

IN THE HIGH COURT OF SINDH, AT KARACHI

Present: Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6202 of 2014

Syed Abbas Imran JafryPetitioner

Versus

The Federation of Pakistan & 4 othersRespondents

Date of hearing: 15.08.2017

Syed Abbas Imran Jaffary Petitioner in person.
Mr. Sanaullah Noor Ghori advocate for the Respondents No.2 to 5.
Mr. Muhammad Aslam Butt DAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:-Through the instant Petition, the Petitioner is seeking direction to the Respondents to accommodate him for any equivalent post with further direction to the Respondents to transfer the petitioner to his earlier post so also to pay the salary for the month of October 2012.

2. The facts of the case in nutshell are that the Petitioner was transferred from Multan to Jinnah International Air Port Karachi, (JIAP) on 26.03.2012 to perform duty as Air Traffic Control Officer (ATCO). Per Petitioner he applied for Earned Leave in the month of

October 2012, which was approved but the department deliberately and intentionally issued him Show Cause Notice dated 9.4.2013 for remaining absent from duty for 19 days but subsequently it was withdrawn vide Order dated 17.12.2013 with warning to be careful in future, however, salary of the Petitioner for that month was not paid to him without assigning reasons. Petitioner further asserts that on 10.10.2014, he moved an application for his transfer from Karachi to Multan but the same was not considered and declined. It is further added by the Petitioner that he also applied for the post of General Manager Licensing (CAA) as per advertisement published in 'Daily Jang' and 'Daily Dawn' dated 26.01.2014. Per petitioner, he is most qualified person for the post applied for as during his service he acted as Airport Manager in five different Airports of the country, Radar qualified, having management and flying experience (CAA), in the meanwhile he received a letter dated 08.05.2014, for interview for the post of General Manager Licensing, however, he was not appointed for the said post, for that he moved a grievance application to the Competent Authority, which was not redressed. It is further added that on 15.08.2014, Petitioner appeared before Respondent No.1 but of no avail. Petitioner further added that he has been discriminated in the appointment of said post though he fulfilled all the codal formalities as prescribed under the law/rules of CAA.

3. This court vide Order dated 2.12.2014, subject to maintainability of the instant petition, issued notices to the Respondents as well as DAG. Parawise comments were filed on

behalf of Respondents No.2 to 5, who denied the adverse allegations leveled against them.

4. Syed Abbas Imran Jafry, Petitioner present in person has submitted that he applied for the post of General Manager Licensing, he met with the qualification but was not considered by the Respondents No. 2 to 5, with malafide intention, thereby discriminated by appointing their blue eyed person; that he can be accommodated for the said post or equivalent post i.e. General Manager Licensing, but the Respondents are neither accommodating nor transferring him to his earlier post so also his salary for the month of October 2012 has been withheld; that the Petitioner requested the Chief Operation Officer (JIAP) for break for the training at Control Tower due to mental stress and fatigue; that Petitioner was referred to the medical board for medical checkup to ascertain the allegations of being a patient of psycho and sleeping disorder; that on the basis of the report of Medical Board Petitioner cannot be posted out to work in Air Traffic Control Office; that the Medical Report dated 17.6.2015 submitted by Dr M. Faheemuddin Khan is incorrect and in violation of Order passed by this Court on 25.5.2015; that the same doctor earlier declared the Petitioner fit person twice which is clear malafide on the part of doctor and Respondents; that psychiatric assessment report dated 12.6.2015, supports the contention of the Petitioner regarding stress caused by the Respondents; that all allegations are false against Petitioner; that Petitioner is neither patient of psychological disorder nor there is any other fatal disease so the ground taken by the Respondents not to give posting as per

qualification is against the basic spirit of law. He lastly prayed for allowing the petition as prayed.

5. Mr. Sanaullah Noor Ghouri learned counsel for Respondent No.2 to 5 has argued that the instant Petition is not maintainable; that CAA having Non Statutory Regulations of service; that the Petitioner has approached the Hon'ble Court with unclean hands, as such he is not entitle for discretionary relief under Article 199 of the Constitution of Islamic Republic of Pakistan 1973; that after completion of basic ATC course at CATI Hyderabad, the Petitioner was posted to Lahore Airport and he joined duty there on 07.08.2000, after serving about 08 months period, without earning sole/rating of any ATC unit, due to poor performance of the Petitioner, during the training period, the Petitioner was posted out to Nawabshah Airport location, where a Traffic Density Code III/ to earn his 1st solo rating. Thereafter about serving 02 years at Nawabshah Airport, the Petitioner influenced the authority for his posting to his home town (Multan Airport); that since the Petitioner's own interest was involved, the Petitioner quickly earned the Rating of APP/Tower of the location and stayed there until June 2006 and then was transferred and posted out to Gawadar Airport. After serving about 01 year at Gawadar Airport, the Petitioner was transferred and posted to JIAP Karachi in July 2007. The Petitioner served in Karachi less than 02 years and earned rating of Control Tower. The Petitioner did not show any interest for Cross Unit Training at the location. Thereafter the Petitioner had influenced the authority for his posting in Multan and the Petitioner was posted at Multan Airport in May 2009 and after serving 03 years at Multan Airport, the Petitioner was

transferred to Karachi and posted at JIAP Karachi against his radar qualification; that Petitioner did not show any interest in his training as such the Petitioner as per provisions of ANO-APP/Tower rating and therefore his financial benefits (Rating Allowance) were not paid; that throughout his service w.e.f. May 2003 till to date, the Petitioner did not prove himself as good asset for the department Civil Aviation Authority/CAA and always get his posting by gearing up political influence upon the administration. The Petitioner is continuously holding the privileges of APP/Tower ratings at Multan Airport; that keeping in view the previous experience of the Petitioner, he always remained to Class-II & III Traffic Density Airports and during his previous stay at location, the new ATM system was not installed, which considerably changed the working environment, the Petitioner was put On Job Training (OJT) at the basic ATS Unit of PFIU & GOC, initially and thereafter planned for ACC non Radar Unit; that Petitioner disobeyed the standing Orders of the Chief Operation Officer, JIAP by refusing training; that the Petitioner was put on OJT at Control Tower Unit, but again he excused on medical ground and on 20.11.2014 filed an application to Chief Operational Officer (CAA) JIAP Karachi and requested a break in his training at Control Tower Unit due to mental health problems and display no interest in the task of training given to the Petitioner by the Management; that factual position is that before development of Ante Radar Controller it is essential that the person must be familiar/conversant with basis of PFIU; that Petitioner applied for the post of General Manager Licensing, however he could not qualify for the said post and no experience certificate of working at

Airports was ever produced by the Petitioner for the said post, even otherwise it was not the requirement for the said post of General Manager, hence the Petitioner was not selected by the Selection Committee; that Director General Civil Aviation Authority (CAA) being the Appointing Authority accorded approval for the appointment as General Manager Licensing in respect of the most suitable candidate, who had secured highest overall score in interviews in line with the recommendation of the Selection Board. The recommendation for appointment was made purely on merit in accordance with relevant Rules/Regulations of Civil Aviation Authority (CAA) for Selection Board perse with advertisement content and it was not the sole decision of Respondent No.2 i.e. Director General Civil Aviation Authority (CAA), who in this case is Competent Authority but selecting candidates were recommended by the Selection Board and the Petitioner had not arrayed the selected persons(s) as party in the instant Petition; that as per direction of this Court a Medical Board was constituted to examine the mental condition of the Petitioner, medical board has submitted its report and opined that Petitioner is not fit person for the post, he lastly prayed that in view of such expert opinion the instant Petition is liable to be dismissed.

6. Mr. Muhammad Aslam Butt, Deputy Attorney General representing the Respondents No. 1 supported the contention of Respondents No. 2 to 5.

7. We have heard the arguments of Petitioner in person and learned counsel for the parties at length and with their assistance

perused the entire material available on record and decisions relied upon by them.

