

In the supreme court of Pakistan
(Original Jurisdiction)

Present:

Mr. Justice Amir Hani Muslim
Mr. Justice Qazi Faez Isa
Mr. Justice Sardar Tariq Masood

Suo Moto Case No. 13 of 2016

*(Action against illegalities, contraventions
and violations in appointments within NAB)*

AND

Civil Misc. Application No. 5811 of 2016

*(Application for impleadment of Mirza Sultan
M. Saleem and others)*

AND

Civil Misc. Application No. 5887 of 2016

(Application BY Syed Adil Gillani)

AND

Civil Misc. Application No. 6001 of 2016

*(Application of Sr. Shafiq-ur-Rehman S/o
Sajawal Khan)*

AND

Civil Misc. Application No. 6028 of 2016

*(Anonymous application regarding illegal
appointments in NAB)*

AND

Civil Misc. Application No. 6285 of 2016

(Impleadment application by Asad Kharal)

AND

Civil Misc. Application No. 6907 of 2016

(Application by Mirza Sultan M. Saleem)

AND

Civil Misc. Application No. 6980 of 2016

(Impleadment Application by Dr. Shaista Nuzat)

AND

Civil Misc. Application No. 6984 of 2016

(Impleadment Application by Yasir Ali)

AND

Civil Misc. Application No. 7093 of 2016*(Application by Muhammad Arshad Saeed)***AND****Civil Misc. Application No. 7363 of 2016***(Application of Haji Muhammad Tariq Aziz Khokhar)***AND****Civil Petition No. 630-K of 2015***(Abdul Hadi Vs. NAB and others)***AND****Civil Petition No. 65-Q of 2015***(Mirza Luqman Masud and others Vs. Chairman NAB and others)***AND****Civil Misc. Application No. 1249 of 2017***(Report by Joint Secretary (D & L), on behalf of Establishment Division)***In Attendance:**

On Court Notice	:	Syed Tahir Shahbaz, Secretary, Establishment Division.
For the Federation	:	Ch. Amir Rehman, Addl. Attorney General.
For the NAB	:	Khawaja Haris Ahmed, Sr. ASC Mr. Waqas Qadeer Dar, PG, NAB. Mr. Qamar Zaman, Chairman NAB
For Ms. Aliya Rasheed	:	Hafiz S. A. Rehman, Sr. ASC. <i>(in CMA. 7192/16)</i>
For Maj. (R) Shehzad Saleem: and Maj. (R) Shiraz Naeem	:	Malik Muhammad Qayyum, Sr. ASC
For Brig.(R) Farooq Nasir	:	Mr. Ahmed Awais, ASC
For Maj (R) Shabir Ahmed and for Syed M. Husnain	:	Mr. Muhammad Shoaib Shaheen, ASC Mr. Rashid Javid Lodhi, ASC.
For Ziaullah Toru	:	Khawaja Azhar Rashid, ASC.
For Zahir Shah	:	Dr. Muhammad Ali Saif, ASC.
For Adnan Shehzad Asghar, Yasir Mehmood, Muhammad Fahad Khan, Karim Bux and Harmoon Bhatti	:	Raja Imran Aziz, ASC. Mr. Arshad Ali Ch., AOR.

In CMA.5811 & 6907/16 : Mr. Abdur Rehman Siddiqui, ASC.
Mr. Ahmed Nawaz Ch., AOR.

In CMA.5887/16 : Mr. Hashmat Ali Habib, ASC

In CMA.6001/16 : Shafiq-ur-Rehman, In-person.

In CMA 6285/16 : Asad Kharal, In-person.

In CMA.6980/16 : Sardar Muhammad Aslam, ASC.
Dr. Shaista Nuzat, In-person

In CMA.6984/16 : Nemo.

In CMA.7093/16 : Nemo.

In CMA.7363/16 : Mr. Aftab Alam Yasir, ASC.
Syed Rifaqat Hussain Shah, AOR.

In CP No.65-Q/2015 : Mr. Muhammad Aslam Chishti, Sr. ASC.
Mr. Zahoor-ul-Haq Chishti, ASC.

In CP No.630-K/2015 : Mr. Shahid Anwar Bajwa, ASC.

In Attendance

Raja Saif-ur-Rehman, ASC.
Mr. Muhammad Umer Riaz, ASC.
Mr. Riaz H. Rahi, ASC.
Mr. Kamran Murtaza, ASC.
Mr. Mehr Khan Malik, AOR.
Mir Aurangzaib, AOR/ASC.

Dates of Hearing : 27th, 28th and 29th March, 2017.

