

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

**PRESENT:**

MR. JUSTICE SARDAR TARIQ MASOOD  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITION No. 419 OF 2019**

(Against the judgment of Federal Service Tribunal, Karachi Bench dated 03.12.2018, in Appeal No.51 (K) CS of 2018)

Kashif Aftab Ahmed Abbasi

...Petitioner

**VERSUS**

Federation of Pakistan through Secretary  
Establishment Division, Islamabad

...Respondent

For the Petitioner:

Mr. Abdur Rahim Bhatti, ASC  
Malik Naeem Iqbal, ASC  
Ch. Akhtar Ali, AOR

For Respondent:

Mr. Ayaz Shaukat, DAG

Date of Hearing:

06.06.2022

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.** This Civil Petition for leave to appeal is directed against the judgment dated 03.12.2018, passed by learned Federal Service Tribunal, Karachi Bench in Service Appeal No. 51 (K) CS/2018, whereby the Appeal filed by the petitioner was dismissed.

2. The short and snappy minutiae of the case are as under:-

The petitioner joined Pakistan Navy and promoted as Lieutenant on 01.01.2004. While performing his duties as Lieutenant, he was appointed ADC to the Governor Sindh in 2006. During the posting, the petitioner was given an option to join Federal Civil Service. The petitioner joined the selection process and on the recommendations of the Federal Public Service Commission, he was inducted in the Police Service of Pakistan in BS-17. The petitioner was called upon to undertake 35<sup>th</sup> Common Training Program (CTP) but the Governor Sindh refused to relieve the petitioner and requested for his deferment. According to the petitioner, he was deferred every year on the requests of Governor Sindh till 2015, i.e. 42<sup>nd</sup> CTP.

Despite that, he claimed antedated seniority from 2007 with 35<sup>th</sup> CTP members of service. He preferred a departmental appeal on 02.10.2015 which was rejected, thereafter; he filed service appeal before learned Federal Service Tribunal which was also dismissed.

3. The learned counsel for the petitioner argued that the petitioner was appointed in terms of Police Service of Pakistan (Composition, Cadre & Seniority) Rules, 1985, hence he was entitled to the seniority from the date of his regular appointment without qualifying common training programme. He further argued that the petitioner was discriminated in not assigning seniority from the date of regular appointment with 35<sup>th</sup> CTP. The petitioner was prevented from joining Common Training Program in the exigency of service and not for any reason attributable to him, therefore, he could not be denied seniority from the date of regular appointment in terms of Rule 11(2) of Police Service of Pakistan (Composition), Cadre & Seniority) Rules, 1985. It was further contended that the Rule 7 of Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990 contemplates determination of seniority amongst probationers whereas the Rule 11(2) of Police Service of Pakistan (Composition), Cadre & Seniority Rules, 1985, provides that seniority to the service shall be counted from the date of regular appointment.

4. The learned DAG argued that the petitioner was inducted in PSP on reserved quota of Armed Forces. In the appointment letter dated 31.08.2007, it was clearly mentioned that the seniority shall be determined after Passing Out Examination in accordance with Rule 7 of the Occupational Group and Services (Promotion, Training & Seniority) Rules, 1990. The terms and conditions of appointment were accepted by the petitioner without any reservation but he did not join training in 35<sup>th</sup> CTP and on continuous requests made from time to time, he was allowed deferment from 35<sup>th</sup> CTP till 42<sup>nd</sup> CTP with the

approval of the Secretary Establishment Division on the request of the then Governor Sindh. After eight deferments, the petitioner joined 43<sup>rd</sup> CTP, thereafter, his inter-se seniority was fixed with 43<sup>rd</sup> CTP at Serial No. 21. It was further contended that seniority of the petitioner was fixed in accordance with para 1 (a & b) of the Establishment Division's O.M.No.1/3/2014-T-V dated 23.09.2015. It was further contended that the seniority of the probationers was to be determined after Final Passing Out Examination under Rule 7 of Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990. The petitioner completed his CTP with 43<sup>rd</sup> CTP and his inter-se seniority was fixed accordingly.

5. Heard the arguments. The record reflects that on recommendation of the Federal Public Service Commission, the competent authority issued an offer letter to the petitioner on 31.08.2007 for his induction in the Police Service of Pakistan in BS-17 on certain terms and conditions of service which, inter alia, provided that the petitioner was required to qualify every examination to the satisfaction of the head of training/Educational Institution where he shall undergo training. So far as the seniority is concerned, it was clearly mentioned in Condition No.2 (ix) of the offer letter that the seniority of the petitioner in the group/service shall be determined by the appointing authority after the final passing out of examination in accordance with Rule 7 of the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990. In response to this offer letter, the petitioner communicated his acceptance to the terms and conditions of appointment vide letter dated 11.09.2007 to the Deputy Secretary, Establishment Division, Government of Pakistan, Islamabad. Under Rule 7 of the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990, it is clearly provided

that the seniority of the probationers shall be determined by the appointing authority after final passing out examination. In the appointment letter of the petitioner referred to above, it is further provided in clause 2 (i) that the petitioner will remain on probation for a period of two years or for such period as government may extend for the successful completion of training, the probationary period shall not be terminated until completion of Common Training at the Civil Services Academy, Lahore, Specialized Training at National Police Academy, Islamabad and passing out the prescribed examination including the final passing out the examination which will be conducted by the FPSC or any other government specified educational institution. It is further divulges from the record that vide letter dated 06.12.2008, the Civil Services Academy on behalf of Director General Civil Services Academy conveyed congratulation to the petitioner on his selection to the Police Services of Pakistan and he was welcomed to join campus of Civil Services Academy for 36<sup>th</sup> Common Training Programme on 15.01.2009, however, the petitioner could not join as he was not relived by the Governor Sindh where the petitioner was performing the job of ADC. The deferment of the petitioner was requested by the Governor with the suggestion that the petitioner may be allowed to join 37<sup>th</sup> Common Training Programme in the subsequent year.

6. The petitioner was being continuously called upon to join Common Training Programme but on continuous requests of his deferment the matter was lingering on. It is clear beyond any shadow of doubt that even in the appointment letter it was clearly provided that the petitioner will remain on probationary period until completion of Common Training programme in Civil Services Academy and regardless of inviting the petitioner each and every time to join CTP,

requests for his continual and unending deferments were being made and according to the petitioner, he was not being relived for joining CTP by the Governor Sindh as he was performing very crucial job of ADC in the Governor House. No less than 8<sup>th</sup> consecutive deferments were allowed on requests and eventually the petitioner joined 43<sup>rd</sup> C.T.P. after that his inter-se seniority was fixed with 43<sup>rd</sup> CTP at Serial No.21. The completion of training was mandatory which the petitioner failed to join until 43<sup>rd</sup> CTP. It is also beyond reasonable comprehension that though the petitioner was willing to join CTP but under some compelling circumstances, he was prevented and his continuous deferments were being asked without his consent or unwillingness. Nothing placed on record that he ever raised any objection or demur that he wanted to join training rather than enjoying the post of ADC. We are also not persuaded that there was so serious scarcity and drought of proficient officers to undertake the job of ADC except the petitioner henceforth, the presence of petitioner was so indispensable and de rigueur that except him no other person was accessible or easy to get to serve the errand of ADC with excellence than the petitioner. Nothing was placed on record to show that he ever requested the Governor Sindh to release him for joining CTP. Keeping in view his complete silence at least for 8<sup>th</sup> deferments, the possibility cannot be ruled out that the deferments were requested and allowed with his consensus and acquiescence.

7. According to Rule 11 of the Police Service of Pakistan (Composition, Cadre & Seniority) Rules, 1985, the members of the Service referred to in clauses (a) and (b) of sub-rule (2) of rule 3 shall retain the same seniority as is shown in the gradation list as it stood immediately before the commencement of these rules. It is inter alia provided in sub-rule (2) that the persons appointed to the Service in

accordance with these Rules shall count seniority from the date of regular appointment against a post in Service and according to Rule 5, the initial appointment to the Service against cadre posts in basic Grade 17 is to be made on the basis of the results of the competitive examinations held for the purpose by the Commission. Whereas in sub-rule 2 it is clearly mentioned that unless the appointing authority in any case otherwise directs, a person appointed to the Service under sub-rule (1) shall be appointed to the Service as a probationer in accordance with the rules which the Federal Government may make from time to time, including rules and orders relating to training during probation, and shall be required to undergo such departmental training and pass such departmental examinations as may be specified by the Federal Government or the Government of the Province to which he is allocated.

8. It is further reflects that on 23.09.2019, provisional inter se seniority of PSP probationers of 43<sup>rd</sup> CTP was issued in the light of Rule 7 (4) and (5) of Occupational Groups and Service (Probation, Training and Seniority) Rules, 1990 in which the name of the petitioner was at Serial No.21 but he wanted that his seniority should be fixed with 35<sup>th</sup> CTP without qualifying requisite training programme which means that seniority of many person will be severely affected without providing any opportunity of being heard to them. The law is somewhat and moderately well settled in series of dictums of superior Courts highlighting the conspectus that a particular claim of promotion or seniority is not a fundamental right and a person is disentitled to claim seniority from a date he was not borne or take on in the service. In the philosophy or jurisprudence of service laws, no one has a vested right to a particular promotion or particular seniority but it is always governed and regulated in

accordance with the applicable rules and regulations with a venue of consideration for progression including the fixation of seniority in line with the criteria provided under the applicable rules and such consideration can only be invited if all requisite conditions or preconditions are fulfilled by such claimant enabling him to join the queue or stand in line. Though it is an admitted fact that the petitioner joined training with the batch of 43<sup>rd</sup> CTP but he is aspiring and ambitious for the fixation of his seniority with the batch of 35<sup>th</sup> CTP without passing out in that training course which besides being unpersuasive and irrational, also quite unfamiliar and alien to the applicable rules governing and regulating the principles envisaged for fixation of seniority to any particular post or cadre. At this juncture reference of Office Memorandum dated 23.09.2015 issued by Establishment Division, Government of Pakistan for determination of inter-se seniority of officers of all Occupational Groups and Services is quite significant. The relevant paragraph (a) & (b) are reproduced as under:-

(a) All cases pending or future of probationers/officers received for determination of seniority due to deferment will have seniority fixed with the batch, these probationers/officers undergo CTP and not their original CSS batch. Accordingly, all past cases that have been decided otherwise i.e., seniority fixed with original CSS batch will be reverted to bring these at par with the new policy issued vide establishment Division O.M. No.1/3/2014-T-V dated 05.03.2015.

(b) If a probationer is granted deferment after joining CTP with original CSS batch, his/her seniority will be fixed with the batch he/she undergoes/complete the CTP.

9. In order to streamline the proper administration of a service, cadre or post, the appointing authority is required to make out a seniority list of the members, but no vested right is conferred to a particular seniority in such service, cadre or post. No antedated seniority can be

claimed as a vested right. The seniority of the petitioner was rightly fixed in 2015 which is also reminded us the celebrated turn of phrase "Birds of a feather flock together" that is somewhat communal in everyday speech used to refer to the resemblance, uniformity and equivalence within a group of people who are permitted to join and sensed safeguarded and shielded around one another. According to Black's Law Dictionary, Ninth Edition, "antedate" means to affix with a date earlier than the true date; backdate. Similarly, in the Wharton's Concise Law Dictionary, "antedate" means to date a document before the day of its execution and to affix with a date earlier than that true date. Whereas in Legal Thesaurus, Regular Edition, William C.Burton, "antedate" means to affix an earlier date; anachronize; assign to an earlier date; date back; date before the true date; date before the true time; date earlier than the fact; foredate; predate; set an earlier date and transfer to an earlier date. The learned Tribunal in its Judgment also considered the venue of progression with mathematical calculation and further discussed the required minimum length of service for promotion. According to factual matrix, the petitioner joined 43<sup>rd</sup> CTP in the year 2015 hence his prospective leeway or possibility of promotion would be matured after five years for BS-18. Had the appeal of the petitioner allowed by the learned Federal Service Tribunal, it would deem to have been allowed antedated seniority in BS-17 with 35<sup>th</sup> CTP contenders in the year 2007 that would tantamount to nurture qualifying service for promotion for BS-18 & BS-19 without passing out 35<sup>th</sup> CTP. The petitioner had entreated for directions against the respondents to grant antedated seniority with effect from 2007 with all consequential benefits which request or expectation was beyond the rules and norms. It would also inequitable and unreasonable to the other members of service and obviously overturn and obliterate their



seniority who were neither arrayed before the Service Tribunal nor was any opportunity afforded to them to respond and defend their seniority.

10. In view of above discussion, we do not find any irregularity and perversity in the impugned judgment, this civil petition is dismissed and leave is refused.

Judge

Judge

Islamabad the  
6<sup>th</sup> June, 2022  
Khalid  
Approved for reporting