

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.2184 of 2021  
Dr. Noor Muhammad Shah

**Versus**

Ministry of National Health Services, Regulations & Coordination and  
others

<b>Dates of Hearing:</b>	14.10.2021 & 15.10.2021
<b>Petitioner by:</b>	Mr. Ghulam Fareed Chaudhry Advocate
<b>Respondents by:</b>	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General Mr. Muhammad Arfan, Section Officer (Litigation) and Mr. Abdul Rehman Gohar, Section Officer (Career Planning-VIII), Establishment Division Mr. Majid Khan, Assistant Director (Litigation and Law) Ministry of NHR&C

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Dr. Noor Muhammad Shah, who is presently serving as Drug Controller (BS-19) in the Drug Regulatory Authority of Pakistan ("D.R.A.P."), impugns the memorandum dated 26.05.2021 issued by the Ministry of National Health Services, Regulations & Coordination ("**Ministry of NHR&C**") which shows that he was considered for promotion from BS-19 to BS-20 in the meetings of the Central Selection Board ("**C.S.B.**") held between 04.01.2021 to 07.01.2021 but his promotion was deferred on the ground that he *"had managed to get written his PERs for the year 2017 and 2018 from irrelevant officers."* Furthermore, the C.S.B. recommended that an inquiry be conducted if it is determined that the petitioner had got his Performance Evaluation Reports ("**PERs**") written from irrelevant officers. The petitioner also seeks a direction to the C.S.B to reconsider him for promotion in its next meeting.

2. Learned counsel for the petitioner submitted that there was no BS-20 officer in the D.R.A.P. who could have written the petitioner's PERs; that vide letter dated 13.11.2020, the Ministry of NHR&C had asked the Establishment Division to advise as to whether the Director (Costing & Pricing), D.R.A.P., who was the only BS-20 officer in D.R.A.P. could initiate the PERs of BS-19 officers working in D.R.A.P.,

and whether a BS-20 officer in the controlling Ministry could initiate the PERs; that vide Office Memorandum (“O.M.”) dated 30.12.2020, the Establishment Division informed the Ministry of NHR&C that a certificate in lieu of the PERs could be issued under paragraph 2.43 of the Guide to Performance Evaluation (Edition 2004) for the relevant periods; that a certificate in *lieu* of the petitioner’s PERs for the years 2017, 2018 and 2019 was indeed issued by the Ministry of NHR&C; that in the working paper dated 31.12.2020 submitted by the Ministry of NHR&C clearly mentions the fact that a certificate in *lieu* of the petitioner’s PERs had been issued for the years 2017-19 and that the petitioner’s case was complete in all aspects; and that in the presence of the said certificate, it was irrational rather unlawful for the C.S.B. to have observed that the petitioner had managed to get written his PERs from irrelevant officers. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned Deputy Attorney-General assisted by Muhammad Arfan, Section Officer (Litigation) and Abdul Rehman Gohar, Section Officer, Career Planning-VIII, Establishment Division, submitted that writ petition No.2238/2020 filed by the petitioner had been disposed of by this Court vide order dated 29.10.2020 in terms of the statement made by the learned Assistant Attorney-General and the representative of the Establishment Division that the petitioner’s case would be placed before the C.S.B. after the relevant PERs for the years 2017 and 2018 are submitted; that vide letter dated 03.01.2021, the Establishment Division made a request for the petitioner’s case for promotion to be forwarded in accordance with the said order passed by this Court; that in the meeting of the C.S.B. held in January 2021, the departmental representative informed the C.S.B. that the petitioner *“had managed to get written his PERs for the years 2017 and 2018 from irrelevant officer;”* that the C.S.B. could not assess the petitioner’s performance in the absence of the PERs from the relevant reporting / countersigning officers; that the C.S.B. determined that the petitioner’s performance could not be assessed in the absence of his PERs; that furthermore, the Board recommended that an inquiry

be conducted if it was determined that the petitioner had got his PERs written from *“irrelevant officers;”* and that the C.S.B. recommended that the petitioner’s consideration for promotion be deferred until his PERs for 2021 become available in line with Rule 7(d) (performance watch) and Rule 7(k) (inquiry of previous PERs) of the Civil Servants Promotion (BS-18 to BS-21) Rules, 2019 (**“the 2019 Rules”**). Learned Deputy Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner and the learned Deputy Attorney-General and have perused the record with their able assistance.

