

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE NASIR-UL-MULK, CJ.
MR. JUSTICE GULZAR AHMED
MR. JUSTICE MUSHIR ALAM

CIVIL PETITION NO. 41 OF 2015

(on appeal from the order/judgment of the Islamabad High Court, Islamabad dated 04.12.2014 passed in I.C.A. No. 523 of 2013)

AND

CIVIL PETITION NO. 66 OF 2015

(on appeal from the order of the Lahore High Court, Lahore dated 09.01.2015 passed in W.P. No. 85 of 2015)

Secretary Establishment Division,
Government of Pakistan, Islamabad

...Petitioner

VERSUS

Aftab Ahmed Manika and others
Rao Manzar Hayat and others

(in CP 41/15)

(in CP 66/15)

...Respondents

For the Petitioner:

Mr. Salman Aslam Butt, AGP.
Mr. Waqar Rana, Addl. AGP.
Qari Abdul Rasheed, AOR.
Mr. Mumtaz Ali Khan, JS Est.Div.
Mr. Shahbaz Kirmani, S.O.

For Respondents

(Nos.1,4-6,8,9 &11in CP 41/15

& Nos.1-3 in CP 66/15): Ms. Asma Jahangir, ASC.

Assisted by Mr. Haris Azmat, Advocate.

Dates of Hearing:

30.01.2015 & 09.02.2015

JUDGMENT

NASIR-UL-MULK, CJ.— These two petitions for leave to appeal filed by the Secretary Establishment Division, Government of Pakistan, arise from two judgments. One was rendered by the Islamabad High Court, Islamabad on 04.12.2014 in Intra Court Appeal No. 523 of 2013, whereby the judgment of the Judge-in-Chambers in Writ Petition No. 2026 of 2014 in favour of the respondents, was

maintained. The other was handed down by the Lahore High Court, Lahore on 09.01.2015 in Writ Petition No. 85 of 2015, for implementation of the earlier judgment dated 22.12.2014 passed in Writ Petition No.11192 of 2014. The facts and questions of law in both the matters are similar.

2. The contesting respondents in the two Petitions, who had filed Writ Petitions before the Islamabad High Court and the Lahore High Court, are civil servants, serving in BPS-20 in the Pakistan Administrative Service, the Police Service of Pakistan and the Foreign Service of Pakistan. They were recommended for promotion to BPS-21 along with their colleagues by the Central Selection Board (hereinafter referred to as 'the Board'). The Board recommended 45 officers of the Pakistan Administrative Services, 11 of the Police Service of Pakistan and 12 of the Foreign Service of Pakistan on different dates for promotion and separate summaries were prepared for consideration of the Prime Minister. The recommendations of the Board, to the extent of contesting respondents, were returned by the competent Authority for reconsideration.

3. Before the Islamabad High Court the Federal Government, apart from contesting the Writ Petition on merits on the ground that the appointing Authority was competent to return the recommendations to the Board, also questioned maintainability of the Writ Petition on the ground that the matter related to the terms and conditions of civil servants and thus the jurisdiction of the High Court was barred under Article 212 of the Constitution. The High Court rejected the argument, holding that since the Federal Service Tribunal was not functional at the time, it could assume jurisdiction in view of the judgment of this Court in Safaraz Saleem v. The Federation of Pakistan (**PLD 2014 SC 232**). On merits the Court held that promotion to BPS 21 is governed

by Section 9 of the Civil Servants Act, 1973 read with Rule 7 of the Civil Servants (Appointment, promotion and Transfer) Rules, 1973; that the word "shall" as used in both the provisions of law grants a mandatory character to the recommendations of the Board; that under the scheme of law, the Prime Minister even though retains the authority to scrutinize the recommendations, it cannot return the same except in exceptional cases where procedural or compositional flaws are apparent; that the same has been the scheme of the law as legislature intended to replace the concentration of power in one person which might lead to arbitrary decisions with the collective wisdom of the Board. Further, the Court observed that the petitioners before it had been discriminated in violation of Constitutional protection under Article 25 as the cases of other candidates had been approved through the same process in which the cases of the petitioners were returned.

