

IN THE FEDERAL SERVICE TRIBUNAL, LAHORE

Before: Ch. Muhammad Amin Javed and
Mr. Intiaz Ahmad Khan, Members

S#	Appeal No.	Appellant
1.	302(L)/2022	Muhammad Asghar (J-2390) son of Muhammad Saleem, resident of Climaxabad Mohallah Irsal Colony Dhaly, Gujranwala
2.	303(L)/2022	Abdullah Khan (J-2413) son of Gul Raham Zad, resident of Mohallah Shaheedabad, Kashmir Colony Hassanabdal District Attock
3.	304(L)/2022	Noor Alam (J-2433) son of Aziz-ur-Rehman, National Highways and Motorways Police G-11/1, Islamabad
4.	305(L)/2022	Zubair Khan (J-2428) son of Saleem Khan, resident of Mohallah Sultani Khel, Mian Khan, Tehsil Katalang District, Mardan
5.	306(L)/2022	Irfan Yaqoob (J-2353) son of Muhammad Yaqoob, resident of Chaudhry Street Khayaban-e-Street Chaklala Scheme No. 3, House No. 126-A, Street No. 4, Rawalpindi
6.	307(L)/2022	Asif Hussain (J-2352) son of Sain Ahmed, resident of Post Office Jamkay Cheema, Tehsil Daska, District Sialkot

Respondents:

- (1) Inspector General of Police, National Highways and Motorways Police G-11/1, Islamabad
- (2) Assistant Inspector General (HRM), National Highways and Motorways Police G-11/1, Islamabad

Date of Institution : 28.06.2022
29.07.2022
Date of Hearing : 14.12.2023
Date of Judgment : 15.01.2024

Present: Mr. Allah Nawaz Khosa, Advocate for the appellants
Mr. Faisal Abbas Ranjha, Assistant Attorney General; and
Rana Muhammad Faheem Fazal, Assistant Attorney General
for the respondents alongwith the departmental representative
Mr. Altaf Hussain, Inspector

JUDGMENT

CH. MUHAMMAD AMIN JAVED, MEMBER: Since the issue involved in all these cases is almost identical, therefore, we find it expedient to decide the titled cases together through this common judgment.

2. Precisely the facts of the case, as mentioned in the Memo of Appeals are that after NOC issued vide letter dated 07.06.2013 the present appellants were inducted into respondents-Organization (since 2013) vide letter dated 27.05.2013 and in pursuance of Order dated 28.03.2018 passed by the Hon'ble Supreme Court of Pakistan to the effect that employees of NH&MP belonging to BS-1 to BS-07 should not

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be transferred to their parent Departments. However, a Writ Petition which was filed before the Hon'ble Lahore High Court, Lahore and was disposed of with a rider to consider the request of the appellants for permanent absorption. Resultantly they were permanently absorbed vide Order dated 19.07.2019 with immediate effect rather from the date when they were actually taken in the Organization viz., on the strength of NOC dated 07.03.2013. They have urged that similarly placed employees were absorbed from the date of NOC vide order dated 08.01.2019 & 22.04.2019 but they are being discriminated. They have also relied upon a verdict of the Hon'ble Lahore High Court, Lahore rendered in W.P. No. 238567 of 2018 dated 17.12.2018 in similar circumstances. Their representation was not find favour vide impugned order dated 26.05.2022, so conveyed by the Deputy Director (HRM).

3. The respondents while resisting the appeals have maintained in their para-wise comments that the appellants have claimed their absorption coupled with seniority with retrospective effect without mentioning the officials as party being against the dictum laid down by the Hon'ble Supreme Court of Pakistan in its various pronouncements. The induction of officials who were not recommended by the Departmental Induction Committee (D.I.C) remained cancelled *ab initio* vide letter dated 13.06.2014. After prolonged litigation case of induction was revised and treated with effect from the date of issuance of NOC and not from the back date and then their induction was so materialized. It is added that absorption being a method of appointment through transfer for which NOC from the lending Department is a prerequisite under the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and the grant of NOC to an employee applying for absorption is part of the process which does not *per se* operate as appointment. The appointment through the method of absorption only takes place when order to this effect passed by the Competent Authority after fulfillment of all the prerequisite including NOC from the lending department and recommendation of the DIC.

4. We have heard the arguments of the respective parties at length and have also perused the available record with their able assistance.

5. The issues in moot to be resolved by the Tribunal is as to whether the claim of the appellants voiced in their appeals regarding consideration of their permanent absorption 'from the date of NOC' instead of 'with immediate effect' and fixation of seniority accordingly is legal and lawful under the prevalent rules. The record divulges that the

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appellants joined in the Punjab Police on 15.02.2001 and thereafter they were transferred/sent on deputation to the respondent-NH&MP on 31.08.2007 and NOC was issued by the lending Department on 20.07.2013, 14.10.2013, 04.09.2014, 17.09.2014 & 08.02.2013 were permanently inducted/absorbed on 19.07.2019 with immediate effect. Before reverting to the resolution of the stated issues it is relevant to be noted here that with reference to para-4 of the appeal it is an admitted fact that the appellant/deputationist officers shown their option / willingness for permanent absorption/induction in the borrowing Department and a list of willing officers was prepared on 27.05.2013 and their transfer was not compulsory or the result of conscriptions or alongwith posts and their work.