5. The record shows that in the year 2002, the petitioner joined the erstwhile Ministry of Health as Federal Inspector of Drug (BS-18). He was promoted to the post of Chairman Quality Control (BS-19) in the year 2009.

6. The petitioner is a civil servant and opted to continue serving as a civil servant after the establishment of D.R.A.P. Presently, the petitioner has been given the charge of the post of Drug Controller in his own pay scale (BS-19).

7. It is not disputed that the petitioner satisfies the conditions of eligibility prescribed in the notification dated 19.09.1996 (SRO 903(I)/96) to be considered for promotion to the post of Drug Controller (BS-20). The C.S.B., in its meetings between 27.01.2020 and 29.01.2020, considered the petitioner for promotion to the post of Drug Controller (BS-20). The C.S.B. was informed that the petitioner’s PERs for the years 2017 and 2018 were written by officers who were not his immediate supervisors. Since the petitioner’s performance could not be assessed on the basis of the PERs submitted along with his dossier, the C.S.B. required the petitioner’s PERs to be initiated from the relevant reporting / countersigning officers. However, the C.S.B. recommended that the petitioner’s consideration for promotion be deferred under Rule 7(k) of the 2019 Rules. The said recommendations were approved under Rule 5(1) of the said Rules.

8. Since the petitioner was aggrieved by the decision to defer his consideration for promotion, he filed writ petition No.2238/2020 before this Court. On 29.10.2020, the learned Assistant Attorney-

General appeared before this Court along with Mr. Abdul Rehman Gohar, Section Officer, Career Planning-VIII, Establishment Division, and stated that the petitioner's case would be placed before the C.S.B. after his PERs for years 2017 and 2018 are submitted. The said writ petition was disposed of in terms of the said statement.

9. Vide letter dated 03.01.2021, the Establishment Division requested the Ministry of NHSR&C to forward the petitioner's case for placement before the C.S.B. so that he could be considered for promotion. The petitioner was again considered for promotion by the C.S.B. in its meeting held in January 2021. In this meeting, the C.S.B. was informed by a "departmental representative" that the petitioner *"had managed to get written his PERs for the years 2017 and 2018 from irrelevant officers."* The C.S.B. once again took the view that the petitioner's performance could not be assessed in the absence of PERs from the relevant reporting and countersigning officers. It recommended that an inquiry be conducted if it is determined that the petitioner had got his PERs written from irrelevant officers. Furthermore, the C.S.B. recommended that the petitioner's consideration for promotion be deferred until his PERs for the year 2021 are available. The recommendation for deferment was stated to be in accordance with Rule 7(d) and (k) of the 2019 Rules. Vide impugned memorandum dated 26.05.2021, the Ministry of NHSR&C informed the petitioner that his consideration for promotion had been recommended to be deferred by the C.S.B. until his PERs for the year 2021 are available.

10. The petitioner's case is that in D.R.A.P., there is presently no officer immediately superior to him who could initiate or countersign his PERs. Paragraph 2.51(iv) of the Guide to Performance Evaluation (Edition 2004) provides that when no officer is available to write and countersign the report, the Administrative Division may make a reference to the Establishment Division as to how the situation can be met. Furthermore, it provides that it is to be ensured as far as practical that the report does not remain unwritten.

11. Vide office memorandum dated 13.11.2020 on the subject of *"PERs of the BS-18/19 officers (civil servants) working in D.R.A.P.,"*

the Ministry of NHR&C *inter alia* informed the Establishment Division that there was no BS-20 officer, except Director (Costing and Pricing) in D.R.A.P., who could initiate PERs of the BS-19 officers working in D.R.A.P. Furthermore, the Establishment Division was requested to advise whether the Director (Costing and Pricing) or a BS-20 officer of the controlling Ministry could initiate the PERs for the years 2018-2019 of the BS-19 officers (civil servants) working in D.R.A.P.

