

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3954/2018

Ghulam Nabi Sheikh and another

Versus

Secretary, Establishment Division, Government of Pakistan
and another

Date of Hearing: 14.02.2019

Petitioners by: Mr. Muhammad Shoaib Shaheen, Mirza Waqas Qayyum and Raja Khalid Ismail Abbasi, Advocates.

Respondents by: Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General, M/s Nouman Munir Paracha and Saadia Noreen Malik, Advocates for respondent/NUML
Syed Gulzar Shah, Joint Secretary, Establishment Division.
Mr. Rashid Ahmed, Section Officer, Establishment Division.
Mr. Muhammad Khan Lakho, Section Officer (Lit-V), Establishment Division.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.3954/2018, 4001/2018, 4002/2018, 4004/2018, 4025/2018, 4026/2018, 4027/2018, 4028/2018, 4030/2018, 4031/2018, 4074/2018, 4075/2018, 4080/2018, 4083/2018, 4084/2018 and 197/2019, since the petitioners in the said petitions challenge notification dated 17.10.2018 issued by the Establishment Division, whereby they were repatriated to their parent departments.

Writ Petition No.3954/2018

2. Vide Establishment Division's notification dated 27.02.2013, petitioner No.1 (Ghulam Nabi Sheikh) who was then serving as Assistant Chief (BS-18) in the Planning, Development and Reforms was transferred and posted as Section Officer (BS-18) in the Ministry of Religious Affairs, Islamabad, on deputation basis for a period of three years.

3. Vide Establishment Division's notification dated 30.11.2010, petitioner No.2 (Maqsood Ahmed) who was then serving as System Analyst (BS-18) in the Pakistan Computer Bureau under Ministry of

I.T. & Telecom Division, was transferred and posted as Section Officer (BS-18) in the Industries & Production Division, Islamabad, on deputation basis for a period of three years. It appears that subsequently petitioner No.2 was transferred and posted in the Information Technology and Telecom Division.

4. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioners have been repatriated to their parent departments. Petitioner No.1's name appears at serial No.16, whereas petitioner No.2's name appears at serial No.53 of the repatriated officers, listed in the said notification.

Writ Petition No.4001/2018

5. Vide Establishment Division's notification dated 19.04.2011, the petitioner (Niaz Ali Khan) who was then serving as Research Officer (BS-17) in the Planning and Development Division, was transferred and posted as Section Officer (BS-17) in that Division under Section 10 of the Civil Servants Act, 1973. Office memorandum dated 07.04.2016 issued by the Establishment Division shows that the petitioner was promoted as Section Officer in BS-18 *"while remaining on deputation"*.

6. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at serial No.22 of the repatriated officers, listed in the said notification.

Writ Petition No.4002/2018

7. Vide Establishment Division's notification dated 29.11.2008, the petitioner (Naeem Ahmed Khan) who was then serving as Assistant Professor (BS-18) in the Government Science College, Education Department, Government of Balochistan, was transferred and posted as Section Officer (BS-18) in the Finance Division, Islamabad, on deputation basis for a period of three years. Vide Establishment Division's notification dated 08.10.2010, the petitioner was transferred and posted as Section Officer (BS-18) in the Local Government and Rural Development Division, Islamabad. Vide Establishment Division's notification dated 07.12.2010, the petitioner's services were placed

at the disposal of the Cabinet Division for further posting in the Devolution Cell. Vide office order dated 14.07.2014 issued by the Cabinet Division, the petitioner was posted as Section Officer in the Cabinet Division. Vide Establishment Division's notification dated 19.11.2014, the petitioner was posted as Section Officer (BS-18) in the Ministry of Parliamentary Affairs.

8. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at **serial No.11** of the repatriated officers, listed in the said notification.

Writ Petition No.4004/2018

9. Vide Establishment Division's notification dated 16.10.2012, the petitioner (Assad Khan) who was then serving as Private Secretary (BS-18) in the Federal Land Commission, Islamabad, was transferred and posted as Section Officer (BS-18) in the Ministry of Information and Broadcasting, Islamabad, on deputation basis for a period of three years. Vide Establishment Division's notification dated 26.02.2016, the petitioner's deputation period was extended for a period of two years with effect from 19.10.2015. Vide letter dated 28.01.2013, the Ministry of Information and Broadcasting recommended that the Secretary, Establishment Division may consider the petitioner's request for absorption in the Office Management Group ("O.M.G.").

10. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at **serial No.21** of the repatriated officers listed, in the said notification.

