SUPREME COURT OF AZAD JAMMU & KASHMIR
[Appellate Jurisdiction]

PRESENT:
Raja Saeed Akram Khan, C.J.
Kh. Muhammad Nasim, J.
Raza Ali Khan, J.

CIVIL APPEAL NO. 374 OF 2024
(Against the judgment of the High Court dated 22.102.2024 in writ petit/ions No.2104 and 2215 of 2024)

Ch. Tariq Farooq, General Secretary PML(N) Azad Jammu and Kashmir, Ex-Senior Minister Azad Government of the State of Jammu and Kashmir.

…. Appellant(s)

VERSUS

Azad Government & others

…. Respondent(s)

-:-:-:-:-:-:-:-:-:-:-

For the appellant(s): Raja Sajjad Ahmed Khan, Advocate.

For the respondent(s): Raja Mazhar Waheed Khan, Addl. Advocate General, Mr. Muhammad Hanif Chaudhary, C.P. Ehtesab Bureau, Barrister Humayun Nawaz Khan, Meer Sharafat Hussain, Sheikh Attique ur Rehman and Ansar Khan Tahir, Advocates.

Date of hearing: 03.12.2024

JUDGMENT

Raja Saeed Akram Khan, C.J: The matter in hand concerns the appointment of Mushtaq Ahmed Janjua, respondent No.11, as Chairman of the Ehtesab Bureau, through notification dated 10.02.2024, and the subsequent grant of pay, perks, and privileges equivalent to a Judge High Court, via notification dated 27.03.2024.

THE SUMMARIZED FACTS

2. Two writ petitions (Nos. 2104/2024 and 2215/2024) were filed before the High Court, challenging the aforesaid notifications. The

petitioners-appellants cited various grounds for declaring the appointment of respondent No.11 as invalid. It was also contended that according to the principle of law laid down in the case reported as *Azad Government & others vs. Sardar Muhammad Mukhtar Khan* [2016 SCR 206], no individual could be granted perks and privileges equal to those of a Judge High Court. The High Court dismissed both the writ petitions through the impugned judgment, hence, this appeal by leave of the Court.

RESIGNATION OF THE RESPONDENT

3. During the pendency of this appeal, respondent No.11 tendered his resignation from the office of Chairman, Ehtesab Bureau, which has since been accepted by the competent authority. Consequently, the immediate subject matter of the appeal has become infructuous, as the impugned appointment and associated notification is no longer operative. However, considering the critical importance of the office of Chairman, Ehtesab Bureau, we find it expedient to proceed with delivering a judgment. This judgment aims to address and elucidate the legal and procedural aspects regarding appointment to such a significant position, ensuring that future appointments shall adhere to the highest standards of merit, legality, and integrity.

THE MENACE OF CORRUPTION

4. Corruption is a pervasive and destructive force that undermines the integrity of institutions and erodes public trust in governance. It diverts resources meant for public welfare, exacerbates inequality, and impedes economic growth. Corruption often thrives in environments of weak accountability and lack of transparency, allowing the powerful to exploit public assets for personal gain. Its impact is particularly devastating in developing regions like ours, where it hinders progress and perpetuates poverty. Combating this menace requires strong legal framework, vigilant enforcement, and a collective commitment to ethical governance and societal integrity.

SIGNIFICANCE AND IMPORTANCE OF ACCOUNTABILITY AND CRITICAL ROLE OF CHAIRMAN EHTESAB BUREAU IN ITS FUNCTIONING:

5. Accountability (Ehtesab) is deeply embedded in Islamic teachings. Islamic law places a profound emphasis on the eradication of corruption and the promotion of justice, integrity, and accountability in society. The Holy Quran categorically condemns corruption and emphasizes accountability, integrity, and justice as fundamental values in governance and social life. Allah Almighty ordains:

وَلَا تَأْكُلُوٓاْ أَمْوَٰلَكُم بَيْنَكُم بِٱلْبَٰطِلِ وَتُدْلُواْ بِهَآ إِلَى ٱلْحُكَّامِ لِتَأْكُلُواْ فَرِيقًا مِّنْ أَمْوَٰلِ ٱلنَّاسِ بِٱلْإِثْمِ وَأَنتُمْ تَعْلَمُونَ

"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you to consume a portion of the wealth of the people in sin, while you know [it is unlawful]" (Surah Al-Baqarah, 2:188).

Similarly, the Holy Quran warns against spreading corruption on earth, in the words:

وَلَا تَعْثَوْا فِي الْأَرْضِ مُفْسِدِين

"And do not commit abuse on the earth, spreading corruption" (Quran, 2:60).*"*

وَلَا تُفْسِدُواْ فِى ٱلْأَرْضِ بَعْدَ إِصْلَٰحِهَا

"And do not corrupt the earth after its reformation." (Quran 7:56)"

Prophet Muhammad (PBUH) himself served as an exemplary leader, stressing the importance of accountability. His saying: ***"Each of you is a shepherd, and each of you is responsible for his flock"*** highlights the obligation of rulers to act responsibly and with transparency. All these teachings and principles emphasize the necessity of establishing an institution dedicated to accountability and the eradication of corruption. In Azad Jammu and Kashmir such an institution is the Ehtesab Bureau, which was established under Azad Jammu and Kashmir Ehtesab Bureau Act, 2001 **(EBA)** to counteract corruption, promote accountability, and recover misappropriate assets. The office of the Ehtesab Bureau holds immense importance in

upholding transparency, accountability, and the rule of law in Azad Jammu and Kashmir. Established to combat corruption and misuse of authority, the Bureau plays a pivotal role in investigating corruption, prosecuting offenders, recovering misappropriated assets and ensuring the swift disposal of cases involving corrupt practices, embezzlement of public funds, and abuse of power. The intent behind formation of Ehtesab Bureau is outlined in the preamble to EBA which clarifies the Bureau's foundational goals and its functions. The preamble speaks that:

> *"AN ACT to provide for the setting up of an Ehtesab Bureau in the State of Azad Jammu and Kashmir so as to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices and matters ancillary thereto;*
>
> *WHEREAS it is expedient and necessary to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse/abuse of power, misappropriation of property, kickbacks, commissions and for matters connected and ancillary or incidental thereto;*
>
> *AND WHEREAS there is an emergent need for the recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to banks, financial institutions, government and other agencies;*
>
> *AND WHEREAS there is grave and urgent need for the recovery of state money and other assets from those persons who have misappropriated or removed such money and assets through corruption, corrupt practices and misuse of power and/or authority."*

After going through the preamble, it reflects that the paramount object of enacting EBA is to eradicate the corruption and corrupt practices and make accountable all those person who are accused of such practices; to provide for effective measures for detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions; recovery of State money and other assets from those person who have misappropriated or removed such money or assets.[1]

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[1] Ehtesab Bureau vs. Abid Hussain & others [2015 SCR 408]

Thus, it has become clear that the institution of Ehtesab Bureau carries significant importance.

6. Every institution, regardless of its nature or scope, requires a leader to guide its vision, set its direction, and ensure its effective functioning. The Ehtesab Bureau is lead by its Chairman. Under section 6 of EBA, to be eligible for appointment as Chairman, an individual must be qualified to be appointed as Judge of the Supreme Court or the High Court or alternatively he may be a current or former civil servant of Azad Jammu and Kashmir, holding a position of BPS-21 and above. What is noticeable is that the qualification prescribed for the Chairman is a definite indicator of the high status of said post which is obviously in consonance with the high obligations cast on him. The Chairman plays most influential role within the Bureau, as the person holding this office directs its activities and represents its values. In Pakistan, the National Accountability Bureau **(NAB)** performs a role similar to that of the Ehtesab Bureau in Azad Jammu and Kashmir. The Supreme Court of Pakistan in the case reported as *The Bank of Punjab vs. Haris Steel Industries* [PLD 2010 SC 1109] had commented on the importance of the post of Chairman NAB in the following manner:

> "40. Be that as it may, what is still strikingly noticeable is that irrespective of the fact whether the said Chairman was appointable with or without the consultation of the Chief Justice of Pakistan, the fact remains that the qualifications prescribed for the said office are a definite indicator of the high status of the said office which is obviously in consonance with the high obligations cast on the incumbent i.e. a Chairman being a person who had held the office of the Chief Justice of Pakistan or of the Judge of the Supreme Court or of the Chief Justice of a High Court or was a retired officer of the Armed Forces of Pakistan of the rank of a Lieutenant General or who was a retired Federal Government Officer in BPS- 22.
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> 41. The reason for looking for a person of such an eminence and prestige for appointment as the Chairman of NAB is not far to find. A bare perusal of the provisions of sections 5(m), 7, 8, 12, 16(a), 18, 19, 20, 21, 22, 24, 25 , 26 and 28 of the said NAB Ordinance would show the importance and the momentousness of the office of the Chairman under the said Ordinance. He is the person to be consulted by the President of Pakistan for the appointment of a Deputy Chairman of the NAB and for the appointment of

> the Prosecutor-General Accountability; he appoints all other officers of the NAB; he is the one to decide whether to make or not to make a Reference with respect to corruption or corrupt practices and no Court could take cognizance of any such offence unless such a Reference was made by him or by an officer authorized by him; he is the one who could order initiation of proceedings under this Ordinance or order an inquiry or investigation in the matter; he is one who directs and authorizes arrests of accused persons under the said Ordinance; he is the one who has the power to freeze properties which are the subject matter of an offence under the said Ordinance and who could in certain cases, even order sale of the said property and he has the authority to call for any record or information with respect to any matter covered by the NAB Ordinance. All Banks and Financial Institutions stand commanded to report all unusual financial transactions to him. It is he who stands authorized to communicate with foreign Governments for their assistance; he is the authority to accept plea-bargains and he is the one who has the power to tender pardon to any person accused of an offence under the said Ordinance. Needless to add that such like orders could be passed by him against any holder of any Public Office including a sitting Prime Minister of the country."

What we wish to demonstrate is that the Chairman is not merely an administrative head but serves as the cornerstone of the institution's functionality. The responsibilities attributed to the Chairman are vast and multifaceted, covering a wide spectrum of powers and duties. The Chairman has the authority to appoint officers within the Bureau, ensuring that the institution is staffed with competent individuals capable of conducting fair and thorough investigations. Under section 9(1) of EBA, the terms and conditions of the Chief Prosecutor of Ehtesab Bureau are determined after consultation with Chairman. Under section 21, without filing of reference by the Chairman, the Ehtesab Court cannot take cognizance of corruption-related offenses. The Chairman is empowered to authorize inquiries and investigations, and the initiation of references (formal charges) against individuals accused of corruption or other offenses. He is empowered under section 27 and 21(5) of EBA to request Court for issuance of arrest warrants of accused, if avoids or refuses to co-operate or appear before or provide record. Under section 31 of EBA, he is authorized to ask for any assistance from a department or statutory body. The Chairman has got the powers under section 37 to

direct Chief Prosecutor at any stage of proceedings before the Court to withdraw from prosecution. He is entrusted with the critical responsibility of ensuring accountability at all levels, including proceeding against high-ranking officials involved in corruption or misuse of authority. The significance of office of Chairman demonstrates that the Chairman should be a person of unimpeachable integrity, exceptional competence, and profound understanding of law and governance. As he has to proceed against high-level officials, manage complex investigations, and safeguard public resources, hence, it is imperative that the Chairman possesses a strong moral compass, impartiality, and the ability to withstand external pressures.

SIGNIFICANCE OF LEADERSHIP INTEGRITY

7. The leadership of anti-corruption institutions is vital for their credibility and effectiveness**.** United Nations Convention Against Corruption (UNCAC), came into existence vide the UNO's General Assembly resolution No.58/4 of 31 October 2003. Pakistan also ratified it on 31 August, 2007**.** UNCAC, as the leading international framework for combating corruption, underscores the necessity of independent and competent anti-corruption bodies. Article 6 mandates that states establish bodies with the necessary independence and resources to prevent and combat corruption. Article 36 further specifies the need for specialized authorities to carry out their functions free from undue influence. Article 6(2) lays down as under[2]:

> *" Article (2). Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided."*
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> *Article (36(. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption*

[2]https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII14&chapter=18#EndDec. Assessed on 05.12.2024

> *through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks."*

These provision underscores and relevant to appointments of the heads of the anti-corruption organisations, and emphasize on merit-based selection processes and independence, integrity, and adequate training of leadership. Other International bodies like the Organization for Economic Co-operation and Development (OECD)[3] highlight that the appointment of heads of anti-corruption institutions must ensure independence from political or external influences to maintain public trust.

INTEGRITY AND SUITABILITY SHALL BE DEEMED PART OF EVERY QUALIFICATION:

8. In the preceding paragraphs, we have emphasized the significance of the Ehtesab Bureau and the critical role of its Chairman. Now, the question arises as to who should be appointed as Chairman. Is it sufficient for a candidate to meet only the formal qualifications, especially when his suitability for such a high-ranking post is questioned? Or should additional factors such as integrity, honesty, capacity, character, merit, efficiency, and overall fitness also be considered? This aspect warrants detailed examination.

9. Eligibility is the state of being qualified or permitted to do something, while suitability is the state of being acceptable for something. A person may be eligible for a job but not suitable for it. Suitability often relies on integrity, which must be regarded as an intrinsic part of every qualification required for public office. The mere possession of technical qualifications, such as academic degrees or professional experience, is not sufficient for someone holding a position that demands ethical conduct, transparency, and

[3]https://www.oecd.org/en/topics/policy-issues/anti-corruption-and-integrity.html. Assessed on 05.12.2024.

accountability. Integrity is a cornerstone of public service. Integrity is not a mere accessory to qualification; it is its essence. "Integrity" has been defined as the quality of having strong moral principles[4], uprightness, honesty and sincerity[5], strict adherence to moral values and principles[6]. Integrity is not a separate or optional attribute, but rather an essential component that ensures that the individual can perform their duties impartially, without bias, and in a manner that upholds the law and public confidence. In positions like the Chairman of the Ehtesab Bureau, where the role is to enforce accountability and ensure fairness, integrity is foundational, as it directly influences the credibility of the institution. Without integrity, the very essence of the office is compromised. Therefore, integrity must be deemed part of every qualification. Let's throw some light on the legal precedents emphasizing that suitability and integrity are essential aspects that go beyond qualifications, particularly for appointments to the high-ranking posts like Judges, Chairman Public Service Commission, Chairman NAB and the institutions of like nature.

10. **Azad Jammu and Kashmir Jurisdiction:** In the case of *Mrs. Shaheen Ashai vs. Muhammad Anwar Chaudhary* [2014 SCR 1169], the matter before this Court was regarding the appointment/transfer of appellant as Director Public Instructions, which was set aside by the Service Tribunal on the ground that respondent No.1 was senior to her. This Court while dealing with the matter held that the term "merit" includes all the qualities of an employee such like academic qualification as distinction in education matters, integrity, devotion of duty and the manner in which a person discharges his duties. The relevant portion of the judgment is reproduced as under:

> "The term "Merit" in relation to service is not specifically defined. It includes all the qualities of an employee such like academic qualification as distinction in education matters, integrity, devotion of duty and the manner in which a person discharges his duties.

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[4] Concise Oxford English Dictionary (Twelfth Edition)
[5] Collins Concise Dictionary of the English Language
[6] Chambers 21st Century Dictionary.

> While determining the merit of a civil servant some other factors including the punctuality in work, the work done by him, the manner and behaviour of such officer with superior and subordinate and with general public, have to be considered. The seniority may be considered as one of the factors for determination of merit and if all other qualities are equal then seniority may be a deciding factor of merit."

In *Syed Mumtaz Hussain Naqvi & 9 others v. Raja Muhammad Farooq Haider Khan & 4 others* [2014 SCR 43] the appointments of Chairman and Members of Public Service Commission were questioned. This Court while dealing with other related matters, held in paragraph 12 that:-

> *"It may be observed that the laws applicable in Pakistan particularly in Punjab province are adapted in Azad Jammu & Kashmir and rule of parity with Pakistan and Punjab is applicable in Azad Jammu & Kashmir. The privileges and benefits are claimed which are admissible in all the fields of life in Pakistan, particularly in Punjab but where the question arises to that of protection of rights of the people, instead of performing the functions or acts according to law and the Constitution, criteria based on favoritism and nepotism is fixed, which is not permissible. The Public Service Commission is the most important constitutional organ of the State, the functions of which are to conduct test and examination for the recruitment to the civil service of Azad Jammu & Kashmir and such post in connection with the affairs of the Government.* ***The persons inducted in the service of Azad Jammu & Kashmir have to remain in the Government service for more than thirty years and future of the generations in Azad Jammu & Kashmir depends upon such persons, who are inducted in service through the Public Service Commission. The Federal Public Service Commission and Punjab Public Service Commission consist of such persons, who are highly qualified and persons of high reputation and integrity.***

The Court while discussing the relevant provisions of laws relating to Federal Public Service Commission of Pakistan and Punjab Public Service Commission, ultimately showed its desire that a suitable amendment shall be brought in the Public Service Commission Act, 1986, providing similar qualification for the members as in the Federal Public Service Commission and Punjab Public Service Commission.

11. **Pakistan Jurisdiction:** In Tariq Aziz-ud-Din's case [2010 SCMR 1301] the Supreme Court of Pakistan held that appointments to public offices must meet the criteria of competence, integrity and transparency.

In *Muhammad Yasin vs. Federation of Pakistan* [PLD 2012 SC 132], the matter in dispute was appointment of Tauqir Sadiq as Chairman Oil and Gas Regulatory Authority (OGRA. The Supreme Court scrutinized the procedural flaws and found that:

> *"56. Based on the foregoing discussion, it is clear that in order to enforce the fundamental rights of the People of Pakistan, it is essential that good governance in OGRA is ensured. To achieve this objective it is crucial that 'highly qualified' persons of 'known competence and integrity' are appointed as Chairman and Members of OGRa. This can only happen if the highest and most exacting standards of diligence, transparency and probity are employed in the selection of these persons. This quite obviously has not been done. We are clear, therefore, that the selection process seriously and irretrievably undermined merit. It is such actions which potentially result in direct harm to the people of Pakistan and also contribute towards heart-burn and disillusionment amongst genuine and competent aspirants for public office. The direct impact of ignoring merit and the eligibility criteria prescribed by the Ordinance also has the potential of causing harshly adverse consequences including unjustified inflation in retail prices for consumers, thus depriving the people of Pakistan of their incomes, assets, quality of life and dignity."*

12. **Indian Jurisdiction:** In *Supreme Court Advocates-On-Record vs. Union of India*[7], the Supreme Court of India held that:

> *"12. This perception of the concept of independence of the judiciary is in harmony with the 'Basic Principles on the independence of the Judiciary' forming a part of the universal 'Human Rights in the Administration of Justice' envisaged by the Seventh United Nations Congress at Milan and endorsed by the U.N. General Assembly in 1985, which provide inter alia as under:*
>
> > ***10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives....***
> >
> > *xxx xxx xxx*
>
> *13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience. (emphasis supplied) (Human rights - A Compilation of International Instruments (1988) at p."*

In the later part of the judgment, specifically in paragraph 16, it was held that:

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[7] https://indiankanoon.org/doc/753224/, accessed on 16.12.2024

"16. In view of the fact that the constitutional functionaries to whom the task has been entrusted discharge a 'participatory constitutional function', it is instructive to recall the prophetic warning of Dr. Rajendra Prasad in his speech, President of the Constituent Assembly, while moving for adoption of the Constitution of India. He said:

> *'We have prepared a democratic Constitution. But successful working of democratic institutions requires in those who have to work them willingness to respect the viewpoints of others, capacity for compromise and accommodation. Many things which cannot be written in a Constitution are done by conventions. Let me hope that we shall show those capacities and develop those conventions. The way in which we have been able to draw this Constitution without taking recourse to voting and to divisions in lobbies strengthens that hope.* ***Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it.... If the people who are elected are capable and men of character and integrity, they would be able to make the beat even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country.*** *After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are bom of these differences. We can only hope that the country will throw up such men in abundance.... In India today I feel that the work that confronts us is even more difficult than the work which we had when we are engaged in the struggle. We did not have then any conflicting claims to reconcile, no leaves and fishes to distribute, no powers to share. We have all these now, and the temptations are really great. Would to God that we shall have the wisdom and the strength to rise above them, and to serve the country which we have succeeded in liberating. (emphasis supplied) (The Framing of India's Constitution, Vol. IV - B Shiva Rao pages 957-58)/"*

In paragraph 18 it was held that:

"18. It is well known that the appointment of superior Judges is from amongst persons of mature age with known background and reputation in the legal profession. By that time the personality is fully developed and the propensities and background of the appointee are well known. ***The collective wisdom of the constitutional functionaries involved in the process of appointing superior Judges is expected to ensure that persons of unimpeachable integrity alone are appointed to these high offices and no doubtful persons gain entry.*** *It is not unlikely that the care and attention expected from them in the discharge of this obligation*

> *has not been bestowed in all cases. It is, therefore, time that all the constitutional functionaries involved in the process of appointment of superior Judges should be fully alive to the serious implications of their constitutional obligation and be zealous in its discharge in order to ensure that no doubtful appointment can be made. This is not difficult to achieve."*

In paragraph 273 it was held that:

> *"273. It is beyond controversy that merit selection is the dominant method for judicial selection and the candidates to be selected must possess high integrity, honesty, skill, high order of emotional stability, firmness, serenity, legal soundness, ability and endurance. Besides the above, the hallmarks of the most important personal qualifications required are moral vigour, ethical firmness and imperviousness to corrupting or venal influences, humility and lack of affiliation, judicial temperament, zeal and capacity to work."*

In *Inderpreet Singh Kahlon vs. State of Punjab*[8] the Chairman Punjab Public Service Commission was accused of large-scale corruption and taking bribes. The Supreme Court of India while dealing with the matter observed as follows:-

> *"110. This unfortunate episode teaches us an important lesson that before appointing the constitutional authorities, there should be a thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high positions. It is an urgent need of the hour that in such appointments absolute transparency is required to be maintained and demonstrated. The impact of the deeds and misdeeds of the constitutional authorities (who are highly placed) affect a very large number of people for a very long time, therefore,* ***it is absolutely imperative that only people of high integrity, merit, rectitude and honesty are appointed to these constitutional positions."***

In *Centre for PIL & others v. Union of India & others*[9], the key issue was appointment of the Chief Vigilance Commission (CVC). The Supreme Court invalidated the appointment of P.J. Thomas as CVC, citing his involvement in a corruption case (palmolein import scam). The court emphasized that the integrity and credibility of the appointee are crucial for such a position. It ruled that appointments to such high offices must be free from even the perception of bias or conflict of interest. In para No. 30 of the judgment it has been emphasized, as under:

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[8] AIR 2006 SC 2571
[9] AIR 2011 SC 1267

> *"As stated, the object and purpose of the 2003 Act is to have an integrity Institution like CVC which is in charge of vigilance administration and which constitutes an anti-corruption mechanism. In its functions, the CVC is similar to Election Commission, Comptroller and Auditor General, Parliamentary Committees etc. Thus, while making the recommendations, the service conditions of the candidate being a public servant or civil servant in the past is not the sole criteria. The HPC must also take into consideration the question of institutional competency into account. If the selection adversely affects institutional competency and functioning then it shall be the duty of the HPC not to recommend such a candidate. Thus, the institutional integrity is the primary consideration which the HPC is required to consider while making recommendation under Section 4 for appointment of Central Vigilance Commissioner. In the present case, this vital aspect has not been taken into account by the HPC while recommending the name of Shri P.J. Thomas for appointment as Central Vigilance Commissioner. We do not wish to discount personal integrity of the candidate. What we are emphasizing is that institutional integrity of an institution like CVC has got to be kept in mind while recommending the name of the candidate."*

In para 33, the integrity requirement is again emphasized, as under:

> *"Thus, we are concerned with the institution and its integrity including institutional competence and functioning and not the desirability of the candidate alone who is going to be the Central Vigilance Commissioner, though personal integrity is an important quality. It is the independence and impartiality of the institution like CVC which has to be maintained and preserved in larger interest of the rule of law [see Vineet Narain (supra)]. While making recommendations, the HPC performs a statutory duty. Its duty is to recommend. While making recommendations, the criteria of the candidate being a public servant or a civil servant in the past is not the sole consideration. The HPC has to look at the record and take into consideration whether the candidate would or would not be able to function as a Central Vigilance Commissioner.*
>
> *Whether the institutional competency would be adversely affected by pending proceedings and if by that touchstone the candidate stands disqualified then it shall be the duty of the HPC not to recommend such a candidate. In the present case apart from the pending criminal proceedings, as stated above, between the period 2000 and 2004 various notings of DoPT recommended disciplinary proceedings against Shri P.J. Thomas in respect of Palmolein case. Those notings have not been considered by the HPC. As stated above, the 2003 Act confers autonomy and independence to the institution of CVC.*
>
> *Autonomy has been conferred so that the Central Vigilance Commissioner could act without fear or favour. We may reiterate that institution is more important than an individual. This is the test laid down in para 93 of N. Kannadasan's case (supra)."*

13. In light of the foregoing discussion, it may be put that eligibility for high-ranking positions, particularly those critical to the administration of justice and governance, requires more than mere fulfillment of technical qualifications. Integrity, character, and merit are indispensable attributes that must be rigorously evaluated to ensure the effectiveness and legitimacy of such appointments. The principles of transparency and accountability, as emphasized in the legal precedents and the objectives of the EBA, underscore the need for selecting individuals who not only meet statutory qualifications but also exemplify the highest standards of ethical conduct and professional competence. Appointments made without considering these broader criteria risk undermining public confidence in the institutions tasked with upholding the rule of law, thereby defeating the very purpose for which these offices were established. It is, therefore, imperative that the appointment process adheres to these foundational principles to safeguard the integrity and credibility of the institution.

LEGISLATIVE HISTORY OF AJ&K AND PAKISTAN REGARDING MODE OF APPOINTMENT OF CHAIRMAN:

14. This brings us to a crucial and thought-provoking question: how can an individual of impeccable integrity, honesty, competence, character, merit, and efficiency be selected for appointment to the esteemed position of Chairman? The solution lies in establishing a transparent and well-structured appointment process to eliminate political influence and ensure that only the candidate of high calibre and integrity is selected. Thus, the question arises whether the mode of appointment prescribed under EBA, is robust enough to ensure the selection of individuals with the requisite integrity, competence, and independence, free from political influence, for the esteemed position of Chairman. To answer this question, we would like to discuss the legislative history regarding the mode of appointment of Chairman NAB in Pakistan as well as Chairman Ehtesab Bureau.

15. **Pakistan:** *In the case of Khan Asfandyar Wali and others v. Federation of Pakistan and others* [PLD 2001 SC 607], the Supreme

Court of Pakistan recommended that the Chairman of the NAB should be appointed by the President in consultation with the Chief Justice of Pakistan. This recommendation was initially implemented through the National Accountability Bureau (Amendment) Ordinance XXXV of 2001. However, through the National Accountability Bureau (Amendment) Ordinance CXXXIII of 2002, the Chief Justice of Pakistan was removed from the list of consultees, and the consultation process was modified. Under this amendment, the Leader of the House (Prime Minister) and the Leader of the Opposition in the National Assembly were to be consulted by the President before appointing the Chairman NAB. In subsequent judgments, the Supreme Court reiterated the importance of involving the Chief Justice of Pakistan in the consultation process. Those judgments are ***Dr. Mobashir Hassan & others vs. Federation of Pakistan & others*** [PLD 2010 SC 265], ***The Bank of Punjab v. Haris Steel Industries (Pvt.) Ltd. and others*** [PLD 2010 SC 1109] and ***Shahid Orakzai v. Pakistan through Secretary*** [PLD 2011 SC 365]. However, currently section 6 is holding the field in the following form:

> "6. National Accountability Bureau.—
>
> (a) There shall be constituted a National Accountability Bureau for the whole of Pakistan.
>
> (b) Chairman, National Accountability Bureau: —
>
> (i) There shall be a Chairman, National Accountability Bureau to be appointed by the Federal Government after consultation between the Leader of the House and the Leader of the Opposition in the National Assembly: Provided that the consultation between Leader of the House and Leader of the Opposition shall be initiated two months prior to the expiry of the term of outgoing Chairman and shall be concluded within the period of forty five days;
>
> (ii) If there is no consensus on the name of the Chairman, the names proposed by the Leader of the House and the Leader of the Opposition shall be forwarded by the Chairman of the Senate and Speaker of the National Assembly, as the case may be, to the Parliamentary Committee appointed under clause (iii), which may confirm any one name for appointment as Chairman:

Provided that the Leader of the House and Leader of the opposition shall propose two names each for consideration of the Parliamentary Committee;

(iii) The Parliamentary Committee under clause (ii) shall be constituted by the Speaker, National Assembly, comprising fifty percent members from the treasury benches and fifty percent from the opposition benches, based on their strength in Majlis-e-Shoora (Parliament), to be nominated by the respective Parliamentary Leaders:

Provided that the Parliamentary Committee shall recommend the name of the Chairman not later than thirty days;

(iv) The total strength of the Parliamentary Committee shall be twelve members out of which one third shall be from the Senate. If the National Assembly stands dissolved at the material time, all the members of the Committee shall be from the Senate;

(v) The Chairman shall, on such terms and conditions as may be determined by the Federal Government, hold office for a non- extendable term of three years and shall not be eligible for subsequent appointment as Chairman and shall not be removed from office except on the grounds and in the manner as provided in Article 209 of the Constitution:

Provided that as and when the office of the Chairman NAB falls vacant or when the Chairman NAB is absent or unable to perform the functions of his office, due to any reason whatsoever, the Deputy Chairman NAB shall act as Chairman NAB and in absence of Deputy Chairman NAB, the Federal Government shall appoint an acting Chairman NAB from amongst the senior officers of the NAB; and

(vi) The Chairman may, by writing under his hand, addressed to the Federal Government, resign from his office.

(ba) A person shall not be appointed as Chairman NAB unless he—

(i) is a retired Chief Justice or a Judge of the Supreme Court or a Chief Justice of a High Court; or

(ii) is a retired officer of the Armed Forces of Pakistan equivalent to the rank of a Lieutenant General; or

(iii) is a retired Federal Government Officer in BPS 22 or equivalent."

16. **Azad Jammu and Kashmir:** To combat corruption and corrupt practices in public offices, the Ehtesab Act, 1997, was promulgated on June 21, 1997, in Azad Jammu and Kashmir. Section

13 of the Act stipulated the appointment of a Chief Ehtesab Commissioner for a term of three year by the President, after consultation with the Prime Minister, the Leader of the Opposition, and the Chief Justice of Azad Jammu and Kashmir. However, no specific qualifications were prescribed for the post. The Ehtesab Act, 1997, was repealed with the enactment of EBA. Section 6 of this Act postulated that the Chairman shall be appointed by the President after consultation with the Chairman of the Azad Jammu and Kashmir Council. Still no qualification was prescribed, however, subsequently in 2005, a proviso was added to Section 6, prescribing qualifications for the Chairman. These included: (i) a person who is or has been qualified to be appointed as Judge of the Supreme Court or High Court; (ii) a retired officer of the Armed Forces of Pakistan, equivalent to the rank of Major General; or (iii) a person who has served as a member in the service of Azad Jammu and Kashmir in BPS-21 or above. In 2010, Section 6 was substituted again, removing the requirement for consultation with the Chairman of the Azad Jammu and Kashmir Council. Additionally, the qualification of a retired officer of the Armed Forces equivalent to the rank of Major General was also omitted. Lastly, in 2020, Section 6 was amended to provide that the Chairman shall be appointed by the President on the advice of the Prime Minister. Currently, section 6 is enforced in the following form:

> *"6. Chairman of the Ehtesab Bureau (1) There shall be Chairman of the Ehtesab Bureau to be appointed by the President on the advice of the Prime Minister and on such terms and conditions as may be prescribed.*
>
> *(2) No person shall be appointed as Chairman Ehtesab Bureau unless he:-*
>
> *(i) He has been or qualified to be appointed as Judge of the Supreme Court or the High Court; or*
>
> *ii) is or has been civil servant of Azad Jammu and Kashmir in BPS-21 and above."*

COMPARATIVE ANALYSIS OF SECTION 6 OF EBA AND NAO.

17. A comparative analysis of Section 6 of EBA and Section 6 of the NAB Ordinance, 1999 (NAO) highlights significant differences

in the qualification criteria and appointment process for the heads of the respective accountability institutions. Section 6 of EBA lacks detailed procedural requirements or checks to ensure transparency and bipartisan consultation. In contrast, Section 6 of NAO, establishes a more comprehensive and transparent appointment process. The Federal Government appoints the Chairman NAB after mandatory consultation between the Leader of the House and the Leader of the Opposition in the National Assembly. If a consensus cannot be reached, the proposed names from both leaders are forwarded to the Chairman of the Senate and the Speaker of the National Assembly, who, in turn, refer the matter to a Parliamentary Committee. This Committee, comprising equal representation from treasury and opposition benches, confirms the appointment. The EBA limits the pool of potential candidates by restricting eligibility to individuals with judicial or administrative experience. This narrow focus contrasts with NAO, which permits broader eligibility by including candidates with judicial, military, and senior administrative backgrounds. This flexibility allows for a more diverse selection of leadership. Another key difference is the lack of clarity in the EBA regarding the Chairman's tenure, which leaves the position vulnerable to instability and arbitrary dismissal. On the other hand, NAO ensures continuity through a defined tenure and guarantees the Chairman's security of office. The EBA concentrates power in the hands of the Prime Minister, which may politicize the appointment process. Corruption being an unfortunate bane of our society in the current phase of our history and even the high public offices being not immune from serious allegations in that regard, leaving the matter of appointment of the head of the most important anti-corruption institution in the country in the hands only of those very persons who could possibly, in future or present, be a subject of inquiries, investigations of trials for corruption would, apart from giving rise to the issue of conflict of interest, defeat the very object of the relevant law and would, thus, also prejudicially affect, directly or indirectly, the Fundamental Rights of the citizens at large.

SUGGESTED REFORMS IN EBA:

18. The Ehtesab Bureau, which happens to be a premier and high-profile anti-corruption institution of the state is being perceived as an institution which is possibly being misused for covering-up corruption at high places and such cover-up is perceived to be controlled and managed through appointment of its handicapped Chairman. It is imperative to address and dispel this perception to safeguard the Bureau's institutional integrity and public trust. If the Government is serious about making the Ehtesab Bureau an effective, credible, and independent institution, it must deliberate to establish an apolitical appointment process by introducing a balanced and transparent mechanism for the selection of the Chairman ensuring consultation with the leader of Opposition to minimize political influence. This can only be done if the appointment process is restructured through legislative reforms mandating a bipartisan approach that includes not only the Prime Minister and the Leader of the Opposition but also independent institutions such as the parliamentary committee to ensure the selection of a person of impeccable character, integrity, competence, and professionalism. The qualifications must be wide enough to enable the consultees to consider a diverse pool of candidates, including persons with proven expertise, unblemished integrity, and a strong track record of professional competence. Furthermore, the security of the Chairman's service must be ensured to uphold the independence of the office. The Chairman should be guaranteed a fixed tenure and protected from arbitrary removal. Removal should only be possible through a transparent process involving an inquiry conducted by the Chief Justice of Azad Jammu and Kashmir or a Judge nominated by him. These reforms are essential to establish credibility, safeguard the Chairman’s independence, and ensure the Ehtesab Bureau can effectively fulfill its mandate free from undue influence. We are optimistic that the Government will seriously consider the need for comprehensive

reforms to ensure the Ehtesab Bureau functions as an independent, credible, and effective institution.

PERKS AND PRIVILEGES FOR CHAIRMAN:

19. Another key issue in this case is whether the respondent was rightly granted perks and privileges equivalent to those of a Judge High Court. In our view, this issue became moot upon the respondent's resignation. However, in the public interest we would like to hold that nobody can claim the perks and privileges equivalent to those of a Judge High Court as a matter of right. This issue has already been deliberated upon by this Court in the case reported as *Azad Govt. & others vs. Sardar Muhammad Mukhtar Khan* [2016 SCR 206], in the following manner:-

> *"16. In our considered view, the practice of granting the terms and conditions equal to that of Judge High Court is not strictly according to the spirit of the Constitution. Such practice has been so misused that even a person who according to nature of his job is not performing any judicial functions is also getting the judicial allowance. It is very funny and mockery with the constitutional provisions. As the Government has already realized this situation and a notification which was issued on 25.6.2002 is holding the field, the validity of which has not been challenged by the respondent rather it appears to be consistent with the spirit of the Constitution, therefore, in this situation, no detailed deliberation is required. The Government and other concerned are directed to strictly and practically apply the notification dated 25.6.2002 and in future any violation of this notification will be deemed the violation of law and the Supreme Court's direction."*

In our opinion, it is up to the Government to announce a suitable package, but such like package should never be given the name of "perks and privileges equivalent to those of a Judge High Court".

20. As the respondent has resigned from his office which has been accepted, hence, there remains no need to touch the ancillary issues involved in the case.

21. Before concluding, it is imperative to state that no further appointments shall be made to the post of Chairman, Ehtesab Bureau, until suitable amendments are enacted. Until such amendments are in place, the Government may also consider rationalizing the number of

law officers in the Ehtesab Bureau to ensure optimal resource utilization and reduce the burden on the public exchequer.

22. Lastly, we would like to sum up by quoting here the words of an eloquent poet Saaghir Siddiqui:

جس عہد میں لُٹ جائے فقیروں کی کمائی
اس عہد کے سلطان سے کچھ بھول ہوئی ہے

as a poignant reminder for holders of high offices that their primary responsibility is to safeguard the rights and resources of the most vulnerable members of society. When the wealth and toil of the downtrodden are unjustly taken or squandered, it reflects a failure of leadership and governance, demanding introspection and corrective action to restore justice and equity.

We dispose of the appeal in the above terms. No order as to costs.

CHIEF JUSTICE JUDGE JUDGE

Muzaffarabad,
14.01.2025