

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Constitutional Petition No. D-1955 of 2019

[Israr Hussain Chang, Advocate v. Federation of Pakistan & others]

PRESENT:

*Mr. Justice Muhammad Faisal Kamal Alam
Mr. Justice Khadim Hussain Tunio*

For the Petitioner : Mr. Muhammad Zakaria Baloch, advocate.
For the Respondent(s) : Mr. M. Saleem Hashmi Qureshi, advocate
For Govt. of Pakistan : Mr. Shamsuddin Rajpar, DAG.

Date of Hearing : 19.12.2023
Date of Decision : 12.01.2024

ORDER

KHADIM HUSSAIN TUNIO, J.- Petitioner has challenged the process of induction/appointment by the Competition Commission of Pakistan ('CCP' or 'Respondent No. 3') through its Director General, Human Resources ('DG-HR' or 'Respondent No. 4') on the ground of being non-transparent and manipulative in appointing one Farhan Shah from Khyber-Pakhtunkhwa ('Respondent No. 5') against the post of Deputy Director, Legal.

2. Petitioner, being an Advocate, had participated in the test conducted by National Testing Service (NTS), vis-à-vis for the posts advertised by Respondent-CCP. He applied for the post of the Deputy Director [Legal] and Assistant Director [Legal] which are mentioned at Sr. No. 1 and 2 of the Advertisement appended at page 13 of the petition. Admittedly, he secured 66 marks, ranking highest on the merit list throughout Pakistan, for the post of the Deputy Director and 53 marks for the post of the Assistant Director and such results are appended at pages 17 and 19 of the petition. Petitioner did not receive any interview call despite inquiry from the office of Respondent No. 3 and emails sent by him.¹ However, he was verbally informed by the Office of Respondents No. 3 and 4 that a candidate had been selected on the instructions of Respondent No.

¹ Appended at pages 21, 23, 25 and 27

1, but no further information was provided in writing to him. Finding no other recourse, he filed the instant petition.

3. The petition is opposed by the Respondents.

4. Learned Assistant Attorney General filed Comments on behalf of Respondent No. 1 (Cabinet Division) and Respondent No. 2 (Finance), both of whom stated that they had no concern with the management of affairs relating to recruitment by the CCP and that they were merely proforma Respondents, and the Petitioner is not aggrieved by any act of theirs.

5. Respondent No. 3, through its counsel Mr. Muhammad Saleem Hashmi, has opposed the Petition and stated that the same is not maintainable while contending that the Respondents No. 3 is situated in Islamabad, therefore, this Court has no territorial jurisdiction. It was further contended that the quota mentioned in the Advertisement was general and it was further divided as, (a) Deputy Director, Legal-Khyber Pakhtunkhwa, (b) Deputy Director (Research)-Sindh, and (c) Deputy Director (Advocacy & Media)-Punjab. However, they did not dispute the qualification of the Petitioner.

6. In compliance of the earlier Order dated 12.09.2023, Registrar CCP has filed his Affidavit, wherein it is stated in Paragraph 3 that quota of the Provinces as mentioned (ibid) came “subsequently”. It is stated that the Quota was strictly followed and positions of Deputy Director (Research) and Deputy Director (Advocacy and Media) were offered to candidates from Sindh and Punjab, respectively.

7. Since it was contended that this Court lacks territorial jurisdiction to entertain the instant petition, it would be necessary to decide such contention first. CCP was established under section 12 of the Competition Act, 2010. This body performs its functions across Pakistan and maintains its Head Office at the Capital Territory Islamabad, but is not restricted from establishing offices in other places. This question has been dealt with and we need not do more than refer to the same. In the case of *Trading Corporation of Pakistan (Pvt.) Ltd. v. Pakistan Agro Forestry*

*Corporation (Pvt.) Ltd.*² where relief was claimed against the Central Board of Revenue having its office at Islamabad. Lastly, the case of *M/s Sethi and Sethi Sons through Humayun Khan v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others*³ is referred wherein it was firstly observed that a body performing functions in connection with the affairs of the Federation is one which has its territorial jurisdiction spanning across the country and that such a body enjoys “ubiquitous presence everywhere across the Country having territorial jurisdiction all over Pakistan or in other words, within the territorial jurisdiction of every High Court in the country.” It is not the case of CCP that their functions are limited to Islamabad because even the statute, that is, the Competition Act 2010 does not place such stipulations. Thus, we find ourselves in agreement with the observations rendered in the case of *M/s Sethi and Sethi Sons* (supra) and are of the view that this Court enjoys territorial jurisdiction to entertain the matter.

8. Coming to the merits of the case at hand, Record show that the recruitment against vacancies was announced in the month of March 2019. Relevant part of the Advertisement is reproduced hereunder for ease of reference:

GOVERNMENT OF PAKISTAN COMPETITION COMMISSION OF PAKISTAN STAFF REQUIRED							
The Competition Commission of Pakistan (CCP) is an independent quasi-regulatory, quasi-judicial body that helps ensure healthy competition between companies for the benefit of the economy. As a part of organizational development and to strengthen its HR, CCP invites applications from talented, self-motivated, result oriented and energetic candidates for appointments on regular basis against the following posts -							
Sr #	Post	Preferred experience	Minimum Qualification	Age Limit	Minimum Experience	No. of Positions	Quota
1.	Deputy Director (Legal)	The candidate should have experience of law practice and dealing in corporate and regulatory affairs. The ideal candidate should also possess strong writing and analytical skills.	Master's degree in Law or Bachelor degree in Law	32 Years	5 Years (7 years in case of Bachelor's degree in law)	01	
	Deputy Director (Research)	Report writing and strong background of conducting research. Strong grip and working knowledge of applicable computer software programs, such as MS office applications, SPS, STATA, Eviews, RATS.	Master's degree in Economics, Business Administration (Finance)	32 Years	5 Years	01	1 Punjab 1 2 Sindh 1 3 KPK 1
	Deputy Director (Advocacy & Media)	Candidate should have demonstrable experience in content writing, editing documents, articles/papers, speeches, compiling and summarizing information for annual reports, newsletters, and other print material. Candidate should have a flair for writing, should be highly proficient in developing quality content, writing articles, speeches, editing documents, strong communication skills.	Master's degree in Social Sciences, English, Mass Communication, MBA (Marketing)	32 Years	5 Years	01	

9. The perusal of the above Advertisement shows that the post of Deputy Director (Legal) was placed at serial No. 1 and the quota for the same was notified as each Province having one position. It appears that the

² 2000 SCMR 1703

³ 2012 PTD 1869

Provinces were also given a serial number, with Punjab being the first, Sindh second and KPK on third. Common sense would suggest that even if these serial numbers were to have relevance, Punjab would be the Province wherefrom Deputy Director (Legal) was to be chosen. However, that was not the case as according to the Comments received from CCP, the seat was for KPK. Record pertaining to the distribution of this quota was also called and the Minutes of Meetings were received, wherein everything was decided. At the very outset and as the record below shall show, the Advertisement was made on 10.03.2019, however the meeting wherein quota was ascertained was held on 15.03.2019, that is, after the Date of the Publication of the Subject Advertisement. Why this was done is unclear as we also saw from the record that the draft Advertisement was placed before the Commission on 07.03.2019 where quota had already been assigned in ambiguous terms. What the record below will also show is the pick and choose method employed by the Commission in assigning quota to each Province even though claims have been made through Comments of the CCP (Respondent No. 3 and 4) that they followed proper guidelines in doing so. Firstly, for the posts of Deputy Director, a total of three vacancies were available; one under each head (Advocacy & Media, Legal and Research). The existing quota position showed 01 seat for the Province of Khyber Pakhtunkhwa for Advocacy & Media, however, the proposal approved and acted upon showed that this seat was given to Punjab. Similarly, Research had 00 existing quota positions, yet this position was seemingly created and handed to the Province of Sindh. Then, the post of Assistant Director had a total of 11 posts; two for Cartel & Trade Abuse, two for Research, two for Legal, one for Office of Fair Trade, one for Office of International Affairs, two for Software Development and one for Networks. Cartel & Trade Abuse had 01 existing quota for the Province of Punjab, but two seats were proposed; one for Sindh (Urban) and one for Punjab. Research had 00 existing quota, yet a seat was given to Punjab and one to KPK. Legal Department had 01 existing quota for KPK, yet one seat was open merit and the other was given to Punjab. Office of Fair Trade had two open quota positions, one for Punjab and another for KPK, however only one seat was given to Punjab. Office of International Affairs had 00

existing quota positions, yet Punjab was given a position. The Commission created seats for every Province where such seats, according to quota allocation, were not even available, yet they refused to entertain the top scoring candidate—the petitioner. The CCP is created, inter alia, to ensure free competition in all spheres of commercial and economic activity and to protect consumers from anti-competitive behaviour, but when it comes to its own recruitment policy, there seems to be no notion of competition. The list is appended herein for reference:-

S.#	POST	NO. OF POSITIONS	EXISTING QUOTA POSITIONS		PROPOSED ALLOCATION ACCORDING TO QUOTA
1.	Deputy Director (Advocacy & Media)	1	Punjab Sindh KP Balochistan GB/FATA AJK	00 00 01 00 00 00	PUNJAB 01
	Deputy Director (Research)	1	Punjab Sindh KP Balochistan GB/FATA AJK	00 00 00 00 00 00	SINDH 01
	Deputy Director (Legal)	1	Punjab Sindh KP Balochistan GB/FATA AJK	00 00 01 00 00 00	KPK 01
2.	Assistant Director (Cartel & Trade Abuse)	2	Punjab Sindh KP Balochistan GB/FATA AJK	01 00 00 00 00 00	SINDH (U) 01 PUNJAB 01
	Assistant Director (Research)	2	Punjab Sindh KP Balochistan GB/FATA AJK	00 00 00 00 00 00	PUNJAB 01 KPK 01
	Assistant Director (Legal)	2	Punjab Sindh KP Balochistan GB/FATA AJK	00 00 01 00 00 00	OPEN MERIT 01 PUNJAB 01
	Assistant Director (Office of Fair Trade)	1	Punjab Sindh KP Balochistan GB/FATA AJK	01 00 01 00 00 00	PUNJAB 01
	Assistant Director (Office of International Affairs)	1	Punjab Sindh KP Balochistan GB/FATA AJK	00 00 00 00 00 00	PUNJAB 01
	Assistant Director (Software Development)	2	Punjab Sindh KP Balochistan GB/FATA AJK	01 00 00 00 00 00	PUNJAB 01 KPK 01 SINDH (R) 01
	Assistant Director (Networks)	1	Punjab Sindh KP Balochistan GB/FATA AJK	00 00 00 00 00 00	
	3.	Management Executive (Cartel & Trade Abuse)	4		
	Management Executive (HR)	1	Punjab	00	PUNJAB 01
	Management Executive (Media)	1	Sindh	00	PUNJAB 01
	Management Executive (Office of Fair Trade)	2	KP	00	PUNJAB 01
	Management Executive (Research)	2	Balochistan	00	SINDH (U) 01
	Management Executive (Exemptions)	1	GB/FATA	00	OPEN MERIT 01
	Management Executive (Merger & Acquisition)	2	AJK	00	GB/Fata 01
	Management Executive (IA)	1			PUNJAB 01
	Management Executive (Accounts)	1			PUNJAB 01 KPK 01 PUNJAB 01 SINDH (U) 01

357. Forwarded for consideration and approval please.

DG (HR)

Rabia Arifeen
Assistant Director (HR)

10. The Advertisement confirms that the Province of Sindh also had a vacancy for the post of Deputy Director (Legal). This fact further

finds support by the contention raised by the CCP in its Comments, wherein they stated that they could change the recruitment policy at any time in their discretion. Suffice it to say that an Advertisement, once published, is a promise to all the candidates appearing therein for any posts advertised and by such Advertisement, the advertiser undertakes to abide to the terms therein.⁴ It is essential that no changes are made to such an Advertisement as they may be affecting vested rights of candidates and even if any corrigendum is necessary, it must duly be communicated to all the candidates. Had the position of Deputy Director (Legal) been restricted to the Province of Khyber Pakhtunkhwa, why was it that the tests for this post were conducted all across Pakistan and even the merit list contained every candidate's name and not just those from Khyber Pakhtunkhwa; CCP cannot deny vested right of candidates and choose someone of their liking. Suffice it to say that despite having advertised the posts, the Committee of CCP had not even decided the quota allocation and only did on 15.03.2019 as seen above, also proving mala fide on their part. Furthermore, the stance taken by the CCP that the Advertisement had correctly mentioned that only one seat was available for each Province for all three posts is also controverted by the fact that even if that was the case, the serial numbers, besides each Province, suggest that the post of Deputy Director (Legal) should still have gone to Punjab and not Khyber Pakhtunkhwa. Not only this, it was the duty of the CCP to mention the allocation of the posts according to the Provinces in unambiguous terms as had been held by the Supreme Court in the case of *Amir Hamza v. Government of Balochistan*.⁵

11. Therefore, the decision of the CCP in revising the quota at a subsequent date without communication to the candidates, and then picking one candidate of their choice, was in violation of the conditions prescribed in the Advertisement dated 10.03.2019. The rule laid down in the aforementioned case law is applicable to the facts of the present *lis*, inter alia, that a non-transparent process of selection is not sustainable in law; transparency has been explained to include providing equal opportunity in order to guarantee that the appointment is made on merit and of the most

⁴ See *Malik Waqas Ahmed and another v. Government of Pakistan through Secretary Ministry of Water and Power and 13 others*, 2011 PLC (CS) 455

⁵ 2005 SCMR 1422

capable and qualified person. Conversely, in the present case, the petitioner who scored the highest marks, was ousted on the basis of purported provincial quota, which otherwise was illegal, as discussed in the foregoing paragraphs.

12. Any superstructure built upon an unlawful order must fall, as such this petition is allowed. Consequently, the impugned decision of CCP with regard to selecting a candidate that had admittedly lesser marks than the Petitioner, as the Deputy Director (Legal), is set aside, as the same is void ab initio. Respondents should consider the case of petitioner in accordance with their recruitment Policy, Rules and take a decision within four weeks.

Judge

Judge