

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J.

MR. JUSTICE CH. IJAZ AHMED

MR. JUSTICE GHULAM RABBANI

**HUMAN RIGHTS CASES NO.8340, 9504-G, 13936-G,
13635-P & 14306-G TO 14309-G OF 2009.**

(Applications by Tariq Aziz-ud-Din & others)

Tariq Aziz ud Din:	Applicant in HRC 8340/09
Nazir Ahmed Chaudhry:	Applicant in HRC 9504-G/09
Farkhanda Wasim Afzal:	Applicant in HRC 13635-P/09
Dr. Muhammad Aslam Khaki	Applicant in HRC 13936-G/09
Shahnaz S. Hamid:	Applicant in HRC 14306-G/09
Bilal Khan:	Applicant in HRC 14307-G/09
Bashir Ahmad Chowhan:	Applicant in HRC 14308-G/09
Saleem Ullah Khan:	Applicant in HRC 14309-G/09

For the applicants/ affectees:	Mr. Muhammad Akram Sheikh, Sr. ASC Assisted by Mr. Sajeel Shehryar, Advocate (on behalf of 69 officers) Mr. M. Ikram Chaudhry, ASC (on behalf of M. Hafeez of Foreign service) Dr. Muhammad Aslam Khaki, ASC (in HRC 9504-G & 13936-G/09) Mr. Afnan Karim Kundi, ASC (on behalf of Khurshid Anwar of Foreign service) Mr. Haider Hussain, ASC (on behalf of M. Saleem & Masood of Accounts service) Mr. Saleemullah Khan, (in person in HRC 14309-G/09)
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Nemo in HRC 14306-7/G of 2009

On Court notice:	Mr. Anwar Mansoor Khan, AGP.
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For the Estt. Division:	Mr. Abdul Hafeez Pirzada, Sr. ASC Mian Hassan Aurangzeb, ASC Mr.M.S. Khattak, AOR Mr. Ismail Qureshi, Secretary. Mr. Munir Ahmed, Sr. JS. Syed Mubashar Raza, JS.
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For Foreign Office:	Mr. Ishtiaq H. Andrabi, Addl. Secy (A) Mr. Shair Bahadur Khan, Legal Advisor
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Promoted Officers:
(On court Notice)

Mr.Athar Tahir, Mr.Naguibullah Malik,
Mr.Abdul Ghafar Soomro, Maj. ® Qamar Zaman,
Mr.Imtiaz Hussain Qazi, Mr.Ishtiaq Ahmed Khan,
Mr.Shahid Rashid, Mr.Nasir Mahmood Khan Khosa,
Mr.Javed Iqbal, Mr.Nazar Hussain Mahar, Mr.Junaid
Iqbal, Mr.M.Sami Saeed, Mr.Imtiaz Inayat Elahi,
Mr.Javed Mehmood, Mr.Ghulam Ali Pasha, Khawaja
Khalid Farooq, Syed Shabbir Ahmed, Mr.Tariq
Masood Khan Khosa, Dr.Wasim Kausar, Mr.Tariq
Saleem Dogar, Syed Jawed Ali Shah Bukhari,
Mr.Muhammad Zafeer Abbasi, Mr.Jaweed Akhtar,
Dr.Inamullah Khan, Mr.Khalid Idrees, Neelam S. Ali,
Mr.Abdul Shafiq, Mr.Ahmed Mehmood Zahid,
Mr.Batool Iqbal Qureshi, Mr.Ghulam Rasool Ahpan,
Mr.Gul Muhammad Rind, Mr.Anisul Hassnain
Musavi, Mr.Agha Sarwar Qizalbash, Mr.Ghalibuddin,
Mr.Ayub Tarin, Mr.Asif Usman Khan, Mr.Mansoor
Sohail, Mr.Haroon Shaukat. (all in person)

Dates of hearing: 10.11.09, 26.11.09, 7.1.2010, 20.1.2010, 26.1.2010,
28.1.2010, 29.1.2010 & 15.02.2010.

JUDGMENT

CH. IJAZ AHMED, J. Facts in brief, relevant for disposal of instant HR Cases, are that one Mr. Tariq Aziz-ud-Din from the Foreign Service Group, moved an application dated 6th November, 2009, addressed to Chief Justice of Pakistan, stating therein that Government of Pakistan has made promotions of officers of various occupational groups, including Foreign Service group to which he also belong, from BS-21 to BS-22, in total violation of Constitutional basis and principles of merit, seniority and fair play. He added in the application that the competent authority has no arbitrary power under the law to pick and choose on his whims although he sits as head of Selection Board. It is averred by him that in this way his fundamental right to expect a fair career progression has been violated as his juniors have been promoted while superseding him without any justification. The application was registered as HR Case No. 8340-G/2009.

2. Initially, the comments on the above said application were called from the Secretary, Ministry of Foreign Affairs, Government of Pakistan, however, ultimately the matter was ordered to be fixed in Court with notice to the

Attorney General for Pakistan, Secretaries, Establishment & Foreign Affairs Divisions, applicant and all those officers who had been superseded as well as to the officers promoted by the Federal Government to be served through Secretary Establishment. In the meantime, some of the other affectees also approached the Court by way of filing separate applications, which were also registered as HR Cases, titled above and clubbed together.

3. Subsequently, Mr. Muhammad Akram Sheikh, Sr. ASC, Mr. M. Ikram Chaudhry, ASC, Dr. Muhammad Aslam Khaki, ASC, Mr. Afnan Karim Kundi, ASC and Mr. Haider Hussain, ASC appeared on behalf of the applicants/officers who have not been promoted, whereas Mr. Abdul Hafeez Pirzada, Sr. ASC appeared on behalf of Federation of Pakistan through Establishment Division. Likewise, Mr. Anwar Mansoor Khan, Attorney General for Pakistan appeared on Court's notice. On the other hand the officers promoted to BS-22 except few also appeared in response to the notices.

4. Mr. Muhammad Akram Sheikh, Sr. ASC appearing on behalf of the petitioners argued that:-

- a) In terms of Section 9(1)(b) and 9(2) of Civil Servants Act, 1973 [hereinafter referred to as 'CSA, 1973'], the Civil Servants (Appointment & Tenure of Post in BPS-22) Rules, 1993 [hereinafter referred to as 'CSR, 1993'] were framed but these rules were rescinded on 4th April, 1998. In such situation, it is the responsibility of the Government to frame rules with regard to terms and conditions of the services of the Civil Servants in BS-22 and if there is no rules or law made in this regard, then it is called exploitation, within the meaning of Article 3 of the Constitution of Islamic Republic of Pakistan, 1973 [hereinafter referred to as 'the Constitution'].
- b) Section 9(2) of the CSA, 1973, mandates that recruitment should be made on merit, therefore, when merit comes, it excludes discretion. [Reliance placed on Lahore Development Authority v. Shamim

Akhtar (2003 MLD 1549) and Adil Hamid v. Azad Jammu and Kashmir Govt. {1991 PLC (CS) 1195}].

- c) Despite framing of rules, if some discretion is left, it should be structured discretion, based on seven instruments of structuring of discretion and scope of that structuring of discretion is left only after framing of rules in the manner prescribed.
- d) When a criterion is to be structured by rules then the only rules are to be made applicable and nothing else and if no law or rules are framed then the Judge made laws shall fill in the vacuum.
- e) Merit of course can be taken into consideration with respect to the eligibility but eligibility does not militate against merit. [Reliance placed on Muhammad Anis v. Abdul Haseeb (PLD 1994 SC 539), Fazali Rehmani v. Chief Minister, NWFP (PLD 2008 SC 769) and Tanvir Shaukat v. District & Sessions Judge, Narowal (2009 SCMR 764)].
- f) The promotion relates to the right to life of a civil servant because depriving him from the ultimate glory of his service i.e. BS-22, for which he had made sacrifices, would tantamount to scuttle of his right to life in terms of Article 9 of the Constitution.
- g) There are neither any rules, guidelines nor compulsions, therefore, the discretion of the Prime Minister, governing the transfers and promotions to BS-22 would negate the entire Esta. Code. [Referred to page 257 of the Esta. Code, 2007 Ed. (regarding Selection Board)].
- h) Discretion vested in the competent authority is a sacred trust, which is to be exercised with application of mind to ensure equality of opportunity as envisaged in Article 2A of the Constitution. [Reliance placed on Chairman RTA v. Pak. Mutual Insurance Co. (PLD 1991 SC 14), Director Food, NWFP v. Madina Flour and General Mills (Pvt.) Ltd. (PLD 2001 SC 1), Chief Secretary Punjab v. Abdul Raoof Dasti (2006 SCMR 1876), Abdul Wahab v. Secretary, Govt. of Balochistan (2009 SCMR 1354) and Delhi Transport Corpn. v. D.T.C. Mazdoor Congress (AIR 1991 SC 101)].

He concluded his arguments by saying that the petitioners are claiming their right guaranteed by the Constitution and policy of merit, which obliges the trustees of the State powers i.e. the chosen representatives to exercise such power with all the conditions prevalent between the trustee and beneficiary. He also referred to the seniority list submitted by the Federal Government, demonstrating that the persons having just few months' service in BS-21 have been promoted whereas no reason either for selection or rejection has been assigned.

5. Mr. Afnan Karim Khundi, ASC appearing for some of the affectee officers, while adopting the arguments of Mr. Muhammad Akram Sheikh, Sr. ASC, added that:-

- a) An effort has been made by the Establishment Division in its comments/reply to the applications of the affectee officers, to strike some balance in terms of the Provincial representation in BS-22, however, the Provincial quota is only applicable to appointments initially made and not to be observed while making promotions, for which the criterion is performance, service record and seniority.
- b) While making promotions, gender balance is being struck by the Federal Government while picking up a person much below in the seniority just because she is a lady. Consideration of gender is not a criterion for promotion specially to the selection posts, where promotions have to be made on merit alone.
- c) The promotions in question were made without assigning any reasons regarding exercise of such discretion, which is in violation of Section 24-A of the General Clauses Act.

6. Mr. M. Ikram Chaudhry, learned ASC for one of the affectee officers, after giving the service history of the petitioner, argued that:-

- a) The competent authority has to exercise the discretion in the public interest with transparency, which lacks in the instant case. [Reliance placed on *Zia Ullah Khan v. Govt. of Punjab* (PLD 1989 Lahore 554)].

- b) When no reason has been assigned either for selection or rejection, therefore, it precisely means that the rule of pick & choose was the prime consideration and there is no transparency in the exercise of discretion by the competent authority. [Reliance placed on *Aman Ullah Khan v. Federal Government of Pakistan* (PLD 1990 SC 1092), *Pak. Mutual Insurance Co.'s case* (PLD 1991 SC 14) and *Abu Bakar Siddique v. Collector of Customs* (2006 SCMR 705)].

He concluded his submissions while arguing that although seniority is not the only consideration but it is to be observed to some extent, whereas, in instant case the opportunity to be considered for promotion has not been provided to the petitioner.

7. Dr. Aslam Khaki, ASC appeared on behalf of affectee officers, and argued that:-

- a) Discretion must be based upon reasons but in the instant case, the petitioners represented by him have not been considered rather ignored, as such they have been condemned unheard against the principle of audi alteram partem.
- b) When there is no law on a subject, the principles of natural justice would be applicable.
- c) The competent authority was vested with powers to frame rules in terms of Section 9 of CSA, 1973, but the same has not been done, which shows the mala fide on its part.
- d) According to the injunctions of Islam as well as under Article 2A of the Constitution and the principles of policy, everything should be done on merit with justice. [Referred to the Holy Quran (Suah-e-Al-Nisa verse 135)].
- e) Some of the persons, who were even not eligible for promotion being not part of any occupational group and even not falling within the category of civil servants, such as officers of National Assembly and NLC, have been promoted in violation of rules and law.

8. Mr. Haider Hussain, ASC gave the service record of the petitioner represented by him and argued that:-

- a) The discretion is bound by the rule of reasons, which must be guided by law and must not be used in an arbitrary, vague and fanciful manner. [Reliance placed on Zubair Ahmad v. Shahid Mirza (2004 SCMR 1747)].
- b) Civil servant has a right to be considered for promotion and similarly to be disclosed the reasons for not being promoted. [Reliance placed on Muhammad Zafeer Abbasi v. Govt. of Pakistan {2003 PLC (CS) 503}].
- c) The four officers promoted in the occupational group of the petitioner i.e. the Audit Department, even do not qualify for promotion, as they had never served in BS-21 in that occupational group.

9. On the other hand Mr. Abdul Hafeez Pirzada, learned Sr. ASC, appearing for the Federation of Pakistan, through Secretary Establishment Division, argued that:-

- a) The material for promotions of all these officers was sent to the Prime Minister in November, 2008 which contains the service record of the entire 267 officers in Grade 21. This record remained with the Prime Minister for consideration until September, 2009 (almost for a period of 10/11 months), therefore, the competent authority has made these promotions with due application of mind.
- b) This Court does not sit as a Court of appeal over the exercise of power by a lawful authority as it has only to satisfy itself as to whether the reducible minimum requirements of good governance have been complied with or not, and the benefit of doubt, if any, will go in favour of the validity of the action taken by the competent authority and not against it. Onus, therefore, very heavily lies upon the person coming to challenge that there has been a foul play in the exercise of executive discretion.

- c) The Officers who are working in BS-21 and have not been promoted to BS-22, shall continue to be eligible for promotion to BS-22 in future, therefore, there is no question of supersession.
- d) Originally only eight persons, who were not promoted, out of 213, approached this Court, whereas a vast majority of them have not come to the Court for the redressal of their grievance and some of them have made the representation before the competent authority for revisiting of their cases.
- e) In order to see whether the discretion has been exercised properly or not by the competent authority, this Court has to scrutinize each and every case individually in order to sever the good from the bad.
- f) The principles of seniority, fitness and aptness, as claimed by the affectee officers, are not applicable in a case of promotion from BS-21 to BS-22.
- g) The Rules were framed during the time of caretaker government by virtue of SRO.1047(I)/1993 dated 23rd October 1993 in respect of BS-22, which were rescinded in the year 1998 through notification dated 4th April 1998 and since then the Judge made laws have taken effect, therefore, the Court has to satisfy itself in favour of validity of an action, rather than to strike it down, particularly when it will affect a lot of innocent and deserving persons.
- h) The discretion exercised by the competent authority can only be challenged on the grounds of illegality, bias or malice or mala fide, and proceedings being coram non judice, but in the instant case at the best, the question is of irrationality or lack of procedural propriety, which even has not been substantiated at all by the petitioner/affectee officers.
- j) The competent authority has exercised the discretion after considering record of each person, with due application of mind, though the satisfaction will not be the same as that of the Court but it cannot be said that the competent authority has not applied its mind.
- k) Instant cases are not maintainable as the applicants have failed to show as to how their right to life being a fundamental right is

affected in view of the fact that they are only entitled to be considered for promotion and even promotion is not a right, especially when they will continue to be considered for promotion every time when there are vacancies.

and

Apart from this right no other right has been pleaded or claimed. A right to be considered for promotion cannot be equated with right to life or right to access to justice, etc. under Articles 9 and 25 of the Constitution. In absence of violation of any fundamental rights, although the matter is of great public importance, this Court may not exercise jurisdiction under Article 184(3) of the Constitution, as these are individual grievances.

- l) Immediately prior to promotions, eleven Additional Secretaries from BS-21 were acting as Secretaries holding independent Divisions, whereas three Inspectors General of Police and three Chief Secretaries were also working on acting charge basis, and their performance was known to the competent authority, which was one of the consideration for promotion.
- m) While making the promotion under challenge, the competent authority had tried to maintain gender balance. [Referred to Articles 27(1) read with 34 and 37(f) of the Constitution].
- n) The competent authority has also tried to observe the quota while making the promotions under challenge, as interpreted by this Court in number of judgments to be the basic feature of the Constitution.
- o) When actions are taken in exercise of executive discretion, the Courts of Appeal in England have introduced new element in the doctrine of promissory estoppel 'of proportionality'. In future, this Court would be called upon to judge such actions on the doctrine of proportionality i.e. is the action proportionate to the requirement or not. [Referred to Council for Civil Service Unions (CCSU) v. Minister for the Civil Service [1984] 3 All ER 935 (administrative actions subject to judicial review) and R. v. Secretary of State [1985] 1 All ER 40 – [the doctrine of proportionality in the law of estoppel].

- p) The grievance of the petitioner/affectee officers are personal in nature and not that of public importance. [Reliance placed on *All Pakistan Newspapers Society v. Federation of Pakistan* (PLD 2004 SC 600)].
- q) Absence of rules will not render any action, otherwise lawfully taken, to be unlawful. The words 'necessary or expedient' used in Section 25 of CSA, 1973 are not mandatory but directory in nature.
- r) Although, the exercise of discretion by the competent authority is subject to judicial review but the standard required for judicial review will have to be different in case of civil servant, who is already part and parcel of the State vis-a-vis the citizen who seeks remedy against the Government.
- s) If the affectee officers are aggrieved from the order of promotion under challenge, they should go and seek individual remedy before the competent forum and not through the instant proceedings.

He concluded his arguments while saying that according to his instructions, the Government will frame rules with prospective effect in view of the fact that if the rules are made retrospectively it will cause difficulties because some delegated legislation creates rights ex post facto.

10. In rebuttal Mr. Muhammad Akram Sheikh, Sr. ASC added with respect to the question whether fundamental rights are involved or not, that it is not the case of promoted or ignored employees, rather it is a case running the Government in accordance with the Constitution and the Rules of Business. According to him right to employment is a public undertaking as a fundamental right, derivable from Article 9 of the Constitution. He referred to *Pakistan Muslim League (N) v. Federation of Pakistan* (PLD 2007 SC 642) and Rule 5(10)(c), 15(2) & (4) of the Rules of Business. Lastly he referred to *Sajjad Ahmed Javed Bhatti v. Secretary, Establishment Division* [2009 PC (CS) 981] whereby the Service Tribunal directed the Establishment for framing of Rules.

11. Mr. Ikram Chaudhry, ASC placed on record extract from the American Constitution (para 1 from page 12) on the point that whether the king is the law or the law is the king. He also referred to the book Fundamental law of Pakistan by A.K. Brohi to elaborate public policy and public interest.

12. Mr. Afnan Karim Kundi, ASC argued that the admission made by the counsel for the Federation of Pakistan to the effect that there is need to make the rules as required by Section 9(1) of CSA, 1973, concedes our entire case as if there is need to make rules now, then there was always need to have made rules well in time. While referring to Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, he added that the senior most officer should be given the acting charge, therefore, the consideration prevailed upon the competent authority that 17 officers were already functioning in BS-22 on acting charge basis, conceded my case because the seniority is the determining factor for promotion to BS-22.

13. Mr. Anwar Mansoor Khan, learned Attorney General for Pakistan made his submissions as under:-

- a) Section 9 of CSA, 1973 has two portions i.e. eligibility and how selection is to be made. Section 9(1) provides firstly, the eligibility for promotion having minimum qualification as may be prescribed, in the cadre to which he belongs, and secondly the proviso provides that promotion to the post of Secretary be made in the public interest, therefore, every person in BS-21 will be eligible if he possesses minimum qualification and distinction between this promotion and normal promotion is in the 'public interest'.
- b) Section 9(2) of CSA, 1973 emphasized upon the word 'merit' so the eligibility for the purpose of promotion is not the sole consideration as thereafter 'merit' will come. So all the persons are eligible and merit is to be looked into amongst them. [Reliance placed on Muhammad Yousaf v. Abdul Rashid (1996 SCMR 1297)].