12. In response to the said O.M. dated 13.11.2020, the Establishment Division, vide O.M. dated 30.12.2020, informed the Ministry of NHR&C that after examining the case in light of the relevant rules, the view of the Establishment Division was that the Ministry of NHR&C may issue a certificate in *lieu* of PERs for the periods in question in terms of paragraph 2.43 of the Guide to Performance Evaluation (Edition 2004).

13. On the basis of the advice from the Establishment Division, the Ministry of NHR&C issued a certificate in *lieu* of the petitioner's PERS for the years 2017 to 2019. This certificate reads thus:-

*"It is certified that Dr. Noor Muhammad Shah, a BS-19 officer (Civil Servant) in Drugs Regulatory Authority of Pakistan (DRAP) served as Additional Director from 01.01.2017 to 31.12.2019.*

*2. The reporting officers / countersigning officers of the above named officer were BS-18/19 officers and also on look after charges during the above stated period. As such, the matter was referred to Establishment Division for advice in the matter. That Division vide their O.M. No.F.2/6/2019-Ex-Cadre/DRAP/PD-III/CP-XI dated 30.12.2020 has advised that the Ministry of NHR&C may issue "Certificate in lieu of PERs" for the period in terms of Para 2.43 of AGPE-2004.*

*3. Accordingly, exemption certificate has been issued to the officer concerned for the period from 01.01.2017 to 31.12.2019."*

14. On 31.12.2020, the Ministry of NHR&C forwarded the promotion proposal of a panel of three BS-19 officers in D.R.A.P., including the petitioner, to be considered by the C.S.B. for promotion against the two vacant posts of Drugs Controller (BS-20) in D.R.A.P. The working paper prepared by the Ministry of NHR&C on 31.12.2020 for the C.S.B. with respect to the three BS-19 officers showed that the petitioner's case was *"complete in all aspects,"* and that up to 2016, his PERs are complete and quantified whereas for the period 2017-19, a certificate had been issued.

15. Now, the primary reason why the C.S.B. recommended the petitioner's consideration for promotion to be deferred was that his PERs for the years 2017 and 2018 were written by *"irrelevant officers,"* and therefore his performance could not be assessed in the absence of the PERs from the relevant reporting and countersigning officers. Apparently, a departmental representative had informed the C.S.B. that the petitioner *"had managed to get written his PERs for the years 2017 and 2018 from irrelevant officers."* Assuming that the petitioner's PERs for the said years sent along with his dossier to the C.S.B. were from officers who were not his immediate supervisors, the fault lay with the Ministry of NHSR&C in sending such PERs along with the petitioner's dossier. Rule 24 of the 2019 Rules provides *inter alia* that while forwarding proposals for consideration for the C.S.B., the Departmental Selection Board ("D.S.B."), Departmental Promotion Committee ("D.P.C.") and the administrative Ministries, Divisions and Departments shall follow the guidelines set out in Schedule-VI to the said Rules. Paragraph (2)(iii) of Schedule-VI titled *"Guidelines for Ministries, Divisions, Departments and Responsibilities of Departmental Representatives"* obligate the administrative Ministries, Divisions and Departments to ensure that documents related to proposals for promotion are prepared with utmost care so that the information submitted to the C.S.B., D.S.B. and D.P.C. are complete and accurate in all aspects and to ensure that PER dossiers are complete. The obligation to submit complete PER dossiers would include the duty to ensure that PERs of civil servants under consideration for promotion by the C.S.B. are from the relevant officers.

16. In the case of Secretary, Revenue Division Vs. Muhammad Saleem (2008 SCMR 948) it has been held *inter alia* that *"[t]he law has provided it is the duty of the department to get prepared the PERs of an officer, to keep it and to maintain it, so that the same could be used for the other prescribed purposes and at the time of promotion of an official."*

17. In the case reported as 2013 SCMR 1150, (In the matter of: REGARDING PUTTING OF TWO GOVERNMENT OFFICERS NAMELY

HASAN WASEEM AFZAL AND HIS WIFE FARKHANDA WASEEM AFZAL AS OSD) two BPS-21 officers were kept as Officers on Special Duty for long periods due to which they were not able to earn PERs. This became the sole ground for their promotion to be deferred. The Hon'ble Supreme Court deprecated this in strong terms and directed the Establishment Division to convene a meeting to consider them for promotion. In the said report it was held as follows:-

*“7. Today when we took up this case for hearing, it was again noted that Mr. Hassan Waseem Afzal had been posted OSD ever since 2008 and Mrs. Farkhanda Waseem Afzal. Their cases were forwarded for promotion but were deferred on the sole ground that they could not earn any PERs because of their being posted as OSDs. When we inquired as to what called for such treatment, no answer much less satisfactorily has been given by the persons at the other end. In fact the two officers of the Ministry, present in Court have accepted that the treatment given to the applicants is not in conformity with the accepted norms. We ourselves also scanned the record but could not find anything which could call for such treatment. Had their past performance or integrity been below the mark, they could have been treated as such but there is nothing of that sort. We were rather amazed and even appalled to see them treated in this way. Yes, as per minutes of meeting dated 2-8-2011, 25-11-2011 and 12-4-2012, they could not earn any PERs one way or the other because of their posting but this could not be construed to their detriment under any canons of law and propriety. The more so when their past record had been outstanding throughout. They initiated a contest in the High Court, but called it off when the respondents on the other end assured the High Court that they would be considered for promotion. But nothing in black and white was done towards what was assured, in spite of the fact that this order was also upheld in intra court appeal. We have been told that Mr. Hassan Waseem Afzal is going to retire in a day or so while his spouse is going to retire in a year in grade 21. Their promotion to the next higher, scale has been denied for want of PERs and PERs have not been complied on account of their posting as OSDs which is not an act of their own doing. "Let them suffer" may be a command of expediency but we cannot approve it when, "give them their due" is a command of justice, which prima facie appears to have been denied to them out of indignation and ill will of the high ups. It appears to be a typical case of political victimization, where even a moment's delay could cause irreparable harm and immeasurable losses to the officers whose merit lacks intercessional props and pillars. We have, therefore, no alternative but to direct the Secretary Establishment to convene a meeting of HPSB DSC for passing an appropriate order after considering the aforesaid officers for promotion to the next higher scale but before the sunset today.”*  
(Emphasis added)

18. In the case of Liaquat Ali Khan Vs. Federation of Pakistan (2020 PLC (C.S.) 826), the petitioner's consideration for promotion was deferred by the CSB on the ground that his PERs were not

complete. This Court disposed of the writ petition filed by the petitioner/civil servant against the deferment of his promotion with direction to the respondents to forthwith complete his Performance Evaluation Reports and place his name in the next meeting of CSB if the petitioner was otherwise eligible for promotion. In the said report, this Court after referring to several judgments of the Superior Courts, held as follows:-

*“In view of the above judgments 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.”*

19. The reasons given by the C.S.B. for recommending the petitioner's consideration for promotion to be deferred do not show that the C.S.B. had been made aware that it was none other than the Establishment Division which had advised the Ministry of NHR&C that in *lieu* of the petitioner's PERs for the years 2017 and 2018, a certificate under the Guide to Performance Evaluation (Edition 2004) could be issued. Reference to this certificate was clearly made in the working paper dated 31.12.2020 prepared by the Ministry of NHR&C for the C.S.B. The certificate issued by the Ministry of NHR&C in *lieu* of the petitioner's PERs for the years 2017 to 2019 finds no mention in the reasons given by the C.S.B. for deferring his consideration for promotion as Drug Controller (BS-20). The departmental representative clearly misled the Members of the C.S.B. by not drawing their attention to the Ministry NHR&C's O.M. dated 13.11.2020, the Establishment Division's advice dated 30.12.2020,



and the certificate issued by the Ministry of NHSR&C in *lieu* of the petitioner's PERs for the years 2017 to 2019.

20. The learned Deputy Attorney-General on instructions of the officers from the Establishment Division present in the Court submitted that the petitioner had been considered for promotion pursuant to the order dated 29.10.2020 passed in writ petition No.2238/2020 which was to the effect that his case would be placed before the C.S.B. after the PERs for the years 2017 and 2018 were submitted, and therefore, the C.S.B. was correct in deferring the petitioner's consideration for promotion in the absence of such PERs from the relevant officers. The petitioner's consideration for promotion in the meeting of the C.S.B. held in January 2021 may well have been pursuant to the order dated 29.10.2020 passed by this Court but it ought to be borne in mind that it was after the said order was passed that the Ministry of NHSR&C vide O.M. dated 13.11.2020 had sought an advice from the Establishment Division, and the said Division had, vide O.M. dated 30.12.2020, expressed the views that a certificate in *lieu* of the PERs for the said periods would be submitted under the Guide to Performance Evaluation (Edition 2004). It may be mentioned once again that a certificate in *lieu* of the petitioner's PERs for the years 2017 to 2019 had indeed been issued by the Ministry of NHSR&C before the meeting of the C.S.B. In the face of this development, it was not just irrational but arbitrary for the C.S.B. to have deferred the petitioner's consideration for promotion on the ground that he did not have the PERs for the years 2017 to 2019. Therefore, the absence of the petitioner's PERs for the years 2017 and 2018 (in *lieu* whereof a certificate had been issued on the basis of the advice from the Establishment Division) was not a valid or sustainable ground for the C.S.B. to recommend the deferment of the petitioner's consideration.

21. The C.S.B. in its reasons for recommending the deferment of the petitioner relied on Rule 7(d) of the 2019 Rules, which provides that a civil servant's consideration for promotion shall be recommended for deferment if the C.S.B. wants to further watch performance of the officer for any reason to be recorded in writing.

Other than the reason that the petitioner did not have the PERs for the years 2017 and 2018 from the relevant officers, there is no other reason ascribed by the C.S.B. for deferring the petitioner's consideration for promotion. I have already held that the ground of the absence of the petitioner's PERs for the years 2017 and 2018 for deferring his consideration for promotion is not sustainable.

22. The C.S.B. has also referred to Rule 7(k) of the 2019 Rules for deferring the petitioner's consideration for promotion. This Rule permits the C.S.B. to defer a civil servant's consideration for promotion if there is any other reason to be recorded in writing. Another reason given by the C.S.B. for deferring the petitioner's consideration for promotion was that an inquiry with respect to his previous PERs was to be conducted. I have observed hereinabove that if the petitioner's PERs submitted by the Ministry of NHR&C to the Establishment Division for consideration by the C.S.B. were not from the relevant officers, the fault lay with the Ministry of NHR&C and not the petitioner. Time and again this Court asked the learned Deputy Attorney-General and the officers from the Establishment Division present in the Court as to whether there was any officer senior to the petitioner in D.R.A.P. who could initiate and countersign the petitioner's PERs. The officer submitted that the Joint Secretary in the Ministry of NHR&C could have been the petitioner's reporting officer whereas the Secretary could have been his countersigning officer. With due respect to the officer, this submission runs contrary to the advice given by the Establishment Division in its O.M. dated 30.12.2020 to the Ministry of NHR&C. The Ministry of NHR&C, in its O.M. dated 13.11.2020, had specifically asked whether an officer in the controlling Ministry, i.e. Ministry of NHR&C could initiate the petitioner's PERs. The Establishment Division's advice to the Ministry of NHR&C through O.M. dated 30.12.2020 was that a certificate in *lieu* of the PERs could be issued under the Guide to Performance Evaluation (Edition 2004).

23. In view of the above, the instant writ petition is allowed and the impugned memorandum dated 26.05.2021 issued by the Ministry of NHR&C on the basis of the recommendations of the C.S.B. is set-

aside. The respondents are directed to consider the petitioner for promotion against the vacant post of Drug Controller (BS-20) in the very next meeting of the C.S.B. which shall take into consideration the certificate issued to the petitioner by the Ministry of NHR&C in lieu of his PERs for the years 2017 to 2019 on the advice of the Establishment Division contained in O.M. dated 30.12.2020.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 26/10/2021**

**(JUDGE)**

**APPROVED FOR REPORTING**

*Qamar Khan\**