

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

JUDICIAL DEPARTMENT

F.A.O. No. 131 of 2016.

Flight Lieutenant Riffat Ullah Khan.

Versus

Federal Public Service Commission of Pakistan, etc.

Date of Hearing: 19.03.2018.

Appellant by: Mirza Waqas Qayyum, Advocate.

***Respondents by: Mr Israr ul Haq Malik, AAG.
Mr Haroon ur Rashid, A.D. FPSC.***

Athar Minallah, J: This appeal has been filed by Flight Lieutenant Riffat Ullah Khan son of Sifat Ullah Khan (hereinafter referred to as the "***Appellant***") under section 7(3)(d) of the Federal Public Service Commission Ordinance, 1977 (hereinafter referred to as the "***Ordinance of 1977***") challenging orders dated 06.10.2016, 13.10.2016 and 04.12.2016 passed by the Federal Public Service Commission (hereinafter referred to as the "***Commission***"). The Appellant had earlier filed a constitutional petition, WP No. 3506 of 2012, which was disposed of vide order dated 30.09.2016 by directing the Commission to decide the

pending representation. The representation was decided and duly communicated to the Appellant vide Memorandum dated 06.10.2016. The review petition was also dismissed and the decision was communicated vide Memorandum dated 04.11.2016.

2. The Appellant is a commissioned officer of the Pakistan Air Force. The controversy is in respect of the induction of officers belonging to the three armed forces i.e. Pakistan Air Force, Pakistan Army and Pakistan Navy in the Civil Service of Pakistan relating to the batch which had taken the Competitive Examination, 2015 (hereinafter referred to as "**CSS-2015**"). Every year a percentage of the vacant posts are allocated for the induction of officers belonging to the Armed Forces of Pakistan. The Federal Government each year determines the number of vacant seats in the distinct Occupational Groups, which are required to be filled by the Commission as mandated under the Ordinance of 1977. The expression 'Occupational Group or Service' is defined in clause (viii) of Rule 2 of the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990 as meaning any group or service, recruitment to which is made through the competitive examination conducted by the Commission from time to time against BPS 17 posts, inter alia, under the occupational group or service. The distinct Occupational Groups have been notified through respective office memorandums issued by the Establishment Division. While most of the posts are filled through selection made on the basis of the competitive examination held by the Commission, the officers of Armed Forces of Pakistan are selected and inducted in the Occupational Groups through a distinct and special procedure. It is noted that the officers of the Armed Forces are inducted in only three occupational groups i.e. the Pakistan Administrative Service,

which was earlier known as the District Management Group, the Police Service of Pakistan and the Foreign Service of Pakistan.

3. Three branches of the Armed Forces of Pakistan, namely the Pakistan Army, Pakistan Air Force and Pakistan Navy select their respective officers and thereafter forward the names to the Ministry of Defence. The latter sends a consolidated list to the Commission. The Commission determines the merit amongst the nominated officers and, based thereon and having regard to the prescribed criterion, allocate occupational groups to the successful nominees. The successful nominees then become part of the batch for the particular year which is identified with reference to the year when the competitive examination is conducted by the Commission. In the appeal in hand the induction was made in the batch known as CSS-2015 (hereinafter referred to as "**CSS 2015**"). For CSS 2015 nine seats in various occupational groups were earmarked, against which thirty five officers of the three branches of the Armed Forces of Pakistan were nominated by the Ministry of Defence. The Appellant, who belongs to the Province of Khyber Pakhtunkhawa, (hereinafter referred to as "**KPK**") was included amongst the nominated officers. The Commission, after assessing each nominated officer, determined the order of merit. The Appellant was placed seventh on over all merit while he had topped amongst the nominees who belonged to KPK.

4. It is relevant to note that before the recent judgment rendered by the august Supreme Court, which will be discussed later, the criteria followed by the Commission for the induction of officers of the Armed Forces of Pakistan was based on three factors. Firstly, merit,

secondly, provincial /regional quota and lastly, the formula which was referred to in the minutes of the meeting dated 10.09.1991. The formula contemplated in the minutes of the meeting, dated 10.09.1991, was to the effect that if there were six seats, then one each would be filled from amongst the officers of Pakistan Navy and Pakistan Air Force respectively while the remaining four by officers of Pakistan Army. This formula contemplated in the minutes of the meeting dated 10-09-1991 was subject to confirmation / approval of the Government of Pakistan through the Secretary Establishment and in consultation with the Ministry of Defence. The methodology of the induction of officers of the armed forces was otherwise prescribed in the Office Memorandum, dated 09.09.1991 published in the ESTA Code as SI No.244 and the relevant clauses thereof are as follows;-

(a) Officers of the armed forces, irrespective of their rank, will be eligible for induction in the civil to posts in pay scale 17 only provided-

(i) their overall service record in the armed forces is not below "High Average" and (ii) they are below 32 years of age.

