

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 369 of 2024

Babar Ali

vs.

**Chairman Federal Public Service
Commission, Islamabad & other**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.1522/2024
2. For hearing of main case.

Before

Adnan-ul-Karim Memon, J:

Mohammad Abdur Rehman, J

Date of hearing: **15.05.2024**
Date of order: **23.05.2024**

Mr. Sohail Ahmed Khoso, Advocate for petitioner
Mr. Karim Bux Janwri, Assistant Attorney General alongwith Ms.
Sanam Pirzada, Regional Head FPSC, Sukkur.

ORDER

MOHAMMAD ABDUR RAHMAN J., The Petitioner maintains this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking the following relief:

“

(a) That this Honourable Court may be pleased to declare the act of the official respondents as null and void for not including name of petitioner in the provisionally shortlisted candidates, while the petitioner was passed in the written/MCQs test and his name was placed at serial No.13.

(b) That this Honourable Court may be pleased to direct the official respondent to include the name of the petitioner in the provisionally shortlist candidate and thereafter other process may be completed in accordance with law.

(c) That this Honourable Court may be pleased to restrain the official respondents to suspend/postpone the schedule of interview till the final decision of present petition.

(d) To any other relief which deem fit and proper under the circumstances of the case. “

2. The Federal Public Services Commission (hereinafter rereferred to as the “FPSC”) issued Consolidated Advertisement No.12 of 2022 dated 3 November, 2022 inviting applications, *inter alia*, for the position of Civilian Security Officer Grade-3, (BPS-17) Permanent Corps of EME, Ministry of Defence in the following terms:

“ ... Case No.F.4-194/2022-R (12/2022). **CIVILIAN SECURITY OFFICER, GRADE-III (BPS-17, PERMANENT CORPS OF EME, MINISTRY OF DEFENCE, MINIMUM QUALIFICATION:** *Second class or Grade 'C' Master's degree in Public Policy & Strategic Security Management/Criminology & Security Studies from a University recognized by HEC or Retired Army Officers of the rank of Captain/Major with requisite qualification of the post. AGE LIMITS; 22-30 years plus five (5) years general relaxation in upper age limit. NUMBER OF VACANCIES=TWO (2) DOMICILE/QUOTA: Punjab (Open Merit) = One and Sindh (Rural) (One Merit)= One. PLACE OF POSTING" Anywhere in Pakistan."*

3. Instructions for short listed candidates were issued to applicants and wherein the criteria for selection was indicated in the following terms:

“ ... 5. Short-listing criteria for interview:

The Candidates will be short-listed for interview as per policy of the Commission contained in para-16 (A.B.&C) of General Instructions."

As per the advertisement the general instructions for the short listing criteria of BS-16 and BS-17 posts had been indicated by the FPSC as being as follows:

“ ... 16. SHORTLISTING CRITERIA.

A. FOR BS-16 AND BS-17 POSTS.

- i) *In case number of applicants is maximum twenty (20) per case, the Commission reserves the right to dispense with the Screening (MCQ) Test and call the candidates for interview directly, after determination of their eligibility in terms of advertised conditions and if number of applicants is more than twenty (2) per case, Screening Test comprising MCQs (with qualifying threshold of 40% marks) will be held.*
- ii) *For BS 16-17 level posts, after the screening test, if deemed necessary to further differentiate the competitors, an additional filter against a certain benchmark may be applied in the shape of descriptive test comprising written papers^{9s}) as may be prescribed by the commission on case to case basis.*
- iii) *To keep within manageable limits the cases where more than twenty thousand (20,000) applications are received, Screening (MCQ) Descriptive Test will be held in Batches by equally bifurcating the candidates whereupon different papers will be set.*
- iv) *Vacancies of Assistant Private Secretary (BS-16) requisitioned of FPSC by various sponsoring Ministries/Divisions/Departments having same recruitment rules will be clubbed together and advertised twice a year in January and July in consolidated advertisement.*
 - a) *Aspirants will submit a single application contesting for all positions of APS published in an advertisement in accordance with their domicile and depositing fee prescribed for single application.*
 - b) *A combined test(typing, computer literacy and shorthand) shall be conducted and merit list shall be drawn.*

- c) Candidates, however, will be required to cast their preference(s) for the department(s) they intend to join at the time of interview, which will be final.
- v) The posts where Typing, Shorthand and Computer Literacy Tests are to be held, candidates will be first required to qualify the typing test with 90% accuracy and then to proceed further for shorthand and Computer Literacy Tests.
- vi) The qualifying candidates of Screening/Descriptive Test, if eligible otherwise, shall be called for interview in the following ratio;
- a) 05 candidates per post; for all Provincial/Regional Quota posts (if overall advertised posts per case two or less) as well as all merit quota posts;
- b) 03 candidates per post; for all Provincial/Regional Quota posts (if overall advertised posts per case are more than two).
- vii) In non-test cases final merit list shall be based only on marks of interview. In test cases, where only Screening Test is held, the final merit list shall be based on Aggregate of Marks obtained in the Screening Test and interview. However, in the cases where Descriptive Test is held, final merit list shall be drawn on the basis of marks in Descriptive Test and interview."

