

## **JUDGMENT SHEET.**

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

**W.P. No. 1384/2014.**

Manzoor Hussain and others.

***Versus***

The Chairman NAB, etc.

**Petitioners by:** Mr. Adnan Haider Randhawa and Raja Khurram Ijaz,  
Advocates.

**Respondents by:** Barrister M. Mumtaz Ali, AAG.  
Mr. Nasir Mehmood Mughal, Special Prosecutor NAB.  
M Javed Iqbal Khan, Assistant Director HRM, NAB.

**Date of Decision:** 24.02.2020.

**MOHSIN AKHTAR KAYANI, I:** Through this writ petition, the petitioners have prayed for the following relief:-

*That this Honourable Court may graciously be pleased to direct the Respondents to consider the case of incumbents/petitioners for promotion as Assistant Director (BPS-17) giving retrospective effect of Service Rules MAQ-2002 thereunder incumbents were appointed in NAB from the date when juniors to petitioners promoted in DPC held on 27.12.2013, applying conditions prescribed for length of service to the post of Assistant Director (BPS-17) as per rules.*

2. Learned counsel for the petitioners contends that NAB is a statutory body established under NAO, 1999 and its employees do not fall under the definition of civil servants in terms of Section 28(d) of NAB Ordinance, 1999 read with Section 14.06 of terms & conditions of service (TCS), 2002; that NAB employees terms & conditions of service, 2002 were framed with the concurrence of Establishment Division vide SRO dated 26.12.2002, whereby Methods of Appointment and Qualifications (MAQ) and other conditions for appointment against all the posts in the NAB have been given; that petitioners were initially appointed as Stenographer in BPS-15 and their post has been upgraded by the Federal Government on 23.12.2011 and re-designated as Assistant Private Secretary (APS) by Finance Division vide O.M dated 28.02.2013; that prior to up-gradation of the post, the

incumbents of the said post were eligible for promotion for the post of Personal Assistant (BPS-16), who were otherwise eligible for promotion of Assistant Director (BPS-17) and as such respondent department when initiated the process of promotion for the post of Assistant Director, the department has not considered the petitioners for the said post despite the fact that petitioners being Stenographers were already up-graded as APS in BPS-16 and as such their matching qualification and other experience fulfills the criteria for promotion to the post of Assistant Director but this aspect has been ignored and their request to that extent has been regretted which is contrary to law, hence, this writ petition.

3. Conversely, learned Special Prosecutor NAB contends that petitioners do not fulfill the requirement for promotion to the post of Assistant Director, because feeding posts for the said position are Inspector/Superintendent/Accountant/Personal Assistant (BPS-16) and as such petitioners do not fall within that four categories although they have been promoted from BPS-15 to BPS-16 but this does not create any right in their favour qua promotion as Assistant Director.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioners are Stenographers in NAB have prayed for inclusion of post in the terms & conditions for promotion/eligible persons for promotion in column No.5 of the NAB Employees Terms & Conditions of Service (TCS), 2002, where-after they would be provided equal opportunity of promotion as granted to other employees of similar status/grade.

6. I have gone through each and every aspect of this case, however, in order to understand the proposition, it is necessary to reproduce the relevant para 3.04 of the NAB Employees Terms & Conditions of Service, 2002:-

**3.04 Methods of Appointment and Qualifications etc.,**

*(1) Subject to para (3) and (4) below appointment to posts shall be made on regular basis by any of the following methods, namely:-*

*(a) By initial appointment in accordance with Part-II.*

*(b) By promotion in accordance with Part-III.*

*(c) By transfer in accordance with Part-IV.*

*(2) The method of appointment, qualification and experience and other conditions for various posts shall be laid down by the NAB, in consultation with the Establishment Division.*

*(3) Appointment to 10% posts in each cadre shall be made by induction of officers or personnel of Armed forces as the case may be.*

*(4) Quota reserved for disabled persons and women shall be observed as per Government instructions.*

7. The petitioners are praying that they be considered for promotion against the post of Assistant Director BPS-17 on the ground that their status of Stenographers have been upgraded by the NAB authorities alongwith incumbents against the post of APS BPS-16 vide order dated 23.12.2011 and they have been re-designated by the Finance Division as APS vide O.M dated 28.02.2013. The minimum requirements provided in column 5 of **"persons eligible for promotion"** are:-

- (a) Inspector
- (b) Superintendent
- (c) Accountant
- (d) Personal Assistant (BPS-16)

8. Besides the other conditions of the promotion the said column is silent qua the Stenographers and as such the case of petitioners does not fall within that parameter for the purpose for consideration for promotion against the post of Assistant Director, however, petitioners have argued that their post of Stenographer has already been upgraded in BPS-16 and as such they could not be ignored merely on the ground that they are not Personal Assistant (PA), although petitioners' post has been upgraded in BPS-16 with nomenclature of APS but still they have not been designated as PA, therefore, they do not fall within the parameters of the NAB Employees TCS, 2002 referred at S. No.06, as such the interpretation made by the petitioners is farfetched and could not be considered relevant as Stenographers might be promoted from BPS-15 to BPS-16 in past but this does not mean that they are automatically be considered for the post of Assistant Director. The up-gradation of any post alongwith incumbents does not mean that the petitioners fulfill the requirement of next higher position automatically unless NAB Employees TCS, 2002

are not amended to this effect. Even otherwise the up-gradation of the post does not mean the promotion against the substantive post and a separate order for promotion is required, even in this case the Stenographers though that have achieved the BPS-16 by virtue of up-gradation but they could not be called as PA referred in S.No.6 and said position of PA is one of the eligibility for promotion to be considered against the post of Assistant Director at S.No.5, however, at this stage whether it could be claimed that a direction be issued to NAB for amendments of the said NAB Employees TCS, 2002 is justified. The answer to the proposition has to be seen in the light of amended revised MAQ, 2002 whereby channel of promotion to the post of Private Secretary (BPS-17) provided to APS (BPS-16) and at the same time for the post of Assistant Director, PA has been excluded. The relevant extract of MAQ, 2015 for the said post is as under:-

S.No. 1	Post 2	BS 3	Persons eligible for promotion 4	Conditions 5
5	Assistant Director	17	Deputy Assistant Director  • Superintendents (BPS-16) • Accountant (BPS-16) • Data Control Supervisor (DCS) (BPS-16) For promotion as AD (AD Admn, Finance and IT)	3 x years service in BPS-16  i. 3 x years service in BPS-16 or 8 x years service in BPS-11 and above. ii. Graduate 2 <sup>nd</sup> Division plus departmental Exam.

9. The petitioners have challenged the MAQ, 2015 being aggrieved with the nomenclature of Private Secretary (BPS-17) instead of Assistant Director (BPS-17) and their representation has been considered by the Chairman NAB which was rejected vide order dated 02.02.2018. It has further been observed from record that post of Stenographer was upgraded from BPS-15 to BPS-16 for the purpose of future promotion as Private Secretary, however, it has been clarified by the clarification dated 22.10.2013 issued by the Establishment Division **that posts of Private Secretary have not been upgraded but granted time scale on completion of prescribed length of service.**

10. In view of above position, it is not the right of an employee to claim the amendment in the TCS, 2002 as per his own interpretation and as such no legal right is visible from record for the justification and maintainability of instant writ petition

especially when the MAQ have already been settled by the competent authority, therefore, at this stage no retrospectivity could be given after amendment in the TCS, 2002, which exclusively falls within the mandate of NAB authorities. Hence, instant writ petition is not competent and the same is hereby ***dismissed***.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid