

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

No.

IHC/Judl.Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. F.A.O. 68-2011

Titled. MUHAMMAD JAZIB ROOMI vs. FISC. 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.

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

FAO No. 68 of 2011
Muhammad Jazib Roomi-Vs- FPSC etc.

FAO No. 69 of 2011
M. Suhail Siddique-Versus-FPSC etc.

Dates of Hearing: 12.12.2011, 14.11.2012, 28.01.2013,
14.02.2013, 21.03.2013, 17.04.2013,
13.05.2013 & 04.06.2013:

Appellants By: - Appellant Suhail Siddiqui in person & Mr. Abdur Rahman Advocate for appellant Jazib Roomi.


Respondents By: - Qazi Rafee ud Din Babar learned DA-G with Mr. Muhammad Khalil Director [Legal], Mumtaz Hussain Shaukat AD [CSS] and Rameez Ahmad, Director [CE] FPSC:

J U D G M E N T
MUHAMMAD ANWAR KHAN KASI, CJ:

By way of this single judgment, both the captioned appeals are being taken-up as the same emanate from the order dated 25.11.2011, passed by respondent No.1 [FPSC], whereby the selection of the appellants as successful candidates against Punjab Quota on the basis of CSS Competitive Examination 2010, was rejected.

2. In brief, the case of the appellants is that they qualified the written test as well as viva-voce of the Competitive Examination 2010, and were placed at 149 & 154th position, respectively, in all Pakistan Merit List of the 626 qualified candidates, whereas in the Merit List of Punjab, they were placed at 105th & 109th position amongst the 437th qualified candidates.

3. On 23.5.2011, the respondent No.1 [FPSC] through a Press Note announced number of vacancies to be filled by successful candidates from all over Pakistan in the following order:-

- 
- i. All-Pakistan Open Merit = 7.5%
(Punjab 13 + GB FATA 1 = 17 seats)
Irrespective of any Province/Region and Gender
 - ii. Punjab Reserved Quota = 50%
(92 + 1* seats, Provincial quota irrespective of any gender + seats reserved for minorities = 108)

NOTE: 1 seat was added in Punjab Provincial quota raising the number from 92 to 93 according to Press Note issued by respondent No.2, dated 23.8.2011.

- iii. Sindh (R) Reserved Quota = 11.4%
(26 seats, Provincial/Region quota irrespective of any gender + 9 seats reserved for women only + 1 seat reserved for minorities = 36 seats)
- iv. Sindh (U) Reserved Quota = 7.6%
(45 seats, Provincial/Regional Quota irrespective of any gender + 7 seats reserved for women only + 0 seat for minorities = 52 seats)
- v. KPK Reserved Quota = 11.5%
(23 seats, Provincial quota irrespective of any gender + 01 seat reserved for women only + 0 seat for minorities = 23 seats)
- vi. Balochistan Reserved Quota = 6%
(12 seats, Provincial quota irrespective of any gender + 06 seats reserved for women only + 0 seat for minorities + 18 seats)
- vii. GB FATA Reserved Quota + 4%
(10 seats, Provincial/Regional quota irrespective of any gender + 01 + 01* seats reserved for women only + 0 seat for minorities = 11 seats)
NOTE: 1 seats was added in GB FATA women reserved seats raising the number from 1 to 2 according to Press Note issued by respondent No.2, dated 23.8.2011.
- viii. A J & K Reserved Quota = 2%
(04 seats, Provincial/Regional quota irrespective of any gender + 0 seats for women + 0 seat for minorities = 04 seats).

4. It is the case of the appellants that the post in each grade had to be considered separately for purposes of allocation of the prescribed merit and provisional or regional quotas, while the vacancies which cannot be filled by the candidates belonging to the provincial region to which the vacancies allocated should be carried over and re-advertised at the later date meaning thereby that a vacancy for 01 Province cannot be filled by a candidate of another Province. It is further contended that the first 7.5% [17 seats] in CSS, 2010, were to be filled purely on all Pakistan Open Merit Basis and the provincial quota should be calculated in addition to the provincial participation in the first 7.5% all Pakistan Open Merit.

