HCJD/C-121

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No.2100 of 2021

Mohammad Ishfaq

Versus

Federation of Pakistan through Secretary Establishment Division and others

Petitioner by	**:**	**Mr. Mohammad Ramzan Khan, Advocate.**
Respondents by	**:**	**M/s Mohammad Shoaib Shaheen, Mirza Waqas Qayyum and Nasir Saleem, Advocates.** **Mr. Aqeel Akhtar Raja, A.A-G.** **M/s Sher Alam Khan and Mohammad Sultan, Section Officers, Estb. Div.** **Malik Mazher Mohammad, Accounts Officer, Department of Explorers, Petroleum Division, Ministry of Energy.**
Date of Decision	**:**	**02.07.2024**

***Babar Sattar, J*:-** The petitioner is aggrieved by the actions of respondent No.3 whereby he has been superseded after being considered for promotion from BPS-19 to BPS-20 under the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 **("Promotion Rules")**.

2. Learned counsel for the petitioner submitted that the departmental representative who presented the petitioner's case before CSB had a grudge against the petitioner and consequently did not present an accurate account of the petitioner's record before respondent No.3. Learned counsel for

the petitioner submitted that the petitioner is the senior most person in BS-19 in his service according to the seniority list issued on 29.07.2020. He submitted that all of the pre-requisites for promotion were satisfied including successful completion of Midcareer Management Course and Senior Management Course in which the petitioner attained good grades. He further submitted that all of the previous ACRs of the petitioner have been graded as outstanding and very good except for the last ACR for a period of nine months, which was also written by the departmental representative who presented the petitioner's case. He submitted that the ACR for the year 2018 for the three months that was written by a different supervising officer was very good, but the nine months for which he was evaluated by the departmental representative who presented his case, the ACR was adverse. And that the petitioner has challenged the said ACR before the Federal Service Tribunal **("FST")**, which allowed the petition filed by the petitioner by order dated 20.11.2023 and also concluded that the case of the petitioner had been prejudiced by the countersigning officer who was reluctant to sign his Performance Evaluation Report **("PER")** with *mala-fide* intention to benefit a junior of the petitioner (i.e. respondent No.4). He submitted that as a consequence the adverse remarks and the downgrading of the PER of the petitioner were set aside. Learned counsel for the petitioner submitted that after the downgrading of the petitioner's PER in the year 2018 he filed a departmental appeal on 28.12.2020. It was during the pendency

of such appeal that the petitioner was superseded and respondent No.4 was promoted. He submitted that the adverse remarks in his PER by the countersigning officer and the downgrading of his performance evaluation ought not have been placed before the CSB in view of clause 3.17 of the Guide to Performance Evaluation, which states that any adverse remarks or down-gradation of a PER should not be placed before the CSB till a representation against such action has been decided. Learned counsel for the petitioner submitted that while the departmental appeal was rejected on 05.04.2021, the FST accepted the appeal against the departmental decision on 10.08.2023. Once his PER for the year 2018 was considered extraordinary, pursuant to original evaluation as upheld by the FST, he ought to have been granted 10 marks for his performance in the year 2018. Had such marks been granted for the year 2018, his overall marks for the PERs would have been enhanced and consequently he would have surpassed the threshold of 70 marks and would have qualified for the promotion.

3. Learned Assistant Attorney-General submitted that there was no infirmity with the manner in which the case of the petitioner had been processed before the CSB. He submitted that at the time when the case was sent to the CSB for consideration of the petitioner for promotion, his countersigning officer had already passed adverse remarks and had downgraded his performance evaluation. Subsequently, such action was upheld in the departmental appeal as well.

Therefore, there is no illegality on part of the Federal Government in the manner in which the case was processed, as at the relevant time all relevant facts had been placed before the CSB. He further submitted that pursuant to the order of the Court dated 30.05.2024, the Establishment Division had carried out the calculation of the marks that would be awarded after granting the petitioner 10 marks in his performance evaluation for the year 2018, as directed by the FST. And despite such recalculation, the petitioner's collective score on account of his PERs and TERs came to 51.31. Once the assessment grade allotted to him by CSB was added to this, score for PERs and TERs, his aggregate score was still less than 65, whereas the minimum threshold to be met to qualify for promotion was 70. This meant that even if the petitioner were to be awarded 10 marks for his performance evaluation in the year 2018, he would still not meet the threshold of 70 marks required for purposes of promotion.

4. Learned counsel for respondent No.4 submitted that there was no illegality the manner in which the petitioner was considered for promotion. He submitted that the petitioner had been superseded as he did not meet the requisite marks required for purposes of promotion. He submitted that even after giving effect to the decision of FST the petitioner could not qualify for promotion as he would not meet the threshold of 70 marks, even if he was allotted full 10 marks for his performance for the year 2018. He submitted that pursuant to Rule 10(5) of the Promotion Rules, the petitioner would be eligible for

reconsideration after he had been issued one more performance evaluation report.

5. The Court had directed the Federal Government to recalculate the score to be attributed to the petitioner in the event that the decision of the FST setting aside the down-gradation of his performance evaluation for the year 2018 were to be given effect. Even after awarding the petitioner 10 marks for his performance evaluation for the year 2018 and adding such marks within the overall scores for PERs, and then adding the overall score for PERs in the overall score attained by the petitioner for his TERs, his aggregate score comes to 51.31 out of 70 under the Promotion Rules. The remaining 30 marks are to be granted by the CSB pursuant to an objective assessment of the petitioner against the criteria prescribed in the Promotion Rules. Learned counsel for the petitioner contended that the adverse remarks included in his dossier, which have been set aside by the FST, would naturally affect the evaluation undertaken by members of the CSB. Had such adverse remarks not been placed before the CSB, the petitioner might have been given a higher grade by CSB and may have cross the threshold of 70 marks, in which case he would have been promoted and would retain his seniority against Respondent No.4.

6. This Court cannot pontificate over such a hypothetical. There is no doubt that the FST in its order dated 10.08.2023 has found that the down-gradation of the petitioner's performance evaluation for the year 2018 was illegal and has set it aside. The FST has also observed that there may have

been *mala-fide* involved in the manner in which the petitioner's performance evaluation was undertaken for the year 2018. The manner in which overall marks are allocated for purposes of considering a candidate for promotion creates a link between the grading for PERs and the evaluation to be undertaken by the CSB. It can obviously not be ruled out that any adverse remarks within the dossier of the petitioner could have influenced the members of CSB. But the impact of such effect cannot be quantified by this Court. The down-gradation of his evaluation report and the adverse remarks were part of the petitioner's record at the relevant time and consequently no illegality was committed by their inclusion within the dossier that was presented before the CSB. But this Court can also not close its eyes to the judgment of the FST dated 10.08.2023, which has found that not only was the down-gradation of the performance evaluation of the petitioner for the year 2018 illegal but that such down-gradation and the manner in which his PERs were compiled was also motivated by *mala-fide* inspired by the intent to benefit one of the petitioner's colleagues.

7. In this view of the matter, this Court finds that it would be appropriate for the CSB, when it considers the petitioner for promotion in the next CSB, to also determine whether in view of the judgment rendered by the FST dated 10.08.2023 and the observations recorded therein, the petitioner was entitled to be promoted in accordance with the criteria as prescribed in the Promotion Rules when he was first considered by the CSB in 2021. And, if so, whether he is entitled to be promoted with

effect from the date on which he was superseded in the meeting of the CSB held from 04.01.2021 to 07.01.2021, given that at the relevant time the petitioner's dossier included adverse remarks and a PER score, which has since been determined by the FST to be incorrect and a product of *mala-fide.*

8. The petition is ***allowed*** in the above terms and it would before the CSB to consider the petitioner in its next meeting and determine whether (i) the petitioner is entitled to promotion, and (ii) if he is entitled to promotion with effect from the last CSB meeting held in 2021, in view of the observation of FST in judgment dated 10.08.2023.

(BABAR SATTAR)
JUDGE

M.A. Raza