

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.2205 OF 2014
Mazhar Amin
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2200 OF 2014
Muhammad Azam
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2201 OF 2014
Ghulam Dastagir
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2202 OF 2014
Muhammad Awaz
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2204 OF 2014
Muhammad Ashfaq Ajmal
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2206 OF 2014
Niaz Hussain Chandio
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2752 OF 2014
Kanwar Mohsin Ali Khan
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2497 OF 2014
Khalid Imran Khan
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2829 OF 2014
Noor Wali Khan
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.3987 OF 2014
Walayat Ali Khan Lashari
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.3988 OF 2014
Farrukh Hassan
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.4053 OF 2014
Syed Nudrat Sadiq Bukhari
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.3011 OF 2014
Ibad ur Rehman
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2750 OF 2014
Muzaffar Iqbal
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.3302 OF 2014
Syed Muhammad Muslim
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.748 OF 2015
Muhammad Amjad Aziz
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.1058 OF 2015
Abdul Karim Danver
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.4052 OF 2015
Mir Muhammad Shahwani
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.4056 OF 2015
Amanullah
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.1025 OF 2016
Habib Ullah
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.1026 OF 2016
Tariq Javed
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.1857 OF 2016
Sher Bahadur Khan
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.1929 OF 2016
Muhammad Akhtar
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2050 OF 2016

Abdul Ahad

Vs.

Federation of Pakistan etc.

CASE NO. : W.P. NO.2051 OF 2016

Muhammad Ahmed Nawaz

Vs.

Federation of Pakistan etc.

Petitioners by : Mr. Tahir M. Butt, Advocate & Mehr
Muhammad Shafique, Advocate

Respondents by : Mr. Shahid Anwar Bajwa, Advocate with Syed
Irfan Ali Shah, GM (Legal), Salman Zafar, SM
(Legal) & Raheel Zafar, Manager (Legal),
PTCL.

M/s Habib A. Bhatti & Mahmoor A. Chaudhry,
Advocates

Mr. Ali Nawaz Kharal, Advocate

Barrister M. Saad Buttar, Advocate

Mr. Khurram Ibrahim Baig, Advocate

Date of hearing: 29.09.2016

NOOR-UL-HAQ N. QURESHI J. As the above

titled writ petitions involve common questions of law and facts,
therefore, the same are being decided vide this consolidated
judgment.

2. In all these petitions, following common grounds have been
taken for consideration of this Court; -

- i) The petitioner may very kindly be directed to be
treated generally under the laws governing civil servants
serving in the Federal Government/respondent No.1
for regulating their terms and conditions of service in
terms of their rights, benefits and privileges etc.

concerning seniority, promotion, pay, pension and other fringe benefits etc.;

- ii) *The promotion of petitioner against the higher post of General Manager/Senior Business Manager/Senior Manager/Senior Manager (Finance) on own pay and scale may very kindly be directed to be treated as regular in view of the eligibility of the petitioner and his suitability having determined on the basis of his performance pertaining to a period of more than 06/04/05/03-years duly appreciated by the management of the respondent PTCL;*
- iii) *The promotion of the private respondents being junior incumbents in preference to the petitioner may very kindly be declared illegal and unlawful and the petitioner may very kindly be directed to be promoted in their place in accordance with his entitlement under the law;*
- iv) *The difference of the higher post of General Manager/Senior Business Manager/Senior Manager/Senior Manager (Finance) held by the petitioner for a period of more than 06-years may very kindly granted;*
- v) *The petitioner may very kindly be given the difference of salary on account of annual increase of salary announced by the Federal Government/respondent No.I for the civil servants from the year 2010 onwards;*
- vi) *The petitioner may very kindly be granted the amount of annual bonus as per his entitlement under the policy prevailing at the time of his transfer to the respondent PTCL;*
- vii) *The disciplinary proceedings initiated against the petitioner under the domestic regulation in contravention of the law applicable to them under Government Servant (E&D) rules, 1973 may very kindly be declared illegal, void ab-initio;*
- viii) *The performance of the petitioner assessed under the PMS introduced by the respondent PTCL as against the law applicable to him concerning writing of PERs/ACRs under ancillary instructions of the*

Federal Government may very kindly be declared illegal as without jurisdiction, void ab-initio;

