

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

W.P.No.868 of 2017

Muhammad Yaar Nadeem and others

**Versus**

Federation of Pakistan through Secretary, Ministry of Interior and  
others

<b>Date of Hearing:</b>	20.04.2018
<b>Petitioners by:</b>	Ch. Saifullah Warraich, Yasir Rahim Bhatti, Arshad Mehmood, Mirza Waqas Qayyum, Raja Shahzad Javed and Muhammad Waqas Chatha , Advocates.
<b>Respondents by:</b>	Mr. Rashid Hafeez, learned Deputy Attorney-General. Ms. Sitwat Jehangir, learned Standing Counsel. Mr. Javed Atta, Prosecutor Sub-Inspector.

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**MIANGUL HASSAN AURANGZEB, J:-** Through this judgment, I propose to decide writ petitions No.868/2017, 429/2017, 431/2017, 494/2017, 974/2017, 1915/2017, 2064/2017, 2131/2017, 2134/2017, 2275/2017, 2475/2017, 2516/2017, 2575/2017, 2586/2017, 2602/2017, 3046/2017, 3047/2017, 3053/2017, 3133/2017, 3198/2017, 3366/2017, 3411/2017, 3527/2017, 4252/2017 and 561/2018, since they entail common questions of law and fact.

2. Through the said writ petitions, the petitioners, who are serving in the Islamabad Capital Territory Police, impugn orders passed by the Office of the Senior Superintendent of Police, Islamabad, whereby the *“out of turn promotions”* granted to the petitioners during their service, were cancelled/withdrawn, resulting in their reversion.

3. The position taken by the petitioners in their writ petitions was that the petitioners had performed their duties with full devotion and honesty; that the petitioners were promoted after their credentials and performance were scrutinized and evaluated; that the reversion orders passed against the petitioners are based on misinterpretation of the law laid down in the judgments reported as 2013 SCMR 1752 and 2015 SCMR

456; that vide order dated 20.06.2016, this Court had already allowed writ petition No.2432/2016 in which the petitioner had agitated the same grounds as the ones agitated by the present petitioners; that several petitioners had filed departmental appeals which are still pending; that the respondents had not constituted an anomaly committee; that the petitioners' replies to the show cause notices were not taken into consideration before the impugned reversion orders were passed; that the impugned reversion orders were non-speaking orders and therefore not in accordance with Section 24-A of the General Clauses Act,1897; that the impugned reversion orders have violated the petitioners' rights bestowed upon them under Articles 4, 9, 10-A, 18 and 25 of the Constitution; and that until the petitioners' appeals/departmental representations are decided by the competent authority, the petitioners are left without a remedy and therefore, they do not have an option but to invoke the Constitutional jurisdiction of this Court under Article 199 of the Constitution. Learned counsel for the petitioners prayed for the writ petitions to be allowed and for the impugned reversion orders to be set-aside.

4. On the other hand, the learned Deputy Attorney-General raised a preliminary objection to the maintainability of all the writ petitions. He submitted that since all the petitioners were civil servants and had the alternative remedy of filing departmental appeals and thereafter, appeals before the Service Tribunal, this Court did not have the jurisdiction to adjudicate upon the instant writ petitions in view of the bar contained in Article 212 of the Constitution. He further submitted that the reversion orders had been passed pursuant to the judgments of the Hon'ble Supreme Court in the cases reported as 2013 SCMR 1752 and 2015 SCMR 456. Learned Deputy Attorney-General prayed for the writ petitions to be dismissed.

5. I have heard the contentions of the learned counsel for the petitioners as well as the learned Deputy Attorney-General and have perused the record with their able assistance.

6. It is not disputed that all the petitioners are civil servants. Through the orders impugned in the instant writ petitions, the petitioners have challenged orders, whereby “*out of turn promotions*” granted to them have been withdrawn/cancelled. The consequence of such withdrawal/cancellation is that the petitioners have been reverted to the rank which they held prior to the grant of “*out of turn promotions*”. The impugned reversion orders were passed in view of the law laid down by the Hon'ble Supreme Court in the judgments reported as 2013 SCMR 1752 and 2015 SCMR 456.

