

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

COMMENTS /REPLY TO SERVICE APPEAL NO. 05/2023

Mr. Safdar Ali Shah

Appellant

Versus

Government of Khyber Pakhtunkhwa
and others

Respondents


Comments on behalf of respondent No. 06

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RESPONDENT

Through


Aman Ullah Marwat
Advocate Supreme Court

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

COMMENTS /REPLY TO SERVICE APPEAL NO. 05/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6291

Mr. Safdar Ali Shah

Appellant dated 05/07/23

Versus

Government of Khyber Pakhtunkhwa
and others

Respondents

Comments on behalf of respondent No. 06

Preliminary objections

1. That the appeal is time barred for more than four years and as such it is barred by law hence not maintainable.
2. That the appellant has challenged order of the honorable Peshawar High Court upheld by the Supreme Court of Pakistan for which this honorable Tribunal lacks jurisdiction
3. That the appellant has got no cause of action, therefore, the instant appeal is liable to be dismissed.
4. That the appellant has got no locus standi to file this appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appeal does not meet the judicial standards and the same is barred by law.
7. That the appellant is liable for compensatory cost for the false and frivolous appeal before this honorable Tribunal.

Parawise comments are offered as follows:

1. Not relevant with the instant case.
2. Not relevant with the instant case
3. Correct
4. Pertains to record.
5. Not relevant with the instant case.
6. Correct to the extent that the appellant was holding post of Chief Conservator Wildlife till 13-06-2019 (on O.P.S/ A.C.B) when regular incumbent (respondent No. 06) was posted against the said post after fulfillment of all codal formalities and approval of the competent authority (Chief Minister). The appellant was

involved in VR with NAB and had returned an amount of about Rs. 4.000 million and consequently he was facing disciplinary inquiry under the order of Apex Court in SMC No. 17 of 2016 and Respondent No. 06 was promoted against the **single selection post** of Chief Conservator Wildlife, Khyber Pakhtunkhwa (BPS-20) on regular basis vide Notification dated 17-01-2019, Copy enclosed as **Annex-I**.

7. As per promotion policy, only in case of "**many posts**", a post is reserved for deferred incumbent and post cannot be reserved against the single post. Moreover, the mentioned post of Chief Conservator Wildlife (BPS-20) is "**Selection Post**" in nature which is required to be filled on the basis of "**merit**" instead of "seniority cum-fitness". The promotion case was placed before the competent forum (PSB), who examined documents of both the appellant and respondent No. 06 and decided the case on merit. Minutes of the meeting of PSB are enclosed as **Annex-II**. The Competent Authority (Chief Minister, Khyber Pakhtunkhwa) also approved the case as per law and rules and hence the frivolous statement of the appellant is denied.
8. Incorrect; the appellant was served upon a "Show Cause Notice" by the Competent Authority as per law, rules and procedure after conducting denov inquiry.
9. Correct
10. Incorrect; the order was issued after fulfillment of codal formalities adopting procedure
11. Correct
12. Incorrect; as explained above, the promotion case of both the appellant and respondent No. 06 was placed before the Provincial Selection Board which correctly recommended respondent No.06 for promotion against the single selection post of Chief Conservator Wildlife as per law and rules.
13. Writ Petition No. 317-P/2019 filed by the appellant was **dismissed** by the honorable Peshawar High Court and neither the appellant submitted appeal in Khyber Pakhtunkhwa Service Tribunal in line with para-18 of the decision of the honourable Peshawar High Court dated 26.11.2020 nor challenged the decision in Supreme Court of Pakistan and thus the said judgment has got finality leaving the appellant superseded and the case is time barred for about four years. Copy of the order dated 26-11-2020 is enclosed as **Annex-III**.
14. The appellant was conditionally promoted on acting charge basis because at that time the incumbent Chief Conservator Wildlife was posted temporarily outside the department in Pakistan Forest Institute Peshawar.
15. Seeking remedy through relevant court of law is a legal right.

16. Correct, however the Writ Petition No. 317-P/2019 filed by the appellant challenging promotion of the respondent No. 06 was **dismissed** through a separate court order also. Copy of the relevant order dated 26-11-2020 is attached as **Annex-IV**
17. The apex court declared posting of respondent No. 06 as Chief Conservator Wildlife (BPS-20) fully justified under the law and rules. Copy of the order of the Supreme Court of Pakistan dated 12-04-2022 is enclosed as **Annex-V**.
18. Incorrect; review application of the appellant was **dismissed** by the apex court. Copy of the order dated 28-07-2022 is enclosed as **Annex-VI**.
19. Incorrect, the appellant instituted COC NO. 390/2022 before Peshawar High Court for the same prayer as submitted before this honorable Tribunal which was **dismissed** on 22-03-2023 during pendency of the instant appeal. Copy of the Judgment of honorable Peshawar High Court dated 22-03-2023 is enclosed as **Annex-VII**. Moreover, the instant appeal is not only in violation of judicial procedure but also time barred by more than four years for the reason recorded above.
20. The appellant has no legal justification to institute the instant appeal.

ON GROUNDS

- A. Incorrect as explained above.
- B. Incorrect as explained above.
- C. Incorrect; the appellant returned about 4.000 million rupees to the NAB as Voluntary Return and the Acting Charge Basis Appointment Notification of the appellant in BPS-20 has clear mention "**subject to final decision of the August Supreme Court of Pakistan in Suo Motu Case No.17/2016**". SMC No.17/2016 has been decided on 08-03-2023. Copies of the orders of honorable Supreme Court of Pakistan dated 24-10-2016, 6-12-2016 and 08-03-2023 in the referred SMC case are enclosed as **Annex-VIII, IX and X** respectively.
- D. Incorrect, as explained above.
- E. Incorrect review petition of the appellant was "**Dismissed**" and statement of the appellant is not justified.

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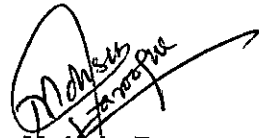
F. Incorrect; as explained above

G. Incorrect; as explained above

H. Incorrect.

I. No comments.

Keeping in view the above exposition, it is requested that the instant baseless frivolous and misconceived appeal may kindly be dismissed with cost.



Dr. Mohsin Farooque
Chief Conservator Wildlife
Khyber Pakhtunkhwa Peshawar
(Respondent No.06)

Through



Aman Ullah Marwat
Advocate Supreme Court



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(5)
Annex-I

Dated Peshawar, the January 17, 2019

NOTIFICATION

NO.SO(E-I)E&AD/9-112/2019.