- ix) All the orders of placing the petitioner on waiting and transferring him in violation of the statutory law governing the other civil servants duly intercepted by the Hon'ble Apex Court in case of Anita Turab (supra) may very kindly be declared as illegal and void ab-initio;*
- x) It is further prayed that during the pendency of the writ petition, the operation of impugned promotion notifications issued in the year 2010 & 2014 may very kindly be suspended and the respondent company may kindly be restrained from taking any further vindictive or coercive measures including stoppage of pay etc."*

3. The petitioners were appointed on different posts in pursuance of recommendations of Federal Public Service Commission in the erstwhile Telegraph & Telephone Department. They were further promoted to the higher posts and earned excellent report throughout. In the meanwhile, erstwhile Telegraph & Telephone Department was converted into Pakistan Telecommunication Corporation under the provisions of Pakistan Telecommunication Corporation Act, 1991. Resultantly, the petitioners along with other employees of the said Department were transferred to the Corporation on the same terms and conditions of their service. Later on, the Telecommunication Sector in Pakistan was restructured by the promulgation of Pakistan Telecommunication (Re-Organization) Act, 1996 and the respondent Company was created in pursuance thereof. The

transferred employees working in the Pakistan Telecommunication Corporation were further transferred to the newly created Company on the same terms and conditions of their previous status as employees in the service of Pakistan.

4. Learned counsel for the petitioners have contended that the terms and conditions specified in the Civil Servants Act, 1973 pertaining to the seniority, promotion, transfer, posting, retirement etc. and further prescribed under the rules together with ancillary instructions of the Federal Government are accordingly applicable to the present petitioners and other transferred employees before and after their transfer to the respondent PTCL in terms of judgments of the Hon'ble Apex Court in case 'Masood Ahmad Bhatti and Others Vs. Federation of Pakistan through Secretary, Ministry of Information & Technology and Telecommunication and Others (2012 SCMR 152) and unreported judgment passed in Faiz-ur-Rehman case (Civil Petition Nos.717 & 718/2013). It is contended that above judgments of Hon'ble Supreme Court of Pakistan are not being honoured by respondent PTCL right from the date of assumption of the management by the private investor M/s Etisalat, which resulted in several acts of omission and commission on the part of respondent Nos.1 & 2 adversely affecting the valuable rights of the 'transferred employees'

concerning their terms and conditions of service contrary to the Articles 189/190 of the Constitution of the Islamic Republic of Pakistan. Reliance has been placed upon PLD 2013 SC 195.

On the point of promotion, learned counsel for the petitioners have argued that the respondent PTCL is dealing with the petitioners and the other similarly placed 'transferred employees' in respect of their terms and conditions of services in accordance with the regulations and procedures devised by itself rather than regulating such affairs in accordance with the provisions of Civil Servants Act, 1973 and other laws applicable to the Federal Government employees, but in the matter of their promotions, policy of pick and choose is being adopted without following the criteria prescribed under the Civil Servants Act, 1973, Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, Civil Servants Seniority Rules, 1993, guideline for writing of Performance Evaluation Reports/ACRs and the promotion policy of the Federal Government etc. It is contended that according to the method of appointment, promotion and transfer prescribed under the rules, the incumbents in BPS-19 are eligible for promotion against the higher posts in BPS-20 in the prescribed manner with due regard to the seniority. The petitioners were eligible for promotion to the higher posts on the basis of the

prescribed criteria on the due turn of their seniority in terms of Section 9 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 and the Promotion Policy, 2007, but instead of granting them promotion on regular basis against the next higher post in the due course in accordance with their eligibility, the petitioners were given the charge of higher post on own pay and scale against clear vacancies available and in this way, they were deprived of their valuable rights of promotion and benefits attached there-with. On the other hand, the private respondents otherwise juniors to the petitioners in order of seniority according to merit assigned by FPSC and maintained under the relevant seniority lists have illegally and unlawfully been promoted to the posts carrying BPS-20 ignoring the petitioners, which are liable to be declared as such. Reliance is placed upon 2013 SCMR 642. It is settled law that where a junior incumbent is promoted in preference to a senior incumbent, such senior incumbent earns a right for promotion from the date when his junior was promoted. Resultantly, the respondent PTCL is obliged to pass the orders of the promotion of the petitioners to the higher post from the same date. Reliance is placed upon 2011 SCMR 389. It is also a settled law that where an incumbent otherwise eligible to be promoted against a substantively vacant higher post, is made to work against that post on temporary,

officiating or adhoc basis etc, such promotion would be deemed to be a regular promotion for all practical and legal intents and purposes. Reliance has been placed upon 1995 SCMR 18.

