

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.1660 & 1661/2024 & C.M.A. NOS.4586 & 4587/2024

[Against the judgment dated 29.02.2024 passed by the learned Federal Service Tribunal, Lahore in Service Appeals No.245(L) and 246(L) of 2022]

Chief Executive Officer, NTDC, Lahore (in both cases)
...Petitioner(s)

Versus

Masood Ahmad Qureshi and others (in CPLA 1660/2024)
Muhammad Afzal Gill and others (in CPLA 1661/2024)
...Respondent(s)

For the Petitioner(s)	: Mr. Umar Ijaz Gilani, ASC Syed Rifaqat Hussain Shah, AOR (in both cases)
For Respondent No.1	: Ch. Ishtiaq Ahmad Khan, ASC (in both cases)
For Respondent No.2	: Syed Hussain Ali Raza, ASC (in CPLA No.1660/2024)
For Official Respondents	Mr. Munawar Iqbal Duggal, Additional Attorney-General for Pakistan (in both cases)
Date of Hearing	: 2 nd of June, 2026

Judgment

Muhammad Ali Mazhar, J. – The petitioner has challenged the judgment dated 29.02.2024 passed by the learned Federal Service Tribunal (**‘Tribunal’**) in Service Appeals No.245 (L) and 246(L) of 2022.

2. According to the facts documented in the judgment of the learned Tribunal, the respondents were appointed as Line Superintendents in Water and Power Development Authority

(WAPDA). Both the respondents appeared in the departmental promotion examination and declared passed in view of the Notification dated 15.07.1984. The bottom line is that according to their stance, they became eligible for Time Scale Upgradation **(TSU)** despite their retirement not only in BS-18 but also to BS-19 by virtue of upgradation process initiated after the introduction of the policy for the said purpose, hence they applied to the department for the said relief of upgradation but their request made in writing to the competent authority was declined on 01.04.2022. It is also garnered from the comments submitted before the Tribunal by the appellant that a specific plea of maintainability was taken on the ground the respondents/appellants are not civil servants within the meaning of Section 2 (b) of the Civil Servants Act, 1973, **(CSA 1973)**. It was further averred that they were appointed as Linemen in WAPDA and later on promoted as SDO (BS-17) and thereafter their services were assigned to NTDC, which was registered under the Companies Ordinance 1984. According to the departmental stance, the upgradation policy on 27.05.2010 was introduced much after the retirement of the respondents who filed representations for TSU much after the date of retirement. The Notification dated 12.08.2004 was not meant for Non-Graduate Junior Engineer, whereas the Scheme/policy of TSU was notified on 19.08.2013 with immediate effect subject to passing upgradation Departmental Examination and Management Course besides fulfilling other criteria laid down for the upgradation in BS-18. Since the requests made by the respondents failed to find favour, hence they approached the learned Tribunal for seeking directions against the petitioner to provide them all the allowances/privileges in the up-graded scales since the date of their alleged entitlement. The learned Tribunal while setting aside the impugned departmental order dated 01.04.2022 and allowing both the appeals, also issued directions to the management of the petitioner's company to grant TSU to the

respondents in BPS-18 with effect from 12.08.2004 within two months positively.

3. In the absolute beginning, the learned counsel for the petitioner argued that the National Transmission and Despatch Company (**NTDC**) is a corporation incorporated under the provisions of Companies Ordinance, 1984 (now National Grid Company). Hence, the employees of NTDC are not civil servants, therefore, their cases are not amenable to the jurisdiction of the learned Tribunal in terms of Article 212 (3) of the Constitution of the Islamic Republic of Pakistan, 1973. He further argued the question of jurisdiction and maintainability was raised but it was not properly adverted to by the learned Tribunal and in the impugned judgment reliance was placed on WAPDA Rules, 1958. He further argued that the question of jurisdiction always goes to the roots of the case but in this case employees of public unlisted company have been treated as civil servants.

4. The learned counsel for WAPDA argued that the learned Tribunal noted that NTDC is a subsidiary of WAPDA but in actual this is totally a separate company. He further argued that NTDC is not under the control of WAPDA and it is totally a separate entity, hence the application or applicability of WAPDA Rules, 1958 does not arise.

5. The learned counsel for respondent No.1 though made much emphasis that the employees of NTDC are civil servants within the ambit and purview of WAPDA rules but when we specifically called upon him to point out any incidence when the NTDC employees were earlier treated as civil servants by the learned Tribunal in any past judgment, the learned counsel was not able to quote any such precedent. However, as a fall back argument, the learned counsel relied upon a judgment of this Court authored by one of us in the case of General Manager, Punjab Provincial Cooperative Bank, Ltd and others

v. Ghulam Mustafa and others (**2024 SCMR 1458**) in which also question of jurisdiction and statutory rules vis-à-vis the relationship of master and servant was discussed in detail and ultimately directions were issued to the department to at least apply their own rules and pass a speaking order.

6. Heard the arguments. According to the information articulated at NTDC website <https://www.ntdc.gov.pk>, it was incorporated as a Public Limited Company on Nov 06, 1998 under the Companies Ordinance 1984 (now Companies Act 2017), after unbundling of WAPDA and started its commercial operations from March 01, 1999. The transmission license was issued by National Electric Power Regulatory Authority (**NEPRA**) in December 2002 to engage in the exclusive transmission business for a term of thirty (30) years. It links Power Generation Units with Load Centers spread all over the country (including Karachi) and thus establishes and governs one of the largest interconnected Networks and also responsible for evacuation of Power from the Hydroelectric Power Plants (mainly in the North), the Thermal Units of Public (GENCOs) and Private Sectors (IPPs) (mainly in the South) to the Power Distribution Companies through primary (EHV) Network.

7. The aphorism "service of Pakistan" as defined under Article 260 of Constitution of the Islamic Republic of Pakistan 1973, means any service, post or office, in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of Majlis-e-Shoora (Parliament) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary or Chairman or member of a Law Commission, Chairman or member of the

Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister or member of a House or a Provincial Assembly. Taking into account the aforesaid definition, what is attention-grabbing with a plain sight is that every civil servant is in the service of Pakistan, but every person in the service of Pakistan is not a civil servant, therefore, the employees of autonomous corporations under the Federal Government/statutory bodies having their own service statutory rules of service cannot be deemed to be civil servants. In addition thereto, we cannot close the eyes to the definition of Civil Servants provided under Section 2 (1) (b) of CSA 1973 according to which "Civil Servant" means a person who is a member of an All Pakistan Service or of a civil service of the Federation or who holds a civil post in connection with the affairs of the Federation including any such post connected with defence, but does not include (i) a person who is on deputation to the Federation from any province or other authority; (ii) a person who is employed on contract or on work charged basis or who is paid from contingencies or (iii) a person who is "worker" or 'workman' as defined in the Factories Act 1934 or the Workman's Compensation Act 1923. Solely on account of or for no other reason than the person is in "Service of Pakistan", cannot be classified or recognised as a Civil Servant.

8. The WAPDA was constituted under the Water and Power Development Authority Act, 1958 (**Act of 1958**) to provide for the unified and co-ordinated development of the water and power resources of Pakistan. Section 17 is in fact germane to the "Employment of officers and servants" and its sub-section (1-B) provides that service under the Authority is hereby declared to be service of Pakistan and every person holding a post under the Authority, not being a person who is on deputation to the Authority from any Province, shall be deemed to be a civil servant for the purposes of the Service Tribunals

Act, 1973. Pursuant to the powers conferred under Section 18 of the Act of 1958, the Authority has been conferred to prescribe the procedure for appointment, and terms and conditions of service of its officers and servants, and shall be competent to take disciplinary action against its officers and servants, hence several rules in vogue including “The Pakistan Wapda Employees (Efficiency and Discipline) Rules, 1978” and “The Pakistan Wapda Employees (Conduct) Rules, 1978”.

9. The corporate veil of incorporation of NTDC deciphers it as a corporate entity status which was registered as an independent public limited company under the erstwhile Companies Act 1984. The reliance placed on Section 17 (1-B) of the Act of 1958 which in our considered view does not extend to the corporatized successor or corporate entities like NTDC. In order to extend the benefit of TSU, the learned Tribunal in the beginning relied on the benchmarks disseminated by means of Notification dated 12.08.2004 whereby WAPDA decided to allow TSU to its Engineers and other Officers of Grade 17 and Grade 18 on fulfilling certain qualifications with immediate effect. The eligibility conditions for achieving TSU were as under:

“a. Upgradation from BPS 17 to 18

The Authority, in its meeting dated 12 11.2001 decided to fix a quota of 10% of total posts of Junior Engineers of Power Wing for upgradation BPS 18. This incentive shall now be extended to 10% of all the BPS 17 employees of all the cadres throughout WAPDA, on fulfilment of the following eligibility conditions.

