

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2874 of 2019

Zahid Rashid

Versus

Federation of Pakistan through Secretary to the Prime Minister etc.

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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10.08.2020 Mr. Taimoor Aslam Khan, Advocate for the petitioner,
Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General,
Mr. Mahmood Khan Lakho, Section Officer, Establishment Division,
Mr. Muhammad Abdullah, Assistant Director, F.P.S.C.

Through the instant writ petition, the petitioner, Zahid Rashid, who is presently serving as a BS-19 officer in the Audit and Accounts Group, impugns the order dated 31.07.2019 whereby the reasons for his supersession were communicated to him. The Central Selection Board (“C.S.B.”) had considered the petitioner for promotion to BS-20 in its meetings held between 27.05.2019 and 29.05.2019, and had recommended his supersession.

2. The record shows that the petitioner is a civil servant having joined the Pakistan Audit and Accounts Group on 31.10.1992. Over the years, he was promoted to BS-19. On 13.02.2014, the petitioner was considered by the C.S.B. for promotion to BS-20. The petitioner’s promotion was deferred by the C.S.B. Aggrieved by the said decision, the petitioner filed writ petition No.29098/2016 before the Hon’ble Lahore High Court. Vide order dated 03.02.2017, the said writ petition was allowed and the petitioner’s deferment was set-aside. Furthermore, it was

directed that the petitioner's case be placed before the C.S.B. by convening a special meeting.

3. The C.S.B., in its meetings held between 05.05.2015 and 07.05.2015, considered the petitioner for promotion to BS-20 but decided to supersede him. Aggrieved by the said decision, the petitioner filed writ petition No.1429/2015 before this Court which was allowed vide judgment dated 27.07.2015 and the decision of the C.S.B. to supersede the petitioner was set-aside. The said judgment was upheld up to the Hon'ble Supreme Court of Pakistan vide judgment reported as 2017 SCMR 969.

4. Disciplinary proceedings had been initiated against the petitioner by the Auditor General's Department. The petitioner had assailed the initiation of disciplinary proceedings in appeal No.1488(R)CS/2016 before the Federal Service Tribunal, Islamabad ("F.S.T."). The petitioner had also challenged the 'D' grading given to him in the integrity column of his Performance Evaluation Report ("PER").

5. Vide judgment dated 04.11.2016, the F.S.T. held that the 'D' grading given to the petitioner was not sustainable. The F.S.T. did not interfere with the initiation of disciplinary proceedings against the petitioner. However, in the said judgment it was observed that the petitioner's case for promotion to the next scale needs to be sent to the upcoming meeting of the C.S.B. for consideration on merits in its upcoming meeting.

6. Subsequently, the petitioner filed a review petition before the F.S.T. seeking a direction to the C.S.B. to consider the petitioner's case for promotion on merits despite the pendency of the disciplinary proceedings. Vide order dated 29.11.2016, the said review petition was disposed

of with the observation that *“pendency of an inquiry against a civil servant cannot come in the way of his promotion.”*

7. The petitioner was again considered for promotion to BS-20 by the C.S.B. in its meetings held between 13.12.2016 to 16.12.2016. This time the C.S.B. decided to supersede the petitioner. Aggrieved by his supersession, the petitioner filed writ petition No.1918/2017 before this Court, which petition was disposed of vide order dated 22.05.2017. During the proceedings in the said petition, the Additional Attorney-General for Pakistan had submitted that the petitioner would be considered for promotion in the next meeting of the C.S.B. in compliance with the directions given by the Hon'ble Supreme Court in the judgment reported as 2017 SCMR 969.

8. Vide notification dated 19.01.2017 issued by the office of the Auditor General of Pakistan (“A.G.P.”), major penalty of dismissal from service was imposed on the petitioner. The petitioner assailed the said notification in appeal No.2229(R)CS/2017 before the F.S.T. Vide judgment dated 22.09.2017, the said appeal was allowed and the said notification dated 19.01.2017 was declared as void. Furthermore, it was directed that the petitioner be reinstated in service, and to put up his case for promotion in the upcoming meeting of the C.S.B.

