ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 3259 of 2014

Khalid Mehmood
Versus
Secretary, Information & Broadcasting, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	14.03.2022	Mr. Ghulam Farid Chaudhry, Advocate for petitioner, Syed Nazar Hussain Shah, AAG Ms. Farah Naz Awan, Advocate for PBC.

Through the instant writ petition, petitioner has impugned orders dated 15.05.2014, whereby respondents 4 to 8 were promoted to the post of Controller (News) while representation of the petitioner assailing his supersession was turned down through order dated 29.05.2014.

2- Facts arising out of the instant writ petition are that the petitioner was appointed as Sub Editor in respondent-department vide appointment letter dated 01.04.1985, subsequently promoted as Assistant News Editor, and again promoted as News Editor in the year 1996 and on performing his duty successfully and to the satisfaction of his high ups again he was promoted as Deputy Controller in the year 2004; that the petitioner is senior from respondent No. 4 to 8 as per seniority list. The petitioner was superseded by his juniors in past as well vide order dated 14.11.2012 and again superseded on 12.11.2013 and lastly vide impugned order dated 15.05.2014 he was again superseded by his junior who are arrayed in the instant writ petition as respondents No. 4 to 8; that the supersession is against the rules and without assigning any cogent reasons and that the petitioner agitated his right of promotion but the same was rejected vide order dated 29.05.2014, impugned herein.

3- The learned counsel for the petitioner contended that the petitioner being the senior most Deputy Controller News had to be considered for promotion to the post of Controller News by the Selection Board; that the petitioner has been superseded thrice by his juniors without assigning any cogent reasons; that the petitioner on all three occasions had been agitating the matter with the respondent-department but has never received any feedback regarding non-consideration for his promotion; that the supersession of the petitioner is not in accordance with law and rules; that the petitioner has no alternate remedy but to invoke the jurisdiction of this Court under the Service Tribunal Act , section 4 (1)(b). Reliance is placed upon case law reported as **2013 SCMR 1707**; that the respondent through Memorandum dated 02.02.2009, has revised the promotion policy and adopted the Federal Government Civil Servant Promotion Policy approved by the Establishment Division vide O.M. No. 1/3/2007/CP/II dated 24.10.2007 therefore, under the existing promotion policy, instant writ petition is maintainable.

4-. Conversely, the learned counsel for the respondent stated that the petitioner joined PBC on 01.04.1985 as Sub Editor; that his academic qualification is M.A. (IR); that he was promoted to the post of News Editor on 27.06.1996; that he was promoted to the post of Deputy Controller News on 31.05.2004'; that the promotion for the post of Controller News is to be made by the selection amongst the senior most Deputy Controller News; that the promotion to the Controller News will be on the basis of seniority and performance of the officer; that the prescribed qualifying score in quantification of PERs for promotion to the post of Controller News in PBC Scale-9 is 70 Marks (85% by quantification of PERs and 15 % to be awarded by the Selection Board as per Revised Promotion Policy); that the required length of service in PBC pay scale 6 and above is

17 years; that the petitioner being the senior most Deputy Controller News was therefore, considered thrice for promotion in different Board Meetings held on 14.11.2012 11.11.2013 and 13.05.214 respectively; that due to the lack of qualifying score of 70 Marks required for promotion to the post of Controller News, the petitioner was superseded; that the instant writ petition is not maintainable as the rules of the Pakistan Broadcasting Corporation are non-statutory; that the terms and conditions of the petitioner services are not governed by the statutory rules; that transfer, posting and promotion being part of service terms and conditions cannot be claimed as a matter of right; reliance was placed on **(2009 SCMR 61).**

5- Heard, record perused with the able assistance of the learned counsel for the parties.

6- The perusal of record reveals that it is an admitted position that the petitioner was considered for promotion to the post of Controller (News) thrice by the Selection Board, but was superseded on one and the same reason i.e. lack of required number of marks. The first supersession had taken takes place on 14.11.2012; the second on 11.11.2013 while the last one on 13.05.2014. The first two supersessions remained unchallenged by the petitioner and the reason for the said supersession was the same as of the third one. The petitioner did not opt to challenge the first two supersessions at appropriate time either within the departmental hierarchy or before any appropriate forum.

7- The record further reveals that the petitioner had attained the age of superannuation of 05.04.2019. The promotion policy adopted by the respondent department is annexed with the petition wherein the eligibility criteria of consideration of promotion is as under;-

> *"i. Fulfillment of prescribed minimum length of service in PBC Sclae-6 and above for promotion to various scales.*

ii. Should possess qualification/experience and other conditions as prescribed in the relevant Recruitment Rules.

iii. An officer Superseded earlier shall be considered after earning Performance Evaluation Report (PER) for one full year. For example, and officer superseded on the basis of his PERs up to 2004, will become eligible for consideration after earning PER for 2005."

SELECTION/NON SELECTION SCALE POSTS

The posts in PBC Scale-6, Scale-7 and Scale-8 have been taken out of the category of *"selection posts"* and henceforth shall be treated as non-selection posts. Promotion from PBC Sclae-6 to PBC Scale-7 posts and from PBC Scale-8 posts, being non-selection posts should be based on seniority cum fitness, i.e. on 100% on the PERs.

DEVELOPMENT OF COMPREHENSIVE EFFICIENCY INDEX FOR PROMOTION/DEFERMENT/SUPERSESSION:

a) The minimum threshold of marks for promotion to various scales shall be as per following table;-

PBC pay scale	Aggregate marks of Efficiency Index
Scale-7	50
Scale-8	60
Scale-9	70
M-III	70

b) The Selection Board shall recommend the officers of the panel securing requisite % and above in the efficiency index for promotion unless deferred in order of seniority, depending upon the number of vacancies. No officer meeting the aggregate threshold shall be superseded.

c) Whenever an officer, particularly of small cadres is recommended for deferment the Board may also decide as to whether a vacancy be reserved or not depending upon public interest vs officer's right for consideration.

PANEL OF OFFICERS PER VACANCY:

The panel of officers per vacancy will be ad under;-

For promotion to PBC Scale-7 and Scale-8	A minimum of 2 officers per vacancy depending on the availability of eligible officers in the cadre.
For promotion to PBC Scale-9 and Grade M-III	A minimum of 3 officers per vacancy depending on the availability of eligible officers in the cadre.

Provided that the panel would be in addition to superseded cases and not inclusive thereof."

8- The record reveals that the first supersession wherein the petitioner was not considered for promotion in the year,2012, remained unchallenged, the minutes of the meeting for Selection Board for promotion to the post of Controller News dated 14.11.2012 is tabulated as under:-

S. No.	Name & Unit	Final Score in quantification of PERs	Score awarded by the Selection Board	Total Score
1.	Mr. Khalid Mehmood, Deputy Controller (News), PBC News, Islamabad	58.12	9.00	**67.12**
2.	Ms. Perveen Khurshid, Deputy Controller (News), PBC Karachi.	59.95	9.00	68.95
3.	Mr. Sher Zaman, Deputy Controller (News) PBC Peshawar	62.82	9.00	71.82

9- It is further evident from the record annexed with the reply of the respondents that the second supersession wherein the petitioner was not considered for promotion in the year, 2013, remained unchallenged, the minutes of the meeting for Selection Board for promotion to the post of Controller News dated 11.11.2013 is tabulated as under;-

S. No.	Name & Unit	Final Score in quantification of PERs	Score awarded by the Selection Board	Total Score
1.	Mr. Khalid Mehmood, Deputy Controller (News), PBC News, Islamabad	57.25	7	**64.25**
2.	Ms. Perveen Khurshid, Deputy Controller (News), PBC Karachi.	60.29	11	71.29
3.	Mr. Sher Zaman, Deputy Controller (News) PBC Peshawar	61.89	12	73.89

10- Record further reveals that the third supersession wherein the petitioner was not considered for promotion in the year, 2014, impugned through the instant writ petition, the minutes of the meeting for Selection Board for promotion to the post of Controller News dated 13.05.2014 is tabulated as under;-

