JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition no. 941 of 2024

Muhammad Tahir Hassan
versus
Federation of Pakistan through Secretary, Establishment Division and others

Petitioner by:	M/s Mahmood A.Sheikh and Yasir Ahmed Rathore, Advocates
Respondents by:	Barrister Munawar Iqbal Duggal, Additional-Attorney General along with Mr. Yasir Arfat Abbasi, Assistant-Attorney General
	Manzoor Ali Sheikh-Additional Secretary, Sajid Mehmood-Joint Secretary (CP-II), Establishment Division
	M.Asim- Joint Secretary (Lit), Aminullah Tareen-Deputy Secretary (CP), Jameel Shekih, Deputy Secretary (Litigation), Abid Mehmood Ch., Section Officer (Legal), Waqas Harral, SO(Litigation) and Muhammad Sultan, Section Officer (CP), Dr. Sohail Aftab- Director (Legal)
Assisted by:	Ms. Sakina Bangash, Law Clerk
Date of hearing:	**09.12.2024**

Sardar Ejaz Ishaq Khan, J: The petitioner was superseded by the Central Selection Board (**CSB**) in its meeting dated 01.08.2023 that considered his case for promotion to Grade 21. He was a BS-20 officer of Information Group when his case was considered. The reasons for his supersession were conveyed to him under Rule 23 of *the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019* (**CSPR**), which, while recording that he had an acceptable service record in terms of PERs and TERs, noted that he was reputed to be an officer of mixed reputation and questionable integrity which was not in sync with his quantified-performance. The CSB then awarded him 'Category-C' and, awarding him 10 marks, found him not meeting the required threshold of 75 marks for him to be promoted under the CSPR.

2 The memo of petition averred that the opinion formed by the CSB that his integrity was questionable was based entirely on the reports of the intelligence agencies, which were produced for the first time before the CSB and shared with the members of CSB *during its meeting*. This fact was not denied by the respondents at the hearing.

3 The petitioner's case was forwarded for promotion to CSB on the basis of 13 'Outstanding', 22 'Very Good', and 2 'Good' PERs, spanning over his career from 1994 to 2022. Out of his last 17 PERs, 13 were 'Outstanding' and the other 4 were 'Very Good'. His Secretary recommended him strongly. Nonetheless, predominantly on the basis of the intelligence agencies reports that surfaced in the CSB's meeting, his PERs/TERs quantification marks of 61.16 were disregarded to promote another officer with lower marks of 58.22.

4 The two primary grounds of challenge to the petitioner's supersession were, *firstly*, that his fundamental right to due process under Article 10A of the Constitution of Islamic Republic of Pakistan, 1973, was violated by considering the intelligence agencies' reports without granting him the opportunity to counter those reports and, *secondly*, that under Rule 18(3)(b) CSPR, the evaluation by CSB carried 30 marks, with the remaining 70 marks allocated to quantification of PERs and TERs, and that the 30 marks left for the CSB's 'collective judgment" per Rule 18(3)(d) to determine the fitness for promotion were not to be arbitrarily allocated, but were governed by the table in Schedule IV to the CSPR, by which only 3 marks could have been deducted on the ground of compromised integrity. Before we proceed to consider these grounds, it is essential to deal with the legal objection to the maintainability of this petition raised by the respondents, who urged that the matter lay within the exclusive jurisdiction of the Federal Service Tribunal, and that a civil servant had no vested right to promotion.

5 The Supreme Court held in *Orya Maqool Jan v. Federation of Pakistan through Secretary and others* (2014 SCMR 817) that the bar under section 4 of the Federal Services Tribunal Act, 1973, has no application on the fitness of a person to hold a particular post and that a direct recourse to the Constitutional jurisdiction of superior courts is not barred in like cases. It was also so held in *Secretary Establishment Division v. Aftab Ahmed Maneka*

(2015 SCMR 1006) that the Constitutional jurisdiction of the High Court is not ousted in matters pertaining to the civil servants' promotion to a higher grade. Promotion is not part of the terms and conditions of service and the bar of Article 212 to invoke the Constitutional jurisdiction of the High Court under Article 199 is not applicable, as held in *I.A. Sherwani and others v. Government of Pakistan through Secretary Finance Division, Islamabad and others* (1991 SCMR 1041). In *Muhammad Zafeer Abbasi v. Government of Pakistan through Secretary, Establishment Division* (2003 PLC (CS) 503), a Division Bench of the Lahore High Court entertained the Constitutional petition where the subjective evaluation by the CSB was found to be arbitrary. As for the second objection, the right to be considered for promotion, fairly and justly, is a right distinct from promotion itself. In the specific context of this case, the following principle of law affirmed by the Supreme Court applies with full force[1]:

> The consideration of an officer for promotion was to be based not only on the relevant law and the rules, but also on some tangible material, which could be lawfully taken into consideration. Therefore, unless the opinion of Selection Committee was backed by some tangible material, it could not be said that the case of the petitioner for promotion was considered in accordance with law.

This petition is therefore, found to be maintainable.

6 Finding the respondents' replies to be deficient in addressing the two primary grounds of this petition and the reply on the use of the agencies' reports remaining evasive, it was found essential to call for affidavits of the learned members of CSB, and the following order was then passed on 29.10.2024:

> The case now boils down to the following point, namely, whether the observations on the mixed reputation and questionable integrity of the petitioner were based on personal knowledge of the members of the CSB or were the result of a report of an agency, which was neither commissioned under the applicable rules, nor was the petitioner confronted therewith, and whether such a report could at all form the basis for the CSB to tarnish the petitioner's reputation. In order to get

[1] *Tariq Aziz-ud-Din and others*: in re (2010 SCMR 1301). This principle is affirmed in other judgments too including *Managing Director (Power), WAPDA and others v. Muhammad Luqman* (PLD 2003 SC 175)

> to the bottom of this rather disturbing allegation, this Court is left with no option but to require that the members of the CSB file their affidavits stating on oath (i) whether they relied on any agency's report in this behalf, (ii) if yes, whether such an agency had the mandate to furnish such report, (iii) whether it is permissible under the applicable rules-based framework for the CSB not only to receive and entertain such a report from some agency but also to proceed to exercise its functions on the basis of such report, (iv) whether the CSB members had any personal knowledge of the petitioner's questionable integrity pre-existing the agency's report, and (iv) whether the petitioner was confronted with that report, and if not, then why not. The aforesaid affidavits are to be submitted within one week from today.

7 After some initial prevarication by filing the affidavit only of the secretary to the CSB, the respondents finally procured the affidavits of 14 out of the 18 members of CSB. The CSB comprised of the ex officio Chairman Capt. (R) Shahid Ashraf Tarar, Senators Sadia Abbasi, Kamran Murtaza, Salim Mandiwala, MNAs Mr. Muhammad Aslam Bhotani and Mr. Osama Qadri, Mr. Imdadullah Bosal, Mr. Muhammad Sualeh Ahmad Faruqi, Dr. Kazim Niaz, Mr. Gias-ud-Din Ahmed, Mr. Pervaiz Junejo, the Secretaries Establishment Division and Cabinet Division, and the Chief Secretaries of the four Provinces. This reads an impressive list, and it became a matter of grave concern that such an illustrious assembly could discard the formulaic and professionally prepared dossier and service record of the petitioner, over almost two decades, solely on the basis of intelligence reports that were never before the recommending Division and its Secretary before recommending the petitioner's case for promotion.

8 Out of 18 members of the CSB, 14 filed their affidavits. Senator Salim Mandviwala and Mr. Sohail Rajput were abroad and could not file their affidavits. Mr. Muhammad Aslam Bhutani and Mr. Osama Qadri, MNAs, despite being informed by the Establishment Division, chose not to file the affidavits. The order was partially dictated for bailable arrest warrants to be issued for them to appear and answer the questions raised in the order dated 29.10.2024, but as the petition came to a conclusion the same day, the order was not followed through.

9 All the affidavits but one were identical. This is understood to be because the Establishment Division put together a *proforma* for all of them to

sign. Whether it was for convenience or any other reason that the 13 deponents did not consider it worth their while to add their own views in their affidavits, one deponent stepped forward with moral courage (for which I hope he doesn't have to face any reprisals), recording in his affidavit that the intelligence reports took him by surprise and contradicted the petitioner's service record and reputation in the civil service. That is quite understandable, because it is conceded by the learned AAG that the intelligence reports were produced for the first time before the CSB members during their meeting. It is downright shocking for a system of justice to countenance a framework whereby an officer's career can be put in jeopardy on the basis of an intelligence report that was neither before his department before recommending him for consideration for promotion, nor was before the CSB members at any time before they convened to consider an officer's promotion. To make the matters worse, the intelligence report are somewhat oxymoronic because there is nothing intelligent written in those reports. The Court has been shown the reports while requesting for confidentiality, but not only nothing in the CSPR confers confidentiality to such reports, but, in my humble view, if any such attempt were to be made, it would be *ultra vires* the fundamental rights to information and due process under the Constitution, because no information can ever be confidential which adversely affects the civil rights of a person without confronting him with its contents with him being given due opportunity of making a defence. The principles of natural justice are to be read into each law regardless of being mentioned therein[2]. The CSB, being a semi judicial forum, is required to examine the cases of officers justly and fairly[3].

10 The respondents' reply, and 13 out of 14 affidavits, placed their reliance on the amendments to the CSPR vide SRO 1558(I)/2022, dated 05.08.2022, whereby rule 2(p) was added on the directions of the worthy Prime Minister. Rule 2(p) read as follows:

> "special vetting agency" or "SVA" means an agency as approved by the Prime Minister and notified for verification and screening of officers being considered for promotion under these rules.

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[2] *PIA and others v. Nasir Jamal Malik and others* (2001 SCMR 934). *Abdul Hafeez Abbasi and others v. Managing Director PIHC* (2002 SCMR 1034)

[3] *Orya Maqbool Abassi v. FOP through Secretary, Establishment* (2014 SCMR 817)

The 2022 amendment also added sub rule (5) in rule 4, which reads as follows:

> (5) The CSB may besides other information consider intelligence reports of SVA to arrive at a decision.

11 The aforesaid amendments are vacuous, in that they not only disturbed the detailed formulaic method woven in the fabric of the CSPR (read with the Schedules) for processing an officer's case for promotion, but also left it entirely vague as to what weightage was to be given to such intelligence reports in the overall scoring scheme of the CSPR. Leaving such intelligence reports to be 'considered' by CSB provides no guidance in the overall scheme of the CSPR for the score given to such consideration. Above all, when an intelligence report, not backed by any credible evidence, unabashedly tarnishes the integrity of a senior officer, one wonders how any CSB member would feel safe in recommending such an officer for promotion without exposing the CSB member(s) to subsequent disciplinary or other adverse action. Sub-rules 2(p) and 4(5) added vide the 2022 amendment expose CSB as much to potentially adverse consequences as they do an officer who is not promoted as a consequence of such reports. No wonder, despite the Secretary Information Division's letter dated 20.10.2023 (on learning about the petitioner's supersession) recording that the petitioner was of '*impeccable integrity*', was '*instrumental in establishing a transparent system in payments in media*', and that '*the intelligence reports were the result of petitioner's refusal to bow down to illegal demands to extend favours*', the said letter had to be withdrawn by him subsequently vide letter dated 25.10.2023 by '*deferring to the collective judgment of the CSB*'. The collective judgment to which the learned Secretary deferred was, it is patent from the record, deeply swayed by the intelligence agencies' reports, notwithstanding the officer's cadre administrator vouching to the contrary.

12 This Court is still reeling from the shock of the argument by the respondents that, solely by virtue of rule 2(p), the Prime Minister's conferral of the responsibilities on ISI and IB as SVAs was sufficient delineation of the scope of responsibility of the SVAs for the debate to end there. To highlight the point, the contents of the ISI's report on the petitioner are reproduced below:

- He is professionally of satisfactory competence.
- He is financially corrupt and involved in corrupt practices.
- He is shrewed (sic!) person who can't handle pressures.
- Reportedly, he is doing multiple business through proxies.
- During his assignment in KPK, he was charged for releasing ads campaigns to advertising agencies for taking bribe.
- He was later suspended, made OSD and enquiry was initiated against him.
- **Unsuitable**.

The IB's report remarks as follows:

- Mr. Muhammad Tahir Hassan does not carry fair reputation vis-a-vis financial integrity.
- During his stint as PIO in Press Information Department Islamabad, he reportedly faced a departmental enquiry on corruption charges.

13 The quality of these reports defies belief! Bearing in view the context in which these reports are produced, namely, the promotion of an officer who has already put about 20 years of his life in service, one would expect, as a minimum, such reports to be duly documented with evidence and adequate particulars of enquiries to gather that evidence. Such reports bear no authenticity in saying "reportedly" with reference to any serious allegation, especially when such daming allegations of financial corruption contradict the service record and would stay in the petitioner's dossier, practically killing his career beyond that date. When he is never confronted with any material evidence, how would he ever be able to defend himself? This is the most egregious breach of the fundamental right to due process under Article 10-A of the Constitution.

14 This Court is also surprised that how could the worthy Prime Minister let this happen in such a casual and lackadaisical manner. How could he leave his senior bureaucracy at the mercy of such inane intelligence reports that are not backed by any demonstrated evidence. How does the worthy Prime Minister expect his bureaucracy to serve the Government in these circumstances is completely lost on this Court. If the SAVs were to be used, one would expect that it would not have been done in a slipshod manner as

this, but that a detailed procedural framework would have been put in place, necessitating as a minimum, the minimum specification of the sources and evidence required to make damaging conclusions, with due opportunity to the officer to defend himself at the departmental level well before the CSB sits to consider his case, including, if necessary, by cross-examination of the intelligence officers who prepared that report; after all, the intelligence in question concerns financial integrity and not terrorism or anti-Pakistan activities where there may be reason to shield the intelligence officers from public view. It is not the job of senior officers sitting in CSB to venture into an inquiry if the officer seeks to assail such an intelligence report. They are there to look at concluded reports and make their decision. Such an exercise would have to be carried out before the officer's case is finalized and placed before the CSB.

15 In the circumstances, I am quite satisfied that this is a case of first impression, and this has not been disputed by the learned counsels at the bar. By the same token, it needs no complex legal acumen or an extensive discussion of precedent case law to conclude, what is almost self-evident, that a civil servant's promotion decision influenced by an intelligence report not worth its name being produced at the meeting of CSB is a flagrant and egregious breach of the fundamental rights under the Constitution including under Article 10A. I cannot do better than reproduce the contents from the memo of petition highlighting the deleterious consequences:

> That when examined analytically, the impugned decision determines that a high ranking civil servant must make sure that he should always remain on the right side of the agency as adverse report by the agency could destroy prospects of his promotion, surely this could not be the intent of the law and the rules. Leaving a loaded gun in the hands of agency can make high ranking civil servants dance to their tunes which can jeopardize the honest, efficient and proper management of any department.

16 The duty to ensure truthful proposals is already enshrined in Schedule-VI to the CSPR as follows:

> The Administrative Ministries, Divisions and Departments shall ensure that documents related to the proposals for promotion are prepared with utmost care so that the information submitted to the

> CSB, DSB and DPC is complete and accurate in all respects…(emphasis supplied)

How the recommending Division would ensure that allegations of financial corruption were accurate without those reports being placed before the Divisions prior to the finalisation of the proposal for consideration by the CSB is completely lost on this Court.

17 The record screams aloud that the entire service record of the petitioner was subordinated to the recommendation "Unsuitable" by some anonymous intelligence personnel, who nobody in the entire department nor in the CSB knew as to their competence and integrity, and who were never there to vouch for the contents of their reports with credible material in support. No one knows whether the intelligence reports were gathered by some intelligence officer making random phone calls while sitting in the office, or by some diligent work of intelligence which unearthed damaging evidence that contradicted the petitioner's stellar service record and impeccable reputation of integrity amongst his peers and his seniors. In a case to expunge the adverse remarks made by the countersigning officer of a magistrate based on the general reputation enjoyed by the officer, the Supreme Court had this to say in *Government of the Punjab through Additional Chief Secreary v. Abdul Matloob Khan* (1990 SCMR 1431):

> The performance of a magistrate is not so much a matter of reputation as of expert assessment by a superior from record and performance relatable to individual cases and situations. By resorting to the reputation as the source and not to the actual performance, the Commissioner has justified his remarks by reference to a somewhat extraneous consideration.

18 The second ground noted in paragraph 4 above also succeeds, because the CSB's impugned decision is completely silent as to how the 3 marks allocable to integrity, per Schedule IV for 30% marks available under the 'collective judgment' of the CSB, could have resulted in the remaining 27 marks being reduced to an aggregate to 10 only.

19 It is apt to conclude this judgment with the concluding observations of the Supreme Court in *Tariq Aziz-ud-Din*[4] case:

> 34. Before parting with the judgment, we may observe that good governance is largely dependent upon the upright, honest and strong bureaucracy particularly in written Constitution wherein important role of implementation has been assigned to the bureaucracy. Civil service is the back bone of our administration. The purity of administration to a large extent depends upon the purity of the services. Such purity can be obtained only if the promotions are made on merit in accordance with law and Constitution, without favouritism or nepotism … The manner in which the instant promotions in the Civil Services have been made, may tend to adversely affect the existence of this organ…No doubt petitioners/affectee officers had no right to be promoted, yet in accordance with section 9 of the CSA, 1973, they were, at least, entitled to be considered for promotion. The right contemplated under section 9 supra is neither illusionary nor a perfunctory ritual and withholding of promotion of an officer is a major penalty in accordance with the Civil Servants (Efficiency and Discipline) Rules, 1973, therefore, consideration of an officer for promotion is to be based not only on the relevant law and the rules but also to be based on some tangible material relating to merit and eligibility which can be lawfully taken note of.

20 Accordingly, this petition is **allowed** as prayed for, i.e., the impugned decision of CSB dated 01.08.2023 superseding the petitioner is set aside, and the immediately next CSB meeting is directed to consider the promotion of the petitioner from BPS-20 to BPS-21 from the date he was superseded, strictly in accordance with the marking and ranking criteria stipulated in CSPR, and without regard to any intelligence reports which the petitioner had not had adequate opportunity to rebut in a quasi-judicial setting at the departmental level.

(**Sardar Ejaz Ishaq Khan**)
Judge

Imran

Approved for reporting

[4] 2010 SCMR 1301