

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon,*

Const. Petition No.5494 of 2023

Petitioner Syed Muhammad Mehdi Raza Taqi, in person

Respondents through Ms. Wajiha M. Medhi, Asstt. Attorney General alongwith Syed Amir Ali, Senior Research Officer, and Ali Gohar Baloch, Assistant. Director (Admin)

Date of hearing and order 24.09.2025

ORDER

Adnan-ul-Karim Memon, J. Through this constitutional petition, the Petitioner seeks the following relief(s):-

- “i) To direct the respondents to immediately cancel/rescind the notification dated 16.08.2021, about assigning of additional charge on O.P.S (own pay and scale) to respondent No.4, from an indefinite period, and he may be placed at his substantive position;*
- ii) To direct the respondents to depute/post a deserving, senior, and experienced official against the post of Assistant Director (BS-17), in compliance to the rules and regulations;*
- iii) To direct for inquiry about the passing of the aforesaid notification when the authorized officer was not in charge of the said post;*
- iv) To direct the respondents to verify the shorthand/typing certificate of respondent No.4, purportedly acquired within three (03) months, and submitted by him at the time of regularization;*
- v) To direct the respondents to adhere to the law, rules, policies, regulations, and principles enunciated by the Honorable Apex Court, in the future and not to repeat the exercise of passing orders for placing and posting non-deserving and junior officials in the Council;”*

2. In the captioned petition filed against the Council for Works and Housing Research (CWHR), the petitioner alleges several irregularities concerning the appointment and subsequent assigning additional charge of higher grade in BS-17 of Respondent No. 4. It is submitted that Respondent No. 4 was initially hired on a contract basis and later regularized as a P.A. (BPS-16) on November 17, 2017, with the condition that he obtain a typing/shorthand certificate. Despite this, he was given the additional charge of Assistant Director (BPS-17) on an "OPS basis" in August 2021 without approval of concerned Ministry. This appointment is alleged to violate recruitment rules notified in January 2021, as it is a promotional post that requires seniority and proper authority approval. The notification for this

appointment appears to have a forged signature and bypasses numerous senior and more experienced officials, including the petitioner. It is submitted that this posting violates an Establishment Division memo from November 21, 2000, which limits additional charge assignments to six months and requires approval from the appointing authority. He submitted that he petitioner, an Assistant Private Secretary (BPS-17) and the most senior officer, claims he has been improperly assigned to the Store/Maintenance Section for eight years. He alleges that after he raised concerns about the irregularities, he received threatening letters demanding an apology, which is apathy on the part of respondents.

3. The petitioner's stance is that Respondent No. 4's permanent appointment on OPS in higher grade was/is invalid because the condition to obtain a shorthand/typing certificate within three months was unrealistic. The petitioner further asserted that Public officials must exercise their discretion fairly and legally, not based on personal favoritism. The actions on their part violate service rules and Section 24-A of the General Clauses Act, 1897, which requires all executive orders to be lawful and fair. He prayed to allow this petition as prayed.

4. The Respondent No. 4 is present in court and submits that CWHR's service rules are not yet finalized, so the post of Assistant Director (Admin) BS-17 has been vacant since 2013; therefore, the additional charge was given to him for smooth working. At this stage, learned AAG submits that this was/is without approval from the Ministry and in violation of Federal Government rules. However, the authenticity of the notification and the signatures on it are currently being investigated. The AAG requested that the petition be disposed of in terms of contents of the official respondents.

5. We have heard the parties present in court and perused the record with their assistance.

6. This practice of appointment on an OPS basis has always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self-respect and dignity of the Civil / Public Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of this nature, if allowed to be vested in the Competent Authority, will offend valuable rights of the meritorious Civil / Public Servants besides blocks promotions of the deserving officers. In this respect the law empowers the Competent Authority to appoint a Civil / Public Servant on acting charge and current charge basis, it provides that if a post is required to be filled through promotion and the most senior Civil / Public Servant eligible for promotion does not possess the specific length of service, the appointment of the eligible officer may be made on acting charge basis after obtaining approval of the appropriate

Departmental Promotion Committee/Selection Board. Further that an appointment on an acting charge basis shall be made for vacancies lasting for more than 6 months and vacancies likely to last for less than six months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, an appointment on a current charge basis is purely temporary in nature or a stopgap arrangement, which remains operative for a short duration until a regular appointment is made against the post. It is crystal clear that there is no scope of the appointment of a Civil /Public Servant on an OPS basis except in exigencies appointment on an acting charge basis can be made, subject to conditions contained in the relevant Rules.

7. In our view, posting/transferring a Civil / Public servant on his pay and scale (OPS) is not legally permissible. Our view is supported by the decisions rendered by the Supreme Court in the case of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189] and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411).

8. The above discussion leads us to an irresistible conclusion that the appointment/posting of Civil / Public Servant on OPS/additional charge basis, is violative of law and public interest as a result thereof the instant petition is disposed of with the direction to the competent authority of respondents to comply with the ratio of the decisions passed by the Honorable Supreme Court in the cases of Province of Sindh & others v. Ghulam Fareed & others [2014 SCMR 1189] and Khan Muhammad vs. Chief Secretary Baluchistan and others (2018 SCMR 1411) in its letter and spirit and avoid *making* the transfer and posting on own pay scale in future, however, subject to conditions as enumerated in the aforesaid judgments of the Supreme Court. Consequently, the office order dated 16.08.2021 issued by the Respondent department to the extent of respondent No.4 on OPS is set aside. The same post shall be filled on regular basis strictly under the recruitment rules. Resultantly, the pending Application[s] are disposed of.

JUDGE

HEAD OF CONST. BENCHES