

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 1702 OF 2021

Abdul Majid Yousfani

Vs

Establishment Division through its Secretary, etc.

PETITIONER BY: Barrister Muhammad Saad Buttar,
Advocate.

RESPONDENTS BY: Mr. Farrukh Shahzad Dall, Assistant
Attorney General.
M/s Muhammad Saleem Khattak, Deputy
Secretary and Mehmood Khan Lakho,
Section Officer (Litigation-VI),
Establishment Division.

DATE OF DECISION: 13.07.2021.

=====

BABAR SATTAR, J.- The petitioner is aggrieved by the decision of respondent No.2 to defer the petitioner for promotion to BS-21.

2. The learned counsel for the petitioner stated that the reasoning for such deferment was communicated by letter dated 13.04.2021 ("**Impugned Letter**") and the reasons were perverse, prejudicial, discriminatory and against the rules. He further stated that in the first paragraph of letter dated 13.04.2021, the departmental representative informed the Board that the officer had previously been deferred as he had not undertaken mandatory training and not submitted his declaration of assets. He submitted that none of these requirements still remained unfulfilled for purposes of the present Central Selection

Board ("**CSB**") as the declaration of assets had already been made and the mandatory training had also been completed for purposes of the present CSB. And that such facts were only flagged by the departmental representative to prejudice the case of the petitioner. The learned counsel further stated that one of the reasons stated by the Board to defer the petitioner was that he had served outside the cadre and had not spent enough time within the cadre to enable the Board to form an opinion about his capability. The learned counsel for the petitioner pointed out that in view of Rule 18(3)(c) of the Civil Servants Promotion (BS-18 to BS-21) Rules, 2019 ("**Promotion Rules**") read together with Serial No.2 of Schedule-IV of such rules, variety and relevance of experience were listed as positive considerations. And that posting at a foreign station or within a provincial government showed variety of experience and that the civil servant had been chosen for such role based on his credential. He further pointed out that according to rule 4(iv) of the Civil Servants (Promotion to the post of Secretary & Equivalent) Rules, 2010, sufficient variety of experience was also a relevant consideration for promotion from BS-21 to BS-22. In view of the Promotion Rules, he contended that the selection of a civil servant for posting abroad or within the provincial government was deemed a positive factor embellishing the credentials of the civil servant, as was evident from the cases of at least three other officers, who were junior to the petitioner, and yet were considered and promoted through notification dated 26.02.2021. Given that the Board recommended for promotion three colleagues of the petitioner, who were junior to him and served on deputation and

were presently serving outside the cadre, reflected discriminatory treatment meted out to the petitioner and highlighted the perversity in the reasoning of respondent No.1 in deferring the petitioner for promotion. The learned counsel for the petitioner stated that the petitioner had legitimate expectancy that if he discharged his duties vigilantly and served against coveted positions that resulted in him acquiring a variety of work experience, he would be promoted in accordance with law.

3. The learned counsel for the petitioner further stated that in the reasoning in letter dated 13.04.2021, it has been pointed out that the petitioner has two good Performance Evaluation Reports (PERs), which have been held against the petitioner. And that such reasoning was perverse as the petitioner had two extraordinary PERs and two good PERs and such performance reports could only be construed in his favour and not be considered adverse as none of his PERs were average or below average. The learned counsel for the petitioner stated that the treatment meted out to the petitioner was due to *mala fide* on part of the departmental representative who presented the case of the petitioner to the Board, and consequently six civil servants, who were junior to the petitioner, were considered and promoted and the petitioner was left hanging in the cold.

4. Learned counsel for the petitioner contended that the reasons for deferment were not in compliance with requirements of Rule 23 of the Promotion Rules read together with section 24-A of the General Clauses Act, 1897.

