

**ORDER SHEET.**

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

**W.P No.4351/2019.**

Hamid Nasrullah Ranjha

Versus

Chief Commissioner, Islamabad etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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<b>01.</b>	17.12.2019	Mr. Kamran Murtaza and Mr. Shahzaib Jaffar, Advocates for the petitioner.
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Through this writ petition, the petitioner has assailed notification dated 30.10.2019 issued by M/o Interior Government of Pakistan, whereby the petitioner posted as Assistant Director BS-17 in Labour Welfare Department, ICT, Islamabad has been repatriated to his parent department i.e. NADRA with immediate effect.

2. Learned counsel for the petitioner inter-alia contends that the petitioner was initially inducted as Assistant Director in NADRA/respondent No.4, where-after his services were placed at the disposal of ICT Administration against the vacant post of Assistant Director (Civil Defence) ICT on deputation basis vide notification dated 27.02.2013; that during this period, the petitioner performed numerous duties including introducing Smart Registration Card Project in Motor Registration Department, ICT; that after expiry of three years deputation period, deputation period was extended for two years w.e.f. 01.03.2016 to 28.02.2018 on standard terms and conditions vide notification dated 07.04.2016; that vide office order No.127/2018, the petitioner was transferred from Civil Defence, ICT to Labour Welfare Department, ICT and thereafter vide

impugned notification dated 30.10.2019, the petitioner has been repatriated to his parent department NADRA; that the petitioner submitted a representations/requests for his absorption in ICT Administration on 08.03.2018 and 10.04.2017 but the same have not yet been decided, whereas other similarly placed employees i.e. Ali Javed and Abdul Hadi, Naib Tehsildars have been absorbed on permanent basis in ICT Administration; that impugned notification is illegal and contrary to law.

3. I have heard learned counsel for the petitioner and perused the record.

4. Perusal of the record reveals that the petitioner was initially inducted as Assistant Director T-5 (equivalent to BPS-17) in NADRA/respondent No.4 and his services were placed at the disposal of ICT Administration as Assistant Director (BS-17) in the Civil Defense Department on deputation basis for period of 03 years vide notification dated 27.02.2013. After posting in ICT Administration, Office of Chief Commissioner, the petitioner was further assigned duties of ETO-I in Excise & Taxation Department, ICT vide office order dated 28.01.2014. The initial deputation period of 03 years was extended w.e.f. 01.03.2016 to 28.02.2018 on standard terms and conditions vide notification dated 07.04.2016. However, he was again transferred from Assistant Director Civil defense Department to Assistant Director, Labour Welfare Department vide office order No.127/2018 and thereafter vide impugned notification dated 30.10.2019, the petitioner has been repatriated to his parent department NADRA. The petitioner made request to the Chief Commissioner, Islamabad for his permanent absorption in ICT, Administration while quoting different examples of absorption of similarly placed persons through applications dated 08.03.2017

and 10.04.2017, however, these applications have not yet been responded by the Chief Commissioner, ICT and Director Excise & Taxation, ICT, as they are not competent to pass any order on these applications under the law.

5. While considering entire background of this case , I have gone through the judgment reported as 2013 SCMR 1752 (Contempt Proceedings Against Chief Secretary, Government of Sindh) as well as ESTA Code, wherein necessary requirements of deputation and absorption have been highlighted.

6. The term “*deputation*” referred in Chapter-3, Part-II, Serial No.26 of the ESTA Code, Vol.1 is reproduced as under:-

*“An officer is said to be on deputation when he is detached on special temporary duty for the performance of which there is no permanently or temporarily sanctioned appointment.”*

7. In view of above, government servant begins to be regarded as a deputationist when he is appointed or transferred through the process of selection to a post in a department or service altogether different from the one to which he permanently belongs. He continues to be placed in this category as long as he holds the new post in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post. Reliance is placed upon PLD 1981 SC 531 (Islamic Republic of Pakistan vs. Israrul Haq).

8. It has also been settled by the ESTA Code that the normal period of deputation is three years and the concerned official has to report back after completion of his three years period, unless it has been extended to further two years and the maximum period is five years in terms of Serial No.27 (iv) of the ESTA Code,

whereby both the borrowing and lending organization should ensure immediate repatriation of the deputationist. Furthermore, it is also clearly mentioned in the ESTA Code that period of deputation has to be defined specifically and after the expiry of the said period, the official should automatically be relieved from his office duties, unless his period has been extended. The other pre-conditions of deputation referred in *Chapter-III (Transfer, Posting and Deputation)* of the ESTA Code, are as under:

- (i.) *Where a post proposed to be filled is reserved under the rules for departmental promotion, appointment on deputation may be made only if the department certifies that no eligible person is available for promotion or the eligible person is found unfit for promotion by the appropriate DPC/Selection Board. In such cases, deputation may be approved till such time a suitable person becomes available for promotion.*
- (ii.) *In case of posts reserved for initial recruitment, appointment on deputation may be made only as temporary arrangement, pending joining of the nominee of the FPSC, and subject to the condition that such appointment shall be made only after a requisition has been placed with the FPSC.*
- (iii) *In cases where a post is tenable through appointment by deputation, the normal period of deputation should be three years and no extension beyond three years may be allowed without prior approval of the Establishment Division.*
- (iv) *No officer should be sent on deputation unless he has completed three years' service in his parent department after return from an earlier deputation.*  
*(the underlining & emphasizing is mine)*

9. Similarly, any deputationist can be absorbed in terms of Serial No.28 of Chapter 3 of the ESTA Code in the following manner:-

- (4) *In case a deputationist is proposed to be absorbed permanently in the borrowing*

*office (either a government organization or a corporation etc), such a proposal shall be initiated by the borrowing office at least six months before the expiry of the deputation period of the deputationist concerned. Such a proposal, with the written consent or request of the deputationist, shall be made by the borrowing office to the lending office (or parent office of the deputationist) which shall convey its decision (if necessary, in consultation with the Establishment Division) to the borrowing office as well as the deputationist, by the expiry of the term of his deputation. In the event of non-acceptance of the proposal, the individual shall revert back to his parent office as indicated at (2) and (3) above.*

*(underlining and emphasizing is mine)*

10. Likewise, it has also been settled that deputation is not a method of appointment in terms of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and even the Civil Servants Act, 1973 provides the concept of absorption in terms of Sec.11-A & B which has been reproduced as under;

**"11A. Absorption of civil servants rendered surplus:** *Notwithstanding anything contained in this Act, the rules, agreement, contract or the terms and conditions of service a civil servant who is rendered surplus as a result of re-organization or abolition of a Division, department, office or abolition of a post in pursuance of any Government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possesses the qualifications and fulfils other conditions applicable to that post:*

*Provided that where no equivalent post is available he may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the higher post immediately preceding his appointment to a lower post shall remain protected].*

***IIB.** (1) Where it is brought to the notice of the appointing authority that appointment of a person to a civil post was made without observing the prescribed procedure or without fulfilling the prescribed qualification, experience and age limit, it may send a reference to the Federal Public Service Commission for determination whether he is fit to hold the post to which he was appointed and, if not, whether he is fit to hold any other post compatible with his qualification and experience.*

*(2) On receipt of the advice of the Federal Public Service Commission on a reference made under sub-section (1), the appointing authority may pass such order of appointment or termination of service as may be considered by it to be just and equitable:*

*Provided that if it is proposed to pass order of termination of service in the light of the advice of the Commission, a reasonable opportunity of showing cause against the order of termination, shall be provided.*

*(3) Where an order of appointment is made on the advice of the Commission, it shall be treated as a case of fresh appointment and seniority of such an appointee shall be determined in accordance with the Civil Servants (Seniority) Rules, 1993].*

*(underlining and emphasizing is mine)*

11. The above referred concept has further been clarified by the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and also provides concept of appointment on deputation which is referred in Rule 20-A in the following words:

***“20A: Appointment on deputation:** (1) 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 of two years on such terms and conditions as may be*

*sanctioned by Federal Government in consultation with the lending Organization.*

*(2) Subject to any rule or orders on the subject issued by the Federal Government, a civil servant who fulfills the conditions and is considered suitable may be sent on deputation to an autonomous, semi-autonomous body or corporation established by law or to the Provincial Government on such terms and conditions as may be decided by the lending and borrowing organizations.*

*(3) In case of appointment under sub-rule (1) or sub-rule (2) pension contribution shall invariably be made by the borrowing organizations”.*

*(underlining and emphasizing is mine)*

12. All these above referred provisions of law clearly demonstrate that only a civil servant can be sent on deputation and absorbed thereafter, but in order to justify the absorption the borrowing department has to prove that there is no other suitable candidate with such matching qualifications and the appointment of person so desired has been required on the term “*exigency of services*” and if such nominated person has not been absorbed, the normal day-to-day working of the department of the Government of Pakistan will be affected and the appointment is indispensable and even the Government of Pakistan and the relevant department will be benefited from the services of such transferee/deputationist.

13. Perusal of record further reveals that the petitioner has not justified his initial employment in NADRA being permanent employee nor any document in this regard has been placed on record, whereas it is settled law that no officer should be sent on deputation unless he has completed his three years of service, whereas no detail has been provided by the petitioner as to when

he was appointed in NADRA. Even there is no record to establish that the petitioner is permanent employee of NADRA.

14. It is well settled that deputationist has not vested right for absorption in the borrowing department. However, there is an elaborate procedure prescribed for the absorption of the deputationist in the borrowing department in case of **Gansham Das vs. FOP through Secretary Establishment 2017 CLC(CS) 191**, wherein a Division Bench of this Court has given the procedure in Para.17, wherein it has been held that:-

*“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, 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.”*

15. It is settled proposition of law that Civil Servants Act, 1973 provides different categories, service cadres or posts as prescribed by the recruitment rules of the department and the very concept of cadre provides a safeguard within the service hierarchy so that one kind of officer could not cross the cadre,



disturb the seniority, other rights of the officers in different cadres. The borrowing as well as the lending department should have been owned by provincial or federal government, even then such kinds of practices were not allowed. Reliance is placed upon **2015 SCMR 456 Ali Azhar Khan Baloch vs. Province of Sindh**, wherein it was held that,

*“This distinction of class has been specifically introduced by the legislature with the sole object that if a person is initially appointed in one service or cadre or post, his progression would remain in the same cadre, service or post. His vertical growth or progression shall remain within his class by compartmentalizing the Act which regulates his terms of service. What is more interesting is that section 5 of the Act does not vest any discretion in the Government to relax the Rules for change of cadre.*

*The language of section 5 is very clear and mandates that the appointments to the Civil Service or post shall be made in the prescribed manner.*

*112. Appointment by promotion as used in Rule 6(A) is the consequence of initial appointment. Likewise, appointment by transfer is also the consequence of initial appointment. The appointment by promotion is made within the cadre or service or post and, therefore, it does not require any interpretation. The appointment by transfer can only be ordered if the Civil Servant is eligible and qualifies for his transfer under Rule 3(2) of the Rules of the department to which he is to be transferred, read with Rules 4, 7 and 8 of the Rules, which prescribe conditions laid down for such appointments by transfer to such posts. A Civil Servant who is to be appointed by transfer has to appear before the Departmental Promotion Committee or the Provincial Selection Board which will consider his eligibility, qualification and such other conditions applicable to the post as laid down in the recruitment rules of the department to which his transfer is to be ordered.”*

(underlining and emphasizing is mine)

16. In view of above authoritative judgment, inference can safely be drawn that transfer and posting of non-cadre to a cadre post is not permissible, even though, the eligibility, qualification and such other conditions for appointment against said post as provided in rules of the department shall also be considered. Whereas, in this case petitioner was an employee of NADRA, which is an authority established under the National Database and Registration Authority Ordinance, 2000 to facilitate the registration of all persons and the service structure provided in the said law refers different kinds of persons, appointed by authority and civil servants who have been transferred to NADRA on deputation and even the said law provides the option to become an officer of NADRA or to remain as a civil servant and in such case, the transferee civil servants' rights would remain protected, however there is no concept provided in the NADRA laws for sending any NADRA employee on deputation to any other department of the Government of Pakistan except if one is a civil servant. Similarly, the Apex Court in the judgment of **Ali Azhar Khan Baloch** *supra* refers the concept of transfer and absorption in the following words:

*“116. The term 'transfer' used in Rule 9(1) has not been defined either in the Act or the Rules of 1974, therefore, we have to attach an ordinary dictionary meaning to it. The ordinary dictionary meaning of the term 'transfer' means 'to move from one position to another.' If this meaning is attached to the term 'transfer' used in Rule 9(1), it would lead to mean an ordinary posting of a Civil Servant from one position to another. Such transfer, however, cannot be construed to qualify the term 'absorption' as has been contended by the learned Counsel, which term is alien to the Act and the Rules. Therefore, the appointment by transfer under Rule 9(1), as has been interpreted by us, would be confined to the parameters laid down by the scheme of the Act and the Rules of 1974.”*

