

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2703 of 2012

Safiullah Jokhio etc.

Vs.

Federation of Pakistan etc.

PETITIONER BY: M/s Shah Khawar, ASC, Sardar
Nasir Ahmed Saghir and Aamir
Rehman Mughal, Advocates

RESPONDENT BY: Mr. Tariq Mehmood Jehangiri,
learned DAG
Barrister Sajeel Sheryar and Ch.
Hassan Murtaza Mann, Advocate for
Respondent No.11.
Mr. Qaisar Masud, D.D (Law), FIA.
Mr. Zarnab Khattak, Supdt. Estb.
Division.

DATE OF DECISION: 06.06.2013

SHAUKAT AZIZ SIDDIQUI; J: Instant Writ Petition was disposed of by means of short order dated 06.06.2013 which is reproduced here in below:-

For the reasons to be recorded later on, instant petition is allowed with the declaration that induction of respondent Nos. 4 to 48 in the FIA on deputation followed by absorption is based on political considerations, unprecedented, illegal, unconstitutional, besides the dictums laid down by the apex Court and principles of transparency, fairness and merit.

2. *The bringing of respondent Nos. 4 to 48 to FIA is not result of any credible process rather consequence of dubious mannerism, polluted approach which itself is rarity. Respondent Nos. 4 to 48 are directed to be repatriated to their parent departments in the grade/position they were holding prior to coming to the FIA. It is further directed that on relieving the deputationists the posts which become vacant and are hundred percent promotion posts, same may be filled through promotion*

on the principle of seniority-cum-fitness and if rules permit to induct any person directly for the vacant posts then all such posts must be filled through competitive process. Respondent Nos. 4 to 48 be relieved / repatriated to their parent departments, forthwith.

2. Petitioners invoked the constitutional jurisdiction of this court by way of filing the instant writ petition with the following prayer ;-

“It is therefore respectfully prayed that this Hon’ble court may issue a writ of Quo Warranto” to the extent that ;-

- (a). To call upon the private respondents to submit as to under what authority of law respondents No 4 to 48 are holding their respective offices as mentioned in the title of the petition and on their failure to show the lawful authority, they may be treated as usurper and be ordered to cease to hold such office forthwith.*
- (b). Respondents No 1 to 3 be directed to re-evaluate and examine the cases of private respondents on the touchstone of the FIA Act 1974 and FIA (APT) Rules 1975 and if found to be appointed against said Act and Rules, the private respondents be repatriated to their parent departments .*
- (c). Declaration that the process of absorption of respondents No 19 to 36 in FIA is illegal and void.*
- (d). To grant any other relief which deem fit and appropriate under the circumstances of the case.”*

And presented the facts as under:-

2(a). That petitioners are regular appointees/officers of Federal Investigation Agency (FIA) and are aggrieved of the illegal process carried out by respondent No 3 of bypassing and eroding the FIA Act 1974 and FIA (APT) Rules 1975 through which the appointments have been made in different pay scales from different Federal Government, Semi Government and Provincial Services into FIA which act is detrimental to the seniority and promotion rights of the petitioners and that this is

a glaring example of illegal practice through which respondent Nos.4 to 48 have been picked up from different departments on political consideration and have been posted in FIA on different positions in BPS 16,17,18 & 19 as shown in four categories of the list annexed with the petition.

Moreover, the respondent Nos.11 & 36 were considered and absorbed by respondent No 3 by bypassing and eroding the provisions of FIA (APT) Rules 1975 through Departmental Promotion Committee held on 15 & 16 of August 2012. It is further maintained that this act of the FIA authorities is illegal, void ab-initio and gross violation of the law and also violations of the fundamental rights of the petitioner guaranteed under Constitution of the Islamic Republic of Pakistan, 1973, on the ground that basic function and duty of this agency is to enquire and investigate the offences specified in schedule of the FIA Act 1974, that under Section 15 of FIA Act 1974 this agency has all the powers to investigate the crimes specified in the schedule which the police do have under the Cr.PC at the provincial level. That rule (3) of the FIA (APT) Rules 1975, procedure of appointments has been provided, according to which appointments in FIA shall be made by following method:-

