

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge
In Chamber.**

**SMC.No.06/2015.
ORIGINAL JURISDICTION.**

**(APPOINTMENT OF NATIONAL ACCOUNTABILITY COURT
JUDGE AND ESTABLISHMENT OF ITS POLICE STATION).**

ORDER DATED: - 30.11.2015.

Dr. Rana Muhammad Shamim, CJ.....This Court took Suo Moto notice on 19.11.2015 at Skardu on the News published on 18.11.2015 in Daily K-2 Gilgit-Baltistan regarding appointment of the Judge of National Accountability Court Gilgit-Baltistan. Consequently on 23.00.2015 report was sought from the learned Chief Secretary, Gilgit-Baltistan and learned Chairman, National Accountability Bureau Islamabad. The learned Secretary Law & Prosecution Gilgit-Baltistan submitted its report dated 27.11.2015 which is reproduced as under:-

**“Government of Gilgit-Baltistan
Office of the Secretary Law & Prosecution
Gilgit-Baltistan Secretariat**

**PS-Secy law 1(1)-2011-viii
Dated 27th November, 2015.**

**The Registrar,
Supreme Appellate Court,
Gilgit-Baltistan,
Gilgit.**

**Subject:- APPOINTMENT OF NATIONAL ACCOUNTABILITY BUREAU JUDGE
AND ESTABLISHMENT OF POLICESTATION.**

I am directed to refer to Senior Assistant Registrar Supreme Appellate Court GB letter No.SAC-HRW.No.05/2015 dated 23rd November, 2015 on the subject and to submit detail report on the issue as under :-

- a. According to section 5(g) of the NAB Ordinance 1999 “Court” means an Accountability Court which shall consist of a Judge who shall be appointed by the President of Pakistan with consultation of Chief Judge of High Court of the Province concerned on such terms and conditions as may be determined by the President. Copy of the relevant section is attached as annexure-A.

- b. Similarly as per section 24(f) of the said Ordinance the Chairman National Accountability Court may declare and notify any place as a police station or a sub-jail at his discretion. Copy of relevant section is attached as annexure-B.
- c. At present, there are only four cases subjudice before the National Accountability Court due to which the Government of Gilgit-Baltistan vide letter dated 27/7/2015 had requested to Gilgit-Baltistan Council for assignment of Additional charge of the post of Judge Accountability Court to the Judge of Customs and Banking Court in addition to his own duties. Accordingly the Chairman Gilgit-Baltistan Council/Prime Minister of Pakistan had been pleased to approve the Additional charge of the post of National Accountability Court to Mr. Mehr Ijaz Ali Sial Customs and Banking Court vide Notification C-4(2)/2013 GB Council dated 21st August, 2015. Copy of the notification is attached as Annexure-C.
- d. The Judge Custom & Banking Court had assumed the additional charge of the post of Accountability Court vide charge assumption report is as annexure-D.
- e. The Gilgit-Baltistan Chief Court vide letter dated 4th September, 2015 has stopped the Judge for further proceedings and also intimated the Gilgit-Baltistan Council to re-visit the notification regarding assignment of additional charge of the post of Judge National Accountability Court to the Judge Customs and Banking Court Gilgit-Baltistan and the issue is still under consideration between the Gilgit-Baltistan Council and Gilgit-Baltistan Chief Court. Copy of letter is at annexure-E. The detail reply of GB Council addressed to Registrar Gilgit-Baltistan Chief Court is attached as annexure-F.

The above mentioned position clarifies that the GB Government has no role regarding the appointment of the Judge and establishment of Police Station as provided under National Accountability Bureau Ordinance 1999. The matter was discussed with Secretary GB Council on phone who informed that very soon a panel of Judges will be sought from GB Chief Court for appointment of the Judge NBP Court among the said panel. Moreover the Government of Gilgit-Baltistan has already provided office building for the Judge and staff and also grants budget to the Court.

Report is submitted as desired, please.

-Sd/-
Rahim Gul
Secretary Law & Prosecution
Gilgit-Baltistan, Gilgit
Ph No. 05811-920592”

According to the aforementioned report the learned Chief Judge according to its impugned administrative order dated 04.09.2015 has desired to appoint a Judge of National Accountability Court Gilgit-Baltistan in accordance with the provisions of National Accountability Ordinance 1999. Meanwhile the learned Chief Court has advised to Mr. Mehr. Ijaz Ali Sial, Judge Banking/Custom Court, Gilgit-Baltistan not to take

cognizance of the cases pertaining to National Accountability Court
Gilgit-Baltistan

Consequent thereto, I have examined the Notification No. 3(4)/2015 GBC-Law dated 19.06.2015 regarding appointment of Mr. Mehr Ijaz Ali Sial Judge Banking /Customs Court Gilgit-Baltistan which is reproduced as under:-

**“GILGIT-BALTISTAN COUNCIL
SECRETARIAT, BLOCK “B” 2ND FLOOR
BENEVOLENT FUND BUILDING
ZERO POINT ISLAAMABAD**

Islamabad, the 19th June 2015

NOTIFICATION

No. 3(4)/2015 GBC-Law. The chairman, Gilgit-Baltistan Council has been pleased to appoint Mehr Ijaz Ali Sial (retired) District & Session Judge as Judge Banking/Customs Court, Gilgit-Baltistan on contract basis, for a period of three years, with the salary & allowance as admissible to a Judge of Chief Court, Gilgit-Baltistan with immediate effect and until further orders.

-Sd-
(Ehsan Ul Haq)
Deputy Secretary (GBC)
Tele: 9253263.

The Manager,
Printing Corporation of Pakistan Press,
University Road,
Karachi.

