

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Faisal Arab  
Mr. Justice Ijaz ul Ahsan

**CIVIL APPEAL NO.551 OF 2020**

[Against the judgment dated 18.12.2018, passed by the Peshawar High Court,  
Peshawar in W.P.No.5030-P of 2017]

***Director General of Intelligence &  
Investigation, F.B.R., Islamabad and others.*** ...Appellants

***Versus***

***Muhammad Aslam Khan.*** ...Respondents

For the Appellant (s) : Mr. M.D. Shahzad Feroz, ASC  
with Muhammad Israr ul Haq,  
Intelligence Officer

For the Respondent (s) : Mr. Muhammad Shoaib  
Shaheen, ASC  
Syed Rifaqat Hussain Shah,  
AOR

Date of Hearing : 21.09.2020

**O R D E R**

**Gulzar Ahmed, CJ:-** The case is quite simple, as stated by the learned counsel for the appellants, in that, there were 8 vacancies for direct recruitment to the post of LDC. No direct recruitment against the vacant posts was made. Respondent-Muhammad Aslam Khan was employed as Sepoy in the office of Director General, Intelligence and Investigation, Federal Board of Revenue on 09.09.1985. On the recommendation of the Departmental Promotion Committee (**DPC**) and with the approval of the Director General, the competent authority vide order dated 07.07.2007, the respondent was promoted as LDC on acting charge basis. The period of probation was mentioned as one year with further period of one year. It was further mentioned that on

termination of probationary period, the appointment shall be deemed to be held until further orders. Much after completion of the probationary period, the respondent requested for his confirmation as LDC but his request was denied. The respondent initially filed Writ Petition No. 1084-P/2012, which was disposed of through order dated 05.11.2013, directing the appellants to consider the case of the respondent for confirmation as LDC. It seems that the appellants considered the case of the respondent and denied his request for confirmation as LDC. Yet again, the respondent filed a writ petition, which came to be decided by the impugned judgment dated 18.12.2018 by a learned Division Bench of the Peshawar High Court, Peshawar, whereby the writ petition was allowed in terms that the respondent shall be deemed to be confirmed as LDC (BPS-7), immediately, after completion of probationary period with all service benefits. Against the said judgment, leave to appeal was granted by this Court on 29.05.2020.

2. Learned counsel for the appellants has contended that in terms of Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, the respondent has no vested right to be confirmed as LDC and in any case, there was 10% quota for promotion.

3. On considering the arguments of the learned counsel for the appellants, what appears is that it is self destructive and also self serving. It seems that the appellants themselves violated the mandate of Article 27 of the Constitution when they promoted the respondent from the post of Sepoy to the post of LDC, on acting charge basis, against the post specifically reserved for direct recruitment. The respondent for almost 10 years served on the post of LDC and when he asked for confirmation, it was refused to him. The appellants took refuge under Rule 8-B *ibid*. The appellants cannot be allowed to approbate and

reprobate at the same time, and in law, the appellants will be *estopped* from taking such position. The respondent did nothing and could not have done anything to obtain his promotion from the post of Sepoy to that of the post of LDC and thus, the granting of such promotion to the respondent was a voluntary act of the appellants themselves. The vacancy of LDC did exist but was meant for direct recruitment. The appellants for their own convenience promoted the respondent to the post of LDC on acting charge basis and thus, cannot be heard refusing confirmation to the respondent to the post of LDC, for it was the appellants' own voluntary act. The provision of Rule 8-B *ibid* as canvassed before us, will not apply to the present case in the facts and circumstances.

4. It cannot be imagined that since 2007, when there were vacancies for direct recruitment, no recruitment against such vacancies were made and as per the submission of the learned counsel for the appellants, such vacancies still exist. This is a classical case of failure of administration on the part of the appellants, in that, from 2007 to date, it has not been able to fill up the vacancy of LDC through direct recruitment.

5. So for the submission of the learned counsel for the appellants that there are 10% vacancies meant for promotion to the post of LDC, we have not been shown any material or document, which could establish that 10% promotion vacancies with the appellants were ever filled in. What appears is that one Mansoor Ali Khan, who was employed as Sepoy on 05.11.1998, was given regular promotion as LDC on 07.07.2007. This is the same date on which the respondent was given promotion on acting charge basis. The reason given for regular promotion of Mansoor Ali Khan is that he obtained highest typing speed

of 30 words per minute **(WPM)**. Although such is mentioned by the appellants, but they have not attached any document of typing test showing that Mansoor Ali Khan obtained highest typing speed of 30 WPM. Even if it is admitted that Mansoor Ali Khan secured higher marks, still he was junior by almost 13 years' to the respondent and such period is not accounted for in any document.

6. We may note that similar case also come before this Court by way of Civil Appeals No.164 to 168 of 2012 titled as Government of Pakistan, Revenue Division, etc. Vs. Shafqat Ali Awan and others, which appeals were dismissed vide order dated 13.02.2020 and review petitions filed against such order came to be dismissed today i.e. 21.09.2020.

7. It seems that the appellants are running the department not only on *ad hocism* but are also apparently conducting themselves in an illegal manner and such factum is also supported by the letter dated 24.12.2004, by which the appellants ordered the promotion of ministerial staff to next higher posts against available vacancies of direct quota on acting charge basis. Further, by letter dated 30.03.2007, the appellants again ordered the promotion of ministerial staff to the post of Intelligence Officer against the post falling to the share of direct recruitment quota on acting charge basis. Though the Rule provides for promotion on acting charge basis, but such Rule has been made *bona fide*, to be used in *bona fide* situations and for *bona fide* purposes, and not to exploit the employees, who in the present case, is a ministerial employee and further, to perpetuate the maladministration of the department, which in the present case, is what the appellants are doing. No such acts of the appellants can be countenanced nor can the appellants be allowed to make its ministerial

staff hostage to appellants' own arbitrary, whimsical and capricious conduct and play with the employment of its ministerial staff. This will amount to allowing premium to the appellants for their apparent bad conduct and conduct, which is not mandated by law.

8. The appeal is, therefore, dismissed. Copy of the order is sent to the Chairman, FBR for taking of appropriate action against the delinquent officials.

**CHIEF JUSTICE**

**JUDGE**

Bench-I  
Islamabad  
21.09.2020  
APPROVED FOR REPORTING  
Rabbani/\*

**JUDGE**