List of Signatories Removed by the Inspection Panel for Purposes of Confidentiality

ANNEX - I

Government of Pakistan
Revenue Division
Federal Board of Revenue
***

C.No. 9(3)/2009-M-I Islamabad, the 12th September, 2009.

To All Directors General,
Chief Collectors Customs (South)/(North),

Subject: **TAX ADMINISTRATION REFORMS: REORGANIZATION OF FEDERAL BOARD OF REVENUE – CREATION OF NEW OCCUPATIONAL SERVICE NAMELY INLAND REVENUE SERVICE.**

Kindly find enclosed a copy of self-explanatory Establishment Division's Office Memorandum No. F.6/2/2009-CP.II dated 12.09.2009 on the above subject.

2. It is requested that the above communication may kindly be circulated among all officers of Customs & Excise and Income Tax Groups under your administrative control and obtain irrevocable option from each officer of the existing Customs and Excise Group and Income Tax Group for inclusion or otherwise into the new **Inland Revenue Service** as outlined in the O.M. under reference by **28.09.2009** positively. The option so exercised in each case may be furnished to Member (Admn), FBR by **28.09.2009** repeat **28.09.2009**.

Encl: As above.

(Ch. Muhammad Azam)
Member (Administration)
Ph: 9201353

FBR PAKISTAN

Revenue Division
Federal Board of Revenue
Government of Pakistan

Attention: All Officers of Customs and Excise Group and Income Tax Group

CREATION OF INLAND REVENUE SERVICE

INVITATION FOR OPTIONS

As part of the Tax Administration Reforms a new occupational group, the Inland Revenue Service, has been created by the Government of Pakistan. This service group would be responsible for carrying out the functions relating to Income Tax, Sales Tax and Federal Excise.

Each officer of the existing Customs and Excise Group and the Income Tax Group is called upon to exercise option for inclusion into the new Inland Revenue Service. In case no option is given it would be deemed that the officer desires to remain in his/her original group. For further details related to the size of the new group, fixation of seniority etc. FBR website www.fbr.gov.pk may be consulted.

The options should reach the following by Monday the 28th September, 2009:

Ch. Muhammad Azam
Member (Administration)
Federal Board of Revenue
Constitution Avenue
Islamabad
Phone: 0519201353
Fax: 051- 9209446
Email: memberadmin@fbr.gov.pk

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

ANNEX- II

No. F. 6/2/2009-CP-II, Islamabad dated the 12th September, 2009.

OFFICE MEMORANDUM

Subject: **TAX ADMINISTRATION REFORMS: REORGANIZATION OF FEDERAL BOARD OF REVENUE - CREATION OF NEW OCCUPATIONAL SERVICE NAMELY INLAND REVENUE SERVICE.**

In terms of S.No.10.2.(i) of Schedule-II of Rules of Business,1973 and in continuation of this Division's OM No.5/2/75-ARC dated 9-5-1975 and O.M.No. 4/2/75-ARC dated 9-5-1975, the undersigned is directed to say that in view of the ongoing Tax Administration Reforms that include reorganization of Federal Board of Revenue, it has been decided to create a new Occupational Service namely Inland Revenue Service with immediate effect.

2. All the business concerning Income Tax, Sales Tax and Federal Excise currently being done by the officers and staff of Income Tax and Customs and Excise Groups is transferred to the new Inland Revenue Service. Existing Customs and Excise Group will be renamed as Pakistan Customs Service.

3. Federal Board of Revenue shall seek from each officer and staff of the existing Customs & Excise Group and Income Tax Group an irrevocable option for inclusion or otherwise into the new Inland Revenue Service. Such option once exercised shall be final. In order to facilitate the officers in this process, FBR shall apprise each officer (1) the number of posts which would form part of the new occupational service (2) upon option, the seniority in the new service shall count from the date of regular appointment in the present post in the existing Customs & Excise Group and Income Tax Group in accordance with Civil Servants (Seniority) Rules, 1993, as amended from time to time.

4. Upon receipt of requisite options. Federal Board of Revenue shall proceed as under:

(a) **Scenario-I**

In case, some officers from the Customs and Excise Group and some officers from the Income Tax Group opt for Inland Revenue Service, the shortage of the Inland Revenue Service shall be met by posting of officers of Customs Group and defunct Income Tax Group under Section 10 of the Civil Servants Act, 1973.

Depending upon number of options to be exercised by the officers of Customs and Excise Group and Income Tax Group, the tentative cadre strength of new Inland Revenue Service and Pakistan Customs Service may be as under (i.e. equivalent to existing combined strength of the Income Tax and Customs and Excise Groups):-

New Inland Revenue Service

Functions	**Officers**
• Federal Excise	218
• Sales Tax	
• Income Tax	978
• **Total**	**1196**

- **Pakistan Customs Service**

Functions	**Officers**
Customs	218

Upon completion of exercise of options, the exact cadre strength shall be finalized by the Establishment Division in consultation with Revenue Division.

(b) <u>Scenario-II</u>

In case all the officers of the Customs and Excise Group and Income Tax Group opt for new Service, the Service be renamed as "Pakistan Revenue Service" with common seniority and doing all the revenue and tax business. All officers would be part of one cadre.

The tentative cadre strength of new service may be as under (i.e. equivalent to existing combined strength of the Income Tax and Customs and Excise Groups) :-

Functions	**Officers**
• Fed. Excise	218
• Sales Tax	
• Income Tax	978
• Customs	218
• **Total**	**1414**

Upon completion of exercise of options, the exact cadre strength shall be finalized by the Establishment Division in consultation with Revenue Division.

5. In both the scenarios mentioned in para-4 above, the Income Tax Group officers not opting for the new service, will remain in the existing Income Tax Group which will be a defunct and lying cadre without any future intake.

6. The inter se seniority of the officers of existing Income Tax and Customs and Excise Groups exercising option for inclusion in the new Pakistan Revenue Service or Inland Service, as the

case may be, shall count from the date of regular appointment in the present post in the existi Customs and Excise Group and Income Tax Group in accordance with Civil Servants (Seniorit Rules, 1993, as amended from time to time.

7. Other measures shall be taken as under:-

(a) All the existing posts currently forming part of Income Tax Group as well as those meant for federal excise business but currently forming part of Customs and Excise Group shall form part of the new Inland Revenue Service with immediate effect. The said posts will, however, be transferred to the new Service upon completion of exercise of option.

(b) Further recruitment to the existing Income Tax Group is stopped.

(c) Effective from 2009, fresh recruitment to the newly constituted Inland Revenue Service or Pakistan Revenue Service as the case may be, shall be initiated through Federal Public Service Commission.

8. Establishment Division's O.M. No. 5/2/75-ARC dated 9-5-1975 and O.M.No. 4/2/75-ARC dated 9-5-1975 regarding constitution of existing Income Tax and Customs and Excise Groups shall be deemed to have been modified to the above extent. In case of inconsistency between the provisions of said O.M.s dated 09-05-1975 and this O.M., the provisions of this O.M. shall have the over riding effect.

9. To overcome the difficulties and interpretation of the methodology an Anomaly Committee is constituted comprising Additional Secretary-II, Establishment Division, Chairman Federal Board of Revenue and Additional Secretary, Law and Justice Division whose interpretation shall be final subject to approval of Establishment Division.

10. The Anomaly Committee and all others concerned shall ensure that the decisions contained in this O.M. do not create any administrative complications.

(Munir Ahmed)
Joint Secretary (CP-II)
Tele:9209236

Secretaries/Additional Secretaries Incharge
of the Ministries/Division,
Islamabad/ Rawalpindi.

Contd.....P/4

information to :-

Secretary General to the President, President's Secretariat (Public), Islamabad.
Principal Secretary to the Prime Minister, Prime Minister's Secretariat (Public), Islamabad.
Secretary, National Assembly Secretariat, Islamabad.
Secretary, Senate Secretariat, Islamabad.
Secretary, Election Commission of Pakistan, Islamabad.
The Auditor General of Pakistan, Islamabad.
The Chairman, Federal Board of Revenue, Islamabad.
Secretary, Federal Public Service Commission, Islamabad.
Secretary, Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad.
. Secretary, National Reconstruction Bureau, Islamabad.
. Secretary, National Accountability Bureau, Islamabad.
. Director General, Intelligence Bureau, Islamabad.
. All Chief Secretaries of the Government of Punjab/Sindh/NWFP/Baluchistan & Azad State of Jammu & Kashmir.

(Munir Ahmed)
Joint Secretary (CP-II)

ANNEX - III

Detail of Law-suits Filed by Customs Officers against Inland Revenue Service

S.No	Title of the Law Suit	Name of the Court	Current Status	Next Date of Hearing
1.	Omer Mukhtar & Others vs. Federation of Pakistan & Others Writ Petition No. 2816/ 2009	In The Lahore High Court, Rawalpindi Bench Rawalpindi.	Judgment reserved	
2.	Mr. Adnan Shoaib, Assistant Collector, Regional Tax Officer, Islamabad. And Others VS. Federation of Pakistan, Through Secretary Establishment Division, Constitution Avenue, Islamabad. And Others. Writ Petition No. 2875 /2009	Before The Lahore High Court, Rawalpindi Bench at Rawalpindi	Do	
3.	Rizwan Bashir & Others VS FOP & Others Writ Petition No. 2664 /2009	In The Lahore High Court, Rawalpindi Bench. Rawalpindi	Do	
4.	Muhammad Zubair, Additional Collector, Large Tax Unit, Islamabad and Others VS Federation of Pakistan through Secretary Law and Justice Division, Government of Pakistan, Islamabad. W.P. No. 3599 /2009	In The Lahore High Court, Rawalpindi Bench. Rawalpindi	Do	
5.	Shafqat Hayat Hottiana Vs Fop & Others. W.P. No. 2576 /2009	Before The Lahore High Court, Rawalpindi Bench Rawalpindi	Do	
6.	Muhammad Arshad,	In The Lahore	Do	

	(CEG/ BS-20), Member (Customs, Sales Tax & Federal Excise, Appellate Tribunal), Islamabad and Others Vs Federation of Pakistan through Secretary to the Government, Establishment Division, and Others. W.P. No. 3600 / 2009	High Court, Rawalpindi Bench. Rawalpindi		
7.	Ms. Ayesha Bashir Wani, Deputy Collector, Customs, Federal Excise & Sales Tax, Islamabad and Others. Vs Government of Pakistan, Islamabad, Establishment Division, Cabinet Secretariat, through its Secretary and Other, W.P. No. 2577 / 2009	Before The Lahore High Court, Rawalpindi Bench Rawalpindi	Do	
8	Syed Muhammad Khalid Zaidi etc. Vs Cheif Commissioner. W.P. No. 23779 /2009	Lahore High Court Lahore.	Do	
9	Dr Shahab Imam V/s Govt of Pakistan,Establishment division, Secretary Revenue division and others,C.P.No.2125/09	Sindh High Court Karachi		22nd December,2009.
10.	Mohammad Daud Pirzado Vs Govt of Pakistan,Secretary Establishment,Secretary Revenue and others,C.P.No.2126/09	Sindh High Court Karachi		22nd December,2009.
11.	Mohammad Faisal Khan V/s Govt of Pakistan,Establishment division, Secretary Revenue division and others,C.P.No.2122/09	Sindh High Court Karachi		22nd December,2009.
12.	Yousuf Ali Magsi V/s Govt of	Sindh High Court Karachi		22nd December,2009.

	Pakistan,Establishment division, Secretary Revenue division and others,C.P.No.2124/09			
13.	Muhammad Saleem Memon V/s Govt of Pakistan,Establishment division, Secretary Revenue division and others,C.P.No.2123/09	Sindh High Court Karachi		22nd December,2009.
14.	Fateh Mohammad and others V/s Govt of Pakistan , Secretary Establishment division ,Secretary Revenue division and others C.P.No.2634/09	Sindh High Court Karachi		
15.	Tariq Huda and othersV/s Govt of Pakistan,secretary Establishment division,Secretary Revenue division and others.	Sindh High Court Karachi		
16	Ali Abbass Gardezai and others V/s Govt of Pakistan,,Writ petition no24410 /2009	Lahore High Court ,Lahore		
17	Nisar Ahmed V/s Govt of Pakistan,Writ petition no,24451	Lahore High court ,Lahore		

COPY OF LEGAL NOTICE TO GOVENMENT OF PAKISTAN and F.B.R

ANNEX. III (a)

Phone:(021) 34310251-2
Fax: (021) 34310250

Mohammad Naseem & Co., Advocates

Advisors on Taxation, Income & Sales Tax, Customs & Excise, Labour, Insurance, Arbitration
Admiralty, Banking, Service, Copyright, Patent & Design, Commercial and Corporate Laws

SUPREME COURT OF PAKISTAN
PROVINCIAL HIGH COURTS
INCOME TAX APPELLATE TRIBUNAL
CUSTOMS, EXCISE & SALES TAX APPELLATE TRIBUNAL
FEDERAL & PROVINCIAL SERVICE TRIBUNALS

MOHAMMAD NASEEM
MA, RA-I, LLB
ADVOCATE, SUPREME COURT

DR. MOHAMMAD FAROGH NASEEM
ADVOCATE, SUPREME COURT
LL.B (Hons)(Wales), LL.M (London)
Ph.D(London)
of Lincoln's Inn, Barrister-at-Law
Former Advocate General, Sindh

102, First Floor,
Fortune Centre, Plot 45-A,
Block-6, P.E.C.H.S.,
Shahrah-e-Faisal,
Karachi

Ref. No. _____ Dated: 08.12.2009

1. **The Secretary**
   Establishment Division
   Government of Pakistan
   ISLAMABAD

2. **The Secretary**
   Revenue Division
   Government of Pakistan
   ISLAMABAD

3. **The Chairman**
   Federal Board of Revenue
   Government of Pakistan
   ISLAMABAD

4. **The Chairman**
   Federal Public Service Commission
   ISLAMABAD

Subject: **Notice**

Dear Sirs,

This is to inform you that on behalf of Mr. Fatch Mohammad and others (Officers/Collectors and Addl Collectors in the Customs and Excise Group) we have preferred CP No.D-2634/2009 before the Sindh High Court, Karachi. On 8.12.2009 the matter came up before a learned Division Bench of the Sindh High Court, Karachi comprising the Hon'ble Chief Justice i.e. Mr. Justice Sarmad J.

Osmany and Mr. Justice Sajjad Ali Shah, which has been pleased to issue directions as follows:-

> *"Consequently, we would direct that the CSB should be held as proposed but subject to final outcome of this Petition and connected Petition no.2122/2009."*

2. The next date of hearing is 22.12.2009 scheduled at 11.00 am.

3. It is important to point out that in the above mentioned petition we have challenged the holding of the forthcoming CSBs for BS-19 to 20 and BS-20 to 21.

4. It is needless to mention that earlier in CP D-2122/09 (and others) the learned Division Bench of the Sindh High Court, Karachi comprising the Hon'ble Chief Justice i.e. Mr. Justice Sarmad J. Osmany and Justice Ms. Rukhsana Ahmed, was pleased to issue the following directions:-

> *" In these circumstances, we would direct that till the next date of hearing, the option, if any, exercised by the Petitioner would not be treated as final. Adjourned to 7.10.2009 as requested. Notice to the learned DAG as well as Respondents. The Secretary, Establishment Division shall file a comprehensive plan vis-à-vis the career development of all the officers who are members of the Customs, Income Tax, Federal Excise, Sales Tax Services of Pakistan in the proposed set-up."*

5. Unfortunately, the directions as above have not been complied with and due to non-compliance thereof we shall be left with no other option but to institute appropriate proceedings.

6. While Court notice shall be communicated to you in due course, the order of the Sindh High Court, Karachi dated 08/12/2009 is being communicated to you by the undersigned by way of an abundant caution.

Yours faithfully,

(Dr. Mohammad Farogh Naseem)
PhD (London), Barrister-at-Law

ANNEX- III (b)

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
RAWALPINDI

Writ Petition No: _____/2009

In the matter of:

RIZWAN BASHIR & OTHERS

....Petitioners

VERSUS

FOP & OTHERS

....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

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2	Impugned O.M [No F.6/2/2009-CP-II, Dated: 12.09.2009]	A/1	
3	Impugned O.M [C. No: 9(3)/2009-M-I, Dated: 12.09.2009]	A/2	
4	S.R.O 597(K) dated 18th December 1959	B	
5	Letter C. No: 9 (12)/2004-M-II, Dated: 09.04.2004	C	
6	Press Note bearing No: F. No: 1/9/2003-T.V	D	
7	C.M for Interim Relief & Affidavit	-	
8	CM for Dispensation & Affidavit	-	
9	Power of Attorney (*Wakalatnama*) *(Only with Original)*	-	

Petitioners

Through:

Barrister Masroor Shah
B.A; LL.B (Hons) (UK); PGD (London)
Bar at Law (Lincoln's Inn)
Advocate High Court
(CC No: 17747)

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
RAWALPINDI

Writ Petition No: _____/2009

1. **RIZWAN BASHIR**
   D.C Customs, Sambrial
   Sialkot

2. **DR. AITZAZ AHSAN**
   D.C Customs, Model Custom Collectorate
   Lahore

3. **NAVEED AZIZ**
   D.C. Customs,
   Islamabad

4. **SHAHID ALI**
   D.C. Model Custom Collectorate
   Quetta.

5. **SHAHID JAN**
   D.C. Model Custom Collectorate (Appraisement)
   Karachi.

6. **WAJID ALI**
   D.C. Model Custom Collectorate (Export)
   Karachi

7. **SHAFIQ-UR-RAHMAN**
   D.C Customs, Model Custom Collectorate (Port Qasim)
   Karachi

8. **FAHAD ALI CHAUDHARY**
   2nd Secretary, Federal Board of Revenue

Islamabad

9. **BASIT HUSSAIN**
D.C. Larger Taxpayers Unit
Karachi.

10. **HONNAK BALOCH**
D.C. Regional Tax Office
Karachi

11. **BASIT MAQSOOD ABBASI**
D.C. CEG, C/o FBR
Islamabad

12. **AGHA SAEED AHMED**
D.C. CEG
Karachi

13. **ATTAULLAH SHABBIR**
A.C, Regional Tax Office
Karachi

14. **MODASSAR AHMED TIRMIZI**
A.C. CEG
Sialkot

15. **OMAR MUKHTAR KHAN**
D.C. Model Custom Collectorate,
Lahore

.....Petitioners

VERSUS

1. **FEDERATION OF PAKISTAN**
Through Secretary to the Government of Pakistan
Establishment Division, Pak Secretariat
Constitutional Avenue
Islamabad

2. **SECRETARY, REVENUE DIVISION, GOVERNMENT OF PAKISTAN**
Pak Secretariat, Constitutional Avenue
Islamabad

3. **FEDERAL BOARD OF REVENUE**
Through Chairman, Federal Board of Revenue
FBR Headquarters, Constitutional Avenue
Islamabad

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

Respectfully Sheweth:

1. That the Petitioners are the officers of the Customs and Excise Group in the service of Pakistan and have joined the service on merit after passing the Central Superior Services Examination.

2. That the "Pakistan Customs and Excise Service" was constituted with effect from 01.01.1960 vide S.R.O 597(K), Dated: 18th December 1959 (Hereinafter referred to as the "SRO 1959") by "amalgamating the Pakistan Customs Service Class I and the Class I posts in the Central Excise and Land Customs Department into a unified Central Service Class I". This SRO was issued by the President of Pakistan, copy whereof is annexed herewith and marked "**B**".

3. That the SRO 1959 was in field on the day Constitution of the Islamic Republic of Pakistan, 1973 came into force. It is averred that Article 268 (read with Article 241) of the Constitution protected all "existing laws" including SRO 1959, unless modified by "appropriate legislature".

4. That the particulars of other pertinent instruments qua the Customs and Excise Service are set out hereinafter:

   a. OM No: 1/9/74-ARC Dated: 12/09/1974 notifying conversion of the service into an Occupational Group titled Federal Revenue (Indirect Tax Group), under administrative control of Ministry of Finance; (ESTACODE 1989 Pages 219-221)

   b. The aforesaid OM had followed a D.O letter issued by Respondent No: 1 bearing No: 1/1/73-ARC dated: 21/08/1973 wherein merger of all services of the Federation into a single unified group called Federal Unified Group was enunciated [ESTACODE Pages 989 – 990] and later stipulation about abolition of the Service nomenclatures was made by another letter bearing No: 1/2/73-ARC dated: 24/08/1973 [ESTACODE Page 991].

   c. The aforesaid was followed by an OM notifying parameters for composition of C & E Service and regulates the Petitioners' Service Group, to date [5/2/75-ARC dated: 9/05/1975] as amended by OM No: 3/3/86-CP – 2 dated: 08/09/1987 [ESTACODE 1989 Pages 1035-1037]

   Notwithstanding its legality, it did not bring in any material change in the existing service structure of the Service and was merely a cosmetic measure.

5. That the OM 1975 clearly endorses this position by stating that "consequent upon the Administrative Reforms, certain cadres have been transformed into occupational groups *but the composition of cadres comprising these groups has remained intact*; [ESTACODE 2006 Pages 256 – 258].

6. That now Respondent No: 1 has purportedly issued Office Memorandum bearing No: F.6/2/2009-CP-II Dated: 12/09/2009 on basis whereof the Third Respondent purportedly issued letter No: C. No 9(3)/2009-M-I Dated: 12.09.2009 (Hereinafter collectively referred to as the "Impugned OM"), copies whereof are annexed herewith and marked "**A/1** and **A/2** respectively"). It is averred that the Impugned OM is arbitrary, illegal, unreasonable,

without lawful authority, *corum non judice* and against the laws and principles of natural justice. Further averred that the Impugned OM not only has the potential to effectively devastate the career progression of the Petitioners but also grossly infringe upon their fundamental rights enshrined in and guaranteed by the Constitution. Further averred that the Impugned O.M changes the Lien and seniority rules to the detriment of the Petitioners and grossly affects the terms and conditions of their service. It also affects the Petitioners' inter se seniority.

7. That the Petitioners have no other efficacious remedy at hand to get their genuine grievances redressed but to invoke the extra ordinary jurisdiction of this Honorable Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 on inter alia, the following grounds:

GROUNDS:

A. That the Petitioners as well as all other officers of Customs & Excise Group (Hereinafter referred to as the "CEG") have been appointed therein by accepting an offer made by the Federal Board of Revenue (Respondent No: 3) to join CEG subject to certain terms and conditions. Copy of the said Offer of Appointment made to Petitioner No: 1 by Respondent No: 3 vide Letter C. No: 9 (12)/2004-M-II, Dated: 09.04.2004 is annexed herewith and marked "**C**". It is averred that once the offer was accepted by the Petitioners, both the Petitioners and the Federal Board of Revenue entered into a contract binding on both of them. One of the material term and condition of the said contract was that "change of occupational group will not be allowed in any case" (Clause VI of Annex C). It is averred that by giving option to join IRS or a group/service, which will be renamed in future and manage business of one tax/levy i.e. Customs, the Respondent No: 3 (FBR) has made the contract voidable at the option of each officer/Petitioner. Further averred that Respondent No: 3 (FBR) has reverted to the status of Petitioners to a position which existed before the offer was made. In the premise, ends of justice would only be met should the Petitioners be

given again an option to join any of the service/occupational groups, including IRS and Pakistan Customs Service, and should be placed in the occupational group as per their choice and in consonance with their position in the merit list announced by the FPSC.

B. That even otherwise, a bare perusal of the Occupational Group Allocation List of the successful candidates of Competitive Examinations conducted by the FPSC every year reveals that the Petitioners who opt for CEG are always ranked higher in the merit list. For instance in 2002, the merit list of CSS Exam publicized by way of Press Note bearing No: F. No: 1/9/2003-T.V issued by Respondent No:1, copy whereof annexed herewith and marked "**D**", would reveal that the CEG was opted by the candidates ranking higher in the final merit list. Similar is the situation in the merit lists related to every year's CSS examination. The candidates joining the CEG made informed and well considered decision on the basis of career prospects and functions attributed to this Service. The petitioners preferred to join CEG over other services/ occupational group, despite the fact they could have been allocated to other services/ occupational groups on the basis of their merit in the CSS exams, mainly based on the information available to them about the career progression, promotion prospects and seniority issues in CEG.

It is averred that should the Impugned O.M be allowed to remain in force, the officers of the CEG in general and the Petitioners in particular would be left short changed as not only their career progression would be adversely affected but the functions and nature of job would also be drastically changed for worse. In the premise, ends of justice would only be met if the choice offered to the Petitioners by the Respondent No: 1 vide Impugned O.M, is not restricted to IRS & Pakistan Customs Service alone. It should rather be extended to all Occupational Groups and only in this manner would the Petitioners be endowed a fair, easonable and appropriate chance to exercise its choice on the basis of materially changed circumstances. If the petitioner is asked to revisit the options, the same should not be restricted to one group i.e. either IRS or Pakistan Custom Service. Rather the petitioners be given the option to join any other service/ occupation group of the federation commensurate to their merits at the time of CSS exams with original seniority or

alternatively they may be given the option to join the occupational group / service that was One Step higher in the order of preference submitted by the petitioners at that time, so that the petitioners are not discriminated vis-à-vis other service/occupational groups and their career/ promotion prospects are not jeopardized.

C. That even otherwise the Impugned OM is repugnant to Civil Servants (Appointments, Promotion & Transfer) Rules, 1973. It is averred that there is a clear procedure laid down for filling-up different positions in a service by transfer under Rules 7 and 8 of the Civil Servants (Appointments, Promotion & Transfer) Rules, 1973, whereby a clear criteria is to be notified and that the option to join the new group cannot be restricted to one or two services as all civil servants fulfilling the prescribed qualifications/criteria would be eligible for appointment by transfer to the Inland Revenue Service and Pakistan Custom Service.

D. That Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 categorically stipulates as under: -

"**Article 4: Right of Individuals to be dealt with in accordance with the law etc**

a. To enjoy the protection and of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. ...."

It is averred that every person (including a civil servant, which include the Petitioners) is entitled to be treated in accordance with the law. The Respondents, being public functionaries exercising the functions of the state are duty bound to respect and give effect to the inalienable rights of the Petitioner accruing from the Constitution and are entitled to be treated in accordance with the law.

E. That the Impugned O.M also runs contrary to the well established principle of *locus poenitentiae*. It is averred, that the protection and benefits once bestowed upon the Petitioners by the law cannot not be unilaterally taken back by the Respondents.

F. That the Impugned OM is repugnant to Article 268 of the Constitution. It is averred that SRO 1959 was in field on the day the Constitution of the Islamic Republic of Pakistan, 1973 came into force. Article 268 of the Constitution protected all "existing laws" including SRO 1959 unless modified by "appropriate legislature". Excerpts from Article 268 are set out hereinafter:

268. Continuance in force and adaptation of certain laws.

(1) Except as provided by this Article, all existing laws shall, subject to the Constitution, continue in force, so far as applicable and with the necessary adaptations, until altered, repealed or amended by the appropriate Legislature.

(7) In this Article, "existing laws" means all laws (including Ordinances, Orders-in-Council, Orders, rules, by-laws, ***regulations*** *and Letters Patent constituting a High Court, and any notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extraterritorial validity, immediately before the commencing day.*

Since the term "existing laws" includes SRO 1959 (which created 'Pakistan Customs and Excise Service') is a proper legislation duly protected by the Constitution, the same can only be modified by the Legislature and not by a mere Office Memorandum. Hence, the Impugned OM is patently illegal and *void ab initio*. Further averred, that a mere policy statement or administrative instructions cannot change the terms and conditions of the 'Pakistan Customs and Excise'.

G. That the Impugned OM is also repugnant to Article 240 of the Constitution. It is averred that as per the enunciations set out in the said Article, it is the Parliament that can determine the appointments to and the conditions of service of persons in the service of Pakistan. Excerpts from Article 240 are set out hereinafter: -

240. Appointment to service of Pakistan and conditions of service.

Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined-

(a) in the case of the services of the Federation, posts in ***connection with the affairs of the Federation and All-Pakistan Services, by or under Act of [Majlis-e-Shoora (Parliament)];***

In the premise, it is the Parliament and Parliament alone that can determine the appointments to and the conditions of service of persons in the service of Pakistan. It is averred that no tacit license can be given in the hands of the First Respondent (Establishment Division) to flout the categorical provisions of the Constitution and change conditions of service of Petitioners purportedly through the Impugned OM.

H. That the Impugned OM is against letter and spirit of Article 240 of the Constitution which unequivocally stipulates that the terms and conditions of service of a Civil Servant are to be determined by or under an Act of Parliament and not by a mere Office Memorandum and that too to the detriment and disadvantage of the Petitioner.

I. That the Impugned OM is also repugnant to Article 242 the Constitution read with Section 7 of the Federal Public Service Commission Ordinance, 1977. Excerpts from Article 242 are set out hereinafter:

242. Public Service Commission.

(1) [Majlis-e-Shoora (Parliament)] in relation to the affairs of the Federation, and the Provincial Assembly of a Province in relation to affairs of a Province, may, by law, provide for the establishment and constitution of a Public Service Commission.

(2) A Public Service Commission shall perform such functions as may be prescribed by law.

As per the stipulation of Article 242, Federal Public Service Commission Ordinance, 1977 was passed. Section 7 of the said Ordinance determines the functions of the Commission as under: -

7. Functions of the Commission:-

(1) The functions of the Commission shall be:-

(a) to conduct tests and examinations for ***recruitment*** *of persons to All- Pakistan Services, the civil services of the Federation and civil posts in connection with the affairs of the Federation in basic pay scales 16 and above or equivalent; and*

a) ...

(b) to advise the President:

(i) on matters relating to qualifications for and methods of recruitment to, services and posts referred to in clause (a);

(ii) on the principles to be followed in making initial appointments to the services and posts referred to in clause (a) and in making appointments by promotion to posts in BS- 18 and ***above and transfer from one service or occupational group to another; ....***

Hence, the pivotal role of Federal Public Service Commission (FPSC) in the creation of and appointment to the positions in the proposed new group(s) under the Impugned OM, as per laid down law and criteria, can not be brushed aside for the purpose of ensuring merit, transparency and impartiality in making appointments by transfer to newly established

service/group (s). It is averred that under Article 242 of the Constitution, read with section 7 of the Ordinance 1977, it is the function of FPSC to advise the President on the principle to be followed in making appointments by transfer from one service or Occupational Group to the other. Unless such principle/criteria is prescribed and duly notified, appointments to new group are clear violations of the prescribed procedure in this regard.

J. That the Impugned OM, by adversely changing terms and conditions of the service, is a clear violation of section 3 (2) of the Civil Servants Act, 1973 as the terms and conditions of service (which also includes appointment, confirmation, promotion, seniority, etc.) of any person cannot not be varied to his disadvantage.

K. That the Section 23 of the Civil Servants Act 1973 also provides protection to the civil servants by declaring that, nothing in this Act or in any rule shall be construed to limit or abridge the power of the President to deal with the case of any civil servant in such manner as may appear to him to be just and equitable. Provided that, where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favorable to him than that provided by this Act or such rule. It is averred that the Impugned OM is neither just nor equitable; secondly, it has created a situation, much less favorable to every officer of Customs and Excise Group, than the existing one.

L. That the Impugned OM is in clear contradiction to the Civil Servants (Confirmation) Rules, 1993, read with the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, as it does not allow lien, requiring the Petitioners to join a new service group on irrevocable basis (*Para 3 of the Impugned OM - Annex "A/1"*), without having the right of lien. It is averred that the Impugned OM is not only repugnant to the rules governing the services of the federation, but also contrary to the fundamental rights guaranteed by the Constitution.

Further averred that the lien is a right guaranteed to all the civil servants under rule 6(4) of the Civil Servants (Confirmation) Rules, 1993, read with rule 21(1) of the Civil Servants

(Appointment, Promotion & Transfer) Rules, 1973. The right/title guaranteed by legislature cannot be taken away by an Office Memorandum, which is defined as a mere mode of communication between the two Ministries/Divisions, under the Secretariat Instructions.

M. That the Impugned O.M is repugnant to law and the Constitution as it grossly infringes upon the rights of those civil servants who stand deferred but later on get promoted. It is averred that Section 8(2) of Civil Servants Act, 1973 and Rule 3(c) of Civil Servants (Seniority) Rules, 1993 bestows upon legal right of retaining inter se seniority upon such civil servants who stand deferred. Relevant excerpts from Rule 3(c) of Civil Servants (Seniority) Rules, 1993 are set out hereinafter: -

"3. **Seniority on promotion** ----Seniority in a service, cadre or post to which a civil servant is promoted shall take effect from the date of regular promotion to that service, cadre or post:-

Provided that: -

a) ....
b) ....
c) Civil Servant eligible for promotion who could not be considered for promotion in the original reference in circumstances beyond their control or whose case was deferred while their juniors were promoted to the higher post, shall on promotion, without supersession, take their seniority with the original batch".

Despite a categorical and unequivocal stipulation of law qua right of the Petitioners to retain inter se seniority, the Impugned O.M purportedly stipulates the date of regular promotion in a post as the yardstick of gauging the seniority. Thus, the civil servants, who were initially deferred and then promoted later on and retaining their inter se seniority would become junior not even to their juniors within their own batch but in numerous cases would be junior to later batches. It is averred that the Petitioner No: who could not be promoted to BPS - 18 by reason of his absence from the country for the purpose of higher studies in the USA and was deferred, would now be placed below his juniors in seniority should the Impugned O.M be allowed to remain in force. It is averred that whatever protection and benefit bestowed upon the Petitioner by the law qua their inter se seniority is

purportedly snatched away by the Impugned O.M. Besides infringing upon the vested rights of the Petitioners and violating the well settled and jealously guarded principle of *Legitimate Expectation*, the Impugned O.M would open a Pandora box of complex and interminable litigation within the existing services.

N. That the OM is against the doctrine of "*Promissory Estoppel*": The creation of IRS and Pakistan Customs Service creates a situation where the officers of CEG will have fewer posts available to them for promotion and lateral movement. It is averred that promotion prospects as were available to CEG officers at the time of joining CEG on the basis of CSS examination being a vested right, cannot be denied to them at this stage.

O. That creating two new occupational groups and seeking irrevocable options from Customs and Excise Group and Income Tax Group to join the same without disclosing the true and complete information about the cadre strength, functional scope, career / promotion prospects of the officers joining the new group, seniority issues, etc. is unreasonable, arbitrary and without taking into consideration of all relevant considerations. In absence of this, Petitioners' can not make an intelligent/informed decision to join IRS or Pakistan Custom Service and one would be leaping into dark. And justice will be only be met if the petitioners are given an option to join any other service/ occupational group of the federation commensurate to their merits at the time of CSS exams with original seniority or Alternatively, they may be given the option to join the service/ occupational group that was One Step higher in the order of preference submitted by the petitioners at the time of allocation to their current service/ occupational group. It is pertinent to mention here that the respondents have already filed a representation with the Establishment Division, Federal Public Service Commission, Revenue Division and Federal Board of Revenue on 18-09-2009. The respondents have not yet responded to the representations of the Petitioners. Keeping in view the circumstances and the unrealistic deadline of 28th

September, it is not possible for the petitioners to join either IRS or Pakistan Custom Service as it will be detrimental to the fundamental rights of the petitioners.

P. That the Impugned OM is against well settled doctrine of 'legitimate expectation' as Petitioners, after competing in CSS examination, passing many subsequent examinations and trainings have a legitimate expectation to proceed on a chartered career progression that is being demolished by this arbitrary Impugned OM.

Q. That there is absolutely no cogent basis of the splitting of cadre strength of CEG into 218 for Customs and 218 for Excise. This splitting has been done arbitrarily without any background analysis. Moreover, no post has been shown against Sales Tax despite the fact that CEG officers have all along been appointed and promoted against posts in Collectorates of Sales Tax & Federal Excise. Asking the petitioners to join IRS or Pakistan Customs Service in this scenario will seriously affect Petitioners' rights.

It is averred that justice will only be met and the rights of the petitioners are not jeopardized, if the petitioners are given an option to join any other service/ occupational group of the federation commensurate to their merits at the time of CSS exams with original seniority or alternatively they may be given the option to join the service/ occupational group that was One Step higher in the order of preference submitted by the petitioners at the time of allocation to their current service/ occupational group

R. That if this practice of such arbitrary and unlawful options to join IRS or Pakistan Customs Service as per the Impugned OM is allowed to flourish, the entire service structure of the federation would be shaken to the core and would lay at the mercy of the interpretations of Establishment Division and it would be extremely fatal to the principles of neutrality,

impartiality, fairness, good governance that are sina quinon of the civil service which is the backbone of executive in the country.

PRAYER:

In the premise, it is respectfully prayed that upon acceptance of this writ petition, this Honorable Court may: -

a) Direct the Respondents not to restrict the Petitioners to exercise their option of joining Inland Revenue Service or Pakistan Customs Service rather enable the Petitioners to exercise option to join any of the Service/Occupational Group as per their choice and in consonance with their position in the merit list announced by the Federal Public Service Commission or alternatively be given the option to join the service/ occupational group that was One Step higher in the order of preference submitted by the petitioners at the time of allocation to their current service/ occupational group.

b) Direct the Respondents to extend the date of 28th September, 2009 for submitting options to join either IRS or Pakistan Customs Service till the decision of the Court.

c) Direct the Respondents to treat the Petitioners in accordance with the law.

This Honorable Court may also pass any other order in view of the facts and circumstances of the case.

Petitioners

Through:

Barrister Masroor Shah
B.A; LL.B (Hons) (UK); PGD (London)
Bar at Law (Lincoln's Inn)
Advocate High Court
(CC No: 17747)

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Certificate:

Certified that as per Clients' instructions, this is the First Writ Petition filed by the Petitioners against the Respondents in respect of the Impugned Office Memorandum. Further Certified that the petition, filed under Article 199 of the Constitution, arises out of the infringement of the Petitioners' fundamental constitutional rights and that no other petition is pending before the Supreme Court or any other Court between the Parties in respect of the Impugned Office Memorandum.

Counsel

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
RAWALPINDI

Writ Petition No: _____/2009

RIZWAN BASHIR & OTHERS

....Petitioners

VERSUS

FOP & OTHERS

....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

AFFIDAVIT

I, **RIZWAN BASHIR,** Deputy Collector (Customs), Sambrial, Sialkot, do hereby solemnly swear and affirm as under: -

1. That the Petitioners are the officers of the Customs and Excise Group in the service of Pakistan and have joined the service on merit after passing the Central Superior Services Examination.

2. That the "Pakistan Customs and Excise Service" was constituted with effect from 01.01.1960 vide S.R.O 597(K), Dated: 18th December 1959 (Hereinafter referred to as the

"SRO 1959") by "amalgamating the Pakistan Customs Service Class I and the Class I posts in the Central Excise and Land Customs Department into a unified Central Service Class I". This SRO was issued by the President of Pakistan, copy whereof is annexed herewith and marked "**B**".

3. That the SRO 1959 was in field on the day Constitution of the Islamic Republic of Pakistan, 1973 came into force. It is averred that Article 268 (read with Article 241) of the Constitution protected all "existing laws" including SRO 1959, unless modified by "appropriate legislature".

4. That the particulars of other pertinent instruments qua the Customs and Excise Service are set out hereinafter:

   a. OM No: 1/9/74-ARC Dated: 12/09/1974 notifying conversion of the service into an Occupational Group titled Federal Revenue (Indirect Tax Group), under administrative control of Ministry of Finance; (ESTACODE 1989 Pages 219-221)

   b. The aforesaid OM had followed a D.O letter issued by Respondent No: 1 bearing No: 1/1/73-ARC dated: 21/08/1973 wherein merger of all services of the Federation into a single unified group called Federal Unified Group was enunciated [ESTACODE Pages 989 – 990] and later stipulation about abolition of the Service nomenclatures was made by another letter bearing No: 1/2/73-ARC dated: 24/08/1973 [ESTACODE Page 991].

   c. The aforesaid was followed by an OM notifying parameters for composition of C & E Service and regulates the Petitioners' Service Group, to date [5/2/75-ARC dated: 9/05/1975] as amended by OM No: 3 36-CP – 2 dated: 08/09/1987 [ESTACODE 1989 Pages 1035-1037]

   Notwithstanding its legality, it did not bring in any material change in the existing service structure of the Service and was merely a cosmetic measure.

5. That the OM 1975 clearly endorses this position by stating that "consequent upon the Administrative Reforms, certain cadres have been transformed into occupational groups *but the composition of cadres comprising these groups has remained intact*; [ESTACODE 2006 Pages 256 – 258].

6. That now Respondent No: 1 has purportedly issued Office Memorandum bearing No: F.6/2/2009-CP-II Dated: 12/09/2009 on basis whereof the Third Respondent purportedly issued letter No: C. No 9(3)/2009-M-I Dated: 12.09.2009 (Hereinafter collectively referred to as the "Impugned OM"), copies whereof are annexed herewith and marked "**A/1** and **A/2** respectively"). It is averred that the Impugned OM is arbitrary, illegal, unreasonable, without lawful authority, *corum non judice* and against the laws and principles of natural justice. Further averred that the Impugned OM not only has the potential to effectively devastate the career progression of the Petitioners but also grossly infringe upon their fundamental rights enshrined in and guaranteed by the Constitution. Further averred that the Impugned O.M changes the Lien and seniority rules to the detriment of the Petitioners and grossly affects the terms and conditions of their service. It also affects the Petitioners' inter se seniority.

7. That the Petitioners have no other efficacious remedy at hand to get their genuine grievances redressed but to invoke the extra ordinary jurisdiction of this Honorable Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 on inter alia, the following grounds:

GROUNDS:

A. That the Petitioners as well as all other officers of Customs & Excise Group (Hereinafter referred to as the "CEG") have been appointed therein by accepting an offer made by the Federal Board of Revenue (Respondent No: 3) to join CEG subject to certain terms and

conditions. Copy of the said Offer of Appointment made to Petitioner No: 1 by Respondent No: 3 vide Letter C. No: 9 (12)/2004-M-II, Dated: 09.04.2004 is annexed herewith and marked "**C**". It is averred that once the offer was accepted by the Petitioners, both the Petitioners and the Federal Board of Revenue entered into a contract binding on both of them. One of the material term and condition of the said contract was that "change of occupational group will not be allowed in any case" (Clause VI of Annex C). It is averred that by giving option to join IRS or a group/service, which will be renamed in future and manage business of one tax/levy i.e. Customs, the Respondent No: 3 (FBR) has made the contract voidable at the option of each officer/Petitioner. Further averred that Respondent No: 3 (FBR) has reverted to the status of Petitioners to a position which existed before the offer was made. In the premise, ends of justice would only be met should the Petitioners be given again an option to join any of the service/occupational groups, including IRS and Pakistan Customs Service, and should be placed in the occupational group as per their choice and in consonance with their position in the merit list announced by the FPSC.

B. That even otherwise, a bare perusal of the Occupational Group Allocation List of the successful candidates of Competitive Examinations conducted by the FPSC every year reveals that the Petitioners who opt for CEG are always ranked higher in the merit list. For instance in 2002, the merit list of CSS Exam publicized by way of Press Note bearing No: F. No: 1/9/2003-T.V issued by Respondent No: 1, copy whereof annexed herewith and marked "**D**", would reveal that the CEG was opted by the candidates ranking higher in the final merit list. Similar is the situation in the merit lists related to every year's CSS examination. The candidates joining the CEG made informed and well considered decision on the basis of career prospects and functions attributed to this Service. The petitioners preferred to join CEG over other services/ occupational group, despite the fact they could have been allocated to other services/ occupational groups on the basis of their merit in the CSS exams, mainly based on the information available to them about the career progression, promotion prospects and seniority issues in CEG. It is averred that should the Impugned O.M be allowed to remain in force, the officers of the CEG in general and the Petitioners in particular would be left short changed as not only their career progression would be adversely affected but the functions and nature of job would also be drastically changed for worse. In the premise, ends of justice would only be met if the choice offered to the Petitioners by the Respondent No: 1 vide Impugned O.M, is not restricted to IRS &

Pakistan Customs Service alone. It should rather be extended to all Occupational Groups and only in this manner would the Petitioners be endowed a fair, reasonable and appropriate chance to exercise its choice on the basis of materially changed circumstances.

If the petitioner is asked to revisit the options, the same should not be restricted to one group i.e. either IRS or Pakistan Custom Service. Rather the petitioners be given the option to join any other service/ occupation group of the federation commensurate to their merits at the time of CSS exams with original seniority or alternatively they may be given the option to join the occupational group / service that was One Step higher in the order of preference submitted by the petitioners at that time, so that the petitioners are not discriminated vis-à-vis other service/occupational groups and their career/ promotion prospects are not jeopardized.

C. That even otherwise the Impugned OM is repugnant to Civil Servants (Appointments, Promotion & Transfer) Rules, 1973. It is averred that there is a clear procedure laid down for filling-up different positions in a service by transfer under Rules 7 and 8 of the Civil Servants (Appointments, Promotion & Transfer) Rules, 1973, whereby a clear criteria is to be notified and that the option to join the new group cannot be restricted to one or two services as all civil servants fulfilling the prescribed qualifications/criteria would be eligible for appointment by transfer to the Inland Revenue Service and Pakistan Custom Service.

D. That Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 categorically stipulates as under: -

"Article 4: Right of Individuals to be dealt with in accordance with the law etc

a. To enjoy the protection and of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. …."

It is averred that every person (including a civil servant, which include the Petitioners) is entitled to be treated in accordance with the law. The Respondents, being public functionaries exercising the functions of the state are duty bound to respect and give effect to the inalienable rights of the Petitioner accruing from the Constitution and are entitled to be treated in accordance with the law.

E. That the Impugned O.M also runs contrary to the well established principle of *locus poenitentiae*. It is averred, that the protection and benefits once bestowed upon the Petitioners by the law cannot not be unilaterally taken back by the Respondents.

F. That the Impugned OM is repugnant to Article 268 of the Constitution. It is averred that SRO 1959 was in field on the day the Constitution of the Islamic Republic of Pakistan, 1973 came into force. Article 268 of the Constitution protected all "existing laws" including SRO 1959 unless modified by "appropriate legislature".

Excerpts from Article 268 are set out hereinafter:

268. Continuance in force and adaptation of certain laws.

(1) Except as provided by this Article, all existing laws shall, subject to the Constitution, continue in force, so far as applicable and with the necessary adaptations, until altered, repealed or amended by the appropriate Legislature.

(7) In this Article, "existing laws" means all laws (including Ordinances, Orders-in-Council, Orders, rules, by-laws, ***regulations*** *and Letters Patent constituting a High Court, and any notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extraterritorial validity, immediately before the commencing day.*

Since the term "existing laws" includes SRO 1959 (which created 'Pakistan Customs and Excise Service') is a proper legislation duly protected by the Constitution, the same can

only be modified by the Legislature and not by a mere Office Memorandum. Hence, the Impugned OM is patently illegal and *void ab initio*. Further averred, that a mere policy statement or administrative instructions cannot change the terms and conditions of the 'Pakistan Customs and Excise'.

G. That the Impugned OM is also repugnant to Article 240 of the Constitution. It is averred that as per the enunciations set out in the said Article, it is the Parliament that can determine the appointments to and the conditions of service of persons in the service of Pakistan. Excerpts from Article 240 are set out hereinafter: -

240. Appointment to service of Pakistan and conditions of service.

Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined-

(a) in the case of the services of the Federation, posts in ***connection with the affairs of the Federation and All-Pakistan Services, by or under Act of [Majlis-e-Shoora (Parliament)];***

In the premise, it is the Parliament and Parliament alone that can determine the appointments to and the conditions of service of persons in the service of Pakistan. It is averred that no tacit license can be given in the hands of the First Respondent (Establishment Division) to flout the categorical provisions of the Constitution and change conditions of service of Petitioners purportedly through the Impugned OM.

H. That the Impugned OM is against letter and spirit of Article 240 of the Constitution which unequivocally stipulates that the terms and conditions of service of a Civil Servant are to be determined by or under an Act of Parliament and not by a mere Office Memorandum and that too to the detriment and disadvantage of the Petitioner.

I. That the Impugned OM is also repugnant to Article 242 the Constitution read with Section 7 of the Federal Public Service Commission Ordinance, 1977. Excerpts from Article 242 are set out hereinafter:

242. Public Service Commission.

(1) [Majlis-e-Shoora (Parliament)] in relation to the affairs of the Federation, and the Provincial Assembly of a Province in relation to affairs of a Province, may, by law, provide for the establishment and constitution of a Public Service Commission.

(2) A Public Service Commission shall perform such functions as may be prescribed by law.

As per the stipulation of Article 242, Federal Public Service Commission Ordinance, 1977 was passed. Section 7 of the said Ordinance determines the functions of the Commission as under: -

7. Functions of the Commission:-

(1) The functions of the Commission shall be:-

(a) to conduct tests and examinations for ***recruitment*** *of persons to All- Pakistan Services, the civil services of the Federation and civil posts in connection with the affairs of the Federation in basic pay scales 16 and above or equivalent; and*

a) ...

(b) to advise the President:

i) on matters relating to qualifications for and methods of recruitment to, services and posts referred to in clause (a);

ii) on the principles to be followed in making initial appointments to the services and posts referred to in clause (a) and in making appointments by promotion to posts in BS- 18 and ***above and transfer from one service or occupational group to another;***

....

Hence, the pivotal role of Federal Public Service Commission (FPSC) in the creation of and appointment to the positions in the proposed new group(s) under the Impugned OM, as per laid down law and criteria, can not be brushed aside for the purpose of ensuring merit, transparency and impartiality in making appointments by transfer to newly established service/group (s). It is averred that under Article 242 of the Constitution, read with section 7 of the Ordinance 1977, it is the function of FPSC to advise the President on the principle to be followed in making appointments by transfer from one service or Occupational Group to the other. Unless such principle/criteria is prescribed and duly notified, appointments to new group are clear violations of the prescribed procedure in this regard.

J. That the Impugned OM, by adversely changing terms and conditions of the service, is a clear violation of section 3 (2) of the Civil Servants Act, 1973 as the terms and conditions of service (which also includes appointment, confirmation, promotion, seniority, etc.) of any person cannot not be varied to his disadvantage.

K. That the Section 23 of the Civil Servants Act 1973 also provides protection to the civil servants by declaring that, nothing in this Act or in any rule shall be construed to limit or abridge the power of the President to deal with the case of any civil servant in such manner as may appear to him to be just and equitable. Provided that, where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favorable to him than that provided by this Act or such rule. It is averred that the Impugned OM is neither just nor equitable; secondly, it has created a situation, much less favorable to every officer of Customs and Excise Group, than the existing one.

L. That the Impugned OM is in clear contradiction to the Civil Servants (Confirmation) Rules, 1993, read with the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, as it does not allow lien, requiring the Petitioners to join a new service group on irrevocable basis (*Para 3 of the Impugned OM - Annex "A/1"*), without having the right of lien. It is

averred that the Impugned OM is not only repugnant to the rules governing the services of the federation, but also contrary to the fundamental rights guaranteed by the Constitution. Further averred that the lien is a right guaranteed to all the civil servants under rule 6(4) of the Civil Servants (Confirmation) Rules, 1993, read with rule 21(1) of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973. The right/title guaranteed by legislature cannot be taken away by an Office Memorandum, which is defined as a mere mode of communication between the two Ministries/Divisions, under the Secretariat Instructions.

M. That the Impugned O.M is repugnant to law and the Constitution as it grossly infringes upon the rights of those civil servants who stand deferred but later on get promoted.

It is averred that Section 8(2) of Civil Servants Act, 1973 and Rule 3(c) of Civil Servants (Seniority) Rules, 1993 bestows upon legal right of retaining inter se seniority upon such civil servants who stand deferred. Relevant excerpts from Rule 3(c) of Civil Servants (Seniority) Rules, 1993 are set out hereinafter: -

"3. **Seniority on promotion** ----Seniority in a service, cadre or post to which a civil servant is promoted shall take effect from the date of regular promotion to that service, cadre or post:-

Provided that: -

a) ....

b) ....

c) Civil Servant eligible for promotion who could not be considered for promotion in the original reference in circumstances beyond their control or whose case was deferred while their juniors were promoted to the higher post, shall on promotion, without supersession, take their seniority with the original batch".

Despite a categorical and unequivocal stipulation of law qua right of the Petitioners to retain inter se seniority, the Impugned O.M purportedly stipulates the date of regular promotion in a post as the yardstick of gauging the seniority. Thus, the civil servants, who were initially deferred and then promoted later on and retaining their inter se seniority would become junior not even to their juniors within their own batch but in numerous cases would be junior to later batches. It is averred that the Petitioner No: who could not be promoted to BPS - 18 by reason of his absence from the country for the purpose of higher studies in the USA and was deferred, would now be placed below his juniors in seniority should the Impugned O.M be allowed to remain in force. It is averred that whatever protection and benefit bestowed upon the Petitioner by the law qua their inter se seniority is purportedly snatched away by the Impugned O.M. Besides infringing upon the vested rights of the Petitioners and violating the well settled and jealously guarded principle of *Legitimate Expectation*, the Impugned O.M would open a Pandora box of complex and interminable litigation within the existing services.

N. That the OM is against the doctrine of "*Promissory Estoppel*": The creation of IRS and Pakistan Customs Service creates a situation where the officers of CEG will have fewer posts available to them for promotion and lateral movement. It is averred that promotion prospects as were available to CEG officers at the time of joining CEG on the basis of CSS examination being a vested right, cannot be denied to them at this stage.

O. That creating two new occupational groups and seeking irrevocable options from Customs and Excise Group and Income Tax Group to join the same without disclosing the true and complete information about the cadre strength, functional scope, career / promotion prospects of the officers joining the new group, seniority issues, etc. is unreasonable, arbitrary and without taking into consideration of all relevant considerations. In absence of this, Petitioners' can not make an intelligent/informed decision to join IRS or Pakistan Custom Service and one would be leaping into dark. And justice will be only be met if the

petitioners are given an option to join any other service/ occupational group of the federation commensurate to their merits at the time of CSS exams with original seniority or Alternatively, they may be given the option to join the service/ occupational group that was One Step higher in the order of preference submitted by the petitioners at the time of allocation to their current service/ occupational group. It is pertinent to mention here that the respondents have already filed a representation with the Establishment Division, Federal Public Service Commission, Revenue Division and Federal Board of Revenue on 18-09-2009. The respondents have not yet responded to the representations of the Petitioners. Keeping in view the circumstances and the unrealistic deadline of 28th September, it is not possible for the petitioners to join either IRS or Pakistan Custom Service as it will be detrimental to the fundamental rights of the petitioners.

P. That the Impugned OM is against well settled doctrine of 'legitimate expectation' as Petitioners, after competing in CSS examination, passing many subsequent examinations and trainings have a legitimate expectation to proceed on a chartered career progression that is being demolished by this arbitrary Impugned OM.

Q. That there is absolutely no cogent basis of the splitting of cadre strength of CEG into 218 for Customs and 218 for Excise. This splitting has been done arbitrarily without any background analysis. Moreover, no post has been shown against Sales Tax despite the fact that CEG officers have all along been appointed and promoted against posts in Collectorates of Sales Tax & Federal Excise. Asking the petitioners to join IRS or Pakistan Customs Service in this scenario will seriously affect Petitioners' rights. It is averred that justice will only be met and the rights of the petitioners are not jeopardized, if the petitioners are given an option to join any other service/ occupational group of the federation commensurate to their merits at the time of CSS exams with original seniority or alternatively they may be given the option to join the service/ occupational group that was One Step higher in the order of preference submitted by the petitioners at the time of allocation to their current service/ occupational group.

R. That if this practice of such arbitrary and unlawful options to join IRS or Pakistan Customs Service as per the Impugned OM is allowed to flourish, the entire service structure of the federation would be shaken to the core and would lay at the mercy of the interpretations of Establishment Division and it would be extremely fatal to the principles of neutrality, impartiality, fairness, good governance that are sina quinon of the civil service which is the backbone of executive in the country.

Deponent

Verified on oath at Islamabad on this Twenty Eighth Day of September 2009 that the contents of my above affidavit are all true and correct according to my knowledge and belief and that nothing has been concealed from the Court

Deponent

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
RAWALPINDI

C.M No: _____/2009 in Writ Petition No: _____/2009

RIZWAN BASHIR & OTHERS

....Petitioners

VERSUS

FOP & OTHERS

....Respondents

C.M FOR INTERIM RELIEF

Respectfully Sheweth:

1. That the Petitioners have filed the instant Writ today against the Respondents, which is pending adjudication before this Honorable Court. For the sake of brevity, the contents and averments set out in the said Petition may graciously be read and treated as integral part hereof.

2. That upon perusal of the contents and averments set out in the main Petition, it would transpire that the Petitioners have a very good prima facie case.

3. That in case the operation of the Interim Relief is not granted, the Petitioners shall suffer irreparable loss. The Respondents on the contrary shall not suffer any loss at all.

4. That in the premise the balance of convenience clearly lies in favor of the Petitioners.

PRAYER:

In the premise, it is respectfully prayed that the operation of the Impugned Office Memorandum to the extent of its setting out 28th September 2009 as the deadline for submitting options to join either IRS or Pakistan Customs Service may graciously be suspended till the final adjudication of this petition by this Honorable Court, in the interest of justice.

Petitioners

Through:

Barrister Masroor Shah
B.A; LL.B (Hons) (UK); PGD (London)
Bar at Law (Lincoln's Inn)

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
RAWALPINDI

C.M No: _____/2009 in Writ Petition No: _____/2009

RIZWAN BASHIR & OTHERS

....Petitioners

VERSUS

FOP & OTHERS

....Respondents

C.M FOR INTERIM RELIEF

AFFIDAVIT

I, **RIZWAN BASHIR**, Deputy Collector of Customs, Sambrial, Sialkot,, do solemnly swear and affirm as under: -

1. That the Petitioners have filed the instant Writ today against the Respondents, which is pending adjudication before this Honorable Court. For the sake of brevity, the contents and averments set out in the said Petition may graciously be read and treated as integral part hereof.

2. That upon perusal of the contents and averments set out in the main Petition, it would transpire that the Petitioners have a very good prima facie case.

3. That in case the operation of the Interim Relief is not granted, the Petitioners shall suffer irreparable loss. The Respondents on the contrary shall not suffer any loss at all.

4. That in the premise the balance of convenience clearly lies in favor of the Petitioners.

Deponent

Verified on oath at Islamabad on this Twenty Eighth Day of Septembet 2009 that the contents of my above affidavit are all true and correct according to my knowledge and belief and that nothing has been concealed from the Court

Deponent

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH

RAWALPINDI

C.M No: _____/2009 in Writ Petition No: _____/2009

RIZWAN BASHIR & OTHERS

....Petitioners

VERSUS

FOP & OTHERS

....Respondents

APPLICATION UNDER SECTION 151 OF THE CIVIL PROCEDURE CODE, 1908 FOR EXEMPTION FROM FILING CERTIFIED COPIES OF CERTAIN DOCUMENTS ANNEXED WITH THE WRIT PETITION

Respectfully Shetweth:

1. That the Petitioners have filed Writ Petition, particulars whereof set out hereinbefore, in this Honorable High Court.

2. That the Petitioners could not annex the certified copies of all the documents herein.

3. That the Petitioners may graciously be allowed to annex uncertified true copies of the same.

PRAYER:

In the premise, it is respectfully prayed that the Petitioners may graciously be allowed to annex uncertified true copies of the documents relied hereupon, in the interest of justice.

Petitioners

Through:

Barrister Masroor Shah
B.A; LL.B (Hons) (UK); PGD (London)
Bar at Law (Lincoln's Inn)
Advocate High Court
(CC No: 17747)

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
RAWALPINDI

C.M No: _____/2009 in Writ Petition No: _____/2009

RIZWAN BASHIR & OTHERS

....Petitioners

VERSUS

FOP & OTHERS

....Respondents

APPLICATION UNDER SECTION 151 OF THE CIVIL PROCEDURE CODE, 1908 FOR EXEMPTION FROM FILING CERTIFIED COPIES OF CERTAIN DOCUMENTS ANNEXED WITH THE WRIT PETITION

AFFIDAVIT

I, **RIZWAN BASHIR**, Deputy Collector of Customs, Sambrial, Sialkot,, do solemnly swear and affirm as under: -

1. That the Petitioners have filed Writ Petition, particulars whereof set out hereinbefore, in this Honorable High Court.

2. That the Petitioners could not annex the certified copies of all the documents herein.

3. That the Petitioners may graciously be allowed to annex uncertified true copies of the same.

Deponent

Verified on oath at Islamabad on this Twenty Eighth Day of September 2009 that the contents of my above affidavit are all true and correct according to my knowledge and belief and that nothing has been concealed from the Court

Deponent

COPY OF COURT'S STAY ORDER

ANNEX- IV

ORDER SHEET

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
JUDICIAL DEPARTMENT

Case No:

WP No. 2577 of 2009.

Versus

Ayesha Bashir Wani etc — Govt. of Pakistan etc.

No. of order/ Proceeding	Date of order/ Proceeding	Order with signatures of Judge, and that of parties or counsel, where necessary.
	28.09.2009.	M/s Barrister Masroor Shah, Zafar Ullah Khan and Muhammad Zahir Shah, Advocates for the petitioners. M/s Saeed Ahmad Zaidi and Dr. G.S.Khan Advocates for respondents. Muhammad Aqil Usman Member Legal FBR.

Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, the petitioners have sought for setting aside the office memorandum dated 12.09.2009 issued by Joint Secretary (CP-II) Government of Pakistan Cabinet Secretariat Establishment Division through which the employees of the Custom Department have been merged with Income Tax Department after the creation of new occupational service, namely constituted *"Inland Revenue Service (IRS)"*.

2. The main contention of learned counsel for the petitioners is that aforementioned Inland Revenue Service could only be created after the legislation by the Parliament and it could not be created by the virtue of Office Memorandum; that Under Article 242 of the Constitution of Islamic Republic of Pakistan, 1973, read with section 7 of the Ordinance 1977 it is the function of FPSC to advise the President on the principle to be followed in making appointment by transfer from one service or Occupational Group to the other; that the petitioners are working in

ATTESTED
29/9/09
Examiner Copy Supply
Section Lahore High Court
Rawalpindi Bench

Custom Excise & Taxation Department, and their terms and conditions will be affected badly in case said office memorandum is not declared null, void and abinito.

3. During the arguments M/s Saeed Ahmad Zaidi, Dr. G.S. Khan advocates and Mr. Muhammad Aqil Usman Member Legal FBR have entered appearance on behalf of the respondents of their own and opposed the petition by raising preliminary objections about maintainability of writ petition as the matter relates to terms and conditions of service and under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 this writ petition is not maintainable.

4. After hearing the learned counsel for the parties, it is found that questions of serious nature have been raised from both the sides, which need consideration. A copy of this petition is handed over to the learned counsel appearing on behalf of the opposite party, who have accepted the notice on behalf of respondents No.2 and 3. However, a copy of this petition shall be sent to Mr. Akhtar Awan, DAG by the office, who shall appear on behalf of respondents No.1 and 2 and ensure their representation. To be relisted on 8.10.2009.

5. In the meantime operation of the impugned office memorandum dated 12.09.2009 shall remain suspended and no further action will be taken till the next date of hearing.

(IJAZ AHMED CHAUDHRY)
JUDGE

SEAL OF THE LAHORE HIGH COURT

Certified to be True Copy

29/9/09

Examiner Copy Supply Section
Authorised Under Article 87

Imtiaz**

W. P No. _____/09

1. Ms. Ayesha Bashir Wani, Deputy Collector, Customs, Federal Excise &Sales Tax, Islamabad
2. Ms. Ammara Durrani, A.C, Lahore R/o 159-AI, Valancia, Lahore
3. Syed Javad Ali Shah D.C MCC, Lahore R/o 346-AA, Phase-4, DHA, Lahore
4. Mr. Shuja-ud-Din Additional Director PCA, LahoreR/o 119/I, 5137 "Z" Block, DHA, Lahore
5. Mr. Rashid Habib Khan, Second Secretary, HRD, Deputy Collector, Mehmoodabad, Pajjagi Road, Peshawar;
6. Mr. Abu Nasr Shuja Akram, Second Secretary, Federal Board of Revenue, Islamabad,
7. Mr. Tariq Ahad Nawaz, Director (Internal Audit) Customs, Federal Excise &Sales Tax, Islamabad
8. Mr. Abdul Sattar Aora, Chief , Federal Board of Revenue, Islamabad,
9. Mr. Muhammad Ramzan, Member (Domestic Operations South), Federal Board of Revenue, Islamabad,
10. Mr. Adnan Iqbal, Deputy Collector, MCC, Islamabad,
11. Mr. Muhammad Akram Chaudhry, Additional Collector (HQ/NA) Federal Board of Revenue, Islamabad,
12. Mr. Irfan Javed, D.C, R/o House No.10-T, Mohalla Asad Jan Road, Lahore Cantt.,
13. Mr. Ashhad Jawad, Secretary , Federal Board of Revenue, Islamabad,
14. Mr. Muhammad Nadir Khan Hoti, Collector Customs, Rawalpindi;
15. Ms. Ansir Anise, Assistant Collector Customs, Headquarters, FBR, Islamabad
16. Mr. Masood Ahmed, Deputy Collector, Islamabad Dry Port, Islamabad.
17. Mr. Faiz Ali, Deputy Collector (Customs), Model Customs Collectorate, Islamabad;
18. Mr. Muhammad Arshad Khan, Deputy Collector Sales Tax&F.E, LTU, Islamabad;
19. Ms. Iram Maqbool Aamir, Deputy Collector, Customs, Sales Tax & Federal Excise, Islamabad;
20. Mr. Abdur Rashid Bajwa, Collector, Sales Tax & Federal Excise, LTU, Islamabad;
21. Mr. Azood-ul-Mehdi, Deputy Collector, LTU, Islamabad,
22. Mr. Imran Ahmed, Deputy Collector, MCC, Islamabad;
23. Ms. Azmat Tahira, Deputy Collector Customs, RTO, Lahore;

Colony 26, Karachi,

29. Mr. Moeen Afzal Ali, A.C R/o Flat No.6/4, 7 Floor Dadabhoy Centre, Shahrah-e-Faisal, Karachi (East)
30. Mr. Yousaf Ali Khan Magsi, D.C, Karachi, R/o House No.446/A, Gulshan-e-Iqbal, Block 5, Karachi;
31. Ms. Nyma Batool, Deputy Collector, Lahore R/o 4-25/217-A, Gordit Singh Road, Quetta;
32. Mr. Sadiq Ullah Khan, Second Secretary, AS&C, G&SE, Federal Board of Revenue, Islamabad;
33. Mr. Aftab Anwar Baloch, Chief Sales Tax, FBR, R/o H.No.74/1, St.8, Commercial Street, DHA, Phase-4, Karachi;
34. Mr. Muhammad Ali Raza, Secretary Procurement, Tax Administration Reforms Project, FBR, Islamabad;
35. Mr. Muhammad Saleem, Secretary, FBR R/o Tatta Pani Dhanah, Tehsil and District Kotli,
36. Mr. Imran Tariq, Collector, H.No.215-U, Defence Housing Authority Lahore Cantt;
37. Mr. Fahad Ali Chaudhary, Second Secretary, FBR, H.No.124, St.9, F-11/1, Islamabad;
38. Mr. Muhammad Rashid Munir Siddiqui D.C, MCC, Lahore, Chongi No.9, H.NO.1788/H, Salman Plaza, Vokala Colony, Chah Usmani Wala, Multan;
39. Ms. Tahira Javed A.C, RTO, Lahore H.34-B, Block 2, Sector C-1, College Road Township Lahore;
40. Mr. Saad Atta Rabani, A.C RTO, Sialkot H.No.NA-204/252, 7th Road S. Town Rawalpindi;
41. Mr. Muhammad Ismail, D.C, MCC, Lahore H.No.SD-30, St.14-A, Askari Housing Scheme Walton Lahore Cantt.;
42. Mr. Rozi Khan Burki, Chief Customs Exports, FBR, Islamabad;
43. Mr. Muhammad Nayyar Shafiq, DC, RTO, Sialkot, H.No.1013, St.67, G-9/4, Islamabad;
44. Mr. Khial Muhammad, D.C, MCC, Port Qasim, R/o District Charsada, NWFP, Umarzai;
45. Mr. Imtiaz Ahmed Dev Additional Collector R/o Chak No.37-SB, Tehsil and District Sargodha;
46. Mr. Salman Yaqoob Khan, Deputy Director, I&I, Peshawar;
47. Mr. Mudasar Ahmed Tirmizi, A.C, RTO Sialkot, R/o H.No.5, Abass Street, Ilama Iqbal Town Lahore;
48. Ms. Qurat-ul-Ain Dogar D.C, R/o Customs Colony, H.B-4, Satluj Block Alama Iqbal Town Lahore;
49. Mr. Qamar Zia-ul-Haq, A.C, H.62-C, PECHS, Block-2, Karachi;
50. Mr. Jamil Ahmed Baloch; Deputy Collector, Quetta;
51. Mr. Karam Ellahi, DC, Islamabad

Versus

1. Government of Pakistan, Islamabad , Establishment Division, Cabinet Secretariat, Islamabad, through its Secretary.
2. Government of Pakistan, Islamabad, Revenue Division, Ministry of Finance, Revenue & Economic Affairs, through its Secretary..
3. Federal Public Service Commission, through its Chairman
4. Federal Board of Revenue, Government of Pakistan, Islamabad, through its Chairman.

Respondents

WRIT PETITION UNDER ARTICLE 199 OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKSITAN, 1973

CLAIM IN WRIT PETITION:

To set aside the Impugned Office Memorandum No.F.6/2/2009-CP-II, dated 12th September 2009 (OM 2009) **(Annexure-A)** issued by the Establishment Division, Government of Pakistan, Islamabad/Respondent No. 1

The Petitioners respectfully submit as under:

Brief Facts:

1) That the addresses of the parties have correctly been mentioned in the above captioned petition for the affective service of summons upon them;

2) that the petitioners belong to the Customs and Excise Group, a Service of the Federation, consisting of 436 officers; it discharges its functions with the assistance of some 11000 staff placed under its oversight and responsibility ;

3) That the "Pakistan Customs and Excise Service" was initially constituted with effect from 01.01.1960 vide S.R.O 597(K) dated 18th December 1959 (SRO 1959) by "amalgamating the Pakistan Customs Service Class I and the Class I posts in the Central Excise and Land Customs Department into a unified Central Service Class I". This SRO was issued by the President of Pakistan under enabling powers of the provisional Constitution **(Copy annexed as Annex-B);**

4) That this SRO 1959 was in field on the commencing day of the Constitution of the Islamic Republic of Pakistan 1973; and its article 268, read with its article 241, protected all "existing laws" including this SRO, unless modified by "appropriate legislature".

5) That the next relevant instruments regarding all Services of the Federation, including the Customs and Excise Service, are:

   i) The OM. No 1/9/74-ARC dated the 12th September 1974 to notify conversion of the Service into an occupational group titled Federal Revenue (Indirect Tax Group), under administrative control of Ministry of Finance;[Estacode 1989 pages 219-221]

   ii) The (a) above had followed a D.O letter of Respondent no 1, the Establishment Secretary, no 1/1/73-ARC dated 21 August wherein merger of all services of the federation into a single unified Group called Federal Unified Group was announced, [Estacode pages 989-990]; and later abolition of the Service nomenclatures by another letter no 1/2/73/-ARC dated 24 August 1973 {Estacode page 991].

   iii) That the above were followed by an OM that notified policy parameters for composition of C &E Service as 'Customs Group and regulates the Petitioners' Service Group, to date ['no 5/2/75-ARC dated the 9th May 1975 [illegible] OM no 3/3/86/ CP 2 dated 8.9.1987 [Estacode

any material change in the existing service structure of the Service and was merely a cosmetic measure;

6) That the OM 1975 clearly endorses this position by stating that "consequent upon the Administrative Reforms, certain cadres have been transformed into occupational groups *but the composition of cadres comprising these groups has remained intact*; **(Copy enclosed as Annex-C);**

7) That now the Respondent No, 1 has issued the impugned OM 2009 which is arbitrary, illegal, unreasonable, without lawful authority, corum non judice, , against laws and principles of natural justice and if allowed to be implemented will effectively destroy the career and fundamental rights of the petitioners;

8) The impugned OM creates a new Service of the federation by abolishing by way of merger two services. It not only changes the structure of the petitioners' service group in material particulars, it also impinges on Lien and seniority rules, affects the terms and conditions of the service. It also affects the inter se seniority in addition to being arbitrary in nature, vague and without lawful authority;

9) That being an instrument that affects the structure of the services as well as terms & conditions of entire membership of a constitutionally protected service , the petitioners have no other suitable and efficacious remedy available to them except challenging it through this constitutional jurisdiction;

10) That pursuant to the impugned OM, respondent no. 4 has issued a letter no. C.No. 9(3)-2009-M-1dated 12-09-2009 asking for options from the petitioners to join IRS; **(copy of letter as Annex - D);**

a) That the impugned OM 2009 is in contradiction of Article 268 of the Constitution; that SRO 1959 was in field on the day when Constitution of the Islamic Republic of Pakistan 1973 came into effect. That the said Article 268 of the Constitution protected all "existing laws" including 1959 ~~this~~ SRO, unless modified by "appropriate legislature, generally. The relevant clauses of Article 268 read as below:

268. Continuance in force and adaptation of certain laws.

(1) Except as provided by this Article, all existing laws shall, subject to the Constitution, continue in force, so far as applicable and with the necessary adaptations, until altered, repealed or amended by the appropriate Legislature.

.....

.....

(7) In this Article, "existing laws" means all laws (including Ordinances, Orders-in-Council, Orders, rules, by-laws, ***regulations*** *and Letters Patent constituting a High Court, and any notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extraterritorial validity, immediately before the commencing day.*

That the term "existing laws" included the SRO 1959. This means that the SRO 1959 creating 'Pakistan Customs and Excise Service' is a proper legislation duly protected by the Constitution, and can only be modified by the Legislature; hence, impugned OM 2009 is illegal and secondly, being a mere policy statement or administrative instructions cannot change the terms and conditions of the 'Pakistan Customs and Excise Service';

b). that the impugned OM 2009 is not covered by enabling provisions of Article 240 the Constitution; as per this Article, it is the Parliament that can determine the appointments to and the conditions of service of persons in

Article reads:

> ***240. Appointment to service of Pakistan and conditions of service.***
>
> ***Subject to the Constitution,*** *the appointments to and the conditions of service of persons in the service of Pakistan shall be determined-*
>
> *(a) in the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services,* ***by or under Act of [Majlis-e-Shoora (Parliament)];*** *and*

In the light of these constitutional provisions, it is the Parliament that can determine the recomposition of a legally constituted service and as also matters ancillary thereto including modification of terms and the conditions of persons in the service and not Establishment Division through this or an OM;

c). That the impugned OM is against letter and spirit of Article 240 of the Constitution that dictates that the terms and conditions of service of a Civil Servant are to be determined, **subject to constitution,** by or under an Act of Parliament whereas this OM is changing terms and conditions to a great disadvantage to defy the universal principle of sanctity of vested rights;

d). That the impugned OM 2009 is against Article 242 the Constitution read with section 7 of the Federal Public Service Commission Ordinance 1977 and subsisting Government Servants (Application for Services and Posts) Rules 1966 framed under Article 179 of 1962 constitution ; the Article 242 reads:

> ***242. Public Service Commission.***
>
> *(1) [Majlis-e-Shoora (Parliament)] in relation to the affairs of the Federation,*

prescribed by law.

As per this constitutional dictate, Federal Public Service Commission Ordinance 1977 was promulgated and Section 7 of the Ordinance as amended by Ordinance LXI of 2000 determines the functions of the Commission; the Section reads:

7. Functions of the Commission:-

(1) The functions of the Commission shall be:-

(a) to conduct tests and examinations for ***recruitment*** *of persons to All-Pakistan Services, the civil services of the Federation and civil posts in connection with the affairs of the Federation in basic pay scales 16 and above or equivalent; and*

(b) to advise the President:

(i) on matters relating to qualifications for and methods of recruitment to, services and posts referred to in clause (a);

(ii) on the principles to be followed in making initial appointments to the services and posts referred to in clause (a) and in making appointments by promotion to posts in BS- 18 and ***above and transfer from one service or occupational group to another; and""***

The role of Federal Public Service Commission (FPSC) in the creation of and appointment to the positions in the proposed new group(s) under the impugned OM, as per laid down law and criteria, can not be ignored for the purpose of ensuring merit, transparency and impartiality in making appointments by transfer to newly established service / group (s). Under Article 242 of the Constitution, read with section 7 of the Ordinance 1977, it is the function of FPSC to advise the President on the principle to be followed in making appointments by transfer from one service or Occupational Group to the other. Unless such principle / criteria is prescribed and duly notified, appointments to new group are clear violations of the prescribed procedure in this regard; this position is reinforced by the

the purview of the FPSC; however, with the repeal of the FPSC Act in December 1977 by the presently enforced FPSC Ordinance 1977, the services of the Federation were also placed within the purview of the FPSC; by further amendments in the 1977 Ordinance, the FPSC has been designated as the authority to advise the President about the principles for transfer of officers from one service to another; the principles for inter-service transfer, whether by way of merger or otherwise, and are dully protected Government Servants (Application for Services and Posts) Rules 1966, framed under Article 179 of the 1962 Constitution do not permit transfer or merger of Service Groups proposed to be clubbed under IRS except by or through a fresh FPSC examination and, in case of change from one service group under FBR to another first by resigning from the initial service[Estacode pps 326-329:SRO 953 (K)/66 dated 8 June 1966.

e). That this OM by adversely changing terms and conditions of the service, is a clear violation of section 3 (2) of the Civil Servants Act, 1973 as the terms and conditions of service (which also includes appointment, confirmation, promotion, seniority, etc.) of any person shall not be varied to his disadvantage;

f). That the Section 23 of the Civil Servants Act 1973 also provides protection to the civil servants by declaring that, nothing in this Act or in any rule shall be construed to limit or abridge the power of the President to deal with the case of any civil servant in such manner as may appear to him to be just and equitable. Provided that, where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favorable to him than that provided by this Act or such rule; that this OM is neither just nor equitable; secondly, it has created a situation, much less favorable to every officer of Customs and Excise Group, than the existing one;

willing the petitioners to join a new service group on irrevocable basis (*Para 3 of the OM 2009*) , without having the right of lien , is not only repugnant to the rules governing the services of the federation, but also contrary to the fundamental rights guaranteed by the Constitution; that the lien is a right guaranteed to all the civil servants under rule 6(4) of the Civil Servants (Confirmation) Rules, 1993, read with rule 21(1) of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973. The right / title guaranteed by legislature cannot be taken away by an Office Memorandum, which is defined as a mode of communication between the two Ministries / Divisions, under the Secretariat Instructions;

h). That the impugned 2009 OM is violative of Civil Servants (Appointments, Promotion & Transfer) Rules, 1973; that there is a clear procedure laid down for filling-up different positions in a service by transfer under rules 7 and 8 of the Civil Servants (Appointments, Promotion & Transfer) Rules, 1973, whereby a clear criteria is to be notified and that the option to join the new group can't be restricted to one or two services as all civil servants fulfilling the prescribed qualifications/criteria would be eligible for appointment by transfer to the Inland Revenue Service;

i). That every officer of Customs & Excise Group has been appointed, with prior approval of the Establishment Division that works directly under the Prime Minister, by accepting an offer conveyed through ~~of~~ the Federal Board of Revenue to join Customs & Excise Group, subject to certain terms and conditions, both express and implied. One of the implied conditions was that Custom & Excise Group is a service which manages business of three taxes / levies i.e. Customs, Sales Tax & Federal Excise. Once the offer has been accepted, both the officer and the Board are under solemn contractual obligations that are binding on both of them; that another condition of the offer was that "change of occupational group will

by giving an option both the officers and the Board have reverted to the status which existed before giving of offer. Therefore, the officers should be given again an option to join any of the service group, including IRS, and should be placed in the occupational group as per their choice with all incidental benefits;

j). That the OM is in clear violation of Civil Service Act 1973 read with rule 3(c) of Civil Servants (Seniority) Rules 1993; That in cases of deferred civil servants who later on get promoted, they retain their inter se seniority in terms of section 8(2) of Civil Service Act 1973 read with rule 3(c) of Civil Servants (Seniority) Rules 1993. However, in case of principle of date of regular promotion in a post as the principle of seniority (Para 3 (2) of OM), the civil servants who were initially deferred and then promoted later on would become junior not even to their juniors within their batch but in numerous cases would be junior to later batches. Thus on the one hand the OM declares protecting inter se seniority and on the other hand takes it away. This is against law, practice, service conventions and natural justice and would lead to interminable litigation within the existing services;

k) That the OM is against the doctrine of "Promissory Estoppel": The creation of IRS / PRS creates a situation where the officers of CEG will have fewer posts available to them for promotion and lateral movement. Promotion prospects as were available to CEG officers at the time of joining CEG on the basis of CSS examination being a vested right which cannot be denied to them at this stage;

l) That under this OM, there is no clear and final declaration of cadre strength of IRS with detail of posts in each grade and Establishment Division has to

invitation of seeking options is at best an invitation for adventurous leaping into unknown darkness (of the scenarios given in Para 4) and throwing oneself at the mercy of the Establishment Division. That it is also possible that petitioners opt for IRS and would finally find themselves in the PRS without opting for it (Para 4(b) of OM);

m) Creating a new occupational group and seeking irrevocable options from Customs and Excise Group and Income Tax Group to join the same without disclosing the true and complete information about elementary features of service structure including its cadre strength, functional scope, career / promotion prospects of the officers joining the new group, seniority issues, etc. is unreasonable, arbitrary and without taking into consideration of all relevant considerations;

n) That the OM is against well settled doctrine of 'legitimate expectation' as petitioners after competing in CSS examination, passing many subsequent examinations and trainings have a legitimate expectation to proceed on a chartered career progression that is being demolished by this arbitrary OM;

o) That there is absolutely no cogent basis of the splitting of cadre strength of CEG into 218 for Customs and 218 for Excise or ignoring another 11, 000 civil servants placed in direct oversight responsibility of the service leadership. This splitting has been done arbitrarily without any background analysis. Moreover, no post has been shown against Sales Tax despite the fact that CEG officers have all along been appointed and promoted against the post in the Collectorates of Sales Tax and Federal Excise; it will seriously affects rights of the petitioners;

p) When the OM clearly states that deficiency in IRS could be met through

intentions of throwing the option of PRS can be nothing but preventing the majority of CEG to join IRS;

q) That the creation of PRS in second scenario is against the principle of specialization on which basis this OM is issued; so the mala fides is apparent on the face of it;

r) that the decision regarding creation of a new Service / Occupational Group(s) in place of the existing Income Tax and the Customs & Excise Group is potentially detrimental to the stated objectives of revenue enhancement through bridging the Tax Gap, bolstering the Tax to GDP ratio, reducing the cost of doing business for the taxpayers and the taxpayers' facilitation. It will embroil the Government of Pakistan in controversies for good part of the foreseeable future; and OM is disruptive of the established principles governing service matters and is fraught with seeds of inter-organizational hostility distracting the employees to consume themselves for self preservation rather than focusing on their jobs;

s) That the OM will adversely affect the CEG and aims at improperly benefiting the ITG whereas the CEG has a higher priority in seat options/allocation after CSS examination and now by this backdoor CEG is being relegated to the lower status;

t) That the CEG though being a small cadre in its strength has a much much better performance than the ITG; (the cadre strength of CEG is 436 officers whereas the officer cadre strength of ITG is 978); the following chart amply clears this assertion:

BREAKUP OF REVENUE COLLECTION
FY 2007-08

Wealth Tax	=	48	Million
Total	=	373.456	**Billion**

{*Includes Withholding Tax = **205.144 Billion (56%)}

(** Includes Rs. 27.674 Billion Collected At Import Stage)

Indirect Taxes

Customs Duty	=	150.663	Billion
Sales Tax	=	376.957	Billion
Federal Excise	=	92.137	Billion
Total	=	**619.278**	**Billion**

BREAKUP BY TAX GROUP

Custom & Excise Group (CEG)

At Import Stage (All Taxes)

Customs duty	=	150.663	Billion
Sales tax	=	196.034	Billion
FED	=	07.300	Billion
Income Tax	=	27.674	Billion
Total	=	381.671	Billions

At Domestic Stage (All Taxes)

Sales tax	=	180.923	Billion
FED	=	84.837	Billion
Total	=	265.76	Billion

Total Duties/Taxes Collected By CEG = 647.431 Billion (65%)

Income Tax Group (ICG)

Income Tax	=	340.243	Billion

Schedule-II of Rules of Business, 1973 which deals with the formation of occupational groups. This power of the Establishment Division emanates from Section 3 (3) of the Rules of the Business, 1973 which says that the business of the government shall be distributed among the Divisions in the manner indicated in Schedule-II. So the authority invoked to issue this OM merely deals with the allocation of the business to the Establishment Division but it does not give the authority to bypass all existing relevant laws or to amend these laws through this O.M; these provisions just empower the respondent NO. 1 to initiate and complete these functions as per all relevant laws which are in the field. Furthermore, this deals with that the formation of the occupational groups and not with the formation of the new service which is the case here.

v). That President is the authority for determining the terms and conditions of the civil servants whereas this OM has not been issued with the approval of the President and the consent of the President is absent. Only the Prime Minister has reportedly approved the summary about the impugned OM;

w). That the OM kills the legitimate expectancy of the subordinate establishment (of about 11000 personnel) of the CEG which has a right to move up in the specialized field; they are materially relevant but they have been totally marginalized, side tracked and ignored; even democratic principles of good governance make them vital stakeholders in the system and there may be a disruptive turmoil at some point in time;

x). that the OM is against the letter and spirit of ~~the~~ article 18 of the Constitution;

of cadre determination and this excessive conferment of the authority will affect many statutory and constitutional rights of the petitioners/civil servants and it is itself against the settled principles of subordinate legislation and delegation of authority; this unbridled and excessive power conferred on the Establishment Division is against the settled principles of statutory protection to the civil servants, parliamentary sovereignty, reasonableness, equity and good conscious; in the past too, under the cover of reforms, these have been grossly abused to generate inter-se service disputes rather than inculcation of a sense of equity and fair play;

aa). If the practice of such arbitrary and unlawful OM is allowed to further destroy the functional services and flourish, the entire service structure of the federation responsible to generate local resources would be shaken to the core to increase Pakistan's dependence on foreign loans and would lay at the mercy of the interpretations of Establishment Division and it would be extremely fatal to the principles of neutrality, impartiality, fairness, good governance that are sin qua non of the civil service which is the backbone of executive in the country.

bb). That the entire OM, in the final analysis, appears to be based on fallacious assumptions and is contradictory in nature and is also tainted with mala fides. It is grounded in abdication of sovereign authority to international monetary institutions;

Prayers

Under the above related facts and circumstances, this august court is requested kindly to:

a) very graciously set aside the above impugned Office Memorandum being

authority; hence illegal and void ab initio;

b) declare that Establishment Division was not the ' competent legislature' within the meaning of article 268;

c) affirm that any instrument that tends to transfer a member of one service to another lawfully constituted service sans FPSC inputs was violative of articles 4 and 242 of the constitution;

d) suspend the operation of the impugned OM and the letter No. C.No. 9(3)-2009-M-1dated 12-09-2009 till the final adjudication on the petition; and

e) Grant any other relief that this august court may deem fit.

Petitioners

Through

(Zafarullah Khan)

Barrister at Law

(Khawaja Zaheeer Ahmad)
Advocate High Court

(Muhammad Zahir Shah)
Advocate High Court

Reliance:

- Constitution of Islamic Republic of Pakistan 1973
- Federal Public Service Commission Ordinance 1977
- The Civil Servants Act, 1973
- Civil Servants (Confirmation) Rules, 1993,
- Civil Servants (Appointment, Promotion & Transfer) Rules, 1973
- Civil Servants (Seniority) Rules 1993
- Pakistan Rules of Business 1973

Copy of Court's order

Annex - IV (9)

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-2634/2009

Fateh Muhammad & Ors.....Petitioners

Versus

Pakistan and ors.....Respondents.

O R D E R

Dated: 8th December 2009

Dr. Muhammad Farogh Naseem, Advocate for Petitioners.

Mr. Khalid Javed Khan, Advocate for Respondents in C.P. No.D-2122/2009.

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1. Granted.

2. Learned counsel says that he would be complied with office objection within two days. Order accordingly.

3. Granted subject to all just exceptions

4&5. According to Learned Counsel, in connected Petition No.D-2122/2009 it was directed by this Court that the option to be exercised by the officers of the Revenue Department would not be treated as final in terms of Office Memorandum dated 12.09.2009. However, to-date no comments have been filed in that Petition. Additionally, per Learned Counsel, the Learned Rawalpindi Bench of Lahore High Court in W.P. No.2577 of 2009 has, in fact, suspended the operation of the Office Memorandum vide order dated 28.09.2009. In view of these developments, now the Respondents are contemplating promotion within the department based on the old dispensation prior to the office memorandum which would adversely affect the interest of the Petitioners, as the Income Tax Group has more vacancies than Customs and Excise Department, to which the Petitioners belong. In these circumstances, he prays that Central Selection Board ("CSB")

promotions etc. to be announced in the forthcoming meeting of the Department be not treated as final till such time as the outcome of this Petition and connected Petition No.2122/2009.

To this submission, Mr. Khalid Javed Khan, Learned Counsel appearing on behalf of the Department, says that unless and until the CSB is held and the promotions given the entire functioning of the Department would come to a stand still. He, therefore, prays that the CSB should be allowed to be held and promotion, if any, given to various officers for filling up the existing vacancies.

We have heard both the learned counsel.

Considering that the effect of the Office Memorandum which contemplates the amalgamation of various departments forming two groups i.e. Inland Revenue Service and Custom Service, has been suspended by the Learned Rawalpindi Bench of Lahore High Court promotions etc. cannot be given based on the new dispensation viz. amalgamation as above-referred. Consequently, we would direct that the CSB should be held as proposed but subject to final outcome of this Petition and connected Petition No.2122/2009. Notice to the Respondents as well as to the learned DAG.

To come up on 22.12.2009 alongwith connected CP No.D-2122/2009 at 11:00 a.m.

Sd/- Chief Justice.
Sd/- Sajjad Ali Shah, Judge.

Certified to be true copy

Assistant Registrar (Writ)

C.P.No.D-2634/2009 Karachi, dated.08-12-2009

Copy forwarded for information and compliance to:

1. Pakistan through its Secretary, Establishment Division, Government of Pakistan, Islamabad.
2. Secretary, Revenue Division, Government of Pakistan, Islamabad.
3. The Chairman, Federal Board of Revenue, Islamabad.
4. Federal Public Service Commission, Islamabad, through its Chairman.

BY ORDER

(MUMTAZ ALI)
Assistant Registrar (Writ)

COPY OF BUSINESS RECORDER EDITORIAL (ANNEX - V)

FW: World Bank Must Apologize (Business Recorder Editorial dated 4-11-2009)

From
Sent: Tue 12/08/09 4:41 AM
To:

Date: Tue, 8 Dec 2009 00:36:24 -0800
From:
Subject: Fw: World Bank Must Apologize (Business Recorder Editorial dated 4-11-2009)
To:

----- Forwarded Message ----
From:
To: jhellman@worldbank.org; aahmad2@worldbank.org; skahkonen@worldbank.org; ycrookes@worldbank.org; dtheis@worldbank.org; media@imf.org; mariamaltaf@worldbank.org
Sent: Wed, November 4, 2009 8:21:49 PM
Subject: World Bank Must Apologize (Business Recorder Editorial dated 4-11-2009)

World Bank must apologise

EDITORIAL (November 04 2009): Ahsan Iqbal, Central Information Secretary, PML (N) condemned the World Bank's statement, contained in the Economic Outlook 2009, wherein it is stated that sending the package of legal reforms to the parliament or submitting them for the next fiscal year "maybe subject to changes in the parliament that might bring undesired consequences."

Few would challenge the thrust of Iqbal's argument and one would hope that the relevant staff member(s) of the World Bank are held accountable for this statement and that, unlike the case of the United States holding its junior staff responsible for the Abu Ghuraib abuses on Iraqi prisoners, those held responsible in this instance are the ones who signed on the document.

Such a faux pas on the part of the Bank is no doubt reminiscent of the Musharraf era, during which the parliament was either routinely bypassed at worst or rubber-stamped whatever Musharraf wanted at best. It is indeed ironic that an institution like the World Bank, engaged in strengthening democracy in this country, so openly flouts democracy's basic tenets, accepted world-wide: that parliament is supreme. Iqbal also clamoured for a public apology from the World Bank and one hopes that this would be forthcoming promptly.

In this context, it is gratifying that Finance Minister Shaukat Tarin has publicly stated that the Finance Ministry is preparing a rejoinder to the World Bank. Unfortunately, however, he appeared more focused on the report's failure to include the updated statistics provided by the government, rather than taking exception to the report's reference to the country's parliament. Be that as it may, one would fully endorse the World Bank report's concerns with respect to 'revenues continued

under-performing in the first two months of 2009/10.'

An increase in domestic revenue generation is the only policy option that has the capacity to take this country out of its inordinately heavy reliance on foreign assistance. The World Bank report reveals that the "Federal Board of Revenue (FBR) tax collection, during July-August 2009, increased only by 3.6 percent compared to the 19.5 percent required to reach the annual target."

And this is partly accounted for by the failure of the government to show progress on revenue reforms in the first quarter of 2009/10, owing to what the report states are "vested interests and lack of political will." No one can challenge this assessment as the general public is fully cognisant of the fact that government after government has failed to impose a tax on the income of the rich landlords because this group is heavily represented in the country's parliament.

Be that as it may, the World Bank must also be aware of the fact that the executive within a democratic dispensation cannot simply restructure the tax collection agency according to its dictates, without going to the parliament. In its report, the World Bank admits that "the long over-due restructuring of the FBR, which was launched at the beginning of 2009, was reversed in May owing to a court case by the customs group, which opposed the reform."

It maybe recalled that the customs group had a legitimate case against the restructuring plan, namely that those who had opted for serving in the customs department after passing the gruelling CSS examination had done so based on an assessment of the opportunities it provided at the time. The World Bank, claiming international experience as its strength, must take responsibility for failing to devise a restructuring mechanism that would have taken appropriate note of the concerns of the customs officials.

The critical lessons learned against this latest episode with respect to the government's dealings with International Financial Institutions (IFIs) are the same that this paper has been proposing since the advent of democracy in this country last year: increase tax-to-GDP ratio and reduce expenditure to have sustainable budget deficits based on indigenous resources.

In addition, the practice of senior bureaucrats working for the IFIs to routinely be granted an audience with the President, the Prime Minister as well as other members of the cabinet must be discouraged. They must meet their Pakistani counterparts which, at the highest level, must be the Secretary of the ministry.

EMAILS TO BANK STAFF

ANNEX - VII (A)

FW: Another News report regarding TARP in Pakistan

From:

Sent: Tue 12/08/09 4:44 AM

To:

Attachments:

FBR chairman at odds with CEG officers.doc (29.0 KB)

Date: Tue, 8 Dec 2009 00:46:07 -0800

From:

Subject: Fw: Another News report regarding TARP in Pakistan

To:

----- Forwarded Message ----

From:

To: skahkonen@worldbank.org

Cc: ycrookes@worldbank.org; dalvarez@worldbank.org

Sent: Mon, October 12, 2009 1:29:25 PM

Subject: Another News report regarding TARP in Pakistan

Dear World Bank /IMF fellows,

Your attention is sought towards serious flaws and misgivings about the World Bank / IMF funded 'Tax Administration Reforms Program (TARP)' presently underway in Pakistan. There are some 300 Custom and Sales Tax officers who have gone to High Courts against the program and have gotten Stay Orders against the formation of 'Inland Revnue Service' under TARP.

No consultations were done with the real stakeholders i.e. Customs and Sales Tax officers and rather in the name of Awareness campaign, they were harrassed by the incumbent Chairman Federal Board of Revnue and they were called 'Lowest of the lowest', scoundrels, animals etc for chellenging the Government decisions in the court (while speaking to officers in Lahore on 03-10-2009). There rights to promotion, seniority are being violated on one side and on the other hand, there are serious charges of inappropriations in the TARP funds (pl see attached news report in Pakistan's leading News Paper... 11-10-2009).

The Customs and Sales Tax officers have shown their resolve to support the reform program whole heartedly and have always presented alternate ways of achieving the same objective i.e. improving the tax to GDP ratio however they are unable to access the TARP team due to various reasons.

It is requested that the TARP team may immediately hold a meeting with Association of officers of Customs and Sales Tax Officers to resolve the issue before the whole reform process get bogged down in litigations,

Regards,

EMAILS TO BANK STAFF

ANNEX - VII (b)

FW: STAY BY THE HIGH COURT AGAINST TARP

From:
Sent: Tue 12/08/09 4:43 AM
To:

Date: Tue, 8 Dec 2009 00:38:32 -0800
From:
Subject: Fw: STAY BY THE HIGH COURT AGAINST TARP
To:

----- Forwarded Message ----
From:
To: ycrookes@worldbank.org; skahkonen@worldbank.org
Cc: mariamaltaf@worldbank.org; media@imf.org
Sent: Tue, October 20, 2009 2:59:42 PM
Subject: STAY BY THE HIGH COURT AGAINST TARP

Dear all,

The Lahore High Court has extended Stay Order against IRS till 4th November 2009. In addition, Multan bench of Lahore High Court has granted stay till 12th November 2009. The stay means that FBR cannot proceed with formation or any development with respect to 'Inland Revenue Service' under TARP.

Hope better sense shall prevail and the World Bank shall think about taking the most affected stake holders i.e. Customs and Excise group on board through its Association. Otherwise these reforms are bound to fail because of its politics if not for its merit.

Regards,

EMAILS TO BANK STAFF ANNEX - VII (C)

FW: CRISIS IN FBR PAKISTAN DUE TO IRS

From:
Sent: Tue 12/08/09 12:54 AM
To:
Attachments:
FROM HIGH COURT2.tif (64.2 KB), FROM HIOH COURT1.tif (61.6 KB), WP FAHAD.doc (173.0 KB)

Date: Mon, 7 Dec 2009 21:42:00 -0800
From:
Subject: Fw: CRISIS IN FBR PAKISTAN DUE TO IRS
To:

----- Forwarded Message ----
From:
To: skahkonen@worldbank.org
Cc: dalvarez1@worldbank.org
Sent: Tue, October 6, 2009 11:14:27 AM
Subject: CRISIS IN FBR PAKISTAN DUE TO IRS

Dear Ms. Satu Kristiina Kahkonen, Mr. Daniel Alvarez and Mr. Anjum Ahmed,

This is to apprise you of a grave situation of crisis arising in FBR Pakistan due to the ill-digested, misguided and unrealistic plan of IRS, the brainchild of a few unscrupulous elements of the Income Tax Group under the blanket of TARP, a project for reforms in CBR Pakistan.

We officers of Pakistan Customs wish to invite your attention to a serious crisis unfolding in the FBR Pakistan. To begin with, the creation of IRS (Inland Revenue Service) has been challenged by a large number of the adverse affectees viz. officers of Customs and Excise Group(CEG) of Pakistan and the Lahore High Court Rawalpindi bench has suspended the impugned Office Memorandum dated 12.09.2009 issued by the Establishment Division Government of Pakistan regarding the establishment of IRS. As many as five constitutional petitions have been filed in the Lahore High Court and Sindh Court and many more are likely soon. As Pakistan's judiciary has of late become independent and assertive, it unlikely to see these petitions decided in favor of the IRS. In fact the establishment of IRS is **LEGALLY** and **CONSTITUTIONALLY** such a flawed and infractious act that no court of law will accept it.

Kindly be advised to tackle this issue carefully and through this email, we, the officers of CEG want you to know the following more facts about the issue that is likely to have disastrous consequences for the economy of a country which your team is supposed to help.

(A). The creation of IRS, notwithstanding its being un-constitutional and illegal, is totally outside

the original mandate and terms of reference of the TARP. It has been added only by the malafide and short-sighted Mr. who belonged to Income Tax Group. His hostility and conspiracies against CEG (Customs and Excise Group) is a known fact.

(B). The CEG has undergone tremendous reforms so far, from PaCCS to online Sales tax returns filing and Automated refunds, Rebate processing, Electronic filing through One-Customs and so on. What has the Income Tax department done, except trying to snatch Sales Tax from the CEG?

©. The total officers of CEG (Basic scale 17 to 21) is 505 and they are collecting more than 70% of the total federal revenues (including Customs Duty, Sales Tax, Federal Excise Duty and even Withholding/ Advance Income Tax at import stage) while the strength of Income Tax Department (BS 17 to 21) is above 978, who collect only 20% or less of the total federal revenues. The IRS is intended to truncate CEG and punish them for their good work while rewarding ITG (Income Tax group) for their inefficiency and corruption.

(D). If the WB / IMF team continues to ignore the genuine concerns and legitimate demands of the CEG, it will not only be violative of the very charter of the WB but also be contrary the various assessment/ review reports of the Bank and independent commissions such as the one headed by Joseph Stiglitz, former Chief Economist of the World Bank. In such a situation we will be constrained to approach the court of law in Pakistan for making WB team itself for infringing on our fundamental rights and ignoring the basic and legitimate rights of the STAKEHOLDERS.

In view of the above, the WB team is once again requested to approach the CEG officers through their association office bearers and get a true picture of HOW THE WB TEAM HAS BEEN MISGUIDED/ MANIPULATED INTO THIS TRAP which has led to disastrous situation for the officers of CEG as well as for the FBR itself.

Let reason and justice prevail. Let injustice and conspiracy be defeated.

Copies of the one of the 5 writ petitions and stay order are attached.

Thanks a lot.

Sincerely,

All officers of Customs and Excise Group of Pakistan.

EMAILS TO BANK STAFF ANNEX- VI (d)

FW: MESS IN TARP REFORMS OF FEDERAL BOARD OF REVENUE

From:
Sent: Tue 12/08/09 7:06 AM
To:

Attachments:
Letters to CC regarding contempts.doc (92.0 KB)

Date: Tue, 8 Dec 2009 03:58:43 -0800
From:
Subject: Fw: MESS IN TARP REFORMS OF FEDERAL BOARD OF REVENUE
To:

----- Forwarded Message ----
From:
To: jhellman@worldbank.org; aahmad2@worldbank.org; skahkonen@worldbank.org; ycrookes@worldbank.org; dtheis@worldbank.org; media@imf.org; mariamaltaf@worldbank.org
Sent: Tue, December 8, 2009 4:58:10 PM
Subject: MESS IN TARP REFORMS OF FEDERAL BOARD OF REVENUE

Dear all,

The creation of IRS has been stayed by the High Court and no action can be taken by the FBR in this regard in view of the Stay Order. However FBR as well as various Commissioner Income Tax are violating this Stay order with contempt and issuing orders pertaining to IRS. A contempt application has been filed against the Chairman FBR as well as various parties to the issue in Lahore High Court.

I am attaching various letters written by Collectors of Sales Tax Karachi, Islamabad and Lahore to FBR and Chief Commissioners explaining this wilful contempt of court by some officers. The attachment shall reveal to you the type of mess that has been created in the name of World Bank reforms by vested interests.

I request you to please take corrective actions now as these actions of some officers of FBR and Income Tax may completely derail the reform process and irreversibly damage the revenue collection machinery of the Government,

Best,

EMAILS TO BANK STAFF ANNEX. VII (e)

FW: Are we following World Bank Charter 2005 in TARP program Pakistan

From:
Sent: Tue 12/08/09 4:43 AM
To:

Date: Tue, 8 Dec 2009 00:39:59 -0800
From:
Subject: Fw: Are we following World Bank Charter 2005 in TARP program Pakistan
To:

----- Forwarded Message ----
From:
To: skahkonen@worldbank.org
Cc: ycrookes@worldbank.org; mariamaltaf@worldbank.org; dtheis@worldbank.org; enora@worldbank.org; media@imf.org
Sent: Tue, October 13, 2009 1:52:11 PM
Subject: Are we following World Bank Charter 2005 in TARP program Pakistan

This article in DAWN (leading Pakistan's newspaper) today is a good estimate of where TARP refroms are heading. (http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/letters-to-the-editor/fbrs-arbitrary-decisions-309)

FBR's arbitrary decisions

Tuesday, 13 Oct, 2009 | 01:57 AM PST

font-size font-size font-size print email

THIS is apropos of Wajahat Hayat's letter, "FBR's arbitrary decisions" (Oct 4). The Federal Bureau of Revenue has been in the limelight for the past many years, less because of its performance and more for the controversies shaking the very foundations of this vital organisation.

FBR reforms are bound to fail owing to the highhanded, oppressive and arbitrary attitudes of those heading the all-important revenue organisation. I have been in the Civil Service of Pakistan for the past two and a half decades or so.

The pride, honour, dignity, sense of service to the public instilled in me as a career civil servant was shattered recently in Lahore when the FBR chairman came to address the officers.

Everyone was shocked and stunned to hear what the chairman had to say. No one could ever imagine that a grade 22 officer of the DMG would disgrace his fellow officers to the extent of comparing them with animals whom he liked watching on the 'animal planet'.

Is this the way FBR reforms are going to proceed? Are the officers not entitled to move the court to protect the infringement of their vested rights? Is it not the Constitution that is supreme and which protects and secures the fundamental rights of citizens? Is it an offence to pursue the breach of rights

in the courts of law? Why are the officers being harassed and made to suffer if they have taken the legal course of action against the arbitrary and illogical steps being taken by the FBR?

It is an irony that the true picture about ground realities is never presented to the government. Biased and distorted version of the facts is portrayed before the government, bringing about flawed decisions.

Arbitrary decision-making at the FBR would bring no positive change. It would, in fact, negatively impact the performance of the officers and staff and, thus, undermining the collection of revenues which Pakistan can ill-afford at this critical juncture.

The target for the first quarter of the financial year 2009-10 has already been missed by billions of rupees. It is, therefore, imperative for those at the helm of affairs to take stock of the situation and address the genuine issues being raised by the officers so that the FBR's performance can get back on track.

A DISGRUNTLED FBR OFFICER
Islamabad

Are we following the World Bank charter ???'

The **World Bank Charter** (published in 2005) specifically requires that in public sector reform the key stakeholders should be taken on board. Similarly, the report of **Carlos Silvani**, a key member of the current World Bank team on TARP (Tax administration Reforms Project), titled "*Designing a Tax administration Reform Strategy: Experiences and Guidelines*" published in 1997 by the IMF, also categorically emphasises that for a tax administration reform strategy, it is imperative to take the stakeholders on board and address their concerns. Is there any empirical evidence that the FBR involved officers of CEG & Sales Tax and took into account their concerns and apprehensions before creation of IRS?

Act before it is too late::::

EMAILS TO BANK STAFF ANNEX VII (f)

FW: AVOIDING THE PARLIAMENT TO AVOID UNDESIRABLE RESULTS IN TARP... WORLD BANK SUGGESTION

From:
Sent: Tue 12/08/09 4:42 AM
To:

Date: Tue, 8 Dec 2009 00:38:08 -0800
From:
Subject: Fw: AVOIDING THE PARLIAMENT TO AVOID UNDESIRABLE RESULTS IN TARP... WORLD BANK SUGGESTION
To:

----- Forwarded Message ----
From:
To: jhellman@worldbank.org; aahmad2@worldbank.org; skahkonen@worldbank.org
Cc: ycrookes@worldbank.org; dtheis@worldbank.org; media@imf.org; mariamaltaf@worldbank.org
Sent: Thu, October 29, 2009 3:06:13 PM
Subject: AVOIDING THE PARLIAMENT TO AVOID UNDESIRABLE RESULTS IN TARP... WORLD BANK SUGGESTION

http://www.thenews.com.pk/daily_detail.asp?id=205636 (The NEWS International dated 29-10-2009)

WB report asks for creating IRS thru presidential ord

Says sending legal reforms to parliament may bring undesired results

Thursday, October 29, 2009
By Tariq Butt

ISLAMABAD: The World Bank has recommended to the government to implement the agreed harmonization of tax laws and creation of the Inland Revenue Service (IRS) by adopting a fast track through issuing a presidential ordinance rather than enacting the required legislation through parliament.

The recommendation sent to the government of Pakistan in the latest report of the World Bank was based on its mission's findings that visited Pakistan last month but had to cut short its stay for security reasons.

"A second option may be to send the package of legal reforms to parliament or include them as part of the budget submission for the next fiscal year. This will significantly delay the implementation of the harmonized procedures, but more importantly, may be subject to changes in parliament that might bring undesired consequences. The Minister of Finance will make a recommendation to the government to decide the best legal strategy for this objective," said the WB report, which is available with The News.

It said that the Pakistan government has some options to follow in order to modify the set of legal instruments that will harmonize procedures and responsibilities and allow the integration of functions irrespective of tax types.

The first option was to again submit the ordinance for president's signature during the next recess of parliament (as an ordinance can not be issued when the National Assembly is in session). This is a relatively fast journey in the administrative (executive) branch, which will require parliament's ratification after four months, it said.

According to the report, simultaneously with the creation of the IRS, an ordinance was drafted, which contained amendments to the domestic tax laws to harmonize procedures and provide a delegation framework properly aligned with the new organization.

The ordinance was cleared by Pakistan's law ministry and submitted to the prime minister who sent it to the president. It was not issued by the president and was turned back to the prime minister.

The FBR authorities explained that the presidency's decision was based on the fact that parliament would soon start its next session, the report said.

It said that the harmonization of tax laws is an important step in the integration process because it will give legal support to changes in procedures and responsibilities of various levels of the organization.

The Establishment Division (ED) in accordance with terms of July 2009 agreement between the government of Pakistan and the World Bank (Istanbul Agreements) created the IRS.

The report said that according to the ED office memorandum, IRS officers would be in charge of every aspect of income tax, sales tax and federal excise as well as every other new domestic tax to be created.

Federal Board of Revenue (FBR) asked all officers of Customs & Excise (CEG) and Income Tax Groups (ITG) to submit an irrevocable option to join the newly created IRS.

According to the report, on Sep 28 (the deadline for the options), almost 900 ITG officers (82 per cent) opted joining IRS, but only 16 out of 50 CEG officers exercised a positive option.

A group of CEG officers challenged the ED's office memo in court arguing that it is arbitrary, unreasonable, without lawful authority and against the laws and principles of natural justice, and affects their constitutional rights and asked the Lahore High Court Rawalpindi Bench to order not to restrict them to exercise their option of joining the IRS or Pakistan Customs Service etc.

The report said that this claim, in principle, should not hold back the implementation of the IRS because petitioners only asked for additional options for the CEG officers.

However, FBR authorities suspended the application of the process for implementing the ED's office memo until the petition is resolved, presumably on the basis of the stay order decided by court.