4. The petitioners who moved the Lahore High Court were also serving in BPS-20 and their cases for promotion too were recommended by the Board which were returned by the Prime Minister on 03.04.2014. Here also the Federation had raised the issue of jurisdiction of the High Court which was rejected on the ground that the matter related to the fitness of the Respondents for promotion and was thus beyond the jurisdiction of the Service Tribunal. On merits the Court held there was no information available to the competent Authority to come to a conclusion that the Board had not applied its mind in some cases; that the competent Authority had not given any reason for returning the recommendations of the Board thereby violating the principles of transparency, fairness and good governance; that this amounted to discrimination against the candidates whose names were returned as the Board had nominated them upon the same criterion as applied to those whose recommendations were accepted by the competent

Authority for promotion. The Court further observed that the Board had evaluated the subjective assessment of integrity, general reputation and perception and awarded marks for it; that the return of some of the nominations by the competent Authority suggested that it was working on personal information or opinion, thereby violating the collective wisdom of the Board and the requirements of Due Process; that return of the recommendations by the competent Authority is also against the dicta as laid down in the case of Orya Maqbool Abbasi v. Federation of Pakistan through Secretary Establishment (**2014 SCMR 817**) as the Board had already assessed the recommendations upon the criterion as laid down in the said case and there was no justification in requiring the Board to deliberate upon the same again.

5. The Board had held its meetings from 11th to 13th February, 2014 to consider the promotions of civil servants of different Groups from BPS-20 to BPS-21. Out of the recommended lists, 18 officers from the Pakistan Administrative Services, 6 from the Police Service of Pakistan and 4 from the Foreign Service of Pakistan were returned to the Board by the appointing Authority. The relevant part of the Summary, approved by the Prime Minister, for reconsideration of the respondents' promotion, as given in Paragraph Nos. 9, 10 and 11 of the Summary dated 3.04.2014 is reproduced below:

"9. Further, whilst examining the instant recommendations of the Central Selection Board, the Prime Minister is pleased to observe that the Board has failed to apply its mind and exercise its discretion in an objective manner in evaluating officers on the attribute of 'integrity/general reputation/perception'. The CSB was required to be mindful that this attribute was inserted in the "Objective Assessment Form" in order for the CSB to evaluate officers not only on the basis of

integrity as reported in the ACRs/PERs but also to form a collective opinion as to general reputation and perception of the officers under consideration in a reasonable, fair and equitable manner; and then to award marks out of maximum five. A mechanical exercise, without application of mind, to award marks for the attribute 'integrity/general reputation/perception' on the basis of formally written reports is, by no means, in consonance with the spirit of the Hon'ble Supreme Court's judgment in C.P. No.22/2013 and the essence of the Objective Evaluation Form to be used by the CSB. The Prime Minister is pleased to observe that given the seniority, eminence and stature of the Individual members of the CSB, including its chairman, it would not have been problematic for the CSB to assess the general reputation/perception regarding officers under consideration, particularly after these officers had had a service experience of around twenty five years in full public view.

10. *Therefore, in view of above observation, the Prime Minister does not deem it prudent and justified to approve the CSB's recommendations forthwith in respect of officers, as to whom sufficient reasons exist for them to be considered as holding reputation of being corrupt or known to be dishonest or perceived to be so and desires that only officers with impeccable repute should be promoted in public interest.*
11. *The Prime Minister, therefore, whilst approved the CSB's recommendations regarding officers named in Para-8 above who clearly and unquestionably hold a public reputation and perception of being honest and not corrupt, is pleased to direct that, in respect of the following officers, the CSB may reconsider their cases in its next meeting and*

assess and evaluate them as to the attribute 'integrity/general reputation/perception' in a comprehensive and objective manner."

It was added that *"the post against which these officers were recommended by the CSB to be promoted to BPS-21 shall remain vacant until the matter is reconsidered by the CSB in its next meeting"*.

6. The learned Attorney General for Pakistan referred to Section 9(3) of the Civil Servants Act, 1973 to point out that the Central Selection Board is only a recommendatory body, whose recommendations are not binding upon the appointing Authority. He added that the Prime Minister had only referred the cases of the respondents to the Board for reconsideration with the direction that in case they are promoted, their seniority shall remain undisturbed. Referring to Sr. 192 of the Esta Code (Edition 2007 Vol.-I) the learned Attorney General submitted that the Prime Minister is by convention empowered to return the cases of promotion to the Board for further consideration in case he disagree with its recommendations. Referring to ordinary meaning of the word '*recommendation*' from Concise Oxford English Dictionary (11th Edition, Revised), Black's Law Dictionary (6th Edition) and Supreme Court on Words & Phrases (2nd Edition 2008) he submitted that the '*recommendations*' are merely suggestions or proposals, which may or may not be accepted. In this context, reliance was placed upon Islamic Republic of Pakistan v. Israrul Haq (**PLD 1981 SC 531**), Bahadur Shah, Divisional Engineer Development II, I.T.R. Islamabad and others v. Pakistan through Secretary, Ministry of Communication and others (**1988 SCMR 1769**), Faris Rahman Khan v. Federation of Pakistan through Secretary Establishment Division (**1995**

