JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1880 of 2024

Muhammad Usman
Versus
Federation of Pakistan and Others

Petitioner by:	Mr. Muhammad Wasif Khan, Advocate. (in all petitions)
Respondent No. 1 by:	Mian Muhammad Faisal Irfan, DAG. (in all petitions)
Respondent No. 2 by:	Mr. Agha Muhammad Ali Khan, Advocate, along with Flying Officer, Faiz Ullah Baig, JAG Department, PAF. (in all petitions)
Date of Hearing:	**12.06.2025**

INAAM AMEEN MINHAS, J:- This judgment shall decide the instant writ petition as well as the writ petitions mentioned in the **Annexure-A,** involving common questions of law and facts.

2. In all the petitions, the petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 **("the Constitution")**, seeking a direction to the respondents to grant them incentive promotion to the rank of Chief Warrant Officer from Warrant Officer with effect from 08.07.2023, as per the promotion policy of 2018 then in force, i.e., Air Force Order 30-14 dated 16.03.2018 **("Policy of 2018")**, and declaration that denying grant of incentive promotion to the petitioner based on the revised promotion policy dated 21.07.2023 **("Policy of 2023")**, and its retrospective application to their cases is illegal, unlawful and discriminatory.

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3. Brief facts of the instant petition are that the petitioner having joined the Pakistan Air Force **("PAF")** as an Airman on 09.07.1999, served with dedication and was promoted to the rank of Warrant Officer on 09.07.2022. Upon attaining the age of superannuation, he was struck off duty **("SOD")** on 09.07.2023. The petitioner was considered in Promotion Board-2022 for promotion to the rank of Chief Warrant Officer but due to lower on merit he was not promoted. He claims entitlement to the incentive rank, which is given on retirement for the purpose of monetary benefits, in terms of Policy of 2018, which granted incentive promotions to Junior Commissioned Officers and Non-Commissioned Officers **("JCOs/NCOs")**. The petitioner was meeting the promotion criteria but was not promoted due to lack of vacancies. Subsequently, revised Policy of 2023 was issued which introduced a Base Line Index **("BLI")**, based on overall performance, achievements and number of courses completed. The revised policy was made applicable retrospectively from 27.12.2022 and such retrospective application altered the terms and conditions of service of the petitioner. The petitioner now seeks judicial review on the grounds of malice in law, arbitrariness, and violation of constitutional rights under Articles 4, 9, 10-A, and 25 of the Constitution.

4. The facts and grounds are common in all the connected petitions listed in Annexure-A, therefore, shall not be reproduced individually for the sake of brevity.

5. The learned counsel for the petitioners contended that these petitions under Article 199 of the Constitution are maintainable as the controversy does not pertain to terms of service, disciplinary proceedings, or efficiency-related matters, but rather involves an arbitrary and unlawful application of Policy of 2023 retrospectively that adversely affects their vested rights after retirement as the denial of incentive promotion was based on a policy issued subsequent to their retirement. The learned counsel further contended that claim of the petitioners is grounded in the enforcement of existing Policy of 2018 under which they were eligible at the time of retirement and the respondents' refusal to grant the benefit amounts to

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malice in law and colorable exercise of authority; that where executive actions are alleged to be without jurisdiction, discriminatory, or tainted with *mala fide*, the bar under Article 199(3) of the Constitution is not attracted and this Court is fully competent to examine the legality of such actions and the protection of fundamental rights, including equality before law, due process and the right to property in the form of pensionary benefits.

6. Conversely, the learned counsel for respondent No.2 raised a preliminary objection regarding maintainability of the petitions, asserting that the petitioners, being retired Warrant Officers of the PAF, were subject to the Pakistan Air Force Act, 1953, **("the Act, 1953")** and thus falls within the category of personnel excluded from the jurisdiction of this Court under Article 199(3) of the Constitution as the issue in hand pertains to the terms and conditions of service within the Armed Forces and involves a policy decision falling within the exclusive domain of the PAF to regulate its internal affairs; that the petitioners have failed to demonstrate that the actions of PAF are tainted with *mala fide*, *coram non judice*, or are without jurisdiction, and in the absence of such infirmities, the bar on judicial review applies in full force. He further contended that the petitions do not disclose any cause of action as no legal or enforceable right has been infringed and the petitioners have not been able to establish any violation of applicable law or policy. On merits, the learned counsel for respondent No.2 submitted that the petitioners were considered for promotion to the rank of Chief Warrant Officer in Promotion Board-2022 but were found low on merit and retired with all post-retirement benefits due under the law; that the policy for incentive promotion was revised from time to time, and by 2020 onwards, eligibility was made subject to BLI and performance benchmarks, which were duly circulated and known across PAF. It was maintained that the grant of incentive rank is not a vested or accrued right, but a discretionary privilege extended to high-performing and well-disciplined individuals based on available criteria and financial implications and that the petitioner's performance did not meet the

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prescribed threshold and no discrimination or *mala fide* is evident, as the JCOs were not granted incentive promotion after March 2023.

7. I have heard the learned counsels for the parties and perused the record with their able assistance.

8. The learned counsel for the respondents has raised a preliminary objection regarding the maintainability of the petitions under Article 199(3) of the Constitution. The Honourable Supreme Court in case of ***Muslim Commercial Bank Limited vs. Muhammad Anwar Mandokhel*** **(2024 SCMR 298)** held that every Court prior to taking cognizance of any matter should first resort to the question of assumption of jurisdiction of the Court then adjudicate upon the matter. Therefore, this Court shall decide first the question of the maintainability of the petitions. In order to adjudicate the question of maintainability, it is imperative to determine the nature of the relief claimed. The petitioners' primary grievance concerns the grant of incentive promotion under two separate policies of the PAF, namely AFO 30-14, Policy of 2018 and the revised AFO 30-14, Policy of 2023, both policies provide different criteria for incentive promotion. The relevant clauses of both policies are reproduced hereunder :-

> *"**AFO 30-14 of 2018***
>
> ***14. Grant of Incentive Rank.*** *On retirement, one substantive higher rank of AWO/ WO/ CWO will be granted as an incentive to only those who have cleared the promotion board and are not promoted due to want of vacancy. However, all JCOs/ Airman who have opted "No" for revised term of engagement as per corrigendum 01/2015 of JSI 10/88 and have become superseded (due to ineligibility or want of vacancies cadre to only those high performing individuals who were falling on the Base Line Index (BLI) but could not be promoted due to want of released vacancy as per service requirements.*
>
> ***AFO 30-14 of 2023***
>
> ***14. Grant of Incentive Rank.*** *On retirement, the worthy CAS may authorize on higher unpaid rank in JCO cadre to only those high performing individuals who were falling on the Base Line*

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Index (BLI) but could not be promoted due to want of released vacancy as per service requirements."

9. The petitioners have primarily challenged the retrospective applicability of the Policy of 2023 as the petitioners were retired before its circulation; however, the material placed on record reflects that performance-based evaluation system, including the introduction of the BLI, had already been disseminated prior to the issuance of the Policy of 2023. A letter bearing reference No. AHQ/12315/24/3/1/DCAS (P), dated 27.12.2022 confirms that the criteria based on BLI had been formally communicated to all personnel across all bases and units of the PAF as such the policies governing incentive promotion were duly formulated and applied uniformly, and the performance-based standards introduced through internal policy instruments prior to the Policy of 2023 were applicable to the petitioners.

10. Now turning to the question of maintainability of the instant petition under Article 199(3) of the Constitution, the statutory framework governing PAF personnel is regulated by the Act, 1953, the Defence Services Regulations, 1988, and various administrative instruments issued by Air Headquarters, such as AFOs and policy directives. These instruments constitute a complete code for service structure, discipline, promotions, and related matters within the PAF. Article 199(3) of the Constitution places an express bar on the jurisdiction of the High Courts in matters relating to the terms and conditions of service of members of the Armed Forces, whereas an incentive promotion, being governed by internal policy and falling squarely within administrative discretion, does not by itself create an enforceable legal right capable of judicial enforcement under Article 199(1) of the Constitution unless the act is *mala fide*, corum-non-judice or without jurisdiction. The jurisdiction of this Court in these petitions is barred under Article 199(3) of the Constitution for the reasons that these petitions have been filed by the retired members of the Armed Forces of Pakistan, but also in respect of the terms and conditions of their

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service. Reliance is placed on ***Sadaqatullah vs. The Federation Of Pakistan through Secretary and 3 others*** **(2019 PLC (C.S.) 695)**.

11. The petitioners have failed to demonstrate that the action complained of is tainted with malice, coram non judice, and/or without jurisdiction. In the absence of these grounds, the writ jurisdiction of this Court remains ousted, and service matters falling within the Armed Forces' internal regulatory framework cannot be adjudicated.

12. In view of the above discussion, the instant writ petition as well as the writ petitions mentioned in **Annexure-A** are ***dismissed*** being not maintainable.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 24.06.2025.

JUDGE

M. Yahya Khan Niazi, L.C.

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Annexure- A

Sr. No	Writ Petition Number	Title
1.	Writ Petition No.1881 of 2024	Muhammad Ayaz Vs. Federation of Pakistan and others
2.	Writ Petition No.1882 of 2024	Lal Hakeem Vs. Federation of Pakistan and others
3.	Writ Petition No.1883 of 2024	Syed Rizwan Haider Vs. Federation of Pakistan and others
4.	Writ Petition No.1884 of 2024	Zahid Nawaz Khan Vs. Federation of Pakistan and others
5.	Writ Petition No.1885 of 2024	Mudassar Iqbal Vs. Federation of Pakistan and others
6.	Writ Petition No.1886 of 2024	Muhammad Iftikhar Vs. Federation of Pakistan and others
7.	Writ Petition No.1887 of 2024	Faisal Khalid Vs. Federation of Pakistan and others
8.	Writ Petition No.1888 of 2024	Muhammad Abrar Vs. Federation of Pakistan and others
9.	Writ Petition No.1889 of 2024	Tahir Tabassum Vs. Federation of Pakistan and others
10.	Writ Petition No.1890 of 2024	Javed Iqbal Qamar Vs. Federation of Pakistan and others
11.	Writ Petition No.1891 of 2024	Azmat Hayat Vs. Federation of Pakistan and others
12.	Writ Petition No.1892 of 2024	Sajjad Ahmad Vs. Federation of Pakistan and others
13.	Writ Petition No.1893 of 2024	Muhammad Mazhar Iqbal Vs. Federation of Pakistan and others
14.	Writ Petition No.1894 of 2024	Ihsan Ali Vs. Federation of Pakistan and others
15.	Writ Petition No.1895 of 2024	Shafiq Ur Rehman Vs. Federation of Pakistan and others
16.	Writ Petition No.1896 of 2024	Tariq Mehmood Vs. Federation of Pakistan and others
17.	Writ Petition No.1897 of 2024	Mujahid Iqbal Vs. Federation of Pakistan and others
18.	Writ Petition No.1898 of 2024	Imran Hussain Vs. Federation of Pakistan and others
19.	Writ Petition No.1899 of 2024	Muhammad Wajid Vs. Federation of Pakistan and others
20.	Writ Petition No.1900 of 2024	Maroof Hussain Vs. Federation of Pakistan and others
21.	Writ Petition No.1901 of 2024	Muhammad Akram Tahir Vs. Federation of Pakistan and others
22.	Writ Petition No. 1902 of 2024	Muhammad Waseem Rishi Vs. Federation of Pakistan and others
23.	Writ Petition No. 1903 of 2024	Ghulam Ullah Vs. Federation of Pakistan and others
24.	Writ Petition No. 1904 of 2024	Sher Muhammad Khan Vs. Federation of Pakistan and others

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25.	Writ Petition No. 1905 of 2024	Syed Karamat Ali Vs. Federation of Pakistan and others
26.	Writ Petition No. 1906 of 2024	Iftikhar Ahmad Vs. Federation of Pakistan and others
27.	Writ Petition No. 1907 of 2024	Muhammad Jahangir Khan Vs. Federation of Pakistan and others
28.	Writ Petition No. 1908 of 2024	Ghulam Hussain Vs. Federation of Pakistan and others
29.	Writ Petition No. 1909 of 2024	Shahadat Ali Vs. Federation of Pakistan and others
30.	Writ Petition No. 1910 of 2024	Muhammad Sharafat Khan Vs. Federation of Pakistan and others
31.	Writ Petition No. 3103 of 2024	Zahid Hussain Vs. Federation of Pakistan and others
32.	Writ Petition No.3104 of 2024	Adal Muhammad Vs. Federation of Pakistan and others
33.	Writ Petition No.3105 of 2024	Muhammad Azhar Vs. Federation of Pakistan and others

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