

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

**PRESENT:**

**MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J**  
**MR. JUSTICE IJAZ AHMED CHAUDHRY**  
**MR. JUSTICE SH. AZMAT SAEED**

**CONSTITUTION PETITION NO. 22 OF 2013**

Orya Maqbool Abbasi

.... Petitioner

Versus

Federation of Pakistan through Secretary  
Establishment & others

.... Respondents

Petitioner

Mr. Orya Maqbool Abbasi, In Person

For the Applicant

Mr. Arshad Ali Chaudhry, AOR  
(*in CMA 2903/13*)

For Estt. Div. & CSB

Mr. Shah Khawar, Addl. AGP  
Raja Abdul Ghafoor, AOR  
Malik Shakeel, J.S. (Litigation)  
Mr. Shahbaz Karmani, S.O.

For Res. Nos.19,61 & 81

Hafiz S. A. Rehman, Sr. ASC

For Respondent No.82

Mr. Rashid A. Rizvi, Sr. ASC

For Respdts. 23, 47, 49,  
53, 57, 74-76

Mr. Abdur Rahim Bhatti, ASC

For Respondents No.28,  
43,52-54 & 58

Syed Iftikhar Hussain Gillani, Sr. ASC  
Mr. Mehr Khan Malik, AOR

Respdts In person

Mr. Saqib Aleem, Addl. Secy. Wafaqi Mohtasib  
Capt. Retd. Muhammad Aftab, J.S. (Cabinet)  
Mr. M. Shabbir Ahmed, Addl. Secy. MOI

Date of hearing

12.07.2013

**JUDGMENT**

**IFTIKHAR MUHAMMAD CHAUDHRY, C.J.:-** The petitioner has approached this Court under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 for the enforcement of fundamental rights, involving question of public importance of outlining an objective criteria for promotions to make the civil service rewarding for honest officers and free from political pressures.

2. The grievance of the Petitioner, as narrated in the petition, is non-recommendation of his name, along with so many other officers, for promotion from BPS 20 to 21, by the Central Selection Board (CSB), in its meeting held on 11-14.02.2013 and 27.02.2013, who according to his version were eligible for promotion but their cases were deferred or postponed for want of transparent objective criteria embodied in principle of rewarding honest officers instead of penalizing them by withholding their due rights contrary to Articles 3, 9 and 14 of the Constitution. In this regard, he has made the following prayer:-

“(a) A free and fair enquiry of the assets of the Civil Servants in promotion zone and their families by comparing with their assets at the time when they joined the service. Their life style, expense on children education, expenses on children marriages, foreign tours etc., should be taken into account to measure the level of corruption and honestly. The

enquiry should be made by an independent body or commission constituted by the Honourable Supreme Court. The assets of all the Civil Servants should be open for public scrutiny.

- (b) To check the political affiliations and to make the bureaucracy free and fair from political affiliations; efficiency should be linked with the level of independence an officer has secured during his service. The entire career records of each Civil Servant should be scrutinized before promotion, to check as who enjoyed better posting in which political party's tenure. This will certainly present a clear picture of a majority of civil servants divided/loyal with different political groups, leaving a few independent and honourable officers aside."

3. Brief but relevant facts of the case are that the petitioner, Orya Maqbool Abbasi, joined government service on 18.10.1984 in the District Management Group (now "Pakistan Administrative Service" (PAS)). He was promoted to BPS 18 in the year 1990, BPS 19 in the year 1998 and BPS 20 in the year 2006. For the purpose of promotion of the petitioner along with others from grade 20 to 21, a meeting of Central Selection Board (CSB) was held on 03.10.2011, but the petitioner among others was not recommended for promotion. As in the instant case, a larger question involving the fundamental right of government servants to be promoted from Grade 20 to 21 was involved, therefore, being aggrieved from the decision of the CSB, left-

over candidates invoked constitutional jurisdiction of the High Courts, including Islamabad High Court by instituting Writ Petition No. 3483/2011 wherein orders were passed restraining CSB from undertaking further proceedings and the writ petition was ultimately disposed of. Relevant para therefrom is reproduced hereinbelow: -

“In this view of the matter instant writ petitions are allowed, formula of award of 15 marks on the discretion of CSB is declared as illegal, superficial, unconstitutional, against the dictums of court of apex, non-transparent, result of adamant approach, whimsical, sham, unprecedented, infringement to constitutional guarantees and principle of natural justice, therefore, same is set aside. The respondent Establishment Division is directed to implement the judgment of honourable Supreme Court, delivered in Civil Petitions Nos. 1083, 58 to 60, 443 and 444 of 2010, in its letter and spirit and restructure the formula of award of 15 marks, in accordance with guidelines provided therein. All the meetings of CSB, therefore, are declared unconstitutional without jurisdiction and unjust which are held to be of no consequence”.

4. It is to be pointed out that in another case Liaqat Ali Chughtai v. Federation of Pakistan through Secretary Railways (PLD 2013 Lahore 413) the learned Lahore High Court on setting aside some of the recommendations of CSB, issued directions to formulate a well thought out Objective Criteria in accordance with the Revised

Promotion Policy and consider the cases of the petitioners (before the High Court) and private respondents (therein) afresh.

5. As a result whereof, two meetings of the CSB were held on 11<sup>th</sup> to 14<sup>th</sup> February, 2013 and 27<sup>th</sup> February, 2013, to consider and recommend promotions of officers from Grade 20 to Grade 21 of All Pakistan United Grades (APUG). Break up whereof is noted in the summary dated 20<sup>th</sup> November, 2012, moved by Secretary Establishment for the approval of the Prime Minister vide following paras of the summary: -

- 3. To compute the vacancies for promotion of PAS officers to BS-20 & BS-21, the following factors have been taken into account:
  - (i) Number of posts as per cadre strength in the Provinces.
  - (ii) Difference between cadre strength and staffing position.
  - (iii) Anticipatory vacancies due to retirements till 31.01.2013.
- 4. Based on the above factors, the following vacancy position in respect of PAS has been reckoned for promotion of PAS officers to BS=-21 and BS-20:

BS-21	BS-20
22	68

6. It is to be noted that 22 vacancies were got approved on 27<sup>th</sup> November, 2012. A second summary was moved on 9<sup>th</sup> January, 2013 and 37 vacancies were got approved from the Prime Minister on 24<sup>th</sup> January, 2013. Again a third summary dated 30<sup>th</sup> January, 2013 was forwarded for approval of the Prime Minister, in view of the following para: -

"34. Keeping the above factors into account, the vacancy position in respect of PAS/BS-21 has been worked out and is added at Annexure-XIII, which comes to 56 against the earlier 37 vacancies already approved. Similarly, the revised vacancy position for promotion to BS-21 in Secretariat Group comes to 31 against 28 already approved. As such 2/3<sup>rd</sup> share for Secretariat Group officers comes to 21 against 19 already approved and 1/3<sup>rd</sup> vacancies i.e. 10 would go to other Groups/Services against 09 already approved."

And Prime Minister gave its approval on 1<sup>st</sup> February, 2013. Breakup whereof is as under: -

Annex-XIII	
REVISED VACANCY POSITION FOR PROMOTION OF PAS OFFICERS FROM BS-20 TO BS-21	
A) Departments/Organizations of the Federal Government where manning is done by the Establishment Division	Number of BS-21 Vacancy Positions
Prime Minister Secretariat	01
Wafaqi Mohtasib	02
FBR	01
NPF	01
NDMA	01
TCP	01
NHA	01
PMDC	01
Agriculture Policy Institute	01
National School of Public Policy	01
B) Retirement of BS-22 officers belonging to PAS by 30.04.2013	05
C) Retirement of PAS/BS-21 officer by 30.04.2013	01
D) Additional BS-21 position reported by	02

Provincial Governments	
Already approved vacancies	37
Total	56

7. A perusal of above breakup makes it clear that 19 vacancies were added in the revised list, object is understandable, namely, to accommodate maximum persons from PAS by promoting them to Grade 21 against  $22+56+10=88$  vacancies.

8. It is an admitted position that against above vacancies, candidatures of the officers out of the seniority list of Pakistan Administrative Service (PAS) serial No.133 were examined by CSB in its meetings held on 11<sup>th</sup> to 14<sup>th</sup> February and on 27<sup>th</sup> February, 2013. As a result whereof 49 candidates were deferred, including the petitioner. In his case following reasons have been assigned by Secretary Establishment in his concise statement: -

“Earlier superseded on 23<sup>rd</sup>, 24<sup>th</sup> September & 3<sup>rd</sup> October, 2011 for the reason that professionally not sound and unfit to hold higher responsibility. The Board now noted that said supersession was not supported by his PERs record particularly for the last five years which, *inter-alia*, rated him as outstanding/very good with integrity as above board. He did not earn PER one full year (12 months) after his last supersession. His PER for the year 2011 was required to be earned subsequent to his supersession in terms of para 1(a)(iv) of Revised Promotion Policy, 2007. The Board decided to defer him.

He is to be reconsidered on the basis of PER of complete 12 months, required under Policy.”

9. Surprisingly, despite realizing that petitioner’s PER’s had not supported his supersession of 23<sup>rd</sup>, 24<sup>th</sup> September and 3<sup>rd</sup>

October, 2011, as he is an outstanding officer and also very good integrity wise, but he was again deferred. Perhaps, he did not have PER for the year 2012-13 though he had special report in his favour and according to revised policy dated 11<sup>th</sup> January, 2013, special report for the period of deficiency, earned in the next calendar year would be taken in to account to complete the 12 month's requirement for the purpose.

10. It is to be observed that not only the petitioner but few other candidates were also subjected to the following arbitrary and discriminatory treatment: -

OFFICERS RECOMMENDED FOR DEFERMENT FOR PROMOTION  
OF BS-20 OFFICERS OF PAKISTAN ADMINISTRATIVE SERVICE  
(PAS) TO BS-21

Sl. NO	SEN NO.	NAME OF OFFICERS	REASONS
6	14	Mr. Muhammad Rashid	Earlier superseded on 23 <sup>rd</sup> , 24 <sup>th</sup> September & 3 <sup>rd</sup> October, 2011 for the reason that this integrity was not above board & professionally not sound. The Board now noted that said supersession was not supported by his PERs record particularly for the last five years which, <i>inter-alia</i> , rated him as very good/good with integrity as honest, reliable and above board. He did not earn PER one full year (12 months) after his last supersession. His PER for the year 2011 was required to be earned subsequent to his supersession in terms of para 1(a)(iv) of Revised Promotion Policy 2007. The Board decided to defer him.  He is to be reconsidered on the basis of PER of complete 12 months after supersession, as required under Policy.
7	17	Mr. Muhammad Rizwan Taqi Capt. (R)	Earlier superseded on 23 <sup>rd</sup> , 24 <sup>th</sup> September & 3 <sup>rd</sup> October, 2011 for the reason that his score was below required threshold. The Board now noted that said supersession was not supported by his PERs record particularly for the last five years which, <i>inter-alia</i> , rated him as very good/good with integrity as honest, reliable and above board. He did not earn PER one full year (12 months) after his last supersession. His PER for the year 2011 was required to be earned subsequent to his supersession in terms of para 1(a)(iv) of Revised



			<p>Promotion Policy 2007. The Board decided to defer him.</p> <p>He is to be reconsidered on the basis of PER of complete 12 months after supersession, as required under Policy.</p>
8	19	Mian M. Zulqarnain Aamir Maj. (R)	<p>Earlier superseded on 23<sup>rd</sup>, 24<sup>th</sup> September &amp; 3<sup>rd</sup> October, 2011 for the reason that most unreliable, professionally not sound and connected with agencies. The Board now noted that said supersession was not supported by his PERs record particularly for the last five years which, <i>inter-alia</i>, rated him as very good/good with integrity as honest, reliable and above board. He did not earn PER one full year (12 months) after his last supersession. His PER for the year 2011 was required to be earned subsequent to his supersession in terms of para 1(a)(iv) of Revised Promotion Policy 2007. The Board decided to defer him.</p> <p>He is to be reconsidered on the basis of PER of complete 12 months after supersession, as required under Policy.</p>
10	25	Mr. Manzar Hayat	<p>Earlier superseded on 23<sup>rd</sup>, 24<sup>th</sup> September &amp; 3<sup>rd</sup> October, 2011 for the reason that thoroughly corrupt and professionally not sound. The Board now noted that said supersession was not supported by his PERs record particularly for the last five years which, <i>inter-alia</i>, rated him as very good/good with integrity as honest, reliable and above board. He did not earn PER one full year (12 months) after his last supersession. His PER for the year 2011 was required to be earned subsequent to his supersession in terms of para 1(a)(iv) of Revised Promotion Policy 2007. The Board decided to defer him.</p> <p>He is to be reconsidered on the basis of PER of complete 12 months after supersession, as required under Policy.</p>
12	29	Mr. Iftikhar Hussain	<p>Earlier superseded on 23<sup>rd</sup>, 24<sup>th</sup> September &amp; 3<sup>rd</sup> October, 2011 for the reason that morally &amp; professionally not sound. The Board now noted that said supersession was not supported by his PERs record particularly for the last five years which, <i>inter-alia</i>, rated him as very good/good with integrity as honest, reliable and above board. He did not earn PER one full year (12 months) after his last supersession. His PER for the year 2011 was required to be earned subsequent to his supersession in terms of para 1 (a) iv of Revised Promotion Policy 2007. The Board decided to defer him.</p> <p>He is to be reconsidered on the basis of PER of</p>

		complete 12 months after supersession, as required under Policy.
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Whereas, to achieve the object for which 88 vacancies were created following officers were promoted: -

**OFFICERS RECOMMENDED FOR PROMOTION OF BS-20  
OFFICERS OF PAKISTAN ADMINISTRATIVE  
SERVICE (PAS) TO BS-21**

Sl. NO.	SEN . NO.	NAME OF OFFICERS	TOTAL SCORE OF PER & TRAINING	AWARD OF MARKS BY CSB		TOTAL SCORE
				CATE-GORY	MARKS	
1.	1.	Mr. Farooq Ahmed Khan	66.98	B	10	76.98
2.	2.	Mr. Tariq Javed Afridi Maj. (R)	61.46	B	15/24	76.46
3.	5.	Mr. Abdul Jalil	63.21	A	12	75.21
4.	8.	Mr. Rashid Bashir Mazari Capt. (R)	69.57	B	10	79.57
5.	11.	Mr. Tipu Mahabet Khan	69.64	A	11	80.64
6.	12.	Mr. Athar Hussain Khan	69.71	B	10	79.71
7.	13.	Mr. Aftab Habib	66.48	B	10	76.48
8.	15.	Mr. Aijaz Ahmed	66.65	B	10	76.65
9.	20.	Mr. Ahmed Yar Khan Sq. Ldr.	77.12	A	12	89.12
10.	21.	Mr. Tariq Masud Capt (R)	67.15	B	10	77.15
11.	23.	Mr. Ali Zaheer Hazara	60.48	B	15/24	75.48
12.	24.	Mr. Shujat Ali	74.97	A	12	86.97
13.	26.	Mr. Aftab Ahmad Maneka	68.31	B	10	78.31
14.	27.	Mr. Usman Ali	64.51	A	11	75.51
15.	30.	Mr. Muhammad Aslam Hayat	71.38	B	10	81.38
16.	31.	Mr. Javaid Nisar Syed	68.66	B	09	77.66
17.	33.	Mr. Mohsin S. Haqqani	72.83	B	10	82.83
18.	34.	Mr. Ajaz Ali Khan	77.24	A	11	88.24
19.	35.	Mr. M. Tariq Mahmood Pirzada	67.30	B	15/24	82.30
20.	37.	Mr. Shoaib Ahmad Siddiqui	74.25	A	11	85.25
21.	38.	Mr. Zahid Saeed Capt. (R)	73.94	A	12	85.94
22.	41.	Dr. Hammad Uwais Agha	68.64	B	10	78.64
23.	42.	Mr. Altaf Ezid Khan	71.71	B	10	81.71
24.	43.	Mr. Shah Sahib	65.69	B	10	75.69
25.	45.	Mr. Sajjad Ahmed	75.34	A	11	86.34
26.	46.	Mr. Arbab Muhammad Arif	76.28	A	12	88.28
27.	49.	Mr. Hassan Iqbal	75.35	A	12	87.35

