JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

1. WRIT PETITION NO. 989 OF 2025

MUHAMMAD ASAD ISLAM MADNI
VERSUS
FEDERATION OF PAKISTAN THROUGH SECRETARY, ESTABLISHMENT DIVISION AND OTHERS

2. WRIT PETITION NO. 967 OF 2025

MURTAZA KHAN
VERSUS
FEDERATION OF PAKISTAN THROUGH ITS DEPUTY PRIME MINISTER OF PAKISTAN AND OTHERS

3. WRIT PETITION NO. 1085 OF 2025

SOHAIL ALI KHAN
VERSUS
FEDERATION OF PAKISTAN, THROUGH THE SECRETARY ESTABLISHMENT DIVISION AND OTHERS

4. WRIT PETITION NO. 1144 OF 2025

ASIF SAIFULLAH PARACHA
VERSUS
FEDERATION OF PAKISTAN, THROUGH THE SECRETARY, ESTABLISHMENT DIVISION AND OTHERS

5. WRIT PETITION NO. 1160 OF 2025

M. AAMIR ZULFIQAR KHAN
VERSUS
FEDERATION OF PAKISTAN THROUGH SECRETARY, ESTABLISHMENT DIVISION AND OTHERS

6. WRIT PETITION NO. 1848 OF 2025

OWAIS NAUMAN KUNDI
VERSUS
FEDERATION OF PAKISTAN THROUGH SECRETARY, ESTABLISHMENT DIVISION AND OTHERS

7. WRIT PETITION NO. 2522 OF 2025

MS. AMNA IMRAN
VERSUS
FEDERATION OF PAKISTAN THROUGH SECRETARY, CABINET DIVISION AND OTHERS

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Petitioners by:	M/s Shoaib Shaheen, Muhammad Umair Baloch, Barrister Hassan Shoaib and Muhammad Nasir Saleem, Advocates in writ petitions No. 989/2025 and 1848/2025. M/s Umer Ijaz Gilani, Muhammad Alee and Sanaullah Khan, Advocates in writ petitions No. 1085/2025 and 1144/2025. M/s Feisal Hussain Naqvi, Mian Samiuddin and Nasir Mehmood, Advocates in writ petition No. 1160/2025. Barrister M. Saad Buttar assisted by M/s Muiz Gull, Tahir Hussain Anchan and Barrister Danyal Sohail, Advocates in writ petition No. 2522/2025. Barrister Gulrukh Murtaza, Advocate in writ petition No. 967/2025.
Respondent No. 1 (Establishment Division) by:	Mr. Rashid Hafeez Additional Additional Attorney General, Mr. Mian Faisal Irfan, DAG and Mr. Fahad Khan Tareen, AAG along with Raja Saim ul Haq Satti, Legal Advisor, Establishment Division, Syed Zeeshan Raza Zaidi S.O. & Dr. Abdul Qayyum, S.O., Establishment Division.
Assisted by:	Muhammad Yahya Khan Niazi and Muhammad Fahad, Advocates.
Date of Hearing:	**27.02.2026**

INAAM AMEEN MINHAS, J:- This common judgment shall decide the afore-titled writ petitions, as they involve similar questions of law and facts.

2. In the first two (02) afore-titled writ petitions i.e. W.P. No.'s 989 and 967 of 2025, the petitioners have impugned the amendment made vide SRO. 255(I)/2025 dated 05.03.2025 ***("Reconsideration Amendment")***, whereby the Civil Servants (Promotion to the post of Secretary, BS-22 and Equivalent) Rules, 2010 ***("Rules of 2010")***, were amended to the effect that an officer, who had been considered twice for promotion to BS-22 and was not recommended for promotion, was rendered ineligible for further consideration and the petitioners also seek a declaration that the recommendations of the High Powered Selection Board ***("HPSB")*** which conducted its 29th Meeting held on 05-10.03.2025 be set aside. The petitioners also seek a direction for consideration to BS-22 with effect from the date when their junior officers were promoted with all consequential benefits.

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3. In the writ petitions listed at serial number 3-7, the petitioners in addition to the afore referred prayers have also impugned the notification made vide S.R.O. 35(I)/2025 dated 21.01.2025 ***("Impugned Notification")***, whereby Bilawal Bhutto Zardari, MNA and Khawaja Muhammad Asif, Minister for Defense were co-opted as members of HPSB, as illegal being *ultra vires* the Rules of 2010, and the amendment made vide S.R.O. 243(I)/2025 dated 27.02.2025 ***("the Chairman Amendment")***, whereby the requirement of the Prime Minister chairing HPSB was dispensed with, as illegal having been made without the approval of the Federal Government. The petitioners also seek a declaration that the HPSB was not constituted in accordance with the law and consequently the decisions taken therein are of no legal effect.

4. Apart from the afore stated reliefs sought, in W.P. No. 1160 of 2025 the petitioner has also impugned the amendment made vide S.R.O. (I)/2017 dated 17.07.2017 ***("2017 Amendment")*** whereby the preamble of the Rules of 2010 and Rule 5 were amended. The petitioner also seeks that his posting as an officer on special duty ***("OSD")*** made vide notification dated 13.02.2023 ***("OSD Notification")*** be declared unlawful and the very act of continuing as OSD unlawful. Additionally, the petitioners in W.P. No. 1160 of 2025 and W.P. No. 2522 of 2025 seek a direction for the constitution of the HPSB in terms of the Rules of 2010 as framed originally and to consider afresh the cases of petitioners for promotion to BS-22.

5. Lastly, the petitioner in W.P. No. 2522/2025 has also sought a direction to the respondent to file the exact reasons for non-promotion of the petitioner along with the complete record that was placed before the HPSB for considering the petitioners case for promotion.

A. FACTUAL BACKGROUND

6. The facts leading to the filing of these petitions are that the Prime Minister of Pakistan in his capacity as Chairman of the HPSB invited two persons vide the Impugned Notification namely Bilal Bhutto Zardari, MNA and Khawaja Muhammad Asif, Minister for Defense to attend the 29th meeting of the HPSB in pursuance of Rule 5 of Rules of 2010. Thereafter, vide the Chairman Amendment the Prime Minister amended the Rules of 2010, and the requirement regarding Prime Minister chairing the HPSB was dispensed with and the entry

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(a) of rule 5(1) was amended, which now reads as *"(a) Prime Minister or a Federal Minister authorized by him in his behalf as Chairman."* Thereafter, on 10.03.2025, a Press Release was issued by the Establishment Division, stating the results of the 29th Meeting of HPSB. This Press Release showed that multiple juniors to the petitioners were promoted instead of the petitioners. The petitioners in all these petitions are civil servants presently serving in BS-21 and were eligible to be considered for promotion to BS-22 by the HPSB. The Board, after deliberation in its 29th meeting decided not to recommend the petitioners for promotion and consequently their cases were sent to the competent authority, i.e. the Prime Minister, for consideration of the recommendations who accorded his approval and consequently the recommendations of the HPSB stood affirmed. From the Press Release it also transpired that the meeting was presided over by Muhammad Ishaq Dar the Deputy Prime Minister.

B. ARGUMENTS OF THE PARTIES

I. SUBMISSIONS OF THE PETITIONERS

7. The learned counsels appearing on behalf of the petitioners advanced the following submissions, which are reproduced in consolidated form for the sake of convenience:-

i) The first argument advanced by the learned counsels was that the Impugned Amendments are *ultra vires* the Civil Servants Act, 1973 **("the Act")** and the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**. They contended that according to the well-settled canon of delegated legislation, a piece of subordinate legislation may only be amended by the same authority that enacted it. In this regard they submitted that the Rules of 2010 were framed by the Federal Government in exercise of powers delegated by the President under Section 25(1) of the Act. Since the Rules of 2010 were promulgated by the Federal Government and not by the Prime Minister in his individual capacity, the Impugned Amendments issued by the Prime Minister alone are *ultra vires* the parent statute and the Cconstitution. Reliance was placed on the case of ***Mustafa Impex v. Government of Pakistan, (PLD 2016 SC 808)*** in which the Honorable Supreme Court authoritatively held that the Federal Government comprises the Prime Minister and the Federal Cabinet

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collectively. The Prime Minister is the head of the Cabinet but is not, in himself, a surrogate or substitute for the Federal Government. He cannot unilaterally exercise powers that are vested in the Cabinet as a whole. Thus, the Impugned Amendments, having been made by the Prime Minister without Cabinet sanction, are *void ab initio* for want of competence.

ii) With regards to the Chairman Amendment notified on 27.02.2025, which substituted Rule 5(1)(a) of the Rules of 2010 to provide that the HPSB may be chaired by the Prime Minister or a Federal Minister authorized by him in that behalf, the learned counsels contended that the President delegated rule-making authority to the Federal Government under Section 25 of the Act. That authority was not, and could not be, further sub-delegated by the Prime Minister in his individual capacity. The Impugned Amendments are accordingly a nullity in the eyes of law and this principle *delegatus non potest delegare* operates with full force in the present context which states that an authority to which a power has been delegated cannot further delegate that power.

iii) The learned counsels regarding the *Reconsideration Amendment* notified on 05.03.2025, submitted that the amendment provides that an officer who has been deferred or not recommended on two occasions by the HPSB shall be rendered permanently ineligible for further consideration for promotion to BPS-22 which is irrational and violative of the petitioner's fundamental rights. The learned counsels submitted that this amendment is arbitrary, unreasonable, and irrational on its face, and offends Articles 4, 9, 10-A, 12, 25, and 27 of the Constitution. They argued that a civil servant may be deferred by the HPSB for a variety of reasons entirely unrelated to his or her merit, fitness, or suitability for promotion. These include incompleteness of the service record, the officer's absence on ex-Pakistan leave, and pendency of disciplinary or criminal proceedings not yet resulting in conviction, the officer being on deputation or training, or the temporary unavailability of posts. The Reconsideration Amendment, in sweeping and indiscriminate terms, treats all deferrals as equivalent to a finding of unsuitability, and permanently bars the officer from future consideration. It was contended

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that this conflation of procedurally motivated deferrals with merit-based rejections is logically indefensible and constitutionally impermissible.

iv) Furthermore, the learned counsels argued that by imposing a permanent disqualification in consequence of two prior considerations, even where no finding of unfitness was ever communicated to the officer, the Reconsideration Amendment operates as the functional equivalent of a major penalty under the Government Servants (Efficiency and Discipline) Rules, 1973. It is settled law that no major penalty may be imposed upon a civil servant without affording him a notice of the allegations against him and a reasonable opportunity of being heard. They submitted that the Reconsideration Amendment imposes precisely such a penalty, the permanent termination of promotional prospects without any process whatsoever. This constitutes a violation of Article 10-A of the Constitution, which guarantees the right to a fair trial and due process.

v) Learned counsels further argued that the retrospective application of the Reconsideration Amendment is constitutionally prohibited. They argued that the Impugned Amendments have been applied retrospectively to the petitioners, in that the working papers for the consideration of the petitioners' cases had been prepared and finalized in the week preceding 05.03.2025, and the eligibility of the petitioners had been fully established under the Rules of 2010 as they then stood. They submitted that the Reconsideration Amendment was notified on 05.03.2025, the very day of the HPSB meeting, and were applied to exclude the petitioners from consideration despite their pre-existing eligibility. Moreover, they submitted that the retrospective operation of such legislation is expressly prohibited by Article 12 of the Constitution, and the Honorable Supreme Court has consistently struck down such measures.

vi) The next argument advanced was that the 29th meeting of HPSB was *coram non judice* since the HPSB was not constituted in accordance with the law and the Impugned Decisions are *void ab initio*. In this regard they submitted that the Rules of 2010, as originally promulgated, provide unambiguously that the Prime Minister of Pakistan shall be the Chairman of the HPSB. The SRO No. 243(I)/2025 purportedly amended this

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provision to allow the Prime Minister to authorize "a Federal Minister" to chair the Board in his place. However, even accepting the validity of this amendment arguendo, the 29th meeting was presided over not by a Federal Minister but by the Deputy Prime Minister, Muhammad Ishaq Dar. Learned counsels submitted that the office/post of "Deputy Prime Minister" is not a constitutionally recognized post under the Constitution, and the Deputy Prime Minister does not hold the office of "Prime Minister" nor has he been shown to have received any lawful authorization from the Prime Minister to preside over the HPSB in compliance with the amended rules. The meetings were accordingly presided over by a person who had no legal authority to do so, rendering all proceedings and recommendations *void ab initio* and *coram non judice*.

vii) Learned counsels further submitted that participation of unauthorized persons vitiated the proceedings. In this regard they submitted that Rule 5 of the Rules of 2010, as originally framed, permits the Chairman of the HPSB to invite officers holding posts in BPS-22 for consultation where deemed appropriate. The 2017 amendment to the said rule expanded this provision marginally to allow the Chairman to additionally invite Federal Ministers, Ministers of State, Advisors, and Special Assistants to the Prime Minister. Notwithstanding these provisions, the meetings of the HPSB of 05.03.2025 and 10.03.2025 were attended by Bilawal Bhutto Zardari, who at the material time held the office of Member of the National Assembly and not any of the offices specified in Rule 5. His presence in the deliberations of the HPSB was entirely without legal authority and in flagrant violation of the Rules of 2010. The participation of an intruder in proceedings of a statutory body is sufficient, in itself, to vitiate the entire proceedings and render the recommendations of such body a nullity. In addition, the Impugned Notification of 21.01.2025 inviting Bilawal Bhutto Zardari and Khawaja Muhammad Asif to attend the upcoming HPSB meeting was issued by the Prime Minister in purported exercise of the Chairman's power under Rule 5. However, the Prime Minister did not chair the actual meeting of 05.03.2025. Since the power under Rule 5 to invite additional participants is personal to the Chairman, and since the Chairman of the 05.03.2025 meeting was, in fact,

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the Deputy Prime Minister, the invitations issued by the Prime Minister on 21.01.2025 had no legal efficacy for purposes of that meeting. They further submitted that the Impugned Notification through which elected politicians were invited not only politicizes the HPSB, but the same does not qualify under Rule 5 since the invited members are not officers in BPS-22 and unauthorized to participate in deliberations on the fitness and suitability of civil servants for promotion. The Rules of 2010 were framed expressly to insulate senior bureaucratic appointments from political interference, in the spirit of the Supreme Court's ruling in the ***Tariq Aziz-ud-Din*** case reported as ***2010 SCMR 1301***. Thus, they submitted that the 29th meeting of HPSB was *void ab initio* and *coram non judice*.

viii) The next argument advanced by the learned counsels was that the HPSB violated the principles of natural justice. The learned counsels argued that the HPSB was bound to act within the four corners of the law but their actions exhibit a capricious and unfettered exercise of discretion. Reliance was placed on the case of *Tariq Aziz-ud-Din (ibid)*, wherein the Court held that civil servants, while they do not possess an absolute right to promotion, are vested with an indefeasible right to be fairly and lawfully considered for promotion. Learned counsels submitted that withholding of promotion from a civil servant who is otherwise eligible and senior constitutes a major penalty within the meaning of the Government Servants (Efficiency and Discipline) Rules, 1973, and cannot lawfully be imposed upon such a civil servant except in accordance with due process of law, upon the basis of tangible material, and after affording the concerned officer an opportunity to be heard. However, in the cases at hand, no reasons have ever been communicated, no adverse material was placed before the petitioners, and no opportunity to rebut any such material was afforded to them. The non-recommendation of the petitioners in favor of their juniors has been affected without a shred of recorded reasoning capable of withstanding scrutiny. They argued that the Courts have consistently and emphatically deprecated the non-communication of reasons for deferment or supersession as being violative of Articles 4 and 10-A of the Constitution and of Section 24-A of the General Clauses Act, 1897, which mandates that every authority

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exercising statutory power shall do so reasonably, fairly, and justly, and shall record reasons for its decisions. The impugned recommendations of the HPSB are thus arbitrary, in excess of jurisdiction, and liable to be set aside.

ix) Lastly, the learned counsels submitted that the circumstances surrounding the issuance of the Impugned Amendments and the proceedings of the HPSB meeting is tainted with *mala fide*. In particular, the attention of this Court is drawn to the following; the amendment of 05.03.2025 was notified on the very day that the HPSB met, apparently in reaction to the orders of this Court in writ proceedings then pending; the working papers for the petitioners consideration had been completed in the preceding week, demonstrating their eligibility under the then-prevailing rules; and the amendment was applied on the very day of its notification, with the admitted purpose of excluding the petitioners from consideration. These facts, taken together, compel the inference that the Impugned Amendments were designed to circumvent judicial scrutiny and to favor particular blue eyed officers by engineering the disqualification of the petitioners and the deliberate circumvention of these safeguards vitiates the entire exercise.

II. ARGUMENTS OF THE RESPONDENTS

8. Conversely, the learned Additional Attorney General raised preliminary objection to the maintainability of the writ petitions by contending that the petitioners are civil servants whose terms and conditions of service are governed exclusively by the Act, and the bar contained in Article 212 of the Constitution is squarely attracted, therefore, matters relating to the terms and conditions of service, including promotion and determination of suitability, fall within the exclusive jurisdiction of the Federal Service Tribunal ***("FST").*** He submitted that u/s 23-B of the Act only FST has jurisdiction to hear the cases of the civil servants. It was further contended that the minutes of meeting of the HPSB which contains its assessment and collective judgment have been declared confidential in nature by the Minister-in-Charge and in the absence of any explicit rule in the Rules of 2010, the same are not liable to be disclosed. The learned Additional Attorney General without prejudice to the afore-stated

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objection, contended on merits that the evaluation of the petitioners was undertaken within a regulated framework of structured discretion prescribed by the Rules of 2010 as mandated by the decision of the Honorable Supreme Court of Pakistan in ***Federation of Pakistan vs. Dr. Muhammad Arif & Others, (2017 SCMR 969)***. He further contended that the HPSB acted strictly in accordance with law without discrimination or *mala fide* and decisions regarding promotions rest firmly within the domain of the competent executive authorities whose professional expertise, institutional knowledge, and familiarity with the functional requirements of senior civil service positions ensure fairness, impartiality, and integrity in the process.

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

C. OBJECTIONS

I. MAINTAINABILITY

10. Before entering upon the merits of the matter, it is necessary to first address the objection as to the maintainability raised by the learned Additional Attorney General who contended that this Court's jurisdiction was ousted by Article 212 of the Constitution in matters relating to the terms and conditions of service of the civil servants and that the matter falls within the exclusive jurisdiction of the FST which is competent to decide the matter even in the presence of challenge to the vires of Impugned Amendments. However, the same is misconceived since for this contention to hold merit, the matter must fall within the jurisdiction of FST. Only if this threshold is met would the second question arise i.e. whether the FST is competent to decide the questions of vires. It is settled position that the FST is competent to examine questions of vires incidental to matters falling within its jurisdiction[1] but that competence cannot be invoked to manufacture jurisdiction over a matter that falls outside the FST's statutory jurisdiction.

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[1] *Iqan Ahmed Khurram vs. Government, (PLD 1980 SC 153), Muhammad Hashim Khan vs. Province of Balochistan, (PLD 1976 Quetta 59), Muhammad Hashim Khan vs. Province of Balochistan, (PLD 1976 Quetta 59), Muhammad Anis vs. Abdul Haseeb, (PLD 1994 SC 539) and I.A. Sherwani and others vs. Government of Pakistan through Secretary Finance Division, Islamabad and others, (1991 SCMR 1041).*

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11. At this juncture it is appropriate to state that apart from the challenge to vires these cases pertain to promotion of the petitioners to posts in BS-22 and essentially relates to the determination of their fitness for the posts in question. It is settled law that assessment of fitness and suitability are excluded from the jurisdiction of the FST under section 4 of the Federal Service Tribunals Act, 1973. The position has been best explained by the Honorable Supreme Court in the case of *Aftab Ahmed Maneka*[2] in the following manner:-

> *"13. We first attend to the preliminary objections raised on behalf of learned Attorney-General to the maintainability of the Writ Petitions filed before the High Court on the touchstone of Article 212 of the Constitution. Article 212(1)(a) is an enabling provisions empowering the legislature to establish Tribunals exercising exclusive jurisdiction in matters relating to the terms and conditions of service of persons who are or have been in the Service of Pakistan. It is in view of this Constitutional provision that the Federal Service Tribunal Act, 1973 was enacted. Clause (2) of Article 212 of the Constitution excludes the jurisdiction of all Courts in matters falling within the exclusive jurisdiction of Tribunal set up under Clause (1) of Article 212 of the Constitution. It reads:*
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> *"(2) Notwithstanding anything hereinbefore contained where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal; other than an appeal pending before the Supreme Court, shall abate on such establishment." [Emphasis is ours]*
>
> *Section 4 of the Federal Service Tribunal Act, 1973 provides for appeals to the Tribunal by a civil servant aggrieved of any order regarding terms and conditions of his service. Clause (b) of subsection (1) of section 4 of the Federal Service Tribunal Act expressly bars the Tribunal from entertaining appeal against the decision of a departmental Authority determining the fitness or other wise of a person to be promoted to a higher grade. The Tribunal has thus no jurisdiction to examine whether or not a civil servant is fit for promotion to a higher grade. Under Clause (2) of Article 212 of the Constitution the jurisdiction of the Court is ousted only over matters falling within the exclusive jurisdiction of the Tribunal established under Clause (1) of Article 212. As the determination of fitness of a civil servant for promotion has been*

[2] *Secretary Establishment Division vs. Aftab Ahmed Maneka, (2015 SCMR 1006).*

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> *excluded from jurisdiction of the Tribunal, the ouster Clause (2) of Article 212 therefore does not extend to such matters."*

From the perusal of above it is evident that the jurisdiction of High Court is not barred, where the issue pertains to fitness for promotion. As a consequence, the bar contained under Article 212 is not attracted to the present cases and the same has been categorically held by the superior courts in numerous cases.[3]

II. CONFIDENTIALITY

12. The second objection was raised when this Court, in order to ascertain the veracity of the claims regarding arbitrariness and unfair consideration for promotion, directed that the minutes of the meeting of HPSB and the complete record placed before the HPSB be placed before this Court. At this juncture, the learned Additional Attorney General raised the objection of confidentiality and reliance was placed upon section 7(f) of the Right of Access to Information Act, 2017. For ease the relevant portion is reproduced below:-

> *"**7. Exclusion of certain record.** —Nothing contained in section 6 shall apply to the following record of all public bodies, namely: —*
>
> *(a)…*
> *(b)…*
> *(c)…*
> *(d)…*
> *(e)…*
>
> *(f) record declared as classified by the Minister-in-charge of the Federal Government:*
>
> *Provided that the Minister-in-charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information outweighs public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded."*

13. A bare perusal of section 7(f) unambiguously reveals that the exclusion from disclosure is neither automatic nor unconditional. The provision contemplates a two-fold statutory requirement before any record can be lawfully withheld on the ground of confidentiality. Firstly, the record must have been

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[3] *Orya Maqbool Jan vs. Federation of Pakistan through Secretary and others, (2014 SCMR 817), I.A. Sherwani and others vs. Government of Pakistan through Secretary Finance Division, Islamabad and others, (1991 SCMR 1041), Mian Abdul Malik vs. Dr. Sabir Zameer Siddiqui and 4 others, (1991 SCMR 1129).*

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expressly declared as "classified" by the Minister-in-charge of the Federal Government. Secondly, even such declaration is subject to a mandatory obligation upon the Minister-in-charge to record reasons demonstrating that the harm likely to result from disclosure outweighs the public interest involved. The proviso further circumscribes the scope of exclusion by expressly providing that information pertaining to allegations of corruption or violation of human rights shall not fall within the exclusionary ambit. In the present matter, the first requirement is satisfied since the record has been declared as classified by the Prime Minister who at that time was the minister in Charge. However, the respondents have failed to satisfy the second statutory requirement of section 7(f) which stipulates that the Minister in Charge shall record reasons demonstrating that the harm likely to result from disclosure outweighs the public interest involved. The Prime Minister/Minister in Charge's approval dated 10.01.2022 reflects that no reasons were recorded to justify the classification of such record as "classified". Equally absent is the recording of reasons to establish that the harm from disclosure outweighs the overriding public interest. It is settled law that statutory power cannot be exercised in an unstructured, unguided, or unbridled manner, for such exercise undermines the statutory scheme[4]. It would be more appropriate to examine the matter through the lens of the standard in which the Minister in Charge, must invariably ask himself: *what order should I pass if I were to act justly, fairly, and reasonably?* If the order ultimately passed is inconsistent with the answer to that question, he would exceed his lawful jurisdiction. Reasonableness in this context requires a demonstrable application of mind, a conscious evaluation of the circumstances warranting the exclusion of the record from "Public Record", and the articulation of reasons that reveal a rational nexus between the standard that the harm from disclosure outweighs the overriding public interest. However, it is evident from the record that the Minister in Charge mechanically categorized the record as "classified" and did not address the statutory preconditions. In the absence of

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[4] *Walayat Ali Mir vs. Pakistan International Airlines Corporation, (1995 SCMR 650), Aman Ullah Khan and others vs. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others, (PLD 1990 SC 1092), Chairman Regional Transport Authority, Rawalpindi vs. Pakistan Mutual Insurance Company Limited, Rawalpindi, (PLD 1991 SC 14), Government of N.W.F.P. through Secretary and 3 others vs. Mejee Flour and General Mills (Pvt.) Ltd. Mardan and others, (1997 SCMR 1804), Abid Hussain and others vs. P.I.A.C. and others, (2005 SCMR 25), Messrs Gadoon Textile Mills and 814 others vs. WAPDA and others, (1997 SCMR 641), Abu Bakar Siddique and others vs. Collector of Customs, Lahore and others, (2006 SCMR 705)*

compliance with these statutory pre-conditions, the plea of confidentiality remains a mere assertion devoid of legal backing. The contention of the respondents that the record is confidential, without fulfilling the mandatory statutory requirements enshrined in section 7(f) of the Right of Access to Information Act, 2017 cannot be sustained.

14. Even otherwise, the reliance upon section 7(f) is misconceived inasmuch as the minutes of meeting forms the very basis of the Impugned Decisions affecting the petitioners' promotion prospects. Denial of access to such material, while simultaneously relying upon it to the detriment of the petitioners, offends the principles of transparency, fairness, and due process, and renders the decision-making process opaque and arbitrary. The same, therefore, amounts to nothing more than a bare assertion of confidentiality, which carries no legal sanctity and is liable to be disregarded in proceedings of judicial review. Moreover, this Court has already addressed the contention of confidentiality in the case of *Babar Bashir*[5], in the following manner:-

> *"13. This Court would like to take exception to the plea that the objective assessment and marks awarded by the DSB are "confidential" and therefore immune from disclosure. Quite frankly this cannot be accepted as an absolute proposition of law. While it is settled that promotion to a selection post is not a vested right and that the assessment of fitness lies primarily within the domain of the competent authority, such discretion is neither unfettered nor insulated from judicial scrutiny. Confidentiality cannot be invoked as a cloak to defeat the requirements of fairness, transparency, and due process, particularly where it results in an adverse outcome such as supersession of a civil servant. The right asserted by the petitioner is not to promotion per se, but to a fair, reasoned, and lawful consideration in accordance with the governing rules. Where the decision results in supersession, the minimum requirement of law is that the affected officer be made aware of the basis of the decision, at least to the extent necessary to enable him to understand why he failed to meet the prescribed threshold and to meaningfully assail the decision if it is arbitrary or perverse… Judicial precedent has consistently held that while courts do not sit as appellate forums over the wisdom of Selection Boards, they are competent to examine whether the process adopted was lawful, transparent, and free from arbitrariness or mala fides. Non-disclosure of marks or reasons, especially when allegations of "average competence" and "questionable integrity" are levelled without prior communication or supporting material, renders the process doubtful and offends the principles of natural justice. Confidentiality, therefore, cannot be stretched to justify*

[5] *Writ Petition No. 3715 of 2024 titled "Babar Bashir vs. Federation of Pakistan and others".*

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> *non-communication of reasons or to shield an otherwise reviewable decision from judicial review, particularly where the action complained of is supersession and that too which frustrates the legitimate expectation of fair consideration under the law."*

15. The above referred case related to the Babar Bashir's consideration for promotion by the Department Selection Board, however, the same observation applies with equal force in these matters and the plea of confidentiality, as raised by the respondents, cannot be accepted as an absolute bar to disclosure before this Court, particularly where the impugned decisions are alleged to be procedurally improper, irrational, arbitrary and tainted with *mala fide*.

D. QUESTIONS FOR DETERMINATION

16. Tersely recapitulated, the petitioners in all the writ petitions are civil servants and were eligible to be considered for promotion in BS-22 by the HPSB in its 29th meeting, however, they were not recommended for promotion vide the Impugned Decisions. While considering the background of the petitions, the grounds raised by the parties and question of law involved, the following questions need adjudication by this Court:-

> *i) Whether the Impugned Amendments are unconstitutional and ultra vires the Civil Servants Act, 1973 and the Constitution of 1973?*
>
> *ii) Whether the 29th meeting of the HPSB was lawfully constituted and conducted in accordance with the Rules of 2010?*
>
> *iii) Whether the Impugned Decisions of the HPSB are liable to be set aside on the grounds that the Board failed to accord meaningful consideration to the petitioner's cases for promotion?*
>
> *iv) Whether the OSD Notification, as well as the act of Respondent No. 1 in continuing the petitioner in W.P. No. 1160 of 2025 as an OSD for the past two years, is unlawful?*

E. CHALLENGE TO THE VIRES

17. To address the first question framed, it is necessary to briefly examine the relevant statutory framework, and the delegating provision that governs the exercise of the delegated legislative power. The Rules of 2010 were promulgated by the Federal Government in the exercise of powers derived from Section 25(1) of the Act which is the delegating provision in the parent statute and goes to the root of the entire matter. Section 25 of the Act is reproduced below:-

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> *"**25. Rules.-** (1) The President, or any person authorised by the President in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.*
>
> *(2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act."*

A plain reading of Section 25(1) reveals two distinct limbs of rule-making authority. First, the power is vested in the President as the principal authority. Second, the President is expressly empowered to delegate this authority to any person he may authorize in that behalf. The provision thus creates a structured mechanism for the exercise of delegated legislative power, with the President at its head and the option of further delegation by express authorization.

I. VIRES OF THE 2017 AMENDMENT

18. The Rules of 2010 were first amended vide the 2017 Amendment which effected two amendments in the rules. First, the preamble to the Rules of 2010 was substituted. Second, the Note to Rule 5 was substituted. This Court shall first address the vires of the amended preamble and in order to address the issue appropriately, it is necessary to reproduce the preamble, both as it stood prior to and after the 2017 Amendment:-

Pre-amendment Preamble
*In exercise of the powers conferred by sub-section (1) of section 25 of the Civil Servants Act, 1973 (LXXI of 1973), read with proviso to sub-section (1) of section 9 of the said Act, the **Federal Government** is pleased to make the following rules, namely:—*
Post amendment Preamble
*In exercise of the powers conferred by sub-section (1) of section 25 of the Civil Servants Act, 1973 (LXXI of 1973), read with clause (h) of sub-section (1) of section 2 read proviso to sub-section (1) of section 9 thereof and all other powers enabling him in this behalf, the **Prime Minister** is pleased to make the following Rules, namely:-*

19. The learned counsel for the petitioners advanced the argument that since the Rules of 2010 were originally framed and promulgated by the Federal Government, the amendment introduced by the Prime Minister in his individual

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capacity is without jurisdiction, *ultra vires* the Act, and repugnant to the Constitution. Two interrelated legal propositions were urged in support of this contention. First, it was submitted that delegated legislation may only be amended by the authority that originally enacted it. This principle proceeds from the foundational premise that the power to legislate subordinate rules is derivative in character and must be traced to the enabling statute, and the instrument of delegation cannot be amended save by the delegating authority or by the same body that made the original instrument. Second, reliance was placed upon the decision of *Mustafa Impex (Supra)* in which the Honorable Supreme Court of Pakistan authoritatively held that the Federal Government is a distinct constitutional entity constituted collectively by the Prime Minister and the Federal Cabinet acting as one body. It was argued that the Prime Minister, being merely the head of the Cabinet, cannot unilaterally exercise powers vested in the Cabinet as a whole, and that any purported exercise of collective governmental authority by him in his individual capacity is constitutionally impermissible.

20. The argument is not devoid of initial merit as there is no cavil to the principle that a piece of delegated legislation may only be amended by the same authority that enacted it. However, an abstract invocation of principle, untethered to the factual and legal matrix of the matter before the Court, cannot be sufficient to invalidate an otherwise valid exercise of legislative power. A case of challenge to the vires of subordinate legislation demands a careful examination of all relevant factors, including the specific contours of the delegation of authority. The Courts have spelt out a number of grounds for laying a challenge to delegated or subordinate legislation. The following tests[6] have been laid down by the Courts for examining the validity and vires of delegated legislation:-

> *(1) The Rules framed are beyond the power granted by the enabling legislation (ultra vires);*

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[6] *Reliance is placed on Muhammad Amin and others vs. Government of Pakistan, (2015 SCMR 630), Khawaja Ahamd Hassan vs. Province of Punjab, (2015 SCMR 186), Aziz Ahmad vs. Provincial Police Officer, (PLD 2005 Lahore 185), Saleh Muhammad vs. Traffic Manager, Port Trust, (Karachi PLD 1961 (W.P.) Kar. 349), S.M. Sharif vs. Federation of Pakistan (PLD 1981 Lah. 74) and Hashwani Sales and Services Limited vs. Karachi Building Control Authority (PLD 1986 Kar. 393). These tests have also been propounded in Administrative Law by J.F. Garner; Introduction to Administrative Law by David Foulkes, Judicial Review of Administrative Action by S.A. de Smith, Craies on Statute Law.*

(2) Whether the process for formulating the Rules prescribed by the parent statute was followed (procedural ultra vires); and

(3) The Rules are inconsistent with the objective of the parent statute.

21. A bare perusal of Section 25 reflects that the same vests the rule-making power in the President, with an enabling clause permitting delegation to such person or authority as may be authorized by him. The controversy raised by the petitioners stands substantially answered upon an examination of the record. It is manifest from the record that by virtue of S.R.O. 120(I)/98, promulgated in 1998 by the President in exercise of the authority conferred by Section 25(1) of the Civil Servants Act, the President expressly authorized the Prime Minister to make rules under the Act. This delegation is of utmost importance since it is specific in its subject matter *(rule-making under the Act)*, express in its conferment *(the authorization is unambiguously directed to the Prime Minister)*, and valid in law *(it flows from a constitutional and statutory authority fully competent to delegate)*. It is not manifest from the record that S.R.O. 120(I)/98 was itself *ultra vires* or had ceased to have effect prior to the 2017 Amendment.

22. The reliance on the doctrine in *Mustafa Impex* must, accordingly, be understood in its proper context. The Supreme Court's holding in that case addresses the distinction between the Prime Minister acting in his personal capacity and the Federal Government acting as a collective constitutional body. It does not address the distinct circumstance where the President has made an express and specific delegation of a statutory power directly to the Prime Minister. When the Prime Minister exercises authority that has been personally conferred upon him by the President under a statutory provision, he does not purport to act as the Federal Government, rather he acts as the authorized delegate of the President. The two situations are legally distinct and must not be conflated. The principle in *Mustafa Impex* is directed at preventing the Prime Minister from appropriating to himself powers constitutionally or statutorily vested in the Federal Government collectively. It has no application where the Prime Minister exercises power in his own name, by virtue of an express delegation in his name from the constitutionally competent authority. To hold otherwise would be to render the enabling clause in Section 25(1), *"or any person authorised by the President"* irrelevant, redundant and illusory, which

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cannot be countenanced. The Federal Government is a distinct constitutional entity under Article 90 of the Constitution, functioning collectively through the Cabinet. It is neither synonymous with nor interchangeable with the Prime Minister acting individually when authorized. Thus, the reliance on the case of *Mustafa Impex* is misconceived.

23. Moreover, even if the original promulgation of the Rules of 2010 by the "Federal Government" created an ambiguity as to the identity of the promulgating authority, given that the delegation under S.R.O. 120(I)/98 was in favour of the Prime Minister individually, the 2017 Amendment operates as a curative measure that resolves that ambiguity definitively and prospectively. An authority competent in law when subsequently exercises a power in respect of an earlier instrument, such subsequent exercise operates to cure any procedural or formal defect that may have attended the earlier action. The curative principle does not require the invalidity of the earlier action to be established, it suffices that the subsequent exercise of power, by the competent authority, regularizes and reaffirms the basis upon which the earlier instrument was made. In the present case, the Prime Minister as the lawful and express delegate of the President for rule-making under the Act amended the preamble of the Rules of 2010 which explicitly acknowledged that the rules were being made by him in exercise of his delegated authority. This act of clarification was squarely within the scope of the delegation under S.R.O. 120(I)/98 and necessary after the judgment in *Mustafa Impex*. Far from being an unauthorized usurpation of power, it was an exercise of existing and valid authority, which had the additional effect of removing any residual uncertainty regarding the identity of the lawful rule-maker.

24. It is a foundational principle of judicial review that courts must approach challenges to delegated legislation with restraint and deference, and must not substitute their own assessment of legislative policy for that of the authority to whom the power of legislation has been delegated. The test of vires is not whether the court would have made the rule, nor whether the rule represents the wisest or most prudent exercise of the delegated power. The test is strictly and only whether the rule falls within the four corners of the authority conferred by the enabling statute. Where a rule is capable of being read as falling within that

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authority, it must be sustained. Invalidity is not to be presumed rather it must be demonstrated by the one laying challenge to the vires and such challenge must rest on clear and cogent grounds. However, the learned counsels for the petitioners have not been able to demonstrate the same and since the delegation was in favour of the Prime Minister, the authority of the Federal Government cannot supersede or override such delegation unless expressly provided by law. Delegated power cannot be assumed by implication nor expanded by practice.

25. This Court shall now examine the vires of amendment made in the "Note" at the end of Rule 5 of the Rules of 2010 which, as originally framed, had allowed the Chairman of the HPSB to invite *"any officer holding the post in BS-22"* to meetings of the HPSB. The 2017 Amendment amended the said Note as follows:-

> *"Note. The Chairman may invite Federal Minister(s)/Minister(s) of State/Advisor(s) to Prime Minister / Special Assistant(s) to the Prime Minister and Officer(s) holding the post of BS-22 for consultation where deemed appropriate"*

26. It is manifest that before the 2017 Amendment, the Chairman's power of invitation extended only to officers holding the post in BS-22. After the 2017 Amendment, that power was expanded to include Federal Ministers, Ministers of State, Advisors to the Prime Minister, and Special Assistants to the Prime Minister. The learned counsels for the petitioners argued that the rules as originally framed insulated the bureaucracy from political pressures and consequently the amendment in the "Note" politicizes the HPSB which reflects *mala fide*. However, the same can be said regarding any executive or administrative act and the argument of politicization of the HPSB has to be tested against the settled grounds of vires. The first one being against the parent act which imposes no restriction on the class of consultees. The rule-making power under Section 25(1) of the Act is expressed in the widest possible terms. The authorized delegate may make *"such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act."* The legislature has not, within this provision or elsewhere in the Act, prescribed any restriction upon the categories of persons who may be associated with or consulted in the proceedings of bodies constituted under the Act. In the absence of any express or necessarily implied statutory restriction, it is not open to this Court to read such a restriction into the enabling provision by inference or by resort to a

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general argument of politicization. The principle of legality requires that invalidity be traced to the specific statutory provision which prohibits it and not derived from a bare assertion of what the statute ought to have provided or what policy would have been wiser. Since Section 25 imposes no restriction on the class of consultees, the expansion effected by the amended "Note" cannot, on that ground alone, be declared as *ultra vires*.

27. It is axiomatic that if the provisions of a statute deal with the subject matter in considerable detail, the scope of delegated legislation shall correspondingly become limited. On the contrary, if the statute generally deals with the subject matter, the scope of delegated legislation made under it shall become greater for it is assumed that the legislature consciously decided to leave the detail to be filled out by delegated legislation[7]. The need for delegated legislation arises to reduce pressure on parliamentary time and to make provision for rapidly changing or uncertain situations which may or may not be in the contemplation of the Parliament. The theory underlying the principle of delegated legislation is that the Parliament is only concerned with general principles whereas the executive and other authorities authorized to make delegated legislation address and deal with matters of administration and detail. O'Connor J. in ***Baxter v. Ah Way (1909) 8 CLR 626*** put forward the rationale for making regulations in the following terms:-

> *"Now the legislature would be an ineffective instrument for making laws if it only dealt with the circumstances existing at the date of the measure. The aim of all legislatures is to project their minds as far as possible into the future, and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases, and, therefore, legislation from the very earliest times, and particularly in more modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied."*

28. Furthermore, there is a strong presumption of validity attached to delegated legislation.[8] In a Suo Motu Case[9] it was held by the august Supreme

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[7] *Muhammad Fahad Malik vs. Pakistan Medical and Dental Council and others PLD 2018 Lahore 75 and Morton v. Union Steamship Co. of New Zealand Ltd. [(1951) 83 CLR 402].*
[8] *Ummat Ullah vs. Province of Sindh (PLD 2010 Kar. 236).*
[9] *Suo Motu Case No.11 of 2011, (PLD 2014 Supreme Court 389).*

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Court that a strong presumption of constitutionality, legislative competence, legality, reasonableness and *intra vires* is attached with full force to subordinate legislation and to strike down such delegated legislation, the challenger is required to show that the same impinges upon fundamental rights, conflicts with any Constitutional provision, there is a lack of legislative competence of the delegatee making it or it is beyond the scope of parent statute. However, the petitioners have not put forward any valid ground for laying challenge to the vires of the same and have relied on the ground of *mala fide* by submitting that the amendment in the "Note" politicizes the HPSB. However, it is a settled principle of law that general allegation of *mala fide* carries no weight in the eyes of the law[10]. Moreover, a significant aspect is that pre-amendment "Note" already contained a provision for the Chairman to invite external persons for consultative purposes. The 2017 Amendment did not introduce the concept of external consultation *de novo*. It expanded the class of permissible consultees while retaining the discretionary character of the Chairman's power and the consultative nature of the invited participation. The amendment is therefore not a departure from the underlying framework and it is a modification that remains entirely within the framework's logic and structure. Seen in this light, the mere expansion of the class of consultees through the amended "Note" cannot, by itself, render the provision ultra vires. In order to strike down the amendment, it was incumbent upon the petitioners to show that any of the disqualification exist namely (a) it impinges upon fundamental rights guaranteed under the Constitution (b) it is in conflict with any Constitutional provision (c) it is beyond the legislative competence of the delegatee making it and or (d) it is violative or beyond the scope of the parent or enabling statute, and in the absence of these, the same cannot be declared *ultra vires*.

II. VIRES OF THE CHAIRMAN AMENDMENT

29. The Chairman Amendment notified on 27.02.2025, substituted Rule 5(1)(a) of the Rules of 2010 to provide that the HPSB may be chaired by the Prime Minister or a Federal Minister authorized by him in that behalf. In this regard the learned counsels for the petitioners relied upon the doctrine of *delegatus non potest delegare*, which states that a delegate cannot further

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[10] *Federation of Pakistan vs. Saeed Ahmed Khan, (PLD 1974 SC 151).*

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delegate the power entrusted to him and that by doing so and allowing the Deputy Prime Minister to Chair the HPSB, the constitution of the Board is unlawful and the proceedings *corum non judice*. The maxim *delegatus non potest delegare* operates to prevent a delegate from transferring to another person the power that has been vested in him to be exercised specificly by him, and no other. The rationale is that where a power is delegated to a specified person, it is done so on the basis of a judgment that the person or authority possesses the competence, accountability, and legal position appropriate for the exercise of that power. To permit that authority to further delegate the power would be to substitute, a different and unauthorized person or authority to exercise power in place of the one the law selected and intended. At this juncture it is appropriate to examine how the courts have interpreted the maxim. In the case of ***Imtiaz Gohar and others vs. Additional Commissioner and others, (1990 MLD 1912),*** J. Fazal Karim expounded on the principle in the followings words:-

> *"18. Three general propositions of law are well-settled and well-recognized: (i) if the power given by the statute is personal to the person designated in the statute or the statutary law, the power must be exercised by that person' Liversidge v. Anderson (1942) AC 206, 265, (ii) in order to enable a person to delegate his powers or functions, there must be an authority express or implied to delegate and that the action taken by a delegated authority when there is no power to delegate goes to the root of the jurisdiction. (Vine v. National Dock Labour Board (1957) AC 488 and (iii) judicial authority normally a cannot be delegated (Vine's case, referred to above)."*
>
> (Underlined for emphasis)

Similarly, in the case of ***Muhammad Yusuf Ali Shah vs. Federal Land Commission, Government of Pakistan and 2 others, (1995 CLC 369)***, the Honorable Division Bench of the Lahore High Court observed:-

> *"10. Having noted the facts of the case, the arguments of the parties and the point for determination, we now proceed to determine these questions one by one. We take question No. 1 first. Before we proceed to deal with the contentions of the parties in regard to this point, we feel it necessary to state that it is a settled proposition of law that when a power is conferred on a particular person then that person can neither transfer its exercise to another person nor can exercise it without application of his mind to the facts and circumstances of that case. What is required, is that he has to exercise that power with application of his independent mind to the facts and circumstances of that case regardless any*

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extraneous/dictative influence. Reference may be made to a passage from celebrated work "Introduction to Administrative Law by David Foulkes, Fourth Edition, which is as under:

"An act may be ultra vires because it is done by the wrong person. This raises particularly the problem of delegation of functions. Where a power is conferred on one person then the general rule is that he cannot transfer its exercise to another person--delegatus non potest delegare. In Allingham v. Minister of Agriculture and Fisheries, (1947) 1 All ER 780, the Minister had by regulations lawfully delegated to a County War Agricultural Committee his powers to give directions concerning the use of agricultural purpose of land specified in the notice of direction. The committee decided that eight acres of sugar beet should be grown by the occupier of certain land but left it to its executive officer to select the acres to which the direction would apply. The officer consulted a local sub-committee appointed to make recommendations to the committee; acting on its advice he served a notice on the occupier specifying the acres. The notice was held to be invalid as the committee had left to the officer the duty of deciding something they had to decide for themselves.

Of course, where the delegate is expressly empowered by statute to sub-delegate, then no objection can be made. Section 101 of the Local Government Act, 1972 gives a wide power to local authorities to make a what are popularly called `agency arrangements' (though the section does not use the word agent or delegate). By it a local authority may `arrange for the discharge of any of their functions (a) by a committee, a sub-committee or an officer of the authority; or (b) by any other local authority:"

Also see Mehtab Khan v. Rehabilitation Authority (PLD 1973 SC 451)."

(Underlined for emphasis)

30. It transpires from the perusal of the above referred case laws that in order to enable a person to delegate his powers or functions a qualification exists i.e. there must be an authority express or implied to delegate and where the delegate is expressly empowered by statute to sub delegate, then no objection can be made. Thus, the doctrine of *delegatus non potest delegare* yields where the law expressly or impliedly authorizes sub-delegation. In the present matter the Chairman Amendment expressly permitted such delegation. The question that now arises is whether the Prime Minister, having been validly authorized by the President to frame rules under the Act, could lawfully amend the Rules of 2010 to the effect that the HPSB shall be chaired by "the Prime Minister or any

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Minister authorized by him," or whether such a provision offends the principle *delegatus non potest delegare*. Therefore, it is necessary to identify that which is being delegated since the question of vires hinges upon it.

31. The rule-making power delegated to the Prime Minister by the President under Section 25(1) of the Act, through S.R.O. 120(I)/98, is legislative in character since it is the power to make the rules. The Prime Minister exercised that power to enact the Chairman Amendment and amended Rule 5(1)(a) to provide for an authorized Federal Minister to chair the HPSB. This distinction is critical since by amending Rule 5(1)(a), the Prime Minister did not purport to transfer or sub-delegate his rule-making authority to a Federal Minister, nor did the amendment confer upon such Minister any competence to frame, modify, or repeal rules under the Act. The legislative function remained wholly intact with the delegate originally empowered to exercise it. The Chairman Amendment merely altered the procedural arrangement within the structure of the rule itself, whereby the chairing of the meeting of the HPSB could be undertaken by a Federal Minister authorized for that purpose. The amendment, therefore, regulates the manner in which a statutory body constituted under the rules is to conduct its proceedings. In essence this is the exercise of an executive function that the rule has created and authorized and is a distinct act which does not pertain to law-making. The maxim *delegatus non potest delegare* does not prohibit a delegate from arranging the manner in which administrative functions under a rule are to be carried out, unless the parent act requires personal performance of the function. However, neither the parent Act or nor its scheme indicate that the function must be exercised personally by the Prime Minister. In the absence of such an indication, the amendment remains within the permissible domain of subordinate legislation and cannot be invalidated on the ground of impermissible sub-delegation since it merely restructures administrative machinery.

32. Moreover, the Courts ordinarily do not interfere in the functioning of the executive as long as it adhered to the law and established norms and acts in

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furtherance of its fiduciary responsibility[11]. It was thus obligatory upon the learned counsel for the petitioners to rebut this presumption not by merely asserting that the Chairman Amendment is *ultra vires* the Constitution, but by establishing how that conclusion is to be drawn, and not merely by alleging that it breached the fundamental rights of the petitioners guaranteed by the Constitution, but by putting forth substantial grounds capable of leading to that result, since mere reliance upon the maxim *delegatus non potest delegare* cannot be equated with the infringement of any vested right or the violation of any fundamental right. Even otherwise, the Honorable Supreme Court in *Dossani Travels*[12] has laid down the principle of deference to the policy-making functions of executive institutions where no violation of law has been established.

III. VIRES OF THE RECONSIDERATION AMENDMENT

33. The next amendment whose vires have been challenged is the Reconsideration Amendment which added a new clause to the Rules of 2010 i.e. clause (v) to Rule 4, which provides as follows:-

> *"(v) An officer who has been considered twice for promotion to BS-22 by High Powered Selection Board and not recommended for promotion, he/she shall be ineligible for further consideration."*

34. It is undisputed that prior to the Reconsideration Amendment, the Rules of 2010 contained no provision that attached permanent ineligibility to an officer on account of having been considered by the HPSB on two occasions without recommendation. Under the original and previously amended rules, an officer who fulfilled the conditions in clauses (i) through (iv) of Rule 4 i.e. service length, quality of reports, absence of penalty, and variety of experience remained eligible for consideration at each successive meeting of the Board until promoted, retired, or otherwise removed from the panel. Deferment or non-recommendation at one or even two sittings of the Board carried no legal consequence for future eligibility and an officer was entitled for consideration by the Board at each subsequent meeting.

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[11] *Syed Mahmood Akhtar Naqvi vs. Federation of Pakistan, (2013 PLD 195 SC).*
[12] *Dossani Travels Pvt. Ltd vs. Travels Shop (Pvt.) Ltd. (2014 PLD 1 SC).*

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35. An examination of the Reconsideration Amendment reflects that the same is *ultra vires* the Act. Under Section 9 of the Act, a civil servant possessing the prescribed qualifications is eligible for promotion to a higher post reserved for departmental promotion, and in the case of posts such as that of Secretary (BS-22), the statute expressly contemplates that such promotion shall be made *"in such manner and subject to such conditions as may be prescribed."* While this provision confers a degree of latitude upon the rule-making authority, the same is not unbounded. The prescription of "manner and conditions" must remain ancillary to, and in furtherance of, the core statutory principle that promotions to such high posts are to be made on the basis of merit. The concept of merit, which underpins promotion to BS-22 posts, is inherently dynamic and subject to change with the passage of time, experience and performance. By foreclosing further consideration after two unsuccessful attempts, the amendment debars the assessment of an officer's suitability and deprives him of the opportunity to be reconsidered even in light of subsequent improvements in service record or performance. Such a restriction is manifestly arbitrary and bears no rational nexus to the object of ensuring merit-based selection. In ***Muhammad Amin Muhammad Bashir vs. Government of Pakistan, (2015 SCMR 630)*** while dealing with the principles of delegated legislation the Honorable Supreme Court held:-

> *"The principles of delegated legislation are very clear and hardly require any reiteration by us at this late stage. In brief, they entitle the delegate to carry out the mandate of the legislature, either by framing rules, or regulations, which translate and apply the substantive principles of law set out in the parent legislation or by recourse to detailed administrative directions and instructions for the implementation of the law. They are intended to enforce the law, not override it. They can fill in details but not vary the underlying statutory principles. In case of conflict they must yield to the legislative will. They are below and not above the law. The minutiae can be filled in but the basic law can neither be added to nor subtracted from."*

Similarly, in ***Khawaja Ahmad Hassan vs. Government of Punjab, (2005 SCMR 186)*** the scope of subsidiary legislation and the test for its legality was explained as follows:-

> *"The authority of executive to make rules and regulations in order to effectuate the intention and policy of the Legislature, must be exercised within the limits of mandate given to the rule making authority and the rules framed under an enactment must be*

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> *consistent with the provision of said enactment. The rules framed under a statute, if are inconsistent with the provisions of the statute and defeat the intention of Legislature expressed in the main statute, same shall be invalid. The Rule-making authority cannot clothe itself with power which is not given to it under the statute and thus the rules made under a statute, neither enlarge the scope of the Act nor can go beyond the Act and must not be in conflict with the provisions of statute or repugnant to any other law in force."*

36. A perusal of the judgment above reflects that the Supreme Court reiterated that the power to enact subsidiary legislation can only be exercised in pursuit of the purpose and object of the statute and not to defeat it. Substantive disqualifications or barriers that defeat the right of eligible officers to be fairly considered for promotion is unreasonable which a ground for declaring it *ultra vires*.[13] After the Reconsideration Amendment, an officer's non-recommendation on two occasions by the HPSB automatically and permanently extinguishes his or her eligibility for further consideration for promotion to BS-22, regardless of the reasons for which recommendation was withheld, whether those reasons were ever communicated to the officer, and regardless of whether the earlier proceedings of the HPSB were themselves lawfully conducted. The amendment draws no distinction between non-recommendations following a reasoned assessment of comparative merit, non-recommendation on account of incomplete service record and/or pending disciplinary proceedings subsequently concluded in the officer's favor. In all such instances, the consequence is identical and irreversible i.e. permanent ineligibility. The Reconsideration Amendment, therefore, travels beyond the permissible limits of delegated legislation and is liable to be declared *ultra vires* Section 9 of the Act.

F. CONSTITUTION OF HPSB

37. This Court shall now address the argument of the learned counsels for the petitioners that the HPSB was not constituted in accordance with the law. In this regard, the first contention advanced was that the Impugned Notification allowed the participation of unauthorized persons which vitiated the proceedings. The

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[13] *Saleh Muhammad vs. Traffic Manager, Port Trust, Karachi PLD 1961 (W.P.) Kar. 349, S.M. Sharif vs. Federation of Pakistan, (PLD 1981 Lah. 74) and Hashwani Sales, Muzaffar Khan vs. Evacuee Trust Property, (2002 C L C 1819 [Lahore]). Further reference may be made to Administrative Law by J.F. Garner; Introduction to Administrative Law by David Foulkes, Judicial Review of Administrative Action by S.A. de Smith, Craies on Statute Law.*

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Impugned Notification was issued by the Prime Minister in his capacity as Chairman of the HPSB in exercise of the power conferred by the Rules of 2010 pursuant to which two persons were invited to the meetings. Through the Impugned Notification, the Prime Minister invited Bilawal Bhutto Zardari, MNA and Khawaja Muhammad Asif, Minister for Defence to attend the 29th meeting of the HPSB as participants in the Board's deliberations regarding promotions of civil servants to BS-22. The Impugned Notification has been challenged on the ground of eligibility i.e. Bilawal Bhutto Zardari, as a Member of the National Assembly, is not a Federal Minister, Minister of State, Advisor to the Prime Minister, or Special Assistant to the Prime Minister, and therefore falls outside each of the categories specified in the amended Note to Rule 5 even as enlarged by the 2017 Amendment and his invitation by the Chairman of the HPSB was, on the face of the applicable rule, without legal authority. However, the same is premised on misconception. The Rules of 2010 were amended vide S.R.O. 08(I)/2023 dated 10.01.2023 and this amendment introduced in 2023 altered the composition of the HPSB. Sub-rule 5(1-A) was inserted permitting the Chairman to invite, up to two Federal Ministers, Advisors, Parliamentarians or other officers holding the post in BS-22 for consultation. It evinces from the record that this amendment has not been challenged and the same explicitly allows for the participation of Federal Ministers and Parliamentarians. Consequently, since the governing rule expressly permits the Chairman of the Board to invite, for consultation, Federal Ministers or Parliamentarians, the presence of the aforementioned individuals cannot be regarded as participation of unauthorized persons so as to vitiate the constitution of the Board or its proceedings. The Impugned Notification, having been issued in exercise of the authority conferred by the amended rule, therefore falls squarely within the four corners of law. In the absence of any challenge to the validity of the 2023 Amendment itself, the consequential acts performed pursuant thereto cannot be assailed in isolation.

38. The second contention advanced regarding the Impugned Notification was that the participation of elected officials politicizes the HPSB. However, this argument is devoid of merit. The determination of the institutional composition of consultative or advisory process is, in the first instance, a matter of administrative design falling within the policy domain of the rule-making

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authority, so long as the exercise remains within the bounds of the parent statute and is not arbitrary, or *mala fide*. The matter may also be examined through the broader lens of the doctrine of administrative deference. This principle recognizes that questions involving institutional design, policy considerations, and administrative coordination often present issues which are left to the discretion of competent authorities who is ordinarily better positioned to determine the modalities through which such administration should occur, and courts should exercise restraint on such matters. This principle was appropriately expounded by the United States Supreme Court's in the case of ***Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., [467 U.S. 837 (1984)]*** wherein the Court held that:-

> "*the power of an administrative agency to administer a congressionally created…..program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress. If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Judges are not experts in the field, and are not part of either political branch of the Government. Courts must, in some cases, reconcile competing political interests, but not on the basis of the judges' personal policy preferences. In contrast, an agency to which Congress has delegated policy-making responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices…."*
>
> (Underlined for emphasis)

The decision of the United States Supreme Court referred above is an example that deference should be accorded to policy decisions as unnecessary intrusions can lead to absurdity because Courts do not possess the required expertise to determine whether an alternative policy choice might have been preferable. This principle has also received recognition in Pakistan. In *Dossani Travels*[14], the Supreme Court held that, "*comparative analysis of the constitutional law from various jurisdictions would indicate that the Courts have deferred to the*

[14] *Dossani Travels Pvt. Ltd vs. Travels Shop (Pvt.) Ltd. (2014 PLD 1 SC). Also see Wattan Party vs. Federation of Pakistan, (2006 PLD 697 SC).*

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decisions of the administrative bodies and those entrusted with the policy making functions of the Executive if there was no violation of law". Furthermore, while citing a book on administrative deference it was further held that, "*the court should be loathe to interfere with intra vires administrative decisions, 'particularly where the decision maker is acting within his own area of professional expertise*".

39. This principle, correctly understood, does not demand the exclusion of the political executive from all contact with the civil service promotion process. On the contrary, it requires that each branch and organ of the State operate within its constitutionally and statutorily assigned domain, without undue encroachment by the judiciary into the domain of the executive. Thus, this Court is disinclined to indulge in such an assessment. The powers delegated to the Authority for framing rules generally signify broad discretion reserved for it to make assessment as to what will advance the purposes of the parent statute and also the measures required to advance those purposes. The rule-making authority in the present matter is vested, by specific statutory delegation, in the Prime Minister. The Prime Minister, acting within that delegated authority, determined that the Chairman of the HPSB should have the discretion to seek consultation from senior members of the political executive. That determination is an exercise of executive judgment within the executive domain. For this Court to invalidate that exercise on the ground that it disagrees with the policy rationale behind it would itself constitute a violation of the doctrine of separation of powers. It is generally recognized that issues which relate to policy matters involve greater expertise and are thus left to be determined by the delegated agencies. Implicit in this deferential attitude is the acknowledgement that the Courts should not engage in policy analysis for various reasons. The contention that the presence of the invitees rendered the meetings of the HPSB illegally constituted, or that the recommendations emanating therefrom are *void ab initio*, is thus devoid of legal substance and cannot be sustained.

40. The third contention regarding the constitution of the Board was that the 29th Meeting of the HPSB was presided over by the Deputy Prime Minister, Muhammad Ishaq Dar, however, the amended rule authorizes a "Federal Minister", and the post of Deputy Prime Minister, finds no express mention in

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the Constitution. This contention is tenable to some extent. However, in the specific instance of Muhammad Ishaq Dar the factual matrix is different. The Deputy Prime Minister Muhammad Ishaq Dar concurrently holds the portfolio of Minister of Foreign Affairs which is a full Federal Ministerial appointment carrying the constitutional status of that office. He is therefore, in law, a Federal Minister within the meaning of the Constitution and the amended rule, independently of and in addition to whatever significance attaches to his designation as Deputy Prime Minister. Thus, the authorization of Muhammad Ishaq Dar to chair the 29th Meeting of the HPSB was therefore an authorization to a Federal Minister. Hence, the argument advanced is misconceived, since the legal capacity required by the amended rule was present in Muhammad Ishaq Dar, regardless of the additional title of Deputy Prime Minister he holds.

41. In continuation of the argument another contention was advanced by the learned counsel for the petitioners that the HPSB was chaired by the Deputy Prime Minister who was unauthorized to do so. The learned Additional Attorney General controverted this position and submitted that the Deputy Prime Minister had indeed been duly authorized by the Prime Minister to discharge the function of Chairmanship. In this context Rule 5(1)(a) of the Rules of 2010 is relevant which states that the Chairman of High Powered Selection Board will be the Prime Minister or a Federal Minister authorized by him in that behalf. In order to examine the veracity of the claim regarding the legality of the Deputy Prime Minister's chairmanship of the 29th meeting of the HPSB, this Court summoned the relevant record so as to make certain whether any lawful authorization had been conferred. The Federation in support of its plea of authorization produced summaries dated 28.02.2025 and 26.03.2025. It evinces from a perusal of the summary dated 28.02.2025, paragraph 3 of which explicitly states that it is the Prime Minister, in his capacity as Chairman of the HPSB, who may be pleased to convene and fix a convenient date for the 29th meeting of the Board. This summary represents a formal requisition of the Prime Minister's approval for the convening of the meeting in his capacity as Chairman to which approval was accorded by the Prime Minister vide summary dated 02.03.2025, and the meeting was directed to be held on 05.03.2025. At this stage, the Prime Minister had not issued any express authorization for the Deputy Prime Minister to

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preside over the meeting as its Chairman and such was neither argued, nor could it have been, since at this juncture, the Prime Minister was approving only the convening of the meeting and the question of chairmanship did not arise yet for his express consideration at that stage.

42. The summary subsequently submitted to the Prime Minister for approval on 26.03.2025 sets out the composition of the Board and reflects that the meeting, convened pursuant to the Prime Minister's directions dated 02.03.2025, was held under the chairmanship of the Deputy Prime Minister. From the said approval it is evident that the Prime Minister had seen the summary and had, upon such consideration, issued the aforementioned direction, thereby rendering it manifest that the Prime Minister was fully conscious of the chairing of the meeting by the Deputy Prime Minister. There can be no cavil to the position that authorization, in law, may be either express or implied.[15] Where authorization is express, the act of authorization is manifested through clear and unequivocal language leaving no room for doubt or interpretation. However, the complication arises only in cases of implied authorization, the validity and sufficiency of which must necessarily depend upon the specific circumstances from which such authorization is sought to be derived and the nature of the acts purportedly undertaken thereunder.[16] The governing principle in relation to implied authorization and approval is well-established in law i.e. the authorizing authority must be fully cognizant of and fully informed regarding the acts performed in its name and on its behalf, and the legal and practical consequences of such acts must be attributable to and borne by such authority.[17] The summary dated 26.03.2025 unmistakably establishes that the Prime Minister was indeed fully aware of the fact that the meetings had been presided over by the Deputy Prime Minister on his behalf during the period 05–10.03.2025, and that the

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[15] *Ramasamy Chetty v. Karuppan Chetty and others, (AIR 1916 Mad. 1133) wherein it was held that "in the case of an agent exceeding his authority ratification may be implied from the mere silence or acquiescence of the principal".*

[16] *Tahir Pervaiz vs. Federation of Pakistan, [2019 PLC (C.S.) 339].*

[17] *In case of Bank of Montreal v. Dominion Gresham Guarantee and Casualty Co., (AIR 1930 PC 278) it has been ruled that "effective ratification necessarily involves knowledge of all the material facts on the part of him who ratifies". In case of Surendra Nath Roy v. Kedar Nath Bose and others AIR 1936 Cal. 87 the necessary ingredients of ratification have been discussed and it has been observed that "to constitute a binding adoption of acts of priori unauthorized, these conditions must exist: (1) acts must have been done for and in the name of the supposed principal and (2) there must be a full knowledge of what those acts were, or such an unqualified adoption that the inference may properly be drawn that the principal intended to take upon himself the responsibility for such act, whatever they were."*

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decisions arrived at in those meetings had culminated in the issuance of formal appointments which the Prime Minister himself had approved. It follows, as a necessary corollary, that the acts of the Deputy Prime Minister in chairing the said meetings were clothed with the implied authorization of the PM, a conclusion that is supported and discernible from the Prime Minister's subsequent conduct in approving not only the summary dated 26.03.2025 but also the formal notifications issued pursuant to the decisions taken in those meetings.

43. Moreover, the remaining agenda in the summary dated 26.03.2025 pertains to the convening of a subsequent meeting to address the promotions of civil servants belonging from Federal Board of Revenue (IRS and PCS) since they were not considered due to a stay order granted by this Court, and a convenient date and time were once again sought from the Prime Minister in his capacity as Chairman of the HPSB. The Prime Minister, vide approval dated 14.04.2025 approved the summary in terms whereby the Establishment Division was specifically directed to approach the Deputy Prime Minister and seek his convenience for the purpose of chairing the next meeting. However, it is necessary to observe that the challenge raised by the petitioners is directed exclusively at the chairmanship of the meeting held on 05–10.03.2025. Having examined the said record with due care, this Court is satisfied that the language of the applicable rules, read in its plain and natural sense, does not postulate or require any prior or antecedent authorization as a condition precedent to the assumption of chairmanship. Rather, the operative requirement of the rule is authorization itself, whether express or implied, without mandating any particular form or sequence in which such authorization must be manifested. Accordingly, the chairmanship of the meetings by the Deputy Prime Minister meets the test of implied authorization. The challenge to the legality thereof is, therefore, repelled.

G. FAIR AND MEANINGFUL CONSIDERATION

44. Since the present controversy stems from not being accorded fair meaningful consideration for promotion which is governed under the Rules of 2010, it is important to take a brief look at the genesis of these rules and appreciate the spirit behind them. The Rules of 2010 owe their genesis directly

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to the case of *Tariq Aziz-ud-Din* reported as (2010 SCMR 1301). The petitioner, Tariq Aziz-ud-din was a BPS-21 officer of the Foreign Service Group who had been superseded without merit. Aggrieved, he wrote a letter to the Chief Justice of Pakistan and the matter was converted into a human rights case. The Supreme Court noted that this particular class of promotions i.e. from 21 to 22 were, at the time, not regulated by any specific set of rules. This situation had arisen because the Civil Servants (Appointment and Tenure of Post in BPS-22) Rules, 1993 had been rescinded on 4th April, 1998. The Supreme Court held that the general legal principle of merit-based promotions equally applies to promotions from BPS 21 to 22 and these are not "discretionary" or political appointments. The Court reaffirmed the principle that denial of promotion is a major penalty, therefore, in order to be sustainable before a court of law, the process of promotions, including the promotions from BPS-21 to BPS-22 must be transparent and competitive. The Court set aside the promotion of 54 officers, while directing the competent authority to consider all cases afresh. The Honorable Supreme Court also observed that, *"It would be appreciated that to ensure fairness and justness, the Rules rescinded on 4th April, 1998 are re-enacted accordingly."* It was in pursuance of the Supreme Court's observations in *Tariq Aziz-ud-Did* (Supra) that the Federal Government decided to promulgate, on 16th August, the Rules of 2010. The object and purpose were to ensure that only those who are demonstrably higher in terms of merit will be promoted and furthermore, that the discretion vested in the competent authority for promoting civil servants will not be used for favoring blue-eyed candidates on the basis of political considerations.

45. In the above backdrop, it may be observed that the Rules of 2010 are not in conformity with the principles and law enunciated by the august Supreme Court in the case of *Tariq Aziz-ud-Did (Supra)*. In the said judgment, the Honorable Supreme Court emphasized the necessity of structuring discretion in matters of promotion to ensure transparency, objectivity, and meaningful consideration. The Rules of 2010, however, do not delineate in explicit terms the criteria or weightage governing the exercise of discretion by the HPSB. This position stands in contrast to later regulatory frameworks, such as Civil Servants Promotion (BS-18 to BS-21) Rules, 2019, wherein discretion has been more elaborately structured through defined benchmarks and evaluation parameters.

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The question that, therefore, arises is, where the Rules of 2010 remain in force and have not been declared *ultra vires*, yet do not expressly codify the structured criteria envisaged in *Dr. Muhammad Arif*, how is this Court to assess whether the petitioners were accorded meaningful consideration? In such circumstances, the only legally sustainable course is to examine the record, particularly the minutes of the meeting, to ascertain the manner in which the Board exercised its collective judgment. Judicial review in this domain does not entail substitution of the Court's opinion for that of the Board, rather, it extends to examining whether discretion was exercised on discernible criteria and in a non-mechanical manner. The relevant portion of the minutes of meeting is reproduced below:-

> *"Para 8: The Board was of the view that BPS-22 positions comprise the top most tier of Civil Service of Pakistan; whereby, each position carries immense potential of making contribution to national public policy formulation, overall governance and strategic management of public sector entities. Moreover, successful implementation against various national and global commitments depended mainly on performance of the upper echelon of civil service.*
>
> *Therefore, the Board unanimously resolved that keeping in view the national agenda of socioeconomic transformation and meeting global commitments, the Board would make best efforts to shoulder the responsibility of recommending the best among the available eligible officers for promotion to BPS-22. With this resolve, the Board, while making recommendations regarding the promotion of officers to BPS-22, considered the officers on the panel based on the attributes of experience, integrity, leadership qualities, decision-making ability, Training Evaluation Reports, Performance Evaluation Reports, spirit of public service and competence of the officers based on the record and as known to the Board members. Variety of experience and comparative standing vis-a-vis the peers were also considered. The recommendations of Departmental Representatives concerned are given due weightage as they provide valuable inputs about the performance, integrity and reputation of the officers."*

46. The relevant portion of the minutes reflects that the Board resolved to evaluate officers for promotion to BS-22 on the basis of attributes including experience, integrity, leadership qualities, decision-making ability, Training Evaluation Reports, Performance Evaluation Reports, spirit of public service, competence as reflected in the record, comparative standing vis-a-vis peers, and inputs from departmental representatives. These parameters, though not expressly enumerated in the Rules of 2010, indicate the framework within which

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the Board chose to structure its discretion. In the absence of codified criteria in the Rules of 2010, and in view of the framework adopted by the Board as reflected in the minutes, the scope of judicial review is naturally confined to whether the aforementioned criteria were applied in a meaningful, reasoned, and non-arbitrary manner, or whether the same was merely ornamental and applied mechanically.

47. At this juncture the learned Additional Attorney General contended that this Court cannot interfere in the subjective assessment of the HPSB. However, it is reiterated that this is not the case here. This Court remains fully cognizant of the settled legal position that the ultimate determination of fitness, suitability and capacity to shoulder higher responsibilities lies within the exclusive discretion of the Board, and that while exercising jurisdiction under Article 199 of the Constitution, the Court cannot reappraise merit, or substitute its own opinion for that of the competent authority. Judicial interference with decisions of the selection boards is permissible only in exceptional circumstance.[18] One of these instances is the failure to give meaningful consideration to a civil servants promotion, coupled with the omission to record or communicate plausible reasons for superseding the petitioners. This is of utmost significance since the petitioners have been deprived of knowledge of the grounds of their non-promotion and, consequently, of any meaningful opportunity to question or challenge the assessment. The petitioners have invoked the constitutional jurisdiction of this Court upon the violation of the right to fair and just consideration for promotion. It is trite law that the right to be considered for promotion, fairly and justly, is a right distinct from promotion itself. This principle of law has been affirmed by the Honorable Supreme Court in the *Tariq Aziz-ud-Din* case and applies with full force in the present case.

48. In this backdrop, and to delineate the contours within which the present controversy is to be examined, it is appropriate to briefly restate the well-recognized grounds of judicial review applicable to administrative action, so that the matter may be assessed strictly within the recognized framework. The nomenclature of grounds was defined by Lord Diplock in the case of *Civil*

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[18] *Muhammad Samiullah vs. Federation of Pakistan, (2023 PLC (C.S.) 435), Sikandar Hayat Maken vs. Federation of Pakistan, (2021 PLC (C.S.) 1450), and Muhammad Shahid Javed and others vs. Government of Punjab, (2019 PLC (C.S.) 1414).*

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Service Union[19] as "illegality" "irrationality" and "procedural impropriety" in the following manner:-

> *"By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.*
>
> *By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards (Inspector of Taxes) v. Bairstow of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker.*
>
> *'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review. I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."*

These grounds provide a coherent framework and have been affirmed by the Honorable Supreme Court of Pakistan in the case of *Dr. Akhtar Hassan Khan*[20] and reiterated in the case of *Asaf Fassihuddin*[21]. It is, therefore, appropriate to examine the Impugned Decisions through this lens.

49. Since the cases are required to be decided on the afore-referred grounds, it is necessary to reproduce herein below the reasons of the impugned decisions:-

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[19] *Council of Civil Service Union vs. Minister (1984) 3 All ER 935.*
[20] *Dr. Akhtar Hassan Khan vs. Federation of Pakistan, (2012 SCMR 455).*
[21] *Asaf Fassihuddin Khan Vardag vs. Government of Pakistan, (2014 SCMR 676).*

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SR. NO	TITLE OF PETITION	REASONS FOR IMPUGNED DECISION (VERBATIM)
1	**W.P. No. 1160/2025** M. Aamir Zulfiqar Khan vs. Federation of Pakistan through Secretary, Establishment Division and others	The Departmental Representative apprised that the officer was being considered for the first time. The Board deliberated upon the service profile, Training Evaluation Reports and Performance Evaluation Reports of the officer. The Board observed that though the officer has acceptable PERs and TERs record however, he is an officer with questionable financial integrity. His conduct on important positions has not been above board and he is also prone to abuse of authority. The Board, categorized him as D in Integrity, C in Leadership, B in Decision Making, B in Competence, A in Training Evaluation and B in Public Service Spirit. Subsequent to detailed discussion, the officer was not recommended.
2	**W.P. No. 967/2025** Murtaza Khan vs. Federation of Pakistan through its Deputy Prime Minister of Pakistan and others	The Departmental Representative apprised that the officer was being considered for the first time. The Departmental Representative stated the officer is rated as average and possesses doubtful financial repute. The Board deliberated upon the service profile, Training Evaluation Reports and Performance Evaluation Reports of the officer. The Board agreed with the Departmental Representative that he is an officer of average competence, limited decision-making ability, questionable financial integrity. The Board, categorized him as C in Integrity, C in Leadership, C in Decision Making, C in Competence, B in Training Evaluation and B in Public Service Spirit. Subsequent to detailed discussion, the officer was not recommended.
3	**W.P. No. 989/2025** Muhammad Asad Islam Madni vs. Federation of Pakistan through Secretary, Establishment Division and others	The Departmental Representative apprised that the officer was meaningfully considered thrice in the meetings of HPSB held on 18th-19th May, 2022, 2nd-3rd March, 2023 & 3rd April, 2023 but was not recommended due to overall unsatisfactory performance. The Board deliberated upon the service profile, Training Evaluation Reports and Performance Evaluation Reports of the officer. The Board observed that he is considered to be an officer of mediocre competence with limited decision-making ability and is generally inaccessible to public. He is found lacking in administrative tact and acumen. The Board also observed that the officer has not served much against challenging positions which depicts lack of variety of experience in service. Based on detailed deliberations, the Board categorized him as B in Integrity, D in Leadership, C in Decision Making, C in Competence, B in Training Evaluation and B in Public Service Spirit. Subsequent to the above discussion, the officer was not recommended.
4	**W.P. No. 1085/2025** Sohail Ali Khan vs. Federation of Pakistan, through the Secretary	The Departmental Representative apprised that the officer was being considered for the first time. The Board deliberated upon the service profile, Training Evaluation Reports and Performance Evaluation Reports of the officer. The Board observed that his TER of NDU reflects that the officer possesses limited potential for career progression and

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SR. NO	TITLE OF PETITION	REASONS FOR IMPUGNED DECISION (VERBATIM)
	Establishment Division and others	assuming higher responsibilities within his own service. The Board also observed that he is an officer of mediocre competence with limited decision-making ability, behavioral issues and controversial financial integrity. He is also weak in team building and collaborative working within the government. For these reasons, the officer is "awaiting posting" since a considerable period. The Board, categorized him as D in Integrity, C in Leadership, C in Decision Making, C in Competence, B in Training Evaluation and C in Public Service Spirit. Subsequent to detailed discussion, the officer was not recommended.
5	**W.P. No. 1144/2025** Asif Saifullah Paracha vs. Federation of Pakistan, through the Secretary, Establishment Division and others	The Departmental Representative apprised that the officer was being considered for the first time. The Board deliberated upon the service profile, Training Evaluation Reports and Performance Evaluation Reports of the officer. The Board observed that he is an officer with the repute of mediocre competence, limited decision-making ability, and casual attitude towards professional duties. He has also not inspired enough confidence to be considered for posting against challenging assignments. The Board, categorized him as A in Integrity, C in Leadership, C in Decision Making, B in Competence, A in Training Evaluation and B in Public Service Spirit. Subsequent to detailed discussion, the officer was not recommended.
6	**W.P. No. 1848/2025** Owais Nauman Kundi vs. Federation of Pakistan through Secretary, Establishment Division and others	The Departmental Representative apprised that the officer was considered meaningfully in the previous meeting of HPSB held on 18th-19th May, 2022 but was not recommended due to unsatisfactory performance. The Board deliberated upon the service profile, Training Evaluation Reports and Performance Evaluation Reports of the officer. The Board noted that the officer performed well in the National Defence University Course. However, the Board observed that despite the fact that officer has satisfactory PERs he is an officer of mediocre competence, limited decision-making ability and lacks commitment to public service. The Board also noted that the officer is reputed to be casual towards official duties and has limited potential to serve at strategic positions. The Board, categorized him as A in Integrity, C in Leadership, C in Decision Making, C in Competence, A in Training Evaluation and C in Public Service Spirit. Subsequent to detailed discussion, the officer was not recommended.
7	**W.P. No. 2522/2025** Ms. Amna Imran vs. Federation of Pakistan through Secretary, Cabinet Division and others	The Departmental Representative apprised that the officer was meaningfully considered thrice in the meetings of HPSB held on 18th-19th May, 2022, 2nd-3rd March, 2023 & 3rd April, 2023 but was not recommended on account of questionable financial and professional integrity. The Board reviewed the service profile, Training Reports and Performance Evaluation Reports of the officer. The Board observed that the officer is reputed to be an officer of unstable temperament, average

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SR. NO	TITLE OF PETITION	REASONS FOR IMPUGNED DECISION (VERBATIM)
		competence, controversial integrity and is not passionate towards public service. The Board also noted that the officer's track record remained unsatisfactory. The Board, categorized her D in Integrity, C in Leadership, C in Decision Making, B in Competence, A in Training Evaluation and C in Public Service Spirit. Subsequent to detailed discussion, the officer was not recommended.

50. A perusal of the minutes reflects that the petitioners were not recommended primarily on the basis of adverse assessments touching upon their integrity, competence, leadership, decision-making ability and commitment to public service. The petitioners were described as possessing mediocre or average competence, limited decision-making capacity, casual or unstable temperament, weak administrative acumen, and inadequate exposure to challenging assignments. In certain instances, the Board recorded observations regarding questionable or controversial financial integrity, doubtful financial repute, or conduct not being above board. This Court shall now examine whether any illegality exists in HPSB's decision-making process and whether the same suffers from any irrationality and procedural impropriety.

I. ILLEGALITY

51. This Court shall now examine whether the decision-making process reflects lawful exercise of discretion or suffers from any illegality. The perusal of para 8 of the minutes of the HPSB's meeting reveals a downright shocking situation of exercise of discretion in an unbridled manner. The Board resolved to evaluate officers not only on the basis of their service record, Performance Evaluation Reports, Training Evaluation Reports, and other documentable criteria, but also on the basis of attributes *"as known to the Board members."* This parameter or criteria demands the closest scrutiny since it affords unfettered discretion which is a flagrant illegality. In this regard it necessary to see how the courts have interpreted the limits of discretion. In the case of ***Montgomery Flour and General Mills Ltd., Montgomery vs. The Director, Food Purchases, West Pakistani (PLD 1957 Lah, 914)*** the following was observed:-

> *"It should be remembered that no discretion vested in an executive officer is an absolute and arbitrary discretion. The discretion is vested in him for a public purpose and must be exercised for the*

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> *attainment of that purpose. Even though there be no express words in the relevant legal provision to that effect, the discretion is always circumscribed by the scope and the object of the law that creates it and has at the same time to be exercised justly, fairly and reasonably."*

Similarly in ***Abid Hasan vs. PIAC, (2005 SCMR 25)*** the Court observed:-

> *"If the judicial administrative organs of the State while applying the law were to discriminate between man and man and exercise what may be characterized as arbitrary authority in singling out some persons for discriminatory treatment they would be acting counter to the ideal of equality before law which has been proclaimed by the framers of the Constitution in the first part of the clause of Article 5 an Article which declares that all citizens are equal before law. It would thus be noticed that notion of human equality had emerged as a reaction to abhorring artificial 'distinctions between man and man or between one class of men and another class based on consideration, inter alia, of personal likes and. dislikes -under the garb of discretion.*
>
> *14. In his Treatise 'Discretionary Powers' which is Legal Study of Official Discretion D.J. Galligan has acknowledged that "the general principles that discretionary decisions should be made according to rational reasons means, (a) that there be findings of primary facts based on god evidence and (b) that decisions about the facts be made for reasons which serve the purposes of the statute in an intelligible and reasonable manner" According to the celebrated author, the actions which do not meet these threshold requirements are arbitrary, and may bee considered a misuse of powers. (Emphasis provided)."*

In *Rooke's* case (1598) 5 Co Rep 99b, Coke, LJ observed[22]:

> *"... and notwithstanding the words of the commission give authority to the Commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substances, between equity and colourable glosses and pretences and not to do according to their wills and private affections ...."*

52. The jurisprudence governing administrative discretion makes it clear that a discretionary decision must rest upon rational reasons supported by evidence and directed to the statutory purpose; actions that fail to meet this threshold are regarded as arbitrary. The parameter or criteria "as known to the Board members" imports private, individual, and knowledge alien to the record

[22] *Also cited in cited in Federation vs. Muhammad Aslam, (1986 SCMR 916).*

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possessed by particular members of the Board from sources that are undisclosed and based on personal perceptions. It is precisely this category that the law regards as impermissible. All other criteria enumerated in the minutes, namely experience, integrity, leadership, decision making ability, Training Evaluation Reports, Performance Evaluation Reports, public service spirit, and comparative standing, are at least in principle referable to the officer's service record and therefore capable of verification, challenge, and judicial review. The phrase "as known to the Board members", by contrast, operates outside the record entirely. It is a self-bestowed discretion to act upon information, impressions, or assessments that exist nowhere in the officer's official file, that have never been disclosed to him, and that are by definition incapable of being tested, rebutted, or reviewed most importantly capable of giving an overriding effect to the other parameters on the basis of "as known to the Board members" which is essentially unfettered and weaponized discretion. When it is said that something is to be done within the discretion of an authority it means that that something is to be done according to the rules of reason and justice, not according to private opinion according to law and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular.[23] Similarly, a person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so, he must in the exercise of his discretion do, not what he likes, but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which his reason directs.[24]

53. The second glaring illegality which is apparent on the face of the record is the HPSB's abdication of its statutory function. The criteria directing that recommendations of Departmental Representatives be given "due weightage" as "valuable inputs about the performance, integrity and reputation of officers" is illegal and *ultra vires* the Rules of 2010 since the Departmental Representative is not a member of the HPSB in any deliberative or decisional sense under the rules. It is a settled principle of law that where a statute has entrusted a function to a specific body, that function must be exercised by that body and by no other.

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[23] *Per Lord Halsbury in Sharp v. Wakefield (1891) AC 173; cited in S.S. in Miranda vs. Chief Commissioner Karachi, (PLD 1959 SC (Pak) 134).*
[24] *Lord Wenbury in Roberts v. Hopwood [1925 AC 577].*

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De Smith, in *Judicial Review of Administrative Action, (7th edn., 2013),* states the principle with characteristic precision, *"A discretionary power must, in general, be exercised only by the public authority to which it has been committed. It is a well-known principle of law that when a power has been conferred to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another."* In this context, it is necessary to observe that the Departmental Representative is neither a member of the HPSB nor under the rules can be co-opted or invited for consultation purposes. He is not authorized by law to render findings upon the integrity, financial repute, or professional competence of officers being considered for promotion. His role, to whatever limited extent it is recognized, is informational and not evaluative. He may place factual material before the Board, but the assessment of that material and the conclusions to be drawn from it remain the exclusive prerogative of the Board itself. To formally elevate his inputs into weighted recommendations touching upon performance, integrity, and reputation is to convert an informational role into an evaluative one, a conversion for which there exists no statutory backing.

54. The further and graver illegality introduced by this criteria lies in the vice of official bias. The Departmental Representative is not merely a functionary, rather he is an institutional voice capable of being influenced by departmental relationships and hierarchical loyalties. The Board, as a high-powered statutory body, exists precisely to transcend such influences and to bring independent collective judgment to bear upon the civil servants promotions. A criteria that formally requires the Board to give due weightage to a Representative's characterizations of an officer's integrity and reputation imports into the Board's deliberations an institutional bias that has no legitimate place there. The minutes of the 29th Meeting, insofar as they relate to the case of Murtaza Khan, records that the Departmental Representative apprised the Board that the officer was being considered for the first time and stated that "*the officer is rated as average and possesses doubtful financial repute."* The minutes then record that the Board deliberated upon the service profile, Training Evaluation Reports, and Performance Evaluation Reports of the officer, following which it "*agreed with the Departmental Representative that he is an officer of average competence,*

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limited decision-making ability, questionable financial integrity" and categorized him accordingly across six parameters before declining to recommend him. The reveals a troubling sequence of events. The critical question, therefore, is not whether the Board went through the motions of reviewing the officer's record, as the minutes reflect that it did, but whether that review was genuinely independent or whether it was conducted through the lens of a conclusion that the Departmental Representative had already supplied and to which the Board agreed. The operative word in the minutes is "agreed" and it is that word which exposes the illegality.

55. The structure of the recorded deliberation, with the Representative's assessment coming first and the Board's agreement following second, discloses a process in which the evaluative conclusion preceded rather than emerged from the Board's independent consideration of the record. Had the Board genuinely applied its own collective mind to the officer's service profile, Training Evaluation Reports, and Performance Evaluation Reports, its conclusions would have been its own, arrived at independently and expressed as such. Instead, the minutes record agreement with the Representative's characterization, suggesting that the review of the record served not as the foundation of an independent judgment but as subsequent confirmation of a conclusion already shaped by departmental input. Such exercise cannot be deemed of an exercise of a statutory function. Thus, the Board's conclusion, reflected from its own minutes of meeting, transpire to have been shaped by and expressed in agreement with the views of a person not authorized by law to assess the officer's fitness, the body cannot be said to have exercised the jurisdiction vested in it. It has produced the form of a decision without its substance, and a decision that is the product of another's assessment rather than the Board's own independent judgment is void for want of genuine statutory exercise. The gravity of the adverse findings recorded against Murtaza Khan, namely average competence, limited decision-making ability and questionable financial integrity, makes the failure to exercise independent judgment all the more consequential. These are findings of the utmost seriousness, capable of permanently extinguishing a civil servant's career. They demanded, at the very minimum, that they be the Board's own, reached independently, on the Board's own assessment of the record, and not in

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agreement with a departmental characterization that the Board was never authorized to adopt as its own.

56. The third illegality apparent on the face of the record is the Board's complete failure to evaluate the petitioners against the statutory criterion of "experience" as mandated under Rule 4(iv) of the Rules of 2010. Where law prescribes the criteria upon which an authority must exercise its power, those criteria are not directory suggestions but mandatory requirements, and a decision reached without application of mind to one or more of the prescribed criteria is a decision made in excess of, or in abdication of, the jurisdiction conferred. The Rules of 2010 having specifically enumerated "experience" as one of the parameters upon which officers are to be assessed for promotion, the Board was not at liberty to omit it. The minutes of the 29th Meeting are completely silent on any evaluation of the petitioners experience and such silence is indicative of non-exercise of the Board's power. The HPSB was required by law to consider this criterion and its recorded proceedings disclose no consideration of it. Where an authority takes into account material that it ought not to have taken into account, or disregards material which it was duty-bound to consider, the decision is vitiated regardless of the result. The same was articulated with clarity by Justice Syed Mansoor Ali Shah, before his elevation to the Supreme Court of Pakistan, in ***Humaira Hassan vs. Federation of Pakistan and 2 others, (2012 PLC (C.S.) 566),*** in the following terms:-

> *"9. It is settled principle of administrative law that discretion cannot be based on irrelevant considerations or exercised leaving out relevant considerations. Board while exercising its discretion to formulate recommendations had to balance and structure its considerations in terms of Rule 4. Reliance of High Powered Selection Board on irrelevant considerations and neglecting relevant considerations upsets the equilibrium of discretion, leading to an unstructured and disproportionate decision which is bad in law and ultra vires the RULES."*

57. The consequences of this omission are grave, since it is precisely the kind of criterion that, had it been genuinely evaluated, might have produced a materially different outcome. The Board's failure to evaluate the petitioners against it is therefore not a mere technical deficiency or irregularity, but rather a substantive failure of function. The HPSB, entrusted with so consequential a function, was bound, at the very minimum, to traverse each and every criterion

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that the law required it to apply, and its failure to do so in respect of "experience" renders the Impugned Decisions such that the same cannot be sustained as a valid exercise of the jurisdiction vested in it.