Learned counsel for the petitioners have further contended that the petitioners have a right of payment of pay of higher post. In this regard, decision reported 2006 PLC (CS) 1159 has been referred.

It is also contended that under section 17 and Section 2(1)(d) of the Civil Servants Act, 1973, the petitioners, along with other similarly placed employees, having retained their status as civil servants by operation of law were entitled to the pay and other emoluments declared by the prescribed authority i.e. respondent No.1. Likewise, they were also entitled for revision of rates of special pay, allowances and grant of adhoc allowance 2010 and medical allowance w.e.f. 01.07.2010, but the above benefits announced by Government of Pakistan were arbitrarily withheld by respondent No.2.

It is also argued that petitioners and other transferred employees are being subjected to disciplinary proceedings with malafide intentions to victimize them for claiming their benefits, which are liable to be declared as illegal, unlawful and without lawful authority.

It is next contended that petitioners and other transferred employees are entitled to be dealt with under the criteria prescribed for the civil servants serving in the Federal Government regarding evaluation of their performance through PERs/ACRs for determining the matters like promotion etc., but the respondent PTCL has proceeded to implement its own procedure through an integrated performance management system, which is alien to the applicable law.

5. On the other hand, learned counsel for respondent PTCL has raised preliminary objections with regard to maintainability of present writ petitions. He has argued that as there are non-statutory rules in the respondent Company therefore writ is not maintainable. It is argued that under section 36(2) of the Pakistan Telecommunication (Re-Organization) Act, 1996, the employer PTCL may alter terms and conditions of employment and such altered terms and conditions cannot be treated as statutory. The respondent PTCL being a company is not being controlled by the Federal Government therefore it is not a person within the contemplation of Article 199 of the Constitution of the Islamic Republic of Pakistan hence no writ can be issued to it. It is further submitted that determination of fitness of a person is the exclusive jurisdiction of the employer.

As regards merits of the case, it has been contended that reported judgments 2012 SCMR 152 & PLD 2011 SC 132 are the judgments per incuriam therefore same are not a binding precedent. Under section 36(2) of the Act *ibid*, it is available to the employer PTCL to alter the terms and conditions of employment. The terms and conditions of service cannot be altered to the disadvantage of employees except by payment of compensation and without consent of the concerned employee. The rules of respondent Company are not statutory in nature, as no approval from Federal Government was taken.

It is further argued that Pakistan Telegraph and Telephone Department was the department of the Federal Government, which used to provide Telegraph, Telephone and other Telecommunication services. It was decided by the Federal Government to set up a Corporation for this purpose and then to entrust the functions to this Corporation. Consequently, Pakistan Telecommunication Corporation Act, 1991 was promulgated its Section 2(e) defined the departmental employee. There-after, Section 3 provided for setting up of Pakistan Telecommunication Corporation. In respect of employees, it was provided that the employees of Telephone and Telegraph Department shall stand transferred to the Pakistan Telecommunication Corporation, which

was a statutory body. There-after, in the year 1996, Pakistan Telecommunication (Re-Organization) Act, 1996 was promulgated under section 2(d) of the Act, 1996 defined the Company to be the Pakistan Telecommunication Company Limited to be established and incorporated in accordance with Section 34. Section 35 of said Act provides that property rights and liability of the Corporation shall be transferred to Company and other authorities and bodies named in that Section. In Section 36 (1) & (2) of the Act, terms and conditions of service of employees were settled. Learned counsel has contended that employees of respondent PTCL are being treated in accordance with the rules as framed by its Board of Directors and no terms and conditions of employment.

It is further contended that cases of petitioners were considered by a high powered Promotion Committee and they were not found fit for promotion.