SCMR 579) and Lakhwinder Singh v. Union of India and others (2008)

7 Supreme Court Cases 648.

7. In response to our previous query regarding material on the basis of which the Prime Minister did not approve the recommendations of the Board, the learned Attorney General placed before us some reports from the Inter Services Intelligence (ISI) and the Investigation Bureau (IB), which statedly were taken into account by the Prime Minister in deciding to return the cases to the Board. He informed that such reports were not available to the Board while considering the cases of promotions of the respondents.

8. The learned Attorney General questioned the very maintainability of the Writ Petitions by the respondents before the High Court on the ground that the jurisdiction of the High Court was ousted by Article 212 of the Constitution in matters relating to the terms and conditions of services of the civil servants. Referring to Section 3(2) of the Service Tribunal Act, 1973 he contended that the matters relating to the terms and conditions of service of the civil servants fall within the exclusive jurisdiction of the Service Tribunal and that the exclusion from the jurisdiction of the Tribunal under the said provision matters relating to fitness or otherwise of a civil servant to be promoted or appointed to a particular post means that this question cannot be agitated ever before the Tribunal. That this exclusion does not confer jurisdiction on the High Courts to examine the question of fitness of a civil servant for the present purpose. He therefore contended that the question of fitness is not justiciable before any Court or Tribunal. To strengthen his arguments, the learned Attorney General relied upon Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui and others (**1991 SCMR 1129**), Muhammad Anis v. Abdul Haseeb and others (**PLD 1994 SC 539**), Muhammad Zahir Raja v. Federation of Pakistan (**2012 SCMR**

971) and Fazali Rehmani v. Chief Minister N.W.F.P. (**PLD 2008 SC 769**).

9. The learned Attorney General next submitted that promotion to a particular post is not a right and a civil servant can only be considered for promotion. Reliance was placed on Zafar Iqbal v. Director, Secondary Education, Multan Division (**2006 SCMR 1427**), Government of Pakistan through Establishment Division v. Hameed Akhtar Niazi (**PLD 2003 SC 110**), Saleem Ullah Khan v. Shahid Hamid (**2011 SCMR 788**) and Muhammad Azam v. Muhammad Tufail (**2011 SCMR 1871**).

10. Responding to the above contentions, Ms. Asma Jahangir, ASC representing the respondents, submitted that the Board was chaired by the Chairman Federal Public Service Commission and comprised of fourteen members, including Chief Secretaries of the Provinces, Federal Secretaries and in case of promotion in the Police Force, the concerned Inspector General of the Province; that the opinion or the recommendations of such an esteemed body are entitled to respect and though the appointing Authority may disagree with the opinion but the discretion of returning the names for reconsideration can be exercised only in exceptional circumstances and in a just, fair and reasonable manner. To substantiate her argument, the learned counsel relied on Habibullah Energy Limited v. WAPDA through Chairman and others (**PLD 2014 SC 47**), Syed Mahmood Akhtar Naqvi v. Federation of Pakistan (**PLD 2013 SC 195**) and Abu Bakar Siddique v. Collector of Customs, Lahore (**2006 SCMR 705**).

