

JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.3483/2011

Mrs. Iram Adnan and Adnan Zahir,
Versus
Federation of Pakistan and others

Writ Petition No.3511/2011

Waqar Ahmad Mughal
Versus
Federation of Pakistan and others

Writ Petition No.3512/2011

Shahid Aslam Mohar
Versus
Federation of Pakistan and others

Writ Petition No.58/2012

Abdur Rehman Dogar
Versus
Federation of Pakistan and others

Writ Petition No.427/2012

Muhammad Akram
Versus
Federation of Pakistan and others

DATE OF DECISION: 20-03-2012.

PETITIONER BY: M/s Abdul Rahim Bhatti & Yasir Rahim Bhatti,
Advocates in W.P Nos.3483 of 2011, 3511/2011
and 3512/2011.
Mr. Zulfiqar Khalid Maluka, Advocate in W.P No.58
of 2012.
Mr. Muhammad Irshad Chaudhry, Advocate in W.P
No.427/2012.
STATE BY: Mr. Rehan-ud-Din Khan, Standing Counsel
RESPONDENTS BY: Mr. Saeed Ahmad Zaidi, Advocate FBR
Amjad Saeed Awan, S.O. Establishment Division

SHAUKAT AZIZ SIDDIQUI; J:

By this single judgment Writ Petition Nos.3483, 3511, 3512 of 2011 and 58, 427 of 2012 are being disposed off, as all petitions, almost have similar facts, which involve common points of law.

Facts presented through above mentioned Writ Petitions are as under:-

Writ Petition No.3483/2011

Mrs. Iram Adnan and Adnan Zahir,

Versus

Federation of Pakistan and others

Petitioners of this writ petition joined civil service in 1985 after their selection in the Competitive Examination for Central Superior Services (CSS) held by Federal Public Service Commission and they were allocated Income Tax Group (Inland Revenue Service). On completion of mandatory specialized training and courses, they assumed the charge of Assistant Commissioner (BS-17) Income Tax. In view of their excellent performance, they were promoted to the post of Deputy Commissioner, Income Tax (BS-18) and on the basis of brilliant track record; they were further promoted to the post of Additional commissioner Income Tax in (BS-19). For their further promotion to (BS-20) petitioner were fully qualified and met the eligibility criteria, therefore, their cases were presented to Central Selection Board (CSB) but to the utter surprise of the petitioners, CSB in its meeting held on 3rd of October 2011 passed the order of their supersession. Petitioners were not informed about the reasons of their supersession, however, during the pendency of writ petition following reasons were communicated:-

“Since they had not achieved the requisite threshold and their reputation, known to the Members of CSB, were of being corrupt and in-efficient”. (emphasis provided).

Writ Petition No.3511/2011.

Waqar Ahmad Mughal

Versus

Federation of Pakistan and others

Petitioner of this writ petition Waqar Ahmad Mughal, is an officer of Accounts Group in BS-20 who has also been superseded on the ground of reputation

and consequently awarded less marks, without confronting him with the same and thus was condemned unheard.

Writ Petition No.3512/2011

Shahid Aslam Mohar

Versus

Federation of Pakistan and others

Petitioner of this writ petition Shahid Aslam Mohar being an Officer of Railways (Transportation and Commercial) Group was earlier promoted in the year 2010 in BS-20 and his PERs for the year 2010 & 2011 were not available and that he was superseded without promoting any other officer to BS-21. The officer after his promotion remained on deputation with Benazir Income Support Programme, Punjab, Lahore and is still there. He was not confronted with the allegation of corruption or of corrupt practices.

Writ Petition No.58/2012

Abdur Rehman Dogar

Versus

Federation of Pakistan and others

Petitioner of this writ petition Abdur Rehman Dogar is serving as Director (BS-20) with the Directorate of Intelligence & Investigation, (Inland Revenue Service), Federal Board of Revenue, Govt. of Pakistan. The respondents No.4 to 10 were junior officers who have been promoted to BS-21 while petitioner has been superseded.

Petitioner's case for promotion to BS-21 was considered in the meeting of Central Selection Board (CSB) on 3rd October, 2011 and was superseded for the following reason:-

"Professionally not competent to hold senior assignment in BS-21 as assessed by Departmental Representative. His total score of PERs, Training Evaluation Report and marks awarded by the Board was below the prescribed score of 75." (emphasis provided).