It is further submitted that what was guaranteed by the Act of 1996 terms and conditions of service existing at the time of promulgation of Act of 1996 and any subsequent change in terms and conditions of civil servants brought about by the Federal Government shall not apply to the petitioners. In support, learned counsel has relied upon unreported judgment of this Court dated 19.07.2016 passed in W.P. No.3381-2012 titled 'Syed Imran

Hussain Vs. Federation of Pakistan etc.’ Moreover, disciplinary matters do not belong to terms and conditions but are separate and distinct from it. In support of contention, learned counsel has relied upon following case law: -

- i) PLD 2011 SC 132
- ii) 2006 SCMR 1
- iii) 2002 PLC (CS) 488
- iv) 1999 PLC (CS) 1288
- v) 2001 PLC (CS) 710
- vi) 1994 PLC 301
- vii) PLD 1997 Supreme Court 351
- viii) 2010 SCMR 1162
- ix) 2000 SCMR 184
- x) 2006 SCMR 1317
- xi) 2010 PLC 323
- xii) 2012 SCMR 152

6. Mr. Habib Ahmed Bhatti, Advocate has argued that Integrated Performance System does not affect on the existing terms and conditions of services of petitioners which are duly protected in terms of Section 36 of the Act, 1996. The petitioners have no vested right to claim their promotion without following the process prescribed under 4.19 & 4.20 of Pakistan Telecommunication Company Limited Service Regulation, 1996 (Regulations). Moreover, promotion cannot be claimed on the basis of seniority only under Regulation 4.23 of the Regulations of 1996. It is further contended that main purpose of filing these writ petitions is to defer the disciplinary proceedings initiated by the management of respondent No.2 against the petitioners. Moreover, the petitioners

W.P. No.2205-2014 etc.

are seeking demotion of their junior incumbents without impleading them as respondents in these writ petitions hence these writ petitions are liable to be dismissed on this score only.

7. On the merits of the case, learned counsel has adopted the arguments advanced by Mr. Shahid Anwar Bajwa, Advocate/learned counsel for PTCL.

8. Rest learned counsel for respondent PTCL has also adopted the above arguments extended on behalf of respondent PTCL.

9. I have heard the arguments of both the sides and have perused the record minutely.

10. There is no cavil to the proposition that rights relating to terms and conditions of services of employees of respondent PTCL are guaranteed by Section 36 of the Pakistan Telecommunication Re-Organization Act, 1996. In this regard, the Hon'ble Supreme Court of Pakistan in Masood Bhatti's case has clarified all the clouds roaming over interpretation of such rights guaranteed by the said Act itself. The Hon'ble Supreme Court of Pakistan further clarified the issue in the judgment dated 19.02.2016 passed in Civil Review Petition Nos.247 to 249 of 2011 in Civil Appeals No.239 to 241 of 2011 & Civil Petition No.423-2011 & CrI. Misc. A. Nos.871 to 873 of 2014 in CrI. Misc. A. No.533 of 2012. The Hon'ble Supreme Court of Pakistan in review jurisdiction observed

in clear terms that the legislature has bound the Federal Government to guarantee the existing terms and conditions of services and rights including pensionary benefits of the transferred employees of respondent PTCL. By virtue of aforesaid provision, in the first instance, transferred employees became employees of the Corporation and then of the Company therefore they did not remain civil servants any more but the terms and conditions of their services provided by Section 13 & Section 9(2) of the Act of 1991 and Section 35(2) & 36-(1) & (2) of the Pakistan Telecommunication (Re-Organization) Act, 1996 are statutory. For this view, there is no ambiguity with regard to status of petitioners as employees of the Company, as on one hand, their existing terms and conditions including pensionary benefits of transferred employees were guaranteed by the Federal Government and on the other hand, same cannot be altered to their disadvantage.

II. So far the interpretation of existing terms and conditions of the services of the petitioners are concerned, it is observed that same are protected only to the extent of then terms and conditions of their services. In this regard, proviso (2) of Section 36 of the Pakistan Telecommunication (Re-Organization) Act, 1996 depicts guarantee of the Federal Government existing terms and conditions of their services and rights including pensionary benefits of the

transferred employees. Subsection (4) & (5) of said Act further elaborates the responsibility of Federal Government for pensionary benefits of the transferred employees when recourse of pension found referred to in the Section. Subsection (5) of aforementioned Section vests property of the Corporation in the Company whereby Federal Government shall require the Company to assume the responsibility of the pensionary benefits of the telecommunication employees and the Company shall not alter such pensionary benefits without the consent of individual concerned and the award of property compensation. It positively differentiates the terms and conditions of services of transferred employees and their rights and then assumption of responsibility for the pensionary benefits. This Court through detailed discussion has already decided the case of pensionary benefits of the transferred employees vide judgment dated 17.03.2014 passed in ICA Nos.8 to 13 of 2012, ICA No.16 of 2012 & ICA No.648-2013.

