

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT KARACHI  
Constitution Petition No. D-6202 of 2024  
(Ayaz Ahmed Memon Vs. Federation of Pakistan & others)

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| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
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Before:  
**Muhammad Karim Khan Agha, J;**  
**Adnan-ul-Karim Memon, J**

**Date of hearing and Judgment 12-08-2024**

Mr. Ali Asadullah Bullo, advocate for the petitioner.  
Ms. Wajiha Mehdi, Assistant Attorney General  
Mr. Yasir Saleem Rana Special Prosecutor NAB Headquarter/ Respondent No.2.

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**J U D G M E N T**

**Adnan-ul-Karim Memon J:-**                      The petitioner is requesting this Court  
to grant the following relief:

1. Set aside the committee's findings and recommendations against the petitioner, arguing they were illegal, unconstitutional, malicious, and in violation of natural justice.
2. Set aside the decision dated December 29, 2022, which dismissed the petitioner's representation, on the same grounds of illegality and procedural flaws.
3. Set aside the intimation of rejection dated October 29, 2024, arguing that it is illegal and unsustainable in the eyes of the law because it was not a proper, reasoned decision.
4. Set aside the repatriation notification dated January 10, 2018, to the extent it applies to the petitioner.
5. Restore the petitioner's career with all consequences, including promotions and seniority, as if the repatriation had never occurred.

2.        The petitioner, a former Additional Director at National Accountability Bureau (NAB), is challenging his 2018 repatriation to his parent department i.e. Sindh Government. He was removed following a Supreme Court-mandated committee's finding that he lacked the necessary experience for the post applied for. The petitioner claims this decision was/is arbitrary and discriminatory, and his appeals have been met with a lack of due process. His core submission is that the Prime Minister's office failed to provide a legally required "speaking order," instead offering only a vague rejection, which he submits violates a previous court

directive. He is seeking to have all adverse findings and orders against him set aside as per his prayer clauses.

3. The petitioner's counsel is requesting this Court to nullify the decisions and orders against his client. The primary argument is that a committee and subsequent NAB decisions ignored crucial evidence, specifically an experience certificate detailing the petitioner's investigative work in the relevant field. The counsel asserts that the NAB decision, dated December 29, 2022, was invalid because it lacked a reasoned and objective explanation, thus violating principles of natural justice in terms of Article 10-A of the Constitution. The petitioner's counsel argues that his client was a victim of inconsistent and discriminatory treatment by NAB authorities. The counsel cites several examples to support this claim. He argued that other officers, such as Mr. Mohammad Faheem Qureshi and Mr. Nasim Ahmed Khan, were retained on their respective positions based on a flexible interpretation of the NAB rules (the "disjunctive effect of the word OR"), while this same argument was denied to the case of the petitioner. He further submitted that Mr. Ghazi Rehman was retained despite the committee's findings being unclear about his experience in the relevant field. Similarly, Mr. Haroon Rashid was reinstated after a court order, a remedy that was not extended to the petitioner. He next argued that the promotions of Mr. Abdul Hafeez Siddiqui were corrected and then re-granted by NAB, showing the organization's willingness to revisit and alter decisions for other individuals, but not for the petitioner, which amounts discriminatory attitude. The petitioner's counsel argues that his client's illegal repatriation to his parent department after confirmation of his service in the NAB in 2013 has severely harmed his career, forcing him into a lower-grade position in his parent department while his peers were promoted. A key point of the argument is that the lack of a reasoned "speaking order" for his appeal's rejection constitutes a violation of natural justice and past court directives on the subject issue. The petitioner is now seeking to overturn his repatriation from NAB to Sindh Government, alleging it was based on an arbitrary and discriminatory review process. He provides examples of other officers, including Tariq Hamid Butt and Muhammad Obaidullah Azam, who were retained despite not fully meeting the required criteria or providing necessary documentation. He highlights that other Civil Engineers as like petitioner with similar qualifications and experience were retained based on a "dichotomy" between their degrees and NAB's job requirements. This same rationale was not applied to him, which he argues is a clear example of discrimination and an inconsistent interpretation of the NAB Employees Recruitment Rules. The petitioner claims he was repatriated as a form of retaliation for his involvement in high-profile corruption investigations that displeased NAB's senior leadership. He asserts that his fundamental rights and

constitutional protections were violated by the unfair process, and he is asking this Court to set aside all adverse orders issued against him by the competent authority and allow his petition to retain his position at NAB.

4. Learned special prosecutor has refuted the claim of the petitioner and submitted that this petition is liable to be dismissed for several reasons, primarily because he lacks the required investigation experience for his position under the law and has exhausted all legal remedies as such further indulgence in this Court in terms of Article 199 of the Constitution is not required. He submitted that the petition is not valid because the petitioner, has no "vested rights" (legally protected entitlements) that have been violated. The argument is that he was appointed without the proper qualifications in the first place as such he cannot claim to regain the same position as experience for investigation purposes was/is required for the subject post, which he lacked as such experience cannot be condoned under the recruitment rules. He next submitted that this petition lacks a "cause of action," meaning there is no legal basis or legitimate grievance to support the purported claim. He argued that the petition is filed under Article 199 of the Constitution of Pakistan, which is a constitutional remedy, whereas the petitioner's earlier petition was disposed of and he exhausted all his remedies. The defense counsel argues that this Article does not apply because the required legal conditions for its use have not been met. He pointed out that the petitioner is accused of coming to this Court with "unclean hands," a legal term suggesting he has acted in bad faith by concealing his ineligibility for the role he applied for. Learned counsel emphasized that the petitioner was appointed as an Additional Director (BPS-19) in the National Accountability Bureau (NAB) in 2013. The job required 12 years of relevant experience in investigation, research, or legal matters, which the petitioner lacked as he was simply Mechanical Engineer having engineering experience only, however he succeeded to obtain appointment order and after scrutiny the competent authority repatriated his services to his parent department which was a grace shown to him otherwise his services were liable to be dispensed with. He pointed out that the Supreme Court of Pakistan took up a case regarding irregular appointments in NAB, resultantly a committee was formed to review these appointments. The committee examined the petitioner's experience certificates and found that his previous work as an Assistant Engineer in the Works and Services Department did not match the required experience in "investigation/research or legal matters" as advertised for the NAB post. He added that based on these findings, the committee recommended petitioner be sent back (repatriated) to his original department. The Chairman of NAB approved this recommendation, and the decision was reported to the Supreme Court, where his review application was also disposed of vide order dated 12.03.2020. He submitted that the petitioner has since challenged this

decision multiple times through various legal forums, including the Supreme Court, this Court, and with appeals to the Chairman of NAB and the Prime Minister of Pakistan. All his appeals have been rejected. He submitted that the Prime Minister, acting as the final appellate authority, rejected his appeal, finding it "devoid of merit." He argued that the cases of other officers he cited are factually different as such petitioner cannot claim retention of his post based on such analogy as he lacked experience for the post applied for. He argued that the committee's recommendations for other officers were based on different criteria, such as retaining their services "subject to confirmation of performance" or providing further documentation, which was/is not the case for the petitioner. He prayed for dismissal of the petition.

5. The learned Assistant Attorney General has adopted the arguments of the counsel representing the NAB and prayed for dismissal of the instant petition.

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

7. The central issues for our determination are as follows:

Whether the petitioner has met the requirement of 12 years of post-academic qualification experience at the BPS-17 level or higher, specifically in investigation, inquiries, research, or legal matters, to qualify for the position of Additional Director (BPS-19).

Whether the competent authority acted correctly in repatriating the petitioner to his parent department, the Government of Sindh.

Whether the petitioner has grounds to challenge the final appellate order of the Prime Minister of Pakistan concerning this issue.

8. In 2011, NAB advertised for Additional Director positions, a role Mr. Memon secured in 2013 after applying through proper channels from his position as an Assistant Engineer for the Government of Sindh. A Supreme Court-mandated committee later reviewed these appointments and found that Mr. Memon lacked the required experience. As a result, the committee recommended his repatriation to his parent department, a recommendation NAB's Chairman approved. The petitioner challenged this decision multiple times. The Supreme Court dismissed his initial challenge, instructing him to pursue his grievance through the proper channels. He then filed a petition with this Court, which led NAB to issue a speaking order on December 29, 2022, rejecting his claim. He filed another petition with this Court, which directed NAB to forward his appeal to the Prime Minister. The Prime Minister subsequently rejected his appeal on June 30, 2024.

9. The petitioner's application was rejected by NAB because a committee found he lacked the required 12 years of post-qualification experience in investigation . An excerpt hereof is reproduced as under:-

| BPS | Age           | Limit         | Academic qualification   | Experience   |
|-----|---------------|---------------|--|--|
| 19  | Min<br><br>30 | Max<br><br>45 | Second class or grade C Master’s Degree in Business Administration/Commerce/Economics/Statistics/Defence & Strategic Studies/Law/Computer Science from a recognized University or Chartered Accountant or BE/BSC (Civil/Electrical/Petroleum | 12 years post academic qualification experience in BPS-17 & above or equivalent investigation or inquiries or research or legal matters. |

10. This type of experience is defined as the proficiency and skills gained after earning a specific degree as required for the post, demonstrating a person's ability and suitability for a particular job. The authority creating the job has the sole discretion to set these qualification and experience standards, and no one including the petitioner can claim a right to any relaxation in these criteria. As admittedly the petitioner has a Degree in the Engineering, Discipline. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Federal Public Service Commission, Vs Dr. Shahid Hanif (2023 SCMR 848).

11. The "experience" for the Additional Director (BPS-19) position means full-time, paid experience gained *after* obtaining the required educational qualification. It states that the petitioner did not meet these specific post-qualification experience criteria, a fact confirmed by a committee that reviewed his documents, however experience in criminal investigation is altogether different as such the analogy so put forward by the petitioner is of no avail. This deficiency was the reason his application was rejected, and his subsequent appeals, including the one to the Prime Minister, were also denied.

12. The government has the authority to set appointment policies and qualifications for jobs. To be appointed to a specific post, a candidate must meet these criteria and possess the required qualifications and experience as outlined in the recruitment rules. In such circumstances, since the petitioner also cited various instances whereby other candidates were allowed to continue having been lacking the experience for the subject post as such the competent authority of NAB must

scrutinize the candidatures of those candidates who lacked the experience for the subject post and take concrete decision after hearing them. The competent authority of NAB must determine if the hiring authority followed the official recruitment rules for these posts.

13. Under Article 199 of the Constitution, the High Court has a discretionary power to act in support of the law and protect constitutional rights. This power is reserved for extraordinary situations to ensure justice is served, not to allow injustice to continue. If it is determined that substantial justice has already been achieved between the parties, the court may choose not to use this discretionary jurisdiction.

14. Since the petitioner has repeatedly challenged the decision and his appeals have consistently been rejected by all competent authorities, including the Prime Minister, there is no reason to interfere with the findings under Article 199 of the Constitution.

15. This petition lacks merit and is accordingly dismissed along with pending application(s), if any.

JUDGE

HEAD OF COST. BENCHES

Shafi