

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

F.A.O. No. 83/2015
Dr. Muhammad Ramzan
Versus
Federation of Pakistan and 3 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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10.09.2020	Hafiz Arfat Ahmad Chaudhry, learned ASC for appellant. Mian Shafaqat Jan, learned ASC and Barrister Shayan Qaiser Advocate for respondent No.2. Mr. Naeem Ashraf, Advocate for PTA Syed Imtiaz Naqvi, DD(HR), PTA.
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Through the instant appeal under Section 7 of the Pakistan Telecommunication (Re-organization) Act 1996 ("Act of 1996") as amended in 2006, appellant impugns order dated 01.09.2015, whereby the Authority/P.T.A declined his representation for promotion to the next higher rank i.e. Director General in pay Grade SEG-I.

Along with the appeal, an application for condonation of delay (C.M.A. No.02 of 2015) has also been filed on the ground that the F.A.O was filed within time on 15.09.2015 but the application has been filed under the instructions of the office.

2. Arguments on the point of limitation have been heard. There was a divergent stand qua the nature of the impugned order, being not an order of the Authority appealable in terms of Section 7 of the Act of 1996 and that the remedy to assail the same would be a petition in terms of Article 199 of the Constitution.

3. In order to resolve the controversy *ibid*, reliance is placed upon order of the Hon'ble Apex Court dated 04.01.2013 passed in C.P. No.1515 of 2012 titled ("Abdul Samad V. P.T.A") wherein it was graciously held that "*the Regulations made by the P.T.A are to determine the right of the petitioner in respect of his appeal for redressal of his grievance. Section 7(1) of the Act stipulates that any person aggrieved by any decision or order of the Authority on the ground that it is contrary to the provision of this Act, may within 30 days of the receipt of such decision or order, appeal to the High Court. It was graciously held that the Regulations which are subordinate to the statute cannot possibly override the statutory right of appeal vested in the petitioner.*"

4. The main heading of the instant appeal is "Appeal under Section-7 of the Pakistan Telecommunication (Re-organization) Act, 1996 as amended in 2006 against the order dated 1.9.2015 presented in the Hon. High Court Criminal Original No.251/2015 and attested copy received on 15.09.2015" which expressly shows that instant appeal has been filed by the present appellant under the said Act.

5. The order impugned begins with title "decision of the Authority" and it was concluded that the Authority could not find any cogent reason and justification to consider the appellant for promotion. Thus for all intents and purposes, the impugned order is the decision of the Authority against which the

statute provides remedy of appeal in terms of Section 7 *ibid*.

6. Adverting to the grounds, made basis to seek condonation of delay, depicted in C.M.A No.02/2015, it was asserted that the impugned order was communicated with delay on 15.09.2015 and as the limitation starts from the date of knowledge, appeal would be considered as within time. It was also asserted that the respondents deliberately withheld the impugned order to defeat the legitimate right of the appellant as for getting the same the latter had to file a contempt petition and then the same was filed in the said proceedings.

7. Impugned order is dated 01.09.2015 and record (*copy of official register of respondent authority*) reveals that the same was received by the appellant on 02.09.2015. This fact is also testified by the stance of the present appellant in this Court vide order dated 07.09.2015. This fact unambiguously guides to hold that on 02.09.2015, he was communicated the impugned order and was required to file appeal within thirty days thereof, while admittedly instant appeal has been filed on 10.10.2015 and mentioned in the C.M. that they got knowledge on 15.09.2015 is against the facts and record.

8. Suffice it to say, that mere assertions cannot be held sufficient to condone the delay where, as a matter of course, it is incumbent upon the person, sought condonation, to explain each and every day of delay with details and reasons. Nothing has been annexed

with the application in support of the above referred contention, therefore, there exists no justification to condone the delay in filing the instant appeal. C.M.A. No. 02 of 2015 (*application for condonation of delay*) is dismissed. As a corollary main appeal is also dismissed being time barred.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on 30.09.2020.

JUDGE