JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2110 of 2021

Maj. (R) Nadeem Arif Ch.

Versus

Hon'ble Prime Minister of Pakistan, etc.

Date of Hearing	:	02.08.2022.
Petitioner by	:	Hafiz S.A. Rehman, Hafiz Hifz ur Rehman & Rizwan Nawaz and Muhammad Anwar Mughal, Advocates
Respondents by	:	Muhammad Shakil Awan, AAG. Amjad Iqbal D.D. (litigation) I.B. Mohammad Arfan, Section officer Establishment Division.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, the petitioner has prayed for the following relief:-

> **"It is therefore, most humbly prayed that an appropriate writ may graciously be issued declaring letter dated 30.04.2021 and 18.05.2020, as being illegal, unfounded, arbitrary, capricious, unsustainable, malafide, unjust and unfair.**
> **It is further prayed that on setting aside the above letter, case of the petitioner be sent back to CSB for consideration afresh and consider the petitioner for promotion to BS-20 along with all consequential benefits including seniority from the date of his 1st junior was promoted as is provided in law."**

2. Facts forming background of the instant petition are that the petitioner, a BS-19 officer, is posted as Director Intelligence Bureau under PHQ at Multan. In the year 2015, he was posted as General Manger Vigilance on deputation basis for the period of two years and in the year 2017, posted at BPHQ

Quetta. In 2019, he was again transferred to N.R.H.Q. Rawalpindi. The case of the petitioner for promotion from BS-19 to BS-20 was considered by the Central Selection Board **(CSB)** in its meeting held on 12.01.2018 but was superseded as he failed to meet the required threshold of 70 marks in the objective assessment and was placed in category-C. The petitioner questioned the said supersession through W.P. No. 1009/2018 before this Court which was allowed vide judgment dated 16.11.2018 and the reasons/recommendations of supersession were set aside and the respondents were directed to place the matter before the CSB.

3. The petitioner was served with charge-sheet on 09.5.2018 and an inquiry was held but the same was withdrawn vide Memorandum dated 27.11.2018. The second charge-sheet was served upon him on 16.09.2019 together with the statement of allegations, inquiry was conducted vide Memorandum dated 22.07.2019. The inquiry officer observed as under:-

> ***"that it was a minor administrative issue and could have been resolved through excellent managerial/administrative skills."***

4. The third charge-sheet dated 28.11.2019 along with the statement of allegations was conveyed to the petitioner and a proper inquiry was also conducted. It was recommended by the Inquiry Officer:- ***"there appears no reason to continue the fresh proceedings against major (Retired) Nadeem Arif Chaudhry as the charges framed against him within the meaning of Rule 2 (4) and 3 (b) of E & D Rules 1973 for acts of commission and omission on his part have not been substantiated. Therefore, it is recommended that inquiry proceedings against the defendant may be withdrawn."***

5. The petitioner again was served with show-cause notice **(SCN)** on 10.08.2020. The Director vide letter dated 08.09.2020 communicated to the Director General that the allegations contained in the SCN have already been formally dealt with twice and it would be appropriate to consider the findings of

the previous Inquiry Officers and proceed in accordance with law, that vide Office Memorandum dated 10.08.2020 the charge sheet and SCN were withdrawn. On 23.12.2020 the petitioner was placed under special report for a period of six months. On 18.05.2020 the case of the petitioner for his promotion was placed before the CSB wherein he was deferred by observing as under:-

> ***"The Departmental Representative apprised the board that the officer was deferred in CSB Meeting held in January, 2018 and in No/Dec 2018 based on special report placed on the dossier of the officer which contained adverse remarks. Later he was deferred in CSB meeting held in May 2019 for want of performance.***
> ***That the board was informed that the officer has an average understating of Govt. issues. He exhibited limited efforts and willingness to improve and seriously lacked interpersonal skills. His training report highlighted his causal approach towards effective team building. His PERs rated him in the lower half of the group in all the 3 facts of leadership, friendship and professionalism. His promotion potential was rated as limited. The officer was presently facing a disciplinary proceeding on account of misconduct and misbehavior towards his seniors. He was charge sheeted on 28.11.2019. The Board wanted to consider the officer once PER for 2019 becomes available. Subsequent to above discussion the Board unanimously decided to recommend the officer for deferment till the availability of PERs of the year 2019 in line with Rule 7 (e) of Civil Servant Promotion (BS-18 to BS-21) Rules, 2019"***

The above said reasons were conveyed to the petitioner vide letter dated 30.04.2021.

6. The learned counsel contended that the petitioner has been discriminated and the findings should have been given by the CSB rather than following the directions of the Departmental Representative as observed by the CSB in its meetings; that no inquiry is pending against the petitioner at the moment; that the SCNs issued earlier were subsequently withdrawn by the respondents which fact clearly depicts that the petitioner was innocent; that the subsequent SCN was issued in the year 2020 but with utmost surprise, no action has so far been taken; that the petitioner has already filed objections over the PERs of the year **2019** under Performance Evaluation Guide Rules 2.43 and 2.44; that the charges leveled against the petitioner in the SCN have been withdrawn time and again but still the respondents are adamant to proceed with the charges which have already been inquired/probed into and found baseless, as such there is no ground to initiate another inquiry when all the previous inquiries have been concluded in favour of the petitioner; that this fact was not appreciated by the CSB; that it was the duty of the CSB to consider all the relevant facts while determining the eligibility of the petitioner and that the promotion is earned right of the petitioner which is being denied by the respondents on flimsy ground of pending inquiry. Lastly, the learned counsel prayed for a direction to the respondents to consider the petitioner in the forthcoming CSB Meeting. Learned counsel relied upon judgment of this Court passed in W.P. No. 747/2022, W.P. No. 839/2022 and W.P. No. 421/2022.

7. On the Contrary, the learned AA-G assisted by the Deputy Director (Litigation) Intelligence Bureau and Section Officer (Establishment Division) repelled the above submission by contending that the petitioner shared "*Secret*" documents on social media in violation of Official Secret Act, 1923; that petitioner managed 15 days' medical leave and left the station of posting without informing his senior; that the petitioner did not comply with the orders to appear before the Medical Board; that the petitioner was issued an "Advice" dated 22.07.2019 by the Deputy Director General (DDG) N.R.H.Q. Rawalpindi due to breach of office decorum, whereafter the D.G. I.B issued directions to

conduct Facts Finding Inquiry; that the petitioner was served with the charge sheet dated 16.09.2019 and an inquiry officer was nominated who submitted his report on 21.10.2019; that in exercise of powers conferred under Rule 2 (3) and 5 (1) (iii) of the Government Servant (Efficiency and Discipline) Rules, 1973, the competent authority had issued SCN dated 10.08.2020 which is still pending, therefore, petitioner was not considered for promotion in CSB Meeting and was deferred under Section 7 (e) of the Civil Servant Promotion Rules, 2019.

8. The facts giving rise to the instant petition have already been discussed in the paragraphs *supra,* therefore, need not be reiterated.

9. It is an admitted fact that the petitioner was served with multiple SCNs, faced several inquiries that ultimately culminated into his favour. The SCN pending since 2020 has not yet been decided by the respondents against the petitioner. There was no such record placed before this Court on the basis of which it could be appreciated and held that the petitioner was ever found guilty of any misconduct, and thus could be penalized, deprived of his right of promotion and deferred in terms of Section 7 (e) of the Promotion Rules of 2019.

10. The perusal of parawise comments filed by respondents 1, 2 & 3 and the report filed by respondent No. 4 would reveal that the petitioner was superseded and deferred for promotion due to pending inquiry and not meeting the required threshold in objective assessment by the CSB.

11. While dealing with the first limb of the petition that an inquiry is pending against the petitioner, this aspect of the matter has been dealt with in great deal by the Hon'ble Apex Court in its judgment reported as ***Zia ul Hassan v. Naseem Chaudhry,*** **(2000 SCMR 645)**, wherein it has been held that ***"mere fact that some disciplinary proceedings were pending against the civil servant was not sufficient ground to disregard the promotion***

***of a civil servant if not supported by principle of natural justice**."*

12. In the case of ***Mumtaz Ali Shah v. Chairman Pakistan Telecommunication Company Ltd, Headquarter, Islamabad & 6 others (PLD 2002 SC 1060)***, the Hon'ble Apex Court graciously allowed appeal in a case where appellant was deferred on account of pendency of a criminal case. The appellant was held entitled to promotion from the date his juniors were promoted. In the case ***Muhammad Hanif v. Province of Sindh*** **(2011 PLC (CS) 534)** the Hon'ble Sindh High Court imparted directions to the respondents to consider the petitioner for promotion purely on merits without being influenced by the pendency of any civil or criminal case.

13. In the case of ***Zia ul Hassan, Home Secretary and Others v. Naseem Chaudhry (2000 SCMR 645)***, it was held by the Hon'ble Apex Court that mere pendency of some disciplinary inquiry would not be a sufficient ground for non-consideration for promotion. Law to such an effect has also been laid down in the case of ***Salah ud Din Muhgal v. Province of Sindh (2012 PLS (CS) 1018)***, ***Nazeer ud Din v. Government of Pakistan through Secretary Passport and Immigration Department (2017 PLC (CS) 578)***, ***Muhammad Riaz v. Government of Punjab (2003 PLC (CS)1496)***, ***Muhammad Hanfi V. Province of Sindh (2011 PLC (CS) 534)***, ***Javed Iqbal Nasir v. Managing Director PEPCO (2012 PLC (CS) 1043***), ***Shama Khan Zafar v. District Coordination officer Lodhran (2014 PLC (CS) 948).***

14. The ratio set in by the Hon'ble Apex Court guides to observe that no officer could be punished by denying him his "**earned right"** of promotion or consideration for promotion before the charge is established against him. Mere pendency of a case or inquiry is no valid ground for denying consideration for promotion. However, the authorities concerned would not be debarred to continue with the disciplinary proceedings if there is anything against the civil servant, the competent authority may proceed against him in accordance with law.

15. Dealing with the second limb of the matter that the petitioner has not been able to meet the required threshold of the objective assessment during the CSB, this aspect of the matter has already been dealt by this Court while placing reliance upon the judgment passed in W.P. No. 421 of 2022 titled as ***Yousaf Haider Sheikh v. Establishment Division, etc***, wherein it has been held as under:-

> "In view of the aforementioned opinion, this Court finds the following:
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> 1. The assessment undertaken by the CSB that forms the basis of the decision to supersede the petitioners has been made in breach of requirements of Rule 18 of the Promotion Rules and the criteria and process for assessment prescribed under the Promotion Rules, and is liable to be set-aside.
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> 2. The promotion decisions rendered by the CSB have been made without undertaking mandatory assessment pursuant to Schedule-IV objective assessment proforma, with each member of the CSB evaluating each candidate up for promotion against ten attributes mentioned in the said proforma, against parameters mentioned therein, on the basis of sources of information mentioned therein. Any promotion decision made without undertaking objective assessment in accordance with requirements of Schedule-IV of the Promotion Rules is without lawful authority and liable to be set-aside.
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> 3. The sources of information that are to be taken into account for undertaking objective assessment for purposes of Schedule-IV of the Promotion Rules read together with Rule 18 can only be the sources identified within the Rules. And unless the Rules are amended by the Federal Government to provide for additional sources of information, the CSB is vested with no authority to take into account additional sources of information not mentioned in Schedule IV, including Intelligence Reports.
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> 4. The civil servant being considered for promotion has a right to be confronted with any adverse finding or information that is to be taken into account by the CSB for purposes of

making the promotion decision in relation to such civil servant and a right to respond to such adverse opinion or finding. This is mandatory to meet the requirement of due process prescribed under Article 10A of the Constitution. It is for the Federal Government to identify, through rules framed under the Civil Servants Act, 1973, the stage at which such information is to be disclosed to the civil servant and the manner in order to give him/her an opportunity to respond to the same.

5. The CSB is under an obligation to record candid reasons that inform the CSB's decision to defer or supersede a civil servant. The reasons, as documented, must be such that they convey to the civil servant in question the thinking of the CSB and the factors and facts that prevailed with the CSB in order to enable such civil servant to address the concerns of the CSB and the deficiencies pointed out before his case is presented for reconsideration before the CSB under Rule 10 of the Promotion Rules.

6. The deliberations of the CSB and the minutes of meeting recording such deliberations as well as the material considered by the CSB while reaching promotion decisions are not protected by secrecy when it comes to the civil servant in relation to whom the decision is being made. The public in general may not have a right to access such material under the Right of Access to Information Act, 2017, but the civil servant whose carrier and progression is being determined by a decision based on such material has a vested right to be provided such material. Federal Government shall share excerpts of the minutes of the CSB meeting relating to the civil servant who is a candidate for promotion, together with the Schedule-IV objective assessment proformas filled out by the CSB members, with such civil servant while communicating by him/her the decision reached by the CSB, to comply with requirements of Rule 23 of the Promotion Rules.

7. The petitions are maintainable as they have impugned the decisions of the CSB on grounds of illegality for rendering supersession decisions in breach of provisions of the Promotion Rules. The impugned decisions are liable for being judicially reviewed on ground of procedural impropriety for failing to comply with the procedure through which promotion assessment is to be made, including by

> initiating the assessment process by filling out Schedule-IV objective assessment proformas. The CSB's decisions are liable to be set-aside as the CSB has transformed an objective assessment process prescribed under the Promotion Rules into an unstructured and opaque subjective process driven by opinions of the CSB backed by no documentary evidence and reasoning."

16. By following the wisdom laid down in the case of **Yousaf Haider Sheikh** *(supra)*, the supersession of the petitioner is also liable to be set-aside.

17. Resultantly, the instant writ petition stands **allowed** and the impugned letters dated 30.04.2021 and 18.05.2020 are set aside. The supersession decision impugned by the petitioner is accordingly set aside. The Establishment Division is directed to process the case of the petitioner and place the same before the forthcoming CSB meeting for his consideration for promotion afresh in the light of the observation made herein above.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____08.2022.

JUDGE

//Kamran//