JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.4391 of 2022.

Akhtar Nawaz & others

Versus

National Telecommunication Corporation & another

Petitioners by:	M/s Ajam Naz Malik, Muhammad Tariq and Sidra Sheikh Advocates.
Respondent No.1 by:	Mr. Zeeshan Zafar Hashmi, Advocate.
Respondent No.2 by:	Mr. Fahad Khan Tareen, AAG.
Assisted by:	Muhammad Fahad, Advocate.
Date of Hearing:	**03.02.2026.**

INAAM AMEEN MINHAS, J.- Through the instant writ petition, the petitioners have made the following prayer:-

i. Direct respondents No.1 & 2 to promote the petitioners in pursuance to the regulation 2.26 of service rules of 2008 of NTC, w.e.f relevant dates with all financial benefits, without any further delay;

ii. Direct respondents No.1 & 2 not to make any change in service rules which adversely affects the rights of the petitioners;

iii. No adverse action may be taken against the petitioners during pendency of the instant writ petition; and

iv. Any other relief, which this Hon'ble Court deems fit under the circumstances, may graciously be awarded to the petitioners.

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2. Brief facts leading to the filing of the instant writ petition are that respondent No.1/National Telecommunication Corporation **("NTC")** is a Federal Government-owned body established under the Pakistan Telecommunication Re-organization Act, 1996 **("PTRA, 1996")** and is managed by a Board appointed by the Federal Government. The petitioners are employees of NTC serving in different cadres have identical grievance regarding their promotion. Regulation 2.26 of the National Telecommunication Corporation, Service Regulations, 2008 **("Regulations 2008")** provides that the employees, who remain in the same pay group for seven years without promotion are entitled to upgradation, subject to prescribed criteria. The petitioners meting this requirement, sought their due benefits; however, the NTC Management withheld their promotions on the basis of a Board decision.

3. The learned counsel for the petitioner contended that NTC previously granted benefit of Regulation 2.26 of the Regulations 2008, to other employees, as evident from the promotion letters, therefore, the denial of the same benefit to the petitioners amounts to clear discrimination; that the petitioners, despite fulfilling all requirements, have been unlawfully deprived of promotion due to the inaction and *mala fide* conduct of respondents; that such denial is violative of Articles 4, 9 and 25 of the Constitution, as the petitioners have not been treated in accordance with law or on the basis of equality; that there is no legal or moral justification for withholding promotion, when similarly placed employees have already been granted the same benefit, rendering the act arbitrary and contrary to the principles of fairness and good governance; that it is settled law that where a rule prescribes a manner of doing an act, it must be followed strictly, but the respondents have failed to implement Regulation 2.26; that the petitioners have invoked constitutional jurisdiction under Article 199, as there is clear violation of service regulations and principles of natural justice; that this Court has already directed the implementation of Rule 2.26 of the Regulations 2008 in its earlier judgments, and the respondents have also admitted extending such benefits in

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prior proceedings; that despite this, the respondents have acted arbitrarily, capriciously, without lawful authority and deprived the petitioners of their lawful rights.

4. Conversely, the learned counsel for NTC contended that the instant writ petition is not maintainable as the petitioners have not shown any violation of law or statutory rules; that the petitioners seek interference with the administrative matters of NTC, involving disputed facts that require recording of evidence and cannot be examined under writ jurisdiction; that the claim of promotion as a matter of right is misconceived, as promotion depends on eligibility and fitness, and it is the sole authority of the competent body to set such criteria; that the law also allows the authority to change or amend rules and policies when required; that the Regulations, 2008 being non-statutory in nature, cannot be enforced through constitutional jurisdiction; that section 41(5) of the PTRA, 1996 empowers NTC to frame its own regulations for internal management without prior government approval; that the petitioners have neither challenged any specific illegality nor shown breach of promotion policy rather they are seeking automatic promotion after seven years, which is not supported by law; that this Court cannot interfere in policy matters or act as an appellate authority over administrative decisions, especially where factual controversies exist; that as per the management board's decision, promotions under Rule 2.26 of Regulations 2008 are subject to completion of 10 years' service, availability of funds, and profitability, and may be withheld until financial losses are recovered, therefore, this petition is liable to be dismissed.

5. The learned Assistant Attorney General on behalf of respondent No.2/Ministry of Information Technology submitted that under Clause 17 of Schedule-II of the Rules of Business, 1973, the Ministry of IT and Telecom is responsible for policy making and planning for the development of the IT and telecom sector in Pakistan, and NTC operates under its administrative control; that NTC was established under section 41 of PTRA, 1996 and is empowered under sections 41(5) and 41(17) to frame service regulations

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governing appointment, promotion, and service matters, with the approval of the Federal Government where required; that in exercise of these powers, NTC framed the Regulations 2008, which were duly approved and notified in the official gazette; that as per Regulation 2.26, the employees, who have completed seven years in the same pay group may be promoted, subject to the fulfilment of other criteria, however, promotion is not a vested right and remains subject to eligibility and the competent authority's discretion; that the Ministry is only a proforma party, as it is not involved in the day-to-day affairs of NTC; that the NTC Management Board, in its 81st meeting dated 13.05.2014, resolved that such promotions would be granted after 10 years of service, subject to the availability of funds and profitability but Regulation 2.26 has not been formally amended and still holds field.

6. I have heard the learned counsel for the parties and gone through the record.

7. It is necessary, at the outset, to address the objection raised by the learned counsel for NTC that the instant petition is not maintainable on the ground that NTC is the creation of section 41 of PTRA, 1996, and its sections 41(5) and 41(17) authorize it to make regulations, therefore, Regulations 2008 are non-statutory in nature, and the same were framed merely for internal functioning and management, including matters relating to appointment, promotion, termination, and other terms and conditions of service of NTC employees, and that the NTC Management Board is competent to frame such regulations independently without requiring prior approval of the Federal Government. It is relevant to reproduce the sub-sections (5) and (17) of section 41 of the PTRA, 1996 hereunder as:-

> ***"41. National Telecommunication Corporation.***–
>
> ***(5)*** *For the purpose of its functions, the National Telecommunication Corporation may, subject to regulations made by it providing for procedure of appointment, promotion, termination and terms and conditions of service, employ such persons, as it may consider necessary.*

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> ***(17)*** *The National Telecommunication Corporation may, with the approval of the Federal Government, by notification in the official Gazette, make regulations for the management and operation of its business and activities."*

8. The afore-referred provisions, upon plain reading, contemplate two distinct sets of regulations i.e., sub-section (5) of section 41 pertains specifically to regulations governing service matters, including appointment, promotion, termination, terms and conditions of service of employees, which are to be framed by the NTC itself, and sub-section (17) relates to regulations concerning the management and operation of the business and activities of the NTC, which can only be framed with the approval of the Federal Government and through notification in the official Gazette. The distinction drawn by the legislature is also significant, inasmuch as sub-section (5) employs the expression "regulations made by it", thereby conferring it upon the NTC in service matters, whereas sub-section (17) subjects the framing of regulations with the approval of the Federal Government. However, the Regulations 2008 were made with the approval of the Federal Governement and were duly notified in the official Gazette through SRO No.60(KE)/2008. Furthermore, these regulations were subsequently repealed and replaced by the NTC Employees Service Regulations, 2023, (**"Regulations 2023"**) which were also formally notified in official Gazette with the approval of the Federal Government vide SRO No.1017(1)/2023 dated 02.06.2023, issued by the Ministry of Information Technology and Telecommunication Division. The portion regarding making of both regulations are reproduced as under:-

"Regulations 2008

> ***S.R.O. 60(KE)/2008:*** *In exercise of the powers conferred by (Sub-section (5) and (17) of Section 41 of Pakistan Telecommunication (Re-organization) Act, 1996 National Telecommunication Corporation with the approval of the*

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Federal Government make National Telecommunication Corporation Service Regulations.

Regulations 2023

S.R.O 1017(I)/2023. *In exercise of powers conferred by sub-section (17) of section 41 of the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996), the National Telecommunication Corporation with the approval of the Federal Government is pleased to make the following regulations, namely:-"*

9. Having examined the enabling provisions and the material on record, this Court is not persuaded by the contention of learned counsel for NTC that the Regulations 2008 are non-statutory in nature. Section 41 of the PTRA, 1996 operates on two distinct planes: sub-section (5) vests in the NTC Board the authority to frame regulations for internal management, whereas sub-section (17) contemplates regulations made with the approval of the Federal Government and notified in the official Gazette. It is manifest from the record that the NTC, on two separate occasions, consciously elected to invoke the higher legislative mechanism under sub-section (17). The Regulations 2008 were framed under sub-sections (5) and (17), with the approval of the Federal Government, and duly notified vide S.R.O. No. 60(KE)/2008. The Regulations 2023, notably framed during the pendency of the instant writ petition, were made under sub-section (17) alone, the provision that expressly requires Federal Government approval and official gazette notification, and notified vide S.R.O. No. 1017(I)/2023 dated 02.06.2023. The respondent's own consistent conduct of seeking Federal Government approval and gazette notification on both occasions belies its contention that these instruments are mere internal management regulations and non-statutory.

10. Argument of the learned counsel for NTC mainly rests upon a misconception and conflated two distinct legal situations: one where the very existence of a statutory framework is in dispute, and other, as in the present case, where the statutory character of the instrument is established

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conclusively on its face. The case laws relied upon by the learned counsel were developed exclusively for the former situation and its ratio cannot be stretched to govern the later. The said case laws are distinguishable both on facts and in law and have no application to the present matter. In ***Zarai Taraqiati Bank Limited and others vs. Said Rehman and others,*** **(2013 SCMR 642)**, the apex Court laid down that statutory rules must possess three characteristics: first, that they are framed by a statutory or public body; second, that they are framed under the authority or powers conferred in the statute; and third, that they carry statutory governmental approval or statutory sanction. The Regulations 2008 met these three criteria. The NTC is a creature of statute established under section 41 of the PTRA 1996. The 2008 Regulations were framed expressly under sub-sections (5) and (17) of that section and they carry the approval of the Federal Government and were notified in the Official Gazette. What makes the NTC's position particularly untenable is that the very authorities they cite actively undermine their own contention. In ***Pakistan Red Crescent Society and another vs. Syed Nazir Gillani,*** **(PLD 2005 SC 806)** and ***Chairman, State Life Insurance Corporation and others vs. Hamayun Irfan and 2 others,*** **(2010 SCMR 1495)**, the apex Court defined a statutory regulation as one that is legislative as opposed to executive, made by a rule-making authority in exercise of statutory power, with the approval of the central government, and attended by the publication in the government gazette. The NTC's true argument, stripped of legal clothing, is that because section 41(5) deals specifically with service matters, which is the internal administrative management, the NTC's additional invocation of section 41(17) and its full compliance with that provision's formalities should be disregarded. This proposition is not merely weak — it is perverse, and allowing it would mean that a statutory body, which goes beyond the minimum requirements of law and adopts higher formalities in protection of its employees thereby weakens the very protection it sought to create. Finally, Regulations 2008 have governed the service conditions of the petitioners throughout their employment. Rights, protections, and entitlements have been created and acted upon under these

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Regulations for years. The respondents cannot, at the stage of enforcement of those very rights, turn around and disown the statutory character of the instrument they themselves have administered. To permit the respondents to invoke the Regulations as the governing instrument of service, when it suits their administrative convenience, and disclaim their statutory character when called to account before the Court, would be a course of conduct fundamentally incompatible with the rule of law. Furthermore, in earlier writ petitions arising from Regulations 2008 before this Court, the respondents raised no objection to the statutory character of the Regulations 2008; the present objection is accordingly an afterthought unsupported by the respondent's own consistent practice and conduct. Thus preliminary objection is not tenable and the instant petition under Article 199 of the Constitution is maintainable.

11. Now adverting to the issue of promotion claimed by the petitioners on the basis of Regulation No. 2.26 of Regulations 2008, which is reproduced as under:-

> ***"2.26. Promtions Against ex-Cadre Post & Where Employee is Struck-up-Due to Want of Vacancy.***
> *Corporation's employees who are not promoted for want of vacancy or do not have a channel of promotion and have remained in the same pay group in which they had joined/promoted for 7 years would be promoted to next higher pay group, provided they qualify other criteria for promotion. Promotion under this rule shall be allowed once in a post. On promotion, the post shall automatically be upgraded with same job description whereas the upgraded post shall be abolished. On retirement or leaving service of the Corporation, the up-graded post shall be automatically revert to post in original pay scale."*

The above referred regulation expressly entitles the employees, who remained in the same pay group for a continuous period of seven years without promotion, subject to the prescribed criteria. It is not disputed that the petitioners does not fulfill this requirement. The sole ground on which their

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entitlement has been withheld is a decision of the NTC Management Board. It is well settled that a statutory benefit conferred by a validly notified regulation cannot be suspended, withheld or nullified by an administrative or Board's decision of the NTC itself. It is evident from the promotion letters placed before this Court by the petitioners that the NTC has previously extended the benefit of Regulation 2.26 to similarly placed other employees. When a statutory benefit has already been extended to one set of the employees fulfilling identical criteria, its denial to another set fulfilling the same criteria is not merely irregular but is violative of Article 25 of the Constitution, which eliminates discrimination and guarantees equality before law. The petitioners cannot be made to suffer an arbitrary exclusion from a benefit to which they are equally entitled under the law. It would not be out of place to mention that this Court in its earlier proceedings, directed the respondent to implement Regulation 2.26 and they themselves acknowledged extending such benefits.

12. For the foregoing reasons, the instant writ petition is **allowed**. The respondents are directed to consider the cases of the petitioners for promotion strictly in accordance with Regulation 2.26 of the Regulations 2008 w.e.f the date, when they became entitled.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 30.04.2026.

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APPROVED FOR REPORTING.

R.Anjam.

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