Writ Petition No.4025/2018

11. Vide Establishment Division's notification dated 12.01.2017, the petitioner (Shazia Mir) who was then serving as Craft Designer/Assistant Director (Design) in the Department of Social Welfare, Government of Punjab was transferred and posted as Section Officer (BS-17) in the Ministry of Parliamentary Affairs on deputation basis for a period of three years. Vide office memorandum dated 26.09.2018 issued by the Ministry of

Parliamentary Affairs, the petitioner was relieved of her duties with immediate effect and was directed to report to the Establishment Division.

12. Vide letter dated 07.11.2016, the Social Welfare and Bait-ul-Maal Department, Government of Punjab, had given an N.O.C. to the Establishment Division, Islamabad, for the petitioner's posting as a Section Officer in the Federal Government on deputation basis. Vide letter dated 16.03.2017, the Social Welfare and Bait-ul-Maal Department, Government of Punjab, withdrew the N.O.C. dated 07.11.2016. Vide letter dated 19.05.2017, the Social Welfare and Bait-ul-Maal Department, Government of Punjab, informed the Establishment Division as to the withdrawal of the N.O.C. and as to the fact that the petitioner had not reported to her parent department. The Establishment Division in its letter dated 14.06.2017 took the position that since the matter regarding the repatriation of ex-cadre officers working as Section Officers in the Federal Secretariat was subjudice before the Hon'ble Supreme Court, the petitioner could not be repatriated until the decision in the said case.

13. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to her parent department. The petitioner's name appears at serial No.9 of the repatriated officers, listed in the said notification.

Writ Petition No.4026/2018

14. Vide Establishment Division's notification dated 31.12.2008, the petitioner (Syed Taha Mashadi) who was then serving as Lecturer (BS-17) in the Government Degree College, Mastung, Education Department, Government of Balochistan, was transferred and posted as Section Officer (BS-17) in the Ministry of Special Initiatives, Islamabad, on deputation basis for a period of three years. Vide Establishment Division's notification dated 26.02.2009, the petitioner was transferred and posted as Section Officer (BS-17) in the Planning and Development Division. Vide Establishment Division's notification dated 13.10.2014, the petitioner was transferred and posted as Section Officer (BS-17) in

the Industries and Production Division. Vide Establishment Division's notification dated 02.08.2017, the petitioner was transferred and posted as Section Officer (BS-17) in the Science and Technology Division. Vide Establishment Division's notification dated 16.11.2017, the petitioner was transferred and posted as Section Officer (BS-17) in the Ministry of Inter Provincial Coordination. Vide office memorandum dated 12.12.2017 issued by the Establishment Division, the petitioner's services were requisitioned for posting as Section Officer in the Finance Division.

15. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at serial No.51 of the repatriated officers, listed in the said notification.

Writ Petition No.4027/2018

16. Vide Establishment Division's notification dated 21.07.2008, the petitioner (Muhammad Saeed Ahmed Chaudhry) who was then serving as Lecturer (BS-18) in the National University of Modern Languages, Islamabad ("NUML"), was transferred and posted as Section Officer (BS-18) in the Ministry of Sports under Section 10 of the Civil Servants Act, 1973. Vide Establishment Division's notification dated 20.05.2011, the petitioner was transferred and posted as Section Officer (BS-18) "*on deputation*" in the Economic Affairs Division.

17. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at serial No.1 of the repatriated officers listed in the said notification.

Writ Petition No.4028/2018

18. Vide Establishment Division's notification dated 01.12.2009, the petitioner (Mansoor Ahmed Bajwa) who was then serving as Deputy Project Director (BS-18) in the High Efficiency Irrigation System, Agricultural Department, Government of Balochistan, was transferred and posted as Section Officer (BS-18) in the Planning and Development Division, Islamabad, on deputation basis for a period of three years. Vide Establishment Division's notification

dated 12.01.2015, the petitioner was repatriated to his parent department. Vide letter dated 14.01.2015, the Ministry of Planning, Development and Reform, Government of Pakistan, informed the Establishment Division that the Chief Minister of Balochistan had sent a case for the petitioner's absorption in the Federal Government as a step for putting an end to the sense of deprivation prevailing amongst the people of Balochistan. Accordingly, the Establishment Division was requested to withdraw the petitioner's repatriation orders in relaxation of rules/deputation policy.

19. Vide Establishment Division's notification dated 17.04.2015, the petitioner's deputation period was extended for two years with effect from 10.01.2015. Furthermore, the notification dated 12.01.2015, whereby the petitioner was repatriated to his parent department, was withdrawn.

20. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at **serial No.29** of the repatriated officers, listed in the said notification.

