

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. ICA 98 - 2010

Major (Rtd) Mohammad Farooq

Titled

Vs

Chairman NAB etc

(a) Judgment approved for reporting

☒ Yes / No

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

Yes ☒ No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).


Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

CASE NO.: INTRA COURT APPEAL NO.98 OF 2010

MAJOR (RTD.) MUHAMMAD FAROOQ

VERSUS

CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU AND 3 OTHERS.

DATE OF HEARING : **06.03.2012.**
APPELLANT BY : **Mr. Muhammad Bashir Khan,**
Advocate.
RESPONDENT BY : **Mr. Nadeem Hasan, Senior**
Prosecutor, NAB.
Zafar Minhas, Manager Legal
Pakistan Engineering Council
Mr. M. Imran Shaukat Accounts
Officer, AGPR.

NOOR-UL-HAQ N. QURESHI J.- The instant Intra Court

appeal, directed against order dated 30.06.2010 passed by learned Single Judge in Chamber, dismissed the writ petition filed by the appellant/ petitioner.

2. Brief facts as narrated in the appeal, appellant being aggrieved by the departmental decision found no alternative and efficacious remedy, filed writ petition No.192/2008, which was dismissed by learned Single Judge in Chamber vide order dated 30.6.2010.

3. Against decision of Islamabad High Court, civil petition No.1604 of 2009, was preferred to the Hon'ble Supreme Court of Pakistan, passed the order observing proviso 1 of Section 3 Sub-section 2 of Law Reforms Ordinance, 1972, remedy of Intra Court Appeal in the first instance has to be preferred. Therefore, such petition was not pressed with a view to file Intra Court appeal, however, Hon'ble

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Supreme Court observed in case of filing appeal, High Court may consider filing of petition while deciding question of delay.

4. On filing ICA, briefly stated the facts, whereby appellant joined Pak Army, wherefrom retired as Major in 1995, joined Pakistan Engineering Council, a statutory body under Pakistan Engineering Council Act, 1976 controlled by Government of Pakistan, as a regular employee as Deputy Registrar in Grade-19 having been selected in open merit.

5. The appellant performed duties upto his selection as Additional Director Grade-19 in National Accountability Bureau in open merit competition, therefore, he joined on the same day with effect from 29.5.2004, relieved from Pakistan Engineering Council without any break in service. P.E.C. issued a formal NOC for joining new assignment. Therefore, service being continued from one department to other department.

6. Since the terms and conditions of service of appellant governed by Section 28 of National Accountability Ordinance, 1999 and conditions of Service Rules, 2002 as per Section 28(d), the Civil Servant Act, 1973 do not apply to NAB employees.

7. The appellant was entitled to protection of previous pay and counting of service rendered by him in previous department, which on refusal by National Accountability Bureau, he preferred the writ petition. Failure to seek relief, he preferred the instant Intra Court Appeal.

8. Learned counsel for the appellant argued that terms of office and powers and duties of the Registrar and other officers and servants of the Council are protected by Section 25 of the Ordinance of Pakistan Engineering Council on its promulgation in the year 1976.



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Also, he referred Bye-laws of the Pakistan Engineering Council of 1976, which have been published in official Gazette dated 21.12.1976, as such, the learned Single Judge in Chamber has ignored such legal aspect. He drawn our attention towards decision of the Hon'ble Lahore High Court in case of "Ahmad Mumtaz Bajwa Vs. NAB etc.", whereby in view of section 28(d) of the NAB Ordinance, 1999 has been discussed and observed that Civil Servant Acts, 1973 shall not be applicable to the persons appointed in NAB according to the said provision. He also referred the comments submitted by respondents, wherein the office memorandum No.F.4(2)R-2/96, dated 12.8.2002 at Para-3, which has been further substituted by OM No.4(2)R-2/1996-235/2010, dated 08.6.2010, whereby benefit of protection of pay to the employees of Autonomous Bodies on their subsequent appointment in government service is safe guarded.

9. Such substitution has been concealed by the department while submitted their comments has not taken into consideration, hence, said office memorandum in view of scheme of law as referred above, the appellant is entitled of his pay protection and previous length of service to be counted by the NAB Authorities.

10. He while drawing attention to the prayer clause lastly drawn in Pakistan Engineering Council amounting to Rs.20,395/-, which is requested to be protected till date with all back benefits so also services rendered by him to be counted for the purpose of promotion and pension. In support of his arguments, he relied upon "**2000 PSC 50**" (**Nafees Ahmad Vs. Government of Pakistan and others**), deciding the question of pensionary benefits drawn and inference from Pensionary Rules for Drawing and Disbursing Officers Rules 9.6(v) Chap IX is binding upon the respondents. In the said case, protection of

