

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.1148/2020

Aijaz Ahmed Hashmi

Versus

Federation of Pakistan
through Secretary, Establishment Division, Islamabad, etc

Petitioners by : Mrs. Shireen Imran, Advocate.
Mr Muhammad Shoaib Shaheen, Advocate.
Mr. Mudassar Khalid Abbasi, Advocate .
Mr Saif Shah Rehman Bukhari, Advocate.
Mr Misbahullah Khan, Advocate.
Mr Amaad Nasir Kundi, Advocate.

Respondents by : Mr Saqlain Haider Awan, Assistant Attorney General.
Miss Anita Turab, Joint Secretary (CP-II),
Establishment Division.
Mr Muhammad Jahanzeb Joint Secretary (CP-I),
Establishment Division.
Mr Taimoor Ahmed, Section Officer (CP-VII),
Establishment Division.
Mr Abdul Qayyum Kakar, Section Officer (CP-6),
Establishment Division.
Mr Mahmood Khan Lakho, Section Officer (Lit-6),
Establishment Division.

Date of Hearing : **24-08-2020.**

ATHAR MINALLAH, C.J.- Through this consolidated judgment we will decide the petitions listed in "Annexure-A" attached hereto.

2. The petitioners are civil servants and they are presently serving as officers in BPS-18. They were eligible to be considered for promotion to the next higher grade i.e. BPS-19 and, therefore, their respective service records i.e. service dossiers and other documents were placed before the Departmental Selection Board (*hereinafter referred to as the "Board"*). The latter considered the cases of the petitioners in its meeting held in March, 2020. The petitioners were recommended to be superseded and subsequently the competent authority i.e. the Prime Minister endorsed the recommendations. The petitioners thus stood superseded. The petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*) challenging their supersession.

3. The learned counsels for the petitioners have been heard at length. They have mainly argued that; the proceedings of the Board and its recommendations were based on irrelevant considerations and its members failed to act in a fair and transparent manner; the evaluation was not made on the basis of an objective criteria; the fate of a civil servant cannot be left at the whims of the members of the Board nor the latter can award marks on the basis of personal knowledge; Schedule IV of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 (*hereinafter referred to as the 'Rules of 2019'*) gives unbridled powers to the members of the Board, which is in breach of the law laid down by the august Supreme Court; the Performance Evaluation Reports (*hereinafter referred to as*

'**PERS**') and the Training Evaluation Reports (*hereinafter referred to as 'TERS*') cannot be ignored nor could be made subservient to the evaluation of the members of the Board; the petitioners have been treated differently because other similarly placed officers were recommended for promotion.

4. The learned Assistant Attorney General has argued that; the Rules of 2019 were made by the competent authority keeping in view the principles and law enunciated by the august Supreme Court in the case titled '*Federation of Pakistan through Secretary Establishment Division and others v. Dr Muhammad Arif and others*' **[2017 SCMR 969]**; the petitioners have not alleged malafide on part of the members of the Board; no objection has been raised regarding approval of the recommendations by the competent authority; promotion is not a vested right; there is presumption of regularity relating to the proceedings of the Board; the evaluation made by the Board is not justiciable nor can it be substituted by a tribunal or a court.

5. The learned counsels for the petitioners and the learned Assistant Attorney General have been heard and the record perused with their able assistance.

6. This Court vide judgment, dated 29-09-2020, titled '*Sikandar Hayat Maken v. Federation of Pakistan, etc*' **[W.P. No.08/2020]** (*hereinafter referred to as "Sikandar Hayat Maken supra"*) has highlighted the principles and law enunciated by the

august Supreme Court in its various judgments. Promotion to a post is one of the modes prescribed for appointment. The posts are broadly divided into two categories; 'selection' and 'non selection' posts. The basis for promotion to posts relating to these two categories is distinct; 'seniority cum fitness' in the case of non selection posts while 'merit' is the criteria for a selection post. BS-19 to BS-21 are selection posts and, therefore, the petitioners were considered for promotion against a post in that category. It has been unequivocally declared in almost every policy formulated by the competent authority regarding promotion that though PERs are to be given due importance but they are not the sole criteria for promotion to a selection post. The competent authority may take several factors into consideration while formulating a policy for promotion, with the object of enhancing the efficiency and performance of the civil servants. The authority, competent to formulate the policy regarding promotion, is the best judge because the latter has a better understanding of the nature of the job and the requirements related to a particular post.

7. The question of promotion rests within the exclusive jurisdiction of the competent authority, which ordinarily is not amenable to interference by a court of law except when the latter has acted in violation of law, in excess of jurisdiction, without jurisdiction or in colorable exercise of powers conferred under the law. It is settled law that no vested right of a civil servant is involved in matters relating to promotion or the rules determining the eligibility or fitness. A High Court has no jurisdiction to strike down such rules

through issuance of a writ under Article 199 of the Constitution. Determination of eligibility and policy making decisions fall within the exclusive domain and power of the Government and the same cannot be interfered with. A civil servant cannot claim a vested right to be promoted or in relation to the terms and conditions for promotion to a higher post. "Fitness" involves "subjective evaluation on the basis of "objective criteria". The onerous task of carrying out 'subjective evaluation' has been entrusted to the Board, which is subject to approval after careful scrutiny by the competent authority i.e. the Prime Minister.

8. Determination of "fitness" by the competent forum or authority entails taking numerous factors into consideration and the opinion formed or subjective evaluation made by the Board cannot be substituted by a tribunal or a court for that of its own. The question of fitness or suitability for promotion is, therefore, within the exclusive jurisdiction of the competent authority and it cannot be interfered with by a court or tribunal. The edifice is based on the foundational principle that promotion is not a vested right. All that a civil servant can claim is to be considered for promotion when cases of similarly placed eligible civil servants are taken up. It is the sole prerogative of the Government and the competent authority to prescribe the qualifications and other conditions relating to the eligibility criteria. Framing of rules, regulations or policies in this regard thus becomes the sole prerogative of the competent authority and the latter may at any time amend, alter or change the prescribed qualifications, conditions and eligibility criteria for promotion. A civil

servant has no vested right nor can the exercise of the prerogative to change, amend or alter the qualifications, conditions and eligibility criteria be interfered with except when exceptional circumstances exist e.g. they are clearly person specific or malafide is apparent and floats on the surface of record. The precedent law has been discussed in the judgment titled *Sikandar Hayat Maken* supra.

9. The composition raises presumption of regularity, reliability, fairness and good faith in relation to the entire exercise undertaken by the Board and the subjective evaluation made on the basis of an objective criteria. The subjective evaluation by the Board is not justiciable nor the opinion formed regarding fitness or suitability can be substituted by a court or tribunal for its own. In the light of the precedent law, the Board can form its opinion on the basis of the service dossier and other material or information placed before it, as has been held in the case titled '*Secretary Establishment Division, Govt. of Pakistan v. Aftab Ahmed Manika and others*' [**2015 SCMR 1006**]. The Board and the competent authority are not barred from considering credible information, including reports of the agencies controlled by the Government and any other relevant material. This Court has elaborately highlighted the principles and law relating to promotion of a civil servant in the judgment titled '*Sikandar Hayat Maken*', supra, which was announced while the petitions in hand were pending. We are afraid that interference is not warranted because we are satisfied that the petitioners have not been able to rebut the presumption of regularity and fairness attached with the proceedings of the Board. Except for evasive and

vague assertions regarding malafide on the part of the members of the Board nothing has been placed on record to establish bad faith. It is not the case of the petitioners that the competent authority i.e. the Prime Minister was complacent and had acted in bad faith, with malafide. The precedent law cited at the Bar is distinguishable.

10. We have no hesitation in declaring that the presumption of regularity and fairness relating to the proceedings of the Board and the acceptance of its recommendations by the competent authority i.e. the Prime Minister could not be rebutted. The Board has recorded reasons for forming subjective evaluation in each case. They cannot be subjected to judicial review. This Court while exercising jurisdiction under Article 199 of the Constitution, cannot assume the role of an appellate court, nor can the subjective evaluation and opinions formed by the Board be substituted. The disclosures were sufficient to inform the petitioners regarding the material considered for the subjective evaluation and forming of opinions. No case is made out on the touchstone of the principles and law highlighted in the judgment of this Court titled '*Sikandar Hayat Maken*', supra requiring interference while exercising jurisdiction under Article 199 of the Constitution.

11. In the light of the above, we declare that the Rules of 2019 have been validly framed. The Board's proceedings and its affirmation by the competent authority i.e. the Prime Minister were impartial, unbiased, fair and a result of careful consideration. The

petitioners have not been able to rebut the presumption of regularity and fairness attached with the proceedings and actions of the Board or the competent authority. The petitions are, therefore, without merit and accordingly **dismissed.**

(LUBNA SALEEM PERVEZ)
JUDGE

(CHIEF JUSTICE)

Announced in the open Court on **24-11-2020.**

JUDGE

(CHIEF JUSTICE)

Luqman Khan/*