

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 3028 of 2021

Umair Jam

Petitioner

Through : Mr. Muhammad Arshad Khan Tanoli,
Advocate.

Respondents No.1 to 3 : Mr. Muhammad Nishat Warsi, DAG.
Through

Date of hearing : **11.10.2021**

Date of Order : **11.10.2021**

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the Petitioner has called in question the vires of the letter dated 08.10.2020 issued by the respondent-department, whereby his request for deferment of 48th/49th Common Training Program was declined, inter-alia on the ground that the same is discriminatory, void, arbitrary, and contrary to the principles laid down by the Honorable Supreme Court in the case I.A. Sherwani v/s Government of Pakistan (1991 SCMR 1041); that non granting the deferment to the petitioner from joining 48th/49th Common Training Program is against the occupational groups and services (Probation, Training, and Seniority) Rules, 1990.

2) The precise case of the petitioner is that he was a successful candidate for appointment in a Central Superior Service Competitive Examination CSS-2019; and, keeping in view his merit position and preference, was allocated to the Postal Group vide letter dated 17.8.2020. Petitioner was required to undergo training for a certain period before, being deputed for field duty. The petitioner accepted the offer of appointment vide letter dated 18.08.2020. However, the petitioner could not undertake the training due to domestic issues and requested the respondent department to grant him deferment of the 48th Common Training Program, enabling him to join 49th Common Training Program 2021. His request for deferment was not acceded to by the Ministry of Communication vide impugned letter dated

08.10.2020. The petitioner being aggrieved by and dissatisfied with the letter dated 08.10.2020 has filed the instant petition on 03.05.2021 and prayed for setting aside the rejection order dated 08.10.2020 and also sought for a direction to respondents to allow him to join 49th Common Training Program 202, commencing in the ensuing month.

3) The questions in the context are whether the petitioner has any enforceable right to seek direction to respondents to allow him to join 49th Common Training Program 2021, commencing in the ensuing month. And whether the respondents are required to act fairly, in a manner which is not arbitrary and in accordance with the established practice followed by it over a long period in making such deferments to other candidates namely Hamood-ur-Rehman, Taveer Shahoor Rana, Abraiz Ali Abbasi, Ahmed Saeed Manj and Ateeq-Ullah under the prevailing occupational groups and services (Probation, Training, and Seniority) Rules, 1990.

4) Before touching the merits of the case, at this juncture, learned DAG intervened and agreed in principle that if the petitioner approaches the competent authority for deferment from the training program or allowing him to join the ensuing training program, the competent authority shall pass the speaking order.

5) Mr. Muhammad Arshad Khan Tanoli, learned counsel for the petitioner candidly conceded the proposal as put forward by the learned DAG and submitted that since he has preferred review application dated 26.4.2021 before the competent authority, which has not yet been decided, whereas the training of forthcoming 49th CTP is likely to be commenced in the current month and the petitioner has grave apprehension that his appointment could be canceled at any time if he is not allowed to join in 49th CTP, whereas, the respondents are deliberately avoiding to decide on his review application, which needs early decision thereon by the competent authority.

6) We have heard the learned counsel for the parties and perused material available on record.

7) There is no cavil to the proposition that he is a successful candidate for the post offered to him in Postal Group, however, under the law the petitioner was required to undergo the requisite training as provided under the Occupational Groups and Services (Probation, Training, and Seniority), Rules 1990, which at the initial point of time

empowered the competent authority to allow deferment of training for one year on the recommendation by the training institution or for any cogent reason. Subsequently, the said proviso was substituted vide SRO No.743(1)/2016 dated 11.08.2016, which explicitly provides that if any probationer who fails to undergo prescribed training and qualify the prescribed examination shall render his appointment liable to termination without notice. However, the appointing authority on the recommendation of the special Medical Board and FPSC allow the deferment of training and examination if so justified based on compelling medical ground. It is also provided that the Prime Minister is competent to allow deferment of training for any cogent reason.

8) Prima-facie, the petitioner is not entitled to claim as of right the deferment of CTP supra, yet, we are of the considered view that the respondents ought to have considered the request of the petitioner on the analogy put forward by him in his application. Therefore, taking all the facts and circumstances, in this case, we are of the considered view that it is a fit case to direct the respondents to reconsider the representation made by the petitioner and pass appropriate order under the guidelines provided under the Rules 1990, keeping in mind the letter and spirit of the Honorable Supreme Court Judgment in the case I.A. Sherwani supra.

9) In view of the above facts and circumstances of the case, we are inclined to remit the case of the petitioner to the competent authority of the respondent department to reconsider the representation of the petitioner for joining in 49th CTP and take decision strictly in accordance with the law, within two weeks from the date of receipt of the order.

10) Petition stands disposed of in the above terms with no order as to costs.

Let a copy of this order be transmitted to the competent authority for compliance.

J U D G E

J U D G E

Shahzad Soomro