

## **JUDGMENT SHEET.**

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

**ICA No. 66/2020.**

**Syed Muntazim Rizvi**

*Versus*

**Federation of Pakistan, etc.**

**Appellant by:** Mr. Muhammad Shoaib Shaheen, Mirza Waqas Qayyum and Mr. Saif-ur-Rehman Shah Bukhari, Advocates.

**Respondents by:** Mr. Saqlain Haider Awan, AAG.  
Ehtisham Shahid, DG (HR), NADRA.  
Khalid Ishaq and Ubaid-ur-Rehman, Law Officers, NADRA.

**Date of Decision:** 13.08.2020.

**MOHSIN AKHTAR KAYANI, J:-** Through this ICA, the appellant has assailed the judgment dated 27.02.2020, passed by learned Single Judge in Chambers, whereby writ petition No.2460/2019, filed by appellant was dismissed.

2. Learned counsel for the appellant contends that appellant was appointed as Assistant Manager (O-6) in NADRA on contract basis vide letter dated 04.05.2009 for a period of 03 years till 17.05.2012, however, before expiry of said period an offer was launched by the respondent authority to submit request for conversion of status of all the employees to become an employee under NADRA pay scale or basic pay scale being civil servant; that appellant exercised his option being in terms of position O-8 which is equal to Deputy Director (BPS-18) to be governed under basic pay scale in future but his request was not adhered to and matter was raised before this Court in W.P No.4816/2016 dated 07.12.2017, where-after petitioner was given right of hearing and order dated 04.06.2018 was

passed with self contradictory option in violation of respondents practices and offer made to other similarly placed employees; that appellant exercised his option being Deputy Director scale and same could not be considered lower to his original position of O-8 and as such all the actions of respondents in the recent offer are not justiciable under the law; that learned Single Judge in Chambers has not considered the law in its true perspective as principle of legitimate expectancy has been violated, whereby right to be appointed in terms of BPS-18 is inalienable right of appellant which could not be revoked by changing the original offer in the year 2012.

3. Conversely, learned AAG alongwith Law officers and DG (HR), NADRA contend that appellant has not exercised his option within prescribed time with correct credential and same was returned to the appellant and he never agitated the matter and kept silent till the expiry of his service contract for 03 years and filed writ petition in the year 2017 for the first time with the claim that he has given his option to be regularized in terms of basic pay scale, which is an afterthought and same could not be extended, however, he was given a fair chance on the basis of order passed by this Court in W.P No.4816/2016, dated 07.12.2017 and as such appellant has lost his opportunity to be regularized; that option form given to the appellant is based upon letter dated 06.03.2012, which has its own conditions including the condition No.2(e), whereby it has specifically been stated that service of an individual could be dealt in terms of government rules while considering the eligibility criteria and as such the appellant has not served five years of his service in BPS-17, as a result whereof he could not be given scale of BPS-18.

4. Arguments heard, record perused.

5. From perusal of record, it reveals that appellant is aggrieved with the offer made by NADRA/respondent through letter dated 04.06.2018, whereby he was given following option:-

**GOVERNMENT OF PAKISTAN**  
**INTERIOR DIVISION**  
**NATIONAL DATABASE & REGISTRATION AUTHORITY**  
 State Bank of Pakistan Building, Shahr-e-Jamhuriat  
 G-5/2, Islamabad.  
 Tel: 051-90391342, Fax # 051-9204262

NADRA/HR/Disp/47/28649

04 June, 2018

To: **Mr. Syed Muntazim Rizvi, (ERP # 28649)**  
 Ex-Deputy Director

Info: Chairman Secretariat

Subject: **Decision of Personal Hearing**

1. In compliance with Honourable Islamabad High Court, Islamabad orders dated 07.12.2017 passed in Writ Petition # 4816/2016, you were called for personal hearing before the Chairman NADRA on 15.02.2018 for deciding your case regarding reinstatement in service and grant of regular employment status in accordance with law. After hearing, your case has been analyzed in detail along with other similar placed employees (Malik Khurram Najeem Awan, Sajjad Haider, Syed Hassan Askari, Major (R) Muhammad Tanveer Abbas, Major (R) Tahir Shuaib, Sikandar Abbas, Ms. Naz Shueb) opted for Contractual Regular Employment on Open-Ended contract; resultantly, their rehiring was implemented with same employment status. Even Major (R) Muhammad Tanveer Abbas initially opted BPS and placed in BPS-18; however, for the purpose of his rehiring on O-9 scale as Director, his employment in BPS-18 was considered as void-ab-initio and rehired in O-9 scale on Contractual Regular Employment on Open-Ended contract. Therefore, in order to decide your reinstatement case, your willingness is required one of the following:-

a. If you intend to have Regular Employment in BS grade; then, your services will be placed as Deputy Assistant Director in BS-16 grade as during regularization in NADRA i.e. 29.02.2012, you were working as Assistant Manager in O-6 scale. Further, your rehiring as Deputy Director in O-8 scale with effect from 06.4.2012 will be treated as void-ab-initio as the same could not be considered/materialized while working on BPS employment.

b. If you opt for Contractual Regular till Superannuation; then, you will have to exercise employment option in O-6 Scale as Deputy Assistant Director. Subsequently, your rehiring in O-8 scale as Deputy Director will be considered as promotion and the same will be remained intact with your employment on Contractual Regular till Superannuation as other similar placed employees highlighted by you were treated the same. It is added here that upon conversion of your employment as Contractual Regular till Superannuation; only termination clause of your original contract will be changed wherein notice period is extended from 30 days (1 month) to 90 days (3 month) on either side or payment of pay in lieu thereof without assigning any reason. Other terms and conditions of your contract will be remained same.

