

Form No: HCJD/C-121

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**W.P. No. 939 of 2014**

Abdul Sattar Khokhar and others

**Versus**

Federation of Pakistan through Secretary Establishment Division, Islamabad and  
others

**W.P. No. 1147 of 2014**

Sikander Aqeel Ansari

**Versus**

Federation of Pakistan through Secretary Establishment Division, Islamabad and  
others

**W.P. No. 2353 of 2014**

Waqar Hussain Abbasi and others

**Versus**

Federation of Pakistan through Secretary Establishment Division, Islamabad and  
others

Petitioners By : M/s Abdur Rahim Bhatti, Yasser Rahim  
Bhatti, Muhammad Munir Paracha,  
Nauman Munir Paracha, Sadia Noreen  
and Syed Ishtiaq Haider, Advocates.

Respondents By : Khawaja Haris Ahmed and Mr. Rashid  
Hafeez, Advocates.  
Raja Khalid Mehmood Khan, D.A.G.  
Ch. Saleem Murtaza Mughal, A.A.G  
Punjab.  
Mr. M. Sohail, A.A.G Khyber  
Pakhtunkwha.  
Gulzar H. Shah, Joint Secretary  
Establishment Division.  
Taimoor Khattak, Deputy Secretary  
Establishment Division.  
Ahmad Hassan Shazad, Deputy Secretary  
(Legal) Govt. of Punjab.

Date of Hearing : 06.03.2019

**AAMER FAROOQ, J. -** This judgment shall decide the instant petition as well Writ Petitions No. 1147/2014 and 2353/2014 as common questions of law and facts are involved.

2. The petitioners, in all the petitions, are civil servants belonging to Secretariat Group and/or Office Management Group. They have challenged Notifications No. S.R.O 88(I)/2014 and S.R.O 89(I)/2014 dated 10.02.2014, issued by the orders of the President of Islamic Republic of Pakistan on account of the fact that they adversely affect terms and conditions of their service. In this behalf, Office Management Group and Secretariat Group are distinct with their own seniority list and composition; officers of the Secretariat Group get their seniority from the date they enter into the cadre as per Rule 3 of the Seniority Rule, 1993. On 10.02.2014, the respondents issued above-mentioned Notifications. S.R.O 88(I)/2014 has been issued by the President under Rule 13 of the Civil Service of Pakistan (Composition and Cadre) Rules, 1954 including section 25 of the Civil Servants Act, 1973 and S.R.O 89(I)/2014 has been issued to repeal All-Pakistan Services (Change in Nomenclature) Rules, 1973. The grievance of the petitioners is that their terms and conditions have been altered to their disadvantage in violations of Section 3(ii) of the Civil Servants Act, 1973 as major portion of the posts previously belonging to the Secretariat Group and/or Office Management Group now stand reserved for Pakistan Administrative Service. The petitioners are also aggrieved of proceedings of Central Selection Board (C.S.B) held pursuant to the referred S.R.Os on 11<sup>th</sup> to 13<sup>th</sup> February, 2014.

3. At the very outset, learned counsels for the respondents raised preliminary objection regarding maintainability of the above petitions. Khawaja Haris Ahmed, Senior Advocate Supreme Court appearing on behalf of respondents No. 1&2 submitted that challenge to the Notifications attract bar provided in Article 212 of the Constitution. In support of his contentions, learned counsel placed reliance on cases reported as *Iqan Ahmad Khurram versus*

Government of Pakistan and others (PLD 1980 SC 153), I.A. Sherwani and others versus Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041), Khalid Mahmood Watto versus Government of Punjab and others (1998 SCMR 2280), Government of the Punjab and others versus Muhammad Zafar Bhatti and others (PLD 2004 SC 317), Peer Muhammad versus Government of Balochistan through Chief Secretary and others (2007 SCMR 54), Muhammad Azam versus Muhammad Tufail and others (2012 PLC (CS) 1104) & Ali Azhar Khan Baloch and others versus Government of Sindh and others (2015 SCMR 456).

4. Learned counsel further pointed out that recently similar controversy was agitated before the Hon'ble Peshawar High Court through Writ Petition No. 68-P/2015, which was decided by the Hon'ble Peshawar High Court vide judgment dated 14.04.2015, which was upheld by the august Apex Court.

