JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 886 of 2022

Muhammad Sami Ullah

Versus.

Federation of Pakistan, etc.

Date of Hearing	:	13.05.2022.
Petitioner by	:	Syed Hasnain Ibrahim Kazmi, Advocate.
Respondent by	:	Syed Nazar Hussain Shah, AAG, Abdur Rehman, S.O, Est. Division.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, the petitioner has prayed for setting aside the decision/letter dated 02.02.2022, issued by the respondent No.2 (*Establishment Division*) in compliance with the order dated 22.05.2017 passed by this Court in Writ Petition No. 1015 of 2017. In addition, a direction has also been sought against the respondents for awarding 06 additional marks, collective 15+06=21, being exempted from the Mid-Career Management Course (MCMC), as mentioned in the minutes of the meeting of Central Selection Board "**CSB**", held on 13-16 December, 2016.

2. The learned counsel for the petitioner argued that earlier in the year 2017, petitioner filed Writ Petition No. 1015/2017 against his supersession which was disposed of by this Court vide order dated 22.05.2017, on the statement of the learned Additional Attorney General to the effect that the petitioner will be considered in the (forth-coming) CSB meeting and also assured that his seniority shall not be effected and would be determined in accordance with the relevant rules/law; that in the light of said statement, the CSB considered the petitioner for promotion in the year 2018 and was promoted from BS-19 to BS-20, however, respondents 3 and 4 did not set aside his supersession (*as per CSB meeting held on 13th to 16th December, 2016*); that earlier the petitioner was considered by the CSB in the year 2017 but was deferred; that at present the petitioner retains seniority position at serial No. 58 of BS-20 and in case of removal of supersession, he

will regain his original position at serial No. 12; that the junior colleagues of the petitioner are being promoted by the respondents 3 & 4 in violation of the service regulations; that the petitioner filed a representation before the respondent No. 2 on 07.09.2020, which was replied through the letter dated 02.02.2022, being assailed through the instant writ petition. According to the learned counsel, the petitioner was awarded 5 marks out of 15 while 6 marks of exemption from MCMC were also to be awarded by the CSB and that the petitioner had earned unblemished Annual Confidential Reports/Annual Performance Reports/Performance Evaluation Reports (PERs). Lastly prayed for a direction to the respondents 3 & 4 to set aside petitioner's supersession in the light of order dated 22.05.2017.

3. The learned AAG while referring parawise comments filed by respondents 1 to 4 argued that the petitioner was considered by the CSB in December, 2016 as per Promotion Policy 2007 but was superseded as he failed to meet the required threshold of 70 marks; that the judgment of the Hon'ble Apex Court dated 13.03.2017 was implemented, the petitioner was considered in the CSB meeting held in June, 2017, wherein his performance was also evaluated. The Board observed deficiency of PERs and decided to defer the petitioner in the light of Promotion Policy 2007; that the Prime Minister in the light of the order dated 22.05.2017 passed by this Court accorded approval for conversion of supersession **(*which was recommended in CSB meeting held in December, 2016*)** to deferment in respect of only those officers who had met the required performance qualification to the next grade but were superseded due to overriding effect of integrity and application of Category-C by the CSB. Lastly submitted that the petitioner could not meet the threshold of marks required for promotion, therefore, petition is liable to be dismissed.

4. Arguments heard, record perused.

5. The case of the petitioner is that the respondents 3 & 4 have not considered his case for promotion in accordance with the commitment made on their behalf by the learned Additional Attorney General before this Court on the basis of which, Writ Petition No. 1015 of 2017 was disposed of vide order dated 22.05.2017. In order to appreciate the contention, it is necessary to reproduce paragraph 3 and 4 of the order ibid which read as under:-

> "3. Today at the very outset **learned Additional Attorney General for Pakistan submitted that the petitioner shall be considered for promotion in the next meeting of Central Selection Board in compliance with the directions of the Hon'ble Supreme Court of Pakistan in cases titled Federation of Pakistan etc. Vs. Dr. Muhammad Arif & Others (Civil Appeals No.s.2019 to 2139 of 2016) vide judgment dated 13.03.2017**. It was further contended that since the petitioner shall be considered again for promotion therefore instant petition can be dispose of accordingly.
> 4. In response, learned counsel for the petitioner contended that even though the petitioner shall be considered in the next meeting of CSB however, his seniority might be affected, as he was earlier superseded. **To this, learned Additional Attorney General for Pakistan contended that same shall not be affected and would be determined in accordance with the relevant rules/law."**
> **Emphasis provided.**

6. The statement of the learned Law Officer had been to the effect that the petitioner shall be considered for promotion in the next CSB meeting in compliance with the directions of the Hon'ble Apex Court vide judgment dated 13.03.2017 and that his seniority shall not be effected and would be determined in accordance with the relevant rules/law.

7. Vide judgment dated 13.07.2017, the Hon'ble Apex Court dismissed the appeals/petitions and directed the Establishment Division to place all of those cases which were laid before the Board through the impugned exercise/process afresh, after withdrawing overriding effect of five (5) marks assigned for integrity/reputation etc. and removing the deviation of the focus of the Board from the service dossier to the personal knowledge of its

members. According to the directions, the exercise had to be initiated within four weeks and be concluded within ten weeks from 13.04.2017. Those who may have been promoted on the basis of impugned recommendations shall maintain their elevated position/status. However, in the event the officers whose cases for promotion have been recommended to be deferred or superseded, or through the proposed process recommended for promotion, they shall maintain their seniority *viz-a-viz* those who were recommended for promotion through the impugned process, and may again be so recommended, so that the seniority of the presently leftover officers and so also their entitlement to the consequential benefits, including prospect of their future promotion is not adversely effected.

8. The direction sought to be implemented had been subservient to the gracious directions of the Hon'ble Apex Court *(supra)* whereby the Establishment Division was directed to withdraw the overriding effect of five (5) marks assigned for integrity/reputation etc and removal of the deviation of the focus of the Board from the service dossier to the personal knowledge of its members. The direction was specific to remove the marks assigned for integrity/reputation and the removal of deviation of the focus of the Board from the service dossier to the personal knowledge of its members. The subjective part of the evaluation had thus been set aside by removing overriding effect of five (5) marks assigned to integrity/reputation and the assessment of the officers on the basis of personal knowledge of the members instead of focus on the service dossier.

9. In case of the petitioner, the CSB in its meeting held in December 2016 recommended **"*supersession*"**, for the reasons, *inter alia* amongst others that **"*officers did not meet the threshold of 70 marks*". ** The supersession of all those officers who meet the threshold of marks but were deferred due to overriding effect of integrity and application of Category-C by the CSB was converted to deferment while request of the petitioner was turned down as he did not meet the threshold of marks

required for promotion. The supersession of the petitioner in the meeting of CSB held in December 2016 was not exclusively on account of assessing him against the prescribed objective assessment criteria besides keeping in view the PERs, TERs and knowledge of the Board members and placing him in Category-C but was also on account of lack of requisite marks. The case of the petitioner is not covered under the gracious directions of the Hon'ble Apex Court due to lack of requisite threshold of marks. In this backdrop, the impugned decision appears to be in accordance with the gracious directions of the Hon'ble Apex Court and the order dated 22.05.2017 passed by this Court as well, therefore, warrants no interference.

10. The second limb of the direction, sought to be implemented, had been to the effect that the petitioner shall be considered in the next meeting of the CSB. That direction has since been complied with as the petitioner was considered in the CSB meeting held in 2017. In the meeting, the Board observed that "***the officer had incomplete PERs record, which according to the promotion policy rendered his case to be deferred. Therefore, the Board unanimously recommended that the officer may be deferred due to incomplete record".*** The petitioner has duly been considered while the reasons for deferment warrant no deliberations being out of the ambit of the instant writ petition.

11. There is no dispute that incomplete PERs record is one of the reasons of deferment envisaged in the Promotion Policy while the petitioner also has not questioned the same through the instant writ petition. It is also a matter of record that in the next meeting of CSB held in January 2018, the petitioner again was superseded on account of deficiency in marks and for placing in Category-C. It is significant to note that the said assessment has not been questioned by the petitioner and only agitated the deferment by the CSB of 2016. For the sake of argument, if the contention of the petitioner to waive his deferment of 2016 regarding deficient marks is allowed, the position would remain the same as in the next meeting of CSB of January 2018 he again failed to meet the

required threshold of 70 marks. Even otherwise, the petitioner has since been promoted pursuant to recommendations of the CSB in meeting held in December, 2018.

12. The ground of having exemption to undergo mandatory MCMC was refuted by the respondents in terms that his entire service dossier was considered by the CSB and was recommended for supersession as he did not meet the threshold of 70 marks. The petitioner has failed to substantiate his claim of having exemption to undergo mandatory MCMC. It is settled principle that the question of fitness or suitability for promotion has always been considered being exclusively within the jurisdiction of competent authority not shared with the Court or Tribunal exercising supervisory jurisdiction in respect of eligibility and qualification. Reliance is placed upon case law reported as ***2016 SCMR 1021 (Government of KPK & others v. Hayat Hussain & Others), 2014 SCMR 997 (Dr. Alyas Qadeer Tahir v. Secretary Ministry of Education Islamabad & Others), 2007 SCMR 682 (Muhammad Iqbal v. Executive District Officer Revenue Lordhran etc), 2005 SCMR 980 (Muhammad Ishaque & others v. Government of Punjab etc.) and 2021 PLC CS 1450-Islamabad (Sikandar Hayat Maken v. Federation of Pakistan etc.)***

13. In view of above, no case for exercise of jurisdiction in terms of Article 199 of the Constitution as prayed for is made out. Consequently, it is held that the instant petition lacks merits and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 13.06.2022.

JUDGE

ISLAMABAD | 13.06.2022
APPROVED FOR REPORTING

//*Kamran*//