

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

W.P. No. 834 of 2017

Amna Imran

Versus

Federation of Pakistan and others

Petitioners By : M/s Farooq H. Naik, Abdur Rehman Siddiqui, Ch. Asghar Ali, Abdur Rahim Bhatti, Masroor Shah and Haseeb Shakoor Paracha, Advocates.

Respondents By : Mr. Afnan Karim Kundi, Addl. Attorney General.
Mrs. Misbah Gulnar Sharif, Advocate.
Muhammad Ayub, Senior Joint Secretary,
Omer Bin Zia, Joint Secretary and
Muhammad Afzal Chaudhry, Deputy Secretary (Lit.), Establishment Division.

Date of hearing : 03.11.2017

AAMER FAROOQ, J. - This judgment shall decide the instant petition as well as Writ Petitions No. 2426/2017, 959/2017, 1272/2017, 881/2017 and 954/2017 as common questions of law and facts are involved.

2. The petitioners in all the petitions are civil servants in BS-19 and 20 seeking promotion in the next scale. The petitioners were considered by the Central Selection Board ("**CSB**") for promotion but were either deferred or superseded for various reasons.

3. The petitioner in the instant petition is in BS-20 and was considered for promotion to BS-21 in the meeting of CSB held on 13 to 16 December, 2016. As mentioned in minutes of meeting of CSB in view of updated record, position, integrity, performance of the officer known to the members of Board, opinion of the Departmental representatives as well as pen picture of the officer concerned in Performance Evaluation Reports (PERs) and Training Evaluation Reports (TERs), the Board recommended the petitioner for a period of one year to watch

her performance in all aspects. The recommendation made by the Board was approved by the Competent Authority.

4. The petitioner in Writ Petition No. 2426, was also considered for promotion by the CSB in its meeting held on 13 to 16 December, 2016 and performance of the officer was discussed and debated and despite the fact that she met the required minimum threshold of 75 marks after assessing the officer against the Prescribed Objective Assessment criteria as well as PERs/ TERs etc., she was placed in category-C, hence, recommended for supersession.

5. The petitioner in Writ Petition No. 1272/17, was also considered in the meeting of CSB held on 13 to 16 December, 2016 and was placed in category-C on the basis that despite meeting the minimum threshold of 75 marks, the officer did not qualify on the Prescribed Objective Assessment criteria as well as keeping in view PERs/TERs and knowledge of the members of the Board.

6. The petitioner in Writ petition 959/17 is in Inland Revenue Services in BS-19 and was considered for promotion by the CSB but was recommended for supersession.

7. The petitioner in Writ Petition No. 881/2017 is in Pakistan Police Service and is in BS-19. He was considered for promotion in the meeting of CSB held on 13 to 16 December, 2016 however, the Competent Authority has referred back case of the petitioner to assess and evaluate performance of the petitioner in the forthcoming meeting.

8. The petitioner in Writ Petition 954/17 is in BS-19 in Inland Revenue Services. He was considered for promotion in the CSB meeting held on 13 to 16 December, 2016 and was recommended for supersession.

9. At the very outset, learned Additional Attorney General raised objection regarding maintainability of the petitions in light of the bar provided under Article 212 of the Constitution. In this behalf, it was contended that the relief sought in the instant petitions pertain to terms and conditions of services of

the petitioners hence, bar provided under Article 212 of the Constitution is applicable.

10. Learned counsel for the petitioners, *inter alia*, contended that instant petitions are maintainable in light of the fact that the grievance raised in the instant petitions pertains to fitness of civil servants for promotion. In this behalf, it was contended that question regarding fitness is excluded from the domain of Service Tribunal in light of section 4 of the Service Tribunals Act, 1973. Reliance was placed on cases reported as **(2000 PSC 599)**, **(1993 PLC (CS) 576)**, **"Muhammad Zafeer Abbasi Vs. Government of Pakistan (2003 PLC (C.S) 503)**, **"Managing Director (POWER) WAPDA Vs. Muhammad Luqman" (PLD 2003 SC 175)**, **"Dr. Feroz Memon Vs. Secretary Health, Government of Sindh" (2001 PLC(CS) 878)** as well as **"Secretary Establishment Division Vs. Aftab Ahmed Manika" (2015 SCMR 1006)** and **"Ms. Zubaida Khatoon Vs. Tehmina Sajid Sheikh" (2011 TD (Service) 107)**.

11. Learned counsels for the petitioners, *inter alia*, contended that the petitioners have been deferred or superseded basically on personal knowledge of the members of CSB and for the criteria of Prescribed Objective Assessment despite the fact that they obtained minimum threshold of 70% or 75% marks, required for promotion from BS-19 to BS-20 or BS-20 to BS-21 respectively. It was further contended that after the decision of the Hon'ble Supreme Court of Pakistan in case of **Orya Magbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817)**, the Establishment Division amended the promotion policy and revised the objective criteria by giving it overriding effect which was challenged in a number of cases before this Court and was struck down in the Writ Petitions as well as in Intra Court Appeals. It was further contended that during pendency of the matter before the august apex Court, the judgment of this Court in ICAs was suspended however, the Federation expressed desire to hold meeting of CSB which was allowed by the apex Court on the statement that O.M of 2014 giving overriding

effect to the general objective criteria shall not be used however, the same has been effected. It was further contended that the criteria used by the Federation is in violation of the law laid down by this Court as well as august apex Court from time to time. In this behalf it was contended that decision of this Court in ICA No. 368/2015 etc., has been upheld by the Hon'ble Supreme Court of Pakistan in case reported as **"Federation of Pakistan Vs. Dr. Muhammad Arif" (2017 SCMR 969)**. It was further contended that the criteria used for evaluation of the petitioners to determine the fitness is in violation of cases reported as **"Iram Adnan Vs. Federation of Pakistan" (2012 PLC (CS) 1355)**, **"Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817)**, **"Tariq Aziz-ud-Din Vs. Federation" (2010 SCMR 1301)**, as well as **"Liaqat Ali Chughtai Vs. Federation of Pakistan" (PLD 2013 Lahore 413)**.

12. Conversely, learned Addl. Attorney General, *inter alia*, contended that Office Memorandum of 2014 having overriding effect with respect to the objective criteria has not been used. It was contended that the petitioners have been considered on the basis of their reports and other documents as well as knowledge of the members of the Board and then were either deferred or superseded. It was further contended that the petitioners who have been deferred shall not be prejudiced as they shall be considered in the forthcoming meeting of CSB and if they are promoted, they shall be at par with their batch fellows. Further, it was contended that those who have been superseded, shall be considered after one year, but were superseded because they failed to obtain grade-A in light of the criteria provided in the O.M of 2012.

13. The facts leading to filing of the instant petitions have been mentioned hereinabove, therefore, need not be recapitulated. The respondents have raised preliminary objection regarding maintainability of the instant petitions in light of bar provided under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. The promotion of civil servants is provided in section 9 of the Civil Servants Act, 1973. In this behalf, the referred provision provides that a civil

servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs. Similarly, under Rules 7 & 7-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, promotion of a civil servant is to be made by the Competent Authority, for civil servants in scale 19 and above promotion is made on the recommendations of Central Selection Board. In this behalf, under Rule 8 *ibid*, only such persons who possess qualification and meet the conditions laid down for the purpose of promotion shall be considered by Central Selection Board or Departmental Promotion Committee as the case may be. The dispute regarding terms and conditions of service have been excluded from the jurisdiction of all the courts except the Tribunals constituted for the said purpose however, with respect to question regarding fitness of a civil servant to be promoted, the same has been ousted from the jurisdiction of the Service Tribunal. In this behalf, under section 4(1)(b) of the Service Tribunals Act, 1973, no appeal is provided on the question regarding fitness of a civil servant. The objection by the learned Addl. Attorney General that the instant petitions are not maintainable is not sustainable inasmuch as the issue raised in the instant petitions is regarding fitness of a person to be appointed or to hold particular post. The Hon'ble Supreme Court of Pakistan in case reported as **Ms. Zubaida Khatoon Vs. Mrs. Tehmina Sajid Sheikh, (2011 TD (Service) 107** held that exercise of jurisdiction by the high Court to determine the question of fitness for promotion of a civil servant would not be in violation of Article 199 read with Article 212 (2) of the Constitution as determination of question of fitness for promotion of civil servants falls outside the jurisdictional domain of Service Tribunal in view of bar under section 4(1)(b) of Service Tribunals Act, 1973. Similar view was expressed in case reported as **Secretary Establishment Division Vs. Aftab Ahmed Manika (2015 SCMR 1006)** wherein, the august apex Court observed as follows:-

"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 subsection (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."

Likewise, in **Liaqat Ali Chughtai Vs. Federation of Pakistan (PLD 2013 Lahore 413)**, the Hon’ble Lahore High Court held that where there is question of fitness bar provided under Article 212 of the Constitution is not applicable. In view of the above position of law, the instant petitions are maintainable and not hit by bar provided in Article 212 of the Constitution.

14. As mentioned hereinabove, the petitioners are aggrieved of their deferment or supersession by CSB. The main grievance of the petitioners is that the CSB, while considering the cases for promotion, has used the overriding effect of the objective criteria as provided in O.M dated 10.02.2014 which fact has been categorically denied by the respondents. In view of the situation, the statement was sought from the Secretary Establishment Division regarding criteria used by the CSB in meetings held on 13th to 16th December, 2016 considering the petitioners and others for promotion and following statement was placed on record:-

“As directed vide order dated 03.05.2017, the following statement is submitted for the assistance of this honourbale Court:

- 1. Meetings of Central Selection Board (CSB) were held in December, 2016, attended by the undersigned as one of the Members of CSB.**
- 2. The criteria used for consideration of officers in the CSB was as per the Revised promotion Policy, 2007 as amended to date, which included amendments made vide Establishment Division’s O.M. No. F.1/1/2012-CP-2 dated 12.10.2012 (Annex-I) (hereinafter “OM of 2012”) and O.M. of even number dated 10.02.2014 (Annex-II) (hereinafter “OM of 2014”).**
- 3. The OM of 2012 introduced a new Objective Assessment Form annexed to the said OM for assessment by CSB and award of 15 marks allocated to it. The CSB would assess/ evaluate an officer, assign appropriate marks and place the officer in any of the following categories:**

<u>S.No.</u>	<u>Category</u>		<u>Range of Marks</u>
1.	Category-A	=	11 to 15
2.	Category-B	=	06 to 10
3.	Category-C	=	00 to 05

- 4. Sub Para-b of Para-4 of Revised Promotion Policy, 2007 provided that the officers securing requisite percentage of marks viz: 70 and 75 will be promoted to BS-20 & 21 respectivley. The said para was, however, modified by the OM of 2012 and it *inter alia* provided that “An officer**

meeting the aggregate threshold shall also be superseded if CSB places him in Category-C" [underlined is for emphasis].

5. The OM of 2014 only revised the Objective Assessment form introduced by the OM of 2012. The revised form was annexed to the Om of 2014, which *inter alia* allocated five marks to the attribute of "Integrity/ General Reputation/Perception" in S. No. 8 of the said form. It was further provided that "[a]n officer under consideration, getting less than 3 out of five under this parameter may be deferred or superseded by the CSB at their discretion but with reasons to be recorded in writing" [underlined is for emphasis]. In Sr. No. 10, officers were continued to be placed into an overall Category-A, B or C as per their aggregate marks out of the total fifteen marks to be assigned by CSB.
6. In line with the OM of 2012, all officers who were assessed and assigned five or less than five marks by CSB out of fifteen were accordingly placed in Category-C. Resultantly, they were recommended for supersession because of the mandatory provision of Sub Para-b of Para-4 of Revised Promotion Policy, 2007 as amended by the OM of 2012, which was regardless of whether or not they met the aggregate threshold of marks viz: 70 and 75 for BPS-20 and 21 respectively.
7. All officers who were recommended for supersession by the CSB held in December, 2016 was on account of them having been placed in Category-C and the resultant mandatory supersession provided in Sub Para-b of Para-4 of Revised Promotion Policy, 2007 as amended by the OM of 2012.
8. Since mandatory supersession under the OM of 2012 was given effect in all cases of supersession, no occasion arose for exercising discretion under OM of 2014 to supersede any officer assigned less than three marks under the attribute of "Integrity/ General Reputation/Perception" or to record any reasons therefore specific to the said attribute as required by the OM of 2014.
9. Some of the officers deferred by the CSB were found wanting in requisite attributes including, among other, integrity. However, none of the officers were deferred on account of overriding effect of five marks for "Integrity/General Reputation/Perception". In fact, deferment implied postponing the determination of their fitness for promotion. Accordingly, they were neither assigned any marks under the Objective Assessment Form nor subjected to any overriding effect.

Respectfully submitted by:

Syed Tahir Shahbaz
Secretary, Establishment Division"

The bare perusal of the statement shows that the criteria used for consideration of officers in the CSB was as per Revised Promotion Policy, 2007 as amended vide Establishment Division Office O.M. dated 12.10.2012 and O.M dated 10.02.2014. It

was further clarified the categorization provided in O.M dated 12.10.2012, was used and where the civil servant obtained less than 5 marks on the issue of objective assessment, he was placed in category-C and hence, was recommended for supersession. It was further submitted that no occasion arose for using criteria of awarding marks and giving them overriding effect as provided in O.M of 2014.

15. The promotion criteria for DPC and CSB was initially issued in 1982 on 31.12.1982. Revised Promotion Policy was enunciated on 30.04.1984 which was further revised through Revised Promotion Policy, 2007 on 24.10.2007 which was further amended in 2012 through O.M dated 12.10.2012 and then again on 10.02.2014. In order to understand the back drop of the last two amendments, two cases are pertinent i.e. **Iram Adnan Vs. Federation of Pakistan (2012 PLC (CS) 1355)** and **Liaqat Ali Chughtai Vs. Federation of Pakistan (PLD 2013 Lahore 413)**. In both the petitions, the petitioners were aggrieved of either deferment or supersession and challenged the decision by the CSB. The Hon'ble Lahore High Court in **PLD 2013 Lahore 413** supra, after discussing the then prevailing policy, directed the CSB to formulate a well thought out objective criteria in accordance with Revised Promotion Policy and consider the cases of the petitioners and private respondents afresh. Similar directions were made by this Court in **Iram Adnan Vs. Federation of Pakistan (2012 PLC (CS) 1355)** in the following terms:

"In this view of the matter instant writ petitions are allowed, formula of award of 15 marks on the discretion of CSB is declared as illegal, superficial, unconstitutional, against the dictums of court of apex, non-transparent, result of adamant approach, whimsical, sham, unprecedented, infringement to constitutional guarantees and principles of natural justice, therefore, same is set aside. The respondent Establishment Division is directed to implement the judgment of Hon'ble Supreme Court, delivered in Civil Petitions Nos.1083, 58 to 60, 443 and 444 of 2010, in its letter and spirit and restructure the formula of award of 15 marks, in accordance with guidelines provided therein."

Pursuant to directions in the above cases, the promotion policy of 2007 was revised though O.M dated 12.10.2012 in the following terms:

"2. With approval of the Competent Authority, the following changes are hereby made in the said policies/ guidelines:-

- a. The existing parameters/attributes namely 1) Quality & Output of Work; 2) Variety and Relevance of Experience; 3) Top Management Potential contained in the Guidelines for CSB attached with Promotion Policy, 1982 read with Revised Promotion Policy, 2007 shall continue to apply for consideration of civil servants for promotion, deferment and supersession.**
- b. New parameters/ attributes namely 1) Integrity/ General Reputation/ Perception; 2) Personality Profile; and 3) Conduct, discipline & Behaviour are added in the said Guidelines attached with 1982 Policy.**
- c. "Quality & Output of Work" and "Integrity" contained in the Guidelines attached with 1982 Policy as well as relevant boxes in the PER Forms, deleted in 2003, are revised. Changes in the PER Forms being issued separately.**
- d. A new Objective Assessment Form (Annexure-A) for assessment of each officer on the panel by CSB against the attributes namely 1) Quality & Output of Work; 2) Integrity/ General Reputation/ Perception; 3) Variety and Relevance of Experience; 4) Top Management Potential; 5) Personality Profile; and 6) Conduct, discipline & Behaviour is hereby introduced.**
- e. The said Objective Assessment Form shall be placed before the CSB alongwith panel proforma of every officer for his/her objective evaluation by the CSB. The Board shall assess each officer on the panel on the basis of said parameters/ attributes. After assessment/ evaluation, the CSB shall place the officer in any of the following categories and assign appropriate marks accordingly:**

<u>Sl.No.</u>	<u>Category</u>		<u>Range of Marks</u>
1.	Category-A	=	11 to 15
2.	Category-B	=	06 to 10
3.	Category-C	=	00 to 05

- f. Sub Para-b of Para-4 of Revised Promotion Policy, 2007 provides that the officers securing requisite percentage of marks viz: 70 and 75 will be promoted to BS-20 & 21 respectively. The said para, is modified as under:**

"(b) The Selection Board shall recommend the officers on the panel securing requisite % and above in the efficiency index for promotion unless deferred (in order of seniority, depending upon the number of vacancies). An officer meeting the aggregate threshold shall also be superseded if CSB places him in Category-C. the senior officers, if not recommended for promotion on account of low threshold, shall be superseded whereas the junior officers if not recommended for promotion for want of

vacancies shall be deemed not to have been considered.”

g. The aforementioned criteria for award of 15 marks by the CSB shall henceforth be treated as part of the Guidelines for Selection Board attached with Promotion Policy, 1982.

3. The promotion Policy, 1982 read with Revised Promotion Policy, 2007 as well as the Guidelines for Departmental Promotion committees/ Central Selection Boards attached with the 1982 Policy shall be deemed to have been modified to the above extent.

4. Instructions contained in the Promotion Policy, 1982 read with revised Promotion Policy, 2007, as amended from time to time, and Guidelines for Departmental Promotion Committees/ Central Selection Boards attached with the 1982 Policy in so far as not inconsistent with the provisions of this OM shall remain in force.

5. Subject to the provisions of Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 and such other rules made under the Civil Servant Act, 1973, the Civil servants shall be considered for promotion to higher post in accordance with the Promotion Policy issued by the Federal Government for the time being in force. The amendment in the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 shall be notified separately.”

Likewise, the Objective Assessment Form was revised which is as follows:

“OBJECTIVE ASSESSMENT BY CSB

Officer’s Name:_____ **Seniority No.**_____

Group/Service/Cadre:_____ **Present Scale**_____

S.No.	Parameters/Attributes	Categories		
		Cat-A [11-15]	Cat-B [06-10]	Cat-C [00-05]
1	Quality & Output of Work			
2	Integrity/ General Reputation/ Perception [last 05-yrs of Synopsis OR as known to the Board Members]			
3	Variety & Relevance of Experience Nature of duties, duration & location of positions held in previous two grades or 15 Yrs whichever is longer relevant to the function of posts in BS-21. BS-18 (if applicable) = yrs BS-19 = yrs BS-20 = yrs Total = yrs			
4	Top Management Potential [observation by RO/CO if any OR as known to the Board Members]			
5	Personality Profile [As known to the Board Members]			
6	Conduct, Discipline & Behaviour [Observation by RO/CO during last five years]			

	OR as known to the Board Members]			
7	Total			
8	Average			
9	Marks By CSB			

[Chairman CSB]

[Secretary, CSB]

Dated:_____

Dated:_____”

Though the said revised promotion policy of 2007 was never assailed directly but was considered and deliberated in the case of **2014 SCMR 817** supra. The Hon’ble Supreme Court of Pakistan in the said judgment made the following directions:

- “(i) The petition under Article 184(3) of the Constitution has been held to be maintainable and is allowed.
- (ii) The promotion from BS-20 to 21 against available vacancies has to be made in accordance with reserved quota for the promotion of different groups i.e. PAS, Secretariat etc., as a result whereof instead of cancelling the promotion of the officers from Sr. Nos. 57 to 80 all cases of promotion against 88 vacancies of BS-21 is hereby cancelled being void and unlawful and fresh exercise has to be undertaken along with the cases of the civil servants which have been remanded by the Lahore High Court in *Laiqat Ali Chughtai’s case* (PLD 2013 Lahore 413) and the cases decided Islamabad High Court in W.P. No. 3483 of 2011. Consequently, notification of promotion of all the officers issued in pursuance of the recommendations of CSB held on 11th-14th February and 27th February, 2013 is hereby set aside with direction to the competent authority to undertake the process of the promotion to all of them as observed hereinabove strictly in accordance with law on merits under section 9 of the Civil Servants Act, 1973, read with rules 7, 7A and 8 of the Civil Servants (Appointments Promotions and Transfers) Rules, 1973 as well as Promotion Policy as amended up to date, vide O.M. dated 13.01.2013.
- (iii) The Government shall also undertake exercise to outline the objective criteria for promotion to make the civil servant an honest officer and free from political pressure as has been noted hereinabove.”

In pursuance of the directions of the august apex Court, the promotion policy of 2007 was further revised on 10.02.2014 and objective assessment by the CSB was amended in the following terms:

“OBJECTIVE ASSESSMENT BY CENTRAL SELECTION BOARD

Officer’s Name:_____ **Seniority No.**_____

Group/Service/Cadre:_____ **Present Scale**_____

S.No.	Parameters/Attributes	Total Marks	Marks Assigned
1	Output of Work and Quality of Work	10	
2	Variety & Relevance of Experience Secretariat/ Field Postings; Federal/ Provincial Government Postings; Leadership/ routine Postings; Deputation/ Foreign Postings.		
3	Professional Expertise.		
4	Personality Profile (As known to the Board Members)		
5	Conduct, Discipline and Behaviour [Observation by RO/CO during last 05 years OR as known to the Board Members]		
6	Functional Ability and Leadership		
7	Estimated potential for Middle/ Higher Management Based on PERs and Training Evaluation Reports: Management Skills, Ability to take decisions, Strategic Thinking, Leadership Qualities, Drive for Results and Accomplishments in BPS-19 and 20 in policy formulation & implementation.		
8	Integrity/ General Reputation/ Protection On the basis of PERs/TERs/ Opinion of the Board*	5	
9	Total Marks by CSB	15	
10	Overall Category Cat-A Cat-B Cat-C (11-15) (06-10) (0-05)		

- **An officer under consideration, getting less than 3 out of five under this parameter maybe deferred or superseded by the CSB at their discretion but with reasons to be recorded in writing”**

The said amendment came under challenge before this Court and the O.M dated 10.02.2014 was struck down. The matter was challenged before the Hon’ble Supreme Court and in case reported as **Federation of Pakistan vs. Dr. Muhammad Arif (2017 SCMR 969)**, the judgments of this court in ICAs were upheld. The august apex Court concluded as follows:

25. It was for the foregoing reasons that we through a short order dated 13.3.2017, dismissed the titled appeals/petition, and would hereby direct the Establishment Division to place all of those cases which were laid before the board through the impugned exercise/process, afresh, after withdrawing the overriding effect of five (5) marks assigned for integrity/reputation etc. and removing the deviation of the focus of the board from the service dossier to the personal knowledge of its members. The above exercise be initiated within four weeks, and be concluded within ten weeks from 13.4.2017. In the meanwhile, those who may have been promoted on the basis of impugned recommendations shall maintain their such elevated position/status. However,

in the event the officers whose cases for promotion have been recommended to be deferred or superseded, are through the proposed process recommended for promotion, they shall maintain their seniority vis-a-vis those who were recommended for promotion through the impugned process, and may again be so recommended, so that the seniority of the presently left out officers and so also their entitlement to the consequential benefits, including prospects of their future promotion is not adversely affected.

16. It is during the pendency of the matter before the Hon'ble Supreme Court in the abovementioned cases that exercise of consideration of petitioners for promotion was undertaken by the CSB. Almost in all the cases, the petitioners have achieved threshold of 70 or 75 marks as the case may be, however, either they have been deferred or superseded on account of the reasons mentioned above. Since the statement by the Secretary Establishment Division clearly shows that O.M of 2012 has been used which though was not struck down but was found to be unsatisfactory in **2014 SCMR 817** supra and direction was made to devise a further criteria for promotion. The policy so devised in 2014 was also found to be unsatisfactory in case reported as **2017 SCMR 969**. The bare perusal of the minutes of the meeting and replies filed by the Establishment Division shows that less than 5 marks have been awarded to the petitioners primarily on the basis of personal knowledge of the members of the Board or of the departmental representative. In none of the case, the Establishment Division could show any thing adverse against the petitioners or any matter on the basis of which it could be said that the civil servant did not enjoy good reputation or does not deserve to be promoted due to his integrity, honesty etc. In this behalf, the conclusion reached is not tenable inasmuch as the CSB exercised discretion in an arbitrary and whimsical manner which does not meet the criteria laid down by the august apex Court in case reported as **Re: Tariq Aziz ud Din (2010 SCMR 1301)**. In the said judgment the august apex court, observed as follows:

"It is the duty and obligation of the competent authority to consider the merit of all the eligible candidates while putting them in juxtaposition to find out the meritorious amongst them otherwise is one of the organs of the State i.e. Executive could not survive as an independent organ which is the command of the Constitution. Expression 'merit' includes limitations prescribed under

the law. Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made, for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power [Director Food, N.-W.F.P. v. Messrs Madina Flour and General Mills (Pvt.) Ltd. PLD 2001 SC 1]. Equally, discretionary power conferred on Government should be exercised reasonably subject to existence of essential conditions, required for exercise of such power within the scope of law. All judicial, quasi judicial and administrative authorities must exercise power in reasonable manner and also must ensure justice as per spirit of law and seven instruments which have already been referred to above regarding exercise of discretion. The obligation to act fairly on the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of justice [Mansukhlal Vithaldas Chauhan v. State of Gujrat {1997 (7) SCC 622}]."

17. In view of the above decisions to defer the petitioners or supersede them as the case may be, are not tenable. For the above mentioned reasons, recommendations by the CSB vis-a-vis the petitioners and in case where the Competent Authority has not followed the recommendations, the same are **set-aside** with direction that the petitioners shall be considered afresh based on the new criteria devised by the Establishment Division pursuant to directions of the Hon'ble Supreme Court in case reported as **2017 SCMR 969**. The respondents are directed to place the cases of petitioners in the forthcoming meeting of CSB.

**(AAMER FAROOQ)
JUDGE**

Announced in Open Court on 30.11.2017.

JUDGE

M.Shah/.

