **Salmond on Jurisprudence**, (Eleventh Edition) by Glanville Williams (pages 205, 206 & 211-213), elucidates "A court is not bound by its own previous decisions that are in conflict with one another. This rule has been laid down in the Court of Appeal: Court of Criminal Appeal (a) and Divisional Court (b), and it obviously applies also to the House of Lords. There may at first sight seem to be a difficulty here: how can a situation of conflict occur, if the court is bound by its own decisions? At least two answers may be given. First, the conflicting decisions may come from a time before the binding force of precedent was recognized. Secondly, and more commonly, the conflict may have arisen through inadvertence, because the earlier case was not cited in the later. One may sometimes suspect that the "inadvertence" is intentional- a Nelsonian "blind eye". But usually there is no need to resort to this hypothesis: owing to the vast number of precedents, and the heterogeneous ways in which they are reported– or are not reported– it is only too easy for counsel to miss a relevant authority. Whenever a relevant prior decision is not cited before the court, or mentioned in the judgments, it must be assumed that the court acts in ignorance or forgetfulness of it. If the new decision is in conflict with the old, it is given *per incuriam* and is not binding on a later court. So far as the doctrine of sub-silentio judgments is concerned, it explains that "the previous exceptions to the binding force of precedent can all be summed up as cases where the authority of the precedent is either swept away by subsequent higher or equal authority or it undermined by inconsistency with previous higher or equal authority. We now come to the more subtle attack upon the authority of a precedent involved in saying that the decision was arrived at *sub silentio*. A decision passes *sub silentio*, in the technical sense that has come to be attached to that phrase, when

the particular point of law involved in the decision is not perceived by the court or present to its mind. The rule that a precedent *sub silentio* is not authoritative goes back at least to 1661, when counsel said "An hundred precedents *sub silentio* are not material and Twisden. J. agreed".

24. The doctrine of "coordinate bench" symbolizes two or more benches of judges within the same court. The dominant object is to strengthen the doctrine of precedent, which by and large commands that one coordinate bench must follow the decision of another coordinate bench and in case of any cause of disagreement for any reason to follow, the matter may be referred to a larger bench for final resolution and decision on the issue. The eminent rule is that a coordinate bench is bound by the judgment of another coordinate bench and should not close eyes to an earlier judgment by another coordinate bench. However, a coordinate bench may only disregard a previous judgment if there is a contradictory or diverging decision of the high court or the Supreme Court on the similar subject matter. Another rational at the bottom of this principle is not to circumvent the likelihood of interpretation which lacks consistency and not to do away with the principle of precedent, which warrants that similar cases must be treated alike consistently in order to maintain and boost up judicial discipline by precluding the coordinate benches from overruling or upsetting the judgments of coordinate benches without a valid reason- *"prior tempore potior iure/lex posterior"*. (Earlier in time, stronger in law). Besides, the doctrine of judicial discipline, the doctrine of stare decisis is equally important which accentuates that Courts should follow their own previous decisions to ensure consistency, predictability, and respect for judicial authority.

25. At this juncture, the doctrine of precedent is also not without its nuances and complexities. Thus, an earlier decision, even if considered incorrect by a later Bench, retains its binding effect on subsequent Benches of coordinate jurisdiction. This principle is rooted in tradition, certainty, and the integrity of precedent itself. When Courts deviate from established precedents without

due consideration, they risk undermining the credibility and legitimacy of the legal system. Therefore, the Bench suggested that it is imperative for Courts to uphold the sanctity of legal precedents and adhere to established principles of judicial discipline, even in the face of conflicting opinions or pressures to depart from precedent. Ref: https:www.scconline.com/blog/post/2024/05/22. (which judgment is binding when conflicting decisions coordinate benches). The function of the Courts includes the superintendence of judicial organization, interpretation of laws and render authoritative precedents, harmonizing decisions and unifying the distinct structure. If any past judgment is to be reconciled or to part with any legal flaw, ambiguity or inconsistency, the better course is to constitute a larger bench rather than upsetting the previous decision by a coordinate bench of the same Court.

26. The later judgment which passed without considering the earlier judgment on the same fore loses its efficacy of binding effect and it is called judgment *per incuriam* and in our view an uninfringeable choice is to apply the earliest view because the succeeding ones (second judgment) jumped down in the catalog of *per incuriam* either "through lack of care" or "through inadvertence." In legal phraseology, *per incuriam,* sign post a decision where the courts, on account of omission or failure to notice, disregarded and overshadowed any statutory provision, binding precedent and/ or a rule of law having statutory effect. The judgments rendered in ignorance of binding statutory provisions or precedents do not match or complement the rule of stare decisis. So for all intent and purposes, we are fortified by the dictum laid down by this Court in the first judgment of three members bench which is somewhat pragmatic and proximate with the life-force of STA 1973 wherein it was held that only the final order vis-à-vis the terms and conditions of service can be challenged in the FST/Service Tribunal and since the order of de-novo inquiry is not a final order, therefore it can be challenged in the High Court subject to the findings recorded in this judgment under paragraph No.22 of this judgment.

27. As a result of the above discussion, both the Civil Petitions are converted into Civil Appeals and disposed of with the following declarations:

I. To resolve a crucial question of law, we hold that the order of de-novo inquiry is not a final order thus cannot be challenged before the FST. Therefore, we declare that the writ petition is maintainable in terms of paragraph 22 of this judgment. As a consequence thereof, the impugned order with regard to the maintainability of writ petition against order of de-novo inquiry is set aside. The matter is remanded to the learned Islamabad High Court to examine the fate and legality of order passed by the competent authority for de-novo inquiry in accordance with law and decide the WP. No. 2755/2023 afresh, preferably within a period of three months from the date of receiving copy of this judgment after providing ample opportunity of hearing to the parties.

II. Till such time the aforesaid writ petition is decided by the High Court, the Service Appeal No. 32(K)CS/2025, preferred by the petitioner against the minor penalty of withholding of promotion as a result of de-novo inquiry, if not decided, shall remain pending. Albeit, we want to accentuate a renowned Latin maxim, "*sublato fundamento cadit opus*" which translates "when the foundation is removed, the structure falls". If post remand, the basic order of de-novo inquiry is found to be in violation of law and the rules by the learned High Court, the entire superstructure built upon will fall to the ground and the findings recorded by the High Court while setting aside the deferment shall be resurrected. Quite the reverse, if the legality of de-novo inquiry order is maintained by the High Court, the aforesaid appeal shall be decided by the FST on its own merits.

III. Listed applications are also disposed of accordingly.

Judge

Judge

Judge

Announced in open Court

On 03.10.2025 at Islamabad Judge

Khalid

Approved for reporting.