

IN THE HIGH COURT OF SINDH AT KARACHI

**Suit Nos. 1161/2019 &
Suit No.1271/2019.**

Plaintiffs in both Suits: **Syed Muhammad Iqbal and others
(in Suit No.1161/2019) &
Naseer Ahmed and another
(in Suit No. 1271/2019) Through
Mr. Mujtaba Sohail Raja, Advocate**

**Defendant No.1 in Both
Suits:** **PIACL Through
Mr. Jawad A. Sarwana, Advocate.**

**Defendant No. 2 in both
Suits:** **Society of Aircraft Engineers of
Pakistan, Through
Mr. Mahmud Alam, Advocate.**

**Defendants No. 4 to 16
(In Suit No.1161/2019) &
Defendants No.5 to 7 in
(In Suit No. 1271/2019).** **Through Mr. Ch. Muhammad
Ashraf Khan, Advocate.**

Suit No. 1161/2019.
For hearing of CMA No. 9661/2019.

Suit No. 1271 of 2019.
For hearing of CMA No. 10432/2019.

Dates of Hearing: **19.08.2019, 04.09.2019 & 09.10.2019**

Date of Order: **19.11.2019**

ORDER

Muhammad Junaid Ghaffar J. Both these Suits have been filed by the respective Plaintiffs for Declaration and Injunction and their primary grievance is in respect of the decision taken by the Board (“Board”) dated 20.05.2019, whereby, the private defendants in both the Suits have been selected for foreign postings leaving out the Plaintiffs. It is their case that they are not only senior(s); but otherwise qualified as well; hence they ought to have been given the foreign postings by the Board. By way of temporary injunction, they have prayed to

restrain defendant No.1 from giving effect to the decision of the Board dated 20.05.2019.

2. Learned Counsel for the Plaintiffs has contended that presently the Plaintiffs are working in the capacity of Aircraft Maintenance Engineers with PIA which is recognized as a special cadre of service, being equivalent to Pay Group-VIII of the administrative cadre; that Plaintiff No.1 in Suit No.1161/2019 is presently serving the Line Maintenance Sector of *Aerospace Division*, whereas, Plaintiffs No.2 & 3 are from Base Maintenance Sector of the *Avionics Division*; Similarly, the Plaintiffs in Suit No.1271/2019 are working in the *Avionics Division*; that the defendants are junior(s) in rank as to the service of the Plaintiffs; that presently the relationship in respect of rights and entitlements of the Plaintiffs is governed by a Working Agreement, which is not in dispute and stands recognized; that on 17.05.2019 a list of eligible candidates for the purpose of convening a Board was circulated and Plaintiff No.1 in Suit No.1161/2019 was at Serial No.1 in the Aerospace Division, Plaintiffs No.2 & 3 at Serial Nos.4 & 8 of the Avionics Division, whereas, Plaintiffs No.1 & 2 in Suit No.1271/2019 were placed at Serial No.2 & 3 of the said list; that all Plaintiffs appeared before the Board; but they have been left out as against the private defendants in both the Suits; that the decision of the Board is against the terms so stated in the Working Agreement inasmuch as seniority, which is a vested right has not been maintained; that the private defendants do not possess any better qualifications; that under Article-“VII” of the Working Agreement, the criteria for such purposes has been provided, which must be abided by PIA and Clause 7.7(c) clearly provides that the foreign posting has to be given on seniority cum fitness; that once the Plaintiffs have been shown to be seniors as against the private defendants, then it was only the fitness, which was required to be ascertained, whereas, the Plaintiffs possess all qualifications with regard to the two Aircraft(s) in use by PIA i.e. Airbus A320 and Boeing 777; that the Plaintiffs possess unblemished record of service with more than 30 years of experience; that they have been left out without assigning any reasons; that after decision of the Board, the Plaintiffs made a representation, which still stands undecided and no information has been provided; rather it has been withheld without any justification; that the impugned decision amounts to depriving the Plaintiffs from substantial earnings and allowances, which are given to an employee posted abroad; that ignoring the seniority of the Plaintiffs and non-assigning of reasons, mandates the suspension of the impugned decision till final disposal of the Plaintiffs’ Suits; hence the applications for injunction be allowed as prayed. In support he has relied upon the cases reported as *Shariq-ul-Haq and 5 others v.*

Pakistan International Airlines Corporation Limited and another 2018 PLC (C.S.) 975, Fazali Rehmani v. Chief Minister, N.W.F.P, Peshawar and others PLD 2008 Supreme Court 769, Ahmed Saeed Siddiqui and others v. Pakistan through Secretary Establishment and others 2015 PLC (C.S) 923 and Abid Hassan and others v. P.I.A.C and others 2005 SCMR 25.

3. Learned Counsel for the PIA has contended that it is only a handful of employees, who have come before the Court challenging the decision of Board and around more than 30 Engineers, who were also left out, have accepted the decision; that it is the case of PIA that private defendants are not only seniors to the Plaintiffs but have been found to be fit as against the respective Plaintiffs and when admittedly the criteria for selection is seniority-cum-fitness, then the Plaintiffs have no case to seek an injunction; that the decision of the Board requires a subjective analysis; hence it must be left to the Employer / PIA to decide the same; that though Plaintiff No.1 is the senior most Engineer in the Aerospace Division; however, he is only qualified in respect of Airbus A320; hence he is unfit as against the private defendants, who are though junior, but have experience and expertise in respect of both aircrafts i.e. Airbus A320 and Boeing 777 presently being utilized by PIA; that even otherwise it is the case of PIA that foreign posting is not a promotion; but only a transfer of an employee; hence it does not create any vested right; that even if an employee is senior, it is always the prerogative of the employer to take such decisions; that PIA has to see as to what Engineers are to be posted abroad, and if the decision has been made to curtail expenses, then the same cannot be challenged or agitated; that all private defendants have admittedly license(s) in respect of both the Aircrafts and this gives them an advantage as well as benefit to PIA for foreign posting, so that if any one of the two Aircrafts are sent to a specific station, the Engineers already posted abroad can take care of maintenance issue utilizing their expertise; that when fitness is being ascertained, the leadership qualities are also a material factor and such subjective analysis cannot be done by the Court; that seniority cannot be the only basis for foreign posting; but it has to be supported by the fitness of an Engineer; that even otherwise it requires exercise of discretion by the Employer to arrive at a best possible decision, and therefore, the Court shall not engage itself or takeover the managerial decisions of an employer; that recommendations were given by the Chief Human Resources Officer, Chief Technical Officer and Chief Commercial Officer, and thereafter the private defendants have passed the subjective criteria and were awarded higher points on merits as against the Plaintiffs' in both the Suits; hence no case is made out; that PIA does not deny that the Plaintiffs are also competent and good Engineers but

the difference and spread is very small; that the decision was admittedly taken on 20.05.2019, whereafter the Transfer Letters have also been issued, whereas, the Plaintiffs came before the Court on 16.07.2019 in Suit No.1161/2019 and on 09.08.2019 in Suit No.1271/2019; hence no case for an injunctive relief is made out; that it is settled law that by way of an injunction, no new situation could be created; that the prayer of the Plaintiffs in the injunction application amounts to asking for the final relief, which can only be granted in very exceptional circumstances, which are lacking in the present Suits; that insofar as non-assigning of reasons and communication is concerned, it is the policy of PIA to maintain confidentiality in such matters, and therefore, the Plaintiffs were not provided with any reasons for leaving them out; however, for the convenience and assistance of this Court, the relevant material is being placed in a sealed Envelope, but only for examination by the Court; that the Plaintiffs have quantified damages, and therefore compensation in terms of money is an adequate remedy for the present purposes; that no prima facie case is made out nor balance of convenience lies in their favour, therefore, the listed applications be dismissed. In support he has relied upon the cases reported as *Islamic Republic of Pakistan through Secretary Establishment Division, Islamabad and others v. Muhammad Zaman Khan and others* 1997 SCMR 1508, *Khalil Mughal through Attorney v. Pakistan International Airline Corporation through Company Secretary* 2018 PLC (C.S.) Note 34, *Tariq Mehmood Malik v. Chief Executive Officer and others* 2018 PLC (C.S.) 664 and *Haider Ali Baig v. First Micro Finance Bank Ltd. through President/Chief Executive Officer, Islamabad and 3 others* 2015 PLC (C.S) 1412.

4. Learned Counsel for Defendant No.2 while supporting the stance of PIA has submitted that the foreign posting is a prerogative of the Employer and the decision already taken should not be disturbed; however, this Court can direct PIA to hear and decide the Plaintiffs representations by assigning reasons in writing so that the norms of justice are followed, whereas, aggrieved Plaintiffs can then seek appropriate remedy in accordance with law.

5. Learned Counsel for the private defendants has contended that the present Suits are only to the extent of the Plaintiffs before the Court and is not a Suit in the representative capacity as majority of Engineers, who were left out have not come before the Court and have accepted the decision; that as per the Working Agreement, all Engineers get a chance in their service to be posted abroad; that seniority alone is not a criteria or a priority for a foreign posting; but has to be seen alongwith fitness, which can only be adjudged by the Employer as it requires

the assessment in respect of behavior, attitude and reputation within the organization; that when it is a matter of foreign posting, these qualities matter more as against other considerations; that though there may not be any allegations of misconduct against the Plaintiffs; but if it is a case of conduct being not appreciable, then it disqualifies an employee; that admittedly the foreign posting is neither a promotion nor is a case of any vested right, whereas, it is a subjective assessment and cannot be adjudged at this stage of the case; that as per the Agreement every Engineer gets a chance once in his entire service to be posted abroad, and therefore, the Plaintiffs can always be considered in the next foreign posting; hence, no case is made out. In support he has relied upon the cases reported as *Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui and 4 others* **1991 SCMR 1129** and *Zahra Haider v. Federal Board of Revenue and others* **2014 PLC (C.S) 773**.

6. While exercising his right of Rebuttal, learned Counsel for the Plaintiffs has contended that this is not a case of any ordinary posting or a transfer; rather, attached with it are substantial additional benefits and perquisites, and therefore, it has to be examined in this perspective; that the Plaintiffs have spent more than 30 years with PIA, and therefore, they ought to have been given preference; that the objection regarding having license of only one Aircraft is misconceived inasmuch as there are various stations abroad, wherein, only one of two available Aircraft(s) is being utilized by PIA and for that the Plaintiffs are qualified; hence this argument is not maintainable; that various stations abroad are not even equipped to handle both these Aircrafts; that even the recommendations of the immediate superior officers of the Plaintiffs have been ignored and not considered by the Board, and therefore, the Plaintiffs are entitled for indulgence from this Court.

7. I have heard all learned Counsel and perused the record. Precise facts have been stated hereinabove and it is not in dispute that Plaintiffs in both these Suits were considered for foreign posting by the Board as being eligible; however, the grievance of the Plaintiffs is that, though they are senior in the seniority list of PIA, but have been denied such foreign posting and on this basis the Plaintiffs have impugned the decision of the Board. At the very outset and without any disrespect to the Plaintiffs' Counsel as well as the Plaintiffs, I am of the view that both these Suits ought not to have been filed jointly by several Plaintiffs as apparently they are categorized or placed in separate Division(s) i.e. *Avionics* and *Aerospace*, having separate seniority. For example in Suit No. 1161/2019, the Plaintiff No.1 is in Aerospace Division, whereas, Plaintiffs No.2 & 3 are in Avionics Division. In such a situation, ordinarily, if the Court is required to

examine the issue of seniority, then it is not possible to do so; however, since in this matter, the ultimate conclusion being drawn by me is not entirely dependent on this issue of *inter-se seniority*, nor on eligibility for consideration, therefore, such jumbling of facts can be ignored, as it will not have much effect on the final outcome of the listed applications. Coming to the issue in hand, on merits it appears that the issue in hand is governed by a Working Agreement, and in that Agreement foreign posting is dealt with in Article-VII of the said Agreement which has been entered into between PIA and Society of Aircraft Engineers of Pakistan i.e. Defendant No.2. The relevant clause(s) is contained in 7.6 & 7.7, which reads as under:-

“Foreign Posting / Secondment / Deputation / Resident Engineer:-

- 7.6 Members shall be considered for foreign posting who have not been previously posted abroad either on secondment or Corporation duty. They shall be considered again if all the eligible members have completed one term of posting.
- a) One term of foreign posting shall be of 3 years (36 months) duration which shall normally not be extended / reduced. Term of posting will be considered from the date he joins his station of posting. The Board will be held in JANUARY and Review Board in JULY each year.
 - b) Nomination for posting will be finalized three months prior to proceeding on foreign station posting.
 - c) Every effort shall be made, to replace a member at foreign station in time. Member completing 3 years posting shall be called back to base and temporary arrangement shall be made if required.
 - d) The nomination will be processed six months prior to due posting and any change in qualification will not be affect the nominee. The nominations for posting when finalized will be freezed and cannot be changed even after acquiring suitable qualification/s by other member.
- 7.7 Members shall be considered suitable for international posting as per following order of preference:
- a) Posting / secondment less than six months shall not be considered as foreign posting.
 - b) Member in accordance with requirements of station who has done foreign posting / secondment six months or more and falls in “Seniority cum fitness” for remaining period.
 - c) Members holding Full Set qualification in accordance with requirements of station and never done foreign posting /secondment shall be considered on “Seniority cum Fitness basis”.
 - d) After all the eligible members have done their foreign posting, cycle to be repeated as per same order of preference.”

8. Perusal of the aforesaid clause(s) reflect that firstly, only those employees would be considered for foreign posting, who have not been previously posted abroad, whereas, it also provides that the duration will be of three years, which shall normally not be extended or reduced. Clause 7.7(c) provides that members holding full set qualifications *in accordance with the requirement of station* and persons who have never done foreign posting shall be considered on seniority-cum-fitness basis. To this extent there appears to be no dispute that all eligible candidates including the Plaintiffs were called and considered, and thereafter the decision has been arrived at by the Board, whereby, the private defendants have been posted abroad leaving out the Plaintiffs. Though much stress has been laid by the learned Counsel for the Plaintiffs that since the foreign posting results in various monetary benefits, it is a kind of promotion and therefore, the question of seniority could not be ignored. On the other hand, PIA's argument is that it is merely a transfer, though abroad; however, it is not a promotion *per-se*, and mere payment of incentives for being posted abroad would not *ipso facto* make it a promotion. I am in the agreement with the arguments of PIA's Counsel that for the present purposes foreign posting is not a promotion. It is only a transfer which includes certain incentives for being posted abroad; but in any case, it cannot be termed or equated with promotion. It further appears that to ensure transparency and for protection of the rights of the employees, PIA and Defendant No.2 have already agreed that since such a posting is not an ordinary posting or transfer, therefore, certain parameters are to be followed and fulfilled before an employee can be posted abroad. And for that certain conditions have been set out in the Working Agreement, which, besides others, also provides that such postings would only be made on *seniority-cum-fitness* and not alone on seniority basis.

9. When the Plaintiffs' case is examined in the light of the above facts, it needs to be appreciated that a mere claim of being a senior would not suffice and an employee claiming a foreign posting will have to pass and clear the criteria of being fit or otherwise. Now the first and foremost obstacle in the Plaintiffs' case appears to be that in Suit No. 1161/2019, Plaintiff No.1 is only qualified as an Engineer for Airbus A320, whereas, Plaintiff No.2 is qualified for Boeing 777 only. In that context, they will automatically be disqualified when their fitness is being considered as against the private defendants, who are qualified for both categories of the Aircrafts. In clause 7.7(b) it has been provided that *members holding Full Set qualification in accordance with requirements of station* are eligible for being considered. Now it is not only the first part that full set qualification is required, but so also the requirement of the station for which the

posting is being considered, is equally important and has to be considered. Insofar as, Plaintiff No.3 in this Suit is concerned, he appears to be qualified for both the Aircrafts; however, it is the case of PIA that he is junior to at least three of the defendants i.e. Defendants No.11, 14 & 15, and therefore, he failed to pass the fitness criteria, which includes the total points awarded to him and considered by the Board.

10. During the course of hearing when the Counsel for PIA was confronted as to the decision of the Board, the Counsel informed that such decision is always kept confidential as it carries serious observations, which could go for and against its employees; hence cannot be made public; however, for assistance of the Court he has placed on record a *sealed envelope* containing all such details and has left it to the Court to go through the same, if need be arises. But after going through the material already available on record, I am of the view that for deciding these injunction applications, I need not go through the confidential material placed before me in a sealed envelope and the same must be returned to PIA in the same condition. Court Associate of this Court is directed to act accordingly.

11. Insofar as, the Plaintiffs in Suit No. 1271/2019 are concerned, the Plaintiff No.1 is only qualified for Airbus A320, whereas, Plaintiff No.2 is only qualified for Boeing 777, and therefore, they do not pass the criteria of being fit for such posting.

12. Learned Counsel for the Plaintiffs in response to such disqualification of having only one license made a submission that insofar as the foreign stations are concerned, there are numerous stations, wherein, only one Aircraft is landing, and therefore, the Plaintiffs in their independent capacity, either for Airbus A320 or Boeing 777 are equally qualified. According to him when both these Aircrafts are not being simultaneously utilized by PIA on such stations, therefore, this condition would not apply. However, I am not inclined to accept such line of contention as it is for the management and the employer to look into this matter and if they feel that at any point of time, they can utilize any of its two Aircrafts and it would be more appropriate for it to already have an Engineer posted at such station, where they can send any of their Aircrafts; then it is not for the Court to substitute such a decision of the management. The management has to take such decisions and be accountable for it, therefore, this Court would not like to impose upon its own view on such managerial decisions. The management is best judge for such decisions(s) as this is not a case of promotion; but of a transfer, albeit

abroad. However, merely for it being a foreign posting, the discretion and decision making ability as well as responsibility shall not ordinarily be interfered by a judicial perspective. The Plaintiffs have been considered, but have been found to be unfit (for the time being). It is not the stance of PIA that they have been debarred permanently from being considered again. Rather the Working Agreement already provides to cater such a situation; hence, presently, in fact, there appears to be no adverse order against the Plaintiffs. It is also relevant to note that Defendant No.2 with whom the Working Agreement has been signed by PIA, and on which (the Agreement) the entire case has been set-up by the Plaintiffs, is also not supporting their stance, except that their representation be decided and responded to by disclosing them the reasons thereof.

13. The question of being eligible for promotion has been judicially examined in various decisions, wherein, the promotion is related to *seniority-cum-fitness*. Though as noted hereinabove, this is not a case of promotion; however, qualification in clause 7.7 makes only those as qualified who fulfil the test of *seniority-cum-fitness*, therefore, these judicial opinions can be considered and examined as to the case of the Plaintiffs. The Courts have time and again examined the intent and meaning of the word "*seniority-cum-fitness*" and it has been the consistent view of the Courts that the seniority alone cannot be made basis for any promotion and it has to be judged, coupled with fitness. There is a series of judgments of the Hon'ble Supreme Court as well as High Courts which have dealt with such issue, and the same principle has been reiterated.

14. In the case reported as **PLD 2003 Supreme Court 110** (*Government of Pakistan through Establishment Division, Islamabad and 7 others v. Hameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others*), the Hon'ble Supreme Court has been pleased to hold that seniority is only one of the factors, which is to be considered for promotion; but seniority alone is not enough, whereas, promotion is not automatic; but it depends upon many other factors, such as competence, antecedents etc., the relevant finding of the Hon'ble Supreme Court in this case is as under:-

"22. Section 9 of the Act of 1973 deals with "Promotion". It may be regarding "selection post" or "non-selection post". In case of selection post as involved in these matters, the criterion for promotion is merit, while in case of non-selection post it is done on the basis of seniority-cum-fitness. No civil servant can ask for promotion as a right, and the giving or refusal of promotion is a matter, which is within the exclusive domain of the government/executive authority. If a promotion is denied to a civil servant it could not be termed as denial of any' fundamental right.

23. Perusal of section 9 of the Act of 1973 unequivocally postulates that criterion for selection for promotion to the higher-grade rest upon decision of the competent authority. No other forum/authority can assume the duties, which specifically have been assigned to the competent authority.

24. The seniority is one of the factor, which is considered for promotion, but seniority alone is not enough. Promotion is not automatic, but it depends upon so many other factors, such as, competence, availability of post -and antecedent etc. None of these factors is less important than seniority. For promotion all these factors, on case-to-case basis, are to be determined.

25. On the basis of improved seniority, the benefit of promotion, as a matter of right in selection grade, could not be claimed nor was the Tribunal competent to grant it from back date, as it was explicitly beyond its jurisdiction. The requirements for promotion mentioned earlier were not examined by the competent authority at the relevant time, as such, the same could not be granted by the Tribunal.”

15. In the case reported as **PLD 2008 SC 395** (*Abdul Hameed v. Ministry of Housing and Works, Government of Pakistan, Islamabad through Secretary and others*), the Hon’ble Supreme Court has been pleased to observe as under:-

“4. Having considered the submissions made on behalf of the petitioner, we find the same to be without force. It goes without saying that promotion to a certain post, has never been considered to be a vested right of a civil servant. It is well recognized principle of law that in case of non-selection post, the promotion is made on the basis of seniority cum-fitness and no civil servant can ask for, or claim a promotion as a matter of right as it is within the exclusive domain of the government. Neither the promotion could take place automatically, nor the seniority alone is the deciding factor, as number of factors constitute fitness for promotion. The learned Advocate Supreme Court for the petitioner has not been able to show that there was any malice on the part of the respondents, so far as the conversion/re-designation of the post is concerned.....”.

16. In the case reported as **PLD 2008 SC 769** (*Fazali Rehmani v. Chief Minister N.-W.F.P., Peshawar and others*), the Hon’ble Supreme Court has been pleased to observe that consideration for promotion is though a right; however, the promotion itself cannot be claimed as of right. It has been further observed that fitness for promotion is a subjective evaluation on the basis of objective criteria, where substitution for opinion of the competent authority is not possible by that of a Tribunal or a Court; hence, neither eligibility to promotion can be equated that with promotion nor prospects of promotion can be included in terms and conditions of service. The relevant finding reads as under:-

“6. As regard the first contention raised by the learned counsel for the appellant that since very eligibility of respondent No.5 for promotion to the next higher grade was disputed as compared to the appellant, therefore, the learned Tribunal could

not have declined to exercise jurisdiction by bringing the matter under section 4(b) (i) of the Act, *it may be pointed out here that eligibility for promotion and fitness for promotion are distinct and separate from each other. Eligibility relates to the terms and conditions of service, whereas fitness for promotion is a subjective evaluation on the basis of objective criteria, where substitution for opinion of the competent authority is not possible by that of a Tribunal or a Court hence, neither eligibility to promotion can be equated with promotion nor prospects of promotion can be included in terms and conditions of service. It is well settled that though eligibility for promotion of a civil servant can be subjected to judicial scrutiny by the Service Tribunal as it relates to terms and conditions of a civil servant yet, the question of fitness of a civil servant for promotion is barred from its jurisdiction under section 4(b) (i) of the N.-W.F.P. Service Tribunals Act.*"

17. In the case reported as **PLD 1981 SC 531** (*Islamic Republic of Pakistan v. Israrul Haq and 23 others*), it has been held as under:-

"The upshot of these decisions is that the method and criteria for promotion to selection post is different from promotion to a non-selection post on the basis of seniority-cum-fitness. For the latter, comparative assessment of eligible persons is made starting always with the senior most. The respondent has all the time been invoking the seniority cum-fitness principle' which in fact was inapplicable. Till he got an A. C. R. which could be relevant for determining his fitness as D. I. G. or gained such outstanding competence and ability on ex-cadre post as to merit selection as D. I.G his case could remain deferred.

28. The directions to the Selection Board to take into consideration the Confidential Reports of past five years before the selection are only advisory and directory. The power and jurisdiction of the Selection Board to assess the suitability of the officer from his overall performance remains unabridged. The amplitude of this power of selecting suitable persons can be somewhat gathered from a decision of this Court in the Punjab Public Service Commission, Lahore v. All Gul and 4 others (1976 S C M R 212). It is a decision within the exclusive competence of the Selection Board and the power had to be manifestly exercised to select the respondent for the post. There is no question of implying, inferring or deeming promotion and substituting such an inference for the selection. The Tribunal, in any case, could not substitute its own decision with regard to suitability of the respondent for that of the Selections Board. The fact remains that the Selection Board at no particular time cleared the respondent for promotion as D. I.-G."

18. In the case reported as **2000 PLC (C.S) 1061** (*Jalaluddin and 10 others v. Board of Trustees of the Port of Karachi and 72 others*), a learned Division Bench of this Court has been pleased to hold as under:-

"11. Indeed it goes without saying that no civil servant has a legal right to be promoted to be appointed against a particular post though he has a legal right to be so considered for promotion if found qualified and eligible under the applicable rules. Indeed in posts required to be filled on seniority-cum-fitness basis, a junior would be promoted only if the senior is considered and found unfit."

19. In the case reported as **PLD 1994 Supreme Court 539** (*Muhammad Anis and others v. Abdul Haseeb and others*) the Hon'ble Supreme Court has been pleased to observe as under:-

"We are also of the view that the question of eligibility is different from the question of fitness. Indeed, from the definitions of the words "eligible" and "fit" given in the above dictionaries, it appears that the meanings of above two words are interchangeable and some time they carry the same meaning but at the same time they have different meanings. Even in the above Legal Thesaurus the word "eligible" has been defined as "fit" for appointment, fit for election, fit for selection, if to be chosen, legally qualified and suitable". Whereas, Black's Law Dictionary defines the word "eligible" inter alia as qualified to be elected and legally qualified to serve. It may again be pointed out that the Stroud's Judicial Dictionary has highlighted that the word "eligible" carries two different meanings namely legally qualified or fit to be chosen. *The question whether a person is legally qualified for appointment or promotion to a particular post and grade is relatable to the factum, whether he possesses the requisite qualifications for consideration, whereas the question of fitness pertains to the competency of person concerned to be decided by the competent authority.* For example, under Article 193(2) of the Constitution, the qualifications for being considered for appointment as a High Court Judge have been given. It does not mean that the persons who possess the said qualification are fit for appointment as Judges of the High Courts. The question of fitness of their being appointed is to be determined by the functionaries mentioned therein. In other words a person may be eligible for consideration for a particular post, but may not be fit to be appointed.

We may point out that the question of eligibility and fitness have been treated differently by the Law-makers in the Civil Servants Act, 1973 and in the Act. In Section 9 of the former Act, as pointed out hereinabove, *a right has been conferred on a civil servant to be considered for promotion if he is eligible on account of the fact that he possesses prescribed minimum qualification but he has no vested right to be promoted.* In contrast to above section 9 of the above Act, the Law-Makers in proviso (b) to subsection (1) of section 4 of the Act have not used the word "eligible" but have employed the word "fitness or otherwise to be appointed or to hold a particular post or to be promoted to a higher post or cadre." In other words, the question of eligibility, which is a term of service by virtue of above subsection (1) of section 9 of the Civil Servants Act, 1973, has not been excluded from the purview of the jurisdiction of the Tribunal but the question, whether a person having requisite eligibility has been rightly selected or not selected on account of fitness or otherwise for appointment to hold a particular post or to be promoted to a higher post or grade, has been excluded."

20. When the facts of the present case are examined in the context of the above precedents as well as the current status prevailing in respect of the issue in hand, it appears that the Plaintiffs do not fulfill the three ingredients for passing of an injunction i.e. prima facie case, balance of convenience and causing of irreparable loss. Admittedly, the decision was taken by the Board on 20.05.2019 and though the Plaintiffs' case is that a representation was made and is pending; but nonetheless, they came before this Court belatedly on 16.07.2019 in Suit No. 1161/2019 and on 09.08.2019 in Suit No.1271/2019 and as per the stance of PIA it is a matter of record that immediately after the decision of the Board, posting

letters have been issued and respective Engineers have taken over their assignments. In Suit No.1161/2019 on the first date of hearing i.e. 16.7.2019 only notice was ordered and thereafter, defendants had filed their counter affidavit and on 2.8.2019 while adjourning the matter to 19.8.2019, the Court observed that “*meanwhile, defendant No.1 may assign foreign posting as per final list, however, three position shall be kept vacant matching with the qualification of the plaintiffs till the next date of hearing.*” Insofar as Suit No.1271/2019 is concerned, it appears to be a follow up to the earlier Suit, as though the same was filed on 09.8.2019 but the ad-interim order of similar nature was obtained on 16.8.2019 to keep two posts vacant in respect of eligibility of the plaintiffs in the subsequent suit. However, by that time the requisite formalities for sending the selected engineers abroad had already been initiated and stands completed as per the stance of PIA; except to the extent of the ad-interim order. Therefore, and as rightly contended by the learned Counsel for PIA, grant of interim injunction any further would amount to altering or amending the current situation. As regards the merits of the case, it may be pointed out that it is well-settled proposition of law that the object of passing of an interlocutory order of status quo is to maintain the situation obtaining on the date when the party concerned approaches the Court and not to create a new situation. Another well-settled principle of legal jurisprudence is that generally a Court cannot grant an interlocutory relief of the nature which will amount to allowing the main case without trial/hearing of the same.¹ The facts of the present case do not seem to be at much variance, and I am of the view that it would not be in the fitness of things to pass any interim injunction in favor of the Plaintiffs, as they have failed to make out a prima facie case and balance of convenience does not lie in their favor, whereas, no irreparable loss would be caused to them if the injunction as prayed is withheld, pending final adjudication of the Suit(s). Moreover, as per Working Agreement itself on which reliance has been placed by the Plaintiffs, the Engineers can only be posted once in their entire career, whereas, those who have been left out can be considered in the subsequent foreign postings, if they are otherwise found fit. There is no permanent disqualification in real sense so as to be aggrieved. All these facts do not warrant any exercise of discretion in favor of the Plaintiffs as to alter or change the current status and disturb the findings as well as decision of the Board taken on 20.05.2019. In these circumstances, the injunction applications in both Suits are hereby dismissed.

21. Both listed applications are dismissed.

¹ Islamic Republic of Pakistan v Muhammad Zaman Khan (1997 SCMR 1508)

Dated: 19.11.2019

J U D G E

Ayaz P.s.