

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

MR.JUSTICE AQEEL AHMED ABBASI, CJ

MR.JUSTICE ABDUL MOBEEN LAKHO

C.P. Nos.D-498 of 2022 a/w

C.P. Nos.D-1187, 1992, 720, 826 and 911 of 2022

- Petitioners in CP Nos.D-498 & 826/2022 : Zaeem Iqbal Shaikh through Mr. Farooq H. Naek, Advocate alongwith M/s. Syed Qaim A. Shah, Syed Amar Hussain and G. Murtaza Bhambhro, Advocates.
- Petitioner in CP No.D-1992/2022 : Syed Masood Abbasi Rizvi through Syed Muhammad Saulat Rizvi, Advocate.
- Petitioner in CP No.D-911/2022 : Abid Hussain Hakro through Syed Ashike Raza, Advocate.
- Petitioner in CP No.D-1187/2022 : Abdul Hameed Abro through Mr.Farooq H. Naek, Advocate holds brief for Mr.Muhammad Shahab Imam, Advocate.
- Petitioner in CP No.D-720/2022 : Khalid Saleem through Mr. Farooq H. Naek, Advocate holds brief for Mr.Muhammad Baqir Hussain, Advocate.
- Respondents : Federation of Pakistan through Mr.Khaleeq Ahmed, Deputy Attorney General.
- : Federal Board of Revenue through Mr. Zafar Imam, Advocate.
- Date of hearing : 19th January 2024
- Date of Short Order : 19th January 2024

ORDER

Since the petitioners in above petitions have expressed their common grievance of being superseded by their junior officers through

impugned Notification(s)/letter(s) issued by Central Selection Board (CSB) in violation of law and rules, whereas, common relief has been sought seeking a declaration against impugned Notification(s)/letter(s) issued by the respondents, whereby, petitioners have been intimated that they have been superseded under Rule 8(a) of the Civil Servant Promotion Rules, 2019, as the petitioners failed to meet the requisite threshold marks as prescribed under Rule 16 (Table at S.No.4) for promotion to various grades (BS-18 to BS-21). The brief facts and the grievance as expressed by the petitioners in above petitions can be summarized in the following manners: -

“1. Mr. Zaeem Iqbal PSP officer filed the petition bearing No. 498 of 2022 and made prayer therein that the Notification dated 03-12-2021 and 11-01-2022 be declared as illegal, without lawful authority, without jurisdiction and having no legal effect further prayed that the official respondent be directed to promote the petitioner from BPS-20 to BPS-21 with all pecuniary and ancillary benefits from the Notification dated 03-12-2021.

The petitioner is PSP officer, is considered for promotion BPS-21 by the CSB in September, 2021 the board assessed whole record of the petitioner and service history and recommended him for supersession under Rule 8(a) of the Civil Servant Promotion Rules, 2019, as such the petitioner failed to meet the minimum required threshold of 75 marks therefore supersession letter communicated him on 11-01-2022.

That this Honorable Court called report from the department and department submitted compliance report which is available at Page No. 497 of the Court file, the officer secured 65.44 numbers therefore he was recommended for the supersession in line with Rule 8(A) of the Civil Servant Promotion Rules, 2019.

2. Mr. Khalid Saleem PAS (Pakistan Administrative Services) filed petition bearing No.720/2022 and made prayer that the letter dated 28-12-2021 and 11- 01-2022 be declared as illegal without lawful authority and without jurisdiction having no legal effect further prayed that the official respondent be directed to promote the petitioner from BPS-20 to BPS-21 with all pecuniary and ancillary benefits from the Notification dated 02-12-2021.

The petitioner was superseded under Rule 8(A) of the Civil Servant Promotion Rules, 2019, the board takes into consideration the attributes of objective assessment form while awarding marks prepared in the light of Rule 18 of Civil Servant Promotion Rules, 2019

3. Mr. Faisal Basheer Memon, PSP officer filed CP No.826/2022 (Police Services Pakistan) made prayer that declared meeting of the CSB from 28 to 30th September, 2021 amongst letter dated 03-12-2021 is without jurisdiction illegal, unlawful and null & void, further prayed that the respondent be directed to promote the petitioner from BPS-19 to BPS-20 with all pecuniary and ancillary benefits from 03-12-2021.

That the CSB considered the case of petitioner and deferred under Rule 7(d) CSB Rules, 2019, in compliance of order of this Honorable Court the complete record and minutes of CSB placed on record through Mehmood Khan Lakho Section Officer

4. Mr. Abid Hussain Hakro filed C.P No. 911/2022, he made prayer that the notification dated 02-12-2021 be suspended, no other substantial prayer made by the officer the board thoroughly examined the case of the petitioner considered by the board deliberated upon the Service profile PER and general perception, conduct, integrity and other attributes mentioned in the objective assessment form thereafter decided to recommend the officer for deferment under Rule 7(k) of the Civil Servant Promotion Rules, 2019, the complete minutes placed on record through Mehmood Khan Lakho Section officer.

5. Mr. Abdul Hameed Abro, filed petition No. 2287/2022 and seek relief from this Honorable Court however the case of petitioner placed before CSB in May 2019, January 2020 and September 2021. In the year 2019 neither he completed mandatory training nor complete service record placed on record in the CSB meeting held January, 2021 and September, 2021 the board reviewed the service profile PER and TER of the officer considering the profile of the officer the board decided to recommend the officer for deferment under Rule 7(k) of Civil Servant Promotion Rules, 2019

6. Mr. Syed Masood Abbas Rizvi PA&AS (Pakistan Audit and Accounts Services), filed petition No. 1992/2022 made prayer that the decision of the CSB communicated to letter dated 03-02-2022 be declared as illegal, malafide based upon unfounded instances and baseless, he states that his promotion illegally held by the respondents.”

2. Learned counsel appearing for the petitioners have submitted that petitioners acquired requisite marks with respect to PERs and TERs, however, Central Selection Board (CSB) through impugned Notification(s)/letter(s) simply stated that since the petitioners did not meet the requisite threshold marks, therefore, they have been superseded under Rule 8(a) of the Civil Servants Promotion Rules, 2019, however, without assigning any reasons in violation of Rule 23 of the Promotion Rules, 2019 read with Section 24-A of the General Clauses Act, 1897, which requires the authority to disclose valid reasons for supersession or departmental promotion to a civil servant. Moreover, impugned Notification(s)/letter(s) have been issued in violation of the criteria as prescribed under Rule 18(3)(c) read with Schedule-IV of Promotion Rules, 2019. Per learned counsel, objective assessment has to be done by respondent No.1 and 2 in line with Rule 18(3) (c) read with Schedule-IV of Promotion Rules, 2019 wherein scheme of marks has been defined, whereas, 30 marks assigned to CSB being its prerogative, however, the same has to be used justly and reasonably based on certain parameters and not in an arbitrary manner, whereas, collective wisdom is to be applied according to Schedule-IV of Civil Servants Promotion (BPS 18 to BPS 21) Rules, 2019. Per learned counsel, respondent No.1 and 2 have miserably failed to do so, which reflects upon their malafide intent and misuse of power, which require judicial review, as the petitioners' right of promotion and progression in the service has been denied in violation of law, rules and against the principle of natural justice, as no reasons whatsoever have been assigned or communicated to petitioners. Per learned counsel, criteria mentioned in Item Numbers 1,2,3,6,7,9 and 10 of Schedule IV of Promotion Policy Rules, 2019 are based solely on Dossiers (as defined in Rule 2(i) of Rules), Career profile, PERs, TERs of officer under consideration. Per learned counsel, similarly, criteria at Item Number 4, 5 and 8 do not provide a carte-blanche to CSB

to do as it pleases, but opinion of Board members herein too is subject to dossier/ documentary evidence. Respondents have failed to produce with their comments individual marking of each CSB Members even for these criteria items which would have revealed their malafide intent, discrimination and abuse of authority on part of respondent No.2. Learned counsel have drawn our attention to the relevant rules, including Rule 8(a), Rule 16, Rule 18 and the relevant Table of Promotion Rules, 2019, which have been reproduced for ready reference as under: -

Under Rule 8(a) of Promotion Rules 2019 a Civil Servant shall be recommended for supersession if he does not meet requisite threshold for promotion to a particular post or grade.

Under Rule 16 (Table at Serial No.4) minimum threshold marks for promotion to BS-21 is 75.

TABLE

S.No.	Basic Pay Scale	Aggregate marks of efficiency index
(1)	(2)	(3)
1.	BS-18	60
2.	BS-19	65
3.	BS-20	70
4.	BS-21	75

C. Rule 18 provides for quantification of Performance Evaluation Reports (PERs), Training Evaluation Reports (TERs) and CSB evaluation. Table in the said Rule provides as follows:-

TABLE

S.No.	Factor	Marks
(1)	(2)	(3)
1.	Quantification of PERs	40%
2.	Training Evaluation Reports (TERs)	30%
3.	Evaluation by CSB and DSB	30%
4.	Total	100%

D. Schedule IV of Rules 2019 framed under Rule 18(3)(c) provides for Objective Assessment by Central Selection Board.

Schedule-IV
[See Rule 18(3)(c)]

CONFIDENTIAL

GOVERNMENT OF PAKISTAN
MINISTRY/DIVISION _____

OBJECTIVE ASSESSMENT BY CENTRAL/DEPARTMENTAL
SELECTION BAORD

Officer's Name: _____ Seniority No: _____

Group/Service/Cadre: _____ Present Scale: _____

S. No.	Parameters/Attributes	Total Marks	Marks Assigned
		30	
1.	Output and quality of works; Proficiency/productivity/objectivity/effectiveness, Dossier and documentary evidence	3	
2.	Variety and Relevance of Experience; Secretariat/Field postings, Federal/ Provincial Government postings, Leadership/Routine Postings; Deputation/Foreign Postings	3	
3.	Professional Expertise; Organization/methodical/reliability under pressure/knowledgeable/level headedness. Based on dossier and carrier profile, TERs	3	
4.	Personality Profile; (As known to the Board Members primarily on the basis of dossier/ documentary evidence)	3	
5.	Conduct, Discipline, Behavior; Observation by RO/CO during the last 05 years OR as known to the Board Members primarily on the basis of dossier/documentary evidence.	3	
6.	Leadership; Functional ability/confidence/decision-making based on dossier, TERs, PERs	3	
7.	Estimated Potential for Middle/Higher Management; Based on PERs and TERs; Management Skills, Ability to take decisions, Strategic Thinking, Leadership Qualities, Drive for Results and Accomplishments in BPS-18 and 20 in policy formulation and implementation.	3	
8.	Integrity/General Reputation/ Perception; Professional Ethics/Conduct, On the basis of PERs/TERs/Opinion of the Board primarily based on the dossier/documentary evidence.	3	
	Commitment to Public Service;		

9.	Devotion to duty/drive/motivation based on PERs, Career Profile, Dossier.	3	
10.	Teamwork; Communication/motivation/interpersonal relations based on Career profile, PERs, TERs	3	
TOTAL MARKS			

Overall Category_____

In support of their contention, learned counsel for the petitioners have placed reliance in following reported and unreported cases: -

1. ORYA MAQBOOL ABBASI v. FEDERATION OF PAKISTAN THROUGH SECRETARY ESTABLISHMENT AND OTHERS [2014 SCMR 817];
2. GOVERNMENT OF PAKISTAN THROUGH DIRECTOR-GENERAL, MINISTRY OF INTERIOR, ISLAMABAD AND OTHERS v. FARHEEN RASHID [2011 SCMR 1];
3. Un-reported Judgment of Islamabad High Court dated 24-6-2022 passed in Writ Petition No.421/2022 [Re: Yousif Hyder Shaikh Vs Establishment Division through its Secretary Government of Pakistan and 2 others];
4. Un-reported Judgment of High Court of Sindh, Karachi passed in CP No.D-4035 of 2019 [Re: Bashir Ahmed Kalwar Vs The Federation of Pakistan & others];
5. Un-reported Judgment of Islamabad High Court dated 16-11-2018 passed in W.P. No.3254 of 2018 [Re: Ahmed Jamal-ur-Rehman Vs Federation of Pakistan];
6. Un-reported Order of High Court of Balochistan, Quetta dated 17-5-2022 passed in C.P. No.121/2022 [Re: Akhtar Hayat Khan vs Federation of Pakistan and another];
7. Un-reported Judgment of Lahore High Court dated 16-5-2022 passed in W.P. No.5152 of 2022 [Re:Dr. Naveed Ahmed Chaudhry Vs Federation of Pakistan and another];
8. Un-reported Judgment of Islamabad High Court dated 26-07-2022 passed in Writ Petition No.839 of 2022 [Re: Afaque Ahmad Qureshi Vs Federation of Pakistan and others].

3. Conversely, learned D.A.G. and learned counsel for FBR have raised objection as to maintainability of instant petitions while arguing that promotion is not a vested right of the petitioners, hence instant petitions are not maintainable as held in the cases as reported in the

case of MIAN ABDUL MALIK v. DR. SABIR ZAMEER SIDDIQUI AND 4 OTHERS [1991 SCMR 1129]; ABID HUSSAIN SHERAZI v. SECRETARY M/O INDUSTRIES AND PRODUCTION, GOVERNMENT OF PAKISTAN, ISLAMABAD [2005 SCMR 1742], MUHAMMAD IQBAL AND OTHERS v. EXECUTIVE DISTRICT OFFICER (REVENUE) AND OTHERS [2007 SCMR 682] AND DR. MUHAMMAD HUSSAIN v. PRINCIPAL, AYUB MEDICAL COLLEGE AND ANOTHER [PLD 2003 SC 143]. Learned counsel for the respondents have also attempted to argue that the reliance placed by the learned counsel for the petitioners on the cited judgments, particularly the case of Yousuf Hyder Shaikh v. Establishment Division in a Writ Petition No.421/2022 is misplaced, as according to learned counsel, such judgment was passed prior to framing Civil Servant Promotion Rules, 2019, whereas, ICA No.276/2022 has been filed against such judgment by Islamabad High Court. However, when the attention of learned DAG was drawn to proviso to Section 22(2) of the Civil Servants Act, 1973 and the judgments cited as ABDUL SATTAR JATOI v. CHIEF MINISTER SINDH THROUGH PRINCIPAL SECRETARY, CHIEF MINISTER SECRETARIAT, KARACHI AND OTHERS [2022 SCMR 550] and MRS.IRAM ADNAN AND OTHERS v. FEDERATION OF PAKISTAN AND OTHERS [2012 PLC (C.S) 1355], he could not submit any response to this effect. Accordingly, above petitions are maintainable, whereas, the merits of the case will be dealt as under separately.

4. We have heard the learned counsel for the parties and learned DAG, perused the record of the above petitions with their assistance and have also gone through the judgments relied upon by both the parties.

5. It is pertinent to note that during course of hearing above petitions, on 11.12.2023, when these matters were taken up for hearing further submissions made by the learned counsel for the petitioners were recorded in the following terms: -

“Learned counsel for the petitioners have completed their submissions, subject to rebuttal if any, however, they submit that the petitioners will be satisfied if directions may be issued to the respondents to consider the cases of the petitioners in the next meeting of C.S.B. (Central Selection Board) without being influenced by the comments filed in the above petitions as according to learned counsel, in the impugned letters, no such allegation or adverse remarks have been intimated to the petitioners, therefore, any other basis, which has never been intimated with regard to their supersession will adversely affect petitioners' right. In all the letters it has been intimated that the petitioners could not obtain the requisite threshold of 70% in case of promotion from BPS-19 to BPS-20 and 75% in case of promotion from BPS-20 to BPS-21. Learned counsel for the petitioners in all the petitions submit that the petitioners will have no objection if the above petitions are disposed of keeping in view the parameters as determined by the learned Islamabad High Court, Islamabad in paragraph 40 of its Judgment dated 24.6.2022 passed in Writ Petition No.421/2022 (Yousif Hyder Shaikh..... Establishment Division, Govt. of Pakistan & others), so that it may provide a guideline to the respondents for the purposes of considering the cases of promotion of the civil servants and will ensure transparency and fairness.

Learned D.A.G. requests for short adjournment to seek instructions in this regard, however, submits that the cases of the petitioners will be considered as per rules and regulations and the guidelines as may be given by this Court in these petitions. This aspect of the matter will be considered on the next date of hearing. It is, however, observed that if the respondents are not agreeable to the disposal of instant petitions in the aforesaid terms i.e. in the light of judgment of learned Islamabad High Court, Islamabad or further guidelines as may be issued in these petitions, appropriate order will be passed on the next date of hearing.

By consent to come up on 21.12.2023 at 12:00 noon.”

6. Thereafter, the matter was finally fixed for hearing on 19.01.2024 when arguments of the learned counsel for the parties and the learned DAG were concluded. However, before we could record our finding as to merits of instant petitions according to legal position as argued by the learned counsel for the petitioners and learned DAG, attention of learned DAG was drawn to the submissions of the learned counsel for petitioners as recorded in order dated 11.12.2023 and the proposal that

petitioners will have no objection if the above petitions are disposed of keeping in view the parameters as determined by the learned Islamabad High Court, Islamabad in terms of Paragraph 40 of its judgment dated 24.06.2022 passed in Writ Petition No.421/2022 [Re: Yousif Hyder Shaikh v. Establishment Division, Govt. of Pakistan & others] so that it may provide a guideline to the respondents for the purposes of considering the cases of promotion of the petitioners while ensuring transparency and fairness. In response, the learned DAG has candidly stated that though the facts and the legal issues decided in the above referred petitions/judgments are the similar, however, he cannot concede to the disposal of instant petitions in above terms for the reason that respondents have filed ICA before the Islamabad High Court against the judgment in the case of Yousif Hyder Shaikh (supra). It has, however, been submitted that the case of petitioners will be considered in the next meeting of the Central Selection Board as per applicable Law and the Rules.

7. After hearing the learned counsel for the parties at length and from perusal of the relevant Rules i.e. Civil Servants Promotion Rules, 2019, and the case law relied upon by the parties in support of their contention, we are of the considered opinion that petitioners have made out a case to challenge the impugned Notification(s)/letter(s), whereby, without assigning any reasons or referring to any objective assessment criteria for evaluation of marks by the Central Selection Board, as prescribed under Rule 18(3)(c) of the Civil Servants Promotion Rules, 2019, petitioners have been superseded by their juniors, in violation of law and the rules, and also against the principles of Natural Justice. In the afore-cited judgments relied upon by the learned counsel for petitioners, under similar facts and circumstances, this aspect of the matter has been examined in detail while referring to the relevant rules, whereas, Hon'ble Judge of Islamabad High Court, in the case of Yousif

Hyder Shaikh (supra) while placing reliance on various judgments of the High Court as well as of the Hon'ble Supreme Court has been pleased to allow petitions, while declaring similar Notification/letter as illegal and without lawful authority in terms of Paras 40 and 41 of the afore-cited judgment in the following terms: -

“40.) In view of the aforementioned opinion, this Court finds the following:

1. The assessment undertaken by the CSB that forms the basis of the decision to supersede the petitioners has been made in breach of requirements of Rule 18 of the Promotion Rules and the criteria and process for assessment prescribed under the Promotion Rules, and is liable to be set-aside.

2. The promotion decisions rendered by the CSB have been made without undertaking mandatory assessment pursuant to Schedule-IV objective assessment proforma, with each member of the CSB evaluating each candidate up for promotion against ten attributes mentioned in the said proforma, against parameters mentioned therein, on the basis of sources of information mentioned therein. Any promotion decision made without undertaking objective assessment in accordance with requirements of Schedule-IV of the Promotion Rules is without lawful authority and liable to be set-aside.

3. The sources of information that are to be taken into account for undertaking objective assessment for purposes of Schedule-IV of the Promotion Rules read together with Rule 18 can only be the sources identified within the Rules. And unless the Rules are amended by the Federal Government to provide for additional sources of information, the CSB is vested with no authority to take into account additional sources of information not mentioned in Schedule- IV, including Intelligence Reports.

4. The civil servant being considered for promotion has a right to be confronted with any adverse finding or information that is to be taken into account by the CSB for purposes of making the promotion decision in relation to such civil servant and a right to respond to such adverse opinion or finding. This is mandatory to meet the requirement of due process prescribed under Article 10A of the Constitution. It is for the Federal Government to identify, through rules framed under the Civil Servants Act, 1973, the stage at which such information is to be disclosed to the civil servant and the manner in order to give him/her an opportunity to respond to the same.

5. The CSB is under an obligation to record candid reasons that inform the CSB's decision to defer or supersede a civil servant. The reasons, as documented, must be such that they convey to the civil servant in question the thinking of the CSB and the factors and facts that prevailed with the CSB in order to enable such civil servant to address the concerns of the CSB and the deficiencies pointed out before his case is presented for reconsideration before the CSB under Rule 10 of the Promotion Rules.

6. The deliberations of the CSB and the minutes of meeting recording such deliberations as well as the material considered by the CSB while reaching promotion decisions are not protected by secrecy when it comes to the civil servant in relation to whom the decision is being made. The public in general may not have a right to access such material under the Right of Access to Information Act, 2017, but the civil servant whose carrier and progression is being determined by a decision based on such material has a vested right to be provided such material. Federal Government shall share excerpts of the minutes of the CSB meeting relating to the civil servant who is a candidate for promotion, together with the Schedule-IV objective assessment proformas filled out by the CSB members, with such civil servant while communicating by him/her the decision reached by the CSB, to comply with requirements of Rule 23 of the Promotion Rules.

7. The petitions are maintainable as they have impugned the decisions of the CSB on grounds of illegality for rendering supersession decisions in breach of provisions of the Promotion Rules. The impugned decisions are liable for being judicially reviewed on ground of procedural impropriety for failing to comply with the procedure through which promotion assessment is to be made, including by initiating the assessment process by filling out Schedule-IV objective assessment proformas. The CSB's decisions are liable to be set-aside as the CSB has transformed an objective assessment process prescribed under the Promotion Rules into an unstructured and opaque subjective process driven by opinions of the CSB backed by no documentary evidence and reasoning.

41. These petitions are accordingly allowed. Supersession decision impugned by the petitioners are set-aside. The Establishment Division is directed to process the cases of the petitioners and place them before the CSB in its next promotion meeting for consideration afresh in view of the observations made above.”

8. The view taken by the learned Single Judge of Islamabad High Court in the afore-cited judgment is based upon the judgment of the Hon'ble Supreme Court as well as the judgments of various other benches of Islamabad High Court relating to the subject controversy, therefore, we need not refer to those judgments. We are in agreement with ratio of the afore-cited judgments and, therefore, declare that the impugned Notification(s)/letter(s) in respect of the petitioners, whereby, petitioners have been superseded, as illegal and without lawful authority. Accordingly, aforesaid petitions were allowed vide our short order dated 29.01.2024 and above are the reasons of said short order.

CHIEF JUSTICE

JUDGE

Farhan/PS