

**ORDER SHEET  
IN THE HIGH COURT OF SINDH  
BENCH AT SUKKUR**

C.P. No.D-788 of 2020

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**DATE**

**ORDER WITH SIGNATURE OF JUDGE**

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**Present:**

Mr. Justice Zafar Ahmed Rajput  
Mr. Justice Khadim Hussain Tunio

Date of hearing: 14.12.2022  
Date of reasons: 17.12.2022

Mr. Achar Khan Gabol, Advocate for petitioner.

Mr. Sadam Hussain Associate of Haji Shamsuddin Rajper, Advocate for Respondent No. 6.

Mr. Nisar Ahmed G. Abro, Deputy Attorney General for Pakistan along with Shuja-ur-Rehman Khan, Director, Intelligence Bureau, Islamabad (respondent No. 3).

**ORDER**

KHADIM HUSSAIN TUNIO, J- Through captioned constitutional petitions, the petitioner Shafqat Ali seeks directions to the respondent No. 3 [Director, Intelligence Bureau (Recruitment) Islamabad] to appoint the petitioner on merit basis for the post of Stenotypist (BS-14).

2. Precisely, facts of the instant matter are that through an advertisement dated 16.06.2019 in the Daily Dawn Karachi, the Federal Government invited applications for various posts included Stenotypist (BS-14) through NTS. The petitioner being an eligible candidate applied for the same post and then his skill test was conducted through NTS on 28.12.2019 wherein the petitioner secured 209.61 marks out of 300 and the said result was announced by NTS on its website. Following this, the petitioner received a call for interview to be held on 01.03.2020 at Karachi and after the interview, he awaited

the issuance of final merit list which was never published. Then, the petitioner came to know that respondent No. 6 Moula Bux was appointed on the post of Stenotypist (BS-14) having only obtained 161 marks total and 0 marks in shorthand over the petitioner who had obtained a total of 209.61 marks and 56.61 marks in short hand. Therefore, the petitioner approached this Court and filed the captioned petition with the following prayers:-

- a) To declare the act of the respondents by not issuing final merit for the post of stenotypist (BS-14) Sindh Rural Quota illegal, unwarranted, unjustified capricious and arbitrary which amounts to overtly massacre the merit which is liable to be condemned.
- b) To direct the respondents to submit the record of appointees for post of stenotypist BS-14 on Sindh Rural Quota before this Honourable Court for further appropriate order thereon.
- c) To direct the petitioner on merit basis for the post, as he has already qualified the test for the applied post.
- d) To pass ad-interim order/injunction thereby restraining the respondents from appointing any person for the said post till the final decision of the instant petition.
- e) To grant any other relief which the Court deems fit and proper under the circumstances of the case.
- f) To award the costs of the petition.

3. Respondent No. 2 DG I.B Islamabad, respondent No. 3 Director I.B (Recruitment) Islamabad, respondent No. 4 Joint Director I.B Sindh at Karachi and respondent No. 5 Deputy Director I.B Sukkur Region filed joint written reply while stating that their recruitment is a multilayered process comprising of screening test, skill test and interview and that merely securing high marks in screening or skill test does not guarantee selection of a candidate and the final selection is made on the basis of aggregate marks of candidates obtained in all three components and on this basis, the aggregate marks of respondent No. 6 were higher than the petitioner's for which reason the respondent No. 6 was appointed.

4. Learned counsel for the petitioner contended that the petitioner had obtained 209.61 marks in the written test and the result for the same was published on the NTS website; that the respondent No. 6 had only obtained 161 marks in total; that the

respondent No. 6 had even failed in the shorthand test and received 0 marks when even there was a minimum requirement set to achieve minimum speed of 80/40 words per minute in shorthand/typing respectively; that the respondents did not publish the final merit list and the petitioner was left waiting and only came to know about the respondent No.6 being appointed later on; that the petitioner is duly qualified for the position and was still not appointed.

5. On the other hand, learned DAG along with Director I.B Recruitment Islamabad (respondent No. 3) and assisted by the counsel for respondent No. 6 contended that the petitioner had failed his interview which resulted in him receiving only 0 marks; that the recruitment was based on aggregate marks calculated from screening test having 30% weightage, skill test having 40% weightage and interview having 30% weightage and merely obtaining more marks in the skill test would only increase the aggregate of a candidate; that the respondent No. 6 had an aggregate of 67.700 while the petitioner had an aggregate of 47.222 due to failing the interview due to which he did not succeed; that due to continuous vacancies in the department, the requirement of 80/40 shorthand/typing was changed by the concerned authority.

6. We have heard the learned counsel for the respective parties, learned DAG and perused the record available before us.

7. From the perusal of the record several facts are ascertained. The first being that the petitioner had passed the skill test with 156.61 marks out of 200 and 53 marks in the screening test out of 100, making it a grand total of 209.61 marks out of 300. The 200 marks of the skill test were further divided into 100 for typing and 100 for shorthand, two skills that were specifically required for the post as well. The petitioner obtained 100 in typing and 56.61 in shorthand. His typing speed was marked at 45.33 while his shorthand speed was marked at 45.67. These results were

available on the NTS website and are present on court file at pg.21 (annexure B). In comparison to the petitioner, the respondent No. 6 had obtained a total of 100 marks in the skill test out of 200 and 61 marks in the screening test out of 100, making it a grand total of 161 marks. Out of the 200 marks in the skill test, the respondent No. 6 had obtained zero in shorthand marks and his shorthand speed was also 0 while his typing speed was marked at 44.9. When comparing the interview marks, the petitioner received zero out of a total of 100 while the respondent No. 6 was awarded a grand total of 98 out of 100. The weightage for the calculation of aggregate marks was 30% of screening test, 40% of skill test and 30% of interview test. This brought the aggregate of the petitioner at 47.222 while the respondent No. 6's aggregate was 67.700 on which basis the respondent No. 2 to 5 contended that the respondent No. 6 was appointed over the petitioner.

8. It was contended in the written reply filed on behalf of the respondent No. 2 to 5 (Directors I.B Recruitment and others) that the interviews are deemed as the most critical assessment in the selection process and that their Departmental Selection Committee was responsible for examining each candidate and was able to recruit and pass candidates while judging their aptitude and considering different aspects of their personality. What we found rather surprising is that the interview, any relevant questions asked or the consideration on which basis a candidate was to be graded found no mention in any of the replies furnished by the respondents. What could be gathered from the replies of the respondents was that this procedure was left completely at the discretion of the Departmental Selection Committee (competent authority) and they were able to pick and choose on their own whom they wished to recruit. What is also surprising to note is that despite appearing in the interview, the petitioner was awarded zero marks while someone who had scored less than him in the skill test and even possessed a lesser skill set in general (typing speed etc) managed to achieve a near perfect interview score of 98. This does

not appeal to a prudent mind. It was observed by the Hon'ble Apex Court in the case of ***Dr. Naveeda Tufail and 72 others v. Government of Punjab and others (2003 SCMR 291)*** that:-

"The appointments in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as trustee with complete transparency as per requirement of law so that no person who is eligible to hold such posts is excluded from the process of selection and is deprived of his right of appointment in service."

9. It was also observed in the case of ***Muhammad Intizar-ul-Hasan v. University of Agriculture, Faisalabad and 2 others (1997 PLC C.S 855)*** that:-

"The purpose of making advertisements for the purpose of recruitment against various posts in the government and public institution is that fair opportunity should be granted to all eligible persons who may apply and contest for appointment. While on the one hand, it gives an opportunity to the eligible persons to contest for a particular post on the other hand it gives opportunity to the employer to select the best person for the job in question. The requirement of due publicity of the post in the press is relatable to the constitutional guarantee provided by Article 25 of the Constitution, which enjoins that all citizens are equal before law and are entitled to equal protection of law. This means that in the matter of appointments in the Government or Government controlled agencies all eligible citizens should have equal opportunity to contest for the appointments against posts in the public sector."

10. This recruitment was also done while completely ignoring the initial requirement noted in the advertisement being 80/40 words per minute (w.p.m) in shorthand/typing respectively. To this effect, it was contended by the respondents in the written reply that due to continuous vacancies due to no one meeting the standard, the requirements were changed by the Competent Authority to accommodate maximum number of candidates so that vacancies in the cadre could be filled. To this effect, suffice it to say that an advertisement, inter alia, in relation to filling up of vacancies is a promise stating all the rules which the authority undertakes to observe in consideration for giving employment to the most suitable candidate and there should not be any deviation from the said advertisement and if at all any deviation was necessary in order to overcome some shortfall/legal lacunas then

such changes should be advertised in the same manner as the original advertisement and also to be notified to each and every applicant if the process of filling up the posts commenced in the meanwhile. In this respect, reliance is placed on the case of ***Rasheed-ud-din and another v. Provincial Government through Chief Secretary, Gilgit-Baltistan, Gilgit and others (2020 PLC C.S 1029)***. Transparency in recruitment in a meritorious system also demands that criteria for each stage of recruitment be so clear that the right person for the position could not be controverted by anyone. Merely stating that the Departmental Selection Committee had discretion to pass and fail candidates in the interview does not absolve the respondents of their responsibility to provide clear distinction between a passing and a failing candidate especially when the passing candidate had achieved lesser marks than the failing one. The Hon'ble Apex Court in the case of ***Abdul Waheed and another v. Secretary, Ministry of Culture, Sports, Tourism and Youth Affairs, Islamabad and another (2002 SCMR 769)*** has observed that:-

"We have considered the contentions raised by the learned counsel and found that same are without any substance. We may observe that despite there being no specific bar for exercise of powers of Competent Authority by an Officiating Director, still he would not be supposed to exercise such powers of appointment/promotion of the employees without the proper sanction and allocation of budget besides observing the prescribed procedures including 'advertisement of the posts in the newspaper. The appointments made by the Officiating Director without following the prescribed procedure would not be legal and consequently the petitioners would neither have any right to hold such posts nor were entitled to the salaries and other benefits attached with the said posts. The Tribunal having considered all aspects of the matter and the pleas taken on behalf of the petitioners in the appeals, held that the orders of appointments/promotion of the petitioners were illegal and void ab initio. The learned counsel for the petitioners has not been able to convince us that the view taken by the Tribunal was violative of any law to be interfered by this Court. In any case, the submissions made by the learned counsel have no substance and further these petitions do not involve any question of public importance. The same are, therefore, dismissed and leave is refused."

11. As far as the appointment of the petitioner himself is concerned, suffice to say that even he did not qualify at the relevant

time considering the fact that he did not meet the minimum requirement of 80/40 shorthand/typing.

12. For what has been discussed above, the petitioner was unable to prove his case for his appointment, however has successfully made out a case for the cancellation of appointment of respondent No. 6 who was recruited against the requirements from the advertisement. Therefore, vide short order dated 14.12.2022, the instant petition was partly allowed with directions to the respondents to fill one post of Stenotypist (BS-14) afresh in Sindh (Rural) quota. Both, the petitioner and respondent No. 6, were left at the liberty to freshly apply for the said post if they chose so. These are the reasons for the same.

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