JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 421/2022

Yousif Hyder Shaikh
Vs.
Establishment Division through its Secretary, Government of Pakistan and 2 others.

PETITIIONERS BY:	Barrister M. Saad Buttar, Mr. Tahir Hussain Anchan and Raja Abdul Qadeer, Advocates in Writ Petitions No. 421, 513, 514, 515, 516, 749, 750, 751, 752, 832, 840 and 1666 of 2022. M/s Abdul Rahim Bhatti and Yasser Rahim Bhatti, Advocates in Writ Petitions No. 558, 596 and 600 of 2022. Mr. Zaheer Ullah Jan, Advocate in W.P No. 993/2022.
RESPONDENTS BY:	Ch. Ishtiaq Mehrban, Deputy Attorney General. Raja Saim-ul-Haq Satti, Deputy Legal Advisor, Establishment Division. Ms. Ayesha Bashir Wani, Joint Secretary (Litigation) and Mr. Abdul Rehman Goahr, S.O (Litigation), Establishment Division. M/s Hafiz S.A Rehman, Hafiz Hifz ur Rehman Sayed, Muhammad Irshad Chaudhry and Sheikh Rizwan Nawaz, Advocates for FBR. Mr. Munawar Naqvi, A.A.O (Legal), Auditor General of Pakistan.
DATE OF HEARING:	02.06.2022.

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BABAR SATTAR, J.- This judgment will dispose of writ petitions listed in Annexure-A hereto. All of the petitioners are

aggrieved by letters issued by relevant Divisions of the Federal Government under rule 23 of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 **("Promotion Rules")** communicating reasons recorded by Central Selection Board **("CSB")** while superseding the petitioners.

2. Learned counsels for the petitioners submitted that the impugned letters included no reasons whatsoever for supersession and merely stated that the CSB had found that the petitioners did not meet requisite threshold for promotion to the next grade. It was submitted that disclosing the fact of supersession for not meeting the required threshold was different from communicating the reasoning of the CSB for supersession, which was what the respondents were obliged to do under Rule 23 of the Promotion Rules read together with section 24A of the General Clauses Act, 1897. That under the Promotion Rules, the CSB was under an obligation to perform objective assessment of candidates for promotion with each member of the CSB filling out the objective assessment proforma provided under Schedule-IV to the Promotion Rules, which obligation has not been complied with and only one proforma has been filled out on behalf of the entire CSB. That the assessment on the basis of which the supersession decision was made was not objective but was subjective and it was not based on any tangible material. That it had been held by the learned Lahore High Court in ***Muhammad Zafeer Abbasi, Deputy Secretary, Ministry of Kashmir Affairs and Northern Areas and Safron Vs. Government of Pakistan*** ***(2003 PLC (CS) 503)*** that promotion decisions could only be made on the basis

of tangible material and the said principle was reiterated by the august Supreme Court in ***Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817)*** and ***Federation of Pakistan through Secretary, Establishment Division Vs. Dr. Muhammad Arif (2017 SCMR 969***). That where the CSB took into account any adverse opinion it was under an obligation to disclose such material to the candidate in question to enable him to defend himself and furnish an explanation in relation to such material and such lack of disclosure rendered the CSB decision infirm as had been held by the learned Division Bench of this Court in ***Secretary, Establishment Division, Government of Pakistan Vs. Dr. Muhammad Arif (2017 PLC (C.S) Note 66)*** and reiterated by the august Supreme Court in ***Federation of Pakistan through Secretary, Establishment Division Vs. Dr. Muhammad Arif (2017 SCMR 969)***. That sources of information on the basis of which assessment of candidates was to be undertaken were identified in the Schedule-IV objective assessment proforma and no additional sources of information such as personal opinion of CSB members or the departmental representative could be taken into account while making the assessment. That in ***Mrs. Iram Adnan Vs. Federation of Pakistan (2012 PLC(CS) 1355)***, ***Liaquat Ali Chugtai Vs. Federation of Pakistan through Secretary Railways (2012 PLC (C.S) 1062)***, ***Secretary, Establishment Division Government of Pakistan Vs. Dr. Muhammad Arif (2017 PLC (C.S) Note 66)***, ***Orya Maqbool Abbasi Vs. Federation of Pakistan (2014 SCMR 817)***, ***Tariq Aziz-ud-Din and others (2010 SCMR 1301)*** and ***Federation***

***of Pakistan through Secretary, Establishment Division Vs. Dr. Muhammad Arif* (2017 SCMR 969)**, the Federal Government had been directed to prescribe objective criteria regarding promotion, which direction has been complied with after several flawed attempts by promulgating the Promotion Rules. That now the Promotion Rules were being given effect in a manner that placed 30 marks to be awarded by the CSB at the subjective and unstructured discretion of the CSB. That it was now well-settled that exercise of discretion in an arbitrary or unstructured manner also breached the guarantee of equal protection under law as provided in Articles 4 and 25 of the Constitution. The learned counsel for petitioners also relied on ***Muhammad Akbar Khan Hoti Vs. Federation of Pakistan* (2006 PLC(CS) 619), *Muhammad Ayaz Khan Vs. Government of Sindh* (2007 PLC(CS) 716), *Sameen Asghar Vs. Federation of Pakistan* (2010 PLC(CS) 725), *Amna Imran Vs. Federation of Pakistan* (2019 PLC(CS) 134)** and ***Cap. Retd. Tariq Hayat Khan Vs. Federation of Pakistan* (2019 PLC(CS) Note 15)**.

3. The learned Deputy Attorney General assisted by the Joint Secretary, Establishment Division objected to the maintainability of the petitions in view of the law laid down by this Court in ***Sikandar Hayat Maken Vs. Federation of Pakistan* (2021 PLC(CS) 1450)** and submitted that this Court had held in ***Sikandar Hayat Maken*** that the decision of CSB was to be respected and the court ought to exercise restraint when such decisions are brought into question as presumption of legality is attached to them. That each member of the CSB was

not under an obligation to fill out Schedule-IV objective assessment proforma but that one proforma was to be filled out for each candidate on behalf of the CSB. That Schedule-IV objective assessment proforma identified the source of information that was to be taken into account by the CSB while undertaking the assessment of candidates and included the source described as "documentary evidence" created room for the CSB to take into account additional material, including any intelligence reports that were placed before the CSB. That there was no obligation to confront candidates with adverse material being taken into account by the CSB as promotion assessment could not be turned into a trial and there was no illegality in the manner in which the CSB had evaluated the petitioners. That the impugned letters identified the basic reasons for supersession of the petitioners and the petitioners had no entitlement to be provided minutes of meeting of the CSB that captured the discussion that took place between the CSB members and such minutes were confidential and were not required to be shared with anyone in view of section 7 of the Right of Access to Information Act, 2017.

4. On Court's instructions, the respondents were directed to place on record the minutes of the CSB meeting in order to explain the decision-making process and the manner in which assessment had been undertaken in relation to the petitioners, together with the Schedule-IV objective assessment proforma filled out by the CSB for each petitioner. The respondents were also directed to place on record the complete information in relation to each candidate that was placed before members of

the CSB in order to enable this Court to determine the sources of information the CSB took into account while undertaking the assessment of the petitioners. Such information was placed on record in sealed envelopes, which has been made part of the court record.

5. The petitioners are seeking judicial review of the CSB's decisions that have superseded them after considering them for promotion. This Court has been asked to undertake such judicial review on the basis that the decisions suffer from (i) procedural impropriety, and (ii) illegality for having been reached in breach of the Promotion Rules and for being based on information that falls outside the scope of the information prescribed under the Promotion Rules to be taken into account for assessment of candidates for promotion and for failure to disclose to the petitioners adverse information taken into account while making such decisions.

6. The questions before this Court are the following:

1. Whether the petitions are maintainable?
2. What is the scheme of assessment prescribed under the Promotion Rules?
3. What information can CSB take into account while undertaking assessment for purposes of promotion decisions in view of the objective assessment proforma prescribed under Schedule-IV of the Promotion Rules?
4. Do civil servants have a right to be disclosed adverse material taken into account that informs promotion decisions related to them?

5. What is the scope of Rue 23 of the Promotion Rules and is the requirement to share reasons under the said Rules limited to informing them that they have been found ineligible or does the right include sharing detailed reasoning as noted in the relevant minutes of the CSB meeting.

MAINTAINABILITY OF PETITIONS.

7. The question of maintainability need not be adjudicated afresh as it came before this Court in ***Abdul Majid Yousfani Vs. Establishment Division through its Secretary, etc. (W.P No. 1702 of 2021)*** wherein the following was held:

> *7. ...The proposition that an action or decision by the executive branch of the State that suffers from illegality or irrationality or procedural impropriety is liable to be subjected to judicial review is almost as old and well-settled as the doctrine of judicial review itself. It is true that jurisprudence within service law clearly reflects that courts are deferential toward discretionary exercise of power for administrative purposes by competent authority within the executive branch of the State. And it is not for the court to engage in intrusive non-deferential second-guessing of the executive's determination of fitness or suitability of a civil servant for promotion. This approach is rooted in (i) the doctrine of separation of powers, (ii) the obligation of the court to give effect to the legislative intent behind a statute where the legislature has endowed the executive with the responsibility to undertake administrative decisions, and (iii) the doctrine of judicial restraint which cautions the court against getting embroiled in policy-based judgments. Consequently, when it comes to the determination of question of promotion of a civil servant by the competent authority, in exercise of judicial review, the court affords and undertakes scrutiny of the decision if a ground of judicial review is made out, by exercising rational scrutiny as opposed to strict scrutiny. The object of such scrutiny is not to question the wisdom of the decision, but the legality of the basis that forms such*

decision. In other words, the court merely seeks to ascertain whether the executive authorities have maintained the required evidentiary record reflecting the factual and analytic basis for their decision to explain the reasoning behind it. If the executive fails to adequately justify its decision for being rational and in accordance with the relevant considerations, such policy choice may still not be irredeemably faulty. But when the reasoning behind a decision is found to be perverse, the court, by setting-aside the executive's decision in view of the manner in which it has been reached, only requires the competent executive authority to reconsider and ensure that the decision reached is just, fair and reasonable, not inspired by extraneous considerations and supported by relevant considerations. We have come a very long way from the time when any branch of the State could claim to possess unfettered discretion or claim protection against scrutiny of decisions that are arbitrary or capricious.

8. Our jurisprudence reflects that constitutional law, administrative law and service law have converged and manifest that in a democratic State, where authority flows from the Constitution and is regulated by the Constitution and the law, no power-wielder can claim to possess unfettered discretion. Within the domain of constitutional law, Article 4 guarantees every citizen the right to be treated equally in accordance with law and in view of the fundamental rights guaranteed by the Constitution, including Article 25 guaranteeing the right to equality and protection of law, any arbitrary decision prejudicial to the rights of a citizen is in itself discriminatory and in breach of Article 25 read together with Article 4 of the Constitution. In the domain of administrative law, ***Aman Ullah Khan Vs. The Federal Government of Pakistan through Secretary Ministry of Finance and others*** *(**PLD 1992 SC 1092)** mandated that exercise of discretion must be structured and exercise of unstructured discretion is tantamount to illegal exercise of power. Within the domain of service law, it has been held that section 24-A of the General Clauses Act, 1897 is to be read within all statutes along with principles of natural justice. Consequently, any arbitrary or capricious exercise of authority is found to suffer from illegality or irrationality and any*

exercise of discretion in breach of provisions of natural justice amounts to procedural impropriety subject to judicial review.

8. It was settled by the august Supreme Court in ***I.A Sherwani and others Vs. Government of Pakistan (1991 SCMR 1041)*** that the question of fitness is not amenable to the jurisdiction of Federal Service Tribunal in view of section 4(1)(b) of Service Tribunals Act, 1973, and any grievance in relation to fitness of a civil servant to be promoted can be agitated under Article 199 of the Constitution and the bar of section 212 of the Constitution is not attracted in such cases. ***I.A Sherwani*** remains good law till date.

9. The test for judicial review was laid out with clarity by the august Supreme Court in ***Dr. Akhtar Hassan Khan v. Federation of Pakistan (2012 SCMR 455)*** wherein the following was held:

"*In Tata Cellular v. Union of India ((1994) 6 SCC 651), the Courtwhile dilating on the parameters of judicial review in matters of awarding of contract by the Government candidly laid down a*s follows:--

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

(1) whether a decision-making authority exceeded its powers?

(2) committed an error of law,

(3) committed a breach of the rules of natural justice,

(4) reached a decision which no reasonable tribunal would have reached or,

(5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy of particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in

which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:--

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time."

The test was reiterated by the apex court in ***Asaf Fassihuddin Khan Vardag Vs. Government of Pakistan*** **(2014 *SCMR* 676)** wherein the following was held:

"… It has also been held by the Courts that in matters of judicial review the basic test is to see whether there is any infirmity in the decision making process. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its decision for that of the decision maker. The interference with the decision making process is warranted where it is vitiated on account of arbitrariness, illegality, irrationality and procedural impropriety or where it is actuated by mala fides…

It is to be noted that the duty of the Court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached; or abused its powers. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly, put, there are three grounds upon which an administrative action

is subject to control by judicial review; namely, illegality which means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it; irrationality which means unreasonableness; and procedural impropriety."