5. It is their case that according to Press Note dated 23.5.2011, issued by the respondent No.1, 13 seats out of the first 17 All Pakistan Open Merit seats were qualified by the candidates from Punjab Province and, therefore, by all means

these 13 posts were in addition to the 50% reserved provincial quota seats and the provincial quota for Punjab should have started from all Punjab Merit No.14 [All Pakistan Merit No. 23] and the total number of open merit and provincial quota seats alongwith women and minority seats reserved for Punjab should have been clubbed together like $13 + 93 + 10 + 5 = 121$, while according to the Press Note dated 23.8.2011, the province of Punjab has been offered $13 + 88 + 10 + 5 = 116$ only, which means that they were deprived of their reserved provincial quota to the extent of five posts.

6. It is the grievance of the appellants that respondent No.1 [FPSC] appointed 08 Punjab candidates out of 13 amongst first 17 candidates from All Pakistan Open Merit on top 8 Punjab Provincial Quota seats, while only three candidates from provincial quota were appointed from all Pakistan Open Merit and remaining 5 seats, the Punjab candidates left vacant in all Pakistan Merit, were given to the KPK candidates, while the KPK candidates had qualified only three seat in all Pakistan Merit in addition to their 23 reserved provincial quota seats and one seat for women only.

7. It is further contended that initially the appellants were at 105th & 109th position in Punjab Merit List of 437 qualified candidates, but due to dropping of candidate at Merit No. 100, the appellants came out at 104th and 108th position and afterwards it became 102nd & 106th when two more candidates at position No. 52nd and 103rd position declined the offer for the CSS 2010 job.

8. It is also averred that the allocation of the qualified candidates from Punjab according to the Press Note dated 23.8.2011, went up to 102nd position, while it should have gone up to 107th position in the Punjab, rather it should have gone beyond 109th position in Punjab in re-allocation list, when two more candidates at 52nd & 103rd position declined to join.

9. It is finally submitted that in such view of the matter, the appellants were entitled and qualified for their selection against 93rd Punjab reserved quota seats, but the respondent No.1 [FPSC] without any lawful justification did not take them on merit and rejected their appeals as well as review petitions by non-speaking orders in an illegal manner. The learned counsel, in support of his submissions, referred to case laws reported in 2004 PLC (C.S.) 99, 1997 PLC (C.S.) 958, 1999 SCMR 1863, 2009 PLC (C.S.) 966 & 2010 PLC (C.S.) 783, which are on the point that ///

10. The respondents contested both the appeals by filing their version in black & white. Besides taking legal objections qua maintainability on merits, it is submitted that the method of allocation of successful candidates for Competitive Examination, 2010, was made on the basis of merit, choice of preference, domicile, number of vacancies, regional/provincial quota, 10% female quota and 5% minorities' quota in compliance with the judgment of the Hon'ble Lahore High

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Court, Rawalpindi Bench, Rawalpindi dated 17.3.2010, passed in FAO No.1 of 2010, upheld by the Hon'ble Apex Court vide judgment dated 30.6.2010, passed in Civil Petition No. 941 of 2010.

11. It is submitted that the appellants could not be allocated any group of service due to their low merit position and no candidate below their position has been taken by the FPSC.

12. Heard & record perused.

13. The justification advanced by the respondent No.1 [FPSC] in support of allocation of seats is that 17 vacancies reserved for open merit relating to [PSP=1, DMG=3, FSP=2, IRS=3, PCS=1, MLCG=1, OMG=4, PAAS=1 & POSTG=1 TOTAL 17] were allocated to candidates according to their merit position, whereas the appellants have contended that instead of allocating open merit vacancies in various groups/services, these should have been given to first 17 candidates according to their choice and thereafter the vacancies reserved for provincial/regional quotas should start from Merit No. 18. If, this approach is accepted, it would have the implications that first 17 candidates, according to merit position & choice, would get seats in [DMG=8, PSP=5, FSP=4] and most of the vacancies in highest groups/services would be shared by Punjab/KPK and other provinces/regions would not be able to get due share in higher groups/services such as DMG/PSP. As per method adopted, there were 15 vacancies for PSP and only one was reserved for open merit and 14 were shared by provincial/regional quotas, whereas according to contentions of the appellants four seats would have been reserved for candidates from merit 1 to 17 [hailing three from Punjab and one from KPK] and remaining 11 would have been shared by provinces/regions. In this way provinces/regions will get fewer shares in higher group /services. For instance had there been four vacancies in PSP? None would have gone to any province/region, but allocated to open merit and may have gone to only Province of Punjab and, therefore, to override this deficiency, OM dated 28.11.1973 provides to allocate merit/regional quota separately on each departments /offices/institutions and by following the method contained in the said OM, the allocation was made across all groups/services and was not confined to first 17 candidates so that underdeveloped province/region from where a candidate does not come up at top 17 position would also get share in DMG/PSP.

