

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

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Mazhar Alam Khan Miankhel  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

**CIVIL APPEAL NO.1000 of 2020**

[Against the judgment dated 22.06.2020, passed by the High Court of Sindh, Karachi in C.P.No.D-253 of 2015]

***Chairman National Accountability Bureau  
through Prosecutor General  
Accountability, NAB Headquarters, Sector  
G-5/1, Islamabad***

*...Appellant (s)*

***Versus***

***Faraz Ahmed Sherwani son of Afroz  
Ahmed Sherwani and others.***

*...Respondent(s)*

For the Appellant(s) : Mr. Imran ul Haq, Deputy Prosecutor  
General, NAB  
Mr. Muhammad Sharif Janjua, AOR

For Respondents No.1-2 : Mr. Muhammad Shoaib Shaheen,  
ASC

Date of Hearing : 09.06.2021

**O R D E R**

**GULZAR AHMED, CJ.-** The Respondents No.1 & 2 (the respondents) were initially appointed as Regular Stenographers (BPS-15) vide Notification dated 29.07.2004 by the appellant. The Finance Division, Government of Pakistan issued Office Memorandum dated 23.12.2011, by which the post of Stenographer was up-graded from BPS-15 to BPS-16. The benefit of such Office Memorandum was given to the respondents and they were up-graded in BPS-16 vide Notification dated 31.07.2012. In the meantime, the respondents were promoted to

the post of Personal Assistant (BPS-16) with effect from 27.06.2012 vide Notification dated 05.07.2012. The Respondent No.2 along with one Jawaid Ali Panhwar filed a Constitution Petition No.2056 of 2013, in the High Court of Sindh at Karachi (**the High Court**), in which prayer was made that the respondents/petitioner be granted promotion in BPS-16 with effect from 31.05.2007, when the vacancies became available and till such time the respondents be restrained from holding Departmental Promotion Committee (**DPC**) for grant of promotion and also prayed that the post of Personal Assistant be up-graded as done in the case of Private Secretary, Stenographer and Stenotypist. Para-13 of this very Constitution Petition, the respondents/petitioners have alleged as follows: -

“That it may be submitted that six posts of Private Secretary (BPS-17) remained vacant for filling up through 100% promotion quota amongst Personal Assistant (BPS-16) in NAB. But despite promotions to the post of (BPS-17) from amongst the officers of NAB & Regional NAB's, the Departmental Promotion Committee constituted on 06.02.2013 in NAB HQ Islamabad did not follow the method of promotion shown in the NAB TCS. These vacant posts have been filled amongst the 4 X Personal Assistant (BPS-16) and 2X Stenographer (BPS-16) without any legal/ cogent reason by way of promotion vide Notification dated 08.02.2013, due to which the Personal Assistants (BPS-16) including the Petitioners have suffered grave injustice besides huge financial loss on the one hand and have lost their seniority on the other hand. The method of promotion for Stenographers to Personal Assistant and

Personal Assistant to Assistant Director/Private Secretary should have been followed in accordance with the NAB TCS which has not been done in the instant promotion case. Hence, the whole process has become illegal, arbitrary and discriminatory qua the fundamental rights of the affected persons including the Petitioners have been violated."

2. This very Constitution Petition was disposed of by the High Court of Sindh vide its order dated 11.12.2013 with observations as follows: -

The case of the petitioners is that they were promoted as Stenographers/Personal Assistants and are performing their duties in BPS-16. The petitioners are claiming that the Respondents No.5 and 6 were juniors to them in service, but in the DPC they have been considered and promoted to the posts of Private Secretaries/Assistant Directors in BPS-17. It is further alleged by the learned counsel for the petitioners that the petitioners were promoted from the post of Stenographers to the Personal Assistants, while the Respondents No.5 and 6 were promoted from the post of Stenographers/Personal Assistants to the post of Private Secretaries/Assistant Directors. The petitioners prayed that they may be treated at par and may not be discriminated while they are also serving with the Respondent No.1 for the last several years.

Mr. S. Amjad Ali Shah, Special Prosecutor for NAB/Respondents No.1 to 4 as well as Mr. Muhammad Asif Mangi, learned Standing Counsel both have contended that the case of the petitioners will be considered in the next

DPC and if they will be found eligible, they will be promoted on the basis of their performance and previous ACRs and they will be treated alike with the Respondents No.5 and 6. Upon such statement, learned counsel for the petitioners are satisfied.

This petition is disposed of with the directions to the Respondents No.1 to 4 to consider the case of the petitioners in the next DPC."

3. Pursuant to this order of the High Court, the cases of the respondents were placed before the DPC. Vide Notification dated 27.05.2014, the respondents were promoted on regular basis to the post of Private Secretary (BPS-17) with effect from 22.05.2014. The respondents filed Constitution Petition No.253 of 2015 in the High Court of Sindh challenging the Notification dated 27.05.2014 being contrary to the rules and fundamental rights of the respondents and sought direction to consider the respondents for promotion against the post of Assistant Director (BPS-17) with effect from 24.07.2012, the date when the respondents became eligible for promotion in accordance with their 25% prescribed quota available for promotion.

4. This very constitution petition filed by the respondents was dismissed by the High Court vide judgment dated 24.10.2017. The review application filed by the respondents before the High Court was also dismissed vide order dated 30.10.2017. The respondents filed Civil Petition No.687-K of 2017 in this Court. Vide order dated 31.12.2018, this Court passed the following order:

“Having heard the learned counsel and perused the record and further documents that have been placed on record through CMA No. 1867-K of 2018 whereby the creation of the post, method of its appointment and adaptation of the government rules by the NAB were not before the High Court, therefore, we deem it appropriate by consent of the parties to remand the matter to learned bench of High Court to consider the documents. The impugned judgment is being set aside without dilating upon the implication of such documents which are sought to be placed before us. The documents sought to be filed by the NAB before this court shall be filed before learned bench of High Court and the bench may on the consideration of such documents or any other documents as may be sought to be placed by the parties may proceed to hear the matter afresh and decide the same without being influenced by its earlier decision within a period of not more than six months from the date of this order.

Petition is accordingly converted into appeal, Impugned Judgment is set aside. Matter is remanded. C.P. No. D-253 of 2015 shall be deemed to be pending and shall be decided as directed above.”

5. Pursuant to the order of remand through the impugned judgment, the High Court has allowed the constitution petition filed by the respondents striking down the notification dated 27.05.2014, whereby the respondents were promoted to the post of the Private Secretary (BPS-17) and directed to re-visit the nomenclature of the respondents so as to suitably designate them against any of the notified posts in place under TCS-2002 as on

27.05.2014. We may note that the High Court has not specifically granted relief to the respondents that they be promoted to the post of Assistant Director (BPS-17) rather has directed the appellant to re-visit the nomenclature of the respondents and suitably designate them as per TCS-2002. So it means that the nomenclature to be given to the respondents in terms of TCS-2002 on their promotion from the post of Personal Assistant (BPS-16) could be anyone i.e. Assistant Director, Investigation Officer or Section Officer (BPS-17), because in the TCS-2002, these are the three posts available for promotion from the post of Personal Assistant (BPS-16). We note that while giving the impugned judgment, the High Court did not materially comply with the order of remand dated 31.12.2018, where it was specifically noted that further documents placed on record through CMA No.1867-K of 2018, whereby creation of the post, method of its appointment and adaptation of the government rules by the NAB were not before the High Court and therefore, by consent of the parties the matter was remanded to the High Court to consider the documents.

6. In the first place, we note that respondent No.2 in his earlier Constitution Petition No.2056 of 2013 before the High Court of Sindh has specifically made a mention that six posts of Privates Secretary (BPS-17) remained vacant for filling up through 100% quota amongst Personal Assistants (BPS-16) in NAB. Respondent No.2 has, thus, admitted as a fact that there were posts of Private Secretary (BPS-17), which were provided to be fill

in through 100% promotion quota from amongst the Personal Assistant (BPS-16) in NAB. This very fact, which was available on the record was omitted to be considered by the High Court.

7. We have gone through the history of employment of Private Secretary (BPS-17) in the establishment of NAB and have noted that as back as on 15.11.2002, three temporary posts of Private Secretary (BPS-17) were created. The very TCS-2002 was amended by Corrigendum dated 19.02.2003 and the post of Private Secretary (BPS-17) was added in TCS-2002. The addition of the post of Private Secretary (BPS-17), however, was cancelled from TCS-2002 vide Corrigendum dated 28.09.2004. Though this cancellation was made but the NAB continued to employ Private Secretaries in BPS-17 on temporary basis, in that, three temporary posts of Private Secretary (BPS-17), were extended for the Financial Year 2005-2006. One more temporary post of Private Secretary (BPS-17) was created vide order dated 15.02.2006 and again one more post of Private Secretary (BPS-17) was created vide order dated 24.03.2006. Five temporary posts of Private Secretary (BPS-17) were extended for one year till 31.05.2007. These were continued for the Financial Year 2007-2008 vide order dated 22.07.2007. On 02.01.2008, three temporary posts of Private Secretary (BPS-17) were converted into permanent posts. Two Private Secretary (BPS-17) who remain on temporary posts were extended for the Financial Year 2008-2009 vide order dated 11.07.2008 and the same were also continued for the Financial Year 2009-2010 vide order dated 10.12.2009 and for the Financial

Year 2011-2012 vide order dated 28.07.2011. Vide order dated 30.01.2012, two temporary posts of Private Secretary (BPS-17) were converted to permanent posts. Thus, on this date there were five permanent posts of Private Secretary (BPS-17) in NAB. Again on 01.06.2012 one temporary post of Private Secretary (BPS-17) was created and on 10.07.2012, five more temporary posts of Private Secretary (BPS-17) were created. On 29.03.2013, four more temporary posts of Private Secretary (BPS-17) were created. In all, there were thus, ten temporary posts of Private Secretary (BPS-17) which continued until Financial Year 2018-2019 vide orders dated 18.07.2013, 23.07.2014, 10.07.2015, 31.07.2016, 07.07.2017 and 03.07.2018. Thus, at the time when the notification dated 27.05.2014 was issued, by which the respondents were promoted on regular basis on the post of Private Secretary (BPS-17), there existed in the organization of the NAB, five permanent posts and ten temporary posts of Private Secretary (BPS-17).

8. To support that the respondents were justifiably promoted to the post of Private Secretary (BPS-17), the appellant has relied upon the above orders by which the posts of Private Secretary (BPS-17) were created in NAB. The respondents have further taken a stand that in exercise of the powers under paragraph No.14.08 of TCS-2002 the NAB has adopted the rules applicable to the other civil servants on 24.10.2005, which specifically provides, *inter alia*, as follows:

It is further pointed out that despite these FIA posts, the recruitment rules of following three



categories of NAB's own posts are also required to be framed out since their creation: -

- a. Private Secretary (BPS-17) x 3 posts
- b. Librarian (BPS-17) x 1 post
- c. Protocol Officer (BPS-16) x 1 post

Foregoing in view, in light of Deputy Financial Advisor, Finance Division's remarks and to proceed further in the case, the following course of actions are proposed: -

- a. ....
- b. ....
- c. We may fill the three posts of PS (BS-17), one post of Librarian (BS-17) and one post of Protocol Officer (BS-16) by adopting the rules applicable to the other civil servants in light of para 14.08 of NAB TCS;
- d. We may fill all the vacant posts related to promotion quota by holding the respective Departmental Selection Committees meeting or by grant of current charge to meet the remarks of Deputy Financial Advisor; and"

9. This adoption was made with the approval of the Chairman, NAB, given on 24.10.2005. Further reliance has been placed by the respondents on SRO No.99(KE)/87, dated 22.10.1987, which provides as follows:

"In pursuance of sub-rule(2) of rule 3 of the Civil Servants (Appointment, Promotion and transfer) Rules, 1973, the following method, qualifications and other conditions are laid down for appointment to the post of Private Secretary (BPS-17) to the Secretary/Additional Secretary

and other officers in BPS 22/21 in the Federal Government: -

2. *Method of Appointment:-* Appointment to the post shall be made by promotion on the basis of selection by the DPC of the Ministry/Division/Department concerned and with the approval of the appointing authority, from amongst the regularly appointed Stenographers of the Ministry/Division/Department concerned:

Provided that failing promotion, the post of Private Secretary shall be filled by transfer in accordance with para 4 below.

3. *Conditions for Promotion:-* Promotion to the post in column 1 below shall be made by selection from amongst the persons who hold the post specified in column 2 on a regular basis and possess qualifications and experience prescribed in column 3:

Name of the Post	Persons eligible	Conditions of eligibility
Private Secretary (BPS-17)	Regularly appointed Stenographers, including those in the selection grade.	Seven Year satisfactory Service as stenographer, including service in selection grade.

10. It seems that for appointment to the post of Private Secretary (BPS-17), the respondents have adopted the rules as mentioned in the SRO dated 22.10.1987 and this very aspect of adoption was not disputed from the side of the respondents, rather as noted above, respondent No.2 in his earlier constitution petition before the High Court had admitted as a fact that the posts of Private Secretary (BPS-17) were available in the establishment of NAB which were to be filled in by 100% promotion quota from amongst the Personal Assistants (BPS-16).

11. All these documents, which were placed on the record

and landing support to the case of the appellant that there existed the posts of Private Secretary (BPS-17) in the organizational set up of NAB and said posts were to be filled in through 100% promotion quota from amongst the Personal Assistants (BPS-16), remained altogether concealed or at least not adverted to by the learned Division Bench of the High Court in the impugned judgment, although this Court while remanding the matter has emphasized that all these documents be considered by the High Court.

12. The question remains that what is the effect of the introduction of the posts of Private Secretary (BPS-17) in the organizational set up of the appellant, more particularly, in view of TCS-2002. It is admitted that TCS-2002 was formally amended vide SRO No.1106(I)/2015, dated 30.10.2015, wherein in "Method of Appointment" at Serial No.9, the post of Private Secretary (BPS-17) is mentioned and the method of appointment is 100% by promotion. The post of Stenographer (BPS-16) has been omitted and the post of Assistant Private Secretary (BPS-16) has been created. In the "Conditions for Promotion" to the post of Private Secretary (BPS-17) the persons eligible for promotion are Assistant Private Secretary (BPS-16) rather than Stenographer (BPS-16). This very SRO although was issued on 30.10.2015 and published in the Gazette of Pakistan on 11.11.2015 but in actual fact, the posts of Private Secretary (BPS-17) already existed in the organizational set up of the appellant way back from 15.11.2002 and on 02.01.2008, three temporary posts of Private Secretary

(BPS-17) were converted into permanent posts and then on 30.01.2012, two more posts of Private Secretary (BPS-17) were converted into permanent posts. The respondents were aware of the fact that these posts of Private Secretary (BPS-17) did exist in the NAB and these posts of Private Secretary (BPS-17) were being filled up by 100% promotion from amongst the post of Personal Assistant/Stenographer (BPS-16), which is apparent from the plea of respondent No.2 in his very Constitution Petition No.2056 of 2013.

13. The respondents have also referred to the notification dated 30.04.2007 whereby Mr. Shaukat Ali, Mr. Liaqat Ali, Mr. Qaleem-ud-Din Qureshi, Mr. Muhammad Shabbir and Mr. Tariq Mehmood were promoted from the posts of Personal Assistants (BPS-16) on the recommendation of DPC as Private Secretary (BPS-17). Further, Mr. Muhammad Maroof, Stenographer (BPS-16), Mr. Arshad Mehmood, Personal Assistant (BPS-16), Mr. Arshad Khan, Personal Assistant (BPS-16), Mr. Muhammad Sohail, Personal Assistant (BPS-16), Mr. Riasat Ali Khan, Stenographer (BPS-16) and Mr. Mukhtar Ali, Personal Assistant (BPS-16) were promoted to the posts of Private Secretary (BPS-17) vide notification dated 08.02.2012. Through the notification impugned by the respondents dated 27.05.2014, Syed Waqar Hussain, Ms. Izzat Khatoon, Mr. Iltaf Hussain, Mr. M. Khalid Farooq, Mr. Faraz Ahmed Sherwani and Mr. Muhammad Zafar Ahmad, (the last two are the respondents) were all promoted to the posts of Private Secretary (BPS-17). Apparently, only the

respondents have challenged the notification, while the remaining seem to have accepted their promotion, as there is nothing on record to show that they have not accepted their promotion to the posts of Private Secretary (BPS-17).

14. There is no dispute that TCS-2002 did not mention the post of Private Secretary (BPS-17) but the fact remains that firstly the Private Secretary, though on temporary post, was appointed in the NAB on 15.11.2002. Subsequently, more Private Secretaries were appointment on 15.02.2006, 24.03.2006, 01.06.2012, 10.07.2012 and 29.03.2013, while three temporary posts were converted into permanent posts on 02.01.2008 and further two permanent posts of Private Secretary (BPS-17) were created on 30.01.2012. It is also not disputed that the posts of Private Secretary (BPS-17) were created in NAB by adopting the rules applicable to the Government Servants. Thus, the posts of Private Secretary (BPS-17), apparently, were created by following the rules as were applicable to the Government Servants and this was done under paragraph 14.08 of TCS-2002, which provides as follows:

“In matters not covered, under these TCS the employees of the 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.”

Thus, on the basis of this very paragraph in TCS-2002, in matters not covered under the TCS-2002, the employees of NAB were to be governed by the rules as applicable to the other civil servants and instructions issued from time to time by the Federal

Government on the subject. The rules applicable to the civil servants for appointment to the posts of Private Secretary (BPS-17) were adopted by NAB on 24.10.2005 and as quoted above, the rules applicable to other civil servants in the light of paragraph 14.08 of TCS-2002 were applicable to the posts of Private Secretary (BPS-17). Thus, as it appears that the posts of Private Secretary (BPS-17) were created in NAB by adopting the rules, as noted above, on 24.10.2005, for all intends and purposes, in our view, TCS-2002 stood amended by adoption of the rules applicable to other civil servants in respect of the posts of Private Secretary (BPS-17) on 24.10.2005. When the posts were created by following the rules as were applicable to the other civil servants, obviously the manner in which they were to be filled in was also to be adopted and such adoption was provided in SRO dated 22.10.1987 where the posts of Private Secretary (BPS-17) were to be filled in from amongst the Stenographers, including those in the Selection Grade. The post of Stenographer and the post of Personal Assistant, both being in BPS-16, their line of promotion as per rules was to the post of Private Secretary (BPS-17). Reference in this regard is made to the case of Muhammad Amin v. Chief Engineer, Irrigation and others [2012 PLC (C.S.) 834], wherein this Court has observed as follows:-

"7. The appellant's case for the purpose of promotion to the post of Superintendent will depend upon the Rules applicable to him in the year 1993. The two relevant Rules are, as stated above, of 1962 and 1998, on which reliance is placed by the appellant and the amendments brought about in the years 1983, 1985 and 1986, on which the case of

the respondents rests. Undoubtedly, under the 1962 Rules, made especially for the Irrigation and Power Department, there was no mention of Senior Scale Stenographer and promotion to the post of Superintendent was to be made from combined seniority list of Stenographers and Assistants. These Rules for the Irrigation and Power Department were entirely replaced by the 1998 Rules, wherein the post of Senior Scale Stenographer was also incorporated and promotion to the post of Superintendent was to be made from Senior Scale Stenographers and not Stenographers. In between these two Rules, the Governor of Punjab, in exercise of the powers conferred upon him by section 23 of the Punjab Civil Servants Act, 1974, amended the Rules in the year 1983, whereby the post of Senior Scale Stenographer was introduced and promotion to the post of Superintendent was to be made from the Senior Scale Stenographers. These Rules were further amended in the years 1985 and 1986 but as far as the method of the said promotion, the Rule remained unchanged. These Rules were made applicable to all the Government Departments of Punjab, which obviously included the Irrigation and Power Department. The 1962 Rules thus stood amended by implication. The learned counsel for the appellant had referred to the advice of December, 1990 given by the Government of Punjab, Services, General Administration and Information Department, to the Irrigation and Power Department, stating that the service Rules of the latter Department needed to be amended so as to reflect the change, to include the post of Senior Scale Stenographer, from which promotion is to be made to the post of Superintendent. This advice, however, does not mean that the 1983 amendment in the Rules remained inapplicable to the Irrigation and Power Department. The advice of changing Rules was meant to remove any confusion in the Irrigation Department regarding promotion to the post of Superintendent. The advice explicitly stated that the promotions were to be made in accordance with the changed Rules. It was made clear that under the scheme of Basic Pay Scale the original posts of Stenographer

and Stenotypist have been changed to those of Senior Scale Stenographer and Stenographer, respectively. The 1998 Rules relating to the Irrigation and Power Department were replacement of the 1962 Rules and the change already made about by the 1983 amendment were reflected therein. It cannot be said that the change regarding promotion in the Irrigation and Power Department was made for the first time in the year 1998. It was already in existence since 1983 and thus expressly incorporated in the year 1998."

The principle laid down by this Court as noted above is fully applicable to the case in hand.

15. For all the reasons discussed above, we find that the impugned judgment of the High Court is not sustainable. The same is, therefore, set aside and the appeal is allowed.

**CHIEF JUSTICE**

**JUDGE**

Bench-I  
'APPROVED FOR REPORTING'  
Rabbani/\*

**JUDGE**

Announced on \_\_\_\_\_ at \_\_\_\_\_.

**CHIEF JUSTICE**