6. The principal contention of the appellants in this regard is that some of the deputationists were absorbed from the date of issuance of NOC by the parent Department whereas their induction/absorption was materialized 'with immediate effect' when the impugned order was passed and strenuously pointed out element of discrimination meted out to them by the borrowing Department. Contrarily the respondents' side met this objection with the plea so raised in their para-wise comments that on circulation of seniority list of the rank of Constable/Junior Patrolling Officer and Head Constable/Assistant Patrolling Officer upon receipt of objections it transpired that some officers were inducted as HC/APO and C/JPO subject to receipt of NOCs and their NOCs were issued by their Department after issuance of induction orders in order to remove anomaly their date of induction in the rank of HC/APO & C/JPO was revised and treated with effect from the dates of issuance of NOCs. Their further stance is that no back dated induction/seniority has been granted to anyone rather in that case too the effective date of induction was further delayed to the date of NOC which was issued subsequent to the induction orders, as such, allegation of discrimination has no force at all. The careful examination of the record transpires that vide Office Order dated 19.07.2019 by the office of Inspector General/respondent No.1 as many as 35 officials inducted/permanently absorbed as Constables/JPO/BS-07 in the respondent-NH&MP as per Rule-5 of The NH&MP (Appointment, Promotion and Transfer) Rules, 2007 with immediate effect and upon receipt of NOCs have already been issued by their parent Department. The detail of issuance of NOC of the present appellants is given below for emphasis:-

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S#	Rank, Name & No. of Officer	Joined NHMP-on deputation basis	Date of NOC	Date of Induction in NHMP as c/JPO (BS-07)	Parent Department
1	C/JPO Muhammad Asghar, J-2390	01.04.2010	04.09.2014	19.07.2019	Punjab Police
2	C/JPO Irfan Yaqoob, J-2353	13.08.2009	17.09.2014	19.07.2019	Punjab Police
3	C/JPO Zubair Khan, J-2428	11.11.2011	14.10.2013	19.07.2019	KPK Police
4	C/JPO Abdullah Khan, J-2413	14.01.2013	08.02.2016	19.07.2019	KPK Police
5	C/JPO Noor Alam, J-2433	07.01.2013	08.02.2016	19.07.2019	KPK Police
6	C/JPO Asif Hussain, J-2352	03.07.2008	20.07.2013	19.07.2019	Punjab Police

As shown in the above tabular contents the dates of joining in the respondent-NHMP of the appellants on deputation basis were made effective from 03.07.2008, 13.08.2009, 01.04.2010, 11.11.2011, 07.01.2013 & 14.01.2013 respectively whereas NOCs were issued by the lending department on 20.07.2013, 14.10.2013 04.09.2014, 17.09.2014, 08.02.2016 & 08.02.2016 respectively and finally they were inducted/absorbed on 19.07.2019 by the respondent-NHMP on permanent basis alongwith 29 other officials.

7. The concept of permanent absorption in a new Department is dealt within The Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. The absorption being a method of appointment through transfer after issuance of NOC from the parent-Department to a civil servant showing willingness for absorption is a part of its process which *per se* is not operate as appointment. The permanent absorption being akin to appointment by transfer which is materialized and effectuated after having fulfilled the required conditions precedent besides the eligibility criteria for the post which is as under:-

- Request or willingness of the concerned deputationists for permanent absorption;
- No Objection Certificate (NOC) from his parent department; and
- Issuance of absorption order on the basis of request/willingness and NOC from parent department."

8. The appointment through method of absorption only takes place when in this regard the order is passed by the Competent Authority after having fulfillment of all prerequisites including NOC from the lending department and recommendation of the Departmental Induction Committee (DIC), so far as the issuance of NOC before the order of permanent induction/absorption cannot be taken as date of permanent

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induction in a new Department. In other words it cannot be given retrospective effect. The record also indicates that pursuant to the orders of the Hon'ble Lahore High Court, Lahore passed in W.P. No. 173161/2018, dated 05.03.2018, 235262/2018 dated 17.09.2018, 238567/2018, dated 17.12.2018, 238566/2018 dated 17.12.2018, 258319/2018 dated 24.12.2018 read with Orders passed by the Hon'ble Supreme Court of Pakistan in Crl. Review Petition No. 132/2016 dated 28.03.2018, on the recommendation of Departmental Induction Committee (DIC) during its meeting held on 26.06.2019 and with the approval of the Inspector General NHMP, the appellants alongwith 29 others were inducted / permanently absorbed as Constable/Junior Patrol Officers (BS-07) in NHMP vide Order dated 19.07.2019.

9. Now the issue of seniority as per the stance of the appellants from the date of NOC is required to be elaborated to clinch this matter in accordance with law. Although the appellants have sought seniority from the date of NOC in the prayer clause of the appeals besides of any other better relief which deems fit may also be accorded for the sake of justice. In our view we can grant relief other than specifically prayed but covers under any other better relief to impart justice with the believe to avoid remand of the matter to the Department on this issue and even otherwise we as Judge/Court are under legal obligation to know the law and to apply it correctly. Reliance is placed on Chairman, Nab v. Muhammad Usman and others (2018 PLD Supreme Court 28) while observing that "...one cannot ignore the fundamental principle relating to administration of justice that law is written on the sleeves of the Judges and it is the primary duty of a Judge to apply the correct law to a case before it and even the party is not bound to engage a counsel for telling the Court how a particular law is to be applied and how the jurisdiction is to be exercised..." and also in Muhammad Gulshan Khan v. Secretary, Establishment Division, Islamabad and others (2003 PLD Supreme Court 102) wherein it has been laid down that "It is the bounden duty of the Courts to decide the cases on merits in accordance with law and the rules. The Courts, while dispensing justice, are duty bound to apply the provisions of law in their true perspective and application of the same cannot be avoided simply on the ground that the said provisions of, law were not brought to their notice by the parties..." More so, the Court is also competent to grant a different relief as prayed for to meet the ends of justice in the prayer clause of any other relief deems appropriate.

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10. We have ourselves traced the history/background of seniority given to the deputationists after having gone through the different judgments of the Hon'ble Supreme Court of Pakistan in the case of Muhammad Arshad Sultan, Section Officer, Cabinet Division, Islamabad and another versus Prime Minister of Pakistan, Islamabad and others (PLD 1996 Supreme Court 771) has dealt with the issue of seniority of the deputationist with reference to facts of this case narrated in para-2 whereof the appellant was appointed as Section officer (BPS-17) on acting change basis in the Cabinet Division with effect from 7.3.1985, through Federal Public Service Commission (FPSC). His service was, regularized on 14-11-1988. Private respondents 3 to 9 in this appeal were posted as Section Officers (BPS-17) in Office Management Group (O.M.G.) on deputation from different departments during the period from 2.8.1976 to 10.11.1985. Respondents 3 to 9 were finally absorbed in O.M.G. through transfer of their services with effect from 18.2.1989. In the gradation list issued by the Establishment Division on 10.7.1990, respondents 3 to 9 were shown senior to appellant. The appellant, therefore, submitted representation against the gradation list which was rejected on 27.1.1991. Having failed to get redress from departmental authorities, the appellant approached the Federal Service Tribunal and filed service appeal which too was dismissed on 4.5.1992. Eventually the matter was brought to the Hon'ble Supreme Court of Pakistan and leave was granted in the above appeals to consider;

Whether the private respondents in the above appeals who were initially appointed as Section Officers (BPS-17) in O.M.G. on deputation from other departments and were absorbed subsequently by transfer of their services to O.M.G., were entitled to claim seniority from the date of their joining as Section Officer on deputation or from the date of their regular appointment/absorption in O.M.G. as Section Officers.

The main contention of the appellants in the above cases was that the private respondents, in these appeals having been appointed on deputation in O.M.G. were not entitled to claim seniority from the date of their deputation as during the period of their deputation they remained and continued to be the member of the service/cadre from where they were sent on deputation. It is contended that these deputationists became the members of O.M.G. from the date their services were transferred/regularized as Section Officer (BPS-17) in O.M.G. It is, accordingly, contended that they could not claim seniority in O.M.G. prior to the date of their transfer to O.M.G. The appellants in support of their above contention have relied on an unreported decision of this

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Court in Civil Appeal Nos.361, 362 and 363 of 1990 (M. Afzal Khokar and others v. Azmat Ali Afridi and others), decided on 31.8.1992. The learned Deputy Attorney-General and the private respondents in the above appeals on the other hand contended that in view of the law laid down by this Court in the case of Muhammad Zafar Khan v. Secretary, Establishment Division 1995 SCMR 1840, the respondents were rightly granted seniority as Section Officer from the date of their deputation in O.M.G. The respondents have also placed reliance on the following reported and unreported decisions of this Court in support of their contentions: --

- (i) *Federation of Pakistan, v. Miss Mehr Jamal (C.A. 1340/91), decided on 22.6.1991*;
- (ii) *Federation of Pakistan v. Manzoor Hussain and others (C. A. 54/91 decided on 11.11.1992), and*
- (iii) *Sher Ali Beg and another v. Secretary, Establishment Division (PLD 1991 SC 143).*

It may be mentioned here that through Ordinance, No.III of 1984 published in the Gazette on 22.1.1984, the word 'post' in place of 'grade', in subsection (1); the words "service or cadre" in place of "service, cadre or grade" in subsection (2) and word "Cadre" in place of "Grade" in subsection (3) of section 8 were substituted. Similarly in place of subsection (4) of section 8, the following new subsection (4) was substituted with effect from 1.7.1983:--

- "(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."

Therefore, it appears that prior to the amendments in section 8 of the Act through Ordinance III of 1984, the seniority list of civil servants was prepared on the basis of such civil servants being member of a service, cadre or grade. However, after the amendment of 1983, the concept of preparation of seniority list of civil servants on the basis of being in a particular grade was done away with. Subsections (3) and (4) of section 8 of the Act, which respectively deal with the determination of seniority *inter se* of direct recruits, and seniority between the promotees *inter se* are not attracted in the present cases. The present cases are governed under section 8(2) of the Act which deals with determination of seniority of a civil servant in relation to other civil servants belonging to the same service or cadre. The question which, therefore, immediately arises for,

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consideration in the cases is, whether the appellants and the private respondents belonged to the same service or cadre. To answer this question, it is necessary to examine the status of a deputationist in the office where he is working on deputation. The word 'deputation' or deputationist are not defined in 'the Act' or in 'the Rules'. However, at page 334, Serial No.29, of ESTACODE (1989 Edition), the following interpretation of the word 'deputation' is given:--

"Hitherto the term 'deputation' has not been formally defined. However, according to the practice in vogue a Government servant begins to be regarded as a 'deputationist' when he is appointed or transferred, through the process of selection, to a post in a department or service altogether different from the one to which he permanently belongs, he continues to be placed in this category so long as he holds the new post in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post."

The above definition of the word 'deputation' came up for consideration before this Court in the case of Province of Punjab v. Ikramul Haq (1986 SCMR 1994). In that case, the respondent who was a permanent employee of Punjab Government and had lien against a post, was selected in the Foreign Affairs Group, Government of Pakistan through Lateral Entry Competitive Examination. He was, however, not confirmed against any post in the Foreign Affairs group. He was compulsorily retired from service by the President of Pakistan in exercise of the powers conferred by Section 13(ii) of the Act. He challenged his retirement before Federal Service Tribunal but his appeal was dismissed as not maintainable on the ground that being a deputationist from provincial Government, he was not covered by the definition of 'civil servant' as given under the Act. He then challenged his retirement before the Punjab service Tribunal, which allowed the appeal holding that the President was not competent to pass an order for the retirement of respondent who was a deputationist. The Province of Punjab challenged the decision of Punjab Service Tribunal before this Court which failed. During the course of discussion in the above case, this Court approved the interpretation of the word 'deputation reproduced above in these words:--

"The Federal Service Tribunal has referred to the Establishment Manual, Volume-1, Chapter IX, to demonstrate that the departmental authorities in accordance with the practice in vogue have defined a 'deputationist' to be a Government servant who is appointed or transferred through the process of selection to a post in a department or service altogether different from the one' to which he permanently belongs. Such a Government servant continues to enjoy this status so long as he holds the new post in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new Post or on reversion to his substantive post. The departmental interpretation referred to by the said Tribunal as

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having the effect of statutory role has still being retained, as is evident from the ESTACODE (1983 Edition.) in Chapter 111, part 11 at page 217. This Court has also accepted the aforesaid definition of the term 'deputation' in Islamic Republic of Pakistan v. Israrul Haq and others PLD 1981 SC 531."

At page 335 of the ESTACODE (Edition 1989), Serial No. 10, detailed instructions to regulate cases of transfer of civil servants from one office to another are laid down. The authority for these instructions is stated to be O.M No.6/15/48 ME, dated 31st March, 1951 read with O.M. No.6/39/57 ME, dated 5.2.1958. These instructions deal not only with the cases of transfer in public interest but also with the cases of civil servants working on deputation. These instructions do not come in conflict with any of the provisions of the Act and, therefore, shall be deemed to be rules made under the Act by virtue of the provisions of section 25(2) of the Act. These instructions read as follows:--

"**Sl. No.30. Instructions to regulate cases from one office to another.**---The following instructions are issued to regulate cases of transfers from one office to another of the ministerial staff employed in Pakistan Federal Secretariat and its Attached Departments with particular reference to the position of a deputationist in his parent office as well as in the borrowing office.

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6. Seniority on transfer from one office to another.--(i) The instructions in the foregoing paragraphs regulate the position of a deputationist in his parent office. As regards his seniority in the office to which he is transferred it should be determined in the following manner:--

- (a) When it is open to the person concerned to accept or refuse an offer of appointment in another office, he should, count his seniority in the new office from the date of his transfer to that office.
- (b) When a person is compulsory transferred to- another office as a result of conscription, or alongwith the post and his work, he should be allowed to count his previous continuous service in the grade towards seniority in the grade in the new office.

Para.6 of the above instructions clearly lays down the criteria for determining the seniority of a deputationist in the office where he is sent on deputation. It provides that where it is open to a deputationist to accept or refuse an offer of appointment in another office, he should count his seniority in the new office from the date of his transfer to that office. However, where the transfer is compulsory or result of conscription or alongwith the post and his work, he may count his previous continuous service in the grade towards seniority in that grade

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in the new office. The learned counsel for the private respondents and the, learned Deputy Attorney General jointly contended that the private respondents here in were appointed as Section Officers by way of transfer in public interest under Rule 9-A of O.M.G. Rules, and therefore, they were entitled to count their seniority from the date they were sent on deputation to O.M.G. Rule 9-A which was added through Establishment Division O.M. No.7/12181-C III.B/(O.M.G.-II), dated 4.11.1985 in the existing rules constituting the O.M.G., reads as follows:--

"9-A.(a) Appointment by transfer.--Civil servants belonging to other occupational groups, services, cadres and the Provincial Governments, including those serving, in the Federal Government on deputation basis, may be appointed as Section Officer in the Federal Government, In public interest, on the recommendation of, the Departmental Promotion Committee, and with the approval of the competent Authority. The consent of the Ministry/division/Provincial Government and the officer concerned will be obtained before making such appointments.

There appears to be no conflict between Rule 9-A quoted above and the Rules printed at page 335, of ESTACODE under Serial No.30 relating to regulation of transfer of Government servants from one office to another, reproduced in extenso in earlier part of this judgment. In our view, therefore, the moot question for determination in these cases is, whether the respondents who were deputationists in O.M.G. had the right to accept or refuse the offer of appointment as Section Officer in O.M.G. It cannot be disputed that a deputationist continues to remain a member of his parent service or cadre unless absorbed permanently in the service or cadre where he is sent on deputation. The appointment of respondents, who were admittedly deputationists, as Section Officers in O.M.G. under Rule 9-A referred to above in public interest, was subject to recommendation of Departmental Promotion Committee, consent of the Ministry/Division/Provincial Government and the officer concerned, with the approval of competent Authority. The learned Deputy Attorney General admitted before us that before induction of respondents as Section Officers in O.M.G., the consent of concerned officers and their parent offices were obtained. The learned Deputy Attorney General is, however, unable to state whether the respondents while exercising their option to join O.M.G. had the right to refuse the option. It may be pointed out here that under section, 8(2) of the Act, the seniority of a civil servant is to be reckoned in relation to other civil servants belonging to the same service or cadre and for this purpose it is not necessary that such civil servant should be serving in the same department or office at the time. It is, therefore, necessary for determining the seniority of a civil servant in a service or cadre that he must be a member of that cadre or

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service at the relevant time. In the conclusion of the judgment after having discussed contents of various judgments, such as, Fazle Qadir v. Secretary, Establishment Division (PLD 1988 SC 131); Appeal No.68(R) of 1989; Appeal No.350(R) of 1990; M. Afzal Khokhar and others v. Azmat Ali Afridi and others Civil Appeals Nos. 361, 362 and 363 of 1990; Muhammad Zafar Khan v. Secretary, Establishment Division (1995 SCMR 1840); Federation of Pakistan v. Miss Mehr Jamal C.A. 1340 of 1990; Federation of Pakistan v. Manzoor Hussain and others C.A. No.54 of 1991; ESCTACODE 1989 Edn., S1.29, p.334; Province of Punjab v. Ikramul Haq (1986 SCMR 1994); Establishment Manual Vol. 1, Chap-IX; ESTACODE 1989 Edn. S1.30 Briq. Sher Ali Baz ind another v. Secretary, Establishment Division and others (PLD 1991 SC 143). With reference to para-14, we were of the view that the private respondents in the above appeals were entitled to get their seniority determined in relation to others in accordance with paragraph 6 of the instructions appearing at page 335 of the ESTACODE (Edition 1989) at Serial No. 30 which relates to the persons concerned to refuse or not the offer of appointment to another office but should count his seniority in the new office from the date of his transfer to that office and the case of the present appellants covered in para 6(a) of the instructions printed at page 335 of the ESTACODE (Edition 1989).

11. In the case of Din Muhammad Versus Director-General, Pakistan Post Office, Islamabad and 20 others (2003 SCMR 333). This issue has been discussed elaborately with reference to facts of this case the appellant, was appointed as Sorter in Railway Mail Service, Rawalpindi on 14-7-1969 and later he was transferred as Upper Division Clerk (B-7) to the office of Post Master General, Northern Circle, Rawalpindi, vide order dated 2-8-1978 against 25 % reserved quota. The appellant joined in the above said office on 4-8-1978 and on 1-1-1985 he was permanently absorbed in the office of Post Master General, Northern Circle, Rawalpindi.....

Rule 4 of The Civil Servants (Seniority) Rules, 1993, provides as under:-

4. **Seniority on appointment by transfer.** - Seniority in a service, cadre or post to which a civil servant is appointed by transfer shall take effect from the date of regular appointment to the service, cadre or post:

Provided that

- (a) persons belonging to the same service, cadre or post selected for appointment by transfer to a service, cadre or post in one batch shall, on their appointment, take inter se seniority in the order of their date of regular appointment in their previous service, cadre or post; and

- (b) persons belonging to different service, cadre or posts selected for appointment by transfer in one batch shall take their inter se seniority in the order of the date of their regular appointment to the post which they were holding before such appointment and, where such date is the same, the person older in age shall rank senior."

The above-quoted rule explicitly mentions that the persons appointed through transfer were to be assigned seniority in accordance with the provisions of Civil Servants Act, 1973 read with the rules framed thereunder and, therefore, the right of the appellant who initially was sent to the department on deputation and subsequently was permanently absorbed would be governed in the matter of seniority under the ibid rules. We having carefully considered the contention raised by the learned Deputy Attorney-General find that crucial date for determination of the seniority of appellant would be the date of permanent absorption of appellant in the Office of the Post Master General, Northern Circle, Rawalpindi and thus the seniority of the appellant in the transferee department would be reckoned from the date of his transfer and not from the date of issue of order of absorption. The appellant being on deputation was retained as permanent employee of the Office of Postmaster General, Northern Circle, Rawalpindi and he has been performing his functions to the entire satisfaction of his superiors, therefore upon permanent absorption in the Office of Post Master General, Northern Circle, Rawalpindi, obviously he would become regular employee in the said department with effect from the date of initial induction as envisaged under rule 4 of ibid rules and not from any subsequent date. We find that the Service Tribunal has not considered the case of appellant in the light of the rules relating to the determination of seniority of civil servant in such circumstances.

For the foregoing reasons, we hold that the seniority of appellant would be reckoned from the date of his induction as UDC in the Office of Post Master General, Northern Circle, Rawalpindi through transfer on 4-8-1978. The objection relating to maintainability of appeal raised by the learned Deputy Attorney-General on the ground that the seniority list published in 1987 remained unchallenged would be of no consequence as on publication of subsequent seniority list in the year 1999, there would be a fresh cause of action in favour of appellant, therefore, the appeal before the Tribunal was maintainable. We accordingly, allow this appeal, set aside the judgment of Federal Service Tribunal. However, there will be no order as to costs."

12. The view taken in the above-referred judgment has also been taken a Guideline by the Hon'ble Supreme Court of Pakistan in the case titled Iqbal Hussain Sheikh and 2 others Versus Chairman, Federal Board of Revenue and another (2013 SCMR 281), however, the conclusion of the judgment is given in para 20 whereof which is reproduced hereunder:-

"20. In the light of the above judgments and various rules of the ESTACODE and other laws quoted in this judgment it has now to be seen whether the seniority of the appellant has to be reckoned from the date they were transferred/deputed to the then CBR now FBR or from the date of their absorption in the above organization which date was fixed by this Court in the appellants' earlier judgment quoted supra. Rule 6(a) which has already been reproduced, provides that if it is open to the person concerned to accept or refuse his appointment in another office then the seniority in that office shall be counted from the date of his transfer to that office. In paragraph 10 of the judgment reproduced from the case of Abdul Hameed Anjum quoted supra it has been stated that on the request of CBR the respective department thus invited options from their officers to be transferred/deputed to

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CBR which means that the officers to whom these options were given had right to either refuse or accept the option of being transferred/deputed to CBR, therefore the seniority of such officers who opted to be inducted in CBR has to be reckoned in accordance with Rule 6-A which provides that the seniority in the new office shall be counted from the date of transfer of officer to that office. This date according to the admitted facts is 26th March, 1994. We are, therefore, of the considered opinion that the seniority of the appellant vis-à-vis the other officers for all purposes shall be reckoned from 26th March, 1994 and not from 1st January, 2001 which has been declared to be the date of absorption/induction in the Income Tax Group by this court in its earlier judgment."

The above view has also been endorsed by the Hon'ble Supreme Court of Pakistan in Syed Arshad Ali Versus Secretary Ministry of Housing and Works, Islamabad and others (2022 SCMR 729) while upon in the cases of Tikka Khan and others v. Muzaffar Hussain Shah and others (2018 SCMR 332) and Secretary Revenue Division/Chairman, FBR and another v. Muhammad Arshad Hilali (2019 SCMR 980) while considering the implication of Rule 6 of The Civil Servants (Seniority) Rules, 1993:-

"5. The import of paragraph 6(i)(a) above appears to be quite contrary to what respondent's counsel intend to advance before us. It clearly provides that where a person is transferred to another office in a situation where it was open to him to accept or refuse such transfer, his seniority was to be reckoned from the date of his transfer to the new office. The only exception to this rule is contained in paragraph 6(i)(b). It states that where a person is compulsorily transferred to another office then he is allowed to count his service in the previous office towards his seniority in his new office. In the case of transfer of four other officers of the department, example of which has been quoted as precedent in the present case, their seniority may have been reckoned from the date of their initial appointment but nothing was brought on the record as to the circumstances in which such transfers had taken place. In the present case, one thing is clear that the respondent sought his transfer to his new office on his own volition on the basis of mutual consent with another officer of the same grade. He was not compulsorily transferred at the instance of the department, hence the recognized practice contained in paragraph 6(i)(a) of Serial No. 30, Chapter III, Part II of Estacode (1989 edition) clearly disentitles him to count his previous service towards seniority in the new office. When on a principle of law one upon his transfer is not entitled to seek seniority from the date of his initial appointment then if someone else has been granted seniority in violation of such principle, which too is not clear, the same cannot be made a ground to raise the pica of discrimination."

13. The respondents' side has relied upon un-reported judgment of the Hon'ble Supreme Court of Pakistan passed in Civil Appeals No. 709 to 717/2016 & C.M.A. No. 981 of 2016, dated 16.01.2017 with reference to judgment, dated 29.10.2015 of this Tribunal, passed in Appeals No. 80(L)CS/2008, 715(R)CS/2008, 1212(R)CS/2009, 1214(R)CS/2009 and 1889(R)CS/ 2010. The conclusion of judgment relates to para-3 which is reproduced as under for ease of reference:-

"3. We have called the A.I.G (HRM), NH&MP, and after hearing him and with the consent of the learned Counsel for the parties as

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well as the learned Additional Attorney General for Pakistan, intend to dispose of the Appeals in the following terms:-

"The seniority of the Police Officials in the NH&MP shall be re-fixed. The deputationists (Police Officials) who were inducted in NH&MP by extending the benefit of one step higher than their substantive rank in the parent department, shall be assigned seniority from the date they were permanently absorbed in the department by the notification issued by the competent authority and their seniority shall be placed at the bottom. The one step promotion cannot be equated as out of turn promotion in terms of judgments of this Court reported as Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456). In fact the principles which this Court has enunciated in the case of Ch. Muhammad Akram vs. The Registrar, Islamabad (PLD 2016 SC 961), would be attracted in the case in hand where the issue of the nature was dealt with by this Court. The seniority of all the Police Officials shall be finalized in the above terms from the date when they were permanently absorbed in the department, placing them at the bottom of the seniority as concluded hereinabove.

4. *The process of re-fixation of the seniority shall be completed within one month from today, as suggested by the A.I.G (HRM), NH&MP. These Appeals are disposed of with the modification in the impugned judgment in the terms contained in paragraph 3 of this order."*

13. We have cautiously and minutely gone through the pros and cons of the judgments of the Hon'ble Supreme Court of Pakistan referred to in para-3 of the above un-reported judgment and observed that the proposition in all the judgments relate to different subject matter and none of the judgment is not directly applicable to the issue of seniority of the deputationist involved in the subject appeals, as such, with due respect cannot be relied upon. More so, it is settled law that the latest judgment will prevail over the old view. We have also noted that the judgment of the Hon'ble Supreme Court of Pakistan, dated 16.01.2017, referred to above was passed and rendered with the consent of the parties which can be given the status of a judgment in personam at the most and not judgment in rem applicable in all cases. Furthermore, the judgment of the Hon'ble Supreme Court of Pakistan passed in Muhammad Arshad Sultan, Section Officer, Cabinet Division, Islamabad and another versus Prime Minister of Pakistan, Islamabad and others (PLD 1996 Supreme Court 771) and Din Muhammad Versus Director-General, Pakistan Post Office, Islamabad and 20 others (2003 SCMR 333) *supra* have not been brought in the notice of the Hon'ble Supreme Court of Pakistan wherein the issue of seniority of deputationist was specifically decided. In a recent judgment of the Hon'ble Supreme Court of Pakistan reported as Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others Versus Hon'ble Chairman and Member of Administration Committee and Promotion Committee of Hon'ble High Court of Balochistan and others

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(2022 SCMR 448), the doctrine of judgment in **rem** and **personam**. While discussing the exactitudes and philosophy, also quoted its meaning derived from different law dictionaries in the following manner:-

The Oxford Companion to Law by David M. Walker

Judgment in personam. A judgment determining the rights of persons inter se in or to any money or property in dispute, but not affecting the status of persons or things or determining any interest in property except between the parties. They include all judgments for money.

Rem, Judgment in. A legal determination binding not only the parties but all persons. It applies particularly to judgments in Admiralty, declaring the status of a ship, matrimonial causes, grants of probate and administration and condemnation of goods by a competent Court.

K. J. Aiyar's Judicial Dictionary (10th Edition 1958)

Rem, Judgment in. A judgment which gives to the successful party possession or declaration of some definite right which right is available against the whole world.

Words and Phrases legally defined (Vol. 3 I-N)

Judgment, In personam. A judgment in personam or inter parties are those which determine the rights of parties inter se to or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but do not affect the status of either persons or things, or make any disposition of property or declare or determine any interest in it except as between the parties litigant. They include all judgments which are not judgments in rem.

A judgment in personam determines the rights of the parties inter se to or in the subject matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or declare or determine any interest in it except as between the parties litigant. Judgments in personam include all judgments which are not judgments in rem, but as many judgments in the latter class deal with the status of persons and not of things, the description "Judgment inter parties" is preferable to "Judgment in personam".

Judgment, In Rem. A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from the particular interest in it of a party to the litigation). Apart from the application of the term to persons, it must affect the res in the way of condemnation, forfeiture, declaration of status or title, or order for sale or transfer.

Black's Law Dictionary (6th Edition)

Judgment in personam or inter parties. A judgment against a particular person, as distinguished from a judgment against a thing or a right or status.

Judgment in rem. An adjudication pronounced upon the status of some particular thing or subject-matter, by a Tribunal, having competent authority. Booth v. Copley, 238 Ky.23, 140 S.W 2d, 62, 666. It is founded on a proceeding instituted against or on something or subject-matter whose status or condition is to be determined. Eureka Building and Iran Assn v. Shultz, 139E Kan,

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435, 32 P.2d 477, 480; or one brought to enforce a right in the thing itself. Federal Land Bank of Omaha v. Jafferson, 229 Iowa 1054, 295 N.W. 855, 857. It operates upon the property, Guild v. Wallis, 150 Or. 69, 40 P. 2nd 747, 742. It is a solemn declaration for the status of some person or thing. Jones v. Teat, Tex Civ. Appellant. 57 S.W. 2d. 617, 620. It is binding upon all persons in so far as their interests in the property are concerned".

14. We have also noted that the unreported judgment of the Hon'ble Supreme Court of Pakistan, dated 16.01.2017, *supra*, referred by the respondents' side does not come in the scope of *ratio decidendi* rather covers under the doctrine of *obiter dicta*, as such, is not binding on the Courts in terms of Article 189 of the Constitution and this concept is elaborately discussed in Chaudhary Parvez Elahi Versus Deputy Speaker, Provincial Assembly of Punjab, Lahore and others (PLD 2023 Supreme Court 539):-

A. Ratio Decidendi

22. To assess the above contention of learned counsel for the respondents and the interveners, the first step is to determine whether the view expressed by Justice Sheikh Azmat Saeed in paragraph 112 of his opinion constitutes binding precedent. That will only be the case if paragraph 112 is the ratio decidendi of one, his Lordship's opinion and two of the District Bar Association case (*supra*). This is because it is only the ratio decidendi of a judgment which forms its binding precedent. Halsbury's Laws of England (Volume 11, 2020) explains the correlation between ratio decidendi and binding precedent as follows:-

"25. ...The enunciation of the reason or principle upon which a question before a court has been decided is alone binding as precedent. This underlying principle is called the 'ratio decidendi', namely the general reasons given for the decision or the general grounds upon which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision. What constitutes binding precedent is the ratio decidendi, and this is almost always to be ascertained by an analysis of the material facts of the case, for a judicial decision is often reached by a process of reasoning involving a major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration."


(emphasis supplied)

That the ratio decidendi of a case is its binding precedent was also affirmed by the Court in Pir Bakhsh v. Chairman Allotment Committee (PLD 1987 SC 145):-

"...In a controversy raising a dispute inter partes, the thing adjudged is conclusive as between the parties both on questions of fact and law, but as to what the Court decides generally is the ratio decidendi or rule of law for which it is the authority. It is this ratio decidendi which is applicable to subsequent cases presenting the same problem between third parties not involved in the original case..."

(emphasis supplied)

This dictum was later endorsed by the Court in Muhammad Sohail v. Government of N.-W.F.P. (1996 SCMR 218) at para 7. Likewise, in Irshad Ahmad Shaikh v. State (2000 SCMR 814) the Court held:

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"Now, every case is an authority, to the extent the same decides the legal controversy encompassed in it. In other words, the declaration of law has to be confined to the four corners of the dispute agitated before the Court..."

(emphasis supplied)

23. The constituent elements of ratio decidendi that distinguish it from the other parts of a judgment have been elaborated in the case-law of the Court. For instance, in *All Pakistan Newspapers Society v. Federation of Pakistan* (PLD 2004 SC 600) the Court referred the principles set out in the book 'Fundamental Law of Pakistan' authored by A.K. Brohi for determining the ratio decidendi of a case:-

'17. ...1. "The underlying principle of a judicial decision", says Stephen in his commentaries on the Laws of England, Vol. I, p. 11, "which forms its authoritative element for the future, is termed Ratio Decidendi. It is contrasted with an Obiter Dictum, or that part of a judgment which consists of the expression of the Judge's opinion on a point of law which is not directly raised by the issue between the litigants. Obiter dicta are often valuable though not binding, statement of the law."

2. Sir John Salmond in his Jurisprudence says (at p.1910):

'A precedent, therefore, is a judicial decision which contains in itself a principle. 'The underlying principle which forms its authoritative element is often termed the ratio decidendi. The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of law as regards the world at large.'

3. So also Professor Chipman Gray says in his book 'Nature and the sources of Law' about a judicial precedent (p.261).

'It must be observed that [in] common law not every opinion expressed by a Judge forms a judicial precedent, two things must concur: it must be, in the first place, an opinion given by a Judge, and, in the second place, it must be an opinion the formation of which is necessary for the decision of a particular, case; in other words, it must not be obiter dictum.'

4. Similarly, Professor C.K.Allen, in his Law in the making' says (at p.241).

'Any judgment of any Court is authoritative only as to that part of it, called the ratio decidendi, which is considered to have been necessary to the decision of the actual issue between the litigants. It is for the Court, of whatever degree, which is called upon to consider the precedent, to determine what the true ratio decidendi was.'...

(emphasis supplied)

A succinct but comprehensive synopsis of ratio decidendi can also be found in Jowitt's Dictionary of English Law (5th Edn):

'The legal basis for a judicial decision, which is usually (but not necessarily) made explicit in the judgment. It includes only those statements of legal rules or principles that are the essential basis for reaching the decision, as opposed to other observations on the law (known as obiter dicta (q.v.)) which the judgment may contain. The ratio decidendi is important in the doctrine of precedent (q.v.) since it is only that part of the judgment of a superior court that constitutes a precedent.'

(emphasis supplied)

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15. Now it is settled that each case has to be decided on its own merits and facts and in this respect the Hon'ble Supreme Court of Pakistan has recently ruled in Ali Bux Shaikh Versus The Chief Secretary, Government of Sindh, Karachi and others (2023 PLC (C.S.) 831).

16. The upshot of the above discussion is that interference of this Tribunal is required in the matter being the impugned order dated 26.05.2022 is not sustainable and maintainable in its entirety, as such, impugned order is modified with the observation that the permanent absorption/induction of the appellants in the borrowing Department (NH&MP) will be 'with immediate effect' viz., '19.07.2019' and not from the date of NOC, dated 20.07.2013, 14.10.2013 04.09.2014, 17.09.2014, 08.02.2016 & 08.02.2016 respectively and so far as the determination of seniority of the deputationists is concerned that will be considered from the date of their transfer/induction in the Department with effect from 03.07.2008, 13.08.2009, 01.04.2010, 11.11.2011, 07.01.2013 & 14.01.2013 respectively and the respondents are directed to consider the issue of determination of seniority afresh through meaningful consideration and as per law laid down by the Hon'ble-Supreme Court of Pakistan in Abdul Hameed Anjum and others v. Federation of Pakistan and others (PLD 2010 S.C. 857), Khalid Mahmood Versus Chief Secretary, Government of Punjab and other (2013 SCMR 544); Shama Khan Zafar Versus District Coordination Officer, Lodhran and others [2014 PLC (C.S.) 948]; and Sindh Irrigation and Drainage Authority v. Government of Sindh and other (2022 SCMR 595). No order as to costs.

17. Parties be informed accordingly. Files be consigned to record after codal formalities under Rule-21 of The Service Tribunals (Procedure) Rules, 1974.

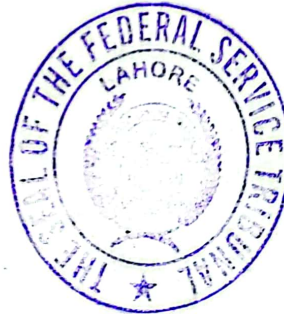
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MEMBER

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MEMBER

Lahore, the
15th January, 2024
'نوید اکرام'

Approved for Reporting

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MEMBER



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