

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE YAHYA AFRIDI

Civil Petition No. 482-K of 2020

(Against the judgment dated 23.06.2020 passed by the Federal Service Tribunal, Islamabad (Karachi Bench) in Appeal No. 07(K)CS/2018 alongwith Misc. Petition No. 53 of 2019)

Zeeshan Shaikh.

... *Petitioner*

Versus

*Federation of Pakistan through Secretary,
Interior Division, Islamabad and others.*

... *Respondents*

For the Petitioner:

Malik Naeem Iqbal, ASC.
Mr. M. Iqbal Chaudhry, AOR.
Assisted by: Mr. M. Nasir Arrian,
Advocate High Court.

For the Respondents:

Mr. Hassan Mehmood Mandviwalla,
Advocate High Court (with permission)

For Respondent No. 32:

Ms. Abida Parveen Channar, AOR

Other Respondents:

Not represented.

Date of hearing:

10.01.2022.

ORDER

Qazi Faez Isa, J. This petition assails the judgment of the Federal Service Tribunal (**'the Tribunal'**) which had dismissed the petitioner's appeal by primarily relying on an unreported order dated 12 January 2016 of a two-member bench of this Court passed in Civil Petition No. 1259 of 2015. The learned counsel for the petitioner states that the petitioner was part of the *Investigation group* of the Federal Investigation Agency (**'FIA'**) which group is separate and distinct from (what he refers to as) the *Immigration wing* and that both are distinct groups/cadres. He submits that the respondent Nos. 3 to 76 (**'the said respondents'**) were inducted specifically to serve as Immigration officers and could not be placed, with the petitioner, in the *Investigation group*. He further submits that the joint seniority list which had treated the *Investigation group* and the *Immigration wing* as one group/cadre did not accord with the law, therefore, it was correctly bifurcated into two in the year 2008. However, the said respondents challenged such bifurcation, contending that they were part of the same group, that is, *Investigation group* in accordance with the Federal

Investigation Agency (Appointment, Promotion and Transfer) Rules, 1975 (**'the Rules'**). The representation of the said respondents failed and the Tribunal too did not agree with the contention of the said respondents but a three-member bench of this Court (in Civil Appeal Nos. 140 to 148 of 2011) *vide* order dated 9 October 2013 set aside the judgment of the Tribunal and remanded the case to the Tribunal for fresh determination in accordance with law. Pursuant to the said remand order the Tribunal, *vide* judgment dated 8 April 2015, allowed the appeal and directed that a combined seniority list be issued, as per the earlier practice of 2003. The decision of the Tribunal was upheld by this Court and FIA issued a combined seniority list, which was then assailed before the Tribunal by the petitioner but his appeal failed, and it is against this judgment of the Tribunal that the instant petition has been filed.

2. With the assistance of the learned counsel we have read the order passed in Civil Petition No. 1259 of 2015. Leaving aside the controversy whether the same had binding effect on the Tribunal in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 (**'the Constitution'**) we proceeded to consider the case on merits.

3. Mr. Hassan Mehmood Mandviwalla, Advocate states that he represented the said respondents before the Tribunal but as he is not enrolled as an Advocate of the Supreme Court he has filed an application (CMA No. 717-K of 2020) seeking permission to represent them. He states that he is well conversant with the facts of the case and the applicable law and that he had represented the said respondents in the High Court who do not have the wherewithal to engage an Advocate of the Supreme Court to represent them. The learned Malik Naeem Iqbal does not oppose his application. C.M.A. No. 717-K of 2020 is allowed and Mr. Hassan Mehmood Mandviwalla, is permitted to represent the said respondents and to address this Court.

4. The learned counsel for the said respondents has referred to rule 12 of the Rules and states that it sets out different groups subsisting within FIA and these are: (i) Investigation, (ii) Accounts, (iii) Customs, (iv) Income-tax, (v) Engineering and (vi) Legal and that from the very beginning *Immigration* was part and parcel of the *Investigation group*. He further states that rule 12 empowers the Federal Government to add to or modify the said six groups but it has not done so till date. The said respondents were and continue to be officers of the *Investigation group*, he submits. He also refers to Article 25(2) of the of the Constitution which stipulates that

'There shall be no discrimination on the basis of sex' and says it would be highly discriminatory if the said respondents, who are all female officers, are excluded from the *Investigation group* as this would violate their said Fundamental Right which prescribes against *discrimination on the basis of sex*.

5. We have heard the learned counsel and with their able assistance examined the documents on record.

6. The matter is relatively simple. The Federal Government has the power, under rule 12 of the Rules, to add to or modify the said six groups but has not exercised such power to make the said *Immigration wing* into a distinct group, and one separate from the *Investigation group*. The learned Malik Naeem Iqbal pointed out that the Additional Director General's Committee of FIA had recommended the creation of just such a separate group and its recommendation was approved by the Director General, FIA. However, even if this had happened, it is only the Federal Government who can create a separate group under rule 12 of the Rules. Moreover, the Tribunal had earlier decided the matter of combined/separate seniority list/s and its decision attained finality when leave to appeal (as mentioned above) had been declined by this Court. Throughout, a combined seniority list of the *Investigation group* was issued, which included the said respondents and when this practice was departed with for a while it was restored by the Tribunal and the decision of the Tribunal was endorsed by this Court. The learned Malik Naeem Iqbal submits that this Court (in Civil Petition No. 1259/2015) had permitted a challenge to the seniority list if it was *against the provisions of the relevant law and rules*, but he was unable to show that the seniority list was against any law or rule. On the contrary the seniority list accorded with rule 12 of the Rules, which had made the abovementioned six groups and no separate *Immigration group*, either of male or of female officers or of both, had been established.

7. Therefore, for the aforesaid reasons, leave to appeal is declined and, consequently, this petition is dismissed.

Judge

Judge

Karachi

10.01.2022

Approved for Reporting

Arif