5. Learned counsels for the petitioners, on the other hand, have argued vehemently that the instant petitions are maintainable on various counts. It was submitted that the jurisdiction is vested in Service Tribunals u/s 4 of the Service Tribunals Act, 1973 and for the same to be exercised there needs be an order by the original or appellate authority which is not in the instant cases. It was further submitted that section 4 of the Service Tribunals Act, 1973 is only attracted for violation of terms and conditions. Learned counsels took the Court through case law to show that in cases of promotion where rights of civil servants are adversely affected, petitions are maintainable. Reliance was placed on cases reported as Mrs. Iram Adnan and others versus Federation of Pakistan and others (2012 PLC (CS) 1355), Aneel Kumar versus Pakistan Telecommunication Company Limited through President and another (2013 PLC (CS) 413), Orya Magbool Abbasi versus Federation of Pakistan through Secretary Establishment and others (2014 SCMR 817), Secretary Establishment Division, Government of Pakistan, Islamabad versus Aftab Ahmed Manika and others (2015 SCMR 1006), Government of Khyber Pakhtunkhwa

through Chief Secretary, Peshawar and others **versus** Hayat Hussain and others (2016 SCMR 1021), Government of Khyber Pakhtunkhwa through Chief Secretary and others **versus** Muhammad Javed and others (2015 SCMR 269), Mrs. Kausar A. Ghaffar **versus** Government of the Punjab and others (2013 SCMR 99), Tariq Aziz-Ud-Din (2010 SCMR 1301), Federation of Pakistan through Secretary, Establishment Division and others **versus** Dr. Muhammad Arif and others (2017 SCMR 969).

6. Learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

7. Since objection regarding maintainability of the petitions was taken by the respondents and the same goes to the root of the matter, the arguments were heard only to that extent and findings shall be rendered on the basis thereof. As mentioned hereinabove, the petitioners have assailed two Notifications on account of the fact that the same adversely affect their terms and conditions of service as civil servants. The thrust of the arguments by the learned counsels for the petitioners was that since there is no order by any Appellate Authority or otherwise, hence jurisdiction of Service Tribunal cannot be invoked u/s 4 of the Service Tribunals Act, 1973; hence bar provided in Article 212 of the Constitution is not attracted. The question that if any notification or rules or an act which adversely affect terms and conditions of service of the civil servants whether he has a remedy to approach Service Tribunal was taken up for consideration in the seminal judgment on the issue, reported as Iqan Ahmad Khurram **versus** Government of Pakistan and others (PLD 1980 SC 153). In the referred judgment the august Apex Court held that where rules altered terms and conditions of service, bar of Article 212 of the Constitution is applicable with full force. The question came up again for consideration before the Hon'ble Supreme Court of Pakistan in case reported as I.A. Sherwani and others **versus** Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041). The august Apex Court observed that whether civil

servant when is aggrieved by final order whether original or appellate can approach Service Tribunal. It was further observed that where vires of a particular Service Rule or a Notification or the question, whether an accused civil servant can claim right to be represented by a counsel before the Inquiry Officer can also be assailed the same if it adversely affects terms and conditions of a civil servant and the same can be treated as an order in terms of section 4 (1) for filing an appeal before the Service Tribunal. In a recent judgment handed down by this Court i.e. W.P. No. 2183 of 2018, this Court after reviewing the case law on the subject upheld the bar provided in Article 212 of the Constitution. The relevant portion of the judgment is reproduced below:-

**"8. It is an admitted position that all the petitioners are civil servants. Through the instant writ petition, the petitioners are assailing the vires of Establishment Division's O.M. by virtue of which the sanctioned strength of posts in BPS-19 in the Railways (Commercial & Transportation) Group has been enhanced from 9 to 16. Essentially, the petitioners' case is that the impugned O.M. has adversely affected the petitioners' prospects for promotion to BPS-19. Therefore, the impugned O.M. has an effect on the petitioners' terms and conditions of service.**

**9. It is well settled that in view of the express bar provided in Article 212 of the Constitution, the High Court, does not have the jurisdiction under Article 199 of the Constitution to determine the challenge made to rules or notifications or office memoranda, which adversely effects a civil servant's prospects for promotion. This is so even if such rules or notifications or office memoranda are challenged on the ground that they infringe the civil servant's fundamental rights or are based on the malafides on the part of the government/department.**

**10. True, an "order" has not been impugned by the petitioners in the instant writ petition. However, for the purposes whether the instant petition is maintainable, the impugned O.M. dated 02.10.2012 would be treated as an order. The petitioners have already filed a representation against the impugned O.M. There was nothing preventing the petitioners to have challenged the said O.M. before the Federal Services Tribunal on account of not having received a response to their representation beyond the prescribed time limit.**

**11. The petitioners, aggrieved by the said O.M., could have assailed its vires before the Federal Services Tribunal. In holding so, I derive guidance from the law laid down by the Superior Courts in the following cases:-**

**i) In the case of I.A. Sherwani Vs. Government of Pakistan (1991 SCMR 1041), it has been held as follows:-**

**"9. From the above quoted Article 212 of the Constitution and section 4 of the Act, it is evident that the jurisdiction of the Courts is excluded only in respect of the cases in which the Service Tribunal under subsection (1) of section 4 has the jurisdiction. It must, therefore, follow that if the Service Tribunal does not have jurisdiction to adjudicate upon a particular type of grievance, the jurisdiction of the Courts remains intact. It may again be pointed out that the Service Tribunal has jurisdiction against a final order, whether original or appellate, made by a departmental authority in respect of any terms and conditions of service. The question, therefore, arises, whether the relevant enactments/notifications containing the provision for payment of enhanced pensions, which have been denied to the pensioners, can be treated as a final order, original or appellate, passed by a departmental authority in respect of any terms and conditions of service.**