Rule-13 allowed for a representation and review for any person aggrieved by a decision of the FPSC in the following terms;

" ... **13. REPRESENTATION AND REVIEW PETITION.**

- a) A candidate aggrieved by any decision of the Federal Public Service Commission may, within thirty days of communication of decision, make a representation to the Commission and the Commission shall decide the representation within fifteen days after giving the candidate a reasonable opportunity of hearing.
- b) A candidate aggrieved by the decision of the Commission made under paragraph (a) may, within fifteen days of communication of decision, submit a review petition to the Commission and the Commission shall decide the review petition within thirty days under intimation to the petitioner. The decision of the Commission on review petition shall be final.
- c) Save as provide in this Ordinance, no order made or proceeding taken under this Ordinance, or rules made hereunder, by the Commission shall be called in question in any court and no injunction shall be granted by any court in respect of any decision made or taken in pursuance of any power conferred by, or under this Ordinance.
- d) Any candidate aggrieved by a decision of the Commission under paragraph (b) may, within thirty days of the decision, prefer an appeal to the High Court.

4. The Petitioner applied and was successful in passing the "written part-MCQs" tests for the vacancy being listed at serial No.13 out of 26 candidates in the merit list. On 13 July 2023 the FPSC by a letter informed the Petitioner that had been further short listed as amongst 15 persons and invited him to submit

various documents and his bio-data, it being specifically clarified in that letter that:

“ ... your eligibility shall be determined as per Commission’s policy laid down in General instructions displayed at FPSC’s Website. Candidates are advised to go through the said General Instructions to update themselves. You will be shortlisted for interview as per applicable policy of the Commission. Your eligibility in all respects shall be reckoned up to closing date.

You are cautioned that requisitioning of the documents for determination of eligibility shall not vest any right in you for the post until they are shortlisted on the basis of advertised merit and relevant Provincial/Regional quota as per policy of the Commission. In case you failed to submit the documents along-with Bio-date within stipulated period, your candidature for the captioned post shall stand rejected and no alibi or excused shall be entertained subsequently.”

5. On 11 March 2024 the FPSC issued a document entitled “Provisionally Short Listed Candidates” and which while indicating the name of the Candidates that were selected for an interview and also indicated the names of three candidates that had been rejected. This list, however, completely excluded the name of the Petitioner altogether. The document concluded by stating under the heading “low merit candidates” each of whom were declared as failed in the following terms/:

“ ... *The remaining candidates in the subject cited case are fail on the basis of **written Screening Test** and they will not be called for interview. It is may also be noted that no further written communication shall be made in this regard.”*

6. Being aggrieved from being excluded from selection the Petitioner on 4 April 2024 maintained a document entitled “review petition” before the Secretary, FPSC and which apparently is still pending. He finds himself aggrieved as despite having filed the “review petition” the same has not been considered within the prescribed 15 day period indicated in clause (a) of Paragraph 13 of the general instructions and despite of which the interviews for the vacancy are now being conducted by the FPSC.

7. Mr. Sohail Ahmed Khoso entered appearance on behalf of the Petitioner and contended that the decision on the “Review Petition” having not been made within time and the interviews being imminent, the Petitioner’s “Review Petition” would be frustrated unless the review is heard prior to the interview process. He further contended that the letter dated 11 March 2024 was clearly ambiguous as it does not clarify as to whether or not the petitioner has been rejected as his name could not appear in the rejected candidates column as he having passed the “written/MCQ test” could not be classified as being a “low merit candidate”.

8. Mr. Karim Bux Janwri, the Assistant Attorney General appeared on behalf of the FPSC and contended that the General Instructions issued clearly reserved the FPSC right to reject a candidate. He further clarified that the Petitioner had not been excluded from selection and was in fact being kept in reserve and hence the Petition was premature and liable to be dismissed.

9. We have heard Mr. Sohail Ahmed Khoso and Mr. Karim Bux Janwri, the Assistant Attorney General and have perused the record.

10. We have considered the Short Listing Criteria as developed by the FPSC in the General Instructions and which to our mind clearly stipulates the criteria for selection of a candidate to a position and which also identifies remedies in the form of representations and review against any decision that is taken by the FPSC during the selection process. It is apparent that the Petitioner had filed a representation on 4 April 2024 in terms of clause (a) of paragraph 13 of the General Instructions but which was indicated by the Petitioner as being a "Review Petition." Despite having been filed, no decision has been given by the FPSC within the 15 day period stated and in the comments filed by the FPSC, the only reason given is as hereinafter:

" ... 5. *His review petition for not including his name in the list of short listed candidates is under submission and its outcome will be conveyed to the petitioner accordingly.*"

11. FPSC continuing with the process of appointment while not deciding the Representation that had been maintained by the Petitioner is to our mind, clearly in violation of clause (a) Paragraph 13 of the General Instructions as it was not decided within the time period prescribed therein and which if decided after the appointments are made, may well leave the Petitioner with nothing more than a *fait accompli*. It was the absolute duty on the part of the FPSC to decide the Representation that had been Petitioner within the time period prescribed and having not done clearly warrants the intervention of this Court.

12. In the circumstances, we hereby dispose of this Petition with the following directions to FPSC:

- (i) the FPSC shall treat the "Review Petition" as a "Representation" under Clause (a) of Paragraph 13 of the General Conditions and

decide the same after affording the Petitioner with a hearing either in person or virtually via “Zoom” and which if done virtually may be recorded and where after FPSC shall pass a speaking order which shall be sent to the Petitioner via registered mail and email, all within a period of three weeks from the date of this order; and

- (ii) the process of recruitment shall remain suspended until a speaking order is passed by the FPSC on the Representation maintained by the Petitioner.

The Petitioner is disposed of in the above terms, along with all listed applications, with no order as to costs

JUDGE

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