

Form No: HCJD/C-121.

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

ICA No. 859 of 2013

Federation of Pakistan through Secretary, Establishment Div.

**Vs**

Khushdil Khan Malik

DATE OF HEARING: 07-12-2017.

APPELLANT BY: Raja Khalid Mahmood Khan,  
Deputy Attorney General.

RESPONDENT BY: Ch. Muhammad Junaid Akhtar  
Advocate, for the respondent No. 1.

**ATHAR MINALLAH, J.-** Through this consolidated judgment we shall decide the instant Intra Court Appeal along with ICA No. 117/2017, titled "Federation of Pakistan through Secretary, Ministry of Defence, Secretariat No. 2, Rawalpindi and another v. Khushdil Khan Malik, etc." and ICA No. 123/2017, titled "The Secretary Establishment Division, Islamabad v. Khushdil Khan Malik, etc.".

2. The facts, in brief, are that Mr Khushdil Khan Malik (hereinafter referred to as the "**respondent**") was appointed against the post of Headmaster (BPS-18) on 24-12-1996 in the Federal

Government Educational Institutions (Cantts/Garrison) [hereinafter referred to as the "**parent Department**"]. The latter falls under the administrative control of the Ministry of Defence. The respondent was posted as Deputy Secretary in the Federal Government on deputation basis with effect from 13-09-2004. The period of deputation was extended from time to time under section 10 of the Civil Servants Act 1973 (hereinafter referred to as the "**Act of 1973**"). It appears, from the record, that, due to alleged complaints relating to misconduct, the respondent was repatriated to the parent Department on 03-02-2010 vide office Memorandum, dated 20-01-2010. The respondent was granted financial benefits of BPS-20 with effect from 25-10-2004 under the Four Tier Structure Formula. The respondent was again transferred to the Federal Government under section 10 of the Act of 1973 vide Notification, dated 01-11-2011. The respondent filed a representation for his induction/absorption in the 'Secretariat Group'. However, his request was regretted by the Establishment Division on the ground that he was not eligible. The parent Department forwarded a summary to the Ministry of Defence for granting promotion to the respondent on the basis of meritorious service. The Ministry of Defence, vide office Memorandum dated 24-06-2015, sought the advice of the Establishment Division. The latter had observed in the said memorandum that the respondent was transferred vide Notificationn dated 29-07-2013 without seeking its concurrence or that of the parent Department. Moreover, it was also observed that the respondent had barely served in BPS-19 and 20 in his parent Department. In response the Establishment Division, vide office Memorandum dated 17-12-2015, informed that since the respondent had not rendered meritorious service in his parent cadre, therefore, he was not eligible for being

promoted on meritorious basis. The respondent filed W.P. No. 828/2011 seeking a writ regarding his induction/absorption in the Secretariat Group besides challenging Notification dated 03-02-2010 whereby he was repatriated to his parent Department. While the constitutional petition was pending the respondent was transferred under section 10 of the Act of 1973 and, therefore, an amended petition was filed and the same was allowed by the learned Single Judge in Chambers vide judgment dated 13-05-2013. The operative part of the judgment is as follows:

*"In this view of the matter, instant petition is allowed and the respondents are directed to process his case for induction in the Federal Government (Secretariat Group) as per rules and regulations, applicable."*

The said judgment has been assailed by the Federal Government through ICA No. 859/2013. The Prime Minister of Pakistan issued a directive whereby the financial benefits under the 'Time Scale Formula' were granted to the Teaching Staff of the Federal Directorate of Education, Islamabad and, pursuant thereto, the Capital Administration and Development Division issued the Office Memorandum dated 15-09-2011. The Ministry of Defence forwarded a summary to the competent authority for extending the 'Time Scale Formula' to the Teaching Staff in BPS-16 and above employed and working in the parent Department. The said summary was endorsed by the Secretary Finance vide note dated 14-02-2014 and the approval, accorded by the Prime Minister, was duly communicated to the Defence Secretary on 16-10-2015. It appears from the record that the respondent's repatriation orders to his parent Department were issued through

Notifications dated 18-10-2012 and 05-05-2016 but there is nothing on record to show as to why they were not implemented. Nonetheless, the respondent continued to serve outside his parent Department. The respondent filed W.P. No. 4118/2016, praying that an appropriate writ be issued for the grant of 'Time Scale Promotion in BPS-21 with effect from 01-01-2011 and thereafter forwarding his case for the grant of BPS-22 on the basis of meritorious service. The said constitutional petition was allowed by the learned Single Judge in Chambers vide the impugned judgment, dated 10-03-2017. The respondents in the said petition were directed to issue a notification in favor of the petitioner for the grant of Time Scale Promotion in BPS-21 with effect from 01-01-2011 and then to forward his case for promotion to BPS-22 on the basis of meritorious service. The Secretary Establishment Division has challenged the judgment, dated 10-03-2017, through ICA No. 123/2017, while the same has also been assailed by the parent Department through the Ministry of Defence by filing ICA No. 117/2017. The respondent was transferred vide Notification, dated 12-01-2017, to the National Security Division and later directed to report to the Establishment Division. The said transfer was challenged by the respondent by filing Crl. OP No. 11/2017 in CP No. 23/2012 and the same was dismissed by the august Supreme Court vide order dated 30-01-2017. The respondent filed W.P. No. 427/2017 before this Court, which was disposed of vide order dated 06-02-2017. Another constitutional petition i.e. W.P. No. 1230/2017, filed by the respondent, was also disposed of by this Court vide order dated 10-04-2017. Pursuant to the aforesaid orders, dated 06-02-2017 and 10-04-2017, the Secretary Establishment Division passed order, dated 26-04-2017,

and the relevant portion thereof is as follows:

*“NOW, THEREFORE, the undersigned, in compliance with the orders of the honourable Islamabad High Court, has heard the petitioner and is of the view that an appropriate placement, that too in consultation with his parent department or repatriation of the officer to is parent department, would be decided in pursuance to any final order of the honourable Islamabad High Court (ICA No. 859/2013) for which an application for early hearing has already been filed. A seat of OSD for the officer will be created in the Establishment Division meanwhile, for pay purposes.”*

3. The learned Deputy Attorney General has contended that; neither can the grant of benefits under the time scale formula nor on the basis of meritorious services be claimed as a matter of right by a civil servant; the absorption/induction in the Secretariat Group is confined to officers who belong to one of the Occupational Groups/Services; the respondent does not belong to any Occupational Group/Service and, therefore, he is not eligible to be considered for absorption/induction; the time scale formula is restricted to those who are working as Teaching Staff in the parent Department; the respondent has remained posted outside the parent Department since 2011; in order to claim the benefits under the Time Scale Formula the respondent is required to resume his duties in the parent Department; the grant of the higher pay scale BPS-22 exclusively vests in the Federal Government; the respondent is not eligible to be considered

for the grant of the higher pay scale on the basis of meritorious services since he does not fulfill the conditions prescribed in the Office Memorandum, dated 07-04-1987.

4. The learned counsel who has appeared on behalf of the respondent has argued that; other similarly placed officers have been inducted/absorbed in the Secretariat Group despite the fact that they were not members of any Occupational Group/Service; promotion on the basis of Time Scale Formula is a right vested in the respondent and the same cannot be denied to the respondent; the learned Single Judge in Chambers, vide judgment dated 13-05-2013, has correctly appreciated the achievements of the respondent; the grant of the higher pay scale on a meritorious basis was recommended by the parent Department and the same was arbitrarily regretted by the Establishment Division; both the impugned judgments do not suffer from any legal infirmity.

5. The learned Deputy Attorney General and the learned counsel for the respondent have been heard and the record perused with their able assistance.

6. The respondent was appointed against the post of Headmaster (BPS-18) in the parent Department. He was transferred to the Federal Government on deputation basis in the year 2004. It is obvious from the record that, vide Office memorandum dated 20-10-2010, the Ministry of Defence had requested repatriation of the respondent and the latter served in his parent Department for a while, but in 2011 he was again transferred under section 10 of the Act of

1973 and posted in the Federal Secretariat. Since the year 2011 the respondent has barely served in his parent Department as member of the Teaching Staff. He invoked the jurisdiction of this Court under Article 199 of the Constitution, seeking direction for his absorption/induction in the 'Secretariat Group, benefits of BPS-21 under the Time Scale Formula and, thereafter, his further promotion to BPS-22 under the policy relating to the grant of the higher pay scale on a meritorious basis. The constitutional petitions were allowed through the impugned judgments. It is the case of the Federation as well as the parent Department that the respondent is not eligible or otherwise entitled to be considered for absorption/induction in the 'Secretariat Group', nor for the grant of a higher pay scale on the ground of meritorious service. Regarding the grant of benefits under the Time Scale Formula, it is an admitted position that it is given under a policy which is exclusively for the members of the Teaching Staff of the parent Department and can only be claimed after resuming duties. In order to answer the questions regarding the eligibility of the respondent to be considered for absorption/induction in the Secretariat Group and the grant of the higher pay scale on the basis of Time Scale Formula or meritorious services it would be relevant to examine the respective policies and conditions prescribed in this regard.

**ABSORPTION/INDUCTION IN THE SECRETARIAT GROUP.**

7. The All Pakistan Service includes distinct Occupational Groups/Services. 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 and the same is reproduced as follows:

**“(viii) “Occupational Group or Service” means 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 under the Federal Government or any occupational group or service transfer to which is made from the Armed Forces by induction and includes the following:-**

- a. Accounts Group
- b. Commerce and Trade Group
- c. Customs and Excise Group
- d. District Management Group
- e. Foreign Service of Pakistan
- f. Income Tax Group
- g. Information Group
- h. Military Lands and Cantonment Group
- i. Office Management Group
- j. Police Service of Pakistan
- k. Postal Group
- l. Railways (Commercial & Transportation) Group and
- m. any other service or group which may be notified by the Government as such.”

It is noted that the Accounts Group, Foreign Affairs, Police Group and District Management Group were renamed as Pakistan Audit and Accounts Service, Foreign Service of Pakistan, Police Service of Pakistan and Pakistan Administrative Service respectively. In continuation of the Office Memorandum, dated 27-01-1975, the "Secretariat Group" was constituted as another Occupational Group vide Establishment Division's Office Memorandum, dated 12-04-1976. The framework of the rules, conditions and procedure for selection of officers in the case of each Occupational Group/Service have been separately described under the relevant Office Memorandums. The "Secretariat Group" has been placed under the administrative control



of the Establishment Division and it is governed under the rules and procedure described in the Office Memorandum, dated 12-04-1976. Clauses 3, 4, 5 and 6 prescribe the conditions, procedure and different modes for appointment or induction in the Secretariat Group. The respondent was not promoted to BPS 20 on a regular basis under the Civil Servants (Appointments, Promotion and Transfer) Rules, 1973 (hereinafter referred to as the "**APT Rules**"). Nonetheless, the conditions and procedure for induction/absorption against the designated positions in the Secretariat Group are described in clauses 3 to 7 of the Memorandum dated 12-12-1996. For the adjudication of the instant petition the relevant clauses are as follows:

3. Deputy Secretary.— Appointment to the post of Deputy Secretary will be made in accordance with the following methods:-

- i. By promotion of Grade 18 officers of the Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.
- ii. By horizontal movement from other Occupational Groups of Grade 19 Officers who have been recommended by the Ministries/Divisions/Departments or Provincial Governments and have been found fit by the Central Selection Board.
- iii. By direct appointment on the recommendations of Federal Public Service Commission of persons possessing such qualifications and experience etc., as may be prescribed.

4. Joint Secretary.— Appointment to the post of Joint Secretary will be made as under:-

- i. By promotion of officers in the Grade of Deputy Secretary on the recommendations of the Central Selection Board.
- ii. By horizontal movement of such Grade 20 Officers of the various occupational groups as are recommended by the Ministries/

Divisions, Departments, Provincial Governments etc. and are found fit by the Central Selection Board.

- iii. By direct appointment on the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc. as may be prescribed.

The appointments against the posts of Deputy Secretary or Joint Secretary, as the case may be, can be made in three distinct modes. It can be through the promotion of grade 18 officers of the Office Management Group and the Secretariat Group or by the horizontal movement of officers in BPS 18 from other Occupational Groups or by direct appointment i.e. on the recommendation of the Federal Public Service Commission (hereinafter referred to as the "**Commission**"). Moreover, in case of induction as Deputy Secretary or Joint Secretary through the mode of horizontal movement, it is mandatory for the officer to belong to one of the Occupational Groups/Services. Moreover, such an officer is required to be recommended by the concerned Ministry, Division, Department or Provincial Governments, as the case may be, and thereafter found fit by the Central Selection Board. These three conditions inevitably have to be met in order to be inducted in the "Secretariat Group" as Deputy Secretary or Joint Secretary.

