

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar

Justice Musarrat Hilali

Justice Irfan Saadat Khan

Civil Petitions for Leave to Appeal No.670/2024

[Against the judgment dated 11.12.2023 passed by the learned Federal Service Tribunal in Appeal No.328(P)CS/2021]

Federation of Pakistan through Secretary,
Establishment Division, Government of
Pakistan, Islamabad

...Petitioner

Versus

Kamran Khan

...Respondent

For the Petitioner : Mr. Munawar Iqbal Duggal,
Additional Attorney-General for Pakistan
a/w Muhammad Sultan & Nasreen
Farhan, SOs

For the Respondent : Mr. Muhammad Umar Ijaz Gilani, ASC

Date of Hearing : 02.06.2026

Judgment

Muhammad Ali Mazhar, J. This Civil Petition for leave to appeal is brought to challenge the judgment dated 11.12.2023 passed by the learned Federal Service Tribunal (**Tribunal**) in Appeal No.328(P)CS/2021 whereby the Office Memorandum (**O.M**) dated 22.10.2015 was declared ultra vires and the appeal of respondent was allowed.

2. According to the facts narrated in the case, the respondent was appointed and joined Police Service of Pakistan (**PSP**) as probationer on 30.09.2016. He impugned the O.M dated 22.10.2015, which conveyed the decision of the competent

authority regarding the determination of seniority in case of repetition of Common Training Program (**CTP**) due to unsatisfactory performance. He was directed to repeat CTP with the 45th Batch and his seniority was fixed with the 45th CTP Batch, instead of his original Batch of 44th CTP. Since the departmental appeal of the respondent was not accepted, therefore, he approached the Tribunal for redress and by means of impugned judgment, the service appeal preferred by the respondent was allowed and the O.M dated 22.10.2015 was declared ultra vires and though held that the order of repetition of CTP was valid but despite that issued directions to fix the seniority of the respondent/appellant on the basis of marks obtained in 44th CTP but not on the basis of 45th CTP.

3. The learned Additional Attorney General for Pakistan ('**Addl. AGP**') argued that though the respondent joined 44th CTP but he could not clear examination, therefore, he was called upon to attend 45th CTP but after passing out in 45th CTP, he claimed seniority with the alleged batchmates of 44th CTP. He further argued that the Civil Service Academy (**CSA**), vide letter dated 13.04.2017, conveyed to Establishment Division that the conduct of respondent was unbecoming of an officer due to his wilful defiance, threatening of lower staff and his general misconduct. It was further informed by CSA that he had not completed 44th CTP satisfactorily, therefore, could not be issued completion certificate. It was further contended by the learned Addl. AGP that CSA in the aforesaid letter observed that the respondent rendered himself liable for imposition of major penalty in terms of Rule 10 of the Occupational Groups of Service (Probation and Training) Rules, 1990 ('**Rules of 1990**') and also recommended that he might be directed to repeat CTP with the 45th CTP and to join his Specialized Training Programme (STP) after successful completion of next CTP. According to the learned Addl. AGP,

all these relevant facts were placed before the learned Tribunal but despite jotting down all these facts as part of the impugned judgment, the learned Tribunal allowed the appeal without appreciating that he could not claim the seniority with officers of 44th CTP.

4. The learned counsel for the respondent argued that though sub-rule 4 of Rule 7 of the Rules of 1990 provides that seniority of the probationers shall be determined by the Appointing Authority after final passing out examination but non-determination of seniority of the respondent with his 44th CTP batchmates amounts to a penalty without taking any action as provided in Rule 10 wherein it is provided that a probationer who fails to comply with the provisions of these rules, or to obey any orders which he may receive from the appointing authority, or from the Provincial Government under which he is serving or who neglects his probationary studies, or is guilty of conduct unbecoming of an officer, shall be liable for removal from service or to such other action as the appointing authority may direct. According to the learned counsel, since no penal action was initiated or taken against the respondent despite CSA observation in the aforesaid letter, therefore, the seniority of the respondent should have been fixed with the officers of 44th CTP.

5. Heard the arguments. In fact the seniority as a rule is determined according to CTP in which the contender/probationer is declared successful. If he fails to qualify the mandatory course, his seniority is relegated and determined with the batchmates of CTP wherein he successfully completed and passed out the course and in such scenario, the seniority moves on to the new-fangled CTP batch. If CTP is cleared in subsequent attempts then obviously, the probationer without a doubt is relocated to the

bottom of that new batch. The seniority is always governed and regulated strictly in accordance with the applicable statutory rules and regulations of the department. **The seniority is not an inherent or fundamental right but it is reckoned according to relevant laws and rules.** A civil servant cannot claim seniority with an earlier batch if he failed to fulfil the statutory prerequisite. The stretch of time consumed in repeating CTP due to failure and subsequently qualifying it successfully in next training program does not bestow any privilege or dispensation for determination of seniority with the original batchmates, rather, the length of finalized service is counted from the batch in which the CTP is cleared.

6. The Rules of 1990 [Occupational Groups and Services (Probation, Training and Seniority) Rules 1990] were framed pursuant to Section 25 read with Section 6 and 8 of the Civil Servants Act 1973. According to clause (iii) of Rule 2 (definition clause), the "Final Passing Out Examination" means the Final Passing Out Examination conducted by the Commission or the department concerned after conclusion of specialized training. At the same time, Rule 3 pertains to the Training Programmes and examinations which *inter alia* accentuates that every probationer shall undergo training in such training institutions and at such places and at such time and for such period and appear in such examinations as the Government may specify and any probationer who fails to undergo prescribed training and qualify the prescribed examination shall render his appointment liable to termination without notice. It is further provided that a probationer who fails to qualify in any subject or subjects in the "Final Passing Out Examination" shall be allowed two more chances to appear in the examination to be held subsequently in such subject or subjects. Whereas Rule 4 is germane to the effect of unsatisfactory completion of training

programme which brings to light that if on the conclusion of a training programme, the performance or conduct of a probationer is determined by the head of the training institution to be unsatisfactory, the Government may require such probationer to undergo such further training as it deems fit and if a probationer is prevented by sickness or any other adequate cause from completing a training programme to the satisfaction of the head of the training institution, the Government may require him to undergo such further training as it deems fit.

7. In tandem, Rule 6 of Rules of 1990 deals with the consequence of failing to qualify the Final Passing Out Examination by the probationer, which is reproduced as under:-

"6. Probationer failing to qualify in the Final Passing Out Examination. (1) A probationer who fails to qualify in the Final Passing Out Examination shall have his increments withheld until such time he qualifies such examination.

(2) A probationer who does not qualify in the Final Passing Out Examination shall:

(a) lose his one increment if he fails in the first attempt.

(b) be relegated in seniority to the bottom of his batch if he fails in the second attempt; and

(c) be discharged from the service under clause (a) of sub-section (2) of section 6 of the Civil Servants Act, 1973 if he fails in the third attempt:

Provided that the Government may, as a matter of grace provide the probationers who could not qualify in their Final Passing Out Examination up to 31st December, 2002, an additional chance to appear in the Final Passing Out Examination on such date and at such place as it may notify, and if a probationer does not qualify in the examination or fails to avail the additional chance, he shall be removed from service.

(3) Absence from the Final Passing Out Examination, without permission of the Government shall be deemed to be a failure to qualify in that examination".

8. Insofar as the question of determination of the seniority is concerned which is indeed the bone of contention in the case, Rule 7 of the Rules of 1990 is quite pertinent which is reproduced as under:

"7. Seniority. (1) The seniority of the probationers shall be determined by the appointing authority after Final Passing Out Examination.

(2) Inductees who join the initial training programme shall be given notional marks in a manner that each inductee has the same marks as the senior most probationer of the occupational group in which the inductee has been inducted.

(3) Inductees who join a specialized training programme directly shall be given notional marks equal to the marks obtained by the senior most probationer of the occupational groups including the marks in the initial training programme.

(4) For the purpose of determining the inter-se-seniority of the probationers who commence their training with initial training programme the marks obtained by a probationer in the competitive examination of the Commission or his notional marks, as the case may be, shall be added to the marks obtained by him in the initial training programme, specialized training programme and the marks obtained by qualifying the Final Passing Out Examination in his first attempt.

(5) For the purpose of determining the inter-se-seniority of the inductees who commence their training with the initial training programme or a specialized training programme, the notional marks given to such an inductee and the marks obtained by him in the initial training programme and specialized training programme, as the case may be, shall be added to the marks obtained by him by qualifying the Final Passing Out Examination in the first attempt".

9. The impugned judgment of the learned Tribunal is based on Office Memorandum which was declared ultra vires. Before doing this, the learned Tribunal failed to consider the niceties

of Rule 7 of the Rules of 1990 in which a proper criteria for determination of seniority has been laid down. The criteria to determine the seniority is explicitly provided and core prerequisite is the passing out of final examination. Nevertheless, the respondent appeared in 44th CTP but could not qualify, therefore, he was provided an opportunity to join 45th CTP and after declared successful, his seniority was rightly determined according to the niceties of Rule 7 of Rules of 1990.

10. What's more, the learned Tribunal also declared the O.M. dated 22.10.2015 ultra vires and declared it null and void. For the ease of reference, the aforesaid O.M is reproduced as under:

**"GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION**

No.2/3/2015-T-V

Islamabad, the 22nd October, 2015

OFFICE MEMORANDUM

**SUBJECT: DETERMINATION OF INTER-SE-SENIORITY
OF PROBATIONERS OF ALL OCCUPATIONAL GROUPS
AND SERVICES WHO REPEAT THEIR CTP DUE TO
UNSATISFACTORY PERFORMANCE.**

The undersigned is directed to refer to the subject cited above and to convey the following decisions taken by the Competent Authority:-

- a. If a probationer is asked to repeat his CTP due to unsatisfactory performance his seniority will be fixed with the batch he successfully completes his CTP. However, for the purpose of pay fixation his length of service will be considered from date of joining of original (first) CTP.
 - b. In case of un-satisfactory performance even during the second CTP, his services will be liable to be terminated.
2. This issues with the approval of Secretary, Establishment Division.

(Amjad Ali)
Section Officer (T-V)
Ph: No.9103578"

11. The expression *ultra vires* means "beyond the powers". If an act is carried out shorn of authority, it is "*ultra vires*". Before declaring aforesaid O.M *ultra vires*, it was obligatory for the learned Tribunal to see whether the O.M was issued without competence and whether the O.M had in any way transgressed or contravened the relevant rules for determination of seniority or if it is just an explanation within the bounds of relevant rule? Seemingly, there was no justification to declare *ultra vires* the aforesaid O.M wherein it was explicated only that if a probationer is asked to repeat CTP due to unsatisfactory performance his seniority will be fixed with the batch he successfully completes his CTP. If this O.M is considered in juxtaposition to Rule 6 and 7 of the Rules of 1990, there was no plausible reason or justification to declare the O.M *ultra vires* or void. The principle and procedure for determination of seniority is clearly provided under the Rules of 1990 and the said O.M is in harmony rather than imposing any condition contrary to the set rules. If in the same O.M for the purpose of pay fixation the length of service is said to be considered from date of joining of original (first) CTP, this condition does not provide any cause of action to claim seniority with original (first) CTP without passing out but it is merely a beneficial condition only for the pay fixation.

12. The learned counsel for the respondent vehemently relied on Rule 10 wherein the penalty of removal from service is provided if a probationer fails to comply with the provisions of Rules of 1990 and argued that if the performance of the respondent was not above board then why action was not taken against him under the aforesaid rule? What we understand is that the respondent was provided a fair opportunity in his best interest to complete the course in the next CTP rather than electing a severe or stern action of

removing him from service on invocation of Rule 10 during probationary period but a further chance was provided so this this grace should not be disgraced.

13. As a result of above discussion, this Civil Petition is converted into an appeal and allowed. As a consequence thereof, the impugned judgment of the Tribunal is set aside and Service Appeal of the respondent filed before the learned Tribunal is dismissed.

Judge

Judge

Judge

Islamabad, the
2nd of June, 2026
Syed Farhan Ali
Approved for reporting