The competent authority, on the recommendations of the Provincial Selection Board, is pleased to promote Dr. Mohsin Farooq, Conservator Wildlife (BS-19) to the post of Chief Conservator Wildlife (BS-20) on regular basis, with immediate effect.

2. The officer on promotion shall remain on probation for a period of one year, in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and extendable for another year with the specific orders of appointing authority within two month of the expiry of first year of probation period as specified in Rule 15(2) of rules ibid.

3. Posting/Transfer order of the above officer will be issued later on.

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. No & Date even.

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Principal Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Secretary to Govt of Khyber Pakhtunkhwa, Environment Department with the request to move a summary for approval of competent authority for posting/transfer of the officer afresh after his regular promotion to BS-20.
5. Accountant General, Khyber Pakhtunkhwa.
6. PS to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Secretary Establishment, E&A Department/SO (Secret)/DS(Admn)/PA to Director (Protocol) E&AD/ACO Cypher E&AD.
8. Officer concerned.
9. Controller, Government Printing Press, Peshawar.

(ISHTIAQ AHMAD) *me*
SECTION OFFICER (E-I)

A.Latif

CF

Annex 6 II

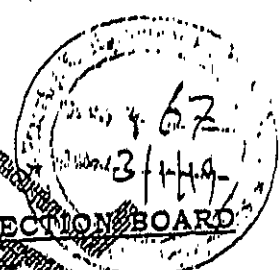
GOVERNMENT OF KHYBER PAKHTUKHWA
ESTABLISHMENT DEPARTMENT

No. SO(PSB)ED/1-7/2018/P-112
Dated Peshawar, the 02.01.2019

ESSENTIAL
RATE



The Secretary to
Government of Khyber Pakhtukhwa,
Environment Department



**ECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 26.12.2018.**

**PROMOTION OF CONSERVATOR BS-19 TO THE POST OF CHIEF
CONSERVATOR BS-20.**

Sir,

I am directed to refer to Environment Department letter No. stt)FE&WD/II/2/2K17 dated 14.12.2018 on the subject and to forward with an extract of Additional item No. (01) of the minutes/recommendations of meeting of Provincial Selection Board held on 26.12.2018 as well as copy of aforesaid summary wherein the Chief Minister being competent authority in terms of clause 4 (1) (a) of the Constitution of Khyber Pakhtunkhwa has approved the recommendation of PSB for further necessary action.

Yours faithfully

(Signature)
(Abdul Hameed)
SECTION OFFICER (PSB)

S.S.

(Signature)
3/1/19
Sp. Secy

(Signature)
o/copy

7

26.12.2018

AGENDA ITEM NO (1)

FORESTRY, ENVIRONMENT AND WILDLIFE DEPARTMENT

(Meeting of PSB held on 26.12.2018)

SUBJECT:- PROMOTION OF CONSERVATOR WILDLIFE BS-19 TO THE POST OF CHIEF CONSERVATOR WILDLIFE BS-20.

Secretary Forestry, Environment and Wildlife apprised the Board that due to retirement, one (01) post of Chief Conservator Wildlife BS-20 is lying vacant. He further apprised the Board that the Peshawar High Court in its order dated 29.11.2018 directed to place the promotion case of Dr. Mohsin Farooq before the Board.

According to service rules the post is required to be filled as under:-

"By promotion, on the basis of selection on merit, from amongst Conservators of Wildlife with at least seventeen years accumulative service in BPS-17 and above. Seniority being considered only in the case of officers of practically the same standard on merit."

The service record of the officers included in the panel, was discussed as follows:-

S#	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Safdar Ali Shah	His date of birth is 24.06.1965. He joined government service on 16.10.1993 in BS-17. He was promoted as Conservator Wildlife BS19 on 13.02.2010. He has passed the prescribed departmental examination. However, he is involved in Voluntary Return (VR) case with NAB. His PER for the year 2017 (P) is also not available. The Board recommended to defer his promotion.
2.	Dr. Mohsin Farooq	His date of birth is 13.03.1968. He joined government service on 10.03.1996 in BS-17. He was promoted as Conservator Wildlife BS19 on 07.02.2014. He has passed the prescribed departmental examination. No enquiry is pending against him. His service record upto 2017 is generally good. The Board recommended the officer for promotion to the post of Chief Conservator Wildlife BS-20 on regular basis. He will be on probation for a period of one year.

CONFIDENTIAL

Attested
Secretary
(PSB)
Government

CFC

Annex-III

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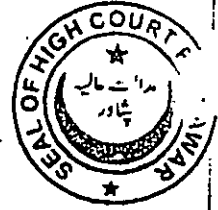
JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.4765-P/2018

Dr. Mohsin Farooq and 03 others

Vs.

**Government of Khyber Pakhtunkhwa through
its Chief Secretary Peshawar and others**



JUDGMENT

Date of hearing **26.11.2020**

**M/s. Sardar Shaukat Hayat and Aman Ullah
Marwat, Advocates, for the petitioners.**

**Mr. Rab Nawaz Khan, AAG, for the official
respondents.**

**Muhammad Ijaz Khan Sabi, Advocate, for the
respondent No.4.**

IJAZ ANWAR, J. Through this
judgment, we intend to decide the instant
writ petition and Writ Petitions, listed
below, since, same questions of law and
facts are involved in it.

- i. W.P. No.317-P/2019 titled "Safdar
Ali Shah Vs. The Government of
Khyber Pakhtunkhwa through the
Chief Secretary, Peshawar and
others".
- ii. W.P. No.5692-P/2019 titled "Dr.
Mohsin Farooq Vs. Government of
Khyber Pakhtunkhwa through
Chief Secretary, Peshawar and
others".
- iii. W.P. No.1816-P/2020 titled "Dr.
Mohsin Farooq and others Vs.

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Peshawar High Court

Government of Khyber
Pakhtunkhwa through Chief
Secretary, Peshawar and others".

Facts of W.P No.4765-P/2018

2. In essence, petitioners are serving on different posts in the Forest, Environment and Wildlife Department-respondent and are aggrieved of the Notification dated 21.09.2017 issued by the Khyber Pakhtunkhwa Establishment Department, Peshawar, whereby, respondent No.4 (Safdar Ali Shah) was appointed as Chief Conservator Wildlife Khyber Pakhtunkhwa (BPS-20) on acting charge basis in his own pay and scale. It is further averred that respondent No.4 has entered into voluntary return with the NAB authorities in an inquiry for the allegations of accumulation of assets disproportionate to his known source of income; later, a departmental inquiry was conducted and accordingly, he was issued a Show Cause Notice and resultantly, minor penalty of withholding two increments was imposed upon him. As

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per the decision of the Hon'ble Supreme Court of Pakistan rendered in Suo Moto bearing No.17/2016, respondent No.4 was not eligible to be promoted to the questioned post and has, thus, deprived the petitioners and others of their promotions.

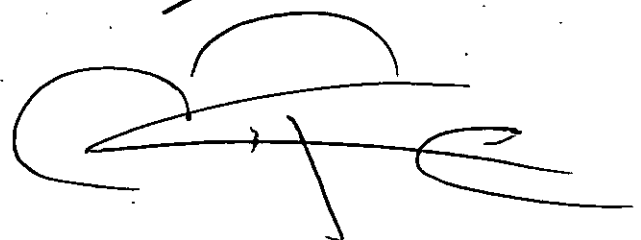
Facts of W.P No.317-P/2019

3. In essence, petitioner who was appointed as Chief Conservator Wildlife (BPS-20) on acting charge basis in his own pay and scale, is aggrieved that despite standing at S.No.1 of the final seniority list, his case for promotion to the post of Chief Conservator Wildlife (BPS-20) was deferred, while respondent No.5, who was junior than him, was promoted to the questioned post vide Notification dated 17.01.2019.

Facts of W.P No.5692-P/2019

4. In essence, petitioner is aggrieved of Notification dated 16.05.2019, whereby, respondent No.6 was appointed as Chief Conservator

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Wildlife (BPS-20) on acting charge basis with immediate effect subject to the decision of the Hon'ble Supreme Court of Pakistan in Suo Moto case No.17/2016; while petitioner has already been promoted to the questioned post; as such, same be declared illegal, without lawful authority and jurisdiction.

Facts of W.P No.1816-P/2020

5. In essence, petitioners are aggrieved of Notification dated 21.03.2019, whereby, respondent No.5 was exonerated from the charges of corruption and corrupt practices and on the basis of which, he was promoted as Chief Conservator Wildlife (BPS-20) on acting charge basis in his own pay and scale vide Notification dated 16.05.2019; as such, the aforesaid Notification dated 21.03.2019 be considered as illegal, without lawful authority and jurisdiction and is liable to be cancelled.

6. Keeping in view the averments made in the instant and connected writ

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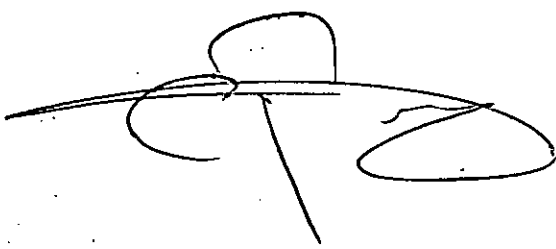
petitions, comments were called from the respondents, who furnished the same accordingly. They, in their comments, strongly opposed the issuance of desired writ, as prayed for by the petitioners.

7. Arguments heard and record perused.

8. Almost in all these petitions, the main controversy is about the posting of respondent No.4 as Chief Conservator Wildlife (BPS-20) on acting charge basis in his own pay and scale vide Notification dated 21.09.2017.

9. W.P. No.4765-P/2018 is in the nature of quo-warranto with an additional prayer for promotion of the petitioner to the post of Chief Conservator Wildlife (BPS-20). Prayer No.III regarding the promotion of the petitioner has become infructuous, as the petitioner has already been promoted to the post of Chief Conservator Wildlife (BPS-20) vide Notification dated 17.01.2019.

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10. Similarly, in accordance with the seniority list, as it stood on 31.03.2016, respondent No.4 was the senior most Conservator Wildlife (BPS-19). In accordance with the recruitment rules, the next post in the channel of promotion to the post of Conservator wildlife (BPS-19) is the Chief Conservator Wildlife (BPS-20) which is to be filled "by promotion, on the basis of selection on merit, from amongst Conservators of Wildlife with at least seventeen years accumulative service in BPS-17 and above. Seniority being considered only in the case of Officers of practically the same standard of merit".

11. Earlier, on the retirement of the incumbent Chief Conservator Wildlife (BPS-20) on 19.05.2017, the case of respondent No.4, being the senior most officer, was considered and as such, was posted as Chief Conservator Wildlife (BPS-20) on acting charge basis in his own pay and scale vide Notification


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dated 21.09.2017. His posting is however disputed on the ground that he has entered into voluntary return with the NAB authorities and thus, as per the judgment of the Hon'ble Supreme Court of Pakistan reported as 2016 SCMR 2031, he cannot be posted on the questioned post. During the pendency of writ petition, petitioner was duly considered by the Provincial Selection Board (PSB) and while recommending him for promotion to the post of Chief Conservator Wildlife (BPS-20) on regular basis, case of the respondent No.4 was deferred in view of the fact that he is involved in voluntary return with the NAB authorities and his ACR/PER for the year, 2017 is also not available. Similarly, vide Notification dated 08.08.2019, respondent No.4 has been transferred and posted as Additional Director General (Education), Pakistan Forest Institute, Peshawar.

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Peshawar High Court

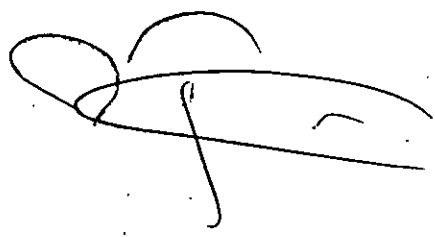


(15)

12. In view of these developments, the controversy between the parties has now been narrowed down only to certain specific issues.

13. In W.P. No.1816-P/2020, petitioner is aggrieved of the exoneration of respondent No.5 from the departmental proceedings and his appointment as Chief Conservator Wildlife on acting charge basis in his own pay and scale vide Notification dated 16.05.2019. As stated above, when the said respondent No.5 has already been posted out vide Notification dated 08.08.2019, prayer of the petitioners in this petition to that extent has become infructuous. However, with regard to his challenge to the exoneration of the said respondent, we are of the view that on any such exoneration, no terms and conditions of the petitioners have affected nor in any manner, he can be considered as aggrieved person within the meaning of Article 199 of the Constitution.

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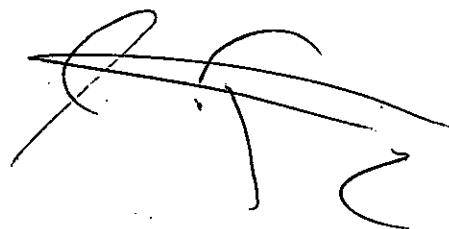


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Besides, we have noted that a regular inquiry was conducted against the aforesaid officer/respondent and whether the charges/allegations, leveled against him, stood proved or otherwise, require detailed scrutiny of record and resolution of factual controversy, which is outside the domain of this Court. The record further transpires that the matter of voluntary return of the respondent is still subjudice before the Hon'ble Supreme Court of Pakistan in Suo Moto No.17/2016; as such, this writ petition is misconceived. Even otherwise, this Court is not supposed to sit as Appellate Authority over the decisions of the Departmental Authorities when law has provided a forum to the aggrieved persons i.e. Service Tribunal. Moreover, the aggrieved person is the one who is awarded any punishment within the meaning of Efficiency & Discipline Rules but surely not the civil servants, who are neither associated with such

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Peshawar High Court

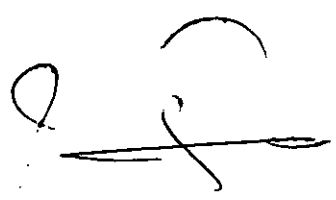


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inquiry nor punished, thus, exoneration of the respondent No.5 would, in no manner, affect their terms and conditions of service; thus, in view of the above, we are of the view that this writ petition to the extent of first part has become infructuous, while rest is not maintainable.

14. Facts of W.P. No.5692-P/2019 are also beyond the scope of this Court when the prayer is for the proceedings against the respondent No.2, the then Secretary, who has allegedly misled the Provincial Selection Board (PSB). In the instant case, when the respondent No.6 has already been deferred on account of entering into voluntary return and missing some ACRs, how can it be said that the PSB is not properly appraised. Similarly, how can the petitioner justify filing of writ petition on such pretext. So far as the other prayer regarding the setting-aside of Notification dated 16.05.2019 is concerned, this Court has

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already discussed this issue in W.P. No.1816-P/2020, because, the said Notification was superseded by Notification dated 08.08.2019 when respondent No.6 was posted as Additional Director General (Education), Pakistan Forest Institute, Peshawar.

15. Apart from the above, petitioner has already been considered and recommended by the Provincial Selection Board (PSB) and is promoted to the post of Chief Conservator Wildlife (BPS-20) on regular basis vide Notification 18.02.2019, thus he has no locus standi left to further proceed with this petition. In view of the above developments and the above discussion about non-maintainability of this petition, we hold that it has partially become infructuous and the rest as non-maintainable.

16. W.P. No.317-P/2019 pertains to recommendation of the PSB, whereby, the respondent No.5 was promoted to the post of Chief Conservator Wildlife (BPS-

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20) on regular basis, while petitioner was deferred.

17. Promotion, being purely a term and condition of service, its grant or denial, can only be called in question by following the procedure as provided under the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The jurisdiction of this Court is expressly barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973; thus, in view of the judgments reported as "2007 SCMR 57" and "2015 SCMR 456", such matters can only be dealt with by the Khyber Pakhtunkhwa Service Tribunal, constituted under the law.

18. In the matter of promotion whether petitioner has submitted any departmental representation before the authority or otherwise, albeit, since this Court has got no jurisdiction, as such, we dismiss this petition; however, allow the

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petitioner to seek his remedy from the proper forum in accordance with law.

19. The only issue left with this Court is regarding filling of the post of Chief Conservator Wildlife (BPS-20). In this regard, different orders were produced before the Court, which clearly suggest that the post in question is being filled throughout on stop gap arrangements; as such, we direct the respondent No.1 to fill the post of Chief Conservator Wildlife (BPS-20) strictly in accordance with law and rules providing criteria for the questioned post.

20. With these directions, this case is disposed of with no order as to costs.

Announced
Dt: 26.11.2020

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JUDGE

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JUDGE

SD

(In the presence of Mr. Justice Bahadur Ali Khan and Mr. Justice Ijaz Ahmad)

[Signature]

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 177 of
The Constitution of Pakistan 1973
18 FEB 2021

No. 26546
Date of Presentation of Application 17/2/2021
No of Pages 62
Copying fee 1687
Total 1872/02
Date of Preparation of Copy 18/2/2021
Date of Delivery of Copy 18/2/2021
Received by Z. M. S. Ad

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EXAMINER
Peshawar High Court

[Signature]

(21)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.317-P/2019

Safdar Ali Shah

Vs.

Government of Khyber Pakhtunkhwa through
its Chief Secretary Peshawar and others

JUDGMENT

Date of hearing 26.11.2020

Muhammad Ijaz Khan Sabli, Advocate, for the petitioner.

Mr. Rab Nawaz Khan, AAG, for the official respondents.

M/s. Sardar Shaukat Hayat and Aman Ullah Marwat, Advocates, for the respondent No.5.

IJAZ ANWAR, J. Vide our detailed

judgment of even date recorded in Writ

Petition No.4765-P/2018, titled, "Dr.

Mohsin Farooq and others Vs.

Government of Khyber Pakhtunkhwa

through its Chief Secretary, Peshawar

and others", this writ petition stands

dismissed for the reasons recorded

therein.

Announced
Dt:26.11.2020

JUDGE

H. A. Qureshi
Divisional Forest Officer Wildlife
(Monitoring) MAI Forestry Sector
Project (Wildlife Component)

[Handwritten Signature]



Annex - IV

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

(29)
Annex-V

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE JAMAL KHAN MANDOKELAIL

CIVIL PETITION NOS.3656 OF 2020 & 177-P OF 2021 &
C.M.A.NO.306-P OF 2021

(On appeal against the judgment dated
26.11.2020 passed by the Peshawar High
Court, Peshawar in W.P.No.4765-P of 2018)

Dr. Mohsin Farooq & others (C.P.3656/20)
Government of KP thr. its Chief Secretary, Civil
Secretariat, Peshawar & others (C.P.177-P
&CMA.306-P/21) ...
Petitioners/Applicants

VERSUS

Government of KP thr. its Chief Secretary, Civil
Secretariat, Peshawar & others (C.P.3656/20)
Dr. Mohsin Farooq & others (C.P.177-P &
CMA.306-P/21) ... Respondent(s)

For the Petitioner(s) : Mrs. Shireen Imran, ASC
(C.P.3656/20)
For the Petitioner(s) : Mr. Zahid Yousaf Qureshi, Addl. A.G., KP
(C.P.177-P/21)
For the Respondent(s) : Mr. Muhammad Asif Yousafzai, ASC
(respondent No.4 in C.P.3656/20 & respondent
No.5 in C.P.177-P/21)
Date of Hearing : 12.04.2022

ORDER

SAJJAD ALI SHAH, J. The judgment of the learned
Peshawar High Court, Peshawar dated 26.11.2020 in Writ Petition
Nos.4765-P of 2018, 317-P of 2019, 5692-P of 2019 & 1816-P of 2020
has been impugned by the petitioner Dr. Mohsin Farooq as well as
Government of Khyber Pakhtunkhwa on a limited issue. The grievance
of the petitioner and the Government is to the extent that the petitioner

WITNESSED

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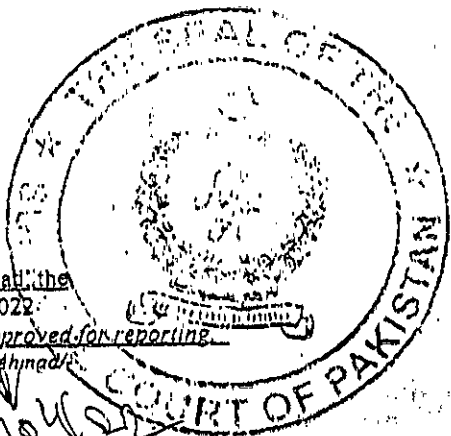
was promoted to BPS-20 and has been posted as Chief Conservator Wildlife, Khyber Pakhtunkhwa vide notification dated 17.01.2019 as have been recorded in para.9 of the impugned judgment and to the contrary in para.19 the learned Peshawar High Court directed to fill the post of Chief Conservator (BPS-20) strictly in accordance with law and rules providing criteria for the questioned post. Learned counsel for the petitioner as well as learned Additional Advocate General submit that as the post has been filled by promotion, therefore, the direction to the extent of petitioner are redundant, However, it is submitted that the Government of Khyber Pakhtunkhwa has been and would appoint the Chief Conservator strictly in accordance with law. In view of the above statement and after attempting to reconcile both referred paras, we are also of the view that the observation in the concluding para refer to future appointments/promotions. In the circumstances, the disposal of these petitions is sought in above terms. Order accordingly.

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Court Associate
Supreme Court of Pakistan
Islamabad



B-VI
Islamabad, the
12.04.2022.
~~Not approved for reporting~~
Sarfaraz Ahmad

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15/04/22

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IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

24

PRESENT
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUHAMMAD ALI MAZHAR

Annex V

C.R.P. 189/2022 IN C.P. 3680/2020 AND
C.R.P. 189/2022 IN C.P. 177-P/2021
Order of the Court dated 12.07.2022

Saidur Ah Shah

VERSUS

Petitioner

M. Mohsin Fareeq and others
The Government of Khyber Pakhtunkhwa through
its Chief Secretary, Peshawar and others

in CRP 189/22

in CRP 189/22
Respondents

For the Petitioner:

Mr. Muhammad Asif Younsuzai, ASG
Mr. Muhammad Shurif Janjua, AOR

For the Respondents:

N.R.

Date of Hearing:

29.07.2022

ORDER

SAJJAD ALI SHAH, J. — Learned counsel for the review petitioner states that the order impugned might affect his right to approach the Tribunal for redressal of his grievance in respect of his promotion. Having gone through the order under review, we find that the order sought to be reviewed does not determine the right or eligibility of any of the candidates appointed or to be appointed to the post in question. With this observation, these review petitions are dismissed as not pressed.

Sd/-
Sd/-

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



GR No: 13935/2022 Civil/Criminal

Date of Presentation: 28-7-2021

No of Words: 300

No of Folios: 3

Requisition Fee Paid: 500

Copy Fee In: 100

Court Fee Stamp: 600

Date of Completion: 1/8/22

Date of Delivery of Copy: 03/08/22

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Annex V

26

IN THE SUPREME COURT OF PAKISTAN

PRESENT: MR. JUSTICE SAJJAD ALI BHAI
MR. JUSTICE MUHAMMAD ALI NAZAR

C.R.P. 188/2022 IN G.O. 0080/2020 AND
C.R.P. 189/2022 IN G.O. 117/2021
Review of the appointments of the Court dated
12.04.2022

Sajjad Ali Bhai

Petitioner

Dr. Mohsin Farooq and others
The Government of Khyber Pakhtunkhwa through
its Chief Secretary, Peshawar and others

In CRP 188/22

In CRP 189/21
Respondents

For the Petitioner

Mr. Muhammad Asif Yousafzal, ASC
Mr. Muhammad Sharif Junjua, AOR

For the Respondents

N/R

Date of Hearing:

28.07.2022

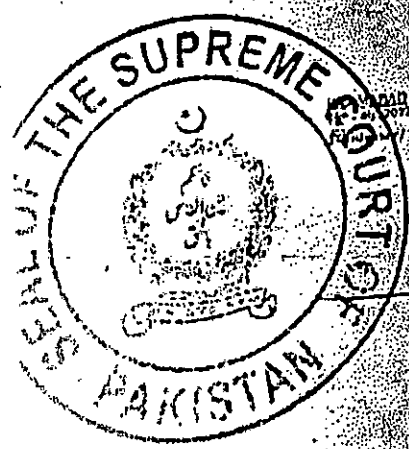
ORDER

SAJJAD ALI BHAI, J. Learned counsel for the review petitioner states that the order impugned might affect his right to approach the Tribunal for redressal of his grievance in respect of his promotion. Having gone through the order under review, we find that the order sought to be reviewed does not determine the right or eligibility of any of the candidates appointed or to be appointed to the post in question. With this observation, these review petitions are dismissed as not pressed.

Sd/-
Sd/-

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



GR No: 13935/2022 Civil/Criminal
Date of Presentation: 28-7-2022
No of Words: 300
No of Pages: 3
Requisition Form No: 500
Copy Fee: 1.86
Court Fee Stamp: 6.06
Date of Completion: 7/8/22
Date of Deposit: 03/08/22

(25)
Annex-VII

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

COC No.390-P/2022 in COC No.52-P/2022 in W.P.
No.4765-P/2022 & W.P. No.317-P/2019

Sufdar Ali Shah

Vs.

Dr. Shahzad Khan Bangash, Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar and others



Date of hearing 22.03.2023

Petitioner(s) by: M/S. Muhammad Asghar Khan Kundl
and Adnan Aman, Advocates.

Respondent(s) by: Syed Sikandar Hayat Shah, AAG Mr.
Amanullah Marwat, Advocate.

JUDGMENT

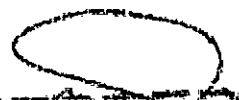
IJAZ ANWAR, J. This COC petition is filed for initiation of Contempt of Court proceedings against the respondents for not complying with/implementing the consolidated order dated 26.11.2020 passed by this Court in Writ Petition No.4765-P/2018, disposing of the same, while the Writ Petition No.317-P/2019 of the petitioner was dismissed and also the judgment of the apex Court dated 28.07.2022 passed in C.R.P No.188 & 189 of 2022, whereby, the apex Court modified its earlier order dated 12.04.2022 passed in C.P. No.3656 of 2020 and 177-P of 2021.

2. Arguments heard and record perused.
3. Perusal of the record reveals that initially, the writ petition filed by the petitioner was decided through a

ATTESTED
EXAMINED

consolidated judgment passed in Writ Petition bearing No.4765-P-2018 vide judgment dated 26.11.2020. The case of the petitioner i.e. W.P. No.317-P/2019 was, however, dismissed on the ground that he has to question the promotion order dated 17.01.2019 before the appropriate Service Tribunal. The judgment of this Court was questioned before the apex Court which was, however, disposed of vide order dated 12.04.2022 maintaining the order of this Court. The present petitioner, thereafter, filed a Review Petition bearing C.R.P. No.188/2022 in C.P. No.3656/2020 and C.R.P. No.189/2022 in C.P. No.177-P/2021 before the apex Court which were also dismissed vide order dated 28.07.2022 on the statement of the learned counsel for the present petitioner as according to him, the impugned order might affect his right to approach the Service Tribunal for redressal of his grievance in respect of his promotion. Similarly, the apex Court observed that the order of the High Court and as well of the apex Court, in no manner, have determined the right or eligibility of any of the candidates appointed or to be appointed to the post in question.

4. During the course of arguments, copies of Service Appeal filed by the present petitioner questioning the minutes of the Provincial Selection Board (PSB) dated 26.12.2018 and the promotion order dated 17.01.2019 were produced. We when confronted learned counsel for the petitioner, he was having no satisfactory answer for the same.



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5. We wonder that how and in what manner the order of this Court has been violated, because, we have, in our judgment, specifically declined the 'prayed relief' to the petitioner on the ground that his remedy lay before the Khyber Pakhtunkhwa Service Tribunal and the order of this Court has not been disturbed, in any manner, by the apex Court while the direction of the apex Court regarding the filling of the post in future is concerned, it will also be of no help to the petitioner at present, because, the ground situation is that the post has since been filled and the order has been questioned by the petitioner before the Khyber Pakhtunkhwa Service Tribunal.

6. For the reasons stated above, we find that this COC petition is misconceived. It is accordingly dismissed.

Announced
Dt: 22.03.2023



Chief Justice



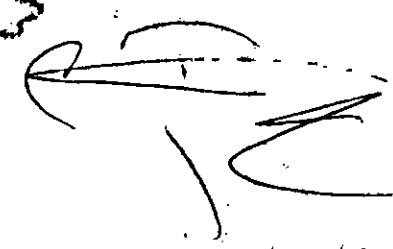
Judge

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28 MAR 2023

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Number of Presentations / Copies of Petition: 11
 Number of Copies: 44
 Date: 28.3.23
 Date: 27.3.23



THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

28

Annex-VIII

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE SH. AZMAT SAEED

Suo Motu case No.17 of 2016.

(Action taken by this Court to examine the vires of Section 25(b) of the NAB Ordinance.

In Attendance:

Mr Ashtar Ausaf Ali, Attorney General for Pakistan.

Ch. Aamir Rehman, Addl.A.G.

Barrister Asad Rehman, Consultant to A.G

Mr Waqas Qadeer Dar, PG, NAB

Mr. M. Azam, DPG, NAB.

Mr Imranul Haq, Spl. Prosecutor NAB.

Mr Abdul Latif Yousafzai, AG, KPK.

Mr Ayaz Swati, Addl.A.G, Balochistan.

Mr Zamir Hussain Ghumro, A.G, Sindh.

Mr Sheharyar Qazi, Addl.A.G, Sindh.

Akhtar Rehana, Addl.P.G Sindh.

Mr Asjad Javed Ghural, Addl.P.G. Punjab.

Mr Mudassar Khalid Abbasi, Asstt.A.G,
Punjab.

Mr Asad Kharral, Applicant in CMA
No.6374 of 2016.

Date of hearing

24.10.2016.

ORDER

AMIR HANI MUSLIM, J.- This Court on 02.09.2016, during hearing of Civil Appeal No.82-K of 2015, noticed abuse of authority by the NAB while taking cognizance of petty matters in terms of Section 9 of the National Accountability Ordinance, 1999 (hereinafter referred to as the Ordinance). The Ordinance was primarily legislated to counter the cases of mega scandals and initiate proceedings against the accused persons who are involved in scandals of mega corruption and corrupt practices.



2. The Court also noticed that in terms of Section 25(a) of the Ordinance, the NAB authorities after issuance of call up notices suggest to the accused that they may opt to come forward with the offer of voluntary return of the amounts that have allegedly been acquired or earned illegally by them. Section 25 (a) (*ibid*) empowers the Chairman, NAB, to accept such voluntary returns made by the accused persons, the amount is deposited with NAB in installments at the discretion of the Chairman, NAB. Alarming, on payment of certain portion of the amount, such person is given clean chit by the NAB to rejoin his job. The frequent exercise of powers under Section 25 (a) (*ibid*) by the NAB on one side has multiplied the corruption usurping the jurisdiction of the F.I.A and Anti-Corruption agencies and defeated the object of the Ordinance on the other hand. In this regard the matter was referred by a Bench of this Court to the Hon'ble Chief Justice of Pakistan, for examining the vires of Section 25(a) (*ibid*) vis-à-vis un-bridled powers of the Chairman, NAB to accept the offer of voluntary return from a person regardless of the size of the amount by any mode adopted at his discretion which falls within the domain of the judiciary. The matter was placed before the Hon'ble Chief Justice of this Court, who directed the office to fix the matter in Court, treating it as a Petition under Article 184 (3) of the Constitution. On 02.09.2016, the NAB authorities were further directed to provide the following details

- (i) The list of the cases in which NAB authorities are conducting enquiries and investigations and or references pending in the NAB Courts, involving an amount of less than Rs.100 Million;
- (ii) The list of the persons, civil servants and or public servants, to be provided by relevant departments of the Governments and or State owned organizations, who entered into Voluntary Return.
- (iii) The action which the Federal/Provincial Governments and or statutory organizations have taken against their employees after their offer of Voluntary Return was accepted by NAB in terms of Section 25(a) of the NAB Ordinance.

