

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

I.C.A. No.25 of 2016
Ghansham Das
Versus.
Federation of Pakistan through Secretary Establishment Division & others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.01.2016	Mr. Arif Chaudhry, learned ASC for appellant

Through Writ Petition No.2869/2015, the appellant/petitioner, Mr. Ghansham Das, Assistant Composite Wood Officer, at the Pakistan Forest Institute, Peshawar, impugned the notification dated 24.02.2015, issued by the Management Services Wing of the Establishment Division, Government of Pakistan, whereby he was repatriated to the Pakistan Forest Institute, Peshawar, from his posting on deputation as Section Officer at the Ministry of Information Technology & Telecommunication, Islamabad. This writ petition was dismissed, vide impugned Order dated 28.12.2015, passed by the learned Single Judge-in-Chambers.

2. Learned counsel for the appellant submitted that on 21.11.2007, the appellant was recommended by the Federal Public Service Commission for appointment to the post of Assistant Composite Wood Officer (BS-17) at the Pakistan Forest Institute, Peshawar, Ministry of Environment, Government of Pakistan; that vide notification dated 30.06.2008, the appellant was appointed to the said post by the Ministry of Environment, Government of Pakistan; that after completing his probation period of one year, the appellant, vide notification dated

31.10.2009, was sent on deputation for a period of three years and posted as Section Officer (BS-17) at the Ministry of Environment, Islamabad; vide notification dated 12.02.2011, issued by the Cabinet Secretariat, Establishment Division, Government of Pakistan, the appellant was transferred as Section Officer to the Petroleum & Natural Resources Division. The appellant continued to remain on deputation. After the enactment of the Constitution (Eighteenth Amendment) Act, 2010, the Ministry of Environment, Government of Pakistan, issued notification dated 30.06.2011 whereunder offices and organizations along with their employees under the Ministry of Environment were transferred to the Government of Khyber Pakhtunkhawa on deputation under Section 10 of the Civil Servants Act, 1973. The appellant's name finds mention at Serial No.35 of the list of officers and employees of the Pakistan Forest Institute, Peshawar, attached to the said notification. Vide notification dated 02.04.2012, issued by the Cabinet Secretariat Establishment Division, Government of Pakistan, the appellant (who was then serving as Section Officer on deputation at the Ministry of Petroleum & Natural Resources) was posted as Section Officer (BS-17) at the Ministry of Information Technology. He continued to remain on deputation and assumed his charge at the Ministry of Information Technology on 18.04.2012. On 24.05.2013, Ordinance No.V of 2013 called the Civil Servants (Amendment) Ordinance, 2013, was

promulgated. Section 2 of this Ordinance amended Section 3 of the Civil Servants Act, 1973, by adding more sub-sections to Section 3 *ibid*. This Ordinance is said to have lapsed on 24.09.2013, and was not re-promulgated. The newly added sub-sections (3) & (4) of Section 3 of the Civil Servants Act, 1973, are reproduced herein below:-

“(3) The Federal Government may transfer a civil servant of a devolved Ministry or Division, working in an Attached Department or Subordinate Office situated in a Province, to the Province concerned, in consequence of the devolution of functions pursuant to the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010) and thereby he shall become the civil servant of the respective Province, on the same terms and conditions of service as where applicable to him before such transfer.

(4) The Federal Government may transfer a civil servant working in a Ministry, Division, Attached Department or Subordinate Office located in the Islamabad Capital Territory to any other Ministry, Division, Attached Department or Subordinate Office, in consequence of the abolition of such Ministry, Division Attached Department or Subordinate Office pursuant to the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010) and thereby he shall become the civil servant of the respective Ministry, Division, Department or Office to which he is so transferred, on the same terms and conditions of service as were applicable to him before such transfer.”

3. The appellant has challenged the notification dated 24.02.2015, issued by the Management Services Wing, Establishment Division, Government of Pakistan, whereby he was repatriated to the Pakistan Forest Institute with immediate effect. The relief prayed for in Writ Petition No.2869/2015 was as follows:-

“It is therefore, most humbly prayed that:-

- i. The impugned order/notification dated 24.02.2015, passed by the respondent may please be declared illegal, unlawful, void ab-initio and without lawful authority and against the principle of natural justice and the same is ineffective upon the rights of the appellant.
- ii. It is further prayed that the operation of impugned order/notification dated 24.02.2015 may graciously be suspended till the disposal of this writ petition.
- iii. Any other appropriate remedy which has not been specifically asked for and this Hon'ble Court deems fit and proper in the circumstances of case may also be granted.”