10. The understanding of the respondents of the ratio in ***Sikandar Hayat Maken Vs. Federation of Pakistan (2021 PLC(CS) 1450)*** seems to be incorrect. ***Sikandar Hayat Maken*** did not lay down a new test for judicial review in relation to the question of fitness of civil servants for promotion. The test for judicial review remains the one enumerated by the august Supreme Court as mentioned above. ***Sikandar Hayat Maken*** upheld the vires of the Promotion Rules and provided guidance in relation to the standard of judicial review that would apply in relation to promotion decisions while highlighting that court ought not undertake strict scrutiny of the merits of the decision rendered by the CSB or second guess the opinion formed by the CSB regarding the entitlement of civil servant for promotion. However, in the event that a challenge to the decision of CSB in superseding a civil servant is based on settled norms of judicial review, including illegality, irrationality or procedural impropriety, such challenge can be brought before the court in its constitutional jurisdiction. As the challenge to the instant petitions is based on procedural impropriety and illegality that allegedly marred the decisions rendered by the CSB, for having been reached in breach of provisions of the Promotions Rules, the objection to the maintainability is without merit.

SCHEME OF ASSESSMENT

11. The scheme of assessment under the Promotion Rules also need not be articulated afresh in this petition. The said scheme was enumerated by this Court in ***Abdul Majid Yousfani***, the observations from which are equally applicable in the instant matter. In the said judgment it was held that:

> *13. In view of the provisions of the Promotion Rules, it is evident that there are three components that form part of overall consideration in relation to promotion issues: (i) Performance Evaluation Report (PERs), (ii) Training Evaluation Reports (TERs), and (iii) dossier and collective judgment of the CSB. The marks allocated to each of these components and how evaluation is to be undertaken in each of these components is provided under Rule 18...*
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> *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, ...*
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> *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 not 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 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.

...

17.The manner in which the promotion rules have been framed reflects that the Federal Government has made a diligent effort to exclude unstructured discretion from the process through which civil servants are considered for promotion. The Rules thus describe the weightage to be given to each component of the evaluation process on the basis of which the decision of CSB to promote or defer or supersede a civil servant is dependent. The scheme further suggests that PERs and TERs are independent of the assessment by CSB. Thus, even if the CSB does not form an exceedingly flattering view of the civil servant being assessed by, hypothetically speaking, grading him such that he scores only 13 out of 30 marks after the quantification of objective assessment by the CSB, but such civil servant has exceptional marks in view of quantified PERs and TERs, it is still possible for the civil servant to meet minimum threshold for promotion prescribed under Rule 16. And consequently, despite not being granted a high score by the CSB, such civil servant may still become eligible for promotion in view of exceptional PERs and TERs. In a nutshell what emerges from the scheme of the Promotion Rules is that an effort has been made through the rules to evaluate the civil servant over the course of his/her service in such manner that no single component forming part of the promotion evaluation process can make or break his career progression. In the event that the PERs and TERs reflecting the performance of a civil servant over an extended period of time during his service present an exceptional picture, a grim view regarding a couple of attributes of such civil servant listed in the objective assessment proforma to be filled out by the CSB will not in of itself sound the death-knell for his career.

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. ...

SCHEDULE-IV PROFORMA AND THE INFORMATION TO BE TAKEN INTO ACCOUNT.

12. The learned counsel for the respondents relied on ***Sikandar Hayat Maken*** for the argument that a Division Bench of this Court has held that assessment to be undertaken by the CSB is subjective in nature and such assessment cannot be impugned before this Court in its constitutional jurisdiction. It appears that the Federal Government has misread the ratio in ***Sikandar Hayat Maken***. ***Sikandar Hayat Maken*** most certainly did not attempt to override almost two decades of jurisprudence requiring the Federal Government to move away from a subjective basis for reaching promotion decisions to adopting objective criteria and a transparent process for such decisions so that the promotion decisions are not only just, fair and reasonable but also appear to be so.

13. This Court need not retrace the history of such jurisprudence. Suffice it to say that for purposes of administrative law it was held in ***Aman Ullah Khan Vs. Federal Government of Pakistan (PLD 1990 SC 1092)*** that under the Constitution and laws of Pakistan there is no arbitrary discretion

vested in any public official and the discretion, where vested, is to be exercised in a structured manner. Within the realm of constitutional law our jurisprudence has evolved in a manner where it is now understood that whimsical exercise of discretion in relation to a citizen is a breach of the right to equality guaranteed by Article 25 of the Constitution as well as the guarantee of equal protection of laws under Article 4 of the Constitution. Within the realm of service law jurisprudence innumerable judgments have been rendered to ensure that there is no arbitrary discretion vested in any decision-making authority authorized to make career decisions, and where discretion is vested the criteria for exercise of such discretion are prescribed in an objective fashion. The history of such jurisprudence has been traced by this Court in ***Secretary, Establishment Division Government of Pakistan Vs. Dr. Muhammad Arif (2017 PLC (C.S) Note 66***) as well as the august Supreme Court in ***Federation of Pakistan through Secretary, Establishment Division Vs. Dr. Muhammad Arif (2017 SCMR 969***).

14. It was held by the learned Lahore High Court in ***Liaquat Ali Ghugtai Vs. Federation of Pakistan (2012 PLC(CS) 1062)*** that, *"discretion devoid of any prefixed evaluation structure results in an unguided and unfettered exercise of power which is facially discriminatory and hence bad in law. Discretion vested in a public authority is a sacred trust exercised by the public officers as trustees. Public officials do not act for their own sake but rather for the sake of the public interest. In this view, the role of the public official in a*

democracy, like the role of the state itself, is to serve the interest of the public and its members. Exercise of discretion is not a casual affair driven by personal likes or dislikes. Structuring of discretion means that the authority (in this case CSB) must first apply its mind to tailor an intelligent objective criteria that is best suited for the selection of the officers under consideration and then begin the process of selection. It must be based on relevant considerations required for selecting the best Officer for the job."

15. The question of arriving at promotion decision based on subjective criteria came before this Court in ***Secretary, Establishment Division Government of Pakistan Vs. Dr. Muhammad Arif*** ***(2017 PLC (C.S) Note 66***) which also declared such criteria to be against the law and the Constitution. The august Supreme Court in ***Federation of Pakistan Vs. Dr. Muhammad Arif*** ***(2017 SCMR 969***) cited with approval ***Mrs. Iram Adnan***, ***Liaquat Ali Chughtai*** and ***Secretary Revenue Division Vs. Gul Muhammad*** ***(2011 SCMR 295)*** while upholding the decision of this Court in ***Secretary, Establishment Division Government of Pakistan Vs. Dr. Muhammad Arif*** ***(2017 PLC (C.S) Note 66***) and rearticulated what was held by the learned Lahore High Court in ***Liaquat Ali Chughtai*** as follows:

> *16. …The board's reliance on the personal opinions of its Members in making recommendations for the supersession of the officers under consideration was held to be an affront to fairness; due process and Article 10 of the Constitution. The power and discretion of the board to grant 15 marks to the officers was held not to be sufficiently structured or elaborately tailored to reflect thorough deliberation and*

proper analytical assessment. The Court thus, set aside the impugned selection process and declared the same illegal and un-constitutional, with direction for framing a well thought-out objective criterion in accordance with the 2007 Revised Promotion Policy. The Court also directed the CSB to form its opinion on the basis of evidence before them in the form of complete service dossier comprising of PERs for the last over 15 years and restrained the board from relying on any evidence without confronting the officer concerned with the same, and also not to pass any adverse order on the basis of any impressions, nurtured, and opinion harboured by its Members without placing any tangible evidence supporting such opinion before the board, and then confronting the officer concerned with such evidence.

16. Commenting on adverse recommendations based on personal opinion of the CSB members the august Supreme Court in ***Dr. Muhammad Arif*** observed that:

23. The entire impugned process being flawed for want of a well thought out structured objective criteria, and lacking in due process, gave way to arbitrariness, ambiguity and a whimsical approach, inasmuch as drifting from reliance upon the service dossier of the officer, (which were duly and meticulously qualified with all assessment spectrum, including overall performance and output and also regarding the integrity of the officer), and instead placing reliance on undefined personal opinion, and that too without qualifying it with the necessity of being based on any tangible evidence/material, resulted in adverse recommendation, like as reproduced hereunder:-

After reproducing a few adverse observations from CSB minutes of meeting, the apex Court further held that:

24. As can be seen from the foregoing, though all the officers named therein, achieved the prescribed threshold on the basis of their PERs and TERs, but have been superseded on the basis of knowledge of the board's members, but neither has any reason given for ignoring the quantification in the service record, nor the nature and/or source of the so called

knowledge been disclosed. Since it has not even been stated as to what came to the knowledge of the members (and to which of them) so as to persuade them to override the evaluation on the basis of the service dossier of the officer covering the entire spectrum of his performance and conduct, spread over long years of his service, and recommend his supersession in the face of his meeting the prescribed criteria otherwise, and therefore neither was the board in a position to disclose or convey to the affectee any ground/reason for his predicament, nor was any explained before us, despite our repeated queries, and thus the process not only violated the requirement of adequate disclosure, but also offended the principle of fairness, due process and procedural propriety. Even otherwise the appellant has not been able to show any thing adverse against the officer in their respective service dossiers. We have also noted that in the cases of deferment also no plausible explanation or reason has been mentioned. The matter of promotion, deferment or supersession of a civil servant and that too of BPS-20 and 21, is of enormous significance, having a bearing on the state structure and cannot be left to be dealt with in an arbitrary, casual and capricious manner, like in the present case.

17. It was in the aftermath of the law laid down by the august Supreme Court in ***Federation of Pakistan Vs. Dr. Muhammad Arif (2017 SCMR 969)*** that the Promotion Rules were enacted to provide for objective assessment for purposes of promotion decisions. In view of the above, the reading of the Federal Government of the law enumerated in ***Sikandar Hayat Maken*** is misconceived as the Court was seized of question of legality of the Promotion Rules. While upholding the vires of the Rules it was not seeking to move back the hand of the clock by holding that the CSB was empowered to undertake subjective assessment based on personal information and opinion of members comprising the CSB and such assessment would have

the backing of law. The Promotion Rules were not enacted in the derogation of the law laid down in ***Federation Pakistan Vs. Dr. Muhammad Arif***, but in its compliance. And the Promotion Rules are therefore to be given effect in consonance with the law laid down and principles highlighted in ***Dr. Muhammad Arif***.

18. In ***Yousif Haider Sheikh Vs. Establishment Division through its Secretary (Writ Petition No. 1931 of 2021),*** the petitioner had challenged the decision by the CSB to defer him for promotion to BS-21 on the basis that the CSB failed to undertake objective assessment under the Promotion Rules, never filled out Schedule-IV objective assessment proforma and the CSB's decision consequently suffered from legal infirmity. The petition was allowed and this Court had explained the manner in which Schedule-IV objective assessment proforma was to be filled out. The relevant para is reproduced below:

> *"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"

19. The Promotions Rules provide for objective assessment of candidates for promotion as they prescribe the criteria on the basis of which candidates are to be adjudged. The said criteria is prescribed in Schedule-IV (see Rule 18(3)(c) of the Promotion Rules) which includes, *"objective assessment by Central/ Departmental Selection Board."* Rule 18(3)(c) states that the assessment is to be undertaken *"on the basis of parameters and attributes as given in respective objective assessment form for promotion"*. Rule 18(3)(d) states that, *"the CSB or DSB, as the case may be, shall apply its collective judgment to determine the fitness for promotion to selection posts as per parameters given in the objective assessment form and shall award marks to an officer and place him in category A, B or C in accordance with the classification given in the following Table …"*. The table then states that 21 to 30 marks result in placement of the candidate in category A, 11 to 20 marks result in placement in category B and 01 to 10 marks result in placement in Category C.

20. In terms of sequences, reading of the Promotion Rules clarifies that step one in the assessment is the evaluation of candidates by the CSB against the parameters and attributes

identified in Schedule-IV objective assessment form, which assessment is to be made based on sources of information also identified within the objective assessment form. The assessment is then followed by an accumulation of marks that a candidate score based on the assessment undertaken by each member of the CSB, and once the marks have been awarded the candidate is placed in a certain category (i.e. A, B or C,) as provided under Rule 18(3)(d) of the Promotion Rules.

21. Reversal of this sequencing transforms the process from being objective to one being completely subjective and unstructured and ends up placing 30 marks out of 100 at the disposal of CSB that are awarded in an unstructured manner across attributes listed in Schedule-IV objective assessment form, after having concluded whether the officer is to be promoted or not. The reversal of the assessment process and its sequencing is not being projected here as a hypothetical. The Joint Secretary, Establishment Division, who appeared before the Court while assisted by the learned DAG, candidly conceded that the CSB does not undertake assessment in a manner where each member of the CSB filled out a Schedule-IV objective assessment proforma, which marks were then added to determine the total marks granted to a candidate out of the 30 marks allocated to the CSB. The documents relating to the assessment, as produced before the Court, also reflect that there is only one Schedule-IV objective assessment proforma filled out by the entire CSB in relation to one candidate. The Establishment Division’s contention before this Court was that based on the material placed before the CSB, the CSB undertook

a discussion and then decided the category within which each candidate was to fall (i.e. Category A, B or C). And on the basis of such prior categorization of each candidate up for promotion, marks were awarded to each candidate for purposes the attributes listed in of Schedule-IV objective assessment proforma such that the total marks ended up placing the candidate in the category initially assigned to him. This is tantamount to reverse engineering where assessment of the attributes in the Schedule-IV objective assessment proforma is tailored to match the category already assigned to the candidate.

22. The manner in which the assessment is being undertaken by the CSB, by collectively filling out one Schedule-IV objective assessment proforma for each candidate after having determined whether or not such candidate is to be promoted, and to awarding him a category for purposes of Rule 18(3)(d), turns the assessment process on its head. Plainly speaking this is a return to the unstructured process of promotion from where the story of structuring discretion started in the first place, and after countless litigation resulted in promulgation of the Promotion Rules. Why list attributes and parameters for evaluation of such attributes in Schedule-IV objective assessment proforma if the promotion decision is to be reached first by predetermining the category in which the candidate is to be placed in view of his PERs and TERs, without any objective assessment of the material placed before the CSB members, to produce the desired outcome i.e. promotion or supersession or deferment. This amounts to placing the horse

before the cart and rendering the entire objective assessment process nugatory, as the promotion decision is reached prior to undertaking an assessment of the candidate's attributes and the assessment proforma is just filled out to produce the agreed outcome by gaming the allocation of marks. This amounts to nothing less than a fraud on the statutory rules prescribed for the explicit purpose of injecting objectivity in the assessment of civil servants when they come up for promotion.

23. The Schedule-IV objective assessment proforma mentions attributes to be evaluated, parameters on the basis of which such attributes are to be evaluated and sources of information to be taken into account while making objective assessment. The sources mentioned in Schedule-IV objective assessment proforma include, dossier, TERs, PERs, and (a generic category for) documentary evidence. The sources mentioned manifests that there must be a documentary basis for the judgment being rendered by the CSB members while evaluating candidates in relation to specified attributes. The basis of such judgment cannot be the subjective personal opinion of CSB members or conjecture or gossip.

24. There is a room for personal opinion in the performance evaluation of a candidate, which is built into the PERs issued each year by the reporting officer and the supervising officer. The PERs are based almost exclusively on the personal opinion and assessment of the reporting and supervising officer, as also evident from the guidelines for filling up the PERs, which state, amongst other guidelines, the following:

(i) *The Reporting Officers should carry out their assessment in Part III through comments against each characteristic. Their opinions should represent the result of careful consideration and objective assessment so that, if called upon, they could justify the remarks/comments. They may maintain a record of the work done by the subordinates in this regard.*

(ii) *The countersigning Officers should weigh the remarks of the RO against their personal knowledge of the officer under report, compare him with other officers of the same grade working under different Reporting Officers, but under the same Countersigning Officer, and then given their overall assessment of the officer. In case of disagreement with the assessment done by the Reporting Officer, specific reasons should be recorded by the Countersigning Officer in Part IV(2).*

(iii) *The Countersigning Officers should underline, in red ink, remarks which in their opinion are adverse and should be communicated to the officer reported upon. All adverse remarks whether remediable or irremediable should be communicated to the officer reported to the officer under report, with a copy of communication placed in the CR dossier. Reporting Officer should ensure that they properly counsel the officer under report before adverse remarks are recorded.*

25. These guidelines re PERs provide for confronting an officer with adverse opinion or assessment or findings of the reporting officer. There is thus no reason that the CSB ought to be permitted to consider material against a candidate to form an adverse opinion about him/her, while such candidate remains oblivious to the existence of such material.

26. The CSB is two steps removed from the officers under consideration for promotion. The pen picture in the PERs is based on the personal opinion of such officers who have supervised the candidate who is up for promotion, and such PERs and pen picture are before the CSB. But individuals CSB members are not meant to evaluate the candidate for promotion based on personal opinion. They may or may not have worked directly with the candidate in question during their careers. And thus, to create a standard assessment process and level-field for all candidates being evaluated, the data and sources of information to be considered when evaluating a candidate are listed in Schedule-IV objection assessment proforma. The use of the concept of "documentary evidence" as a source of information mentioned in Schedule-IV objective assessment proforma, as opposed to "relevant information" or "documentary material" is most relevant. The purpose of mentioning explicit documentary sources of information to be relied upon by the CSB while making promotion decisions is to raise the standard of reliability of the material being used as a basis for promotion decisions, and take out as much subjectivity from the process as possible. This is why Schedule-IV objective assessment proforma has been termed as "objective assessment" and the attributes, parameters and the sources of information to be relied upon for grading candidates have all been specified. This has been done in compliance with judgments already mentioned above emphasizing the need for objective assessment of civil servants prior to ruling on their promotion, supersession or deferment.

27. During the proceedings, the Establishment Division was directed to place on record the material and information placed before the members of CSB to determine whether the information taken into account was in consonance with sources of information directed to be taken into account under Schedule-IV objective assessment proforma. It was through perusal of the information produced that it became evident that the CSB had reversed the evaluation process by placing the candidates in categories A, B, or C without prior assessment, and then awarding marks to the candidate by filling out one Schedule-IV objective assessment proforma per candidate. The Establishment Division was asked to explain how over a dozen members of the CSB found themselves in agreement while grading a candidate against ten different attributes on the basis of parameters mentioned in Schedule-IV objective assessment proforma, in relation to each of the candidates. The Court did not receive a satisfactory answer. The Establishment Division argued that due to the huge number of promotion decisions it was not possible for each member to fill out a Schedule-IV objective assessment proforma. Based on the report produced by the Establishment Division, the average time allocated to the assessment of one candidate is less than three minutes. What is the quality of evaluation being undertaken by the CSB for considering a candidate for the promotion to the higher echelons of bureaucracy if the total time allocated to such process is short of 180 seconds? And how does the view point of individuals members of CSB contribute to the collective wisdom if they cannot find the time to fill out the Schedule-IV objective

assessment proforma on the basis of the material provided to them regarding the candidate?

28. It is evident that CSB continues to undertake assessment in breach of the directions of this Court in ***Yousaf Hyder Shaikh***, wherein it had been clearly stated that the purpose of Schedule- IV objection assessment proforma is that each of the members of CSB fills out such proforma and an accumulation of the marks awarded by each member then results in grades which reflect the collective thinking of the CSB in relation to each candidate. The CSB has instead reversed the assessment process. The consequence is that while under previous promotion policies, which were found to be unstructured and unconstitutional and set aside by the courts, the discretionary marks to be awarded by the CSB ranged from 5 to 15, assessment under the Promotion Rules is being undertaken in a manner where 30 marks are now awarded by the CSB in an unstructured manner based on subjective assessment and opinion of the CSB members without complying with the objective assessment requirements built into the system through the Promotion Rules.

29. In the material submitted by the Establishment Division with regard to information placed before the CSB members for purposes of assessment of candidates up for promotion, the Establishment Division also included the letter U.O No. 03/1/2020-CP-VI, dated 17.12.2020, which states the following:

SUBJECT: PROVISION OF DATA OF CIVIL OFFICERS

Reference Directorate Central of Inter Services Intelligence's letter No. 6085/Gen/SVA/C-63(B) dated 20 August 2020 regarding provision of data of Civil Servants who are likely to be considered for promotion to BS-20 and BS-21 in the upcoming meeting of Central Selection Board scheduled to be held shortly. The requisite information/data in respect of BS-19 and BS-20 officers belonging to PAS, PSP and Secretariat Group are attached herewith for further necessary action at your end please.

Sd.
(Abdul Qayyum Kakar)
Section Officer (CP-IV)

30. The respondents could not explain under what provision of law information regarding officers was being sought from Directorate General, ISI or information/data in respect of such officers was being provided by such Directorate General for consideration of the Establishment Division or the CSB. It was argued before this Court that this Court in ***Sikandar Hayat Maken*** had acknowledged that intelligence reports can be taken into account by the CSB in view of the law laid down by the august Supreme Court in ***Secretary Establishment Division, Government of Pakistan Vs. Aftab Ahmed Manika (2015 SCMR 1006)*** wherein the following had been observed:

The factors or information to be taken into account while considering cases of promotion fall within the exclusive domain of the Board. Whether the reports of the Intelligence Agencies would be material and, if so, the weight that they deserve are matters within the power of the Board. Similarly, the competent authority also in its discretion may take into consideration any information while considering recommendations of the Board. This power, however, is to

> *be exercised sparingly and as mentioned in the Esta Code in exceptional circumstances...*

The dicta of the august Supreme Court in ***Aftab Manika*** is distinguishable as the observations were made in relation to the promotion policy then in place, which left considerable discretion with the CSB and the Prime Minister as the competent authority approving promotions. The situation has changed after promulgation of the Promotion Rules as has been detailed above. Rule 18 prescribes the manner in which the assessment is to be made and pursuant to such rule the Schedule-IV objective assessment proforma has been prescribed, which identifies the sources of information that are to be taken into account while undertaking assessment in relation to each of the ten attributes mentioned in such proforma. The prescribed sources of information do not include intelligence reports. Intelligence reports also do not qualify as "documentary evidence" which is a category mentioned under Schedule-IV objective assessment proforma in relation to certain attributes. To the extent that intelligence reports for purposes of undertaking assessment of attributes mentioned in Schedule-IV objective assessment proforma are placed before the members of CSB anonymously, such reports cannot constitute "documentary evidence". Taking into account such information, to the extent that it contains adverse opinion or assessment or findings by an intelligence agency, which the candidate has not been confronted with or granted an opportunity to respond to, would be in breach of rights of the candidate to fairness and due process. As has been discussed above, the guidelines for issuance of PERs provide that an officer is to be confronted with any adverse opinion or

assessment or finding which is taken into account while filling out the PERs. It is conceivable that at such stage any adverse reports produced by intelligence agencies can be taken into account if the relevant rules and regulations under the Civil Servants Act, 1973, make provision for considering such information. The officer in question can then be confronted with such information and granted an opportunity to provide his/her explanation to response to such information. If the Reporting Officer or Supervising Officer still finds that the adverse observation in such intelligence reports is weighty, such intelligence would then become actionable material and disciplinary proceedings ought to be initiated against the civil servant in question. To the extent that intelligence reports carry adverse opinion or findings regarding civil servant on question of integrity, etc., it makes no sense that such information would only be used in relation to promotion decisions but not to determine whether or not the civil servant in question ought to be removed from service due to lack of integrity.

31. What is not fair is to keep adverse Intelligence Reports shrouded in secrecy and are then to present them before members of the CSB (without the candidate in question being confronted with information contained in such Intelligence Reports) to influence the promotion decision being reached by the CSB. Such use of secret anonymous intelligence reports would be against the due process rights of civil servant as guaranteed under Articles 4, 10A and 14 of the Constitution. If Intelligence Reports were meant to be used as sources of information, they would have found a mention in the Schedule-

IV objective assessment proforma along with other sources mentioned therein. This Court has not been informed that decisions of the CSB that have been impugned before this Court are based on Intelligence Reports produced before the CSB members. But what has been revealed, however, is that Intelligence Reports in some form were presented by the Establishment Division to the CSB that rendered the impugned decisions. A perusal of the minutes of the CSB in relation to the petitioners also reflects two things. One, that the reasoning acquires cyclostyled form and in a majority of cases states that, *"consensus emerged that while the officer has acceptable service record in terms of PERs and TERs but he is reputed to be an officer of average competence and peccable integrity which is not in sync with his quantified performance*" (Attached as Annexure-B are excerpts/reasons from the CSB minutes of meeting in relation to each of the petitioners). The minutes of the CSB reflect that there are no different from the quality of the reasoning that was abhorred by the august Supreme Court in ***Federation of Pakistan Vs. Dr. Muhammad Arif (2017 SCMR 969),*** where it disapproved of officers being superseded on the basis of personal opinions of CSB members, which neither gave reasons for ignoring the quantification of performance in the service record of the officers, nor "the nature and the source of so called knowledge" on the basis of which the performance decisions were made. The failure of CSB to disclose the source of knowledge which trumped years of performance record of officers in question was found by the august Supreme Court not only to violate "the requirement of adequate

disclosure" but was also found to be in breach of "principle of fairness, due process and the procedural impropriety".

32. It does not seem coincidental that a majority of the petitioners who have been superseded have been awarded zero marks against the attribute of integrity within the Schedule-IV objective assessment proforma. However, the minutes do not disclose the source of information on the basis of which the CSB came to conclusion that the civil servant lacked integrity or that the performance as measured by the PERs and the potential as evaluated by the TERs was not in sync with performance requirements for promotion. Without disclosing the sources of information that formed the basis of the CSB's decision, it awarded marks to some of the petitioners such as the petitioner in Writ Petition No. 541 of 2022 who had scored almost 62 marks out of 70 and only needed a 40% grade from the CSB to be eligible for promotion. But he was granted only 11 marks out of 30 on the basis that he was "an officer of average competence and peccable integrity," There is nothing to gainsay that integrity is an essential prerequisite for public service. But lack of integrity is not simply a ground for denying promotion but is the basis for initiating disciplinary proceedings and taking penal action as an officer lacking integrity ought to have no place in public service. Consequently, in the event that the Federal Government is of the view that Intelligence Reports provide useful information to determine whether civil servants are to remain in service or whether they are eligible to be promoted, it must make an allowance by enacting appropriate rules under the Civil Servants Act to allow for the use of Intelligence Reports in a

manner that such intelligence becomes actionable without breaching the principles of fairness and the fundamental right to due process of the civil servant in question. The Promotion Rules in the present form do not provide for consideration of Intelligence Reports by the CSB as a source of information to be taken into account while grading candidates for promotion against attributes mentioned in the Schedule-IV objective assessment proforma. And Federal Government can therefore neither place such reports before the CSB to influence promotion decisions nor can the CSB take into account anonymous Intelligence Reports that have not been disclosed to the candidates whose promotion are being considered, while reaching promotion decision in relation to such candidates.

RIGHT OF CIVIL SERVANT TO BE CONFRONTED WITH ADVERSE MATERIAL.

33. Right of civil servants being considered for promotion to be confronted with adverse material which forms the basis for such decision is not a perfunctory requirement. While no civil servant has a vested right to promotion, it is now settled that the right to be considered for promotion by application of relevant considerations is a recognized right that a civil servant enjoys. Article 10A of the Constitution has only reiterated the principles of fairness, and natural justice that have been applied by constitutional courts for decades. Article 10A states that in the determination determining of the civil rights of a person, such person is entitled to due process and a fair trial. While the question of promotion is not akin to a trial, it does involve determination of civil rights of civil servants such as the

determination of the career advancement and progression of the civil servant. And the process through which such determination is made must qualify as due process for purposes of Article 10A of the Constitution. Requirements of due process include the right to be afforded an opportunity to defend oneself and furnish an explanation after being confronted with any adverse material that is taken into account while determining the civil rights of a person. The CSB is bound to act in accordance with Promotion Rules, which prescribe the sources of information to be considered while undertaking evaluation and filling out the Schedule-IV objective assessment proforma. As mentioned above Schedule-IV identifies in relation to each attribute the sources that are to be taken into account while grading a candidate against such attribute. As has been mentioned above Promotion Rules would need to be amended to provide for consideration of any additional source of information that the CSB is entitled to take into account while undertaking the assessment of candidates up for promotion.

34. Promotion of civil servant is slightly different from the ordinary employment decisions on two fundamental counts. One, civil servants' tenure is protected and they can only be removed for cause and not for convenience. And two, the relationship between the employer and the employee in the context of a civil servant is slightly more complex than where the employer employee relationship can be termed as master-servant relationship. In the context of civil servants those speaking for the employer are also employees and not masters, and are vested with only such authority as conferred on them by law.

They cannot expand the scope of their authority or powers while undertaking promotion decisions and have no inherent powers of their own being, civil servant themselves with limited enumerated powers.

35. PERs are often stated to be unreliable for not correctly representing civil servants' ability and credentials due to an entrenched practice of reporting and supervising officers awarding good, very good and excellent reports in ordinary course. This may be true. But the solution to the problems lies in fixing the manner in which PERs are written, so that they form candid and apt evolution of civil servant over years of service, as opposed to disregarding such PERs and vesting in CSB unstructured and blind discretion and liberty to disregard the PERs. If PER's are to be disregarded on the basis that our social ethos have made the evaluation of reporting and supervising officers unreliable, how can it be concluded that the same officers when reach the highest echelons on bureaucracy and sit as members of the CSB somehow become immense to the corrupting social ethos of not undertaking candid evaluation. The evaluation process under the Promotion Rules is structured such that no one part of the tiers of evaluation - PERs, TERs & CSB - are able to render the others irrelevant. The CSB evaluation is meant to play a critical part in promotion decisions. But it is not meant to be divorced from the other tiers of evaluation. It is designed to rely on such other tiers.

RIGHT TO BE GIVEN REASONS

36. Another question before this Court relates to the scope of reasons to be disclosed under Rule 23 of the Promotion Rules, which states the following:

> ***23. Communication of reasons of deferment and supersession****.—The civil servants deferred or superseded shall, immediately after the recommendations of the CSB, DSB and DPC have been approved by the respective appointing authority, invariably be informed about the reasons of their deferments and supersessions*.

37. The requirement introduced through Rule 23 of the Promotion Rules is an addition to the requirement under section 24-A of the General Clauses Act, 1897, which requires public authorities to act in a just, fair and reasonable manner and further state the reasons for why they have reached the decisions that they have reached. It is now settled proposition that provisions of section 24-A of the General Clause Act, 1897, is to be read in every statute. The requirement of disclosure of reasons came before this Court in ***Secretary, Establishment Division Government of Pakistan Vs. Dr. Muhammad Arif (2017 PLC (C.S) Note 66***), wherein the Division Bench of this Court held the following:

> *105. …simply deferring the promotion of an officer because the CSB, in its collective wisdom, feels that the performance of an officer has to be watched further, does not satisfy the requirements of Section 24-A of the General Clauses Act, 1897. If an officer is not promoted on account of some deficiency in his work related performance, it is his right to know, with sufficient detail, what exactly that deficiency is and which aspect of his work related performance he needs*

to improve upon. Simply deferring an officer by telling him that his work related performance needs to be watched for six months to one year is not just vague, ambiguous, imprecise and nebulous, but unacceptable in the service jurisprudence.

38. The rationale behind duty to given reasons was addressed in detail in ***Muhammad Majid Vs. Secretary, Ministry of Manpower and Overseas Employment, Islamabad*** ***(PLD 2017 Islamabad 19)*** wherein this Court had held the following:

> *"18. The principles deducible from the law laid down by the Superior Courts, on the requirement to give reasons for decisions, are as follows:-*
>
> *(i) Recording of reasons in support of a decision by a quasi-judicial authority ensures that the decision is reached in accordance with the law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency.*
>
> *(ii) A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.*
>
> *(iii) If the executive can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction.*
>
> *(iv) The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness. It gives satisfaction to the party against whom the order is made. It also enables an appellate or supervisory court to keep the executive or a tribunal within bounds."*

39. Justice Louis Brandeis, Associate Justice of United States Supreme Court, had famously observed that, "sunlight is

said to be the best disinfectant." The obligation to disclose reasons under Rule 23 of the Promotion Rules read together with section 24-A of the General Clauses Act, 1897, is not meant to be a technical requirement to be checked off to comply with the law. The rationale for the obligation created under the Promotion Rules is to convey in a meaningful manner the reasons for deferment or supersession that prevailed with the CSB so the officer in question understands the thought process that led to such decision. A civil Servant who is in public service has a right to know why his career advancement has been halted so as to enable him to introspect and improve himself apart from affording him an opportunity to assure himself that the decision rendered is just, fair and reasonable and in accordance with the provisions of the Promotion Rules. This is all the more important as civil servants who are deferred or superseded are to be considered again for promotion pursuant to Rule 10 of the Promotion Rues. Thus, unless they are communicated the actual reasons for such deferment or supersession candidly and sufficient detail they would have no ability to address the deficiencies due to which the decision for deferment or supersession was reached by the CSB and to be able to address such deficiencies before their cases are put up for reconsideration in accordance with Rule 10 of the Promotion Rules.

40. In view of the aforementioned opinion, this Court finds the following:

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.

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.

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.

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.

41. These petitions are accordingly **allowed**. Supersession decisions impugned by the petitioners are set-aside. The Establishment Division is directed to process the cases of the petitioners and place them before the CSB in its next promotion meeting for consideration afresh in view of the observations made above.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **24.06.2022.**

JUDGE

Approved for reporting**.**

Saeed.

ANNEXURE-A

Serial No.	CASE NO.	TITLE
1.	W.P 421-2022	Yousif Hyder Shaikh Vs. Establishment Division through its Secretary, Government of Pakistan and 2 others.
2.	W.P 513-2022	Yasmin Yusuf Khan Vs. Establishment Division through its Secretary, Islamabad & 02 others.
3.	W.P. 514-2022	Tehmina Aamer Vs. Establishment Division through its Secretary, Islamabad & 02 others.
4.	W.P. 515-2022	Ziaullah Khan Vs. Establishment Division through its Secretary, Islamabad & 02 others.
5.	W.P. 516-2022	AsifHaider Orakzai Vs. Establishment Division through its Secretary, Islamabad & 02 others.
6.	W.P. 558-2022	Sara Aslam & 06 others Vs. Federation of Pakistan, through Secretary Establishment Division, Islamabad&02 others.
7.	WP. 596-2022	Muhammad Khan Marwat & another Vs. Federation of Pakistan, through Secretary Establishment Division, Islamabad&17 others.
8.	W.P. 600-2022	Sana-Ul-Islam & 06 others Vs. Federation of Pakistan, through Secretary Establishment Division, Islamabad&17 others.
9.	WP. 749-2022	Roshan Ali Sheikh Vs. Establishment Division through its Secretary, Islamabad & another.
10.	W.P. 750-2022	Akbar Ali Dero Vs. Establishment Division through its Secretary, Islamabad & 02 others.
11.	WP. 751-2022	Dr. Nisar Khan Vs. Establishment Division through its Secretary, Islamabad & 02 others.
12.	W.P. 752-2022	Syed Faisal Bukhari Vs. Establishment Division through its Secretary, Islamabad &02 others.
13.	WP. 832-2022	Engineer Habib Ahmed Vs. Establishment Division through its Secretary, Islamabad & 02 others.
14.	W.P. 840-2022	Imtiaz Ahmed Sheikh Vs. Establishment Division through its Secretary, Islamabad & 02 others.
15.	W.P. 993-2022	Sharif Ullah Vs. Establishment Division through its Secretary, Islamabad & 02 others.

ANNEXURE-B

Sr. No.	Name of the Petitioners	Cases No.	Reasons for supersession in the minutes of Central Selection Board (CSB)
1.	Mr. Yousif Hyder Shaikh	W.P. No. 421/2022	The consensus emerged that though the officer has acceptable service record in terms of PERs and TERs he is reputed to be an officer of average competence and peccable integrity which is not in sync with his quantified performance. The Board apprehended that officers of such average competence and questionable integrity if promoted would not be able to serve the interest of the state.
2.	Ms. Yasmin Yusuf Khan	W.P. No. 513/2022	The consensus emerged that while the officer has acceptable service record in terms of PERs and TERs she is reputed to be an officer of average competence and peccable integrity which is not in sync with her quantified performance. The Board apprehended that officers of such average competence and questionable integrity if promoted would not be able to serve the interest of the state.
3.	Ms. Tehmina Aamer	W.P. No. 514/2022	The consensus emerged that though the officer has acceptable service record in terms of PERs and TERs of NDU she is reputed to be an officer of average competence and peccable integrity which is more in sync with her performance in SMC and not in conformity with her quantified performance. The Board apprehended that officers of such average competence and questionable integrity if promoted would not be able to serve the interest of the state.
4.	Mr. Ziaullah Khan	W.P. No. 515/2022	The Board observed that he is reputed to be an officer of average competence which is sync with the remarks recorded in his different PERs. The Board apprehended that officers of such average competence if promoted would not be able to serve the interest of the state.

5.	Mr. Asif Haider Orakzai	W.P. No. 516/2022	The Board observed that he is reputed to be an officer of average competence and peccable integrity which is in sync with his low score on quantified performance. The Board apprehended that officers of such average competence and questionable integrity if promoted would not be able to serve the interest of the state.
6.	Ms. Sara Aslam	W.P. No. 558/2022	The consensus emerged that though the officer has fairly acceptable PERs and TERs, she is reputed to be an officer who has average competence and peccable integrity which is not in sync with her quantified performance. The Board apprehended that officers of such average competence and questionable integrity if promoted would not be able to serve the interest of the state.
7.	Mr. Muhammad Khan Marwat	W.P. No. 596/2022	The Board observed that the officer has a low score on his quantified performance which is in sync with his general reputation as an officer of average competence. The Board apprehended that officers of such average competence if promoted would not be able to serve the interest of the state.
8.	Mr. Sana-Ul-Islam	W.P. No. 600/2022	The Board observed that the officer's NCMC report assessed his promotion potential as "Good" against the better available option of "Very Good" and in TER for SMC his promotion potential was assessed as "Limited". The Board apprehended that officers of such average competence if promoted would not be able to serve the interest of the state.
9.	Mr. Roshan Ali Sheikh	W.P. No. 749/2022	The consensus emerged that though, except for the PER for the period 01.01.2019 to 13.04.2019, the officer has fairly acceptable PERs and TERs, he is reputed to be an officer who has average competence and peccable integrity which is not in sync with his quantified performance. The Board apprehended that officers of such average competence and questionable integrity if promoted would not be able to serve the interest of the state.
10.	Mr. Akbar Ali	W.P. No.	The consensus emerged that he is reputed to be an officer of average competence which is

	Dero	750/2022	not in sync with the assessment of his performance in the TERs of his mandatory trainings. The Board apprehended that officers of such average competence if promoted would not be able to serve the interest of the state.
11.	Dr. Nasir Khan	W.P. No. 751/2022	It was also observed that 4 consecutive PERs of the officer, from 2016 to 2019, were downgraded by the countersigning officers. The countersigning officer in 2016(pt) and 2017 mentioned that he had been asking him to improve his performance. Further, the countersigning officer in PER 2019(pt) mentioned that the Ministry of Commerce had rated his performance as "average".
12.	Syed Faisal Bukhari	W.P. No. 752/2022	The Board deliberated upon the service profile, TERs and PERs of the officer and noted that training report of the officer mentioned his minimal interest, stating that he considered training as a mere compulsion rather than an opportunity for self-improvement. In addition the officer was categorized as "B" in the attributes of quality of work and intellectual integrity in the PER for F.Y 2019-20.
13.	Engineer Habib Ahmed	W.P. No. 832/2022	The consensus emerged that though the officer has acceptable service record in terms of PERs and TERs he is reputed to be an officer of average competence and peccable integrity. The Board apprehended that officers of such average competence and questionable integrity if promoted would not be able to serve the interest of the state.
14.	Mr. Imtiaz Ahmed Sheikh	W.P. No. 840/2022	The Board deliberated upon the service profile, TERs/PERs of the officer and observed that the officer had obtained "outstanding" PERs during F.Y.2020. During the period, the officer had been rated "A" in terms of quality of work and integrity. The Board was satisfied with the improvement shown by the officer since supersession.
15.	Mr. Sharif Ullah	W.P. No. 993/2022	The consensus emerged that though the officer has acceptable service record in terms of PERs he is reputed to be an officer of

			average competence and peccable integrity. The Board apprehended that officers of such average competence and questionable integrity if promoted would not be able to serve the interest of the state.