Writ Petition No.4030/2018

21. Vide Establishment Division's notification dated 19.05.2009, the petitioner (Muhammad Ishtiaq) who was then serving as Lecturer (BS-17) in the Government Science College, Education Department, Government of Balochistan, was transferred and posted as Section Officer (BS-17) in the Ministry of Livestock and Dairy Development, Islamabad, on deputation basis for a period of three years. Vide Establishment Division's notification dated 29.03.2011, the petitioner was transferred and posted as Section Officer (BS-17) in the Kashmir Affairs and Gilgit Baltistan Division.

22. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at **serial No.40** of the repatriated officers, listed in the said notification.

Writ Petition No.4031/2018

23. Vide Establishment Division's notification dated 28.07.2008, the petitioner (Haroon Arshad) who was then serving as Lecturer

(BS-18) in the University of Balochistan, Quetta, was transferred and posted as Section Officer (BS-18) in the Establishment Division, Islamabad, on deputation basis for a period of three years. Since the petitioner had not been timely relieved by his parent department, he was unable to join his duties in the Establishment Division as a deputationist. Vide letter dated 24.09.2008, approval was granted by the Services and General Administration Department, Government of Balochistan, for the petitioner's posting on deputation basis in the Federal Secretariat. The petitioner was relieved by his parent department with a considerable delay.

24. Vide Establishment Division's notification dated 10.11.2010, the petitioner was posted and transferred as Section Officer (BS-18) in the Education Division. Vide Establishment Division's notification dated 04.02.2011, the petitioner was transferred and posted as Section Officer (BS-18) in the Economic Affairs Division. Vide office order dated 08.04.2011, issued by the Economic Affairs Division, the petitioner was posted in the World Bank/IDB Wing. Vide Establishment Division's notification dated 09.11.2015, the petitioner was transferred and posted in the Ministry of Information, Broadcasting and National Heritage.

25. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at serial No.50 of the repatriated officers, listed in the said notification.

Writ Petition No.4074/2018

26. Vide Establishment Division's notification dated 17.02.2011, the petitioner (Muhammad Saulat Ali) who was then serving as Computer Programmer (BS-17) in the Pakistan Commissioner for Indus Water, Lahore, was transferred and posted as Section Officer (BS-17) in the Ministry of Water and Power, Islamabad, on deputation basis for a period of three years.

27. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his

parent department. The petitioner's name appears at **serial No.2** of the repatriated officers, listed in the said notification.

Writ Petition No.4075/2018

28. Vide Establishment Division's notification dated 24.03.2011, the petitioner (Muhammad Iqbal) who was then serving as Assistant Director (BS-17), Directorate General of Civil Defence, Ministry of Interior, was transferred and posted as Section Officer (BS-17) in the Economic Affairs Division, Islamabad, on deputation basis for a period of three years.

29. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at **serial No.23** of the repatriated officers, listed in the said notification.

Writ Petition No.4080/2018

30. Vide Establishment Division's notification dated 14.03.2013, the petitioner (Abdul Ahad Sami) who was then serving as Assistant Director (BS-17) in the Pakistan Agricultural Research Council under the Ministry of National Food Security and Research, was transferred and posted as Section Officer (BS-17) in the Ministry of Science and Technology, Islamabad, on deputation basis for a period of three years. Vide Establishment Division's notification dated 12.05.2016, the petitioner's deputation period was extended for a period of two years with effect from 03.04.2016. Vide Establishment Division's notification dated 30.08.2017, the petitioner was transferred and posted as Section Officer (BS-18) in the Parliamentary Affairs Division.

31. Vide letters dated 07.09.2018, 12.09.2018 and 18.09.2018, the Pakistan Agricultural Research Council requested the Ministry of Science and Technology to immediately repatriate the petitioner. In the said letter dated 18.09.2018, the petitioner was accused of committing misconduct. Vide notification dated 28.09.2018, the petitioner was relieved by the Ministry of Parliamentary Affairs with effect from 26.09.2018. The Pakistan Agricultural Research Council was informed about this fact by the Ministry of Parliamentary Affairs, vide its letter dated 01.11.2018.

32. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at serial No.10 of the repatriated officers, listed in the said notification.

Writ Petition No.4083/2018

33. Vide Establishment Division's notification dated 31.12.2008, the petitioner (Tanveer Ahmed Kakar) who was then serving as Lecturer (BS-17) in the Government Degree College, Loralai, Education Department, Government of Balochistan, Quetta, was transferred and posted as Section Officer (BS-17) in the Ministry of Special Initiatives, Islamabad on deputation basis for a period of three years. Vide Establishment Division's notification dated 30.11.2011, the petitioner was transferred and posted as Section Officer (BS-17) in the Professional & Technical Training Division.

34. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at serial No.49 of the repatriated officers, listed in the said notification.