9. Vide notification dated 20.10.2017 issued by the office of the A.G.P., the petitioner was reinstated in service with effect from 19.01.2017. On the same very day i.e. 20.10.2017, another notification was issued by the office of the A.G.P. whereby major penalty of dismissal from service was imposed on the petitioner. The petitioner assailed the imposition of the said penalty in

appeal No.208(R)CS/2018 before the F.S.T. Vide judgment dated 24.09.2018, the said appeal was allowed and the notification dated 20.10.2017 whereby major penalty of dismissal from service imposed on the petitioner was set-aside. In paragraph 12 of the said judgment, the F.S.T. held that the imposition of a major penalty on the petitioner on the same day on which he had been reinstated in service was malicious and *malafide*. It was, however, observed in the said judgment that fresh departmental proceedings may be initiated against the petitioner in accordance with the law, if so advised. As a result of the said judgment, the petitioner was again reinstated in service.

10. In December 2018, the petitioner's case for promotion to BS-20 was again placed before the C.S.B. The petitioner's promotion was deferred yet again by the C.S.B. Aggrieved by the said deferment, the petitioner filed writ petition No.1482/2019 before this Court. Vide order dated 26.04.2019, the said writ petition was disposed of after the Court was informed that he was being considered for promotion in the C.S.B.'s next meeting. In the said order, it was observed that *"it is settled by the august Apex Court regarding pendency of inquiry/disciplinary proceedings mentioned in the cases of Chief Secretary, Government of the Punjab and others Versus Muhammad Arshad Khan Niazi (2007 SCMR 1355), Muhammad Afzal Khan, Executive Engineer, Model Town Extension, Lahore Versus Government of Punjab through Secretary to Government of the Punjab, C&W Department and another (PLJ 2008 Lahore 942) and Abdul Wahab Awan Versus Government of Pakistan (2007 PLC (CS) 811)."*

11. On 20.05.2019, the Inquiry Officer submitted his inquiry report with the findings that the charges levelled against the petitioner had been established. These findings were given after the Inquiry Officer noted that since most of the witnesses in the case had either retired from government service, or had been transferred to other departments or had proceeded abroad, their statements could not be recorded afresh. It was also noted that the Inquiry Officer had examined the case in the light of the material collected during the last inquiry. It may be recalled that the imposition of the major penalty on the basis of the last inquiry had been set-aside.

12. On 23.05.2019, a notice was issued to the petitioner by the office of the A.G.P., calling upon him to show cause as to why major penalty of dismissal from service should not be imposed on him under the provisions of the Government Servants (Efficiency and Discipline) Rules, 1973. Vide letter dated 30.05.2019 from the office of the A.G.P., the said show cause notice dated 23.05.2019 was withdrawn *ab-initio*. The Authorized Officer vide letter dated 31.05.2019 had called upon the Inquiry Officer to review his findings in the inquiry report. Till date, the inquiry/disciplinary proceedings against the petitioner have not been culminated in the imposition of any penalty on him.

13. It was in these circumstances that the petitioner was again considered for promotion to BS-20 by the C.S.B. in its meeting held on 29.05.2019. The C.S.B. decided to supersede the petitioner. It is against the said supersession that the instant writ petition was filed.

14. During the pendency of the instant petition, the petitioner was considered for promotion by

the C.S.B. but was again deferred on the ground that he had not been able to earn PER of one full year after his supersession.

15. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the reasons given by the C.S.B. for the petitioner's supersession were not sustainable in law; that the primary reason for superseding the petitioner was that there were disciplinary proceedings pending against him; that the C.S.B. did not appreciate that major penalties imposed on the petitioner at various stages had been set-aside either by the F.S.T. or by the Hon'ble Supreme Court of Pakistan; that the petitioner could not have been penalized for the punishments which had already been set-aside by the judicial *fora*; and that it is well settled that a pending inquiry cannot be a valid ground for not promoting a civil servant.

16. Learned counsel for the petitioner further submitted that due to the petitioner's supersession on 25.05.2019, he was deprived of being promoted in the subsequent meeting of the C.S.B. solely on the ground that he had not been able to earn one full year PER after his supersession. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as 2007 SCMR 1355, PLJ 2008 Lahore 942 and 2007 PLC (C.S.) 811.

17. On the other hand, learned Deputy Attorney-General submitted that in December 2018, the C.S.B. had deferred the petitioner's promotion on the ground that although the major penalty of dismissal from service imposed on him

had been set-aside by the F.S.T. but a *denovo* inquiry was pending against the petitioner; that in 2019, the C.S.B. had recommended the petitioner's supersession on the ground that he had obtained 57% marks in the Senior Management Course ("S.M.C."), and that it was reported that his attitude towards training remained ambivalent and inconsistent; that it had also been reported that the quality of his input in syndicate and tutorial discussions was inadequate, and in the team exercises his conduct was not very supportive; that the petitioner's peers had rated him fairly low as a friend, professional and a leader which was in synchronization with his demonstrative performance; that the petitioner had earned PERs of three years and five months during his entire career; that these are strong enough reasons to supersede a civil servant; and that the petitioner was again considered for promotion in 2020 but since he did not have PER for one full year after his supersession, his promotion was deferred. The learned Deputy Attorney-General prayed for the writ petition to be dismissed.

18. I have heard the contentions of the learned counsel for the petitioner as well as the learned Deputy Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient details in paragraphs 2 to 14 and need not be recapitulated.

19. It is not disputed that the disciplinary proceedings conducted against the petitioner have culminated in judgments passed by the F.S.T. whereby the major penalties of dismissal from service imposed on the petitioner on two occasions have been set-aside. With the setting-

aside of the major penalties that had been imposed on the petitioner, it was most unfair and irrational for the C.S.B. to have recorded that the petitioner was *“prone to disciplinary proceedings.”* The C.S.B. while recording the reasons for the petitioner’s supersession had given the detailed background of the disciplinary proceedings that had been initiated from time to time against the petitioner. After giving such details, it was remarked that the petitioner had a *“chequered career.”* This remark was also unfair since in the final analysis, the F.S.T. had passed judgments in the petitioner’s favour and had set-aside the major penalties that had been imposed on him.

20. The F.S.T. while allowing the petitioner’s appeal (appeal No.208(R)CS/2018), observed in its judgment dated 24.09.2018 that fresh departmental proceedings may be initiated against the petitioner in accordance with the law. Thereafter, a charge sheet was issued to the petitioner on 09.11.2018, and the Inquiry Officer has submitted his report on 20.05.2019 wherein it has been stated that the charges levelled against the petitioner had been established. On 23.05.2019, a notice was issued to the petitioner to show cause as to why major penalty of dismissal from service should not be imposed on him. The letter dated 31.05.2019 from the Authorized Officer to the Inquiry Officer shows that the latter was asked to review his findings in the inquiry by addressing all the discrepancies and shortcomings noted in the F.S.T.’s said judgment dated 24.09.2018. Furthermore, the Inquiry Officer was asked to submit his comprehensive findings in the light of the said judgment. Vide letter dated 30.05.2019, the

Authorized Officer withdrew the show cause notice dated 23.05.2019 that had been issued to the petitioner. There is nothing on the record to show that these inquiry/disciplinary proceedings have culminated in an order against the petitioner. For all intents and purposes, the disciplinary proceedings against the petitioner are still pending.

21. It is well settled that mere pendency of disciplinary proceedings against an officer cannot be a valid ground to deprive him from being considered for promotion or even to defer his promotion. Therefore, I am of the view that the observations “*prone to disciplinary proceedings*” or the petitioner having a “*chequered career*” made by the C.S.B. due to him successfully challenging the imposition of major penalty on him before the F.S.T. cannot be a valid ground for his supersession. In holding so, I derive guidance from the law laid down in the following judgments:-

- i) In the case of Ziaul Hassan Vs. Naseem Chaudhary (2000 SCMR 645), it was held by the Hon'ble Supreme Court that the mere fact that some disciplinary proceedings were pending against an employee was not sufficient ground for not considering him for promotion.
- ii) In the case of Mumtaz Ali Shah Vs. Chairman, Pakistan Telecommunication Company Ltd. (PLD 2002 (S.C.) 1060), the appellant was not promoted due to a criminal case pending against him whereas civil servants junior to him were promoted. The appellant sought his promotion with effect from the date when his juniors were promoted. Even after the prosecution

withdrew the case against the appellant, the authorities refused to promote him. The Services Tribunal upheld the decision of the authorities not to promote the appellant. The Hon'ble Supreme Court set aside the decision of the Services Tribunal, and *inter-alia* held that the appellant had been wrongly denied promotion from the date when his juniors were promoted.

- iii) In the case of Muhammad Hanif Vs. Province of Sindh (2011 PLC (C.S.) 534), the Hon'ble High Court of Sindh gave a direction to the respondents to consider the petitioner's case for promotion purely on merits without any regard to the pendency of any criminal or civil case against him.
- iv) In the case of Salahuddin Mughal Vs. Province of Sindh (2012 PLC (C.S.) 1018), the petitioner was not promoted because a number of enquiries were pending against him and a reference had also been filed against him by the National Accountability Bureau. It was held by the Hon'ble High Court of Sindh that pendency of a reference would not debar a civil servant for being considered for promotion. The Hon'ble High Court directed the department to consider case of the petitioner for promotion in accordance with law.
- v) In the case of Nazeer-ud-Din Vs. Government of Pakistan through Secretary, Passport and Immigration Department (2017 PLC (C.S.) 578), I had the occasion to hold as follows:-

“9. Now, it is well-settled that no one could be punished by denying him promotion or consideration for promotion before the charge is established against him. Mere pendency of a criminal case is no ground for denying him consideration for promotion. Although an FIR has been

registered against the petitioner, it is yet to be established whether or not the petitioner is guilty of the offence that he has been accused with. Until the conclusion of the trial against the petitioner, he cannot be denied consideration for promotion. Promotion is not the petitioner's vested right, but consideration for promotion in accordance with the law, indeed is."

Law to the said effect has also been laid down in the cases of Muhammad Riaz Vs. Government of the Punjab (2003 PLC (C.S.) 1496), Muhammad Hanif Vs. Province of Sindh (2011 PLC (C.S.) 534), Javed Iqbal Nasir Vs. Managing Director, PEPCO (2012 PLC (C.S.) 1043), Shama Khan Zafar Vs. District Coordination Officer, Lodhran (2014 PLC (C.S.) 948) and Muhammad Amin Vs. Managing Director, House Building Finance Corporation (2016 PLC (C.S.) 569).

22. As mentioned above, the petitioner was considered for promotion to BS-20 in the C.S.B.'s meeting held between 27.05.2019 and 29.05.2019. The letter dated 31.07.2019 from the office of the A.G.P. sets out the reasons for the petitioner's supersession. This letter shows that the petitioner was not considered fit for promotion on the basis of the report pertaining to the S.M.C. undertaken by the petitioner in 2013. In the said course, the petitioner's promotion potential was assessed as 'limited' and he was only assigned 57% marks. It had also been reported that the petitioner's attitude towards the training remained ambivalent and his performance was inconsistent. The quality of his input in the syndicate and tutorial discussions was stated to be inadequate, and in the team exercises his conduct was stated to be not very supportive. It was also stated that the petitioner's peers have rated him fairly low as a friend, professional and a leader which was in

synchronization with his demonstrative performance.

23. It is not disputed that the petitioner had undertaken the S.M.C. in the year 2013. It is also not disputed that the petitioner had been considered for promotion on six occasions, out of which on four occasions his promotion was recommended to be deferred. In none of these instances was the petitioner's performance in his S.M.C. considered to be a ground for his deferment or supersession. To supersede an officer on the basis of his performance in the S.M.C., after which his promotion was recommended to be deferred, is irrational and therefore, not sustainable. The C.S.B. appears also to have lost sight of the fact that when the petitioner was considered for promotion by the C.S.B. in the year 2015, he was given 75.5 marks. One of the well recognized grounds for judicial review is irrationality in the decision-making process.

24. Another reason set out in the said letter dated 31.07.2019 for the petitioner's supersession was that he had only earned PERs for three years and five months during his entire career making the objective assessment very difficult. If the petitioner's PERs were not sufficient in terms of the period, this may well have formed a reason for the petitioner's deferment so that he is given an opportunity to earn PERs for a further period but it is not understandable as to how an officer could be superseded for his PERs not being for a sufficient length of time. Learned Deputy Attorney-General could not cite any precedent to demonstrate that an officer whose PERs were not for sufficient

period of time deserved to be superseded instead of being deferred.

25. In view of the above, I am of the view that the petitioner's supersession on the basis of the recommendations made by the C.S.B., in its meeting held between 27.05.2019 and 29.05.2019, are not sustainable. Consequently, this petition is allowed and the impugned letter dated 31.07.2019 is set-aside. The petitioner's supersession shall be treated as deferment. Since this petition has been pending for more than a year, the reason for the petitioner's deferment in the last meeting of the C.S.B. (i.e. the petitioner not having one full year of PER after his supersession) does not hold good any longer. It is directed that the petitioner's case for promotion be placed for consideration before the C.S.B. in its next meeting. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Sultan**

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