Writ Petition No.427/2012

Muhammad Akram

Versus

Federation of Pakistan and others

Petitioner of this writ petition Muhammad Akram, is presently posted as Commissioner Inland Revenue, Zone-II, Regional Tax Officer, Sargodha and serving in Income Tax Department since 22-10-1985. He was promoted to Grade 19 on 08-05-2001 on regular basis. Petitioner was in the seniority list at No.55 of BS-19 to be promoted in BS-20, but as per proceedings of the meeting of the Central Selection Board held on 3rd October, 2011 other officers junior to petitioner in seniority have been promoted, superseding the seniority of petitioner vide promotion notification No.2491-IR-I/2011 dated 02-12-2011 .

In response to petitioner's request, following reasons/basis for not promoting was communicated to the petitioner vide CBR's letter No.22(1)/S-MIR/2008/Edox#176928-R dated 28-12-2011 which are as under:-

"Incompetent and not above board in integrity. Unfit to hold higher responsible post in BS-20 also in view of Training report as well as the opinion of Departmental Representative. His total score of PERs, Training Evaluation Reports and marks awarded by the Board was below the prescribed score of 70". (emphasis provided).

In response to notices issued official respondents appeared and filed report and parawise comments, however, none of the private respondents appeared.

I have heard the learned counsel for Petitioners and official Respondents at great length, crux of their pleadings and arguments are as under:-

PETITIONERS:

- *That entire exercise carried out by the CSB is based on a very dubious formula which is being applied on whims*

- *Petitioners belonging to different groups have been superseded on the personal disliking of the members of CSB instead of any substance and conclusive evidence procured through due process of law*
- *General reputation and reports from secret agencies can never be made basis of taking away valuable rights of any citizen of the Islamic Republic of Pakistan*
- *Petitioners reached to the present status on the basis of their performance, knowledge, experience and achievements which they made in their respective field as Civil Servants*
- *General reputation of being corrupt has always been a disputed question which even otherwise cannot be adjudged without confronting the person against whom such allegations are leveled*
- *There is no rational, logic and prudence behind the formula of awarding marks for the purpose of promotion, deferment, and supersession*
- *Establishment Division playing havoc with the process of law and mandate of the dictums of the superior courts of the country*
- *Reference of section 4(1)(b) of the Service Tribunal Act, 1973 has been made on the point of maintainability of writ petition against determination of fitness*
- *That Federal Service Tribunal vide its Judgment dated 08-10-2008 had directed the Secretary Establishment Division and Chairman FPSC to either lay down objective criteria for awarding 15% marks by CSB or withdraw the same as it was in direct conflict with Supreme Court's earlier order dated 25-09-2006. FST order had attained finality after Supreme Court of Pakistan had dismissed CPLA on 14-07-2009.*

RESPONDENTS:-

- *That service matters of Civil Servants fall within the exclusive jurisdiction of the Service Tribunal in term of Section 3(2) of Service Tribunal Act, 1973 read with Article 212 of the constitution of Islamic Republic of Pakistan.*
- *That, no infringement of any right has been caused to petitioners, by virtue of consideration of their promotion by CSB, as it has been held by the Hon'ble Supreme Court in judgment reported as PLD 1983 SC 652,*
- *That the recommendations of CSB, being mandatory, appointing authority should not promote any person without taking into consideration the recommendation of CSB, therefore, petitioners have no locus standi to file the Writ Petition.*

- *That, civil servant cannot demand promotion as a right and granting or refusal of promotion is a matter which is the exclusive domain of Government/Executive Authorities*
- *That promotion to higher grade is always considered under relevant rules and regulations. Seniority is not the sole criteria for promotion and reasons for non-promotion have been communicated to the petitioners*
- *That CSB on the basis of its collective wisdom decides/recommends the most suitable officers for promotion to higher grade*
- *That promotion to selection post is not based on mechanical or mathematical formula only*
- *That, no discrimination whatsoever has been committed with petitioners as for promotion to these posts besides length of service. Other qualities like relevance of experience, circulation value, quality and output work, integrity, training, variety of experience are also examined by the CSB and thereafter promotion to these posts is made on the basis of selection on merit in terms of Section 9(2) of the Civil Servants Act, 1973*
- *That, the officers junior to the appellants/petitioner had better threshold and the CSB on the basis of its collective wisdom, recommended their promotion over the petitioners*
- *That, the posts carrying basic pay scale 20 falls in the middle management post and promotion to these posts is being made on the basis of selection on merit*
- *That, in addition to the circulation value and variety of experience the incumbents are considered for promotion keeping in view pen picture drawn in the Performance Evaluation Reports, Training Evaluation Reports, reputation of the officer about his integrity and performance as known to the Board Members and this potential cannot be judged by mathematical formula on the basis of seniority cum fitness and the CSB have to apply its collective wisdom.*
- *That as per Promotion Policy 2007, 70% weight is assigned to the PERs of the officer, 15% weight is assigned to the training and 15% marks are reserved for the CSB*

2. First aspect, which requires determination is that, whether, this court has the jurisdiction to adjudicate upon the matter and issue appropriate writ, in the light of the prayer made by petitioners and objection raised by respondents.

For convenience, section 4(1)(b) of the Service Tribunal Act, 1973 is being provided hereunder:-

"No appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher grade"

Similarly, proviso to Sub-section (2) of Section 22 of Civil Servants Act, 1973 provides as under:-

“Provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade”.

Moreover, 2nd proviso to Rule 4(1) of Civil Servants Appeal Rules, 1977 states as herein below:-

“Provided further that, no appeal or review shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade.”

3. As is evident from above provisions, no remedy by way of filing appeal etc. is provided to civil servant against determination of “fitness” therefore, this aspect itself is a ground to invoke the constitutional jurisdiction of this court. In this regard guidance has been sought from the judgments reported as PLD 1989 SC-26, 2000 PSC 599, PLD 2003 (SC) 175, 2001 PLC (CS) 878, 2003 PLC (CS) 503, (LHC) and order dated.20-05-2011 passed by learned single bench of Islamabad High Court in Writ Petition No.1160 of 2011. In this view of the matter, it is held that writ petition on the issue brought before the court is maintainable.

4. The Central Selection Board in its meeting held in November, 2007 decided to award its 15 marks on the basis of Members' views on the officer about his integrity, performance and pen picture in synopsis of PERs for the last 5 years and the Training Evaluation Reports. The CSB had also devised a key for award of marks, as under:

CATEGORY OF OFFICERS.	MARKS TO BE AWARDED
Outstanding	13 to 14
Very Good	10 to 12
Good	07 to 09
Average	04 to 06
Below Average	02 to 03

5. Learned Federal Service Tribunal, vide its judgment dated 08.10.2008 had, however directed the Secretary Establishment and Chairman, FPSC to either lay down objective criteria for award of 15 marks by CSB or withdraw the same as it was in direct conflict with Supreme Court's earlier order dated 25.09.2006. The order of the learned Federal Service Tribunal has attained finality after Supreme Court of Pakistan had dismissed the CPLA on 14.07.2009. In its meeting held in Dec. 2009 the CSB had decided that the officers on the panel may fall in three categories i.e top most being Category-I, the middle one Category-II and the remainder Category-III and CSB marks may be awarded on the basis of officer's integrity, performance known to the Board's Members and the pen picture contained in the Performance Evaluation Reports and Training Evaluation Reports. Present CSB decided to continue with the said process as well the award of marks as under :-

CATEGORY	MARKS
I	12 TO 14
II	08 TO 11
III	07 and below

The formula of allocation of 15 marks by the Central Selection Board is based on Members' view on the officers about his (i) integrity, (ii) performance (iii) pen picture in synopsis of performance evaluation reports (PERs) for the last five years and (iv) Training Evaluation Reports.

6. Award of 15 marks by CSB resulting into grant of promotion or denial to the same brings noticeable proportion of litigation before the High courts, Service Tribunals and ultimately Apex Court. Incidentally, mechanism in which these marks are awarded and the manner in which this formula being applied has received displeasure from the superior courts and observations about same have already been made, through different pronouncements.

7. In a reported judgment, 2006 PLC (CS) 564 learned Division Bench of High Court of Sindh has held that the Bar of 212 of the Constitution is not attracted in cases relating to determination of fitness and further that the qualification score is to be taken into consideration in conjunction with other criteria such as seniority, length of service, varied experience, grading in NIPA course and also the crucial factor of quality and output/integrity. It has also been held that when a civil servant secures the prescribed threshold, he is entitled for promotion, if other factors are also satisfied. Even in the case of less than the prescribed score the other prescribed conditions would also be considered. All the Constitutional Petitions were allowed with the direction to reconvene the meeting of the Central Selection Board to make recommendation for promotion in accordance with law and in terms of directions contained in Para 20 of the Judgment. The judgments have been up-held by the Honourable Supreme court of Pakistan.”

8. Latest dictum has been laid down in the case titled Secretary Revenue Division, CBR/Federal Board of Revenue, Islamabad Vs. Gul Muhammad and others reported as 2011 SCMR 295, operative part of which is reproduced herein below:-

“The above matter came up before this Court and the judgment of the Service Tribunal was upheld vide cited judgment decided on 25th Sept. 2006, concluding para there from is reproduced herein below:-

Learned D.A.G, despite our repeated question, could not satisfy us on this aspect of the case, therefore, we are of the opinion that decision with regard to promotion of the Officer cannot be left on the discretion of Members of the Board. There must be some criteria to judge the performance of a candidate because promotion was denied to the officer on the ground that he does not fulfill the criteria. When there is no criteria, then how a person can be denied promotion, therefore, the Service Tribunal has rightly observed that the Board must bring more objectivity in the criteria.”

In pursuance of the above judgment of this Court, we have no reason to take different view other than which has already been expressed in the said case. In the circumstances, the relief has, therefore, been rightly granted to the respondents and petitions being without substance are hereby dismissed with costs, because knowing well that already a different view has already been taken by the Supreme Court, same point has again been agitated without any justification. When we asked if order dated 29-03-2010 was implemented or not, learned counsel replied that promotion stood granted to the respondents. Be that as it may, the concerned authority of the department is directed to comply with the order of the Service Tribunal, if not implemented as yet and submit report within a period for seven days to Registrar for our perusal in Chambers."

9. In my humble estimation issue before this court is not merely supersession of civil servants rather more serious to that, and it is dis-obedience of judgment of Hon'ble Supreme Court, frustrating the directions contained therein and malicious act to undermine the efforts of building the culture of rule of law. It is constitutional obligation of the High Court to enforce the law declared by apex court through different pronouncements. It really is beyond comprehension that executive functionaries would become insensitive about any judgment containing direction to them, by ignoring it or keeping aside the same. Any court of law does not render the judgment for academic discussion but with the object and purpose to undo the wrong and enforce the rights.

10. Article 189 of the constitution makes it mandatory for all courts in Pakistan to surrender before any decision of court of apex and follow the same as law of the land. It is not a matter of discretion but binding upon the courts and for convenience sake said article is reproduced herein below:-

"Article 189:- Decisions of Supreme Court binding on other courts:-

Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or annunciates a principle of law be binding on all other courts in Pakistan"

11. Unfortunately, trend of showing defiance, disobedience and non-compliance of the orders of the superior court is on increase and this is the appropriate time where

High Court must become more vigilant and enforce its authority for the implementation of the orders of the Hon'ble Supreme Court and persons on the helm of affairs who through cryptic approach are found in ridiculing the orders, must be dealt with strictly in accordance with law.

12. I have no hesitation in observing that after clear direction by the Hon'ble Supreme Court, through judgment supra all the proceedings of Central Selection Board, in violation of observations/directions of apex court, have no sanctity whatsoever. The executive functionaries are expected to act in aid of order passed by the superior courts and implement the same in the spirit in which they are passed. It is common observation that when some decision by executive functionaries is taken in violation of any judgment/order of the superior courts, beneficiaries of such order show arrogance and deprived show their dismay about the judicial system.

13. It is simply unbelievable that civil servants having stinking reputation of involvement in the corrupt practices would be kept in service with a license to pollute the entire system. When it comes to taking action against such element, no evidence or substance is found to warrant action against them. Now, question arises that how can those civil servants be denied benefit of promotion simply for the reason that some of the members of CSB had personal knowledge or in their estimation officer is involved in corrupt practices? It is amazing to note that, no officer against whom presumption of corruption is made, confronted with such suppositions and even interviewed to seek explanation about any impression lurking in the minds of learned members of CSB. One reason of not confronting could definitely be, want of incriminating material and other may be source of personal information, which in the understanding of law is just a hearsay. Admittedly at the time of CSB, no disciplinary proceedings against superseded civil servants were pending, on the ground of charges of corruption. Allegations of corruption against any citizen of the country are

serious but when such type of allegations are leveled against civil servants and that too of top or middle management, repercussion of such allegations are found more than serious and grave in nature. Such allegations against highly placed civil servant besides bringing stigma to his career disrupt entire fiber of his family, professional and social life and at times proves fatal to his life. In the era of awareness, rule of law and judicial activism, it is unexpected of the executive functionaries, to play with the careers of civil servant on hypothesis, surmises and with subjective approach. The superior courts of the country have jealously safeguarded the rights of citizens and always disapproved, actions taken with malafide intention, ulterior motives and nefarious designs. Subjective formula being followed is like declaring civil servants as "good guy" and "bad guy" which is in direct violation of Articles 3,4,5,9,10-A, 14, 25 of the Constitution of the Islamic Republic of Pakistan.

14. 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. All the meetings of CSB, subsequent to the above pronouncement of Hon'ble Supreme Court, therefore, are declared as unconstitutional without jurisdiction and unjust which are held to be of no consequence. The authorities concerned are directed to hold de-novo proceedings of Central Selection Board and on the basis of restructured formula all the superseded

and deferred civil servants must be considered , again, as their supersession/deferment on the basis of existed formula applied by CSB is totally, illegal. However, civil servants who earned the promotion, without superseding other civil servants shall continue to hold their present posts and positions.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

APPROVED FOR REPORTING.

"Waqar Ahmed"

Blue Slip addul