JUDGMENT

Amir Hani Muslim, J. These Suo Moto proceedings were initiated under Article 184 (3) of the Constitution of Pakistan on an anonymous application/letter wherein it was alleged that illegalities, contraventions and violations were committed/made in the appointments made in the National Accountability Bureau (“NAB”). It was, *inter alia* averred that NAB, which was the apex anti-corruption body of the country, had never come under legal scrutiny and the judgments of this Court reported as Contempt Proceedings Against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. The Province of Sindh (2015 SCMR 456) were not followed to stream-line the service structure within NAB. It was further stated that there were a number of officers who lacked the eligibility criteria prescribed in the rules made pursuant to the National Accountability

Ordinance, 1999 (“**the NAB Ordinance**”) were still working in NAB in different capacities. The said rules, which have been made pursuant to the NAB Ordinance, are the “National Accountability Bureau (NAB) Employees Terms and Conditions of Service (TCS), 2002” (“**the TCS**”). Pursuant to the TCS Rules the methods of appointment and qualifications were prescribed in the “National Accountability Bureau (NAB) Methods of Appointment and Qualification (MAQ)” (“**the MAQ**”). After registering the said application / letter as a Suo Moto Case under Article 184(3) of the Constitution, notices were issued to the learned Attorney General for Pakistan and the Chairman NAB. When this case was fixed on 23.09.2016, it was observed by this Court as under:

“2. We have gone through the concise statement filed by the NAB and have noticed that appointments made in the NAB are, *prima facie*, violative of the principles enunciated by this Court in the cases reported as Contempt Proceedings Against Chief Secretary, Sindh and others (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh and others (2015 SCMR 456). The NAB has taken the stance that these judgments do not apply to their employees on the ground that they are not civil servants. This stance is completely in conflict with the observations made by this Court in para 121 of the judgment Ali Azhar Khan Baloch (*supra*) where this Court has held that the principles laid down in aforesaid judgments would be applicable to the civil servants, Government servants and all other employees serving in different statutory organizations which are working under the administrative control of the Government.”

2. Notice of the proceedings as contemplated under Order XXVII-A CPC was also given to the learned Attorney General for Pakistan vide order dated 24.10.2016. Furthermore, NAB was required to file service profile of the officers whose appointments were challenged through different CMAs, *inter alia*, on the ground of legal infirmities in their appointments. In compliance with this direction, NAB filed a report (CMA No.8114/2016) setting out the infirmities in the appointments made in NAB, but as this Court was not satisfied with the report it was decided to take up the case of all the officers / officials named in the said report and decide their fate on merits in accordance with law. Notices were issued

to all the concerned officers / officials vide order dated 7.12.2016. Thereafter, on 12.01.2017, this Court observed as under:

“We have heard the learned Counsel for the NAB and have perused the report submitted by the committee on the issue of appointments made in the NAB. We are not satisfied with the report. The stance of the NAB that a committee comprising senior officers of the NAB and the Establishment Division was constituted to scan the appointments made in the NAB, is also incorrect, as the report submitted by the NAB reflects that the representative of the Establishment Division has not signed it.

2. *With the consent of the learned Counsel for the NAB and the Counsel representing the parties present in Court, we direct the Secretary, Establishment Division, Government of Pakistan, to scrutinize as to whether all the appointments / promotions / absorptions / deputations and appointments on contract basis made in the NAB since 2002 till date are in conformity with the National Accountability Bureau (NAB) Employees Terms and Conditions of Service (TCS) 2002, and National Accountability Bureau Methods of Appointment and Qualification (MAQ) 2002 (amended from time to time) and whether the officers who were appointed/promoted/absorbed/appointed on deputation or on contract basis hold the qualification/relevant experience in the required field and these appointments were in conformity with the principles laid down by this Court in the cases of Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs Province of Sindh (2015 SCMR 456). A detailed report against each appointment / promotion / absorption / deputation made in BS-16 to BS-22 in the NAB shall be submitted by the Secretary. The Secretary, Establishment Division, may summon the original service profile of the officers of the NAB which shall be provided to him immediately without delay. The Chairman, NAB, and all his subordinates shall extend full co-operation to the Secretary, Establishment Division, in this exercise, which shall be completed within 04 weeks from the date of communication of this Order.*

3. *A copy of the report submitted by the NAB shall also be provided to the Secretary, Establishment Division, for his perusal which may be of some assistance to him in completion of the task. Copy of this order shall be faxed immediately to the Chairman, NAB, the Secretary, Establishment Division and Attorney General for Pakistan for their information and compliance.”*

3. Thereafter, when this case was fixed on 22.03.2017, it was observed by this Court as under:

“....According to the Secretary, Establishment nine officers lacked inherent qualification for appointment to the post. In addition with regard to the issue of promotion where, according the Secretary, Establishment, there are many inconsistencies. The Secretary, Establishment has not given his own opinion as to whether these officers qualified to be retained in the office or not. Kh. Haris Ahmed, learned Sr. ASC is put on notice to go through the report and make statement as to whether the discrepancies in the appointments / promotions are correct and whether in particular the nine officers pointed out by the Secretary, Establishment had the requisite qualification on the date of their appointment and, if they did not whether such officers were entitled to subsequent promotions. He states that he will examine the report of the Secretary, Establishment with regard to the inherent disqualification of nine officers, the promotion that were given and whether the appointments by promotion or absorption were in conformity with the principles laid down by this Court in the judgments reported as: Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752) Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456) and Ch. Muhammad Akram Vs. Registrar, Islamabad High Court (PLD 2016 SC 961). Kh. Muhammad Haris, learned Sr. ASC will file a report which will cover all material aspects as pointed out by Secretary Establishment...”

Following the above mentioned directions, NAB submitted its response, through CMA 1748 of 2017, which states that to the extent of some of the officers they agree with the report of the Secretary Establishment.

4. Khawaja Harris Ahmed, Senior ASC appeared as Counsel for the NAB and made a statement on behalf of NAB and the Chairman NAB, stating that the list of nine officers who were found to have inherent disqualifications in their appointments according to the report of the Secretary Establishment can be divided into two sets of officers. The first set of officers comprises of three officers with regard to whom NAB has no dispute with the findings of the Secretary Establishment that they did not meet the stipulated qualification and were inherently disqualified. The second set comprises of six officers whose induction in NAB according to his understanding is protected by a ‘deeming clause’ which is sub-rule (2) of Rule 14.03 of TCS. This ‘deeming clause’, according to him, provides that officers who have been inducted in NAB under Rule 14.03 of the TCS will be deemed to be ‘transfer employees’ for all purposes

under the TCS and the requirements of TCS will not apply to them . He further contends that Rule 3.30 of TCS would not be attracted in the case of induction of these employees who were already serving in NAB. In an attempt to explain his interpretation of the *deeming clause* in sub-rule (2) of Rule 14.03 of TCS, he stated that the last line of the said sub-rule provides that those inducted in NAB through Rule 14.03 shall be *deemed* to be appointments by transfer “for all purpose of the TCS”. By virtue of this phrase, he states, that the relevant rules applicable to appointment by transfer in part IV of the TCS titled ‘Appointment by Transfer’ which prescribe that three elements need only to be fulfilled, which are that the appointment must be in the public interest (Rule 3.28 of TCS), only regular incumbents be considered (Rule 3.29 of TCS) and employees possess qualifications required for initial appointment to the relevant post (Rule 3.30 of TCS). These elements, he contends, are presumed to have been fulfilled by an inductee by operation of the deeming clause. In this regard he has referred to the case of Munir Hussain Bhatti vs. Federation of Pakistan (PLD 2011 SC 407).

5. The learned Senior ASC next contends that there are three main categories of appointments mentioned in the report of the Secretary Establishment Division wherein inconsistencies were found in the mode of appointment; i.e. (i) appointment by initial appointment (ii) appointment by induction and (iii) appointment by promotion. Regarding the first category, in which employees were inducted through initial appointment, he states that there were 629 appointments made in NAB, out of which in 101 appointments inconsistencies were found in the report of the Secretary Establishment and NAB agrees that there were inconsistencies in 48 appointments and states the concerned officers will be de-notified. He further stated that apart from these, there are twelve (12) officers who are no longer in the service of NAB and that NAB does not agree with inconsistencies found in the appointments of the remaining 39 officers.

6. With regard to the second category, where appointments were made by promotion, the learned counsel states that the said report reflects that 561

appointments were made by promotion within NAB out of which inconsistencies were found in only 133 appointments and out of these 35 officers have retired. He submitted that NAB agrees with the findings of inconsistencies in 102 of these appointments except four officers who were pointed out in Annexure IV of the said report, namely: (1) Khalid Mehmood, (2) Ansar Yaqub, (3) Saleem Chandio and (4) Afshan Basharat. Regarding these four officers he states that their appointments were governed by Rule 14.02 of the TCS. He states that Khalid Mehmood was appointed on deputation basis in NAB from the Accounts and Works Department Punjab in the year 2007. He states that Khalid Mehmood and Ansar Yaqub were promoted on the decision of the Federal Service Tribunal and since there is no provision in the TCS that provides for the fate of appointments by promotion given by a Service Tribunal's decision, Rule 14.08 of the TCS applies to their appointments which provides that *"in matters not covered under the TCS the employees of NAB shall be governed by the rules applicable to the other civil servants and the instructions issued from time to time by the Federal Government on such subject"*. He further contends that the third officer namely Saleem Chandio was given a conditional promotion on the recommendations of the DPC and his case too is, therefore, distinguished and attracts special treatment on this ground. As regards the fourth officer Afshan Basharat she was given conditional promotion on the ground that her senior was resigning and thereafter she was promoted when the resignation of her senior was finalized and contends that Rule 3.24 of TCS applies to her appointment by promotion.

7. Khawaja Haris Ahmed, learned ASC then contends that in the third category of appointment, which was by induction, there were 32 officers who were inducted in NAB pursuant to Rule 14.03 of the TCS. He submitted that proviso (i) of paragraph 2 of the MAQ specifically addressed the treatment of officers who had been working in NAB on transfer / deputation basis for the past one year prior to the promulgation of the MAQ. The proviso states that vacancies will be reserved for such employees against the posts equal to those already held

by them on regular basis in their parent departments in terms of Rules 14.02 and 14.03 of the TCS. He further submits that out of these 32 officers only 15 are still in service while the rest have retired. Out of these remaining 15 officers, six (6) officers have been cleared by the Secretary Establishment in his report. He contends that one of these nine (9) officers is Aliya Rasheed and NAB agrees with the findings of the report of the Secretary Establishment in her case. He, however, states that she has been retained in NAB on the basis of judgments of this Court in her favour. A judgment of this Court passed in CP No.1632/2011 decided on 2.12.2011 wherein this Court observed that her appointment, future promotion or career shall not be affected in any manner and the second judgment of this Court in HRC No.1305-G/2009 wherein it was observed by this Court that she should not be discriminated against with regard to her promotion.

8. The learned counsel further contends that another officer, S. M. Hasnain, did not complete the one year period of service in NAB as per proviso (i) of para 2 of MAQ before his induction. With regards to his induction Khawaja Haris Ahmed submits that a lenient view may be taken as he was short of the requisite experience by only a few months. Regarding the remaining seven 7 officers, he contends that NAB agrees that the required qualifications were not met by these officers, however, these officers do not need to comply with the said requirements as proviso (i) of para 2 of MAQ read with Rule 14.03 of TCS governs their induction. He submits that sub-rule (2) of Rule 14.03 contains a deeming clause whereby employees inducted from the Federal Government, other than those from the Armed Forces, could exercise a one time option for their absorption and would be deemed to have been appointed on transfer under the TCS, subject to the consent of the competent authority of their parent department and the approval of the appointing authority in NAB.

9. Khawaja Haris Ahmed, ASC learned counsel further argued that apart from these nine officers, there was one more officer, namely, Zia Ullah Khan Toru who is currently serving as Deputy Director (BS-20) in NAB. This

officer was continuing on the basis of a judgment in his favour from the Peshawar High Court. This judgment was appealed before this Court but the petition was dismissed therefore, Zia Ullah was appointed in NAB without an advertisement, and without meeting the requisite academic qualification criteria.

10. Mr. Waqas Qadeer Dar, the Prosecutor General (“PG”) NAB, stated that in the MAQ the qualifications required for appointment, in the Schedule under ‘Academic Qualification’ also includes “any qualification approved by the competent authority”. He contends that the said word “any” is of wide import and would include any qualification. In this regard he referred to the case of *Inamur Rehman Vs. Federation of Pakistan* (1992 SCMR 563) and regarding interpretation of word “qualification” he referred to the case of *Noor-Ul-Ameen Vs. Muhammad Abdul Qayum Khan* (1991 MLD 2658).

11. Malik Muhammad Qayyum, learned Sr.ASC, appeared on behalf of Major (R) Shiraz Naeem, who is currently serving in the NAB as Director on “Own Pay Scale” (OPS). The learned Senior ASC contends that Major (R) Shiraz Naeem was previously serving in the Pakistan Army and was sent on deputation to NAB. Thereafter, he served in NAB on deputation from 1999 till the year 2003 after which he retired from the Pakistan Army and was inducted in the NAB under the TCS. He pointed out that Major (R) Shiraz Naeem possessed the required academic qualifications since he had a Masters Degree in Computer Sciences and therefore, he did not have any inherent disqualification. He also submits that the report of the Secretary Establishment had no adverse findings against his appointment. Malik Muhammad Qayyum, learned Sr. ASC also appeared on behalf of Maj. (Retd) Shehzad Saleem and contended that at the time of his induction in NAB he fulfilled all the codal formalities, therefore, his induction was in accordance with the law / rules.

12. Mr. Ahmed Awais, learned ASC, appeared on behalf of Brig. (R) Farooq Naseer Awan and contends that the applicant was directly appointed as

Director General (BS-21) in NAB in the year 2013 and fulfilled the requisite academic qualifications prescribed in the MAQ since he had a B.Sc. degree as well as M.Sc. degree. With regard to his mode of appointment, he contended that 307 candidates had applied for the said post in February 2013 and he was duly selected. Despite there being no irregularity in his appointment he contends that his case falls in the list of 48 officers regarding whose appointment NAB agrees with Secretary Establishment's report that inconsistencies existed.

13. Hafiz S.A. Rehman, learned ASC, appeared on behalf of Aliya Rasheed in CMA No. 7192 of 2016. He contends that Aliya Rasheed was appointed in NAB on 26.06.2003 pursuant to a directive by the then Prime Minister on account of her being an exceptional tennis star who represented the country in various international tennis tournaments. He contended that she had never been involved with or assigned any investigation related matter throughout her service in NAB and was only involved in raising awareness against corruption. He next contended that her appointment was not made under the TCS or MAQ but was made pursuant to the said policy of the Prime Minister. He concedes that no other sportsperson was appointed in NAB pursuant to this policy. He next contends that she has been retained in NAB on the ground of judgments of this Court in her favour, passed in CP No.1632/2011 decided on 2.12.2011 wherein this Court observed that her appointment, future promotion or career shall not be affected in any manner and the second judgment of this Court in HRC No.1305-G/2009 wherein it was observed that she should not be discriminated against with regard to her promotion.

14. Mr. Shoaib Shaheen, learned ASC, appeared on behalf of the applicants namely, Major (R) Shabbir Ahmed and S.M. Hasnain. He contends that both of the applicants were appointed in NAB pursuant to Rules 14.02 and 14.03 of the TCS. He also contends that although Major (R) Shabbir Ahmed did not initially have the required qualifications for the post of Deputy Director (BS-20) on 30.09.2003 when he was absorbed in NAB, he had later acquired a LLB

degree in the year 2005 and then a MBA degree in the year 2010. He submits that a recent judgment of this Court in the case of DCO/ Chairman District Recruitment Committee Khanewal Vs. Kishwar Sultana (Civil Appeal No. 843 to 863 of 2012 etc) supports the proposition that where a person lacks the qualifications required for initial appointment to a post, he may acquire the required qualification later to cure the defect. With respect to the case of the applicant S.M Hasnain, he contends that the said officer did not complete the one year period of service in NAB as per proviso (i) of para 2 of MAQ before his induction, however he had four years of experience in the Anti-Corruption Establishment. He also referred to Rule 14.01 of the TCS whereby the Chairman if he is satisfied may relax any provision or condition.

15. Dr. Shaista Nuzhat who was previously employed in NAB and is now serving in the Establishment Division in BS-19, appeared in CMA No.6980/2016 and submitted that she only wanted to place some facts on record regarding the appointment of Ms. Aliya Rasheed. She contended that Ms. Aliya Rasheed was initially a project employee in the Ministry of Education, remained on contract basis in the said Ministry and was never appointed on regular basis. Thereafter, she was appointed in NAB in BS-18 on contract basis and was inducted after two months in BS-19. She further contended that Prime Minister had twice turned down the summary for her appointment but she was appointed in NAB in violation of the law / rules.

16. Maj. (Retd) Syed Burhan Ali, appears in person and contends that he is presently posted as Director General NAB, Lahore (BS-20). While giving details of the process of his induction in NAB, he contends that he was a serving Major in Pakistan Army and was appointed on deputation to NAB as Deputy Director (B-18) in the year 2000, following which his induction took place on 30.9.2003. He next contends that he was holding a B.Sc. degree at the time of his induction and his case fell in the category of those officers who possessed “any qualification approved by the competent authority” as stipulated in the

qualification requirement for the post of Deputy Director (BS-18) under the “Academic Qualification” in the Schedule to MAQ, therefore, the qualifications which were relevant for other officers were not attracted in his case. He also refers to Rule 1.02 (b) of the TCS, submitting that his case falls within the ambit of those officers on deputation who were excluded from the application of the TCS even though after induction he was no longer a deputationist.

17. Maj. (Retd) Tariq Mehmood Malik, Director General NAB, Balochistan, appeared in person and contended that his case was similar to that of Maj. (Retd) Syed Burhan Ali. He contends that he was holding a B.Sc. degree at the time of his induction and his case fell in the category of those officers who possessed “any qualification approved by the competent authority”, therefore, the academic qualification which were relevant for other officers were not attracted in his case. He also referred to Rule 1.02 (b) of the TCS, submitting that his case falls within the ambit of those officers who were on deputation and had been excluded from the application of the TCS even though after induction he was no longer a deputationist.

18. Chairman NAB, appeared in Court and was confronted with his opinion about those officers who did not have the requisite academic qualifications for their appointment and are serving in NAB, and why these officers had not been de-notified as yet. In response to this he stated that he agreed that the qualification/criteria prescribed in the TCS and the MAQ cannot be compromised, therefore, the officers who lacked the required qualifications at the time of their appointments, should indeed be de-notified.

19. On 28.03.2017 the Chairman NAB submitted that with regard to the nine officers who were found to have inherent disqualification in their appointments in the Secretary Establishment’s report, two Directors namely Muhammad Younas and Capt. (Retd) Farrukh Naseem Akhtar have opted for voluntary retirement, whereas, two other officers, namely, Col. (Retd) Naeem and

Sq. Ldr. (Retd) Tariq Nadeem serving as DG and Director respectively have retired. He further submits that two officers, namely, Syed Muhammad Amir (Additional Director) and Ansar Yaqub (Deputy Director) have opted for repatriation to their parent departments. He stated that Ms. Aliya Rasheed, who was not amongst these nine officers, was offered voluntary retirement but chose not to opt for the same and contest her case on merits. He next states that the issue now remains only with regards to three officers, namely, Maj. (Retd) Syed Burhan Ali, Maj. (Retd) Tariq Mahmood Malik and Maj. (Retd) Shabbir Ahmed.

20. When this matter was fixed on 28.03.2017, the following order was passed by this Court:

“We asked the Chairman, NAB to respond to the option which this Court had extended to the nine officers against whom the report submitted by the Secretary, Establishment Division, Government of Pakistan and which was concurred by NAB that the said nine officers did not meet the stipulated criteria prescribed for appointment.

2. *The Chairman, NAB states that two of these officers have retired, namely, Col. Naeem, Director General NAB, Karachi and Tariq Nadeem, Director NAB, Lahore.*

3. *Chairman NAB further states that Mr. Muhammad Younas, Director NAB, and Mr. Farrukh Naseem Akhtar, Director NAB have opted to avail pre-mature retirement. Therefore, these two officers shall submit pre-mature retirement applications to the Chairman, NAB which should be processed in accordance with rules and accepted. It is clarified that these two officers would be entitled to all the pensionary benefits and perks that would be due to them upon such retirement.*

4. *With regard to Syed Muhammad Amir, Additional Director NAB, Quetta and Ansar Yaqoob, Deputy Director NAB, Lahore, the Chairman, NAB states that they have sought to be repatriated to their respective parent departments. Let such applications be made to the Chairman, NAB, who in turn shall relieve these officers by repatriating them to their respective parent departments. Their lien, if it had been terminated shall stand revived and they would be entitled to the same benefit of salary and seniority as per their batch-mates, and if their batch-mates have been promoted, they shall also be entitled to promotion in their parent departments. The parent departments shall complete this exercise from the date they receive the order of repatriation/relieving by the Chairman, NAB.*

5. *As regards the remaining three officers, namely, Maj. (R) Syed Burhan Ali, who is posted as Director General NAB, Lahore, Maj. (R) Tariq Muhammad, who is working as Director General NAB, Balochistan and Maj. (R) Shabbir Ahmed, Director NAB holding acting charge of Director General, NAB Karachi, the matter is adjourned for tomorrow. i.e. 29.03.2016. In the meantime, Chairman NAB shall get in touch with Secretary Establishment Division, Government of Pakistan”*

21. Through the NAB Ordinance, NAB was created with the purpose to eradicate corrupt practices and hold accountable persons who had indulged in corrupt practices. The object, as mentioned in its Preamble was to provide effective measures for the detection, investigation and prosecution of those involved in corruption and corrupt practices or who had misused or abused their powers. The apparent objective was not to target petty criminals but those who had indulged in massive corruption or where there had been major misuse or abuse of powers. NAB also had the mandate to proceed against white collar criminals who may not be easily detected by the provincial police or the Anti-Corruption Establishments in view of the subterfuge with which such persons operate or in view of the difficulty associated with unearthing such crimes. The very mandate of NAB means that the different positions in NAB are filled by persons possessing certain minimal academic qualifications and experience as stipulated in the Schedule to MAQ. Similarly, stringent conditions for promotion were mentioned in the TCS and MAQ. We were dismayed with the contents of the report submitted by the neutral and very senior bureaucrat, the Secretary Establishment Division, Government of Pakistan. Whereas, NAB acknowledges many of the shortcomings and discrepancies in the appointments, inductions and promotions it had a different viewpoint with regard to certain others.

22. The learned counsel representing officers in NAB as well as Khawaja Haris Ahmed, learned senior ASC, representing NAB have tried to justify as to why the stipulated academic qualification or the prescribed experience was not met by a person appointed and/or promoted. A number of

untenable arguments in this regard were put forward which have been mentioned hereinabove. In this regard reference was made to sub-rule (2) of Rule 14.03 of TCS and much stress was placed on the word “deemed” appearing therein. Another argument that was put forward was that appointments made by transfer, as attended to in Part VI of the TCS, had their own methodology and that the appointments made pursuant to these provisions would not require to meet the criteria specified in MAQ. The learned PG, NAB put forward another novel contention which was that under the title “Academic Qualification” which mentions specific qualifications that appointments could also be made if the appointee had “any qualification approved by the competent authority”. Messrs Malik Muhammad Qayyum, learned Senior ASC, Ahmed Awais, learned ASC and Muhammad Shoaib Shaheen, learned ASC, stated that if a person had subsequently acquired the required academic qualification he cannot be removed or de-notified on the ground that he did not have the stipulated academic qualification. It was also stated that the Chairman, NAB has the power to relax any provision, condition or requirement. The individuals who represented themselves advanced similar arguments. Hafiz S. A. Rehman, learned Senior ASC canvassed another extra-ordinary viewpoint which was that if an appointment was made, pursuant to a policy issued by the Prime Minister that supported or encouraged sportspersons, the stipulated qualification and experience would not be relevant.

23. Though an attempt has been made to make this matter complicated, it is basically very simple. The MAQ and the TCS prescribed the requisite academic qualification and experience, inter alia, that a person who is appointed must possess at the time of his appointment. To appreciate the respective contentions, it would be appropriate to reproduce certain provisions of the TCS:

“1.02. Commencement and Application. These terms and conditions of service (TCS) shall come into force at once and shall apply to all employees of the National Accountability Bureau other than:

(b) a person who is serving on deputation from the Federal or the Provincial Government or from a corporation, statutory body or Local Fund or an autonomous body etc;”

“3.30. Possessing Qualifications for Initial Appointments. Only an employee possessing the qualifications and other conditions laid down for initial appointment to the post on which appointment by transfer is being made, shall be considered by the Selection Board or the Departmental Selection Committee, as the case may be, for appointment by transfer.”

“14.01. Just and Equitable Treatment in Hardship Cases. Notwithstanding anything to the contrary contained in these TCS in relation to the terms and conditions of service of an employee, the Chairman may, if he is satisfied, for reasons to be recorded in writing, that strict application of any provision or, condition causes hardship in any case, by order, relax this requirement to such extent as it may deem fit, for ensuring just and equitable treatment to the employee concerned without infringing the right of any other employee.”

“14.02. Appointments made Prior to Coming Into Force These TCS. On commencement of these TCS, all appointments made either by initial recruitment or promotion or transfer other than of those employees who were posted on deputation or employee or contract before coming into force of these TCS, shall be deemed to have been made on regular basis, subject to fulfillment of conditions of eligibility prescribed in the Methods of Appointment and Qualification, (MAQ) for each post, recommendation of appropriate Selection Board/Committee as well as approval of the appointing authority.”

“14.03. Induction of Employees of other Services. (1) A person belonging to the Federal Government including the Armed Forces of Pakistan or a Provincial Government or a Corporation or body set up or controlled by any such Government and serving on deputation in the NAB may opt for permanent absorption in the NAB against the post equal to or identical with the post held on regular basis by him, under such Government, Corporation or body.

(2) The option for absorption once exercised shall be final and subject to the consent of the competent authority of such employee in the parent department and approval of the appointing authority in the NAB, his appointment in the NAB shall be deemed as appointment on transfer for all purposes under these TCS.”

24. Clause (b) of Rule 1.02 of the TCS is restricted only to such persons who are “serving on deputation” in NAB, and this Rule has no application if a person wants to be permanently absorbed in NAB. Rule 14.03 of TCS does not stipulate that, those who opt for permanent absorption in NAB are not required to have the academic qualifications and experience provided in the MAQ. Neither the MAQ nor any rule of the TCS mentions that the qualifications prescribed in MAQ would not apply to such persons. Therefore, the prescribed qualifications are applicable. This would also apply to the appointments made on transfer basis.

25. With regard to the induction of an employee from any other service and the argument that he “shall be deemed as appointment on transfer”

and therefore would only be required to comply with Rules 3.28, 3.29 and 3.30 of TCS is not supported by the TCS. Rule 3.30 clearly stipulates that, “only an employee possessing the qualifications and other conditions laid down for initial appointment to the post on which appointment by transfer is being made shall be considered...”. Therefore, if a person is to be inducted in NAB from another service he must have the requisite qualifications, and if he did not have them he cannot be appointed. As regards the other limb of the argument that induction is “deemed as appointment on transfer” is also of no consequence as Rule 14.03 does not state that the inductee from another service is exempt from having the prescribed academic qualifications and other eligibility criteria. The persons who were so inducted in NAB were already advantageously placed as they did not have to compete with others in a competitive process, therefore, to project them as victims is wholly inappropriate.

26. As regards the learned PG’s contention that, under the title “Academic Qualification” in the Schedule to MAQ, the competent authority can substitute the stipulated academic qualifications by “any qualification” this contention has no application in these cases, since the competent authority had not exercised such powers nor had substituted the stipulated academic qualifications with any other qualification. Therefore, we need not speculate as to the kind of alternative qualifications which could have been approved by the competent authority. We may, however, observe that if the competent authority elects to substitute the stipulated academic qualification it could only be to ensure that certain skills which accompany a particular academic qualification were required. The alternative attempt by the learned PG, to read the words “any qualification” on their own, is precluded by the fact that these words are followed by the following words- “approved by the competent authority”.

27. The contention that a person can obtain the requisite qualifications subsequently, that is after he had already joined the service of NAB is unsustainable. If this concept or principle is accepted it would render meaningless

the stipulated qualification for a particular job. Though reference has been made to an unreported judgment mentioned in paragraph 14 (above) but that judgment is based on altogether different facts and circumstances. In that case the Skill Development Council constituted under the National Training Ordinance, 1980 had embarked upon issuing diplomas and certificates which it was not entitled to do and this Court held, that “persons employed on the basis of the same may continue in service” provided they also “possess the requisite or relevant qualifications”, and as regards “those who could not improve their qualification should improve it within a period of one year...”. An untenable situation was created by the Government itself as it had stipulated that those who possess certificates/diplomas from the Skill Development Council could apply. This judgment is given on its own the peculiar facts and circumstances and does not lay down any principle of law in terms of Article 189 of the Constitution. Moreover, in the present case NAB did not issue any notification that it would also accept any other degree/diploma/certificate, consequently, the said judgment has no relevance to the facts of this case.

28. As regards the argument that, the Chairman, NAB possesses the power to relax any provision or condition under Rule 14.01 of the TCS and in making the appointments he is presumed to have done so, is negated by the said Rule itself. The Chairman’s power to relax is circumscribed in terms of Rule 14.01 itself. To begin with this Rule is premised on the fact that the person affected by any particular provision or condition is already an employee of NAB, which was not so in the present case, as deputationists in NAB are not employees of NAB. This Rule does not apply to those who are being appointed or inducted in NAB. In addition the Chairman, NAB can only exercise his powers to relax rules only to the extent that a particular provision or condition “causes hardship” and provided it is “just and equitable”. All these factors have to be attended to by the Chairman, NAB “in writing”. Moreover, nothing has been brought on the record to show that the Chairman, NAB had actually exercised such powers. If a person

does not have the requisite academic qualification it cannot be construed to “cause hardship”, therefore, the question of providing “just and equitable treatment” in terms of Rule 14.01 would not arise. Besides the aforesaid reasons, we are of the considered view that the Chairman, NAB did not have the authority to relax the rules by compromising eligibility and academic qualifications. In this regard, we are fortified by the judgment of this Court in the case of Muhammad Akram v. Registrar, Islamabad High Court (PLD 2016 SC 961). Consequently, we are clear that Rule 14.01 of the TCS is not attracted.

29. As regards pressing into service the “policy” issued by the Prime Minister to support and encourage sportspersons with regard to Ms. Aliya Rasheed, the referred to “policy” is reproduced hereunder:

“In order to promote sports at grass root level and inculcate discipline amongst the masses for national integration and cohesion, the Prime Minister has been pleased to direct that the sportsmen of International/National level may be provided jobs in Government Departments and large organizations like PIA, WAPDA, Police, Railways and other Federal/Provincial Departments/Autonomous Bodies, through a proper selection procedure. For this purpose Departments/Organizations concerned should make necessary provision in their service rules.

2. M/o MCST&YA will monitor the progress of implementation of this directive and submit monthly progress report for information of the Prime Minister.”

Supporting the said appointment on the basis of this “policy” is not sustainable on a number of grounds. Firstly, the NAB Ordinance, the TCS and MAQ do not vest the Prime Minister with any authority to issue such a policy. Secondly, pursuant to the purported policy neither the MAQ or the TCS were amended. Thirdly, the appointment was made without advertising the post or inviting equally placed persons to participate. Simply issuing such “policy” without any further action thereon cannot substitute the provisions of the NAB Ordinance, the TCS and/or the MAQ.

30. It is, therefore, quite clear that none of the arguments and contentions that were advanced could justify the appointments, inductions or transfers mentioned hereinabove.

31. We accordingly hold and direct that:

I. The initial appointments of 05 officers namely Muhammad Fahad Khan, Yasir Mehmood, Karim Bux, Harmoon Bhatti, and Adnan Shehzad Asghar, whose names have been mentioned at page 86 of C.M.A.No.1748 of 2017, have been found to be inconsistent with the National Accountability Bureau (NAB Employees Terms and Conditions of Service) (TCS), 2002. The learned counsel for these officers, stated that one of these officer, namely, Adnan Shehzad Asghar may be allowed to be repatriated to his parent department, i.e. the National Bank of Pakistan. In these circumstances and to avoid any hardship, we direct the Chairman, NAB, to immediately repatriate Adnan Shehzad Asghar to his parent department, i.e. the National Bank of Pakistan, and the Bank, in turn, shall allow him to join. He shall be given seniority and promotion alongwith his batch mates as if he was never repatriated. Termination of lien will not come in the way of the aforesaid officer. According to the learned Counsel the remaining four officers named hereinabove had not produced equivalence certificate from the Higher Education Commission (HEC) and be given an opportunity to do so. We therefore grant time to these officers to submit equivalence certificates after obtaining them from the HEC in respect of their degrees/certificates within four weeks from today. In case they fail to produce the requisite equivalence certificates, their services shall be terminated forthwith under intimation to this Court through the Registrar.

II. On the issue of requisite experience in the initial appointments in the NAB, the Secretary, Establishment Division, had noticed 96 officers who lacked the requisite experience and he suggested, with the consent of the Chairman, NAB, that a committee be formed to examine the issue. The list of these officers was placed separately by the Secretary, Establishment Division, which was taken

on record. We agree with this suggestion and constitute such Committee, which shall be headed by Syed Tahir Shahbaz, Secretary, Establishment Division, who shall be its Chairman and its Members shall be Mr. Muhammad Shakeel Malik, Director General (H.R), NAB and one Member of the Federal Public Service Commission to be nominated by the Chairman, FPSC. The Chairman, FPSC, shall notify the Member for the purpose of joining the Committee within one week from today.

III. The Chairman NAB/Competent Authority shall issue notices to all these officers to appear before this Committee. The Committee after affording them an opportunity of a hearing, shall record its findings within two months and the findings shall be acted upon by NAB.

IV. With regard to the appointments by promotion the Secretary, Establishment Division, found 137 promotions made in NAB to be inconsistent with the TCS and or MAQ and the NAB authorities concur with him. The Chairman, NAB, informs that out of these 137 officers 35 have retired. We direct that the remaining officers shall be issued show cause notices to appear before the Committee referred to hereinabove. The Committee shall afford these officers an opportunity of a hearing and decide their cases within two months from the date they appear before the Committee. The findings shall be acted upon forthwith by the NAB. The Committee and the Chairman, NAB, shall submit compliance reports in respect of both the aforesaid issues for our perusal in Chambers, within 15 days of the recording of findings by the Committee.

32. As regards the officers namely Maj (R) Syed Burhan Ali, Maj (R) Tariq Muhammad, Maj (R) Shabbir Ahmed and Ms. Aliya Rasheed, they were not qualified to hold the respective posts in NAB. They shall therefore be de-notified immediately. It will, however, be open for these officers to exercise the option of proceeding on retirement within four days from today, and if such option is exercised it shall be accepted by NAB. They shall be entitled to all the pensionary benefits to which they are entitled to under the law/rules. However, in case they fail to exercise the option of retirement, their services shall be

terminated after expiry of four days. It will be open to these officers to apply for the posts advertised by the NAB in future and they shall be entitled to appear in the examinations to be conducted by FPSC provided they meet the eligibility criteria and compete with the other candidates. The Chairman, NAB, shall submit compliance report in this regard within seven (7) days for our perusal.

33. We expect that all the existing vacancies in NAB or that may be pursuant to the Committee's findings in future shall be filled within three months through the Federal Public Service Commission, from the date, the proposed Committee finally submits its report for our perusal. In the intervening period, NAB shall requisition its existing vacancies to the FPSC, which shall take steps for filling up the same. We are aware that the recruitment rules of NAB exclude recruitment through the FPSC, but in the larger public interest, the FPSC shall undertake this exercise and the posts shall be filled in by observing the mandate of Articles 240 and 241 of the Constitution, as these posts are extremely sensitive and only the most qualified candidates should be appointed. The Chairman, NAB, shall submit compliance report in the matter."

34. These proceedings alongwith all the listed Applications are disposed of in the above terms. The connected Civil Petitions No. 630-K of 2015 and 65-Q of 2015 are de-tagged and should be fixed for hearing before an appropriate Bench. Office is directed to send copies of this judgment to the Chairman, Federal Public Service Commission, Islamabad, the Secretary Establishment Division, Government of Pakistan, Islamabad and Chairman, National Accountability Bureau for information and compliance. The time periods mentioned above shall commence from the date of receipt of the judgment by the aforesaid.

Judge

Judge

Judge

Bench-III
Islamabad:
31.03.2017
Approved for Reporting
(Sohail)