Writ Petition No.4084/2018

35. Vide Establishment Division's notification dated 07.01.2013, the petitioner (Dr. Muhammad Fayaz Sh.) who was then serving as Medical Officer (BS-17) in the Civil Hospital, Sukkur, Health Department, Government of Sindh, was transferred and posted as Section Officer (BS-17) in the Ministry of Inter Provincial Coordination, Islamabad, on deputation basis for a period of three years. Vide letter dated 26.02.2016, the Establishment Division requested the Secretary, Services and General Administration Department, Government of Sindh, to give an N.O.C. for an extension in the petitioner's deputation period for further two years. The Ministry of Inter Provincial Coordination, in their written comments, filed on 15.11.2018 have confirmed that the petitioner was still working as a deputationist in the said Ministry.

36. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his

parent department. The petitioner's name appears at **serial No.17** of the repatriated officers, listed in the said notification.

Writ Petition No.197/2019

37. Vide Establishment Division's notification dated 10.04.2013, the petitioner (Pervaiz Iqbal) who was then serving as Assistant Audit Officer (BS-17) in the Pakistan Audit Department, Office of the Auditor General of Pakistan, Islamabad, was transferred and posted as Section Officer (BS-17) in the Ministry of Human Resource Development, Islamabad, on deputation basis for a period of three years. Vide Establishment Division's notification dated 05.08.2016, the petitioner's deputation period was extended for a period of one year with effect from 16.04.2016. As per the written comments filed by the Ministry of Overseas Pakistanis and Human Resource Development, the petitioner had completed his deputation period and the Office of the Auditor General of Pakistan had requested that he be repatriated to his parent department. Indeed, vide letters dated 26.12.2017 and 20.12.2018, the Office of the Auditor General of Pakistan required the petitioner's repatriation to his parent department.

38. Vide impugned notification dated 17.10.2018 issued by the Establishment Division, the petitioner has been repatriated to his parent department. The petitioner's name appears at **serial No.7** of the repatriated officers, listed in the said notification.

39. Learned counsel for the petitioners submitted that the petitioners were challenging their repatriation to their parent departments primarily on the ground that they, having served as deputationists for more than three years, had developed a legitimate expectation for their absorption/induction in the O.M.G. pursuant to paragraphs 5 and 9(A) of the Establishment Division's office memorandum dated 27.01.1975; that the petitioners should be considered for absorption/induction against the 10% quota reserved for deputationists in the O.M.G; that several persons serving on deputation in the Federal Secretariat had been absorbed/inducted in the O.M.G.; that between 1985 to 2013, 284

officers in BS-17 and BS-18 have been absorbed/inducted in the O.M.G.; that since the petitioners had served as deputationists for more than three years, it was in the public interest for the Departmental Promotion Committee to consider them for absorption in the O.M.G; and that until the petitioners were considered for absorption/induction in the O.M.G., they had a right to continue serving as deputationists. Learned counsel for the petitioners made submissions in reiteration of their pleadings in the said writ petitions.

40. Learned Assistant Attorney-General submitted that a deputationist has no vested right to continue serving as such for an indefinite period; that a deputationist can be repatriated even prior to the expiry of the period for which he/she was sent on deputation; that there must be exceptional and compelling reasons for a deputation period to be extended beyond the period of five years; that the petitioners never applied for absorption/induction in the O.M.G.; and that the petitioners' parent departments have not given their consent for the petitioners' absorption/induction in the O.M.G. Learned Assistant Attorney-General prayed for the writ petitions to be dismissed.

41. I have heard the contentions of the learned counsel for the petitioners as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

42. All the petitioners who are serving as deputationists in the Federal Government, are desirous to be absorbed/inducted in the O.M.G. Since, through the impugned notification dated 17.10.2018, they have all been repatriated to their respective parent departments, they are challenging the said notification. They took the position that since they are eligible to be absorbed/inducted in the O.M.G. against the 10% quota reserved for deputationists, they cannot be repatriated unless they are considered for absorption/induction in the O.M.G.

43. In the year 1975, a new occupational group called the O.M.G. was constituted. This group comprised of (i) all ministerial posts in the Federal Secretariat from Grade 1 to 16, (ii) posts of Section

Officers in Grade 17 and 18, and (iii) such other posts, including posts in Grade 19 and 20, as may be specified and included in the said group from time to time. The administrative control over the said group was with the Establishment Division. Vide office memorandum dated 27.01.1975 issued by the Establishment Division, the strength of duty posts of Section Officers in the Federal Secretariat was fixed at 750, out of which 10% were reserved for appointment on deputation on tenure basis or by transfer of officers in BS-17 and BS-18 from other occupational groups/cadres and provincial civil servants. Paragraph 9(A) of the said office memorandum provided the mechanism for the appointment of Section Officers in the Federal Government. For the purposes of clarity, paragraph 9(A) of the said office memorandum is reproduced herein below:-

“9(A) Appointment by Transfer- Civil Servants belonging to other occupational groups, services, cadres and the Provincial Governments, including those serving in the Federal Government on deputation basis, may be appointed as Section Officers in the Federal Government in public interest, on the recommendation of the Departmental Promotion Committee, and with the approval of the competent authority. The consent of the Ministry/Division/Provincial Government and the officer concerned will be obtained before making such appointments.”

