Form No: HCJD/C-121
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 3981 of 2025

Muhammad Ayub, Ex-Director, Prime Minister's Office, Board of Investment, Islamabad.

Versus

Government of Pakistan, Establishment Division, Cabinet Secretariat, through its Secretary, and three other

PETITIONER BY:	Mr. Matloob Hussain Malik, Advocate
RESPONDENTS BY:	Mr. Fahad Khan Tareen, Assistant Attorney General. Mr. Shoaib Raza Gopang, S.O, Establishment Division. Mr. Mansoor Ahmed, Superintendent, Estb. Division
DATE OF HEARING:	19.10.2026

***AYYAZ SHAUKAT, J*:-** The petitioner, a retired Director (BPS-19) of the Board of Investment **("BOI"),** invokes Article 199 of the Constitution against the decision communicated to him on 19.08.2025, by which the Central Selection Board **("CSB")**, at its meeting held from 11 to 14 March 2025, declined to recommend him for proforma promotion to BPS-20 (Director General). That decision was taken pursuant to a judgment of the Federal Service Tribunal **("FST")** dated 22.01.2020 and an order of the Hon'ble Supreme Court dated 25.01.2023 refusing leave to appeal against that judgment. The petitioner prays that the decision be declared illegal and void, and that the respondents be directed to reconvene the CSB and grant him proforma promotion from 13.08.2015 with all consequential pensionary and monetary benefits.

2. The petitioner (date of birth 01.12.1956) joined the Investment Promotion Bureau as Assistant Director (BPS-17) through the Federal Public Service Commission on 13.12.1990 and came to the BOI upon the merger of the Bureau. He was promoted to the post of Deputy Director (BPS-18) in 2000 and to that of Director (BPS-19) in 2007. After he completed the Senior

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Management Course in 2011, his case for promotion to Director General (BPS-20), a post filled by promotion, matured. The respondents do not dispute that his service record is unblemished; they say only that this does not by itself confer a right to promotion. The Establishment Division's own record shows that he was the senior-most officer at the time of his retirement.

3. On 13.08.2015, the BOI forwarded his promotion proposal, with a panel of four BPS-19 officers in which he stood at seniority No.1, to the Establishment Division for placement before the CSB against vacant Director General (BPS-20) posts in the promotion quota. It is admitted that no CSB meeting was held between June 2015 and November 2016. The BOI re-submitted the proposal on 20.06.2016. By O.M. dated 10.11.2016 the Establishment Division asked for updated proposals, a seniority list and panel proformae as on 03.10.2016 because a CSB meeting was scheduled to be held shortly, and on 21.11.2016 the BOI confirmed that nothing had changed.

4. The petitioner retired on attaining the age of superannuation with effect from 30.11.2016. The CSB met from 13 to 16 December 2016, thirteen days after his retirement. His representation of 01.12.2016 and his reminders of 17.07.2017 and 21.12.2017 were rejected by the BOI on 22.12.2017 on the ground that his request was "not covered under the rules".

5. The petitioner then filed Appeal No. 199(R)CS/2018 before the FST, which was allowed on 22.01.2020. The Tribunal noted that no CSB meeting took place for 17 months at a stretch, that twice-yearly meetings had been a regular feature since 2006 pursuant to a Prime Minister's directive, and held in paragraph 7:

> *"Be that as it may, non-consideration by the CSB despite fulfilling eligibility criteria and submission of case could not be attributed to any fault on behalf of the appellant. Respondent No.2 (Establishment Division) is directed to process the case for proforma promotion of the appellant w.e.f. the date the case was submitted for consideration by CSB and submit it to the quarter concerned who would complete the process in three months time."*

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6. The Establishment Division's Civil Petition No. 1154 of 2020 against that judgment was dismissed by the Hon'ble Supreme Court on 25.01.2023. The Court observed that "the failure of the government to hold a meeting of the CSB for a continuous period of 17 months, during which the case of the petitioner was mature for consideration but could not be evaluated, reflects a failure on the part of the government for which the respondent officer should not have been punished"; held the Tribunal's direction to be "a valid direction which is in line with the norms and dictates of justice"; and, relying on *Federation of Pakistan v. Jahanzeb* (2022 SCMR 2020), reiterated that an employee who lost promotion through administrative oversight or delay in the meeting of a DPC or Selection Board, despite having fitness, eligibility and seniority, has a legitimate expectation of proforma promotion with consequential benefits.