S. No.	Name & Unit	85% Quantified Score of PERs	15% Marks awarded by the Selection Board	Total Score	Remarks
1.	Mr. Khalid Mehmood, PBC News, Islamabad	56.58	06	**62.58**	Not cleared
2.	Mr. Zafar Iqbal Mughal, PBC News, Islamabad.	63.51	10	73.51	Not cleared
3.	Mr. Gul Akbar, PBC News, Islamabad.	65.07	10	75.07	Not cleared
4.	Mr. Muhammad Ramzan, PBC News, Islamabad	58.06	07	65.06	Not cleared

11- It is also important to mention that the petitioner was superseded on all three occasions due to non-fulfillment of the criteria prescribed through the revised Promotion Policy adopted by the respondent department. Thus, it can safely be said that the actions had been taken under mandatory procedural requirements. Although the main contention of the learned counsel for the petitioner was attribution of malafide to the Selection Committee but nothing was brought on record to attribute bad faith or malafides to the Members of the Committee. The learned counsel also attributed unfairness to the Selection Committee and to strengthen such argument, he suggested that the petitioner should have been provided opportunity of hearing by the Selection Committee and ought to have been confronted with the material that had adversely effected the petitioner. As mentioned in earlier part of the judgment, the first two supersessions remained unchallenged by the petitioner while the last one had been for the same reason i.e. lack of required number of marks. Moreover, the representation of the petitioner was also responded vide letter dated 27.05.2014 in terms that his successive supersessions had been due to lack of required number of marks, required under the rules, therefore, objection of the learned counsel regarding unfairness retains no worth particularly when the

petitioner himself opted not to contest his two successive supersessions.

12- It is settled principle that an action based on malafide of law or malafide of fact can be challenged while the terms and conditions of service embrace bona fide discharge of public duties by the respective authorities. In this regard, reliance is placed upon case of "*Muhammad Yahya Khan Kolachi v. Registrar Lahore High Court, Lahore*" (**2011 SCMR 1381**). The August Supreme Court of Pakistan in the case of "*Rana Muhammad Sarwar v. Govt. of Punjab, through Services General Administration Department*", **(1990 SCMR 999)** has graciously held that;-

> "*All actions taken against a civil servant can be challenged on the ground of mala fides of law or mala fides of fact ---Mala fides of law was involved where authority, not competent, had taken an action; or the mandatory procedural requirements for taking the actions or the jurisdictional requirements for it remained unsatisfied ---Mala fides in fact, related to those cases where personal bias, grudge or vindictiveness was the prompting force for action ostensibly in proper form and content---Latter category of actions was as much violation of terms and conditions of employment as the first category because public power was never entrusted or reposed in functionary to be exercised for achieving personal ends, like unjust enrichment, vindictiveness or revenge----Terms and conditions of service embrace bona fide discharge of public duties by the repository of public power."*

13- The Hon'ble Apex Court in its pronouncement reported as **PLD 1974 SC 151**, has held that:-

> **"***Mala fides is one of the most difficult things to prove and the onus is entirely upon the person alleging mala fides to establish it, because, there is, to start with, a presumption of regularity with regard to all official acts, and until that presumption is rebutted, the action cannot be challenged merely upon a vague allegation of mala fides. Mala fides must be pleaded with particularity, and once one kind of mala fides is alleged, no one should be allowed to adduce proof of*

any other kind of mala fides nor should any enquiry be launched merely on the basis of vague and indefinite allegations, nor should the person alleging mala fides be allowed a roving enquiry into the files of the Government for the purposes of fishing out some kind of a case.

Government of West Pakistan v. Begum Agha Abdul KarimShorish Kashmiri P L D 1969 S C 14 ref.