28.	50.	Mr. Imran Afzal Cheema	72.49	B	10	82.49
29.	51.	Mr. Sardar Ahmed Nawaz Sukhera	80.91	A	12	92.91
30.	52.	Mrs. Yasmin Masood	70.25	A	12	82.25
31.	53.	Mr. Saqib Aleem	68.67	B	10	76.67
32.	54.	Mr. Muzaffar Mehmood	70.80	B	10	80.80
33.	55.	Dr. Allah Bakhsh	69.09	B	10	79.09
34.	56.	Mr. Muhammad Ijaz	70.14	B	10	80.14
35.	58.	Mr. Mohammad Younus Dagha	80.40	A	12	92.40
36.	59.	Mr. Naveed Kamran Bluch	74.35	A	11	85.35
37.	60.	Mr. Shmail Ahmed	76.98	A	11	87.98
38.	61.	Mr. Mohammed Misbah	70.22	B	10	80.22
39.	62.	Mr. Mukhtar Hussain	74.40	A	11	84.40
40.	64.	Mr. Aurangzeb Haque	69.41	B	10	79.41
41.	66.	Mr. Muhammad Tariq Hayat, Capt.	69.00	B	10	79.00
42.	67.	Dr. Syed Sohail Altaf	73.80	A	12	88.80
43.	68.	Mr. Ghulam Qadir Khan	69.25	B	10	79.25
44.	69.	Maj. Rizwan Ullah Beg	72.11	A	11	83.11
45.	70.	Mr. Azam Suleman Khan	78.68	A	12	90.68
46.	71.	Mr. Abid Ali Sq. Ldr. (R)	67.65	B	10	77.65
47.	72.	Mr. Muhammad Ifran Elahi Sq. Ldr. (R)	73.82	A	12	85.82
48.	73.	Mr. Amjad Ali Toor Sq. Ldr. (R)	73.71	A	12	85.71
49.	74.	Mr. Qaiser Majeed Malik Maj. (R)	72.50	A	12	84.50
50.	75.	Mr. Malik Tahir Sarfraz Awan Capt. (R)	74.64	A	11	85.64
51.	76.	Mr. Atta Muhammad Khan Capt. (R)	73.60	B	10	83.60
52.	77.	Mr. Fazeel Asghar Capt. (R)	72.85	B	10	82.85
53.	78.	Mr. Amjad Shahid Afridi	70.66	B	10	80.66
54.	79.	Mr. Shabbir Ahmed	70.38	A	12	82.38
55.	80.	Mr. Yousaf Naseem Khokar	78.76	A	12	90.76
56.	81.	Mr. Allam ud Din Bullo	72.05	A	11	83.05
57.	82.	Dr. Syed Hyder Ali	77.71	A	11	84.71
58.	84.	Dr. Fida Muhammad Wazir	70.45	B	10	80.45
59.	85.	Mr. Rizwan Malik	74.42	A	11	84.42
60.	86.	Mr. Imran Ahmed	72.84	B	10	82.84
61.	87.	Mr. Muhammad Ashraf	77.82	B	10	83.82
62.	88.	Ms. Shaista Sohail	77.20	A	12	89.20
63.	89.	Ms. Rabiya Adila Javeri	77.49	A	12	89.49

64.	90.	Mr. Muhammad Ilyas	70.75	B	10	80.75
65.	92.	Mr. Mummtaz Ali Shah	74.61	A	12	86.61
66.	93.	Mr. Jamil Ahmed	70.51	B	10	80.51
67.	94.	Mr. Muhammad Asif	73.36	A	12	85.36
68.	95.	Mr. Sheikh Zia ul Haq	71.36	A	11	82.36
69.	96.	Mr. Muhammad Javed Hanif	76.78	A	12	88.78
70.	102.	Mr. Rashid Ahmed	67.55	A	18/24	75.55
71.	103.	Mr. Shoaib Mir Memon	78.98	A	12	90.98
72.	107.	Mr. Jalal Sikandar Sultan	77.28	A	11	88.28
73.	118.	Mr. Babar Hassan Bharwana	68.56	B	10	78.56
74.	119.	Mr. Imran Nasir Khan	67.99	B	10	77.99
75.	112.	Mr. Shfaqut ur Rehman Ranjha	71.61	B	10	81.61
76.	118.	Mr. Tariq Feroze Khan	66.92	B	12/24	78.92
77.	119.	Mr. Munir Ahmed	60.70	B	15/24	75.70
78.	125.	Mr. Nasrullah Khan	65.72	B	10/24	75.72
79.	132.	Dr. Fazlullah Pechuho	77.30	A	11	88.30
80.	133.	Mr. Rizwan Ahmed	69.82	B	10	79.82

11. It has been informed that against originally created 22 vacancies of Grade 21 approved on 27<sup>th</sup> November, 2012, officers noted in the seniority list of PAS at serial Nos. 1, 2, 5, 8, 11, 12, 13, 15, 20, 21, 23, 24, 26, 27, 30, 31, 33, 34, 35, 37, 38 & 41 were accommodated in the meeting held in February, 2013.

It is to be noted that M/S Liaqat Ali Chughtai, Syed Hassan Mehmood, Imtiaz Hussain Rizvi and Ahsan Mehmood Mian whose cases were remanded by the learned Lahore High Court vide judgment noted above were not included in the above lists.

12. It may be observed that the manner in which 88 vacancies were created are self explanatory; otherwise object of accommodating junior officers, who were at serial No.132 and 133, could not have been possible.

13. A bird eye view of the above promotee officers suggest that mostly senior officers were recommended for deferment, reasons

of the same have already been noted above. In this manner, 80 out of 133 officers were promoted on the recommendation of CSB.

14. When the matter was taken up, Mrs. Seema Najeeb and Mr. Iqbal A. Bablani jointly filed an application for impleadment as party through Arshad Ali Ch. AOR, wherein it has been stated that applicants joined the Government Service on 22.10.1985 in the then DMG in BPS 17, and are now placed at Sr. 45 and 60 respectively in the seniority list of PAS Officers in BPS 20. It has been further stated in the application that PERs are due on 31<sup>st</sup> January of each year. As such, at the date of the meeting even PER for the year 2012 were available with Establishment Division for consideration. It was asserted that no person can be condemned for fault of others and it was for others to furnish PERs by 31<sup>st</sup> January each year. They argued that, the promotion of both the applicants was deferred for no fault on their part, as their PERs for the year 2012 were available with the Establishment Division at the time of both the CSB Meetings held on 11.02.2013 and 27.02.2013.

15. Another application for impleadment as party vide CMA No. 4298/2013 was field on behalf of Hafiz Muhammad Abdul Hayee, an ex-officer of in Administrative Services serving in BPS 20,

16. More than one concise statements, including CMA Nos. 3358/2013, 4431/2013 and 4445/2013 on behalf of Establishment Division and CMA No. 3989/2013 on behalf of former secretary establishment, have been filed.

