# JUDGMENT SHEET
# IN THE ISLAMABAD HIGH COURT, ISLAMABAD

**CASE NO. : W.P. NO.4546-2023**

**Muhammad Irfan Wahid**

**Vs.**

**Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad & Another**

**Petitioner by :** Ms. Zainab Janjua, Advocate

**Respondents by :** Mr. Umer Sajjad Chaven, Advocate (respondent No.2) Mr. Munawwar Iqbal Duggal, Additional Attorney General & Mr. Azmat Bashir Tarar, Assistant Attorney General with Kashif Manzoor Malik, Joint Secretary, Ministry of Commerce.

**Date of decision :** 11.01.2024

**AAMER FAROOQ C.J.** Federation of Pakistan, through notification issued by Ministry of Commerce, invited applications for posting at Pakistan's Trade Mission Abroad, 2023. In this regard, relevant guidelines regarding terms and conditions for appointment, were provided in 'Policy Guidelines for Selection, Appointment and Posting of Trade and Investment Officers (BS-18 to BS-21) in Pakistan's Trade Missions Abroad dated 03.07.2023' (the Policy), were to be followed. Under clause 1 (j) of the Policy, applicants were to provide in sequence to their preferences the options of eight different stations, for which, the applications for posting were invited. The petitioner accordingly made application and also provided his option in order of reference and kept Washington D.C. as Preference No.1 and London (U.K.) as Option No.2; written tests were conducted by Lahore University of Management Sciences (LUMS) and there-after the psychometric analysis was done and merit list was prepared, in which, the petitioner stood at No.4. The allocation of stations was recommended, as per the Policy, by the Interviewing Board (the Board) for selection of Trade and Investment Officers (BS-20) for Pakistan Missions abroad.Washington D.C., as a station, was allotted to the person who stood first on the merit list, however, the petitioner was allocated the station of Riyadh (Saudi Arabia), which was not his option as preference No.2, whereas respondent No.2, who was at the 5$^{th}$ position on the merit list, was recommended for appointment at the London station. The

petitioner, feeling aggrieved, has challenged the instant decision on part of Selection Board.

2. Learned counsel for the petitioner *inter alia* contended that recommendation has been made by the Board without any justification or basis inasmuch as the petitioner stood in merit higher than respondent No.2, but he was recommended for his second preferred option. It was contended that in terms of the Policy, every candidate is to provide the preference list of the stations and there was no justification or basis for not adhering thereto. Learned counsel argued that where the Policy provides options, that also needed to be adhered to and any deviation there-from tantamount to violation of the Policy, which decision can always be struck down on the basis of non-compliance. In support of his contentions, learned counsel placed reliance on the cases mentioned in footnote [1].

3. Learned Additional Attorney General, appearing for respondent No.1, objected to the maintainability of the instant petition on the ground that matter pertains to the terms and conditions of service, hence writ petition is not maintainable in terms of bar provided under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution). It was submitted that the appointment to the Missions Abroad tantamount to transfer and posting, which a matter of terms and conditions of service and the bar under Article 212 of the Constitution is attracted. Reference was made to cases mentioned in the footnote[ 2 ]. Learned Additional Attorney General further contended that petitioner was not given the station of his preference due to the fact that respondent No.2 had more expertise in Europe, whereas extra efforts are required in Riyadh and the petitioner has niche in the same. It was submitted that minutes of meeting totally record the merit and the recommendation for allocation of the Station. It was submitted that even-otherwise, writ petition is not maintainable, as the petitioner has executed an undertaking that he will join the training for appointment to the Station allocated, hence he is bound by the same.

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[1] Dr. Masood Saleem Vs. Federation of Pakistan through Secretary, Establishment Division and another [2013 PLC (CS) 1062], Zaigham Abbas and 10-others Vs. Federation of Pakistan through Secretary, Ministry of OP and HRD and 14 others [2021 PLC (CS) 486] & Muhammad Adil Khan and others Vs. Federation of Pakistan through Secretary, Ministry of Overseas Pakistanis & Human Resource Development and others (W.P. No.3055 of 2019).

[2] Dr. Muhammad Saleem Vs. Government of Balochistan and others (2023 SCMR 2119) & Altaf Hussain Khuro and 3 others Vs. Federation of Pakistan and 6 others [2023 PLC (CS) 796]/

4. Learned counsel for respondent No.2 *inter alia* contended that writ petition is not maintainable in terms of bar provided under Article 212 of the Constitution. Reference was made to case reported as below [3]. It was further contended that clause 1 (j) of the Policy, which requires candidates to give options in preference of the Stations, does not create a vested right in any applicant for allocation to a particular Station.

