Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 1931 of 2021

Yousif Hyder Shaikh

Vs

Establishment Division through its Secretary, etc.

PETITIONER BY: Barrister M. Saad Buttar, Raja Abdul Qadeer Janjua and Mr. Tahir Hussain Anchan, Advocates.

RESPONDENTS BY: Mr. Farrukh Shahzad Dall, Assistant Attorney General.
Mr. Saeed Ahmed Zaidi, Advocate for respondent No.2.
Raja Saim ul Haq, Advocate for Establishment Division.
Ms. Anita Turab, Joint Secretary (CP-II), Ms. Ayesha Bashir Wani, Joint Secretary (Lit.), Mr. Jamil Akhtar Khan, Deputy Secretary, Ms. Maryam Ahmed, S.O and Mr. Mahmood Khan Lakho, S.O, Establishment Division.

DATE OF HEARING: 24.09.2021.

BABAR SATTAR, J.- The petitioner is aggrieved by the reasoning communicated to him for his deferment for promotion to BS-21 by respondent No.2 through letter dated 30.04.2021.

2. Learned counsel for the petitioner stated that the said letter communicated two reasons for his deferment. The first was that his PER in the National Management Course was "good". And the second reason was that he had no policy exposure and had predominantly field posting experience.

Learned counsel for the petitioner stated that in the 110th National Management Course, in which the petitioner participated, he was sixth in his class and the person who was at the top of the class was also granted an evaluation of "good" and consequently it could be claimed by no means that the petitioner did not perform well in the said course. Learned counsel further stated that from 01.12.2015 to 08.08.2017 the petitioner served as Chief Inland Revenue Officer Operations at FBR, which was not a field position but a policymaking position, and consequently the reasoning that he had insiffucient policy exposure was also incorrect. He stated that the reasoning for deferment suffered from irrationality and was consequently illegal and liable to be set aside. He further stated that the petitioner has been treated in a discriminatory fashion as his colleagues who were graded lower in the National Management Course have been approved for promotion.

3. The learned counsel for the petitioner further stated that the petitioner's ability is apparent from the fact that a working paper authored by him during his National Management Course was used as an exemplary paper for the next batch (i.e. 111th batch) of the National Management Course in order to guide its participants. He contended that six others who were issued grades lower than that of the petitioner in the National Management Course were promoted and the petitioner could thus not be deferred on the basis that the grade accorded to him during the National Management Course wasn't good enough. He emphasized that the petitioner had a variety of experience

which was required for promotion to BS-21 and BS-22 and further that the petitioner had no choice in the matter of where he was being appointed to serve. That the petitioner had served against various policymaking positions, including his work with World Bank in Washington and within the policy wing of FBR. And despite the fact that he had been deferred on the basis of lack of sufficient policymaking experience, he had not been transferred to any policy-related position even after his deferment, which reflected that the posting policy of the Federal Government was not in sync with the considerations borne in mind by the Federal Government while considering civil servants for promotion.

4. Learned counsel for FBR stated that the petitioner's record reflected that he had worked within FBR against a policy-related position only for a few months and that it was essential for the Federal Government to gauge the policymaking ability of an official for purposes of promotion to BS-21 given that such leadership positions required experience and ability in the realm of policymaking.

5. Learned Assistant Attorney General assisted by the Joint Secretaries, Establishment Division, submitted that the Federal Government undertook career planning in order to nurture well-rounded officers. He submitted that it was essential that a civil servant had policymaking expertise as the top echelon of civil bureaucracy required expertise in policymaking. He submitted that deferment under Rule 7(d) of the Civil

Servants Promotion (BS-18 to BS-21) Rules, 2019 **("Promotion Rules")** did not amount to punishment and was merely meant to place a civil servant on further watch to be considered for promotion within the next year. That the PERs were often extremely exaggerated and consequently it had been rightly left to the judgment of the Central Selection Board **("CSB")** as to whether the civil servant possessed the qualities required for promotion to BS-21.

6. On 11.08.2021 the learned Assistant Attorney General assisted by Dr. Ali Raza and Mr. Muhammad Khan Lakho, Section Officers had appeared before the Court on behalf of Establishment Division and stated that in cases of deferment the CSB did not undertake a formal evaluation of the officer being considered and did not fill out the form provided under Schedule-IV of the Promotion Rules. This Court had granted the Establishment Division another opportunity to confirm whether or not while deciding to defer the petitioner pursuant to section 7(d) of the Promotion Rules, the CSB had in fact not undertaken evaluation pursuant to Schedule-IV of the Promotion Rules by according scores to the petitioner after grading him against the prescribed attributes against which a civil servant is to be graded pursuant to the evaluation form under Schedule-IV of the Promotion Rules. The Establishment Division had confirmed that the evaluation form under Schedule-IV was not filled out while undertaking the evaluation of the petitioner and in fact such evaluation form is never filled out in cases of deferment.

7. The scheme of the Promotion Rules was discussed in detail in the matter of ***Abdul Majid Yousfani Vs. Establishment Division through its Secretary, etc. (W.P No.1702/2021 decided on 13.07.2021).*** It would be beneficial to restate what was held in ***Abdul Majid Yousfani*** as opposed to rephrasing the same for purposes of the present petition.

> *14. Rule 18(1) clarifies that PERs are to be quantified in accordance with the formula as set out in Schedule-III. When so quantified, the PERs provide an arithmetic score and there is no role of any subjective assessment in relation to PERs. Rule 20 mandates how TERs are to be transformed into an arithmetic score in accordance with the provisions of Schedule-V of the Promotion Rules, which also reflects that there is no subjective assessment involved in quantification of TERs. The third component of the assessment is the exercise of collective judgment by the CSB, which is to be undertaken in accordance with the objective assessment criteria listed under Schedule-IV, read together with clause (g) of the guidelines for CSB provided under Schedule-I and Rule 4(2) of the Promotion Rules. The proforma for objective assessment provided in Schedule IV, to be filled out by the CSB, is a product of clause (f) of the guidelines in Schedule-I, also reproduced below:*
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> > *"(f) Posts carrying basic pay scale 21 fall in senior management involving important policy-making or extensive administrative jurisdictions. In addition to the circulation value and variety of experience the incumbents must possess proven analytical competence, breadth of vision, emotional maturity and such other qualities as determine the potential for successfully holding posts in top management. This potential cannot be judged by mathematical formula. The Selection Board will have to apply its collective judgment to determine the same. For promotion to*

senior management posts, a civil servant must fulfill qualifying service, eligibility threshold, qualifications, relevance of experience, quality and output of work and integrity, variety of experience, training and Top Management Potential. Since officers promoted to this level may be called upon to hold independent charge of a Ministry/Division or to head a major corporation, the Board should satisfy itself about the officer's maturity, balance and ability to assume such top management positions even at short notice."

15. Perusal of the objective assessment proforma provided as Schedule-IV of the Promotion Rules, to be filled out by the CSB, lists ten parameters against which an officer is to be considered for promotion. The said proforma is labeled as an objective assessment because the parameters and attributes against which a civil servant is to be evaluated have been prescribed therein. The place where subjective assessment comes into play is when individual CSB Members award marks to the civil servant being considered against the attributes listed in Schedule-IV. It is a collegiate exercise in a sense that the marks awarded to a civil servant against this component of evaluation (which forms 30% of the total consideration for promotion) is an accumulation of marks awarded to such civil servant by each member of the CSB. Naturally there cannot be a consensus amongst all members of the CSB regarding the evaluation of a civil servant against each of the ten listed attributes or parameters. They will each undertake the evaluation by filling out the proforma and the aggregate outcome of marks against each attribute granted by each member would produce the collective view of the CSB as a collegiate body. The total marks will determine what category the officer gets placed in for purposes of Section 18(3)(d) of the Promotion Rules.

16. The objective assessment proforma also guides the CSB as to what sources of information are to be considered by grading a civil servant against each of the ten attributes listed in the proforma. Once the CSB has undertaken the assessment of the civil servant against each of the ten

attributes, the subjective assessment part of the CSB's consideration comes to an end. Once such grading is complete, the assessment of CSB is reduced once again to an arithmetic number, which is then regarded as an objective assessment. After conversion of all the three components for the assessment of a civil servant for promotion to arithmetic numbers, these numbers are to be placed in the table provided under Rule 18(3)(b), which states that 40% weightage is to be given to the quantified PERs, 30% to quantified TERs and 30% to quantified evaluation by the CSB. Once the quantification is complete, it produces a score that a civil servant being considered for promotion has been awarded out of 100. Such score is then to be considered in view of the minimum threshold of marks for promotion to officers according to pay scales as prescribed under rule 16. Rule 16 provides that the minimum threshold to be met by a civil servant to be eligible for promotion to BS-20 is 75%.

18. Another aspect of the scheme of Promotion Rules is that while PERs and TERs are independent of assessment to be undertaken by the CSB, the assessment of attributes listed in the objective assessment proforma to be filled out by CSB members is contingent on the PERs and TERs and the dossier presented to the CSB by the parent department. What emerges is that if the objective assessment by the CSB is undertaken in accordance with guidelines in Schedule-I and Schedule-IV, the larger picture regarding the performance and potential of the civil servant being assessed would in all likelihood not be in contradiction to the picture painted by the PERS and TERS. In other words, the objective assessment proforma does not grant the CSB a veto power (except to an extent pursuant to Rules 7(d), 7(k) and 8(c), which shall be discussed later) for purposes of deferment and supersession. If the collective marks after addition of quantified PERs and TERs and CSB's collective assessment are greater than the minimum threshold prescribed under rule 16, the civil servant will ordinarily be deemed fit for promotion. In the event that civil servant does not meet the required threshold for promotion or has failed thrice to

attend mandatory training, he is to be recommended for supersession. A civil servant can also be recommended for supersession if despite him scoring above the minimum threshold prescribed in Rule 16, the CSB records reasons to recommend him for supersession pursuant to rule 8(c). As this provision is not attracted to the facts of the present case, the scope and manner of exercise of such authority can be determined in an appropriate case.

22. The obligation of the CSB to inform a civil servant as to the reasons for his/her deferment or supersession under section 23 is not a mere formality as highlighted in the initial part of the judgment. Public functionaries are under an obligation to exercise their power in a just and reasonable manner. Further, under section 24-A of the General Clauses Act, 1897, the CSB is under an obligation to document the reasons for the decisions reached and communicate the same to the person affected by such decisions so that the justice, fairness and reasonableness of such decisions can be independently ascertained based on the reasoning provided. The content of the Impugned Letter reflects that the CSB, with all due respect, may not have taken into account the manner in which the Promotion Rules require it to undertake subjective assessment of the petitioner against the objective criteria listed in the objective assessment proforma under Schedule-IV of the Promotion Rules. The factors to be taken into account by the CSB while assessing the performance and potential of a civil servant to be promoted to BS-20 are provided in clause (vii) of the guidelines for CSB under Schedule-I read with Rule 4(2), which criteria is then further identified in the form of attributes listed in the objective assessment proforma under Schedule-IV read with rule 18(3)(c) of the Promotion Rules. The CSB was, therefore, under an obligation to assess the petitioner against the prescribed attributes and in the event that it concluded for purposes of rules 7(d) or 7(k) that the petitioner was to be deferred, the reasons for such deferment had to be justified in terms of the attributes against which the petitioner was to be evaluated once he served against a cadre post. In view of

> *the Impugned Letter, the petitioner can have no idea as to which attributes the CSB in its collective wisdom found deficient or missing, that the petitioner must address to be promoted in future.*

8. In the instant case, the Establishment Division has candidly submitted that the CSB has simply not undertaken the evaluation for purposes of Schedule-IV of the Promotion Rules and there is no evaluation form available that reflects the collective judgement of CSB in terms of the score awarded to the petitioner against 30% marks reserved for evaluation of the CSB. In order to decide the instant petition, this Court need not to go any further in view of the scheme of the Promotion Rules as explained in ***Abdul Majid Yousfani***. The deference to be accorded to the collective judgment of CSB is due to the subjective assessment undertaken by the senior-most officials of the civil bureaucracy as a collegiate body against the objective criteria prescribed in the Promotion Rules and listed in the form provided as Schedule-IV to the Promotion Rules. In the event that a civil servant considered for promotion has not been evaluated by individual members of the CSB and subjective assessment of each member has not been recorded in form provided under Schedule-IV, it must be deemed under the Promotion Rules that the CSB has failed to undertake the evaluation that is required to be undertaken which has been given 30% weightage under the Promotion Rules for purposes of consideration of a civil servant for promotion. In the absence of such evaluation, which is mandated under the Promotion Rules, the CSB is afforded with no alternative mechanism to evaluate a

civil servant and determine that such civil servant is to be placed on watch and deferred for promotion under Rule 7(d) of the Promotion Rules. The starting point of the collective assessment to be undertaken by the CSB under the promotion rules is for individual members of the CSB to fill out the form under Schedule-IV and grade the officer being considered against required attributes and parameters listed therein. It is once the individual members have undertaken such evaluation that CSB as a collegiate body could engage in a conversation about the strengths and weaknesses of the officer being considered and a collective view might emerge that such officer is lacking essential attributes required for promotion and is required to be placed on watch under Rule 7(d) of the Promotion Rules to demonstrate to the CSB in the next round that such deficiency has been addressed. Thus, CSB's determination even for purposes of rule 7(d) can only be undertaken once the CSB has completed its collegiate assessment process mandated in terms of Schedule-IV read together with other Promotion Rules and concluded while considering the individual attributes mentioned in Schedule-IV that the Civil Servant in question is liable to be deferred from consideration for promotion for reasons recorded by CSB after its collective assessment. As in the instant case the CSB has not undertaken evaluation as prescribed by the Promotion Rules, the decision of CSB suffers from procedural impropriety and there is absolutely nothing available on record to establish as to what process was adopted by the CSB to reach the conclusion that it reached and what was the subjective assessment undertaken by

individual members of the CSB that resulted in its collective decision to place the petitioner on watch under Rule 7(d). As was emphasized in ***Abdul Majid Yousfani***, unless the CSB maintains a record of individual assessment undertaken by each member of the CSB by filling out the form under Schedule-IV of the Promotion Rules, there will be no basis for the Federal Government to explain how the CSB came to any collective assessment. The deference afforded to such collective assessment of CSB is contingent on the fact that it is a product of individual subjective assessment undertaken by each senior member of the CSB and it is after such individual assessment together with deliberation and debate that the CSB comes to the collective assessment which is then transformed into an arithmetic score reflected in terms of a score on terms of the 30% marks to be accorded to CSB's assessment.

9. For the aforesaid reasons, due the failure of CSB to undertake the mandatory assessment as prescribed under Schedule-IV of the Promotion Rules, the impugned decision suffers from procedural impropriety and is set-aside for being unlawful and the petition is consequently **allowed.** Respondent No. 1 is directed to place the case of the petitioner before the CSB in the next meeting to be convened for purposes of promotion of officers to BS-21 and the CSB will consider the case for the petitioner in accordance with the provisions of the Promotion Rules and document reasons for any decision reached in terms of attributes to be evaluated as listed in the Schedule-

IV of the Promotion Rules after each member of the CSB has individually undertaken such evaluation by filling out the form under Schedule-IV.

10. Before parting with the judgement, this Court wishes to observe that it has emerged from challenges to promotion decisions by the Federal Government brought before this Court that there does not appear to be in place an effective posting policy being followed by the Federal Government that is in sync with the criteria prescribed for purposes of promotion. It was noted in ***Abdul Majid Yousfani*** that civil servants have no control over their posting and transfers and they are obliged to serve wherever posted in terms of section 10 of the Civil Servants Act, 1973. The Establishment Division therefore ought to come up with an effective posting policy that affords civil servants the opportunity to serve against posts that helps create a record reflecting his/her credentials in relation to attributes mentioned in Schedule-IV of the Promotion Rules, so that the CSB has sufficient data before it to undertake informed evaluation of the credentials of civil servants being considered for promotion. Unless a civil servant has been provided with an opportunity to prove himself in terms of attributes deemed essential for the promotion to higher echelons of the civil service, it would be unfair to hold lack of record or experience as a basis to deny promotion or to place such civil servant on further watch. As in such case it is not the lack of ability, but rather the lack of opportunity to establish ability that would be held against the civil servant being considered for promotion. It

logically follows that an essential feature of the human resource policy of the Federal Government ought to be a posting policy that affords civil servants a variety of experience on the one hand and the Federal Government an opportunity to document strengths and weaknesses of civil servants against the attributes it wishes to see in officers deemed capable of forming part of senior bureaucracy. It appears that at present the posting policy being followed by the Establishment Division is not tailored to effectively evaluate civil servant against attributes which are considered by the CSB for purposes of promotion. It is, therefore, expected that the Federal Government will come up an effective posting policy which is in harmony with the promotion policy as reflected in the Promotion Rules in order to enable the CSB to undertake informed and effective evaluation of civil servants being considered for promotion and minimize legal challenges to promotion decisions being reached by the CSB. The office is directed to send a copy of this judgment to Secretary Establishment Division for his information.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **08.11.2021**.

JUDGE

Saeed.