

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

W.P No. 4389/2019

Muhammad Tufail

Vs

The Secretary, Establishment Division, Government of Pakistan, etc

Petitioners by : Mr. Moin Uz Zafar Khan, Advocate.

**Respondents by : Ms. Ruqya Sami, learned AAG.
M. Younis Khan, Accounts Officer, Military
Accountant General,(MAG).**

Date of hearing : 23.07.2020.

LUBNA SALEEM PERVEZ J. Present petition has been filed by the petitioner seeking following prayers:-

"1. It is, therefore, respectfully prayed that this Writ Petition may kindly be allowed and Respondents may kindly be directed to determinate the seniority and inter-se-seniority of petitioner in the light of Section 8 Seniority (1-4) of Civil Servant Act, 1973 and Civil Servant Rules 1993 section 3 and 6 and re-fixed in impugned seniority Roster 06.06.2017, so that his grievances may be resolved.

2. It is further prayed with this Hon'ble Court impugn letter dated 26.08.2015 issued by Respondent 2 which is contrary, infringed with above Service rules, therefore, it may please be set aside and restored letter dated 13.05.2014, which was issued in accordance with above Civil Servant Act/Rules."

2. Brief facts, as per petition are that the petitioner was appointed as Junior Auditor on 31.12.1980 and on regular basis promoted as Auditor on 26.05.1982. Respondent No.5 was also appointed directly as auditor on the same date. Respondent No.5 as per seniority roaster for Senior Auditor (BS-16) (for graduate and non-graduate) issued on 20.03.2015 was at Sr.No. 2265 while the petitioner was at Sr. No. 2240 in the list. However for promotion against the post of Assistant Account Officer (BS-17) the petitioner, despite being senior, was not considered rather Respondent No.5 was considered for the said promotion.

3. The learned counsel for the petitioner submitted that the supersession of the petitioner has changed the inter-se-seniority of the officers serving on the same post which act is illegal, unjust and in violation of Civil Servants Appointment and Promotion Rules, 1973; that the seniority list dated 20.03.2015 was in accordance

with the guidelines and instructions of the Hon'ble Supreme Court which was prepared in the light of Section 8 of Civil Servants Act, 1973 and the Rules prepared thereunder; that Section 6 provides for inter-se-seniority of the civil servants appointed in the same calendar year according to which the civil servant appointed by promotion, transfer or initial appointment to a service cadre or post shall take seniority from the date of their regular appointment; that Respondent No.2 has illegally issued letter dated 26.08.2015, by making reference of judgment passed by FST Islamabad in appeal No. 590, 592 (K) and judgments of the Hon'ble Supreme Court passed in CPL No. 210 (K) of 1998, to withdraw his previous letter dated 13.05.2014; that Respondent No.3 has arbitrarily withdrawn the legally issued seniority roster dated 20.03.2015 and has issued seniority list dated 06.06.2017 (impugned) illegally and surreptitiously on the basis of higher qualification i.e. B.A against the provisions of sections 6 & 8 of Civil Servants Act, 1973 according to which the basis of promotion is an initial appointment; that the petitioner filed his representation dated 01.04.2016 for antedated promotion or for proforma promotion as Assistant Accounts Officer (BS-17); that due to illegal and unlawful action of Respondent No.3 the petitioner has been deprived of his legitimate right of promotion according to law. He prayed for direction of re-fixing the seniority roster dated 06.06.2017 and setting aside letter dated 26.08.2015. Learned counsel placed reliance on cases reported as "*Abdul Rauf vs. Government of the Punjab (2016 PLC (C.S) 1099)* and "*Muhammad Ilyas Khokhar vs. FOP*" (2006 SCMR 1240).

4. Learned counsel for the respondent on the other hand, vehemently contested the maintainability of this petition as alternate remedy of FST is being available to the petitioner; that the writ petition is hopelessly time barred; that no departmental appeal was filed before Controller General Pakistan and Auditor General Pakistan against order dated 06.06.2017 issued after filing of representation dated 17.05.2017; that the impugned letter dated 26.05.2015, after due deliberations of the representatives of field Accountant Officers on 14.07.2015 and was also submitted before Hon'ble FST during hearing of Appeal Nos. 673 to 679 and

subsequently the appeals before the FST were decided in terms of policy guidelines issued, vide letter dated 26.08.2015, hence, attained finality and superseded all earlier letters. Learned counsel for the respondents in view of the submissions prayed for dismissal of the petition.