- a. By promotion of persons employed on regular basis in the Agency.*
- b. By transfer of person from other departments of the Federal Government and the Provincial Governments on deputation for a specified period; and*
- c. By direct appointment.*

3. Petitioners contended that there are six groups within the agency for the purpose of promotion, direct appointments and transfer as provided in Rule 12 of the FIA (APT) Rule 1975 :-

- (i) ***Investigation.***
- (ii) ***Accounts.***
- (iii) ***Customs.***
- (iv) ***Income Tax.***
- (v) ***Engineering.***
- (vi) ***Legal***

Petitioners have further maintained that Rule 5 of the supra Rules clearly depicts that post in Grade 19 shall ordinarily be filled by promotion of officers of Grade 18 serving in the Agency on regular basis and it is clear that there could be no appointment in BPS 19 by way of transfer and subsequent absorption, that Rule 2 (e) of supra rules defines the Departmental Selection Committee constituted for the purpose of making selection for direct appointments or by transfer through post in FIA in BPS 18 and below and only the Departmental Selection Committee is competent to make selection of BPS 18 and below. That Rule 6 provided that 50% of posts from BPS 16, 17 & 18 shall be filled by promotion of officers serving in Agency on regular basis provided that if no suitable officer is serving in agency on regular function, experience and length of service is available, post may be filled by transfer or direct appointment and in case of appointment in BPS-18, 50% of posts shall be filled by promotion amongst the officers of the agency on regular basis and remaining 50% allocated to the Police Cadre (PSP), therefore no appointments

can be made in the grade 18 by transfer on deputation and subsequent absorption thereof. That as far as grade 17 and below are concerned, the officers from other departments can only be requisitioned on deputation having fulfilled the qualification and experience required for the 06 groups of FIA as mentioned in Rule 12. That it is mandatory upon respondent No 3 that all the direct appointments in BPS 16 & 17 be made on the basis of examination held by Federal Public Service Commission (FPSC) and this method of appointment has not been followed deliberately to open flood gate of favoritism to induct the people on political consideration. On the other hand the respondent Nos.1, 3, 4, 5, 7, 8, 11 & 20 filed their replies and para wise comments and raised following preliminary objections;-

- i. *That petitioner has no cause of action as the respondents have been adjusted against the post reserved for direct/ PSP Quota.*
- ii. *That writ petition in service matter is not entertainable as in terms of Article 212 of Constitution of the Islamic Republic Of Pakistan, as such Federal Service Tribunal has jurisdiction in the matter.*
- iii. *That matter is already pending sub-judice before the Hon'ble Sindh High Court Karachi in CPLA D-422/2012 filed by Hafeez Ullah and others and CPLA 423/2012 filed by Muhammad Anwar & others.*

4. Learned counsel for the petitioners have argued that the private respondents did not meet the requirements as specified in the FIA (APT) Rules 1975, that deputation of the respondents No 4 to 48 in FIA and their subsequent absorption is in gross violation of the above mentioned laws and rules and

same be declared as illegal and void-ab-initio. Learned counsel for the petitioner has further argued that writ petition is competent as in this writ petition the service matters are not in issue but actually the writ petition is against the illegal acts of the respondents whereby they showed favoritism and they also succumbed to political pressure by taking the respondents No 4 to 48 in FIA who are absolutely unskilled persons and will just be burden on the panel of the agency who has to cope up and fight against terrorism as well as to curb white collar crimes.

5. On the other hand the learned counsel for the respondents while highlighting the averments of the para wise comments has argued that the respondent Nos.4 to 48 had been taken on deputation from different departments after approval of the competent authority under Rules 3 & 15 of the (APT) Rules 1975 against the vacant posts reserved for direct quota and PSP cadre. Learned counsel has further argued that some of the deputationists who fulfill the requisite qualification / experience qua the respective posts have been appointed by transfer in FIA on the recommendations of the Departmental Selection Committee (DSC) and with the approval of the competent authority strictly under Rule 16 of the FIA (APT) Rules 1975 against the post reserved for the direct quota in order to strengthen the professional capability of the agency without disturbing the promotion quota, therefore the deputation of these officers and appointments by way of transfer have not effected the seniority and promotion of the petitioners and other officers of FIA. Learned counsel have

further argued that all the appointments have been made strictly in accordance with the Rules 15 & 16 of the FIA (APT) Rules 1975, that Rule 5 prescribes that post in Grade 19 shall ordinarily be filled by promotion of officer of Grade 18 serving in the agency on regular basis. It is further contended that 29 posts are reserved for promotion quota of FIA against which 15 Additional Directors BPS-19 and 18 Deputy Directors (BPS-18) are working at presently and this means that 04 officers of FIA have been promoted over and above the prescribed quota whereas against 28 posts of Additional Directors / Deputy Directors (19/18) reserved for PSP cadre and only 13 PSP officers are working. Learned counsel has further argued that after fulfillment of basic and legal formalities the respondents had been taken on deputation in terms of Rule 3,6 and 15 of the Rules 1975 temporarily for specific period against the posts reserved for PSP cadre to enhance the professional capabilities of this agency which is quite reasonable and holds merits.

6. As far as respondent No 11 is concerned, it is stated that he is regular Director (BPS-19) of NADRA and his services were placed at the disposal of the FIA on deputation basis for an initial period of 03 years on standard terms and conditions as Additional Director BPS-19 on 29.11.2011 by Ministry of Interior. Learned counsel has argued that respondent No 11 has given his consent for permanent absorption in FIA and his parent department i.e. NADRA has also issued "No Objection Certificate" in this regard but case was not considered by the (DPC) rather his case was placed

before the High Level Department Selection Board. It is further argued that case for recruitments to the post of 18 Assistant Directors Investigation and 56 Inspector Investigation has already been sent to the FPSC through Ministry of Interior, that initial period for deputation is 03 years which is extendable for a further period of 02 years or till the availability of regular incumbent whichever is earlier. Learned counsel has lastly argued that this writ petition should be dismissed.

I have heard the learned counsel for the parties, perused the pleadings and went through the applicable provisions/rules.

7. I find it appropriate to decide firstly the issue of maintainability of the writ petition. Learned counsel for the respondents have argued that in view of the bar of Article 212 of Constitution of the Islamic Republic of Pakistan, 1973 this writ petition is not maintainable, that if the petitioner is aggrieved of any alleged onslaught on his seniority and promotion, he may approach the Federal Service Tribunal and that this court has no jurisdiction in the matter. I have considered this contention of the learned counsel for the respondents but this contention is without any substance as in number of cases the august Supreme Court of Pakistan has settled the law that the actions of the various departments of the Government and statutory bodies, if are illegal, malafide and coram-non-judice then all these actions are amenable to the constitutional jurisdiction of the constitutional courts. In the

writ petition in hand, the actual grievance of the petitioners is about the malafide and illegal process whereby some individuals from the other departments are being imported to the FIA without any logic. The locus standi of the petitioners is also apparent as the illegal induction of the certain individuals who have never worked in any law enforcement agency and they do not carry any experience in the field of law enforcement, then not only the petitioner, the institution but the nation has to suffer. The objection of the learned counsel for the respondents about the maintainability of the writ petition is repelled in view of the dictums laid down by the august Supreme Court of Pakistan in the case of "Raja Mujahid Muzaffar & others Vs Federation of Pakistan & others" (2012 SCMR 1651), "Rental Power Plant (2012 SCMR 773), "M/s Faheem Haider Vs Government of Pakistan and 09 others" (2010 GBLR 467), Air Port Security Services Vs Air Port Manager Quaid-e-Azam International Air Port Karachi and others (1998 SCMR 2269), case of M/s UN Professional Corporate Bank Ltd Vs Deputy Commissioner of Income Tax and others" (2002 PTD 2799) and "Commissioner Inland Revenue Vs M/s Kamal Fabrics" (2012 PTD (Trib) 619).

8. The next objection of the respondents is that in the matter in hand some writ petitions are pending in the Hon'ble Sindh High Court Karachi, therefore, this court should wait for the decision of those cases from the Hon'ble Sindh High Court Karachi. This contention of the learned counsel for the respondents is without any substance as the matter in issue

relates to the department of the Federal Government and this court has the exclusive jurisdiction to decide this matter.

