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**Judgment Sheet**

***IN THE LAHORE HIGH COURT LAHORE***

**JUDICIAL DEPARTMENT**

**Case No: W. P. No. 25301/2011.**

Liaqat Ali Chughtai.	<b>Versus</b>	Federation of Pakistan etc.
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**JUDGMENT**

Date of hearing:	17.02.2012.
Petitioner by:	Mr. Ali Akbar Qureshi, Advocate.
Respondents by:	Ms. Shaista Qaisar, Deputy Attorney General for Pakistan. Hafiz Ahsan Ahmad Khokhar, Advocate. Hafiz Tariq Nasim, Advocate for private respondents Mr. Muhammad Awais Kundi, Joint Secretary, Establishment Division. Mr. Shamas-ud-Din Baloch, Section Officer, Establishment Division, Islamabad. Mr. Bilal Ahmad, Assistant Ministry of Railways.
Research Assistance rendered by:	M/s. M. Nadeem Ahmed Sohail and Nadir Hussain Shah Gilani, learned Civil Judges/ Research Officers, Lahore High Court Research Centre.

**Syed Mansoor Ali Shah, J:-** This judgment will decide the instant petition along with writ petitions listed in **Schedule -A**, as they raise common questions of law and facts.

2. Brief facts of the case are that the petitioners, who are senior officers (in BS-19 and BS-20) of Pakistan Railway, were considered for promotion by the Central Selection Board (“**CSB**”) under the

Revised Promotion Policy dated 24.10.2007 (“Policy”) for the following posts:

Sr. no.	Name of the Petitioner/ grade	W. P. No.	Considered for promotion to the post of:
1	Liaqat Ali Chughtai	25301/2011.	Chief Mechanical Engineer (BS-20)
2	Syed Hassan	25300/2011.	Chief Mechanical Engineer (BS-20)
3	Muhammad Nawaz	25299/2011.	Chief Mechanical Engineer (BS-20)
4	Imtiaz Hussain Rizvi	26541/2011.	Railways Transportation (Traffic) and Commercial Group from BS20 to BS 21
5	Ahsan Mehmood Mian	25302/2011.	Additional General Manager/ Passenger (BS-21)

3. According to the Policy, CSB is to award marks to the officers, under consideration, out of a total of 15 marks, in addition to the marks already tabulated in the following manner:

Sr. No.	Factor	Remarks
1	Quantification of PERs relating to present grade - @ 60 % previous grades - @ 40%	70%
2	Training Evaluations reports in ratio of 60% : 40%	15%
3	<b><u>Evaluation by CSB</u></b>	<b><u>15%</u></b>
	Total	100%

According to the Policy the threshold marks or Aggregate Marks of Efficiency Index for promotion to BS-20 and BS-21 are as under:

Sr. #	Basic Pay Scale	Aggregate Marks of Efficiency Index
01.	BS-20	70 MARKS
02.	BS-21	75 MARKS

4. In the present cases, CSB awarded the following marks to the

petitioners on the basis of the reasons recorded hereunder:-

Sr. #	Name of Officer	Marks out of 15	Reasons
01.	Liaqat Ali Chughtai	1	<b>Reputed to be known corrupt and dishonest</b>
02.	Syed Hassan	1	<b>Reputed to be Corrupt. Incompetent</b>
03.	Muhammad Nawaz	1	<b>Reputed to be know corrupt and dishonest.</b>
04.	Syed Imtiaz Hussain Rizvi	2	<b>Known dead corrupt</b>
05.	Ahsan Mahmood Mian	2	<b>Known to be corrupt. Incompetent. Not fit to hold senior position.</b>

As a result the petitioners were superseded because their marks did not add up to meet the minimum requirement of Aggregate Marks of Efficiency Index mentioned above.

5. The grievance of the petitioners is two fold: First, the award of 15 marks by CSB is not based on any structured objective criteria. Second, the process of evaluation adopted by CSB lacks due process and fairness, in as much as, opinions and personal impressions, of some of the Members of CSB, adverse to the interest of the petitioners have been relied upon by the CSB without adequate disclosure of the same to the petitioners and without affording them an opportunity to defend themselves. This has also resulted in abuse and failure of discretion exercised by CSB in awarding the marks to the petitioners.

6. It is vehemently submitted that the REASONS recorded in the Minutes of the Board, reproduced above, against the petitioners have no nexus with the record (service dossier) placed before the CSB, in as much as, there is no document in the dossier that can even remotely

establish that the petitioners are “*corrupt*” or “*incompetent*.”