44. Now under paragraph 9(A) of the office memorandum dated 27.01.1975 only *“civil servants belonging to other occupational groups, services, cadres and the Provincial Governments, including those serving in the Federal Government on deputation basis”* could be appointed as Section Officers in the O.M.G. A person who is not a civil servant could not be appointed in the Federal Government under the said office memorandum. The term *“including those serving in the Federal Government on deputation”* is referable to *“civil servants belonging to other occupational groups, services, cadres and the Provincial Governments”* only. Therefore, non-civil servants serving as deputationists in the Federal Government could not be appointed as Section Officers in the Federal Government. An absorption/induction of a deputationist in the Federal Government or the O.M.G. would be invalid and in

derogation of the requirements of paragraph 9(A) of the said office memorandum if the following perquisites are not fulfilled:-

- “i. The absorption/induction being in the public interest.*
- ii. Recommendation of a Departmental Promotion Committee or a Departmental Selection Committee.*
- iii. Approval of the competent authority.*
- iv. The deputationist in the Federal Government being a civil servant belonging to other occupational groups, services, cadres and the Provincial Governments.”*

45. On 08.09.2010, the Prime Minister approved the following criteria for appointment by transfer/induction in the O.M.G.:-

- “a) The Federal/Provincial Civil Servants selected through FPSC/PPSC and having two years length of service in the Federal/Provincial Secretariat as Section Officer (BS-17/18) on deputation/under Section 10 of Civil Servants Act, 1973, to be considered in order of seniority against seats reserved/allotted as per prescribed provincial/regional quota/merit quota.*
- b) PERs of the last two years will be quantified for determination of merit against prescribed provincial/regional quota.*
- c) 70 marks will be assigned to the PERs of the last two years.*
- d) 30 marks will be assigned for the interview by the departmental Selection Committee to assess suitability.*
- e) The selection will be on the basis of centralized merit in PERs/interview for the respective provincial/regional quota, including 7.5% merit quota.*
- f) Depending upon number of seats for 7.5% merit quota, the best selectees from each province/region shall be selected/adjusted against 7.5% merit quota over and above their provincial/regional quota.”*

46. As per the said criteria, non-civil servants, employees of autonomous bodies/corporations and civil servants reaching BS-17/18 by promotion, are not eligible for appointment by transfer as Section Officers in O.M.G.

47. Until 15.03.2013, employees of autonomous bodies/corporations had not been appointed by transfer as Section Officers in the O.M.G. as they were not eligible under paragraph 9(A) of Establishment Division's office memorandum dated 27.01.1975 constituting the O.M.G. On 15.03.2013, the Establishment Division submitted a summary to the Prime Minister proposing *inter-alia* that all regular civil servants appointed in BS-17/18, in their parent cadre, through F.P.S.C./P.P.S.C. belonging to any Province/Region and having rendered a minimum of three years service in BS-17/18, in their own cadre, presently working as

Section Officers on deputation, may be appointed by transfer as Section Officers on regular basis in the O.M.G. It was also proposed that due to the acute shortage of regular officers in O.M.G., all regular civil servants appointed in BS-17/18, in their parent cadre, otherwise through F.P.S.C./P.P.S.C. belonging to any province / region and having rendered minimum of three years service in BS-17/18, in their own cadre, presently working as Section Officers on deputation, may be appointed by transfer as Section Officers (BS-17/18) in the O.M.G. on acting charge basis subject to the recommendations of the Departmental Selection Committee ("D.S.C."). Furthermore, it was proposed that this may be subject to the fulfillment of the approved criteria dated 08.09.2010, and the recommendations of the D.S.C. The proposals made by the Establishment Division in the said summary were approved by the Prime Minister on 16.03.2013. Officers who did not fulfill the criteria approved by the Prime Minister on 08.09.2010, could not be appointed by transfer or inducted in the O.M.G. The said criteria stood reaffirmed through the Prime Minister's said decision dated 16.03.2013.