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3. On 28.09.2016, the matter was adjourned at the request of the learned Law Officers of the Federation and the Provinces as well as the NAB authorities for today. In response to the order dated 02.09.2016, the required reports have been submitted by the Federal Government and the Provincial Governments. The NAB has also filed its report as C.M.A.No.6376 of 2016, giving details of the persons who have offered voluntary return of the monetary gains that they acquired through corrupt practices and such offer was accepted by the Chairman, NAB. From the reports submitted by the Federal Government and the respective Provincial Governments, it appears that no departmental action has been taken against the officers/employees of different organizations including Govt. departments, who had voluntarily returned illegally acquired monetary gains, which is very unfortunate. Once a person accused of corruption or corrupt practices volunteers to offer to return the amount he has pocketed or gained through illegal means, *prima facie*, cannot hold any Government/Public Office, as the very act of his offering the voluntary return falls within the definition of "misconduct" under the service law and calls for initiation of disciplinary action against the accused person(s). The report filed by the NAB mentions that hundreds of employees/civil servants and others who have voluntarily returned the amounts in terms of Section 25(a) (*ibid*) are still enjoying their office, without being exposed to any departmental proceedings which has further multiplied the corruption in the country.

4. This inaction on the part of the departmental authorities towards the accused has patronized corruption, by providing a window to the NAB as

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well to the employees, who plunder public money and after paying back a portion of the alleged amount of corruption/corrupt practice continue in their jobs.

5. Primarily, the concept of voluntary return under the Ordinance, was confined to those accused against whom the proceedings were yet to start and they, on their own, had approached the NAB authorities by offering the voluntary return of the amounts illegally gained or acquired by them. This concept, however, was side tracked and instead the accused persons against whom call up notices were issued on the strength of some complaint or otherwise are extended favours by the NAB under the garb of Section 25(a) which was never intended for.

6. In the given circumstances, what has further disturbed us is that the amounts so collected by the NAB in installments or otherwise is not being deposited in its entirety with the concerned Government/Department forthwith, instead some of the amount under the garb of Rules or otherwise is retained by the NAB authorities for distribution to its official towards award.

7. We inquired from the Prosecutor General, NAB, to provide us the details of the amounts of voluntary return recovered from different accused persons and details of its deposit. The P.G, NAB, states that no amount is withheld by the NAB authorities for distribution to its officers who conduct the investigation of the cases as award.

8. The NAB shall provide us the details of the amounts which they have collected from accused persons, during the last 10 years and the

Sub. Motu Case No.17/16

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amounts which they have deposited with the different Governments. These details should reach this Court by 05.11.2016 positively. Likewise, the Attorney General for Pakistan as well as the Advocate Generals of the Provinces shall handover the copies of C.M.A.No.6376 filed by the NAB to the Secretary, Establishment Division and the Chief Secretaries of all the four provinces, who in turn shall ensure initiation of departmental proceedings against the accused persons mentioned therein who have voluntarily returned the amounts under Section 25(a) of the Ordinance, besides they shall further provide the details of the amounts which different departments have received from the NAB in terms of Section 25(a) (*ibid*).

9. We, therefore, direct the Secretary, Establishment Division and all the Chief Secretaries of the Provinces to ensure initiation of departmental proceedings forthwith against the employees mentioned in C.M.A.No.6376 of 2016 who have voluntarily returned the amounts in terms of Section 25 (a) (*ibid*), without further loss of time and report compliance.

10. In the meanwhile, the Chairman, NAB, or any other Officer authorized by him in this behalf, is restrained from accepting any offer of voluntary return in terms of Section 25(a) of the Ordinance. The office is directed to re-list the matter on 07.11.2016.

Islamabad the,
24th October, 2016.
Not approved for reporting.
Sohail**

Handwritten signature and stamp of the Supreme Court of Pakistan, Islamabad.

Chief Justice

Judge

Judge

PLEASE SEE
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Mr. M.A. Butt, ASC (CMA 7361/16)
Mr. Abdul Latif Afridi, ASC (CMA 7258, 7259 & 7293/16)
Syed Arshad, ASC (CMA 7270 & 7274/16)

Annex IX

Date of hearing : 06-12-2016

ORDER

AMIR HANI MUSLIM, J.: The learned Attorney General for Pakistan has requested for time to seek instructions from the Government on the issue of exercise of powers by the Chairman NAB under Section 25(a) of the NAB Ordinance.

2. We have heard the Prosecutor General NAB. For want of time, the matter is adjourned. The Federal and Provincial Governments shall conclude the departmental proceedings against the officials who have entered into voluntary return and report compliance. However, no final order of removal from service shall be passed against any of the officials, who have entered into voluntary return, if the amount of voluntary return paid by him is less than 25 lacs.

3. In the intervening period, the restraining order passed against the Chairman NAB and or any other officer authorized by him in this behalf from accepting any offer of voluntary return in term of Section 25(a) of the NAB Ordinance, shall continue till disposal of these proceedings. To come up on 2nd January 2017.

Sd/- Anwar Zaheer Jamali, CJ
Sd/- Amir Hani Muslim, J
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[Signature]
8/12/16

Court Associate
Supreme Court of Pakistan
Civil/Criminal Section

Not approved for filing
06-12-2016

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Prepared by: _____

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Mr. N.A. Butt, ASC (CMA 7261/16)
Mr. Abdul Latif Afridi, ASC (CMA 7258, 7259 & 7293/16)
Syed Arshad, ASC (CMA 7270 & 7274/16)

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Date of hearing : 06-12-2016

ORDER

AMIR HANI MUSLIM, J. - The learned Attorney General

for Pakistan has requested for time to seek instructions from the Government on the issue of exercise of powers by the Chairman NAB under Section 25(a) of the NAB Ordinance.

2. We have heard the Prosecutor General NAB. For want of time, the matter is adjourned. The Federal and Provincial Governments shall conclude the departmental proceedings against the officials who have entered into voluntary return and report compliance. However, no final order of removal from service shall be passed against any of the officials, who have entered into voluntary return, if the amount of voluntary return paid by him is less than 25 lacs.

3. In the intervening period, the restraining order passed against the Chairman NAB and or any other officer authorized by him in this behalf from accepting any offer of voluntary return in term of Section 25(a) of the NAB Ordinance, shall continue till disposal of these proceedings. To come up on 2nd January 2017.

Sd/- Anwar Zaheer Jamali, CJ
Sd/- Amir Hani Muslim, J
Certified to be True Copy



Islamabad the,
06-12-2016
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8/12/16

Court Associate
Supreme Court of Pakistan
Civil/Criminal Division

Date of filing _____
 Date of disposal _____
 No. of pages _____
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 Date of delivery of copy _____
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Annex I

IN THE SUPREME COURT OF PAKISTAN
(Original/Appellant Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mrs. Justice Ayesha A. Malik

SMC NO.17 OF 2016, CMA NO.6374 OF 2016 IN SMC NO.17 OF 2016, CMA NO.7308 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CMAs NO.7312, 7581, 7815, 7852, 7270, 7274, 7278 AND 7647 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CIVIL PETITION NO.1338 OF 2014 AND CMA NO.6210 OF 2014, CIVIL APPEALS NO.67 AND 150 OF 2015, CIVIL PETITIONS NO.4356 AND 5104 OF 2017, CIVIL APPEAL NO.24 OF 2018, CRIMINAL ORG. PETITION NO.123 OF 2018 IN SMC 17 OF 2016 AND CP NO.548-K OF 2018

Suo Moto Action to examine the vires of Section 25(a) of NAB Ordinance, 1999, etc.

In attendance : Mr. Mumtaz Yousaf
Additional Prosecutor General NAB
Ch. Aamir Rehman
Additional Attorney General for
Pakistan
Malik Waseem Mumtaz
Additional Advocate General Punjab
Sardar Ali Raza
Additional Advocate General, KP
Mian Aziz Ahmed,
Director Legal (Prosecution), KP
Rana M. Faisal, AAO
Syed Zulfiqar Abbas Naqvi, ASC
Khawaja Azhar Rasheed, ASC
Mr. Liaqat Ali Tareen, ASC
Mr. Farooq H. Naek, Sr.ASC
Mr. M. Shoaib Shaheen, ASC
Mr. Shozib Masud, ASC

Mr. Saulat Rizvi
Additional Advocate General Sindh
Mr. Saleem Akhtar Buriro
Additional Prosecutor General Sindh
(via video link, Karachi)

Mr. Zaheer-ud-Din Babar
Deputy Secretary S&GAD
Date of Hearing : 08.03.2023

ORDER

UMAR ATA BANDIAL, CJ.-

SMC NO.17 OF 2016 AND CMA NO.6374 OF 2016

The vires of Section 25(a) of the National
Accountability Ordinance, 1999 (NAO) are under challenge in

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

these *suo moto* proceedings. Learned Additional Attorney General for Pakistan has pointed out that as a result of the amendments made in June, 2022 in the NAO 1999, proviso to Section 15(a) has been amended to apply to Section 25 of the NAO 1999 as a whole. As a result, the penalty of disqualification from holding public office is equally applicable to the situation covered by Section 25(a) as well as section 25(b).

2. From the foregoing amendment in the law it is clear that the objection of the *suo moto* proceedings initiated vide our order dated 24.10.2016 has been addressed. Consequently, these proceedings have fructified and are disposed of accordingly. C.M.A. No.6374 of 2014 for impleadment is also disposed of.

CMA NO.7308 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CMAs NO.7312, 7581, 7815, 7852, 7270, 7274, 7278 AND 7647 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CIVIL PETITION NO.1338 OF 2014 AND CMA NO.6210 OF 2014, CIVIL APPEALS NO.67 AND 150 OF 2015, CIVIL PETITIONS NO.4356 AND 5104 OF 2017, CIVIL APPEAL NO.24 OF 2018, CRIMINAL ORG. PETITION NO.123 OF 2018 IN SMC 17 OF 2016 AND CP NO.548-K OF 2018

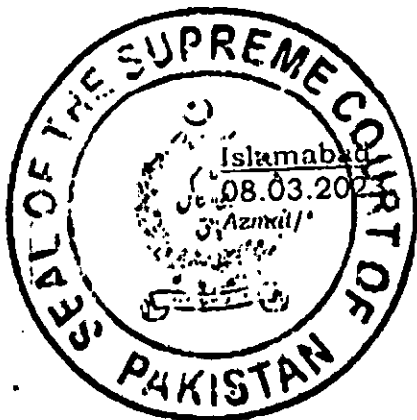
3. These matters are connected with SMC No.17 of 2016 which has been disposed of by our above order. Parties in these matters are not present. Office shall notify the learned AORs/ASCs and fix these matters separately.

Certified to be True Copy/-HCJ

Sd/-J

Sd/-J

Senior Court Associate
Supreme Court of Pakistan
Islamabad



5024/2023

OR file: _____ Civil/Criminal

Date of Presentation: 11.3.2023

No of words: _____

No of Pages: _____

Registration Fee Rs: _____

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Court Fee Stamps: 0-12

Date of Completion of Copy: 15/4/23

Date of Filing of Copy: _____

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Received by: _____

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.05/2023

Mr.Safdar Ali Shah

Versus

Government of Khyber Pakhtunkhwa and others

AFFIDAVIT

I Dr. Mohsin Farooque, Chief Conservator Wildlife Khyber Pakhtunkhwa Peshawar respondent No.6, CNIC No.17301-1354080-3 do hereby solemnly affirm and declare on oath that the contents of the instant reply are true and correct to the best of my knowledge and belief, and that nothing has been concealed from this honorable Tribunal. It is further stated on oath that in this appeal the answering respondent NO.6 has neither been placed ex-parte nor his defence struck off/cost.

Signature

Dr. Mohsin Farooque
Chief Conservator Wildlife
Khyber Pakhtunkhwa
Peshawar

CNIC No.17301-1354080-3

Mobile No. 0334-1155503

