

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

1. Writ Petition No.4096 of 2019

Farhad Ali.

Versus

Federation of Pakistan through Secretary Aviation Division, Islamabad and 02 others.

2. Writ Petition No.4403 of 2019

Naeem Ahmad Khan.

Versus

Federation of Pakistan through Secretary Aviation Division, Islamabad and another.

Petitioners By : Raja Saif-ur-Rehman, Advocate.

Respondents By : Barrister Ehsaan Ali Qazi, Advocate for
Respondents No.2 and 3/CAA (in Writ
Petition No.4096 of 2019).
Ms. Amna Warsi and Ms. Ayasha Warsi,
Advocates for respondent No.2/CAA (in
Writ Petition No.4403 of 2019).
Ms. Maria Jabeen, Senior Deputy Director
(Legal), CAA.
Raja Khalid Mehmood Khan, learned
Deputy Attorney-General.

Date of Hearing : 09.06.2020.

AAMER FAROOQ, J. - This judgment shall decide the instant petition as well as Writ Petition No.4403 of 2019, as common questions of law and facts are involved.

2. The petitioners, in both the petitions, are the employees of Civil Aviation Authority (CAA) and are aggrieved of the decisions of their employer for

not recommending them for promotion. In this behalf, the petitioner, in Writ Petition No.4096 of 2019, was employed in Civil Aviation Authority (CAA) in 1988 as Deputy Manager Accounts in PG-8. He was promoted from PG-8 to PG-9 in 1993 and then to PG-10/EG-7 in 2014. His case for further promotion was put to the competent authority but he was not promoted on account of the fact that he shows reluctance to assume responsibilities. He also moved an appeal/application, which was decided by the competent authority on 21.06.2019, maintaining the referred position.

3. The petitioner, in Writ Petition No.4403 of 2019, joined Civil Aviation Authority (CAA) in 1989 as Assistant Admin Officer in PG-7. He was promoted to PG-8 and then to PG-9/EG-6 in 2005. The case of the petitioner for further promotion was placed before the competent authority in 2017 but he was not recommended for promotion. The representation made by the petitioner also was turned down due to the reason that the minimum PAR score for the last three years as required for promotion to higher position is not met with.

4. At the very outset, learned counsel for the respondents raised objections to the maintainability of the petitions on two scores. Firstly, that this Court lacks territorial jurisdiction in the matter and secondly, the petitions are not maintainable as the rules of service of Civil Aviation Authority (CAA) are non-statutory. In this behalf, it was contended that CAA has its principal office at Karachi and even the Administrative Wing is situated at Karachi, where the cases of the petitioners were considered for promotion. It was conceded that CAA is under the Aviation Division and on that basis this Court has jurisdiction in the matter but contended that the dominant cause is at Karachi, hence the Courts at Karachi have jurisdiction. Reliance was placed on cases reported as "*Sandalbar Enterprises (Pvt.) Ltd Vs. Central Board of Revenue and others*" (**PLD 1997 SC 334**), "*Messrs. AIR CIRO through Senior Partner Vs. Government of Pakistan through Secretary Aviation Division, Islamabad and 5 others*" (**2018 YLR 164**),

and *"Dossani Travels Pvt. Ltd. and others Vs. Messrs. Travels Shop (Pvt.) Ltd. and others."* (**PLD 2014 SC 1**). It was also argued that the rules of service of Civil Aviation Authority (CAA) are non-statutory. In this behalf, reliance was placed on cases reported as *"Muhammad Nawaz Vs. Civil Aviation Authority and others"* (**2011 SCMR 523**), *"Muhammad Aslam Khan Vs. Federation of Pakistan and others"* (**2013 SCMR 747**) and *"Shafique Ahmed Khan and others Vs. NESCOM through Chairman, Islamabad and others"* (**PLD 2016 SC 377**).

5. Responding to the above objections, learned counsel for the petitioners contended that the representations/appeals of the petitioners were decided in Islamabad, hence this Court also has the jurisdiction in the matter. It was contended that CAA is a federal subject and is under Aviation Division. In respect of rules of service, learned counsel submitted that recently the Hon'ble Peshawar High Court has handed down a decision to the effect that the rules of service of Civil Aviation Authority (CAA) are statutory. It was further contended that even if the same are non-statutory, this Court can entertain a petition under Article 199 of the Constitution with respect to an organization, which does not have statutory rules of service but where there is violation of law in light of the decision of the Hon'ble Supreme Court of Pakistan in case reported as *"Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed"* (**2013 SCMR 1707**).