48. It may be mentioned that on 15.03.2016, five petitioners serving as deputationists in the Federal Secretariat, filed writ petition No.969/2015 before this Court, seeking *inter-alia* their induction in the O.M.G. This petition was disposed of, vide order dated 16.03.2016, in terms of the following statement dated 22.02.2016, filed by the Secretary, Establishment Division:-

"It is assured from Establishment Division that the induction of the eligible ex-cadre civil servants working as Section Officers on deputation basis in Federal Secretariat in Office Management Group would be carried out against the 10% quota reserved for the purpose in accordance with para 5 and 9(A) of Frame Work of Rules & Procedure Applicable to Office Management Group with the condition that no restraining order of the court exists barring this Division to process the case."

49. Furthermore, the Establishment Division was directed by this Court to undertake the exercise and complete the same within a period of sixty days. In order to show compliance with the said direction, summary dated 04.05.2016 was moved before the Prime

Minister proposing the following criteria for induction in the
O.M.G.:-

- “a. The Federal / Provincial civil servants of BS-17/18 having three years length of service in the Secretariat as Section Officer on deputation / under Section 10 of the Civil Servants Act, 1973, to be considered against seats reserved/allotted as per prescribed provincial/regional/merit quota (Vacancy position based on provincial quota is at Annex IV). Those already repatriated will not be recommended even if they have not relinquished the charge.*
- b. The deputationists shall not be under any inquiry / disciplinary / departmental proceedings and must have good service record.*
- c. PERs of the last three years will be quantified for determination of merit and fitness for appointment by transfer in OMG.*
- d. 50 marks will be assigned to the PERs of the last three years.*
- e. 50 marks will be assigned for the interview by the Departmental Selection Committee to assess suitability.*
- f. While recommending officers for Induction and deferment for the same, the DPC/DSC may also take into consideration any other fact / aspect, other than those enumerated above, while ascertaining fitness of the officer for his induction/appointment by transfer which is deemed just and appropriate in the public interest.*
- g. The DPC will headed by Additional Secretary-II of Establishment Division as chairman and include Joint Secretary (E), Deputy Secretary (A-I) and representative of Law & Justice Division not below the rank of BS-20.”*

50. On 15.06.2016, the Prime Minister approved the proposal in the said summary dated 04.05.2016 with the following modifications:-

- “(i) The federal and provincial civil servants in BS-17 and BS-18 with at least three years continuous service, cumulatively in the Federal Secretariat, Prime Minister’s Office, Aiwan-e-Sadr (President House), Office of the Waqafi Mohtasib, Senate Secretariat and National Assembly Secretariat as Section Officer in that respective grade, on deputation or under Section 10 of Civil Servants Act 1973, will be considered for appointment by transfer / induction in OMG in BS-17 and BS-18, as the case may, against 10 percent of the duty posts of OMG, as per prescribed provincial / regional quota;*
- (ii) However, as an affirmative action, the 7.5% quota reserved for ‘merit’ shall not apply in this case, and shall be distributed as follows:*
 - (a) FATA 2 %*
 - (b) GB 1 %*
 - (c) Balochistan 2 %*

(d) KPK 1 %
(e) Sindh 1.5 %

- (iii) *Those officers who have already been repatriated will not be considered even if they have not relinquished charge;*
- (iv) *The federal or provincial civil servant to be considered as above, shall not be under any inquiry or disciplinary proceedings;*
- (v) *The federal or provincial civil servant to be considered must have a good service record, to determine which the Performance Evaluation Reports of the last three years will be quantified;*
- (vi) *Any officer fulfilling the prescribed criteria would be eligible to be considered for induction / appointment by transfer in OMG. However, a "No Objection Certificate" from the concerned federal ministry / division / department or the concerned provincial government will be required;*
- (vii) *A Departmental Selection Committee will be constituted by the Secretary Establishment, and shall be headed by an officer not below the level of an Additional Secretary of the Establishment Division;*
- (viii) *Fifty percent marks will be assigned to the PERs of the last three years;*
- (ix) *Fifty percent marks will be assigned for the interview by the Departmental Selection Committee to assess suitability;*
- (x) *While recommending officers for induction or deferment, the Departmental Selection Committee may also take into consideration any other fact / aspect, in addition to those enumerated above, while ascertaining fitness of the officer for his or her induction/appointment by transfer which is deemed just and appropriate in the public interest. The reason for considering any other such fact or aspect, shall be recorded in writing;*
- (xi) *The process and schedule of consideration for induction shall be widely circulated in all ministries and other establishments of the federal government. For this purpose, the Establishment Division shall ensure that this information reaches all eligible officers at least 15 days prior to the beginning of the induction process; and,*
- (xii) *A mechanism will be set up in the Establishment Division under an officer of appropriate seniority to ensure that all eligible cases are properly processed."*

51. After the approval of the said criteria, no induction of any deputationist serving in the Federal Secretariat could be made in the O.M.G. due to the injunctive order dated 29.06.2016, passed by this Court in writ petition No.2622/2016 titled "Sibghatullah Vs. Federation of Pakistan, through Secretary, Establishment Division, etc."