4. Learned counsel for the appellant submitted that instead of being repatriated the appellant should have been absorbed or confirmed in the post where he was working on deputation when Ordinance No.V of 2013 was promulgated. He asserted that the appellant ought to have been absorbed or confirmed in the Federal Government under Sub-Sections (3) & (4) of Section 3 of the Civil Servants Act, 1973 (as amended).

5. The position taken on behalf of respondent No.1 (Federation of Pakistan, Establishment Division through the Secretary, Management Services Wing, Islamabad) in their written comments was that the appellant was an ex-cadre officer and had been working in cadre structure as Section Officer on deputation, hence, he could not be absorbed there. It was further contended that according to paragraph 2(b) of the Cabinet Division Notification No.4-9/2011/Mn.I, dated 29.06.2011, only those employees of the Federal Ministries/Division were to be absorbed in the Federal

Secretariat, who were working in the main Ministries/Divisions abolished pursuant to the 18th Constitutional Amendment; that the absorption at the Federal level was required only for the employees whose parent organizations had been abolished/wound-up; that the parent organization of the appellant i.e. Pakistan Forest Institute was intact under the Government of Khyber Pakhtunkhawa; that under the provisions of Ordinance V of 2013, legitimacy was provided to the actions of the Federal Government to transfer a civil servant of an attached department of a devolved Ministry/Division situated in a Province, to the Province concerned; that in this case the appellant is an employee of the Pakistan Forest Institute, under the Ministry of Environment; that vide notification dated 30.06.2011, the appellant was transferred to his parent office (Pakistan Forest Institute, Peshawar), but he did not obey these orders and did not join his parent office; and that the case of the appellant did not fall under the purview of Ordinance V of 2013.

6. Now ever since 31.10.2009, until the issuance of the impugned notification on 24.02.2015, the appellant has enjoyed the status of a deputationist. Even after the issuance of the impugned notification, the appellant continued to work as a deputationist on account of the status quo order dated 20.03.2015, passed in Writ Petition No.2869/2015. In this way the appellant has been working as a deputationist way beyond 06 years.

7. Deputation has been defined as an administrative arrangement between

borrowing and lending authorities for utilizing services of an employee in public interest and exigency of services against a particular post. Deputation was a contract between the borrowing and the lending authorities, which was liable to be terminated at any stage during prescribed period of deputation. A deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his own whims and wishes. Reference in this regard can be made to the cases of Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad through Chairman & others reported as 2010 SCMR 378, and Mst. Robia Ayub Vs. Federation of Pakistan through Secretary, Ministry of Education & others reported as 2013 PLC (CS) 915.

8. Rule 20-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, provides that a person in the service of a Provincial Government or an autonomous, semi-autonomous body or corporation or any other organization set-up, established, owned, managed or controlled by the Federal Government who possesses the minimum educational qualifications, experience or comparable length of service prescribed for a post shall be eligible for appointment to the said post on deputation for a period not exceeding three years which may be extended for another period of two years on such terms and conditions as may be sanctioned by the Federal Government in consultation with the lending Organization.

9. In the case of Safeer Hussain Vs. Federation of Pakistan reported as 2013 PLC (CS) 28, the Hon'ble Islamabad High Court

has held that deputation in a government department had a significant feature, which required hiring under special circumstances, where there was no expert person available in the department in the relevant subject or field. Furthermore, it was held that Rule 20-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 did not require the continuity of deputation for an indefinite period or the period specified for a deputation and provided the period of deputation not exceeding three years, which may be extended for another period of two years on such terms and conditions as sanctioned by the Federal Government in consultation with the lending organization.

10. The policy guidelines for deputation of government servants set-out in Establishment Division's Office Memorandum No.1(28)/75-D.II/R.I, dated 18.02.1987 makes it clear that the normal period of deputation for all categories of government servants would be three years and that this period was extendable by two years with the prior approval of the competent authority. All cases of initial deputation of government service holding posts in BS-17 and above were required to be referred to the Establishment Division for approval of the competent authority. The authority competent to grant an extension in deputation beyond the initial period of three years for Government servants in BS-17 to 19 was the Secretary of the Ministry concerned. The said Office Memorandum further provides that on completion of the maximum period of five years, both the borrowing and

the lending organizations should ensure immediate repatriation of the deputationist. In case it is not possible to repatriate a person to his parent organization for compelling reasons, the case should be referred to the Establishment Division before the expiry of the maximum period of five years, fully explaining the circumstances due to which immediate repatriation is not possible and measures taken to obtain or groom replacement as early as possible.

11. In an earlier Office Memorandum No.1(28)/75-D.II, dated 06.3.1975, the Establishment Division had expressed its concern with regard to officers whose services were obtained on deputation for a specific period were not returned by the borrowing department when the parent department asked for their reversion. Reference was made to Establishment Division's Office Memorandum No.1(28)/71-D.II, dated 28.03.1972, wherein it was laid down that officers obtained on deputation should be reverted to their parent department on the expiry of the period of deputation. It was stressed that in the interest of official administration, the said instructions should be followed rigidly and the deputationist reverted to their parent department on the expiry of the period of deputation unless the intention is to permanently absorb the deputationist in the cadre or department where he is serving on deputation and the recruitment rules for the post provide for such a course.

12. Office Memoranda issued by the Establishment Division from time to time,

consistent with the statute and statutory rules on the subject, is a matter of policy, which all government departments and public functionaries are expected to strictly adhere to. The Establishment Division is at liberty to improve or amend the policy set-out in such Office Memoranda in order to bring them in complete harmony with the applicable statute or statutory instrument. As long as the policy contained in such Office Memoranda is there, the Government or its instrumentality is expected not to deviate therefrom. These Office Memoranda have acquired the force of rules on the strength of the language of Section 25(2) of the Civil Servants Act, 1973. Any deviation from such a policy by the state or its instrumentality can be corrected by the Service Tribunal at the instance of an aggrieved party/civil servant, and, if the bar contained in Article 212 of the Constitution is not attracted, such deviation can be subjected to judicial review in the constitutional jurisdiction of the High Courts. In the case of Muhammad Yousaf Vs. Abdul Rashid reported as 1996 SCMR 1297, it has been held by the Hon'ble Supreme Court of Pakistan that as follows:-

“By virtue of subsection (2) of Section 25 (ibid), all existing rules, orders or instructions in respect of any terms and conditions of service of civil servant duly made or issued by a competent Authority, insofar it is not inconsistent with the provisions of the Act are saved and are to be treated as rules made under the Act. The validity of the General Principles of Seniority issued by Establishment Division on 31.12.1970 was examined in the light of provisions of the Act in Azam Ali's case (supra) and it was held that these guidelines not being in conflict with any

of the provisions of the Act, acquired the force of rules on the strength of the language of Section 25(2) of the Act.”

13. The law laid down in the case of Muhammad Yousaf Vs. Abdul Rashid (supra) has been consistently followed by the Hon'ble Supreme Court of Pakistan in cases including Azra Riffat Rana Vs. Secretary, Ministry of Housing & Works reported as PLD 2008 Supreme Court 476 and Fazali Rehmani Vs. Chief Minister, NWFP reported as PLD 2008 Supreme Court 769.

14. The record is silent as to the “compelling reasons” which did not make the appellant’s repatriation to his parent department possible upon the completion of the maximum deputation period permissible under the law. Even if it is assumed that all the pre-requisites and the prescribed procedures for the extension in the deputation period of the appellant had been met and complied with, this by itself did not give any right to the appellant to continue indefinitely as a deputationist. It is settled law that a deputationist may not necessarily complete the tenure for which he was deputed and the power rested with the competent authority to repatriate a deputationist without assigning any reason. In the case of transfer on deputation, no vested right accrued to a deputationist to continue for the period of deputation. The competent authority was empowered to repatriate a deputationist as and when the exigencies of service required. Some of the cases in which this view has been taken are mentioned herein below:-

- i) In the case of Pakistan Vs. Fazal Rehman Khundkar & another reported as PLD 1959 Supreme Court (Pak.) 82, it has been held by the Hon'ble Supreme Court of Pakistan that it is a matter of practice and common experience, that officers of the Provincial cadres deputed for service at the Centre are frequently recalled by their Province, by the Provincial Government, in the exigencies of the public service. Against such a recall they have no right of any kind to object, being substantively officers of the Provincial Government and only on deputation to the Centre. The mere fact that they may be holding at the Centre a post higher in rank than that to which their place in the Provincial cadre entitles them in the Provincial service does not constitute the least bar to the making of an order by the Central Government at the request of the Provincial Government, re-placing the services of such an officer at the disposal of his parent Government.
- ii) In the case of Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad reported as 2010 SCMR 378, it has been held by the Hon'ble Supreme Court of Pakistan that the provisions of Civil Servants Act, 1973, and rules made thereunder, as well as Esta Code were silent about the fact that a deputationist must serve his entire period of deputation and such omission seemed deliberate enabling the competent authority to utilize service of an employee in the manner as it might deem fit and

proper. Period of deputation could at the best be equated to that of an expression of maximum period which could be curtailed or extended by competent authority and no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department.

- ii) In the case of Mst. Robia Ayub Vs. Federation of Pakistan reported as 2013 PLC (CS) 915, it has been held by this Court that a deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his/her own whims and wishes. Civil servant has no vested right to complete the deputation period as it is a matter relating to the terms and conditions of service. Competent authority of borrowing department having sole discretion to decide fate of deputationist could repatriate him at any time to parent department.
- iii) In case of Abdul Majeed Vs. Chief Secretary, Punjab reported as 2015 PLC (CS) 1381, it has been held by the Hon'ble Lahore High Court that a deputationist did not have any vested right to remain on the post as deputationist forever or for a stipulated period. A deputationist could be ordered to be repatriated to his parent department at any time without assigning any reason. Parent department of appellant-employee was not bound to assign reason for his repatriation.
- iv) In case of Lal Khan Vs. Employees Old Age Benefit Institution reported as 2010 PLC (CS) 1377 (Karachi), it has been held by the Hon'ble High Court of Sindh that a deputationist had no vested right to remain on post forever or for a stipulated period. A

deputationist could not challenge order of his repatriation as he could be repatriated back to parent department at any time.

15. On account of the above referred trite law, the appellant could not have any grievance against his repatriation by the borrowing department to his parent department i.e. Pakistan Forest Institute, Peshawar.

16. As regards the appellant's desire to be absorbed against the posts where he was working as a deputationist on the strength of Ordinance No.V of 2013, the said Ordinance does not give a right to any deputationist to be absorbed or confirmed in the borrowing department. The Pakistan Forest Institute, Peshawar, which is the parent department of the appellant has not been abolished. Rather the same is functional and the appellant, as an ex-cadre officer of that institute, is expected to show compliance with the impugned notification dated 24.02.2015 without fail. The respondents, in their written comments, took the position that the appellant did not even comply with the earlier notification dated 03.06.2011, whereby he was transferred to the Government of Khyber Pakhtunkhwa under Section 10 of the Civil Servants Act, 1973. It is settled law that he who seeks equity must do equity. This court's jurisdiction under Article 199 of the Constitution, is equitable in nature. No relief in such jurisdiction can be extended to the appellant whose conduct is inequitable.

17. For the absorption or confirmation of any deputationist in the borrowing

department, the ESTA CODE prescribes a procedure. Establishment Division's Office Memorandum No.1(28)/75-D.II, dated 06.03.1975, provides that where there is an intention to permanently absorb a deputationist in the cadre or department where he is serving on deputation and the recruitment rules for the post provide for such a course, in such cases the consent of the deputationist to the suspension or termination of lien on his permanent post in the parent department, as well as the agreement of the parent department, should be obtained. With the completion of these formalities, the deputationist will be treated as a regular member of the establishment of the borrowing department. As early as 1952, it was stated in Ministry of Finance's letter No.600-RIII/52, dated 06.03.1952 that permanent officers belonging to a Government or Department, while on deputation to another Government or Department, should not be confirmed in the latter without the prior formal concurrence of the former and the consent of the officer concerned. This instruction has been formally recognized in Establishment Division's Office Memorandum [No.8.7/64-II,] dated 19.10.1964.

18. The instructions contained in the said Office Memoranda, which as stated above, have a force of law, are in consonance with the law laid down by the superior courts in the following judgments:-

- i) In case of Senate Secretariat Vs. Faiqa Abdul Hayee reported as 2014 SCMR 522, it has been held by the Hon'ble Supreme

Court of Pakistan that absorption was not a vested right of an employee and the employer had the right and authority to terminate the deputation period or repatriate the employee back to his/her parent department.

