

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

I.C.A.No.368 of 2015

Secretary, Establishment Division, Government of Pakistan  
**Versus**

Dr. Muhammad Arif & others

**Date of Hearings:** 11.01.2016, 27.01.2016, 28.01.2016,  
03.02.2016, 04.02.2016, 08.02.2016,  
10.02.2016, 16.02.2016, 17.02.2016,  
18.02.2016, 22.02.2016, 23.02.2016,  
24.02.2016, 25.02.2016, 29.02.2016,  
01.03.2016, 07.03.2016, 08.03.2016,  
09.03.2016, 10.03.2016, 15.03.2016,  
16.03.2016, 21.03.2016, 28.03.2016  
& 04.04.2016

**Appellants by:** Mr. Afnan Karim Kundi, learned Additional Attorney-General in I.C.A.Nos.368, 371, 372, 373, 374, 375, 376, 377, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 391, 392, 393, 394, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432 & 433 of 2015,  
Mr. Atta Ullah Hakim Kundi, Advocate in I.C.A. Nos.390 & 412 of 2015,  
Mr. Asif Khan, Advocate in I.C.A.No.449/2015,  
Mr. Zarnab Khattak, Superintendent Establishment Division,  
Dr. Kashif, Section Officer, Establishment Division.

**Respondents by:** M/s Abdur Rehman Siddiqui, and Ch. Asghar Ali, Advocates for respondent No.1 in I.C.A.Nos.368, 379, 382, 390, 400, 403, 406, 408, 409, 412, 417, 425, 427, 429 & 430 of 2015,  
Mr. Muhammad Aftab Alam Rana, Advocate for respondent No.1 in I.C.A.Nos.391 & 392 of 2015,  
Muhammad Shabbir Bhutta, Advocate for respondent No.1 in I.C.A.Nos.368, 372 & 385 of 2015,  
Barrister Masroor Shah, Advocate for respondent No.1 in I.C.A. Nos.376, 377, 383, 387, 415 & 433 of 2015,  
Mr. Ahsan Hameed Dogar, Advocate for respondent No.1 in I.C.A. Nos.405, 413 & 419 of 2015,  
Mr. Ghulam Rasool Bhatti, Advocate for respondent No.1 in I.C.A. Nos.380, 407 & 424 of 2015,  
Sardar Taimoor Aslam, Advocate for respondent No.1 in I.C.A. Nos.381 & 411 of 2015,  
Mr. Fayyaz Ahmed Jandran, Advocate for respondent No.1 in I.C.A. Nos.398, 414 & 426

of 2015,  
 Mr. Tariq Mehmood, Advocate for respondent No.1 in I.C.A.No.399/2015,  
 Mr. Saeed Khursheed Ahmed, Advocate for respondent No.1 in I.C.A.Nos.368, 375 & 402 of 2015,  
 M/s Aziz Nishtar and Hassan Mehmood, Advocates for respondent No.1 in I.C.A.Nos.373 & 386 of 2015,  
 Mr. Mansoor Beg, Advocate for respondent No.1 in I.C.A.Nos.388 & 423 of 2015,  
 Mr. Moazzam Ali, Advocate for respondent No.1 in I.C.A.No.374/2015,  
 Mr. Asif Khan, Advocate for respondent No.3 in I.C.A.No.371/2015,  
 M/s Ahmad Junaid and Zaafir Khan, Advocates for respondent No.1 in I.C.A.Nos.371 & 449 of 2015,  
 Rai Azhar Iqbal Kharal, Advocate for M/o Railway in I.C.A. Nos.393, 407 & 424 of 2015,  
 Respondent No.1 (Muhammad Akram Khan) in-person in I.C.A.No.392/2015,  
 Respondent No.1 (Badar Zaman) in-person in I.C.A.No.384/2015,  
 Mr. Farooq Amin Qureshi, respondent No.1 in I.C.A. No.422/2015.  
 Mohsin Raza Gondal, Deputy Director, for respondents No.3 & 4,  
 Respondents (Ghulam Haider & Zafar Iqbal Qadir), in-person in I.C.A. Nos.389 & 410 of 2015, respectively,  
 Raja Zubair Hussain Jarra, Advocate, for respondent No.3/Ministry of Defense in I.C.A.No.374/2015,  
 Mrs. Naziran Malik, Advocate for respondent in I.C.A. Nos.368 & 427 of 2015,  
 Hafiz Mazher Maiken, Advocate for respondent No.5 in I.C.A. No.424/2015.

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**MIANGUL HASSAN AURANGZEB, J:-** Through this common judgment, we propose to dispose of the Intra Court Appeals listed in **Schedule-I** to this judgment. Most of these appeals have been instituted by the Federation of Pakistan, against the composite judgment dated 27.07.2015, rendered by the learned Single Bench of this Court, whereby the writ petitions, listed in **Schedule-II** to this judgment, were disposed of.

2. The writ petitioners were/are all civil servants and aspirants for promotion from Basic Pay Scale-20 ("BPS-20") to BPS-21. These petitioners were primarily aggrieved by the recommendations made by the Central Selection Board ("CSB") to the Prime Minister of the Islamic Republic of Pakistan ("the

Prime Minister") not to promote them - they were either recommended to be superseded or deferred. The prayer clause of Writ petition No.2033/2015 titled, "Dr. Muhammad Arif Vs. Federation of Pakistan" is reproduced herein below:-

*"In view of the above, it is most respectfully prayed that an appropriate writ may kindly be issued by this Honourable Court:-*

- a) To set aside impugned 5 marks contained under the so-called structured formula/OM dated 10.02.2014 and the recommendations regarding deferment of the Petitioner by declaring as illegal and unlawful because the officers of other Groups have been promoted with lower quantification.*
- b) The official Respondents may kindly be directed to consider the Petitioner for promotion to BS-20 with effect from the date of occurring of BS-20 vacancy with all consequential benefits.*
- c) Any other relief deemed appropriate under the circumstances of the case may also be granted."*

3. Only a handful of the petitioners had assailed the 'Objective Assessment Form' annexed to the Office Memorandum ("O.M.") No.F.1/1/2012-CP-2, dated 10.02.2014, issued by the Establishment Division, Government of Pakistan. The said Objective Assessment Form set out the criteria for the allocation of the fifteen (15) discretionary marks to be given by the CSB to each candidate for promotion. Out of these fifteen (15) marks, upto 5 marks could be given to the officer under consideration for promotion for his "Integrity/General Reputation/Perception" on the basis of his Performance Evaluation Reports ("PERs"), Training Evaluation Reports ("TERs") and the Opinion of the CSB. An officer getting less than three (3) out of five (5) marks could be deferred or superseded by the CSB at their discretion but with reasons to be recorded in writing.

4. The learned Single Judge-in-Chambers, vide short order dated 27.07.2015, allowed the said writ petitions. The said short order was followed by detailed reasons. For ease of reference the said short order is reproduced herein below:-

*"For the reasons to be recorded later on instant writ petition as well as connected writ petition Nos.1359, 1383, 1401, 1415, 1416, 1418, 1426, 1429, 1432, 1439, 1440, 1446, 1447, 1451, 1453, 1454, 1462, 1464, 1466, 1472, 1484, 1496, 1501, 1503, 1504, 1505, 1506, 1507, 1509, 1511, 1518, 1523, 1524, 1540, 1542, 1561, 1562, 1564, 1565, 1566, 1568, 1583, 1588, 1589, 1607, 1612, 1657, 1756, 1955, 1961, 2033, 2058, 2095, 2137 of*

*2015, 3656 of 2014 and 1855 of 2013 are allowed by declaring that formula of award of 15 marks at the disposal of CSB with overriding effect of 05 marks and thereby placing the civil servants in categories A, B & C is against the dictums laid down by the Hon'ble Supreme Court in the case of Orya Maqbool Abbasi reported as 2014 SCMR 817 and Judgment passed by this Court in Iram Adnan's case reported as 2012 PLC (C.S.) 1355, on the basis of which purportedly new policy was framed. The discretion of award of marks by the CSB cannot bring the ACRs/TERs evaluation into naught and CSB can only grant marks out of 15 at its discretion and marks of quantification to be added in making recommendations for promotion. The entire process carried out by CSB on the basis of formula introduced through Policy of 2012 resulting into deferment/supersession of petitioners is declared as illegal, without jurisdiction, in violation of law laid down by the Superior Courts and offensive to the accrued valuable rights of civil servants."*

5. The learned Single Judge-in-Chambers also directed the Establishment Division to reframe the formula by taking away the overriding effect of the marks to be awarded by the CSB and categorization into A, B & C and place the cases before the CSB in the light of the judgments of the Superior Courts within one month. It was also directed that the assessment should be made on the basis of the entire performance and in case any tangible material questioning the integrity of the civil servant is available, he may be confronted with the same, and thereafter, an opinion regarding deferment or supersession could be made but not on the basis of "hypothesis and reputation in air".

6. Through several Intra-Court Appeals ("ICAs"), under Section 3(2) of the Law Reforms Ordinance, 1972, the Secretary, Establishment Division, Government of Pakistan, challenged the said short order dated 27.07.2015. Alongwith the ICAs, the appellants also filed applications for the suspension of the said order dated 27.07.2015. Vide interim order dated 02.09.2015, the learned Division Bench of this Court directed *status quo* to be maintained until the next date of hearing. Ever since then a meeting of the CSB has not taken place.

7. The learned Additional Attorney-General ("A.A-G"), on behalf of the Federation, submitted that the writ petitions instituted by the civil servants aspiring to be promoted to BPS-21, were all against the 'recommendations' of the CSB; that none of the petitioners waited for the decision of the competent

authority/the Prime Minister regarding their promotion; that the recommendations of the CSB to supersede some of the writ petitioners had not been approved by the Prime Minister. All the recommendations for supersession were converted into deferments, and the recommendations of longer deferments were converted into shorter deferments by the Prime Minister. Therefore, the petitioners had no cause to invoke the jurisdiction of the Hon'ble High Court under Article 199 of the Constitution against the recommendations of the CSB, which were no longer in the field.

8. The objections to the maintainability of the writ petitions raised by the learned A.A-G before the learned Single Bench were reiterated in the appellate proceedings. These objections, which have been set out in paragraph 21 of the impugned judgment are for ease of reference reproduced herein below:-

*"21. Learned Additional Attorney General next contended that in view of foregoing factual position the following are the implications for maintainability of the writ petitions:*

- a. Petitions not challenging the competent authority's order/decision are not maintainable since the order holding field has neither been appended therewith nor assailed therein to begin with. Admittedly, none of the petitioners have sought amendment to their petitions or prayer clauses therewith to pose challenge to the order/decision of the competent authority, nor have they placed the impugned order on record. All oral arguments addressed at the bar on behalf of the petitioners were also solely targeted at and challenging the merits of CSB's recommendations, which has now become a sheer academic exercise. In their present form, the petitions failing to challenge the competent authority's order/decision are not maintainable.*
- b. Petitions challenging the CSB's recommendations which are no more holding field - having not been approved by the competent authority and having been nullified by the competent authority's order/decision of deferment for a short period till September, 2015 -- are not maintainable as they have become infructuous.*
- c. Even otherwise mere recommendations by the CSB do not afford an actionable cause to the petitioners whereby they could be considered "aggrieved" within the contemplation of the Article 199(1)(a) of the Constitution. Recommendations alone do not constitute an adverse order unless approved by the competent authority and resulting in passing of an adverse order as envisaged to be passed and communicated to the concerned civil servant under paragraph 9 of the Promotion Policy of 2007 (revised till date). Reliance is placed on 1995 SCMR 876.*

- d. *That the superior Courts have been assuming jurisdiction in service matters of civil servants pertaining to promotion only where an appeal to FST is not allowed under paragraph (b) of the proviso to Section 4(1) of STA 1973. On the other hand, Article 212(1)(a) of the Constitution read with Section 3(2) of STA 1973 vest "exclusive jurisdiction" in FST "in respect of matters relating to the terms and conditions of service of civil servants". Promotion is admittedly part of the terms and conditions of service of civil servants. Needless to state that the writ jurisdiction of this Hon'ble Court invoked by the petitioners under Article 199 of the Constitution is "Subject to the Constitution" as evident from the opening phrase of Article 199. Also the relevant Constitutional provisions i.e. (a) Article 212(1) vesting exclusive jurisdiction in FST being an administrative tribunal established pursuant to the said Constitutional provision; and (b) Article 212(2) creating Constitutional bar on the jurisdiction of other Courts including this Hon'ble Court -- both start with a non obstante clause i.e. "Notwithstanding anything hereinbefore contained" thereby giving it an overriding effect over Article 199 which is contained before Article 212 in the Constitution. This is besides the fact that remedy before FST would by definition be considered an alternate adequate remedy within the contemplation of Article 199(1) of the Constitution.*
- e. *Petitioners cannot be considered "aggrieved" of the order/decision of deferment made by the competent authority, whereas a civil servant must be "aggrieved" of an order to be able to agitate the jurisdiction of both FST (under Section 4 of STA 1973) and this Hon'ble Court (under Article 199(1)(a) of the Constitution). Indeed, in the petitioners' case, the competent authority has not approved CSB's recommendations of supersession and longer deferment and has instead passed an order/decision of simple deferment for a short period till September, 2015.*
- f. *It is now well-settled that promotion cannot be claimed by the petitioners as a vested right and in the absence of a legal grievance as discussed in the preceding submissions, superior Courts of the country have always refrained from entertaining writ petitions in such cases. Reliance is placed on Government of Pakistan vs Hameed Akhter Niazi (PLD 2003 SC 110) which holds at para 22 as under:*

*"22. Section 9 of the Act of 1973 deals with "Promotion". It may be regarding "selection post" or "non-selection post". In case of selection post as involved in these matters, the criterion for promotion is merit, while in case of non-selection post it is done on the basis of seniority cum fitness. No civil servant can ask for promotion as a right, and the giving or refusal of promotion is a matter, which is within the exclusive domain of the government /executive authority. If a promotion is denied to a civil servant it could not be termed as*

**denial of any fundamental rights." [Emphasis added]**

- g. Only a few petitioners have challenged the Establishment Division's Office Memorandum No.F.1/1/2012-CP-2 dated 10.02.2014 ("OM") annexed therewith the Objective Assessment Form for allocation of fifteen (15) discretionary marks to be given by CSB to each candidate for promotion. What has been challenged is the provision made therein that should a civil servant score less than three (3) marks out of five (5) marks allocated to the head "Integrity/General Reputation/Perception", then he/she may be superseded or deferred by the CSB as its discretion with reasons recorded in writing. It may be mentioned that any challenge to the aforesaid OM would also be maintainable only before FST by way of an appeal in its exclusive jurisdiction vested under Article 212(1)(a) of the Constitution read with Sections 3(2) and 4(1) of STA 1973. This is because the OM clearly pertains to the terms and conditions of service of civil servants in terms of affecting their prospects for promotion. It is now well-settled that anything affecting prospects for promotion is not of itself a determination of fitness for promotion but a method or means of such promotion which can be agitated before FST as part of the right of an eligible officer to be considered for promotion. Hence, a writ petition would not be competent under Article 199 of the Constitution. This is besides the fact that appeal before FST would by definition constitute an alternate adequate remedy envisaged under Article 199(1) of the Constitution. Reliance is placed on I.A Sherwani's case (1991 SCMR 1041), wherein the august Supreme Court authoritatively held at paragraph 10 thereof as under:-***

***"10. From the above cited cases, it is evident that it has been consistently held inter alia by this Court that a civil servant if is aggrieved by a final order, whether original or appellate, passed by a departmental authority in respect of his terms and conditions, his remedy, if any, is by way of an appeal before the Service Tribunal even where the case involves vires of a particular Service Rule or a notification or the question, whether an accused civil servant can claim the right to be represented by a counsel before the Enquiry Officer. We are inclined to hold that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of subsection (1) of Section 4 of the Act in order to file an appeal before the Service Tribunal..... However, we may clarify that a civil servant cannot by-pass the jurisdiction of the Service Tribunal by adding a ground of violation of the Fundamental Rights. The Service Tribunal will have the jurisdiction in a case which is founded on the terms and conditions of the service even if it involves the question of violation of the Fundamental rights..." (Emphasis added)***

- h. Even otherwise what the OM provides for is something belonging to the domain of Promotion Policy of the Government. It is the discretion of the Government to introduce and revise its promotion policy from time to time and the Court cannot substitute the policy decision with its own opinion. Revised Promotion Policy of 2007 together with OM dated 10.02.2014 that allocates fifteen (15) marks to the discretion of the CSB and the manner in which it is done are policy decisions and it is the exclusive domain of the government to prescribe qualifications for a particular post which is not justifiable as a policy matter before this Hon'ble Court. If the Court ventures upon giving its own policy view, there will be no end to suggestions on how to structure the Promotion Policy in terms of weight assigned to the discretionary marks of CSB and the various components thereof. The collective wisdom of the members of CSB drawn from amongst senior-most members of federal bureaucracy also including two Parliamentarians (comprising one Opposition member) are to be trusted since no perfect objective criteria could ever be made and an element of subjectivity based on trust will stay there. Indeed, this Hon'ble Court too would not venture upon giving its own assessment criteria.*
- i) Lastly, this Hon'ble Court's jurisdiction is governed by the Constitution and the law as discussed above. Having no jurisdiction in the matter and the petitions being not maintainable, this Hon'ble Court cannot assume jurisdiction on the notion of simply applying its earlier judgment(s) to examine if the same were followed or not. These are neither contempt nor execution proceedings. Such an exercise could only be undertaken by the forum/Court of competent jurisdiction, which if at all is FST in the instant cases."*

9. The learned A.A-G further submitted that there was no legal constitutional infirmity with the O.M.No.F.1/1/2012-CP-2, dated 10.02.2014; that this O.M. was issued in pursuance of the directions to the Establishment Division by the Hon'ble Supreme Court in the case of Orya Maqbool Abbasi (2014 SCMR 817); that in the case of Aftab Ahmed Manika (2015 SCMR 1006), the Hon'ble Supreme Court had directed that the officers should be considered *"on the basis of the criteria already set for determining the fitness or otherwise of the civil servants for promotion"*; that the law obligates the CSB to give reasons for the supersession or deferment of an officer under consideration for deferment; that the decision whether or not to promote an officer to BPS-20 or BPS-21 is based on the collective wisdom of the members of the CSB, some of them being high ranking civil servants; that the proceedings of the CSB are carried out in a



meticulous manner leaving no room for error; that the member of the CSB from the province or department of the officer under consideration for promotion can tell the other members about the ability and integrity of such an officer; that the Superior Courts have given the status of 'rules' to an O.M., and, therefore, the same should not be lightly interfered with; that the learned Single Bench had set aside portions of the O.M. dated 12.10.2012, which had not been challenged by any of the writ petitioners; and that in this way, the learned Single Judge-in-Chambers had assumed *suo moto* jurisdiction, which he could not exercise.

