

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-3257 of 2010

*(Hafiz Muhammad Tariq v Federation of Pakistan & others)*

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

**Date of hearing and Order: 21.01.2025**

Mr. Naveed Ahmed advocate for the Petitioner a/w Mr. Ubaid-ur-Rehman advocate.

Ms. Wajiha Aman, advocate/Associate of Ms. Zahrah S. Vayani, advocate for respondent No.3.

Ms. Wajiha Mehdi, Additional Attorney General.

**ORDER**

**Adnan-ul\_Karim Memon, J:** The petitioner Hafiz Muhammad Tariq requests this court to:

1. *set aside the impugned appellate order dated 09.07.2009 and 10.11.2008.*
2. *direct the respondents to place/fix the petitioner in SPS-7 of revised Special Pay Scales 2001 w.e.f. 01.12.2001 and then promote him in SPS-8 w.e.f. 30.04.2008.*
3. *direct the respondents to correct the impugned promotion order dated 10.11.2008 by placing the petitioner in SPS-7 BPS-16-Group-IV and then promoting him in SPS-8, BPS-17.*
4. *direct the respondents to all back benefits and consequential benefits may also be granted.*

2. In 2016 in Supreme Court judgment (*Shafique Ahmed Khan v/s NESCOM PLD 2016 SC 377*), it was held that rules framed under the National Command Authority Act, 2010 were/ are statutory. The petitioner claims to be an employee of Pakistan Space and Upper Atmosphere Research Commission (SUPARCO), which is a strategic organization of the National Command Authority (NCA), but was wrongly non-suited by this Court, in the earlier round of litigation, vide order dated 21.1.2011. His appeal before the Supreme Court was allowed vide order dated 21.4.2016, and the matter was remitted to this court for fresh consideration under law.

3. Petitioner's grievance is that respondent No. 3 and other officials repeatedly modified rules, negatively impacting employees' careers, including the petitioner's. He made complaints to respondents No. 2-5 but to no avail leading to further problems and retaliation. As per the petitioner, this constitutes a violation of his fundamental rights. Petitioner's employment history is that he was employed since 1982 as

Sub-Engineer II (Group II, BPS-11) and was promoted to Sub-Engineer I (Group III, BPS-13) in 1991, again promoted to Principal-Tech (Group IV, BPS-16) in 2001. However, his designation was changed to Junior Technical Officer (Group IV) in 2001, with no change in salary or duties.

4. Petitioner has submitted that despite repeated representations to resolve grievances, the respondent authority consistently failed to issue proper and lawful orders. This has resulted in significant financial and positional detriment to the petitioner. He further submitted that he faced irrelevant decisions without legal basis, leading to demotion and degradation since 1-12-2001. He added that his post, grade, and status belong in one category and pay scale (16), but he has been placed in another category, depriving him of promotions and entitlements. This unlawful conversion of grade and scale has caused significant prejudice and loss. He submitted that despite a promotion order dated 10-11-2008, to a newly created grade 7A (equivalent to his current pay scale) without any actual advancement, this is considered illegal and detrimental, as it offers no real benefits while potentially hindering future promotions. The petitioner requests a rightful promotion to a higher position with a corresponding grade and improved financial benefits, based on merit. He next submitted that his appeal was rejected on 14-5-2009 and again on 9-7-2009. This repeated denial, coupled with threats and forced demotion, constitutes unlawful harassment and a deprivation of due process; the respondent's refusal to consider the appeal and subsequent actions were malicious and in violation of the law. Petitioner claims that he was underpaid for 9.5 years due to delayed promotion. The expected promotion path was likely Sub Engineer-II to Sub Engineer-I (Group-III) and then potentially to a higher grade (Group-IV).

5. Learned counsel for the petitioner has prayed for allowing the instant petition on the analogy put forward by the petitioner in his memo of the petition.

6. Keeping in view the aforesaid stance of the petitioner, learned counsel for the respondents was asked to address the question of the maintainability of this petition. Learned counsel submitted that the petition against the National Command Authority (NCA) under the National Command Authority (Amendment) Act, 2016, is not maintainable which envisaging a Master-Servant relationship for the employees of organizations under NCA and ousting the jurisdiction of this court from the entertaining petition of employees; and, prayed for dismissal of the

petition on the analogy that the National Command Authority has no statutory rules of service.

7. The learned Assistant Attorney General is of the same view and added that the order of the Supreme Court remanding the matter to this Court for a fresh decision has been taken care of under the National Command Authority (Amendment) Act, 2016 declaring the rules of NCA as non-statutory. Besides, there is no accrued right in favor of the petitioner so far as the question of his promotion is concerned, which falls within the terms and conditions of service, which are non-statutory, in terms of the latest amendment as discussed supra.

8. Petitioner who is present in court has refuted the claim of respondents by referring to the grounds agitated by him in the memo of the petition and submitted that this petition is maintainable and can be heard and decided on merits.

9. We have heard the petitioner who is present in person along with his counsel and learned counsel representing the respondents as well as the Assistant Attorney General and have perused the material available on record with their assistance.

10. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution, 1973. The Supreme Court in the case of *Shafique Ahmed Khan and others v. NESCOM through Chairman Islamabad and others* (PLD 2016 SC 377), has settled the aforesaid proposition and held that “the rules framed under Sections 7, 9, and 15 of the Act are statutory on all accounts and by every attribute. They are thus declared as such”. However, in subsequent events, the legislative body has declared the rules of NCA as non-statutory vide Notification dated 30.12.2016. Section 3 of the National Command Authority (Amendment) Act 2016 reads as under:-

*“Amendment of section 15, Act V of 2010... In the said Act, in section 15, for the full stop occurring at the end, a colon shall be substituted and thereafter, the following new proviso shall be added namely---*

*“Provided that notwithstanding anything contained in any judgment decree, order, direction or declaration of any Court including the Supreme Court of Pakistan or in this Act or in any other law for the time being in force, the rules, instructions or orders already made, or which may be made, in respect of the employees and strategic organizations of the authority shall be non-statutory unless approved by the Federal Government and published in the official Gazette of Pakistan.”*

11. At this stage, the petitioner has pointed out that the review petition was preferred in the case of *Shafique Ahmed Khan and others*, which was

also dismissed by the Supreme Court as such rules of NCA are still statutory. However the learned counsel for the petitioner after going through the amendment brought on 30.12.2016, submitted that the rules have been declared non-statutory.

12. Progressing further on the subject issue, we have noticed that the (Amendment) Act, 2016, and the decision of the Supreme Court in the case of *Shafique Ahmed Khan and others* supra came on 21st January 2016, which clarified the status of NCAES Rules, 2011 of National Command Authority. Therefore, there is no further discussion on the aforesaid proposition required on our part. It is well settled that the Government and control organization fall within the ambit of "person" within the meaning of Article 199(1)(a)(ii) read with Article 199 (5) of the Constitution and if their actions or orders are violative of the statute creating those bodies or of rules/regulations framed under a statute, the same could be interfered with by the High Court under Article 199 of the Constitution. It is also well settled that when the service issues of the employees of such organizations/authorities are non-statutory then its enforcement has been restricted by the Supreme Court in the case of *Pakistan Electric Power Company v Syed Salahuddin* (2022 SCMR 991).

13. In the present case, the petitioner alleges that the respondent establishment has consistently acted unlawfully, causing significant harm through misleading designation changes, unjustified grade downgrades, denial of rightful promotions, and violation of established rules and procedures. On this issue, the Supreme Court has also held that service rules determine eligibility for promotion, while fitness is a subjective evaluation based on objective criteria. While consideration for promotion is a right, it cannot be claimed as a matter of right. The government has the authority to determine eligibility criteria, amend rules, and decide on promotions in the interest of service efficiency. The Courts generally avoid interfering with the government's decisions on promotion unless there's a violation of law or infringement of vested rights. The questions raised are answered accordingly. Besides, the issue of promotion and demotion falls within the terms and conditions of service and the petitioner cannot claim the same as a matter of right.

14. Time and again, the Supreme Court laid down in various dictums that in the absence of statutory rules of service, the aggrieved employee cannot invoke the writ jurisdiction of the High Court. In the case of *PIAC v. Tanweer-ur-Rehman* (PLD 2010 SC 676), it was held by the Supreme Court that due to non-statutory rules of service, the constitution petition under Article

199 does not lie in the High Court. Whereas in another judgment rendered by the Supreme Court in the case of *PIAC v. Syed Suleman Alam Rizvi* (2015 SCMR 1545), while referring to the case of *Tanveerur-Rehman (supra)*, *Abdul Wahab v. HBL* (2013 SCMR 1383), *Pakistan Defence Officers' Housing Authority v. Lt.Col. Syed Jawaid Ahmed* (2013 SCMR 1707) and *Syed Nazir Gilani v. Pakistan Red Crescent Society* (2014 SCMR 982), reaffirmed that no writ petition lies in the High Court in the matters where the terms and conditions of service are not governed by statutory rules.

15. Insofar as the argument of the Petitioner's Counsel regarding enforcement of fundamental rights and principle of natural justice is concerned, there cannot be any cavil to that; but it must be kept in mind that there is an exception. If a writ is filed for enforcement of any fundamental right against the authority owned by the Government and engaged in the discharge of any public duty, then it still can be maintained and the Court in the given facts and circumstances of a particular case can still exercise its jurisdiction in terms of Article 199 of the Constitution. However, it may be of relevance to further observe that this function test applied and settled by the Supreme Court is limited to a writ petition filed under Article 199 of the Constitution of Pakistan by an employee against an Authority owned and operated by the Government in respect of its terms and conditions of service. For that in the absence of any Statutory Rules of Employment, the principle of master and servant will apply and the test has already been laid down by the Supreme Court way back in the year 1984 in the case reported as *Principal Cadet College, Kohat and another v Mohammad Shoaib Qureshi* (PLD 1984 SC 170) and thereafter followed in the case of *Pakistan International Airline Corporation v Tanveer-Ur-Rehman* (PLD 2010 SC 676) and *Pakistan Telecommunication Co. Ltd., v Iqbal Nasir* (PLD 2011 SC 132) by holding that if the Rules of Employment are non-statutory then no writ would be maintainable under Article 199 of the Constitution of Pakistan.

16. In view of hereinabove facts and circumstances of this case, this petition appears to be meritless is therefore, dismissed. However, the Petitioner is at liberty to seek any other appropriate remedy as may be available to him under law.

JUDGE

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