JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1719 of 2021
Dr. Muhammad Naeem
Versus
Federation of Pakistan and others

Dates of Hearing:	16.11.2022, 17.01.2023 and 28.08.2023.
Petitioner by:	Mr. Tahir Mahmud, Advocate.
Respondents by:	Syed Ahsan Raza Kazmi and Mr. Arshid Mehmood Kiyani, learned Deputy Attorney-General. Mr. Saeed Ahmad Zaidi, Advocate for FBR. M/s Abdul Rehman Goher and Muhammad Salman Malik, Section Officers, Establishment Division.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Dr. Muhammad Naeem, who is serving as Accountant Member, Appellate Tribunal Inland Revenue (**"ATIR"**), Lahore and belongs to the Inland Revenue Service, impugns the notification dated 26.02.2021 issued by the Federal Board of Revenue (**"FBR"**), whereby officers junior to him were promoted to BPS-21. The said notification does not mention the petitioner as one of the promoted officers.

2. The record shows that on 02.06.2015, the petitioner was promoted to BPS-20. In November, 2018, he was considered by the Central Selection Board (**"CSB"**) for promotion, but was superseded. In May, 2019, his promotion to BPS-21 was deferred due to the non-availability of his Performance Evaluation Reports (**"PERs"**) after his supersession. In January, 2020 and January, 2021, he was again considered for promotion, but on both occasions, he was superseded. According to the letter dated 16.04.2021 from the F.B.R., the CSB had recommended the petitioner's supersession on the ground that he failed to meet the required threshold of 75 marks under the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 (**"the 2019 Rules"**). The petitioner has challenged his supersession and the

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promotion of officers junior to him through the instant writ petition.

3. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that none of the petitioner's PERs had any adverse finding against his integrity; that the petitioner on several occasions had been given additional charge of BPS-21 posts; that through notification dated 27.08.2018, the petitioner was appointed as Accountant Member, ATIR which is a BPS-21 post; that letter dated 12.03.2021 shows that the Chairman, ATIR had recommended an extension in the petitioner's deputation period beyond 02.09.2021; that vide notification dated 07.10.2021, the petitioner's deputation as Accountant Member, ATIR was extended; that presently, the petitioner is serving as Accountant Member, ATIR, which is also a BPS-21 post; that even after his supersession, the petitioner has been assigned the duty to serve as Accountant Member, ATIR; that the petitioner has successfully undertaken the Senior Management Course (**"SMC"**) from 08.09.2014 to 23.01.2015 and the National Management Course (**"NMC"**) from 11.09.2017 to 12.01.2018; and that the reasons for the petitioner's supersession are not sustainable in law, and are liable to be set-aside. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned Deputy Attorney-General, assisted by Abdul Rehman Goher, Section Officer, Establishment Division submitted that the CSB, in its meeting held in January, 2021, considered the petitioner for promotion to BPS-21 in accordance with the criteria prescribed in the 2019 Rules and the Members of the CSB in their collective wisdom decided to recommend the petitioner for supersession in line with Rule 8(a) of the 2019 Rules as he had failed to meet the required threshold of 75 marks; that once the recommendations of the CSB are approved by the competent authority, same would be considered to be final in terms of Rule 5(1) of the 2019 Rules; that the CSB's recommendation to supersede the petitioner was approved by

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the competent authority on 25.02.2021 and the petitioner was informed about the reasons for his supersession vide FBR's letter dated 16.04.2021; that the CSB had recommended the petitioner's supersession after taking into consideration his entire service record; that the 2019 Rules do not envisage the CSB giving an opportunity of personal hearing to an officer under consideration for promotion; that this Court cannot substitute its opinion with that taken by the CSB; that in his PERs for the years 2014 to 2017, the petitioner was rated as 'B' in quality and output of work which shows that he was professionally weak and lacked the ability to properly supervise the work of his subordinates; that the petitioner's Training Evaluation Reports (**"TERs"**) showed that he held himself back and treated the training as a mandatory requirement for promotion rather than an opportunity to build his capacity; that in the said reports, the petitioner was rated almost at the bottom by his peers and his promotion potential was graded as 'limited;' and that the process culminating in the petitioner's supersession did not suffer from any legal infirmity. Learned Deputy Attorney-General prayed for the petition to be dismissed.

5. I have heard the contentions of the learned counsel for the petitioner as well as the learned Deputy Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraph 2 above and need not be recapitulated.

6. The petitioner's performance was evaluated by the CSB in its meetings held in January 2020 in accordance with the 2019 Rules. Under Rule 18 of the said Rules, a civil servant under consideration for promotion by the CSB can be given up to 40% marks for quantification of PERs; 30% marks for the TERs; and 30% marks based on evaluation by the CSB.

7. The petitioner was given 32.56% marks for his PERs and 18.30% marks for his TERs. The CSB's objective assessment of the petitioner resulted in 15 marks being given to him out of 30 marks. The petitioner was not able to achieve the required

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threshold of 75% marks for promotion to BPS-21 as prescribed in Rule 16 of the 2019 Rules. He had obtained 65.86% marks. The petitioner fell short by 9.14% marks to achieve the required threshold of 75% for promotion to BPS-21.

8. Rule 8(a) of the 2019 Rules provides that a civil servant shall be recommended for supersession if he / she does not meet the required threshold for promotion to a particular post or grade in any particular service, group or post. Under Rule 8(c) of the 2019 Rules, a civil servant is to be recommended for supersession if there is any other reason which shall be recorded in writing by the CSB. It may be mentioned that this Court has upheld the legality and the constitutionality of the said Rules vide judgment dated 29.09.2020 passed in writ petition No.08/2020 titled "Sikandar Hayat Maken Vs. Federation of Pakistan etc."

9. Rule 20 of the 2019 Rules provides that a total 30 marks shall be allocated to the last two TERs (18 marks @ 60% for the training in the present scale and 12 marks @ 40% in the previous scale). In order to be considered for promotion from BPS-20 to BPS-21, Rule 19 of the said Rules makes it mandatory for a civil servant to undergo the NMC. The petitioner did undergo the NMC between 11.09.2017 to 12.01.2018. In 2015, he had undergone the SMC (which is mandatorily required for a civil servant to undergo in order to be considered for promotion from BPS-19 to BPS-20).

10. The petitioner's course report dated 11.03.2015 for the 16th SMC also formed part of the dossier produced before this Court. The remarks about the petitioner in both the said course reports are not complimentary. On the basis of the said reports, the petitioner secured 18.30% out of 30% marks for his TERs. While carrying out an evaluation and an objective assessment of a civil servant under consideration for promotion, the CSB is also required to look into the TERs of the civil servant. This is clearly mentioned in the objective assessment form set out in Schedule-IV of the 2019 Rules.

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11. It would be most uncharitable to the petitioner if I would reproduce in this judgment the uncomplimentary remarks about him in the course reports of the 16th SMC and the 107th NMC. Suffice it to say that the contents of the said reports are such as would cause me to hold that the award of 18.30% out of 30% marks for TERs and the decision of the CSB to give the petitioner 15 out of 30 marks for his objective assessment and to recommend his supersession does not suffer from irrationality or arbitrariness.

12. As regards the marks awarded to the petitioner for his PERs, the CSB appears to have taken into consideration the petitioner's PERs for the period between 01.07.2015 to 10.03.2016 in which the reporting officer's views were such (not going into specifics) which would cause the CSB not to recommend the petitioner for promotion. The countersigning officer had agreed with the views of the reporting officer. Apparently, the petitioner has health issues, which, according to the reporting officer for the period between 21.10.2016 to 01.03.2017, hinders his performance. Given the petitioner's PERs for the three years before he was considered for promotion in January, 2021, the same do not depict anything adverse or such as would make the petitioner unfit for promotion to BPS-21. It ought to be borne in mind that even though the petitioner was a BPS-20 officer, he had been assigned the duties of a BPS-21 post i.e., Accountant Member, ATIR. As per the documents on the record, the petitioner's performance in the said capacity was such as to cause the F.B.R. to extend his deputation period. At the stage when the instant petition was filed, the petitioner was still serving in the said position. Given the fact that the petitioner had been assigned the duties of an adjudicating officer and that too in a grade higher than BPS-20 in which the petitioner is presently in, the award of just one mark out of three marks for his integrity is most irrational. There is nothing on the record to show that there were any doubts over the petitioner's integrity. The award of just one mark out of three marks for the category of integrity to the petitioner in effect means that he had just been

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awarded 33.3% marks for the said category. In other words, the CSB in its collective wisdom came to the conclusion that the petitioner had failed in the category of integrity. The decision to award such low marks to the petitioner for the category of integrity is not supported by any material on the record.

13. It is noted with regret that despite clear judicial enunciations through judgments in the cases of Federation of Pakistan Vs. Dr. Muhammad Arif (2017 PLC (C.S.) Note 66) and Federation of Pakistan Vs. Dr. Muhammad Arif (2017 SCMR 969), the CSB ignored the guidelines given in the said judgments for granting marks on an officer's integrity. In the former judgment, this Court had the occasion to hold as follows:-

> ***"78. ... "Integrity" has been defined in Words and Phrases, Volume 21B, to mean "moral soundness, freedom from corrupting influence or practice". It is also used as a synonym for probity, fidelity and honesty. Do the 'reasons' make reference to any material which caused the CSB to conclude that the officer lacks moral soundness or honesty. Certainly not! This casts a shadow on the manner in which discretion was exercised by the CSB. This eventuality could have been averted had the Establishment Division acted in accordance with the directions contained in the judgments in Iram Adnan's case, Liaqat Chugtai's case and Orya Maqbool's case and structured an objective criteria on the basis of which the CSB could have exercised discretion. Is it not a paradox that on the basis of an officer's PERs and TERs, etc., he obtains qualifying marks for promotion, but on the basis of the 'opinion' of the CSB regarding his integrity etc., he is given less then 3 marks and denied promotion.***
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> ***79. An officer against whom there is nothing adverse in his PERs and TERs, cannot without sufficient tangible and convincing material be relegated by the CSB by giving him less than 3 marks for his integrity, as the same would go against the age-old maxim "nemo firutrepenteturpissimus" (no one becomes dishonest all of a sudden). If any of the members of the CSB disagree with the positive remarks about the integrity of an officer in his annual confidential reports, they must specifically record as to why they are not satisfied with the remarks in such reports with specific reference to the material which contradicts the remarks in such reports.***
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> ***80. An adverse opinion formed by the members of the CSB about a particular officer under consideration has to be based on tangible material, which would lead any reasonable mind to form the same opinion. The minutes of the meetings of the CSB and the recommendations of the CSB to defer or supersede a particular officer must make explicit reference to the material which caused them to become doubtful about such the officer's integrity. However, if such material has not, at any material stage been, disclosed to the officer, he must first be confronted with it. If such a process is adopted, the officer in question may satisfy the***

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members of the CSB as to inaccuracy or falsity of such material/information. If the officer concerned is not confronted with such material/information, it would be a violation of the principles of natural justice - audi alteram partem (no one should be condemned unheard). The violation of this principle would be enough to vitiate even the most solemn proceedings. This principle has been held to have originated from the Islamic Principles of Justice and would be read / considered as a part of every statute. Audi alteram partem has to be applied in all judicial and non-judicial proceedings notwithstanding that a right of hearing has not been expressly provided by the statute governing the proceedings. Reference in this regard may be made to the law laid down in the cases of Hazara (Hill Tract) Improvement Trust through Chairman & others Vs. Mst. Qaisra Elahi & others (2005 SCMR 678), Messrs Dewan Salman Fiber Ltd Vs. Government of N.-W.F.P. through Secretary, Revenue Department, Peshawar and others (PLD 2004 SC 441), Abdul Hafeez Abbasi and others Vs. Managing Director, Pakistan Airlines Corporation Karachi and others (2002 SCMR 1034), Ghulam Mustafa Jatoi Vs. Additional District & Sessions Judge/Returning Officer and others (1994 SCMR 1299), Makerwal Collieries Ltd and 2 others Vs. Government of N.-W.F.P and 11 others (1993 SCMR 1140), and Raziuddin Vs. Chairman, Pakistan Airlines Corporation and 2 others (PLD 1992 SC 531).

81. In the deliberations of the CSB there is no room for hearsay, rumors, generalizations or gossip about an officer under consideration for promotion. Any member of the CSB cannot tell the others that a particular officer is known to him and that he thinks that the officer's integrity or reputation is such that makes him undeserved for promotion. To immerse an officer into the abyss of doubtful integrity, it is not enough that the doubt fringes on a mere intuition. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain the doubt regarding that possibility. Only then, there is justification to ram an officer with the label 'doubtful integrity'. Collective wisdom implies that the tangible information and material on the basis of which such a member of the CSB formed an adverse opinion about an officer under consideration should be placed before all the other members of the CSB so that they can, with an independent application of mind, form their respective opinions about the integrity or reputation of such an officer."

14. The mere fact that after the said judgments, the 2019 Rules have been framed which do not provide for the officer under consideration for promotion to be confronted with the adverse material about him, would not take away the binding nature of the law laid down in the said judgments and a corresponding obligation on the CSB as well as on the Establishment Division to show strict compliance with the same.

15. The CSB had also awarded just one mark out of three marks to the petitioner under the category of commitment to

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public service. It cannot be discerned from any material on the record as to why such low marks were given to the petitioner. It ought to be borne in mind that a year earlier when the petitioner was considered for promotion by the CSB in January, 2020, he had been awarded two marks for integrity and two marks for commitment to public service. The CSB, in its meeting in January, 2021, awarded the petitioner one mark for each of these categories. For this, the CSB had to substantiate the petitioner's downgrading with tangible material which is totally lacking. The award of such low marks for the petitioner's integrity and commitment to public service causes me to hold that the marks awarded by the CSB for the ten different categories listed in Schedule-IV to the 2019 Rules ought to be revisited.

16. In view of the above, the instant writ petition is allowed; the petitioner's supersession is set-aside, and the same shall be treated as deferment. The Establishment Division is directed to ensure that the petitioner is considered for promotion in the very next meeting of the CSB.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 29.08.2023.

(JUDGE)

*Ahtesham**

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