17. Besides the above referred principles, it has also been held in the same judgment that:-

*“Rule 9-A of the Rules does not permit appointment by transfer of a non-Civil Servant to any other Department and/or organization controlled by the Government to a post which restricts the transfer under Rule 3(2) of the Rules. A person can only be appointed by transfer under Rule 9-A, if he has the eligibility, matching qualifications, expertise coupled with the conditions laid down under Rule 3(2) for appointment to such post. The Competent Authority under Rule 9-A of the Rules while ordering appointment by transfer cannot lose sight of the conditions prescribed under Rules 4, 6(A) and 7. Therefore, any appointment by transfer under Rule 9-A of the Rules in violation of the aforesaid conditions is a nullity, and the conclusion reached by us in para 126 of the judgment under review has to be read in addition to the findings recorded herein above.”*

*(underlining and emphasizing is mine)*

18. Similarly, the concept of absorption of non-civil servant to cadre, service or post to any government department is also not permissible in the entire scheme of civil service laws and it was held in the same judgment qua this aspect that:

*“Appointment by transfer would only mean an ordinary transfer from one post to another post, subject to the restrictions contained in the Rules of 1974. Neither a person can be absorbed under these Rules nor a Civil Servant or non-Civil Servant or a deputationist could be allowed to travel horizontally outside his cadre to penetrate into a different cadre, service or post through an appointment by transfer.”*

*(underlining and emphasizing is mine)*

19. Hence, the above referred authoritative judgment of the Apex Court clearly defines in details the illegalities, violations and conduct committed by the borrowing and lending department and all these observations and law give a conclusive view and this Court has come to an irresistible conclusion that petitioner's

deputation from NADRA to the Chief Commissioner, ICT Administration is illegal, is in violation of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and against the concept of exigency of service. Even otherwise, the petitioner is not a fit candidate to be appointed against the post of ETO as the entire process was being devised as a backdoor by the officials at the time of transfer and posting, neither petitioner has been appointed through any public advertisement nor even crossed the barriers of departmental selection committee and no extraordinary educational background with requisite experience was available with petitioner, to be taken as leverage by the borrowing department.

20. In view of above, I am of the considered view that absorption is not vested right of an employee and the employer has right as well as authority to terminate the deputation period or repatriate the employee back to his/her parent department and as such no illegality has been disclosed by the petitioner regarding his repatriation nor he has been able to demonstrate that his services are necessarily required for proper functioning of the said department. I have attended the proposition while relying upon 2013 SCMR 1752 (Contempt Proceedings against Chief Secretary, Government of Sindh), 2015 SCMR 456 (Ali Azhar Khan Baloch vs. Province of Sindh) and PLD 2016 SC 961 (Ch. Muhammad Akram vs. Registrar Islamabad High Court, Islamabad and others). The petitioner has no right to claim absorption in ICT, Administration, Chief Commissioner Office as he was employee of NADRA and his services cannot be absorbed in the government service in terms of Civil Servant Act, 1973 and as such any absorption amounts to illegality,

which cannot be allowed to be perpetuated by any stretch of imagination.

21. The claim of the petitioner regarding other similarly placed employees, whose services were absorbed cannot be equated with the petitioner and the department has right to review cases of those employees, who are transferred or posted on deputation in Chief Commissioner Office and later on absorbed through an illegal manner. However, this Court will not enter in this arena as cases of those persons are not before this Court. It is settled by Apex Court in **PLD 2016 SC 961 (Ch. Muhammad Akram vs. Registrar Islamabad High Court, Islamabad and others)**,

wherein it has been held that:-

*“all other appointments by way of absorptions were without lawful authority and hence were to be de-notified; that employees absorbed without observing codal formalities were to be repatriated back to their parent departments”*

22. For the foregoing discussion, the instant writ petition bears no merits, therefore, the same stands **dismissed in limine**. The petitioner is directed to report his parent department forthwith and if lien of the petitioner is not protected, he will be allowed to join his parent department in the light of judgment rendered in **Ch. Muhammad Akram’s case Supra**. Copy of this judgment be sent to Chief Commissioner, Secretary Ministry of Interior and Chairman NADRA for compliance.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**\*\*\*Approved for reporting\*\*\***

R.Anjam