52. During the pendency of the said writ petition, the Hon'ble Supreme Court, vide order dated 30.03.2017, passed in criminal original petition No.182/2016, titled "Muhammad Umair, etc. Vs. Syed Tahir Shahbaz, Federal Secretary, Establishment Division, etc." gave the following directions with respect to appointments of deputationists in the O.M.G.:-

- "i. Those officers who are on deputation will be sent back to their parent departments within four months from today;*
- ii. The said policy with regard to deputation and appointments made by transfer shall be reviewed by the Government of Pakistan to bring it in conformity with the referred judgments. An opportunity shall be provided to all the candidates who meet the stipulated criteria to apply for the posts of Office Management Group (OMG) against the 10% reserved quota. The process of selection shall be undertaken by the Federal Public Service Commission (FPSC), which is the constitutional body assigned with the task to recruit the civil servants. The FPSC shall ensure that the officers applying for the said posts of OMG qualify the eligibility criteria provided for the posts and such officers shall be allowed to appear in the examination to be undertaken by the FPSC. The Government of Pakistan shall assign this task to FPSC.*
- iii. Those officers who are presently on deputation and are directed to be sent / report back to their parent departments within four months, would be entitled to compete alongwith other candidates through the FPSC."*

53. The said order makes it very clear that the selection process for induction in the O.M.G. has to be undertaken by the F.P.S.C. A civil servant who was appointed in his parent department through the F.P.S.C., was not exempt from going through the F.P.S.C. for his selection/induction in the O.M.G. Indeed, a civil servant who is not selected through the F.P.S.C. or the P.P.S.C., as the case may be, for his appointment in his parent department, and serving as a deputationist, did not qualify to be considered for induction in the O.M.G. This was explicitly provided in the criteria dated 08.09.2010, approved by the Prime Minister.

54. Now as regards writ petition No.2622/2016 titled "Sibghatullah Vs. Federation of Pakistan, through Secretary, Establishment Division, etc.", this Court, after taking into consideration the directions of the Hon'ble Supreme Court in the order dated 30.03.2017, passed in criminal original petition No.182/2016, titled "Muhammad Umair, etc. Vs. Syed Tahir Shahbaz, Federal Secretary, Establishment Division, etc.",

disposed of the said writ petition vide judgment dated 26.05.2017, with the observation that the petitioners shall be considered in line with the said directions of the Hon'ble Supreme Court.

55. Since the office memorandum dated 27.01.1975, does not provide the mode and procedure for the induction of deputationists in the O.M.G., the said office memorandum needed to be amended in order to bring in line with the judgments of the Hon'ble Supreme Court. An observation to the said effect is made by this Court in paragraph 10 of the said judgment dated 26.05.2017.

56. Syed Gulzar Shah, Joint Secretary, Establishment Division, informed the Court that on 08.02.2019, a summary had been moved before the Prime Minister by the Establishment Division in which the following criteria was proposed for appointments by transfer in the O.M.G. against the 10% quota through the F.P.S.C.:-

- "i. A regular BS-17 or BS-18 Civil Servant, Provincial Civil Servant, Government Servant, Public servant, or officer of Autonomous body / corporation having served on deputation in Federal Secretariat on Section Officers post for a period of three (03) years shall be eligible to appear in the examination (test and interview) to be conducted by the FPSC for appointment by transfer in OMG on regular subject to provision of NOC for induction in OMG from parent department of the candidate.*

For induction in BS-17:-

A regular BS-17 officer who has three years regular service at his credit in Federal Secretariat on deputation basis on Section Officer post.

For induction in BS-18:-

For induction as Section Officer in OMG in BS-18 the officer concerned should either be a regular BS-18 or has five years regular service at his/her credit in BS-17. Whereas, a BS-18 officer cannot apply for BS-17 posts. The officer should also has three years regular service at his credit in Federal Secretariat on deputation basis on Section Officer post.