8. To commence, we would address the question of the jurisdiction of this Court with regard to maintainability of the Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Undoubtedly, Service Regulations of Civil Aviation Authority are Non-Statutory Rules of Service and admittedly the same were framed by the Authority of Civil Aviation Authority (CAA) pursuant to Section 27 of Civil Aviation Authority Ordinance 1982. The issue of maintainability of Constitutional Petition on account of Non-Statutory Rules of Service of Civil Aviation Authority has already been settled by the Hon'ble Supreme Court in the case of Muhammad Rafi and another vs. Federation of Pakistan and others (2016 SCMR 2146). In the given circumstances, we are fully fortified by the view enunciated by the Hon'ble Supreme Court in para 50 of the Judgment delivered in the case of Pakistan Defence Housing Authority vs. Lt. Col. Javed Ahmed (2013 SCMR 1707) "that an aggrieved person can invoke Constitutional Jurisdiction of this Court against a public authority". Accordingly, we are of the view that this Petition could be heard and decided on merits by this Court, while exercising its Constitutional Jurisdiction.

10. Having decided on the maintainability of the instant Petition, questions, which agitate the controversy at hand, could be reduced to the following:-

Whether the Petitioner is entitled for appointment for the post of General Manager Licensing in Civil Aviation Authority as matter of right?

Whether the Petitioner can claim particular post at particular place?

11. We have perused the order dated 25.05.2015, passed by this Court and observed that:-

“ Petitioner was performing very sensitive duty and for that purpose the medical fitness is one of the prime considerations. Since the counsel for the Respondent No.2 to 5, in view of the counter affidavit, again reiterated that the petitioner has to appear before the medical board for the proper report of the experts, therefore, the petitioner agrees to appear before the medical board. Learned counsel for the Respondents Nos. 2 to 5 will submit the report before the next date. He is also agreed that the medical board will be constituted within 15 days and the Petitioner will be intimated in writing to appear before the medical board with specific time and venue.”

12. Record reflects that Petitioner agreed to appear before Medical Board. This Court in the Order dated 25.05.2015 (supra) directed that Medical Board be constituted within 15 days and Petitioner will be intimated in writing to appear before the Medical Board with specific time and venue. Petitioner appeared before the Medical Board, who opined that the Petitioner is unfit for ATCO's duties on account of Psychiatric illness. Per learned counsel for the Respondent Nos. 1 to 5 that Muhammad Tariq Squadron Leader classified Psychiatrist AMI, PAF-Masroor has opined that the Petitioner was not suitable for active, sensitive operational duty of air traffic control and flying, however, Petitioner can be utilized in non-operational administrative duties. Petitioner was further advised to have regular follow up at nearest psychiatrist facility.

13. In the light of opinion of the Medical Board constituted under the direction of this Court, who has opined that Petitioner is

unfit for ACTO's duties on account of Psychiatric illness and not recommended a suitable for active sensitive operational duties of Air Traffic Control and flying.

14. This Court is left with no option but to dispose of the instant Petition as not maintainable on the premise that the Court cannot substitute its findings as of the findings of the Medical Board, since expert opinion has come on record and the Petitioner has remedy to call into question the said Medical Board report, therefore, in presence of remedy available to the petitioner, the instant Petition cannot be maintained under article 199 of the constitution.

15. So far as the contention of the Petitioner with respect to being eligible for the post of general manager licensing is concerned, this contention also in our considered view, cannot be accepted for the reason that in service jurisprudence, no doubt in service matters, the appointment depends upon qualification for the post, eligibility, fitness and availability of vacancy and no one including the Petitioner can claim appointment of a particular post as matter of right. It is for the Competent Authority, who could make appointments, determine eligibility and fitness of candidate and other ancillary matters relating thereto as prescribed under the Act and Rules framed there under.

16. So far as transfer and posting is concerned none has vested right to claim particular post at particular place this principle has already been settled by the Honorable Apex Court through a plethora of judgments.

17. However, it is made clear that if the Respondents are ready and willing to take up the duties of the petitioner in accordance with Civil Aviation Service Regulation they may utilize the services of the Petitioner and it is for them to decide this aspect of the matter.

18. This Petition is accordingly dismissed along with all the listed Applications.

19. Foregoing are the reasons for our short order dated 15.8.2017.

Karachi
Dated:

JUDGE

JUDGE