**10. From the above cited cases, it is evident that it has been consistently held inter alia by this Court that a civil servant if is aggrieved by a final order, whether original or appellate, passed by a departmental authority in respect of his terms and conditions, his remedy, if any, is by way of an appeal before the Service Tribunal even where the case involves vires of a particular Service Rule or a notification or the question, whether an accused civil servant can claim the right to be represented by a counsel before the Enquiry Officer. We are inclined to hold that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of subsection (1) of section 4 of the Act in order to file an appeal before the Service Tribunal. However, in the present case, the petitioners' case is founded solely on the ground of discriminatory treatment in violation of Article 25 of the Constitution and not because of any breach of any provision of the Civil Servants Act or any service rule. Furthermore, the question involved is of public importance as it affects all the present and future pensioners and, therefore, falls within the compass of clause (3) of Article 184 of the**

**Constitution. However, we may clarify that a civil servant cannot by-pass the jurisdiction of the Service Tribunal by adding a ground of violation of the Fundamental Rights. The Service Tribunal will have jurisdiction of the service even if it involves the question of violation of the Fundamental Rights.” (Emphasis added)**

**ii) In the case of National Assembly Secretariat Vs. Manzoor Ahmed (2015 SCMR 253), it has been held as follows:-**

**“8. We have heard the learned counsel for the parties and have perused the record. Admittedly, respondent No.1 is a Civil Servant and, therefore, he could not have approached the High Court under Article 199 of the Constitution for redressal of his grievance, which pertained to the terms and conditions of his Service in view of the Bar created under Article 212(2) of the Constitution. The High Court, therefore, was not competent to adjudicate the issue raised in the Writ Petition. The High Court has fallen in error while proceeding on the erroneous assumption that respondent No.1 had raised the issue of violation of the statutory Rules, therefore, it was competent to decide the issues. This was an incorrect approach of the learned High Court to entertain a Constitutional Petition of a Civil Servant on the ground of the statutory violation. Such grievances of a Civil Servant fall within the domain of the Federal Service Tribunal as mandated by the Constitution.”**

**iii) Recently, in the case of Irfan Aman Yousafzai Vs. Federation of Pakistan (2017 PLC (C.S.) 905, the Division Bench of the Hon’ble Peshawar High Court, after referring to a catena of case law, has laid down the following principles with respect to a challenge being made by a civil servant to the vires of rules/notifications:-**

**“(i) A Civil Servant can move the Apex Court under Article 184(3) of the Constitution, in cases where vires of service rules or notifications are challenged on the touch stone of being against their fundamental rights with the paramount condition that the matter be of public importance.**

**(ii) Civil Servant can move the High Court in its constitutional jurisdiction under Article 199 of the Constitution only in cases where the bar of Article 212 of the Constitution cannot be invoked, as the Federal Services Tribunal lacks the jurisdiction to entertain the impugned matter.**

*(iii) Civil Servant can challenge the Service Rules or Notification before the Federal Services Tribunal, as the same are deemed to be final orders, within the contemplation of section 4(1) of Civil Servant Tribunal Act, 1973.*

*(vi) Civil Servant can move the Services Tribunal challenging the vires of the rules even on the touch stone of being in violation of fundamental rights or mala fide.*

*(v) The Civil Servant cannot move the Constitutional jurisdiction of a High Court challenging the vires of a service rule or notifications, which affects the prospects of promotion of a civil servant even if the challenge is made on the touch stone of breach of fundamental rights of the civil of the civil servant or mala fide on the part of the Executive to frame the said rules or Notifications."*

*Law to the said effect has also been laid down in the cases of Iqan Ahmad Khurram Vs. Government of Pakistan (PLD 1980 SC 153), Khalid Mahmood Wattoo Vs. Government of Punjab (1998 SCMR 2280), Government of the Punjab Vs. Muhammad Zafar Bhatti (PLD 2004 S.C. 317), Peer Muhammad Vs. Government of Balochistan (2007 SCMR 54) and Engineer Musharaf Shah Vs. Government of Khyber Pakhtunkhwa (2015 PLC (C.S.) 215."*

8. In view of the above position of law and facts, the instant petition as well as Writ Petition No. 1174/2014 and Writ Petition No. 2353/2014 are not maintainable and are accordingly **dismissed**. The petitioners are at liberty to pursue their remedy before appropriate forum.

**(AAMER FAROOQ)**  
**JUDGE**

Announced in open Court this 15<sup>th</sup> day of May 2019.

**JUDGE**

M.Shah/.