"Mala fides" literally means "in bad faith". Action taken in bad faith is usually action taken maliciously in fact, that is to say, in which the person taking the action does so out of personal motives either to hurt the person against whom the action is taken or to benefit oneself. Action taken in colourable exercise of powers, that is to say, for collateral purposes not authorized by the law under which the action is taken or actions taken in fraud of the law are also mala fides. It is necessary, therefore, for a person. alleging that an action has been taken mala fide to show that the person responsible for taking the action has been motivated by any one of the considerations mentioned above. A mere allegation that an action has been taken wrongly is not sufficient to establish a case of male fides, nor can a case of mala fides be established on the basis of universal malice against a particular class or section of the people. Thus, action taken, for instance, to acquire lands or take over industries or banks on the basis of a policy intended for introducing a more socialistic system cannot be characterized as action taken mala fides. But in order to make out a case of mala fides, an individual must establish that his land was taken not for the purposes authorized by the law but for the personal aggrandizement of the person empowered with the power to mike the order of acquisition, or because the person so authorized to take action bore any personal grudge against the person in respect of whose lands or properties action has been taken.

In order to establish a case of mala fides, some such specific allegation is necessary and it must be supported by some prima facie proof to justify the Court to call upon the other .side to produce evidence in its possession.

14- Further in a latest pronouncement n the case ***of Sikandar Hayat Maken v. Federation of Pakistan reported as (2021 PLC (CS) 1450)*** the Hon'ble Chief Justice of the Islamabad High Court has graciously held that:-

> *"That excessive intrusion in matters relating to promotion could have profound consequences for the governance of the State and formulation of policies restrain in such matter is thus a rule, while intrusion and exception."*

15- Under the principle of separation of powers, the Constitution defines functions of each organ or each branch of an organ and also specific the territories in which, the subjects in respect of which and sometimes even circumstances in which these functions will be exercised by each of these organs or sub-organs. The limitations would, therefore, be inherent under such a system so that one organ or sub-organ may not encroach upon the legitimate field of the other. The principle has been elucidated by the Hon'ble Apex Court in the case of "*State v. Zia ur Rehman & others" (***PLD 1973 SC 49).** It has been held that:-

> *"In the case of a Government set up under a written Constitution, the functions of the State are distributed amongst the various State functionaries and their respective powers defined by the Constitution. The normal scheme under such a system, with which we are familiar, is to have a trichotomy of powers between the executive, the Legislature and the Judiciary. But each of these organs may itself be fashioned in a variety of different shapes and forms. Thus the Legislature may be unicameral or bicameral; the legislative subjects may be divided between the federating units and the federation in a federal system or even the legislative power may be divided between the executive and the Legislature as in our present system. The executive may take the Presidential or the Parliamentary form. The judiciary also may consist of various types and grades of Courts with the highest at the apex either as an ultimate Court of appeal or a Court of Cessation. There may also be other administrative tribunals outside the judicial pyramid.*
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> *In all such cases, it will also be the function of the Constitution to define the functions of each organ or each branch of an organ, as also specify the territories in which, the subjects In respect of which and sometimes even the circumstances* ***In which these functions will be exercised by each of***

> ***these organs or sub-organs. Limitations would, therefore, be inherent under such a system so that one organ or sub-organ may not encroach upon the legitimate field of the other.*** *Thus, under a written Constitution, the Legislature of a federal unit will not be able to legislate in respect of a subject which is within the field of the federal Legislature, nor will a federal Legislature be able to legislate upon a subject which is within the exclusive field of the Legislature of the federating units. It cannot, therefore, be said that a Legislature, under a written Constitution, possesses the same powers of "omnipotence" as the British Parliament. Its powers have necessarily to be derived from, and to be circumscribed within, the four corners of the written Constitution"* [**emphasis added]**

16- In addition, this Court while exercising jurisdiction in terms of Article 199 of the Constitution is not vested with any authority to compel the competent authority to promote the petitioner as it would amount to cause interference and hamper the functioning of the departmental authorities. Reliance is placed upon case of ***Mst. Iffat Nazir v. Government of Punjab & others (*2009 SCMR 703**).

17- In view of above, instant writ petition fails and is accordingly dismissed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on _____04.2022

JUDGE

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