II. IRRATIONALITY

58. The promotion of a senior civil servant is not an act of administrative routine, since it is a determination that touches upon professional reputation and future service. Where an evaluation and recommendation by a Promotion Board are so outrageous in their defiance of logic or accepted moral standards that no sensible person applying his mind to the fitness of the officer could have arrived at the same conclusion, such recommendations are not merely erroneous but also irrational. Thus, it is imperative to examine the Impugned Decisions through the lens of irrationality[25], since when an administrative decision is alleged to be bereft of any cogent, tangible, or record-based foundation, the Court is duty bound to scrutinize whether such conclusion bears a rational nexus to the material on record or instead constitutes an arbitrary exercise of discretion unsupported by reason. It was laid down in the case of *Dr. Muhammad Arif* [26] 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. The Honorable Supreme Court of Pakistan unequivocally affirmed that discretion exercised by a public authority is not unfettered, and that such discretion must be structured in accordance with seven recognized instruments, namely: open plans, open policy statements, open rules, open findings, open reasons, open precedents, and fair informal procedure. The Court in that case, echoing the words of Kenneth Culp Davis in his authoritative text on Administrative Law, declared that discretion unregulated by reasons, rules, or precedent becomes arbitrary and capricious, and such exercise of power is *ipso facto* liable to judicial intervention. The principle underlying irrationality as a ground of judicial review is not confined to the irrationality of the conclusion alone since it equally touches upon the decision-making process. A bare perusal of the minutes of meeting

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[25] *The ground of irrationality, as classically expounded by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374, denotes a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. This formulation is commonly denominated as Wednesbury unreasonableness, which originated from the celebrated English authority in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [(1947) 2 All ER 680], also cited as [1948] 1 KB 223.*

[26] *Secretary Establishment Division vs. Dr. Muhammad Arif, [PLC (CS) Note 66].*

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reflects the exercise of discretion and decision making by the Board is fundamentally at odds with the standard of rationality demanded by law. In at least two of the seven petitions, the Board itself acknowledged satisfactory PERs and acceptable TERs, yet proceeded to record adverse conclusions on integrity, competence, leadership, and public service spirit. The cases of M. Aamir Zulfiqar Khan *(W.P. No. 1160/2025)* and Owais Nauman Kundi *(W.P. No. 1848/2025)* constitute the most noticeable instances of this internal contradiction within the Board's own reasoning.

59. The case of M. Aamir Zulfiqar Khan presents perhaps the starkest illustration of irrational decision making in the Board's proceedings. The Board simultaneously recorded that the officer possessed acceptable Performance Evaluation Reports and Training Evaluation Reports, yet proceeded to categorize him as 'D' in Integrity, recording that his conduct on important positions had not been above board and that he was prone to abuse of authority. These two propositions cannot coexist on any rational basis. A service record acknowledged to be acceptable cannot, without more, sustain a finding of the most adverse integrity categorization available under the framework. The Board offered no explanation for this incongruence. It identified no departmental inquiry, no adverse entry in the Performance Evaluation Reports or Annual Confidential Reports, and no other verifiable material upon which the integrity finding could rest. The contradiction was recorded without acknowledgment and the conclusion was reached without justification. This is precisely the scenario condemned by the Court in the cases of *Tariq Aziz ud Din* and *Humaira Hassan*, where it was held that consideration of an officer for promotion must be based not only on the relevant law and rules but on some tangible material relating to merit and eligibility which can be lawfully taken note of. The right to consideration, the Court declared, is neither illusory nor a perfunctory ritual. That declaration carries particular weight in the present context. Where an adverse finding on integrity is recorded in the complete absence of any substantiating material from the service dossier, the right to consideration has been reduced to precisely the kind of empty formality that the Supreme Court condemned. The officer was considered, in the technical sense that his name came before the Board. But he was not genuinely considered in the sense that the law requires, because the conclusion recorded against him bears no traceable

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connection to any material that the law recognizes as a legitimate basis for such a finding. A 'D' rating in Integrity is not a minor administrative assessment. It is a finding of the most serious professional consequence that the Board's evaluative framework permits. It effectively forecloses advancement, casts a permanent shadow over an officer's career, and carries with it the unmistakable implication of moral and professional unfitness. A finding of such gravity demands, at the very minimum, a foundation in identifiable and verifiable material. It cannot rest on impression, on undisclosed information, or on the mere agreement of the Board with a characterization supplied by a source not authorized to make it. Where no such foundation exists, and where the finding stands in direct and unresolved contradiction with the officer's acknowledged service record, the decision is not merely weak or poorly reasoned. It falls squarely within the *Wednesbury* formulation of irrationality, being a conclusion so divorced from the material before the Board that no authority directing itself properly to the relevant considerations could have arrived at it. The simultaneous acceptance of two irreconcilable propositions, without any attempt to explain or resolve the contradiction between them, is the antithesis of rational decision making and cannot be permitted to stand.

60. A similar infirmity afflicts the case of Owais Nauman Kundi. The Board expressly noted that the officer performed well in the National Defence University Course and that he had satisfactory Performance Evaluation Reports, yet simultaneously categorized him as 'C' in both Decision Making and Public Service Spirit, characterizing him as casual towards official duties and of mediocre competence. No adverse Annual Confidential Report entry was identified, and no specific incident was brought on record to bridge the acknowledged satisfactory service history with these damning conclusions. The principle that discretion must be exercised through open findings and open reasons is not a procedural luxury. It is a substantive safeguard rooted in the rule of law. As the Supreme Court of Pakistan observed in *Tariq Aziz ud Din*, *"discretion is to be exercised according to rational reasons which means that: (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made for reasons which serve the purposes of the statute in an intelligible and reasonable manner. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power."* In the present

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cases, that threshold has manifestly not been met. The Board acknowledged a satisfactory service record on one hand and recorded adverse assessments of competence and public service spirit on the other, without identifying any primary fact, any specific incident, or any material of record capable of sustaining the distance between the two positions. The acknowledged satisfactory performance was simply set aside, without explanation and without reason. Where adverse assessments are recorded without reference to primary facts, and where acknowledged satisfactory service records are discarded without any articulated reason, the exercise of discretion crosses from lawful selectivity into the realm of arbitrariness. This is not a case of the Board weighing competing considerations and arriving at a conclusion with which the officer disagrees. It is a case of the Board recording conclusions that its own minutes show to be unsupported by the material before it, and irreconcilable with the service history it simultaneously acknowledged. That is not the exercise of discretion. It is its misuse, and it falls squarely within the category of actions that the Supreme Court in *Tariq Aziz ud Din* condemned as arbitrary and an abuse of power.

61. Another instance of irrationality is manifest from the record. In multiple petitions adverse assessments of integrity are recorded without identification of substantiating material. In the case of Ms. Amna Imran (W.P. No. 2522/2025), the Board recorded "controversial integrity", in the case of Murtaza Khan (W.P. No. 967/2025) the Board categorized the officer as 'C' in integrity and described him as possessing "doubtful financial repute" and similarly in the case of Sohail Ali Khan (W.P. No. 1085/2025) the Board went further, recording "controversial financial integrity". To ensure that the same withstands the test of rationality this Court sought for the production of entire material and record that was placed before the HPSB. The Additional Attorney General on the direction of this Court placed on record the entire material which was placed before the Board in its 29th meeting which includes: (i) HPSB's minutes of meeting, (ii) Panel Pro forma, (iii) Performance Evaluation Reports of last six years, (iv) Individual Career Planning Chart, and (v) Course reports of Senior Management Course.

62. A thorough perusal of the record shows that such allegations are unsupported by any tangible material. A decision of a statutory Board must bear

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a rational nexus between the material available on record and the conclusion drawn therefrom. Rationality in administrative law is not satisfied by the mere existence of an opinion or perception, rather it requires that the opinion/perception be demonstrably founded upon relevant considerations and supported by discernible evidence. Allegations regarding integrity must therefore be supported by tangible material forming part of the service record. If the recorded ACRs and service profile of an officer consistently reflect impeccable and above board integrity *(such as in these cases)*, then the sudden attribution of questionable integrity without reference of documentary support constitutes a departure from logic and structured reasoning. The use of the word 'repute' is itself signals that the finding rests on impression and hearsay rather than on any verifiable entry in the service record. Such a conclusion would amount to substituting evidence for speculation and objective evaluation for subjective suspicion. Similar view has been adopted by the courts in numerous cases[27], in which the civil servants were considered for promotions.

63. Moreover, it would offend the well-established maxim, *nemo fit repente turpissimus*, that 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. An officer's dossier reflects a cumulative record of years of service, performance, and conduct. Such a comprehensive career profile cannot lawfully be nullified by a cryptic observation or personal impression since this would amount to arbitrariness. Thus, where an officer's record is marked by unblemished service, any sudden departure imputing doubtful, controversial or mixed integrity must rest on clear, specific, and credible evidence. Even otherwise, if the integrity of an officer is genuinely in question, the natural and logical course available to the competent authority is to initiate disciplinary proceedings so that the matter may be adjudicated in accordance with the law. To use the same for not recommending the officer to BS-22 while allowing him to continue in BS-21 reflects an exercise in which discretion is weaponized to momentarily portray a civil servant as an officer of doubtful integrity for the limited purpose of denying him his due progression in service,

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[27] *The civil servants were considered for promotions by the Departmental Selection Board and Central Selection Board. Although these cases relate to decision making by different statutory boards for different posts, the principles enunciated therein are equally applicable.*

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only for that supposed blemish to vanish thereafter without any formal inquiry or punishment. The absence of any such proceedings, despite a finding adverse enough to deny promotion, renders the action suspicious. The only reasonable inference that can be drawn is that such adverse remarks or assessments are nothing more than a colourable exercise of discretion.

64. The superior Courts, have repeatedly held that when administrative or quasi-judicial authorities are conferred discretion affecting valuable rights, such discretion must be exercised reasonably, fairly and in accordance with law. Thus, the HPSB's recommendations are unsupported by material, unexplained in its divergence from the official record, and untraceable to any lawful source of information. Such a decision making process undermines not only the settled law but also strikes at the root of fairness, transparency and meritocracy in the civil service. Therefore, this Court holds that the same is irrational since the recommendations lacks a logical foundation, fails the test of reasonableness, and renders the decision-making process arbitrary in substance as well as in form.

III. PROCEDURAL IMPROPRIETY

65. Another aspect of fair and meaningful consideration would be whether the consideration is free from procedural impropriety, which operates through two distinct but overlapping mechanisms. First is the failure to observe statutory procedural requirements. The second limb of procedural impropriety is the breach of natural justice. While it is hard to exactly define the boundaries of natural justice, it can be safely said that natural justice embodies the fundamental rights, different rules of fair play, due process and other rights, which may be treated as fundamental, even though not enumerated in the Constitution. Whatever disagreement there may be as to the scope of "natural justice", there is no doubt that it generally always includes the right to be heard and adherence to the principle of *audi alteram partem* i.e. no one should be condemned unheard. It is settled law that every person is entitled to have due notice of proceedings, which effects his rights along with being afforded a reasonable opportunity to defend[28]. For its application, the rule does not depend upon whether the proceedings are judicial or quasi-judicial or administrative or quasi

[28] *Aftab Shahban Mirani vs. President of Pakistan, (1998 SCMR 1863) and New Jubilee Insurance vs. National Bank of Pakistan, (PLD 1999 SC 1126).*

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administrative. The rule applies to judicial as well as administrative bodies, especially where the proceedings taken may affect the person[29]. The Honorable Supreme Court in the case of *Hazara Hill Tract*[30] categorically observed that the principle of natural justice enshrined in the maxim *audi alteram partem* is one of the most important principle and its violation is always considered enough to vitiate even most solemn proceedings. The relevant portion is as under:-

> *"This principle originates from Islamic System of Justice as evident from historical episode when Iblees was scolded for having misled Hazrat Adam (p.b.h.) into disobedience of Allah's command. Almighty Allah called upon Iblees to explain his conduct and after having an explanation from him which was found untenable, he was condemned and punished for all times to come. Thus, it is held that the principle of natural justice has to be applied in all kinds of proceedings strictly and departure therefrom would render subsequent actions illegal in the eye of law."*

66. The above referred reasoning reflects the importance of this principle and underscores that no person may be condemned without first being afforded an opportunity to explain or defend their conduct. However, it is manifest from the record that the petitioners were neither confronted with any adverse material nor afforded an opportunity to explain or rebut any allegation impugning their integrity or competence. The superior Courts have consistently held that the minutes of the meetings of selection boards, as well as their 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. Yet, where such material has not been disclosed to the officer at any stage, the principle of natural justice mandates that he must first be confronted therewith, so as to afford him an opportunity to explain or disprove its accuracy. It has been laid down in the case *Muhammad Farooq Chauhan*[31] that the adverse un-communicated remarks cannot be taken into consideration to decline the promotion to an officer. Similarly, by adopting this process in the present matters would have enabled the petitioners to dispel the misgivings of the HPSB and demonstrate the falsity or irrelevance of the material relied upon. Failure to confront the petitioners with such material amounts to a clear violation of the settled principle of *audi alteram*

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[29] *Rahim Shah vs. Chief Election Commissioner, (PLD 1973 SC 24) and Raziuddin vs. Chairman Pakistan Airlines Corporation, (PLD 1992 SC 531).*
[30] *Hazara (Hill Tract) Improvement Trust vs. Mst. Qaisra Elahi, (2005 SCMR 678).*
[31] *Muhammad Farooq Chauhan vs. Province of Punjab, (PLD 1987 SC 271).*

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partem and any departure therefrom would render the decision procedurally improper. 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.

67. The second plane of procedural impropriety relates to communication. It transpires that the officers in the present petitions were superseded without being informed of the reasons, the material, or the findings that led the Board to that determination. This non-disclosure strikes at the heart of the principles of natural justice and procedural fairness, as the petitioners have been deprived of knowledge of the grounds of their non-promotion and, consequently, of any meaningful opportunity to question or challenge the assessment. This obligation of communication is not derived solely from the common law of natural justice, though it is firmly grounded there. It finds independent and express constitutional support in three provisions of the Constitution of Pakistan. Article 4 imposes upon every public functionary the obligation to act justly, fairly, and without arbitrariness toward every citizen. An authority that withholds from an officer the grounds of his supersession cannot, by any measure, be said to have acted justly or fairly toward him. Article 10-A, introduced through the Eighteenth Amendment, guarantees the right to a fair trial and due process in the determination of civil rights and obligations, a right that is rendered wholly meaningless if an affected officer is denied knowledge of the case against him. Article 19-A guarantees the right of access to information in all matters of public importance, a right that is directly engaged when an officer is denied access to the findings and material that have determined the course of his career.

68. The Lahore High Court, in *Humaira Hassan (Supra)*, examined the obligations of the HPSB and held that the Board is under a constitutional and legal obligation to communicate its recommendation to the concerned civil servant and not to keep it under wraps to the disadvantage and inconvenience of the civil servant. The Court further condemned this ring of secrecy by stating, *"this undesired and unnecessary ring of secrecy leaves the civil servant groping in an abyss of uncertainty, which besides lowering her morale and confidence restricts her right to access to justice."* The same observation applies with equal force to the seven petitioners before this Court, each of whom was left without

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any substantiated communication of the basis for their supersession. The obligation to communicate reasons is further reinforced by section 24-A of the General Clauses Act, 1897, which mandates that every statutory power be exercised reasonably, fairly, justly, and for the advancement of the purposes of the enactment under which it is conferred. The superior Courts have, in a consistent and unbroken line of authority, interpreted this provision to require that executive authorities exercising discretionary powers issue speaking orders i.e. orders that articulate the reasons upon which the decision is founded.

69. This requirement of reasoned decision-making is neither a procedural formality nor an administrative courtesy. It is a substantive safeguard that serves three distinct and essential functions. First, it ensures that the decision-maker has applied its mind genuinely and objectively to the matter before it, rather than acting upon impulse, prejudice, or predetermined conclusion. Second, it apprises the affected person of the basis of the action taken against him, thereby enabling him to exercise whatever rights of appeal, review, or challenge the law affords. Third, it renders the decision amenable to meaningful judicial review, since a court cannot scrutinize the legality, rationality, or proportionality of a decision whose reasons are not disclosed. A decision without reasons is, for the purposes of judicial review, a decision without accountability. In the present cases, the impugned recommendations were effected without any speaking order articulating the basis of the Board's adverse conclusions. No reasons were communicated to the petitioners. No material impugning their integrity was disclosed to them. The minutes of the Board's meetings, to the extent available on the record, contain no express reference to the specific material that led the Board to entertain doubts regarding the petitioner's fitness. This constitutes not merely a breach of natural justice but a blatant disregard of the express statutory mandate of section 24-A of the General Clauses Act, 1897. The discretion entrusted to the Board was exercised in a manner that is the precise antithesis of what the law requires i.e. in a manner without reasons, without disclosure, and without any demonstrated application of mind to the individual circumstances of each officer. On this ground alone, this Court is inclined to hold that the petitioner's consideration for promotion was not meaningful and fair due to the failure to effectively communicate reasons, which as stated above is meant to ensure fairness and transparency.

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H. LEGALITY OF OSD POSTING

70. The petitioner in W.P. No. 1160/2025 is an officer of the Police Service of Pakistan who joined service in 1991 and, after a long and distinguished career spanning more than three decades, was promoted to BPS-21 in 2018. At the time of the 29th meeting of HPSB, the petitioner was the third most senior officer in BPS-21 within the Police Service of Pakistan and had been posted as OSD vide the OSD Notification. The OSD Notification did not disclose any reasons for such posting, nor was any responsibility assigned to the petitioner thereafter. The petitioner has been posted as OSD for more than two years and has sought a declaration that the same is unlawful. Therefore, this Court shall now address the fourth question framed namely *whether the OSD Notification, as well as the act of Respondent No. 1 in continuing the petitioner in W.P. No. 1160 of 2025 as an OSD for the past two years, is unlawful.*

71. The moot point involved concerns the legal status of the expression OSD and whether the executive authority may, by resorting to such designation, keep a civil servant without assignment of duties for an indefinite period. Primarily, the service structure of civil servants in Pakistan is regulated by the Civil Servants Act, 1973 and the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, and service structure in the present case is governed by the Rules of 2010 rules which constitute the governing statutory framework for appointments, transfers and postings. A careful reading of the said statute and the rules framed thereunder reveals that the expression/post of OSD does not find any statutory recognition of such designation and has repeatedly been held by the superior courts of this country. It is well settled that placing an officer as OSD is tantamount to penalizing him because the expression OSD is not known to either the Civil Servant Act, 1973 or the Civil Servants (Appointment Promotion and Transfer) Rules, 1973, or the 2010 rules.[32] According to Article 3 of the Constitution, the State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability to his work. This Court is cognizant of the fact that transfers and postings of civil is in the discretion of the Competent Authority, who has to pass such orders on administrative grounds only and not for personal,

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[32] *Corruption in Hajj Arrangements Case, (PLD 2011 SC 963).*

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political, or other extraneous consideration. The discretionary powers vested in an authority must be exercised judiciously and in a reasonable manner, and must not be susceptible to arbitrariness or unfettered exercise of power. In the present matter, the petitioner was posted as OSD vide the OSD Notification, and the relevant part thereof is reproduced hereunder:-

> *"Mr. Muhammad Aamir Zulfiqar Khan, a BS-21 officer of Police Services of Pakistan, presently awaiting posting Establishment Division, is posted as Officer on Special Duty (OSD) in Establishment Division w.e.f. 25-01-2023 and until further orders."*

72. Perusal of the OSD Notification reveals that the petitioner was posted as OSD for indefinite time without any reason and no adequate or plausible reasons by the Federation were furnished for making the petitioner OSD. This Court upon a thorough perusal of the petitioners service dossier could not find anything which would warrant such treatment. This Court consider it necessary to observe that the conduct of the respondents in the present case represents the systematic use of administrative mechanisms to sideline officers who, for whatever reason, have become unwelcome to those in authority. The persistence of such practice, even in presence of binding judicial pronouncements, is a matter of serious concern. The question involved is no longer *res integra* and stands settled by the superior Courts, which through a consistent line of precedents has examined and deprecated the practice of placing civil servants as OSD. In the case of ***Sajjad Ahmad Javed Bhatti vs. Federation of Pakistan, (2009 SCMR 1448)*** the Honorable Supreme Court held:-

> *"7. However, at limes, civil servants are also made O.S.D. or kept without any posting, in case they have become persona non grata. Therefore, the posting of such officers as O.S.D. for considerably long period is deprecated by the Courts. See the case of Lt.-Col. (R) Abdul Wajid Malik (supra). It may be unfair and unjust to keep a government servant on tenterhooks without getting any work from him. The right to work is a valuable right of a person as visualized by Article 3 of the Constitution of Islamic Republic of Pakistan, a provision meant to ensure social and economic justice to the people of, Pakistan.*
>
> *8. This Court in the case of Pakistan and others v. Public at large and others PLD 1987 SC 304 observed that right to work was very valuable right which could not be denied: The Supreme Court of India in the case of P.K. Chinnasamy v. Government of Tamil Nadu and others AIR 1988 SC 78 also took the view that:*

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> *"In a democratic polity as ours, the bureaucracy work as the pivot for running the administration. So far as the State is concerned, matters of policy and the ultimate responsibility for running the administration is obviously of the apex body-the council of Ministers and the Executive Head—the Governor. It cannot be lost sight of that every public officer is a trustee and in respect of the office he holds and the salary and other benefits which he draws, he is obliged to render appropriate service to the State. The scheme postulates that every public officer has to be given some posting commensurate to his status and circumstances should be so as to render commensurate service in lieu of the benefits received by him from the State. If an officer does not behave as required of him under the law he is certainly liable to be punished in accordance with law but it would ordinarily not be appropriate to continue an officer against a post and provide no work to him and yet pay him out of Consolidated Fund. We direct the respondent-Government of Tamil Nadu to give an appropriate posting to the appellant within one month from today and once he is given such posting, he must be assigned normal official work to be discharged by him as contemplated under the rules and procedure in respect of the post the appellant is assigned. We hope and trust that the appellant shall be given a proper assignment commensurate to his position in the service and the State Government in its action would exhibit no bias or mala fides. We make it clear that we have not examined the correctness of such allegations as we are sure given an opportunity the State Government would exhibit ideal conduct as an employer and establish by its conduct that the allegations were baseless."*

Similarly, in the case of ***Syed Mehmood Akhter Naqvi and others vs. Federation of Pakistan and others, (PLD 2013 SC 195)*** the Honorable Supreme Court held:-

> *"22. The principles of law enunciated hereinabove can be summarized as under:--*
> *(i) ...*
> *(ii) ...*
> *(iii) ...*
> *(iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest"*

73. The Honorable Supreme Court of Pakistan in Corruption in *Hajj Arrangements (Supra)* Case examined the concept of OSD in considerable detail and unequivocally held that placing an officer as OSD is tantamount to penalizing

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him because the expression itself is not known to civil servants laws of Pakistan and penalizing an officer through such administrative maneuver not only undermines the rule of law but also discourages honest officers who faithfully perform their duties in accordance with the Constitution and the law, and such actions may amount to a violation of Articles 3 of the Constitution. The superior courts have consistently deprecated the practice of keeping civil servants idle by designating them as OSDs for long periods, and such arrangements at best may be tolerated for a very brief transitional period where an officer is awaiting posting orders, but it cannot be allowed to continue for a prolonged duration. The that officers should not be kept as OSD for indefinite period and their services must be utilized in the public interest instead of allowing them to remain idle while drawing salary from the public exchequer. Another important safeguard emphasized by the superior courts is that even where exceptional circumstances justify a temporary OSD arrangement, the reasons for such action must be recorded in writing and must be capable of judicial scrutiny.

74. When the principles emerging from the above precedents are applied to the facts of the present case, the illegality of the impugned action becomes manifest. The OSD Notification does not disclose any reasons for placing the petitioner as OSD. The respondents have not asserted that any disciplinary proceedings or investigation are pending against the petitioner. He has remained in the said position for more than two years, which is far beyond the limited transitional period recognized by the courts. The petitioner is a senior officer of BPS-21 and his continued placement without duties not only undermines his professional dignity but also deprives the State of the services of a highly experienced officer. Such action therefore bears all the characteristics of an administrative penalty imposed without following the procedure prescribed by law. Administrative discretion, though wide, cannot be exercised arbitrarily or for extraneous purposes. The exercise of executive power must conform to the requirements of fairness, reasonableness and legality. Where the authority acts without recording reasons or in disregard of settled legal principles, such action becomes amenable to correction in constitutional jurisdiction. The continued placement of the petitioner as OSD, in the absence of compelling reasons and for an indefinite period, therefore constitutes an arbitrary exercise of power and cannot be sustained in law.

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75. In view of the above discussion, this Court finds the following:-

i. The 2017 Amendment was promulgated by the Prime Minister who framed and amended the Rules of 2010 in lawful exercise of authority personally delegated to him by the President under S.R.O. 120(I)/98 made under Section 25(1) of the Civil Servants Act, 1973. The principle in *Mustafa Impex* is inapplicable where the President has made an express and specific delegation directly to the Prime Minister; in that configuration the Prime Minister does not act as a surrogate for the Federal Government but as the President's authorised delegate. The expansion of the consultee class in the Note to Rule 5 falls within the broad latitude of the rule-making power and attracts no express or implied statutory prohibition. The 2017 Amendment is declared ***intra vires***.

ii. The Impugned Notification (S.R.O. 35(I)/2025) whereby invitation was extended to Bilawal Bhutto Zardari and Khawaja Muhammad Asif was issued in exercise of sub-rule (1-A) inserted by S.R.O. 08(I)/2023 *(which stands unchallenged)*, which expressly permits the Chairman to invite up to two Parliamentarians or Federal Ministers for consultation. The Impugned Notification is declared ***intra vires***.

iii. The Chairman Amendment (S.R.O. 243(I)/2025) pursuant to which the Prime Minister exercised his own delegated rule-making power to restructure an executive function i.e. the chairmanship of the HPSB is not a sub-delegation of legislative authority and does not offend the principle of *delegatus non potest delegare*. The argument that the 29th meeting was presided over by the Deputy Prime Minister rather than a Federal Minister is misconceived since Muhammad Ishaq Dar concurrently holds the office of Federal Minister for Foreign Affairs and is therefore a Federal Minister within the meaning of the amended rule, independently of his additional designation as Deputy Prime Minister. The Chairman Amendment is declared ***intra vires***.

iv. The Reconsideration Amendment (S.R.O. 255(I)/2025) in which clause (v) inserted into Rule 4 of the Rules of 2010 imposes permanent ineligibility upon an officer considered twice without recommendation, regardless of the reasons for non-recommendation, whether those reasons

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were ever communicated, and whether the earlier proceedings were themselves lawfully conducted. This provision bears no rational nexus to the merit-based purpose of Section 9 of the Act. It substitutes a procedural count for a substantive merit assessment, travels beyond the permissible limits of delegated legislation. The Reconsideration Amendment is declared ***ultra vires*** and is struck down.

v. On the question of meaningful consideration this Court finds that the recommendations of the HPSB are vitiated on three independent grounds. On illegality, the HPSB's resolution to evaluate officers on attributes "as known to the Board members" confers an unbounded and unreviewable discretion untethered to the service record, which is impermissible. The criterion directing that recommendations of Departmental Representatives be given "due weightage" as "valuable inputs about the performance, integrity, and reputation of officers" is illegal and *ultra vires* the Rules of 2010, since the Departmental Representative is not a member of the HPSB and has no evaluative role, and a decision that is the result of another's assessment is *void* for want of genuine statutory exercise. The minutes of the 29th Meeting are completely silent on any evaluation of the petitioners' experience, which is a mandatory statutory criterion under Rule 4(iv) of the Rules of 2010 and such silence is not a mere gap in articulation but is indicative of non-exercise of the Board's power, and a decision reached without application of mind to a prescribed criterion is a decision made in in abdication of the jurisdiction conferred. On irrationality, in the cases of M. Aamir Zulfiqar Khan *(W.P. No. 1160/2025)* and Owais Nauman Kundi *(W.P. No. 1848/2025),* the Board acknowledged acceptable PERs and TERs while simultaneously awarding low grading which is an irreconcilable contradiction left unacknowledged and unexplained. In the cases of Sohail Ali Khan, Murtaza Khan, and Ms. Amna Imran, adverse integrity findings were recorded without reference to any entry or material in the service dossier, contrary to the maxim *nemo fit repente turpissimus* which fails the test of rationality and renders the recommendations unreasonable as under the *Wednesbury* unreasonableness. On procedural impropriety, the adverse material was never disclosed to the petitioners and no opportunity to respond was afforded, in violation of *audi alteram*

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partem; and the petitioners were not recommended without communication of reasons, in breach of Articles 4, 10-A, and 19-A of the Constitution and Section 24-A of the General Clauses Act, 1897. A decision without reasons negates genuine application of mind, deprives the officer of any meaningful right of challenge, and forecloses judicial review. The recommendations of the HPSB given in its 29th meeting (05–10.03.2025), insofar as they pertain to the seven petitioners, are ***set-aside*** on the grounds of illegality, irrationality, and procedural impropriety.

vi. The OSD Notification dated 25.01.2023, and the continued placement of the petitioner in W.P. No. 1160 of 2025 as an Officer on Special Duty beyond any reasonable transitional period, is unlawful, arbitrary, and is ***set-aside***.

76. The cases of the petitioners for promotion shall be considered afresh with effect from the date of the Impugned Decisions, strictly in accordance with the law and the following directions:-

i. The HPSB shall confine itself to material in the official service dossier. It shall not rely upon personal knowledge, oral impressions, or unverifiable views of its member and the Departmental Representatives.

ii. Any adverse integrity finding shall be supported by specific reference to documentary material in the dossier. No such finding shall rest upon reputation, impression, or hearsay.

iii. In the event of non-recommendation, the Board shall record clear and specific reasons referable to each prescribed evaluation parameter or criteria.

iv. The reasons and material forming the basis of any adverse finding shall be communicated to the concerned officer within fourteen days of the conclusion of the fresh proceedings. Confidentiality shall not be invoked to deny the petitioners any minutes of meetings or reasons as the same pertains to and affects their rights.

v. The petitioner in W.P. No. 1085/2025 shall be considered for proforma promotion.

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vi. The respondents are directed to assign the petitioner in W.P. No. 1160/2025 a posting commensurate with his rank and seniority within a period of thirty days from the date of this judgment, and reasons for any posting so made shall be duly recorded in accordance with the law.

77. In view of the above terms, these writ petitions are ***partly allowed***.

78. Before parting with the matter, this Court would like to acknowledge the valuable assistance provided by Mr. M. Yahya Khan Niazi, Judicial Law Clerk assigned to this Court.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 18.03.2026.

JUDGE

APPROVED FOR REPORTING

M. YAHYA KHAN NIAZI, L.C.

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