

Form No.: HCJD/C
JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 3091 of 2019

Liaqat Ali Khan

VERSUS

**Federation of Pakistan through Secretary,
Establishment Division and two others**

**For the Petitioner: Mr. Muhammad Umair
Baloch, Advocate.**

**For Respondents: Raja Khalid Mehmood
Khan, Deputy Attorney
General.
Ms. Anita Turab, Joint
Secretary (CP-II),
Establishment Division.
Mr. Abdul Qayyum
Kakar, Section Officer
(CP-VI), Establishment
Division.
Mr. Mahmood Khan
Lakho, Section Officer
(Lit-VI), Establishment
Division.**

Writ Petition No. 511 of 2019

Shoaib Ahmad Sethi

VERSUS

**Federation of Pakistan through Secretary,
Establishment Division and others**

**For the Petitioner: Ms. Neeli Khan,
Advocate and Mr.
Muhammad Umair
Baloch, Advocate.**

For Respondents:

Raja Khalid Mehmood Khan, Deputy Attorney General.

Mr. Haroon Rashid, Deputy Director, FPSC.

Mr. Mehmood Ahmed, Deputy Director, FPSC.

Mr. Faiq Ahmad, Assistant Director, FPSC.

Mr. Mahmood Khan Lakho, Section Officer (Lit-VI), Establishment Division.

Date of Decision:

21.11.2019.

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AAMER FAROOQ J. This judgement shall decide the instant petition as well as Writ Petition No.511 of 2019 as common questions of law and facts are involved.

2. The petitioner, in the instant petition, is aggrieved of Order dated 05.08.2019, whereby the petitioner was intimated that he was considered for promotion, however, was deferred due to incomplete Performance Evaluation Reports for the year 2017 and 2018. The petitioner is currently serving in BS-19 as Director, Federal Public Service Commission. He completed 23 years of government service including five years in BS-17, fifteen years in BS-18 and three and a half years in BS-19.

3. The petitioner in Writ Petition No.511/2019, is serving in BS-20 and was considered for promotion but was intimated that his promotion has been deferred.

4. Learned counsel for the petitioner in Writ Petition No.3091/2019, submitted that the sole reason in the impugned letter is that the Performance Evaluation Reports of the petitioner are incomplete for the year 2017 and 2018. It was submitted that the petitioner is eligible for promotion to BS-20. In this behalf it was contended that for promotion to BS-20, 17 years of service in BS-17 or 12 years service in BS-18 and above or 05 years service in BS-19, in case of initial recruitment in BS-19, is required.

5. It was submitted that the petitioner is civil servant having 23 years of service hence is eligible for promotion in BS-20. It was further submitted that non-availability of the PER is not the fault of the petitioner rather is responsibility of the employer.

6. Learned counsel for the petitioner in Writ Petition No.511/2019, adopted the arguments of the learned counsel for the petitioner and contended that the non-availability of the PERs is not the fault of the petitioner.

7. Learned Deputy Attorney General submitted that both the petitioners were deferred due to incomplete PERs; it was further contended that providing of the PERs is not the obligation of the employer rather the employee has to ensure its due completion. In case of the petitioner in Writ Petition No.3091/2019, learned Deputy Attorney General contended that he also does not have the requisite service. When confronted as to whether that is the ground in the impugned

letter learned Deputy Attorney General frankly submitted that such is not a case, however, contended that this Court can take judicial notice of the same. Reliance was placed on ***Trustee of the Port of Karachi versus Gujranwala Steel Industries and another (1990 CLC 197), Abdul Majeed versus Senior Vice President, UBL, Karachi and others [2002 PLC (C.S.) 1438], Bashir Hussain Bokhari versus Secretary, Ministry of Housing and Works, Islamabad (1994 SCMR 420).***

5. Arguments advanced by learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

6. In both petitions, the petitioners are civil servants and were not promoted due to non-availability of their Performance Evaluation Reports. The contention of the learned Deputy Attorney General was it is the obligation of the employee/civil servant to provide Performance Evaluation Reports or at least he is jointly responsible with the employer, is not tenable. Reliance is placed on ***Pervaiz Akhtar versus Federal Government [2014 PLC (C.S.) 326]*** where the Honourable Lahore High Court observed that non-availability of record for promotion including Annual Confidential Report by the concerned department was not the fault of the civil servant for which he could be made to suffer. Similarly, the Honourable Lahore High Court in case reported as ***Mirza Lutuf Muhammad Khan versus***

Government of Pakistan [2006 PLC (C.S.) 85] Honourable Lahore High Court though did not interfere in the matter but directed the respondent to complete the PER of civil servants. In ***Secretary, Revenue Division and others versus Muhammad Saleem (2008 SCMR 948)*** the Honourable Supreme Court of Pakistan held that law provided that it is the duty of the respondent department to prepare the Performance Evaluation Reports of officer to keep and maintain the same so that it could be used for the prescribed purposes at the time of promotion of the concerned official. It was further observed that as the department has neglected in its duty to complete all the PERs of the civil servants, therefore, he had no alternate remedy except to approach the High Court for relief.

7. In view of the above judgements the respondent department in both the petitions neglected to complete the Performance Evaluation Reports of civil servants/petitioners and it is surprising to note that despite the said fact their cases had been sent to Central Selection Board for promotion. The justification rendered by the learned Deputy Attorney General during the course of arguments for such course of action was that since the department has to send a panel of the names of the civil servants; petitioners names were added. The referred argument is without any substance inasmuch as the purpose of sending a panel means that names of eligible persons should be sent. The names of the

petitioners in the first instance should not have been sent if their PERs were not complete; that it was due to the fault of the respondents that the Performance Evaluation Reports were not complete and those who are responsible of the same should have been taken to task. For a civil servant promotion is nothing less than a prize for the entire life devoted to service; the monetary gains coming with the promotion are collateral benefits but the honour and pride is of utmost importance.

8. In case of Writ Petition No.3091/2019, learned Deputy Attorney General pleaded another ground for not recommending the petitioner as he did not have the requisite length of service. The said aspect of the case is not made out from any document; even the impugned Order dated 05.08.2019, does not refer this as a ground for not recommending the petitioner for promotion though the learned Deputy Attorney General submitted that the Court can take judicial notice of the said fact, however, this submission is spurned inasmuch as this is not the case which the petitioner has pleaded nor is borne out from the available record. If the petitioner did not fulfil the requisite length of service his case again ought not have been sent to Central Selection Board for consideration. The department acting in such a callous manner plays with the careers of civil servants.

9. In view of the above the instant petitions are disposed of with direction to the respondents to complete the Performance Evaluation Reports of the petitioners forthwith and place their names in the next meeting of Central Selection Board if the petitioners are otherwise eligible for promotion. Before parting, it is observed that in case any civil servant is not eligible, his name should not be sent to Central Selection Board in Order to fulfill the requirement of the names to be sent as panel for promotion because the purpose of the law is that all eligible candidates be sent as panel to be considered and out of the same the best is promoted.

(AAMER FAROOQ)
JUDGE