(b) Induction will be allowed only in the following occupational groups:-

- (i) District Management Group
- (ii) Foreign Service of Pakistan
- (iii) Police Service of Pakistan

(c) Induction will be equal to 10% of annual vacancies in each of these 358 groups with a minimum of 2 vacancies in each group.

(d) Induction/allocation to various Occupational Groups* will be through FPSC instead of Defence Services Officers Selection Board (DSOSB).

(e) Each Service Headquarter shall have a Board which will examine the cases of officers willing to be considered for induction in civil and who fulfill the conditions indicated above.

(f) Each Board shall recommend to the Ministry of Defence names equal to double the number of available vacancies.

(g) The FPSC will select officers and allocate them to occupational groups on the basis of psychological test, viva voce and regional/provincial quota.

(h) [Re-employment of the retired officers of the armed forces in civil besides Office Management Group, Secretariat Group, Foreign Service of Pakistan and Information Group has also be extended upto 10% of the annual vacancies in Ministries of Health, Education, Communications and Intelligence Bureau. There will be no reemployment in ***Accounts Group in future].

5. It is noted that the formula contemplated in the minutes of the meeting, dated 10.09.1991, was never incorporated in the Office Memorandum, dated 09.09.1991, nor was the approval of the Government of Pakistan notified through a separate memorandum.

6. Based on the above three factors, particularly the formula inter se the three services contemplated in paragraph 10 of the minutes of the meeting dated 10-09-1991, the Commission allocated the

occupational groups amongst the nominees from the Armed Forces of Pakistan for the batch CSS 2015 as follows;-

Original Allocation made by FPSC.				
Merit No.	Name	Department /Services	Domicile/Quota	Allocated Group/Service
1.	Flt. Lt. Fahad Mahmood	Air Force	Merit	PAS
3.	Capt. Tayyab Sami Khan	Army	Punjab	PAS
4.	Capt. Ali Raza	Army	Punjab	PSP
5.	Capt. Usama Majeed Cheema	Army	Punjab	PAS
6.	Capt. Shehryar Sherazi	Army	Punjab	PAS
8.	Lt.Tariq Masroof (PN)	Navy	KPK	FSP
9.	Capt. Muhammad Saad Ahmed	Army	Punjab	FSP
11.	Capt. Sadam Hussain	Army	Sindh(R)	PSP
27.	Capt.Syed Aqeel Hussain	Army	Sindh(U)	PSP

7. The Appellant who was overall 7th on the merit list and had topped the candidates from KPK was not allocated one of the nine seats. Even if the formula had been correctly applied the Appellant would have qualified since seven candidates from Pakistan Army could not have been accommodated on the basis of the said formula. He had filed a constitutional petition but the same was dismissed on the ground that alternate remedies were available under the Ordinance of 1977. The Appellant, after exhausting all the available remedies, ultimately filed the instant appeal. In the meanwhile, another nominee of the Ministry of Defence, namely Lt. Azhar Javed belonging to Pakistan Navy and having domicile of Urban Sindh, invoked the constitutional jurisdiction of the Sindh High Court through C.P. No. D-5048 of 2016, which was dismissed vide judgment dated 13.01.2017. He filed a Civil Appeal No.6-K of 2017 and the august Supreme Court, through a short order, dated 04.07.2017, allowed the appeal and set aside the judgment, dated 13.01.2017, passed by the Sindh High Court. The Commission, without waiting for the detailed reasoning of the august Supreme Court, allocated the occupational group of Police Service of Pakistan by replacing Capt. Syed Aqeel Hussain who was earlier selected. A certified copy of the detailed reasoning rendered by the august Supreme Court was placed before this Court on 19.03.2018. The august Supreme Court, after examining the Office Memorandum dated 09.09.1991 and the minutes of meeting, dated 10.09.1991, has observed and held as follows:-

