

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4305 of 2018
Zaka Ullah Khan Khalil

Versus

Federation of Pakistan through Secretary, Ministry of Overseas
Pakistani and Human Resource Development and others

Dates of Hearing:	19.08.2020, 24.08.2020 and 08.09.2020
Petitioner by:	Mr. Ali Nawaz Kharal, Rana Rashid Javed and Malik Muhammad Naeem Awan, Advocates
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General Mr. Muhammad Ibrar, Deputy Registrar, N.I.R.C. Mr. Ijaz Ahmad, Section Officer, Ministry of Overseas Pakistanis and Human Resource Development Mr. Muhammad Abdullah, Assistant Director (Legal), F.P.S.C.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Zaka Ullah Khan Khalil, who is presently serving as a Registrar (BPS-19) in the National Industrial Relations Commission (“N.I.R.C.”), seeks a direction to the respondents to forward his name for consideration for appointment by promotion as Registrar Trade Union (“R.T.U.”) in accordance with Section 4 of the Industrial Relations Act, 2012 (“the I.R.A.”) read with notification (SRO 263(I)/90) dated 12.03.1990 as amended by notification (SRO 1128(I)/2016) dated 01.12.2016 issued by the Ministry of Overseas Pakistanis and Human Resource Development (“Ministry of O.P.&H.R.D.”), Government of Pakistan.

2. Learned counsel for the petitioner submitted that notification (SRO 1128(I)/2016) dated 01.12.2016 provides the method of appointment to the post of R.T.U. (BPS-20) to be 75% by promotion and 25% by initial appointment; that ever since the enactment of the I.R.A., R.T.U. has not been appointed on regular/permanent basis in accordance with Section 4 of the said Act; that the said notification also provides the conditions of

eligibility for appointment as R.T.U.; that since the petitioner has been serving as Registrar, N.I.R.C. (BPS-19) since 16.07.2015, he fulfills the criteria for promotion as R.T.U.; that the petitioner has also the required qualification of an L.L.B. degree in the second class and has 17 years of experience in BPS-17 and above in the field of Labour Administration; that the petitioner cannot be denied promotion against the post of R.T.U. simply because he has not undertaken the compulsory training for promotion to BPS-20; that the petitioner is a civil servant belonging to a specialist cadre, and the post of R.T.U. is a post in the technical category; that under Rule 19 of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 ("the 2019 Rules"), the petitioner is exempt from the mandatory training for promotion to BPS-20 on account of belonging to a specialist cadre; and that even otherwise, since the petitioner is due to retire on 27.04.2021 (i.e. less than two years), Rule 21 of the said Rules exempts the petitioner from mandatory training for promotion to BPS-20. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned Deputy Attorney-General submitted that since the petitioner has not undergone the Senior Management Course ("S.M.C."), he was not eligible to be considered for appointment on promotion as R.T.U. which is a post in BPS-20; that Rule 19 of the 2019 Rules makes it mandatory for a civil servant in BPS-19 to undergo the S.M.C. in order to become eligible for consideration for promotion to BPS-20; that a civil servant in BPS-18 has to undergo the Mid-Career Management Course ("M.C.M.C.") in order to become eligible for promotion to BPS-19; that since the petitioner had not undertaken M.C.M.C. prior to his appointment by promotion in BPS-19, his promotion to BPS-19 was also marred with procedural irregularities; that in fact the petitioner, in his entire service career, has not participated in a single professional training course; that the petitioner cannot claim exemption from undertaking the mandatory training by claiming to belong to a

specialist cadre; and that the Establishment Division, in its office memorandum dated 04.04.2019, has taken the position that the post of R.T.U. does not fall within the meaning of technical category so as to exempt the petitioner from participating in the mandatory training course in order to make him eligible for promotion as R.T.U. (BPS-20).

4. Learned Deputy Attorney-General further submitted that under Rule 21 of the 2019 Rules, an officer who is likely to retire within two years from service on attaining the age of superannuation shall be exempted from the mandatory training; and that it had been decided to give the benefit of the said rule to the petitioner by preparing his documents for submission to the C.S.B. for considering him for promotion. Learned Deputy Attorney-General prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the petitioner as well as the learned Deputy Attorney-General and have perused the record with their able assistance.

6. On 09.06.1987, the petitioner was appointed as Legal Assistant (Deputy Assistant Solicitor) (BPS-16) in the Ministry of Law and Justice after a competitive process conducted by the Federal Public Service Commission ("F.P.S.C."). Subsequently, the post of Legal Assistant was upgraded to BPS-17, and the petitioner was appointed as Deputy Registrar (BPS-17), N.I.R.C. on the recommendation of F.P.S.C. On 03.12.1991, the petitioner was posted as Deputy Registrar (BPS-17) in the N.I.R.C. On 16.07.2015, the petitioner was promoted as Registrar (BPS-19) in the N.I.R.C. The N.I.R.C. is an attached department of the Ministry of O.P.&H.R.D.

7. The method, qualifications and other conditions for appointment to different posts, including the post of Registrar (BPS-19), in the N.I.R.C. were laid down in the notification (SRO 263(i)/90), dated 12.03.1990 issued by the erstwhile Ministry of Labour, Manpower and Overseas Pakistanis, pursuant to Rule 3(2) of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ("A.P.T. Rules"). The said notification was amended by notification (SRO 1128(i)/2016), dated 01.12.2016 issued by

the Ministry of O.P.&H.R.D. in exercise of the powers conferred by Rule 3(2) of the A.P.T. Rules and Section 7(1)(b)(i)&(ii) of the Federal Public Service Commission Ordinance, 1977 ("F.P.S.C. Ordinance"). The said notification provided for the method, qualifications and other conditions for appointment to the post of R.T.U. (BPS-20). According to this notification, the method of appointment to the post of R.T.U. (BPS-20) was 75% by promotion and 25% by initial appointment; the persons eligible for appointment were Registrar/Joint Registrar (BPS-19); the conditions of eligibility were 17 years of service in BPS-17 and above or 05 years of service in BPS-19 in case of initial appointment in BPS-19; the qualifications and experience required were (i) second class or Grade "C" L.L.B. degree or equivalent qualification from a university recognized by the Higher Education Commission, (ii) 17 years experience in BPS-17 and above in the field of Labour Administration or 05 years experience in BPS-19 in case of initial appointment in BPS-19 in the field of Labour Administration.

8. It is not disputed that presently the petitioner is serving as Registrar (BPS-19) in the N.I.R.C., and that he has 17 years of service in BPS-17 and above. It is also not disputed that the petitioner has 17 years of experience in BPS-17 and above in the field of Labour Administration.

9. As mentioned above, the learned Deputy Attorney-General on instructions submitted that since the petitioner was due to retire on attaining the age of superannuation on 27.04.2021, he had been given the benefit of Rule 21 of the 2019 Rules, which provides *inter alia* that "*an officer who is likely to retire within two years from service on attaining the age of superannuation shall be exempted from the mandatory training.*" It was also submitted that the petitioner's case was being prepared for submission to the C.S.B. for his consideration for promotion. In view of this development which took place during the pendency of this petition, I am of the view that the instant petition has been rendered infructuous. Due to this development, there is no need for this Court to determine in this petition whether the petitioner

is a civil servant belonging to a specialist cadre so as to exempt him from mandatory training under Rule 19 of the 2019 Rules. The question whether or not the petitioner is eligible to be promoted to the post of R.T.U. (BPS-20) cannot be determined by this Court in exercise of its jurisdiction under Article 199 of the Constitution.

10. In view of the above, the instant petition is dismissed as having been rendered infructuous.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 15-9-2020

(JUDGE)

*Qamar Khan**