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pay and counting of period of service within two government functionaries was considered, on failure to seek remedy from the Tribunal. Another case law referred reported in "**1998 SCMR 1442 (Majid Hussain Vs. Secretary, Finance Division, Ministry of Finance and 2 others)**", to enunciate the principle while considering the status of the employee as a Civil Servant, therefore, entitled to invoke F.R. 22(A)(i) for protection of salary, which he was drawing in his parent department. Again an issue decided respecting a civil servant on his joining of other department, in between two departments by considering the rules applied. The case law reported in "**2008 SCMR 14 (Syed Abdus Samad Pirzada Vs. Government of Punjab through Finance Department and another)**", which learned counsel for the appellant relied upon, wherein employee on leaving corporation, joined Education Department through Public Service Commission and through proper channel applied, thus was observed to be entitled to protection of his last pay from joining in Education Department. The crucialities discussed are change of service through applying proper channel. The authority referred in support of contention raised by learned counsel for the appellant is "**NLR 2011 Service 13 (Chairman CBR and others Vs. Nawab Khan)**", whereby Hon'ble Supreme Court while discussing the concerned civil servant relinquished his lien in autonomous body and no service break between his resignation,, which as a result of grant of relief by the Service Tribunal, assailing the same by the Department leave to appeal was declined.

11. Learned counsel for the respondent/NAB argued that all pay and allowances admissible to the appellant under the rules including gratuity, leave encashment, and GP Fund were already paid to him by Pakistan Engineering Counsel at the time of leaving service. As

such, he is not entitled for pay protection or even length of service mainly on following grounds:-

- (a) The appellant has already drawn his service emoluments from his earlier department i.e. Pakistan Engineering council.
- (b) As per own admission of the appellant that Civil Servants Act would not apply, therefore, he cannot be termed as civil servant, as such, cannot seek such relief under the relevant provision applied to the civil servant.
- (c) He has not applied through proper channel, such relief cannot be granted to him by the answering respondent/NAB.
- (d) He has not produced any such proof, which he is required to submit respecting previous service.
- (e) The department concerned i.e. previous department has to be a consented part for relief sought, failure therefore, such a relief cannot be accorded.

12. Learned counsel for the respondent while relying upon **"2011 PLC (CS) 1175 (Akbar Shah Vs. Securities and Exchange commission of Pakistan through Chairman)"**, emphasized that no such certificate has been produced by the appellant, therefore, he was not qualified for any relief claimed.

13. Learned counsel for the respondent also argued that Intra Court Appeal when in view of facts on record providing no any favourable relief, same cannot be maintained through ICA. In support of such view, he relied upon **"2004 MLD 1615 (Agha Abdur Rahman Khan and others Vs. Managing Director, Cholistan Development Authority, Bahawalpur)"** and **"2010 MLD 1550 (Muhammad Munir Abdullah Vs. T.M.A and another)"**.

14. We have heard the argued and gone through the record.

15. Carefully reading of the main contention respecting office memorandum dated 08.6.2010, whereby, earlier office memorandum of 2002 was substituted, which has been made basis for seeking relief through the instant appeal. The substituted memorandum is reproduced hereunder:-

"The benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in government service is not admissible as the employees of autonomous bodies are not civil servant within the meaning of Civil Servant Act, 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted Scheme of Basic Pay Scales in toto on their appointment in Government offices provided they have applied for the post through proper channel."

16. While referring such substitution, it is very important to note that there is a condition provided that benefit of pay protection will be admissible to the employees of such autonomous organizations, who have adopted Scheme of basic pay scales in toto on their appointment in government offices provided they have applied for the post through proper channel.

17. Leaving aside the crucially argued by learned counsel for the respondent/NAB, we are constrained to emphasize as to whether appellant applied through proper channel, which on preferring either the petition or document submitted in support thereof. No where such condition is seems to have been complied with by the appellant.

18. Another very important latter dated 31.6.2006 issued by the Finance Division, Regulations Wing through Section officer, communicated to Assistant Director NAB discusses, that since both the departments are autonomous bodies established through an Ordinance

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and the appellant has joined one autonomous body, having been relieved from other autonomous body, therefore, fixation of pay be decided in the light of their own policy and service rules.


19. Otherwise, there is no other ground available to the appellant even in view of his own assertion that Civil Servants Act does not apply, hence, the relevant law and rules are also not applicable to him, therefore, he cannot claim benefit whereof.

20. More to that when the appellant has not applied through proper channel the new posting, how he can get benefit of the office memorandum dated 08.6.,2010, which cannot be pressed in service in favour of those, who did not apply for the post through proper channel.

21. No any such policy or rules of any of the autonomous body either leaving or joining is discussed by the appellant through such scheme of law, he is entitled to seek relief, failure thereof totally disentitle the appellant from seeking such a relief.

22. In the light of above discussion, this Intra Court Appeal is devoid of any force, the impugned order dated 30.6.2009 passed by the learned Single Judge of this Court does not suffer from any illegality or infirmity, therefore, the instant ICA is dismissed and order passed by the learned Single Judge of this Court in Chamber, is upheld. Parties are left to bear their own costs.


(CHIEF JUSTICE)


(NOOR-UL-HAQ N. QURESHI)
JUDGE

*AR.ANSARI/

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APPROVED FOR REPORTING

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