5. The learned Assistant Attorney General assisted by Mr. Muhammad Saleem Khan Khattak, Deputy Secretary and Mr. Muhammad Khan Lakho, Section Officer, Establishment Division contended that reasons for deferment were duly communicated to the petitioner by the Impugned Letter in compliance with the requirements of rule 23 of the Promotion Rules. He submitted that the Impugned Letter stated that CSB did not find PERs for 2017 and 2018 encouraging as performance of the petitioner was assessed as "Good". And further, the CSB felt that the petitioner needed to work against a cadre post for proper assessment of his credentials. He also contended that the instant petition was not maintainable as vires of the Promotion Rules had been upheld by this Court in ***Writ Petition No. 8 of 2020 titled Sikandar Hayat Maken Vs. Federation of Pakistan, etc.***. That it was held in ***Mian Abdul Malik Vs. Dr Sabir Zameer Siddiqui and 4 others (1991 SCMR 1129)*** that question of fitness for promotion has always been considered to fall exclusively within the jurisdiction of the competent authority and that it was not for the Court to exercise supervisory jurisdiction over such matter.

6. The learned counsel for the petitioner contended in rebuttal that the petitioner is essentially seeking exercise of judicial review by the Court of the legality of reasons communicated to him for his deferment under Rule 7(d) of the Promotion Rules. That the challenge was based on the argument that the deferment decision suffered from illegality and irrationality, which rendered it liable to be corrected in exercise of the judicial review powers of this Court.

7. Let us first address the respondents' challenge to the maintainability of this petition. The proposition that an action or decision by the executive branch of the State that suffers from illegality or irrationality or procedural impropriety is liable to be subjected to judicial review is almost as old and well-settled as the doctrine of judicial review itself. It is true that jurisprudence within service law clearly reflects that courts are deferential toward discretionary exercise of power for administrative purposes by competent authority within the executive branch of the State. And it is not for the court to engage in intrusive non-deferential second-guessing of the executive's determination of fitness or suitability of a civil servant for promotion. This approach is rooted in (i) the doctrine of separation of powers, (ii) the obligation of the court to give effect to the legislative intent behind a statute where the legislature has endowed the executive with the responsibility to undertake administrative decisions, and (iii) the doctrine of judicial restraint which cautions the court against getting embroiled in policy-based judgments. Consequently, when it comes to the determination of question of promotion of a civil servant by the competent authority, in exercise of judicial review, the court affords and undertakes scrutiny of the decision if a ground of judicial review is made out, by exercising rational scrutiny as opposed to strict scrutiny. The object of such scrutiny is not to question the wisdom of the decision, but the legality of the basis that forms such decision. In other words, the court merely seeks to ascertain whether the executive authorities have maintained the required evidentiary record reflecting the factual and analytic basis for their decision

to explain the reasoning behind it. If the executive fails to adequately justify its decision for being rational and in accordance with the relevant considerations, such policy choice may still not be irredeemably faulty. But when the reasoning behind a decision is found to be perverse, the court, by setting-aside the executive's decision in view of the manner in which it has been reached, only requires the competent executive authority to reconsider and ensure that the decision reached is just, fair and reasonable, not inspired by extraneous considerations and supported by relevant considerations. We have come a very long way from the time when any branch of the State could claim to possess unfettered discretion or claim protection against scrutiny of decisions that are arbitrary or capricious.

8. Our jurisprudence reflects that constitutional law, administrative law and service law have converged and manifest that in a democratic State, where authority flows from the Constitution and is regulated by the Constitution and the law, no power-wielder can claim to possess unfettered discretion. Within the domain of constitutional law, Article 4 guarantees every citizen the right to be treated equally in accordance with law and in view of the fundamental rights guaranteed by the Constitution, including Article 25 guaranteeing the right to equality and protection of law, any arbitrary decision prejudicial to the rights of a citizen is in itself discriminatory and in breach of Article 25 read together with Article 4 of the Constitution. In the domain of administrative law, **Aman Ullah Khan Vs. The Federal Government of Pakistan through Secretary Ministry of**

Finance and others (PLD 1992 SC 1092) mandated that exercise of discretion must be structured and exercise of unstructured discretion is tantamount to illegal exercise of power. Within the domain of service law, it has been held that section 24-A of the General Clauses Act, 1897 is to be read within all statutes along with principles of natural justice. Consequently, any arbitrary or capricious exercise of authority is found to suffer from illegality or irrationality and any exercise of discretion in breach of provisions of natural justice amounts to procedural impropriety subject to judicial review.

9. In the aforesaid context the law on how promotions are to be considered and given effect has also been streamlined over the years. The history of both executive and judicial regulation of the question of promotion reflects that the object of such exercise has been to structure discretion and exclude arbitrary and capricious exercise of authority. The move toward greater objectivity in considering the promotion of civil servants from BS-20 to BS-21 has been tracked in **Secretary Establishment Division, Government of Pakistan Vs. Dr. Muhammad Arif and others (2017 PLC (CS) N 66)**. There it was emphasized that the august Supreme Court in **Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817)** directed the Establishment Division to outline objective criteria for promotions and it was held that the decision to recommend civil servants for promotion cannot be left to the discretion of the CSB. It was highlighted in **Dr. Muhammad Arif** that the question before a court while exercising judicial review powers is whether the reasoning given by the executive

authorities, "would satisfy any reasonable mind as to their adequacy, appropriateness and sufficiency" and "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." It was further emphasized that the CSB had a duty to give reasons for its decisions. The rationale behind the duty to give reasons was explained further in the judgment rendered by this Court in **Muhammad Majid Vs. Secretary Ministry of Manpower and Overseas Employment, Islamabad and others (PLD 2017 Islamabad 19)** wherein the following was held:

"18. The principles deducible from the law laid down by the Superior Courts, on the requirement to give reasons for decisions, are as follows:-

(i) Recording of reasons in support of a decision by a quasi-judicial authority ensures that the decision is reached in accordance with the law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency.

(ii) A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.

(iii) If the executive can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction.

(iv) The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness. It gives satisfaction to the party against whom the order is made. It also enables an appellate or supervisory court to keep the executive or a tribunal within bounds."

10. In view of the case law and jurisprudential principles cited above, the objection to maintainability of the instant petition is misconceived. This Court is fully aware that it is not sitting in appeal over a decision reached by the CSB. Neither does it wish to second-guess the wisdom of a decision rendered by the CSB as a collegiate body. The scope of inquiry in the instant petition is much narrower. The sole question before this Court is whether the impugned decision suffers from illegality or irrationality in view of the reasons stated in the impugned order when juxtaposed against the provisions of the Civil Servants Act, 1973, read together with the provisions of the Promotion Rules.

11. Let us now consider the scheme of the Promotion Rules prior to analyzing whether the impugned decision falls foul of the considerations that the CSB ought to have taken into account while passing the impugned order to defer the petitioner and whether the reasoning in the Impugned Letter is in accordance with the requirements of Rule 23 of the Promotion Rules read together with section 24-A of the General Clauses Act, 1897.

12. Rule 4(1) of the Promotion Rules vests in the CSB (DSB or DPC as the case may be) the authority to consider a Civil Servant for promotion. Sub-rule (2) of Rule 4 requires the CSB to follow provisions of these Rules and guidelines set out in Schedule-I to the Promotion Rules while discharging its functions. Sub-rule (3) of Rule 4 then states that after consideration, the CSB can recommend a civil servant for promotion or appointment on acting Charge basis or deferment or supersession. Rule 7 is

relevant which lists conditions for deferment and rule 7(d) provides that a civil servant can be recommended for deferment by CSB for reasons to be recorded in writing. Rule 10 provides for reconsideration of a civil servant who has been deferred or superseded. Sub-rule (1) of Rule 10 provides that a civil servant deferred shall be reconsidered once reasons that form the basis of deferment cease to exist, but excludes from the scope of this rule a civil servant deferred under Rule 7(d). Rule 11 states that a civil servant shall not be considered for promotion for a period of one year after he/she resumes his/her duty on a cadre post. This rule is not attracted in the instant case as the petitioner was not barred from consideration under Rule 11(1), but was deferred under Rule 7(d) after consideration by CSB. Rule 14 provides that posts in BPS-19 to BPS-21 are selection posts and subrule (2) states that for such posts, *"PERs and TERs shall be given due importance as prescribed under these rules. Dossier and collective judgment of the CSB or DSB shall also be taken into account."*

13. In view of the provisions of the Promotion Rules discussed so far, it is evident that there are three components that form part of overall consideration in relation to promotion issues: (i) Performance Evaluation Report (PERs), (ii) Training Evaluation Reports (TERs), and (iii) dossier and collective judgment of the CSB. The marks allocated to each of these components and how evaluation is to be undertaken in each of these components is provided under Rule 18, which states the following:

18. Quantification of PERs, training evaluation reports and CSB, DSB and DPC evaluation. —(1) For the purpose of consideration by the CSB, DSB and DPC, the PERs shall be quantified in accordance with the formula as set out in Schedule III.

(2) For the purposes of promotion to BPS-18, the PERs shall have the weightage of hundred percent.

(3) For the purposes of promotion to the posts in BPS-19, BPS-20 and BPS-21, the following quantification method shall be followed namely: —

(a) PERs in respect of two preceding BPS or the last fifteen years whichever is more shall be quantified. If the service of an officer in present and previous BPS is less than fifteen years then the deficiency shall be met by taking into account the PERs of next lower BPS, which shall be bracketed with the PERs of preceding BPS. Quantification of PERs relating to present and previous BPS will have a ratio of 60%:40%;

(b) the marks mentioned in column (3) of the table below shall be allocated for quantification of PERs, training evaluation report and CSB and DSB evaluation as mentioned in column (2) of the Table namely: -

TABLE

Sr.	Factor	Marks
(1)	(2)	(3)
1.	Quantification of PERS	40%
2.	Training Evaluation Reports (TERs)	30%
3.	Evaluation by CSB and DSB	30%
4	Total	100%

(c) the objective assessment form as set out in Schedule-IV to these rules shall be placed before the CSB and DSB along with panel proforma of every officer for objective evaluation. The CSB and DSB shall assess each officer on the panel on the basis of parameters and attributes as given in the respective objective assessment form for promotion;

(d) the CSB or DSB, as the case may be, shall apply its collective judgment to determine the fitness for promotion to selection posts as per parameters given in the objective assessment form and shall award marks to

an officer and place him in category A, B or C in accordance with the classification given in the following Table, namely:-

<i>Category</i>	<i>Marks</i>
<i>(1)</i>	<i>(2)</i>
<i>A</i>	<i>21 to 30</i>
<i>B</i>	<i>11 to 20</i>
<i>C</i>	<i>1 to 10</i>

- (e) in such cases whereby a civil servant was not required to undergo mandatory training, weightage of PERs shall be 50% and marks out of 50% shall be awarded by the CSB and DSB; and*
- (f) in case, a civil servant has been appointed in the cadre in the present scale, his/her PERs of the present scale shall be given the total weightage assigned to the PERs in the Table under clause (b).*

14. Rule 18(1) clarifies that PERs are to be quantified in accordance with the formula as set out in Schedule-III. When so quantified, the PERs provide an arithmetic score and there is no role of any subjective assessment in relation to PERs. Rule 20 mandates how TERs are to be transformed into an arithmetic score in accordance with the provisions of Schedule-V of the Promotion Rules, which also reflects that there is no subjective assessment involved in quantification of TERs. The third component of the assessment is the exercise of collective judgment by the CSB, which is to be undertaken in accordance with the objective assessment criteria listed under Schedule-IV, read together with clause (g) of the guidelines for CSB provided under Schedule-I and Rule 4(2) of the Promotion Rules. The proforma for objective assessment provided in Schedule IV, to

be filled out by the CSB, is a product of clause (f) of the guidelines in Schedule-I, also reproduced below:

"(f) Posts carrying basic pay scale 21 fall in senior management involving important policy-making or extensive administrative jurisdictions. In addition to the circulation value and variety of experience the incumbents must possess proven analytical competence, breadth of vision, emotional maturity and such other qualities as determine the potential for successfully holding posts in top management. This potential cannot be judged by mathematical formula. The Selection Board will have to apply its collective judgment to determine the same.

For promotion to senior management posts, a civil servant must fulfill qualifying service, eligibility threshold, qualifications, relevance of experience, quality and output of work and integrity, variety of experience, training and 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.

