

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE AYESHA A. MALIK

CIVIL APPEALS NO. 21 & 22 OF 2022

(Against the judgment dated 24.09.2021 passed by the High Court of Sindh at Karachi, in C.P.No.D-3228/2020)

- | | |
|--|---------------------------------------|
| 1. Federation of Pakistan through Secretary
Establishment Division, Islamabad | (In C.A.21/2021) |
| 2. Federal Board of Revenue through its Chairman
Revenue Division, Government of Pakistan,
Islamabad | (In C.A.22/2021)

...Appellants |

VERSUS

Misri Ladhani and others	(In both cases) ...Respondents
--------------------------	-----------------------------------

For the Appellants:	Mr. Sohail Mehmood, Addl. Attorney General Mr. Sajid ul Hassan, S.O., Establishment (In CA.21/2022)
---------------------	---

Mr. Shakeel ur Reman, ASC
(In CA.22/2022)
(Video link from Karachi)

Hafiz S.A. Rehman, Sr. ASC
(In CA.22/2022)

For the Respondent:	Mr. Misri Ladhani (In-Person)
---------------------	-------------------------------

Date of Hearing:	02.06.2022
------------------	------------

JUDGMENT

MUHAMMAD ALI MAZHAR, J. These Civil Appeals with leave of the Court are directed against the judgment dated 24.09.2021 passed by learned High Court of Sindh, Karachi in C.P.No.D-3228/2020, whereby the petition filed by the respondent No.1 was allowed.

2. The transitory facts of the case are as under:-

The respondent No.1 is a retired BS-20 officer of Inland Revenue Service (IRS). The CSB (Central Selection Board) in its meeting convened in February, 2014, recommended his case for promotion to BS-21. The recommendations of CSB were not approved by the Prime Minister on the ground that the officer (respondent No.1) did not clear the threshold of integrity/general

reputation/perception in consonance with the spirit of the Supreme Court Judgment in C.P.No.22/2013, hence the matter was returned to CSB for re-examination. The respondent No.1 attained age of superannuation on 28.02.2014. Due to his retirement, his case was not reconsidered in the next meeting of CSB held in May 2015 but it was considered by High Level Committee on FR-17 in its meeting on 13.01.2021. The respondent No.1 was dissatisfied with the proceedings of FR-17 Committee, hence he approached to the Sindh High Court Karachi for implementation of the CSB's old recommendations made in February, 2014. The learned High Court vide impugned judgment directed the competent authority to notify the proforma promotion of the respondent No.1 in BS-21 with effect from the date on which the CSB recommended his case for promotion in BS-21 with all ancillary benefits.

3. Leave to appeal was granted vide order dated 11.01.2022 in the following terms:-

"The learned Additional Attorney General (in C.P.No.5548/21) so also the learned counsel for the petitioner (in C.P.NO.5779/21) contend that the respondent was employed as an officer in BPS-20 in Federal Board of Revenue (F.B.R.) and his matter of promotion was considered by the Central Selection Board (C.S.B.) and recommended him for BSP-21 but the Competent Authority i.e. the Prime Minister returned the case back to the C.S.B. for re-consideration on the ground of integrity/General Reputation/Perception and to re-submit the recommendations. Learned counsel submits that, in the first place, the very writ petition, filed by the respondent before the High Court, was not maintainable for that the respondent was a civil servant and the matter agitated before the High Court in the constitutional petition was relating to the terms and conditions of service. In support of his contentions, the learned Addl. A.G., placed reliance on the cases of Federation of Pakistan through Secretary Establishment, Islamabad Vs. M.Y. Labib-ur-Rehman and others (2021 PLC (C.S.) 1583) and Chief Secretary, Government of Punjab, Lahore and others Vs. Ms. Shamim Usman (2021 PLC (C.S.) 1595).

2. The contentions raised by the Addl. A.G. and the learned counsel require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents, if any, within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously, preferably, after three months".

4. The learned Additional Attorney General argued that the question of fitness for promotion is not reviewable by judicial authority. The competent authority is not bound to accept the recommendations of the Central Selection Board ("CSB") regarding fitness for promotion of a civil servant. The impugned judgment is against the law settled by this Court in the case reported as Secretary Establishment Division, Government of Pakistan, Islamabad Vs. Aftab Ahmed Manika and

others (2015 SCMR 1006). The learned High Court could not issue directions to the Government to issue notification of promotion of a civil servant instead of remanding the case to the competent authority for reconsideration with regard to proforma promotion in terms of Fundamental Rule 17. It was further contended that the learned Sindh High Court wrongly upheld the CSB's recommendations which were subject to the approval of Prime Minister as final authority in the matter and the decision of the competent authority could not be reviewed by the High Court in a perfunctory manner.

5. The respondent No.1 argued in person that the CSB in its meeting had examined his fitness as per threshold prescribed under the law and rules and after having found him fit, recommended his name for promotion from BS-20 to BS-21. The Prime Minister did not approve the recommendations of the CSB of various officers including the respondent No.1 and returned the matter to the CSB for re-examination. Soon after the recommendation for promotion to BS-21 by the CSB, the respondent No.1 attained the age of superannuation on 28.02.2014, therefore, there was no justification to return his case to the CSB for re-examination. In support of his contention, the respondent No.1 also referred to the reported judgment of this Court in the case of Aftab Ahmed Manika (supra). It was further contended that he was entitled for proforma promotion in view of the recommendation of CSB, therefore, the High Court rightly issued directions to notify his proforma promotion in terms of FR-17 with effect from the date on which the CSB recommended his case but he was deprived of his legitimate right of promotion and pensionary benefits to higher grade.

6. Heard the arguments. The communiqué dated 23.4.2014 shows that the recommendations of the CSB for promotion of Inland Revenue Service Officers from BS-20 to BS-21 was placed before the Prime Minister and Secretary to Prime Minister forwarded the aforesaid letter to the Secretary Establishment Division, Islamabad for showing concern and observation of the Prime Minister who deemed it inappropriate to approve the CSB's recommendations in respect of officers as to whom sufficient reasons exist to hold reputation of being corrupt or known to be dishonest or perceived to be so and desired that only officers with impeccable repute should be

promoted in public interest. While approving the CSB's recommendations for promotion by the Prime Minister in respect of the officers who clearly and unquestionably held a public reputation and perception of being honest and not corrupt as well as approving the deferment and supersession of some officers mentioned in the summary, he further directed for some officers to be considered *de novo* by the CSB in the next meeting to assess and evaluate their integrity, general reputation and perception in a comprehensive and objective manner and resubmit fresh recommendations. So far as the case of present respondent No.1 is concerned which was mentioned at S.No.6 in Para 3 of the summary, the Prime Minister had observed that although the officer was in service on 13.02.2014, however, he did not clear the threshold of integrity/general reputation/perception in consonance with the spirit of Supreme Court Judgment in C.P. No. 22/2013 hence his case was returned to CSB for re-examination and resubmission. Seemingly, on attaining the age of superannuation by the respondent No.1, the FBR had placed his case before FR-17 Committee for grant of proforma promotion in BS-21 but the Committee deferred the case till receipt of complete documents from administrative department. The High Level Committee on FR-17 also considered the case and recommended that the case may first be re-examined by CSB in the light of observations raised by the Competent Authority (Prime Minister) dated 23.04.2014. The recommendations of High Level Committee were approved by the Prime Minister on 11.03.2021 hence the promotion matter of the respondent No.1 was placed before the CSB and after due consideration, the recommendations were resubmitted as under:-

"The Board deliberated upon the service profile, PERS, TER and general perception of the officer regarding professional conduct and integrity as per available record. The Board noted that in his TER at NIPA, Karachi his promotion potential was assessed as "Good" against the better available options of "Very Good" and "Outstanding".

The officer in his PER for the financial year 2012-2013 (July to December) was assessed as "Average" against the attributes of "Quality of Work", "Output of Work", "Integrity (general)" and "Integrity (intellectual)"; that in this report it was mentioned that his performance is lackluster and collection out of arrears and current income tax demand during the period under review is not up to the mark. No collection made under FED. Only 18 audit cases decided out of 489 with demand of only 3.8 million, which is abnormally low for a unit size of Hyderabad collection out of arrears demand under S.T is zero percent; that in this report it was also mentioned that he is apparently weak in his

ability to make optimal use of human resources available to him. The Board noted that Mr. Misri Ladhani was reputed to be an officer with average competence which is more in sync with the assessment of the reporting officer in the part PER.

The Board observed that the officer at the time he earned the PER for the financial year 2012-2013 was serving in his own pay scale against a BS-21 position. Though he earned a better a PER for the latter half of this financial year, the fact remains that his assessment as "Average" against the attributes of "Quality of Work", "Output of Work", "Integrity (general)" and "Integrity (intellectual)" and his failure to produce output to the satisfaction of his reporting officer do not make him fit for promotion in BS-21 in 2014 at the time his case was considered for promotion by the CSB.

The Board observed that BS-21 was a selection post even at the time the case of the officer was considered for promotion and referred to Section 9(2) of the Civil Servants Act, 1973, which provides that selection to such posts shall be made on the basis of merit.

The Board also noted that the Supreme Court of Pakistan vide its judgment dated 11-10-2002 in Civil Appeal No. 1599 to 1606/1999 had observed that "no civil servant can ask for promotion as a right". Further the Board also considered the IHC judgment in "Sikandar Hayat Maken etc. vs Federation of Pakistan" case wherein the court upheld the exclusive jurisdiction of the competent authority over the question of fitness or suitability for promotion. This judgment mentioned that the competent authority had to ensure that civil servants who are competent, suitable and known for their integrity are appointed through promotion against "Selection Posts".

Subsequent to detailed deliberations, the Board unanimously decided that the officer was not fit for promotion to BS-21 and awarded him 10 marks out of 24 in the light of Revised Promotion Policy, 2007 which was in vogue at the time when officer was still in service. The officer failed to meet the required threshold of 75 and the Board recommended that he is unfit for grant of proforma promotion in BS-21".

7. The concept of promotion is provided under Section 9 of the Civil Servants Act, 1973, which prescribes that a civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post. In Sub-Section (3), it is clearly provided that promotions to the posts in BPS-20 and BPS-21 and equivalent shall be made on the recommendations of the Selection Board, which shall be headed by the Chairman, Federal Public Service Commission. According to Sub-Clause (b) of Rule 2 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, (APT Rules, 1973) Central Selection Board (CSB) means a Board constituted by the Federal Government for the purposes of selection for promotion or transfer to a post in BPS-18 in the District

Management Group, Police Group and posts in BPS-19 to 21 and equivalent, consisting of such persons, as may be appointed by the Federal Government from time to time. It is further provided in Rule 7 of the APT Rules, 1973 that promotions and transfers to posts in BPS-2 to BPS-18 and equivalent shall be made on the recommendations of appropriate Departmental Promotion Committee ("DPC") and promotions and transfers to posts in BPS-19 to BPS-21 and equivalent shall be made on the recommendation of the Selection Board. At this juncture, Rule 7 (a) is also very significant, which explicates that the competent authority may approve the promotion of an officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made. It is further provided in Sub-Rule (2) that notwithstanding anything in FR-17, the officer or official, who expires or superannuates after the recommendations of CSB or DPC and before issuing of the notification, shall stand exempted from assumption of the charge of the higher post. The principal appointing officer or an officer so authorized will give a certificate to the effect that the officer or official has expired or superannuated. Moreover, Rule 8 further expounds that only such person as possesses the qualification and meet the conditions laid down for the purpose of promotion or transfer to a post, shall be considered by the DPC or the Selection Board, as the case may be.

8. The dictum laid down by this Court in the case of Secretary Establishment Division, Government of Pakistan, Islamabad vs. Aftab Ahmed Manika and others (2015 SCMR 1006) brings to light that the respondents filed separate writ petitions with the plea in the Islamabad High Court and Lahore High Court that being civil servants in BPS-20 in the Pakistan Administrative Service, Police Service of Pakistan and Foreign Service of Pakistan, they were recommended for promotion to BPS-21 by the CSB but recommendations made by the CSB for promotion were returned by the competent authority to the Board for reconsideration. They challenged the directions issued by competent authority for remanding the matter for reconsideration to the CSB. While dilating upon the issues and various other dictums laid down by this Court from time to time, it was held in the aforesaid case that neither the Civil Servant Act nor the APT Rules, 1973, provided that the

recommendations of the CSB shall be binding and while giving reference of ESTACODE, it was further held that exercise of powers by the Prime Minister was neither arbitrary nor discriminatory. Some material was before him, which dissuaded him from appointing the respondents awaiting further probe by the Board. Finally, the petitions filed by the Federation were converted into appeals, the impugned judgments of the High Courts were set aside and the writ petitions filed by the respondents in the High Courts were dismissed with the directions that the Board shall re-examine the cases of the respondents on the basis of the criteria already set for determining the fitness or otherwise of the civil servants without in any way being influenced by the observations made in the summary for the return of recommendations to the Board and thereafter, the competent authority shall finalize the cases after resubmission of the recommendations by CSB.

9. According to Rule 7 of the APT Rules, 1973, the competent authority may approve the promotion of an officer or official from the date on which the recommendation of Central Selection Board or as the case may be, the Departmental Promotion Committee was made but nowhere is it said that the competent authority is by all means bound to accept the recommendations and has no power or jurisdiction to remand or reject the recommendations of CSB or DPC. At this juncture, SI.No.182 of ESTACODE (Edition 2000) is quite relevant through which Government had decided that there should be a convention whereby the advice of the Selection Board should be accepted quickly save in exceptional cases and if the Prime Minister or the Minister concerned disagrees with the view of the Selection Board, the case should be returned to the Board for further consideration and a decision taken by the Prime Minister only after the further views of the Board have been placed before him. Whereas in SI.No.192 of ESTACODE (Edition 2007), Volume I, it is provided that the competent authority has unfettered powers and it may accept, reject or refer back the matter to the Central Selection Board for reconsideration and competent authority may choose any option. Relevant excerpts of the aforementioned Establishment Codes are reproduced as under:-

ESTACODE--CIVIL ESTABLISHMENT CODE
(Edition 2000) (Page 285)

Sl. No.182

Convention regarding Acceptance of Recommendations of the Selection Board.- The Administrative Enquiry Committee reviewed the working of the Selection Board and in their report made the following recommendations:-

- (a) that both for protection to Ministers and in the interests of efficient working, the rules about the Selection Board be closely adhered to; and
- (b) that there should be a convention whereby the advice of the Selection Board should be accepted quickly and automatically except in wholly exceptional cases.

2. Government considered these recommendations and their orders are as follows:-

- (a) Accepted.
- (b) Government have decided that there should be a convention whereby the advice of the Selection Board should be accepted quickly save in exceptional cases; and that if the Prime Minister or the Minister concerned disagrees with the view of the Selection Board, the case should be returned to the Board for further consideration, and a decision taken by the Prime Minister only after the further views of the Board have been placed before him.

3. In dealing with Selection Board cases, these orders of Government must be strictly followed.

(Authority: Estt .Division O.M.No.33/3/54 SEI, dated 22-9-1954)

ESTACODE--CIVIL ESTABLISHMENT CODE
(Edition 2007) Volume I (Page 314 & 315)

Sl. No.192

Convention Regarding Acceptance of Recommendations of the Selection Board

The Administrative Enquiry Committee reviewed the working of the Selection Board and in their report made the following recommendations:-

- (a) that both for protection to Ministers and in the interests of efficient working, the rules about the Selection Board be closely adhered to; and
- (b) that there should be a **convention whereby the advice of the Selection Board should be accepted quickly and automatically except in wholly exceptional cases.

2. Government considered these recommendations and their orders are as follows:-

- (a) Accepted.
- (b) Government have decided that there should be a convention whereby the advice of the Selection Board should be accepted quickly save in exceptional cases; and that if the Prime Minister or the Minister concerned disagrees with the view of the Selection Board, the case should be returned to the Board for further

consideration, and a decision taken by the Prime Minister only after the further views of the Board have been placed before him. *[The above instructions are neither a law nor a rule and are subservient in the provisions of the Civil Servants Act, 1973** specially with reference to powers of the "competent authority" for giving final approval regarding appointment by promotion. These powers are unfettered and the competent authority may accept, reject or refer back the matter to the Central Selection Board for reconsideration. All these options are available to the competent authority whose powers are unfettered to choose any one of the options]. [Emphasis supplied].

3. In dealing with Selection Board cases, these orders of government must be strictly followed.

(Authority: Estt. Division O.M.No.33/3/54-SEI, dated 22-9-1954)

10. In the case of Fazali Rehmani Vs. Chief Minister, N.W.F.P., Peshawar and others (PLD 2008 SC 769), it was held that eligibility relates to the terms and conditions of service, whereas fitness for promotion is a subjective evaluation on the basis of objective criteria, where substitution for opinion of the competent authority is not possible by that of a Tribunal or a Court hence, neither eligibility to promotion can be equated with promotion nor prospects of promotion can be included in terms and conditions of service. It was further held though consideration for promotion is a right, yet the promotion itself cannot be claimed as of right. While in the case of Muhammad Azam Vs Muhammad Tufail and others (2011 SCMR 1871), again it was held by this Court that there is no vested right in promotion or rules determining the eligibility for promotion. Being fortified by the dictum laid down in case of Government of Punjab v. Muhammad Awais Shahid (1991 SCMR 696), it was further held that as regards the claim for promotion or proforma promotion, what the civil servant could claim under the law was that he should be considered when question of promotion was taken up. Civil servant, could not call upon the Service Tribunal to direct the department to fill the promotion post forthwith or on a particular date and not to keep it vacant or under consideration. Ref: Muhammad Iqbal v. Saeeda Bano (1991 SCMR 1559). In the same judgment, this Court also dilated upon the controversy that the Service Tribunal was not competent to embark upon the question of fitness and also drawn a line of distinction between the question of eligibility and fitness in the light of judgment rendered in the case of Muhammad Anis v. Abdul Haseeb (PLD 1994 Supreme Court 539) wherein it was held that the question of eligibility

relates primarily to the terms and conditions of the service and their applicability to the civil servant concerned and therefore, the Tribunal has jurisdiction and whereas the question of fitness is a subjective evaluation on the basis of objective criteria where substitution for an opinion of the competent authority is not possible by that of a Tribunal or of a Court and therefore the Tribunal had no jurisdiction on the question of fitness. Whereas in the case of Muhammad Anis and others.Vs. Abdul Haseeb and others (PLD 1994 SC 539), this Court by dint of assistance from different law lexicons, also recounted the literal meaning of the words "Eligible" and "Fit" as under:

Legal Thesaurus (Regular Edition) by William C. Burton

Eligible: acceptable, appropriate, approved, befitting, capable, desirable, dignus, employable, fit for appointment, fit for election, fit for selection, fit to be chosen, fitting, idoneus, legally qualified opportunus, proper, qualified, right, satisfactory, suitable, usable. Associated concepts: eligible to hold public office."

Fit: able, acceptable, accommodated, adapted, adequate, adjusted, advantageous, advisable, applicable, apposite, appropriate, apropos, apt, aptus, becoming, befitting, capable, commodus, compatible, competent, concordant, comformable, congruous, consistent, consonant, correspondent, eligible, fitted, fitting, harmonious idoneus, inkeeping, in place, legitimate, matched, opportune, pertinent, prepared, primed, proper, qualified, ready, relevant, right, seasonable, seemly, sortable, suitable, suited, tailor-made, tasteful, to the purpose, well-fitted, well-qualified, well-suited, well-timed, wise, workable, worthy.

Black's Law Dictionary, Fifth Edition

Eligible: Fit and proper to be chosen; qualified to be elected. Capable of serving, legally qualified to serve. Capable of being chosen. as a candidate for office. Also, qualified and capable of holding office, see also capacity.

Fit: Suitable or appropriate. Comformable to a duty. Adapted to, designed, prepared.

Stroud's Judicial Dictionary, Fourth Edition

Fit or fit and proper has also the meaning just stated with the added condition that the person to be appointed is legally eligible, e.g. a "fit and proper" person to be appointed church warden (Church Building Act, 1831(C.38), (S.16) had to be resident in the parish (R.v. Harding 6 T.L.R. 53;

R.v. Cree, 67 L.T. 566; as to such residency, see Stephenson v. Langston, 1 Hagg Con. 379).

Eligible: This word, as applied to the selection of persons, has two meanings, i.e. "legally qualified" or "fit to be chosen" (per Lord Chelmsford, Baker v. Lee, &H L Cas. 495).

11. The Revised Promotion Policy 2007 was discussed by this Court in the case of Orya Maqbool Abbasi Vs. Federation of Pakistan through Secretary Establishment and others (2014 SCMR 817) wherein it was held that the Policy of promotion enjoys the force of law which has to be adhered to strictly. The Central Selection Board, being semi judicial forum, has been authorised to examine the cases of the officers justly and fairly. The Court held that Clauses (e) and (f) of Item-5 of Promotion Policy are very important and while examining clauses (e), (f) and (h) relating to quality and output of work, variety of experience and top management potential, the Court observed that stringent provisions have to be incorporated to make such Promotion Policy to provide objective criteria for promotion. It was further observed that it would be great achievement, if it is 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 lifestyle, expenses on children education, expenses on children marriage, foreign tours as well as to ascertain the political affiliation of such a candidate to make the bureaucracy free from political affiliation as it has been observed in his speech by the Quaid-e-Azam.

12. Though at the time of considering the case of respondent No.1 by the CSB in 2014, the matter was remanded by the competent authority to the CSB for reconsideration in terms of power conferred and vested in ESTACODE for which the respondent No.1 had no right to question the decision of competent authority. However, after some passage of time, in order to ensure more clarity and transparency in the selection process, the Prime Minister in exercise of powers conferred by Sub-Section (i) of Section 25 of the Civil Servants Act, 1973 had also notified the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 ("2019 Rules") obviously for prospective application in which various substantive provisions have been incorporated for considering the venue of promotions of civil servants and the

composition of Central Section Board, Departmental Selection Board and Departmental Promotion Committee, as may be notified by the Establishment Division with the approval of the Prime Minister. It is lucidly provided under Rule 5 of the 2019 Rules that the recommendation made by the Central Section Board, Departmental Selection Board or Departmental Promotion Committee shall have no effect unless approved by the appointing authority concerned with further condition specifically in sub-rule 3 that appointing authority shall have powers to approve or reject or remand back the recommendations of the Central Section Board, Departmental Selection Board or Departmental Promotion Committee, whereas in sub-rule (4) it is further provided that in case of rejection or remanding back any recommendation, the competent authority shall record reasons for doing so. Whereas in the Rule 6, 7 and 8 of 2019 Rules, the eligibility criteria for promotion; conditions for deferment and conditions for suppression have been incorporated respectively. Certain schedules are also appended to the Rules as guidelines for Central Section Board, Departmental Selection Board and Departmental Promotion Committee such as (Schedule-I); Minimum length of service for eligibility for promotion to posts in various basic pay scales. (Schedule-II); Quantifying the Performance Evaluation Reports (Schedule-III); Objective assessment by Departmental Selection Boards (Schedule-IV); Evaluation of reports from training institutions (Schedule-V) and Guidelines for Ministries, Divisions, Departments and responsibilities of departmental representatives (Schedule-VI).

13. The learned Sindh High Court while allowing the petition of the respondent No.1 referred to the case of Itfikharullah Malhi Vs. Chief Secretary (1998 SCMR 736) in which this Court while relying on the case of Abdul Jabbar Khan Vs. Government of Sindh (1996 SCMR 850) directed the respondent department to place the case of the appellant before the DPC with all relevant ACRs which would consider the appellant case for promotion as Superintending Engineer and if it founds the view that in normal course the appellant would have been promoted as Superintending Engineer if he would have been given his correct seniority at the relevant time, the department shall give him proforma promotion as Superintending Engineer with effect from the date when his junior was promoted. The

next reliance was on the case of Askari Husnain Vs. Secretary Establishment (2016 SCMR 871) wherein the Selection Board did not recommend petitioner/civil servant for promotion to BS-19 as he only secured 59.60% marks. Whereas the threshold for qualifying the promotion was 60 percent marks. The Court held that even if the 59.60% marks obtained by the petitioner are rounded up to 60%, he could be eligible for promotion. Since in this case the petitioner had attained the superannuation age, his marks were rounded off to bring him within the threshold, thereafter, some directions were issued to the competent authority to issue notification of proforma promotion. In our considered view, the aforesaid precedents are neither relevant to the present controversy, nor find support in any way to the facts and circumstances of the present case.

14. In the instant case, the Central Selection Board after remand, considered the dossier of respondent No.1 for promotion de novo and according to their recommendations, the PER of respondent No.1 for the year 2012-2013 was assessed as "Average" against the attributes of "Quality of Work", "Output of Work", "Integrity (general)" and "Integrity (intellectual)" and after detailed deliberations, the Board unanimously decided that the respondent No.1 is unfit for grant of proforma promotion in BS-21. It is the dominance and ascendancy of competent authority to prescribe benchmarks for awarding promotions in the higher grades or positions. The governing command of competent authority to revise the promotion policy evenhandedly and objectively in order to set the guidelines or benchmarks for promotion to the higher grade or position or exercising the power to remand the matter for reconsideration to CSB and submit fresh recommendations cannot be demurred or opposed by the respondent No.1 to assert the claim of proforma promotion. Nobody has a vested right to promotion but entitled to be considered evenhandedly and fairly for promotion in accordance with the rule and the terms and conditions of service conferring right of actual promotion or a right to be considered for promotion. In the case of Union of India and others vs. Sangram Keshari Nayak (2007) 6 SCC 704, the Supreme Court of India held that promotion is not a fundamental right but right to be considered for promotion is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Whereas in the same Court

in the case of Hardev Singh vs. Union of India and another, (2011) 10 SCC 121, held that "17. It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant General but he had a right to be considered for promotion to the rank of Lieutenant General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly considered by the SSB for his promotion to the rank of Lieutenant General."

15. In the wake of above discussion, both the appeals are allowed. Consequently, the impugned judgment of High Court of Sindh, Karachi is set aside and Constitution Petition filed by the respondent No.1 in the Sindh High Court is dismissed.

Chief Justice

Judge

Judge

Islamabad the
2nd June, 2022
Khalid
Approved for reporting.