

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2660/2018

Maj. (R) Muhammad Asim Waqar ul Hussnain

Versus

Federation of Pakistan through its Secretary, Establishment Division and
others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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27.06.2019

**Dr. G.M. Chaudhry, Advocate for the petitioner.
Ch. Akbar Ali, learned Assistant Attorney-General,
Mr. Ijaz Hussain Shah, Senior Admin Officer of respondents No.2 and 3,
Raja Zubair Hussain Jaral, Advocate for respondent No.5.**

Through the instant writ petition, the petitioner, Maj. (R) Muhammad Asim Waqar ul Hussnain, seeks a direction to respondent No.2 (Ministry of Defence) to prepare a departmental seniority list in accordance with the Civil Servants (Seniority) Rules, 1993, and place his name at appropriate position in the said list after taking into account his induction on 24.01.2002.

2. Learned counsel for the petitioner submitted that by virtue of notification S.R.O.No.305(I)/85, dated 31.03.1985, issued under Rule 3(2) of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, the method of appointment against the post of Director (BS-19) in the Department of Survey of Pakistan was such that 80% of the total posts were to be filled by promotion from the civilian officers, whereas 20% were reserved for the army officers of the Corps of Engineers; that under this method, the posts of Directors in the Department of Survey of Pakistan are to be filled by appointing an army officer of the Corps of Engineers after making four appointments as Directors from the civilian officers; that under this formula, the

petitioner, who is the senior most Deputy Director (BS-18) from the armed forces should have been appointed as Director (BS-19) after the appointment of five civilians as Directors was completed on 27.12.2018; that ever since the issuance of the said S.R.O. dated 31.03.1985, respondent No.2 had appointed 36 Directors, out of which only 6 were from the armed forces and the rest were all civilians; that had the petitioner been appointed as Director (BS-19) after 27.12.2018, the requirement for promotion under the 20% quota for the armed forces in accordance with the said S.R.O. dated 31.03.1985 would have been fulfilled; that the petitioner has the requisite experience and qualifications to be promoted as Director (BS-19); and that through the instant petition, the petitioner was simply seeking a direction to the Department of Survey of Pakistan to consider him for promotion to the post of Director (BS-19). Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondent No.5 raised an objection to the maintainability of the instant petition. He submitted that upon the petitioner's induction from the Pakistan Army to the Department of Survey of Pakistan, he became a civil servant; that in the instant petition, the petitioner has agitated a matter pertaining to the terms and conditions of his service; that the petitioner has the alternative remedy of taking his grievance to the Federal Service Tribunal ("F.S.T."); and that since respondents No.2 and 3 are beyond this Court's territorial jurisdiction, a writ cannot be issued to the said respondents.

4. He further submitted that the grievance agitated by the petitioner in the instant petition has already been settled in the judgment dated 24.02.1999, passed by F.S.T. in appeal No.296(P)/1998 titled "*Shahzad Hussain Vs. Secretary, Establishment*"; that vide judgment dated 23.04.2004, passed by the Hon'ble Supreme Court, appeal against the said judgment of F.S.T. was dismissed; and that the petitioner was trying to agitate a matter which has already been settled by F.S.T. as well as the Hon'ble Supreme Court. Learned counsel for respondent No.5 prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. There is no denying the fact that the petitioner is presently serving as Deputy Director (BS-18) in the Department of Survey of Pakistan. It is also not disputed that upon the petitioner's induction from the Pakistan Army in the Department of Survey of Pakistan, he became a civil servant. By seeking promotion to the post of Director (BS-19) on the basis of the method prescribed in notification S.R.O. No.305(I)/85, dated 31.03.1985, the petitioner is agitating a matter pertaining to the terms and conditions of his service. However, learned counsel for the petitioner is correct in his submission that the petitioner is simply seeking a direction for his consideration for appointment/promotion as Director (BS-19) in the Department of Survey of Pakistan.

7. This matter was argued on merits at length. It may be mentioned that the above-mentioned notification S.R.O. No.305(I)/85, dated 31.03.1985 has already been interpreted in the judgment

dated 24.02.1999, passed by F.S.T. in appeal No.296(P)/1998. It is not disputed that the said judgment has been upheld by the Hon'ble Supreme Court of Pakistan.

8. Perusal of the said judgment dated 24.02.1999, passed by F.S.T. shows that out of seven sanctioned posts of Director (BPS-19), two had been appointed from the armed forces in view of the 20% quota for the army officers of the Corps of Engineer under the notification S.R.O. No.305(I)/85, dated 31.03.1985. F.S.T. held that the appointment of two Directors from the armed forces was in defiance of the said notification. Letter No.1/3/94/17, dated 29.10.1996 from the Ministry of Defence, provided that on the basis of the existing strength, only one post comes to army officers and the Survey of Pakistan was advised to strictly adhere to the promotion quota as laid down in the recruitment rules. On the basis of the said letter dated 29.10.1996 and notification S.R.O. No.305(I)/85, dated 31.03.1985, the learned F.S.T. observed as follows:-

"5. It is obvious from the present composition of officers in Grade-19 that 20% quota has not been observed by the Survey of Pakistan in defiance of the directive of the parent Ministry i.e. Ministry of Defence. The Surveyor General is, therefore, directed to reduce the number of Army Officers holding the post of Director to one only and appoint civilian officers in the vacancies according to their selection procedure and the Recruitment Rules for civilians."

9. As mentioned above, the said judgment of F.S.T. has been upheld by the Hon'ble Supreme Court of Pakistan.

10. Given the current sanctioned strength of seven Directors (BS-19) in the Department of Survey of Pakistan, two officers from the armed forces have already been appointed as Directors

(BS-19). Major (R) M. Tanvir was appointed on 25.09.2008 whereas Major (R) Nadeem Chaudhary was appointed on 04.11.2009. These officers have already occupied the 20% quota for Directors (BS-19) from the armed forces in the Department of Survey of Pakistan. The petitioner being in the service of the Department of Survey of Pakistan and having been inducted from the Pakistan Army cannot be appointed against the single vacancy of Director (BS-19) reserved against the 80% quota for the civilian officers of the Department of Survey of Pakistan. If the petitioner is to be appointed as Director (BS-19) with two other officers from the quota of the armed forces already being in service, it would violate the quota of only 20% for appointment as Director (BS-19) from the armed forces.

11. In view of the above, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan