

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

No.

IHC/Judl.Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP-3459-14

Titled. Shahzad Hussain Vs Competition Commission of Pakistan etc

- a) Judgment approved for reporting Yes/No
- b) Judgment any comment upon the conduct of the Judicial officer for quality of the impugned judgment Is desired to be made. Yes/No

(In case the answer is affirmative separate confidential note may be sent to the Registrar drawing his attention to the particular aspect).

Initial ~~of~~ the Judge.

- NOTE.
1. If the slip is used, the Reader must attach on top of first Page of the judgment.
 2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
 3. This slip is only to be used when some action is to be taken.

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. NO: 3459/2014

SHAHZAD HUSSAIN VERSUS COMPETITION COMMISSION OF PAKISTAN, ETC

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

05

3.12.2014

Mr. Muhammad Amin Farooqi, Advocate for petitioner
In WP No. 3459/2014,
Barrister Faisal Khan, Advocate for petitioner in WP No. 3548/2014,
Sultan Mazhar Shair and Mian Sami Ud Din, Advocates for respondents,
Raja Khalid Mehmood Khan, learned Standing Counsel.

ORDER
MUHAMMAD ANWAR KHAN KASI, CJ:

Present petition as well as WP No. 3548/2014 involve common proposition of law and facts, therefore, being decided through this single Order.

2. Brief facts are that petitioners are Joint Director (Administration- Grade-7) and Director (Advocacy) in Competition Commission of Pakistan. They are aggrieved of common transfer order dated 8.7.2014 on the ground that it has been issued in quick succession of the series of transfer orders.

3. Petitioner Shahzad Hussain claims to have been previously transferred vide orders dated 11.10.2013, 9.1.2014 & 4.7.2014, while petitioner Ahmed Qadir alleges that he has been previously transferred vide orders dated 3.1.2013, 10.09.2013 & 20.03.2014 .

4. Learned counsel for petitioners submits that they have been subjected to the malafide transfer orders in order to victimize them for their working in association with previous chairperson against whom the incumbent Chairman CCP has nourished professional bias.

5. Learned Counsel adopted that under Section 14 of the Competition Commission of Pakistan Act, 2010 minimum five members are required for constitution of commission while only three members were appointed till the time of issuing the impugned order due to which commission is not properly constituted.

6. It is also argued that respondent No.3 holding the post of Chairman CCP on acting charge basis is required to run day to day affairs of the organization, therefore, he cannot make decisions like establishment of regional offices having long term financial impact and transfers in the said offices are not lawful in pursuance of that scheme.

7. Learned Counsel maintained that under Section 23 of CCP Act, 2010 the powers to make appointments and to determine terms and conditions of service is vested in the Competition Commission but through the Regulations, 2007 it has been delegated to the Chairman and other members as well as Officers against the settled principle that no delegate can further delegate. In this regard learned counsel placed reliance on '*Ashraf Tiwana's Case*' [2013 SCMR 1159]

8. Learned counsel next submits that by way of successive transfer orders, petitioners have been deprived of the valuable right of earning evaluation reports which are contributory to their career advancement.

9. Learned counsel lastly submits that the transfer orders without completing normal tenure of posting have been denounced in various judgments passed by the Hon'ble Superior Courts of the country. He placed reliance on the case laws titled as "*Mst. Anita Turab's case*" [PLD 2013 SC 195], "*Zahid Akhtar Vs Govt of Punjab etc*" [PLD 2011 SC 963], "*Hameed Akhtar Niazi's case*" [1996 SCMR 1185], "*Agha Abdul Karim Shourish case*" [PLD 1969 Lahore 289], "*Civil Aviation Authority. vs. Javed Ahmad*" [2009 SCMR 956] & "*Ghazanfar Ali Vs ZTBL etc*" [2011 PLC (CS.) 648 IHC].

10. On the other hand, learned counsel for respondent/CCP resisted the petition while submitting that petitions are not maintainable as the petitioners seek to enforce non statutory rules and have invoked constitutional jurisdiction without availing alternate remedy of departmental representation under Regulation-6, Chapter 12 of the Competition Commission (Service) Regulations, 2007.

11. It is also contended that petitioners have approached this Court with unclean hands by incorrectly posing them to be civil servants while they are not so.

Learned counsel further submits that petitioners are governed by Competition Commission Service Regulations, 2007 and by virtue of Regulation 7 of the said Regulations employees of CCP are liable to serve anywhere in Pakistan.

12. Moreover, the Judgments relied upon are of no relevance in the instant case as the tenure of three years is fixed for posting of a civil servant while the petitioners being employees of an independent authority are subject to terms and conditions of their appointment as well as Regulations & SOPs issued from time to time while the rules laid down for civil servants are not applicable in their case.

13. It is further submitted that petitioners have levelled baseless allegations against the administration without putting forth any reliable evidence.

14. In support of their contentions learned counsel placed reliance on case laws titled as “Dossani Travels Vs M/S Travel Shop (Pvt.) Ltd. Etc” [PLD 2014 SC 1], *Sou Moto Case NO 18 of 2010* [PLD 2011 SC 195], “Syed Mahmood Akhtar Naqvi etc Vs FOP etc *Ms Anita Turab’s Case*” [PLD 2013 SC 195], “Ghulam Rasool Vs Govt of Pakistan” [CP No. 2124 of 2013] & “Modern Textile Mills Limited Vs Collector of Central Excise” [2000 CLC 1583 Karachi]

15. Heard & record perused.

16. Undertaking the determination of the maintainability first, it is admitted position that pursuant to Schedule II of the Rules of Business, 1973, Competition Commission of Pakistan is an authority which performs functions under the administrative oversight and receives financial grants from the Federal Government through Ministry of Finance. Besides that the employees of CCP are performing duties in connection with the affairs of Federation and in exercise of powers under Section 23, the Commission has determined terms and conditions of its employees through Competition Commission (Service) Regulations, 2007, which have been published in the Gazette of Pakistan, therefore, the same carry statutory character.

17. So far as the contention regarding availability of alternate remedy is concerned, the impugned order

pertains to matter of transfer which has not been exhaustively dealt by the CCP Service Regulations, 2007 as protection regarding minimum term of posting was notified through SOP dated 25.07.2014, subsequent to filling of writ petitions before this Court. Moreover, due to alleged compositional flaw under Section 14 of CCP Act, 2010 and apprehension of mala fide lurking in the minds of petitioners, the alternate remedy cannot be called meaningful or efficacious. It goes without mentioning that availability of alternate remedy does not automatically debar constitutional jurisdiction and this Court can exercise jurisdiction in presence of alternate remedy where the order impugned is patently illegal. Guidance is sought from case of *“Dr. Sher Afgan Khan Niazi Vs All S. Habib”* [2011 SCMR 1813] wherein the test envisaged by the Hon’ble Apex Court allows grant of relief under Article 199 of the Constitution in presence of alternate remedy where the other remedy is not equally convenient, beneficial and effective. In the same sequel the objection upon maintainability of petitions is turned down.

18. The factum of transfer orders in quick succession has been admitted by the respondent’s side, therefore, the contention stands established, however the defence regarding non-applicability of three years tenure of posting in view of independent rules is not tenable because Regulation 7 Chapter 12 of the CCP Service Regulation, 2007 prescribes a general principle that every employee is liable to serve anywhere in the country and at the cost of repetition it is mentioned that impugned order was passed prior to issuance of Transfer Policy through SOP dated 25.07.2014 and same cannot be presumed to carry retrospective effect.

19. It is worth mentioning that the regulation *ibid* does not confer unfettered and arbitrary powers upon the authority to make transfer orders whimsically without regard to reason and administrative propriety.

20. In the case titled as *“Khawaja Muhammad Asif Vs FOP”* [PLD 2014 SC 206] the Hon’ble Supreme Court observed that *“government and its instrumentalities were expected to act fairly, justly and in a transparent*

manner....transparency lay at the heart of every transaction entered into by or on behalf of a public entity”.

21. If it is presumed that the normal tenure of three years for posting is not applicable to the respondent-department even then in absence of any rule to the contrary, general principle of fairness and reasonableness is applicable, therefore, four postings, transfers within short span of nine months cannot be held reasonable by employing yardstick of administrative freedom. Guidance is sought from the case of *“Walayat Ali Mir. Vs. Pakistan International Airlines Corporation etc”* [1995 SCMR 650] wherein the Hon’ble Supreme Court held as follows :-

“Discretion to be exercised has to be judged and considered in the background of facts and circumstances of each case. Discretion is not to be exercised on whims, caprices and mood of authorities. Exercise of discretion is circumscribed by principle of justice and fairness.”

22. In view of above, the petitions are allowed, consequently the impugned order dated 08.07.2014 is set aside. No order as to costs.

(CHIEF JUSTICE)

Umar

APPROVED FOR REPORTING