8. In the instant case, the respondent is, admittedly, neither an officer belonging to one of the Occupational Groups/ Services nor has he been recommended by the controlling Ministry of the parent Department. We are afraid that his case is also not covered under the other modes prescribed for induction as an officer in the Secretariat Group. There is no force in the argument that as other ineligible

persons have been inducted, therefore, the same benefit may also be extended to the respondent. It is implicit in this argument that illegality may be allowed to be perpetuated. The respondent definitely does not meet the prescribed eligibility criteria and conditions for induction in the Secretariat Group. The learned Single Judge in Chambers was indeed not properly assisted nor was his attention drawn to the mandatory conditions which have been discussed above. The respondent is not eligible nor otherwise entitled for induction in the Secretariat Group. No right has accrued in his favor and, therefore, the constitutional petition which was decided vide the impugned judgment, dated 13-05-2013, was without merit.

**BENEFIT UNDER TIME SCALE FORMULA.**

9. The terms and conditions of service of a civil servant are governed and determined under the Act of 1973 read with the rules made thereunder which, inter-alia, include the APT Rules. The procedure and conditions relating to the promotion of a civil servant are prescribed under the APT Rules. Promotions are granted on a regular basis against a vacant post and in the manner prescribed under the APT Rules. The expression "Time Scale Promotion" is not defined in the Act of 1973 nor is it one of the terms and conditions there under. It does not amount to a regular promotion under the APT Rules. The 'Time Scale Formula' is not prescribed under the Act of 1973 nor the rules made thereunder. It is granted to specific categories of professions through policy approved by the competent authority and with the concurrence of the Finance Division. It is ordinarily aimed at giving financial benefits of higher pay scales to those cadres of civil

servants which do not offer an opportunity to be promoted to higher grades under the APT Rules on a regular basis e.g. the Teaching Staff. It is a financial incentive which is confined to a particular profession or class of civil servants. The Establishment Division, vide office Memorandum dated 19-09-2011, has expressly clarified that 'Time Scale Formula' is simply the grant of financial benefits of a higher pay scale without change in designation of the post and does not tantamount to upgradation of the said post nor requires amendment in the recruitment rules. A further clarification was issued by the Finance Division, vide letter dated 10-09-2013, affirming that even after the grant of higher time scale the incumbent continues to hold the same post without there being any change in its status. It is, therefore, obvious that extending the benefit of 'Time Scale Formula' does not amount to promotion under the APT Rules nor is the post upgraded. As an illustration, a Headmaster holding the post of BPS-19 would only be entitled to the benefits of the higher scale of BPS-20 while the status of the said post would remain unchanged. It is a financial facility or benefit which is person specific and does not entitle him or her to hold a post in the higher grade. This benefit or incentive is extended through a policy and it does not require primary or subordinate legislation. This benefit was initially granted to the Teaching Staff of the Federal Directorate of Education, Islamabad and later, at the request of the Ministry of Defence, it was extended to the Teaching Staff of the parent Department pursuant to approval given by the Prime Minister which was duly communicated on 16-10-2015.

10. The respondent admittedly belongs to the cadre of the Teaching Staff of the parent Department and his eligibility and

entitlement in respect of grant of benefits under the Time Scale Formula has not been denied. However, he would become entitled to be considered and his case will be processed once he joins his cadre of Teaching Staff in the parent Department. The respondent has remained posted outside his parent Department since 2011 and obviously he could not have been granted the benefit under the 'Time Scale Formula', particularly when he was also seeking his induction in the Secretariat Group. When the financial benefits under the 'Time Scale Formula' were extended to the Teaching Staff of the parent Department, at that time the respondent was not serving in his parent Department and, therefore, his case could not be processed. Moreover, the judgment of this Court, dated 13-05-2013, also appears to have created a clog in extending the benefit of higher time scale because the learned Single Judge in Chambers had directed the induction/absorption of the respondent in the 'Secretariat Group'. Nonetheless, the respondent shall be entitled to be considered for the benefits of the higher pay scale under the 'Time Scale Formula' after he is repatriated and rejoins his parent Department. This Court, therefore, expects that the competent authority shall consider and process the case of the respondent for the grant of the benefits under the 'Time Scale Formula' after his repatriation to the parent Department.

