JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 3493 of 2024

Muhammad Ali Asghar

Versus

Pakistan through Secretary Establishment Division and others

Petitioner by:	M/s Afnan Karim Kundi and Muhammad, Advocates.
Respondent No.1 by:	Mian Muhammad Faisal Irfan, DAG along with Syed Zeeshan Raza Zaidi, S.O., Establishment Division.
Respondents No.2 to 19	Ex-parte.
Assisted by:	Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**02.09.2025**

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INAAM AMEEN MINHAS, J:- Through the instant petition, the petitioner impugns the notifications of Establishment Division dated 13.08.2024 **("Impugned Notifications")** and the Establishment Division's letter dated 24.09.2024 **("Impugned Letter")**, whereby juniors to the petitioner i.e. respondents No. 2 to 19 were promoted against vacant posts of BS-19 in Pakistan Administrative Service **("PAS")** and the petitioner was informed regarding his supersessions, respectively.

2. The facts, in brief, are that the petitioner, joined the PAS in BS-17 on 14.09.2011 as part of the 39th Common Training Program and is presently of BS-18 officer. Vide Establishment Division's notification dated 08.03.2024, upon completion of thirteen years of active service, services of the petitioner were placed at the disposal of the Commerce Division for posting as Trade and Investment Counsellor at the Consulate General of Pakistan, Madrid,

Spain, where he is serving presently. The petitioner was promoted to BS-19 on acting charge basis pursuant to the recommendations of the Departmental Selection Board **("DSB")** in its meeting in July 2023, vide Establishment Division's Notification No. F1/3/2023/E-5 dated 27.07.2023 but in the subsequent meeting of DSB dated 06.08.2024, which was held to consider PAS officers for regular promotion to BS-19, he was superseded. Moreover vide Establishment Division's Notification No. F1/3/2024/E-5(PAS) dated 13.08.2024, the acting charge granted to him was withdrawn, reverting him to BS-18. The petitioner, being aggrieved filed a representation on 09.09.2024 before respondent No.1 i.e. Secretary, Establishment Division seeking an objective review of his case and communication of reasons for his supersession along with an opportunity of personal hearing. Vide the Impugned Letter, the petitioner was informed that the DSB had assessed his case on the basis of "service profile, TERs/PERs and general perception regarding professional conduct, integrity and other attributes mentioned in the objective assessment form" and found him to have failed "to meet the required threshold of 65 marks", further adding that "no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted"; thereafter, the petitioner vide letter dated 04.10.2024 again requested respondent No.1 for a personal hearing and sought disclosure of the objective assessment form, the precise reasons, or any adverse material relied upon by the DSB for superseding him but no reason was communicated for his supersession, while his juniors (respondents No. 2 to 19), admittedly lower in seniority and merit, were promoted vide the Impugned Notifications.

3. The learned counsel for the petitioner contended that the petitioner throughout his career discharged his responsibilities with utmost honesty, dedication and devotion, earning an unblemished service record without a single complaint, adverse remarks or counselling ever communicated to him; that the petitioner consistently achieved targets, gained wide-ranging experience relevant to the PAS cadre and successfully completed all mandatory training requirements, including securing the highest score in his Mid-Career Management Course among the 35th batch at the National Institute of Management; that the petitioner had already been declared fit for

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promotion by the DSB in 2023, which on the basis of his service dossier, PERs and TERs promoted him to BS-19 on acting charge basis. The learned counsel also submitted that the petitioner's sudden supersession by the DSB in its meeting on 06-07.08.2024, without confronting him with any adverse material or affording an opportunity of hearing, is not only unjustified but also arbitrary and unlawful; that the marks awarded by the DSB in the objective assessment form do not correlate with the outstanding grading in his recent PER, or even the very parameters under Schedule-IV of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 **("Promotion Rules, 2019")** and the service record, which speaks in his favour; that the inconsistency with last year's assessment further exposes the lack of objectivity and integrity in the decision-making process.

4. The learned counsel for the petitioner further contended that Rule 23 of the Promotion Rules, 2019 expressly mandates communication of reasons to the officers deferred or superseded, yet the petitioner has only been provided vague intimation of failing to secure the threshold score of 65 marks, without disclosure of any documentary basis or justification for adverse marking and this omission violates not only the statutory framework but also the settled principles of natural justice, particularly the constitutional guarantees under Articles 4 and 10-A that no one should be condemned unheard; that the petitioner's record is devoid of any criminal or corruption proceedings as no inquiry has ever been initiated by NAB, FIA, ACE or any intelligence agency against him; that recently in March 2024, the petitioner successfully underwent a full clearance process before his posting as Trade & Investment Counsellor abroad; that it is settled principle of law that consideration for promotion is a vested right and the DSB was bound to give meaningful and fair consideration to his comparative merit against his juniors, however, the DSB exercised its discretion in an arbitrary manner reflecting *mala fide* and non-application of mind. Lastly, he prayed that the impugned supersession and promotion of respondents No.2 to 19 are therefore liable to be declared without lawful sanction and be set aside.

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5. Conversely, the learned Deputy Attorney General on behalf of respondent No. 1 raised a preliminary objection regarding the maintainability of the writ petition and contended that the petitioner is a civil servant, therefore, his terms and conditions are governed by the Civil Servants Act, 1973 and under Article 212 of the Constitution jurisdiction of this Court is barred. Lastly, he submitted that under section 23B of the Civil Servants Act, 1973 only Federal Service Tribunal **('FST")** has jurisdiction to hear the cases of civil servants.

6. I have given anxious consideration to the arguments of the learned counsel for the parties and perused the record with their able assistance.

7. While considering the background of the petition, the grounds raised by the parties and question of law involved, the following question needs adjudication by this Court.

> *Whether the DSB failed to give meaningful consideration to the petitioner's promotion, coupled with its omission to record or communicate plausible reasons for superseding the petitioner?*

8. Before addressing the above framed question, it is necessary to first address the objection of maintainability raised on behalf of respondent No. 1 on the ground that the petitioner is a civil servant, therefore, the matter falls within the exclusive jurisdiction of the FST and that a civil servant has no vested right to promotion. This argument is devoid of merit as the Honourable Supreme Court has consistently held that the bar contained in section 4 of the Federal Service Tribunal Act, 1973 does not extend to questions concerning the fitness of a civil servant to hold a particular post and that in such matters direct recourse to the constitutional jurisdiction of the superior Courts remains available. In the case of ***Secretary Establishment Division vs. Aftab Ahmed Maneka, (2015 SCMR 1006)*** the Honourable Supreme Court reiterated that the constitutional jurisdiction of High Court is not ousted in matters relating to promotion of civil servants to higher grades. Similarly, in ***Orya Maqbool Jan vs. Federation of Pakistan through Secretary and others, (2014 SCMR 817)*** it was specifically held that jurisdiction of High Court is not barred, where the issue pertains to fitness for promotion. It was also settled in ***I.A.***

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Sherwani and others vs. Government of Pakistan through Secretary Finance Division, Islamabad and others (1991 SCMR 1041) that promotion does not fall within the terms and conditions of service and consequently, the bar of Article 212 of the Constitution to invoke the constitutional jurisdiction of High Court under Article 199 is not attracted.

9. This Court shall now address the question framed. It is apparent from the record that the meeting of DSB held on 6th and 7th August, 2024 recommended the petitioner for supersession with the following remarks:-

> *"The Board deliberated upon the service profile, TER/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 had earned a bad name during his stint as Deputy Commissioner in Peshawar vis-à-vis his financial integrity. The Board was also informed by the members that the officer has a reputation of being rude and insolent with the general public, which has resulted in distrust between public and the government administration in the province. The Board noted that the officer carries a reputation of peccable integrity and behavioral complexes, both of which are traits that are unsuitable for an officer to be appointed on a position of greater responsibility……..After detailed deliberations, the Board concluded that Mr. Muhammad Ali Asghar is an officer with repute of average competence and peccable integrity and is not fit to discharge responsibilities that he will have to shoulder if promoted. The Board judged Mr. Muhammad Ali Asghar as a Category-C officer and awarded him 03 marks."*

10. It is evident from the above referred minutes of the meeting as well as from the comments submitted by respondent No.1 that blemish was on the integrity of the petitioner. However, the record reflects that the allegation with regard to the integrity of the petitioner by the DSB is not supported by any tangible material nor is apparent from his service record. It was laid down in ***Muhammad Zafeer Abbasi's*** case reported as ***2003 PLC (C.S.) 503*** that the consideration of an officer for promotion is to be based not only on the relevant law and rules but also on some tangible material, which could be lawfully taken into consideration. The governing framework for promotion is embodied in the Promotion Rules, 2019, which prescribes not only the

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procedure but also the criteria upon which the fitness of an officer for promotion is to be assessed.

11. Schedule-IV of the Promotion Rules, 2019 contains the quantification formula, which is intended to structure the discretion of DSB to ensure just and fair treatment to contenders for promotion. Under Schedule-IV of the Promotion Rules, 2019 the DSB in the objective assessment form scores the civil servants out of 30 under the following ten parameters:-

> *"i. Output and quality of work*
> *ii. Variety and relevance of experience*
> *iii. Professional expertise*
> *iv. Personality Profile*
> *v. Conduct, Discipline and Behavior*
> *vi. Leadership*
> *vii. Estimated Potential for Middle/Higher Management*
> *viii.* ***Integrity / General reputation / Perception***
> *ix. Commitment to Public Service*
> *x. Teamwork"*

12. It is evident from the record that 3 marks could be awarded to the petitioner by the DSB for his integrity/general reputation/perception, however, he was given zero marks. In other words, the DSB, in its collective wisdom, came to the conclusion that the petitioner had no integrity. The scheme of grading provided in Schedule-IV to the Promotion Rules, 2019, provides that while giving marks in respect to an officer's integrity, general reputation and perception, the DSB has to take into consideration the officer's professional ethics / conduct on the basis of PER.s / TERs and the opinion of the Board primarily based on the dossier / documentary evidence. In the present case, the respondents have not placed a single document on record to suggest that the petitioner's integrity was questionable, let alone justify awarding him zero marks under that head. The petitioner's PERs throughout thirteen years of service consistently recorded him as a person of unimpeachable integrity. Moreover, during his career, the petitioner has never been proceeded against under the Efficiency and Discipline Rules, neither has any adverse remark been recorded against him, nor has any inquiry or reference been initiated by the competent authority or any investigating

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agency. In these circumstances, an unsubstantiated adverse perception by the DSB, not grounded in tangible material cannot lawfully form the basis for denying promotion. To rely upon such vague and unrecorded considerations amounts to arbitrary exercise of discretion, in violation of the settled principles of natural justice and the Promotion Rules, 2019.

13. Additionally, if any member of the DSB records an opinion contrary to officer's ACR regarding his integrity, it is incumbent upon such member to specifically record the reasons for such disagreement, with express reference to the material on record, which contradicts the service record of the civil servant. Any departure from this requirement would not only offend the principles of fairness but also run contrary to the long-standing maxim *nemo fit repente turpissimus* (no one becomes dishonest all of a sudden). This maxim signifies that integrity, whether sound or tainted, reveals itself over time through a consistent course of conduct. Thus, where an officer's record is marked by unblemished service and outstanding evaluations, any sudden departure imputing dishonesty must rest on clear, specific and credible evidence. To disregard such a consistent service profile without cogent reasons founded upon credible material would amount to imputing dishonesty in a manner that is arbitrary.

14. Dilating upon this, it is observed that a challenge to a civil servant's integrity is a very serious allegation and in such an eventuality, it is necessary to call his explanation as settled by the Apex Court over the years. It was held by the Honourable Supreme Court of Pakistan in the case ***Muhammad Farooq Chauhan vs. Province of Punjab, (PLD 1987 SC 271)*** that even the adverse un-communicated remarks cannot be taken into consideration to decline the promotion to an officer. In the present matter the adverse remarks regarding the petitioner's integrity were never communicated to him, therefore, cannot be taken into consideration.

15. The Courts have consistently held that the minutes of the meetings of the DSB as well as its recommendations to defer or supersede any officer, must contain an express reference to the material that led the Board to entertain doubts regarding the officer's integrity. However, where such

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material has not been disclosed to the officer at any stage, the principles of natural justice mandate that he must first be confronted therewith, so as to afford him an opportunity to explain or disprove its accuracy. Adopting this process may enable the officer concerned to dispel the misgivings of the DSB and demonstrate the falsity or irrelevance of the material relied upon. Failure to confront the officer with such material amounts to a clear violation of the settled principle of *audi alteram partem* i.e. no one should be condemned unheard and any departure therefrom would suffice to vitiate even the most solemn of proceedings. It is trite law that *audi alteram partem* has to be applied in all judicial and non-judicial proceedings notwithstanding that a right of hearing has not been expressly provided by the statute governing the proceedings. Reference in this regard may be made to the law laid down in the cases of ***Hazara (Hill Tract) Improvement Trust through Chairman and others vs. Mst. Qaisra Elahi and others, (2005 SCMR 678)*** and ***Raziuddin vs. Chairman, Pakistan Airlines Corporation and 2 others, (PLD 1992 SC 531)***.

16. Moreover, it is also reflected from the record that the petitioner was promoted to BS-19 on an acting charge basis vide Establishment Division's Notification dated 27.07.2023, pursuant to the recommendations of DSB, in accordance with Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. The DSB recommended the petitioner for promotion to BS-19 on acting charge basis after objective assessment and thorough examination of all aspects of his service record, including PERs, the dossier and training evaluation reports. However, in the subsequent meeting of the DSB held on 06–07.08.2024, the petitioner was superseded without any valid or compelling reason on record to justify it. This amounts to a colourable exercise of discretion since it is incomprehensible how the petitioner, found fit for acting charge in BS-19 by the DSB in 2023, could be declared unfit in the very next year despite earning an "Outstanding" PER. Right to be considered for promotion, fairly and justly, is a right distinct from promotion itself. This principle has been affirmed by the Honourable Supreme Court in the case of ***Tariq Aziz-ud-Din*** cited as ***(2010 SCMR 1301)*** and applies with full force in the present case.

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17. In view of the above discussion, I am of the view that case of the petitioner for promotion was not considered in accordance with law. Consequently, the instant petition is ***allowed***. The impugned letter dated 24.09.2024 superseding the petitioner is **set aside**. Respondent No.1 is directed to consider the petitioner for promotion from the date he was superseded, strictly in an impartial, reasonable and objective manner keeping in view his merit as borne out from his respective service record and the law laid down on the matter. Respondent No. 1 shall consider the petitioner's case for promotion within two months or in its next meeting of DSB, whichever is earlier.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 25.09.2025

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