15. Perusal of the objective assessment proforma provided as Schedule-IV of the Promotion Rules, to be filled out by the CSB, lists ten parameters against which an officer is to be considered for promotion. The said proforma is labeled as an objective assessment because the parameters and attributes against which a civil servant is to be evaluated have been prescribed therein. The place where subjective assessment comes into play is when individual CSB Members award marks to the civil servant being considered against the attributes listed in Schedule-IV. It is a collegiate exercise in a sense that the marks

awarded to a civil servant against this component of evaluation (which forms 30% of the total consideration for promotion) is an accumulation of marks awarded to such civil servant by each member of the CSB. Naturally there not be a consensus amongst all members of the CSB regarding the evaluation of a civil servant against each of the ten listed attributes or parameters. They will each undertake the evaluation by filling out the proforma and the aggregate outcome of marks against each attribute by each member would produce the collective view of the CSB as a collegiate body. The total marks will determine what category the officer gets placed in for purposes of Section 18(3)(d) of the Promotion Rules.

16. The objective assessment proforma also guides the CSB as to what sources of information are to be considered by grading a civil servant against each of the ten attributes listed in the proforma. Once the CSB has undertaken the assessment of the civil servant against each of the ten attributes, the subjective assessment part of the CSB's consideration comes to an end. Once such grading is complete the assessment of CSB is reduced once again to an arithmetic number, which is then regarded as an objective assessment. After conversion of all the three components for the assessment of a civil servant for promotion to arithmetic numbers, these numbers are to be placed in the table provided under Rule 18(3)(b), which states that 40% weightage is to be given to the quantified PERs, 30% to quantified TERs and 30% to quantified evaluation by the CSB. Once the quantification is complete, it produces a score that a civil servant being considered for promotion has been awarded

out of 100. Such score is then to be considered in view of the minimum threshold of marks for promotion to officers according to pay scales as prescribed under rule 16. Rule 16 provides that the minimum threshold to be met by a civil servant to be eligible for promotion to BS-20 is 75%.

17. The manner in which the promotion rules have been framed reflects that the Federal Government has made a diligent effort to exclude unstructured discretion from the process through which civil servants are considered for promotion. The Rules thus describe the weightage to be given to each component of the evaluation process on the basis of which the decision of CSB to promote or defer or supersede a civil servant is dependent. The scheme further suggests that PERs and TERs are independent of the assessment by CSB. Thus, even if the CSB does not form an exceedingly flattering view of the civil servant being assessed by, hypothetically speaking, grading him such that he scores only 13 out of 30 marks after the quantification of objective assessment by the CSB, but such civil servant has exceptional marks in view of quantified PERs and TERs, it is still possible for the civil servant to meet minimum threshold for promotion prescribed under Rule 16. And consequently, despite not being granted a high score by the CSB, such civil servant may still become eligible for promotion in view of exceptional PERs and TERs. In a nutshell what emerges from the scheme of the Promotion Rules is that an effort has been made through the rules to evaluate the civil servant over the course of his/her service in such manner that no single component forming part of the promotion evaluation process can

make or break his career progression. In the event that the PERs and TERs reflecting the performance of a civil servant over an extended period of time during his service present an exceptional picture, a grim view regarding a couple of attributes of such civil servant listed in the objective assessment proforma to be filled out by the CSB will not in of itself sound the death-knell for his career.

18. Another aspect of the scheme of Promotion Rules is that while PERs and TERs are independent of assessment to be undertaken by the CSB, the assessment of attributes listed in the objective assessment proforma to be filled out by CSB members is contingent on the PERs and TERs and the dossier presented to the CSB by the parent department. What emerges is that if the objective assessment by the CSB is undertaken in accordance with guidelines in Schedule-I and Schedule-IV, the larger picture regarding the performance and potential of the civil servant being assessed would in all likelihood not be in contradiction to the picture painted by the PERS and TERS. In other words, the objective assessment proforma does not grant the CSB a veto power (except to an extent pursuant to Rules 7(d), 7(k) and 8(c), which shall be discussed later) for purposes of deferment and supersession. If the collective marks after addition of quantified PERs and TERs and CSB's collective assessment are greater than the minimum threshold prescribed under rule 16, the civil servant will ordinarily be deemed fit for promotion. In the event that civil servant does not meet the required threshold for promotion or has failed thrice to attend mandatory training, he is to be recommended for supersession.

A civil servant can also be recommended for supersession if despite him scoring above the minimum threshold prescribed in Rule 16, the CSB records reasons to recommend him for supersession pursuant to rule 8(c). As this provision is not attracted to the facts of the present case, the scope and manner of exercise of such authority can be determined in an appropriate case.

19. Let us now consider the facts of the instant case against the scheme of the Promotion Rules. Pursuant to the impugned letter, the CSB identified two negatives due to which the petitioner has been deferred after consideration by the CSB. The first was that the Board found the petitioner's performance as Consul General in Sydney, for which he obtained "Good" PER in 2017 and 2018, not encouraging. And second, that after return from foreign posting, the petitioner served as Member of Revenue, Sindh Board and the CSB felt that the officer needed to work against a cadre post for proper assessment of his performance. Schedule-III read with rule 8(1) provides the manner of quantification of PERs and clause 2(a) of the Schedule-III awards 7 marks for a PER that is graded as 'good' as opposed to 8 marks for grade as 'very good' and 10 marks for a PER graded as outstanding. The PERs once quantified in accordance with Schedule-III captures the weightage of each PER, including those that are "good". The PER score is not an independent attribute in the objective assessment proforma provided under Schedule-IV pursuant to which the CSB is to assess the attribute of the civil servant being considered. It would have been one thing for the Board to take the PERs into

account while grading the petitioner against the attributes mentioned in the objective assessment proforma and grade him against the said attributes in a manner that the overall marks allocated by the CSB for purposes of 30% CSB evaluation ended up being a low number and the petitioner consequently failed to measure up to the minimum threshold for promotion prescribed under Rule 16. The CSB would have been within its right to conclude that the civil servant being assessed was wanting in relation to a crucial attribute, such as leadership or potential in higher management or integrity, if that were the case. And while recording reasons for such assessment, the CSB could possibly conclude that despite the civil servant meeting the minimum threshold for promotion prescribed under Rule 16, he is to be deferred for purposes of rule 7(d) or 7(k) of the Promotion Rules. However, in the instant case this is not what the CSB has done. It has merely extrapolated from two PERs given to the petitioner while he was serving as Consul General in Sydney that he is not fit to be promoted without explaining as to how his grading as "Good" for the two years rendered him deficient in relation to any of the attributes mentioned in the objective assessment proforma, which becomes an impediment for being promoted to BS-21. It is also not that all civil servants eligible for promotion to BS-21 are graded on a curve, due to which even a civil servant with a "Good" PER is found unfit for promotion due to the presence of competing civil servants whose PERs are "Very Good" or "Excellent". But promotion decisions under the Promotion Rules are not made on the basis of grading of civil servants on a curve. The first disability identified by CSB

and communicated through the Impugned Letter i.e. "Good" PERs, is therefore no disability at all.

20. The second reason cited by the CSB is that the petitioner has not worked against a cadre post long enough to enable the CSB to perform proper assessment. Again, the reasoning of the CSB is problematic on this count too. The petitioner was not deemed ineligible for being considered for promotion under rule 11 of the Promotion Rules. The petitioner was in fact considered by the CSB, which then concluded that he would be deferred further till such time that he worked against a cadre position in order for the CSB to perform proper assessment of his performance. Section 10 of the Civil Servants Act, 1973 ("**CSA**") states the following:

10. Posting and transfer. *Every Civil servant shall be liable to serve anywhere within or outside Pakistan, in any equivalent or higher post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government;*

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."

21. Section 10 of CSA thus states unequivocally that a civil servant is under an obligation to serve against the post to which he is posted. In other words, the petitioner had no choice

in the matter once he was posted as a Member of Sindh Revenue Board on deputation after his return from Sydney, where he was posted as Consul General. It is for the Federal Government through its Establishment Division to plan careers and issue posting and transfer orders of civil servants in a manner to ensure that the Federal Government has the requisite data to evaluate their performance for purposes of promotion once they become eligible to be considered for such promotion. It is also noteworthy that the petitioner was posted as a Consul General Sydney and subsequently as Member of Sindh Revenue Board, both of which posts would ordinarily be deemed coveted positions. Posting orders issued by the Federal Government under section 10 of CSA, which the petitioner complied with as he was required to, cannot be treated as a disqualification for the petitioner. Even in the event that the CSB came to the conclusion while grading the petitioner against attributes listed in the objective assessment proforma under Schedule-IV that by virtue of the nature of work performed by the petitioner, the CSB did not have sufficient data to grade him against a particular attribute, the CSB was under an obligation to state such fact and identify the attributes for the grading of which the petitioner was required to serve against a cadre post. Without the identification of such attributes, the civil servant being assessed would have no idea as to what the deficiency was and would not be able to take corrective measures to ensure that the CSB at the time of subsequent consideration has the required information to assess the potential of such civil servant. This is not something that the CSB has not been done as evident from the Impugned Letter.

22. The obligation of the CSB to inform a civil servant as to the reasons for his/her deferment or supersession under section 23 is not a mere formality as highlighted in the initial part of the judgment. Public functionaries are under an obligation to exercise their power in a just and reasonable manner. Further, under section 24-A of the General Clauses Act, 1897, the CSB is under an obligation to document the reasons for the decisions reached and communicate the same to the person affected by such decisions so that the justice, fairness and reasonableness of such decisions can be independently ascertained based on the reasoning provided. The content of the Impugned Letter reflects that the CSB, with all due respect, may not have taken into account the manner in which the Promotion Rules require it to undertake subjective assessment of the petitioner against the objective criteria listed in the objective assessment proforma under Schedule-IV of the Promotion Rules. The factors to be taken into account by the CSB while assessing the performance and potential of a civil servant to be promoted to BS-20 are provided in clause (vii) of the guidelines for CSB under Schedule-I read with Rule 4(2), which criteria is then further identified in the form of attributes listed in the objective assessment proforma under Schedule-IV read with rule 18(3)(c) of the Promotion Rules. The CSB was, therefore, under an obligation to assess the petitioner against the prescribed attributes and in the event that it concluded for purposes of rules 7(d) or 7(k) that the petitioner was to be deferred, the reasons for such deferment had to be justified in terms of the attributes against which the petitioner was to be evaluated once he served

against a cadre post. In view of the Impugned Letter, the petitioner can have no idea as to which attributes the CSB in its collective wisdom found deficient or missing, that the petitioner must address to be promoted in future.

23. The reasons stated for deferment of the petitioner in the Impugned Letter are devoid of factual and analytical basis justifying such decision. The reasons lack a justification in terms of the attributes on the basis of which the objective assessment of the petitioner was to be undertaken by the CSB as prescribed by the Promotion Rules. The reasons stated, not being in consonance with the matrix of assessment under Schedule-IV, pursuant to which the CSB was required to exercise its authority under the Promotion Rules, suffer from illegality. Further to the extent that the CSB has found PERs awarded to the petitioner classified as "good" to be his disqualification and held that his compliance with posting and transfer orders issued under section 10 of CSA will be treated as a further disability for purposes of his assessment for promotion, the Impugned Letter is also unreasonable.

24. The reasons recorded in the Impugned Letter explaining why CSB recommended the petitioner to be deferred for promotion suffer from illegality and irrationality and the recommendation based on such reasons is therefore liable to be set-aside. Any decision reached by the competent authority on the basis of such illegal recommendation by the CSB is consequently also liable to be set-aside. Respondent No.1 is thus directed to place the case of the petitioner for consideration

before the CSB in the next meeting convened for purposes of considering civil servants for promotion to BS-21 and the CSB will consider the petitioner's case in accordance with the provisions of the Promotion Rules and document the reasons for any decision reached in terms of attributes to be evaluated as discussed above.

25. These are the detailed reasons of the short order dated 13.07.2021, which is reproduced as under:

*"For reasons to be recorded later, this petition is **allowed**. The impugned order dated 13.04.2021 is set aside for being perverse, in breach of Rule 18 of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 provisions of Section 24-A of the General Clauses Act, 1897, and principles of reasonableness laid down by the august Supreme Court for structuring and exercise of discretion."*

(BABAR SATTAR)
JUDGE

Approved for reporting.

Saeed.