5. In rebuttal, learned counsel for the petitioner contended that this Court has already held in similar facts and circumstances that bar under Article 212 of the Constitution is not attracted. Reference was made to case reported in the footnote[4].

6. Submissions of the parties have been heard and the documents, placed on record, examined with their able assistance.

7. The dispute raised in the present petition is with respect to the recommendation made by the Board for selection of Trade and Investment Officers at Pakistan Missions Abroad, 2023 and the acceptance of the same by respondent No.1. As noted above, the petitioner, despite having qualified on merit at Sr. No.4, was not given his second preference (London) as a Station of his posting.

8. Before dealing with the merits of the matter, since an objection regarding maintainability of the instant petition, has been raised, it is appropriate that same be dealt with first.

9. Learned Additional Attorney General as well as learned counsel for respondent No.2 has questioned the maintainability of instant petition on the basis of bar provided under Article 212 of the Constitution. It is trite law that matters pertaining to the terms and conditions of a civil service are to be dealt with by the Service Tribunal constituted under Service Tribunal Act, 1973 pursuant to Article 212 of the Constitution and no court, including this Court, can exercise jurisdiction in such matters. It is also an established law that transfer and posting is a term and condition of service and case law relied upon by the respondents is apt and instructive. Reference can be made to cases reported as Altaf Hussain Khuhro and 3 others Vs. Federation of Pakistan and 6 others (2023 SCMR 796) & Dr. Muhammad Saleem Vs. Government of Balochistan and others

[3] Fida Hussain Shah and others Vs. Government of Sindh and others (2017 SCMR 798)
[4] Sajid Mehmood Raja and another Vs. Federation of Pakistan and others [2013 PLC (CS) 864].

(2023 SCMR 2119), however, the facts, in the instant case, are different and it is not a matter of transfer and posting within the meaning of the concept as provided in section 10 of Civil Servants Act, 1973. In somewhat similar circumstances, a challenge was made to the appointments of civil servants at Trade Missions Abroad through a petition under Article 199 of the Constitution in case reported as Sajid Mehmood Raja and another Vs. Federation of Pakistan and others [2013 PLC (CS) 864] and an objection was raised regarding maintainability of petition, which was dealt with by this Court in paragraph-17 of the judgment and opined that since the petitioners who are civil servants are seeking remedy of being posted abroad on the basis of policy, which did not form part of terms and conditions of service, hence the petitions are not for implementation of terms and conditions of service, therefore, bar under Article 212 of the Constitution had no application in the present case; the petitions were held to be maintainable. In view of said dictum by this Court, instant petition is also maintainable.

10. As already cited above, appointments are being made pursuant to the Policy and for the purposes of present controversy, clauses 1(j) & 1(k) of the Policy are pertinent and are reproduced below:-

> *"1 (j) Successful candidates shall (in order of their merit, comprising of summation of scores in written test and interview) be given the option to choose the station of their choice from amongst available stations. Preference will be given to those candidates who have knowledge of foreign language related to the vacant posts.*
> *1(k) The final list of candidates recommended by the Interview Board shall be submitted (in order of merit) to the Prime Minster for approval".*

In view of clause 1(j) of the Policy, successful candidates (in order of their merit, after submission of their scores in written test and interview) are given option to choose the station of their choice from amongst the available stations; preference is to be given to those candidates who have knowledge of foreign language. In terms of clause 1(k), the final list of candidates recommended for the Interview Board is to be submitted to the Prime Minister for approval. In terms of clause 1(j), the successful candidates are to give options in order of preference with respect to the stations which are available and as per clause 1(k) of the Policy and the recommendations made by the Board constituted and mentioned hereinabove, for final approval by the Prime Minister.

11. The stance of learned Additional Attorney General is that since more efforts are required for enhancement of trade in Riyadh (Saudi Arabia), hence task was assigned to the petitioner as a challenge, as he is a diligent officer. When confronted as to the mention of this fact in the minutes of meeting, the candid reply was in negative.

12. The Lahore High Court, in case reported as Dr. Masood Saleem Vs. Federation of Pakistan through Secretary, Establishment Division and another [2013 PLC (CS) 1062], was confronted as to the transfer and posting on the basis of rotation policy notified on 22.07.2000. The Lahore High Court adopted the same reasoning as was given by this Court in case [2013 PLC (CS) 864] supra in holding that petition is maintainable, as the matter pertains to transfer policy, hence bar under Article 212 of the Constitution, is not attracted. The Lahore High Court went on to observe that where a particular mode is laid down for doing an act and there is no impediment in adopting the procedure laid down, a deviation from that procedure amounts to being unreasonable and can be labeled as being arbitrary. It was observed that if the policy is to be deviated, cogent reasons are to be given for doing the same. Similar view was taken by this Court in decision in case titled as 'Muhammad Adil Khan and others Vs. Federation of Pakistan through Secretary, Ministry of Overseas Pakistanis & Human Resource Development and others (W.P.No.3055-2019) and case reported as Zaigham Abbas and 10 others Vs. Federation of Pakistan through Secretary, Ministry of OP and HRD and 14 others [2021 PLC (CS) 486]. This Court, while holding that when appointments are to be made pursuant to a specific policy and change in policy after interviews have been conducted, creates vested right to be dealt with in accordance with the policy, as it originally existed, allowed the petition.

13. It is an admitted position that petitioner ranks higher in merit than respondent No.2 and it is also an admitted position that his second preference/option is London and the policy did entitle him to give his options in preference. It is also not in dispute that appointments are taking place strictly in accordance with the Policy. Where such is the position, deviation from the policy, is unwarranted and respondent No.1 had to give cogent reasons for not allowing the petitioner his station of second preference. If argument of learned Additional Attorney General is admitted that clauses 1(j) & 1(k), if read conjointly, provides

discretion to the Board to make appointment other than the preferred option, the provision of providing candidates their options, would become redundant. Had been the petitioner below in merit, naturally, he could not have pressed the preference of options and was bound by the recommendations made by the Board. The petitioner had the legitimate expectation that he shall be treated in accordance with the policy and there shall be no deviation therefrom. The doctrine of legitimate expectation was elucidated in Uzma Manzoor versus Vice-Chancellor Khushal Khan Khattak University (2022 SCMR 694); in paragraph 12 of the judgment, it was stated as follows:-

> *"12. The doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government or a public authority. When such a legitimate expectation is obliterated, it affords locus standi to challenge the administrative action and even in the absenteeism of a substantive right, a legitimate expectation may allow an individual to seek judicial review of a wrongdoing and in deciding whether the expectation was legitimate or not, the courts may consider that the decision of public authority has breached a legitimate expectation and if its proved then the court may annul the decision and direct the concerned authority/person to live up to the legitimate expectation. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation. This Court expatiated the doctrine of legitimate expectation in the "Judges Pension case" reported in PLD 2013 SC 829 with the observation that the rule of legitimate expectation is not a part of any codified law, rather the doctrine has been coined and designed by the Courts primarily for the exercise of their power of judicial review of the administrative actions. As per Halsbury's Laws of England, Volume 1(1), 4th Edition, paragraph 81, at pages 151-152, it is prescribed that "A person may have a legitimate expectation of being treated in certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice." In the case of R. v. Secretary of State of Transport Exporte Greater London Council (1985) 3 ALL.ER 300, it is propounded that "Legitimate, or reasonable, expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. The expectation may be based on some statement or undertaking by or on behalf of the public authority which has the duty of taking decision." Whereas in the judgment reported as Union of India v. Hindustan Development Corporation (1993) 3 SCC 499, it was held that "The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or established procedure followed in regular and natural sequence. It is also distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."*

In President National Bank of Pakistan versus Waqas Ahmed Khan (2023 SCMR 766) the Supreme Court of Pakistan explained legitimate expectation in the following terms:-

> *"There is no denial to this fact that doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. The legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government of a public authority. When such legitimate expectation is obliterated, it affords locus standi to challenge the administrative action before the court of law. However, it is for the Court to decide as to whether the expectation is legitimate or not."*

14. The fact that candidates are provided options to give their preferences in the Policy, does not create a vested right in them *per se* to be allocated that particular station, however, where a candidate has qualified on merit and his preference of the Station is available, he has legitimate expectation that such option would be granted to him. The undertaking executed by the petitioner does not debar him for asserting his right to be posted at the station of his second preference.

15. The reasoning put forward by learned Additional Attorney General which formed basis for recommendations of the Board does not surface anywhere in the minutes of meeting and on this count also, minutes and recommendations of the Board, are defective as being violative of Section 24-A of General Clauses Act. In case reported as President, National Bank of Pakistan Vs. Waqas Ahmed Khan (2023 SCMR 766), the Supreme Court held that where there is explicit promise on part of government departments, the citizen has a right to expect and to adhere and in failure or deviation there-from, affords a person locus standi to challenge administrative action before the court of law.

16. In view of foregoing, instant petition is allowed in terms that recommendations made by the Interview Board, to the extent of recommendation of appointment of the petitioner at Riyadh (Saudi Arabia), are in violation of the Policy, hence respondent No.1 is directed to act strictly in accordance with the Policy.

**(CHIEF JUSTICE)**

Approved for reporting

Zawar