14. I have also gone through the Allocation Chart and the OM dated 28.11.1973, to verify as to whether allocations were made in accordance with law or the appellants have been deprived of their reserved provincial quota to the extent of five posts as claimed by them.

15. The following chart shows the group-wise allocation of candidate of the competitive examination on merit and provincial quota:-

ALLOCATION CHART

STATEMENT SHOWING THE GROUP WISE ALLOCATION OF CANDIDATES OF COMPETITIVE EXAMINATION 2010, ON MERIT AND PROVINCIAL QUOTA																
NAME OF GROUP	MERIT 7.5%	PUNJAB (50%)			SINDH (R)11.4%	SINDH (U) 7.6%	K.P.K 11.5%	BALOCHISTAN 6%	GBFATA 4%	AJK 2%	TOTAL VACANCIES					
Commerce and Trade Group (CTG)	-	Open Merit	-	-	-	(4)	-	-	(1) 114	-	5					
		Female	-	(1)	(1)	-	(1) 520	-	-	-	3					
		Minorities	-	-	-	-	-	-	-	-	-	-				
		Open Merit	(16) 8,9,11,12, 15, 17, 23, 25, 30, 31, 36, 40, 41, 42, 44, 46	(3) 129, 161, 187	(2) 162, 191	(3) 6, 13, 18	(2) 35, 72	(2) 61, 73	(1) 38	32						
District Management Group (DMG)	(3) 2, 4, 5	Female	(2) 70, 79	-	(1) 428	-	-	-	-	-	3					
		Minorities	228	-	-	-	-	-	-	-	1					
		Open Merit	(11) 26, 52, 53, 54, 55, 57, 62, 66, 67, 68, 69	(3) 119, 248, 313	(2) 166, 252	(3) 22, 24, 28	(1) 126	(1) 75	-	23						
		Female	(1) 84	-	-	-	(1) 424	-	-	2						
Foreign Service of Pakistan (FSP)	(2) 7, 16	Minorities	(1)	-	-	-	-	-	-	-	1					
		Open Merit	-	(3)	(7)	-	-	-	(1) 236	-	11					
		Female	-	(1)	(1)	-	(2)	(1)	-	5						
		Minorities	-	-	-	-	-	-	-	-	-					
Inland Revenue Service (IRS)	(3) 39, 47, 49	Open Merit	(17) 77, 78, 80, 82, 83, 85, 87, 93, 94, 96, 97, 98, 100, 101, 102, 105, 106	(4) 192, 205, 211 255	(3) 430, 483, 495	(4) 56, 60, 63, 64	(2) 147, 173	(2) 122, 164	(1) 169	36						
		Female	(2) 107, 113	(1) 345	(1)	-	-	-	-	-	4					
		Minorities	(1)	-	-	-	-	-	-	-	1					
		Open Merit	(4) 88, 89, 90, 99	(1) 422	(1) 266	(1) 48	(1) 197	-	(1) 172	10						
Military Lands & Cantonments Group (MLCG)	(1) 33	Female	-	(1)	-	-	-	-	-	-	1					
		Minorities	-	-	-	-	-	-	-	-	-					
		Open Merit	(21) 120, 121, 123, 124, 128, 131, 132, 133, 135, 136 138, 139, 140, 141, 142, 144, 153, 170, 176, 182, 183	(4) 501, 510, 547	(11) 137, 152, 155, 157, 158	(5) 285,294,308	(1) 208	-	49							
		Female	(3) 185, 188, 193	(1)	(1)	(1) 232	(1)	-	-	8						
Office Management Group (OMG)	(4) 65, 116, 117 118	Minorities	(1)	(1)	-	-	-	-	-	2						