6. On merit, learned counsel for the petitioners submitted that the adverse remarks have not been communicated to the petitioners; that in response to the representations adverse remarks have been made and the allegations have been levelled against which the petitioners are entitled to the show cause notice; that respondents did not take into account the ACRs/PARs, which are excellent; that in considering the cases of the petitioners not only procedural violations were made but provisions of Civil Aviation Ordinance, 1982 were also flouted.

7. Learned counsel for the respondents, *inter-alia*, contended that in case of the petitioner, in Writ Petition No.4096 of 2019, the Board did not recommend him for promotion due to his reputation with reference to financial turpitude as well as because the petitioner shows reluctance to assume his responsibilities. In case of the petitioner in Writ Petition No.4403 of 2019, it was contended that the petitioner since lacks the required experience for Aviation Security as he is to be promoted to Additional Director Security, hence he was not considered for promotion. It was also stated that in terms of Performance Appraisal Reports (PARs) for the year 2017 and 2018, it was remarked that the petitioner needs to improve professional skills.

8. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

9. In so far as objection of Civil Aviation Authority (CAA) regarding the maintainability of the petitions for its rules being non-statutory is concerned, the judgments of the august Apex Court on the subject are lucid. In "*Muhammad Nawaz Vs. Civil Aviation Authority and others*" **(2011 SCMR 523)**, the Hon'ble Supreme Court of Pakistan observed that the regulations of Civil Aviation Authority (CAA) are non-statutory. Similar observation was made in case reported as "*Muhammad Aslam Khan Vs. Federation of Pakistan and others*" **(2013 SCMR 747)**, wherein it was observed that Civil Aviation Authority (CAA) had no statutory rules, thus its employees did not have a remedy before Service Tribunal regarding all grievances relating to their terms and conditions of service. In "*Muhammad Rafi and another Vs. Federation of Pakistan and others*" **(2016 SCMR 2146)**, the august Apex Court observed that the rules of service of Civil Aviation Authority (CAA) are non-statutory, however, in the same judgment it was also observed that even where the rules of service are non-statutory, a petition under Article 199 of the Constitution is maintainable provided there is any violation of law. In case reported as "*Muhammad Zaman and others Vs.*

Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others” (2017 SCMR 571), the august Apex Court held that where the rules/regulations are framed for internal management and control, the same are non-statutory and could not be invoked under the constitutional jurisdiction of a High Court. The upshot of the above case law is that the rules/regulations of service of Civil Aviation Authority (CAA) are non-statutory, however, a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is still maintainable in case there is any violation of law particularly principles of natural justice.

10. The second objection raised was regarding the territorial jurisdiction of this Court. CAA is under the Aviation Division, which is based in Islamabad. The petitioners filed their appeals/representations, which were decided in Islamabad. Admittedly, the principal office of CAA is situated in Karachi, hence in light of the judgment of the Hon’ble Supreme Court of Pakistan reported as *“Let.-Gen. (R) Salahuddin Tirmizi Vs. Election Commission of Pakistan” (PLD 2008 SC 735)*, this Court alongwith the Hon’ble Sindh High Court has concurrent jurisdiction in the matter.

11. Petitioners were denied promotion for the reasons spelled out in the letters mentioned above. In the case of petitioner in Writ Petition No.4096 of 2019, observations were made by the Board considering the promotion of the petitioner that he does not have good reputation regarding integrity and also lacks initiative. This Court in a petition under Article 199 of the Constitution cannot be an arbiter or adjudicate upon the reasons which prevailed with the Selection Board. In case there are any procedural violations of the service regulations, the same are not justiciable because of the fact that they are non-statutory. Moreover, the post, in question, is a selection post for which the petitioner seeks promotion and criteria for same is merit and suitability. Again this Court cannot take exception to the decision of the Selection Board regarding

the merit and suitability of the petitioner. In view of the above position, there is no violation of any law committed by respondents No.2 and 3 in the facts and circumstances. CAA was not required to issue any show cause notice or provide an opportunity of hearing to the petitioner.

12. In case of the petitioner, in Writ Petition No.4403 of 2019, his Performance Appraisal Record clearly has observations that the petitioner needs to improve his professional knowledge and skills and does not have proper requisites for a higher level security position. The petitioner again in such facts and circumstances is not entitled to any opportunity of hearing and there is no violation of any law in the facts and circumstances.

13. For what has been stated above, in the facts and circumstances of both the cases, learned counsel for the petitioners could not point out any violation of law for which interference could be made in the decisions of CAA in not recommending the petitioners for promotion. The petitions are, therefore, not maintainable as rules of service of CAA are non-statutory and there is no violation of any law in not recommending the petitioners for promotion.

14. In view of the foregoing, the petitions mentioned above are **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 21st day of August, 2020.

JUDGE

M. Zaheer Janjua