

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

W.P No.1631/2017.

Rashid Ameer Vs. Federation of Pakistan, etc.

**Petitioner by: Sardar Muhammad Tariq Fareed
Gopang, Advocate.**

**Respondents by: Arshad Mahmood, Superintendent
Establishment Division.**

**Abdul Rauf, Inspector Legal, Islamabad
police on behalf of respondents No.3 & 4**

Ms. Saima Naqvi, State Counsel.

Date of hearing: 21.12.2017.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has assailed the order dated 27.04.2017, passed by Inspector General of Police, Islamabad/respondent No.3, whereby application filed by the petitioner for relaxation in age limit to apply for the post of ASI (BPS-11) in Islamabad Police Counter Terrorism Force (CTF) was dismissed on the ground that the petitioner is over aged by 4 years, 1 month and 10 days against the prescribed age limit of 25 years.

2. Brief facts, necessary for disposal of the instant writ petition are that the petitioner is a constable in Islamabad Police and performing his duties since 10.07.2007. Father of the petitioner died during his service on 03.11.2011 as DSP in Sindh Police, Karachi. Respondent No.4 published vacancies for the post of ASI and the petitioner in order to apply for the said post moved an application to Inspector General of Police/Islamabad/respondent No.3 on 18.04.2017 for relaxation in age, however, the application of the petitioner was turned down vide impugned order dated 27.04.2017 on the ground that requisite age for the post of ASI is 25 years, whereas petitioner is over aged by 4 years, 1 month and 10 days.

3. Learned counsel for the petitioner has contended that order of rejection of the application filed by the petitioner is against the rules, whereas Establishment Division vide office memorandum dated 24.06.2010 gave clarification regarding general

relaxation in upper age limit, which is also applicable to Islamabad Capital Territory Police but respondent No.3 did not consider the said office memorandum, which is misconduct on part of respondent No.3. Learned counsel for the petitioner further argued that the petitioner being already in service is entitled for age relaxation as per office memorandum of Establishment Division; that Establishment Division/respondent No.2 in its report submitted before this Court regarding age relaxation has also acknowledged that office memorandum dated 24.06.2010 provides 05 years general age relaxation to all citizens of Pakistan and 10 years to those employees, who have completed 02 years continuous government service on the closing date for receipt of application.

4. Conversely, Inspector Legal, Islamabad Police argued that office memorandum dated 24.06.2010 is not applicable to Islamabad Police and the advertisement published for the recruitment of ASI was duly approved by the Establishment Division through Ministry of Interior, Islamabad but the Establishment Division did not refer any such office memorandum at that time. He further argued that if relaxation in age limit is allowed, it will open Pandora box; that recruitment process of ASI (CTF) has already been completed and selected candidates are getting training in Hangu Police College since 25.11.2017. He further argued that petitioner will be given chance in the next recruitment process for the post of ASI subject to his clearance under the rules.

5. I have heard the arguments and gone through the record.

6. From perusal of the record, it has been observed that respondent No.3 made advertisement in different newspapers inviting applications from suitable Pakistani Nationals for the post of ASI in Counter Terrorism Force, Islamabad, Capital Territory Police [CTF(ICT Police)] and as a result whereof, the petitioner being a constable in ICT, Police filed an application before Inspector General of Police, Islamabad/respondent No.3 for relaxation in age limit to apply for the said post, which was turned down vide impugned order/letter dated 27.04.2017 mainly on the ground that petitioner is over aged by 4 years, 1 month and 10 days, whereas prescribed age limit for the post of ASI is 25 years and no relaxation in age is

admissible as per advertisement. The application submitted by the petitioner before respondent No.3 is reproduced as under:-

بخدمت جناب انسپکٹر جنرل آف پولیس اسلام آباد۔

عنوان: عمر میں رعایت برائے بھرتی بطور ASI سال 2017

جناب عالی!

گزارش ہے کہ فدوی مورخہ 10-07-2007 کا بطور کنسٹیبل بھرتی شدہ ہے۔ فدوی کو بذریعہ اخبار معلوم ہوا ہے کہ محکمہ اسلام آباد پولیس میں ASI کی پوسٹ کیلئے چند اسماء خالی ہیں۔ فدوی ASI کی پوسٹ کے مطلوبہ معیار پر پورا اترتا ہے۔ جبکہ فدوی کو بذریعہ اشتہار معلوم ہوا کہ ASI کی پوسٹ کیلئے عمر کی حد 25 سال مقرر کی گئی ہے۔ جبکہ فدوی کی عمر 29 سال ہے، فدوی محکمہ ہذا میں تقریباً گزشتہ 10 سال سے ڈیوٹی سرانجام دے رہا ہے لہذا فدوی جناب سے بذریعہ درخواست استدعا کرتا ہے کہ فدوی کو محکمہ ہذا میں بطور کنسٹیبل ہونے کی بناء پر ASI کی پوسٹ کے لیے اہلائی کرنے کیلئے عمر میں رعایت دی جائے تاکہ فدوی ترقی حاصل کر سکے۔

فدوی نے درخواست کے ہمراہ (Relaxation of Upper Age Limit) Rules, 1993 کے مجاہدہ Government of Pakistan, Cabinet Secretariat Establishment Division نوٹیفیکیشن نمبر S.R.O 1079 (1)/93 کی کاپی بھی لگائی ہے جس کے تحت فدوی Part-II General Relaxation کی سیریل نمبر (iii) اور سیریل نمبر (v) پر پورا اترتا ہے۔

سیریل نمبر (iii) کے مطابق فدوی متعلقہ اسمی کی آخری تاریخ تک فدوی اپنی 02 سالہ ملازمت پوری کر چکا ہے۔ اور اس لیے فدوی کو 10 سال تک کی رعایت حاصل ہے۔

سیریل نمبر (V) کے مطابق فدوی کے والد Civil Servant (سندھ پولیس میں بطور DSP) تھے جو دورانِ سروس وفات پا گئے تھے۔ اس طرح فدوی 05 سال کی رعایت کا مستحق ہے۔

فدوی کی آپ جناب سے گزارش ہے کہ دونوں میں سے کسی بھی ایک Rule کے تحت فدوی کو ASI کے لیے Apply کرنے کی اجازت دی جائے۔ جناب کی عین نوازش ہوگی۔

7. The above referred application was forwarded to respondent No.3 by Superintendent of Police Headquarters, Islamabad on 18.04.2017. Respondent No.3 while deciding the same did not considered the law referred in the application in its true perspective.

8. It has been observed from the record that Establishment Division vide S.R.O. No.1079(1)/93 in pursuance of rule 12 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1993, made rules under the title Initial Appointment to Civil Posts (relaxation of Upper Age Limit) Rules, 1993, whereby relaxation in the recruitment rules was provided in respect of the different candidates. Rule 3 of Initial Appointment to Civil Posts (relaxation of Upper Age Limit) Rules, 1993 is reproduced as under:-

“(3) Maximum age limit as prescribed in the recruitment rules shall be relaxed in respect of the candidates mentioned in column (2) below to the extent mentioned against each under column (3):-

Sl. No.	Category of candidates	Age relaxation admissible
<i>1</i>	<i>2</i>	<i>3</i>
i)	(a)Candidates belonging to Scheduled Castes Buddhist Community, recognized tribes of the Tribal Areas, Azad Kashmir and Northern Areas for all posts under the Federal Government.	3 years.
	(b)Candidates belonging to Sindh (R) and Balochistan for posts in BPS-15 and below under the Federal Government.	3 years
ii)	Released or retired Officers/personnel of the Armed Forces of Pakistan.	15 years or the number of years actually served in the Armed Forces of Pakistan, whichever is less.
iii)	Government servants who have completed 2 years continuous Government service on the closing date for receipt of applications.	10 years, upto the age of 55 years.
iv)	Disabled persons for appointment to posts in BPS-15 and below.	10 years
v)	Widows, son or daughter of a deceased civil servant who dies during service	5 years

9. Besides the above referred rule, vide office memorandum of Establishment Division dated 24.06.2010 clarification regarding general relaxation of 5 years in upper age limit prescribed in Recruitment Rules was made and this very fact has been admitted by respondent No.2/Establishment Division in its report submitted before this Court in the instant writ petition. Relevant paragraphs of the above referred office memorandum are reproduced as under:-

“2. In light of the recommendations of the Senate Standing Committee, the Ministries/Divisions/Departments are advised that hence-forth, the concession of 5 years general relaxation in upper age limit shall be clubbed with the maximum age limit of the post in their advertisements. In case usual upper age limit of posts in various Basic Pay scales is as in column (2) below:-

<u>Basic Pay Scale</u>	<u>Age Limit.</u>	<u>General Age Relaxation</u>	<u>Maximum Age Limit</u>
(1)	(2)	(3)	(4)
1-15	25 years	+5 years	30 years

16	28 years	+5 years	33 years
17	30 year	+5 years	35 years
18	35 years	+5 years	40 years
19	40 years	+5 years	45 years
20	45 years	+5 years	50 years
21	50 years	+5 years	55 years

3. The Ministries/Divisions are further advised that the following relaxation in upper age limit available to the category of candidates specified below (to the extent mentioned against each) should be clearly mentioned in their advertisements for vacant posts:-

Sl. No.	Category of candidates	Age relaxation admissible
1	2	3
(i)	(a)Candidates belonging to Scheduled Castes Buddhist Community, recognized tribes of the Tribal Areas, Azad Kashmir and Northern Areas for all posts under the Federal Government.	3 years.
	(b)Candidates belonging to Sindh(R) and Balochistan for posts in BPS-15 and below under the Federal Government.	3 years
(ii)	Released or retired Officers/ personnel of the Armed Forces of Pakistan.	15 years or the number of years actually served in the Armed Forces of Pakistan, whichever is less.
(iii)	Government servants who have completed 2 years continuous Government service on the closing date for receipt of applications.	10 years, upto the age of 55 years.
(iv)	Disabled persons for appointment to posts in BPS-15 and below.	10 years
(v)	Widows, son or daughter of a deceased civil servant who dies during service	5 years

Note: Where a candidate is entitled to age relaxation under more than one categories specified above, he shall be allowed relaxation in age only in one category.

4. In addition to above, the President/Prime Minister may, on extreme compassionate grounds, grant age relaxation to an individual candidate for a period not exceeding three years.

5. Further, where the Ministries/Divisions/Departments have recently advertised various posts and the candidates have appeared in written test but their interviews are yet to be held i.e. their selection process is not over, the said posts may be re-advertised for additional applications with clear rule position about age limit and age relaxations as at paras 2 & 3 above.

10. The above referred rule 3 of Initial Appointment to Civil Posts (relaxation of Upper Age Limit) Rules, 1993 as well as office memorandum of Establishment Division dated 24.06.2010 clearly establish that any person, who is working in the government department and has completed two years continuous service on the closing date of receipt of the application, 10 years age relaxation is permissible to him, whereas at the time

advertisement for the post of ASI, the petitioner was 29 years old but his request for relaxation in age to apply for the post of ASI was turned down by respondent No.3.

11. The stance taken by Islamabad Police Department in its report/reply to the writ petition is based upon advertisement, wherein age limit was mentioned 18 to 25 years for both categories alongwith other pre-requisite.

12. In the light of office memorandum of Establishment Division dated 24.06.2010, an order was passed in C.M No.01/2017 on 21.06.2017, whereby the IG of Islamabad Police was directed to issue direction to the relevant authorities to include the name of the petitioner for his participation in the recruitment process but surprisingly respondent No.3 did not bother to obey the said order. The conduct of the police official is highly disregarded to the Court's orders.

13. Islamabad Police also acknowledged passing of order dated 21.06.2017 in C.M No.01/2017 in its report/reply to the writ petition, however, Islamabad Police took the stance that all the selected candidates have joined the Hangu Police College for training on 25.11.2017 and it is not possible for them to accommodate the petitioner at this stage.

14. The petitioner cannot be deprived from his valuable right, which has accrued in his favour through office memorandum of Establishment Division dated 24.06.2010.

15. Moreover, clause 5 of the said office memorandum further strengthen case of the petitioner that if the advertised posts are under the process of selection and interviews have not yet been taken, the said post will be re-advertised for additional application with clear rule position about age limit and age relaxations, therefore, it can safely be concluded that Islamabad Police being under the Administrative control of Ministry of Interior was under obligation to follow the law regarding age relaxation in stricto sensu and despite rule 3 of *Initial Appointment to Civil Posts (relaxation of Upper Age Limit) Rules, 1993* as well as office memorandum of Establishment Division dated 24.06.2010, respondent No.3 did not extend the benefit of relaxation in age to the petitioner, which is contrary to the law.

