ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

(JUDICIAL DEPARTMENT)

Writ petition no. 677/2023

Abdul Wahid Uqaily

vs.

FOP through Secretary Establishment Division, and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
3	18.03.2023	Mirza Waqas Qayyum, Advocate along with the petitioner Mr. Saeed Ahmed Zaidi, Advocate for respondent no.3 FBR Abdul Rehman Goher, S.O, Establishment Division

This petition owes its existence to an unwarranted and uncalled for interpretation of the 3rd proviso to rule 12 of the *Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019* (**2019 Rules)**, which (apart from resulting in two successive deferments of the petitioner by the CSB), if allowed to stand, will lead to placing an illegal obstacle in the way of the petitioner's promotion.

2 The petitioner has a sterling academic and professional career, including the 1st position in the National Management Course in the year 2020. The petitioner received a fully funded PhD scholarship in public policy from West Virginia University, USA, under a Technical Assistance Program. He was permitted to proceed for his PhD with effect from 01.08.2017, and his period of study was declared to be on duty. These are admitted facts.

3 The petitioner completed his course work for the PhD at the University, culminating with him defending his dissertation prospectus successfully before the University. The transcript of his *completion of course work* records his overall performance as 'excellent'. He re-joined his duties in Pakistan with effect from 16.07.2021, and is currently working as Director General Digital Initiatives (BS-21 in OPS) at FBR, Islamabad. In the last two CSB sessions, his PERs fell short of one full year's PER since he re-joined his duty. He had earned the PER for a period of 9 months and 27 days, but the reason for the PER falling short of one year was not attributable to the petitioner as he was placed in the admin pool for an intervening period of 1 ½ month. As he did not have one full year's PERs, the CSB naturally looked at the 3rd proviso to sub-rule (2) of rule 12 to see if he was eligible to be considered for promotion.

But while doing so, the CSB fell into error by placing a wrong interpretation on the 3rd proviso as imposing a distinct requirement of obtaining the PhD degree. The reason given was not the absence of any PERs or other credentials required for being considered for promotion, but that he had not completed his PhD degree.

4 The reason communicated to him vide letter dated 03.02.2022 for his first deferment read as follows:

> Deferred in line with Rule 7(k) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 as you have not produced the evidence of successful completion of PhD degree.

5 He was deferred again in the meetings held on 10th to 15th August, 2022. The reasons for deferment were communicated to him vide letter dated 16.01.2023 as follows:

> 'The Board reviewed the service profile, TERs and PERs of the officer. Considering that the officer has not produced the evidence of successful completion of his PhD degree in terms of last proviso of Rule 12(2) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019, the Board decided to recommend the offer for deferment in the light of observation above **i.e. the officer will be considered for promotion after successful completion of his PhD and was therefore deferred** in line with Rule 7(k) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019'.

6 It will be convenient to reproduce rule 12 in its entirety:

> 12. **Consideration for promotion of civil servants who are on leave** --- (1) A civil servant having availed or availing ex-Pakistan leave or leave within Pakistan including extraordinary leave or study leave shall be considered for promotion by the CSB or concerned DSB or DPC, provided such leave is less than one year. However, on approval of recommendation of promotion by the appointing authority, the promotion shall be actualized on return from leave.
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> (2) A civil servant having availed or availing ex-Pakistan leave or leave within Pakistan including extra ordinary leave or study leave for a period of not less than one year shall be required to earn a PER for one full year after the officer joins back:

> Provided, that the training period and the training evaluation report (TER) shall also be included for the purpose of computation of twelve complete months period and evaluation.
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> Provided further, that one full year shall start from the date the officer joins back.
>
> Provided further that civil servants availing scholarships after a competitive process and through Technical Assistance Program shall only be required to produce the evidence of successful completion of the course and the provision of sub-rule (2) of rule 12 shall not apply to such cases.

7 The reasons stated in the aforesaid impugned letters for deferment emanate from the 3rd proviso to rule 12(2), but the 3rd proviso does not stand in its own right independent of sub-rule (2). A proviso cannot be read independently, but is to be read in light of the main provision in relation to which the proviso carves out an exception, a qualification, an allowance, or the like. The enacting part of the section is not to be construed in the light of the proviso, but it is the proviso which is to be interpreted in light of the main enacting part of the statute. A proviso only carves out an exception which, but for the proviso, would fall within the language and meaning of the enacting part[1].

8 Rule 12 in its entirety takes into account the period spent by a civil servant while on study leave, and caters for the requisite background requirements that would otherwise be required in the normal course such as the PERs. Sub-rule (1) caters for a study leave of less than one year, and sub-rule (2) caters for study leave of more than one year. Since the PERs are a mandatory requirement for being considered for promotion, sub-rule (2) stipulates that one full year's PER will be required where the civil servant has availed an ex-Pakistan leave for more than one year, which entails that, after returning from his study leave, he would be required to serve for at least one year before he is considered for promotion; hence the requirement of one full year's PER. The 3rd proviso, however, creates an exception by stipulating that

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[1] Commissioner of Income Tax v Nasir Ali (1999 SCMR 563); Liaqat Hussain v FOP (PLD 1999 SC 504); Pfizer Products Inc. v Hilton Pharma (Pvt.) Ltd (2015 CLD 1384)

a civil servant availing scholarship through a technical assistance program shall *only* be required to produce the evidence of successful completion of the course, and the requirement of one full year's PER per sub-rule (2) shall not apply to him. The interpretation urged by the respondents on the proviso turns the proviso and its rationale on its head. It ignores the word '*only*' in the proviso, to read wrongfully that it was mandatory for a civil servant to produce the evidence of successful completion of the course. The word '*only*' has a function of limiting the proviso's operation when read in light of sub-rule (2), which necessitates the production of one full year's PER. The concluding words that the provisions of sub-rule (2) shall not apply to such cases fortifies that interpretation. When the proviso is read together with sub-rule (2), then it can carry no meaning other than that in such cases a full one year's PER will not be required if the evidence of successful completion of the course is provided.

9 Though it is somewhat academic on the facts of this case to discuss the validity of CSB's reasons given for the petitioner's successive deferments, it needs be said that the petitioner had nonetheless met the condition per the 3rd proviso by producing the evidence of successful completion '*of the course'* by way of the University's transcripts placed on record confirming that he had completed his course work, had passed his dissertation prospectus defence, and was now carrying out the post-course-work dissertation research for submitting his dissertation. It is surprising that the top-most bureaucrats constituting the CSB cannot distinguish between the manner in which a PhD degree is completed and the manner in which, let us say, a matriculation degree is completed. The 3rd proviso was never meant to act as a 'disqualifier', but that's how it was read by the CSB. It was only meant to be an exception to the requirement of earning the PER for one full year, and was never meant to lay down a mandatory condition for obtaining a degree. The petitioner has been allowed by the University to carry out his research work and to submit his thesis up to May 2023. The University vide letter dated 20.02.2023, confirms that the petitioner '*has completed all his formal coursework with a GPA of 3.87 and that he is pursuing his doctoral research alongside full time work in Pakistan'.* The application of the proviso ought to reflect the specifics of a course a civil servant was pursuing. If it were, say, a

plain vanilla MA without any course work, then the interpretation placed by the respondents would make eminent sense, but if it was a PhD degree, which his University acknowledged to contain a component of the course work and then post-doctoral research, then it cannot be said that such civil servant had not completed his course. Deferring a civil servant with PERs falling short of one year by 2 months only, and that too for reasons not attributable to the civil servant with an 'excellent' result of the coursework to his credit, is, with respect, creating a disincentive for brighter civil servants to pursue higher studies.

10 Mr. Saeed Ahmed Zaidi appeared for respondent no.3 FBR and made his submissions adopting the comments of the Establishment Division, as he could not file his reply in the time available because the case was listed for early disposal in view of the upcoming CSB meeting reportedly scheduled by the end of this month. It was submitted by the Establishment Division's representative in Court in defence of the petitioner's two deferments that there had been instances in the past where the civil servants abused their study leaves as paid holidays, and therefore a strict application of the 3rd proviso was called for. The Court is somewhat surprised at this position. How can an 'excellent' result after completion of the course work be equated with a paid holiday? Is the top echelon of our civil service not equipped to distinguish between cases where study leaves have been frittered away and where they have been availed to purpose? The reason given by the representative is tantamount to an unwarranted generalisation, by which dutiful civil servants who pursue their studies with diligence are placed in the same bucket as those who abuse their study leaves. Further, if the objective is a mindless and undiscerning criterion of getting the degree only, then the proper course would be to amend the rules to say explicitly that only the final degree will be acceptable to waive the requirement of one full-year's PERs, so that the civil servant are aware in advance and can weigh their options before choosing to opt for PhDs, for it is common knowledge that PhDs can take anywhere from 4 to 7 years.

11 The Establishment Division's representative confirms that the petitioner's PER for one full year since his return is now available. This judgement finds that the 3rd proviso to sub-rule (2) of rule 12 applies only

where one full year's PER is not available. Resultantly, this petition is **allowed**, and it is declared that the 3rd proviso will not stand in the way of the petitioner's consideration for promotion in the next CSB meeting.

(Sardar Ejaz Ishaq Khan)
Judge

Fazal Elahi