

**JUDGEMENT SHEET**

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

**Case No: Writ Petition No.444 of 2018**

Muhammad Amin and another  
Vs.  
Ministry of Interior and 2 others

Petitioners by: M/s. Hafiz Arfat Ahmed Chaudhary,  
Kashifa Niaz Awan, Adnan Saeed  
Chaudhary, Zaman Tariq Chaudhary &  
Qasim Duggal, Advocates.

Respondents by: M/s. Afnan Karim Kundi, Hafiz S.A.  
Rehman, Hifz ur Rehman Syed & Adil  
Aftab, Advocates.  
Raja Khalid Mehmood Khan, Deputy  
Attorney-General.  
M/s. Saqib Jamal, (Director Legal),  
Ubaid ur Rehman, Umer Ali Khan &  
Khalid Ishaq, Law Officers.  
Muhammad Faridoon, Section Officer  
(NADRA/NACTA).

**Date of Hearing: 13.08.2020.**

**AAMER FAROOQ, J.-** This judgment shall decide the instant petition as well as W.P. No.703/2018, W.P. No.4248/2018, W.P. No.3083/2018 & W.P. No.831/2018 as they involve common questions of law and facts. In all the petitions the petitioners have challenged the appointment of Usman Yousaf Mubin as Chairman NADRA for a period of three (3) years. In W.P. No.444/2018 the petitioners are aggrieved of change in the criteria while appointing the Chairman NADRA; in this

behalf learned counsel for the petitioners contended that during the process the criteria was changed by the Selection Committee and the present incumbent who originally was at serial No.5 on the merit list jumped to serial No.1 being blue eyed person. It was highlighted that the allocation of marks was altered in the educational qualification and Master Degree was allocated 15 marks whereas Ph.D. 5 marks. It was contended that since the present incumbent was not Ph.D.; he got the benefit of 15 marks of LLM qualification from a reputable University.

2. Learned counsel for the petitioners, in W.P. No.703/2018 as well as W.P. No.3083/2018, *inter alia*, contended that the legal provisions relating to the appointment of Chairman NADRA is National Database and Registration Authority, Ordinance, 2000 (**NADRA Ordinance**) (Section 3). It was further contended that at the time when advertisement was made the criteria for appointment of Chairman NADRA was not issued by the competent authority which now in light of the decision of the Hon'ble Supreme Court of Pakistan in case reported *Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others* (PLD 2016 SC 808) is the Federal Government. It was further submitted that the appointment

has been made on the recommendations of the Board comprising incompetent and unqualified persons, hence the same is not tenable. Reliance was placed on the case titled **Muhammad yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others** (PLD 2012 SC 132). Learned counsel further pointed out that Section 44 of the NADRA Ordinance provides for framing of the Rules which has not been done till todate and the appointment of Chairman NADRA has been made without framing of the Rules which is unconstitutional inasmuch as it provides unbridle power/discretion to the appointing authority. It was submitted that the discretion provided has to be exercised in reasonable manner and the same has to be structured. Reliance was placed on the case titled **Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary M/o Finance, Central Secretariat, Islamabad and others** (2015 PTD 1100), **Khawaja Muhammad Asif v. Federation of Pakistan and others** (2013 SCMR 1205), **Ghulam Rasool v. Govt. of Pakistan through Secretary, Establishment Division Islamabad and others** (PLD 2015 SC 6). It was further contended that the appointment of the present incumbent as Chairman NADRA is politically motivated, hence not tenable.

Reliance was placed on the case titled **Syed Mahmood Akhtar Naqvi and others v. Federation of Pakistan and others** (PLD 2013 SC 195). It was pointed out that one of the participant namely Lt. Col. (R) Muhammad Talha Saeed challenged the process due to age restriction; however, his writ petition (W.P. No.20/2018) was dismissed against which he filed an Intra Court Appeal (I.C.A. No.64/2018) in which the Federal Government made a statement that the appellant shall be considered; however, he was not appointed. It was further submitted that in the issue of appointment on discriminatory basis in Government Departments the Hon'ble Supreme Court of Pakistan considered the matter in case titled **Mushtaq Ahmad Mohal and others v. The Honourable Lahore High Court, Lahore and others** (1997 SCMR 1043). It was further contended that the integrity and credibility of respondent No.2 is not aboveboard. Learned counsel further highlighted that in such like appointments the selection should be in a transparent manner as it is a key post.

3. Learned counsel for the petitioners, in W.P. No.444/2018 & W.P. No.4248/2018, *inter alia*, contended that as per Section 3(5) of the NADRA Ordinance the Federal Government is competent authority and the terms

and conditions for appointment of Chairman NADRA are to be determined by the Federal Government whereas in the instant case it was submitted that the terms and conditions were settled by the Minister Incharge in violation of Section 3(5) *ibid*. It was contended that in somewhat similar circumstances this Court in case reported as **Dr. Farzana Bari v. Ministry of Law, Justice and Human Rights through Secretary and 3 others (PLD 2018 Islamabad 127)** held the appointment to be in violation of the statutory provisions. It was further contended that after completion of the process the matter was placed before the Cabinet in a mechanical fashion which without application of mind made the appointment. It was further submitted that during the process, after receiving applications, the criteria for awarding marks was changed which shows *mala fide* on part of the Selection Committee. Learned counsel further submitted that the proceedings for *quo warranto* are inquisitorial in nature and the Court can look into the process to determine *mala fide* on part of the appointing authority. It was submitted that the sub Committee formed to scrutinize the applications, prepared merit list and the present incumbent Chairman NADRA got 30 marks; however, subsequently, the criteria was altered drastically after which the present

incumbent was placed at serial No.1; the change in criteria decrease the marks of Ph.D. from 15 to 5 and the person with lesser qualification was awarded higher marks arbitrarily. The educational marks were allocated for holding a degree from a reputable University according to international ranking. It was contended that likewise, marks were altered for foreign work and experience. Learned counsel further pointed out that the age was fixed in the advertisement as 55 years maximum whereas in the NADRA Ordinance it is provided 65 years as retiring age. It was also contended that the age was arbitrarily fixed as 55 years so that the present incumbent has lesser competition. It was submitted that the above appointment of Chairman NADRA has been made in violation of the law and Article 18 of the Constitution of the Islamic Republic of Pakistan (the **Constitution**) and is discriminatory as well. It was reiterated that due to absence of Rules the matter has been left to the discretion of appointing authority which has exercised the same in arbitrary and unreasonable manner. In support of his contentions reliance was placed on the case titled **Mushtaq Ahmad Mohal and others v. The Hon'ble Lahore High Court, Lahore and others** (1997 SCMR 1043), **Arshad Mehmood and others v. Govt. of Punjab through**

Secretary Transport Civil Secretariat Lahore and others (PLD 2005 SC 193), Obaidullah and another v. Habibullah and others (PLD 1997 SC 835), Faisalabad Development Authority v. Raja Jahangir Nasir and others (2004 SCMR 1247), Director General Multan Development Authority and another v. Nasir Ahmad Tanveer Bajwa (2016 PLC 245), Bashir Ahmed v. Govt. of Pakistan and others (2011 SC 1742), Federation of Pakistan and others v. Ch. Muhammad Aslam and others (1986 SCMR 916), the Montgomery Flour and General Mills Ltd. Montgomery v. the Director Food Purchases etc. (PLD 1957 (W.P.) Lahore 914), Haji Ghulam Zamin and another v. A.B. Khondhar and others (PLD 1965 Dacca 156), Padfield and others v. Minister of Agriculture Fisheries and Food and others (1968) 1 All ER 694), Muhammad Azram v. National Institute of Health and others (2015 PLC (C.S.) 537), Zainab Garments Pvt. Ltd. v. Federation of Pakistan and others (PLD 2010 Karachi 374) & Federation of Pakistan etc. v Qamar Hussain Bhatti and others (PLD 2004 SC 77).

4. Learned Deputy Attorney-General appearing on behalf of Ministry of Interior, *inter alia*, contended that the advertisement was made spelling out the educational and work experience criteria for appointment of Chairman

NADRA. In this behalf it was pointed out that the original summary was forwarded before the Cabinet for second stint of present incumbent; however, it was returned with the observation that the matter be advertised and the applications be invited, hence the needful was done. It was further contended that original criteria used in the old advertisement was followed and the sub Committee formed made the scrutiny. It was further pointed out that under serial No.140 of the ESTA Code where the appointment of Head of any Autonomous body is to be made by the Federal Government the Minister Incharge is to carry out the process and accordingly in the instant case the Federal Minister Headed the Selection Committee formed for appointment of Chairman NADRA; that sub Committee scrutinized the matter and shortlisted the candidates using the criteria as provided in the old advertisement which provides marks for qualification as 20; experience 40 marks and interview 40 marks. Learned Deputy Attorney-General further pointed out that the marks criteria was for internal assessment and since the old criteria was not in harmony with the advertisement made and Section 3(7) of the NADRA Ordinance, hence on the recommendations of the Members of the Selection Committee it was changed whereby educational



qualification continued to carry 20 marks with 15 marks to Master Degree and 5 additional marks for Ph.D. and educational qualification for degree awarded by high ranking international University. It was also submitted that the experience marks were further subdivided by virtue of which working with multiple Government Agencies carry 10 marks, interface with I.T. industry 10 marks. These changes were made in light of the advertisement criteria. It was further submitted that after the applications were scrutinized and interviews were conducted the present incumbent namely Usman Yousaf Mubin was selected and appointed by the Federal Government. Learned Deputy Attorney-General emphasized that there was no *mala fide* on part of the Selection Committee or Federal Government in making the appointment of Usman Yousaf Mubin as Chairman NADRA who in any case was being considered for appointment in the second stint.

5. Learned counsel for Chairman NADRA, *inter alia*, contended that the appointment of Chairman NADRA has been made on the basis of merit; that Usman Yousaf Mubin participated in the process despite being the Chairman NADRA and after only he secured the highest marks was selected by the appointing authority. It was further contended that the process was transparent and

there is no *mala fide* on the part of the Government functionary.

6. Learned counsel appearing on behalf of NADRA, *inter alia*, contended that the internal documents have been obtained by some of the petitioners which is in violation of the law laid down by the Hon'ble Lahore High Court as well as the Hon'ble Supreme Court of Pakistan. Reliance was placed on the case titled **Muzaffar Hussain, Principal, Govt. Weaving and Finishing Institute, Shahdara, Lahore v. Punjab Public Service Commission through Secretary and 2 others** (2001 PLC (C.S.) 634), **Dr. Azim ur Rehman Khan Meo v. Govt. of Sindh and another** (2004 SCMR 1299). It was further contended that the fixation of age as 55 years is not arbitrary and is not in violation of the spirit of NADRA Ordinance. It was further pointed out that malice is to be pleaded specifically and proved beyond reasonable doubt. Reliance was placed on the case titled **Senator Taj Haider and others v. Govt. of Pakistan, through Secretary, Finance Division and others** (2018 CLC 1910) & **Amin Jan v. Director-General, T&T and others** ( PLD 1985 Lahore 81). It was further submitted that there is nothing on record to show that that the discretion was exercised in arbitrary or whimsical manner. Reliance was placed on the

case titled **Tariq Aziz ud Din and others (Human Rights Cases)** (2010 SCMR 1301). Learned counsel adopted the arguments on merit as addressed by the learned Deputy Attorney-General.

7. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

8. As noted above, the petitions in hand challenge the appointment of Usman Yousaf Mubin as Chairman NADRA. Before embarking upon rendering findings on the merit of the arguments raised before the Court it is important that the facts be narrated in more detail. The post of Chairman NADRA was advertised by the Ministry of Interior in leading newspapers on 23.12.2017. In this behalf the draft of the advertisement is as follows:

Education	<u>At lease a masters</u> in the field of Computer Science, Engineering, Statistics, Demography, Law, Business Management, Finance, Accounting, Economics, Civil or Military Administration, or the field of Registration. <u>A PhD in an IT related field and or an MBA from a World class university would be a plus.</u>
Work experience	At least 15 years <u>experience in relevant fields</u> , indicated above. The role requires innovative use of national IT Database to build cross cutting solutions in sectors such as health care, education and social protection and a high degree <u>collaboration with multiple Government Departments</u> . The ideal candidate must have a demonstrative <u>capability to work with multiple government agencies, build and manage a team of innovative technology professionals and interface with the IT industry.</u>
Age	<u>55 years</u> (Maximum)as on the date of publication of advertisement.
Pay Package	MP-1 Scale
Period of appointment	Three years of contract

<b>General Instructions:</b>	<p>i. Persons having requisite expertise and qualification should submit their application and CV along with attested and verified copies of Degrees. Copies of testimonials duly vetted by the instituted attended and recent 4x photographs along with verified/attested copies of CNIC to the undersigned within 15 days of publication of this advertisement.</p> <p>ii. The applicant working with Government/Semi Government Departments or Autonomous bodies should submit their applications through proper channel.</p> <p>iii. Only shortlisted applicants will be invited for interview/selection process.</p> <p>iv. Incomplete applications/documents or those received after the due date will not be entertained.</p> <p>v. The candidates shall not be entitled for any TA/DA while appearing for interview/selection process.</p>
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9. Advertisement and process was challenged by one of the participants namely Lt. Col. (R) Muhammad Talha Saeed in W.P. No.20/2018 regarding fixation of upper age limit of 55 years which was dismissed vide judgment dated 29.01.2018. The referred Lt. Col. (R) Muhammad Talha Saeed filed an Intra Court Appeal (I.C.A. No.64/2018) before the Division Bench of this Court. During the course of proceedings learned Additional Attorney-General made a statement that as per instructions the appellant shall be considered for appointment despite the fact that he does not meet the requisite criteria. The referred appeal was accordingly disposed of on 01.02.2018. On 01.02.2018 a letter was issued by the Ministry of Interior to Lt. Col. (R) Muhammad Talha Saeed to appear before the Selection Board for interview on 02.02.2018. Usman Yousaf Mubin was appointed Chairman NADRA vide notification No.1/79/2004-E-6 dated 08.02.2018 issued by the Establishment Division.

10. The relevant provisions of law for the purposes of adjudicating the instant matter are Section 3 as well as Sections 44 & 45 of the NADRA Ordinance. For the sake of brevity the relevant Sections are reproduced below:

*“3. Establishment of the authority. —(1) As soon as may be, but not later than thirty days after the commencement of this Ordinance, the Federal Government shall, by notification in the Official Gazette, establish an Authority to be known as the National Database and Registration Authority for carrying out the purposes of this Ordinance.*

*(2) The Authority shall be a body corporate, with power to acquire, hold and dispose of property, having perpetual succession and a common seal and shall by that name sue and be sued.*

*(3) The Authority shall consist of a Chairman, also to be called the Registrar General of Pakistan, and 1 [not less than] five members to be appointed by the Federal Government: Provided that till such time the Authority is established the Chairman may exercise the powers and perform the functions of the Authority [:]1 1 [Provided that further that the Federal Government may, from time to time by notification in the official Gazette, increase or decrease the number of members and prescribed mode of their appointment as it may deem fit].*

*(4) No person shall be appointed as the Chairman or a member if he has been declared insolvent, or convicted for an offence involving moral turpitude, or declared to be disqualified from employment in, or dismissed from Government Service.*

*(5) The Chairman and a member shall, unless he resigns or is removed from office earlier as hereinafter provided, hold office for a term of three years and shall be eligible for reappoint for 1 [a similar term or terms] the Federal Government may determine: 1 Ins. Subs. and Added by Act Vof 2007, s. 2. Page 5 of 28 Provided that a Chairman or a member shall retire on attaining the age of sixty five years.*

(6) *In case of vacancy occurring due to death, resignation or removal of the Chairman or a member, the Federal Government shall within a period not exceeding sixty days, appoint an other qualified person to fill such vacancy.*