- (1) Seniority Cum fitness.
- (2) Length of service 18 years or more.
- (3) Horner Management Course.
- (4) Passing Departmental Promotion Examination.
- (5) Such incumbents will draw pay and allowances and other benefits of the higher pay scale (viz. BPS 18) and will continue to exercise administrative and financial powers of BPS 17 till their promotion posting against the post of BPS 18.

b. Upgradation from BPS 18 to 19

5% of BPS 18 officers of all the cadres throughout WAPDA shall be upgraded to BPS 19 on fulfilment of the following conditions:-

- (1) Seniority cum fitness.
- (2) Length of service should be minimum 25 years including 10 years' service in Grade 18. Length of service shall be minimum 14 years in case of direct inductees in Grade 13.
- (3) Mobile Management Course.
- (4) Passing Departmental Promotion Examination.
- (5) Such incumbents will draw pay and allowances and other benefits of the higher pay scale (viz. BPS 19) and will continue to exercise administrative and financial powers of BPS 18 till their promotion posting against the post of BPS 19".

10. A further Notification dated 10.09.2004 has also been reproduced by the learned Tribunal whereby WAPDA Administration clarified that TSU is not a promotion to the higher rank. The regular Promotion of officers is to be made subsequently through normal Selection Boards on availability of clear vacancies and having given weightage to latest performance and ACR. The learned Tribunal next relied on the Notification dated 02.5.2006 issued by NTDC with regard to the allowance of TSU to non-graduate engineer from BPS-17 to BPS-18, wherein while referring to the O.M instructions contained in No.D/DD (Rules) 07451/(15)IV/12229-13529 dated 28.02.2006, it was observed that in both Power & Water Wings there are Junior Engineers who are not graduate engineers and due to this reason, they are not promoted in BPS-18/given time scale upgradation. They are not allowed to appear in DPE and nominated for trainings. It was further opined when ex-cadre officers have been given the benefit of TSU from BPS-17 to BPS-18 and BPS-18 to BPS-19, therefore, the non-graduate Junior Engineers (in BPS-17) may also be given this benefit but instructions issued by Rules Directorate are silent. Finally, clarification in this regard was sought for

the reasons that non-graduate Junior Engineers of NTDC were demanding grant of TSU in BPS-18.

11. On the basis of cumulative effect of aforesaid notifications the learned Tribunal held that both the respondents/appellants are entitled for TSU of BPS-18 but they have been denied this benefit on the ground that they have been retired on attaining the age of superannuation on 27.10.2006 and 01.12.2007 respectively, whereas notification of TSU was issued in the year 2004 and since all the employees of WAPDA of all cadres were granted TSU since August 2004, therefore, the respondents/appellants were meted out with discriminatory treatment. It was further held by the learned Tribunal on the question of maintainability that the learned counsel for the NTDC was directed to produce the service Rules of NTDC but he could not produce on the ground that the NTDC has not framed the service Rules and also submitted that service Rules of WAPDA Rules, 1958 are applicable.

12. It is clear that the learned Tribunal did not rely solely on WAPDA notification but also took the aid from NTDC notification which unequivocally demonstrates that both organizations are distinct so they had issued their separate notifications. If both the organizations are considered one and the same and the TSU was to be granted only on the basis of WAPDA notification then there was no question to issue and ask clarification by the NTDC according to their own corporate structure for allowing TSU to their employees. It is gathered from the backdrop that the decisions for the promotion and career progression frameworks of NTDC employees including the other terms and conditions of service are within the absolute domain of Board of Directors (BOD) of the Company. It is nowhere pleaded that still the WAPDA is running the affairs of NTDC despite unbundling into distinct corporate entity under the Companies Act. Neither anything is on record that when the respondents accepted or opted their engagement

from WAPDA to NTDC, they showed any demur or asked for any indemnity that their terms and conditions of service will be governed under the CSA 1973 without any change to their status as civil servant. Since the business affairs of NTDC are governed and regulated by its Board of Directors as a corporate entity, hence, mere use of WAPDA Efficiency and Discipline Rules, 1978 as an administrative and secretarial adoption for internal misconduct neither changes its corporate status nor bestow any right to the employees to invoke the jurisdiction of FST for redress of grievances unless it is fixed in the definition of civil servant as envisaged under the CSA 1973.

13. The jurisdictional landscape of the Federal Service Tribunal (FST) was shifted significantly with the insertion of Section 2A into the Service Tribunals Act, 1973 (STA) on June 10, 1997, whereby the service under any authority, corporation, body or organization established by or under a Federal law or which is owned or controlled by the Federal Government or in which the Federal Government has a controlling share or interest, was declared to be service of Pakistan and every person holding a post under such authority, corporation, body or organization was deemed to be a civil servant. However, this amendment was challenged and this Court in the case of Muhammad Mubeen us-Salam and others v. Federation of Pakistan (**PLD 2006 SC 602**), declared Section 2A of the STA ultra vires of Articles 240 and 260 of the Constitution to the extent of the category of employees whose terms and conditions of service have not been determined by the Federal Legislature, and by a deeming clause they could not be treated as civil servants, as defined under Section 2(1)(b) of the Civil Servants Act, 1973 ("CSA"), or not be engaged in the affairs of the Federation. It was further held that the employees under Section 2A, STA 1973, who do not fall within the definition of civil servants as defined in Section 2(1)(b) of the CSA 1973, shall have no remedy before the Service Tribunal, functioning under Article

212 of the Constitution and they would be free to avail appropriate remedy and the proceedings instituted either by an employee or by an employer, pending before this Court, against the judgment of the Service Tribunal, not covered were abated, leaving the parties to avail remedy prevailing prior to the promulgation of Section 2A of the STA. If NDTC employees are still considered to be civil servants and subjecting them to the jurisdiction of the Service Tribunal, it would tantamount to effectively revive and resurrecting Section 2A, which this Court has already declared *ultra vires* in the aforesaid dictum.

14. The term 'jurisdiction' in the legal phraseology denotes the dominion accorded to the Courts by the law and the Constitution. To deal with the genera of lawsuits, some of the Courts and Tribunals are invested with exclusive jurisdiction which the other courts cannot undertake under the inflexibility of exclusive jurisdiction doctrine. Though as per plea of the petitioner that NTDC employees cannot invoke the jurisdiction of learned Tribunal being not the civil servants but concomitantly we are also not oblivion that mere taking jurisdictional plea, the management/BOD of the NTDC is not absolved from its own corporate and managerial duties to implement its internal rules/policies/decisions as held by one of us in the case of General Manager, Punjab Provincial Cooperative Bank, Ltd and others v. Ghulam Mustafa and others **(2024 SCMR 1458)**. If other employees at par with the respondents have been granted TSU, then they should not be discriminated and entitled to the equal treatment. Despite non-statutory service rules or even WAPDA rules have been adopted for internal use even though under the essential principle of the "Doctrine of Indoor Management" the management and the Board of Directors, corporate bodies, and/or corporations cannot be absolved from their duty of equal and fair treatment with all employees and they should adhere to implement their own internal service rules or policies across the board without

any favour or discrimination. In the Notification issued by NTDC management on 02.5.2006, it was opined that when ex-cadre officers have been given the benefit of TSU from BPS-17 to BPS-18-and BPS-18 to BPS-19, therefore, the non-graduate Junior Engineers (in BPS-17) may also be given this benefit but instructions issued by Rules Directorate were silent, therefore the administration sought the clarification for the reasons that various non-graduate Junior Engineers of NTDC were demanding grant of TSU in BPS-18.

15. In our view before rejecting the requests of respondents, it should have been considered whether they were entitled to TSU particularly when such notification was issued prior to their superannuation when they were allegedly entitled for such benefit. Mindful to the judgment rendered in the case of General Manager, Punjab Provincial Cooperative Bank (supra), the learned counsel for the petitioner frankly conceded that though there was an issue of jurisdiction of the learned Tribunal in the case of NTDC employees but the management of NTDC shall consider afresh whether the respondents are entitled to TSU notionally in line with directions contained in paragraph No.11 of the impugned judgment and pass an appropriate order and communicate the same to the respondents for further action at their end. In tandem, the learned counsel for the respondents seconded the proposal with the rider that BOD should consider the case afresh and if the similar relief has been given to the other employees and case of respondents found to be at par then the department shall also grant such relief which the learned counsel for the petitioner conceded that if the respondents (retired employees) were found at par, they will be allowed same relief by the management/BOD.

16. In the wake of the above discussion, the Civil Petitions are converted into appeals and allowed. In consequence thereof, the impugned judgment of the learned Tribunal dated

29.02.2024, rendered in Service Appeals No. 245(L) and 246(L) of 2022, is set aside, and the appeals filed by the respondents before the learned Tribunal are dismissed. However, the NTDC management/BOD shall consider the requests of both respondents fairly and with an independent application of mind, while remaining mindful of the aforesaid notifications issued prior to the date of retirement. If any other employee on par with the respondents has been granted TSU, the same benefit should also be granted to the respondents irrespective of their retirement, and the arrears of TSU shall be worked out and paid accordingly. The management/BOD shall pass a speaking order within a period of two months from the date of receiving a copy of this judgment, and the order shall be communicated to the respondents. C.M.A. NOS.4586 & 4587/2024 (Stay Applications) are also disposed of accordingly.

Judge

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

Judge

Judge