16. Keeping in view the background and law on the subject referred above, this Court is of the considered view that the process of recruitment of ASI, in which the petitioner was not granted relaxation in age by ignoring rule 3 of *Initial Appointment to Civil Posts (relaxation of Upper Age Limit) Rules, 1993* as well as office memorandum of

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Establishment Division dated 24.06.2010, Islamabad Police Department has deprived the petitioner to apply for the post of ASI in clear cut violation of the rules. Depriving the petitioner to apply for the post of ASI by ignoring the relevant rules is also violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, which guarantees equal protection of law.

17. For the foregoing reasons, instant writ petition is accepted and the petitioner is declared to be eligible to apply for the post of ASI on the basis of relaxation in age by 10 years as he is serving in Islamabad Police as constable since his appointment i.e 10.07.2007, therefore, impugned order dated 27.04.2017 is hereby set aside and instant writ petition is allowed.

18. As per report/reply of Islamabad Police Department the recruitment process has been completed and selected candidates have joined their training on 25.11.2017, therefore, at this stage, if this Court set asides the entire recruitment process, it will affect the other selected candidates, who have already earned their legitimate right after due process of law and they should not be suffered for the wrong of respondent No.3, who did not bother to follow the rules, law and even order of this Court. While relying upon the judgments 2011 PLD SC 365 (Shahid Orakzai vs Pakistan through Secretary Law, Ministry of Law, Islamabad) & (PLJ 2011 [Lahore] 32 (DB) (All Pakistan Textile Mills Association vs. FOP), whereby the relief can be molded in the changed circumstances, respondents No.3 & 4 are directed to reinitiate recruitment process for the post of ASI (BPS-11) in Islamabad Police (CTF) only to the extent of petitioner, wherein the petitioner shall apply and participate in written test, physical test or any other test, which were taken by the Recruitment Committee in the cases of previously selected candidates. This recruitment process shall be completed on merits within 30 days from the date of announcement of this judgment under intimation to this Court through learned Registrar. If the petitioner successfully completes all the stages of recruitment process, he shall be appointed and sent to training in Hangu Police College, where the already selected candidates are getting training.

19. Inspector General of Police Islamabad/respondent No.3 is directed to strictly follow office memorandum of Establishment Division dated 24.06.2010 regarding relaxation in age in future recruitments and if any advertisement regarding recruitment in

Islamabad Police is made in violation of the said office memorandum as well as rule 3 of *Initial Appointment to Civil Posts (relaxation of Upper Age Limit) Rules, 1993*, the same shall be illegal, hence, Secretary Establishment is directed to convey the said office memorandum to the Secretary Ministry of Interior as well as Chief Commissioner, Islamabad and Inspector General of Police for ready reference and application of the rules regarding relaxation in age.

20. As earlier mentioned in Para 12 of the judgment that order passed in C.M No.01/2017 on 21.06.2017 was not complied with by respondent No.3 despite the fact that the order was passed in the presence of Abdul Rauf, Inspector Legal, Islamabad Police, Tahir Jamil Ahmed, D.S (R-II) Establishment Division and M. Waqar, P.A (R.6) Establishment Division, therefore, office is directed to issue notice to the Inspector General of Police and Assistant Inspector General Police (Establishment), i.e. respondents No.3 & 4 to explain their position as to why the petitioner was not allowed to participate in the recruitment process and contempt of Court proceedings may not be initiated against them for willful defiance of this Court's order dated 21.06.2017. The Inspector General of Police shall submit detailed report comprising of recruitment process, stages, dates of recruitment and after fixing the responsibility of the delinquent police official who has not complied with the Court order.

21. The replies of above mentioned persons shall reach to this Court within 15 days from the date of announcement of this judgment, whereafter office shall register this case as criminal original and place before this Court on 25.01.2018³ for further proceedings.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 29th December, 2017.

JUDGE

R.Anjam

Approved for Reporting.