

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

**Present:**

**Mr. Justice Mushir Alam**  
**Mr. Justice Qazi Faez Isa**  
**Mr. Justice Sajjad Ali Shah**

**Civil Appeal No. 322 of 2018.**

(Against the order dated 4.11.2016 passed by the  
Federal Service Tribunal in Appeal No. 161(K)CS/2015)

Chairman, FBR Through Member Administration.

...Appellant (s)

**VERSUS**

Muhammad Asfandyar Janjua, etc.

...Respondent(s)

For the Appellant (s) : Hafiz S. A. Rehman, Sr. ASC

For the Respondent-1 : In person.

Date of hearing : 30.05.2018

**JUDGMENT**

**Sajjad Ali Shah, J.** Leave was granted by this Court on 6.3.2018 to examine as to whether “*in cases where length of service is provided for promotion, the time spent in litigation prior to the first appointment of civil servant could be counted towards such length of service*”.

2. Briefly, the respondent No.1 passed civil services examinations conducted by the Federal Public Service Commission in the year, 1996. However, he was treated to be domiciled of Punjab instead of Sindh (Urban) and consequently could not be declared successful on account of high merit list of Punjab. The respondent in the year 1997 challenged such treatment by filing a Constitutional Petition before the High Court of Sindh, which was allowed on 29.5.2003 upon his furnishing an undertaking that he would not claim the seniority. The said order was maintained by this Court by declining leave vide order dated 15.11.2006. The respondent, on 6.1.2008, was finally allowed to proceed for training in Sindh Civil Academy from where he passed the mandatory final passing out examination on 1.9.2009. It also appears to be a matter of record that the respondent from

1996 to 2007 had remained abroad and according to his claim has undertaken various exams as well as remained on job with world's best multinational companies. It also appears to be an admitted position that after requisite training and on completion of five years mandatory service, the respondent on 6.9.2012 was promoted from BS-17 to BS-18. The respondent claimed to have been aggrieved when the Departmental Selection Board in its meeting held on 26.11.2014 did not recommend his name for promotion from BS-18 to BS-19 for want of 12 years mandatory service in BS-17 and above, which length of service according to the department, the respondent would complete on 26.8.2019. The respondent consequently approached the Federal Service Tribunal which through the impugned order directed the appellant *"to give benefit of placement of the appellant with 25<sup>th</sup> Common, however, he would be treated at the bottom of the list of that batch and will also be given the necessary benefits of length of service and his pay will be fixed after allowing the notional increments all along so that keeps up with his batch mates, but the salary and allowance for that period would not be disbursed to him"*.

3. Hafiz S. A. Rehman, learned Sr. ASC for the appellant contends that in compliance of the judgment of this Court, the Secretary Establishment approved creation of vacancy in Income Tax Group in CE-1996 and its allocation to the respondent against Sindh (U) quota. He further submits that the respondent was issued offer of appointment on 22.2.2007 and clause-VII of such appointment letter stipulated that the seniority of the respondent in the examination group would be determined by the Government after the final passing out in accordance with Rule VII of the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990 and the respondent having accepted such offer submitted his joining on 27.8.2007 and proceeded on training with 35 Common Training Program (CTP) on 6.1.2008. The respondent on 1<sup>st</sup> September, 2009 was notified to have completed his training along with 35 CTP and was, however, declared to have successfully completed his probation as 25<sup>th</sup> CTP. The respondent being short of period of minimum requirement of five years mandated for promotion from BS-17 to BS-18, was given BS-18 on *'acting charge basis'*. The respondent completed five years of service in BS-17 on 12.3.2012 and was thus regularized in BS-18 on 6.9.2012. Per counsel the respondent's representation against the seniority list as circulated by the Federal Board of

Revenue (FBR) dated 3.8.2012, claiming *inter se* seniority along with 25<sup>th</sup> CTP of Inland Officers was accepted on 13.9.2012 but such notional seniority could not be a substitute to the actual length of service of 12 years required for promotion to Grade BS-19 as provided under the rules. It was further contended that the offer of appointment issued to the respondent clearly narrates that his seniority would be determined in the examination group after the final passing out in terms of Rule VII of the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990 which provides that seniority of the probationers shall be determined by the Government after final passing out of examinations. Additionally, per counsel, sub-sections (2) and (3) of Section 7 of the Civil Servants Act, 1973 provides that seniority on initial appointment to service, cadre or post is to be determined, as may be prescribed, whereas, rule 2 of the Civil Servants Seniority Rules, 1993 provides that if two or more persons are recommended in open merit, their seniority *inter se* is determined in order of merit as assigned by the selection authority. However, in case there is only one candidate recommended as in the present case the seniority is to be counted in terms of sub rule (3) (b) of Rule 2 *ibid* from the date of his joining the post after being recommended by the selection authority. It was, therefore, submitted that the seniority of the respondent is to be reckoned from the date when he actually joined the service and, therefore, he cannot be given the benefit of the time which he has spent on litigation prior to his first appointment as a civil servant. In support of his contention that seniority of a person is to be reckoned from the date of his regular appointment or absorption in the transferee group, reliance has been placed on the judgment of this Court in the case of **Chairman Federal Board of Revenue versus Iqbal Hussain Shaikh** (2016 SCMR 773). Counsel further in support of his contention that seniority cannot be determined without reference to continuous appointment in a particular group, referred the judgment of the Court in the case of **Haroon Muhammad Khan and others versus. Rukhsana Yasmeen and others** (2014 SCMR 358) as well as **Ghulam Rasool and others versus Government of Baluchistan and others** (2002 PLC (C.S.) 47) and **G.C. Gupta vs. N.K. Pandey** (AIR 1988 Supreme Court 654).

4. On the other hand, the respondent despite his counsel being in attendance, opted to argue the matter himself and contended that it was the appellant's fault that he was

treated as Punjab domiciled and was declined his due right and was made to litigate for a period of ten years, therefore, he cannot be denied the benefit of such promotion, merely for want of length of service. As to the undertaking submitted for getting into civil service, it was contended that such undertaking cannot take away the vested right of the petitioner to be treated alongwith his batch-mates. It was next contended that once he was granted seniority with his batch-mates by the appellant vide letter dated 12.10.2012 by accepting his representation, he cannot be denied such seniority for want of actual length of service. It was lastly contended that he is being discriminated as the appellant-Government has granted promotion in various cases without actual length of service and in that pursuit the respondent has referred to the cases of *Abdul Qadir, Tariq Pirzada and Faisal Bashir Memon*. He, therefore, prays that similar benefit be also extended to him. In support of his contentions, the respondent randomly referred the judgments of this Court in the cases of *Miss Zubaida Khatoon versus Mrs. Tehmina Sajid Sheikh and others* (2011 SCMR 265), *Tariq Aziz ud Din and others in re: Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 143309-G of 2009* (2010 SCMR 1301), *Abdul Hameed versus Ministry of Housing and Works, Government of Pakistan, Islamabad through Secretary and others* (PLD 2008 Supreme Court 395), *Abid Hussain Sherazi versus Secretary M/o Industries and Production, Government of Pakistan, Islamabad* (2005 SCMR 1742) and *Ch. Muhammad Saleem versus Government of Punjab through Chief Secretary, SGA&I Department, Lahore and 5 others* (1994 SCMR 517).

5. We have heard the learned counsel for the appellant, the respondent, in person and have perused the record as well as the case law cited at bar.

6. It is not disputed before us that in terms of in OM No.1/9/80-R-II(A), dated 2.6.1983 issued by the Establishment Division, minimum length of 12 years of service in grade BS-17 and above is required for promotion in Grade-19, which the petitioner would acquire on 26.8.2019. Further it is by now settled law that *Office Memorandum*, issued under section 25 (2) of *Civil Servants Act, 1973* have force of law. [see *Azra Riffat Rana v. Sec. Minister of Housing & Works and others* (2008 Supreme Court 470), *Fazali Rehmani versus Chief Minister N.W.F.P. Peshawar and others* (PLD 2008 Supreme

*Court 769)*]. The Office Memorandum No.1/9/80-R.2 dated 2.06.1983 prescribing minimum length of service for promotion in Grade-18 and above reads as follows:

GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
ESTABLISHMENT DIVISION

No.1/9/80-R.2Rawalpindi, the 2<sup>nd</sup> June 1983

OFFICE MEMORANDUM

Subject: MINIMUM LENGTH OF SERVICE FOR ELIGIBILITY IN PROMOTION OF OFFICERS

In pursuance of rule 8-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and in supersession of the instructions laid down in the Establishment Division’s Office Memorandum No.1/9/80-R. II (A), dated the 12<sup>th</sup> January, 1981, *the President is pleased to decide that the minimum length of service for promotion to various grades shall be as follows: -*

For Grade-18	5 years in grade 17
For Grade-19	12 years in grade 17 and above
For Grade-20	17 years in grade 17 and above
For Grade-21	22 years in grade 17 and above

Proved that: -

- Where initial appointment of a person not being a person in government service takes placed in a post in grade 18, 19 or 20, the length of service specified in this office memorandum shall be reduced by the following periods:

<u>First appointment in</u>	<u>Reduced by</u>
Grade-18	5 years
Grade-19	12 years
Grade-20	17 years

- Where initial appointment of a person already in government service takes place, on recommendations of the Federal Public Service Commission in a post in grade 18, 19 or 20 the length of service specified in this office memorandum shall be reduced by the periods specified in proviso (i),

iii) Where first appointment of a person other than a person covered by proviso (ii) was made to government service in grade 16 or below, one-half of the service in grade 16 and one fourth in grade 15 and below may be counted as service in grade 17 for computing length of service for the purpose of promotion only.

Sd/xxx  
(Mashkoor Ahmad Khan)  
Joint Secretary  
To the Government of  
Pakistan

All Ministries/Divisions

7. It is also a matter of record that the respondent pursuant to the orders of the Court was finally issued the offer of appointment on 22.2.2007, Clause-VII whereof reads as under:

*“Your seniority in the Examination Group will be determined by the Government after the Final Passing Out in accordance with Rule 7 of the Occupational Groups and Services (Probation, Training & Seniority) Rules, 1990”.*

The respondent while accepting such offer letter, proceeded on training at Civil Services Academy, Lahore on 6.1.2008. After successful completion of training, his probation was terminated vide notification dated 1.9.2009 and thereafter upon completion of required length of five years of service in Grade-17 he was promoted on 6.9.2012 to Grade-18. The respondent in the meanwhile had challenged the seniority list circulated by the appellant in respect of officers of Inland Revenue Services from 22<sup>nd</sup> CTP to 30<sup>th</sup> CTP by filing a representation and claiming *inter se* seniority with 25<sup>th</sup> CTP of 1997. The representation of the respondent was allowed on 13.11.2012 and he was granted *inter se* seniority with 25<sup>th</sup> CTP of 1997 by placing his name at serial No.13. However, it is yet to be seen whether such seniority could be allowed and if yes then as to whether such notional seniority at the time of promotion could entitle the respondent to actual prescribed length of service or that such notional seniority could be a substitute for actual length of service.

8. The manner in which the seniority of a civil servant is to be determined and the way he becomes eligible to the promotion are detailed in Sections 8 and 9 of the Civil Servants Act, 1973, Rule 2 of the Civil Servants (Seniority) Rules, 1993 and Rule 7 of “*The Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990*”. The relevant portions of the said Sections and rule are reproduced for better understanding the controversy:

**“The Civil Servants Act, 1973.**

**8. Seniority.** – (1) *For proper administration of a service, cadre or post the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be.*

(2) *Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre whether serving in the same department or office or not, as may be prescribed.*

(3) *Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.*

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post:

*Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post retain their inter se seniority as in the lower post.*

**9. Promotion.** – (1) *A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs;*

....

(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotions shall be made as may be prescribed.

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of a non-selection post, on the basis of seniority-cum-fitness.”

**“The Civil Servants (Seniority) Rules, 1993.**

**2. Seniority on initial appointment.**

(1) ...

(2) ...

(3) If only one candidate is recommended in open advertisement by the selection authority, he shall count his seniority from –

(a) the date of recommendation by the selection authority, if he was already holding the same post on ad hoc basis; and

(b) the date of his joining the post after being recommended by the selection authority, if he was not already holding the same post.”

**“Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990.**

**7. Seniority.** – (1) The seniority of the Probationers shall be determined by the Government after Final Passing Out Examination.  
(highlighted to supply emphasis)

9. Perusal of sub-section (3) of Section 8 of the Act, 1993 reflects that the seniority of a civil servant on initial appointment to a service, cadre or post is to be determined as may be prescribed. Whereas, rule 2 of the Seniority Rules, 1993 framed under the Act of 1973 prescribes the reckoning of seniority in case of initial appointment from the date of joining the post. The provision of Sub-section (3) of Section 8 of Act, 1973 if read in conjunction with rule 2(3)(b) of the Seniority Rules, 1993 leaves no doubt in our minds that the seniority of a civil servant on initial appointment to a service, cadre or post has to be reckoned from the date of his joining the post after being recommended by the Selection Authority and not from a date prior thereto. Even Rule 7 of the Seniority Rules, 1990 empowers the Government to determine the seniority of the probationers after Final Passing Out Examination. Neither any Section of law or rule framed thereunder was brought to our notice which could empower the Government in cases of initial appointment to fix the seniority of a civil servant from a date prior to his induction in civil service upon successful completion of training. It is to be kept in mind that seniority of a civil servant is always determined keeping in view his regular appointment to a post and, thereafter the continuous service in that particular grade.

10. In the instant case the respondent, consequent to the offer of appointment letter dated 22.2.2007 joined the Civil Services Academy Lahore on 6.1.2008 and successfully completed training on 1.9.2009 with 35<sup>th</sup> CTP. However, he has been given seniority by treating him one of the 25<sup>th</sup> CTP. It is also important to note that neither seniority nor promotion are the vested rights of a civil servant, therefore, neither any seniority nor any promotion could be claimed or granted without actual length of service on account of vested rights. The purpose of prescribing a particular length of service for becoming entitled to be considered for promotion to a higher grade, of course, is not without logic as the officer who is initially inducted to a particular post needs to actually serve on the said post in order to gain experience to hold the next higher post and to serve the public in a befitting manner. It is also important to note that grant of seniority to a civil servant without actual length of service virtually violates the entire service structure as a civil servant inducted in Grade-17 by claiming such benefit without any experience be directly posted in any higher grade, which is neither the intention of the law nor of the equity. In this context it is pertinent to record that earlier the respondent's request to waive off the minimum length of service of five years for promotion to BS-18 was declined on 1.3.2010. However, the competent authority on 12.3.2012 while exercising powers conferred under Rule 8-B of the *Civil Servant (Appointment, Promotion and Transfer) Rules, 1973* promoted the respondent to BS-18 on "*acting charge basis*" as he was otherwise eligible for promotion but, was short of minimum required length of service and later, on completion of five years of mandatory service he was regularized in BS-18 on 6.9.2009.

11. We are mindful of the fact that the respondent on account of certain acts or omissions on the part of the appellant could not maintain his seniority with officers of 25<sup>th</sup> CTP with whom he had cleared CSS examination as neither he could complete his necessary training with officer of 25<sup>th</sup> CTP nor, he could be inducted in service with them. However, the remedy to such act or omission at the most could be induction in service by rectifying the wrong. In the instant case no *mala fide* on the part of the appellant has been alleged but, in our opinion, even in cases where such act or omission is found *mala fide* the remedy could be anything but not seniority without actual length of service.



12. It appears to be a case of first impression, as none of the reported judgments referred to by the parties apply or relevant to the controversy involved in matter in hand, though principles of seniority are dealt with in cited cases. The case of **Chairman, Federal Board of Revenue (Supra)** while dealing with the seniority of *deputationist* held that the seniority of a person on deputation was to be reckoned from the date of his regular appointment-permanent absorption in the transferee group or department and not from the date of his posting or transfer or any earlier date. Likewise, in the case of **Haroon Muhammad Khan (Supra)**, this Court held as under:

*“(18) Promotion and seniority are definitely not vested rights. Sections 8 and 9 of the Civil Servants Act, 1973 read together with section 4(1) proviso (b) of the Service Tribunals Act, 1973 are very clear on that. However, to be considered for promotion and seniority is a vested right. A civil servant may not be able to file an appeal to get seniority or promotion but he can definitely file an appeal to get meaningful consideration for his seniority promotion. In the present case the appellants could not claim safeguard of their right to seniority and promotion. However, they could definitely make a prayer that they should have been considered correctly for their seniority/promotion”.*

13. In the case of **Ghulam Rasool (Supra)**, the services were discontinued in 1973 and, therefore, petitioners could not complete their training till 1977 as they remained ousted from service until the review board vide order dated 20.10.1978 reinstated them with the clarification that no back benefits would be given. The petitioners demanded their seniority retrospectively from the date of their appointment and this Court held that seniority cannot be determined without reference to continuous appointment in a particular grade. In the case of **G.C. Gupta (Supra)**, principle of seniority of *Temporary Assistant Engineer* was held is to be determined from the date of order of absorption in service, from which date they become “members of service” and not before.

14. We have also examined the reported case laws cited by the Respondent, in none of the cases so referred, *minimum length of service*, is shown to have been relaxed to concede promotion to higher grade. Even the precedents cited from jurisdiction of Federal Service Tribunal are of no help to the respondent. Firstly, same are not binding on this Court, and secondly same do not support the case of the respondent. In the Case of **Zaheer Ullah Khan (Service Appeal No. 2269(R)CS/201 judgment dated 14.12.1, learned Service Tribunal while discussing the effect of Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 which empowers the authority to promote senior**

most eligible civil servant who does not possess required length of service directed the appointment of Zaheer Ullah Khan on “*acting charge basis*”. The relevant portion of the said judgment is reproduced as follows:

“7. The contention of the respondents that the appellant has not prayed for Acting Charge Appointment from the date when his juniors were promoted, carries no weight as in para (d) of grounds, he stated that the appellant was denied promotion due to a non-sustainable reason even on acting charge basis without taking into consideration ... and (d)(v) he further stated that ‘his promotion was deferred on the basis of non-fulfilling of requirement of minimum length of service although it was out of question while making promotion on acting charge basis’, (underlining for emphasis), therefore, the objection is hereby overruled.

8. For the foregoing reasons, we accept the appeal and direct the respondent-department to place the case of the appellant before the DPC for consideration for promotion to BS-19, on acting charge basis, with effect from the date his juniors were so granted”.

15. However, in review, it is noted that the same Member without giving any finding/reasoning on length of service held that “*on acting charge basis*” was erroneously mentioned in the judgment and directed the department to consider the case of Zaheer Ullah Khan for promotion to BS-19. We do not approve the order in review, which appears to be an intellectual dishonesty as in the judgment the Tribunal after discussing the effect of Rule 8-B of Rules, 1973 came to the conclusion that condition for having a specified length of service could be dispensed with while appointing an officer who otherwise is eligible on “*acting charge basis*”. There was no reason at all given in the entire judgment that such length of service could be dispensed with while directing regular promotion. It is further important to note that the main judgment whereby the department was directed to consider the case of Zaheer Ullah Khan for promotion of BS-19 “*on acting charge basis*” had come up in appeal before this Court in CP No.924 of 2017 and this Court has upheld the main judgment, therefore, the review even otherwise, could not have been made once the main judgment was approved by this Court.

16. As regard the case of Abdul Qadir Sheikh, (Appeal No.141(K)CS/2005 Judgment dated 23.4.2013, the facts of the case are totally different as in the said case Abdul Qadir Sheikh after passing the CSS Exams joined Pakistan Railways (C&T) Group as was allocated. However, afterward it was revealed to him that he was entitled to Income Tax or Account Group and, therefore, his length of service in the Pakistan Railways (C&T)

was taken into account and he was given the benefit accrued to him including his seniority with his batch-mates.

17. In the case of Muhammad Tariq Pirzada, Writ Petition No.1306 of 1997 judgment dated 2.10.1998 as well as in Faisal Bashir Memon Appeal No.786(R)CS/2011, the dispute emanated from change of occupational groups and, therefore, the length of service was hardly a matter of concern.

18. In the case of reported as **Director-General, Intelligence Bureau, Islamabad and others versus Amir Mujahid Khan and others** (2011 SCMR 389) this Court quite exhaustively dealt with issue of length of service for promotion to higher grade, which is imperative criteria under Rule 8-B of *Civil Servants (Appointment, Promotion and Transfer) Rules, 1973*, after discussing relevant rules and Office Memorandum No.1/9/80-R.2 as reproduced in para-6 above, it was held at page 399 as follows:

*“It is an admitted fact that appellant/competent authority had not circulated seniority list till the length of service of the afore-said respondents was completed as required under the law. They were promoted subsequently on permanent basis vide notification dated 11-8-2006 from the date of their assuming charge of the post of Deputy Director on acting charge basis. The sole question for our determination is that in such situation whether these respondents regained original seniority on subsequent promotion so long the order of the DPC dated 18-8-2005 remains in the field. This fact brings the case of the afore-said respondents that they were considered and were not promoted on permanent basis due to lack of requisite length of service, therefore, they could not be granted seniority from the original date of their consideration for promotion. See Abdul Ghani Chaudhry’s case 1998 PLC (C.S.) 1278. It is pertinent to mention here that respondents who were promoted on permanent basis as they had requisite length of service in their grade as mentioned above.”*

19. It may be observed that rule 8-B of Rules, 1973 *ibid*; indeed empowers the competent authority in the public interest to fill a post reserved under the rules for departmental promotion after compromising length of service, and subject to other concomitant conditions as set down in succeeding sub rules of rule 8-B *ibid* by appointing such civil servant to higher grade on "acting charge basis". However, in instant case the respondent at the relevant time even did not qualify to be considered for appointment to BS-19 on “*acting charge basis*”.

20. In the facts and circumstances, we allow this appeal by setting-aside the impugned judgment of the Federal Service Tribunal leaving the parties to bear their own costs.

**Judge**

**Judge**

**Judge**

Islamabad  
May 30, 2018  
*A. Rehman*/\*  
Not Approved for Reporting