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Pakistan Audit and Accounts Service (PAAS)	(1) 76	Open Merit	(8) 91, 95, 103, 108, 109, 110, 111, 112	(2) 369, 380	(7) 518	(2) 81, 92	(1) 203	(1) 174	(1) 310	23
		Female	(1) 115	(2)	(1)	-	-	-	-	4
		Minorities	(1) 343	-	-	-	-	-	-	1
Pakistan Customs Service (PCS)	(1) 29	Open Merit	(2) 58, 74	-	-	(1) 32	-	-	-	4
		Female	-	-	-	-	-	-	-	-
		Minorities	-	-	-	-	-	-	-	-
Police Service of Pakistan (PSP)	(1) 1	Open Merit	(8) 10, 14, 27, 34, 43, 45, 50, 51	(2) 59, 71	(1) 222	(1) 19	(1) 21	-	-	14
		Female	(1) 125	-	(1) 526	-	(1)	-	-	3
		Minorities	-	-	-	-	-	-	-	-
Postal Group (POSTG)	(1) 104	Open Merit	(4) 127, 134, 177, 178	(3)	(4)	(2) 175, 218	-	(1) 240	-	15
		Female	-	(1)	-	-	-	-	-	1
		Minorities	-	-	-	-	-	-	-	-
Railways (Commercial & Transportatio n) Group (RCTG)	-	Open Merit	(2) 130, 145	(1)	(3)	(1) 163	(1) 314	-	-	8
		Female	-	(1)	-	-	-	-	-	1
		Minorities	-	-	-	-	-	-	-	-
Total	17		(108)	(36)	(52)	(24)	(18)	(12)	(4)	(271)
Vacancies: Allocated:	17		105	19	12	24	8	10	4	199
Unfilled:	-		3	17	40	-	10	2	-	72

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16. The perusal of Establishment Division OM No.8 /15/73-TRV, dated 28.11.1973, shows that following clarifications were issued:-

- (i) Posts in each grade* [BPS] should be considered separately for purposes of allocation of the prescribed merit and provincial/regional quotas.
- (ii) The provincial/regional quotas, do not apply to posts filled by promotion. These are applicable to direct, including lateral entry, appointments.
- (iii) Vacancies which cannot be filled by candidates belonging to the province or region to which the vacancy is allocated should be carried over and re-advertised at a later date.
- (iv) Posts in the Ministry/Division should be allocated separately from posts in Attached Departments and Subordinate Offices. In other words, the allocation should be made separately for each department, office or institution. [highlighted by me]
- (v) Provincial/regional quotas do not apply to posts filled by transfer of Government servants to post in equivalent grades whether on deputation or on secondment as in the case of military officers.

17. The perusal of chart and OM dated 28.11.1973, clearly indicates that the allocations were made separately to each department/office/institution and, therefore, the contention of the appellants that Punjab should have been allocated 121 seats is not plausible.

18. The open merit vacancies obtained by candidates from Punjab were in fact seven [07] and likewise vacancies reserved for Punjab were $93 + 10 + 5 = 108$ meaning thereby that the last candidate allocated from Punjab was at 145th position on merit, whereas the appellants are much behind at position No. 149th & 154th, respectively.

19. The claim of the appellants that the reserved quota should start from Merit No.18 excluding 13 Open Merit seats exclusively from Punjab is not rational. The vacancies earmarked to the Province of Punjab were allocated in accordance with the prescribed policy and the case law referred do not extend any help to the appellants as the same are neither relevant nor applicable in the present case. 93 candidates of Punjab Province were allocated against 93 Open Merit



vacancies in various groups/services irrespective of their gender up to overall Merit Position No.145 and thereafter only female candidates were allocated against the remaining 10 vacancies reserved for women quota of Punjab.

20 In view of above, I don't find any force in the appeals, the same are, therefore, dismissed leaving the parties to bear their own costs.


CHIEF JUSTICE

Announced in open Court on 21.8.2013.


CHIEF JUSTICE

APPROVED FOR REPORTING

M.Suhail
21.08.2013

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