

## **JUDGMENT SHEET**

### **IN THE ISLAMABAD HIGH COURT,** **ISLAMABAD**

#### **WRIT PETITION NO.3544 OF 2014**

**UMAR DAD AFRIDI.**

**Vs.**

**FEDERATION OF PAKISTAN, ETC.**

**Petitioner by : Mr. Muhammad Shahid Kamal Khan and  
Malik Fazal Ali Pushia, Advocates.**

**Respondents by : Ms. Ruqia Sami, AAG.  
Mr. Muhammad Saleem Khattak, Deputy  
Secretary.  
Mr. Mahmood Khan Lakho, S.O.,  
Establishment Division.**

**Date of hearing : 07.09.2020.**

**LUBNA SALEEM PERVEZ, J.** Through this petition, the Petitioner has invoked the Constitutional jurisdiction of this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, to challenge the decision of the Competent Authority who remitted back his case of promotion to the CSB for reconsideration.

2. Facts of the case are that the petitioner is an officer of BS-19, and is working in the office of the Director General, Trade organizations, Ministry of Commerce, Islamabad. He was recommended for promotion in BS-20 by Central Selection Board (*hereinafter referred to as CSB*) in its meeting held on 11 – 13 February, 2014. However, the Prime Minister of Pakistan in the capacity of Competent Authority referred back the case to the CSB for reconsideration. However, the petitioner was subsequently recommended and promoted to the next higher grade *w.e.f.* 23.02.2018. The petitioner thus claiming the financial benefits / pay and allowances from the date he was rejected for promotion by the Competent Authority/Prime Minister i.e. from 02.07.2014, on the ground that since, he was duly qualified and eligible but illegally and unlawfully denied the promotion.

3. Learned counsel for the petitioner submitted that the petitioner belongs to occupational service group and joined the services through passing CSS exam in the year 1996 where after he served in various department and timely promoted upto grade BS-19; that being a qualified and eligible candidate for promotion in next higher grade i.e. BS-20 he was duly recommended for promotion by the CSB in its meeting held on 11-13 February, 2014; that despite the recommendation of the CSB and having spotless carrier of service as a civil servant, the petitioner's case was remitted back to the CSB for reconsideration without any lawful reason; that the petitioner suffered for four years upto his promotion in the year 2018 which has adversely affected the petitioner morally and financially; that the petitioner has suffered without any fault of his own as his promotion was illegally withheld and during this period the officers junior to him in the service were promoted; that it is the right of the petitioner to know the reasons of rejection when he diligently, honestly and efficiently performed his services, therefore, the petitioner is rightfully claiming financial benefits from the time when his case for promotion was unlawfully remitted back for reconsideration. He relied on the judgments re: *Government of the Punjab and another v. S. Tassadaq Hussain Bokhari* (PLD 1986 Supreme Court 162), *Muhammad Younas v. Secretary, Ministry of Communications and others* (1993 SCMR 122), *Province of Sindh v. Gul Muhammad Hajano* (2003 SCMR 325), *Muhammad ZaheerAbbasi v. Government of Pakistan* [2003 PLC (C.S.) 503], *Secretary, Revenue Division v. Muhammad Saleem* (2008 SCMR 948) and *Tariq Aziz-ud-Din and others* (2010 SCMR 1301).

4. The learned AAG appearing on behalf of the respondent along with representative of Establishment Division, submitted that the case of the petitioner relates to terms and conditions of service, therefore, in view of the bar under Article 212 of the Constitution of Pakistan, 1973, the petition before this Court is not maintainable; that the CSB has recommended the petitioner for promotion, however, the Prime Minister being the Competent Authority has the powers to reject or approve cases of the officers recommended by the CSB; that the petitioner

was neither superseded nor deferred by the CSB held in 11-13 February, 2014, as such, his seniority remained intact; that the procedure for claiming pay and allowances from the period his juniors were promoted has been prescribed in FR-17, therefore, the petitioner is required to avail the remedy under FR-17 for protection of salary from the date his colleagues were promoted or *w.e.f.* the date his case was send back for reconsideration; that the grievance of the petitioner has been redressed when he was promoted on next higher grade on 23.02.2018, and the issue of back benefits can be taken up before the appropriate authority/forum. She prayed for dismissal of the petition as the purpose of the petition is served with the promotion of the petitioner in grade 20.

5. Arguments heard. Record perused.

6. This petition was filed when the petitioner's case for promotion was referred back by the Competent Authority i.e. Prime Minister, to the CSB which have approved and recommended the petitioner for promotion in its meeting held on 11-13 February, 2014. The petitioner prayed for the following directions for the respondent:-

*"Under the circumstances it is therefore, respectfully prayed that this Honourable Court may very graciously be pleased to direct the respondent No. 1 to place on record the recommendations of the CSB for promotion of the petitioner to the next higher grade of BS-20 as well as the reference of the Prime Minister to the CSB and reasons assigned thereto. It is also respectively prayed that this Honourable Court may graciously be pleased to set aside the said reference being unlawful, illegal and without lawful authority and direct the competitive authority to act in accordance with the recommendations of CSB, if the same are in consonance of the personal service record of the petitioner and notify his promotion accordingly with all consequential and back benefits."*

7. During the pendency of this petition the petitioner was promoted to grade BS-20, on the recommendations of the CSB held in January, 2018. Documents submitted by the Respondent Nos. 1 & 2 along with compliance report shows that after the referring back of petitioner's case to the CSB he was deferred in 2016 and 2018 for further watch of his performance for one year and to earn PER for twelve months to assess his performance. After getting promotion in 2018 the petitioner amended his prayer as reproduced hereunder and confine the relief to the extent of directions to the respondents for grant of back benefits of BS-20 *w.e.f.* 02.07.2017

(when the two juniors to the petitioner were promoted and he was left over) upto the date of his promotion i.e. 23.02.2018.

*“Under the circumstances it is, therefore, respectfully prayed that by acceptance of the instant writ petition, this Honourable Court may very graciously be pleased to direct the respondents to grant the financial benefits of BS-20 to the petitioner w.e.f. 02.07.2014 (when the two juniors to the petitioner were promoted and the petitioner was left over) to 23.02.2018 (when the petitioner was notified to be promoted) in the interest of justice.”.*

Perusal of the prayer shows that petitioner is satisfied with his promotion to next higher grade vide approval of the CSB in its meeting held in the year 2018, and it appears that he is no more aggrieved with the referring back his case by the Competent Authority/Prime Minister for reconsideration and now the issue in the petition is confined to the grant of financial benefits from the date his two juniors were promoted till the date of his promotion. The question now is not confined to the grant of financial benefits for the above said period but has become a case of anti dated promotion in which regard the competent forum is the departmental authority. Moreover, there is no document appended with the petition so as to ascertain that whether petitioner is entitled for such relief or not. Further, the petitioner has never agitated the said matter before the departmental authority which is competent to resolve the issue of anti dated promotion and same cannot be bypassed.

8. However, the Respondents in their written reply as well as during arguments have admitted that the petitioner was neither superseded nor deferred and his seniority remained intact and after promotion he retained the right to claim pay/allowances to the extent any of his juniors who had been promoted earlier. Moreover, the CSB in its meeting held on 11-13<sup>th</sup> February, 2014 considered petitioner's case along with other BS-19 officers of Commerce & Trade Group for promotion to BS-20 and recommended him for promotion and the Prime Minister also did not outrightly reject his case for promotion but being the competent authority remanded his case to the CSB for reconsideration / re-examination for having questionable integrity/general reputation/perception in consonance with the spirit of Hon'ble Supreme Court's judgment in C.P.No. 22/2013. Even for safeguarding the right of the petitioner against any unfair detriment, the post

against which he was recommended for promotion was also kept vacant until reconsideration of his case by the CSB in its next meeting.

9. In view of the above discussion, I am of the considered view that the issue of promotion for which the petitioner has invoked the constitutional jurisdiction of this Court has been resolved when he was promoted in BS-20, however, to the extent of prayer seeking direction regarding grant of back benefits, matter is remanded to the respondents to reconsider his case keeping in view the observations recorded at para-8 of the judgment, in the light of the terms on which petitioner's case was referred back to CSB for reconsideration and in accordance with law, within a period of 90 days from the date of receipt of copy of this judgment under intimation to this Court through the Registrar.

10. The petition is **disposed of** accordingly.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

Announced in open Court on this 25<sup>th</sup> day of September, 2020.

**JUDGE**

M. JUNAID USMAN