

ORDER SHEET  
THE HIGH COURT OF SINDH AT KARACHI  
CP.No.D-4417 of 2021

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Date: Order with signature(s) of the Judge(s)  
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1. For hearing of CMA No. 18241 of 2021 (Stay).
2. For hearing of main case.

**13<sup>th</sup> August 2021**

Syed Ali Ahmed Zaidi, advocate for petitioner.  
Mr. Abdul Wahab Baloch, DAG.  
Mr. Muhammad Saleem Mangrio, advocate for Respondents No.2 to 5.  
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Heard and perused record.

Learned counsel for the petitioner while referring page No.17 of the file, pertaining to posting/assignment of duties, has emphasized that the petitioner has been placed on as an Officer on Special Duty (OSD). He further contends the petitioner was working with the respondents in Grade-19 since 32 years without any complain or inquiry; this fact is not disputed by counsel for the respondent. It has also come on record that the petitioner is near to retirement and only two months are remaining to goodbye his department. Here learned counsel for the petitioner while relying upon **PLD 2013 Supreme Court 195**, and **2013 PLC (C.S) 1191** contends that Chairman KPT (Respondent No. 3) was not competent to pass order arbitrarily and without hearing the petitioner while placing him on special duty(OSD) as same creates stigma as well no justification is provided in the posting order.

Whereas, counsel for the respondents No. 2 to 5 while relying upon page 19 of the court file contends that one Anas, who was also working as Manager (Coordination) was transferred in 2020 as OSD in similar fashion and that is the practice. Surprised for placing such reference because legally a plea of '*practice*' alone can't be an excuse to repeat what, *otherwise*, has no backing of law or rules, therefore, to justify the plea, the respondents no.2 to 5 must have placed some law or rule for supporting the plea of '*practice*' even. Be that as it may, since Mr. Anas is not petitioner here; who has not challenged that letter, therefore, reference to such case is without any weight. Further, it is needless to add that any illegality or irregularity, if committed earlier, will not be a legal

ground/justification to strengthen the order passed against petitioner because legally an illegality or even multiplicity thereof can't make the same as '*right*'. Besides, it has come on record the person (respondent No.5) was working in grade 18 who has been posted on same place where petitioner was working in the grade-19 and counsel for the respondent No.5 has failed to demonstrate that what necessitated to post a person of grade-18 on the post of grade-19 (on which petitioner was working) when *admittedly* there is no complaint against petitioner?. Such practice, *even*, completely against the judgment of this court as well as apex court.

At this juncture, learned counsel for the respondents No.2 to 5 has relied upon case law reported as **2009 SCMR 1448** and further contends that he was appointed on acting charge. Before taking plea of '*acting charge*', it is insisted that *first* there must be *legal* justification to remove the proper person from his place (post of grade-19) couple with justification for placing him on OSD when he (petitioner) only has two months towards his retirement which is lacking in instant case. The respondent no.5, before establishing his legal entitlement to hold the post, legally can't claim any benefit of order/letter of '*acting charge*' because through which a person, who was not entitled for the post, has been posted in grade 19 in name of acting charge which, *too*, without any justification. Accordingly, impugned order/ letter dated 09<sup>th</sup> July 2021 at page 17 is hereby set aside. Petition is allowed and parties shall bear their own cost. With regard to case law relied upon by learned counsel for the respondents, with utmost respect, on same analogy the judgment which is more applicable is Anita Turab case *supra*.

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SAJID.