"It is true that Sl.No.244, as reproduced above, does not provide for sub-allocation of vacancies among the three services of Armed Forces i.e. Pakistan Army, Pakistan Navy and Pakistan Air Force and the only quota

that has been provided in Sl.No.244 is regional/provincial quota. Under Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973, it is an inalienable the right of every citizen to be treated and dealt with in accordance with law. Keeping such provision of the Constitution in view, we note that in the very Sl.No.244 which is an Office Memorandum issued by the Establishment Division dated 09.09.1991 the methodology of induction of officers of Armed Forces in Civil Service remained under active consideration of the Establishment Division. The issue was also examined thoroughly by the Recruitment Policy Committee and on the recommendation of the Recruitment Policy Committee, the Prime Minister has given his approval. The minutes of Meeting dated 10.09.1991 as appearing in sub-para (4) of para 10 shows that the participants of the meeting were fully cognizant of this state of affair more particularly the legal position, therefore, while making sub-allocation among the three services of Armed Forces have sought confirmation / approval of the Establishment Secretary in consultation with the Ministry of Defence. We were not shown any confirmation/approval of the Establishment Secretary in this regard. The obvious meaning of which is that the very O.M. dated 09.09.1991 never came to be amended. The result of which would be that Armed Forces Officers who are willing to join civil service were required to be considered on the basis of Sl.No.244 which does not provide any specific quota for any of the three services of Armed Forces i.e. Pakistan Army, Pakistan Navy and Pakistan Air Force rather it took into consideration the Armed Forces as one institution and whoever qualifies the conditions of Sl.No.244 on merits qualifies to be inducted in the civil service. No interpretation other than what we have discussed above could be made of Sl.No.244 read with minutes of Meeting dated 10.09.1991. The learned D.A.G has referred to

Sl.No.231 which is Establishment Division O.M. dated 10.02.1980. This Sl.No.231 also does not provide sub-allocation of quota among Armed Forces Officers for induction in civil posts on the basis of three services of Armed Forces."

8. It is obvious from the above enunciation of law rendered by the august Supreme Court that the formula which was contemplated in the light of sub-paragraph 4 of paragraph 10 of the minutes of meeting, dated 10.09.1991, has been declared as illegal. Consequently, the remaining two factors i.e. merit and regional/provincial quota were required to have been applied for determining the allocation of occupational groups amongst the officers who were nominated by the Ministry of Defence for induction against the reserved quota of nine seats in the batch of CSS 2015.

9. Mr Haroon ur Rashid, Assistant Director of the Commission, had appeared on 09.03.2018. The Commission was directed to submit in writing the status of the induction of officers of the Armed Forces of Pakistan in the batch CSS 2015 on the basis the judgment rendered by the august Supreme Court, dated 04.07.2017. Pursuant to the said direction, the Commission submitted the allocation of officers of the Armed Forces against the nine seats in the batch of CSS 2015 which is as follows;

Revised Allocation in view of judgment of Supreme Court of Pakistan, dated 04.07.2017 in C.A. No.6-K/2017.				
Merit	Name	Department	Domicile/Quota	Allocated
No.		/Services		Group/Service

1.	Flt. Lt. Fahad Mahmood	Air Force	Merit	PAS
3.	Capt. Tayyab Sami Khan	Army	Punjab	PAS
4.	Capt. Ali Raza	Army	Punjab	PSP
5.	Capt. Usama Majeed Cheema	Army	Punjab	PAS
6.	Capt. Shehryar Sherazi	Army	Punjab	PAS
7.	Flt. Lt. Riffat Ullah Khan.	Air Force	KPK	PSP
9.	Capt. Muhammad Saad Ahmed	Army	Punjab	FSP
11.	Capt. Sadam Hussain	Army	Sindh(R)	PSP
26.	Lt. Azhar Javed	Navy	Sindh(U)	FSP

10. In the light of the judgment of the august Supreme Court, dated 04-07-2017, the Appellant who had topped the candidates from KPK and had over all secured 7th position qualifies to be inducted in the Police Service of Pakistan. The only officer who would be affected is respondent no. 5, namely Lt. Tariq Masroof, who was lower on the merit list than the Appellant.

11. For what has been discussed above, this appeal is allowed. It is declared that the Appellant stands inducted in the Police Service of Pakistan in CSS 2015 against one of the nine vacancies allocated for the induction of officers of the Armed Forces of Pakistan. The Commission is forthwith directed to issue fresh notifications, strictly in accordance with the enunciation of law by the august Supreme Court and the status of the nominees highlighted above. The Appellant shall join the Common Training Programme being conducted for the batch of CSS 2015 at the Civil Service Academy.

(ATHAR MINALLAH)
JUDGE

Approved for reporting.

*Asad K/**

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