10. The learned A.A-G apprised the Court of the procedure which is adopted by the Establishment Division for issuing an O.M. He submitted that an O.M. is neither required to be vetted by the Law & Justice Division, Government of Pakistan, nor is it required to be published in the official gazette. He provided the copies of the Office Memoranda and Policies with respect to promotion of civil servants since 1982.

11. The learned A.A-G submitted that as the law did not provide a right of appeal against the proceedings of the CSB, the ICAs against the Impugned Judgment dated 27.07.2015 were maintainable. He submitted that the writ petitions challenging the vires of the O.M. dated 10.02.2014 suffer from laches and were liable to be dismissed. He submitted that although the said O.M. was issued on 10.02.2014, the writ petitioners challenged it in June, 2015, only when it was made applicable to them, and not before. He further submitted that in Aftab Manika's case, the said O.M. dated 10.02.2014 was applied to the civil servants.

12. Mr. Abdur Rehman Siddiqui, learned ASC for respondent No.1 in I.C.A.Nos.368, 379, 382, 390, 400, 403, 406, 408, 409, 412, 417, 425, 427, 429, & 430 of 2015, submitted that BPS-19 to 22 are selection posts; that the Chairman Federal Public Service Commission ("FPSC") did not attend the meetings of the CSB in which the writ petitioners were recommended to be deferred and superseded; that the absence of the Chairman FPSC from the meetings of the CSB was specifically pleaded by the writ

petitioner in the petition from which ICA No.425/2015 arises, but no reply to the same was given by the Federation; that it is an admitted position that some of the Members of the CSB had boycotted the meetings; that prior to 1982, there was no policy for the CSB to recommend promotions; that the Promotion Policy of 1982 was very comprehensive and objective; that the said Promotion Policy provided a formula for the quantification of the Annual Confidential Reports; that the said Promotion Policy has been substantially amended from time to time; that subsequently, the policy of promoting 'the best of the best' was introduced; that this policy was struck down by the Hon'ble Lahore High Court in Muhammad Zafeer Abbasi's case (2003 PLC (C.S.) 503); that O.M. dated 03.09.2005 had, *inter-alia*, provided that if a civil servant is superseded, he will not be considered for promotion unless he has earned PERs for two full years, and that if he is again superseded, he shall lose eligibility for further consideration; that paragraph (a)(iv) of the Revised Promotion Policy/ O.M. dated 24.10.2007 provided that an officer superseded earlier shall be considered after earning a Performance Evaluation Report for one full year; and that the said O.M. dated 24.10.2007 withdrew the earlier Office Memoranda regarding earning of two years reports after supersession and loosing of eligibility for consideration after two supersessions.

13. He further submitted that the decisions made by the competent authority on the basis of the recommendations of CSB in pursuance of the 2007 Promotion Policy have been challenged in three cases before the superior courts, namely, Iram Adnan's case (2012 PLC (C.S.) 1355), Liaqat Ali Chughtai's case (PLD 2013 Lahore 413) and Orya Maqbool Abbasi' case (2014 SCMR 817); that in all these three cases, the decisions made on the recommendations of the CSB were struck down and the need for structured discretion was voiced; that the critique in the judgments of Iram Adnan and Liaqat Ali Chughtai regarding the absence of structured discretion in the decision making process by the CSB, caused the Cabinet Secretariat (Establishment

Division) issued O.M. dated 12.10.2012, which amended the guidelines for the CSB in making recommendations for promotion/supersession/deferment of civil servants; that the deliberations of the CSB in accordance with the promotion policy as amended by O.M. dated 12.10.2012, were also set aside by the Hon'ble Supreme Court of Pakistan in Orya Maqbool Abbasi's case, and the Government was directed to undertake an exercise to outline an objective criteria for promotions; that this led the Establishment Division to issue O.M. dated 10.02.2014, whereby the Objective Assessment Form annexed to the promotion policy was changed; that as per Serial No.8 of the new Objective Assessment Form, the CSB could award upto 5 marks for an officer's Integrity/General Reputation/Perception on the basis of PERs/TERs/Opinion of the Board. Furthermore, it was clarified that an officer under consideration getting less than three out of five marks under this parameter may be deferred or superseded by the CSB at their discretion but with reasons to be recorded in writing.

14. He further contended that the provision of upto five marks for Integrity etc, of a civil servant in the Objective Assessment Form is most irrational; that if there is an allegation of dishonesty or corruption against a civil servant, he is liable to be proceeded against under the Government Servants (Efficiency and Discipline) Rules, 1973 ("the E&D Rules, 1973"); that if there is no such allegation against an officer, but any Member of the CSB feels that he is dishonest or corrupt, it is essential that such an officer should be called and confronted with any material available with the Members of the CSB; that it is not understandable as to why upto five marks have been provided for different levels of an officer's integrity; that either an officer is dishonest or he is not dishonest; and that dishonesty does not have levels.

15. He further submitted that under the new Objective Assessment Form, upto five marks can be awarded to an officer, *inter-alia*, on the 'Opinion of the Board'; that this makes the formula more subjective than objective; that the issuance of the

new Objective Assessment Form cannot be termed as compliance with the directions of the Hon'ble Supreme Court in the case of Orya Maqbool Abbasi; that the Hon'ble Supreme Court had directed for the criteria to be more objective and transparent; that this was not done by the Establishment Division; that the new Objective Assessment Form does not reflect the true spirit of the directions of the Hon'ble Supreme Court in Orya Maqbool Abbasi's case; that for the promotion of a civil servant, there has to be a subjective evaluation on the basis of an objective criteria; that Section 9 of the CSA, 1973, requires the promotion of officers to BPS-20 and BPS-21 to be made on the basis of the recommendations of the CSB in accordance with prescribed conditions; that these conditions are prescribed in Rules 8 and 8-A of the APT Rules, 1973; that earlier the eligibility threshold for promotion to BPS-21 was 70 marks, but subsequently it was raised to 75 marks; that the eligibility criteria for the promotion of an officer to BPS-21 in the Promotion Policy dated 31.10.1982 is different from the one set out in the O.M. dated 24.10.2007; that the eligibility criteria under the Promotion Policy of 1982 was more objective; that under the latest Policy, upto 70 marks can be given for PERs, and upto 15 marks can be given for TERs, and 15 marks are at the discretion of the CSB; that the Objective Assessment Form, which was issued in an effort to structure the discretion of the CSB in awarding the 15 marks, lacks objectivity; that the overriding effect which the award of marks for the integrity of an officer under consideration is to be given by the CSB is irrational and unconstitutional; and that the award of upto 5 marks on the basis of the 'Opinion of the Board' brings in arbitrariness in the proceedings of the CSB.

16. He further submitted that the adverse remarks about an officer in his Annual Confidential Report have to be communicated to him within a period of one month; that if such adverse remarks are not communicated to the officer within the said period, they cannot be used against the officer; that the Promotion Policy of 2007 provides that if disciplinary proceedings are pending against the civil servant, he is to be

deferred; that the Federation cannot put every thing behind the 'collective wisdom' of the members of the CSB, because the result of such collective wisdom has been set aside by the Superior Courts on more than three occasions; and that the Members of the CSB cannot place reliance on the report of Intelligence Agencies in forming an opinion about an officer under consideration.

17. He further submitted that the writ petitions instituted by the petitioners were competent, because the CSB did not pass 'an order' which could be challenged before the Federal Service Tribunal; that the CSB is a statutory authority, because it has been constituted under Section 9 of the CSA, 1973, and exercises statutory function; that if an appeal to the Federal Services Tribunal lay against the issuance of an O.M., then under the provisions of the Law Reforms Ordinance, 1972, the appeals filed by the Federation would be rendered incompetent; and that where a question of eligibility of a civil servant for promotion is involved, he has to seek his remedy before the Federal Service Tribunal, however, where the question of suitability or fitness of a civil servant for promotion is involved, his remedy lies before the Hon'ble High Court under Article 199 of the Constitution. In conclusion, Mr. Abdur Rehman Siddiqui, learned ASC prayed for the appeals to be dismissed.

18. Mr. Muhammad Shabbir Bhutta, learned ASC for respondents No.1 in I.C.A.Nos.368, 372 & 385 of 2015, submitted well prepared compendium of case law on the subject. He drew our attention to various portion of the judgments in Tariq Aziz-ud-Din and Muhammad Zafeer Abbasi's case to bring home the point that seniority is to be given with due consideration when an officer is being promoted to BPS-21 and that any material adverse to officer under consideration has to be confronted to him by the CSB before drawing a conclusion about his integrity. He further submitted that Dr. Muhammad Arif in his W.P.No.2033/2015 had also challenged the overriding 5 marks for the integrity of the officer under consideration brought in through O.M. dated 10.02.2014.

19. Mr. Muhammad Aftab Alam Rana, learned Advocate, who represented respondent No.1 in I.C.A.Nos.391 and 392 of 2015, which arose from W.P.No.1511/2015, submitted that the said petitioner had been recommended to be deferred for a period of one year, but subsequently, the competent authority reduced this period until the next meeting of the CSB, which was scheduled to be held in September, 2015; that due to the stay order in the appellate proceedings, the meeting of CSB could not take place; that the said petitioner had not challenged O.M. dated 10.02.2014; that the CSB had not adequately and meaningfully considered the said petitioner for promotion, because his Objective Assessment Form was not filled; that as per Serial No.157, Volume 1 of the Esta Code (2007), importance has been given to seniority to the posts in BPS-21; that in Serial No.156, Volume 1 of the Esta Code (2007), the process for the quantification of confidential reports is provided, and incorrect quantification identified during the course of inspection or re-verification entails a penalty under the E&D Rules, 1973 as well as the liability under the criminal law; that 12 years of service is required for the promotion of an officer to BPS-19, 17 years is required for promotion to BPS-20, and 22 years is required for promotion to BPS-21; that during the probationary period of one year, the integrity of an officer is carefully watched; that officers with doubtful integrity are not confirmed; that under Section 11 of the CSA, 1973, the services of a probationary can be terminated without notice; that under Section 9 of the CSA, 1973, a department is required to see that a civil servant possesses minimum qualifications for promotion; that under Rule 8 of the Civil Servants (APT) Rules, 1973, the department has a vital responsibility for forwarding a civil servant's name for promotion; that under Rule 7-A of the Civil Servants (APT) Rules, 1973, the competent authority may approve the promotion of an officer from the date on which the recommendations of the CSB was made; that withholding of a promotion is a penalty under Rule 4(1)(a)(i) of the E&D Rules, 1973, whereas Rules 5 and 6 provide the procedure for imposing such a penalty; that at no

material stage were any adverse remarks about the writ petitioner communicated to him; that the competent authority did not agree with the recommendations of the CSB to defer the promotion of the writ petitioner for one year, and reduced the same to the next meeting of the CSB; and that the discretion exercised by the CSB was not structured and was in violation of Article 10-A of the Constitution as well as the law laid down by the Hon'ble Supreme Court in the cases of Abdul Wahab & another Vs. Secretary, Government of Balochistan and another (2009 SCMR 1354) and Chief Executive Officer, Quetta Electric Supply Company (QESCO) and others Vs. Rana Shamim Akhtar and another (2010 SCMR 442). The learned counsel gave to us the list of the several Office Memoranda that were issued by the Establishment Division from 31.10.1982 to 29.01.2013. He concluded his submissions with the prayer that the Federation's appeals should be dismissed.

20. Mr. Ahsan Hameed Dogar, learned Advocate on behalf of respondent No.1 in I.C.A.Nos.405, 413, and 419 of 2015, submitted that the recommendations of the CSB can be challenged before the Hon'ble High Court in proceedings under Article 199 of the Constitution; that the recommendation of the CSB is, in-fact, an order which can be challenged in writ jurisdiction; that under the proviso to Section 22(2) of the CSA, 1973, no representation lies 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; that under the second proviso to Section 4(1) of the Service Tribunals Act, 1973, no appeal lies to the Federal Services Tribunal, against an order or a decision of a departmental authority determining the fitness or otherwise of a person to be promoted to a higher grade; that under the second proviso to Section 4(1)(d)(ii) of the Civil Servants (Appeal), Rules, 1977, no appeal or review lies on matters relating to the determination of fitness of a person, who hold a particular post or to be promoted to a higher post or grade; that if a civil servant is denied promotion on the ground that he was not eligible, then his remedy lies before the Federal

Services Tribunal, but if the civil servant is denied promotion on the ground that he is not fit for promotion due to his doubtful integrity, then his remedy lies before the Hon'ble High Court in writ jurisdiction; that tangible and cogent material had to be available before the CSB in order to disagree with the views of the Reporting Officer and the Countersigning Officer in the ACRs of an officer, who was being considered for promotion by the CSB. In making his submissions, the learned counsel placed reliance on the law laid down in Mrs. Iram Adnan and others Vs. Federation of Pakistan and others (2012 PLC (C.S.) 1355), Liaqat Ali Chughtai Vs. Federation of Pakistan (PLD 2013 Lahore 413), Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817), and Secretary, Establishment Division Vs. Aftab Ahmed Manika (2015 SCMR 1006).

21. The other learned counsel representing the respondents / officers deferred by the competent authority adopted the arguments of Mr. Abdur Rehman Siddiqui, learned ASC.

22. During the course of the hearing, it was decided that ICAs Nos.410 & 427 of 2015, which pertain to the promotion of officers from BS-21 to 22 would be heard separately. Therefore, the said ICAs were de-clubbed.

23. We have heard the learned counsel for the contesting parties and have perused the record with their able assistance.

24. We propose first to deal with the objection taken by the learned A.A-G as to whether a petition under Article 199 of the Constitution, by a civil servant, is maintainable against the recommendations made by the CSB to the Prime Minister.

25. Barrister Masroor Shah, learned counsel for respondent No.1 in I.C.A.Nos.376, 377, 383, 387, 415 & 433 of 2015, submitted that the recommendations of the CSB were justiciable and a petition under Article 199 of the Constitution was maintainable against such recommendations. In support of this contention, the learned counsel referred to the case of Liaqat Ali Chughtai Vs. Federation of Pakistan (PLD 2013 Lahore 413), wherein the recommendations of the CSB were declared as offensive to Article 14 of the Constitution. Furthermore, the



Hon'ble Lahore High Court set aside the selection process carried out by the CSB by declaring it unconstitutional and illegal. The learned counsel further submitted that in the case of Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817), the Hon'ble Supreme Court of Pakistan has held the CSB to be a 'semi judicial forum' authorized to examine the cases of the officers justly and fairly. Drawing support from the observations made in the said two judgments, learned counsel submitted that the learned Single Bench did not commit any jurisdictional error by entertaining writ petitions against the recommendations of the CSB.

26. Be that as it may, the Hon'ble Supreme Court in the recent case of Secretary, Establishment Division Vs. Aftab Ahmed Manika (2015 SCMR 1006) quoted with approval the law laid down in the case of Dr. Habibur Rehman Vs. The West Pakistan Public Service Commission, Lahore (PLD 1973 SC 144), in which the appellant had challenged before the Hon'ble High Court, the recommendations of West Pakistan Public Service Commission and the list in which the name of the appellant was not included for promotion. In the said case, it was held as follows:-

*"Yet another aspect of the matter may also be noticed, viz. that the recommendations of the Public Service Commission being only advisory in nature and it being open to the appointing authority under Article 188 of the Constitution not to accept its advice, it is difficult to see how a petition of this nature can be maintained. The grievance of the candidate would rise only when the Government has made an appointment in contravention of the rules; until that time the advice tendered by the Commission remains confidential and inchoate and cannot give rise to a grievance or a cause of action within the meaning of Article 98 of the former Constitution." (Emphasis is ours)"*

27. As the judgment in the case of Aftab Ahmed Manika is an authority of recent vantage, we find ourselves bound to hold in terms of Article 189 of the Constitution that the writ petitions against the recommendations simpliciter made by the CSB to the Prime Minister were not justiciable and could not be subjected to judicial review in terms of Article 199 of the Constitution. Hence, the writ petitions challenging the recommendations of the CSB

alone were not maintainable, the appeals to that extent are allowed.

28. Having said that we feel that the petitions in which O.M. dated 10.02.2014 and the Objective Assessment Form annexed thereto has been challenged, stand on a different footing. This O.M. which has the force of law, has to be examined on the touchstone of the provisions of the Constitution as well as the Statute i.e. the CSA, 1973, and the law laid down in the judgments of the Superior Courts. The Hon'ble Superior Courts in the cases of (1) Mrs. Iram Adnan and others Vs. Federation of Pakistan and others (2012 PLC (C.S.) 1355), (2) Liaqat Ali Chughtai Vs. Federation of Pakistan (PLD 2013 Lahore 413), and (3) Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817), directed the Establishment Division to restructure the formula for the award of 15 marks (which were to be awarded at the discretion of the CSB to an officer for consideration for promotion), so as to make it more objective, in accordance with the guidelines provided by the Superior Courts. In all the said cases the Government had taken the objection that exercise of jurisdiction of the Hon'ble Superior Courts under Article 199 and/or Article 184(3) of the Constitution was barred under Article 212 of the Constitution. The Hon'ble Courts had spurned the said objection and had examined the manner in which discretion was exercised by the CSB to award 15 marks to an officer under consideration for promotion. We are of the view that since the Establishment Division had been directed time and again by the Hon'ble Superior Courts to formulate an objective criteria for the award of 15 marks by the CSB to an officer under consideration for promotion, this Court does have the jurisdiction to examine the vires of the O.M. dated 10.02.2014 and its annexure, which according to the A.A-G, was issued in compliance with the directions contained in the said judgments, and to determine whether such directions were, in-fact, complied with.

29. Now it is not disputed that BPS-21 is a selection post, promotion whereto is made in accordance with Section 9 of the CSA, 1973, which is reproduced herein below in its entirety:

**"9. Promotion. - (1) 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 of departmental promotion in the service or cadre to which he belongs:**

***Provided that the posts of --***

- (a) Additional Secretary and Senior Joint Secretary may, in the public interest, be filled by promotion from amongst officers of regularly constituted Occupational Groups and services holding, on regular basis, posts in Basic Pay Scale 20; and***
- (b) Secretary may, in the public interest, be filled by promotion from amongst officers of regularly constituted Occupational Groups and services holding, on regular basis, posts in Basic Pay Scale 21, in such manner and subject to such conditions as may be prescribed.***

***(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotions shall be made as may be prescribed --***

- (a) in the case of a selection post, on the basis of selection on merit; and***
- (b) in the case of a non-selection post, on the basis of seniority-cum-fitness.***

***(3) Promotion to posts in basic pay scales 20 and 21 and equivalent shall be made on the recommendations of a Selection Board which shall be headed by the Chairman, Federal Public Service Commission."***

30. Section 9 of the CSA, 1973 is supplemented by Sections 7, 8 and 8-A of the APT Rules, 1973. The APT Rules, 1973, were made by the President in exercise of powers under Section 25 of the CSA, 1973. The said Rules 7, 8 and 8-A of the APT Rules, 1973, read as follows:-

***"7. Promotion and transfers to posts in \*\*[basic pay scales 2 to 18 and equivalent, \*\*\*[except the posts specified in sub clause (i) of clause (b), ] and equivalent] shall be made on the recommendation of the appropriate Departmental Promotion Committee and promotions and transfers to posts, \*\*\*[specified in sub clause (i) of clause (b) and posts], in \*\*\*[basic pay scales 19 to [21] and equivalent] shall be made on the recommendations of the Central Selection Board.***

***8. Only such persons as possess the qualifications and meet the conditions laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Central Selection Board, as the case may be.***

***8-A. No promotion on regular basis shall be made to posts in Basic Pay Scales 17 to 22 and equivalent unless the officer concerned has completed such minimum length of service, attended such training and passed such departmental examination, as may be prescribed from time to time.***

31. The legal framework for promotion and its procedures were provided in the CSA, 1973, and the APT Rules, 1973. As the

said statute and rules, by themselves were not enough to meet the functional requirements, and needed to be supplemented by a comprehensive and consistent set of policy guidelines, the Establishment Division, vide D.O.No.10(2)/81-CP-I(Pt), dated 31.10.1982, framed, with the approval of the President of Pakistan, comprehensive guidelines for the Departmental Promotion Committees/Central Selection Boards ("the 1982 Promotion Policy").

32. The qualifications which an officer in BPS-20 has to possess, and conditions he has to meet in order to be considered to promotion to BPS-21 are set out in the 1982 Promotion Policy, as amended from time to time. The qualifications and conditions so prescribed are set out herein below:-

- (a) *Qualifying Service: possess 22 years service as an officer subject to the provisions contained in Establishment Division's O.M. No.1/9/80-R-II (A), dated 2-6-1983.*
- (b) *Eligibility threshold: attain a minimum score of 70 marks in CRs in accordance with the formula given in the Addendum.*
- (c) *Qualifications: as are prescribed by relevant recruitment rules.*
- (d) *Relevance of Experience: possess experience relevant to the functions of the post being filled by promotion.*
- (e) *"Quality and Output of Work" and "Integrity" marks calculated in accordance with the formula in the Addendum shall be a crucial factor in determining the comparative merit of an officer.*
- (f) *Variety of Experience: the Selection Board should give careful consideration to the nature of duties, duration and location of posts previously held by the officer. At this level, a proper assessment under the criterion may require some distinction between hard or taxing assignments (on account of work load or its complexity) viz-a-viz relatively routine duties particularly in the secretariat. Depending on the posts to be filled, an officer possessing well rounded experience with adequate exposure to difficult assignments should normally be preferred.*
- (g) *Training: should have successfully completed a regular course at the Pakistan Administrative Staff College/National Defence College. This requirement will be waived for officers who:*
  - (i) *have served as head of a training institution for at least one year; or*
  - (ii) *have served on the directing staff of a training institution for at least two years; or*
  - (iii) *have exceeded the age of 56 years.*
- (h) *Top Management Potential: since officers promoted to this level may be called upon to hold independent charge of a*

*Ministry/Division or to head a major corporation, the Board should satisfy itself about the officer's maturity, balance and ability to assume such top management positions even at short notice."*

33. The 1982 Promotion Policy was sent to the Chairman, Central Selection Board, and all Federal Secretaries, and Chief Secretaries of the Provincial Governments, and was required to be kept in view while processing promotion cases. The 1982 Promotion Policy was reviewed vide D.O.No.10(3)/84-CP-1, dated 30.04.1984. It was emphasized that the score for 'integrity' in the Annual Confidential Report will be a crucial factor, along with 'quality and output of work' in determining the comparative merit of officers for promotion to selection posts. While considering a civil servant for promotion, the Departmental Promotion Committee/CSB was required to clearly indicate whether an officer has been cleared for promotion, recommended for supersession or the consideration of his case was deferred. In the Revised Promotion Policy, marks for 'integrity' calculated in accordance with the prescribed formula were to be an important factor in determining the comparative merit of an officer.

34. Vide O.M. No.1/1/2001-CP.II, dated 03.09.2005, issued by the Cabinet Secretariat (Establishment Division) the 'Guidelines for Departmental Promotion Committees/Central Selection Boards/the 1982 Promotion Policy' were further amended so as to provide that if a civil servant is superseded, he will not be considered for promotion unless he has earned Performance Evaluation Report for two full years, and that if he is again superseded he shall lose eligibility for further consideration.

35. Apparently, from the year 2000 onwards, the columns for 'quality and output of work' and 'integrity' from the Performance Evaluation Report Forms, were omitted. The Establishment Division, with the concurrence of the Central Selection Board, also omitted the said columns from the panel performance to be considered by the CSB in its meetings to be held in the year 2003. As such only the quantified score of an officer in the overall assessment was to be taken into account while considering the promotion of officers to the next grade.

36. The 1982 Promotion Policy was substantially amended, vide O.M.No.1/3/2007-CP-II, dated 24.10.2007, issued by the Establishment Division (“the 2007 Revised Promotion Policy”). These amendments were made on the basis of recommendations made by a Committee on Promotion Policy, which was constituted to develop a comprehensive criteria for the selection for promotion/deferment/supersession which was measurable to the extent possible, comparable with regard to the performance of each officer on the panel, and was based on tangible record duly placed on dossier, and also redefine the discretion of the members of the CSB, and to lay down as to how more objectivity could be brought in the recommendations of the CSB.

37. Under the 2007 Revised Promotion Policy, the following marks were required to be allocated for quantification of the Performance Evaluation Report, Training Evaluation Report, and CSB Evaluation:-

| <i>S.No.</i> | <i>Factor</i>  | <i>Marks</i> |
|--------------|--|--------------|
| 1.           | <i>Quantification of PERs relating to present grade and previous grad(s) @ 60%:40%</i> | <i>70%</i>   |
| 2.           | <i>Training Evaluations reports in ratio of 60% : 40%</i>                              | <i>15%</i>   |
| 3.           | <i>Evaluation by CSB</i>   | <i>15%</i>   |
|              | <i>Total:</i>  | <i>100%</i>  |

38. The minimum marks required for promotion from BPS-20 to BPS-21 are 75%. Paragraph 9 of the 2007 Revised Promotion Policy provided that the officers superseded by the CSB should be informed about the reasons for his/her supersession/deferment to enable such officers to improve their performance and to complete their record/any other deficiency, as the case may be.

39. In the unreported judgment dated 20.05.2011, passed by the learned Single Bench of this Court in W.P.No.863/2011 titled "Gulab Zamir Vs. Federation of Pakistan" examined the promotion policy which had provided for the allocation of 70% marks for the Performance Evaluation Reports; 15% marks for the Training Evaluation Reports; and 15% marks to be given by the CSB. In the said judgment, it was, *inter-alia*, held as follows:-

*"6.....Presently, the policy for promotion from Grade-20 to Grade-21 is that names of three persons are sent to the Central Selection Board for consideration for promotion. According to the policy, 70% marks are allocated to the Performance Evaluation Reports. Quantification of these 'PERs' is made on the basis of reports in previous grades as well as the present grade. 15% marks are allocated to Training Evaluation Reports and then 15% marks are given by the Central Selection Board. As far as marks obtained through Performance Evaluation Reports and Training Evaluation Reports are concerned, those are always available and can be looked into. As far as marks given by the Central Selection Board are concerned, these are exclusively discretionary. These marks are to be given with reference to Service Record and having been examined the comparative marks as well as the performance of the officer in the Training Reports. The officer concerned does not appear before the Central Selection Board; there is no interview and there is every possibility that the Selection Board may not be knowing the person, whose case for promotion is before them, so some criteria is required to be evolved as these marks can not be given simply on the basis of whims. The order of Selection Board is required to be based upon proper reasons....."*

*7.....In the present case, no reasons have been given and it is not known as to what sort of criteria was adopted by the Central Selection Board, for assessing the performance of the officer. In absence of any criteria, it would become unfettered discretion of the Central Selection Board to recommend promotion of one person and refuse the same to another similarly placed officer....."*

*8. In the circumstances, I accept this petition; the order of supersession is converted into deferment and the case is sent back to the Central Selection Board with the direction to determine 'Specific Criteria' for assessing the officer and pass a just and fair order, based on reasons."*

40. In the case of Mrs. Iram Adnan and others Vs. Federation of Pakistan and others (2012 PLC (C.S.) 1355) (hereinafter referred to as "Iram Adnan's case"), civil servants aspiring to be promoted to BPS-20 and BPS-21, filed writ petitions before the Hon'ble Islamabad High Court against the decision of the competent authority, based on the recommendations of the CSB to supersede such civil servants/petitioners. Through the said judgment, the learned Single Bench of this Court allowed/decided writ petitions instituted by civil servants in BPS-20, who had been superseded by the competent authority on the recommendations of the CSB. In this judgment, reference was made to the case of Secretary, Revenue Division Vs. Gul Muhammad (2011 SCMR 295), wherein the Hon'ble Supreme Court had referred to an earlier judgment dated 25.09.2006,

passed in C.P.Nos.836 and 837 of 2006, which had arisen from the judgment dated 22.07.2006, passed by the Federal Service Tribunal, Islamabad. The learned Federal Service Tribunal in the said judgment dated 22.07.2006 had directed the Establishment Division to bring more objectivity in the criteria for excellence and comparative merit by defining it further and give more specific, detailed and well argued reasons for denying promotion to an officer, who is eligible and fulfills the requisite criteria, length of service, training requirements, relevant experience etc. The said judgment of the learned Federal Service Tribunal was upheld by the Hon'ble Supreme Court of Pakistan, vide judgment dated 25.09.2006, passed in C.P.Nos.836 and 837/2006. In this judgment, it was held as follows:-

*"2. 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."*

41. In Iram Adnan's case, this Court set aside the formula for the award of the 15 marks at the discretion of the CSB and declared the same as, *inter-alia*, illegal and unconstitutional. Furthermore, the Establishment Division was directed to restructure the formula for the award of 15 marks. This judgment was rendered by the Hon'ble Islamabad High Court on 20.03.2012.

42. In the case of Liaqat Ali Chughtai Vs. Federation of Pakistan (PLD 2013 Lahore 413), (hereinafter referred to as "Liaqat Chughtai's case") the writ petitioners, who were officers in BS-19 and 20 in Pakistan Railways were recommended to be superseded by the CSB, which had considered them for promotion under the 2007 Revised Promotion Policy dated 24.10.2007. The essential grievance of the petitioners in that case was that the award of 15 marks by the CSB was not based



on any structured objective criteria; and that the process of evaluation adopted by the CSB lacked due process and fairness.

43. The Hon'ble Lahore High Court after making reference to the decisions of the CSB regarding a criteria for the award of the 15 discretionary marks, taken in its meetings held in November 2007 and December 2009, held that "*the CSB had consciously adopted a policy to place reliance on the personal views and impressions of the Members regarding the integrity and reputation of the officers under consideration.*" Furthermore, it was held that the process adopted by the CSB negates the very purpose of a CSB, which was expected to form a collective view after independent application of mind to the facts and circumstances of each case. The CSB was required to meticulously review the service dossier of the officers under consideration and formulate a collective opinion. The reliance placed by the CSB on the personal opinions of the Members of the CSB in making recommendations for the supersession of officers under consideration to the competent authority, was held by the Hon'ble Lahore High Court to be an affront to fairness, due process and Article 10-A of the Constitution. The criteria that had been developed/evolved by the CSB for the award of the 15 discretionary marks was held to be not sufficiently structured or elaborately tailored to reflect thorough deliberation and proper analytical assessment of the officers to be considered for promotion by the CSB. The Hon'ble Lahore High Court set aside the selection process carried out by the CSB in its meeting held in September and October, 2011 and declared the same as illegal and unconstitutional. Furthermore, the CSB was directed to formulate a well thought-out objective criterion in accordance with the 2007 Revised Promotion Policy. This judgment was rendered by the Hon'ble Lahore High Court on 17.02.2012. Before moving on, it is pertinent to reproduce herein below the guidelines given by the Hon'ble Lahore High Court for the evaluation process by the CSB:-

*"(i) CSB is free to formulate its opinion on the basis of the evidence before them which is the complete service*

- dossier of the Officers which comprises PERs for the last over 15 years and Training Evaluation Reports.*
- (ii) CSB is bound to confront the same to the officer under consideration and only after granting an opportunity of defence to the said officer regarding the new evidence being introduced, place reliance on it and not otherwise.*
  - (iii) There is no room for CSB to blindly rely and pass an adverse order on the basis of impressions nurtured and opinion harboured by Member(s) of CSB. Without the Member(s) first tabling the tangible evidence against an officer before the Board and then confronting the said evidence to the officer under consideration, the Board cannot place reliance on the said evidence."*

44. After the judgments in Iram Adnan's case and Liaquat Chughtai's case, the Establishment Division, Vide Notification No.1/1/2012-CP.II, dated 15.08.2012, constituted a Committee to consider restructuring the formula for the award of 15 marks by the CSB. The main task of this Committee was to bring more objectivity in the criteria for the award of 15 marks by the CSB in the light of observations made by the Hon'ble High Court. The Chairman of this Committee was a member of the Federal Public Service Commission. He was of the view that since approximately 900 officers were considered in each meeting of the CSB, extending personal hearing to each such officer by the CSB was not practicable. On the basis of the recommendations of this Committee, the 'Guidelines for the Departmental Promotion Committee/Central Selection Board' dated 31.10.1982, the 1982 Promotion Policy, and the 2007 Revised Promotion Policy dated 24.10.2007, was revised yet again.

45. Through O.M. No.F.1/1/2012-CP.II, dated 12.10.2012, the Establishment Division revised and restructured the criteria for the award of the 15 marks reserved for the CSB. The changes so made were as follows:-

- "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 & Behavior 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 revived. 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 Experience; 4) Top Management Potential; 5) Personality Profile; and 6) Conduct, discipline & Behavior is hereby introduced.**
- e. **The said Objective Assessment Form shall be placed before the CSB along with 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 offices 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."**

46. The new Objective Assessment Form referred to in para (d) of the O.M. dated 12.10.2012 is as follows:-

**CONFIDENTIAL**

Government of Pakistan  
Ministry of \_\_\_\_\_

**OBJECTIVE ASSESSMENT BY CSB**

Officer's Name: \_\_\_\_\_

Seniority No. \_\_\_\_\_

Group/Service/Cadre: \_\_\_\_\_ Present Scale \_\_\_\_\_

| S.No. | Parameters / Attributes  | Categories       |                  |                  |
|-------|--|------------------|------------------|------------------|
| 1     | Quality & Output of Work   | Cat-A<br>[11-15] | Cat-B<br>[06-10] | Cat-C<br>[00-05] |
| 2     | Integrity/General Reputation/Perception [Last 05-Yrs of Synopsis OR as known to the Board Members]   |                  |                  |                  |
| 3     | Variety & Relevance of Experience<br>Nature of duties, duration and location of Yrs whichever is longer relevant to the functions of posts in BS-21.<br><br>BS-18 (if applicable) = yrs<br>BS-19 = yrs<br>BS-20 = yrs<br>Total = yrs |                  |                  |                  |
| 4     | Top Management Potential [Observation by RO/CO if any OR as known to the Board Members]  |                  |                  |                  |
| 5     | Personality Profile<br>[As known to the Board Members]   |                  |                  |                  |
| 6     | Conduct, discipline & Behavior [Observation by RO/CO during last five years OR as known to the Board Members]  |                  |                  |                  |
| 7     | Total  |                  |                  |                  |
| 8     | Average  |                  |                  |                  |
| 9     | Marks by CSB   |                  |                  |                  |

[Secretary, CSB]  
Dated \_\_\_\_\_

[Chairman CSB]  
Dated \_\_\_\_\_

47. Now it needs to be seen whether the revision in the promotion policies by the Establishment Division brought in objectivity in the criteria for the award of the 15 discretionary marks, in compliance with the directions issued by the Hon'ble High Courts in Iram Adnan's case and Liaqat Chughtai's case. In the case of Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817), (hereinafter referred to as "Orya Maqbool's case") the petitioner along with other officers in BPS-20, were considered for promotion to BPS-21 by the CSB in its meetings held on 11.02.2013 to 14.02.2013 and 27.02.2013, and were recommended to be deferred/not recommended for promotion. The petitioner had invoked the jurisdiction of the Hon'ble

Supreme Court of Pakistan under Article 184(3) of the Constitution for the enforcement of fundamental rights involving questions of public importance pertaining to outlining an objective criteria for promotion so as to make the civil service rewarding for honest officers and free from political pressures. It was held that although promotion was not a right, but a civil servant, fully qualified for promotion, has a right to claim that his case must be considered for promotion strictly following the eligibility criteria laid down by the Government; and that the officers who were not qualifying the eligibility criteria for promotion could be deferred but not on the basis of discriminatory reasons, particularly, where such elements are not visible on the record. In paragraph 43 of the said report, it was held as follows:-

*"43. As it has been discussed hereinabove the petitioner and others were subjected to arbitrariness by the CSB while considering their cases in the months of September and October, 2011 and in the meetings of CSB held twice in the month of February, 2013, it did not support to its adverse decision against the petitioner and others and on having seen their record concluded that PERs are fully supporting them and in view of the subject reports in their favour, they are eligible to be considered for promotion. However, it failed to take into consideration such reports for the reasons not tenable in law and their such findings were clear violation and departure from the promotion policy because once the officers have fulfilled the criteria, their cases have to be considered, to assess the fitness and suitability to share higher responsibility, mostly based on objective criteria, instead of denying promotion to them for the subjective consideration, as exactly has happened in this case in view of the background which has been noted hereinabove, he should have been reconsidered for promotion. Thus, such findings, which are whimsical, in violation of the policy and are also based on subjective consideration, cannot be endorsed in the public interest as well as for the good governance, relating to the welfare of the citizens. The officers, if have not been considered for promotion on merit against a selection post from BS-20 to 21, it would have direct impact on good governance, which is necessary to provide for smooth running of affairs in the country including protecting the rights of citizens under Articles 3 and 9 of the Constitution."*

48. The Hon'ble Supreme Court, in Orya Maqbool's case, set aside the notifications for promotions of all the officers issued in pursuance of the recommendations of the CSB. The competent authority was directed to undertake the process of promotion of all the officers strictly according to merit and in accordance with

Section 9 of the CSA, 1973 read with Rules 7, 7-A and 8 of the APT Rules, 1973, and the Promotion Policy as amended. The Government was also directed to undertake the exercise of outlining an objective criteria for promotion to make the civil servant an honest officer and free from political pressure. It was also observed that it would be a great achievement if it was added in the Policy to hold an inquiry of the civil servant while sending his case for promotion and also examine his family assets at the time when he joined the service including life style, expenses on children's education, expenses on children's marriage, foreign tours as well as to ascertain the political affiliation of such a candidate to make the bureaucracy free from political affiliation as observed in the speech of the Quaid-e-Azam.

49. The mere fact that the Hon'ble Supreme Court, in Orya Maqbool's case, directed the Establishment Division to outline an objective criteria for promotion, shows that the Establishment Division had not been able to frame an 'objective criteria' through O.M. dated 12.10.2012 for promotion process of senior civil servants. The Hon'ble Supreme Court in giving the said direction to the Establishment Division was fully cognizant of the directions given to the Establishment Division by the Hon'ble High Courts in Iram Adnan's case and Liaqat Chughtai's case, in purported compliance whereof the Establishment Division claims to have issued O.M. dated 12.10.2012.

50. It was in these circumstances that the Objective Assessment Form annexed to the Promotion Policy was revised, vide O.M. No.F.1/1/2012-CP.2, dated 10.02.2014. The Revised Objective Assessment Form is reproduced herein below:-

**CONFIDENTIAL**

*Government of Pakistan*  
*Ministry of \_\_\_\_\_*

**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     | <b>Output of Work and Quality of Work</b>   | 10          |                |
| 2     | <b>Variety &amp; Relevance of Experience</b><br><i>Secretariat/Field Postings;<br/>Federal/Provincial Government<br/>Postings; Leadership/Routine Postings;<br/>Deputation/Foreign Postings</i>   |             |                |
| 3     | <b>Professional Expertise</b>   |             |                |
| 4     | <b>Personality Profile</b><br><i>(As known to the Board Members)</i>  |             |                |
| 5     | <b>Conduct, Discipline and Behaviour</b><br><i>[Observation by RO/CO during last 05<br/>years OR as known to the Board<br/>Members]</i>   |             |                |
| 6     | <b>Functional Ability and Leadership</b>  |             |                |
| 7     | <b>Estimated Potential for Middle/Higher<br/>Management</b><br><i>Based on PERs and Training Evaluation<br/>Reports: Management Skills, Ability to<br/>take decisions, Strategic Thinking,<br/>Leadership Qualities, Drive for Results<br/>and Accomplishments in BPS-19 and<br/>20 in policy formulation &amp;<br/>implementation.</i> |             |                |
| 8     | <b>Integrity/General Reputation /<br/>Perception</b><br><i>On the basis of PERs / TERs / Opinion of<br/>the Board*</i>  | 5           |                |
| 9     | <b>Total Marks by CSB</b>   | 15          |                |
| 10    | <b>Overall Category</b><br><i>Cat-A            Cat-B            Cat-C</i><br><i>(11-15)        (06-10)        (0-05)</i>  |             |                |

\*        *An officer under consideration, getting less than 3 out of five under this parameter may be defended or superseded by the CSB at their discretion but with reasons to be recorded in writing.*

\_\_\_\_\_  
*Secretary CSB*  
*Dated*

\_\_\_\_\_  
*(Chairman CSB)*

51. The most significant change brought about through O.M. dated 10.02.2014, was that the CSB was given the discretion to award upto 5 marks to an officer under consideration for promotion, for his ‘Integrity/General Reputation/Perception’ on the basis of his PERs/TERs and ‘the Opinion of the CSB’. Furthermore, as mentioned above, an officer getting less than 3

out of 5 marks could be deferred or superseded by the CSB at their discretion but with reasons to be recorded in writing.

52. On 05.05.2015, a meeting of the CSB took place in which officers of BS-19 and BS-20 were considered for promotion to BS-20 and BS-21. After the meeting, the CSB made recommendations to the competent authority/the Prime Minister. Several officers were recommended, superseded and deferred. Before the Prime Minister could take a decision on CSB's recommendations, 57 writ petitions were filed before this Court by officers, who were either recommended to be deferred or superseded by the CSB. One of such officers was Dr. Muhammad Arif, Director General (current charge) Department of Archaeology & Museums, Government of Pakistan, whose promotion had been recommended to be deferred by the CSB. He filed W.P.No.2033/2015 against the recommendations of the CSB. Furthermore, he had also prayed for the setting aside of the five marks for Integrity/General Reputation/Perception contained in the O.M. dated 10.02.2014. The prayer clause of his writ petition has been reproduced hereinabove. As mentioned above, vide short order dated 27.07.2015, the learned Single Judge-in-Chambers allowed all the writ petitions challenging the recommendations of the CSB. Furthermore, in the detailed judgment, the following directions were given:-

*“65. In this view of the matter, the Establishment Division is directed to reframe the formula by taking away the overriding effect of the marks to be awarded by CSB and categorization into A, B & C and place the cases before CSB in the light of the judgments mentioned above, within one month. The assessment shall be made on the basis of entire performance and in case any tangible material asking question about integrity of civil servant is available, he may be confronted with the same and then any opinion of deferment or supersession may be made but not on the basis of hypothesis and reputation in air. The cases of employees of BS-21 for promotion to BS-22 be placed before the High Powered Selection Board within one month.”*

53. As some of the writ petitioners (10 in total, i.e. W.P.Nos.1401, 1432, 1440, 1472, 1509, 1542, 1565, 2033, 1564 & 1583 of 2015) had challenged the Objective Assessment Form annexed to the O.M. dated 10.02.2014, to the extent of award upto 5 marks at the discretion of the CSB, it is essential to



examine the vires thereof on the touchstone of law laid down by the Superior Courts in the cases of Iram Adnan, Liaqat Chughtai and Orya Maqbool. The directions given by the Hon'ble Superior Courts to the Establishment Division in the said judgments to frame an objective criteria for the award of marks at the discretion of the CSB to an officer under consideration for promotion, have already been referred to above.

54. Before we examine the vires of the O.M. dated 10.02.2014 and the Objective Assessment Form annexed thereto, especially the 'overriding' 5 discretionary marks which the CSB can award to an officer under consideration for promotion for his Integrity, General Reputation and Perception, we are keen to see how the parameters and criterion for determining the fitness and suitability of an officer for promotion is determined through Office Memoranda issued by the Establishment Division every now and then. We have employed the term 'overriding' because as per the Objective Assessment Form annexed to the O.M. dated 10.02.2014, and as explained by the learned A.A-G, in the event the civil servant is given less than 3 marks by the CSB for this Integrity, General Reputation and Perception, he cannot be recommended to be promoted even if he satisfies the threshold of achieving more than 75 marks for promotion to BPS-21. Some of the respondents before us did achieve more than 75 marks, but were not recommended to be promoted, because they were given less than 3 marks by the CSB for their Integrity, General Reputation and Perception.

55. Now, Section 9 of the CSA, 1973, *inter-alia*, provides that a civil servant possessing such minimum qualifications "as may be prescribed" shall be eligible for promotion to a higher post. The term "prescribed" has been defined in Section 2(f) of the CSA, 1973, to mean, "prescribed by rules". And the term "rules" has been defined in Section 2(g) of the said Act as "rules made or deemed to have been made under this Act". Section 25 of the CSA, 1973, empowers the President or any person authorized by the President, to make such rules as appear to him to be necessary or expedient for carrying out the purposes of the said

Act. One of the purposes of the CSA, 1973, is to cater and provide for the promotion of civil servants to the next higher grade. The conjoint reading of the said provisions of the CSA, 1973, brings home the conclusion that mandate of the said statute was that the minimum qualifications required for a civil servant to be considered for promotion had to be prescribed in the rules made in exercise of the power under Section 25 of the CSA, 1973. Therefore, the CSA, 1973 does not contemplate the prescription for such minimum qualification through an executive fiat.

56. Section 25 of the CSA, 1973, provides as follows:-

***“25. Rules. -- (1) The President or any person authorized by the President in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.***

***(2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.”***

57. Office Memoranda issued by the Establishment Division prescribing or varying the minimum qualifications required to be possessed by a civil servant in order to be considered for promotion, are certainly not “rules” framed under Section 25 of the CSA, 1973. Under Section 25(1) of the CSA, 1973, the President “or any person authorized by the President” can make the rules. Even if the President were to have authorized the Establishment Division to make rules which prescribe the minimum qualifications for a civil servant to be considered for promotion, there is no escape from the conclusion that such minimum qualifications had to be contained in the Rules and not in Office Memoranda. It appears that through Rule 8-A of the APT Rules, 1973, the power/responsibility to prescribe such minimum qualifications (completing of minimum length of service, attending training and passing departmental examination) has been further delegated. Simply providing that promotion cannot be made unless the officer concerned *“has completed such*

*minimum length of service, attended such training and passed such departmental examination*” does not fulfill the requirements of Section 9(1) of the CSA, 1973. What Section 9(1) had mandated was that the “*minimum qualifications*” for the eligibility of a civil servant for promotion should be prescribed by the rules. We have not been able to find the minimum qualifications for the eligibility of a civil servant for promotion in the APT Rules, 1973, or for that matter any other rules framed under Section 25 of the CSA, 1973. Therefore, the Federation would be well advised to consider prescribing such minimum qualifications in the Rules framed under Section 25 of the CSA, 1973.

58. Now an O.M. is not issued by the Establishment Division in exercise of powers conferred by the CSA, 1973. Even the APT Rules, 1973, do not expressly authorize the Executive/Establishment Division to prescribe the minimum qualifications for the promotion of a civil servant, through Office Memoranda. An O.M. setting out the promotion policy or guidelines for the Departmental Promotion Committees/Central Selection Boards cannot be termed as primary or delegated legislation. At best it is an executive order which has been given the status of a ‘law’ by virtue of judgments of the Superior Courts, including but not limited to Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817), Fazli Rehmani Vs. Chief Minister N.-W.F.P. (PLD 2008 SC 769), Sajjad Ahmad Javed Bhatti Vs. Secretary, Establishment, Islamabad (1996 SCMR 628), Secretary to the Government of Punjab Vs. Abdul Hamid Arif (1991 SCMR 628), Khan Faizullah Khan Vs. Government of Pakistan (PLD 1974 SC 291), and Liaqat Ali Chughtai Vs. Federation of Pakistan (PLD 2013 Lahore 413). Although, an O.M. has been given the status of ‘law’ it is certainly not primarily legislation or delegated legislation. It does not come within the ambit of a statutory instrument because it is not made in exercise of a specific statutory power conferred by the CSA, 1973.

59. We were also anxious to know as to why Office Memoranda issued after the enactment of the CSA, 1973, have been given the status of ‘rules’ in several dicta of the Superior Courts. By virtue

of Section 25(2) *ibid*, the Office Memoranda which were in force immediately before the commencement of the CSA, 1973, are deemed to be rules made under the said Act. This is a saving provision in the statute which affords protection *inter-alia* the Office Memoranda issued by a competent authority prior to the enactment of the CSA, 1973. Section 25 (2) is not an enabling provision for making Office Memoranda. It also does not give the status of rules to Office Memoranda issued after the enactment of the CSA, 1973.