11. The learned counsel contended that the Board assigns marks in accordance with the proforma prepared for evaluation of the performance of the candidates, which includes five marks for general reputation and integrity. It was pointed out that the Prime Minister,

while returning the cases of the respondents to the Board, expressed a definite opinion on the integrity and reputation of the candidates and that too without making reference to any material on the basis of which such opinion was formed. The learned counsel next contended that the reports of the ISI and IB about the respondents were an afterthought and were perhaps never placed before the Prime Minister. To substantiate her arguments, the learned counsel made reference to the impugned judgment of the Lahore High Court in which it was mentioned that despite the Court's query the learned Deputy Attorney General was unable to produce before the Court any material forming the basis for the Prime Minister's opinion. The learned counsel then pointed out that the reports of the Intelligence Agencies were not even adverse about some of the respondents. With reference to the case law, it was argued that the reports of the Intelligence Agencies are not relevant and are to be excluded from consideration while forming opinion about the performance or integrity of a civil servant for the purpose of his appointment or promotion. Reference was made to Federation of Pakistan through Secretary M/o Law v. Sindh High Court Bar Association (PLD 2012 SC 1067), Government of the Punjab v. S. Tassadaq Hussain Bokhari (PLD 1986 SC 162) and R.S. Mittal v. Union of India 1995 Supp (2) SCC 230.

12. The learned counsel further submitted that the powers of the appointing Authority to disagree with the recommendations of the Board are not unfettered and are to be exercised in exceptional circumstance upon credible information and only then the recommendations of the members of the Board can be over turned. It was also pointed out that a number of respondents had earlier been recommended by the Board for promotion and were promoted by the then Prime Minister but their promotions were set aside by this Court

in the case of Orya Magbool Abbasi (*supra*) as a result their cases were reconsidered by the Board for the second time.

13. We first attend to the preliminary objections raised on behalf of learned Attorney General to the maintainability of the Writ Petitions filed before the High Court on the touchstone of Article 212 of the Constitution. Article 212(1)(a) is an enabling provisions empowering the legislature to establish Tribunals exercising exclusive jurisdiction in matters relating to the terms and conditions of service of persons who are or have been in the Service of Pakistan. It is in view of this Constitutional provision that the Federal Service Tribunal Act, 1973 was enacted. Clause (2) of Article 212 of the Constitution excludes the jurisdiction of all Courts in matters falling within the exclusive jurisdiction of Tribunal set up under Clause (1) of Article 212 of the Constitution. It reads:

“(2) Notwithstanding anything hereinbefore contained where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal; other than an appeal pending before the Supreme Court, shall abate on such establishment.” [Emphasis is ours]

Section 4 of the Federal Service Tribunal Act, 1973 provides for appeals to the Tribunal by a civil servant aggrieved of any order regarding terms and conditions of his service. Clause (b) of Sub-Section (1) of Section 4 of the Federal Service Tribunal Act expressly bars the Tribunal from entertaining appeal against the decision of a

departmental Authority determining the fitness or other wise of a person to be promoted to a higher grade. The Tribunal has thus no jurisdiction to examine whether or not a civil servant is fit for promotion to a higher grade. Under Clause (2) of Article 212 of the Constitution the jurisdiction of the Court is ousted only over matters falling within the exclusive jurisdiction of the Tribunal established under Clause (1) of Article 212. As the determination of fitness of a civil servant for promotion has been excluded from jurisdiction of the Tribunal, the ouster Clause (2) of Article 212 therefore does not extend to such matters. It has been consistently held by this Court that the Constitutional Jurisdiction of the High Court is not ousted in matters pertaining to appointment of a civil servant to a particular post or to be promoted to a higher grade. Reference may be made to Orya Maqbool Abbasi's case (*ibid*) by which earlier promotions of some of the respondents to BPS-21 by the competent Authority were set aside and the matter was sent to the Board for re-consideration. In that case reliance was placed on Article 212 of the Constitution to object to assumption of jurisdiction by this Court under Article 184(3) of the Constitution. It was overruled in Para 30 of the judgment, which reads:

*"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."*

The same question was raised in I.A. Sharwani and others v. Government of Pakistan (**1991 SCMR 1041**) to the exercise of jurisdiction under Article 184(3) of the Constitution and it was held:

“9. From the above-quoted Article 212 of the Constitution and section 4 of the Act, it is evident that the jurisdiction of the Courts is excluded only in respect of the cases in which the Service Tribunal under subsection (1) of section 4 has the jurisdiction. It must, therefore, follow that if the Service Tribunal does not have jurisdiction to adjudicate upon a particular type of grievance, the jurisdiction of the Court remains intact.”

14. The learned Attorney General had referred to the case of Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui and others (*supra*) to contend that fitness of a civil servant is not open for determination by either the Service Tribunal or the Court. The said judgment is a brief one where a distinction had been drawn between matter relating to eligibility and fitness and it was held that it is the latter and not the former, which has been taken out from the scope of jurisdiction of the Service Tribunal. While holding so, it was further held:

“Fitness introduces an element of subjective evaluation on the basis of objective criteria where substitution for an opinion of the competent authority is not possible by that of a Tribunal or a Court. It is in this background that the question of fitness or suitability for promotion has always been considered to be exclusively within the jurisdiction of the competent authority not shared by the Court or Tribunal exercising supervisory jurisdiction in respect of eligibility and qualification.”

The above principle, however, is not attracted to the present case. Neither of the Courts had embarked upon determining whether respondents were fit for promotion to the higher grade. The Courts had

examined the exercise of the power of the competent Authority in disagreeing with the recommendations of the Board and returning the same for reconsideration and to that extent the order of the Prime Minister was justiciable and thus the Writ Petitions filed by the respondents were maintainable.

15. The next question relates to the extent of the powers of the Prime Minister in disagreeing with the Board. Section 9(1) of the Civil Servants Act, 1973 read with Rule 2(a) and with Rule 6 of the Civil Servants (Appointments, Promotions and Seniority) Rules, 1973 provide that appointment to the post in BPS-20 and above shall be made by the Prime Minister. Sub-Section (3) of Section 9 of the Civil Servants Act provides:

“(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.”

Neither the Civil Servants Act nor the Civil Servants (Appointments, Promotions and Seniority) Rules provide that the recommendations of the Board shall be binding. However, guidance in the shape of conventions is provided at Sr.192(2)(b) of the Esta Code (Edition 2007 Vol.I), which reads:

“(b) Government have decided that there should be a convention whereby the advice of the Selection Board should be accepted quickly save in exceptional cases; and that if the Prime Minister or the Minister concerned disagrees with the view of the Selection Board, the case should be returned to the Board for further consideration, and a decision taken by the Prime Minister only after the further views of the Board have been placed before him.

The above instructions are neither a law nor a rule and are subservient in the provisions of the Civil Servants Act, 1973 specially with reference to powers of the 'competent authority' for giving final approval regarding appointment by promotion. These powers are unfettered and the competent authority may accept, reject or refer back the matter to be Central Selection Board for reconsideration. All these options are available to the competent authority whose powers are unfettered to choose any one of the options."

16. The powers of the Prime Minister to return recommendations to the Board for reconsideration have not been disputed by the learned counsel for the respondents. This has also been held by this Court in a number of judgments. Reference in this context may be made to the case of Islamic Republic of Pakistan v. Israrul Haq (supra) where Shafi-ur-Rehman, J. writing for the Court held:

"26. The objection of the respondent to the functioning of the Selection Board, and his own exclusion from subsequent selections, also does not take into account the rules, the instructions and the practice in the matter. Selection Boards and the Departmental Promotion Committees are the substitutes for and an alternative to Public Service Commission. Their recommendations are entitled to greatest respect and utmost consideration. Government orders with regard to the sanctity of such recommendations are to be found on page 126 of (Estab. Code) in the following words..."

Similar observations have been made in the case of Bahadur Shah, Divisional Engineer Development II, I.T.R. Islamabad and others v. Pakistan through Secretary, Ministry of Communication and others (supra) and Dr. Habibur Rahman v. The West Pakistan Public Service Commission, Lahore and 4 others (**PLD 1973 SC 144**) that the recommendations of

the Public Service Commission to appointing Authority are only advisory in nature.

In the case of Bahadur Shah, Divisional Engineer Development II, I.T.R. Islamabad and others v. Pakistan through Secretary, Ministry of Communication and others (supra) the Federal Public Service Commission (hereinafter to be referred to as "FPSC") had recommended a certain date for the regularization of the services of the respondents and the fixation of seniority from that date; that the President returned the recommendations of the FPSC as he was of the opinion that they were not justified on the grounds of equity and justice. The said order of the President was challenged before the Court. This Court held that the President being the appointing Authority was not bound by the recommendations of the FPSC:

'The functions of the Federal Public Service Commission are of an advisory nature since it has to advise the President on matters which may be referred to the Commission by him (vide Section 7(b) of the Federal Public Service Commission's Ordinance 1977). Furthermore, the advice tendered by the Commission is not binding on him as is clear from the terms of Section 8 which provides that "where the President does not accept the advice of the Commission, he shall inform the Commission accordingly".' (Emphasis is ours)

In the case of Dr. Habibur Rahman v. The West Pakistan Public Service Commission, Lahore and 4 others (ibid) the appellant had challenged before the High Court the recommendations sent by West Pakistan Public Service Commission to the Provincial Government in which the name of the appellant was not included. Expressing its opinion upon the matter the Court held that:

"Yet another aspect of the matter may also be noticed, viz. that the recommendations of the Public

Service Commission being only advisory in nature and it being open to the appointing authority under Article 188 of the Constitution not to accept its advice, it is difficult to see how a petition of this nature can be maintained. The grievance of the candidate would arise only when the Government has made an appointment in contravention of the rules; until that time the advice tendered by the Commission remains confidential and inchoate and cannot give rise to a grievance or a cause of action within the meaning of Article 98 of the former Constitution." (Emphasis is ours)

17. It is the case of the Federation that the Prime Minister had before him the reports from the Intelligence Agencies regarding the reputation of the respondents, which persuaded him to refer their cases back to the Board. This has been seriously disputed by the learned counsel representing the respondents. However, being a question of fact, it will not be possible for us to probe into the question as to whether the material was in fact placed before the Prime Minister while considering the said recommendations. The reports from the Intelligence Agencies were produced before us after we had directed the Attorney General to show the material which was placed before the Prime Minister when the recommendations of the Board came for his consideration. We would not like to make any comment upon the material even tentatively lest it in any way influences the decision of the Board during re-examination of the cases of the respondents.

18. The learned counsel representing the respondents had submitted with reference to case law, mentioned above, to contend that the reports of the Intelligence Agencies are not material for consideration by the Authority making selection for the purposes of promotion or appointment of a person to a particular post or for making assessment of the performance or integrity of a civil servant. We were

informed that the said reports of the Intelligence Agencies were not placed before the Board during the consideration of the respondents' cases. The factors or information to be taken into account while considering cases of promotion fall within the exclusive domain of the Board. Whether the reports of the Intelligence Agencies would be material and, if so, the weight that they deserve are matters within the power of the Board. Similarly, the competent Authority also in its discretion may take into consideration any information while considering the recommendations of the Board. This power, however, is to be exercised sparingly and as mentioned in the Esta Code in exceptional circumstances. The Prime Minister had not turned down the recommendations but had only returned them to the Board for further scrutiny with direction that the slots for promotion shall remain vacant till finalization of the cases of the respondents by the Board and that if promoted, they shall retain their original seniority. Having said that we are not unmindful of the Prime Minister's observations regarding the reputation of the respondents, which we must say have been expressed in strong and definite terms. The Board while reconsidering the cases of the respondents shall remain uninfluenced by such observations and shall make its own independent assessment.

19. We are not persuaded by the reasoning given by the High Courts in allowing the Writ Petitions of the respondents. The exercise of powers by the Prime Minister was neither arbitrary nor discriminatory. Some material was before him which dissuaded him from appointing the respondents awaiting further probe by the Board. The Islamabad High Court has interpreted the word "*shall*" as used in Section 9 of the Civil Servants Act, 1973 and Rule 7 of the Civil Servants (Appointment, promotion and Transfer) Rules, 1973 to grant a mandatory prescription to the recommendations made by the Board to the appointing Authority

which can only be returned in cases of glaring mistakes. From a plain reading of both the provisions of the law, it becomes clear that the appointing Authority has to make promotions in basic pay scales 20 and 21 only upon the recommendations of the Board. It does not provide in either of the provision that the recommendations of the Board are binding and consequently be returned by the appointing Authority only when the procedure followed by the Board suffers from any factual or legal flaw.

20. For the foregoing reasons, both the petitions are converted into appeal and allowed. The impugned judgments of the High Courts are set aside and the Writ Petitions filed by the respondents are dismissed. The Board shall re-examine the cases of the respondents on the basis of the criteria already set for determining the fitness or otherwise of the civil servants for promotion without, in any way, being influenced by the observations made in the Summary for the return of the recommendations to the Board. Since the promotion of the respondents have been pending for the last so many years, let the Board make its recommendations **within a period of 30 days** and the competent Authority shall finalize their cases **within 15 days** of the submissions of the recommendations.

Chief Justice

Judge

Judge

ANNOUNCED IN OPEN COURT AT ISLAMABAD.

On 22nd April, 2015.

Mudassar/[☆]

Chief Justice

“Approved for reporting.”