7. The three-month period fixed by the Tribunal expired in 2020. The BOI forwarded the working papers of two panelists only on 07.10.2024, and the CSB considered the petitioner's case on 11 to 14 March 2025. By letter of 19.08.2025, he was informed that the Board, after noting that "no civil servant can ask for promotion as a right", the Islamabad High Court's judgment in *Sikandar Hayat Maken* on the competent authority's exclusive domain over fitness, and the Tribunal's and Supreme Court's orders, "observed that wrongful prevention has not been established and … did not recommend grant of proforma promotion". The letter added that under the proviso to section 22(2) of the Civil Servants Act, 1973 no representation lies on questions of fitness. The letter does not refer to any PER, TER, adverse remark, disciplinary or integrity matter, or marks awarded to the petitioner.

8. The petitioner's appeal to the Prime Minister dated 09.09.2025 was returned without action by the BOI on 18.09.2025 as "not covered under the relevant rules" (Annexure-L). He filed this petition on 30.09.2025. It is further noticed from the record that Dr. Muhammad Riaz, a retired Director (BPS-19) of the same BOI, who had obtained the judgment of the High Court of Balochistan dated 22.04.2024 in C.P. No. 1642/2023, was granted proforma

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promotion to BPS-20 with effect from 10.08.2023 on the recommendation of the same March 2025 CSB meeting, approved by the Prime Minister and notified by the BOI on 19.08.2025, the very day the petitioner's case was decided against him.

9. Learned counsel for the petitioner contended that the petitioner was prevented from promotion for no fault of his own; that the FST's finding to that effect is final; that the CSB's conclusion that wrongful prevention was not established is inconsistent with that finding and is unsupported by any recorded reason; that the decision is arbitrary and discriminatory when compared with the treatment of Dr. Riaz at the same meeting; and that section 4(1)(b) of the Service Tribunals Act, 1973 and the proviso to section 22(2) of the Civil Servants Act leave him no other remedy.

10. Conversely, the learned Assistant Attorney General opposed the petition and, reiterating the BOI's stance, submitted that promotion is not a vested right; that fitness lies exclusively with the CSB; that the judgments of the FST and the august Supreme Court did not direct promotion but only that his case be processed and placed before the CSB, which was done; that the CSB acted independently; that FR 17(1) applies only where wrongful prevention is established; and that any delay in convening the CSB lies with the Establishment Division. Referring to the objections raised by the Establishment Division, he further contended that the petition is not maintainable in view of Article 212 of the Constitution and section 23-B of the Civil Servants Act, and premature because it seeks to pre-empt the appointing authority under Rule 5 of the Civil Servants Promotion (BS-18 to BS-21) Rules, 2019; that the CSB deliberates "in collective wisdom" on the basis of PERs, TERs and dossiers; that its recommendations, once approved by the

11. It was further submitted at the bar that the proviso to FR 17(1), on which the departmental correspondence and the BOI's comments were founded, has since been omitted; that, notwithstanding this, the superior courts have continued to direct that retired civil servants be considered for

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proforma promotion; and that the respondents have continued to give effect to such directions.

12. I have heard learned counsel for the petitioner and the learned Assistant Attorney General and have perused the record with their assistance. The objections require consideration in light of the nature of the impugned decision. Respondents No. 1 and 2 say the FST has exclusive jurisdiction. Yet the respondents also rely (Respondents No. 1 and 2, preliminary objection VIII and reply to ground xv) on section 4(1)(b) of the Service Tribunals Act, 1973, which bars any appeal to the Tribunal against an order determining the fitness of a person to be promoted, and the BOI returned the petitioner's appeal because the proviso to section 22(2) of the Civil Servants Act bars any representation on fitness. If, as the respondents insist, the impugned decision is one of "fitness", it is beyond both the Tribunal and the departmental hierarchy, and the bar under Article 212(2) would not exclude this Court's jurisdiction in respect of a matter falling outside the Tribunal's competence. The petitioner has already obtained a direction from the Tribunal for consideration of his case for proforma promotion from the date of its submission to the CSB. What he now challenges is a fresh decision of the Board, taken after that judgment, which the respondents themselves treat as a decision on fitness and as unappealable. He has no other adequate remedy, and this Court may examine under Article 199(1)(a)(ii) whether the decision was taken with lawful authority.

13. The petition is not premature. Respondents No. 1 and 2 themselves state that the CSB's recommendations were approved by the Prime Minister under Rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and Rule 5(3) of the 2019 Rules and "are regarded final". The Prime Minister's approval in the parallel case of Dr. Riaz was conveyed by the Establishment Division's O.M. dated 15.08.2025. There is nothing left for the appointing authority to decide in the petitioner's case.

14. It is settled that promotion is not a vested right and that no civil servant can demand it as of right (*Government of Pakistan v. Hameed Akhtar*

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Niazi, PLD 2003 SC 110). The petitioner does not claim otherwise. His claim is that he was denied timely consideration through administrative default, and that the FST's direction, left undisturbed by the Supreme Court, requires consideration of his case for proforma promotion. The question is whether a refusal resting on the finding that "wrongful prevention has not been established" can stand where the FST held, and the Supreme Court left undisturbed, that the non-consideration "could not be attributed to any fault on behalf of the appellant".

15. The FST judgment was rendered between the same parties, was assailed by the Establishment Division itself, and attained finality on 25.01.2023. It bound the respondents. The CSB is a body of the same executive and had no authority to reopen a question adjudicated against the Government. The Board's own letter recites the Tribunal's direction and the dismissal of the Government's petition and then concludes that wrongful prevention is not established. That conclusion does not reconcile the Board's decision with the binding finding concerning non-consideration. Independently of that finality, the admitted facts establish the point: the proposal was complete and forwarded on 13.08.2015 (BOI comments, paras 5 and 6); no CSB met for 17 months; the Establishment Division itself announced on 10.11.2016 that a meeting was imminent; the petitioner retired on 30.11.2016; and the CSB sat thirteen days later. The BOI attributes the delay to the Establishment Division, which offers no explanation. Whichever respondent is responsible, the delay is not attributable to the petitioner.

16. The Court accepts that eligibility and fitness are distinct; that fitness is a subjective evaluation on objective criteria; and that this Court does not ordinarily substitute its own view for that of the CSB (*Muhammad Zahir Raja v. Federation of Pakistan*, 2012 SCMR 971; *Sikandar Hayat Maken v. Federation*, IHC judgment of 29.09.2020). But the Hon'ble Supreme Court in Zahir Raja held also that the discretion has to be exercised in a fair, open and just manner on a reasonable assessment of performance, that it must not be arbitrary or colourable, and that there should be something in writing that

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influences the Board; a "bald observation" in the CSB's proforma that the candidate did not reach the required threshold was held insufficient, and the case was sent back with directions that, if found fit, the officer would take seniority from the date his batchmates were promoted. This Court's decision passed in ICA No. 357/2021, relied on by the respondents , likewise accepts that review lies where the action violates the law or amounts to an unreasonable exercise of discretion.

17. Tested against that standard, the impugned decision cannot be sustained. The CSB remained competent to assess the petitioner's fitness, but could not reopen the finding that his earlier non-consideration was attributable to no fault of his own. It was acting on a binding judgment requiring his case to be processed for proforma promotion from the date it was submitted to the Board. Its reasons consist of two undisputed general propositions, and the conclusion on wrongful prevention. Though the respondents treat it as a decision on fitness, it records no reason for holding the petitioner unfit. It identifies no PER, TER, adverse entry, inquiry, integrity issue or marks. The copy of the CSB's objective assessment form placed on record bears no marks; the panel proforma places him at seniority No. 1 with no adverse remarks. The comments now speak of his "performance profile" and "evaluation outcomes", but reasons that appear for the first time in the comments cannot repair an order that gave none. The generic assertion that decisions rest on "PERs, TERs and dossiers" is not a substitute for reasons addressing the petitioner's case.

18. The Court has considered the submission that the proviso to FR 17(1), which enabled the appointing authority to grant proforma promotion to an officer wrongfully prevented from serving in the higher post, has been omitted, and that the FR-17(1) Committees and the guidelines framed for them (annexed by the BOI to its comments) have been withdrawn. The submission does not, by itself, answer the petitioner's claim founded on the final judicial direction. The petitioner's claim never rested on the proviso

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alone, and the omission does not disturb what has been adjudicated in his favour.

19. First, the source of his claim is the judgment of the FST dated 22.01.2020, which directed that his case be processed for proforma promotion with effect from the date it was submitted to the CSB. The Hon'ble Supreme Court declined to disturb that direction on 25.01.2023, some eight months after the omission, holding it to be "a valid direction which is in line with the norms and dictates of justice". That is a binding adjudication between the same parties, and all executive authorities are required to act in aid of the Supreme Court (Article 190). A later amendment of a rule cannot undo an adjudication already made, and the executive cannot treat its own subsequent change of policy as a reason for not implementing a final judgment. Second, the petitioner's cause accrued, and was pursued, long before the omission: the vacancies and the prevention date from 2015-16, his representation was made in December 2016, and his appeal was filed in 2018. The effect of the omission must therefore be considered with reference to the prior adjudication and the applicable transitional arrangements. As noticed by the Hon'ble Supreme Court in *Secretary, Ministry of Finance, Finance Division, Government of Pakistan and others v. Muhammad Anwar* (2025 SCMR 153), the proviso was omitted vide SRO No.965(I)/2022 dated 20.05.2022; the Finance Division, vide Office Memorandum of the same date, "provided that cases of retired civil servants could be placed before the relevant forums if there existed specific orders of judicial forums"; and, according to the guidelines, cases received before 20.05.2022 could also be entertained.

20. Third, the conduct of the respondents themselves shows that court directed proforma promotion ~~remains a live remedy~~ has continued to be considered. After the omission the CSB was convened in March 2025 to consider the petitioner "for proforma promotion to BS-20" in pursuance of the FST and Hon'ble Supreme Court orders, and it framed its decision in the language of "wrongful prevention". The same Board, at the same meeting, recommended proforma promotion for Dr. Riaz in pursuance of a High Court

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judgment, which the Prime Minister approved and the BOI notified on 19.08.2025. The respondents cannot maintain that the remedy has ceased to exist while applying it to another officer. The Court does not hold that every retired civil servant has a right to proforma promotion. It holds that a final judicial direction in the petitioner's favour, founded on the respondents' own administrative default, must be implemented; and that the omission does not, by itself, justify disregarding that final direction.

21. The Hon'ble Supreme Court has repeatedly held that an officer must not suffer for the department's delay. In *Federation of Pakistan v. Jahanzeb* (2022 SCMR 2020), decided after the omission and applied by the Court in its order of 25.01.2023 in this very case, the loss of promotion through "administrative oversight or delay in the meeting of DPC or Selection Board" gives rise to a legitimate expectation of proforma promotion with consequential benefits. In *Asad Hussain v. Controller General of Accounts* (2025 SCMR 1515) the Court held that promotion must be considered from the date a vacancy in the officer's quota arises, that the competent authority "cannot delay promotion on administrative pretexts", that the civil servant "must not bear the consequences of internal procedural lapses", and that "[a]ccountability lies with the department, not the employee"; it directed promotion from the date the vacancy first became available with all consequential benefits, without reference to FR 17. That case arose from a DPC in BPS-16/17 and concerned a serving officer, and is relevant to the requirement of timely and fair consideration. It does not, by itself, dispense with the conditions governing proforma promotion after retirement.

22. The Court does not treat the two cases as identical, and the CSB was entitled to decide each on its facts. But the respondents' answer that "each case is evaluated independently" does not explain the outcome. In Dr. Riaz's case the High Court of Balochistan recorded that the departmental representatives "frankly conceded" that he had been deprived of promotion on account of incorrect information furnished about his length of service, and the same CSB sitting on the same dates recommended proforma promotion.

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The petitioner's deprivation is not conceded but the subject of the Tribunal's finding that his non-consideration was attributable to no fault of his own, which the august Supreme Court left undisturbed. The Board has not said what distinguished the two. The disparity, unexplained, reinforces the conclusion that the impugned decision lacks a rational basis (Article 25 of the Constitution).

23. The elements that the omitted proviso reflected, and which the courts continue to apply in this class of case, are that the officer (i) was entitled to be promoted from a particular date, (ii) was prevented from serving in the higher post for no fault of his own, and (iii) was wrongfully so prevented. The record establishes the petitioner's entitlement to consideration and that his earlier non-consideration was attributable to no fault of his own; it does not dispense with an assessment of fitness by the competent authority. He was eligible, senior-most, and the vacancies are not denied. No adverse entry or finding of unfitness has been produced against him. His deprivation was adjudicated to be through no fault of his own, and the only reason he was not considered is that the CSB did not meet for 17 months and then met when he had just retired.

24. The Court has considered whether it should itself direct that the petitioner be promoted. Such a direction would not be appropriate. The assessment of fitness belongs to the CSB, and the appointing authority for BPS-20 is the Prime Minister. In Zahir Raja the Hon'ble Supreme Court, though it found the Board's exercise of discretion unsupportable, remitted the case to the Board rather than promote the officer, and in this very case the direction of the Tribunal, which the Supreme Court upheld as valid, was to process the case for proforma promotion, not to grant it. The proper course is therefore to set aside the impugned decision and to direct fresh consideration. Fresh consideration must, however, address the defects identified above. The petitioner's case has been pending since August 2015; the three months fixed by the Tribunal expired in 2020; and the CSB has already had one opportunity, in March 2025, and identified no deficiency on

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his part. The directions below are accordingly framed so as to (a) treat the finding that he was prevented from consideration for no fault of his own as final and binding; (b) require any adverse view on fitness to rest on identified material and to be recorded in a speaking order; and (c) fix short timelines. In accordance with the FST's binding direction, the case is to be considered for proforma promotion with effect from the date of its submission to the CSB, i.e. 13.08.2015. Since the petitioner has retired, proforma promotion will not disturb the seniority or prospects of any serving officer; it operates only on his notional pay, pension and retirement benefits.

25. The remaining objections may be dealt with briefly. The submission that the proviso to FR 17(1) no longer exists is answered above. Enforcing final judicial directions and examining whether a decision was taken with lawful authority is a judicial function that does not offend Article 175 of the Constitution. The petitioner is plainly an aggrieved person. The prayer for dismissal with costs is declined. The petitioner is entitled to fresh consideration of his case to the extent indicated below.

26. For these reasons, **the petition is allowed** as follows:

(a) The decision of the Central Selection Board taken at its meeting of 11 to 14 March 2025, as communicated by letter No. 1(4)-HR/2025 dated 19.08.2025, insofar as it declines to recommend the petitioner for proforma promotion, is declared to be without lawful authority and of no legal effect.

(b) It is declared that the petitioner was prevented from consideration for promotion to BPS-20 for no fault of his own; that this finding of the Federal Service Tribunal (judgment dated 22.01.2020 in Appeal No. 199(R)CS/2018), left undisturbed by the Supreme Court (order dated 25.01.2023 in Civil Petition No. 1154 of 2020), is final and binding on the respondents and shall not be reopened; and that the omission of the proviso to FR 17(1) does not affect it.

(c) Respondents No. 1 and 2 shall place the petitioner's case for proforma promotion from BPS-19 to BPS-20 (Director General) with

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effect from 13.08.2015 before the Central Selection Board, in accordance with the applicable procedure, and the Board shall consider it afresh within thirty (30) days of the receipt of this judgment.

(d) The consideration shall proceed on the footing stated in paragraph 26(b). It shall not be treated as a ground of refusal that wrongful prevention has not been established. If the Board or the appointing authority forms the view that the petitioner is not fit, the decision shall be a speaking order identifying the specific material relied upon, shall contain the reasons supporting that decision at the time it is made, and shall be communicated to the petitioner within seven (7) days.

(e) If the petitioner is recommended and the recommendation is approved, the notification of his proforma promotion with effect from 13.08.2015 shall be issued within fifteen (15) days of approval, and thereafter Respondents No. 3 and 4 shall (i) fix his notional pay in BPS-20 and pay the arrears of pay and allowances of the higher post for the period up to 30.11.2016 as admissible on proforma promotion; and (ii) revise his pension, commutation and other retirement benefits on the basis of BPS-20, with arrears, in accordance with the applicable rules.

(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on 22.10.2026.

JUDGE

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