

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-5965 of 2019
(*Muhammad Mithal versus Province of Sindh & others*)

Date	Order with signature of Judge(s)
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Before:
Justice Mohammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

Date of hearing and order: 02.5.2025

Mr. Ali Asadullah Bullo advocate for the petitioner
Mr. Ali Safdar Depar, Assistant AG

ORDER

Adnan-ul-Karim Memon, J. The Petitioner's counsel averred that the petitioner was initially appointed as an Accountant (BS-15) in the defunct Sindh Arid Zone Development Authority (SAZDA) in 1990. Following SAZDA's closure in 2002, its staff was transferred to Respondent No.2 and declared government servants upon absorption in 2003 by the order of the competent authority. The Petitioner received a No Objection Certificate (NOC) and was subsequently absorbed into the Finance & Cooperation Department as an Accountant (BS-15) in October 2003. He contended that while other SAZDA employees were absorbed at their original grade levels, he was not. He pointed out that during the period of the district government setup, he was posted as an Assistant (BS-11) in 2004, then as a Junior Scale Stenographer (BS-12) in 2005, and later as an Assistant/Budget Examiner (BS-14) in 2009. Upon the re-centralization of offices in 2012, his services were placed at the disposal of the Hyderabad Development Authority. Following a Supreme Court judgment in 2013 (**2013 SCMR 1752**), he was repatriated to the Finance Department as an Accountant in 2015. However, the Finance Department then declared him again surplus and relegated in the position of an Assistant (BS-14) in the same year. The Petitioner now seeks to be reinstated as an Accountant (BS-15) with all subsequent upgradation of post, receive all due back benefits, and be placed appropriately on the seniority list from the date of first absorption in terms of Rule 9-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. He argued that these actions by the respondents are illegal, violate established service rules, and contravene the Supreme Court's judgment reported in 2013 SCMR 1752 and 2015 SCMR 456, resulting in financial losses and impeding his professional advancement. He prayed for allowing the petition.

2. The Assistant Advocate General (AAG) acknowledged that the Petitioner was initially working as an Accountant (BS-15) at SAZDA. Following SAZDA's closure and the declaration of its employees as surplus, the Petitioner was among

25 individuals transferred to the Finance Department for absorption in terms of Rule 9-A. The AAG explained that due to a lack of available BS-15 positions, the Petitioner, along with 15 other former SAZDA Accountants, was absorbed as an Assistant (BS-11) in accordance with Rule 9-A(11) of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, which permits absorption into a lower grade when an equivalent post was/is unavailable. The AAG cited a Supreme Court ruling as discussed supra as precedent for this practice and submitted that the Petitioner accepted the Assistant BS-11 position as such he cannot claim the higher position at this stage. Furthermore, the AAG pointed out that the Petitioner's Assistant post has since been upgraded to BS-14 (in 2007) and subsequently to BS-16 (in 2016), which is the current pay scale. Consequently, the AAG requested the dismissal of the petition on the aforesaid analogy.

3. We have heard the learned counsel for the parties and perused the record with their assistance.

4. The petitioner was confirmed as Accountant BS-15 in SAZDA (1990), which dissolved in 2002. Became a government servant upon absorption (2003) and absorbed as Accountant BS-15 in the Finance Department (Oct 2003). Unlike other SAZDA staff, later posted in lower grades (BS-11 in 2004, BS-12 in 2005, BS-14 in 2009). Placed with Hyderabad Development Authority (2012), then repatriated as Accountant (August 2015) after the Supreme Court ruling. Subsequently, on October 12, 2015, an order was issued declaring the Petitioner's services as surplus once more, assigning him the status of Assistant BS-14. It is well-settled under the service jurisprudence that once the surplus employee was absorbed under Rule 9-A of the Sindh Civil Servants Rules (1974), the government departments could not arbitrarily demote the employee as in the present case, the petitioner has been demoted from Accountant BS-15 to Assistant BS-14. Primarily, Rule 9-A(11) did not apply after the initial absorption following SAZDA's abolishment in 2002. The term "absorption" lacks definition in the 1973 Act and its Rules, 1974, but Rule 9-A (1974) governs surplus employee transfers to suitable posts (ideally equivalent grade), this proposition is supported by the decision of the Supreme Court. According to Paragraph 116 of the **2013 SCMR 1752** judgment, clarified that Rule 9-A governs the transfer of surplus employees (due to post abolition or government takeover of their organization) to suitable government posts, provided they meet the qualifications for an equivalent or comparable scale. Seniority in the new cadre starts from the appointment date.

5. The Petitioner has sought his original Accountant BS-15 benefits and upgrades, consistent with Supreme Court rulings. This court accept the plea of the petitioner and direct the respondent's competent authority to reconsider its

decision within three months after hearing the Petitioner, in line with those rulings as discussed supra and observation recorded hereinabove.

6. The petition is disposed of in the aforesaid terms.

JUDGE

HEAD OF CONST. BENCHES