JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1578 of 2019

Azhar Rasheed Khan

Versus

Pakistan through the Federal Secretary, Establishment Division, Islamabad.

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Petitioner by	:	Ms. Farhat Nawaz Lodhi, Advocate.
Respondents by	:	Syed Nazar Hussain Shah, AAG. Mr. Abdur Rehman, Mr. Sami-ul-Haq, S.O. Establishment Division.
Date of hearing	:	11.03.2022

ARBAB MUHAMMAD TAHIR, J: Through the instant petition, the petitioner impugns the deferment order dated 29.03.2019.

2. The learned counsel contended that the petitioner assailed his supersession for promotion from BS-20 to BS-21 by the CSB held on 13-16 December, 2016 through W.P. No. 1539/2017 which was allowed vide order 30.11.2017; that name of the petitioner was placed before the CSB held on 09.01.2018, but was superseded again, subsequently a review board meeting was notified on 19.03.2018. The learned counsel further argued that the fact sheet prepared by the Establishment Division for the CSB supports the case of the petitioner on the grounds agitated through the instant writ petition; that the petitioner requested the respondents through a written application to have reasons of supersession for availing appropriate remedy; that subsequently filed W.P. 1588/2018 which was allowed by this Court vide order dated 07.09.2018 whereby the recommendations of the CSB were set-

aside with direction that the petitioner shall be considered by the CSB afresh; that on 06.12.2019, the case of the petitioner was placed before the CSB but no notification to this effect was ever issued; that vide letter No. F. No. 1/1/2017-CP-I, dated 29.03.2019, the petitioner was informed about reasons for his deferment and non-consideration. The learned counsel for the petitioner stated that the findings conveyed vide the impugned letter are in violation to the earlier orders passed by this Court and are in sheer violation of the dictums laid down by the Hon'ble Apex Court in this behalf.

3. Conversely, the learned AAG assisted by the Section officers of the Establishment Division opposed the contentions raised by the learned counsel for the petitioner. It is submitted that the petitioner was considered by the CSB, in order of seniority, along with other officers for promotion to BS-21, in its meeting held on 13.12.2016, 09/12 January, 2018, 06.12.2018, the reasons mentioned for his supersession are tabulated as under:-

Sr. No	Date of CSB meeting	Recommendation/decision of competent authority
1	13.12.2016	Superseded by CSB dated 13.12.2016 as the officer did not meet the required threshold of 75.
2.	19.06.2017	"Not considered" by CSB June, 2017 on the request of Departmental Representative.
3.	09.01.2018	Deferred on 09.01.2018 for want of one full year (12 months) PER after his supersession in CSB, 2016
4.	06.12.2018	His case was reconsidered by CSB dated 06.12.2018, in pursuance of Apex Court's orders dated 25.10.2018 read with Islamabad High Court's Judgment dated 29.09.2018, and was superseded, as the Board deliberated upon his service profile/record and observed that his overall performance had remained fairly average as he lacked the desired cutting edge to handle challenging and strategic assignments and was not in sync with the potential leadership assignments associated with the elevated position. He failed to meet the required threshold of 72 marks.

4. The learned AAG further elaborated the legal framework for promotion of the Civil Servants from BS-20 to BS-21 and also elaborated section 9 of Civil Servant Act, 1973. According to learned AAG, posts of BS-20 and BS-21 are selection posts which

are required to be made on merit in terms of Section 9 of the Civil Servant Act, 1973. He further stated that BS-21 posts are part of policy making hierarchy of the Government. It is mandatory that officers in these positions should have an analytical mind, depth of vision and clear potential for holding post in top management. He highlighted that the minimum threshold of marks for promotion to BS-21 is 72 marks for all groups/services/cadres other than Pakistan Administrative Services (PAS) where requirement is 75. An officer meeting the aggregate threshold shall also be superseded if CSB places him in category-C as per the amendment introduced in Para 4 (b) of the revised promotion policy.

5. I have heard the learned counsel for the parties and gone through the record with their able assistance.

6. Perusal of the record reveals that the supersession of the petitioner for promotion from BS-20 to BS-21 in the proceedings of the CSB meeting held on 13/16 December, 2016 were assailed in W.P. No. 1539/2017, which was allowed vide order dated 30.11.2017. Thereafter, the petitioner was considered by the CSB meeting held on 09.01.2018, but he was superseded by his juniors, subsequently a review board meeting was notified on 19.03.2018. The petitioner requested the respondent to provide him the reasons for his supersession and deferment as no heed was paid to the request of the petitioner, ultimately the petitioner filed W.P. 1588/2018 which was allowed on 07.09.2018 with the directions to the respondents that the petitioner shall be considered afresh. The petitioner's case was placed before the CSB on 06.12.2019, in view of the directions passed by the Hon'ble Apex Court in Criminal Original 137/2017 dated 25.10.2018. The petitioner was informed through letter dated 29.03.2019 for the reasons of his supersession and deferment.

7. The petitioner in the instant petition prays that his supersessions and deferment be set aside and he be considered

with retrospective effect and the adverse proceeding of the CSB held on 06.12.2018, and of the review board may be suspended.

8. The perusal of the parawise comments filed by respondent No. 1 reveals that the petitioner was superseded by the CSB on 13.12.2016 on account of lack of requisite threshold of 75 marks. The petitioner was not considered in the CSB held on 19.06.2017 on the request of the departmental representative. On 19.01.2018 the petitioner's case was deferred for want of full year PERs and on 06.12.2018 the petitioner's case was reconsidered by CSB in pursuance of the order passed by the Hon'ble Apex Court and again the petitioner was superseded for the reasons recorded by the CSB.

9. The legal framework which governs the promotion of a civil servant needs to be looked into. Section 9 of the Civil Servant Act 1973 provides the mechanism for promotion. BS-20 and BS-21 are selection posts, to which selection is to be made on merits in terms of Section 9 of the Civil Servant Act, 1973. As per amendments introduced in para 4 (b) of Revised Promotion Policy, an officer meeting the aggregate threshold shall also be superseded even if his/her named is placed in category-C by the CSB. As per Rule 6 of the Civil Servant (Appointment Promotion and Transfer Rules, 1973) for the post of BS-20 and above, the appointing authority is the Prime Minister.

10. The Office Memorandum No. 33/3/54/SEI dated 22.09.1954 stipulates powers of the competent authority for according final approval regarding appointment by promotion. As per said policy, the competent authority may accept/reject or refer back the matter to the Selection Board for reconsideration. The contents of the above mentioned Office Memorandum have been upheld by the Hon'ble Lahore High Court, Lahore in W.P. No. 7735/2005 titled as ***Major Fateh Sher v. Government of Pakistan & others.*** The discretion of the Board is structured on the basis of collective wisdom of the Board members and in the

light of different criteria specified in different objective assessment forms.

11. The perusal of the record reveals that the petitioner was considered by the CSB meeting held on 06.12.2018, as per court directions wherein the departmental representative apprised the Board that the petitioner was superseded in the year 2016, later his case was again placed before the CSB in the January, 2018, he was recommended for deferment as PERs for 12 months were not available since his supersession in December, 2016. The Board was further apprised that the case of the petitioner has to be considered in view of the orders passed by the Hon'ble Apex Court on 25.10.2018, and in Crl. Original No. 137/2017 wherein the Hon'ble Apex Court directed to reconsider the cases afresh in accordance with the parameters laid down by the Hon'ble Apex Court in its judgment dated 14.04.2017, whereby it was directed that the Board shall asses the suitability of the Officers solely on the basis of dossier and available record removing focus from personal knowledge of the Board members.

12. The promotions in Bs-20 and BS-21 under section 9 (3) of the Civil Servant Act, 1973 are made purely on the recommendations of the Selection Board headed by the Chairman Federal Public Service Commission (FPSC) parliamentarians, Chief Secretaries, I.Gs of the Provinces and the Federal Secretaries. For consideration of cases of PSP officers, I.Gs (BS-22) or senior most officers and Secretary Interior Division are co-opted members.

13. The Establishment Division D.O. letter No. F. 2(36)/60-EIX dated 24.04.1968 incorporated in ESTA Code 2007 at serial No. 148. The Higher Posts at the Federal Government are selection Posts which no officer can claim as a right.

14. An important aspect of the matter that if the prayer of the petitioner is allowed, it would amount to the revision of the seniority list of his counterparts. The supersession in the year

2016, 2017 and 2018, the subsequent events and setting aside of the reasons recorded by the CSB would amount to undo the whole exercise carried out by the CSB in the year 2016, 2017 and 2018 entailing fatal consequences towards the officers already promoted The assertion that no reasons for supersession of the petitioner have ever been conveyed to him is rebutted by the respondents by placing letter dated 07.04.2021, wherein the reasons for supersession of the petitioner of the year 2016 and afterwards are dealt in detail.

15. In view of above, no case for exercise of discretion in terms of Article 199 of the Constitution as prayed for as in view of the dictum laid down by this Court in ***Sikandar Hayat Makan, etc v. Federation of Pakistan*** the question of fitness or suitability for promotion is the exclusive jurisdiction of the competent authority. The competent authority had to ensure that civil servants who are competent suitable and known for their integrity are appointed through promotion against the selection posts. Consequently, instant writ petition fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open court on 07.06.2022.

JUDGE

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