60. In the case of Khan Faizullah Khan Vs. Government of Pakistan (PLD 1974 SC 291), it has been held as follows:-

*“This Court has stated on several occasions that even instructions contained in Memoranda issued by the appropriate Government could be regarded as being in the nature of statutory rules provided they are expressed with precision and yet possess generality so as to be capable on application to a large number of cases-See Pakistan v. Abdul Hamid (PLD 1961 SC 105), Province of West Pakistan v. Din Muhammad (PLD 1964 SC 21), Government of West Pakistan v. A. A. Aziz (PLD 1966 SC188) and Habibur Rehman v. West Pakistan Public Service Commission (PLD 1973 SC 144). The Resolution issued by the Central Government on the 8th November 1950 regarding the creation of the Civil Service of Pakistan amply fulfils these requirements.”*

61. Furthermore, in the case of Secretary to the Government of Punjab Vs. Abdul Hamid Arif (1991 SCMR 628), it has been held as follows:-

*“In this connection, however, it needs to be pointed out that this Court has held in several decisions that where an office memorandum is expressed in precise terms, which are capable of being applied with particularity to a great variety of cases and in particular those instructions can be applied with exactness in number of cases, the terms of such memorandum should be deemed to amplify and adapt the statutory rules in the relevant respect and be regarded as supplementing them. See for example Pakistan v. Abdul Hamid (PLD 1961 SC 105)”*

62. In the cases of Khan Faizullah Khan and Abdul Hamid Arif, the Hon'ble Supreme Court, holding that Office Memoranda issued by the Government could be regarded as being in the nature of statutory rules, has placed reliance on the law laid down by the Hon'ble Supreme Court in judgments prior to the enactment of the Civil Servants Act, 1973. Perusal of Section 25 of the Civil Servants Act, 1973, does not give the status of

statutory rules of the Office Memoranda issued after the enactment of the said Act. Therefore, Office Memoranda issued by the Establishment Division is given the status of law on the basis of Judge made law. Many other judgments of the Superior Courts, while treating the Office Memoranda issued by the Establishment Division, as 'rules', place reliance on the law laid down by the Hon'ble Supreme Court in the case of Khan Faizullah Khan Vs. Government of Pakistan (supra). For instance, in the case of Muhammad Afzal Vs. Government of Balochistan (1995 PLC (C.S.) 567), it was held by the Hon'ble Balochistan High Court as follows:-

*“Before proceeding ahead, it is to be observed that the Policies, instructions issued from time to time by the Government could be equated with statutory Rules, because it possess generality and covers large number of cases on the subject. In following this principle, we are fortified by the judgment of Hon'ble Supreme Court in Faizullah Khan V. Government of Pakistan PLD 1974 SC 291.”*

63. On the other hand, the Hon'ble Superior Courts in a number of cases have given Office Memoranda issued by the Establishment Division the status of 'rules' in accordance with the mandate of Section 25 (2) of the CSA, 1973. For instance, in the case of Muhammad Yousaf Vs. Abdul Rashid (1996 SCMR 1297), the Hon'ble Supreme Court, after making reference to Section 25 of the Civil Servants Act, 1973, held as follows:-

*“By virtue of subsection (2) of section 25 (ibid), all existing rules, orders or instructions in respect of any terms and conditions of service of civil servant duly made or issued by a competent Authority, in so far it is not inconsistent with the provisions of the Act are saved and are to be treated as rules made under the Act. The validity of the General Principles of Seniority issued by Establishment Division on 31-12-1970 was examined in the light of provisions of the Act in Azam Ali's case (supra) and it was held that these guidelines not being in conflict with any of the provisions of the Act, acquired the force of rules on the strength of the language of section 25(2) of the Act. The precise observation of this Court in this regard in Azim Ali's case (supra), are as follows:--*

*“As the contents of the Circular of December, 1970 are not found to be inconsistent with any provision of the Act, they acquire force of rules under the Act on the strength of section 25, subsection (2) of the Act which provides: Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by any authority competent to make them and enforced immediately before the commencement of this*

*Act, shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act be deemed to be Rules under the Act.””*

64. Now, coming back to the executive orders through which *inter alia* minimum qualifications for promotion of the senior civil servants to BPS-20 and BPS-21, were prescribed, the first two paragraphs of the cover letter (D.O. No.10(3)/81-CP-I(Pt), dated 31.10.1982) from the Establishment Secretary, Cabinet Secretariat (Establishment Division), Government of Pakistan, through which the 1982 Promotion Policy was issued, read as follows:-

*"The legal frame-work for promotion and its procedures has been provided in the Civil Servants Act, 1973 and the Civil Servants (Appointment, Promotion and Transfers) Rules, 1973, The Law and Rules, by themselves, are not enough to meet the functional requirement and need to be supplemented by a comprehensive and consistent set of policy guidelines.*

*2. Comprehensive guidelines for Departmental Promotion Committees/Central Selection Boards have, therefore, been framed with the approval of the President. A copy is enclosed."*

65. This shows that the promotion policy and the guidelines for the CSB were issued in the form of Office Memoranda by the Establishment Division so as to supplement and meet the functional requirements of the CSA, 1973, and the APT Rules, 1973. This was done because the statute and rules were considered to be '*not enough*' to meet the '*functional requirements*'. No reference was given to any statutory power in exercise of which the Office Memoranda prescribing the minimum qualifications for promotion of a senior civil servant to the next higher grade, was given.

66. The Section Officer (Career Planning), Establishment Division explained to us that an O.M. is a mode through which communication takes place between all Ministries and Divisions of the Government. It is a mode of inter-departmental communication. O.M. supplementing the provisions of a Civil Servant Act, and the APT Rules, are said to have been made under the provisions of the Rules of Business, 1973, which are made in exercise of the powers conferred by Articles 90 and 99 of the Constitution. Rule 3(iii) of the Rules of Business provides

that the business of the government shall be distributed among Divisions in the manner indicated in Schedule-II thereto. Item No.11 in Schedule-II of the Rules of Business lists the business which is to be carried out by the Establishment Division. The following entries in Item No.11 of Schedule-II of the Rules of Business are relevant for the purpose of this case:-

| <b>Entry</b> | <b>Business</b>   |
|--------------|---|
| <b>1.</b>    | <i>Regulation of all matters of general applicability to 2[civil posts in connection with the affairs of the Federation] including --<br/><br/>(i) Recruitment;<br/>3[(ia) Promotion;]<br/>(ii) Verification of character and antecedents;<br/>(iii) Conduct and discipline; and<br/>(iv) Terms and conditions of service (including re-employment after retirement) other than those falling within the purview of the Finance Division.</i> |
| <b>8.</b>    | <i>Matters relating to--<br/>(i) Central Selection Board;<br/>(ii) Special Selection Board, except the Special Selection Boards constituted in the Divisions relating to selection of officers for posting in Pakistan Missions abroad.<br/>(iii) Selection Committee for Provincial Posts borne on All Pakistan Unified Grades Career Planning;</i>  |
| <b>9</b>     | <i>(i) Career Planning;<br/>(ii) Instructions for writing and maintenance of Annual Confidential Reports servants;<br/>(iii) Centralized arrangements in managing original or duplicate Annual Confidential Reports dossiers of officers.</i>   |
| <b>13.</b>   | <i>Administration of the Civil Servants Act, 1973, and the rules made thereunder</i>  |

67. It was explained to us that the process of issuing an O.M. which is supposed to supplement the legal framework for promotion and its procedure provided in the CSA, 1973, and the APT Rules, 1973, is initiated by a Note from the Secretary, Establishment Division, requiring a draft to be put up. (Rule 4(2) of the Rules of Business, 1973, provides that the Secretary, shall be the official head of the Division and shall be responsible for its efficient administration and discipline and for the proper conduct of business assigned to the Division under Rule 3(iii) for the due execution of sanctioned policy). The Section Officer (Policy), and the Deputy Secretary (Policy) Establishment Division are the initiating desks for making the draft of an O.M. The draft made by

them goes up the ladder to the Joint Secretary (Policy) for approval, whereafter it goes to the Additional Secretary, and then to the Secretary (Establishment Division). Thereafter, a summary with respect to the issuance of an O.M. on the said subject is put up before the Prime Minister. Rule 5(1) of the Rules of Business, 1973, provides that no important policy decision shall be taken except with the approval of the Prime Minister, and Rule 5(4) provides that no decision of policy taken by the Prime Minister shall be varied or reversed or infringed without consulting him.) Once the Prime Minister approves the summary sent by the Secretary, Establishment Division, regarding the issuance or modification of an O.M., it is issued by the Establishment Division. Such an O.M. is then circulated to the other Divisions of the Government. Rule 11 of the Rules of Business, 1973, provides that no Division shall, without the previous consultation of the Establishment Division, issued, or authorized the issuance of, any orders, other than orders in pursuance of any general or special delegation made by the Establishment Division, which involves, *inter-alia*, the following:-

*"appointment to a post in BS-20 and above and equivalent whether by initial appointment or promotion or transfer."*

68. As mentioned above, matters relating to the CSB come within the business domain of the Establishment Division under Rule 3(3) read with Entry No.8(i), Item No.11, of Schedule-II to the Rules of Business, 1973. Rule 5(15) of the Rules of Business, 1973, provides that detailed instructions for the manner of disposal of business in the Federal Secretariat shall be issued by the Establishment Division in the form of Secretariat Instructions. Paragraph 55 of the Secretariat Instructions issued by the Management Services Wing of the Establishment Division reads as follows:-

*"55. Office Memorandum.-- This form should be used:*

- (a) for correspondence between various Divisions;*
- (b) for conveying information not amounting to an order of Government to Attached Departments and subordinate authorities.*

*It should be written in the third person and should bear no salutations except the signature and designation of the officer signing it. The name of the Division or Attached Department*



*(including, if necessary, the name of the officer) should appear at the bottom on the left hand corner of the page. The Office Memorandum purporting to issue under directions from Government should begin with the words "The undersigned is directed to.....".*

69. In the case of Tariq Aziz-ud-Din reported as 2010 SCMR 1301, the Hon'ble Supreme Court of Pakistan has emphasized that due weight was required to be given to Rules of Business, 1973, which had a constitutional sanction. And in the case of Amin Jan Vs. Director-General, T&T, reported as PLD 1985 Lahore 81, it has been held that Rules of Business are based on public policy and designed to effectively safeguard State interests. To act in consonance with these Rules is a clear duty cast on all the Divisions and Ministries of the Federal Government.

70. In the judgment dated 03.02.2016, passed by Division Bench of this Court in I.C.A. No.281/2015, titled, "Azra Jamali and others Vs. Federation of Pakistan, through Secretary, M/o Commerce and another", has held that the consistent view taken by the Superior Courts in Pakistan has been that the Courts would not interfere in the policy making domain of the executive unless the policy was in violation of the Constitution, smacked of arbitrariness, favoritism and a total disregard of the mandate of law.

71. We now proceed to examine the vires of the O.M. dated 10.02.2014, and the Objective Assessment Form annexed thereto to see whether it satisfies not just the test of legality and constitutionality on the touchstone of the law (including judge-made law) and the Constitution, but also that of rationality and reasonability.

72. As per the Objective Assessment Form annexed to O.M. dated 10.02.2014, the CSB can award upto 5 marks for an officer's "Integrity/General Reputation/Perception" on the basis of his PERs/TERs/Opinion of the Board. An officer getting less than 3 marks out of 5 may be deferred or superseded by the CSB at their discretion but with reasons to be recorded in writing. The O.M. dated 10.02.2014 does not make it clear as to how many out

of the 5 marks are to be attributed to the officer's PERs, how many to his TERs, and how many to the 'Opinion of the Board'. The said O.M. also does not clarify as to the material /information on which the CSB can base its opinion on. In this respect it is vague and ambiguous and leaves the CSB with unfettered and unbridled discretion. In the absence of a specific criterion on the basis of which the CSB is to form its opinion about an officer's integrity, there was no way of knowing how an officer was assessed by the CSB. As the discretion of the CSB to give marks to an officer for his integrity is not structured and is unfettered, it leaves the CSB to dish out marks at its sweet will. This is more so when the marks for integrity are given on the basis of the 'Opinion of the Board' as well as the PERs/TERs of an officer. In the case of Babar Sattar Vs. Federation of Pakistan (2016 CLD 134) the Hon'ble Islamabad High Court has held that *"the concept of absolute, unfettered or unguided exercise of discretion by public authorities is treated as alien to the essence of the rule of law"*.

73. A glance at how this discretion has been exercised by the CSB would be apposite. Before we do this, it is pertinent to bear in mind that the CSB is required to record reasons for its decisions. Paragraph 9 of the O.M. dated 24.10.2007 provides as follows:-

*"The officers superseded by the CSB be informed about the reasons for his/her supersession/ deferment to enable such officers to improve their performance and to complete their record/any other deficiency, as the case may be."*

74. Vide O.M. No.1/3/2007-CP-II, dated, 19.01.2012, the Cabinet Secretariat, (Establishment Division) clarified that the officers who have been recommended for supersession/deferment may be informed about reasons of the said supersession/deferment immediately after the recommendations of the DPC/DSB/CSB have been approved by the competent authority.

75. Section 24-A of the General Clauses Act, 1897, which was inserted through General Clauses (Amendment), Act, 1997, reads as follows:-

***"24-A. Exercise of power under enactments. --(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.***  
***(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially."***  
(Emphasis added)

76. The requirement to give reasons for orders passed and decisions made by the executive has been emphasized by the Hon'ble Supreme Court of Pakistan in umpteen cases including Messrs Airport Support Services Vs. The Airport Manager, Quaid-e-Azam International Airport Karachi and others (1998 SCMR 2268), Secretary, Ministry of Health, Government of Pakistan, Islamabad and another Vs. Dr. Rehana Hameed and others (2010 SCMR 511), Muhammad Ashraf Tiwana and others Vs. Pakistan and others (2013 SCMR 1159), Messrs. United Bank Limited Vs. Federation of Pakistan and others (2014 SCMR 856), and Muhammad Amin Muhammad Bashir Limited Vs. Government of Pakistan through Secretary, Ministry of Finance, Central Secretariat, Islamabad and others (2015 SCMR 630).

77. The reasons given by the CSB for superseding officers who had satisfied the threshold of qualifying marks for promotion to the next higher grades, but were not able to get 3 marks for their integrity/general reputation/perception, are as follows:-

| S. No. | Name of the petitioner    | W.P.No.   | Reason for supersession as recommended by CSB   |
|--------|---------------------------|-----------|---|
| 1.     | Qaiser Majeed Malik (PAS) | 1401/2015 | Following reasons provided:<br>"Though the officer met the minimum threshold of 75 marks, yet the Board, after assessing the officer against the prescribed objective assessment criteria, besides keeping in view the PERs, TERs and knowledge of the Board members, placed him in Category-C and accordingly recommended him for supersession." |
| 2.     | S. Asif Mateen Zaidi      | 1506/2015 | Following reasons provided:<br>"Though the officer met the required minimum threshold of 70 marks, yet the Board, after assessing the officer against the prescribed objective assessment   |

|    |                  |           |  |
|----|------------------|-----------|--|
|    |                  |           | criteria, besides keeping in view the PERs, TERs and knowledge of the Board members, placed him in Category-C and accordingly recommended him for supersession.  |
| 3. | Samin Ullah Khan | 1507/2015 | Following reasons provided:." Though the officer met the required minimum threshold of 70 marks, yet the Board, after assessing the officer against the prescribed objective assessment criteria, besides keeping in view the PERs, TERs and knowledge of the Board members, recommended him for supersession. |

78. The vital question that needs to be answered is whether the ‘reasons’, as mentioned above, would satisfy any reasonable mind as to their adequacy, appropriateness and sufficiency. Furthermore, do these ‘reasons’ carry any element of clarity or inform the superseded officer about the grounds which prevailed over the CSB to make a recommendation detrimental to the officer. “Integrity” has been defined in Words and Phrases, Volume 21B, to mean “moral soundness, freedom from corrupting influence or practice”. It is also used as a synonym for probity, fidelity and honesty. Do the ‘reasons’ make reference to any material which caused the CSB to conclude that the officer lacks moral soundness or honesty. Certainly not! This casts a shadow on the manner in which discretion was exercised by the CSB. This eventuality could have been averted had the Establishment Division acted in accordance with the directions contained in the judgments in Iram Adnan’s case, Liaqat Chughtai’s case and Orya Maqbool’s case and structured an objective criteria on the basis of which the CSB could have exercised discretion. Is it not a paradox that on the basis of an officer’s PERs and TERs, etc., he obtains qualifying marks for promotion, but on the basis of the ‘opinion’ of the CSB regarding his integrity etc., he is given less than 3 marks and denied promotion.

79. An officer against whom there is nothing adverse in his PERs and TERs, cannot without sufficient tangible and convincing material be relegated by the CSB by giving him less

than 3 marks for his integrity, as the same would go against the age-old maxim "*nemo firut repente turpissimus*" (no one becomes dishonest all of a sudden). If any of the members of the CSB disagree with the positive remarks about the integrity of an officer in his annual confidential reports, they must specifically record as to why they are not satisfied with the remarks in such reports with specific reference to the material which contradicts the remarks in such reports.

80. An adverse opinion formed by the members of the CSB about a particular officer under consideration has to be based on tangible material, which would lead any reasonable mind to form the same opinion. The minutes of the meetings of the CSB and the recommendations of the CSB to defer or supersede a particular officer must make explicit reference to the material which caused them to become doubtful about such the officer's integrity. However, if such material has not, at any material stage been, disclosed to the officer, he must first be confronted with it. If such a process is adopted, the officer in question may satisfy the members of the CSB as to inaccuracy or falsity of such material/information. If the officer concerned is not confronted with such material/information, it would be a violation of the principles of natural justice - *audi alteram partem* (no one should be condemned unheard). The violation of this principle would be enough to vitiate even the most solemn proceedings. This principle has been held to have originated from the Islamic Principles of Justice and would be read / considered as a part of every statute. *Audi alteram partem* has to be applied in all judicial and non-judicial proceedings notwithstanding that a right of hearing has not been expressly provided by the statute governing the proceedings. Reference in this regard may be made to the law laid down in the cases of Hazara (Hill Tract) Improvement Trust through Chairman & others Vs. Mst. Qaisra Elahi & others (2005 SCMR 678), Messrs Dewan Salman Fiber Ltd Vs. Government of N.-W.F.P. through Secretary, Revenue Department, Peshawar and others (PLD 2004 SC 441), Abdul Hafeez Abbasi and others Vs. Managing Director, Pakistan

Airlines Corporation Karachi and others (2002 SCMR 1034), Ghulam Mustafa Jatoi Vs. Additional District & Sessions Judge/Returning Officer and others (1994 SCMR 1299), Makerwal Collieries Ltd and 2 others Vs. Government of N.-W.F.P and 11 others (1993 SCMR 1140), and Raziuddin Vs. Chairman, Pakistan Airlines Corporation and 2 others (PLD 1992 SC 531).

81. In the deliberations of the CSB there is no room for hearsay, rumors, generalizations or gossip about an officer under consideration for promotion. Any member of the CSB cannot tell the others that a particular officer is known to him and that he thinks that the officer's integrity or reputation is such that makes him undeserved for promotion. To immerse an officer into the abyss of doubtful integrity, it is not enough that the doubt fringes on a mere intuition. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain the doubt regarding that possibility. Only then, there is justification to ram an officer with the label 'doubtful integrity'. Collective wisdom implies that the tangible information and material on the basis of which such a member of the CSB formed an adverse opinion about an officer under consideration should be placed before all the other members of the CSB so that they can, with an independent application of mind, form their respective opinions about the integrity or reputation of such an officer. At this stage, it is apposite to refer to Liaquat Chughtai's case, wherein it has been held as follows:-

*"16. ...CSB comprises 12 members belonging to different provinces. It is, therefore, difficult to imagine that all the Members knew about the inefficiency and performance of the petitioners, hence, personal opinion of some Members seems to have been casually adopted by the rest of the Members without independent application of mind and without carrying out a punctilious review of the service record of the petitioners. The process adopted by CSB negates the very purpose of a central selection board which is expected to form a collective view after independent application of mind to the facts and circumstances of each case."*

82. In the event, no such material or information is made available, the officer in question cannot be penalized by denying him a recommendation for promotion. On the other hand if such

material or information is available, the officer in question must be called and confronted with it before an opinion is formed by the members of the CSB.

83. Again in Liaquat Chughtai's case, the Hon'ble Lahore High Court held as follows:-

*"22. In case, CSB relies on any other evidence collected through its own source (Promotion Policy does not specifically provides for this) in addition to the service dossier of the officers, CSB is bound to confront the same to the officer under consideration and only after granting an opportunity of defence to the said officer regarding the new evidence being introduced, place reliance on it and not otherwise. ..."*

84. Vide Order dated 01.04.2015, passed in Civil Appeal No.66 of 2009 titled Secretary, Establishment Division, Islamabad Vs. Abdul Ghaffar Mian, the Hon'ble Supreme Court in paragraphs 2 and 3 held as follows:-

*"2. However, since this is the second round of litigation and the respondent had retired on 23.07.2009 after superannuation, we have no desire to remand the case to the High Court once again. We had required the Federation to show us the reasons why the respondent was not promoted. The relevant record has been produced before us. The ACRs signed and countersigned by the responsible senior Police Officers have stated that the respondent is a good officer who is also upright and honest. Nevertheless, the CSB has variously reported that he does not enjoy a good reputation. When we questioned the learned DAG to let us know the basis of this opinion formed by the CSB, he was not in a position to do so although the entire record of the Establishment Division relating to the respondent-officer has been produced before us. The same is also being returned to the Establishment Division.*

*3. Since there appears to be no apparent basis for the opinion formed by the CSB resulting in deferment/supersession of the respondent, we find that the opinion of CSB is unjustified. We may also state that the Establishment Division needs to look into this matter to improve its functioning so those senior officers of the Government who have spent more than 30 years in government service are not dealt with arbitrarily. If indeed the respondent did not enjoy a good reputation, perhaps this should have been documented or in the alternate those reporting officers should have been questioned who have stated that the respondent was a very diligent, competent, honest and good officer.*"

85. Furthermore, in the case of Muhammad Zafeer Abbasi Vs. Government of Pakistan (2003 PLC (C.S.) 503), the Division Bench of the Hon'ble Lahore High Court held at paragraphs 11 to 12 of the report as follows:-

*"11. ...We are quite mindful that the Selection Board comprises of very high personage with variety of experience and wisdom yet they are human beings and cannot be said to be infallible. Such a presumption is neither warranted by reality nor supported by the history. We are also mindful that we cannot substitute the opinion of the Selection Board with our own opinion yet we may observe here that if the opinion as to unsuitability of an officer for promotion is not based on any material the decision based thereon is rendered arbitrary and open to correction by this Court in exercise of Constitutional jurisdiction."*

*12. No doubt, the petitioner had no right to be promoted yet in accordance with section 9 of the Civil Servants Act (No. LXXI), 1973 he was entitled to be considered for promotion. The right contemplated by section 9 aforesaid is neither illusory nor a perfunctory ritual. Withholding of promotion is a major penalty in accordance with the Government Servants (Efficiency and Discipline) Rules, 1973 and therefore, before a Civil Servant is condemned, he has a right to insist that the material on the basis of which he is being deprived of promotion should be disclosed to him and he should be allowed an opportunity to clear himself. The consideration of an officer for promotion is, therefore, to be based not only on the relevant law and the rules but also on some tangible material which could be lawfully taken into consideration therefore, unless the opinion of the Selection Board was backed by some tangible material, it could not be said that the case of the petitioner for promotion was considered in accordance with law. The expression "law" as employed in Article 4 of the Constitution is of wider import which includes the duty of every public functionary to act in the matter justly and fairly and in accordance with the principles of natural justice. (Emphasis added).*

86. As both the Hon'ble Judges who heard and decided Muhammad Zafeer Abbasi's case subsequently rose to grace the Hon'ble Supreme Court of Pakistan, the said judgment deserves the respect and reverence.

87. In the case of Ahmed Saeed Siddiqui Vs. Pakistan through Secretary Establishment (2015 PLC (C.S.) 923), it has been held by the Hon'ble High Court of Sindh, as follows:-

*"31. Without 'disclosure' of 'adverse materials' and affording opportunity of defence, nevertheless, the petitioners herein were deprived of their promotion which act of the Central Selection Board [CSB] is not only 'unfair' but also against the principles of natural justice and spirit of Articles 4 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973 as well. In this regard the relevant observation from the case of Tanvir Ashraf v. Riasat Ali and 5 others [2004 YLR 659] are reproduced herein below:---*

*"... To arrive at a finding adverse to some person, not only cogent evidence is required but also that the affected person has to be confronted with the material sought to be used against him to fulfil the duty of "adequate*



*disclosure" and the said person is also entitled to an opportunity of defense to rebut the material, to satisfy the requirement of the principles of natural justice and fairness to obey the command of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973."*

88. The principle is well-settled that an adverse report in an ACR cannot be acted upon to deny promotional opportunities unless it is communicated to the officer concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the officer concerned, whether the adverse report is justified. The decision of the CSB to give less than three marks to an officer for his integrity in the absence of any adverse remarks *qua* the integrity of such an officer in his PERs and TERs, would assume the character of an "adverse remark" about his integrity and obligate the CSB to communicate the same to him as well as the material on which such a decision is based, so as to enable the officer to offer an explanation, before the CSB sends its recommendations to the competent authority.

89. The Hon'ble Supreme Court in Orya Maqbool's case has observed that *"Civil Servants of BPS-21 who have to involve themselves in important policy making and extensive administrative jurisdictions, having possessed proven analytical competence, breadth of vision, emotional maturity and such other qualities as determined the potential for successfully holding posts in top management for achieving the goal for the welfare of the general public, which also deals with their fundamental rights under Articles 9 and 25 etc. of the Constitution."* Therefore, the process for the promotion of such officers has to be pristine and should carry no impression of arbitrariness. We are told that the CSB has to examine hundreds of cases in a few days after every few months, therefore, each and every case cannot be given more than a certain time. Rush of work should be no excuse of not giving a meaningful and

purposeful attention to each case.

90. If a junior officer is to be promoted and the senior deferred, a comparative analysis must be carried out between the two or with each of the officers over which a junior is being promoted, and reasons should be given which would satisfy and convince any reasonable mind as to the causes and factors due to which the seniors are ignored. Such reasons must contain the attributes which are possessed by a junior promoted officer and which the senior deferred or superseded officers are bereft of. Where the senior officers are so ignored, it is their right to know about their deficiencies, which prevailed over the minds of the members of the CSB in arriving at a conclusion not to recommend him for promotion.

91. In Tariq Aziz-ud-Din's case (2010 SCMR 1301), it has been held by the Hon'ble Supreme Court as follows:-

*"22. ... [T]o ensure justice and openness in view of rule of law it becomes obligatory upon the competent authority to decide each case on merit taking into consideration the service record of the officers BS-21 who were eligible for promotion to BS-22. This aspect of the matter requires application of mind based on consideration and determination of merit in the light of the material explicitly showing as to why the officers who have been left out were not found to be competent/below merit in comparison to those promoted to BS-22. Such consideration of the case and determination of merit for parity of treatment becomes all the more necessary and in absence of considering the candidature of the left out officers it would alone be tantamount to pick and choose essentially leading us to hold that there was no transparency in the exercise of discretion by the competent authority."*

92. The Hon'ble Supreme Court in a number of cases have emphasized that the seven instruments that are most useful in structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair and informal procedures. The CSB in exercising its discretion whether to recommend the promotion or supersession or deferment of an officer must bear the said instruments in mind.

93. In Aftab Manika's case (2015 SCMR 1006), it is, *inter-alia*, held as follows:-

*"....The factors or information to be taken into account while considering cases of promotion fall within the exclusive domain*

*of the Board. Whether the reports of the Intelligence Agencies would be material and, if so, the weight that they deserve are matters within the power of the Board. Similarly, the competent authority also in its discretion may take into consideration any information while considering the recommendations of the Board. This power, however, is to be exercised sparingly and as mentioned in the Esta Code in exceptional circumstances....."*

94. Although, it is the prerogative of the CSB whether or not to take the reports of the Intelligence Agencies about an officer under consideration for promotion, the law laid down by the superior courts as regards the veracity, strength and evidentiary value of such reports, must be borne in mind. A reference, at this stage, to case law on the subject is apposite:-

- (i) In the case of Muhammad Akbar Khan Hoti Vs. Federation of Pakistan (2006 PLC (C.S) 619), the writ petitioner was aggrieved of the decision of CSB to brush aside his annual confidential reports and based their decision regarding his integrity on the reports of the Intelligence department. In paragraphs 14 to 16 of the report, it was held as follows:-

*"14. Anyhow, a report from the Intelligence Department with respect to a government servant touching upon his integrity and work stands at an inferior position as invariably this is written by a person of the lowest rank, who cannot have a perception which an immediate boss of a civil servant may have. Therefore, when ACRs are discarded, the intelligence report cannot take their place absolutely as this can lead to very dangerous results. At the most an overall picture can be drawn ' based on the statements in the ACRs and the intelligence reports.*

*15. The CSB in this case has not ascertained from the entire material placed before it as to what was the integrity of the petitioner for purposes of consideration of his promotion case. It simply brushed aside the dossier on the basis of intelligence report even without asking the petitioner any question. It did not even ascertain who was the author of the report. If the report was given by a Grade IV Officer it would not be wise to depend on such a report.*

*16. Therefore, the CSB has not applied its mind to the case of the petitioner. As the CSB has not applied its mind, this Court has no hesitation in issuing a mandamus to the CSB to look into the entire record of the petitioner and then consider the reports on the basis of their intrinsic value and determine whether this was a fit case for promotion or not."*

- (ii) Similarly in the case of Sameen Asghar Vs. Federation of Pakistan (2010 PLC (C.S.) 725), it has been held by the

Hon'ble Lahore High Court as follows:-

*"7. The petitioners were superseded by the Central Selection Board merely because of the reports of the Intelligence Agencies, but admittedly neither these reports were communicated to them nor were they confronted with same. Even the details whereof were neither given in the proceedings of the Central Selection Board nor in the comments submitted by the respondents. In alike circumstances, this Court vide orders dated 21-3-2006 and 19-3-2007 passed in Writ Petition No. 195 of 2006 and Writ Petition No. 11 of 2007, the reports of the intelligence agencies were declared as without lawful authority, supersession made on their basis was set aside and the Central Selection Board was directed to consider the case of the petitioner without being influenced by the report of any intelligence agency."*

- (iii) In the case of Muhammad Hanif Vs. Islamic Republic of Pakistan (2001 YLR 834), it has been held by the Hon'ble Lahore High Court in paragraph 2 of the Report as follows:-

*"2. It is the case of the petitioner, that the Government of Pakistan, has conducted a thorough investigation through the officials of the Intelligence Department for the candidates of Nazim and Naib-Nazim; and as per such reports, Haq Nawaz/respondent No.5, is found to be a police tout, therefore, he is disqualified to contest the election and hold the post. According to this plea, it may be held, that in law no reliance can be placed upon the so-called intelligence reports, which are of hearsay nature, besides no such report has been placed on the record, therefore, the argument of the learned counsel is repelled."*

- (iv) In the case of Abdul Wadood Khan Vs. Secretary, Establishment Division (2009 PLC (C.S.) 348), it has been held by the Hon'ble Islamabad High Court as follows:-

*"5. The supersession of the petitioner in the meeting of the Central Selection Board on the ground of negative reports from the Intelligence Agencies particularly when petitioner was not confronted with the reports, is illegal. The supersession of the petitioner in the year 2005 is, therefore, declared to have been made without lawful authority having no legal effect. The supersession of the petitioner in the year 2005 shall be treated to be a deferment."*

- (v) In the case of Muhammad Ashraf Vs. Government of Pakistan (2007 PLC (C.S.) 669), it has been held by the Hon'ble Lahore High Court in paragraphs 10 and 11 of the report as follows:-

*"10. As to intelligence report qua the integrity of the petitioner is concerned, the answer would be that a report from the intelligence department with respect to a Government servant touching upon his integrity and work stands at an inferior position as invariably this is written by a person of the lowest rank, who cannot have a perception, which an immediate boss of a civil servant may have. When ACRs of a civil servant are discarded the intelligence report cannot take their place absolutely and this can lead to very dangerous results. At the most an overall picture can be drawn based on the statements in the ACRs. and the intelligence reports.*

*11. The non-consideration of ACRs. of civil servant by Selection Board on the basis of adverse intelligence report "qua" his integrity without asking his explanation would mean that Board had not ascertained from entire material as to what was the integrity of civil servant for the purpose of consideration of his promotion case nor the Board has determined that as to who was the author of the report and it has been laid down in case of Muhammad Akbar Khan v. Federation of Pakistan 2006 PLC (C.S.) 619 that intelligence report, if given by a Grade-IV officer could not be relied upon."*

- (vi) In the case of High Court Bar Association Bahawalpur Vs. Federation of Pakistan (PLD 2015 Lahore 317), the Hon'ble Lahore High Court set aside the decision of a Parliamentary Committee constituted under Article 175-A of the Constitution which had based its decision whether or not to accept the recommendations/nominations of the Judicial Commission on Intelligence Reports. The reasons given by the parliamentary committee in not accepting the recommendations of the Judicial Commission regarding the elevation of Judges to the High Court were termed as "frail and cosmetic".
- (vii) In the case of Government of Punjab Vs. S. Tassadaq Hussain Bokhari (PLD 1986 Supreme Court 162), a magistrate was issued a show cause notice wherein it was alleged that he had a persistent reputation of being corrupt. The competent authority, after affording him an opportunity of personal hearing, held *inter-alia*, as follows:-

*"I see no reason to disagree with the report of the Directorate of Anti-Corruption Establishment and the Special Branch who have looked into the allegations against the accused officer, independently of each other, and have sent separate independent reports, with identical findings, holding him guilty of the charges spelt out in*

*the show-cause notice.”*

95. Consequently, the Magistrate was removed from service. Aggrieved by this, the Magistrate agitated the matter before the Punjab Service Tribunal, which held as follows:-

*"It is apparent from record without any dispute, that he had been removed from service on the basis of secret reports provided to the authority by the Special Branch of Police as well as by the Anti-Corruption Establishment. ... We are of the considered opinion that the appellant has been condemned on secret reports of the Anti-Corruption Establishment and Special Branch Police, which have based their reports without recording any evidence but only by probe at their own end. Without associating the appellant at any stage of these enquiries, submitting at the same time that the appellant was reportedly or allegedly or stated to be corrupt."*

96. After holding so the Punjab Service Tribunal set aside the decision of the competent authority. The Hon'ble Supreme Court upheld the judgment of the Punjab Service Tribunal, by holding *inter alia* that there is no indication that the secret reports were shown or the factual contents thereof disclosed to the Magistrate.

97. The prime responsibility of the CSB is to consider the cases of the eligible civil servants in order of seniority, and either (i) recommend a civil servant for promotion to the next higher post, or (ii) recommend a civil servant for supersession, or (iii) defer the consideration of promotion of a civil servant provided that the consideration of a civil servant's promotion is deferred only for the reasons set out in the Promotion Policy/Guidelines for Departmental Promotion Committees/CSB.

98. We noticed that some of the officers that were considered for promotion by the CSB were awarded specific marks for their PERs, TERs and their Integrity. Such marking was not done for officers, who were recommended by the CSB to be deferred. The learned A.A-G submitted that the reason why marks were not given to the officers recommended to be deferred was because prior to reaching the marking stage, it was decided by the CSB to watch their performance. Now it is within the realm of possibilities that had marks for PERs, TERs and Integrity being given to such officers some may well have satisfied the threshold

of 75 marks. The mere fact that they were deferred without being subjected to marking on the basis of their PERs, TERs and Integrity by the CSB, would imply that the deficiencies in their work related performance were so wanting that they did not deserve to be considered any further in the process underway. This makes the communication of the deficiencies in the officers along with the reasons for deferring them more imperative.

99. Initially, when the 1982 Promotion Policy (i.e. Guidelines for Departmental Promotion Committee/CSB issued through D.O.No.10(3)/81/CP-1(Pt), dated 31.10.1982, by the Establishment Division), the CSB could defer the consideration of promotion of a civil servant, only for the following three reasons:-

- "(i) the CR dossier is incomplete or any other document/information required by the DPC/CSB for determining a civil servant's suitability for promotion is not available; or*
- ii) disciplinary or departmental proceedings are pending against the civil servant whose promotion case comes up for consideration before the DPC /CSB; or*
- (iii) the civil servant is on deputation abroad to a foreign government private organization or international agency."*

100. These Guidelines were subsequently changed, vide D.O.No.10(3)/84/CP-1, dated 30.04.1984. Three more grounds on which a civil servant's promotion could be deferred were added. These were as follows:-

- "(iv) the civil servant does not possess the requisite length of service; or*
- (v) the civil servant has not undergone the prescribed training or passed the departmental examination for reasons beyond his control ; or*
- (vi) the civil servant's inter se seniority is subjudice."*

101. Vide O.M. No.1/3/2007-CP-II, dated 24.10.2007, the Guidelines for Departmental Promotion Committees/CSB were again revised. On account of the said revision, the grounds on which the CSB could defer the consideration of promotion of a civil servant, were as follows:-

- "(i) Not undergone the prescribed training or passed departmental examination.*
- (ii) Non submission of Part-I and Part-II of the PER by the concerned officer to his reporting officer in respect of his service in the present grade and the preceding grade.*

- (iii) When the Board considers the record as incomplete, or wants to further watch the performance of the officer or for any other reason to be recorded in writing.*
- (vi) Disciplinary or departmental proceedings are pending against the civil servant.*
- (v) The civil servant is on deputation abroad to a foreign government, private organization or international agency.*
- (vi) The civil servant's inter se seniority is subjudice."*

102. The said O.M. dated 24.10.2007, *inter-alia*, clarified that the civil servant whose promotion has been deferred will be considered as soon as the reason on the basis of which the deferment took place ceases to exist.

103. The learned Single Judge-in-Chambers had the occasion of going through the record of the CSB. The officers in BPS-19 and BPS-20 whose promotion to BPS-20 and BPS-21 was recommended to be deferred by the CSB, and the reasons for such deferral are listed in paragraph 35 of the impugned judgment. For ease of reference, this list at Schedule-III to this judgment.

104. Perusal of the said list shows that most of the officers were recommended to be deferred, because their work related performance was to be watched/observed for periods extending from six months to one year. The CSB had ascribed the said reason on the basis of paragraph (b)(iii) of the Promotion Policy as revised, vide O.M. dated 24.10.2007. The said paragraph (b)(iii) has been reproduced hereinabove.

105. We are of the view that simply deferring the promotion of an officer because the CSB, in its collective wisdom, feels that the performance of an officer has to be watched further, does not satisfy the requirements of Section 24-A of the General Clauses Act, 1897. If an officer is not promoted on account of some deficiency in his work related performance, it is his right to know, with sufficient detail, what exactly that deficiency is and which aspect of his work related performance he needs to improve upon. Simply deferring an officer by telling him that his work related performance needs to be watched for six months to one year is not just vague, ambiguous, imprecise and nebulous, but unacceptable in the service jurisprudence. The officer whose



promotion is deferred for such reasons would have no way of knowing how and where his work related performance has been wanting or scarce. The Superior Courts have time and again emphasized upon the requirement of reasons being given for decisions made by public functionaries. Such reasons have to contain the basis on which public functionaries arrive at a certain decision, especially when such a decision is to the detriment of the subject. In the case at hand, the decision to recommend the promotion of an officer to be deferred, is in-fact, a decision not to promote him at a particular stage. When an officer is not promoted, when his similarly placed peers are promoted, this is detrimental and harmful to him. The assertion of the learned A.A-G that when such an officer is promoted after six months or one year after the deferment, he will regain his seniority, is no consolation to such an officer and is no excuse for not providing him reasons with specificity and detail as to the areas or facets where his work related performance is deficient. The decision to recommend the promotion of an officer to be deferred cannot be at the whims or impulses of the members of the CSB. Such a decision has to be backed by tangible material showing the deficient performance of the officer under consideration for promotion.

106. We were told by the learned A.A-G that the writ petitioners, whose promotion had been recommended to be deferred could not be termed as aggrieved persons, because the competent authority had reduced the periods of their deferral to shorter period and that they would be considered for promotion in the next meeting of the CSB. This, in our view, is a self-defeating argument. If the members of the CSB considered that the work related performance of a particular officer needed to be watched for one year, one wonders what prevailed over the competent authority to substantially reduce the period of deferral of such an officer.

107. The law laid down by the Hon'ble Supreme Court of Pakistan in Orya Maqbool's case that the *"decision with regard to the promotions of the officers cannot be left on the discretion of*

*the Members of the Board; there must be some criteria to judge the performance of a candidate because promotion was denied to an officer on the ground that he does not fulfill the criteria."*

108. We are of the view that this principle is squarely applicable to the officers, who are recommended to be deferred by the CSB. The CSB can recommend the promotion of an officer to be deferred only and only for the reasons set out in the O.M. dated 24.10.2007, under the heading "Conditions for Deferment". Now Clause (iii) of the "Conditions for Deferment" does not reflect any criteria or objectivity. Just like the superior courts had earlier directed to restructure the criteria for the award of the 15 discretionary marks available to the CSB, we, without setting aside the same or making a declaration with respect to it, expect that the said Clause (iii) of the "Conditions for Deferment" would also either be reworded or supplemented by the Establishment Division so as to bring in more objectivity and transparency in the process. In expressing this expectation, we remain conscious of the limitations on our jurisdiction under Article 199 of the Constitution, especially in view of the law laid down by the Hon'ble Supreme Court in the case of Dr. Imran Khattak Vs. Ms. Sofia Waqar Khattak (2014 SCMR 122).

109. Paragraph 2 of the O.M. dated 24.10.2007 provides that *"the civil servant whose promotion has been deferred will be considered as soon as the reason on the basis of which deferment took place ceases to exist."* Now when the civil servant is not informed about the deficiency in his work related performance with specific details, how is he to know which area of his performance he has to improve upon. Unless there is specific material on the basis of which the members of the CSB feel that the work related performance is deficient and not up to the mark, and needs to be watched for another year or so, the decision of the CSB to recommend the promotion of an officer to be deferred cannot be termed as reasonable or rational.

110. Confining the reason for recommending an officer's promotion to be deferred so as to *"watching his work related performance"* for six months or one year, without further ado

leaves the door ajar to arbitrariness and abuse of discretion. The process by which the CSB comes to the conclusion to defer an officer has to be purposeful and meaningful.

111. Some of the reasons on which an officer's promotion can be deferred are where he has not undergone the prescribed training or passed departmental examinations; where disciplinary or departmental proceedings are pending against the civil servant; where the civil servant is on deputation abroad; where the civil servant's inter se seniority is subjudice. This information about a civil servant ought to be in the knowledge of the department to which he belongs. We fail to understand as to why the case of an officer, suffering from the disabilities mentioned above, is sent by his department to the CSB for consideration for promotion. Regardless of these disabilities, if the department sends the case of such an officer for consideration for promotion to the CSB, and the CSB comes to know about such disabilities, then obviously such an officer cannot be considered for promotion.

112. The learned A.A-G submitted that an error has been committed by the learned Single Judge-in-Chambers in paragraph 54 of the impugned judgment and that while reproducing the O.M. dated 12.10.2012, the Objective Assessment Form which had been issued along with the said O.M. has not been reproduced, rather the Objective Assessment Form which had been issued along with O.M. dated 10.02.2014, had been reproduced.

113. We do not think that anything turns on this error because the O.M. dated 10.02.2014 other than replacing the Objective Assessment Form did not bring about any substantive change in the O.M. dated 12.10.2012. There is no denying the fact that the cases of the writ petitioners were considered by the CSB under the promotion policy as amended by the O.M. dated 12.10.2012 and the Objective Assessment Form issued along with the O.M. dated 10.02.2014.

114. The learned A.A-G submitted that the writ petitions filed by the respondents impugning the O.M. dated 10.02.2014, were not

maintainable, because the petitioners could have filed an appeal before the Federal Services Tribunal in terms of Rule 4(1)(a) & (b) of the Civil Servants (Appeal) Rules, 1977, which are reproduced herein below:-

*"4. (1) A civil servant shall be entitled to appeal to the appellate authority from an order passed by an authority which -*  
*(a) alters to his disadvantage, his conditions of service, pay, allowances or pension; or*  
*(b) interprets to his disadvantage the provisions of any rules whereby his conditions of service, pay, allowances or pension are regulated; or"*

115. Learned A.A-G submitted that if the writ petitioners were of the view that the O.M. dated 10.02.2014 and the Objective Assessment Form annexed thereto, altered to their disadvantage, their conditions of service or interpreted to their disadvantage the provisions of any rules whereby their conditions of service were regulated, they could have challenged the vires of the said O.M. and its annex before the Federal Services Tribunal. This, we feel is a self-defeating argument, because if the remedy of an appeal under the said law was available to the writ petitioners, then under the proviso to Section 3(2) of the Law Reforms Ordinance, 1972, the appeals filed by the Federation against the judgment dated 27.07.2015 of the learned Single Bench of this Court would be liable to be dismissed as not maintainable. However, since the learned counsel for the contesting parties have argued their cases on merits stretched over a period of 25 dates of hearing, we feel that a decision on merits is warranted.

116. We are of the view that the requirement for marks to be given to an officer for his integrity/general reputation on the basis of the 'Opinion of the Board', went contrary to the directions given to the Establishment Division by the Superior Courts in the judgments in Iram Adnan's case, Liaqat Chughtai's case and Orya Maqbool's case. Furthermore, the same was unguided and was likely to lead to arbitrariness and unreasonableness. Hence, judgment of the learned Single Bench to the extent of *"declaring that the formula of award of 15 marks at the disposal of the CSB with overriding effect of 05 marks"* is

upheld. Consequently, the direction made by the learned Single Bench to the Establishment Division to *“reframe the formula by taking away the overriding effect of the marks to be awarded by CSB”* is also upheld.

117. None of the writ petitioners had challenged the O.M. dated 12.10.2012 or the Objective Assessment Form annexed thereto. Therefore, the judgment of the learned Single Bench to the extent of making a declaration with respect to the said O.M. is set aside. This, we hold in view of the law laid down by the Hon'ble Supreme Court in the case of Dr. Imran Khattak Vs. Ms. Sofia Waqar Khattak (2014 SCMR 122). It may, however, be observed that in the presence of the O.M. dated 12.10.2012, the Hon'ble Supreme Court, in Orya Maqbool's case, had directed the Government to undertake an exercise to outline an objective criteria for the promotion.

118. For the foregoing reasons, we hold as follows:-

- (i) The appeals arising from the impugned judgment dated 27.07.2015, whereby the writ petitions in which the recommendations of the Central Selection Board were challenged, are allowed. Therefore, the writ petitions to the extent of challenging the recommendations of the Central Selection Board, are dismissed as not maintainable.
- (ii) The appeals from impugned judgment dated 27.07.2015 to the extent of striking down the O.M. dated 10.02.2014, and the Objective Assessment Form annexed thereto, to the extent of the five (5) overriding discretionary marks, which the Central Selection Board could grant to an officer under consideration for promotion for his Integrity, General Reputation and Perception, are dismissed.
- (iii) The impugned judgment dated 27.07.2015 to the extent of striking down the O.M. dated 12.10.2012, is set aside.
- (iv) The entire process carried out by the CSB on the basis of the O.M. dated 10.02.2014 and the Objective Assessment Form annexed thereto resulting in the recommendations of the CSB for the deferment/supersession of the officers under consideration for promotion, is declared to be

unlawful and in violation of the law laid down by the Hon'ble Supreme Court in Orya Maqbool's case. The Establishment Division is directed to reframe the formula, in the light of the observations made herein, and by taking away the overriding effect of the five marks to be awarded by the CSB, and place the cases of all the officers, who were considered for promotion in the meetings of the CSB (whether subsequently promoted or not) prior to the filing of the writ petitions. The CSB shall carry out the assessment of the officers in accordance with the directions made by the learned Single Bench in paragraph 65 of the impugned judgment.

(AAMER FAROOQ)                      (MIANGUL HASSAN AURANGZEB)  
JUDGE    JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2016

(JUDGE)    (JUDGE)

APPROVED FOR REPORTING

Qamar Khan\*

**SCHEDULE-I**  
**DETAILS OF INTRA COURT APPEALS**

| SR.NO. | CASE NO.           | CASE TITLE  |
|--------|--------------------|---|
| 1.     | I.C.A.No.368/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Dr. Muhammad Arif                       |
| 2.     | I.C.A. No.371/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Aftab Ahmed Cheema & others             |
| 3.     | I.C.A. No.372/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Shah Muhammad Jamal                     |
| 4.     | I.C.A. No.373/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Khwaja Adnan Zahir & others             |
| 5.     | I.C.A. No.374/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Mukhtar Ahmed Baig                      |
| 6.     | I.C.A. No.375/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Syed Zulfiqar Ali Shah Kazmi & others   |
| 7.     | I.C.A. No.376/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Dr. Mushtaq Ahmed Qureshi & others      |
| 8.     | I.C.A. No.377/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Ghani-ur-Rehman Wazir & others          |
| 9.     | I.C.A. No.379/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Capt. (Retd.) Tariq Hayat Khan & others |
| 10.    | I.C.A. No.380/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Younis Ali Khan & others                |
| 11.    | I.C.A No.381/2015  | Federation of Pakistan through Secretary<br>Establishment Division,<br>Vs.<br>Fasiuddin                               |
| 12.    | I.C.A No.382/2015  | Federation of Pakistan through Secretary<br>Establishment Division,<br>Vs.<br>Qaiser Majeed Malik                     |
| 13.    | I.C.A No.383/2015  | Federation of Pakistan through Secretary<br>Establishment Division,<br>Vs.<br>Waqar Haider                            |

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| 14. | I.C.A No.384/2015  | Federation of Pakistan through Secretary<br>Establishment Division,<br>Vs.<br>Badar Zaman             |
| 15. | I.C.A. No.385/2015 | Federation of Pakistan through Secretary<br>Establishment Division,<br>Vs.<br>Hafiz Zafar Ali Malik   |
| 16. | I.C.A No.386/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Ejaz Ahmed Rasool        |
| 17. | I.C.A.No.387/2015  | Federation of Pakistan through Secretary<br>Establishment Division,<br>Vs.<br>Syed Imtiaz Altaf       |
| 18. | I.C.A No.388/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Sheraz Mirza             |
| 19. | I.C.A. No.389/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Ghulam Haider           |
| 20. | I.C.A. No.390/2015 | Hassan Nisar Jami<br>Vs.<br>Malik Tahir Sarfraz   |
| 21. | I.C.A.No.391/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Rana Muhammad Luqman    |
| 22. | I.C.A No.392/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Muhammad Akram Khan      |
| 23. | I.C.A No.393/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>S. Asif Mateen Zaidi     |
| 24. | I.C.A. No.394/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Tariq Mehmood Javaid    |
| 25. | I.C.A No.398/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Muhammad Ayub Minhas     |
| 26. | I.C.A No.399/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Dr. Muhammad Farooq Azam |
| 27. | I.C.A No.400/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Malik Tahir Sarfaraz     |



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| 28. | I.C.A No.401/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Muhammad Zahid Mehmood      |
| 29. | I.C.A No.402/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Khawaja Umer Mehdi          |
| 30. | I.C.A No.403/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Sohail Akhtar               |
| 31. | I.C.A No.404/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Muhammad Shoaib Bashir Khan |
| 32. | I.C.A No.405/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Shahid Hussain             |
| 33. | I.C.A No.406/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Samin Ullah Khan Gandapur   |
| 34. | I.C.A No.407/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Muhammad Rafique Khan       |
| 35. | I.C.A No.408/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Akbar Shamim Aleem          |
| 36. | I.C.A No.409/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Suresh Mal                  |
| 37. | I.C.A. No.410/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Zafar Iqbal Qadir          |
| 38. | I.C.A.No.411/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Zahid Rasheed              |
| 39. | I.C.A No.412/2015  | Ejaz Ahmad<br>Vs.<br>Akbar Aleem   |
| 40. | I.C.A No.413/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Asif Samad                  |
| 41. | I.C.A No.414/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Muhammad Ayub Minhas        |

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| 42. | I.C.A No.415/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Rana Muhammad Iqbal Khan      |
| 43. | I.C.A No.416/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Hamayun Iqbal Shami           |
| 44. | I.C.A No.417/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Capt. (Retd) Tariq Hayat Khan |
| 45. | I.C.A No.418/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Capt. (R) Mohammad Shoaib    |
| 46. | I.C.A. No.419/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Ghulab Zamir                 |
| 47. | I.C.A. No.420/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Haroon Khan                  |
| 48. | I.C.A No.421/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Abid Mehmood Khan            |
| 49. | I.C.A No.422/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Farooq Amin Qureshi           |
| 50. | I.C.A. No.423/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Imran Tariq                  |
| 51. | I.C.A. No.424/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Munir Khan                   |
| 52. | I.C.A. No.425/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Ghulam Sarwar Jamali         |
| 53. | I.C.A No.426/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Muhammad Ayub Minhas          |
| 54. | I.C.A.No.427/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Syed Ejaz Hussain Shah        |
| 55. | I.C.A. No.428/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Dr. Lubna Ayub               |

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| 56. | I.C.A. No.429/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Dr. Kamran Fazal      |
| 57. | I.C.A. No.430/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Babar Sikandar        |
| 58. | I.C.A No.431/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Riaz Hussain           |
| 59. | I.C.A No.432/2015  | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs<br>Muhammad Yaseen Shar   |
| 60. | I.C.A. No.433/2015 | Federation of Pakistan through Secretary,<br>Establishment Division<br>Vs.<br>Dr. Muhammad Shafique |
| 61. | I.C.A No.449/2015  | Tariq Javed<br>Vs.<br>Aftab Ahmad Cheema etc  |

**SCHEDULE-II**  
**DETAILS OF WRIT PETITIONS**

| Sr.No. | Case No.         | Case Title   |
|--------|------------------|--|
| 1.     | W.P.No.1269/2015 | Syed Ijaz Hussain Shah<br>Vs.<br>Federation of Pakistan, etc   |
| 2.     | W.P.No.1359/2015 | Akbar aleem Shamim<br>Vs.<br>Federation of Pakistan, etc       |
| 3.     | W.P.No.1383/2015 | Khawaja Adnan Zahir<br>Vs.<br>Federation of Pakistan, etc      |
| 4.     | W.P.No.1401/2015 | Qaiser Majeed Malik<br>Vs.<br>Federation of Pakistan, etc      |
| 5.     | W.P.No.1415/2015 | Badar Zaman<br>Vs.<br>Federation of Pakistan, etc              |
| 6.     | W.P.No.1416/2015 | Riaz Hussain<br>Vs.<br>Federation of Pakistan, etc             |
| 7.     | W.P.No.1418/2015 | Malik Tahir Sarfraz Awan<br>Vs.<br>Federation of Pakistan, etc |
| 8.     | W.P.No.1426/2015 | Imran Tariq<br>Vs.<br>Federation of Pakistan, etc              |
| 9.     | W.P.No.1429/2015 | Zahid Rashid<br>Vs.<br>Federation of Pakistan, etc             |
| 10.    | W.P.No.1432/2015 | Suresh Mal   |

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|            |                         | <b>Vs.<br/>Federation of Pakistan, etc</b>                               |
| <b>11.</b> | <b>W.P.No.1439/2015</b> | <b>Khawaja Umer Mehdi<br/>Vs.<br/>Federation of Pakistan, etc</b>        |
| <b>12.</b> | <b>W.P.No.1440/2015</b> | <b>Ghani-ur-Rehman<br/>Vs.<br/>Federation of Pakistan, etc</b>           |
| <b>13.</b> | <b>W.P.No.1446/2015</b> | <b>Munir Khan Khilji<br/>Vs.<br/>Federation of Pakistan, etc</b>         |
| <b>14.</b> | <b>W.P.No.1447/2015</b> | <b>Farooq Amin Qureshi<br/>Vs.<br/>Federation of Pakistan, etc</b>       |
| <b>15.</b> | <b>W.P.No.1451/2015</b> | <b>Syed Zulfiqar Ali Shah<br/>Vs.<br/>Federation of Pakistan, etc</b>    |
| <b>16.</b> | <b>W.P.No.1453/2015</b> | <b>Capt. Muhammad Shoaib<br/>Vs.<br/>Federation of Pakistan, etc</b>     |
| <b>17.</b> | <b>W.P.No.1454/2015</b> | <b>Aftab Ahmad Cheema<br/>Vs.<br/>Federation of Pakistan, etc</b>        |
| <b>18.</b> | <b>W.P.No.1462/2015</b> | <b>Tariq Hayat Khan<br/>Vs.<br/>Federation of Pakistan, etc</b>          |
| <b>19.</b> | <b>W.P.No.1464/2015</b> | <b>Dr. Mushtaq Ahmad Qureshi<br/>Vs.<br/>Federation of Pakistan, etc</b> |
| <b>20.</b> | <b>W.P.No.1466/2015</b> | <b>Babar Sikandar<br/>Vs.<br/>Federation of Pakistan, etc</b>            |
| <b>21.</b> | <b>W.P.No.1472/2015</b> | <b>Shah Muhammad Jamal<br/>Vs.<br/>Federation of Pakistan, etc</b>       |
| <b>22.</b> | <b>W.P.No.1484/2015</b> | <b>Shoaib Bashir Khan<br/>Vs.<br/>Federation of Pakistan, etc</b>        |
| <b>23.</b> | <b>W.P.No.1496/2015</b> | <b>Sheraz Mirza<br/>Vs.<br/>Federation of Pakistan, etc</b>              |
| <b>24.</b> | <b>W.P.No.1501/2015</b> | <b>Dr. Lubna Ayub<br/>Vs.<br/>Federation of Pakistan, etc</b>            |
| <b>25.</b> | <b>W.P.No.1503/2015</b> | <b>Dr. Kamran Fazal<br/>Vs.<br/>Federation of Pakistan, etc</b>          |
| <b>26.</b> | <b>W.P.No.1504/2015</b> | <b>Muhammad Rafique Khan<br/>Vs.<br/>Federation of Pakistan, etc</b>     |
| <b>27.</b> | <b>W.P.No.1505/2015</b> | <b>Younis Ali Khan<br/>Vs.<br/>Federation of Pakistan, etc</b>           |
| <b>28.</b> | <b>W.P.No.1506/2015</b> | <b>S. Asif Mateen Zaidi<br/>Vs.<br/>Federation of Pakistan, etc</b>      |
| <b>29.</b> | <b>W.P.No.1507/2015</b> | <b>Samin Ullah Khan</b>  |

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|-----|------------------|---|
|     |                  | <b>Vs.<br/>Federation of Pakistan, etc</b>                              |
| 30. | W.P.No.1509/2015 | <b>Syed Imtiaz Altaf<br/>Vs.<br/>Federation of Pakistan, etc</b>        |
| 31. | W.P.No.1511/2015 | <b>Rana M. Luqman<br/>Vs.<br/>Federation of Pakistan, etc</b>           |
| 32. | W.P.No.1518/2015 | <b>Abid Mahmood Khan<br/>Vs.<br/>Federation of Pakistan, etc</b>        |
| 33. | W.P.No.1523/2015 | <b>Muhammad Farooq Azam<br/>Vs.<br/>Federation of Pakistan, etc</b>     |
| 34. | W.P.No.1524/2015 | <b>Muhammad Zahid Mahmood<br/>Vs.<br/>Federation of Pakistan, etc</b>   |
| 35. | W.P.No.1540/2015 | <b>Ghulam Sarwar Jamali<br/>Vs.<br/>Federation of Pakistan, etc</b>     |
| 36. | W.P.No.1542/2015 | <b>Hafiz Zafar Ali Malik<br/>Vs.<br/>Federation of Pakistan, etc</b>    |
| 37. | W.P.No.1561/2015 | <b>Tariq Mehmood Javaid<br/>Vs.<br/>Federation of Pakistan, etc</b>     |
| 38. | W.P.No.1562/2015 | <b>Muhammad Yasin Shar<br/>Vs.<br/>Federation of Pakistan, etc</b>      |
| 39. | W.P.No.1564/2015 | <b>Rana Muhammad Iqbal Khan<br/>Vs.<br/>Federation of Pakistan, etc</b> |
| 40. | W.P.No.1565/2015 | <b>Waqar Haider<br/>Vs.<br/>Federation of Pakistan, etc</b>             |
| 41. | W.P.No.1566/2015 | <b>Mukhtar Ahmad Baig<br/>Vs.<br/>Federation of Pakistan, etc</b>       |
| 42. | W.P.No.1568/2015 | <b>Asif Samad<br/>Vs.<br/>Federation of Pakistan, etc</b>               |
| 43. | W.P.No.1583/2015 | <b>Muhammad Shafique<br/>Vs.<br/>Federation of Pakistan, etc</b>        |
| 44. | W.P.No.1588/2015 | <b>Dr. Haroon<br/>Vs.<br/>Federation of Pakistan, etc</b>               |
| 45. | W.P.No.1589/2015 | <b>Shahid Hussain<br/>Vs.<br/>Federation of Pakistan, etc</b>           |
| 46. | W.P.No.1607/2015 | <b>Zafar Iqbal Qadir<br/>Vs.<br/>Federation of Pakistan, etc</b>        |
| 47. | W.P.No.1612/2015 | <b>Muhammad Ayub Minhas<br/>Vs.<br/>Federation of Pakistan, etc</b>     |
| 48. | W.P.No.1657/2015 | <b>Sohail Akhtar</b>  |

|            |                         |  |
|------------|-------------------------|--|
|            |                         | <b>Vs.<br/>Federation of Pakistan, etc</b>                             |
| <b>49.</b> | <b>W.P.No.1756/2015</b> | <b>Fashiuddin<br/>Vs.<br/>Federation of Pakistan, etc</b>              |
| <b>50.</b> | <b>W.P.No.1955/2015</b> | <b>M. Akram Khan<br/>Vs.<br/>Federation of Pakistan, etc</b>           |
| <b>51.</b> | <b>W.P.No.1961/2015</b> | <b>Ghulab Zamir<br/>Vs.<br/>Federation of Pakistan, etc</b>            |
| <b>52.</b> | <b>W.P.No.2033/2015</b> | <b>Dr. Muhammad Arif<br/>Vs.<br/>Federation of Pakistan, etc</b>       |
| <b>53.</b> | <b>W.P.No.2058/2015</b> | <b>Ghulam Haider Khaskheli<br/>Vs.<br/>Federation of Pakistan, etc</b> |
| <b>54.</b> | <b>W.P.No.2095/2015</b> | <b>Humayun Iqbal Shami<br/>Vs.<br/>Federation of Pakistan, etc</b>     |
| <b>55.</b> | <b>W.P.No.2137/2015</b> | <b>Ejaz Asad Rasul<br/>Vs.<br/>Federation of Pakistan, etc</b>         |
| <b>56.</b> | <b>W.P.No.3656/2014</b> | <b>Muhammad Ayub Minhas<br/>Vs.<br/>Federation of Pakistan, etc</b>    |
| <b>57.</b> | <b>W.P.No.1855/2013</b> | <b>Muhammad Ayub Minhas<br/>Vs.<br/>Federation of Pakistan, etc</b>    |

**SCHEDULE - III**

| <b>Sr. No.</b> | <b>Name of Officer</b>                                   | <b>Writ Petition No.</b> | <b>Reason given by CSB for Deferment</b>                                       |
|----------------|--|--------------------------|--|
| <b>1.</b>      | <b>Akbar Aleem Shamim (PAS)</b>                          | <b>WP-1359/15</b>        | <b>To observe his work related performance for a period of (06) six months</b> |
| <b>2.</b>      | <b>Khawaja Adnan (IRS)</b>                               | <b>WP-1383/15</b>        | <b>To further watch his work related performance for a period of one year.</b> |
| <b>4.</b>      | <b>Badar Zaman (PSP)</b>                                 | <b>WP-1415/15</b>        | <b>Was not considered by the board</b>   |
| <b>5.</b>      | <b>Malik Tahir Sarfraz (Pak. Administration Service)</b> | <b>WP-1418/15</b>        | <b>To further watch his work related performance for a period of one year.</b> |
| <b>6.</b>      | <b>Imran Tariq (PCS)</b>                                 | <b>WP-1426/15</b>        | <b>To further watch his work related performance for a period of one year.</b> |
| <b>7.</b>      | <b>Khawaja Umar Mehadi (PCS)</b>                         | <b>WP-1439/15</b>        | <b>To further watch his work related performance for a period of one year.</b> |
| <b>9.</b>      | <b>Farooq Amin Qureshi (PSP)</b>                         | <b>WP-1447/15</b>        | <b>To further watch his work related performance for a period of one year.</b> |
| <b>10</b>      | <b>Syed Zulfiqar Ali Shah</b>                            | <b>WP-1451/15</b>        | <b>To further watch his work related performance for a period of one</b>       |

|     | Kazmi (PCS)                              |            | year.   |
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| 11. | Aftab Ahmed Cheema (PSP)                 | WP-1454/15 | Disciplinary proceedings under Govt. Servant E& D Rules, 1973.  |
| 14. | Shoaib Bashir Khan (P & D & R)           | WP-1484/15 | Marks awarded by the board were below the prescribed score of 75  |
| 15. | Sheraz Mirza (IRS)                       | WP-1496/15 | To further watch his work related performance for a period of one year.   |
| 16. | Kamran Fazal (PSP)                       | WP-1503/15 | Watch of work performance in all aspects including integrity for a period of one year.                                |
| 19. | Rana Muhammad Luqman (IRS)               | WP-1511/15 | Watch of work performance in all aspects including integrity for a period of one year.                                |
| 20. | Ghulam Sarwar Jamali (PSP)               | WP-1540/15 | Watch of work performance in all aspects including integrity for a period of one year.                                |
| 21. | Rana Muhammad Iqbal Khan (PSP)           | WP-1540/15 | To further watch his work related performance for a period of one year.   |
| 22. | Muhammad Shafique (PSP)                  | WP-1583/15 | Watch of work performance in all aspects including integrity for a period of one year.                                |
| 23. | Muhammad Akram Khan (BOI)                | WP-1955/15 | To further watch his work related performance for a period of one year.   |
| 24. | Gulab Zamir                              | WP-1961/15 | The board after examining the record of the case did not recommend the official for grant of performa promotion.      |
| 25. | Ghulam Hyder Khaskheli (EOE)             | WP-2058/15 | Watch of work performance in all aspects including integrity for a period of one year.                                |
| 26. | Ejaz Asad Rasul (Ministry of L J & HR)   | WP-2137/15 | Watch of work performance in all aspects including integrity for a period of one year.                                |
| 1.  | Riaz Hussain (Secretariat Groupt)        | WP-1416/15 | PER of the officer for the year 2010 to 2013 are disputed. To get the disputed PERs from the right reporting officer. |
| 3.  | Suresh Mal (Ministry of Housing & Works) | WP-1432/15 | Seat Kept Reserved for the officer on the super-annotation of the officer n the vacancy of Chief Engineer BPS-20      |
| 5.  | Muhammad Shoaib (PSP)                    | WP-1453/15 | Watch of work performance in all aspects including integrity for a period of one year.                                |
| 7.  | Babar Sikandar (IB)                      | WP-1466/15 | Watch of work performance in all aspects including integrity for a period of one year.                                |
| 8.  | Lubna Ayub & 05 others                   | WP-1501/15 | Watch of work performance in all aspects including integrity for a  |

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|     | (IRS)  |            | period of one year.   |
| 9.  | Younas Ali Khan (Pak Railways)                       | WP-1505/15 | To further watch his work related performance for a period of one year.   |
| 12. | Abid Mehmood Khan (Pak. Railways)                    | WP-1518/15 | To further watch his work related performance for a period of one year.   |
| 13. | Muhammad Farooq Azam (PSP)                           | WP-1523/15 | Watch of work performance in all aspects including integrity for a period of one year.  |
| 14. | Muhammad Zahid Mehmood (Ministry of Water & Power)   | WP-1524/15 | The item was not considered by the board due to unavailability of the Secretary, Ministry of Water and Power                          |
| 15. | Hafiz Zafar Ali Malik (PS)                           | WP-1542/15 | Watch of work performance in all aspects including integrity for a period of one year.  |
| 16. | Tariq Mehmood Javaid & 04 others (Secretariat Group) | WP-1561/15 | For incomplete PER record [2008, 2009, 2010, 2011, 2012, 2013 (]pt]   |
| 17. | Muhammad Yaseen Shar (Secretariat Group)             | WP-1562/15 | Officer should serve in federal secretariat for one year for want of assessment in own cadre.   |
| 19. | Mukhtar Ahmed Baig (Defence Ministry)                | WP-1566/15 | To further watch his work related performance for a period of one year.   |
| 20. | Asif Samad (Ministry of Defence)                     | WP-1568/15 | To further watch his work related performance for a period of one year.   |
| 21. | Haroon Khan (CAAD)                                   | WP-1588/15 | To further watch his work related performance for a period of one year.   |
| 22. | Shahid Hussain (Ministry of Defence)                 | WP-1589/15 | Official not considered for want of vacancy   |
| 23. | Sohaid Akhtar (Housing & Works)                      | WP-1657/15 | Mandatory training not done   |
| 24. | Fasihuddin (PSP)                                     | WP-1756/15 | Disciplinary proceedings initiated by NAB Peshawar against the officer on allegation of corruption defined in section 9(a) of NAO 99. |
| 25. | Muhammad Arif (Information & broadcasting)           | WP-2095/15 | To further watch his work related performance for a period of one year.   |



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| 26. | Humayun Iqbal Shami (Staff Welfare) | WP-2095/15 | To further watch his work related performance for a period of one year. |
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