**PROMOTION ON THE BASIS OF MERITORIOUS SERVICES.**

11. The policy regarding grant of Basic Pay Scales 21 and 22 to Technical and Professional officers on meritorious basis was approved by the competent authority and it was accordingly notified vide paragraph 7(a)(c) of the Finance Division's Office Memorandum, dated

18-08-1983. Later a committee was constituted which recommended the criteria and modalities which, after approval, was notified vide Office Memorandum, dated 07-04-1987. The policy for the grant of BPS-21 and BPS-22 to Technical and Professional officers on the basis of meritorious services was revised and accordingly notified vide Office Memorandum, dated 25-11-2008. The revised prescribed criteria is as follows:

- a. Officers be considered for grant of BPS-21 and BPS-22 on the basis of meritorious service in order of seniority.
- b. P.E.Rs. should be quantified in present and previous scales as per existing promotion policy and assigned a weightage of 70%.
- c. Training from NIPA, Staff College and National Institutes of Management may be given 15% weightage. In case the training information/requirement is not relevant, overall professional competence be judged and notional marks be assigned on the basis of his previous record.
- d. Minimum of 3 years' active service in BPS-20 for BPS-21 and 5 years active service in BPS-20 and above including 3 years in BPS-21 for BPS-22 will be required excluding the period of long leave (4 months or more).
- e. The Special Selection Committee shall scrutinize significant contribution of the Technical and Professional Officers in their relevant fields of specialization, consulting Secretary concerned and Head of Offices/Organizations about the background, level of competence and general reputation and allocate marks out of 15 to the officers being considered for grant of BPS-21 and BPS-22 on the basis of meritorious services.
- f. Minimum threshold in this way shall be 75% marks.

12. The above criteria were further revised vide office Memorandum, dated 04-10-2012. The policy for the grant of BPS-21 and BPS-22 to Technical and Professional officers, on the basis of meritorious services, does not vest a right in a civil servant. The grant under the said policy, therefore, cannot be claimed as of right. The premise of this extraordinary benefit is 'meritorious services'. It is a reward for technical and professional officers who have distinguished themselves by outstanding achievements through rendering meritorious services. It is an acknowledgment for exceptional contributions of a technical or professional officer in his or her specialised field. We are afraid that a High Court, while exercising jurisdiction under Article 199, cannot assume the role of the Special Selection Committee so as to assess the contributions of an officer. The respondent has been serving outside the parent Department since a long time and, therefore, he has not held a technical or professional office in his parent Department. It was due to this sole reason that the Ministry of Defence had solicited clarification from the Establishment Division and the latter had regretted the recommendations made by the parent Department. It is settled law that a thing ought to be done in the manner prescribed under the law. Reliance in this regard is placed on the case '*Muhammad Anwar and others v. Mst. Ilyas Begum and others*' [PLD 2013 SC 255].

13. The policy relating to the grant of BPS-21 and BPS-22 to Technical and Professional Officers on the basis of meritorious services is an extra ordinary benefit and can only be extended in the prescribed manner which has been highlighted above. In the instant case, the parent Department had recommended the responded on its

own, which was in violation of the conditions and procedure, inter alia, prescribed in Office Memorandum, dated 25-11-2008.

14. For what has been discussed above, all the three appeals succeed and the impugned judgments, dated 13-05-2013, passed in W.P. No. 828/2011 and dated 10-03-2017, passed in W.P. No. 4118/2016, are consequently set aside. It will be open to the Federal Government to proceed with the placement of the respondent in the light of paragraph 8 of the order, dated 26-04-2017, passed by the Secretary, Establishment Division.

(MIANGUL HASSAN AURANGZEB) (ATHAR MINALLAH)  
JUDGE JUDGE

Announced, in open Court on 8<sup>th</sup> March, 2018.

JUDGE

JUDGE

Tanveer Ahmed.

*Approved for Reporting.*