

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 3680/2020

Jan Wali Khan

Versus

Federal Secretary M/o Kashmir Affairs and Gilgit-Baltistan, Islamabad, etc.

Petitioner by: Mr. Mastan Wali Khan, Advocate.

Respondents by: Raja Muhammad Aftab Ahmed, AAG.
Mr. Abdul Hafeez Amjad, Advocate.
Naseer Khan, General Duty Assistant, NATCO.

Date of Decision: 14.09.2021.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has prayed for the following relief:-

That the writ petition in hand may kindly be accepted and directions may be passed down to department that the petitioner may be promoted and confirmed in the post of workshop manager with all the benefits from the date he was given additional charge for the said post after the retirement of the workshop manager in Nov, 2011.

2. Learned counsel for the petitioner contends that petitioner was appointed as Workshop Assistant at NATCO Station Ghizer on contract basis for a period of six months on 14.05.2009 by the Government of Pakistan, whose services have been regularized by the department on 20.10.2009 as Assistant Workshop Manager but later on he has not been promoted despite availability of post and he has been discriminated in comparison with the other employees of NATCO.

3. Conversely, learned counsel for respondents as well as AAG raised the question of maintainability of instant writ petition primarily on the ground that Headquarter of NATCO is situated in Gilgit-Baltistan and even petitioner is performing his duties in Gilgit-Baltistan and as such having no nexus to file the petition at Islamabad; that status of rules of respondent company is being non-

statutory and as such petitioner is not entitled to re-course the constitutional jurisdiction.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner is permanent employee of NATCO/respondents No.2 to 4, which was initially incorporated as Corporation registered with Joint Stock Exchange at Gilgit-Baltistan under Companies Ordinance, 1984 having its Head office at Gilgit-Baltistan duly controlled under Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009, presently under Gilgit-Baltistan Order, 2018. There is no denial to the status of NATCO whose service rules called NATCO Service Rules amended and modified in 2015 are non-statutory which have been approved by the Board of NATCO. As per relevant provision 9.6 "Promotion of the employees of the Corporation can be considered by the management keeping in view the qualification, experience, seniority and fitness through a properly constituted DPC after departmental examination/test" and in terms of rule 9.7 "Promotion is the function of the management and cannot be claimed as a matter of right." In such scenario the basic claim of the petitioner is not maintainable and consideration by the department is privilege under the rules of company. However, question of maintainability of instant writ petition has to be considered in the light of judgments reported as 2013 SCMR 747 (Muhammad Aslam Khan vs. Federation of Pakistan), 2017 SCMR 2010 (Pakistan Defence Officers Housing Authority vs. Mrs. Itrat Sajjad Khan), 2017 SCMR 571 (Muhammad Zaman vs. Government of Pakistan), 2014 SCMR 982 (Syed Nazir Gillani vs. Pakistan Red Crescent Society), 2013 SCMR 1383 (Abdul Wahab vs. HBL), 2016 SCMR 2146 (Muhammad Rafi vs. Federation of Pakistan).

6. This court is of the view that function test provided in the above mentioned judgments of Apex Court clearly establishes that terms & conditions of service of petitioner are governed under non-statutory rules and as such

constitutional jurisdiction is not available to the petitioner. Even otherwise, the dominant cause highlighted in the petition falls within the territorial jurisdiction of Gilgit-Baltistan as petitioner is performing his duty in Gilgit-Baltistan and Headquarters of NATCO is also situated in Gilgit-Baltistan, therefore, this court lacks the territorial jurisdiction in this matter, hence, instant writ petition is hereby *dismissed*.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid