JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 3594 AND 3024 OF 2023

ALI SUFIAN VS FEDERATION OF PAKISTAN THROUGH MINISTRY OF COMMERCE, ETC.
(In both Cases)

Petitioner by	**:**	**Mr. Afnan Karim Kundi, Advocate.** (in both Writ Petitions)
Respondents by	**:**	**Raja Zamir-ud-Din Ahmed, A.A.G.** (in both Writ Petitions) **Hafiz Arfat Ahmed Chaudhry Advocate, for Respondent No. 5.** (in Writ Petition No.3594 of 2023) **Mr. Ahmed Nawaz Chohan, Section Officer, Ministry of Commerce.** (in both Writ Petitions) **Mr. Zeeshan Zaidi, Section Officer, Establishment Division.** (in both Writ Petitions)
Date of hearing	**:**	**24.06.2025**

MUHAMMAD AZAM KHAN, J.

1. Through this single judgment, I intend to dispose of both the above-mentioned Writ Petitions filed by Ali Sufian (**"Petitioner"**) under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), in which he has prayed for the following: -

Prayer in W.P No. 3594 of 2023: -

a. Clause 3.12[i] of the Guide to Performance Evaluation published by Respondent No.4 may kindly be declared as null and void for being unconstitutional as it infringes the fundamental rights as enshrined in Articles 4, 8, 10-A, 19-A, 25, and 27 of the Constitution.

b. Petitioner's PERs for the years 2019 and 2020 may kindly be summoned, examined and the overall grading of "Average" given by the Countersigning Officer therein may be set aside and he may be directed to make assessment of the Petitioner's performance and other attributes afresh fairly and accurately in line with the PER Guide and the law including the Petitioner's overall grading.

c. Violation of BS-19, 50% Quota by Respondent No.3 reserved for Commerce and Trade Group (CTG) Officers provided in the policy guidelines and advertisement may kindly be declared illegal, indiscriminating and in violation of the Petitioner's fundamental rights as enshrined in Articles 4, 8, 10A, 19A, 25, and 27 of the Constitution.

d. Selection of the three officers, namely, Muhammad Yasir Hussain Khokhar, Ali Rasul, and Babar Khan, who were given NOC for BS-18 posts and also applied against BS-18 posts but were selected for BS-19 posts of Trade & Investment Officers **("TIO**"), may kindly be set aside.

e. Respondent No.1 may kindly be directed to conduct and complete the selection process for TIOs in BS-19, including interview, in respect of the Petitioner being an eligible candidate in a fair, impartial and just manner and to further appoint and allot him a station as TIO purely on merit in order of the Petitioner's priority given by him in the Priority Proforma against one of the posts reserved for CTG officers in BS-19.

f. Respondents may kindly be directed to stop the process for the selection of the post of TIO of BS-19, abroad, till the final decision of this Writ Petition.

Prayer in W.P No.3024 of 2023: **-**

a. The Respondents may graciously be directed to allow the Petitioner to complete the selection process including the final interview.

b. Appropriate directions to Respondents may kindly be issued to maintain fairness in the selection process and to refrain them from violating the settled principles for the appointments on such like posts just to accommodate their blue eyed officers.

c. The Respondents may kindly be directed to stop the process of selection of the BS-19 Trade and Investment Counselors till the final disposal of the instant Writ Petition or doing any act which is prejudicial to the rights of the Petitioner till the final decision of the case.

2. The brief facts of the case as per the contents of the Petition are that the Petitioner is a BS-19 officer of the Commerce and Trade Group, presently serving as Director at the Directorate General of Trade Organizations (DGTO), an attached department of the Ministry of Commerce. On 08.07.2023, the Ministry of Commerce (**"Respondent No. 3"**) issued an advertisement inviting applications for the posts of TIOs in Pakistan's missions abroad. The Petitioner

successfully cleared all three stages of the selection process, i.e., —shortlisting, written examination, and psychometric testing. However, he was denied appearance in the final stage (interview) on the grounds of his placement in the category of ineligible candidates under Clause “d” of the conditions of ineligibility of the policy guidelines. The Petitioner filed W.P. No. 3024 of 2023 seeking inclusion in the selection process. He was subsequently informed via a speaking Order dated 09.10.2023 by the Secretary, Ministry of Commerce (**Respondent No. 1**), that his exclusion was based on the "Average" PER grading, which, under Clause 3.12(i) of the PER Guide, is not considered adverse and thus was not communicated.

