

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-2740 of 2022
(Aamir Ali & others v Federation of Pakistan & others)

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

For Direction

- 1. For hearing of Misc. No. 22392/2022
- 2. For hearing of Misc. No. 22393/2022
- 3. For orders as to maintainability of petition.

Date of hearing and Judgment : 27.08.2025

Barrister Faizan Hussain Memon, M/s Muhammad Saleem Khaskheli and Muhammad Nasir, advocates for the petitioner
Mr. Ali Safdar Depar, Assistant Advocate General
Ms. Wajiha M. Mehdi, Assistant Attorney General.

J U D G M E N T

Muhammad Karim Khan Agha, J. – The petitioners have filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- I. *Declare that the failure of respondents to absorb the petitioners in FIA is illegal, unlawful, unconstitutional, discriminatory, arbitrary, in violation of rules and against principles of natural justice, equity, and fairness.*
- II. *Direct the respondents, their officers, representatives, or anybody acting on their behalf to absorb the petitioners as Constable BS-05 in FIA, forthwith.*
- III. *Restrain the official respondents, their officers, representatives or anybody acting on their behalf from taking any adverse action against the petitioners, including their repatriation.*

2. The petitioners, Police Constables (BS-05) from the Sindh Police, are seeking permanent absorption into the Federal Investigation Agency (FIA) where they are currently working on deputation. The petitioners were deputed to the FIA from the Sindh Police in 2017 for a three-year period, which was later extended. They have served the FIA for five years without any complaints. They submit that they are being unfairly discriminated against as other similarly situated police constables have been absorbed into the FIA in the past, in line with the FIA's own Service Rules (FIA APT Rules, 1975) and Supreme Court order dated 27.03.2018 passed in Cr. Original Petition No. 98 of 2017, whereby it was observed that all the employees of the Police department working into BS-01 to BS-7 in different departments shall not be repatriated to the parent department. The petitioners have applied for permanent absorption and believe that they have a "legitimate expectation" of being absorbed due to their past performance and the agency's past practices. Instead of absorbing them,

the FIA is attempting to repatriate them back to the Sindh Police Department and has advertised their posts for new recruitment. The petitioners see this as an illegal, arbitrary, and discriminatory act. They are now asking the court to declare the FIA's actions illegal, direct the agency to absorb them, and stop any adverse actions, such as their repatriation.

3. The petitioners' lawyer argued that petitioners should be permanently absorbed into the FIA because they have a legal right to it under the Federal Investigation Agency Act, 1974, and its rules, specifically Rule 15. The lawyer cited a Supreme Court of Pakistan order dated March 27, 2018, from a similar case (Crl. Original Petition No. 89/2017) where police officers were sent back to their parent department but then returned to their deputation. The lawyer says the petitioners' case is the same. He submitted that under Rule 16 of the FIA Rules, 1975, the petitioners' continued service is permissible. Their repatriation would cause "immense hardship" and is unnecessary given their experience and performance. He argued that the FIA's refusal to absorb them violates Section 24-A of the General Clauses Act, 1897, which requires public officials to act fairly and reasonably. The lawyer concludes by asking the court to allow the petition and allow the petitioners' permanent absorption in FIA.

4. The learned Assistant Attorney General opposed the petition on the analogy that the respondent-FIA cannot be compelled to absorb the petitioners in terms of the decision of the Supreme court as they had already advertised the post for the position from BS-1 to BS-15, for which the petitioners cannot ask for their induction/absorption by way of transfer on permanent basis and FIA vide order dated 31.08.2022 and 06.09.2022 relieved some of the petitioners as their five years period of deputation in FIA had already been completed. She prayed for dismissal of the petition.

5. We have heard learned counsel for parties and have perused the material available on record with their assistance.

6. The question is whether the petitioners can ask for their permanent absorption in F.I.A under the law.

7. To appreciate the aforesaid proposition, it is expedient to have a look at the scheme of FIA. Rules 15 and 16 of the FIA (Appointment, Promotion & Transfer) Rules, 1975, outline the process for appointing someone to the FIA by transfer or deputation. **Rule 15** states that the appointment on deputation can be made from a person in the same or a lower grade from another department, provided they meet the required qualifications and experience. **Rule 16** allows a person appointed under

Rule 15 to be kept regularly. With the approval of their home department and their own consent, they can be confirmed into a permanent position within the FIA.

8. According to the ESTACODE 2009, a **deputation** is the temporary transfer of a government employee to another department. For a deputation to be valid, the following conditions must be met: The person must be a government employee. The transfer must be based on a selection process. The receiving department, in this case, the FIA, must be able to prove a genuine need for the transfer. The deputed employee must have the required qualifications, expertise, and experience for the new role.

9. Rule 20A of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, governs appointments on deputation. An employee from a provincial government or a government-controlled organization is eligible for a two-year deputation if they have the required qualifications and experience for the post. The Federal Government, in consultation with the lending organization, determines the terms of the deputation. A suitable civil servant can be sent on deputation to an autonomous body or provincial government, with terms and conditions decided by both the lending and borrowing organizations. The borrowing organization is responsible for making pension contributions for the deputed employee.

10. The legal status of deputation, as per the provided rules, confirms that an appointment can be made under specific terms and conditions. However, the law does not explicitly mention or authorize the permanent absorption of a deputed person into the FIA as their deputation term was fixed and upon expiry, the services of the some of the petitioners repatriated to Sindh Police. However, the Competent Authority does not have unlimited power to absorb a deputed employee into an organization like the FIA. The term "absorption" is not the same as "confirmation," which has its own specific legal process. The only exception for absorption is outlined in Section 11A of the Civil Servants Act, 1973. This rule allows for the absorption of a civil servant who has been "rendered surplus" due to government reorganization, abolition of a department, or a post. It specifies that such an employee can be appointed to an equivalent or lower post, with their pay protected.

11. It is urged that the FIA has the authority to absorb deputed officers based on the FIA (Appointment, Promotion & Transfer) Rules, 1975. In this regard, Rule 2(e): Defines the Departmental Selection Committee, which is responsible for selecting candidates for direct appointment or

transfer. Rule 3: Lays out three methods of appointment to the FIA: promotion, transfer/deputation, and direct appointment. Rule 8: Stipulates that 50% of posts in grades 3-15 are filled by promotion and 50% by direct appointment or transfer. Rule 10: Establishes departmental selection committees for direct recruitment or transfer. Rule 11: Identifies the competent authorities for making appointments to different grades. Rule 12: Groups FIA posts into different categories (e.g., Investigation, Accounts). Rule 13: States that promotions are for officers working on a regular basis within the agency. Those appointed by transfer can only be considered for promotion after they have been selected to serve on a "regular basis." Rule 15: Governs appointments by deputation for a specific period, requiring the individual to have the necessary qualifications. Rule 16: States that a person appointed under Rule 15 can be "retained on regular basis" with the approval of their parent department and their own consent, and can be "confirmed in due course against permanent post." Rules 17, 18, and 19: Detail the process for direct appointments, including examinations, advertisements, and interviews, and outline the required qualifications.

12. Rules 15 and 16 of the 1975 Rules, which cover transfers, must be read in conjunction with other rules to be properly understood. For a civil servant to be appointed by transfer, they must first meet the eligibility and qualification criteria outlined in Rules 3(a), (b), (c), 8, 10, 11, 12, and 18. This process requires the individual to appear before a Departmental Selection Committee, which will assess their suitability for the new position.

13. Based on the analysis of the 1975 Rules, Rules 15 and 16 do not authorize the permanent absorption of a civil servant into FIA. The rules do not give the government or selection authorities unlimited power to transfer an employee without them meeting the specific eligibility and qualification conditions. Rules 15 and 16 do not grant permanent status or absorption as a consequence of a transfer from provincial government. There is no proper procedure for this under the FIA Act or its rules to absorb the provincial government employ in FIA. A transfer under these rules is for a fixed term. Once the term is completed, the civil servant must return to their original parent department. The term "appointment by transfer" (Rule 3) is a distinct concept and should not be confused with "initial appointment", which has a different set of rules. The term "transfer" must be interpreted narrowly, within the limitations of the rules. This conclusion is supported by the Supreme Court's findings in the case of *Ali Azhar Khan Baloch*, **2015 SCMR 456**. The key points from that

precedent are that a civil servant holding a non-cadre post cannot be transferred and absorbed into a cadre post that is designated for competitive recruitment; that a civil servant can be transferred to another government department, but this is subject to the limitations outlined in Rules.

14. The main question here is whether the government has complied with key Supreme Court rulings that declared the absorption of deputed employees into different departments as legally invalid. Based on this, the petitioners are only deputationists, not permanent employees of F.I.A. Primarily a deputationist has no guaranteed right to remain in a post indefinitely and can be sent back to their original department at any time. This view is supported by several Supreme Court cases, including: *Contempt proceedings against the Chief Secretary, Sindh* (2013), *Ali Azhar Khan Baloch vs. Province of Sindh* (2015) and *Dr. Shafi-ur-Rehman Afridi vs. CDA, Islamabad* (2010) and in compliance whereof several individuals have been or will be sent back to their original departments. However in the present case the Petitioners have already been repatriated to the Sindh Police by the F.I.A.

15. The claims of petitioners regarding their qualifications for retention in the FIA are invalid for the simple reason that their deputation term was fixed and after expiry they ought to have been repatriated to their parent department if not earlier repatriated. This court finds that their asking for permanent absorption in FIA are against the criteria set by the Supreme Court in paragraphs 132 and 136 of its judgments. Therefore, this court has "no hesitation" in ruling against their claim for such absorption in FIA.

16. The Supreme Court of Pakistan decision in National Highways & Motorway Police case, that addresses the absorption of employees from different departments. In that case, Petitioners who were directly appointed to the National Highways & Motorway Police (NH&MP) claimed that the absorption of deputationists from other departments was illegal and negatively impacted their seniority rights. They submitted that these deputationists lacked the necessary qualifications and that the NH&MP had only partially implemented a previous court judgment that canceled all such absorptions. The Supreme Court dismissed the petitioners' request. It found that the NH&MP's decision to repatriate the deputationists was valid. The Supreme court has issued a clear directive to repatriate all person to their original departments. This order is to be carried out strictly in accordance with previous Supreme Court rulings,

specifically those in the cases of *Contempt proceedings against the Chief Secretary, Sindh* (2013) and *Ali Azhar Khan Baloch vs. Province of Sindh* (2015).

17. This court agreed with the department's position taken in the their report/comments filed on 26.09.2022; and, we see no reason to review their point of view/ decision and, therefore, this petition is liable to be dismissed, which is hereby dismissed along with pending application(s)

Head of Const. Benches

JUDGE