- ii) In case of National Assembly of Pakistan Vs. Muhammad Aslam Shami reported as 2012 SCMR 412, it has been held by the Hon'ble Supreme Court of Pakistan that a proposal for permanent absorption of a deputationist in borrowing department must be initiated by borrowing department at least six months before expiry of deputation period. A deputationist in case of non-acceptance of such proposal would revert back to his parent department.
- iii) In case of Mst. Robia Ayub Vs. Federation of Pakistan reported as 2013 PLC (CS) 915, it has been held by this Court that a deputation being a contract, a deputationist would have no vested right to remain/continue on deputation or his permanent absorption. A deputation is an administrative agreement between borrowing and lending authorities for utilizing the services of an employee in the public interest and exigency of services against a particular post against which the deputationists cannot claim any right of permanent absorption.
- iv) In case of Rasheed Tareen Vs. Chairman Works Welfare Board reported as 2012 PLC (CS) 54 (Quetta), it has been held by the Hon'ble Balochistan High Court that a deputationist through constitutional petition could not claim permanent absorption in borrowing department as it

was the prerogative of borrowing department to determine tenure of deputation, to revert/return deputationist or to absorb a deputationist permanently. Due to refusal by borrowing department for permanent absorption, the appellant could not be termed as an aggrieved person.

19. At no material stage has the borrowing department sought the formal concurrence of the parent department for the appellant's absorption during the permissible deputation period. Since the very process for the absorption of the appellant has not been initiated in accordance with the applicable law, the desire or concurrence of the appellant for absorption is immaterial.

20. Event otherwise, a vital question that needs to be answered is whether the appellant could invoke the constitutional jurisdiction of this court to prevent his repatriation to his parent department. The law in this regard is also well settled. In the case of Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad through Chairman & others reported as 2010 SCMR 378, it has been held by the Hon'ble Supreme Court of Pakistan that a deputationist cannot be treated as an 'aggrieved person' because he has no vested right to remain on a post as deputationist forever or for a stipulated period as mentioned in notification and can be repatriated at any time. In the case of Rasheed Tareen Vs. Chairman Works Welfare Board reported as 2012 PLC (CS) 54 it has been held by the Hon'ble Balochistan High Court that when a person belonging to a particular service or cadre is transferred to another cadre or autonomous body, the same amounts to deputation and terms and conditions of such civil servant have to be settled between

borrowing and lending authority. Tenure of such appointment is also term and condition of service as per Civil Servants Act, 1973 and when tenure is so fixed and notified it has to be honoured by both borrowing and lending authorities except in special circumstances when borrowing agency directs repatriation of deputationist. In the case of Zahoor Khan Vs. Government of Khyber Pakhtunkhwa reported as 2015 PLC (CS) 824, it has been held by the Hon'ble Peshawar High Court that a matter with regard to deputation and repatriation would relate to the terms and conditions and constitutional jurisdiction of High Court would be barred. In the case of Abdul Jabbar Memon Vs. Federation of Pakistan reported as 2011 PLC (CS) 513 it has been held by the Hon'ble High Court of Sindh that a petition by deputationist for his continuation on deputation basis or regular deputation would not be maintainable. The petitioner was held not to be an aggrieved person on account of termination of his deputation, thus, he could not maintain a Petition under Article 199 of the Constitution.

21. The appellant, who, save the one year probationary period and four months of service at his parent department, has remained a deputationist during his entire career in the Government, did not have any vested right to continue working as a deputationist. It does not lie in the mouth of a deputationist to say that there are compelling reasons to stretch his deputation period. He has been correctly repatriated to his parent department, which, as a consequence of the 18th Constitutional Amendment, stands devolved to the province of Khyber Pakhtunkhwa.

22. Matters with regard to deputation and repatriation have been held to relate to the terms and conditions of service, therefore, the

constitutional jurisdiction of High Court would be barred. The appellant had no vested right to continue on deputation in the borrowing department or be absorbed there as these matters relate to the terms and conditions of service.

23. In view of the above, we do not find any infirmity in the order dated 28.12.2015 passed by the learned Single Judge. Accordingly, this appeal is dismissed in limine with no order as to costs.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

APPROVED FOR REPORTING

Qamar Khan*