JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 1053 of 2022

Muhammad Rashid

Versus

Federation of Pakistan, etc.

Date of Hearing:	**13.06.2022**
Petitioner by:	Mr. Taimoor Aslam Khan, Advocate
Respondents by:	Syed Nazar Hussain Shah, AAG Saleem Khattak DS and Muhammad Arfan SO, Establishment Division

ARBAB MUHAMMAD TAHIR, J.:- Through the instant writ petition, the petitioner impugns recommendations of his supersession by the Central Selection Board-CSB, contained in the Minutes of the meeting held from 20th to 30th September, 2021 which read as under:-

> "The Board deliberated upon the service profile, TERs/PERs and general perception of the officer regarding professional conduct, integrity and other attributes mentioned in the Objective Assessment Form. The Board noted that the officer has obtained low scores in both the mandatory trainings. The Board noted that his TER for MCMC depicts that he was rated low by his peers as a "leader" and as a "professional" and his promotion potential was assessed as "Good" against the better available option of "Very Good". The Board noted that his TER for SMC evaluates him as Average and depicts that his peers ranked him in the last tier of the class in all three assessed facets of personality and that his promotion potential was assessed as "Limited" against the better available options of "Good" and "Very Good".
> The Board observed that he is reputed to be officer of average competent and peccable integrity, which is in sync with 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."

2- In-brief, the petitioner with seniority position No.2, was considered for promotion to BS-20 by the CSB in its meeting held

on 20th to 30th September, 2021 and recommended for supersession in terms of Rule 8(a) of the Rules, 2019 as he failed to meet the required threshold of 70 marks. The documents, made available on file, reflect that the petitioner had the score of 54.89 in terms of PER and training while the CSB awarded 12 marks out of 30 which raised total up to 66.89 out of 100, deficient by 3.11 to 70 marks, the required threshold.

3- According to the learned counsel, the assessment of the CSB with regard to integrity of the petitioner is in complete conflict with the PERs for the years 2018 and 2020 respectively wherein he was marked as trustworthy and honest. Further asserted that the petitioner had been treated with discrimination and in unfair manner which renders the impugned action, result of malafide and that the treatment afforded to the petitioner amounts to a penalty. It is added that departure from the prescribed criteria and basing the opinion on personal knowledge without any reason by ignoring the quantification in the service record not only contravenes the due requirements but also offends the principle of fairness and propriety. Learned counsel in support of his submissions placed reliance on case law reported as 2017 SCMR 969, 2018 PLC(CS) 907 Islamabad, 2021 PLC(CS) 1450, 2017 PLC(CS) 738.

4- The learned AAG representing respondents 1&2 while referring parawise comments repelled the stance of the petitioner on multiple grounds. According to the learned AAG, the petitioner was considered fairly and justly by the CSB and the CSB unanimously agreed to recommend the officer for supersession which was duly approved by the competent authority in terms of Rule 6 of the Rules 1973. It is added that due procedure envisaged in the Rules 2019 were followed and the CSB made its recommendations after evaluating personal record, conduct, discipline and overall objective assessment besides capacity for holding an executive post meant for decision making.

5- Heard, record perused.

6- At the very outset, it is significant to note that the issue contained in the *lis*-at-hand had been the subject matter in various

writ petitions which have since been decided by my learned brother his Lordship *(Mr. Justice Babar Sattar)* through a consolidated judgment dated 24.06.2021 in the case of ***"Yousaf Haider Sheikh versus Establishment Division through its Secretary, Government of Pakistan and 2 others"*** (**WP No.421-2021**). The Court after surveying the case law in conjunction with contentions, pro and contra, concluded in paragraph No.40 in following terms:-

> "In view of the aforementioned opinion, this Court finds the following:
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> 1. The assessment undertaken by the CSB that forms the basis of the decision to supersede the petitioners has been made in breach of requirements of Rule 18 of the Promotion Rules and the criteria and process for assessment prescribed under the Promotion Rules, and is liable to be set-aside.
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> 2. The promotion decisions rendered by the CSB have been made without undertaking mandatory assessment pursuant to Schedule-IV objective assessment proforma, with each member of the CSB evaluating each candidate up for promotion against ten attributes mentioned in the said proforma, against parameters mentioned therein, on the basis of sources of information mentioned therein. Any promotion decision made without undertaking objective assessment in accordance with requirements of Schedule-IV of the Promotion Rules is without lawful authority and liable to be set-aside.
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> 3. The sources of information that are to be taken into account for undertaking objective assessment for purposes of Schedule-IV of the Promotion Rules read together with Rule 18 can only be the sources identified within the Rules. And unless the Rules are amended by the Federal Government to provide for additional sources of information, the CSB is vested with no authority to take into account additional sources of information not mentioned in Schedule IV, including Intelligence Reports.
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> 4. The civil servant being considered for promotion has a right to be confronted with any adverse finding or information that is to be taken into account by the CSB for purposes of making the promotion decision in relation to such civil servant and a right to respond to such adverse opinion or finding. This is mandatory to meet the requirement of due process prescribed under Article 10A of the Constitution. It is for the Federal Government to identify, through rules framed under the Civil Servants Act, 1973, the stage at which such information is to be disclosed to the civil servant and

the manner in order to give him/her an opportunity to respond to the same.

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

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

7. The petitions are maintainable as they have impugned the decisions of the CSB on grounds of illegality for rendering supersession decisions in breach of provisions of the Promotion Rules. The impugned decisions are liable for being judicially reviewed on ground of procedural impropriety for failing to comply with the procedure through which promotion assessment is to be made, including by initiating the assessment process by filling out Schedule-IV objective assessment proformas. The CSB's decisions are liable to be set-aside as the CSB has transformed an objective assessment process prescribed under the Promotion Rules into an unstructured and opaque subjective process driven by opinions of the CSB backed by no documentary evidence and reasoning."

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

8- Resultantly, the instant writ petition to the extent of supersession of the petitioner is **allowed**. The supersession decision impugned by the petitioner is accordingly set aside. The Establishment Division is directed to process the case of the petitioner and place the same before the CSB in the next meeting for his consideration for promotion afresh in the light of the observations made in case of **Yousaf Haider Sheikh** *(supra)*.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on 26.07.2022

JUDGE

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