

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)



PRESENT:

Mrs. Justice Ayesha A. Malik
Mr. Justice Shahid Waheed

CPLA Nos.8 AND 371 OF 2023

[Against judgment dated 17.10.2022 passed by the Federal Service Tribunal, Islamabad in Appeal No.10(Q)/CS/2018]

The Controller General of Accounts,
Islamabad and another (in CPLA.8/2023)

The Federal Public Service Commission
through its Chairman (in CPLA.371/2023) ...Petitioner(s)

Versus

Tariq Khan and others (in both cases) ...Respondent(s)

For the Petitioner(s) : Raja Muhammad Shafqat Abbasi,
Deputy Attorney General for Pakistan
Haroon-ur-Rasheed, Assistant Director, FPSC
Mirza Noman Khursheed, Accounts Officer,
CGA

Respondent No.1 : In person (via video link, Quetta)

Date of Hearing : 24.09.2026

JUDGMENT

Ayesha A. Malik, J. The Petitioners, the Controller General of Accounts, Islamabad (**CGA**), the Accountant General Balochistan, Quetta, and the Federal Public Service Commission, Islamabad (**FPSC**) have impugned judgment dated 17.10.2022 passed by the Federal Service Tribunal, Islamabad (**Tribunal**) whereby the amendment to the Recruitment Rules, effected through CGA Notification dated 15.07.2014 (**Recruitment Rules, 2014**), was set aside. The Petitioners are aggrieved by the impugned judgment on the ground that the Tribunal could not have struck down the Recruitment Rules, 2014.

2. The Deputy Attorney General for Pakistan (**DAG**) argued that the Tribunal ought to have exercised restraint in assuming jurisdiction, as the Recruitment Rules, 2014 concerned a policy matter falling exclusively within the domain of the Executive and did not relate to the terms and conditions of service of Respondent No.1 (**Respondent**). On this basis, it was submitted that the Tribunal was not justified in setting aside the

Recruitment Rules, 2014. It was also pointed out that the Respondent was promoted from the post of Junior Auditor (BS-11) to Senior Auditor (BS-16) on 01.01.2021, well before the pronouncement of the impugned judgment in 2022, rendering the relief sought before the Tribunal infructuous. Hence, there was no justification in setting aside the Recruitment Rules, 2014. From the record, it transpires that the Respondent acknowledges his promotion through CMA No. 14384 of 2025, as well as his consequent eligibility to appear in the Pakistan Institute of Public Finance Accountants examination (**PIPFA**). As per the CMA, he now seeks setting aside of the impugned judgment. Accordingly, the Petitioners and the Respondent are both aggrieved by the decision of the Tribunal.

3. The basic facts in this case are that the Respondent filed a departmental appeal on 22.09.2017 seeking amendment of the Recruitment Rules, 2014 by way of insertion of a provision enabling promotion from Junior Auditor (BS-11) to Assistant Accounts Officer (BS-17) upon passing the PIPFA examination. This representation was dismissed on 02.03.2018. Thereafter, the Respondent filed his appeal before the Tribunal seeking the same prayer. The Tribunal considered the case of the Respondent and concluded that the Recruitment Rules, 2014, notified on 15.07.2014, had not been approved by the Establishment Division and, consequently, had not been validly approved and notified. As a result, the Tribunal struck down the Recruitment Rules, 2014 in their entirety and directed compliance with the procedure prescribed under the the Rules of Business, 1973 (**RoB**). It was further directed that the Recruitment Rules, 2014 be redrafted so as to eliminate any discriminatory provisions and ensure their harmonization with the various Office Memorandums issued by the Finance Division and the Establishment Division from time to time.

4. Accordingly, the basic issue before us is **(i)** whether the appeal before the Tribunal was maintainable, that is, whether the Tribunal had jurisdiction, in the first instance, to entertain the Respondent's appeal; and **(ii)** whether the Tribunal exceeded its jurisdiction in setting aside the Recruitment Rules, 2014 and by directing to redraft the Recruitment Rules, 2014 with certain conditions. In this context, we have examined the appeal filed by the Respondent before the Tribunal in 2018. The Respondent's case before the Tribunal was that he is a Junior Auditor (BS-11) and that he is particularly aggrieved by the modifications introduced

by the Recruitment Rules, 2014 which restrict the eligibility of Junior Auditor (BS-11) for the post of Assistant Accounts Officer (BS-17) after taking the PIPFA examination. He based his claim on the ground of discrimination given that other Ministries allowed a promotional jump from BS-11 to BS-17 through a promotional examination. He also urged the point that the Recruitment Rules, 2014 were not notified as per the prescribed procedure as the Establishment Division did not give its approval. We note that the Recruitment Rules, 2014, provided for a promotional route from Junior Auditor (BS-11) to Senior Auditor (BS-16), subject to the prescribed qualifications and experience. The Respondent's grievance, however, was that the Recruitment Rules, 2014 did not provide a promotional jump from Junior Auditor (BS-11) to Assistant Accounts Officer (BS-17) upon passing the PIPFA examination.

5. Effectively, the Respondent's grievance was not that the Recruitment Rules, 2014 deprived him of a promotional avenue altogether, but they altered the promotional structure to his disadvantage in two material aspects. First, the Respondent sought eligibility for Junior Auditor (BS-11) to be promoted to Assistant Accounts Officer (BS-17) upon qualifying the PIPFA examination, as was approved by the Establishment Division vide Office Memorandum dated 21.11.2013¹ (**2013 Draft Rules**). This promotional jump for Junior Auditors was deleted in the Recruitment Rules, 2014. Secondly, the promotion quota for the post of Senior Auditor (BS-16) was reduced to 10% under the Recruitment Rules, 2014 as opposed to 25% in the Recruitment Rules, 2012 and 33% in the 2013 Draft Rules. Thus, the Respondent's challenge to the Recruitment Rules, 2014 essentially rested on two grounds: **(i)** the reduction of the promotion quota for Senior Auditor (BS-16) to 10%; and **(ii)** the exclusion of Junior Auditor (BS-11) from eligibility for promotion to Assistant Accounts Officer (BS-17) upon qualifying the PIPFA examination.

6. In order to appreciate the contentions advanced by the Respondent before the Tribunal, it is necessary to examine the Recruitment Rules. The Recruitment Rules, 2008 provided that both Junior Auditor (BS-7) and Senior Auditor (BS-14) were eligible for promotion to the post of Assistant Audit Officer (BS-16). The posts were upgraded and subsequently the Recruitment Rules, 2012, introduced a significant change in the promotional structure by providing for the

¹ Establishment Division OM No 10/2/89-R-5, dated 21.11.2013.

promotion of Junior Auditors (BS-11) to Senior Auditors (BS-16), while making only Senior Auditors eligible for promotion to Assistant Audit Officer (BS-17). The Recruitment Rules, 2014 retained this eligibility framework reflected in the Recruitment Rules, 2012, but altered the prescribed promotional quota for appointment to the respective posts. For ease of reference, the comparison of the Recruitment Rules, 2012 and the Recruitment Rules, 2014 is as under:

Recruitment Rules of 2012

CONDITIONS FOR PROMOTION

S. No.	Designation and BPS of the post	Persons eligible	Conditions of eligibility
(1)	(2)	(3)	(4)
1.	Audit Officer (BS-18)	Assistant Audit Officer (BS-17)	05 years service as Assistant Audit Officer (BS-17).
2.	Assistant Audit Officer (BS-17)	Senior Auditor (BS-16)	03 years service as Senior Auditor (BS-16) with qualification of SAS/PIPFA (Public Sector) Exam. (Senior Auditors on date of DPC would be considered for promotion on Seniority-Cum-Fitness basis subject to observance of ratio of 1:2 between unqualified and SAS/PIPFA (Public Sector) qualified Senior Auditors respectively).
3.	Senior Auditor (BS-16)	Junior Auditor (BS-11)	10% Graduate in Commerce with three year's service as Junior Auditor. 15% Graduate with five year's service as Junior Auditor.

METHOD OF APPOINTMENT

S. No.	Name and BPS of the Post	Method of Appointment	
		By Promotion	By initial appointment
(1)	(2)	(3)	(4)
1.	Audit Officer (BS-18)	75%	25%
2.	Assistant Audit Officer (BS-17)	67%	33%
3.	Senior Auditor (BS-16)	25%	75%

(Emphasis added)

Recruitment Rules of 2014

CONDITIONS FOR PROMOTION

S. No.	Designation and BPS of the post	Persons eligible	Conditions of eligibility
(1)	(2)	(3)	(4)
1.	Accounts Officer (BS-18)	Assistant Accounts Officer (BS-17)	05 years service as Assistant Accounts Officer (BS-17).
2.	Assistant Accounts Officer (BS-17)	Senior Auditor (BS-16)	03 years service as Senior Auditor (BS-16) with qualification of APE/SAS/PIPFA (Public Sector) Exam. (Senior Auditors on the date of DPC would be considered for promotion on seniority-cum-fitness basis subject to observance of ratio of 1:2 between unqualified and APE/SAS/PIPFA Public Sector Qualified Senior Auditors respectively.)
3.	Senior Auditor (BS-16)	Junior Auditor (BS-11)	(i) 5% Graduate in Commerce with three year's service as Junior Auditor (BS-11).

			(ii) 5% Graduate with five year's service as Junior Auditor (BS-11).
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METHOD OF APPOINTMENT

S. No.	Name and BPS of the Post	Method of Appointment	
		By Promotion	By initial appointment
(1)	(2)	(3)	(4)
1.	Accounts Officer (BS-18)	75%	25%
2.	Assistant Accounts Officer (BS-17)	100%	---
3.	Senior Auditor (BS-16)	10%	90%

(Emphasis added)

7. The first question is whether the appeal filed by the Respondent, seeking amendment of the Recruitment Rules, 2014 so as to make Junior Auditor (BS-11) eligible for promotion to the post of Assistant Accounts Officer (BS-17), was maintainable since the relief sought by the Respondent, in substance, called into question the *vires* of the Recruitment Rules, 2014. This Court has settled the law on this issue starting from the *Iqan Ahmad Khurram Case*², when a three-member bench of this Court held that the service tribunal had jurisdiction to examine the *vires* of the rules challenged before it, if the rules had the effect of altering the terms and conditions of service of a civil servant. The jurisdiction to examine the *vires* of a statutory rule is therefore incidental to the Tribunal's jurisdiction over service matters and does not operate independent of it. The principle was further elaborated by a five-member bench of this Court in *I.A. Sharwani Case*³, wherein it was held that where a statutory rule or notification adversely affects the terms and conditions of service of a civil servant, it assumes the character of an order for the purposes of Section 4(1) of the Service Tribunals Act, 1973 (**STA**) and may accordingly be challenged before the Service Tribunal. The fact that the challenge to such an order involves the *vires* of the underlying rule or notification does not take the matter outside the Tribunal's jurisdiction. The same principle has subsequently been applied and reaffirmed by this Court in the Cases of *Abid Mahmood*,⁴ *Khalid Mahmood Wattoo*,⁵ and *Muhammad Zafar Bhatti*.⁶ In *Abid Mahmood Case*, this Court reaffirmed that where a service rule governs matters such as eligibility and has a bearing on the terms and conditions of service, its *vires* may be examined by the Service Tribunal. *Khalid Mahmood Wattoo Case* went further and explained that the jurisdiction to examine such a challenge lies exclusively with the Service Tribunal, and cannot be avoided merely by characterizing

² *Iqan Ahmad Khurram v. Government of Pakistan* (PLD 1980 SC 153) (**Iqan Ahmad Khurram**).
³ *I.A. Sharwani v. Government of Pakistan* (1991 SCMR 1041) (**I.A. Sharwani**).
⁴ *Abid Mahmood v. Government of Pakistan* (1996 PLC (C.S.) 1061) (**Abid Mahmood**).
⁵ *Khalid Mahmood Wattoo v. Government of Punjab* (1998 SCMR 2280) (**Khalid Mahmood Wattoo**).
⁶ *Government of the Punjab v. Muhammad Zafar Bhatti* (2004 PLC (C.S.) 881) (**Muhammad Zafar Bhatti**).

the impugned rule or departmental action as *ultra vires*, *void*, *mala fide* or *coram non judice*. *Muhammad Zafar Bhatti Case* extended the principle to amend service rules affecting promotion prospects, holding that a challenge to the validity of such rules falls within the exclusive jurisdiction of the Service Tribunal. The most recent pronouncement in *Muhammad Hassanullah*⁷ brought these precedents together by identifying the precise jurisdictional question: whether the impugned rule or notification relates to the terms and conditions of service and operates adversely upon the civil servant. As per the judgment of this Court where that is the case, the provision assumes the character of a final order for purposes of the Tribunal's jurisdiction. Therefore, the mere fact that the grievance is framed as a challenge to the *vires* of a rule is not determinative; it is the subject and effect matter of the impugned provision that determines whether the matter falls within the Tribunal's jurisdiction. Accordingly, when exercising its jurisdiction, the Tribunal must ensure that rule under challenge does not take away or defeat any right conferred or protected by the Civil Servants Act, 1973 (**CSA 1973**).

8. Article 212(1)(a) of the Constitution of the Islamic Republic of Pakistan, 1973 (**Constitution**) extends that jurisdiction to matters relating to the terms and conditions of persons in the service of Pakistan, while Section 4(1) of the STA permits an appeal against a final order concerning the terms or conditions of a civil servant's service. The jurisdiction of the Service Tribunal to examine the *vires* of a statutory rule must, therefore, be understood within these jurisdictional limits, and its consequences. In our view, the exercise of this jurisdiction requires that the impugned rule both concern the terms and conditions of service falling within the Tribunal's jurisdiction and must operate adversely upon the claimant. In the *Farkhanda Talat Case*⁸ this Court held that, in the context of Section 3(2) of the STA, the protection afforded to the terms and conditions of service extends to the various incidents of a civil servant's employment, including matters relating to tenure, pay and grade, promotion and retirement benefits, as well as other conditions prescribed by the applicable service laws, rules and regulations. The impugned rule must, therefore, bear upon a matter falling within this sphere, such that it must have an adverse legal effect upon the civil servant's terms and conditions of service. Such adverse effect may arise where the rule violates the

⁷ Muhammad Hassanullah (Omg/B-18) v. Chief Secretary, Government of Balochistan (2025 SCMR 134) (**Muhammad Hassanullah**).

⁸ Farkhanda Talat v. Federation of Pakistan (2007 SCMR 886) (**Farkhanda Talat**).

fundamental rights guaranteed under the Constitution,⁹ is repugnant to or travels beyond the parent statute under which it is framed,¹⁰ operates retrospectively to the detriment of conditions of service enjoyed over years¹¹ or is discriminatory or arbitrary and is tainted by *mala fide*.¹² Only where both these elements are present does the question of *vires* fall within the Tribunal's jurisdiction. The Service Tribunal must, therefore, as a first and foremost step identify the legal limitations that the rule has transgressed in relation to the terms and conditions of service before proceeding to strike them down. This Court has also held that within this ambit, the Service Tribunal exercises exclusive jurisdiction under Article 212, which, by virtue of Article 212(2), ousts the jurisdiction of the High Court under Article 199 and that of other civil courts in matters falling within the Tribunal's jurisdiction.¹³ In this context, it is the exclusive forum for examining the constitutional and statutory *vires* of service rules and notifications.¹⁴

9. Applying these principles to the present case, the Respondent was aggrieved by the Recruitment Rules, 2014 primarily because they deleted the promotional jump from BS-11 to BS-17 on passing the PIPFA examination, as provided under the Recruitment Rules, 2008 and 2013 Draft Rules. The Tribunal, however, failed to consider that the Recruitment Rules, 2012 had already discontinued the promotional jump from BS-11 to BS-17, while retaining the promotional avenue from BS-11 to BS-16. The Respondent never challenged the Recruitment Rules, 2012, which essentially introduced the change. He challenged the Recruitment Rules, 2014, which merely retained the same avenue of promotion from BS-11 to BS-16 as provided in the earlier Recruitment Rules, 2012. The Tribunal ought to have taken note of this essential fact. It further bears emphasis that the Respondent admittedly availed the promotional avenue provided under the Recruitment Rules, 2014 when he was promoted from BS-11 to BS-16 on 01.01.2021. Having obtained this promotion under the same Recruitment Rules, 2014 he challenged, he failed to establish how the absence of a further promotional jump to BS-17 rendered the Recruitment Rules, 2014 unlawful. Hence, we find that as such the Respondent failed

⁹ *supra* note 7; *supra* note 3.

¹⁰ Zaffar Iqbal Khan, ECG Technician v. Azad Government of the State of Jammu and Kashmir (2019 PLC (C.S.) 995).

¹¹ Federation of Pakistan v. Muhammad Rafique (1996 PLC (C.S.) 204).

¹² Secretary, Ministry of Health v. Dr. Rehana Hameed (2010 PLC (C.S.) 1075 SC).

¹³ Chief Secretary, Government of Punjab v. Shamim Usman (2021 SCMR 1390); *supra* note 5; Superintendent of Police v. Muhammad Latif (PLD 1988 SC 387); *supra* note 7; *supra* note 6.

¹⁴ *supra* note 7; *supra* note 5; Noor Badshah Khattak v. Government of N.W.F.P. (2004 PLC (C.S.) 1084); Ahmad Ullah v. District Education Officer (Male) (2024 SCMR 2004);

to establish any adverse impact on his terms and conditions of service, whether by way of violation of any fundamental right, vested right, *mala fide*, arbitrariness or discrimination. His other grievance, concerning the promotional quota for Senior Auditor (BS-16), was also subsequently addressed through the amendment introduced by Notification dated 29.05.2019,¹⁵ which increased the promotion quota from 10% to 50%. In these circumstances, even this challenge did not warrant interference and the exercise of jurisdiction to examine the *vires* of the impugned Recruitment Rules, 2014. We find that the Tribunal should have been mindful of its jurisdictional limitations while examining the *vires* of the Recruitment Rules, 2014 and should have been aware that the Government retains the authority to revise service structures and recruitment rules in accordance with administrative needs, that promotion is not itself a vested right¹⁶ and a policy decision restricting promotional opportunities for a particular category of employees is not, by itself, *ultra vires*.¹⁷ The Tribunal could, therefore, neither strike down the Recruitment Rules, 2014 nor direct the Government to frame rules according to a particular promotional avenue, qualification or eligibility criterion, or substitute its own view for that of the Executive.

10. The Tribunal also concluded that the Recruitment Rules, 2014 had been notified without the requisite approval of the Establishment Division under the RoB. Although the Establishment Division had approved the initial draft on 21.11.2013, the CGA and the FPSC subsequently agreed upon amendments, following which the final Recruitment Rules, 2014 were notified on 15.07.2014 without being resubmitted for approval to the Establishment Division. While we find that the Tribunal was correct in identifying this procedural omission, however, before striking down the Recruitment Rules, 2014, it ought to have considered the subsequent approval by the Establishment Division of amendments made in 2017,¹⁸ 2019,¹⁹ and 2021²⁰, each proceeding on the basis of the Recruitment Rules, 2014. These subsequent approvals, together with the continued operation of the Recruitment Rules, 2014 and the Respondent's subsequent promotion, were relevant considerations in determining whether the Recruitment Rules, 2014 should be invalidated

¹⁵ SRO 754(I)/2019, dated 29.05.2019.

¹⁶ Falak Sher Khan v. Mukhtar Ahmad (PLD 1989 SC 262).

¹⁷ Federal Public Service Commission v. Shiraz Manzoor (2023 SCMR 2087).

¹⁸ SRO 277(I)/2017, dated 14th April, 2017.

¹⁹ SRO 754(I)/2019, dated 29th May, 2019.

²⁰ SRO 690(I)/2020, dated 27th May, 2021.

and whether in fact there was a grievance before the Tribunal. In the particular circumstances of this case, the subsequent approvals and continued operation of the Recruitment Rules, 2014 support preserving them, consistent with the principle that courts should favour sustaining rather than invalidating a legal instrument.²¹ It is, however, clarified that this conclusion rests on the particular facts of this case, namely, the subsequent approval of the Establishment Division on three occasions and the continued operation of the Recruitment Rules, 2014.

11. The exercise of jurisdiction by the Service Tribunal must be understood in the broader context of the administration of service laws and the requirements of good governance. While the Executive bears the primary responsibility for framing and implementing service laws, rules and regulations, the Tribunal performs a complementary function by ensuring that decisions affecting the rights of civil servants conform to the law. Both institutions contribute to effective governance, but within their own respective domain. The Tribunal serves as a check on the exercise of administrative power by ensuring that such power is lawfully exercised within the bounds of law and while doing so it cannot substitute its own judgment for that of the Executive or assume the functions of the competent authority in matters entrusted to them. The effectiveness of service adjudication is in the correction of unlawful administrative actions and not in its substitution.

12. In view of the foregoing, these Civil Petitions are converted into appeals and allowed. The impugned judgment dated 17.10.2022 passed by the Tribunal is set aside and the Recruitment Rules, 2014 are hereby restored.

JUDGE

JUDGE

'APPROVED FOR REPORTING'

*Azmat / Rahima Khurram**

Announced in open Court on _____ at _____

JUDGE

²¹ Saad Ali v. Federation of Pakistan (2026 SCMR 22).