12. Regarding prayer sought in respect of promotion, the Hon'ble Supreme Court of Pakistan decided the status of transferred employees in clear words that they are not the civil servants therefore such relief claimed through present writ petitions cannot be granted. However, to settle this issue, the respondent Company has to formulate promotion policy bifurcating categories

of employees of Company by placing their cases separately. Intermingling cases of transferred employees with those who have been newly inducted after promulgation of the Pakistan Telecommunication (Re-Organization) Act, 1996 who are juniors to them, is contrary to the norms of justice, as their rights/privileges/terms and conditions of the services of transferred employees are altogether different to those employees who have been newly inducted hence cases of promotion cannot be assessed on the basis of equity. Therefore, it is neither just nor equitable hence promotion cases are required to be revisited by the Company by maintaining separate seniority lists among two sects of employees. In this regard, the Company while formulating promotion policy shall avoid distinction keeping in view the ratio between transferred employees and employees who have been inducted after promulgation of the Pakistan Telecommunication (Re-Organization) Act, 1996.

13. In this regard, I would further add respondent Company shall also consider assessment of quantification. The fitness and seniority of petitioners as well as their PERs/ACRs etc. shall also be considered. Except pension cases with regard to other conditions of service could not be assessed ancillary to the instructions of Federal Government but it shall only confine to the conditions of service

and rights existing at the time of the Pakistan Telecommunication (Re-Organization) Act, 1996. By virtue of subsection (2) of Section 36 of the Act, the terms and conditions of services of transferred employees of respondent PTCL even cannot be altered adversely by the Company.

14. Some of the petitioners rendered services against higher posts in their own pay and scale against which they are seeking their regularization in view of their eligibility and suitability on the basis of their past experience of more than six years, which was duly appreciated. It is observed that it was a sort of appointment rather a stopgap arrangement therefore it does not confer any right for regular promotion in their own pay and scale in view of pronouncement of the Hon'ble Supreme Court of Pakistan in Appeal No.333(R)/1984, Civil Appeal Nos.1946 to 1948/1993 reported as 1997 SCMR 1760 & Appeal No.210 (R) of 1995 as well as 2000 PLC (CS) 39. It is further observed that promotion eligibility criteria enhanced in ATP Rules, 1973 disregards such relief in clear terms. Rule 8-A & B of said Rules defines clearly that such promotion on regular basis, unless appointing authority considers any employee to be fit and fill the same in public interest, cannot be made. Therefore, all other relives sought by the petitioners through present petitions upto number (vii) are in

consonance with each other which do not come within the ambit of law, therefore, does not favour the petitioners.

15. While submitting report and parawise comments, the respondents have taken a stance that petitioners' cases for promotion were deferred as they were not found fit in view of their Performance Evaluation Reports. In this regard, Performance Evaluation Forms in case of every individual are placed on record, as those infer fitness of any individual for promotion. The Evaluation Form can hardly be conserved as ACR/PER, which again are required to be maintained on the same pattern as provided by the Book/Guideline for preparing ACRs of any civil servant, which is still intact and is required to be adopted while assessing skills of any civil servant for promotion. Therefore, it is observed that such practice adopted by respondent PTCL is inadequate hence is hereby annulled. It is directed that cases of petitioners for promotion be considered in the light of their seniority-cum-fitness basis hence to this extent all acts done and efforts made by the respondent PTCL are declared as illegal. In this regard, directions are issued that record of old/transferred employees of respondent PTCL shall be maintained which shall not be intermingled with new inductees and seniority lists of transferred as well as new inductees shall be maintained separately and all documentation

provided in respective Rules or methods adopted in their cases shall also be arranged. It would be the prerogative of respondent PTCL to deal with the employees duly inducted after promulgation of the Pakistan Telecommunication (Re-Organization) Act, 1996 in accordance with their service structure.

16. All above titled writ petitions stands disposed of in above terms.

17. The parties are left to bear their own costs.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Announced in Open Court on _____

JUDGE

Zawar