(7) *The Chairman shall be an eminent professional of known integrity and competence with substantial experience in the field of computer science, engineering, statistics, demography, law, business, management, finance, accounting, economics, civil or military administration, or the field of registration.*

(8) *Every member shall also be a person of known integrity and competence with sufficient experience in the field of computer science, engineering, statistics, demography, law, business, management, finance, accounting, economics, civil or military administration, or the field of registration 1 [:] 1\* \* \**

(9) *No act or proceeding of the Authority shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution of, the Authority.*

(10) *The principal office of the Authority shall be at Islamabad and it may set up offices at such place or places as it may deem appropriate: Provided that all offices including the District Registration Offices, other offices, counters and any other formation of the Registration Organization as well as that of the National Database Organization alongwith their entire respective record, shall become and be deemed to be the offices, the District Registration Offices, other offices, counters and other formations of the Authority respectively along with such record.*

(11) *The Chairman or a member may, by writing under his hand, resign from his office: Provided that his resignation shall not take effect until accepted by the Federal Government.*

(12) *The Federal Government may remove the Chairman or any member from office if—*

- (a) upon an inquiry, he is found incapable of performing the functions of his office by reason of mental or physical incapacity or has been found guilty of misconduct; or*
- (b) after his appointment he is disqualified from being so appointed as provided in subsection (4).”*

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*“44. Power to make rules. The Federal Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance:*

*Provided that till the time any amendments are made or any fresh rules are made in this behalf, the rules made under section 15 of the National Registration Act, 1973 (LVI of 1973) and in force at the time of the establishment of the Authority shall be applied as nearly as practicable in the same manner as before to the extent the same are not inconsistent with the provisions of this Ordinance with any references to the Registrar General, Director General Registration Organization, or any competent authority by whatever nomenclature therein to be deemed to be a reference to the Authority.*

*45. Regulations.—(1) The Authority may, by notification in the official Gazette, make regulations, not inconsistent with the provisions of this Ordinance or the rules, for the carrying out of its functions under this Ordinance and any other matter for which, under this Ordinance, provision may be made by regulations.*

*(2) Without prejudice to the generality of the foregoing powers, such regulations may provide for appointment of Registration Officers, members of its staff, experts, consultants, advisers and other officers and employees and the terms and conditions of their service:*

*Provided that, subject to the provisions of section 40 till the time any amendments are; made or any fresh regulations are made in this behalf, any rules or regulations governing the terms and conditions of their service and in force at the time of the establishment of the Authority shall be applied as nearly as practicable in the same manner as before to the extent the same are not inconsistent with the provisions of this Ordinance, with any references to the Directorate General of Registration, or any competent authority by whatever nomenclature therein to be deemed to be a reference to the Authority.”*

11. The bare reading of Section 3 shows that the authority namely the National Database and Registration Authority has been constituted under the NADRA Ordinance. Sub Section 5 of Section 3 of the NADRA Ordinance provides for appointment of Chairman as well as Members of the Authority. The tenure of the appointment is provided as term of 3 years. Under proviso to subsection 5 the Chairman or a Member is to retire on attaining the age of 65 years. There is no bar for reappointment of any Member or Chairman. The credentials for appointment of the Chairman NADRA are provided in subsection 7 of Section 3 of NADRA Ordinance which *inter alia* includes an eminent professional of known integrity and competence with substantial experience in the field of computer science, engineering, statistics, demography, law etc. The appointing Authority of Chairman NADRA is Federal Government; however, as was submitted by the learned Deputy Attorney-General that under serial No.140 of ESTA Code where the Federal Government is to appoint any Head of Autonomous body the process is initiated and carried out by the Minister Incharge. In light of serial No.141 (3) (b) the procedure adopted for appointment requires advertisement for the post and selection of candidates accordingly. It is pertinent to observe that no Rules or Regulations have been framed by the Federal Government or NADRA envisaging the process for



appointment of Chairman NADRA or its Members. The referred fact is absolutely a lapse on the part of the Federal Government that despite 20 years having passed the relevant Rules have not yet been framed. In view of the referred position, the discretion regarding criteria for appointment of Chairman NADRA vests with the Federal Government/Relevant Ministry. The lack of Rules does not *per se* make the exercise of discretion by the appointing Authority or the persons concerned with the selection process wrong. All that is to be seen is whether discretion has been exercised in a reasonable and structured manner. In this behalf the case law relied upon by both the sides was examined and the crux of the same is that there is no cavil with the fact that the exercise of discretion always has to be structured and has to be exercised in a fair and reasonable manner.

12. The attack on the appointment of the present incumbent as Chairman NADRA and the process carried out by the Federal Government is on two scores; firstly, the fixation of maximum age as 55 years as an eligibility for the applicants and secondly, the change in criteria after the applications had been received and the process had commenced. Insofar as the fixation of age as 55 years is concerned, the matter came up for consideration before this Court in case titled *Lt. Col. (R) Muhammad Talha Saeed v. Federation of Pakistan etc.* (W.P.

No.20/2018). This Court while dismissing the petition vide judgment dated 29.01.2018 observed as follows:

*“7. Admittedly, the grievance of the Petitioner is regarding the age limit prescribed by the Respondents for being eligible of applying against the post of Chairman NADRA which according to Petitioner is fixed as 55 years which is aimed to exclude the Petitioner and other similar candidates who possesses vast experience and are fully qualified for being appointed against the said post. Arguments advanced by the learned Counsel for the Petitioner also indicates towards the malafide and ill will on the part of Respondents as the impugned act is aimed at disqualifying the Petitioner exclusively, from being eligible of even making application for appointment against the post of Chairman as he is the most senior and suitable employee of the Respondent Authority who had already competed in the previous exam conducted by the Respondents for appointment against the said post and went up to the level of final interview, however, some other candidate was appointed as Chairman NADRA. For considering the argument of malafide and targeting the Petitioner mainly, it is necessary to see that whether the eligibility criteria for the post of Chairman has been modified and age limit is decreased for the first time to 55 years or otherwise. In this regard comparison of prescribed age limit in previous as well as present advertisement is to be made, hence, for convenience same is reproduced as under:-*

	<b>Advertisement published in the year 2014- 2015</b>	<b>Advertise ment published on 23.12.201 7.</b>
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<b>Age:</b>	55 Years (maximum) as on the date of publication of advertisement. Younger candidates will be preferred	55 Years (maximum ) as on the date of publication of advertise ment.
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*It is evident from the above comparison of age limit prescribed by the Respondents for appointment against the Post of Chairman NADRA that it is not the first time that said criteria has been laid down rather in the previous advertisement, in which Petitioner competed without any objection, the age limit was same, whereas, now the Petitioner has showed serious concerns about the same and termed it arbitrary, illegal and based on malafide intentions of short listing him and other experienced candidates, as such, Petitioner is estopped by his own conduct to object the age criteria and cannot put it to question at this stage after accepting the same previously when it was suitable for him as when a person was aggrieved of a fact, he had a right, rather a duty to object thereto to safeguard his right, and if such a person did not object, he shall be held to have waived his right to object. In my view Petitioner’s participation in the competitive process for the first time on the similar conditions reflects his consent besides, this silence on part of the Petitioner is relevant for attracting rule of estoppel against him. Guidance in this regard may be sought from the case law reported as **Trustees of the Port of Karachi Vs. Organization of Karachi Port Trust Workers (2013 SCMR 238)** and **Irfan Ali Bhatti Vs Chairman Lahore Development Authority/Chief Minister, Punjab, Lahore through Director General (2002 PLC(CS) 200)**.*

8. Another aspect involved in the matter is that whether there is any bar on the authority to fix age limit for the appointment of Chairman NADRA, in which regard Section 3(3) of the NADRA Ordinance,

*2000 is relevant which for convenience is reproduced here-in-below:-*

***“3 (3) The Authority shall consist of a Chairman, also to be called the Registrar General of Pakistan, and five members to be appointed by the Federal Government.”.***

*Perusal of the above said provision clearly stipulates that appointment of Chairman NADRA is solely the domain of the Federal Government regarding which they can lawfully fix/formulate the criteria, hence, there is no bar on fixation of age limit for such appointment by it and such policy matter are not open for Courts interference unless and until same are proved to be violative of the fundamental rights guaranteed by the organic law of the country i.e. Constitution of Islamic Republic of Pakistan. Reliance in this regard can usefully be made to the case law reported as **Dossani Travels (Pvt) Lt. Vs. Travel Shop (PVt) Ltd. (PLD 2014 SC 1) & Watan Party Vs. Federation of Pakistan (PLD 2013 SC 167)**. The constitutional jurisdiction of the High Court is meant to be exercised in those cases where any individual brings his grievance with regard to infringement of any accrued right by the public functionary. The case of the Petitioner does not warrant exercise of constitutional jurisdiction in his favour, as he has miserably failed to prove the element of mala fide, discrimination and ill-will against the Institute.”*

13. As noted above, the instant judgment though was challenged by way of an Intra Court Appeal however, the same was disposed of on the statement by the learned Additional Attorney-General and the judgment by the learned Judge-in-Chamber in W.P. No.20/2018 *supra* was never set aside. The

findings rendered regarding the maximum age as 55 years attained finality and cannot be interfered with in the instant petition. Even otherwise, the reasons which prevailed with this Court in W.P. No.20/2018 are in consonance with the facts and law. Insofar as the second ground of attacks is concerned, the matter was initiated by way of advertisement for the post of Chairman NADRA; in this behalf to ensure transparency and merit a sub Committee was constituted by the Ministry of Interior under the Chairmanship of Additional Secretary-I. Moreover, pursuant to O.M. No.1(72)/2002-E-6 dated 11.04.2005 Selection Board was also constituted comprising Minister for Interior as Chairman, Secretary Interior as Member, Additional Secretary, Establishment Division as Member, Additional Secretary-I, M/o Interior as Member and Joint Secretary (Admn), M/o Interior as Secretary. Two Members from NADRA Board as well as Deputy Secretary (Admn) and Deputy Secretary (FIA) were co-opted Members. The sub Committee constituted undertook the task of scrutinizing the applications on the basis of previous marks criteria. Out of 186 applicants 51 were held to be meeting the criteria as advertised. In this behalf scrutiny Committee after applying the criteria prepared a merit list wherein the name of present incumbent was at serial No.5; however, on the interference of the Chairman of the Selection Board and sub

Committee constituted the marks awarding criteria for education and experience was revisited in light of the advertisement which is as follows:

Experience		Marks (40 maximum)	
Working with multiple Government agencies (10 marks maximum)	Interface with IT industry (10 marks maximum)	Leading & Management team of innovative technology professionals (10 marks maximum)	Heading a public sector/ large organization (10 marks maximum). i.05 marks be awarded in case of heading Large Organization. ii.05 marks be awarded in case of heading large Public sector or relevant organization.

14. In this behalf Master Degree contained 15 marks and out of the same 10 marks were for foreign Master Degree and 5 if the Master Degree is from the world ranking Universities between 1 to 25. If the applicant was Ph. D. 5 additional marks were to be awarded. Likewise, the maximum 40 marks were split for experience. The explanation rendered by the learned Deputy Attorney-General for change of criteria for awarding of marks was solely to synchronize the same with the criteria provided in the advertisement inasmuch as in the education it was pointed out that a person should have at least Master Degree and if he is Ph.D. in IT field or MBA that would be a plus. Likewise, experience in various Government Agencies and IT Agencies were to be preferred, hence the

marks were split accordingly under the heading “Work Experience”. The assertion by the petitioners that this was due to the *mala fide* on part of the Federal Government to patronize and accommodate the present incumbent is not evident from the record. This Court in case titled **Senator Taj Haider and others v. Govt. of Pakistan, through Secretary, Finance Division and others** (2018 CLC 1910) has already held that where malice is pleaded it must be particular and proved beyond reasonable doubt. Only because of the fact that after the Scrutiny Committee had prepared the merit list eligibility criteria was changed does not amount to malice on behalf of the appointing Authority. The internal evaluation criteria was the prerogative of the Selection Board and the Minister Incharge in the absence of Rules to determine the same. The entire selection process was to be looked after by the Minister Incharge, Ministry of Interior in light of serial No.140 of ESTA Code. Moreover, the fixation of internal assessment criteria was a policy matter which cannot be interfered with. Reliance is placed on **Govt. of Khyber Pakhtunkhawa v. Hayat Hussain** (2016 SCMR 1021), **Dr. Alyas Qadeer v Secretary M/o Education** (2014 SCMR 997) and **Muhammad Ishaq v. Government of Punjab** (2005 SCMR 980).

15. The Federal Government at the relevant time could have even made appointment without advertisement. There

was no requirement for advertising the post since no such requirement exists in Section 3(5) of the NADRA Ordinance and there being no Rules for appointment of the post of Chairman NADRA or Members; however, in order that the appointment should be in a transparent manner the entire process of advertisement and selection was carried out. If the malice or preset mind is to be attributed to the Federal Government it could have done so right from its inception. Moreover, after the selection process the names of top three candidates were forwarded to the Federal Cabinet. It is interesting to observe that in the summary for approval made to the Cabinet in paragraph 264 it has been mentioned that top five candidates according to merit were interviewed and Lt. Col. (R) Muhammad Talha Saeed was interviewed on the directions of the Hon'ble Islamabad High Court, Islamabad. This aspect of the matter is not correct inasmuch as, as noted above, the Federal Government, acting through learned Additional Attorney-General, had categorically made a statement before the Court that Lt. Col. (R) Muhammad Talha Saeed shall be interviewed and it was only then the appeal was disposed of. This practice, where the concession is made and later the same is put on the shoulders of the Courts, is to be deprecated and all the Ministries of the Federal Government are to ensure that where such statement is made the same should be followed and



the matter should not be attributed to Judiciary. The Cabinet i.e. the Federal Government approved the appointment of Usman Yousaf Mubin as Chairman NADRA and the communication of the approval was intimated on 07.02.2020. In view of the above position of facts and law, there is no legal flaw in the appointment of the Chairman NADRA nor it can be said that the present incumbent did not fulfill the eligibility requirements as provided in Section 3 (7) of the NADRA Ordinance or the advertisement.

16. In view of foregoing reasons, the above-mentioned writ petitions are without merit and are accordingly dismissed.

17. Before parting, it is relevant to observe that in some of the petitions the internal note sheets of communication *inter se* the Ministry of Interior or other Departments have been appended. The said practice is in violation of law and dicta of the Hon'ble Supreme Court of Pakistan as well as the Hon'ble Lahore High Court. In case titled **Dr. Azim ur Rehman Khan Meo v. Govt. of Sindh and another** (2004 SCMR 1299) it was observed by the august Apex Court that if the petitioner approaches the Court with *mala fide* intention and ulterior motive and as an instrument of fraud the relief can be declined. It was also observed that where a person has no authority to take out the documents from the record the conduct *ex facie* amounted to misconduct on his part. Similarly, observations

were made by the Hon'ble Lahore High Court in case titled **Muzaffar Hussain, Principal, Govt. Weaving and Finishing Institute, Shahdara, Lahore v. Punjab Public Service Commission through Secretary and 2 others** (2001 PLC (C.S.) 634) as well as **Tanveer Ahmed Khan v. Registrar, Lahore High Court, Lahore** (PLD 2013 Lahore 386). The Federal Government shall look into the matter that its internal record or confidential documents do not end up in the hands of persons who are not authorized to have access to the files and in case such a thing happens an inquiry should be held and the culprits should be proceeded with in accordance with law. It would be appropriate that in this behalf the Establishment Division should issue a circular intimating all the Departments to ensure confidentiality of the record.

**(AAMER FAROOQ)**  
**JUDGE**

*Announced in open Court on the 10th of November 2020*

**JUDGE**

\*M.Naveed\*

**Approved for reporting**