

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3055 of 2019

Muhammad Adil Khan and others

Versus

Federation of Pakistan through Secretary, Ministry of Overseas
Pakistanis & Human Resource Development and others

Date of Hearing: 27.01.2020 and 07.02.2020.
Petitioners by: M/s Abdul Rahim Bhatti, Yasser Rahim Bhatti and Qaisar Rahim Bhatti, Advocates.
Respondent by: Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General.
Mr. Muhammad Ibrar, Section Officer, Ministry of Overseas Pakistanis and Human Resource Development.
Mr. Mahmood Khan Lakho, Section Officer, Establishment Division.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, who are civil servants, voice their grievance against the decision of the Special Selection Board (“S.S.B.”) not to post them as Community Welfare Attaches (“C.W.A.s”) in Pakistan’s Missions Abroad.

2. Learned counsel for the petitioners submitted that the decision of the S.S.B. not to select the petitioners for appointment as C.W.A.s in Pakistan’s Missions Abroad is in stark violation of the policy guidelines issued by the Establishment Division vide office memorandum dated 16.02.2016 inasmuch as the marks given to the candidates in the interview were of no consequence in the selection process; that since the number of vacancies were more than the candidates who qualified the written test, they should all have been appointed as C.W.A.s; that it was obligatory for the respondents to have dealt the petitioners in accordance with policy guidelines contained in the Establishment Division’s office memorandum dated 16.02.2016; that during the pendency of the instant writ petition, the vacancies against which the petitioners could be appointed were not advertized; that the petitioners’ appointment will not impinge on the rights of the officers selected against the subsequently advertized vacancies; that the petitioners’ cases could only be considered under the

policy contained in the Establishment Division's office memorandum dated 16.02.2016; and that the amendment in the said policy made after the petitioners participated in the written test and interview cannot be applied retrospectively. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned Assistant Attorney-General submitted that although the petitioners had successfully participated in the written test but after they were interviewed by the S.S.B., it was decided only to appoint the officers who had fared best in the interview; that the petitioners could have participated in the test and the interview conducted during the pendency of the instant petition; that the Ministry of Overseas Pakistanis and Human Resource Development had published advertisement dated 27.10.2019 inviting applications for appointment as C.W.A.s; that on 24.11.2019, written tests were conducted by the Institute of Business Administration; that out of the 272 candidates who appeared in the written test, 79 qualified by securing 60% or more marks; that between 30.12.2019 and 06.01.2020 interviews were conducted by the S.S.B.; and that the selection of officers against 09 vacant posts is yet to take place whereas a cushion of 07 posts has been kept for the petitioners who have filed the instant writ petition.

4. Learned Assistant Attorney-General further submitted that the policy contained in the office memorandum dated 16.02.2016 was amended with the approval of the Prime Minister; that the amended policy provides that 40% marks should be for the interview, and the passing marks for the interview should be 50%; that the said amendment was approved by the Prime Minister on 10.12.2019; and that henceforth, the selection of C.W.A.s is to be carried out in accordance with the amended policy. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

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

6. Vide office memorandum dated 16.02.2016, the Establishment Division issued the *“Policy Guidelines for Foreign Appointments and Postings in Pakistan Missions Abroad and against Pakistan’s Seats in International, Multilateral, Bilateral and Regional Organizations, FORA and Bodies”*. Paragraphs vii to x of the said policy are reproduced herein below:-

- “vii. Candidates qualifying the test will be called for an interview, which will be conducted by a committee to be constituted with the approval of the Prime Minister;*
- viii. Eighty percent weightage will be given to the written test scores and twenty percent weightage to the interview scores;*
- ix. No minimum passing marks shall be fixed for the interview, and no candidate will be deemed to have failed in the selection process merely on the basis of his or her performance in the interview;*
- x. Successful candidates shall be given, in order of their merit, comprising of summation of scores in written test and interview, the option to choose the station of their choice from amongst circulated stations.”*

7. The Ministry of Overseas Pakistanis and Human Resource Development published an advertisement inviting applications from officers, who were in BS-18 and BS-19 fulfilling the criteria mentioned therein, to apply for appointment as C.W.A. for posting in Pakistan’s Missions Abroad. Out of 410 candidates, who appeared in the written test, only 11 candidates qualified by securing 60% or more marks. The petitioners are amongst 11 candidates, who passed the written test. All the 11 candidates obtained more than the pass-mark of 60% in the written test conducted by the Institute of Business Administration, Karachi. All the 11 candidates, who qualified the written test, were interviewed by the S.S.B. chaired by the Special Assistant to the Prime Minister for Overseas Pakistanis and Human Resource Development. The marks given to the candidates in the interview are set out in annexure-H to this petition. The minutes of the meeting of the S.S.B. held on 30.05.2019 show that the S.S.B. recommended only 04 candidates for posting as C.W.A.s. The names of the petitioners were not recommended for posting, and it was decided to re-advertise the remaining vacant posts *“in relaxation of the policy guidelines”* contained in the Establishment

Division's office memorandum No.4/3/2016-T-IV, dated 16.02.2016.

8. All the petitioners are the officers who were interviewed by the S.S.B. after passing the written test. The minutes of the S.S.B.'s meeting held on 30.05.2019 show that the petitioners had not been found fit for appointment as C.W.A.s. The vital question that needs to be answered is whether in view of the policy contained in the Establishment Division's office memorandum dated 16.02.2016, the S.S.B. could decide not to appoint the petitioners as C.W.A.s on the basis of their performance in the interview. The decision of the S.S.B. not to appoint the petitioners as C.W.A.s even though they had attained 60% or more marks in the written test is a clear violation of paragraph ix of the policy contained in the Establishment Division's office memorandum dated 16.02.2016 which provides that *"no minimum passing marks shall be fixed for the interview, and no candidate will be deemed to have failed in the selection process merely on the basis of his or her performance in the interview"*. It is an admitted position that the number of vacant posts of C.W.A.s were more than the number of candidates that appeared for the interview before the S.S.B. Consequently, the decision of the S.S.B. taken in its meeting dated 30.05.2019 to the extent of not appointing the petitioners as C.W.A.s is liable to be set-aside on the touchstone of the provisions of the policy contained in the Establishment Division's office memorandum dated 16.02.2016.

9. True, the Prime Minister on 10.12.2019 had approved an amendment in the above mentioned policy by allocating 40% weightage for the interview and making 50% as passing marks for the interview in the selection process for the appointment of C.W.A.s. Earlier, under the Establishment Division's office memorandum dated 16.02.2016, there were no pass marks for the interview, and 80% weightage was given to the written test whereas 20% was given to the interview scores. Since the said decision of the Prime Minister was taken after the petitioners had participated in the test as well as the interview, it could not be

given retrospective operation by making it applicable to the competitive process in which the petitioners had participated.

10. The learned Assistant Attorney-General assisted by Mr. Muhammad Ibrar, Section Officer, Ministry of Overseas Pakistanis and Human Resource Development, had confirmed that given the present vacant posts of C.W.A.s, if the petitioners are to be appointed as C.W.A.s, it would not adversely affect the selection process that was carried out during the pendency of the instant writ petition for the appointment of C.W.A.s against the remaining vacant posts.

11. In view of the above, the instant petition is allowed. The impugned decision of the S.S.B. not to appoint the petitioners as C.W.A.s is declared to be contrary to the policy guidelines contained in the Establishment Division's office memorandum dated 16.02.2016 and is accordingly set-aside. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2020

(JUDGE)

*Qamar Khan**

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