JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.491 of 2025

Abdul Hanan Tunio
Versus
Federation of Pakistan and others

Petitioner by:	Hafiz Noor Muhammad, Advocate. (also in person)
Respondents by:	Mian Faisal Irfan, Deputy Attorney General along with Dr. Agha Ghulam Haider, Director Legal, M/o FE & PT, Muhammad Sajid Hameed, Director (RCCDD) and Dr. Irfan Ullah, S.O, (T-II), Establishment Division.
Date of Hearing:	**04.06.2025.**

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INAAM AMEEN MINHAS, J:- Through the instant writ petition, the petitioner seeks direction to respondents No.2 & 3 to nominate and select him for 37th Senior Management Course **("SMC")** already commenced or 38th or any other subsequent SMC at the earliest.

2. Brief facts are that the petitioner was appointed as Director Works (BPS-19) on 23.01.2014, whereas he joined service on 07.02.2014 and since then performing his duties with respondent No.3. As per Recruitment Rules, 2008 the post of Director General (SE) BPS-20 is 100% promotion post and the feeding post for the solitary post of Director General (SE) BPS-20 is the post of Director BPS-19. The petitioner, being a civil servant, made several requests to respondent No.3 for preparation of a seniority list of the Directors BPS-19 but no action was taken on the request of the petitioner and finally he approached the Federal Service Tribunal, Islamabad **("FST")** and during pendency of the appeal before FST respondent No.2 issued a

provisional common seniority list of Directors, Director (Works) & Director (Admin) dated 29.10.2024, wherein the name of the petitioner was placed at Serial No.1. The objections were filed against the provisional seniority list, which were rejected on 19.12.2024 as such the provisional seniority list dated 29.10.2024 became final. Vide letter dated 16.02.2024 the petitioner being the senior-most Director BPS-19, was selected and recommended for 35th SMC but subsequently, the petitioner's nomination was withheld on the ground of non-availability of the approved seniority list of Directors BPS-19. Similarly the petitioner was again nominated for 36th SMC, which was forwarded by respondent No.1 but later on one Ms. Ansa Aziz Director junior to the petitioner was sent for SMC. In these circumstances, the petitioner challenged the nomination of Ms. Ansa Aziz by way of filing of W.P. No.2717/2024, before this Court and during the pendency of the said writ petition, she completed the course and the writ petition became infructuous and was dismissed as withdrawn on 28.01.2025. Respondents No.2 & 3 again did not nominate the petitioner for 37th SMC, which was going to commence on 27.01.2025, despite several requests made by the petitioner, hence, this writ petition.

3. The learned counsel for the petitioner contended that the act of the respondents not nominating the petitioner for SMC is illegal and against the rules because the petitioner fulfilled the criteria; that a Director five years junior to the petitioner was sent for SMC; that actions and inactions on part of the respondents are discriminatory and in violation of Articles 2-A, 4, 5, 8, 9, 10-A, 19-A, 25 and 38(e) of the Constitution.

4. On the other side, the learned Deputy Attorney General contended that the petitioner was not eligible for SMC as he was neither in the promotion zone nor in the seniority list and Ministry of Federal Education and Professional Training being the Administrative Ministry did not communicate the name of the petitioner for 37th SMC in response to the Establishment Division' OM No.5-5/2025-T-2, dated

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11.11.2024; that the matter relates to the terms and conditions of the service and under Article 212(2) of the Constitution the same falls within the exclusive jurisdiction of FST; that the respondent No.3 maintains a consistent position that only a Director BPS-19 having relevant experience and qualification in the field of Special Education is considered and nominated for SMC, and Director (Works) and Director Admin were not considered eligible for the promotion to the post of Director General (SE); that at present the petitioner is at Serial No.1 of the common seniority list of Directors BPS-19, therefore, nomination for eligible candidates including the petitioner would be forwarded for SMC under the prevailing rules/policy/law.

5. I have heard the arguments of the learned counsel for the parties and perused the record.

6. The respondents have taken and argued the specific ground that this Court does not have the jurisdiction to hear the case because according to Article 212(2) of the Constitution matters relating to the terms and conditions of a person's service fall within the exclusive jurisdiction of the Service Tribunal. To resolve this issue the prayer of the petitioner is relevant, which is reproduced as under:-

> *"a. The petitioner being the senior most Director of the Department, directly appointed on 07 02 2014, may be nominated and selected for 37th SMC, already commenced or 38th or any other subsequent SMC, at the earliest.*
>
> *b. That the Respondents be directed to maintain status quo till the final disposal of this petition and completion of SMC by the petitioner.*
>
> *c. The respondents may be restrained from taking any adverse action against the petitioner in consequence of this petition."*

7. In view of the above prayer clause, the petitioner requests for issuance of the direction to the respondents to nominate and select him for the SMC, which is designed to enhance the petitioner's

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qualifications and improve his managerial skills. It is important to note that the petitioner is not challenging any aspect of his employment, such as appointment, promotion, transfer, or dismissal, which would fall under the category of "terms and conditions of service." Instead, he is simply seeking an opportunity for professional development. Since the matter does not involve any service-related rights or disputes, it falls outside the exclusive jurisdiction of the Service Tribunal under Article 212(2) of the Constitution. Therefore, I hold that the instant writ petition is maintainable and the relief sought can be examined and granted in accordance with law.

8. It is an undisputed fact that the petitioner was appointed as Director (Works) in Basic Pay Scale BPS 19 on 07.02.2014. Currently, the petitioner holds the top position, Serial No. 1, in the Provisional Common Seniority List of Directors BPS-19 within the Directorate General of Special Education, Islamabad. According to the Establishment Division's Office Memorandum (OM) No. 5-4/2024-T-II/36 SMC, dated 10.06.2024, specific eligibility criteria have been laid down for nomination to the SMC. This OM clearly states that a panel of BPS-19 or equivalent officers, drawn from various occupational groups and services including ex-cadre officers from Ministries, Divisions, Departments, Subordinate Offices, Autonomous or Semi-Autonomous Bodies, as well as Provincial Governments and the Government of Azad Jammu and Kashmir is to be submitted to the Establishment Division for consideration. In light of this, the petitioner, being a senior BPS-19 officer and being at Serial No.1 of the seniority list, fulfills the general eligibility criteria for nomination. Therefore, the petitioner's case reasonably qualifies for consideration under the stated policy and the matter deserves appropriate attention from the competent authorities in accordance with the terms of the Office Memorandum dated 10.06.2024, taking into account the following criteria:-

> *"i. Officer(s) is/are in BS-19 or equivalent on regular basis.*

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ii. The officer(s) is/are in the promotion zone.

iii. The officer(s) may be considered in order of seniority in their respective cadres and the officers otherwise senior to them must not be ignored.

iv. The officers, who are on deputation in international organizations may not be nominated Similarly, the officers posted in Pakistan's Mission abroad, except those belonging to the Foreign Service of Pakistan, may also not be nominated.

v. The officers (s) on long leave / EOL and are undergoing disciplinary proceeding may also not be nominated. However, those accused officers whose disciplinary proceedings are pending for over one year may be nominated.

vi. In terms of Rule 21 of Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 an officer who is likely to retire within two years from service on attaining the age of superannuation shall be exempted from the mandatory training.

2. The nominating agencies are requested to forward following documents in respect of each nominee:-

i. Panel Proforma duly filled in (Annexe-1) & (Annexe-II).

ii. Copy of valid seniority list of officers in BS-19.

iii. Certificate to the effect that no disciplinary proceedings are pending against the nominees under the prescribed rules/law. However, those accused officers whose disciplinary proceedings are pending for over one year are exempted.

iv. Copy of the Latest Annual Medical Examination Report in respect of nominees.

v. Certificate to the effect that no junior officer has been nominated for the course.

3. Further, it may be noted that no nominations shall be processed/entertained if:-

i. Nominations are received after the due date.

ii. Nominations with incomplete documents.

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iii. Advance copies of nominations with no intimation from parent department.

iv. Withdrawals are received after the due date.

v. Advance copies of withdrawals not directed through parent department.

vi. Provisional contested seniority lists."

9. The petitioner has been serving as Director (Works) in the Basic Pay Scale BPS-19 since his joining on 07.02.2014 and has completed 11 years of service in this grade. His eligibility for promotion and career advancement is governed by the statutory rules and regulations framed under the relevant legal provisions. Specifically, SRO 1025(I)/2008, dated 25.09.2008, was issued under the authority granted by Sub-Rule (2) of Rule 3 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, in conjunction with Section 7(1)(b)(i) and (ii) of the Federal Public Service Commission (FPSC) Ordinance, 1977. This SRO outlines the method of appointment, required qualifications and other conditions applicable to posts within the Directorate General of Special Education, Ministry of Social Welfare and Special Education/respondent No.3 and Clause 3 of the said SRO specifically deals with the prerequisites and criteria for the promotion of officials, which is reproduced as under.

"CONDITIONS FOR PROMOTION

3. Promotion to the posts in column 2 below shall be made by selection from amongst the persons who hold the posts specified in column 3 on a regular basis and fulfill the conditions of eligibility as prescribed in column 4.

S.No.	***Designation and BPS of the post***	***Persons eligible***	***Conditions of eligibility***
1.	*Director General (BS-20)*	*Director (BS-19)*	*17 years service in BPS-17 and above or 12 years service in BS-18 and above; or 5 years service in BS-19*
2.	*Director (BS-19)*	*Deputy Director Audiologist (BS-18)*	*12 years service in BS-17 and above or 7 years service*

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			in BS-18
3.	*Director (Admn) (BS-19)*	*Deputy Director (Admn) (BS-18)*	*12 years service in BS-17 and above or 7 years service in BS-18*
4.	*Audiologist (BS-18)*	*Audiologist (BS-17)*	*(i) 5 years service in BS-17* *(ii) Post graduate higher lower diploma in the relevant specialty recognized by PMDC*

10. In light of the foregoing facts and Clause-3 of the said SRO, it is clear that the petitioner, being the most senior Director (Works) in the department of respondent No. 3 and having completed 11 years of service in BPS-19, is fully eligible for nomination to SMC. The criteria for SMC, as laid down in the relevant rules and policies, do not impose any specific bar that would disqualify the petitioner from being nominated. The respondents' claim that the petitioner is not in the promotion zone and therefore not eligible for SMC is inconsistent with the applicable rules and policies governing civil service promotions and training. As a BPS-19 officer with extensive experience and seniority, the petitioner clearly falls within the promotion zone and qualifies for nomination to SMC. The repeated withdrawal of his name after initial nomination appears to be arbitrary and unjustified. This conduct on the part of the respondents suggests that a particular group of officials within the Directorate General of Special Education, which holds a majority and wields dominant influence, is intentionally creating baseless technical hurdles to obstruct the petitioner's career progression. Such actions not only undermine merit and fairness but also unjustly deprive the petitioner of his legitimate expectation to advance in his career through recognized and required training opportunities such as the SMC.

11. The respondents have a legal and constitutional obligation to act fairly, reasonably and without any form of discrimination while

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exercising their official powers and discretion. They are expected to adhere to the principles of justice, equity and good governance in all administrative matters, particularly those that affect the rights and careers of civil servants. However, in the present case, their conduct in first nominating the petitioner for the Senior Management Course SMC and then withdrawing his nomination on purely technical grounds raises serious concerns. This inconsistent and unjustified action is a misuse of administrative authority and reflects a departure from the applicable rules, policies and legal standards. The selective application of technical objections not only lacks transparency but also indicates that the respondents have acted in a manner that is arbitrary and discriminatory. Such conduct is contrary to the established principles of service law and it leads this Court to reasonably conclude that the respondents have exercised their powers in violation of the governing rules, policy framework, and legal obligations.

12. For what has been discussed above, the instant writ petition is **allowed**. Respondents No.2 & 3 are directed to nominate and select the petitioner for the next coming SMC and submit compliance report through the Registrar of this Court.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 27.06.2025.

JUDGE

R.Anjam

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