17. Mr. Taimur Azmat Osman, former Secretary Establishment filed his reply through CMA No.3989/2013; relevant paras therefrom are reproduced hereinbelow for reference: -

"8. The CSB in its decisions is guided by the common wisdom and recommendations of the presenting Secretary, but option of the presenting Secretary may not be agreed by the CSB. The cases of all officers who were superseded in October, 2011, including Mr. Orya Maqbool Abbasi were presented by me before the Board.

9. The case of the petitioner was deferred not on the basis of record, but on technicalities relating to the eligibility criteria for consideration for promotion. Under revised Promotion Policy 2007 read with earlier Policy of 1985 "an officer superseded earlier shall be considered after earning PER for full one year. In case the officer has earned part PER for less than 12 months in a calendar year then a special report for the period of deficiency earned in next calendar year shall be taken into account to complete the requirement of 12 months for this purpose".

10. Mr. Orya Maqbool Abbasi had not earned a full PER of one year after supersession at the time when the matter was considered by the Board since PER up till December, 2011 were being considered. He had a shortfall of around 1½ month in his PER for the year 2011. However, a special report for completing mandatory one calendar year was received in the Establishment Division and presented before the Board. As such the requirements of the policy quoted above were completed. However, the Board in its collective wisdom decided not to consider the petitioner as well as number of officers of the PAS with similar requirements because, in their view point, they should be even handed with all other services as they had not considered cases of similar nature of other services. The Board thought that they should not give special dispensation to the PAS officers. On my insistence as presenting Secretary, the Board agreed to at least reserve equal number of vacancies for officers of similar category of PAS, including the petitioner, for consideration of their cases in the next CSB's meeting."

18. Similarly, another concise statement has been filed on behalf of Establishment Division through CMA No.3358/2013. Relevant paras therefrom are reproduced hereinbelow: -

"4. One view was that the said Special Reports for the period of deficiency (part or whole 2012) be obtained and cases of officers concerned be submitted in next session of CSB's meeting. The other view was that the proposed Special Reports pertaining to part/whole of 2012 should not be considered mainly for the reason that the entire proceedings had taken place on the basis of PER record upto 2011. The Board advised that requisite Special Reports in the said cases be obtained. Final decision for consideration OR otherwise to be taken in the next session. On 27-02-2013, the CSB after detailed deliberation, in its collective wisdom decided not to consider the said Special Reports. The CSB, however, agreed to convene next regular meeting to consider promotion from BS-19 to BS-20 and from BS-20 to BS-21 in all the Ministries/Divisions/Department, shortly upon receipt of PER 2012 of the officers on the panel.

5. The name of Mr. Orya Maqbool Abbasi was placed before the Central Selection Board (CSB) held on 11<sup>th</sup>-14<sup>th</sup> & 27<sup>th</sup> February, 2013. The Board observed that the officer was earlier superseded on 23<sup>rd</sup>-24<sup>th</sup> September & 3<sup>rd</sup> October, 2011 for the reason that professionally not sound and unfit to hold higher responsibility. His score of PERs, TERs and marks awarded by Board was below the prescribed score of 75. The Board noted that said supersession was not supported by his PERs record particularly for the last five years which, inter-alia rated him as outstanding/very good with integrity as above board. He did not earn PER one full year (12 months) after his last supersession. His PER for the year 2011 was required to be earned subsequent to his supersession in terms of para 1 (a) (iv) of Revised Promotion Policy 2007. The Board decided to defer him. He is to be re-considered on the basis of PER of complete 12 months, as required under policy."

19. Report on behalf of head of CSB/Chairman FPSC was filed through CMA No.3803/2013 stating therein that CSB after detailed discussion and taking into account all aspects decided to consider all promotion cases placed before it on the basis of PERs upto 2011. The petitioner was superseded in the previous meeting of the CSB held in October 2011. As per the Policy, the superseded officers are required to earn PERs for 12 months but the petitioner had not earned PERs for 12 months, upto December 2011, therefore he along with all other officers falling in that category were deferred to the next meeting. First session of the CSB was held on 11<sup>th</sup>-14<sup>th</sup> February, 2013 to consider the cases of promotions, but some of the agenda items could not be considered due to pre-engagements of the Board members, shortage of time, non-readiness of agenda items, etc., therefore, second session of the CSB's meeting was held on 27.02.2013. It was in this session that the Board in its collective wisdom decided not to consider special reports (for the period of deficiency, i.e. part or whole of 2012) for the reasons: -

- (i) 18 officers of another category who were promoted to their present grade in year 2011 were also not recommended for promotion mainly for the reason that they lacked experience at the existing level. PER of 2012 in case of these officers was also not considered like all other officers for the sake of uniformity.
- (ii) In case PER for 2012 was considered, the officers superseded by CSB in its present with less quantification would also have claimed that they could have been promoted after considering PER for 2012 as the same may have improved their quantification.



20. It was further submitted that not only the petitioner but about 24 other officers of BPS 19 and 20 were also deferred for the same reasons, hence no discrimination was done nor any fundamental right was infringed. The CSB unanimously took a policy decision and applied in all cases across the board.

21. Yet another concise statement was filed on behalf of Establishment Division through CMA No.3642/2013 stating therein that the petitioner was superseded in CSB meeting held on 3.10.2011 but he did not assail his supersession in any court of law, therefore, the decision of CSB has attained finality.

22. Another concise statement was filed on behalf of Establishment Division, in compliance of order dated 27.06.2013 through CMA No. 4303/2013 providing complete record of promotion of officers from Grade 20 to 21; statement showing number of cadre posts available in the year 2012 and 2013; seniority list of officers who were promoted and those who were not considered along with reasons. It was further asserted that Secretary Establishment Division on his own is not empowered to increase the strength of cadre posts of PAS. It was also submitted that no induction of any officer from any other cadre has been made in the PAS in BPS 21, as a consequence of CSB February, 2013.

23. CMA 4454/2013 has been filed by Shabbir Ahmad, respondent No. 56, stating therein that Establishment Division moved a summary in June, 2011 seeking approval of 22 vacancies which was approved by the Prime Minister, however, CSB-I could not meet due to the restraining order of the Islamabad High Court. In June, 2012 in

response to another summary, the Prime Minister approved 37 vacancies but due to the restraining order issued by the Islamabad High Court, CSB could not be convened. Thereafter, CSB was finally held on 11<sup>th</sup>–14<sup>th</sup> February, 2013 in which 56 candidates were promoted including the respondent. According to the respondent, the delay of 16 months was caused due to restraining order of Islamabad High Court.

24. In the concise statement filed on behalf of respondents No. 23, 47, 49, 53, 57, 74 and 75 through CMA No. 4453/2013, it was asserted that the petition under Article 184(3) of the Constitution is not maintainable as in individual grievance relatable to the terms and conditions of the services and by the specific bar contained in Article 212(3) of the Constitution. The guidelines for the CSB are enunciated in the Revised Promotion Policy, 2007 read with earlier Policy of 1985 on the same subject. The criteria for promotion to BPS 21 asked for by the petitioner, in their opinion, do not fall within the criteria laid down in the said policy.

25. It was further submitted that previously ex-cadre posts were included in the vacancy positions on a notional basis and officers were posted subsequent to promotion. For the sake of transparency, this time around existing vacancies were taken into account before the meeting of CSB after approval of the Prime Minister. They also argued that no aggrieved person has approached the Court in order to challenge the posting made against ex-cadre posts while 79 out of 80 officers promoted to BPS 21 have actualized their promotion since March, 2013. In addition to it, it was stated that the exact number of vacancies was determined and that matter was cleared for holding

meeting of CSB after vacation of stay order by the Islamabad High Court in January, 2013. The last meeting of the Board was then held in February 2013 and vacancies of BPS 21 which accrued thereafter were also taken into account.

26. Dr. Fazlullah Pechuho, Respondent No. 82, has filed concise statement through CMA 4462/2013 mentioning therein that as the petitioner has invoked the jurisdiction of this Court under Article 184(3) for his personal grievance, therefore, no question of public importance is involved; hence, petition is liable to be dismissed. Besides this the petition is barred under Article 212(2) of the Constitution as the petitioner intends to enforce terms and conditions of his service. Moreover, the petitioner has not preferred departmental appeal.

27. In the joint concise statement, respondents No.28, 43, 52, 53, 54 and 58 stated that promotions to higher post in terms of Section 9 of the Civil Servants Act, 1973 [CSA, 1973] are reserved under the rules for departmental promotion in the service or cadre to which a civil servant belongs, and it, *inter alia*, provides for filling of posts of Additional Secretary in a prescribed way. They also raised the question with regard to filing of petition under Article 184(3) of the Constitution.

28. Later on, in the concise statement filed on behalf of respondents No.19, 38, 61, 73 and 81 it was stated that the petitioner was deferred for promotion from BPS 20 to 21 on account of deficiency in PERs along with others and that he would be considered for promotion in the next CSB meeting subject to fulfillment of deficiency

pointed out earlier by the CSB. It was further stated that deferment is not a punishment and is not also a question of law or public importance. Reliance in this behalf was placed on the case of Watan Party v. Chief Executive of Pakistan (PLD 2003 SC 74) relied upon in the case of All Pakistan Newspapers Society v. Federation of Pakistan (PLD 2004 SC 600). It was argued that interference in the collective wisdom of the CSB is not warranted and the Court had not entertained such petitions wherein proceedings of CSB were called in question. Reliance in this regard has been placed on Dr. Mir Alam Jan v. Dr. Muhammad Shehzad (2008 SCMR 960) and Saleem Ullah Khan v. Shahid Hamid (2011 SCMR 788). Moreover, the matter relates to the terms and conditions of service which exclusively falls within the jurisdiction of the Federal Service Tribunal under Article 212 of the Constitution. Also, this petition is barred on the basis of the dictum laid down in the cases of I.A. Sherwani v. Government of Pakistan (1991 SCMR 1041) and Khalid Mahmood Wattoo v. Government of Punjab (1998 SCMR 2280). It was argued that a panel of 134 PAS officers of BPS 20 was placed before the Board for consideration who on the basis of updated record, integrity and performance of the officers known to the Board members as well as pen pictures contained in the PERs and training evaluation reports considered the officers on the panel in the order of seniority. Minimum threshold of marks for promotion to BPS 21 was 75 marks, while applicants had secured the marks mentioned against their names: -

Sr. No	Name	Marks	Respondent No.
19	Mr. Mohsin Haqqani	82.83	19

36	Mr. Naveed Kamran Baloch	85.35	38
59	Mr. Rizwan Malik	85.42	61
71	Mr. Shoaib Mirza Memon	90.98	73
79	Mr. Rizwan Ahmed	79.82	81

29. Before dilating upon the merits of the case it is considered appropriate to deal with the objections of maintainability of instant petition under Article 184(3) of the Constitution. It is to be noted that an individual is empowered to invoke the jurisdiction of this Court, if it is established that a question of public importance with reference to the enforcement of the Fundamental Rights is involved. The petitioner has not invoked the jurisdiction of this Court to seek relief individually as it is evident from the contents of the prayer clause, reproduced hereinabove and also arguments advanced by him, relating to enforcement of fundamental rights of the Civil Servants of BPS-21 who have to involve themselves in important policy making and extensive administrative jurisdictions, having possessed proven analytical competence, breadth of vision, emotional maturity and such other qualities as determined the potential for successfully holding posts in top management for achieving the goal for the welfare of the general public, which also deals with their fundamental rights under Articles 9 and 25 etc. of the Constitution. Reference may be made to Tariq Aziz-ud-Din's case (2010 SCMR 1301). Relevant paras therefrom are reproduced hereinbelow: -

30. Learned counsel for the Federation and Attorney General for Pakistan were of the opinion that as few persons have approached this court by sending Misc. applications which have been treated petition under Article 184(3) of the Constitution whereas majority of

the officers have accepted the decision, therefore, for this reason petitions may be dismissed directing the aggrieved party to avail legal remedy permissible under the law, instead of invoking constitutional jurisdiction of this Court. Reliance was placed on *All Pakistan Newspapers Society and others v. Federation of Pakistan and others* PLD 2004 SC 600. We are not impressed with this argument; as well, for the judgment cited by the learned counsel for the Federation is not relevant to the issue involved because the exercise of discretion contrary to settled principles has not only affected the left out officers but has left a far-reaching adverse effect upon the structure of civil servants---- be in the employment of the Federal or the Provincial Governments, autonomous and semi-autonomous bodies, etc. --- and if the decision of the competent authority under challenge is not examined keeping in view the Constitutional provisions and the efficient officers who have served honestly during their service career, would have no guarantee of their future service prospects. Consequently, such actions are also likely to affect the good governance as well as framing of policies in the welfare of the public and the State. Therefore, to assure the public at large, more particularly the civil servants in this case that their fundamental rights will be protected, this Court is constrained to exercise jurisdiction under Article 184(3) of the Constitution. "

30. Second objection, which has been raised by Mr. Rashid A. Rizvi, learned counsel is that in view of bar of Article 212 of the Constitution, instant petition is not competent. In this behalf reference may be made to section 4 of the Federal Service Tribunal Act, 1973 [FSTA, 1973], which has no application on the fitness of a person to hold a particular post. As CSB in view of promotion policy has deferred to a good number of BPS-20 officers of PAS/APUG, allegedly for subjective reasons, therefore, in view of law laid down in I.A. Sherwani's case (ibid), it is held that objection has no substance.

31. Now it is to be noted that BPS-21 position is a selection post and is to be dealt with under section 9 of the CSA, 1973, which reads thus:-

"9. Promotion.- (1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs:

Provided that the posts of -

(a) Additional Secretary and Senior Joint Secretary may, in the public interest, be filled by promotion from amongst officers of regularly constituted Occupational Groups and services holding, on regular basis, posts in Basic Pay Scale 20; and

(b) .....

(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotions shall be made as may be prescribed-

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of a non-selection post, on the basis of seniority-cum-fitness.

(3) Promotion to posts in basic pay scales 20 and 21 and equivalent shall be made on the recommendations of a Selection Board which shall be headed by the Chairman, Federal Public Service Commission."

32. There is no cavil with the proposition that BPS-21 post has to be filled on merits on the recommendations of Selection Board. In presence of above provision of law to evolve a transparent procedure for promotion and making selection to the pos of BPS-21, the competent authority in exercise of powers under section 9 (2)(a) of the CSA, 1973 read with rule 7, 7A and 8 of the Civil Servants (Appointments, Promotions and Transfers) Rules, 1973 [CS(AP&T)R, 1973], issued following revised guidelines (Policy of Promotion in 2007):-

"5. Posts carrying basic pay scale 21 fall in senior management involving important policy-making or extensive administrative jurisdictions. In addition to the circulation value and variety of experience the incumbents must possess proven analytical competence, breadth of vision, emotional maturity

and such other qualities as determine the potential for successfully holding posts in top management. This potential cannot be judged by mathematical formula. The Selection Board will have to apply its collective wisdom to determine the same. A civil servant must fulfill the following conditions for promotion to senior management post: -

- (a) *Qualifying Service:* possess 22 years service as an officer subject to the provisions contained in Establishment Division's O.M. No.1/9/80-R-II (A), dated 2-6-1983 (Sl. No. 157).
- (b) *Eligibility Threshold:* attain a minimum score of 75\* marks in CRs in accordance with the formula given in the Addendum.
- (c) *Qualifications:* as are prescribed by relevant recruitment rules.
- (d) *Relevance of Experience:* possess experience relevant to the functions of the post being filled by promotion.
- (e) *"Quality and Output of Work" and "Integrity":* marks calculated in accordance with the formula in the Addendum shall be a crucial factor in determining the comparative merit of an officer.
- (f) *"Variety of Experience:* the Selection Board should give careful consideration to the nature of duties, duration and location of posts previously held by the officer. At this level, a proper assessment under the criterion may require some distinction between hard or taxing assignments (on account of workload or its complexity) *viz-a-viz* relatively routine, duties particularly in the secretariat. Depending on the posts to be filled, an officer possessing well-rounded experience with adequate exposure to difficult assignments should normally be preferred.
- (g) *Training:* should have successfully completed a regular course at the Pakistan Administrative Staff College/National Defence \*College. This requirement will be waived for officers who:
  - (i) have served as head of a training institution for at least one year; or
  - (ii) have served on the directing staff of a training institution for at least two years; or
  - (iii) have exceeded the age of 56 years.
- (h) *Top Management Potential:* since officers promoted to this level may be called upon to hold independent charge of a Ministry/Division or to head a major corporation, the Board should satisfy



itself about the officer's maturity, balance and ability to assume such top management positions even at short notice."

33. It may not be out of place to observe that policy of promotion (revised in 2007) enjoys the force of law, therefore, has to be adhered to strictly. Reference in this behalf may be made to the case of Fazali Rehmani v. Chief Minister NWFP (PLD 2008 SC 769).

34. Petitioner has emphasized that CSB arbitrarily recommended to the candidates for promotion not fit for promotion for extraneous conditions qua it had also happened in the cases of superseded or deferred officers, therefore, it is necessary to amend promotion policy incorporating provision to hold enquiry about their life style, expenses on children's education, expenses on children marriages, foreign tours, etc. and political affiliations, enable CSB to give its findings objectively instead of denying their rights of promotion on subjective conditions.

35. It is to be noted that above noted policy was promulgated as back as in the year of 2007. Findings so recorded by CSB during promotion of candidates by CSB had been subject matter of judicial review by Courts as recently in the Writ Petition No. 3483/2011 decided by Islamabad High Court findings of CSB have been declared unlawful and contrary to the guidelines. Similarly in Liaqat Ali Chughtai's case (supra) the learned High Court in respect of selection process carried out by CSB in its meeting on 23<sup>rd</sup> -24<sup>th</sup> September, 2011 observed as follows: -

"38. For the above reasons, the selection process carried out by CSB in its meeting held on 23<sup>rd</sup>, 24<sup>th</sup> September, and 3<sup>rd</sup> October, 2011 is hereby declared unconstitutional

and illegal and is therefore set aside. CSB is directed to formula a well thought out Objective Criteria in accordance with the Revised Promotion Policy (as discussed above) and consider the cases of the petitioners and private respondents afresh."

36. As it has been pointed out that promotion from BS-20 to BS-21 is merit base selection, while taking into consideration eligibility criteria to assess the fitness and suitability of the officers who shall be involved in important policy making decisions for extensive administrative jurisdiction as per the guidelines issued in Promotion Policy of 2007; therefore, Establishment or concerned department remains under legal obligation to assist CSB in a transparent and fair manner to avoid non-transparent selection of such like officers. It is quite possible to do so in view of statutory provision of law dealing with the case of promotion through process of selection under sub-sections (2)(a) and (3) of section 9 of the CSA, 1973 read with rules 7-A and 8 of the CS(AP&T)R, 1973, on the recommendations of the Central Selection Board along with revised Promotion Policy of 2007, which have been reproduced hereinabove.

37. The conditions for promotion to senior management post, noted above, are required to be fulfilled strictly while examining the case of each candidate. Needless to observe that promotion is not a right, but a civil servant who is fully qualified for promotion has a right to claim that his case must be considered for promotion strictly following the eligibility criteria laid down by the Government, more particularly, in view of the provisions of section 4 of the FSTA, 1973, whereby a civil servant is debarred to avail remedy under Article 212(3) of the Constitution, as it has been laid down in the case of

Government of Punjab, through Secretary Health Department v. Dr. Aman-ul Haq (2000 SCMR 1805).

38. Unfortunately, in the instant case, which has been filed under Article 184(3) of the Constitution and maintainability of the same has already been decided *supra*, neither the Secretary Establishment nor CSB strictly adhered to the provisions of section 9 of the CSA, 1973 and rules 7-A and 8 of the CS(AP&T)R, 1973 as well as revised Promotion Policy of 2007, and without causing prejudice to the case of any of the individual, an extensive exercise was undertaken to ensure promotion of the officers who were junior as per seniority list by increasing the number of available vacancies in which non-cadre posts were also added. Initially, approval of the Prime Minister was obtained for 22 vacancies on 27.01.2013 and perhaps on having seen that target of promoting junior officers could not be achieved, if CSB is allowed to make the recommendations against only these vacancies, second summary was moved on 09.01.2013 for the approval of the Prime Minister for adding 37 vacancies, which was approved on 12.01.2013. Again, third summary was moved on 30.01.2013, wherein by making reference to 22+56 vacancies, 10 more vacancies for other groups/service were got approved. A perusal of the break up of 56 vacancies, approved on 1.2.2013, which has been reproduced hereinabove, abundantly makes it clear that the purpose was nothing except to achieve the object noted hereinabove, otherwise for promotion of officers of PAS there was no necessity to add vacancies which were outside the cadre of PAS or the Secretariat group like *Wafaqi Mohtasib*, FBR, PF, TCP, NAB, PMDC, etc. Not only this, the vacancies which were likely to be vacated in future on the retirement

of officers of grade 21 and 22, belonging to PAS on 30.04.2013, etc., were included knowing well that the organizations named hereinbefore had their own service structure and promotion to the next higher scale has to be carried out amongst their ranks. In this context, it has been informed that previously ex-cadre posts used to be included in the vacancy positions on a notional basis and officers were posted subsequent to promotion, and the stand taken by the Establishment Division is that for the sake of transparency this time overall existing vacancies were taken into account, before the meeting of CSB after approval of the Prime Minister. It is interesting to note that 10 vacancies were identified to be added in the total available positions of BS-21 for promotion of Secretariat Group or other services but admittedly in a highly unauthorized manner no promotion of any officer except PAS officers was made as a consequence of deliberations of CSB meeting held on 11<sup>th</sup> to 14<sup>th</sup> and 27<sup>th</sup> February, 2013. In view of such situation there is hardly any necessity to repeat about the object and purpose of promoting the officers junior in the seniority list upto serial No.133, at the same time recommending deferment of 49 PAS officers including the petitioners, Orya Maqbool Abbasi, Muhammad Rashid, Muhammad Rizwan Taqi, Mian Muhammad Zulqurnain, Manzar Hayat, Iftikhar Hussain, etc., for arbitrary reasons. To substantiate this point, reference may be made to various notifications placed on record of same date i.e. 11.03.2013 as in some of the notifications despite promotion most of the officers were allowed to actualize their promotion with the same vacancy of BS-20, which they were already occupying. It is true that the officers who were not qualifying eligibility criteria for promotion, their cases could be

deferred but not on the basis of discriminatory reasons, particularly, where such elements are visible on record. In this behalf reference may be made to CMA No.3358/2013 wherein the Board observed that the officer (Orya Maqbool Abbasi) earlier superseded on 23<sup>rd</sup>, 24<sup>th</sup> September & 3<sup>rd</sup> October, 2011 for the reason that he is professionally not sound and unfit to hold higher responsibility. It was further observed that marks awarded by Board were below the prescribed score of 75. However, in the next meeting i.e. 11<sup>th</sup> – 14<sup>th</sup> and 27<sup>th</sup> February, 2013 the Board noted that said supersession was not supported by his PERs record particularly for the last five years which, *inter alia*, rated him as outstanding/very good, with integrity as above board. Luckily, identical observations have been made in respect of Muhammad Rashid and others whose names have been noted hereinabove. Not only this, the petitioner had secured a special report for the year 2012 as per the admission of Secretary Establishment, as such requirements of the policy quoted above were fulfilled. This may also be borne in mind that *vide* Office Memorandum No.F.1/1/2012-CP-2 dated 11.01.2013 issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division, following proviso was inserted in Para-2 of Revised Promotion Policy, 2007: -

“Provided further that if an officer has not earned Performance Evaluation Report of complete one year and has earned only part Performance Evaluation Report in a calendar year for no fault of his own (i.e. he/she remained OSD without any assignment, remained on mandatory/non-mandatory training and awaiting posting/actualization of promotion) then his/her special report for the period of deficiency earned in next calendar

year shall be taken into account to complete the 12 – months requirement for the purpose.”

39. It is beyond our comprehension that CSB while deferring the cases of others as well (noted hereinabove) observed that as per the policy the superseded officers are required to earn PERs for 12 months but the petitioner had not earned PERs for 12 months upto December, 2011, therefore, he along with all other officers, falling in that category, were deferred to the next meeting. First sessions of CSB was held on 11<sup>th</sup> – 14<sup>th</sup> February, 2013 to consider the cases of the promotion but some of the agenda items could not be considered due to pre-engagements of the Board members, shortage of time, non-readiness of agenda items, etc., therefore, second session of the CSB’s meeting was held on 27.02.2013. In this session, the Board in its collective wisdom decided not to consider special reports (for the period of deficiency, i.e. part or whole of 2012). Least we can observe that recommendations for the deferment of the senior management officers was nothing but unfairness with them.

40. The case of senior management officers was not decided following the principle of due process of law being one of their fundamental rights under Article 10A of the Constitution, which provides that for the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process, as it has been held in the case of Babar Hussain Shah v. Mujeeb Ahmed Khan (2012 SCMR 1235) as under: -

“11. ... Although from the very inception the concept of fair trial and due process has always been the golden principles of administration of justice but after incorporation of Article 10-A in the Constitution

of the Islamic Republic of Pakistan, 1973 vide 18<sup>th</sup> Amendment, it has become more important that due process should be adopted for conducting a fair trial and order passed in violation of due process may be considered to be void."

The same principle has been highlighted in the case of President Balochistan High Court Bar Association v. Federation of Pakistan (2012 SCMR 1958), wherein it has been held that the due process of law was not one of the fundamental right but after the 18<sup>th</sup> Constitutional Amendment, it was made part of Chapter 1, Part II of the Constitution as one of the fundamental rights. It provides that for the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process. Thus, it is the duty of the State to enforce fundamental rights of citizen and protect their life, liberty and property and anyone of them if charged for any offence, he has to be dealt with in accordance with law by providing fair trial and due process.

41. The CSB, being semi judicial forum, has been authorized to examine the cases of the officers justly and fairly. In the instant case, as it is evident from the available record, a good number of officers were deferred on 23<sup>rd</sup>-24<sup>th</sup> September and 3<sup>rd</sup> October, 2011 contrary to the record, as it is admitted by the Secretary, Establishment, for different reasons including that they were professionally not sound and unfit to hold higher responsibility, but when again for the second time their cases were put up the same Board noted that said supersession was not supported by their PERs record, particularly for the last five

years, which, *inter alia*, rated them as outstanding/very good, with integrity as above board.

42. We have posed a question to ourselves as to whether on account of earlier unfounded, illegal and arbitrary decisions by the CSB, the officers should be allowed to continue to suffer despite realization of CSB that its earlier findings were not supported with the record; the answer to it is that illegal and arbitrary decisions militates against the rule of law, thus, calls for interference by the Court in exercise of its power of judicial review. In addition to it, emphasis has been laid by the GoP through its Secretary Establishment that the cases for promotion of the petitioner and so many others, were not rejected for any technical reasons but it is in the collective wisdom of CSB not to consider the petitioner and all the officers in PAS with similar requirements, because in their viewpoint they should be even handed with all other services as it had not considered cases of similar nature of other services. This Court in the case of Federation of Pakistan through Secretary Establishment vs. Liaqat Ali and Tauqir Ahmad Faiq (Civil Petition Nos. 836 and 837 of 2006) held that decision with regard to promotion of the officers cannot be left on the discretion of the members of the Board; there must be some criteria to judge the performance of a candidate because promotion was denied to the officer on ground that he does not fulfill the criteria.

43. As it has been discussed hereinabove the petitioner and others were subjected to arbitrariness by the CSB while considering their cases in the months of September and October, 2011 and in the meetings of CSB held twice in the month of February, 2013, it did not



support to its adverse decision against the petitioner and others and on having seen their record concluded that PERs are fully supporting them and in view of the subject reports in their favour, they are eligible to be considered for promotion. However, it failed to take into consideration such reports for the reasons not tenable in law and their such findings were clear violation and departure from the promotion policy because once the officers have fulfilled the criteria, their cases have to be considered, to assess the fitness and suitability to share higher responsibility, mostly based on objective criteria, instead of denying promotion to them for the subjective consideration, as exactly has happened in this case in view of the background which has been noted hereinabove, he should have been reconsidered for promotion. Thus, such findings, which are whimsical, in violation of the policy and are also based on subjective consideration, cannot be endorsed in the public interest as well as for the good governance, relating to the welfare of the citizens. The officers, if have not been considered for promotion on merit against a selection post from BS-20 to 21, it would have direct impact on good governance, which is necessary to provide for smooth running of affairs in the country including protecting the rights of citizens under Articles 3 and 9 of the Constitution.

44. It is most important to note that during the hearing of the case, learned Additional Attorney General conveyed that the Government had decided to review the promotion of PAS officers and in this behalf following statement was filed: -

"STATEMENT ON BEHAFL OF SECRETARY ESTABLISHMENT  
DIVISION

Respectfully Sheweth

During the hearing of Constitution petition No.22/2013 titled Orya Maqbool Abbasi vs Federation of Pakistan today in the Honourable Supreme Court of Pakistan, the Additional Attorney General conveyed to the apex Court that it was decided by the Federal Government to review the promotion of PAS officers recommended in the second session of the CSB held on 27.02.2013. The Honourable Court directed that statement in writing maybe given by Establishment Secretary.

2. Establishment Secretary is traveling to Lahore via motorway in connection with an official engagement in NSPP. He has accorded verbal approval on phone to file the statement on his behalf.

3. Establishment Division hereby confirms that it would review promotion of 24 officers (at serial No.57 to 80) already recommended by CSB, through another CSB meeting to be convened, shortly.

4. Promotion of 56 officers recommended in the first session of CSB, 2013 maybe allowed to continue in BS-21.

(SYED ALI SHAHBAZ KIRMANI)  
Section Officer (Legal)  
Establishment Division  
Islamabad"

45. After considering the above statement, we observe that above admission is sufficient to support his contention, which has been raised by the petitioner and so many other senior management officers, who joined the proceedings by submitting miscellaneous applications, in pursuance whereof they have also highlighted their grievances, which are somehow identical in nature. Therefore, it is considered appropriate to examine the above statement in its real perspective as it is not an individual case of few officers for promotion of grade 20 or 21 but relates to good governance, rights of general public, enforcement of fundamental rights as well as application of

statutory provision of law, followed by rules and guidelines of promotion noted hereinabove. At the same time it is also to be seen that Lahore High Court in the case of Liaqat Ali Chughtai v. Federation of Pakistan (PLD 2013 SC 413) had remanded the case. It seems that during the CSB 2<sup>nd</sup> meeting in the month of February, their cases were not considered and same is the position in respect of the cases of civil servants, which were decided by Islamabad High Court in Writ Petition No.3483/2011.

46. Now turning towards the pivotal role of officers relating to the management in Government of Pakistan, notwithstanding whether they belong to PAS or Secretariat Group or any other group, fact remains that individuals of such cadre play a decisive role in shaping the destiny of the nation. Reference in this behalf to highlight their importance can conveniently be made to the following passage from the speech of *Quaid-i-Azam* Muhammad Ali Jinnah delivered in April, 1948, to the civil officers in Peshawar: -

" ... The reason why I am meeting you is that I wanted to say a few words to you who are occupying very important positions in the administration of this province. The first thing that I want to tell you is that you should never be influenced by any political pressure, by any political party or any individual politician. If you want to raise the prestige and greatness of Pakistan you must not fall victim to any pressure but do your duty as servants of the people and the state, fearlessly and honestly.

The services are the backbone of the state. Governments are formed. Governments are defeated. Prime Ministers come and go, ministers come and go, but you stay on. Therefore, there is a very great responsibility placed on your shoulders. You should have no hand in supporting this political party or that political party, this political leader or that political leader. This is not your business.

Whichever government is formed according to the constitution, and who ever happens to be the prime minister or minister, coming into power in the ordinary

course, your duty is only to serve that government loyally and morally but, at the same time, fearlessly, maintaining your high reputation, your prestige, your honour and the integrity of your service. If you start with that determination, you will make a great contribution to the building up of Pakistan of our conceptions and our dream-a glorious state and one of the greatest nations in the world.

While impressing this upon you, I wish also to take the opportunity of impressing upon our leaders and politicians in the same way, that if they ever try to interfere with you and bring political pressure to bear upon you, which leads to nothing but corruption, bribery and nepotism-which is a horrible disease and for which not only your province but others too are suffering-if they try to interfere with you in this way, I say they are doing nothing but disservice to Pakistan.

I hope that each of you will understand his own sphere of duty and responsibility and act with others harmoniously in complete cooperation, keeping in mind that each has to do his duty within the sphere to which he belongs, if on your part start with that determination and enthusiasm – and I hope the other side will also realize what a terrible evil they are raising up and how it demoralizes the services to try and influence this department or that departments, this office or that officer-and if you stick to your determination you will have done a great service to your nation. Putting pressure on service people is, I know, a very common fault of politicians and those with influence in political parties, but I hope you will now, from today, resolve and determine to act according to the humble advice I am giving you. ...”

Importance of the role of the civil servants could not be highlighted in better manner except in the words of founding father of this country noted hereinabove.

47. It is critically to be noted that unlike the provisions of the earlier Constitutions of 1956 and 1962, no protection is provided to the civil servants in the Constitution of 1973, as a result whereof, this important section of executive, which is responsible to make the policies for country are not feeling as strong as it should have been with the constitutional protection to their services. Therefore, by

enforcing existing laws, rules and regulations full protection is required to be provided to them so honest and dedicated members of civil service may discharge their function without any fear or favour enabling them not to show eagerness to obey unlawful and uncalled for demands of their bosses, instead of following the principle of honesty and transparency in the performance of their duties. In this behalf reference readily may be made to the case of Tariq Aziz-ud-Din (2010 SCMR 1301). In the said case, all the promotions of grade-22 officers in exercise of judicial powers, were reversed and the Government was asked to frame policy/rules for promotion from grade 21 to 22, to ensure that such appointments must be made on merit, according to the criteria laid down by the law and the rules. Recently, in another judgment in the case of Syed Mahmood Akhtar Naqvi v. Federation of Pakistan commonly known as *Ms. Anita Turab case* (PLD 2013 S.C. 195), this Court, once again proceeded to interpret the relevant provisions of law, particularly relating to the tenure of the officers and immature transfers/postings. In this context it is to be noted that firstly, the competent authority i.e. Government as well as CSB had to adhere strictly to the law and the rules as well as the instructions on the subject. If any action is taken against any of the officers denying his case for promotion, such action would be unlawful and would have no leg to stand. In addition to it, two clauses i.e. (e) and (f) of item 5 of Promotion Policy, noted hereinabove, are very important. While examining clauses (e), (f) and (h) relating to quality and output of work, variety of experience and top management potential, stringent provisions have to be incorporated to make such promotion policy to provide objective criteria for promotion. The

petitioner has prayed that the criteria of eligibility on merits, credibility of civil servants could be adjudged in view of the contentions, which he has made part of the petition. We do agree with his prayer and observe that it would be great achievement if it is added in the policy to hold an inquiry of the civil servant while sending his case for promotion and also examine his family assets at the time when he joined the service including lifestyle, expense on children education, expenses on children marriage, foreign tours as well as to ascertain the political affiliation of such a candidate to make the bureaucracy free from political affiliation as it has been observed in his speech by the Quaid-e-Azam.

48. A very dangerous trend has been set amongst the civil servants that instead of claiming their recruitment, promotion, etc., on merit, they prefer to seek the blessings from the outside of their service hierarchy, which ultimately makes obligatory upon them to oblige the persons who favoured them in the promotion to the higher rank. Therefore, on adding this clause in the policy, the government would be able to get service of quite independent persons with knowledge, ability and free from any pressure, for the purpose of assisting the executive Government to discharge its function as well as to maintain the rule of law.

49. As we noted that the government itself has shown inclination to reconsider the cases for promotion from grade 20 to 21, in view of the statement and discussion made hereinabove, but we are of the opinion that as the decision of CSB and the manner in which 88 positions of BS-21 were created, has not found in consonance with the

statutory provision of law, rules and the guidelines for promotion, thus action of CSB in deferring 49 officers for one or the other reason has rendered whole process of promotion void. Therefore, we are of the opinion that instead of reconsidering the cases of officers from Sr. No.57 to 80 out of seniority list of PAS officers it would be in all fairness to undertake exercise by CSB as a whole for promotion from BS-20 to 21 including candidates of PAS and for other services i.e. Secretariat group etc.

50. Thus, it is held as under: -

- (i) The petition under Article 184(3) of the Constitution has been held to be maintainable and is allowed.
- (ii) The promotion from BS-20 to 21 against available vacancies has to be made in accordance with reserved quota for the promotion of different groups i.e. PAS, Secretariat etc., as a result whereof instead of cancelling the promotion of the officers from Sr. No.57 to 80 all cases of promotion against 88 vacancies of BS-21 is hereby cancelled being void and unlawful and fresh exercise has to be undertaken along with the cases of the civil servants which have been remanded by the Lahore High Court in Liaqat Ali Chughtai's case (PLD 2013 Lahore 413) and the cases decided Islamabad High Court in W.P. No. 3483/2011. Consequently, notification of promotion of all the officers issued in pursuance of the recommendations of CSB held on 11<sup>th</sup>-14<sup>th</sup> February and 27<sup>th</sup> February, 2013 are hereby set aside with direction to the competent authority to undertake the process of the promotion to all of them as observed hereinabove strictly in accordance with law on merits under Section 9 of the Civil

Servants Act, 1973, read with rules 7, 7A and 8 of the Civil Servants (Appointments, Promotions and Transfers) Rules, 1973 as well as Promotion Policy as amended upto date, vide O.M. dated 13.1.2013.

- (iii) The Government shall also undertake exercise to outline the objective criteria for promotion to make the civil servant an honest officer and free from political pressure as has been noted hereinabove.

Petition stands disposed of leaving the parties to bear their own costs.

Chief Justice

Judge

Judge

Announced on 3<sup>rd</sup> October, 2013 at Islamabad

Chief Justice

Approved For Reporting