JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 2912 OF 2019

A.S. BABAR HASHMI.

VS

FEDERATION OF PAKISTAN ETC.

Petitioner by : Barrister Hassan Shoaib, Advocate.

Respondents by : Mr. Sarfraz Rauf and Raja Zameer ud Din, AAG.
Mr. Majeed Ullah, A.D (SSA).
Ghulam Mustafa, APS, MOFA.

Date of hearing : 20.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, **("Constitution"),** A.S. Babar Hashmi **("Petitioner")**, seeks direction to the Respondents to grant him ante-dated promotion to BS-21 with effect from 15.05.2015 (i.e. the date on which the Petitioner's juniors were promoted) and to further promote him in BS-22 with effect from 26.11.2018 when an officer junior to him was so promoted, with all consequential back benefits.

2. The brief facts giving rise to filing of the instant Petition as per the Memo of Petition are that the Petitioner joined the Foreign Service of Pakistan in the year 1986 after qualifying Central Superior Services (CSS) Examination conducted by the Federal Public Service Commission **("FPSC")**. The Petitioner rendered 33 years of professional, dedicated, and meritorious service including 12 years in BS-20 as he was promoted to BS-20 in the year 2006. The Petitioner's case along with his other colleagues was considered for promotion by the Central Selection Board **("CSB")** in its meetings held in the years 2015, 2016, and 2017, but he was not promoted on the pretext of 'incomplete Performance Evaluation Report **("PER")** record'. The Petitioner was continuously deferred till 22.2.2018 whereas his batch-mates and others, far below him in seniority, were promoted to BS-21 in May, 2015 and in subsequent years. Vide Notification dated 22.2.2018, the Petitioner was promoted to BS-21 with immediate effect, however, the promotion was not given to him from the date when his other batch-mates, junior to him, were promoted in May, 2015, while he was denied promotion for no fault of his own, on the pretext of "non-completion of PER record". Hence, the instant Writ Petition for

the Petitioner's ante-dated promotion to BS-21 from 15.5.2015 and subsequent promotion to BS-22 from 26.11.2018 has been filed.

3. The learned counsel for the Petitioner argued that the impugned action of the Respondents is illegal, unlawful, preposterous and *void ab initio* which is against the Petitioner's rights; that by not promoting the Petitioner in May, 2015, a genuine opportunity for his subsequent promotion to BS-22 was unjustly denied on technical grounds; that CSB has acted in an arbitrary manner while ignoring the Petitioner for promotion to the next grade at the right time i.e. in May, 2015; that the CSB is required to adhere to the rulings of the Honorable Supreme Court of Pakistan and the promotion policy framed by the Government; that the Petitioner has not been treated reasonably, fairly, justly, which is certainly against the advancement of law in general and the Civil Servants Act in particular; that if the Petitioner is to be denied his right to promotion, the reasons must be clearly documented and supported by substantive material; that the reasoning/decision has to be supplied to the prejudicially affected Officer as mandated by Section 24-A of the General Clauses Act, 1897; that the principle of seniority, a definite consideration, has been recklessly flouted in not promoting the Petitioner, when his promotion was due; that nevertheless, the Petitioner's batch-mates have been promoted in preference to the Petitioner, illegally, unlawfully and in flagrant violation of the law and the Constitution; that it is settled law that similarly placed persons cannot be treated differently; that the Petitioner has been discriminated against and that too on the basis of extraneous consideration on the pretext of incomplete PER record; that all promotions in BS-21 and BS-22 are now to be made on the touchstone of the conditions set out in the Promotion Policy and the principles laid down by this Court and the judgments of the august Supreme Court of Pakistan and there has to be some tangible material on record to warrant the Officer's exclusion from promotion; that in the Petitioner's case, there was no such material before the CSB to warrant his exclusion for promotion in years 2015, 2016 and 2017; that the Petitioner enjoys higher merit on all counts and is senior to 18 Officers who have been promoted in BPS-21 by CSB during its meetings held in 2015, 2016 and 2017; that withholding the Petitioner's promotion would tantamount to subjecting the Petitioner with a major penalty, which could not be done without due process and on the basis of some solid material duly brought to his notice and after affording him an opportunity of being heard; that the Petitioner has been condemned unheard which has resulted in violation of his fundamental rights guaranteed by the Constitution, more particularly Article 10-A which guarantees the right to a fair trial. The learned counsel requested for acceptance of

instant Petition and for issuance of direction to the Respondents to allow the Petitioner's ante-dated promotion in BS-21 with effect from 15.05.2015, the date when his juniors were promoted, and to further promote the Petitioner in BS-22 with effect from 26.11.2018, when an officer junior to him was promoted, with all consequential back benefits. The learned counsel for the Petitioner has relied upon *Federation of Pakistan through Secretary, Establishment Division and others versus Dr. Muhammad Arif and others,* 2017 SCMR 969 and subsequent orders dated 25.10.2018, judgment dated 26.04.2013 passed in CMA No.4918/2012 and CMA No.08/2013 in CPLA No.23/2012, *Muhammad Amin Muhammad Bashir Limited Versus Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad,* 2015 SCMR 630, *Muhammad Ashraf Tiwana & others Vs. Pakistan & others*, 2013 SCMR 1159 and *Babar Hussain Shah Vs. Mujeed Ahmed Khan,* (2012 SCMR 1235).

4. On behalf of the Respondents Nos.1, 3 & 4, it is argued that the Petitioner was considered fairly, justly and as per merit; that no discriminatory treatment was meted out to the Petitioner as he was considered strictly in accordance with law, rules and policies; that 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 as per Section 9(2) of the Civil Servants Act, 1973 **("Civil Servants Act")**; that non-promotion is not a penalty; that CSB made its recommendation after careful examination of personal record, conduct, discipline and overall objective assessment besides capacity for holding an executive post meant for decision making; that CSB takes into account all aspects of Service including PER, TER and Service dossiers; that in terms of proviso to sub-section 2 of Section 22 of the Civil Servants Act read with second proviso to rule 4(i)d(ii) of 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.

5. On behalf of the Respondent No.2 it is argued that as per Rule 22(2) of the Civil Servants Act, 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; that as per Rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, the Prime Minister is the appointing authority for appointments in Basic Pay Scales 20 and above, or equivalent. The CSB is the competent body to recommend officers for promotion to BS-20 and BS-

21, while the Prime Minister is the authority to make such appointments in accordance with the rules.

6. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

7. Through the instant Writ Petition, the Petitioner seeks direction to the respondent to grant him ante-dated his promotion to BPS-21 w.e.f. 15.05.2015, the date when his juniors were promoted and to further promote him in BS-22 with effect from 26.11.2018 when an officer junior to him was so promoted, with all consequential back benefits. The Petitioner contends that CSB in its meetings held in the years 2015, 2016 & 2017 deferred him for promotion on the ground that his PER record was incomplete; that finally vide Notification dated 22.02.2018, he was promoted to BS-21 and that since the Petitioner's promotion to BS-21 was delayed for reasons beyond his control, he is entitled for promotion to be ante-dated with effect from the date when his juniors were promoted.

8. Comments were called from the Respondents which have been received and are placed on the file. According to the comments, the case of the Petitioner was placed as part of panel of CSB held in the year, 2014 for promotion to BS-21, but CSB did not consider him for want of vacancy. The officer was again considered by CSB in its meeting held in May, 2015, but recommended for deferment for the reason that the Board wanted to further watch his work related to performance for a period of one year. Thereafter, the officer was recommended for promotion to BS-21 by CSB in the year, 2016 but the Prime Minister referred back his case for reconsideration. Accordingly, the case of the Petitioner was considered afresh by CSB held in June, 2017 and recommended for deferment due to incomplete PER record.

9. The Petitioner submits that he was consistently deferred on one pretext or another without there being any fault of his own and that the principle of the seniority has been ignored by the department by not promoting him. He further submits that it is settled law that similarly placed persons cannot be treated differently, whereas the Petitioner has been subjected to discrimination, as others have been promoted in violation of the principle of seniority.

10. Admittedly, the Petitioner wanted his ante-dated promotion in BPS-21 which is the selection post under the Civil Servant Promotion Rules, 2019. The Petitioner was a civil servant and promotion is part of the terms and conditions of

his service. The issue of eligibility pertains primarily to the terms and conditions of service and their applicability to the concerned civil servant. Therefore, the Service Tribunal holds exclusive jurisdiction over such matters. Regarding the argument of the learned counsel for the Petitioner asserting that seniority is a vested right of which the Petitioner could not have been deprived of, suffice it to state that promotion is not a vested right of a civil servant, and promotion to a specific post is never considered an entitlement of the employee. In case of non-selection post, the promotion is made on the basis of seniority-cum-fitness and no civil servant can ask for or claim a promotion as a matter of right. I am fortified in this view by the judgment of the apex Court passed in *Muhammad Amjad versus The Director General, Quetta Development Authority,* 2022 SCMR 797.

11. Since, Promotion is not a vested right and relates to the terms and conditions of service therefore, assumption of jurisdiction by the High Court in respect of such like matters is unconstitutional and impermissible due to the bar contained in Article 212 of the Constitution whereas the exclusive jurisdiction in this regard lies with the Administrative Tribunals.

12. For what has been discussed above, this Petition, being not maintainable, is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of March, 2025.

JUDGE

Sajid/--