Copy forwarded to:-

1. The Secretary to the Prime Minister/Chairman, Gilgit-Baltistan Council Islamabad.
2. The Secretary to the Governor, Gilgit-Baltistan, Gilgit.
3. The Secretary to the Chief Minister, Gilgit-Baltistan, Gilgit.
4. The Registrar, Supreme Appellate Court, Gilgit-Baltistan, Gilgit.
5. The Registrar, Chief Court, Gilgit-Baltistan, Gilgit.
6. The Secretary, Home Department, Gilgit-Baltistan Gilgit.
7. The Secretary, Services & General Administration Department GB Gilgit.
8. The Secretary, Law & Prosecution Department Gilgit-Baltistan, Gilgit.
9. The Secretary, Finance Department Gilgit-Baltistan, Gilgit.
10. The Accountants General, Gilgit-Baltistan, Gilgit.
11. PSO to Minister in charge Gilgit-Baltistan Council Secretariat, Islamabad.
12. PS to Secretary In-charge Gilgit-Baltistan Council Islamabad.
13. PS to Chief Secretary, Government of Gilgit-Baltistan, Gilgit.
14. PIO, PID, Islamabad.

15. Mehr. Ijaz Ali Sial (retired) District & Sessions Judge , C/o Nasir Raza Shah, Banking Court Bahawalpur, Gulberg Road , Model town "A" Block, Bahawalpur.
16. Office Copy.

-Sd-
(Sqn. Ldr. ® S. Shakil Raza)
Section Officer (Council)
Tele: 9253268

The Gilgit-Baltistan council also submitted their comments before the learned Chief Court which are also reproduced as under:-

F.NO.C-4(2)/2013-GBC
GILGIT-BALTISTAN COUNCIL
SECRETARIAT, "B" 2nd FLOOR,
BENEVOLENT FUND BUILDING,
ZERO POINT, ISLAMABAD

Islamabad, the 23rd September, 2015

To

The Registrar Chief Court,
Gilgit-Baltistan,
Gilgit.

Subject:- NOTIFICATION REGARDING ASSIGNING ADDITIONAL CHARGE OF NATIONAL ACCOUNTABILITY COURT GILGIT-BALTISTAN TO MR. MEHR IJAZ SAIL, JUDGE CUSTOMS AND BANKING COURT GILGIT-BALTISTAN

Please refer to the Chief Court, Gilgit-Baltistan letter No.CC-E-4(1)/20145 dated 4th September, 2015 on the subject.

2. This is to intimate that the observations of the Honourable Chief Judge Chief Court GB have been considered and it is stated that all codal formalities shall be strictly followed at the time of regular appointment of Judge NAB court, however, at present only additional charge has been conferred to Mr. Mehar Ijaz Ali Sial, Judge Banking & Customs, Gilgit-Baltistan on the request of Law & Prosecution Department Gilgit-Baltistan till the regular appointment. It will not be out of place to mention here that such an arrangement was made in the past also and no such observations were made by the honourable Chief Judge, Chief Court Gilgit-Baltistan, infact the worthy Chief Judge was pleased to dismiss Writ Petition No.35/2013 vide orders dated 02-09-2013 wherein the petitioners had challenged the additional charge entrusted to Mr. Malik Safdar, the then Judge Banking & Customs.
3. The worthy Chief Judge, Chief Court Gilgit-Baltistan may kindly be apprised of the above said position and informed that all codal formalities shall be observed at the time of regular appointment, he may be further requested to allow Mehar Ijaz Ali Sial Judge Banking & Customs to perform his duties as Judge NAB Gilgit-Baltistan on additional charge basis till the time of regular appointment.

-Sd/-
(Muhammad Ajmal Gondal)
Joint Secretary
Ph: 051-9253261

I have gone through all the aforementioned Notifications, reply of Gilgit-Baltistan Council and impugned Administrative Order dated 04.09.2015. passed by the learned Chief Court Gilgit-Baltistan. Admittedly, the appointment of Mr. Mehr Ijaz Ali Sial as Banking/Customs Judge Gilgit-Baltistan was made by the Gilgit-Baltistan Council with the consultation and consent of the learned Chief Judge, Chief Court, Gilgit-Baltistan. The impugned Administrative Order dated 04.09.2015 passed by the learned Chief Court, Gilgit-Baltistan appears contradictory to its own Court's Judgment in Writ Petition No. 35/2013 dated 02.09.2013 regarding the additional charge given to Malik Safdar, the then Banking/Customs Judge as Judge of National Accountability Court, Gilgit-Baltistan.

In view of the above discussion, in my considered view since Mr. Mehr Ijaz Ali Sial was lawfully appointed as Judge of Banking/Customs Court Gilgit-Baltistan and he was given additional charge of Judge of National Accountability Court Gilgit-Baltistan, no consultation and consent was required afresh from the learned Chief Judge, Chief Court, Gilgit-Baltistan by the Gilgit-Baltistan Council.

In view of the above discussion, the impugned Administrative Order passed on 04.09.2015 by the learned Chief Judge, Chief Court, Gilgit-Baltistan is set aside. The Order vide Notification No. C-4(2)/2013 GB Council dated 21.08.2015 issued

by Gilgit-Baltistan Council regarding “Additional Charge as Judge” of National Accountability Court Gilgit-Baltistan given to Mr. Mehr. Ijaz Ali Sial is hereby restored. Consequently, Mr. Mehr Ijaz Ali Sial Judge Banking/Customs Court Gilgit-Baltistan is directed to continue to hold additional charge as Judge of National Accountability Court Gilgit-Baltistan in order to hear & decide cases in accordance with law, till the appointment of a regular Judge in terms of Section 5 and 5 (A) of the National Accountability Ordinance 1999. The Copies of this order be sent to all concerned /departments for implementation of this order.

The SMC No. 06/2015 is disposed off in above terms.

Chief Judge.