5. Arguments heard, record perused.

6. The controversy raised through present petition is with regard to the changes made in the seniority list dated 20.05.2015, for graduates and non-graduates Senior Auditors (BS-16) w.e.f. 01.07.1993 to 31.12.1993, through a new seniority list issued vide covering letter dated 06.06.2017, by the office of Military Accountant General which is as under:-

"Subject: SENIORITY ROASTER OF GRADUATE/NON-GRADUATE SENIOR AUDITOR (B-16) W.E.F. 01.07.1983 TO 31.12.1993.

Seniority roaster of graduate/non-graduate senior auditors (B-16) w.e.f 01.07.1983 to 31.12.1993 as per annexure attached to this letter is being reorganized in the light of Instructions issued by Controller General of Accounts Islamabad vide their letter No. 748/CGA/Establishment/24-C/2015 (Vol-I) dated 26.08.2015. Prior to finalization, the same was circulated amongst the Cs..M.A vide our letter 250/AN/744-SA-Estb dated 06-02-2017 for information of all concerned with the instructions to verify / check the service particulars of their employees with reference to available record. However, discrepancies so pointed out by the Cs.M.A have been incorporated in the roster in hand which is once again enclosed for information of all concerned as their record.

2. *All previous instructions/orders/guidelines issued on the above subject will stand superseded.*

3. *Please acknowledge receipt.*

*(Muhammad Waqas Khan Khakwani)
Asstt: Military Accountant General
(Admin)"*

Letter dated 26.08.2015, issued by Controller General of Account, which has been referred in the above letter dated 06.06.2017, has also been perused which is also reproduced as under:-

"Subject: DISPUTE OF SENIORITY OF GRADUATE AND NON-GRADUATE SENIOR AUDITORS – IMPLEMENTATION OF JUDGMENT OF THE HONOURABLE SUPREME COURT OF PAKISTAN'S DATED 17.08.2009.

Apropos this office correspondence resting with your offices on the subject cited above.

2. *In order to resolve the longstanding dispute of seniority among the graduate and non graduate Senior Auditor as well as in pursuance of judgment passed by FST, Islamabad in Appeal Nos. 590, 591, 592(k) of 1997 and judgments*

of Honourable Supreme Court of Pakistan passed in Civil Petition No. 201(K) to 203 (K) of 1998 and passed in Civil Appeal No. 672 to 680 of 2009, the following principles will serve as a guideline:-

- i. This is not simply an issue of seniority rather it is a matter of induction in the cadre of Senior Auditors. The officials who are inducted as Senior Auditors from other cadres, or any subsequent reorganization, can only be inducted as per procedure, and they shall not be senior to those Senior Auditors who are already serving as Senior Auditors before this induction irrespective of length of service.
- ii. The ante-dation of promotion can never affect the rights enjoyed by the direct appointees in a senior grade against the quota reserved for direct recruitment.
- iii. An officer / official cannot be made junior to another officer retrospectively who has never worked as junior to him before.

03. It is decided that a single seniority list of Senior Auditors (graduate an non graduate) may be prepared on the following lines:-

- i. All graduate Audit & Accounts Assistants (BPS-11) and Auditors (BPS-07) may be inducted into the cadre of Senior Auditor (BPS-11) w.e.f 01.07.1983 according to their inter-se-seniority as on 30.06.1983.
- ii. The non graduate Audit & Accounts (BPS-11) & Auditors (BPS-07) who subsequently graduate or those who were directly recruited graduate Senior Auditors may be placed in the seniority list on the date of their graduation or direct appointment as Senior Auditors.
- iii. All non graduate Audit and Accounts Assistants (BPS-11) and non graduate Auditors (BPS-07) having 08 yeas service may be inducted into the cadre of Senior Auditors w.e.f. 01.04.1988 as per instructions contained in Finance Division, Regulation Wing, O.M. bearing No. F.1(1)-R.3/83 dated 24.05.1988. No retrospective induction shall be given before 01.04.1988 on the basis of 08 years service.
- iv. All non graduate Audit and Accounts Assistants (BPS-11) and non graducate Auditors (BPS-07) having 05 yeas service may be inducted into the cadre of Senior Auditors w.e.f. 01.04.1992 as per instructions contained in Finance Division, Regulation Wing, O.M. bearing No. F.1(1)-R.3/83 Vol-II dated 04.01.1992. No retrospective induction shall be given before 04.01.1992 on the basis of 05years service.

03. All field offices are directed to prepare seniority lists of Senior Auditors in light of above instructions within 30 days. The seniority lists so prepared may be displayed at Notice Boards of your offices for any objection from the existing Senior Auditors, if any.

04. This office letter bearing No. 111/97/CGA/Estt/24-C/2003/Part File dated 13.05.2014 and corrigendum thereof may be treated as withdrawn abi-nitio.

(Nazar Muhammad Ranjha)
Director (Establishment)

Bare perusal of the above letters shows that after formulating guidelines in the light of the judgments of FST and Hon'ble Supreme Court of Pakistan to resolve the disputes regarding seniority among the graduate and non-graduate employees the impugned seniority list was issued on 06.06.2017. The contention of the learned counsel for the petitioner is that the said seniority list has been issued in violation of

Sections 6 & 8 of the Civil Servants Act, 1973 and by virtue of the said list Respondent No.5 having qualification of graduation was promoted before the petitioner though appointed in the service on the same date hence, the impugned seniority list has adversely affected the terms and conditions of the service of the petitioner, whereby, he was superseded by a junior officer.

7. The seniority of a civil servant as per Civil Servants Act, 1973 is the part of the terms and conditions of the service of the civil servants thus the disputes of seniority falls within the domain of Federal Service Tribunal established under Article 212 of the Constitution of Pakistan, 1973, having exclusive jurisdiction in respect of the matters relating to terms and conditions of a civil servant as per definition of the term "Tribunal" defined, vide section 3 of Service Tribunal Act, 1973.

8. The case laws relied upon by the learned counsel for the petitioner on the ground of maintainability of petition before this Court has been examined and found to be distinguishable as in the judgment of Hon'ble Lahore High Court passed in case re: *Abdul Rauf vs. Government of the Punjab [2016 PLC (C.S) 1099]* the controversy relates to the deferment for promotion of the civil servant on the ground of fitness, therefore, it has been held that appeal before the FST is not maintainable. In the judgment re: *Muhammad Ilyas Khokhar vs. FOP (2006 SCMR 1240)* relied upon by the learned counsel it has been laid down that as far as Auditor-General is concerned, he in his capacity has got no lawful authority to lay down the policy unless it is approved by the Establishment Division, however, in present case the letter dated 26.08.2015 has been issued by Establishment Division as it bears signature of Director Establishment, office of the Controller General of Accounts, Islamabad. The law has now been settled that appropriate forum for the issues/controversies relating to the terms and conditions of the service of a civil servant is Federal Service Tribunal (FST). Guidance in this regard has been taken from the judgments of the Hon'ble High Courts in cases reported as "*Muhammad Zafar Versus Director General Pakistan Post, Islamabad (2017 PLC C.S Note 24 Lahore)*", *Fazal Ahmad Ranjha Versus Government of The Punjab Through*

Secretary Education (Schools), Lahore (2016 PLC C.S 1209 Lahore), Syed Hassan Askari Versus Province of Punjab Through Chief Secretary (2016 PLC C.S 459 Lahore), Anees Ahmed Versus Federation of Pakistan (2015 PLC C.S 129 Karachi) and Muhammad Khan Ranjha Versus Secretary, Government of Punjab, Irrigation Department, Lahore (2014 PLC C.S 244 Lahore). In all the cited cases it has been held that the High Court is not supposed to entertain and adjudicate on such disputes due to bar contained under Article 212 of the Constitution. The Hon'ble Supreme Court in the judgment *Re: Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456)* and *National Assembly Secretariat through Secretary vs. Manzoor Ahmed another (2015 SCMR 253)* has observed that bar contained in Article 212 of the Constitution ouster the jurisdiction of the High Court in respect of the matters regarding terms and conditions of service which includes the seniority of the civil servant and any act of discrimination of the department which disturbed the seniority of the civil servant and unlawfully disentitled him/her for promotion in the next higher grade is challengeable before the departmental hierarchy through representation and thereafter before the FST which is empowered to check the violations of any fundamental right and discrimination with regard to the service matters falling within the scope of terms and conditions of service.

8. For the foregoing reasons and in view of the bar contained under Article 212 of the Constitution and granting exclusive jurisdiction to FST over the matters relating to terms and conditions of civil servants, the instant petition is not maintainable, hence, **dismissed** accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this 24th day of August, 2020.

JUDGE