7. Learned Deputy Attorney General for Pakistan representing the Establishment Division raised preliminary objection that the present petition is not maintainable under Article 212 of the Constitution and placed reliance on *Khalid Mahmood Wattoo vs. Government of Punjab and others* (1998 SCMR 2280). He went on to say that the courts have in the past refrained from interfering in the subjective assessments/ opinions of the Central Selection Board and relied upon *Dr. Omer Farooq Zain vs. Bahauddin Zakariya University, Multan through Vice-Chancellor and 6 others* (2008 PLC (C.S.) 1012) and *Dr. Mir Alam Jan vs. Dr. Muhammad Shahzad and others* (2008 SCMR 960) besides unreported judgments of this court and the Islamabad High Court i.e., W.P. no. 9703/2009 (dated 2-4-2010), W.P. no. 7677/2011 (15-6-2011), W.P. 1152/2011 (dated 22-6-2011) and W.P. no. 603/2009 (1-7-09) in support of this submission.

8. On merits learned Deputy Attorney General referred to the Minutes of the Meeting of Central Selection Board held on 23<sup>rd</sup>, 24<sup>th</sup> September and 3<sup>rd</sup> October, 2011, whereby a criteria was developed for award of 15 marks by the Central Selection Board and submits that the said criteria is fair and transparent. Learned Deputy Attorney General categorically submitted that the reasons given in the recommendations whereby the petitioners have been declared to be corrupt or incompetent is based on the opinion of one of the Members of the Central Selection Board and is not borne out from the dossier of the petitioners placed before the CSB. This fact has also been

confirmed by the representatives of the respondents namely: M/s. Muhammad Awais Kundi, Joint Secretary, Establishment Division, Shamas-ud-Din Baloch, Section Officer, Establishment Division, Islamabad and Bilal Ahmad, Assistant Ministry of Railways.

9. Learned counsel for respondent Pakistan Railways submits that the Service Dossier prepared for Central Selection Board by the Pakistan Railways carries the Performance Evaluation Reports (“PERs”) spanning over several years and the Training Evaluation Reports. He submits that there is no finding in these Reports that could remotely lead the CSB to arrive at reasons recorded in the impugned minutes/decision of the CSB. He submitted that the reasons and the consequent marks awarded to the petitioners are based on personal opinion of the Members of the Board (most probably the erstwhile Secretary Railways, who was then the Member of CSB<sup>1</sup>).

10. Learned counsel for the private respondents i.e., officers who have been promoted, submits that total score of the petitioners in Performance Evaluation Reports and the Training Evaluation Reports is below the prescribed threshold of 70 and 75 marks (as applicable), therefore, it is an exercise in futility to discuss the merits of the criteria framed or the award of 15 marks by CSB. Learned counsel referred to unreported order of this Court dated 15.06.2011 passed in W.P. No.7677/2011 in support of this contention.

11. Arguments heard, record perused.

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<sup>1</sup> This is also borne out from letter dated 16.02.2012 written to the learned Deputy Attorney General for Pakistan by the Director Administration, Ministry of Railways, Government of Pakistan. (No.24/44-2/2011-AI).

12. These cases pertain to promotion of the petitioners to SELECTION posts in BS-20 and BS-21. Appointment through promotion to SELECTION posts is based on MERIT, which requires subjective assessment regarding “fitness” and “suitability” of the officers to the said post subject to their eligibility. The impugned decision of supersession of the petitioners by the CSB is, in effect, determination of their fitness for the posts in question. It is settled law that assessment of fitness and suitability are excluded from the ambit of the Services Tribunal under section 4 of the Federal Service Tribunals Act, 1974. Reliance for convenience is placed on Mian Abdul Malik v. Dr. Sabir Zameer Siddiqui and 4 others, (1991 SCMR 1129), Government of Punjab, through Secretary Health Department, Civil Secretariat, Lahore and another v. Dr. Aman-ul-Haq, M.S. District Headquarter, Gujranwala, (2000 PSC 599), and Mushtaq Hussain Shah v. Director, Food, Lahore Region and others, (1990 SCMR 1492). As a consequence, the bar contained under article 212 is not attracted to the present cases. The preliminary objection raised by the learned DAG is, therefore, over-ruled. On the objection whether this court can interfere in the subjective assessment of the CSB, it is observed that this is not the case here. It is not the subjective assessment of the CSB which is under challenge here but infact the process adopted by CSB in arriving at the said subjective assessment. It is now settled that subjective assessment by a public authority must rest on an open and transparent objective criteria. The subjectivity of CSB must filter through clearly defined parameters,

criteria and standards. Subjective assessment does not empower or grant a license to a public authority to exercise discretion without first structuring it.

