

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 1622 of 2025

[Muhammad Suleman Ghouri and 4 others *versus* Federation of Pakistan and 3 others]

Present:  
**Mr. Muhammad Faisal Kamal Alam, J.**  
**Mr. Jawad Akbar Sarwana, J.**

Date of hearings : 08.05.2025 and 21.05.2025.

Petitioners : Muhammad Suleman Ghouri and 4 others, through Malik Naeem Iqbal, Advocate for the Petitioners along with M/s. Malik Waseem Iqbal, Talha Ahmed Khan and Mehboob Irshad, Advocates.

Respondent No.1 : Federation of Pakistan, through Mr. Mohsin Qadir Shahwani, Additional Attorney General for Pakistan.

Respondent No.2 to 4 : Pakistan Civil Aviation Authority and 2 others, through Mr. S. Aminuddin Fakir, Advocate along with Mr. Danish Ali, Advocate.

**Case law cited by Counsel for the Petitioners**

- i. **2013 S C M R 1707**  
[*Pakistan Defence Officers’ Housing Authority and others versus Lt. Col. Syed Jawaid Ahmed*];
- ii. **2016 S C M R 2146**  
[*Muhammad Rafi and another versus Federation of Pakistan and others*] – **Rafi Case**;
- iii. **2022 S C M R 1256**  
[*Sui Southern Gas Company Limited and others versus Saeed Ahmed Khoso and another*].

**Case law relied upon by the Additional Attorney General for Pakistan**

- i. **2017 S C M R 2010**  
[*Pakistan Defence Officers Housing Authority versus Mrs. Itrat Sajjad Khan and others*] – **DHA Case**;
- ii. **2022 S C M R 991**  
[*Pakistan Electric Power Company versus Syed Salahuddin and others*] – **PEPCO Case**;
- iii. **2013 S C M R 1383**  
[*Abdul Wahab and others versus HBL others*];
- iv. **2024 P L C (C.S.) 1028**  
[*The General Manager, Punjab Provincial Cooperative Bank Ltd. and others versus Ghulam Mustafa and others*] – **Co-operative Bank Case**;

- v. **2014 S C M R 982**  
[*Syed Nazir Gillai versus Pakistan Red Crescent Society and another*] – **Pakistan Red Crescent Society Case**; and
- vi. **2024 PLC (C.S.) 431**  
[*Madni Ahmed Ali Arfat Siddiqui versus Sui Southern Gas Company Limited through Company Secretary and another*] – **Madni Case**.

#### **Case law relied upon by Counsel for Respondents No.2 to 4**

- i. **2016 S C M R 1021**  
[*Government of Khyber Pakhtunkhawa through Chief Secretary, Peshawar and others versus Hayat Hussain and others*];
- ii. **2014 S C M R 982**  
[*Syed Nazir Gillani versus Pakistan Red Crescent Society and another*] – **Pakistan Red Crescent Society Case**;
- iii. **2024 P L C (C.S) 1028**  
[*The General Manager, Punjab Provincial Cooperative Bank Ltd. and others versus Ghulam Mustafa and others*];
- iv. **2023 S C M R 2087**  
[*Federal Public Service Commission through Chairman, Islamabad and another versus Shiraz Manzoor and others*].

#### **Law under discussion:**

1. The Constitution of the Islamic Republic of Pakistan, 1973 [“**Constitution**”].
2. The Pakistan Civil Aviation Act, 2023 [“**the Act**”].
3. The Civil Aviation Authority Service Regulations, 2014 (2019) – [“**Service Regulations**”]

### **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** The Petitioners have challenged the Selection Process initiated by Respondents-Civil Aviation Authority [“**CAA**”] through publication of Advertisement of 07.03.2025 [impugned] [Annexure ‘P/3’, page-227], to the extent to fill Four Positions of Joint Director [AT & ER], in the Organization-CAA [Subject Recruitment].

2. Malik Naeem Iqbal, Advocate representing the Petitioners, contended that Petitioners are working in EG-4 [**Executive Grade-4**] as Senior Deputy Directors in Respondent No.3 – Directorate of Air Transport and Economic Regulations [**“AT & ER”**] and in next few months, they will be eligible to be considered for their promotion in **EG-5** [Executive Grade-5]. Contended that the same Post has been advertised on three years contract basis in the impugned Advertisement, reducing the eligibility criterion, in particular, the length of service to five years, as against twelve years, as mentioned in the Service Regulations, only to favour the favourites. Has referred to Service Regulations 15 to 21, in support of his arguments, that the Post of Joint Director is to be filled by promotion and for contract employment, provision is given in Regulation 21, *inter alia*, stating in Paragraph(3) whereof as under\_

*“Appointments on contract shall only be made against the vacant posts when no regular employee of the respective trade is eligible to fill such vacant posts through promotion. The contract appointment shall be made through open competition by advertising the post.”*

Referred to the Correspondence of Director AT & ER [Respondent No.3], addressed to the Senior Management [*at page-245*], stating that the Petitioners would soon be eligible for the said Posts through Promotion, while questioning the wisdom behind publication of the impugned Advertisement. Contends that Regulations 31 to 34 deal with Promotions, but will be made redundant because of the above Advertisement; referred to Paragraph (2) of Regulation 34 that promotion in EG-3 and EG-5 shall be subject to availability of vacancy / post in the service cadre. Contended that if the available vacancies in EG-5 as Joint Directors AT & ER are filled through impugned advertisement, it is bound to jeopardize career of the Petitioners.

3. Mr. Mohsin Qadir Shahwani, Additional Attorney General for Pakistan, has questioned the maintainability of this Petition, *inter alia*,

contending that, *firstly*, it is an Executive decision and Policy matter to issue such nature of advertisement, for selecting the best candidates, and, *secondly*, since Service Rules / Regulations of CAA are Non-Statutory, therefore, Petitioners either directly or indirectly cannot agitate any grievance relating to their employment through the present Petition; has distinguished the Case Law cited by the Petitioners’ Legal Team, in particular, the Judgment of **Rafi case** [2016 S C M R 2146], and states that the Judgment is on a different premise, where petitioners [of the above Case] were selected, Offer Letters issued and then CAA, scrapped the entire Recruitment Process; which was set aside by the Honourable Supreme Court, but no such situation has arisen in the present case, as the selection process has just started, which is not prejudice to anyone.

4. Mr. S. Aminuddin Fakir, Advocate representing Respondents No.2 to 4, while questioning the maintainability of present Petition, has argued on the basis of his Counter Affidavit; has produced Statement [21.05.2025] in Court today in compliance of the earlier Order of 08.05.2025 along with documents, *inter alia*, with particular reference to the credentials of candidates short-listed to fill the Post of Joint Director, AT & ER, which, for ready reference, is reproduced herein under\_

S. No.	Name	Education	Experience	Skillset
01.	Khizar Hayat	BBA	7 years’ experience of Multan Flying Club, Airborne Aviation & Pakistan International Airlines	<ul style="list-style-type: none"><li>• Commercial Pilot Licence</li><li>• Flight Operations Officer Licence</li><li>• Microlight Competency Certificate</li></ul>
02.	Shaharyar	BBA	6 years’ experience in Aeroworld Pakistan as Flight Despatcher	<ul style="list-style-type: none"><li>• Flight Operations Officer Licence</li></ul>
03.	Syed Hashim Ali Bukhari	BBA	8 years of experience in field	<ul style="list-style-type: none"><li>• Flight Operations</li></ul>

			of Routes & Navigation in Multinational organizations like Gerry's Dnata	Officer Licence
04.	Muhammad Sohaib	MBA	13 years of experience of Terminal, Airside Management & CNS in Pakistan Airports Authority	<ul style="list-style-type: none"><li>• PEC Registered Engineer</li><li>• Number of Technical courses on Audit, Quality and Regulations</li></ul>
05.	Shaza Hashar	MS (Aviation Management)	16 years of experience and remained supervisor of Fuel Management of Pakistan International Airlines	<ul style="list-style-type: none"><li>• PhD Scholar and Author &amp; Co. Author of various Research Papers including Aviation</li></ul>
06.	Agha Ali Zaheer Khan	MBA	7 years of extensive experience of Finance in organizations like Serene Air	<ul style="list-style-type: none"><li>• Expertise of Financial Modeling &amp; Valuation Analysis</li></ul>

Stated that the findings mentioned in the DHA Case [*ibid*], in particular, Paragraph-50, relied upon by the Petitioners’ counsel, the Honourable Supreme Court in the subsequent case of Pakistan Red Crescent Society, after considering the above Paragraph-50, has given a different view with regard to those Organizations, like Respondents-CAA, which does not have Statutory Service Rules, ruling that writ petitions are not maintainable. Has referred to the provision of right of appeal mentioned in the Service Regulations and states that the alternate remedy is available, which is also one of the grounds for dismissing this Petition. Referred to the Response of 11.04.2025 by CAA to the earlier Correspondence of its Director AT & ER of 11<sup>th</sup> March 2025, referred to by the Petitioners’ Counsel, and contends that the above Response is self-explanatory and clarifies the intention of CAA Management, that career progression of the regular employees would not be jeopardized. Contends that after this Response / Correspondence, the Petitioners should not have approached this Court merely on the basis of apprehension.

Argued that to fill four Positions of Joint Director, AT & ER, out of seven available vacant Posts, the impugned advertisement is published, because the present Petitioners at present did not qualify to be promoted in EG-5, due to lack of length of service, as mentioned in the Regulations, that is, continuous service of twelve years in Executive Grade and minimum two years of service in EG-4, as they were lastly promoted in or around 27.10.2023 and they may be considered for next promotion in October 2025 in terms of Regulations 31 and 34 of the Service Regulations. At the same time, such important Positions cannot be kept vacant and thus Respondents-Management has issued the Advertisement by exercising the authority, *inter alia*, under Regulation 21.

5. Arguments heard and record perused.

6. Summary of the case law cited by Petitioners' counsel is as under\_

In the Yasin case [*supra*], the appointment of Respondent No.5 to the Office of the Chairman, Oil and Gas Regulatory Authority [**“OGRA”**] was challenged, on the ground, *inter alia*, that respondent does not possess the requisite qualification for the Office and the selection process was non-transparent. Ruling in favour of the maintainability of the petition, which was vehemently opposed by the Federation, it is held that it is part of the fundamental rights of the people of Pakistan that they should be governed by a State, which protects, *inter alia*, the belongings and assets of the State and its citizens from waste and malversation, while expounding the concept of Article 18 of the Constitution [guarantee concerning the economic life of the Nation and its citizens], that it is inextricably linked with the proper functioning of the Regulatory Bodies. Under the parent *Statue*, the function of OGRA was considered. Supreme Court is of the view that autonomy of OGRA as envisaged in its governing law, is only possible when appointment to key positions are done lawfully and “*in a demonstrably*

*transparent manner*”. The principle of trichotomy of power is also discussed and the opinion of the Court is that the governing law itself provides a measurable objective criteria for the appointment of Chairman, which if not met and appointment is made in violation of the law, the same executive act can be subject to judicial review, although, the Apex Court has also clarified the limitations of exercise of judicial review by stating that Court will not engage in any exhaustive or full-fledged assessment of the merits of the appointee nor will it seek to substitute its opinion to that of the Executive. The appointment of Respondent No.5 as Chairman was declared as void *ab initio*.

To overcome the argument of Respondents’ Legal Team, about non-statutory status of the Service Regulations, Petitioners’ counsel has placed reliance on DHA case [*ibid*], in which the Honourable Supreme Court after considering number of the judicial precedents evolved with the passage of time, has laid down the criteria for maintainability and non-maintainability of writ petitions under Article 199 of the Constitution.

Sub-Paragraph (i) and (iv) are relevant, which are reproduced herein under\_

- (i) *Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious remedy can be enforced through writ jurisdiction.*
- (ii) .....
- (iii) .....
- (iv) *Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*

7. Summary of the Case Law cited by learned Additional Attorney General is\_

Honourable Supreme Court in the case of Co-operative Bank [*ibid*] has reiterated that in absence of Statutory Rules, aggrieved employee of an

Organization cannot invoke writ jurisdiction of the High Court, but the remedy can be availed by filing a Civil Suit. However, in this Decision, the Honourable Supreme Court is of the view that while dealing with cases falling within the category of Master and Servant, the Employer should not lose sight of the fundamental rights and due process, while dealing with the Employment issues of the Employees; legislative amendment is also proposed for setting up a Special Tribunal for dealing such nature of cases expeditiously.

In Madni Case [*supra*], Single Bench of this Court, has dismissed the Suit, challenging the advertisement published by Sui Southern Gas Company Limited, inviting applications to fill the senior positions of General Manager Information Technology, Procurement and Inventory Management, Environment and Quality Assurance, *inter alia*, discarding the stance of plaintiff [of the reported judgment] that such selection process would jeopardize the career progression. It is held that it is the discretion of the Management / Board of defendant Organization to modify, amend, replace and frame policies in accordance with the present day requirement, while ruling that to challenge such advertisements / selection process, qualification of the challenger [plaintiff] should have direct nexus with the Posts advertised.

In PEPCO Case [*ibid*], the Honourable Supreme Court has dismissed the request of respondent Salahuddin and others, employees of initially QESCO [Quetta Electric Supply Company] and later on merged with PEPCO, that since rules are non-statutory, therefore, grievance about promotion cannot be remedied through writ jurisdiction under Article 199 of the Constitution.

8. The Respondents-CAA's Counsel has also cited the Co-operative Bank case above [2024 P L C (C.S) 1028] and while supporting the



arguments of the learned Additional Attorney General, he emphasized, that the Honourable Supreme Court has settled and reiterated the principle, that if an Organization or Entity does not have statutory rules, any issue relating to the employment cannot be agitated in a writ jurisdiction, without making any distinction between a statutory Corporation, Autonomous Body and / or a Corporate Entity, wholly owned by Federal Government. Has distinguished the Judgment handed down by the Honourable Supreme Court in DHA Case [*ibid*], as mentioned in the foregoing paragraphs. Question of promotion is an administrative matter falling within the exclusive domain and policy decision making of the Government and promotion cannot be claimed as a vested right, hence, the jurisdiction of High Court cannot be invoked [*this particular Judgment is cited by the learned counsel for Respondents-CAA, to augment his arguments, that in effect through the present constitution petition, since Petitioners are apprehensive of their future promotion, due to Selection Process, therefore, their stance is to be discarded by this Court in view of the above case law*].

9. **Maintainability to be decided first.**

10. Regulations are available in record filed by both Petitioners and Respondents-CAA. These Regulations are framed under Section 27 of the CAA Ordinance.

11. As already discussed and not disputed, the total length of service required to fill the subject Posts of Joint Director, AT & ER, as per the Regulations, is twelve years, *whereas*, in the impugned advertisement, this crucial criteria has been reduced to five years, on the ground, explained by the Respondents' Legal Team in their arguments. **Secondly**, the subsequent Judgment of the Honourable Supreme Court in Pakistan Red Crescent Society Case, has not overruled or distinguished the Judgment of DHA

Case, and, in particular, Paragraph-50 thereof, rather while deciding the subject Judgment of the Pakistan Red Crescent Society Case, Sub-Paragraph-(ii) of Paragraph-50 was relied upon; thus, in view of Sub-Paragraphs-(i) and (iv), reproduced herein above, since the Service Regulations of CAA are framed under the provision of the Parent Statute, providing the requisite length of service for EG-5, which has been reduced in the impugned Advertisement, therefore, to consider this aspect along with other material issues, this Petition is maintainable.

12. In the above mentioned Statement / Compliance Report [filed by Respondents-CAA], an overview of the AT & ER, Directorate and its significance is also mentioned, that is, *inter alia*, it is responsible for pursuing bilateral Air Service Agreements [“ASAs”] with the contracting States of the International Civil Aviation Organization [“ICAO”]; economic oversight of air service operations in Pakistan, so on and so forth. The rationale mentioned in this Compliance Report for recruitment through the impugned Advertisement, is that Respondents-CAA intends to enhance its quality and expertise, being the Regulator, through hiring expertise from the Private Sector. It is stated that Petitioner No.4 has recently been transferred in AT & ER Directorate from the Estate Department, and has no prior experience in this field.

13. The factual assertion of Petitioners about the fact that the same Posts were advertised in 2023 with different benchmark has not been disputed, rather it is further clarified that in the above previous Advertisement, the criteria was fifteen years’ experience in Air Traffic / Air Defence Controlling and five years of experience at any Leadership / Executive / Command Positions; but, setting of a higher bar / standard was counterproductive, and no suitable candidate could be selected. This argument of Respondents-CAA is not tenable, because for induction in

Executive Group, in particular, the prescribed eligibility criteria mentioned in the Service Regulations, cannot be violated to such an extent, that minimum twelve years' experience in EG-1 and above with minimum two years' experience in the existing Executive Grade, that is, EG-4, is reduced to five years of experience in Aviation. The other argument of CAA Counsel, that the Service Regulations does empower the Management to hire suitable persons on Contract / secondment basis, with specific reference to Regulation D-2.4, that it is the sole prerogative of the Competent Authority to prescribe the criteria, is accepted, but with a rider, that the above referred Regulation and other similar provisions in the Service Regulations are to be read in conjunction with and not in derogation of Regulation-21, Paragraph-3 [*ibid*], so also the current prescribed criteria of Service Regulations for Joint Director in EG-5 [already mentioned hereinabove].

14. The names and credentials of the short-listed candidates are also mentioned in the above Compliance Report, which have been perused. Except one candidate, who has an educational background and experience in Aviation, none of the candidates possess a level of academic qualification or practical experience, that can justify the stance of Respondents-CAA. This is where the equitable doctrine of legitimate expectation should be invoked. If the above Selection Process is accepted, then it is bound to adversely affect the career progression of the Petitioners. Although, promotion is not a vested right of an employee and is to be decided by the Employer / Management after evaluating multiple factors, so also prescribed in the present CAA Regulations, but at least the Petitioners have a right to be considered for promotion, if they are fulfilling the eligibility criteria, stated above [in the Service Regulations], so also mentioned in the Missive of Director, AT & ER [of 11.03.2025, *ibid*] and

not as such disagreed by Respondent CAA in the Response dated 14.04.2025 [*supra*]. A person working with honesty and diligence in an Organization or Institution has a legitimate expectation to be considered for promotion; otherwise, it will result in overall discouragement in the Organization and will have a direct impact on its functioning and operations.

15. An Organization, or for that matter, even State Institutions, cannot viably deliver results as required of them, if employees / team members become disenchanted and disengaged due to unreasonable, arbitrary and discriminatory policies adopted by those at the helm of affairs.

16. The stance of Respondent CAA about short-listing of the above named Candidates in pursuance of the impugned Advertisement is violative of the prescribed Service Regulations and cannot be endorsed.

17. Finally, there is another aspect of the matter, which is the timing of the Advertisement, which was published about six months before the Petitioners were poised to complete the twelve-year threshold of service, one of the prerequisites for consideration for the post of Joint Director, AT & ER, by the Respondent-CAA. This eleventh-hour rush to reduce the available slots before all the Petitioners qualify appears oddly hastened on the part of Respondent-CAA, as the vacancy for the posts has not been articulated by Counsel for Respondent-CAA to be closed as a matter of national emergency, notwithstanding that the modus operandi as an objective and inclusive recruitment design process does not appear to meet such goals.

18. Consensually, this Petition is partly accepted, only to the extent, that the subject Posts in AT & ER cannot be filled through the impugned Advertisement, by circumventing and violating the prescribed eligibility

criteria of the Service Regulations; thus, to the extent of Subject Posts, the decision and steps taken so far by the Respondents-CAA, are illegal and set aside.

19. The Respondents-CAA should first try to fill the vacancies from within the Organization, as envisaged in its Service Regulations. It is clarified that this Decision is not a bar on the prerogative of the Competent Authority and Management of CAA, to appoint the best of the best candidates from different channels through a legitimate Selection Process, but within the frame of the above Governing Law [the Act], CAA Rules and Service Regulations.

20. In view of the above, Petition stands disposed of along with all pending application(s), if any, but there will be no order as to costs.

**Judge**

**Judge**

**Karachi.**

**Dated: 29.05.2025.**

Riaz / P.S.