

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

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Ijaz ul Ahsan  
Mr. Justice Munib Akhtar

**Civil Appeal No.485 of 2020**

[Against the judgment dated 08.10.2018, passed by the Federal Service Tribunal, Lahore Bench Lahore in Appeal No.464(L)/2017]

**Secretary, Establishment Division,**  
**Government of Pakistan, Islamabad.** *...Appellant (s)*

***Versus***

***Imtiz Ahmad Malik, Director Anti-Corruption,***  
***Establishment Sahiwal and others.*** *...Respondent(s)*

For the Appellant (s) : Mr. Ayaz Shaukat, Deputy  
Attorney General for Pakistan  
Sajid-ul-Hassan, Section Officer,  
Establishment Division

For the Respondent(s) : Mr. Muhammad Yasin Bhatti, ASC  
Mian Liaqat Ali, AOR (Absent)

Date of Hearing : 27.11.2020

**ORDER**

**Gulzar Ahmed, CJ.**— Respondent No.1 (**the respondent**) was working as Deputy Central Intelligence Officer (BPS-17) in the Intelligence Bureau, Government of Pakistan and vide office order dated 28.11.1989 his service was placed at the disposal of the Punjab Police on deputation for a period of three years. He was absorbed in the Punjab Police as DSP (BPS-17) vide order dated 13.05.1992 and this date was treated as the date of his fresh appointment in the rank of DSP (BPS-17). A seniority list of DSP was issued on 25.09.1997, wherein the name of the

respondent was shown at Serial No.245. The respondent filed representation seeking that his seniority in the rank of DSP be counted from the date of his absorption and his name in the seniority list be fixed below Mr. Iftikhar Hussan Pirzada, whose name appeared at Serial No.3. Another seniority list dated 13.11.2001 was issued in which the name of the respondent appeared at Serial No.314. The respondent again filed representation. Yet again seniority list dated 18.05.2005 was issued in which the name of the respondent was shown at Serial No.426. The representation of the respondent was rejected vide order dated 04.11.2006. The respondent filed the service appeal in the Punjab Service Tribunal, Lahore, which came to be allowed vide judgment dated 30.06.2008, wherein the respondent was given seniority from the date of his induction in service as DSP i.e. 13.05.1992 and fixing his seniority at Serial No.3-A in the seniority list dated 25.09.1997. The civil petition filed by the Punjab Police before this Court was dismissed vide order dated 30.03.2012. Since the respondent got the relief of his seniority in the rank of DSP from 13.05.1992, he made another representation for granting him *pro forma* promotion in the rank of SP (BPS-18) on the analogy of Mr. Muhammad Riaz Maiken, SSP, who was granted *pro forma* promotion with effect from 31.05.1994. The Departmental Promotion Board granted *pro forma* promotion to the respondent as SP (BPS-18) with effect from 31.05.1994 vide Notification dated 10.07.2014. Having succeeded in obtaining *pro forma* promotion as SP (BPS-18), the respondent, who was encadred as PSP Officer vide Establishment Division Notification dated 11.10.2007 with effect

from 02.06.2005 made a representation to have his seniority in PSP cadre re-fixed according to his seniority of SP (BPS-18). This representation of the respondent was declined by the appellant vide its order dated 10.04.2017, which is as follows: -

“Government of Pakistan  
Cabinet Secretariat  
Establishment Division

No.2-7/2015-CP-VII Islamabad the 10<sup>th</sup> April, 2017

From: M.Zubair Hayat  
Section Officer (CP-VII),  
Ph. No.051-9203198

To: Mr. Khawar Basheer Ahmad,  
Section Officer (Services-II),  
S&GAD, Government of Punjab,  
Lahore

Subject: **REPRESENTATION FOR MODIFICATION OF  
DATE OF ENCADREMENT (31.05.1994) AND  
GRANTING OF FURTHER CONSEQUENTIAL  
BENEFITS ACCORDINGLY.**

I am directed to refer to S&GAD, Government of the Punjab's letter dated 15-09-2015 followed by 11-04-2017 on the subject noted above and to inform that the subject request of Mr.Imtiaz Ahmed Malik, PSP/BS-19 was examined in the Division as per Law/Rule /Policy and the same was regretted by the Competent Authority, in the light of Supreme Court of Pakistan's Judgment dated 15-12-2014 passed in Civil Appeal Nos. 1122 & 1123 of 2011, 431 of 2013, 1343 of 2014 and Criminal Appeal No.436 of 2011, which categorically declared encadrement/ appointment into PSP with prospective effect and not retrospective effect. The officer may accordingly, be informed of the above stated position.

Yours faithfully,

-sd.-

(M.Zubair Hayat)”

4. The respondent filed service appeal in the Federal Service Tribunal, Lahore Bench, Lahore (**the Tribunal**) in which he made the following prayer: -

“In view of foregoing reasons, it is humbly prayed that the order dated 10.04.2017 (ANNEX. A/18) conveyed vide letter dated 13.07.2017 (ANNEX. A/19), received by the appellant on 31.07.2017 passed by the respondent No.1 may kindly be set aside and the appellant may kindly be ordered to be granted seniority qua to his juniors in P.S.P. Cadre (In Punjab Province) i.e. Ghulam Muhammad Kalyar who was junior to Aslam Sahi and was inducted in P.S.P. Cadre amongst the provincial quota and all consequential service benefits be also awarded to the appellant so that the ends of justice are achieved.”

Vide impugned judgment dated 08.10.2018, the Tribunal allowed the appeal granting the respondent the following relief: -

“In view of what has been discussed above, we are of the opinion that PST’s judgment has attained finality and the notification dated 10.07.2014, is still in the field and there was nothing in the judgment of the August Supreme Court of Pakistan, dated 15.12.2014 which rendered the case of the appellant to be revisited. The appeal, therefore, is accepted and the impugned order is set aside.”

6. Mr. Ayaz Shaukat, learned Deputy Attorney General for Pakistan has contended that the Tribunal was not at all justified in distinguishing the judgment of this Court dated

15.12.2014, which was applicable on all fours to the case in hand and was binding on the Tribunal by virtue of Article 189 of the Constitution, in that, this Court has laid down the principle of law of encadrement in the Police Service of Pakistan (**PSP**) and no retrospective encadrement could be granted.

7. Mr. Muhammad Yasin Bhatti, learned counsel for the respondent, on the other hand, contends that once the respondent has been granted *pro forma* promotion as SP (BS-18) with effect from 31.05.1994 vide Notification dated 10.07.2014 his encadrement has to be made accordingly.

8. There is no dispute on facts between the parties and the only issue that has arisen before the Court is whether or not the judgment of this Court dated 15.12.2014 was applicable to the case in hand. We may note that the respondent was encadred as PSP Officer vide Notification dated 11.10.2007 with effect from 02.06.2005. After this Court has given its judgment dated 15.12.2014, this very Notification of encadrement of the respondent as PSP Officer was revised vide Notification dated 07.07.2015 and the date of encadrement of the respondent as a PSP Officer was changed from 02.06.2005 to that of 11.10.2007. This very Notification dated 07.07.2015, admittedly, was not challenged by the respondent. The judgment of this Court dated 15.12.2014 is reported as Muhammad Zafar Ali and others vs. Asim Gulzar and others (2015 SCMR 365). The operative part of which is reproduced as follows: -

“13. It is common ground between the appellants

and the respondents that Rule 11(2)(c) is not in conflict with either subsection (2), subsection (3) or for that matter subsection (4) of section 8 of the Act, 1973. The Rules, 1985 provide 3 modes of appointments to the PSP: initial appointment (Rule 5), appointment of officer of the Armed Forces (Rule 6) and appointment of members of the Provincial Police (Rule 7). The seniority amongst the police officers is regulated by Rule 11. Clause 'a' of sub-rule 2 of Rule 11 provides for seniority between the officers inducted into the Police Service of Pakistan through initial appointment. Clause 'b' regulates the seniority of those appointed in the Police Service of Pakistan from the Armed Forces, whereas clause 'c' deals with the seniority of the police official encadred from the Provinces. The said Rules do not make any provision for determining seniority in between the various groups except to a limited extent under proviso to clause 'b', between initial appointees and the officers coming from the Armed Forces appointed in the same year; that the latter shall rank senior to those appointed through the process of induction through initial appointment. However, there is no provision for regulating seniority between initial appointees and those encadred from the Provinces. Rule 11 therefore only provides criteria for determining seniority within each group. Rule 11(2)(c) is confined to determination of seniority amongst the encadred police officers. Thus, where a question of seniority arises either between those coming from the same Province or between officers encadred from different Provinces the same will be determined in accordance with Rule 11(2)(c). The said rule is thus to be restricted only to the determination of seniority in the encadred group and cannot be made applicable for determining their seniority vis-à-vis the other two groups. When it comes to deciding seniority between members of different groups the relevant date would be that of

their regular appointment. For the purposes of determination of inter se seniority encadred provincial police officers cannot be considered initial appointees in view of the clear mode of appointment for each of the three groups stated in Rules 5, 6 and 7 where 'initial appointment' is confined to those appointed against a cadre post through competitive examination held by the Federal Public Service Commission. We therefore find no conflict of Rule 11(2)(c) with any provision of section 8 of the Act, 1973 and the two can exist in harmony.

14. Another aspect of the case is that Rule 11(2)(c) only provides for determination of seniority and not appointment. The appointments in the encadred group are made under Rule 7 which states that "Members of the Police cadre of a Province shall be appointed to the Service on the basis of selection made on the recommendation of the Governor". Had the intention of the legislation been to make provision for retrospective appointment of such officers from the date on which the vacancy arose in a Province it would have been specifically mentioned in Rule 7. The use of the words "shall be appointed to the service" indicates that the appointment is to be with prospective effect and not retrospective effect. The settled principle is that appointments are always prospective in nature notwithstanding a vacancy occurring earlier. This has been clearly held by this Court in the case of Khushi Muhammad (ibid) where it was held that "it would be against all notions of natural justice that persons who join service in a grade first should be relegated to a junior position as against those who join later, merely because they fill vacancies which were deemed to be reserved for them. The ratio of 50:50 between the direct recruits and the departmental promotees merely related to the policy of their recruitment to the grade and is not to be extended to the fixation of

their seniority or their confirmation *inter se*." The appointment of the encadred police officers from the Provinces is to be made with prospective effect and retrospective effect can be given to such appointments only for the limited purpose of determining their own *inter se* seniority in accordance with Rule 11(2)(c) of the Rules, 1985."

9. In the face of the above observation of this Court, more particularly, setting at rest the question of law on the point of encadrement, this Court has held that "The appointment of the encadred police officer from the Provinces is to be made with prospective effect". Only after encadrement as PSP Officer has been made of a police official from a Province, his *inter se* seniority among the encadred officers shall be determined under Rule 11(2)(c) of the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985 but the very encadrement has to be from the date when the encadrement as PSP Officer has actually been effected and counted as such. The case of the respondent is not that of *inter se* seniority of the police officers from the provinces, therefore, Rule 11(2)(c) *ibid* is not applicable in the instant case.

10. In view of the above state of law, we are mindful that the Tribunal in the impugned judgment has not adverted itself to the judgment of this Court noted above, and thus, committed grave illegality in not following the same, which had application to the case in hand and was binding on the Tribunal under Article 189 of the Constitution. The appeal is, therefore, allowed, the impugned judgment dated 08.10.2018 is set aside and the service appeal filed



by the respondent is dismissed. C.M.As No.7534 and 7535 of 2020 are also disposed of.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

Bench-I  
Islamabad  
27.11.2020  
APPROVED FOR REPORTING  
Rabbani\*/