7. The practice of “*out of turn promotions*” was deprecated by the Hon'ble Supreme Court in the abovementioned judgments. In this regard, the relevant portions of the judgment reported as 2013 SCMR 1752 are reproduced herein below:-

*“158. On the issue of out of turn promotions, the impugned enactments are discriminatory persons/class specific and prejudicial to public interest, as it would be instrumental in causing heart burning amongst the police officers whose inter-se seniority and legitimate expectation of attaining upper ladder of career would be affected. The out of turn promotions to the police officers and other civil servants by virtue of Section 9-A would affect the performance of hundreds of thousands of the civil servants serving in the Sindh Government. The impugned instruments on out of turn promotions are neither based on intelligible differentia nor relatable to lawful objects and by the impugned instruments the entire service structure has been distorted, affecting the inter se seniority between the persons, who are serving on cadre posts after acquiring job through competitive process and their seniorities were and are superseded by the powers granted to the Chief Minister through Section 9-A.”*

*“161.....The ultimate casualty of the impugned instruments would not only be the establishment of meritocratic public service but more ominously the certainty of law which undermines both legitimate expectancy individually among the civil servants as regards the smooth progression of their career, but also the overall administrative environment. Article 143 of the Constitution has been promulgated to harmonize and regulate the service of the civil servants from federal government and provincial governments on their opting for All*

***Pakistan Unified Group/PSP. The impugned legislation would distort inter se seniority of the civil servants not only within the province but also the federal civil servants.***

***162. The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the self-respect and dignity of the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bona fide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant out of turn promotions, on the contrary the unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers.”***

***“164. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sindh Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9-A, the Sindh Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word Gallantry in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.”***

**8. As regards the judgment reported as 2015 SCMR 456, the observations of the Hon'ble Supreme Court regarding “out of**

**turn promotions” were set out in paragraphs-122 and 126 of the said report, which are reproduced herein below:-**

***“122. The issue of out of turn promotions has been dealt with by us in detail in the judgment sought to be reviewed and we reached the conclusion that it was violative of Articles 240, 242, 4, 8, 9 and 25 of the Constitution. Mr. Adnan Iqbal Chaudhry, learned Advocate Supreme Court has contended that section 9-A of the Act has not been struck down by this Court, while declaring the out of turn promotions as unconstitutional. We are mindful of this fact as we have held that the Competent Authority can grant awards or rewards to the Police Officers, if they show act of gallantry beyond the call of duty. However, we had struck down the very concept of out of turn promotion being violative of Constitution for the reasons incorporated in paras 158 to 164 of the judgment under review.”***

***“126. The contention of the learned ASC that the judgment of the High Court of Sindh relating to the out of turn promotion is still in field, therefore, he prayed for formulation of a Committee to scrutinize the cases of the Police Officers, who were given out of turn promotion, is without substance. We have already declared out of turn promotion as unconstitutional, therefore, after recording such findings, the need of forming a Committee under Rule 8-B for scrutinizing the cases of Police Personnel is of no significance. However, they could be awarded or rewarded compensation for their exceptional acts of gallantry.”***

**9. Additionally, in the case of Shahid Parvaiz Vs. Ejaz Ahmed (2017 SCMR 206), the Hon'ble Supreme Court has held as follows:**

***“97. The out of turn promotions are inherently destructive of the rights of other officers who, though senior and entitled to be considered for promotion before the beneficiaries of out of turn promotions, are bypassed as a result of out of turn promotions. Thus each out of turn promotion must necessarily have a corresponding affected officer, who suffers due to this exercise despite being completely blameless. He suffers for no fault of his own when he is bypassed in favour of the beneficiary of such an exercise. Unless he voluntarily waives his rights, in which case the promotion could no longer be described as out of turn, the Courts ought not to ignore his rights in matters brought before it for adjudication, irrespective of his presence or absence before the Court in a particular case.”***

**10. So much for the law laid down by the Hon'ble Supreme Court on out of turn promotions in the civil service. Be that as it may, as mentioned above, all the petitioners are civil servants.**

11. This Court is under an obligation to decide the question of its jurisdiction in view of the mandate contained in Article 212(2) of the Constitution. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of "Asadullah Rashid Vs. Muhammad Munir" (1998 PLC (C.S.) 1371).