3. The learned counsel for the Petitioner contended that the Respondents’ reliance on Clause 3.12(i) of the Guide to Performance Evaluation, permitting non-communication of “Average” PERs, is unconstitutional as it violates the Petitioner’s fundamental rights to information, fair trial, and non-discrimination under Articles 4, 8, 10-A, 19-A, 25, and 27 of the Constitution. The Petitioner, a BS-19 Commerce and Trade Group officer, was posted on deputation as Director (Finance & Development), Chief Commissioner Office, ICT, during 2019–2020. Despite consistently being appreciated by his superiors, including the Chief Commissioner/Countersigning Officer and two Reporting Officers, both of whom rated him “Very Good,” the Petitioner was inexplicably given an “Average” overall grading in his PERs, contrary to verbal acknowledgment and without proper assessment. The downgrade appears to stem from a belated or mistaken evaluation, unsupported by his performance history. Prior to and following the contested period, the Petitioner received “Very Good” (2018) and “Outstanding” (2021) ratings. The lack of clarification by Respondent No. 3 on the ambiguous grading, contrary to Schedule III and Rule 8(1)(2)(b) of the Civil Servants Promotion Rules, 2019, further reflects *malafide*. During the pendency of this petition, three BS-18 officers were irregularly promoted and appointed as TIOs in BS-19 (Rome, Mexico City, and Kandahar), bypassing the 50% quota reserved for BS-19 CTG officers. These officers, initially issued NOCs for BS-18 posts, were later unlawfully considered for BS-19 postings without prior approval from the competent authority, violating the policy guidelines and undermining the Petitioner’s rightful claim. The Petitioner was unjustly excluded from the final interview stage based on ineligibility under Clause (d) of the Policy Guidelines, relying on uncommunicated and disputed PER gradings. This exclusion not only deprived him of fair consideration but also

breached established policy, due process, and his legitimate entitlement to BS-19 TIO positions. The Petitioner seeks to be considered for one of the three BS-19 postings or be allowed to appear in the interview, in line with merit and policy. The learned counsel for the Petitioner relied upon judgments i.e., *Tariq Aziz-ud-Din and others* (2011 PLC (C.S.) 1130), *Nazir Ahmad Panwar v. Government of Sindh through Chief Secretary* (2009 PLC (C.S.) 161), and *Zubair Ahmad and others v. Shahid Mirza and 2 others* (2004 SCMR 1747).

4. On behalf of the Ministry of Commerce (**Respondents No. 1, 2 & 3**), a Report has been submitted which reveals that Respondents No. 1, 2 & 3 have performed their duty as required under the law. It is stated that the instant Writ Petition is not maintainable in its present form**,** as no order/alleged act of Respondents No. 1, 2 & 3 has been specifically impugned in the Writ Petition so as to require invocation of writ jurisdiction of this Court. The Petitioner is claiming benefits beyond the scope of law and rules which he cannot claim in perpetuity or eternity in terms of law settled by the august Supreme Court of Pakistan in C.A. No. 202/2021. The Petitioner has already filed W.P. No. 3024/2023 in this Court on the same subject, and Respondents No. 1, 2 & 3 have submitted para-wise comments therein; hence, the instant Writ Petition is not maintainable. Clause 3.12(i) of AGPE 2004, which deals with promotion cases, does not pertain to the selection process for TIOs. The same written test was conducted irrespective of the BPS of the shortlisted candidates. As per Clause 1(d) of the Policy Guidelines 2023 (excluding the five posts mentioned in Para 1(c)), a minimum of 40%, 50%, and 60% of the vacancies in any particular selection cycle will be reserved for BS-20, BS-19, and BS-18 officers of CTG, respectively. In case a sufficient number of CTG officers do not qualify to fill these reserved vacancies, the unfilled ones shall go to the general pool. Therefore, there is no question of violation of fairness or merit. The PERs for 2019 and 2020 (01-01-2020 to 04-06-2020) are unambiguous, and the Countersigning Officer's grading of "Average" is based on objective assessment, for which reasons have also been recorded. Hence, Rule 18(1)(2)(b) of the Civil Servants Promotion Rules, 2019, is not attracted in this case. As per Annex-A of the Policy Guidelines, 2023, Clause 1(b), officers in the promotion zone may apply subject to submission of a notarized undertaking that, if selected, they shall not demand promotion-related trainings or actualization during their tenure. Furthermore, under Section 3.1(i)(b) of AGPE, 2004, all adverse remarks, whether remediable or irremediable, are to be communicated

in writing to the officer, and a copy placed in the dossier. On the basis of these rules, no discretionary power has been exercised contrary to the spirit of justice or law. In compliance with the orders of the Islamabad High Court, the Petitioner was afforded a personal hearing before the Secretary Commerce on 03.10.2023 at 1500 hrs. Equal opportunity was provided to all candidates, and the selection process for TIOs was conducted strictly in accordance with the Policy Guidelines, 2023, approved by the Prime Minister. It is, therefore, prayed that the instant Petition may kindly be dismissed.

5. On behalf of the Establishment Division (**Respondent No. 4**), a Report has been submitted, stating that the instant Writ Petition is not maintainable under law or on facts; that the Guide to Performance Evaluation allows the Countersigning Authority to inform the officer of "Average" reports if deemed appropriate. Moreover, the Performance Evaluation Reports are confidential and cannot be shared with the officer reported upon. As far as adverse remarks are concerned, they are to be communicated as per Clause 3.4(1) of the Guide to Performance Evaluation.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. The main grievance of the Petitioner is that he was not selected for appointment as Trade and Investment Officer to be posted in foreign missions of Pakistan. The selection had to be made in accordance with the Policy Guidelines for Selection, Appointment and Posting of Trade and Investment Officers (BS-18 to BS-20) in Pakistan's Trade Missions Abroad, contained in Office Memorandum dated 03.07.2023 issued by the Ministry of Commerce. In terms of the said policy, a candidate must obtain an average of "Very Good" Performance Evaluation Reports (PERs) for the five years preceding the appointment. The Petitioner's candidature was rejected on the ground that for the years 2019 and 2020, he was graded "Average" in his PERs. Though the two Reporting Officers had rated him "Very Good," the Countersigning Officer downgraded the overall grading to "Average," which then stood as final. The said PERs were not communicated to the Petitioner at the time when it was signed by the Reporting and the Countersigning Officers , because under the Guide to Performance Evaluation (GPE), only adverse entries are required to be communicated. The adverse grading became an impediment for the Petitioner when he participated in the process for appointment as TIO. Though he made a

representation against the said PER, it is argued by the Respondents that there is no provision in the Guide to Performance Evaluation for review in such circumstances.

8. The Petitioner did not meet the required criteria of having "Very Good" PERs for five years preceding the appointment, and was thus rightly excluded. Under Article 199 of the Constitution, this Court may exercise its Writ Jurisdiction in the following circumstances among others:-

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(iii) make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II.

No such unlawful act or omission has been committed by the Respondents that would warrant interference by this Court under Article 199 of the Constitution. Moreover, the issuance of a direction to the Countersigning Officer to review his earlier grading is not within the scope of this Court's jurisdiction. With these observations, both Writ Petitions are **dismissed** for being devoid of merit.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____.

JUDGE

//Sajid//