9. As far as the merits of this writ petition is concerned, this court are left with no doubt that the prophetic wisdom or the intelligence of the Plato is not required to reach to the rational conclusion as the mischief in the induction of respondent Nos.4 to 48 in the FIA is apparent, the illegality committed during this process and the favoritism is floating on the face of the record. FIA was constituted through the Federal Investigation Act 1974. The preamble of the Act narrates the motive for the constitution of the FIA and it is that "this agency was constituted for the investigation of certain offences committed in connection with the matter concerned with the Federal Government and for matters connected thereof." In the schedule to Section 3 (1) and 6 of the FIA Act, the offences and the statutes are enumerated in which the FIA has to investigate the matters. The FIA has been invested with the investigation of the sensitive cases as to ensure the internal security of the State and its subject, therefore enormous and cardinal duty is placed upon the shoulders of this agency as such this agency should have the internal discipline equal to the discipline of Pak (Army) if not more than that. The FIA Act 1974 and the rules framed in 1975 under Section 9 of the Act provided the recruitment, promotion and transfer of its employees. The legislature in its wisdom has granted the concession/liberty to the agency to obtain the services of suitable persons on deputation to enhance its capability to fight the terrorism and to

protect the internal security of the State but perusal of the record reveals that these powers have been ridiculously exercised by bringing the respondent Nos.4 to 48 in the agency. Out of these 45 respondents i.e. respondent Nos 4 to 48 most of them have never served in any law enforcement agency and the court is unable to understand that how an officer who is working in departments like Employees Old Age Benefit Institute, The Security Group, Federal Board of Revenue, The National Bank Of Pakistan, PIA, Motorway Police, NH&MP, Home and Tribal Department, Jail Department of Punjab, Audit Department, NADRA, NEPRA, National High Way Authority, Information Group, Art Council, Health Department, Public Relation Department, Public Works Department Punjab, Office Management Group, Sindh Assembly, Rangers etc could be utilized for any of 06 departments of the FIA. The respondents are without any explanation that out of the millions of the Government Servants how these 45 persons were traced, their names were floated, what were their achievements in their parents department from which they have been picked and what feasibility reports about their deployment in the FIA were prepared. Certainly the Rules 15 & 16 of the FIA (APT) gives the powers to the authorities to requisition the services of the employees working from the different departments of the Federation but this does not mean that the authority has unbridled discretionary powers to exercise it in despotic, illegal, malafide manner in detriment to the institution as well as against the legal rights of regular employees. Rule 3 of the FIA

(APT) Rules 1975 provided the procedure of the appointment in the agency which inter alia contains the appointment through promotion, by transfer of person from other department and by direct appointment, whereas Rule 5 of the FIA (APT) Rules 1975 provides in clear words that the post in Grade 19 shall ordinarily be filled by promotion of officer of Grade 18 serving in the agency on regular basis, but the authority has appointed the person in Grade 19 through transfer which reveals that either there is deficiency of capable officers in the department or authorities are adamant to make their own rules according to their own whims and wishes. The persons should have been taken or may be taken from the other departments to fill up the deficiency of the certain experience and qualification in the existing staff of the agency but not a single person from respondents Nos.4 to 48 has been shown to be possessive of a certain quality which was specifically required to the authority and this reveals that all these respondents have been taken on deputation with nefarious design just to accommodate certain individuals in an unfair and un-transparent manner.

10. This court is constrained to observe that posts in FIA are considered as more lucrative not due to salary package and facilities rather due to influence exercised for irrelevant considerations. Every citizen of the country is aware of this fact that for appointment and transfer to departments like FIA etc. how much amounts are paid to the persons on helm of affairs. When persons with such cryptic devices land in such

departments, they set their own priorities, instead of curbing the evil of corruption.

These are the reasons of short order dated 06.06.2013.

(SHAUKAT FAZIZ SIDDIQUI)
JUDGE

Approved for Reporting.

"Waqar Ahmed"

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