- ii. Age bracket/educational qualification/ number of chances for such induction should be the same as prescribed for Section Officer Promotional Examination (SOPE).*
- iii. Induction is one of the methods of appointment by transfer and according to Establishment Division's OM No.8/15/73-TRV dated 28.11.1973 the provincial/ regional quota will not apply to posts filled by appointment by transfer."*

57. Now it remains to be seen as to whether or not the Establishment Division's proposal contained in the said summary

dated 08.02.2019, is approved by the Prime Minister. Either way an induction in the O.M.G. cannot be made without a test and an interview of the eligible candidates having been conducted by the F.P.S.C. All the petitioners, save the petitioner in writ petition No.4025/2018, have already served for more than three years as Section Officer in the Federal Secretariat on deputation basis. The Establishment Division has not initiated the process of obtaining a No Objection Certificate from the petitioners' parent departments for their absorption/induction in the O.M.G. If the Establishment Division's proposal is approved by the Prime Minister, employees of autonomous bodies and corporations having served as deputationists in the Federal Secretariat for a period of three years would also be eligible for participation in the test and interview to be conducted by the F.P.S.C. for their selection for appointment / induction in the O.M.G. Since the past few years, absorption/induction in O.M.G. has not taken place under paragraph 9(A) of the office memorandum dated 27.01.1975, therefore, it is expected that the Prime Minister would take a decision on the said summary at the earliest.

58. There is nothing on the record to indicate that the petitioners' parent departments had given their consent/no-objection certificate for the petitioners' absorption/induction in the O.M.G., or that any process had been initiated for the said purpose. It is an admitted fact that none of the petitioners have, at any material stage, appeared before any D.S.C. for the assessment of their suitability for absorption/induction in the O.M.G. Furthermore, the petitioners' performance evaluation reports for the last two years have not been quantified for the determination of merit against the prescribed provincial/regional quota. At no material stage, before the issuance of the impugned notification dated 17.10.2018, did the petitioners apply to be considered for absorption in the O.M.G. pursuant to paragraph 9(A) of the Establishment Division's office memorandum dated 27.01.1975. At least there are no such applications on the record.

59. Syed Gulzar Shah also clarified that even if all the petitioners are repatriated, since all of them, save one, have served as deputationists in the Federal Secretariat for more than three years, they were qualified on that score for participation in the competitive process (test and interview) to be conducted by the F.P.S.C. for their selection for appointment in the O.M.G. This takes me to form the view that simply because the petitioners, save one, having completed three years of service as deputationists in the Federal Secretariat, cannot be a valid ground for them to challenge their repatriation to their respective parent departments. They have no legal basis for asserting that they will continue to serve as deputationists until considered for their absorption/induction in the O.M.G. in accordance with the approved criteria/procedure.

60. After holding so, the question that needs to be determined is whether the petitioners have a vested right to continue serving in the borrowing department/Federal Government as deputationists.

61. 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.

62. 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, make 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 prior approval of the competent authority. All cases of initial deputation of government service holding posts in BS-17 and

above are 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 18 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 a deputationist. In case, it is not possible to repatriate a person to his/her 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.

63. In an earlier office memorandum No.1(28)/75-D.II, dated 06.03.1975, 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.

64. It is settled law that a deputationist may not necessarily complete the tenure for which he/she was sent on deputation and the power is vested with the competent authority to repatriate a deputationist without assigning any reason. In 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 (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 (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.
- (iii) In the case of Mst. Robia Ayub Vs. Federation of Pakistan (2013 PLC (C.S.) 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.

- (iv) In case of Abdul Majeed Vs. Chief Secretary, Punjab (2015 PLC (C.S.) 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.
- (v) In case of Lal Khan Vs. Employees Old Age Benefit Institution (2010 PLC (C.S.) 1377), 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 to parent department at any time.

65. Another question that needs to be answered is whether the petitioners could have invoked the Constitutional jurisdiction of this Court to prevent their repatriation to their parent departments. The law in this regard is also well settled. In the case of Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad (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.

66. At no material stage, have the petitioners been absorbed in the borrowing departments. Even the issuance of a "*no objection*" by the petitioners' parent departments would not give the petitioners a vested right for absorption in the borrowing departments or the O.M.G. In the case at hand, the petitioners have served as deputationists for a period far more than the permissible period. There are no compelling reasons on the record to show that the petitioners' services are indispensable to the borrowing department. A deputationist has no vested right to continue serving

in his borrowing department until he/she is considered for absorption/induction in the O.M.G.

67. The Establishment Division instead of churning out office memoranda every now and then on the criteria for absorption/induction of deputationists serving in the Federal Government ought to propose the framing of Rules under section 25(1) of the Civil Servants Act, 1973, on the said subject. The appointment of civil servants belonging to other occupational groups, services and cadres and the Provincial Governments as Section Officers in the Federal Government ought to be regulated by Rules. This would bring certainty and clarity in the process and criteria for absorption/induction of deputationists in the Federal Government or the O.M.G.

68. By reason of the aforementioned, I do not find any merit in these petitions which are accordingly dismissed with no order as to costs. All the injunctive orders stand recalled.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019.

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING

