JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 983 OF 2019

MUHAMMAD SALEEM

VS

PRINCIPAL SECRETARY TO THE PRIME MINISTER OF PAKISTAN, PRIME MINISTER SECRETARIAT, ISLAMABAD, ETC.

Petitioner by	**:**	**Sardar Muhammad Ashfaq, Advocate.**
Respondents by	**:**	**Raja Zamir-ud-Din, A.A.G.** **Mr. Salman Malik, Establishment Division.** **Ms. Amna Ali and Ms. Huma Noreen, Legal Advisor Railway.**
Date of hearing	**:**	**18.06.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), Muhammad Saleem ("**Petitioner**") has prayed that the instant Writ Petition may kindly be allowed and Respondents be directed to award pro forma promotion to him in BS-21 with all benefits and send his case to the concerned Committee constituted under Fundamental Rule (FR)-17.

2. The brief facts of the case, as per the contents of the petition, are that the Petitioner belongs to the 10th Common of the Pakistan Railways (PR) Transportation and Commercial (T&C) Group. In 2010, he was serving as Director Operations (BS-20) in the Ministry of Railways. He requested promotion to the post of Senior Joint Secretary (BS-21) against the reserved quota. However, the Establishment Division, vide letter No. F.No. 2/1/2006-CP-4 dated 19.05.2011, declined to entertain the request, stating that the Petitioner neither had the minimum three years of service in BS-20 nor would have one year of service remaining had he been promoted to BS-21. The Petitioner had been promoted to BS-20 on 22.09.2008 and attained the age of superannuation on 29.02.2012. Subsequently, he was elevated to the post of Additional General

Manager Traffic (AGMT), a BS-21 position at the Pakistan Railways Headquarters, Lahore, on 25.10.2011, on an own-pay-and-scale basis, superseding three senior officers. The Petitioner contends that the conditions for promotion to the post of Senior Joint Secretary were relaxed in the case of Mr. Shamim Ahmed Sheerazi **("Mr. Sheerazi")**, an officer of the Pakistan Railways T&C Group, serving as Managing Director (BS-20) of Pakistan Railway Advisory and Consultancy Services (PRACS). The Establishment Division, vide letter No. 15/5/2013-E dated 17.08.2015, promoted Mr. Sheerazi to the post of Senior Joint Secretary, Law, Justice & Human Rights Division, despite his being due for retirement on 25.02.2016, i.e., six months short of the one-year minimum service in BS-21 purportedly required. In contrast, the Petitioner, who was also short of one year of service before superannuation on 29.02.2012, was not granted such relaxation and was denied promotion to BS-21. He submitted a representation to the Honourable Prime Minister of Pakistan and has been continuously and diligently pursuing the matter. However, he alleges discriminatory treatment, which has led him to file this Writ Petition.

3. The learned counsel for the Petitioner submits that the benefit of relaxation was extended to Mr. Sheerazi, an officer of Pakistan Railways, who was promoted to the post of Senior Joint Secretary in BS-21. It is contended that the Petitioner's case is identical in facts and circumstances, yet he has been denied the same benefit, thereby amounting to discriminatory treatment. This denial of promotion to BS-21 has deprived the Petitioner of a valuable right, in violation of Article 25 of the Constitution, which guarantees equality before the law. The learned counsel further submits that due to the discriminatory act of the Respondents, the Petitioner is continuously suffering financial loss in his pension, which constitutes a recurring cause of action, and therefore, the principle of laches does not bar the maintainability of the instant Petition. It is argued that the Respondents were under a legal obligation to extend the same relaxation and benefit to the Petitioner and to refer his case to the FR Committee for consideration of promotion under FR-17. The Petitioner is entitled to the benefit of FR-17(1), and his case ought to have been placed before the competent forum constituted under the said Rule. It is also submitted that all efforts made by the Petitioner before the concerned authorities have failed. He has no alternate, adequate, or efficacious remedy available to him; therefore, he has invoked the

constitutional jurisdiction of this Honourable Court. Lastly, the learned counsel prays that this Writ Petition may graciously be allowed, and the Respondents may be directed to grant pro forma promotion to the Petitioner in BS-21 along with all consequential benefits and to refer his case to the competent committee under FR 17 for due consideration.

4. On behalf of Respondents No.1 & 4, Report has been submitted which reveals that the instant Writ Petition is not maintainable under law and on facts. Matters relating to the terms and conditions of civil servants fall in the exclusive jurisdiction of the Service Tribunal in terms of Article 212(2) of the Constitution read with Section 3(2) of the Service Tribunals Act, 1973 **("Service Tribunals Act")**. That in terms of Section 9(3) of the Civil Servants Act, 1973 **("CSA, 1973")**, promotion to posts in Basic Pay Scales 20 & 21 and equivalent shall be made on the recommendations of the Central Selection Board **("CSB")**. That posts in BS-20 and BS-21 are selection posts in terms of Section 9(2) read with the Revised Promotion Policy, 2007, as amended from time to time. The CSB gives due consideration to the nature of duties, duration, and location of posts previously held by the officer. Conditions of length of service, prescribed threshold of PERs quantification, mandatory training reports, variety of experience, and remarks of Reporting/Countersigning Officers in PERs, especially during the last five years preceding the Board meeting, are taken into account. In terms of the proviso to sub-section (2) of Section 22 of CSA, 1973, read with the second proviso to Rule 4(1)(d)(ii) of the Civil Servants (Appeal) Rules, 1977, no representation/appeal or review 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. Promotion to a higher post or grade is not a vested right and promotion in BS-19 onwards is made on the basis of selection on merit under Section 9(2) of CSA, 1973. Fulfilling eligibility conditions such as seniority and length of service does not prove entitlement to promotion. The Selection Board does not make recommendations as a mechanical exercise, just on the basis of quantification. The Board assesses the suitability of the officer for promotion after careful examination of the service record in an objective manner. The collective wisdom of the Board serves as the bedrock for deciding promotion case(s) and no whim or caprice is involved. There was no apportionment of the Railways Group in the Federal Secretariat share till the introduction of SRO

89(I)/2014, which came after the superannuation of the Petitioner. The criteria for promotion as Senior Joint Secretary (BS-21) in the Federal Secretariat against the reserved quota was different before the said SRO, and the same criteria which was in vogue at that time was conveyed through Establishment Division's letter No. F.No. 02/01/2006-CP-IV dated 19.05.2011. There was no apportionment in the Federal Secretariat share for officers of the Railways (C&T) Group in the year 2008 and until the year 2015, whereas the Petitioner retired on 29.02.2012. Thus, there were no seats of the Railways (C&T) Group in the Federal Share till 2015, and therefore, the Petitioner could not be promoted against the Federal Share since the scheme came after his retirement. Mr. Sherazi was promoted to BS-21 as Senior Joint Secretary in 2015; thus, no relaxation was given to Mr. Sherazi since he was regularly promoted to BS-21 by the CSB 2015 and posted by the Establishment Division against the share in the Federal Secretariat for the Railways (C&T) Group. The case of the Petitioner is different from Mr. Sherazi as when the Petitioner was in service, there was a different procedure, and after the introduction of SRO 89(I)/2014, the procedure entirely changed. The Establishment Division intimated the Petitioner in response to his application vide O.M. dated 21.01.2018 that his case is different from Mr. Sherazi, as when he was in service there was a different procedure for promotion to Senior Joint Secretary as conveyed to him vide this Division's letter No. F.No.2/1/2006-CP-IV dated 19.05.2011, whereas after the introduction of SRO 89(I)/2014, the procedure changed under which Mr. Sherazi was promoted to BS-21. Furthermore, as per the proviso under Section 22(2) of CSA, 1973, "no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade." Lastly, it is prayed that the instant Writ Petition may kindly be dismissed being devoid of merit.

5. On behalf of Respondent No.2, it is argued that the instant Petition is not maintainable and is time-barred as the Petitioner approached this Court after a long delay, he retired in 2012 and approached this Court in 2019.

6. On behalf of Respondent No.3, Report is submitted which reveals that the proviso of FR-7(1) had been deleted vide SRO No. 617(I)/2022 dated 20.05.2022 with the approval of the competent authority i.e. the Prime Minister, and the committees so formed had been discontinued/dissolved. After the deletion of the

proviso *ibid*, and the dissolution of FR-17(1) Committees, the facility of antedated pro forma promotion no longer exists. Further, the competent authority (i.e., the Prime Minister) has also approved a way forward for the processing of such cases of in-service and/or retired civil servants where issues arise regarding antedated fixation of seniority, etc. This way forward has been notified vide Finance Division's O.M. No. 2(1) FR-17/2021 dated 20.05.2022. Lastly, it is prayed that the answering Respondent may kindly be excluded from the array of Respondents.

7. I have heard the learned counsels for the parties and perused the record with their able assistance.

8. The FR-17 enumerates that the appointing authority may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through pro forma promotion or upgradation arising from the ante-dated fixation of his seniority. If a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is mature, and without such consideration, he reaches the age of superannuation before the promotion, then obviously the avenue or pathway of pro forma promotion comes into the field for his rescue. If a person lost his promotion on account of any administrative lapse or delay in the meeting of the DPC or Selection Board despite having fitness, eligibility, and seniority, then in all fairness, he has a legitimate expectation for pro forma promotion with consequential benefits. In the present case, the Petitioner was not eligible for the subject promotion on the ground that the criteria at that time required three years of service in BPS-20 and a minimum of one year of service before attaining the age of retirement. This means that at the relevant time, he was not eligible to be considered for promotion to BPS-21. The Petitioner made a departmental representation dated 04.01.2011 for waiving the minimum one-year service condition before attaining the age of retirement, which was turned down.

9. Promotion to a higher post or grade is not a vested right, and is made on the basis of selection on merit as per Section 9(2) of CSA, 1973. In terms of Section 9(3) of CSA, 1973, promotion to posts in Basic Pay Scales 20 and 21 and

equivalent shall be made on the recommendations of CSB. The posts in BPS-20 and BPS-21 are selection posts in terms of Section 9(2) read with the Revised Promotion Policy, 2007, as amended from time to time. The Government is competent and has the exclusive domain to determine the eligibility criteria for promotion, and the Petitioner**,** at the relevant time, was not eligible under the criteria prevailing then.

10. Matters relating to the terms and conditions of civil servants fall in the exclusive jurisdiction of the Service Tribunal in terms of Article 212(2) of the Constitution read with Section 3(2) of the Service Tribunals Act, and the Petitioner could not invoke the jurisdiction of this Court under Article 199 of the Constitution, as there is a specific bar under the said Article. For ready reference, Article 212 of the Constitution is reproduced hereunder: -

"212 Administrative Courts and Tribunals.

(1) ***Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act [provide for the establishment of] one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of***

(a) matters relating to the terms and conditions of persons [who are or have been] in the service of Pakistan, including disciplinary matters;

(b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or

(c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends [and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal [other than an appeal pending before the Supreme Court,] shall abate on such establishment]:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, [Majlis-e-Shoora (Parliament)] by law extends the provisions to such a Court or Tribunal." (Emphasis added).

11. In the case titled *"Ahmad Ullah and Others vs. District Education Officer (Male), Buner & others"* **(2024 PLC (CS) 1530)** [Supreme Court of Pakistan], it was held as under: -

> *"The eligibility purely relates to the terms and conditions of service, for example the prescribed length of service, quantification of the marks relating to performance evaluation reports (PERs), completion of training programs etc. The only factor which is excluded from the exclusive jurisdiction and domain of the Tribunal is the decision of a designated authority/ forum regarding 'fitness', while eligibility and all other matters relating to the terms and conditions of service are exclusively within the domain of the Tribunal. The exclusive jurisdiction conferred upon the Tribunal, pursuant to the clear constitutional command under Article 212, ousts the jurisdiction of a High Court while exercising jurisdiction under Article 199 of the Constitution to decide, entertain or adjudicate upon any matter relating to the terms and conditions of service. The bar under Article 212 extends even when an order passed by the departmental authority is without jurisdiction, mala fide, coram non judice, or in breach of the fundamental rights guaranteed under the Constitution.[3] Article 199 explicitly declares the jurisdiction of the High Court to be subject to the Constitution and, therefore, the bar under Article 212 of the Constitution, besides being a constitutional command, is absolute to the extent of all those matters that fall within the exclusive domain and jurisdiction of a Tribunal established under the Act of 1974. This Court has consistently observed that before taking any decision regarding admission of a constitutional petition brought by a civil servant, the High Court is expected to first decide the question of jurisdiction, having regard to the bar contained under Article 212 of the Constitution. It is further noted that a plea taken by an aggrieved civil servant regarding violation of fundamental rights guaranteed under the Constitution also does not confer jurisdiction on a High Court under Article 199 of the Constitution.[4]*
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> *7. In the case before us, the grievance of the petitioners was essentially regarding their terms and conditions of service as civil servants. The question of eligibility was within the exclusive jurisdiction of the Tribunal and, therefore, the petition was not maintainable under Article 199 of the Constitution and thus the jurisdiction of the High Court under Article 199 was ousted in the*

> *light of the express bar contained under Article 212 of the Constitution. The petition under Article 199 was not competent and the grievance raised before the High Court was not justiciable. The petition was, therefore, deemed to have been dismissed on the ground of maintainability and not on merits. The findings and determinations made by the High Court in the impugned judgment regarding the merits are per incuriam and shall not prejudice any proceedings that the petitioners may have initiated before a competent forum to agitate their grievance."*

Reliance is also placed on the judgment of the august Supreme Court of Pakistan titled *"Muhammad Hassanullah (OMG/B-18), Acting Additional Secretary, Health Department, Balochistan vs. Chief Secretary, Government of Balochistan, Quetta and another"* **(2025 SCMR 134)**, relevant portion of which is reproduced as under: -

> *"5. Article 212 starts with a non obstante clause and provides that the appropriate legislature may, by the Act, provide for establishment of one or more administrative courts or tribunals, inter alia, to exercise jurisdiction in respect of matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters. Sub-Article (2) of Article 212 also begins with a non obstante clause and expressly provides that no court other than an administrative court or tribunal shall grant an injunction, make any order or entertain any proceedings in respect of any matter of which the jurisdiction of such administrative court or tribunal extends. The Constitution has, therefore, expressly declared that the administrative court or tribunal established pursuant to the command under Article 212 shall exercise exclusive jurisdiction in relation to the matters within its jurisdiction. The non obstante clause in Article 212 gives it an overriding effect and thus bars the jurisdiction of a High Court vested under Article 199 of the Constitution. The ouster curtails the jurisdiction of a High Court in respect of matters which fall within the ambit of the exclusive jurisdiction of an administrative court or tribunal. It is noted that in order to make a matter exclusively within the domain of the service tribunal under the Tribunals Act, and thus create a bar contemplated under Article 212, it must be shown that the grievance has been agitated by a civil servant and relates to the terms and conditions of service and does not attract the exceptions set out in clause (b) of section 4 of the Tribunals Act. The Act of 1974 and the Tribunals Act provide for a comprehensive mechanism for agitating a grievance by a civil servant and specific forums have been provided for seeking remedies. The exclusive jurisdiction of the service tribunal and the bar contained under Article 212 are of such a nature that that they are attracted even if the grievance arises from an order which*

may involve questions of mala fide, corum non judice or having been passed without jurisdiction.[1] In I.A. Sherwani's case[2], a larger Bench of this Court has held and observed that a civil servant cannot bypass the jurisdiction of the service tribunal by adding a ground of violation of fundamental right(s). The service tribunal will have exclusive jurisdiction in a case founded on the terms and conditions of service even if it involves the question of violation of fundamental rights. It has been further held that the service tribunal will be vested with jurisdiction even where the case involves the vires of a statutory rule or notification. It was held that if a statutory rule or notification adversely affects the terms and conditions of a civil servant the same will be treated as a final order for the purposes of the jurisdiction of a service tribunal. The questions and grievances relating to transfer and postings of a civil servant fall within the ambit of the terms and conditions of service of a civil servant and thus are within the exclusive domain of an administrative tribunal established under the command of Article 212.[3] The bar under Article 212 is complete in respect of the cases in which the Tribunal has jurisdiction under the Tribunals Act."

12. The learned counsel on behalf of the Petitioner also raised the ground of discrimination, as one officer namely Shamim Ahmed Sherazi was promoted under similar circumstances and eligibility, as his remaining time before attaining the age of retirement was less than one year, and despite that, he was promoted to BPS-21. However, the case of Mr. Sherazi was different from that of the Petitioner, on the ground that when he was in service, there was a different procedure for promotion as Senior Joint Secretary, and after the introduction of SRO 89(I)/2014, the procedure changed.

13. As a consequence of the above discussion, the instant Writ Petition, being not maintainable and devoid of merit, stands **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ days of July 2025.

JUDGE

//Sajid//*