JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2718/2019
Khurshid Ahmad Khan Marwat
Versus
Federation of Pakistan through Secretary, Commerce & Textile and others

Date of Hearing:	22.10.2019
Petitioner by:	M/s Afnan Karim Kundi and Sher Afzal Khan Marwat, Advocates
Respondents by:	Mr. Arshid Mehmood Kiani, learned D.A-G., Mr. Osama Azeem Chaudhary, Advocate for Ministry of Commerce and Textile, Ms. Chand Lughmani (D.R.), Dr. Adnan (D.G.) and Anees Arshad (D.R.) Ministry of Commerce

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MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Khurshid Ahmad Khan Marwat, who is a BS-20 officer in the Inland Revenue Service **("I.R.S.")**, seeks a declaration to the effect that the exclusion of the officers of the I.R.S. from consideration for appointment as Trade Officers in Pakistan's Missions abroad is unlawful. Furthermore, the petitioner impugns the requirement of the four-year intervening period for re-application for appointment as Trade Officer to be unlawful.

2. Through an advertisement dated 19.06.2019 published by the Ministry of Commerce and Textile, applications were invited from interested officers of all occupational groups of Civil Service of Pakistan (BS-18 to BS-21) and candidates from Pakistani Diaspora for appointment as Trade and Investment Officers in Pakistan's Missions abroad. In the eligibility criteria set out in the said advertisement, officers from the I.R.S. were not eligible to apply for appointment as Trade Officers. However, during the pendency of the instant petition, learned counsel for the Ministry of Commerce and Textile submitted that the Prime Minister had decided to consider applicants from the I.R.S. to be considered for appointment as Trade Officers. Since the petitioner had applied for appointment as Trade Officer and his

application was considered in accordance with the prevailing policy, this petition to the extent of assailing the exclusion of officers from the I.R.S., to be excluded from consideration for appointment as Trade Officers, has been rendered infructuous.

3. As regards the challenge thrown by the petitioner to the requirement of there being a four-year intervening period before an officer can be re-appointed as a Trade Officer, learned counsel for the petitioner submitted that in the Establishment Division's Office Memorandum ("O.M.") dated 16.02.2016, an officer of identified services, cadres and occupational groups for any foreign post was eligible for two tenures of foreign posting in his entire service, provided that there was an intervening period of at least three years between two such tenures; that after participating in a competitive process in 2012, the petitioner was appointed as Trade Officer at the Pakistani Embassy in Kabul; that the petitioner served on the said position from March 2013 to August 2015; that the petitioner's performance as Trade Officer was such that the Afghan Government recommended to the Pakistani Government that the petitioner be awarded *Tamgha-e-Imtiaz;* that in the *"policy guidelines for selection, appointment and posting of Trade Officers (BS-18 to BS-21) in Pakistan's Missions abroad"* issued by the Ministry of Commerce and Textile, it is provided *inter alia* that there shall be an intervening period of at least four years (as on 30th June in the year when the written test is held) between two tenures; that the said policy was issued seven days after the advertisement; that the requirement of a four-year intervening period for a candidate to re-apply for appointment as Trade Officer is in violation of the above-mentioned O.M. dated 16.02.2016; that the Establishment Division was not consulted before the introduction of the four-year intervening period; that the said requirement has been introduced with *malafide* intention to exclude 146 eligible candidates, including the petitioner, from participating in the competitive process for appointment as Trade Officers; and that the said policy guidelines to the extent of raising the intervening

period from three years to four years is liable to be declared unlawful.

4. Learned counsel for the petitioner further submitted that after qualifying the written test, the petitioner was called for an interview in the competitive process for appointment as Trade Officer; that the petitioner top the interview and his name on the merit list was placed at serial No.5; that the petitioner has not been allocated any station whereas the candidate at serial No.7 has been posted as a Trade Officer at the Pakistani Embassy in Washington DC; and that at serial No.11 is an officer from the I.R.S. who has been posted as Trade Officer at the Pakistani Embassy in Addis Ababa. Learned counsel for the petitioner prayed for the writ petition to be allowed and for a direction to be issued to the respondents to appoint the petitioner as a Trade Officer at a station where he can contribute to the economy of Pakistan in the same manner as he did while posted at Kabul.

5. On the other hand, learned counsel for the Ministry of Commerce and Textile submitted that the *"policy guidelines for selection, appointment and posting of Trade Officers (BS-18 to BS-21) in Pakistan's Missions abroad"* were issued by the Ministry of Commerce and Textile after the approval of the Prime Minister; that the requirement of the four-year intervening period under the said policy was just and reasonable; that the consultation with the Establishment Division was not necessary before the issuance of the said policy; that under Rule 3(3) read with serial No.10 of item No.5 in Schedule-II to the Rules of Business, 1973, the responsibility for the selection of the Commercial Officers for postings in Pakistan's Missions abroad is that of the Commerce Division; and that since the four-year intervening period had not been completed between 15.08.2015 (when the petitioner completed his tenure as Trade Officer at Kabul) and 30.06.2019 (when the written test for appointment as Trade Officer was conducted) the petitioner was not eligible to be appointed as Trade Officer. Learned counsel for the Ministry of Commerce and Textile prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. Trade Officers are appointed in Pakistan's Missions aboard for promoting and facilitating the expansion of Pakistan's exports, increasing investment in Pakistan, negotiating favourable market access conditions for Pakistani products and services in the country of posting, and improving the image of Pakistan, especially in the business realm. Vide O.M. dated 16.02.2016, the Establishment Division had issued the *"policy guidelines for foreign appointments and postings in Pakistan Missions abroad and against Pakistan's seats in International, Multilateral, Bilateral and Regional Organizations, fora and bodies".* Paragraph (iii) of the said policy required the selection process to be completely transparent and absolutely merit-based. Paragraph (xiii) of the said policy provided that no relation or exception to the policy guidelines shall be granted without the prior approval of the Prime Minister for which the concerned Ministry shall provide detail justifications in a summary. Paragraph (xii) of the said policy is reproduced herein below:-

> ***"An officer of identified services, cadres and occupational groups for any foreign post will be eligible for two tenures of foreign posting in his entire service, provided that there shall be an intervening period of at least three years between two such tenures."***
> **(Emphasis added)**

8. It is an admitted position that the petitioner served as a Trade Officer at the Pakistani Embassy in Kabul from 07.03.2015 to 15.08.2015.

9. On 05.03.2019, the Commerce Division had made a presentation to the Prime Minister on the subject of reforms in the selection of Trade Officers in Pakistan's Missions abroad. The Commerce Division had prepared a comprehensive draft of *"Policy Guidelines for Selection, Appointment and Posting of Trade Officers in Pakistan's Missions abroad."* On 06.03.2019, the Ministry of Commerce and Textile moved a summary to the Prime Minister setting out the salient features of the said policy

guidelines. The Prime Minister's approval was also solicited for the said policy and for initiating the process for the selection of Trade Officers accordingly.

10. The second paragraph of the said summary made explicit reference to Annex-II which was the draft of the said policy guidelines. Paragraph 3(a) of the said policy guidelines provided *inter alia* that there shall be an intervening period of at least four years (as on 30th June in the year when the written test is held) between two tenures.

11. On 15.04.2019, the Prime Minister approved the Commerce Division's proposals at *inter alia* paragraph 2 of the summary dated 06.03.2019. Certain amendments were required to be made in Annex-II of the draft policy. However, the four-year intervening period required under paragraph 3(a) of the draft policy guidelines was not required to be amended. Therefore, it would be safe to hold that the policy guidelines for the selection/appointment and posting of Trade Officers (BS-18 to BS-21) in Pakistan's Missions abroad contained in Annex-II to the Commerce Division's summary dated 06.03.2015 were approved by the Prime Minister on 15.04.2019 with certain amendments which did not include an amendment in the four-year intervening period.

12. I would tend to agree with the learned counsel for the Ministry of Commerce and Textile that under Rule 3(3) read with serial No.10 of item No.5 in Schedule-II to the Rules of Business, 1973, the responsibility for the selection of the Commercial Officers for postings in Pakistan's Missions abroad is that of the Commerce Division. Therefore, the concurrence of the Establishment Division was not necessary for the submission of the summary to the Prime Minister on the issuance of policy guidelines on the appointment of Trade Officers in Pakistan's Missions abroad. Vide judgment dated 13.09.2019 passed by the Division Bench of the Hon'ble Balochistan High Court in the Constitutional petition No.729/2019 titled *"Sheryar Taj Vs. Ministry of Commerce etc."* it has been held *inter alia* that no

illegality, irregularity in the process for preparing and approving the policy in question had been pointed out.

13. The requirement for there to be an intervening period of four-year between the previous appointment as Trade Officer and the date of the written test for re-appointment as a Trade Officer is a matter of policy.

14. The Superior Courts in Pakistan have generally exercised judicial restraint in interfering with the policy-making domain of the executive authority while exercising the power of judicial review of administrative actions. Reference in this regard may be made to the case of Farzand Ali Vs. Province of West Pakistan (PLD 1970 SC 98), Government of Pakistan Vs. Zamir Ahmed Khan (PLD 1975 SC 667), Watan Party Vs. Federation of Pakistan(PLD 2006 SC 697), Re: Suo Moto Case No.10 of 2007(PLD 2008 SC 673), Dr. Akhtar Hussain Vs. Federation of Pakistan (2012 SCMR 455), Dossani Travels (Pvt.) Ltd. Vs. Travels Shop (Pvt.) Ltd.(2013 SCMR 1749), Ghulam Rasool Vs. Government of Pakistan (PLD 2015 SC 6), Ministry of Inter-Provincial Coordination Vs. Major (R) Ahmad Nadeem Sadal (2014 CLC 600), Yameen-ud-Din Vs. Lahore Graveyard Committee (2003 CLC 1718), Suhail Shafi Vs. Government of Punjab (2005 PLC (CS) 1), Shazia Irshad Bokhari Vs. Government of Punjab (PLD 2005 Lahore 428), M/s. AES Pak Gen (Pvt.) Ltd., Vs. Income Tax Appellate Tribunal (2006 PTD 1), Dildar Ahmad Vs. Province of Punjab (2010 YLR 101), Safdar Jamil Vs. Vice Chancellor (2011 CLC 116), Alzair Travel and Tours (Pvt.) Ltd., Vs. Federation of Pakistan (2014 CLC 1766), Bar Association, Depalpur Vs. Chief Secretary (PLD 2014 Lahore 433), Muhammad Iqbal Vs. Government of Punjab (2015 PLC (CS) 1503), M/s. A. G. Pesticides (Pvt.) Ltd., Vs. Federation of Pakistan (PLD 2004 Karachi 620), Shehzad Riaz Vs. Federation of Pakistan (2006 YLR 229), Shakirullah Khan Vs. Khyber Medical University (2015 YLR 2488), Ameer Taimoor Vs. Government of Khyber Pakhtunkhwa (2016 PLC (CS) 106), and Rahim-ud-Din Vs. Sabahuddin (2016 MLD 20). In the case of Azra Jamali Vs.

Federation of Pakistan (2017 PLC (CS) 533), this Court had the occasion to hold as follows:-

> ***"29. Now judicial review of administrative actions is a well-established norm. It is permissible on the ground of illegality or irrationality or procedural impropriety. But it is also well settled that administrative decisions involving policy considerations have been put on a different pedestal. Though they are not totally immune from judicial review, yet certain grounds, which are available in the case of administrative decisions not involving policy considerations, are not open for challenging the policy decisions. By and large the courts observe restraint in deciding the validity of issues involving policy. Since, Courts do not sit as an appellate authority over the policy considerations, it cannot examine the correctness, suitability and appropriateness of the policies. The executive has the authority to formulate a policy and the courts can interfere with it only if it violates the fundamental rights enshrined in the Constitution or is opposed to the provisions of the Constitution or is opposed to a statutory provision. A court cannot interfere with a policy either on the ground that it is erroneous or that a better and fairer alternative was available. The administrative actions and policies of the government which relate to the enforcement of fundamental rights of the people and are of public importance, must be framed in consonance with the policy of law and mandate of the Constitution. The consistent view taken by the Superior Courts in Pakistan has been that the Courts would not interfere in the policy making domain of the executive unless the policy was in violation of the Constitution, smacked of arbitrariness, favoritism and a total disregard of the mandate of law."***

15. Since I do not find the policy for there to be a four-year intervening period for appointment as Trade Officers to be in violation of the petitioner's fundamental rights, the instant petition, being bereft of merits, is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*

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