2. You are requested to forward you reply/consent at earliest so that your case can be decided, accordingly.

6. The appellant has claimed that he was initially appointed on contract basis in O-6 and during continuation of said period of contract he was given another contract in O-8 w.e.f. 06.04.2012 as Deputy Director, however, during the said position NADRA Board has decided to regularize the services of the employees,

resultantly the option was given to all the employees to submit their option form to be considered in terms of extended pay scale option-1 or in basic pay scale option-2, whereby appellant has adopted option-2 (Regular Service under BPS) but he was not given the said scale and even matter was not concluded, however, appellant remained in service while performing his duties as Deputy Director in O-8 scale till the expiry of his contract i.e. 31.12.2016, where-after appellant has claimed that his request for regularization of service at his option was not settled and he filed W.P No.4816/2016, whereby matter was disposed of with direction to the respondent authority to decide the same by affording opportunity of hearing to the petitioner in accordance with law. Resultantly order dated 04.06.2018 was passed to which the appellant was not agreed and filed writ petition No.2460/2019 with the claim that options are based upon malafide and even options were not given as per prevailing practice in NADRA where other similarly placed employees have been given rights in terms of their extended pay scale and appellant was given option on the lower side. The matter was considered by the learned Single Judge in Chambers and dismissed the same in the following manner:-

*The petitioner was not entitled to be regularized in the higher scale because that was a subsequent event. The crucial date was decision of the Board to regularize the contract employees. On that date the petitioner was serving in scale-06. As already noted the petitioner accepted his rehiring in the higher scale and continued to serve till the competent authority directed not to extend his contract period. It is also not denied that the petitioner did not raise any objection nor demanded issuance of is regularization notification during the period when he kept serving pursuant to the terms and conditions stipulated in letter, dated 05-04-2012. The judgment referred to by the learned counsel for the petitioner is distinguishable because it is not applicable in case of determination of higher scale granted on the basis of rehiring. With the able assistance of the learned counsels, the impugned order has been carefully perused. It is a well reasoned order and has not been found*

*to suffer from any legal infirmity. The respondent Authority has made an offer to the petitioner based on the facts and circumstances of his case.*

*For the above reasons, this petition is devoid of merits and accordingly dismissed.*

7. While considering the above reasons, we have also gone through the record and there is no cavil to the proposition that offer given to NADRA employees is based upon letter dated 06.03.2012 with subject Regularization of NADRA Employees, which contains the following conditions:-

- a. All employees having completed one year contractual service as on 29<sup>th</sup> February, 2012 are eligible to exercise the option to join BPS Cadre.*
- b. Option once exercised will not be reversed. All employees are therefore requested to read all the terms & conditions carefully before endorsement.*
- c. Equivalence of NADRA pay scales with Basic Pay Scales and designations is attached as **Annex A**.*
- d. Option Form to opt for NADRA or Basic Pay Scales is attached as **Annex B**.*
- e. The eligibility conditions as per Government Rules for various grades and designation are attached as **Annex C**. Only those employees who fulfill the requisite criteria for BPS scales may opt for the same. However, in case an individual falling short of requisite criteria/length of service may opt for lower BPS scale, if otherwise eligible.*
- f. Details of pay fixation under BPS are attached as **Annex D**.*

8. We have attended each and every term for regularization given above, whereby it has not been denied that *“only those employees who fulfill the requisite criteria for BPS scales may opt for the same. However, in case an individual falling short of requisite criteria/length of service may opt for lower BPS scale, if otherwise eligible”* this reference in clause 2(e) left nothing in favour of appellant, who could not demonstrate his eligibility under Government Rules for appointment against the post of BPS-18 as he lacks the working experience for 05 years in BPS-17, which is the primary eligibility/qualification

for promotion and appointment in BPS-18 under Civil Servant Act, 1973 read with APT Rules, 1973.

9. We have also given anxious thought regarding the conduct of the appellant who kept silent for three long years after exercising his option in the year 2012 and when his contract in O-8 being Deputy Director was expired he filed the writ petition before this Court in the first round and claimed that his regularization option was not settled. In view of his conduct whereby he kept silent for more than three long years and enjoyed the financial benefits in O-8 which are much higher in terms of BPS-18 which amounts to acceptance of his original position to perform his duty in O-8 and in contravention to his own claim, although he lacks eligibility criteria otherwise.

10. We have also considered another important aspect of this case that the terms & conditions of service of appellant is governed under master and servant rules as NADRA Employees Service Regulations, 2002 are non-statutory. Reliance is placed upon 2017 SCMR 1979 (Chairman NADRA, Islamabad Vs. Muhammad Ali Shah), 2019 SCMR 984 (Major (Retd.) Syed Muhammad Tanveer Abbas and another Vs. Federation of Pakistan), wherein it was settled that no writ petition is maintainable qua the terms & conditions of NADRA Employees who are on contract on short terms basis especially when no illegality has been observed, even no statutory right has been accrued. Hence, ICA filed by the appellant is not justiciable, even order passed by learned Single Judge in Chambers is in accordance with law, therefore, instant ICA is hereby dismissed.

(FIAZ AHMAD ANUM JANDRAN)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid