JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 1555 OF 2022

Asif ur Rehman

VS

Ministry of Science of Technology & another

Petitioner by	**:**	**Petitioner in person.**
Respondents by	**:**	**Raja Zamir-ud-Din Ahmed, A.A.G.** **Mr. Abid Mehmood Chaudhry, Section Officer (Legal), Ministry of Information and Broadcasting.** **Mr. Muhammad Akmal, Admin Officer (Legal), Ministry of Science & Technology.**
Date of hearing	**:**	**25.08.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**"), the Petitioner seeks (i) direction for declaration of the complete results of the aborted selection process, including disclosure of marks obtained in the written and interview tests as well as the position of each candidate, along with revision of the revised age limit in line with the Establishment Division's policy so as to avoid unreasonable discrimination against experienced civil servants; (ii) a declaration that the Respondents acted with excessive and unreasonable discretion in aborting the earlier process and altering the eligibility criteria, which is contrary to the applicable rules and statutes, and that the initiation of a fresh process and entertaining applications thereunder is without lawful authority, coupled with a consequential direction to forthwith restrain and annul the ongoing recruitment process; and (iii) a declaration on the correct legal position regarding the permissibility, or otherwise, of inclusion of candidates from the private sector for the post in question.

2. The brief facts of the case are that the Ministry of Science & Technology/Respondent No. 1 initiated a selection process for the post of

Science Counsellor in Beijing, under Establishment Division guidelines mandating a transparent, merit-based process. The Petitioner, a qualified CSS officer with relevant experience and an upper age limit of 56, applied through proper channel. He successfully passed the written test (as evidenced by his call for an interview) and appeared before the Special Selection Board. Upon inquiring about the delayed result, he discovered the entire process had been secretly aborted and a new advertisement was published, drastically reducing the upper age limit to 45 and including the private sector, thereby illegally excluding him from consideration.

3. The petitioner himself argued the matter and contended that the Respondents acted arbitrarily, irrationally, and in violation of the governing Policy Guidelines by surreptitiously aborting a completed, merit-based selection process without any transparency. Their failure to declare the results, including the Petitioner's marks and position, breaches principles of natural justice and the Petitioner's legitimate expectation. The subsequent drastic reduction of the age limit to 45 is unreasonable, discriminatory against seasoned civil servants, and contrary to established practice. Furthermore, the inclusion of private sector candidates is *ultra vires*, as the applicable policy is explicitly intended for government officers only, not private individuals.

4. The Ministry of Information & Broadcasting, arrayed as Respondent No. 2, has affirmed in its submissions that it is a proforma party to these proceedings. Consequently, it formally adopts and relies upon the comprehensive para-wise comments and averments set forth by Respondent No. 1, the Ministry of Science & Technology, in its reply.

5. The learned Assistant Attorney General (AAG) while raising preliminary objections submitted that the Petitioner has no cause of action, as non-selection does not confer a right to challenge the process. The petition is not maintainable in its present form, and the Petitioner is estopped by his own conduct from filing it as his conduct demonstrated an implicit acceptance of the entire process as being fair and lawful and his challenge arose only after he learned he had failed the interview and was not selected. The core fact is that the Petitioner, along with all other candidates, failed the mandatory interview by not securing the minimum threshold of 50% marks, a requirement explicitly stipulated under the Establishment Division's policy guidelines. Consequently, the entire selection process was rightly abated as no candidate qualified for the final merit

list. Faced with this outcome and to secure a suitable candidate for this critical national post, the Ministry acted lawfully and transparently. A summary seeking relaxation of the policy's terms, including the age limit and eligibility for private sector candidates, was forwarded to and expressly approved by the Prime Minister, as expressly permitted under Para (xiii) of the Establishment Division's guidelines. The subsequent fresh advertisement was thus issued with full legal sanction. The Ministry carried out all proceedings, encompassing the initial testing phase and the subsequent decision to broaden the candidate pool, strictly in accordance with the law, ensuring transparency and fulfilling all requisite codal formalities for the public good. The allegations of arbitrariness are baseless and vehemently denied. The discretion to set age limits and criteria rests with the Ministry, and it was exercised reasonably following the Prime Minister's approved policy.

6. I have heard arguments of the Petitioner and learned A.A.G, and perused the record including the replies/para-wise comments submitted by the Respondents.

7. The learned counsel for the Petitioner argued that the process was lacking in transparency and that its aborting violated the Petitioner's legitimate expectation. This Court finds these arguments unpersuasive. The Respondent No. 1 have provided a clear, evidence-based account demonstrating that the Petitioner, along with all other candidates, failed to achieve the minimum qualifying score of 50% in the interview, as unequivocally required under Clause *(ix)* of the Establishment Division's O.M. No. 4/3/2016-T-IV dated 21.10.2020/Amended Policy Guidelines for Foreign Appointments and Postings in Pakistan Missions abroad **(**hereinafter referred to as **"O.M")** i.e. *"(ix) Fifty percent passing marks in the interview, and the candidates scoring less than the required threshold shall be deemed to have failed to qualify for the position"*. A process is not rendered opaque merely because its result is disappointing to a participant. The subsequent communication of the said fact that the Petitioner failed to qualify the interview to the Petitioner, while concise, was factually accurate.

8. Furthermore, the doctrine of legitimate expectation guarantees a fair process, not a result. The Petitioner's legitimate expectation was to be assessed on merit according to the rules prevailing at the time. This expectation was fulfilled as, he was tested and interviewed under Clauses *(v), (vi), (vii),* and *(viii)* of the O.M which for ready reference are reproduced hereunder:-

> *v) There shall be a precondition of passing a written qualifying test, but the test shall be organized by the concerned Ministry through the Lahore University of Management Sciences, Lahore or the Institute of Business Administration, Karachi;*
>
> *vi) The minimum qualifying score in the written test will be set at 60 percent;*
>
> *vii) Candidates qualifying the test will be called for an interview, which will be conducted by a committee to be constituted with the approval of the Prime Minister; and*
>
> *viii) Sixty percent weightage will be given to the written test scores and forty percent weightage to the interview scores*.

As such the Petitioner possessed no legitimate expectation that the rules would remain frozen in perpetuity for his benefit after he failed to qualify. The foundational premise of his case is thus fundamentally flawed and contradicted by the official record, which shows he secured only 15.28/40 marks in the interview, falling far short of the mandatory 20/40 threshold. His failure to qualify is, in itself, a complete and sufficient justification for his non-selection. The law is well-settled that a candidate has a right to consideration, not a right to appointment.

9. The Court concurs with the learned Assistant Attorney General that the Petitioner is estopped by his own conduct. He voluntarily participated in every stage of the process, from application under the circulated vacancy (Clause *iv of the O.M*) to the written test (Clause (v) and the interview (Clause *vii*), without raising any protest regarding the validity of the process. It is impermissible in law to fully partake in a process, await the outcome, and then challenge the very framework of that process upon an adverse result. This conduct of approbating and reprobating is an abuse of the Court's process and provides an independent ground for dismissal.

10. It has apprised by the Respondents that the post in question is no longer vacant. A new candidate has been selected, appointed, and already deputed to the Embassy in Beijing. In such circumstances, the Court must consider the practical consequences of its orders. To provide the relief sought would mean overturning a completed appointment as an individual is already in place and performing duties at the embassy in Beijing. Intervening now would cause significant disruption to the country's diplomatic operations, an outcome that is not in the public's best interest. Consequently, the petition has been overtaken by events and no longer presents a live issue for the Court to decide.

11. Furthermore, the challenge to the revised eligibility criteria touches upon the realm of policy formulation. It is a cardinal principle that the judiciary does not sit as an appellate authority over the wisdom of policy decisions made by the Executive. In this case, the change was not made in a vacuum. Clause *(xiii)* of the O.M. explicitly provides a mechanism for change i.e. No relaxation or exception to the above policy guidelines shall be granted without prior approval of the Prime Minister. The Respondents followed this prescribed channel, moving a summary with requisite justifications, which received the explicit approval of the Prime Minister. The rationale, to widen the pool to find a suitable candidate after repeated failures, is logical and demonstrates a due application of mind free from *mala fides*. The Court finds no unreasonableness in this decision and will not substitute its judgment for that of the Executive on a matter squarely within its domain.

12. For the reasons mentioned above, this Petition is found to be devoid of any merit and is accordingly **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Adnan