12. In the cases at hand, the petitioners, all of whom are civil servants, have agitated a matter relating to the terms and conditions of their service. It is well settled that the jurisdiction of this Court is ousted in matters which fall within the jurisdictional domain of the Service Tribunal. Even if this Court is to grant interim relief as a stopgap measure until the petitioners are in a position to agitate their grievance before the Federal Service Tribunal, it would amount to assuming jurisdiction over the *lis*. In doing so, this Court would be going against the mandate of Article 212(2) of the Constitution, which is reproduced herein below:-

*"(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal, other than an appeal pending before the Supreme Court, shall abate on such establishment:*

*Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal."*

13. The argument of the learned counsel for the petitioners that until the petitioners are in a position to approach the Service Tribunal, they are without a remedy, has been adequately dealt with by the Hon'ble Lahore High Court in the case of "Dr. Ghazanfar Ullah Vs. Secretary Health, Government of Punjab" (2010 PLC (C.S.) 51) in the following terms:-

***“8. Arguments heard. Article 199 is “Subject to the Constitution”, while Article 212 being a non obstante Article prevails over Article 199. Article 212 clearly states that “no Court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends”. Therefore, this Court has no jurisdiction to entertain a matter that stands barred under Article 212 of the Constitution. The arguments of the counsel that he has been left remediless after filing his representation under section 4 of the Punjab Service Tribunals Act, 1974 is without any force. The filing of the representation before a departmental authority is itself initiation of the remedy under section 4(1)(a) of the Service Tribunals Act, 1974. The pendency of the representation for a maximum period of 90 days is a part of the procedure/remedy prescribed for a civil servant which then culminates into right to file an appeal. In fact the pendency of the representation before the departmental authority cannot be taken to mean that the petitioners have been left remediless. In fact the petitioners have invoked the remedy and the remedial process has been set in motion. For the sake of arguments even if a writ is issued during this period of 90 days it will make a mockery of the statutory process provided under section 4(1)(a) rendering the final right to appeal in 90 days totally meaningless. Constitutional jurisdiction cannot be put to use to frustrate statutory remedial process as in the present case. In any case this argument is totally fallacious. Once this Court has no jurisdiction under Article 212, the same cannot be conferred on it just because after filing the representation under section 4 of Punjab Service Tribunals Act, 1974 the petitioner has been rendered “remediless” it is not the question of alternate remedy but of bar of jurisdiction. In fact Article 199 cannot be set in motion due to the jurisdictional bar, therefore the question of alternate remedy or mala fide or political consideration or the nature of grievance does not even begin to arise. This distinction between bar of jurisdiction and exercise of judicial power must be clearly understood.”***

14. The Hon'ble Judge who authored the said judgment rose to grace the Hon'ble Supreme Court. Therefore, the said judgment deserves respect and reverence.

15. The jurisdiction of the High Court is barred under Article 212(2) of the Constitution even if an order assailed before the High Court or the proceedings which a civil servant is aggrieved by or are alleged to be *malafide*, *coram non judice*, without jurisdiction or are assailed on the ground of violation of the civil servant's fundamental rights. Reference in this regard may be made to the cases of “Syed Arshad Ali and others

versus Pakistan Telecommunication Company Ltd and others” (2008 SCMR 314), “Peer Muhammad versus Government of Baluchistan through Chief Secretary and others” (2007 SCMR 54), “Noor Badshah Khattak versus Government of N.W.F.P. and others” (2004 PLC (C.S.) 1084 and “Khalid Mehmood Wattoo versus Government of Punjab and others” (1998 SCMR 2280).

16. Regardless of the views of this Court on the question as to whether the requirements of due process had been fulfilled before the issuance of the impugned orders, given the bar contained in Article 212(2) of the Constitution, the instant petitions are not maintainable. Therefore, these petition are dismissed as not being maintainable.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

**APPROVED FOR REPORTING**

*Qamar Khan\**

*Uploaded By : Engr. Umer Rasheed Dar*