- c) Once a person comes within the ambit of Section 9(1) of CSA, 1973 then the factum of his being acceptable, appropriate, approved and befitting will not be considered. [Reliance placed on Muhammad Anis's case Supra.
- d) The sole criterion for selection post is merit. [Reliance placed on Ghuman Singh v. State of Rajasthan {(1971) 2 SCC 452}, State of West Bengal v. Manas Kumar Chakrabarti (AIR 2003 SC 524) and Union of India and others Versus Lt. Gen. Rajendra Singh Kadyan and another {(2000) 6 SCC 698}.
- e) There is no dispute qua the power of this Court to review any order passed by Executive. [emphasized upon the word 'any']. However, if a person, who feels aggrieved from a particular order, unable to show as to with what he is aggrieved and the reasons to which he is aggrieved, then it will not be appropriate to throw away an order passed by the executive, unless there is something so specific.
- f) In absence of rules, when there is complete practice for the past so many years and it is continuing everyday, therefore, if the competent authority has passed an order on the basis of custom and well known principles regarding consistent departmental practice then malice or mala fide cannot be attributed to it.
- g) For the past 60 years, whilst a promotion is made in BS-22, there has not been a single occasion where a summary has been moved for promotion and only the files are being sent to the Prime Minister, who examines them and choose to pass an order. This custom and practice has been followed in the instant case and has not been deviated from.
- h) The competent authority has exercised its discretion properly, keeping in view the settled principles of discretion.
- j) Section 9(3) of the CSA, 1973 places a restriction upon the competent authority that the promotion to the post of BS-20 & 21 shall not be made without the recommendations of the Selection Board, whereas, for promotion to the post of BS-22, there is no such restriction and it is left on the 'assessment' of the competent authority to select the person upon whom he has reasonable

confidence, from those who are eligible, as such now the question of seniority towards eligibility goes out, that is why the lawmaker has omitted the word 'BS-22' from this Section.

- k) It is duty of the Court to interpret and explain the law; when we expand the scope of a certain law, we have to remain within the parameters of the law. If the Court ultimately came to the conclusion that promotion to BS-22 had to be made in the same manner as provided for BS-20 or 21, then the Court is expanding the scope of law. [Referred to R (ProLife Alliance) v. BBC (2003) 2 All ER 977].

14. Notices were also issued to the officers promoted to BS-22 to provide them opportunity to appear and make submissions in support of their cases. They appeared in-person on 12th & 15th February, 2010 and explained their service profile and stated that vested rights had accrued to them vide impugned notifications. According to them they were promoted purely on merit and they had not exercised any political or other influence and the information of their promotion was conveyed to them through news, release in electronic or print media. It was their case that have un-blemished service record and lot of experience to perform their duties in different capacities. During the service they had secured higher education, passed the departmental examinations and courses with distinction, therefore, they were promoted by the competent authority by comparing their qualifications, experience, ability, eligibility with the officers who were not promoted. Some of them stated, they were going to retire on attaining the age of superannuation after availing the benefits of BS-22, therefore, justice demands that notification should not be set-aside otherwise their reputation would be damaged. The officers of the police group submitted that they belonged to discipline force and Officer in BS-21 is equal to Major General and Officer in BS-22 is equal to Lt. General, therefore, seniority is not a criterion and the competent authority has discretion to promote any officer. They added that it would not be in

the interest of justice and in case notifications are set aside, it would be difficult for them to perform their duties, removing their badges of ranks and down grading from BS-22 to BS-21.

15. Since the cases are required to be decided on the basis of facts and figures and not in vacuum, it is necessary to reproduce hereinbelow service record of officers promoted and non-promoted from BS-21 to BS-22 along with relevant details:-

a) List of Officers of the District Management Group (DMG) BS-21 Officers who were promoted vis-à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
1.	1	Mr. Muhammad Asadullah Sheikh	01.12.1973	30.05.2009	Not promoted
2.	2	Syed Tanveer Abbas Jaffary	20.02.1976	11.08.2003	Not promoted
3.	3	Mr. Mohammad Athar Tahir	12.03.1977	11.08.2003	Promoted
4.	4	Mr. Shahid Hussain Raja	21.03.1977	20.07.2004	Not promoted
5.	5	Mr. Shaukat Hayat Durrani	21.03.1977	08.09.2003	Not promoted
6.	6	Mr. Neguib Ullah Malik	00.10.1973	20.07.2004	Promoted
7.	7	Mr. Asif Bajwa	21.03.1977	08.07.2004	Promoted
8.	8	Mr. Abdul Ghaffar Soomro	21.03.1977	06.08.2004	Promoted
9.	9	Capt.(R) Akhtar Munir Murwat	26.08.1974	19.09.2005	Not promoted
10.	10.	Syed Mohammad Hamid	20.02.1976	03.01.2006	Not promoted
11.	11	Qamar Zaman Major (R)	01.06.1982	19.09.2005	Prompted
12.	12	Mrs. Farkhanda Waseem Afzal	08.03.1978	24.09.2005	Not promoted
13.	13	Mr. Hassan Waseem Afzal	08.03.1978	24.09.2005	Not promoted
14.	14	Mr. Mohammad Javed Malik	08.03.1978	24.09.2005	Not promoted
15.	15	Mr. Hafeez-ur-Rehman	08.03.1978	24.12.2005	Not promoted
16.	16	Mr. Saeed Ahmad Khan	08.03.1978	14.10.2005	Not promoted
17.	17	Mr. Imtiaz Hussain Kazi	08.03.1978	26.10.2005	Promoted
18.	18	Mrs. Rukhsana Saleem	08.03.1978	19.09.2005	Promoted
19.	19	Mr. Ishtiaq Ahmed Khan	08.03.1978	19.09.2005	Promoted
20.	20	Mr. Munawar Opel	08.03.1978	15.02.2006	Not promoted
21.	21	Mr. Tariq Yousuf	30.12.1974	08.11.2006	Not promoted
22.	22	Mr. Iqbal Ahmad Maj. (R)	28.06.1983	08.11.2006	Not promoted
23.	23	Shahibzada M. Khalid Maj. (R)	01.06.1983	20.10.2006	Not promoted
24.	24	Mr. Shahid Rashid	29.03.1979	08.11.2006	Promoted
25.	25	Mr. Nasir Mahmood Khan Khosa	29.03.1979	20.10.2006	Promoted
26.	26	Mr. Iftikhar Ahmed	29.03.1979	20.10.2006	Not promoted
27.	27	Mr. Shafiq Hussain Bokhari	29.03.1979	20.10.2006	Not promoted
28.	28	Mr. Abdul Wajid Rana	29.03.1979	20.10.2006	Not promoted
29.	29	Mr. Kamran Lashari	29.03.1976	02.01.2008	Promoted
30.	30	Mr. Javed Iqbal	29.03.1979	20.10.2006	Promoted
31.	31	Mr. Nazar Hussain Mehr	29.03.1979	20.10.2006	Promoted
32.	32	Mr. Fasi-ud-Din	29.03.1979	20.10.2006	Not promoted
33.	33	Kh. Muhammad Siddiq Akbar	29.03.1979	22.11.2008	Not promoted
34.	34	Mr. Junaid Iqbal Ch. Flt. Lt.	08.03.1980	07.11.2006	Promoted
35.	35	Mr. Muhammad Abbas Lt.	10.03.1980	08.11.2006	Not promoted
36.	36	Mr. Ahsanullah Khan	21.04.1977	27.08.2008	Not promoted
37.	37	Mr. Faridullah Khan	29.03.1979	02.01.2008	Not promoted
38.	38	Kh. Muhammad Naeem	10.07.1984	25.06.2008	Not promoted
39.	39	Prince Abbas Khan	10.07.1984	08.01.2008	Not promoted
40.	40	Maj. (R) Haroon Rashid	14.11.1984	02.01.2008	Not promoted
41.	41	Capt.(R) Ghulam Dastagir Akhtar	08.03.1980	02.01.2008	Not promoted
42.	42	Azhar Hussain Shamim	05.04.1980	02.06.2009	Not pro moted

43.	43	Mr. Sohail Ahmed	05.04.1980	02.01.2008	Promoted
44.	44	Mr. M. Sami Saeed	05.04.1980	02.01.2008	Promoted
45.	45	Mr. Akhlaq Ahmad Tarar	05.04.1980	02.01.2008	Not promoted
46.	46	Mr. Attaullah Khan	05.04.1980	02.01.2008	Not promoted
47.	47	Mr. Javed Aslam	05.04.1980	02.01.2008	Not promoted
48.	48	Kazi Afaq Hussain	05.04.1980	02.01.2008	Not promoted
49.	49	Mr. M. Javed Iqbal Awan	05.04.1980	12.01.2008	Not promoted
50.	50	Mr. Shafqat Hussain Naghmi	05.04.1980	02.01.2008	Not promoted
51.	51	Mr. Muhammad Arif Azim	05.04.1980	02.01.2008	Not promoted
52.	52	Mr. Muhammad Ayub Qazi	05.04.1980	02.01.2008	Not promoted
53.	53	Mr. Habibullah Khan Khattak	05.04.1980	27.08.2008	Not promoted
54.	54	Mr. Imtiaz Inyat Elahi	05.04.1980	02.01.2008	Promoted
55.	55	Mr. Javed Mahmood	05.04.1980	02.01.2008	Promoted
56.	56	Mrs. Viqar-un-Zeb	05.04.1980	02.01.2008	Not promoted
57.	57	Mr. Anwar Ahmad Khan	05.04.1980	04.01.2008	Not promoted
58.	58	Mr. Tauqir Ahmed	20.02.1976	26.06.2008	Not promoted
59.	59	Mr. Liaquat Ali	22.02.1976	26.06.2008	Not promoted
60.	60	Mr. M. Maqbool Ahmad Khan	05.04.1980	08.07.2008	Not promoted
61.	61	Mr. Ghulam Ali Shah	05.04.1980	26.06.2008	Promoted
62.	62	Mr. Ahmed Bakhsh Lehri	05.04.1980	25.06.2008	Promoted
63.	63	Mrs. Nargis Sethi	05.04.1980	26.08.2008	Promoted

b) List of Officers of the Police Service of Pakistan (PSP) BS-21 Officers who were promoted vis -à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
1.	1	Mr. Azhar Ali Farooqui	24.12.1971	30.04.2008	Promoted
2.	2	Mr. Muhammad Arshad Saeed	27.12.1972	24.11.2007	Not promoted
3.	3	Mr. Irfan Mahmood	23.12.1972	21.06.2003	Not promoted
4.	4	Syed Irshad Hussain	23.12.1972	22.10.2002	Not promoted
5.	5	Mr. Niaz Ahmad Siddiki	26.01.1973	11.11.2004	Not promoted
6.	6	Mr. Salahuddin Ahmed Khan Niazi	26.12.1972	24.09.2005	Not promoted
7.	7	Mr. Shaukat Ali Khan	01.12.1973	12.11.2005	Not promoted
8.	8	Mr. Israr Ahmad	31.12.1974	25.01.2007	Not promoted
9.	9	Mr. Muhammad Ejaz Akram	30.12.1974	25.01.2007	Not promoted
10.	10	Mr. Tahir Arif	30.12.1974	07.08.2008	Not promoted
11.	11	Mirza Muhammad Yasin	30.12.1974	19.12.2006	Not promoted
12.	12	Mr. Khalid Farooq	30.12.1974	25.01.2007	Promoted
13.	13	Mr. Muhammad Wasim	30.12.1974	25.01.2007	Not promoted
14.	14	Mr. Fayyaz Ahmed Mir	30.12.1974	25.01.2007	Not promoted
15.	15	Mr. Abdul Latif Khan	30.12.1974	01.03.2007	Not promoted
16.	16	Syed Shabbir Ahmed	30.12.1974	24.02.2007	Promoted
17.	17	Mr. Shaukat Hayat	10.01.1975	18.07.2007	Retired
18.	18	Mr. Rahoo Khan Brohi	30.12.1974	04.01.2007	Not promoted
19.	19	Mr. Akhtar Hussain Memon	17.02.1975	30.04.2008	Not promoted
20.	20	Mr. Tariq Masood Khan Khosa	20.02.1976	19.12.2006	Promoted
21.	21	Malik Muhammad Iqbal	20.02.1976	10.02.2007	Not promoted
22.	22	Mr. Iftikhar Ahmed	20.02.1976	19.12.2006	Not promoted
23.	23	Mr. Asif Nawaz	20.02.1976	10.02.2007	Not promoted
24.	24	Mr. Zahid Mahmood	20.02.1976	07.08.2008	Not promoted
25.	25	Mr. Fiaz Ahmed Khan	20.02.1976	16.01.2007	Not promoted
26.	26	Mr. Javed Iqbal	20.02.1976	07.08.2008	Promoted
27.	27	Mr. Zafar Ahmed Farooqi	20.02.1976	01.03.2007	Not promoted
28.	28	Mr. M. Azam Khan Maj.(R)	01.06.1982	26.04.2007	Not promoted
29.	29	Mr. Muhammad Habib-ur-Rehman	05.02.1976	26.04.2007	Not promoted
30.	30	Dr. Wasim Kausar	21.03.1977	26.04.2007	Promoted
31.	31	Mr. Abdul Majeed	21.03.1977	10.02.2007	Not promoted
32.	32	Mr. Tariq Saleem	30.12.1974	10.02.2007	Promoted
33.	33	Mr. Javed Noor	21.03.1977	10.02.2007	Promoted
34.	34	Mr. Aftab Sultan	21.03.1977	10.02.2007	Not promoted
35.	35	Mr. Fakharuddin	30.12.1974	07.08.2008	Not promoted
36.	36	Mr. Shamsul Hassan	21.03.1977	09.08.2008	Not promoted
37.	37	Mr. Humayun Raza Shafi	21.03.1977	01.06.2009	Not promoted
38.	38	Mr. Zafarullah Khan	21.03.1977	29.05.2009	Not promoted

39.	39	Mr. Waseem Ahmed	09.09.1974	29.05.2009	Not promoted
40.	40	Syed Mohammad Saqlain Naqvi	23.06.1973	01.06.2009	Not promoted
41.	41	Wajid Ali Durrani	08.03.1978	15.06.2009	Not promoted
42.	42	Sayyed Jawed Ali Shah Bukhari	29.01.1974	29.05.2009	Promoted

c) List of Officers of the Secretariat Group BS-21 Officers who were promoted vis-à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
1.	1	Mr. Humayun Ishaque Chohan	20.04.1974	06.07.2004	Not promoted
2.	2	Mr. Liaquat Ali Chaudhry	30.12.1974	25.11.2006	Not promoted
3.	3	Mr. Muhammad Zafeer Abbasi	20.11.1974	07.10.2006	Promoted
4.	4	Mr. Bashir Ahmed Chauhan	30.12.1974	07.10.2006	Not promoted
5.	5	Mr. Shaukat Nawaz Tahir	30.12.1974	07.10.2006	Not promoted
6.	6	Mrs. Hahnaz S. Hamid	30.12.1973	31.10.2006	Not promoted
7.	7	Mr. Jaweed Akhtar (inducted in Sectt: Group from NLC)	17.11.2007	17.11.2007	Inducted & promoted on the same day
8.	8	Mr. Irfan Nadeem Syed	20.02.1976	21.01.2008	Not promoted
9.	9	Mr. Inamullah Khan	30.01.1974	18.12.2007	Promoted
10.	10.	Mr. Fakhar Abbas Naqvi	25.03.1975	21.01.2008	Not promoted
11.	11	Mr. Khalid Idrees	30.12.1974	18.12.2007	Promoted
12.	12	Mrs. Neelam S. Ali	19.03.1975	29.12.2007	Promoted
13.	13	Mr. Zaid Usman	30.12.1974	16.05.2009	Not promoted
14.	14	Mr. Abdul Shafiq	22.03.1975	16.05.2009	Promoted
15.	15	Mr. Ali Akbar Bhurgri	26.05.1975	26.06.2008	Not promoted
16.	16	Mr. Attiq-ur-Rehman Malik	20.02.1976	18.12.2007	Not promoted
17.	17	Mr. Anwar Hafeez Khan	20.02.1976	00.10.2008	Not promoted
18.	18	Sheikh Anjum Bashir	20.02.1976	25.05.2009	Not promoted
19.	19	Raja Muhammad Ikramul Haq	20.02.1976	18.12.2007	Not promoted
20.	20	Mr. Ahmad Mahmood Zahid	20.02.1976	18.12.2007	Promoted
21.	21	Mrs. Batool Iqbal Qureshi	20.02.1976	18.12.2007	Promoted
22.	22	Mr. Fazal-i-Qadir	20.02.1976	18.12.2007	Not promoted
23.	23	Mr. Abdul Majid	30.12.1974	19.06.2008	Not promoted
24.	24	Mr. Shahid Latif Anwar	30.12.1974	11.06.2008	Not promoted
25.	25	Mr. Naeem Baig	30.12.1974	22.10.2008	Not promoted
26.	26	Mr. Sharshar Ahmed Khan	21.03.1977	29.11.2008	Not promoted
27.	27	Mr. Ghulam Rasool Ahpan	26.05.1975	28.05.2009	Promoted
28.	28	Syed Turab Haider Zaidi	20.02.1976	07.05.2009	Not promoted
29.	29	Mrs. Rukan Abdullah Shah Gardezi	06.12.1976	07.05.2009	Not promoted
30.	30	Mr. Ziauddin	17.02.1977	07.05.2009	Not promoted
31.	31	Mr. Moosa Raza Effendi	31.03.1977	07.08.2009	Not promoted
32.	32	Mian Mohammad Younus	21.03.1977	07.05.2009	Not promoted
33.	33	Mr. Zaeem Ahmed Chaudhry	21.03.1977	04.07.2009	Not promoted
34.	34	Miss Naheed Rizvi	21.03.1977	06.06.2009	Not promoted
35.	35	Mr. Muhammad Ahsan Akhtar Malik	21.03.1977	07.05.2009	Not promoted
36.	36	Mr. Sikandar Hayat Maken	21.03.1977	07.05.2009	Not promoted
37.	37	Ch. Mohammad Azam	21.03.1977	12.05.2009	Not promoted
38.	38	Mr. Muhammad Anwar Khan	30.10.1988	07.05.2009	Not promoted
39.	39	Mr. Khalid Ahmed Khan	21.03.1977	07.05.2009	Not promoted
40.	40	Mr. Ghul Mohammad Rind	21.03.1977	23.05.2009	Promoted

d) List of Officers of the Commerce & Trade Group BS-21 Officers who were promoted vis-à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
1.	(not provided)	Mr. Tariq Iqbal Puri	01.12.1973	(not provided)	Promoted
2.	2	Mr. Rahatul Ain	30.12.1974	07.01.2004	Not promoted
3.	3	Mr. Naved Arif	30.12.1974	29.12.2006	Not promoted
4.	4	Agha Zafar Mehdi Shah	09.10.1973	25.09.2009	Not promoted

e) List of Officers of the Income Tax Group BS-21 Officers who were promoted vis-à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
1.	1	Mr. Ihsan-ul-Haq	31.12.1974	14.10.2002	Not promoted
2.	2	Mr. Naseer Ahmad	31.12.1974	26.01.2005	Not promoted
3.	3	Mr. Muhammad Istataat Ali	30.12.1974	23.06.2006	Not promoted
4.	4	Mr. Khawar Khurshid Butt	30.12.1974	23.06.2006	Not promoted
5.	5	Mr. Masood Ali Jamshed	30.12.1974	23.06.2006	Not promoted
6.	6	Mr. Bilal Khan	30.12.1974	23.06.2006	Not promoted
7.	7	Mr. Muhammad Fiayaz Khan	20.01.1976	23.06.2006	Not promoted
8.	8	Mr. Qurban Ali	20.02.1976	11.03.2008	Not promoted
9.	9	Mr. Shahid Azam Khan	20.02.1976	23.06.2006	Not promoted
10.	10	Mr. Nazir Ahmad	20.02.1976	23.06.2006	Not promoted
11.	11	Mr. Anis-ul-Hasnain Musavi	16.03.1976	19.12.2007	Promoted
12.	12	Khawaja Shaukat Ali	21.03.1977	19.12.2007	Not promoted
13.	13	Mr. Asrar Raouf	12.03.1977	19.12.2007	Not promoted
14.	14	Agha Sarwar Raza Qazilbash	21.03.1977	19.12.2007	Promoted

f) List of Officers of the Pakistan Audit & Accounts Service BS-21 Officers who were promoted vis-à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
1.	1	Mr. Asif Mahmood Malik	01.12.1973	14.05.2002	Not promoted
2.	2	Mr. Javed Arif	01.12.1973	09.08.2004	Promoted
3.	3	Mr. Masud Muazaffar	30.12.1974	28.09.2005	Not promoted
4.	4	Mr. Yawar Zia	30.12.1974	28.09.2005	Not promoted
5.	5	Mr. Muhammad Ayub Khan Tarin	10.01.1975	30.09.2006	Promoted
6.	6	Mr. Shaukat Muhammad Lundkhaur	10.01.1975	15.12.2007	Not promoted
7.	7	Mr. Muhammad Anwar	30.12.1974	10.01.2008	Not promoted
8.	8	Mr. Muhammad Saleem	30.12.1974	15.12.2007	Not promoted
9.	9	Mr. Muzammil Tayeb Sultan	30.12.2007	15.12.2007	Not promoted
10.	10	Mr. Abdul Waheed Khan	20.02.1976	15.12.2007	Not promoted
11.	11	Mr. Jehangir Aziz	20.02.1976	02.05.2008	Not promoted
12.	12	Ms. Saseem Akhtar	20.02.1976	15.09.2008	Not promoted
13.	13	Mr. Sohail Ahmed	17.05.1976	30.04.2009	Not promoted
14.	14	Mr. Anees Marghub	20.02.1976	16.06.2008	Not promoted
15.	15	Shaikh Muhammad Awais	20.02.1976	16.06.2008	Not promoted
16.	16	Mr. Allah Bux Khan Kalyar	20.02.1976	30.04.2009	Not promoted
17.	17	Mr. Shah Nawaz Khan	20.02.1976	30.04.2009	Not promoted
18.	18	Syed Moazzam Hussain	20.02.1976	30.04.2009	Not promoted
19.	19	Mr. Ghalibuddin	30.12.1950	20.02.1976	Promoted
20.	20	Mr. Saeed Ahmed Panhwar	20.02.1976	11.05.2009	Not promoted
21.	21	Mr. Ejaz Ali Pirzada	20.02.1976	30.04.2009	Not promoted
22.	22	Rana Assad Amin	21.03.1977	30.04.2009	Not promoted
23.	23	Mr. Zahid Saeed	21.03.1977	30.04.2009	Not promoted
24.	24	Mr. Muhammad Junaid	21.03.1977	05.05.2009	Not promoted
25.	25	Mr. Muhammad Shafi	21.03.1977	30.04.2009	Not promoted
26.	26	Mr. Fahimullah Khattak	21.03.1977	12.05.2009	Not promoted
27.	27	Ms. Nasreen Mahdi	21.03.1977	12.05.2009	Not promoted
28.	28	Agha Talat Pervaiz	21.03.1977	30.04.2009	Not promoted
29.	29	Mr. Asif Usman Khan	20.01.1954	21.03.1977	Promoted

g) List of Officers of the Information Group BS-21 Officers who were promoted vis-à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
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1.	1	Mr. Faza-lur-Rehman Malik	30.12.1974	04.03.2004	Not promoted
2.	2	Mr. A.S. Abbasy	30.12.1974	30.09.2005	Not promoted
3.	3	Mr. I.N. Abbasi	26.05.1975	27.05.2009	Not promoted
4	4	Mr. Mansoor Suhail	21.03.1977	15.05.2009	Promoted

h) List of Officers of the Foreign Service Group BS-21 Officers who were promoted vis-à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
1.	1	Mr. Iftikhar H. Kazmi	20.02.1976	09.06.2008	Not promoted
2.	2	Mr. Ashraf Qureshi	21.03.1977	20.07.2004	Not promoted
3.	3	Ms. Humaira Hassan	21.03.1977	24.04.2007	Not promoted
4.	4	Ms. Raana Rahim	08.03.1978	24.04.2007	Not promoted
5.	5	Mr. Khurshid Anwar	08.03.1978	20.07.2004	Not promoted
6.	6	Mr. Tariq Azizuddin	01.08.1975	10.09.2005	Not promoted
7.	7	Mr. M. Khalid Khattak	20.02.1976	10.09.2005	Promoted
8.	8	Mr. Akhtar Tufail	08.03.1978	10.09.2005	Not promoted
9.	9	Mr. M. Haroon Shaukat	08.03.1978	24.04.2007	Promoted
10.	10	Mr. Zamir Akram	02.07.1978	10.09.2005	Promoted
11.	11	Mr. Muhammad Hafeez	08.03.1978	11.12.2007	Not promoted
12.	12	Mr. Masood Khalid	29.03.1979	24.04.2007	Not promoted
13.	13	Mr. Mian Gul Akbar Zaib	29.03.1979	24.04.2007	Not promoted
14.	14	Ms. Kausar Ahsan Iqbal	20.02.1976	09.06.2008	Not promoted
15.	15	Ms. Atiya Mahmood	29.03.1979	11.12.2007	Not promoted
16.	16	Mr. Sanaullah	24.06.1979	11.12.2007	Not promoted
17.	17	Ms. Fauzia Sana	29.03.1979	11.12.2007	Not promoted
18.	18	Mr. Jalil Abbas Jilani	29.03.1979	11.12.2007	Promoted
19.	19	Mr. Rizwanul Haq Mahmood	29.03.1979	11.12.2007	Not promoted
20.	20	Mr. M. Masood Khan	05.04.1980	-	Promoted

i) List of Officers of the National Assembly Secretariat Group BS-21 Officers who were promoted vis-à-vis who were not promoted to BS-22 Posts on or after 04.09.2009.

Sr.#	Seniority Position in BS-21.	Name of the Officer	Date of Joining	Date of Notification of promotion to BS-21	Remarks
1.	1	Mr. Moeen-ul-Islam Bokhari	Ex-Cadre	Not available	Promoted

16. It would also be advantageous to highlight civil servant's structure since promulgation of Government of India Act, 1935 till the law framed under Article 240 of the Constitution. The Federal system of Government initially was introduced in Indo-Pak sub-Continent through Government of India Act, 1935 and the spirit of this Act was retained in the Constitutions of 1956 and 1973, thus our present Constitution is Federal in nature under which the areas of responsibilities of the Federation and the federating units have been precisely defined; they have to exercise their legislative and executive authorities within those limits. The concept of All Pakistan Services was introduced in 1935. Section 263 of the Government of India Act, 1935 provided that:-

“If an agreement is made between the federation and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Federation and one or more Provinces or common to two or more Provinces, or for the maintenance or creation of the post, the function whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor General or any Governor or any Public Service Commission, shall do in relation to that service or post anything which would under the provision of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only”.

A careful perusal of above Section reveals that the independence of the Provinces has not been curtailed by the Federal Government. Further more, it was left to the discretion of the Provinces to agree to such an arrangement or not, not only with the Federation but also between the Provinces and it was in pursuance of one such agreement that All Pakistan Services were created and came to be regulated under the CSP (Composition and Cadre) Rules 1954. According to these rules certain posts in connection with the affairs of the Provinces were to be filled by Members of All Pakistan Service and these posts were determined in the form of a Schedule to the rules. The legal effect of this arrangement was that 30% of the superior posts encadred for the CSP were reserved for the PCS and in this way the posts were created as a result of an agreement between the Governor General of Pakistan and the Governors of the Provinces. Thereafter Constitution of 1956 under Articles 179 to 183 and subsequently Constitution of 1962 under Articles 174 to 179 provided constitutional protection to civil services but the same was withdrawn first time at the time of framing of Constitution of 1973 in terms of Article 240 and it was provided that the terms and conditions of civil service shall be determined by an Act of the Parliament or the Provincial Assembly. As such, Civil Servants Act, 1973 was passed to regulate the service conditions of the

Federal Government Employees. Similarly in accordance with the administrative reforms announced on 20th August, 1973, the classes were abolished and a grading system was introduced at all levels of administration, Federal as well as Provincial and the rules known as Change in Nomenclature and Abolition of Classes Rules were enforced by the Federal and Provincial Governments in 1974, separately. The effect of these changes was that at the time of re-organization of the CSP Cadre, all the posts were encadred for the DMG and the Secretariat Group, which are the successors to the CSP.

17. The trichotomy of power delicately placed in the Constitution cannot be disturbed as it grants power to each organ to perform in its allotted sphere. The subject of appointments to service of the Federation and conditions of service has specifically been mentioned in Article 240 of the Constitution which reads as under:

Article 240: -Subject to the constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined:-

- a) in the case of the services of the federation, posts in connection with the affairs of the federation and all Pakistan services by or under Act of Majlis-e-Shoora (Parliament) ; and
- b)

18. As per the command of above provision of the Constitution, CSA, 1973 was promulgated. Its section 9 mainly deals with promotions up to BS-21, procedure whereof has been laid under Appointment, Promotion and Transfer Rules, 1973. It would not be out of context to note that presently rules are not available for promotion to the selection grade i.e. from BS-21 to BS-22; although in the year 1993, vide SRO. 1047 (I)/1993 dated 23rd October, 1993, such rules were framed but those were rescinded on 4th April, 1998. In absence of any rules for promotion to BS-22, reliance has to be placed on section 9 (2) clauses (a) & (b) of the CSA, 1973, according to which in case of selection post, selection has to be

made on the basis of merit and in the case of non-selection post on the basis of seniority-cum-fitness. It may not be out of context to note that under sub section (3) of section 9, promotion to posts in BS-20 and 21 and equivalent shall be made on the recommendations of a Selection Board. Therefore, while examining the case under consideration no other criterion has to be taken into consideration except merit. As it is noted hereinbefore that there are no rules for promotion to selection post of grade-22 meaning thereby that competent authority may exercise discretion which has to be structured in view of the principles laid down in the Judge made Law by full application of mind. Reference at this stage has to be made to the case of Aman Ullah Khan and others V. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PLD 1990 SC 1092), relevant para therefrom reads as under:-

“Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Text by Kenneth Culp Davis (page 94) that the structuring of discretion only means regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure. Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalise it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times”.

19. The above principles are being consistently reiterated in the cases of Chairman, Regional Transport Authority, Rawalpindi V. Pakistan Mutual Insurance Company Limited, Rawalpindi (PLD 1991 SC 14), Director Food,

N.W.F.P. and another V. Messrs Madina Flour & General Mills (Pvt) Ltd. & 18 others (PLD 2001 SC 1), Chief Secretary Punjab and others V. Abdul Raoof Dasti (2006 SCMR 1876), Abdul Wahab and another V. Secretary, Government of Balochistan and another (2009 SCMR 1354) and Delhi Transport Corporation V. D.T.C. Mazdoor Congress and others (AIR 1991 SC 101). In the case of Abdul Wahab (ibid), this Court while dealing with the subject of structuring of discretion observed as follows:-

“Discretionary power conferred on government should be exercised reasonably and subject to existence of essential conditions, required for exercise of such powers within the scope of law. All judicial, quasi judicial and administrative authorities while exercising mandatory or discretionary jurisdiction must follow the rule of fair exercise of power in a reasonable manner and must ensure dispensation of justice in the spirit of law. Seven instruments that are the most useful in structuring of discretionary power are open plans, open policy statement, open rules, open findings, open reason, open precedents and fair informal procedure. Power to exercise discretion would not authorize such authorities to act arbitrarily, discriminately and mala fide. They have to act without any ulterior motive”.

20. The above principles of structuring of discretion actually has been derived from the concept of rule of law which, inter alia, emphasize that action must be based on fair, open and just consideration to decide the matters more particularly when such powers are to be exercised on discretion. In other words, the arbitrariness in any manner is to be avoided to ensure that the action based on discretion is fair and transparent. The Indian Supreme Court in the case of Delhi Transport Corporation (ibid), while examining a proposition of law, in view of facts of the case mentioned therein concerning removal of an employee under

Regulation 9 (b), where opportunity of hearing was not to be provided before taking action, made the following observation:-

“Any action taken without any modicum of reasonable procedure and prior opportunity always generates an unquenchable feeling that unfair treatment was meted out to the aggrieved employee. To prevent miscarriage of justice or to arrest a nursing grievance that arbitrary, whimsical or capricious action was taken behind the back of an employee without opportunity, the law must provide a fair, just and reasonable procedure as is exigible in a given circumstances as adumbrated in proviso to Art.311(2) of the Constitution. If an individual action is taken as per the procedure on its own facts its legality may be tested. But it would be no justification to confer power with wide discretion on any authority without any procedure which would not meet the test of justness, fairness and reasonableness envisaged under Arts. 14 and 21 of the Constitution. In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey – “Law of the Constitution” – 10th Edn., Introduction cx). “Law has reached its finest moments”, stated Douglas, J. in *United States v. Wunderlich*, (1951) 342 US 98, “when it has freed man from the unlimited discretion of some ruler.....Where discretion is absolute, man has always suffered”. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* “means should discretion be guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful,” as followed in

this Court in *S.G. Jaisinghani v. Union of India*, (1967) 2 SCR 703: (AIR 1967 SC 1427)”.

21. Learned counsel for Federation emphasized that the competent authority (the Prime Minister of Pakistan) has exercised discretion justly and fairly following the recognized principles set out in the judgments relied upon by the learned counsel appearing on behalf of the petitioners and he has been authorized in this behalf to make a statement before the Court that before issuing the notifications of the promotion of some of the officers, he had gone through their service record thoroughly and in this behalf their personal files remained under his consideration for months together and ultimately he decided their cases with due application of mind and as the decision so taken does not suffer from illegality, bias or malice or malafide as well as coram-non-judice, therefore, interference is not called for.

22. However, we have failed to persuade ourselves to agree with the learned counsel for many reasons including;

Firstly, as per Rule 15 (2) of the Rules of Business, it is mandatory that a case should be submitted to the Prime Minister for his orders based on self-contained, concise and objective summary stating the relevant facts of the points for decision prepared on the same lines as those prescribed in these rules for a summary of the Establishment etc. Before us, the Secretary, Establishment pointed out that there is no practice prevailing for the last about 60 years for forwarding the cases of promotion from BS-21 to BS-22 and subject to the availability of the vacancies the Prime Minister calls for the files for promoting officers and notification is issued of his/their promotion on receipt of directions from the Prime Minister by the Establishment Division and in the instant case, too, the past practice was followed; to say, unhesitatingly that mandate of relevant rules was ignored. Conversely speaking, there is admitted non-adherence to the Rules of

Business. The Secretary, Establishment sent files without any forwarding letter and the cases of all the officers totaling 267 were not sent in terms of aforesaid Rules of Business.

In the cases of *Zahid Akhtar v. Government of Punjab through Secretary, Local Government and Rural Development, Lahore* and 2 others (PLD 1995 SC 530), *Federation of Pakistan through Secretary, Planning & Development Division, Islamabad v. Muhammad Akram & others* (1995 SCMR 1647) & *Aman Ullah Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others* (PLD 1990 SC 1092), it has been held that due weight is required to be given to the Rules of Business which have got constitutional sanction whereas, in the instant case, the mandate of law has uncondonably been violated. It may be stated that adopting such arbitrary procedure, not only in-justice has been caused to officers who are otherwise senior and also have better case on merit as is evident from what follows in next paras but they have been deprived because there was nothing as the circumstances reflect, in black and white before the competent authority. This fact brings the case in the area where the discretion so exercised by the competent authority cannot be said to be in consonance with the well known principle of fair play as the cases of the officers who were not promoted their files were not before him, along with self-contained note by the Secretary Establishment in terms of the aforesaid Rules of Business.

Secondly; to ensure justice and openness in view of rule of law it becomes obligatory upon the competent authority to decide each case on merit taking into consideration the service record of the officers BS-21 who were eligible for promotion to BS-22. This aspect of the matter requires application of mind based on consideration and determination of merit in the light of the material explicitly showing as to why the officers who have

been left out were not found to be competent/below merit in comparison to those promoted to BS-22. Such consideration of the case and determination of merit for parity of treatment becomes all the more necessary and in absence of considering the candidature of the left out officers it would alone be tantamount to pick and choose essentially leading us to hold that there was no transparency in the exercise of discretion by the competent authority. Reference in this behalf can be made to the cases of Aman Ullah Khan (ibid), Chairman, Regional Transport Authority, Rawalpindi (ibid) and Abu Bakar Siddique (ibid). For the sake of convenience, relevant para from the last mentioned judgment is reproduced hereinbelow: -

“It is fundamental principle that an authority enjoying the discretionary powers, exercises the same without any guideline but at the same time such authority must not exercise the discretion in an arbitrary and capricious manner. It may not be obligatory for the concerned authority to exercise the discretion in a particular manner but exercise of such power in an unreasonable manner is not proper and in such a case the order passed in discretionary jurisdiction is not immune from judicial review of the superior courts. It is, however, only in exceptional circumstances in which a power is conferred on a person by saying that he may do a certain thing in his discretion but from the indication of the relevant provisions and the nature of the duty to be done, it appears that exercise of power is obligatory. This is an accepted principle of law that in a case in which the statute authorizes a person for exercise of discretion to advance the cause of justice, the power is not merely optional but it is the duty of such person to act in the manner it is intended”.

Thirdly; without going deep into the merits of the case of the petitioners and other left out officers, from the relevant facts concerning their seniority position, date of promotion in grade-21 etc, on a cursory glance one can infer that discretion has also not been exercised reasonably in ignoring their

cases. Mr. Muhammad Akram Sheikh, learned counsel while explaining the case of such officers emphasized that in no manner it could be said that these officers had merit with legitimacy for their promotion to grade-22. According to him, most of them were in grade-21 much before some of the promotees who succeeded in getting promotion in grade-21 in the year 2008-09 but were promoted in the same year to grade-22. A particular reference in this behalf was made to the officers, namely, Mr. Kamran Lashari, Mr. Sohail Ahmed, Mr. M. Sami Saeed, Mr. Imtiaz Inayat Elahi, Mr. Javed Mehmood, Mr. Ghulam Ali Shah, Mr. Ahmed Bakhsh Lehri and Mrs. Nargis Sethi whose names appear at serial Nos.29, 43, 44, 54, 55, 61, 62 & 63 respectively in the seniority list of the DMG occupational group. Whereas the officers namely, Mr. Shahid Hussain Raja, Mr. Shaukat Hayat Durrani, Capt. (R) Akhtar Munir, Syed Muhammad Hamid, Mrs. Farkhanda Waseem Afzal, Mr. Hassan Waseem Afzal, Mr. Muhammad Javed Malik, Mr. Hafeez-ur-Rehman and Mr. Saeed Ahmed Khan etc. of the same occupational group are shown in seniority list at serial Nos.4, 5, 9, 10, 12, 13, 14, 15 & 16, and were the officers promoted in BS-21 much before them but without assigning any reason they were not considered for promotion. Mr. Akram Sheikh, Sr. ASC stated and so we reiterate the principle that promotion is not a right but an officer deserves that his case should be considered for promotion in accordance with law. Had the competent authority considered their cases and informed the reasons for not promoting them probably they would have not grieved to complain the non-adherence to the rule of law and their suffering on that count. At this juncture, it may be stated that Mr. Abdul Hafeez Pirzada learned counsel for Federation, though, emphasized that “there is no question of supersession because the officers who are working in BS-21 and have not been promoted to BS-22 would continue to be eligible for promotion

(emphasis provided), this argument goes in favour of the officers who have not been promoted because there is no question mark on their eligibility and fitness and since there is no reason available on record to deprive them of their deserved position, contention of Mr. Muhammad Akram Sheikh learned counsel and others that discretion has not been exercised reasonably, so also the principles set out to structure the discretion in the judgments cited hereinabove, has not been followed rendering the whole exercise in pursuance of which the aggrieved petitioners have been deprived of the promotion is not sustainable, seems to be tenable. In addition to it, once the argument of learned counsel for the federation in respect of non-supersession of the left out BS-21 officers is accepted then we feel no difficulty in concluding that selection on merit would take place after assessment of all relevant consideration including competence and good service record. It is correct that the interpretation of the word 'merit' includes eligibility as well as academic qualifications [Miss Abida Shabqadar v. Selection Committee (1989 SCMR 1585)]. It is equally important to highlight another important principle that when promotion is to be made to a selection post it needs to be purely on merit. However, in case there is a tie qua meritorious past record, credibility and confidence among the officers then seniority would play its role [State of West Bengal v. Manas Kumar Chakrabarti (AIR 2003 SC 524)]. The Federation in parawise comments or through its learned counsel had not pointed out that the affectee officers were lacking above criteria in any manner in comparison to the promoted officers, therefore, their cases were not considered for promotion to BS-22. Actually, in the instant case, the difficulty seems to have arisen on account of the fact that the Establishment Division did not apprise the competent authority and in that all the cases for promotion from BS-21 to BS-22 were not submitted in consonance with the

provisions of relevant Rules of Business highlighting their service record, academic qualification etc. We feel that the competent authority holding an exalted office needed to be assisted properly by the concerned Secretary explaining the concerned case of each of the officer and then leaving to its discretion to exercise on the principles of rule of law, which does not seem to have been done.

Having accepted that the left out officers were eligible for promotion, yet not promoted and juniors promoted, it would amount to glaring violation of the command of Article 4 of the Constitution according to which it is an inalienable right of individual to be dealt with in accordance with law. When we make reference of the expression of the 'Law' we mean section 9 sub-section 2 clauses (a) and (b) of the CSA, 1973 and in absence of rules for promotion from BS-21 to BS-22, the word 'merit' has to apply in the light of principles highlighted hereinabove and following them, no room is left to make distinction between the officers who have been promoted and not promoted though eligible. Even accepting, for the sake of arguments, that the officers who were promoted to BS-22, were enjoying, save seniority, the same position as that of the left out, we fail to understand as to why they were not considered for promotion particularly, when they happened to be senior to them. In such situation the principle noted hereinabove, that when the officers are considered for promotion having equal merit and eligibility, then the seniority would play a decisive role and ought to have been adhered to, shall prevail. In this case that principle, factually, has not been followed, rather it would appear that the cases of both types of officers have not been measured in the same scale to follow the dictates of Article 4 of the Constitution, the rule of law as well as the due process of law.

We are also conscious of the provision of Article 25 of the Constitution which guarantees equality of citizens. However, denying such protection in peculiar circumstances of the case on basis of reasonable classification founded on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out. The differentia, however, must have rational nexus to the object sought to be achieved by such classification [Dr. Mobashir Hassan V. Federation of Pakistan and others (PLD 2010 SC 265)]. In the instant matter, looking in view of the reply filed by the Establishment Division and the argument advanced by the learned counsel on behalf of Federation, no attempt at all has been made to bring the cases of promoted officers under any reasonable classification. Relevant principles relating thereto have been highlighted hereinbefore.

23. At this juncture, it would not be out of context to make reference to the contention raised by learned Attorney General for Pakistan who placing reliance on section 9 (2) of CSA, 1973, emphasized that the eligibility for the purpose of promotion is not the sole consideration as thereafter merit will come, therefore, according to him, all the persons are eligible and their promotion is to be based on merit amongst themselves. He placed reliance on Muhammad Yousaf v. Abdul Rashid (1996 SCMR 1297). We have no cavil with the proposition discussed therein but on posing a question to ourselves i.e. whether the cited judgment confers arbitrary powers upon the competent authority to side track the principle of structured discretion, rule of law, due process of law, equality before law and the criteria highlighted in the Judge made Law noted hereinabove and finding that the provisions of Article 4 and 25 of the Constitution have not been adhered to, surely, we could not get affirmative answer to persuade ourselves that fate of the officers be left entirely to the discretion of the competent authority. Thus the argument so advanced by the learned Attorney General could be

acceptable only if it comes up to the well-established principles for exercising the discretion highlighted in the judgments noted hereinabove.

24. Learned Attorney General has also relied upon *Ghuman Singh v. State of Rajasthan* {(1971) 2 SCC 452}, *State of West Bengal v. Manas Kumar Chakrabarti* (AIR 2003 SC 524) and *Union of India and others v. Lt. Gen. Rajendra Singh Kadyan and another* {(2000) 6 SCC 698}. These judgments need not be discussed in view of the discussion hereinbefore as the Indian Supreme Court has also not favoured the exercise of discretionary powers without following the seven instruments envisaged in various judgments of this Court

25. We have seen the lists relating to the seniority etc. of both the officers (promoted and non promoted) placed before us by the Establishment Division and have also heard the learned counsel for parties as well as promoted officers, who appeared in person and find ourselves in agreement with Mr. Abdul Hafeez Pirzada, learned counsel appearing for the Federation that the affectee officers have not been superseded not finding anything on record that they were ineligible, we see no reason as to why they, majority of whom are seniors as per the seniority list of their occupational groups, were not promoted. With due deference to the competent authority, we are constrained to note that proper assistance which was mandatory to be provided to it by the Establishment Division under the Rules of Business, to enable it to exercise discretion fairly and justly, has not been rendered. Record produced before us reflects that two officers, namely, Mr. Jaweed Akhtar and Mr. Moeen-ul-Islam Bokhari from Secretariat Group & National Assembly Secretariat Group, respectively, were promoted. Of these two promoted officer, Mr. Jaweed Akhtar, was working in NLC and was inducted on 7.11.2009 in Secretariat Group, on the same day was promoted to BS-21 and then awarded promotion in BS-22 considering him to be an officer of Secretariat Group and almost same was the position of Mr. Moeen-ul-Islam

Bokhari. What could else be the example of non-application of mind and non-adherence to the rule as well as the due process of law.

26. Learned Attorney General and learned counsel for the Federation also emphasized that majority of officers of BS-21 who now have been promoted to BS-22 were holding acting charge of different divisions as Secretaries, etc. and competent authority had an opportunity to watch their performance, therefore, it had rightly considered them for promotion as against the left out officers whose performance, though not said to be blemished, could not be watched. We are not impressed with these arguments for, legally speaking, appointment on acting charge basis does not confer any vested right for regular promotion, as is evident from Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 reproduced below: -

“8-B (1) Where the appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned who is otherwise eligible for promotion does not possess the specified length of service the authority may appoint him to that post on acting charge basis.

(2) *[Omitted].

(3) In the case of a post in basic pay scales 17 to 22 and equivalent, reserved under the rules to be filled by initial appointment, where the appointing authority is satisfied that no suitable officer drawing pay in basic pay scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for a period of six months or more. Against vacancies occurring for less than six months, current charge

appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Central Selection Board, as the case may be, save in the case of post in basic pay scale 22 and equivalent.

(6) Acting charge appointment shall not amount to appointment by promotion on regular basis for any purpose including seniority.

(7) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.”

A careful perusal of the above rule reflects that in case where the appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the cadre or service as the case may be. In the instant case, the officers who were holding the post on acting charge basis were not all senior to those of affectee officers and moreover it is quite evident that even in their cases, holding the acting charge under whatever circumstances, shall not confer any vested right for regular promotion.

27. It was further contended by the learned Attorney General that Chief Executive/competent authority was to select his team with the object in view to ensure the good governance in the country. Suffice to observe as is pointed out hereinabove, as well, that posting a junior officer to hold the charge of a senior post, ignoring seniors who are eligible for promotion, does not advance the object of achieving good governance because the rules framed on the subject, noted hereinabove, are not redundant in any manner, therefore, same need to be respected and followed accordingly. It is a settled principle of law that object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be

achieved by following the rules of justness, fairness and openness in consonance with the command of the Constitution enshrined in different articles including Articles 4 and 25. Once it is accepted that the Constitution is the supreme law of the country, no room is left to allow any authority to make departure from any of its provisions or the law and the rules made thereunder. By virtue of Articles 4 and 5 (2) of the Constitution, even the Chief Executive of the country is bound to obey the command of the Constitution and to act in accordance with law and decide the issues after application of mind with reasons as per law laid down by this Court in various pronouncements [Federation of Pakistan through Secretary, Establishment Division v. Tariq Pirzada (1999 SCMR 2744)]. It is also a settled law that even Chief Executive of the country is not above the Constitution [Ch. Zahur Ilahi v. Mr. Zulfikar Ali Bhutto (PLD 1975 SC 383)]. It is the duty and obligation of the competent authority to consider the merit of all the eligible candidates while putting them in juxta position to find out the meritorious amongst them otherwise one of the organs of the State i.e. Executive could not survive as an independent organ which is the command of the Constitution. Expression ‘merit’ includes limitations prescribed under the law. Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power [Director Food, NWFP v. M/s Madina Flour and General Mills (Pvt) Ltd. (PLD 2001 SC 1)]. Equally, discretionary power conferred on Government should be exercised reasonably subject to existence of essential conditions, required for exercise of such power within the scope of law. All judicial, quasi judicial and administrative authorities must exercise power in reasonable manner and also must ensure justice as per spirit of law and seven instruments which have already been referred to above regarding exercise of discretion. The obligation to act fairly on

the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of justice [Mansukhlal Vithaldas Chauhan v. State of Gujrat {1997 (7) SCC 622}].

28. We may observe here that it is not the case of few individuals who have been promoted or left out, the questions for consideration raised in this case are of far-reaching effect. Essentially, under the trichotomy of the powers, the Executive (Bureaucracy) has to play the most important role for well being of general public. Although, they are not representing any class of masses but whole structure of the government depends upon the efficient and competent officers who matter in making policies which are ultimately approved by the Ministers etc. and if for this purpose the selection of officers is made following the principle to determine the merit are not employed, the running of government on the basis of good policies would ultimately affect the general public as in this matter it is no body's case that the officers who have been left out are not eligible for promotion to BS-22. Thus they stand at par with those who have been promoted and depriving them to enjoy the higher status of a civil servant would indirectly affect smooth functioning of the government on account of despondency developed amongst the officers, who always have stood by law and worked hard but ultimately are deprived of their legitimate right of promotion.

29. Needless to observe that when we talk about the public interest and the welfare of the State, we definitely have in our minds the concept of rule of law as well as access to justice to all as is enshrined in our Constitution.

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 law as well as the judgments on the subject, the competent and 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.

31. It is contended by the learned counsel appearing for the Federation that the officers who have been promoted to BS-22 by the competent authority had been promoted following the provisions of Articles 27 (1), 34 and 37 (F) of the Constitution as an effort has been made to maintain gender balance. It may be noted that according to service structure of different occupational groups, no concession can be extended to any officer in respect of any appointment on the ground only for race, religion, caste, sex, residence or place of birth. Thus Articles 27, 34 and 37 (f) of the Constitution have no application to the facts and circumstances of the instant case. According to clause (2) of the Article 25 of the Constitution, there shall be no discrimination on the basis of sex alone, thus

considering an officer on the basis of sex shall be violation of the mandate of the Constitution.

32. Mr. Abdul Hafeez Pirzada learned counsel for the Federation was also of the opinion that reference of rules on the subject will not render any action otherwise lawfully taken to be unlawful because in section 25 of CSA, 1973, law giver has used the word 'necessary' or 'expedient' for carrying out the purpose of this Act are not mandatory but directory in nature. There is no need to go into this discussion because we have already emphasized that in absence of the rules, the competent authority had a legal commitment to exercise discretion while making the selection of the officers on merit in BS-22 following the settled principles highlighted in the Judge made Law, discussed in detail hereinabove. At the cost of repetition, it is to be noted that the question in issue came up under consideration in *Sajjad Javed Ahmed Bhatti v. Secretary, Establishment Division* [2009 PLC (C.S.) 981] wherein respondents Federation of Pakistan, etc. were well advised to prescribe guidelines for promotion to BS-22 and to facilitate the exercise of discretionary powers fairly, judiciously without favour and discrimination. The said case was decided on 14-1-2007 but, regretfully said, the Federation neither filed any petition there-against before this Court nor framed rules in terms of the directions therein.

33. As it has been observed, hereinabove, that on 23rd October, 1993, vide SRO. 1047 (I)/1993 in respect of promotion to BS-22 Rules were framed, but, subsequently the same were rescinded in the year, 1998. Although, these rules are no more in the statute books but the competent authority/Chief Executive while considering the promotions could have used them as guidelines to ensure just and fair and non-discriminatory treatment to the officers of BS-21 who had legitimate expectancy to be promoted to BS-22 as there is no question mark on their eligibility and it is also the case of the Federation itself that non promotion would not be tantamount to supersede them. However, in view of the statement of Mr.

Abdul Hafeez Pirzada learned counsel for the Federation, referred to hereinabove regarding the framing of rules with retrospective effect, we observe that it would be in all fairness and to streamline the procedure of promotion to the selection grade from BS-21 to BS-22 and also to avoid unjustness, arbitrariness etc. the rules shall be framed by the competent authority as early as could be possible.

34. Before parting with the judgment, we may observe that good governance is largely dependent upon the upright, honest and strong bureaucracy particularly in written Constitution wherein important role of implementation has been assigned to the bureaucracy. Civil service is the back bone of our administration. The purity of administration to a large extent depends upon the purity of the services. Such purity can be obtained only if the promotions are made on merit in accordance with law and Constitution, without favouritism or nepotism. It is a time tested recognized fact that institution is destroyed if promotions/appointments are made in violation of law. It will, in the ultimate result, paralyze automatically. The manner in which the instant promotions in the Civil Services have been made, may tend to adversely affect the existence of this organ. Honesty, efficiency and incorruptibility are the sterling qualities in all fields of life including the Administration and Services. These criteria ought to have been followed in the instant case. Fifty-four persons were promoted in complete disregard of the law causing anger, anguish, acrimony, dissatisfaction and diffidence in ranks of services which is likely to destroy the service structure. No doubt petitioners/affectee officers had no right to be promoted yet in accordance with section 9 of the CSA, 1973, they were, at least, entitled to be considered for promotion. The right contemplated under section 9 supra is neither illusionary nor a perfunctory ritual and withholding of promotion of an officer is a major penalty in accordance with the Civil Servants (Efficiency and Disciplinary) Rules, 1973, therefore, consideration of an officer for promotion is to be based not only on the relevant law and the rules but also to be based on some tangible material relating

to merit and eligibility which can be lawfully taken note of. According to Article 4 of the Constitution the word “law” is of wider import and in itself mandatorily cast the duty upon every public functionary to act in the matter justly, fairly and without arbitrariness.

35. For the foregoing reasons:

- (a) Listed petitions are accepted as a consequence whereof, notifications No.41/317/2009-E-I, 41/343/2009-E-I, 41/321/2009/E-I, 41/318/2009/E-I, 41/319/2009/E-I, 41/344/2009/E-I, 41/341/2009/E-I, 41/320/2009/E-I, 41/345/2009/E-I, 41/346/2009/E-I, PF(190)E-5/DMG, 41/328/2009/E-I, 41/329/2009/E-I, 41/322/2009/E-I, 41/330/2009/E-I, 41/331/2009/E-I, PF(208)E-5/DMG, 41/332/2009/E-I, PF(218)E-5/DMG, PF(229)E-5/DMG, 41/334/2009/E-I, PF(224)E-5/DMG, 41/336/2009/E-I, 41/335/2009/E-I, PF(245)E-5/DMG, 41/339/2009/E-I, PF(257)E-5/DMG, PF(262)E-5/DMG, 41/338/2009/E-I, 41/340/2009/E-I, 21/1/2009-E-I, 12(178)/80-E.3(Police), 12(285)/80-E.3(Police), 12(242)/80-E.3(Police), 12(251)/80-E.3(Police), 12(267)/80-E.3(Police), 12(279)/80-E.3(Police), 12(285)/80-E.3(Police), 12(288)/80-E.3(Police), 12(309)/80-E.3(Police), 41/342/2009/E-I, 44/1/2009-E-I, 41/325/2009/E-I, 41/326/2009/E-I, 41/323/2009/E-I, 41/327/2009/E-I, 41/324/2009/E-I dated 4th September, 2009 and Notification No. PF(227)/E-5(DMG) dated 10th September, 2009 are hereby set-aside and declared to be of no legal consequences.
- (b) The Chief Executive/competent authority may consider the cases of all the officers holding the posts of BS-21 afresh in view of the observations, made hereinabove.
- (c) The officers who have been promoted to BS-22 in pursuance of above referred notifications, which now have been declared of no

legal effect, shall not be entitled for the benefit, perks and privileges, if any.

- (d) It would be appreciated that to ensure fairness and justness, the Rules rescinded on 4th April, 1998 are re-enacted accordingly.
- (e) Parties are left to bear their own costs.

Chief Justice

Judge

Judge

Islamabad
Announced on **28-04-2010**

J.

“A.Rehman:

APPROVED FOR REPORTING.