

**IN THE HIGH COURT OF SINDH
AT KARACHI**

C.P No. D-253 of 2015

Present: Muhammad Ali Mazhar
and Yousuf Ali Sayeed, JJ

Petitioners : Faraz Sherwani & another
through Mr. M. M. Aqil Awan,
Advocate.

Respondent No.1 : Federation of Pakistan, through
Mr. Kafeel Ahmed Abbasi DAG.

Respondents No.2 & 3 : National Accountability Bureau
of Pakistan & another, through
Mr. Sohail Ahmed Khan, Special
Prosecutor, NAB

Date of hearing : 04.02.2020 and 11.03.2020.

JUDGMENT

YOUSUF ALI SAYEED, J - The Petitioners are employees of the Respondent No. 2, presently serving in BPS-17, and have invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan impugning their designation as Private Secretaries and seeking that they instead be designated as Assistant Directors in that very grade.

2. Succinctly stated, the preceding facts giving rise to the Petition are as follows:

- (a) The Petitioners were each firstly appointed in the service of the Respondent No.2 as a Stenographer (BPS-15) on a temporary basis vide office order dated 29.07.2004.
- (b) They were then promoted to the post of Personal Assistant in BPS-16 vide Notification No. 1(20)/2008-CP dated 05.07.2012 with effect from 27.06.2012, and submitted their joining reports on 09.07.2012 and 04.12.2012 respectively.

- (c) The post of Stenographer had apparently been upgraded from BPS-15 to BPS-16 vide an Office Memorandum dated 23.12.2011 issued by the Finance Division, Government of Pakistan, and the Petitioners were placed against the upgraded post vide the Respondent No. 2's Notification No. 2(25)/HQ/2006-PM-I dated 31.07.2012.
- (d) The Petitioner No.2 filed C.P. No. D-2056 of 2013 before this Court seeking promotion to BPS-17 and obtained an Order dated 11.12.2013 that his case for promotion be considered by the Department with direction to the concerned Respondents to consider the case of the Petitioners in the next Departmental Promotion Committee (the "**DPC**").
- (e) The case of the Petitioners was placed before the DPC and on its recommendations the Respondent No.2 issued Notification dated 27.05.2014 (the "**Impugned Notification**") promoting them to the post of Private Secretary BPS-17 on a regular basis with effect from 22.05.2014, with the Petitioners then assuming charge of their office vide a separate Certificate of Transfer of Charge dated 22.05.2014.
- (f) The Petitioners preferred Departmental Appeals against the Impugned Notification on the ground that as per the Terms and Conditions of Service framed vide S.R.O. 780(1)/2002 dated 26.10.2002 published in the Gazette of Pakistan on 07.11.2002 (the "**TCS 2002**"), the promotion of a Personal Assistant to the next higher grade was to be made against the post of 'Assistant Director' and that their promotion ought to have been made accordingly.
- (g) The Departmental Appeals apparently remained unattended, prompting the Petitioners to approach this Court under its Constitutional jurisdiction through the present Petition, which was dismissed vide Judgment dated 24.10.2017, with an ensuing Review Application also being dismissed in terms of a subsequent Order dated 30.10.2017.
- (h) The Petitioners then impugned that initial judgment before the Honourable Supreme Court vide Civil Petition No. 687-K of 2017, with the Apex Court being pleased to set aside the impugned judgment vide Order dated 31.12.2018 and remand the matter for decision afresh in light of certain additional documents that were not before this Court at the time of such earlier adjudication.

3. For purpose of ready reference, the Order of 31.12.2018 made in Civil Petition No. 687-K of 2017 is reproduced, reading as follows:

“ORDER

Having heard the learned counsel and perused the record and further documents that have been placed on record through CMA No. 1867-K of 2018 whereby the creation of the post, method of its appointment and adaptation of the government rules by the NAB were not before the High Court, therefore, we deem it appropriate by consent of the parties to remand the matter to learned bench of High Court to consider the documents. The impugned judgment is being set aside without dilating upon the implication of such documents which are sought to be placed before us. The documents sought to be filed by the NAB before this court shall be filed before learned bench of High Court and the bench may on the consideration of such documents or any other documents as may be sought to be placed by the parties may proceed to hear the matter afresh and decide the same without being influenced by its earlier decision within a period not more than six months from the date of this order.

Petition is accordingly converted into appeal. Impugned judgment is set aside. Matter is remanded. C.P. No. D-253 at 2015 shall be deemed to be pending and shall be decided as directed above.”

4. Following the remand of the case, *apropos* the Apex Court’s Order dated 31.12.2018, a Statement dated 26.02.2019 was presented on 04.03.2019 under signature of the Special Prosecutor, NAB, along with copies of the documents said to be necessary for proper adjudication of the controversy.
5. Proceeding with the matter, learned counsel for the Petitioners submitted that the Impugned Notification was unlawful, mala fide and in contravention to the statutory rules framed by Respondent No.2 for regulating the promotion of its employees, in flagrant disregard of their fundamental rights.

6. Per learned counsel, on the recommendation of the DPC the Petitioners had been promoted from their posts as Personal Assistants in BPS-16 and vide the Impugned Notification had been placed in BPS-17 as Private Secretaries, albeit that such a post (that of a Private Secretary) did not exist as part of the NAB's organizational hierarchy under the service structure then in force in terms of the TCS 2002. It was submitted that, as such, the promotion of a Personal Assistant in the next higher grade ought to have been made at the time to the post of Assistant Director and notified accordingly. Per learned counsel, after issuance of the Office Memorandum dated 23.12.2011 by the Finance Division, the recruitment rules/method of appointment & promotion of the upgraded post required amendment so as to reconcile and aligned them with the upgrade, which exercise had nonetheless not been carried out up till issuance of the Impugned Notification, with the result that the post of a stenographer remained the feeding post for that of a Personal Assistant (BPS-16), which was in turn a feeding post of Assistant Directors/Investigation Officers (BPS-17) against the 25% quota of departmental promotions from (BPS-16).

7. Conversely, the learned Special Prosecutor representing the Respondent No.2 refuted the claim of the Petitioners. He contended that the Impugned Notification was lawful and in accordance with the adopted rules of the Establishment Division of the Government of Pakistan regarding up-gradation of the post of Stenographers from BPS-15 to BPS-16). He submitted that as per the Office Memorandum dated 23.12.2011, the benefit of up-gradation had been announced by the Government as a grant across the board, including to NAB staff, and averred that as the Petitioners had availed the benefit of up-gradation thereunder, they were estopped from claiming the post of Assistant Director (BPS-17).

8. He argued that by virtue of that Office Memorandum, the next line of promotion was clarified by re-designation of the post of Stenographer and submitted that their line of promotion was as follows:

Stenographer (BPS-15)/ APS (BPS-16) PA (BPS-16)	-->	Private Secretary (BPS-17)	-->	Private Secretary (BPS-18)	-->	Senior Private Secretary (BPS-19)
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9. The learned Special Prosecutor pointed out from the counter-affidavit submitted on behalf of the Respondent No.2 that it had been clarified that at that point in time the NAB service rules were in the process of being amended as per direction of the competent authority in accordance with Governmental instructions, with the Methods of Appointment and Qualifications (“**MAQs**”) for stenographers and Personal Assistants (BPS-16) set to be changed so as to include the post of Private Secretary (BPS-17) as the next promotion. It was submitted that, by then, the Committee that had been constituted to orchestrate such a task had finalized the draft MAQs, which envisaged that the post of Personal Assistant (BPS-16) was to be abolished as a feeding cadre for promotion to the post of Assistant Director (BPS-17). He submitted that, thereafter, the TCS 2002 had accordingly been amended vide SRO-1106(I)/2015 dated 30.10.2015 promulgated in Gazette of Pakistan on 11.11.2015, with the post of Private Secretary (BPS-17) being included as the next promotion and the post of PA (BPS-16) being abolished from the feeding cadre for promotion to the post of Assistant Director (BPS-17). It was argued that in view of the upgrade of their post as per the adopted rules, the promotion channel of the Petitioners, who were basically Stenographers (BPS-15), was that of Private Secretary (BPS-17) and not Assistant Director (BPS-17), which required different qualifications and entailed certain criteria not possessed/met by the Petitioners.

10. It was further submitted that as per the MAQs, the eligibility requirement for promotion to the post of Assistant Director as opposed to that of Private Secretary was as follows:

Assistant Director

S#	Post	BS	Persons eligible for promotion	Conditions
1	2	3	4	5
5	Assistant Director	17	Deputy Assistant Director <ul style="list-style-type: none"> • Superintendents (BPS-16) • Accountant (BPS-16) • Data Control Supervisor (DSC)(BPS-16) For promotion as AD (AD Admn, Finance and IT)	3x years service in BPS-16 i. 3x years service in BPS-16 or 8x years service in BPS-11 and above. ii. Graduate 2 nd Division plus Departmental Exam.

Private Secretary

S#	Post	BS	Persons eligible for promotion	Conditions
1	2	3	4	5
6	Private Secretary	17	Assistant Private Secretary (APS) (BPS-16)	7x years service as APS. The Private Secretary would be granted BS-18 & BS-19 as per policy of the Government.

11. Having heard the submissions advanced, it appears that the crux of the Petitioner's case is that they could not have been promoted to BPS-17 against the post of a Private Secretary as such a position did not exist in that grade under the service structure of the Respondent No.2 at the time of the meeting of the DPC or issuance of the Impugned Notification, whereas the defense of the Respondent No.2 is that (a) by availing the benefit of the upgrade of their post (i.e. Stenographer) from BPS-15 to BPS-16, the Petitioners were bound by the line of promotion specified vide the Office Memorandum dated 23.12.2011, as set out in Paragraph 8 above, and that as per the prevailing MAQs the Petitioners were otherwise ineligible for promotion to BPS-17.

12. In this regard, it merits consideration that the TCS 2002, as originally framed, did not envisage the post of a Private Secretary at any echelon of the service structure, but such a post had then been created and added in BPS-17 vide an amendment to the TCS 2002 through a Corrigendum vide SRO NO.193(1)/2003 published in the Gazette of Pakistan on 19.02.2003. However, through a further Corrigendum issued on 28.09.2004 and published in the Gazette of Pakistan on 29.09.2004, the relevant provision of the earlier Corrigendum published vide SRO No.193(1)/2003 had been cancelled, hence that post then stood deleted from the TCS 2002. The said post was then reintroduced in the TCS 2002 through an amendment brought about in terms of SRO 1106(I)/2015 dated 30.10.2015.

13. When the case of the Petitioners and the stance of the Respondents is examined in this backdrop and in light of the factual matrix circumscribing the matter, as delineated in paragraph 2 above, it is apparent that the argument raised on behalf of the Respondent No.2 as to the implications of upgradation of the post of Stenographer from BPS-15 to BPS-16 are immaterial, for at the time that the Petitioners were placed against the upgraded post vide the Respondent No. 2's Notification No. 2(25)/HQ/2006-PM-I dated 31.07.2012, they already stood promoted to the post of Personal Assistant in BPS-16 as per Notification No. 1(20)/2008-CPdated 05.07.2012 and continued in that capacity until being further promoted through the Impugned Notification, which in turn continued to categorize/designate them accordingly. As the MAQs were not in the field at the time of the Impugned Notification, under the TCS 2002 then in force, the post of Personal Assistant in BPS-16 then formed a part of the feeding cadre for the posts of Assistant Director/Investigating Officer/Section Officer in BPS-17, to be filled 25% by promotion, on the condition of 3 years' service in BPS-16 or 8 years' service in BPS-11 and above.

14. Indeed, as previously observed, the very post of Private Secretary did not exist under the TCS 2002 at the time of the Impugned Notification, and it is axiomatic that as a matter of law the case of the Petitioners could only have been dealt with in accordance with the regulatory regime then in force, rather than one that was still in the process of formulation. As such, the conditions that were to be met by the Petitioners for advancing their case for promotion to BPS-17 were those as were already in place under the TCS 2002 rather than those as were subsequently imposed in terms of the MAQs, which, needless to say, cannot be applied retroactively.
15. In view of the foregoing, the Petition is allowed to the extent that the Impugned Notification is struck down as regards the designation of the Petitioners as Private Secretaries, and the Respondent No.2 is consequently directed to revisit the nomenclature of the Petitioners so as to suitably designate them against any of the notified posts in place under the TCS 2002 as on 27.05.2014, being the date of issuance thereof.

JUDGE

JUDGE