13. The objection by the learned counsel for the private respondents that as the petitioners have failed to meet the threshold marks of 70 or 75 respectively, the issue of CSB adopting an objective criteria or the process employed by CSB is irrelevant. This submission is without force for the reason that the marks awarded by CSB (out of a total of 15 marks) have to be added to the quantified marks of PERs and Training Evaluation Reports in order to tabulate the Aggregate Marks of Efficiency Index. Theoretically, for the sake of argument, if more marks were awarded to the petitioners (out of a total of 15 marks) they would have successfully crossed the threshold requirement and be promoted. The order of this court relied upon by the learned counsel turns on its own facts and is not relevant to issue in hand.

14. The legislative background relating to promotion to Selection post of BS-20 and BS-21 is as follows:-

- i. Section 9 (2) (a) of the **Civil Servants Act, 1973** provides that promotion to selection post shall be made on the basis of selection on **merit**, while sub-section (3) provides that the said promotion shall be made on the recommendation of a Selection Board constituted by the Federal Government.
- ii. Rules 7, 7-A and 8 of the **Civil Servants (Appointments, Promotions and Transfers) Rules, 1973** reiterate that promotion to BS-20 shall be made on the recommendation of the Selection Board and only

such persons as possess the qualification and meet the conditions laid down for the purpose of promotion to a post shall be considered by the Central Selection Board.

iii. Preamble to the **Revised Promotion Policy (October, 2007)**<sup>2</sup> provides:

“.....a comprehensive criteria for selection for promotion / deferment / super-session, which is measurable to the extent possible, comparable with regard to performance of each officer on the panel and is based on tangible record duly placed on the dossier and also re-defines discretion, of the members and the Boards and, to lay down as to how more objectivity can be brought in the recommendations of the Selection Board”.  
*(emphasis supplied)*

iv. The Policy provides for **“Comprehensive Efficiency Index”** for promotion. The minimum threshold of marks for promotion to various scales is as follows:-

Basic Pay Scale	Aggregate Marks of Efficiency Index
BS-20	70
BS-21	75

v. Revised Promotion Policy provides that an officer meeting the Aggregate Marks of Efficiency Index cannot be superseded.

vi. Clause 7 of the said Policy provides for Quantification of Performance Evaluation Reports (“PERs”), Training Evaluation and CSB evaluation. For the purpose of consideration by the CSB, PERs are to be quantified

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<sup>2</sup> Sr. No.162-A, Estata Code (Federal Government) which amends original Promotion Policy (October 1982)



according to the form given in the Addendum to the existing Promotion Policy.<sup>3</sup> The Policy allocates following marks for quantification of PERs/Training Evaluation Reports and CSB evaluation:

Sr. #	Factor	Remarks
1.	Quantification of PERs relating to present grade and previous grades @ 60% : 40%	70%
2.	Training Evaluations reports in ratio of 60% : 40%	15%
<b><u>3.</u></b>	<b><u>Evaluation by CSB</u></b>	<b><u>15%</u></b>
	Total	100%

- vii. **Revised Guidelines with addendum for Central Selection Board**<sup>4</sup> provide under clause 4 “that posts in BS-20 are middle management posts. Field offices are generally headed by the officers in this scale. **It is, therefore, essential that in addition to the relevance of experience these officers must also have sufficient variety and width of experience...Variety of experience includes experience in the field, corporations, attached departments, different Ministries/Divisions.** (*emphasis supplied*)
- viii. For promotion to middle management posts (BS-20) a civil servant must fulfill the following requirements:-
- Qualifying Service – Possessing 17 years service;
  - Eligibility Threshold – attain a minimum score of 70 marks;
  - Qualifications – as prescribed by relevant recruitment rules;
  - Relevance of Experience;

<sup>3</sup> Sr. No.162 and 163 of the Esta Code (Federal Government).

<sup>4</sup> Enclosure to Sr. No.163 of the Esta Code (Federal Government).

- (e) “Quality and Output of Work” and “Integrity” – marks calculated in accordance with the formula in the Addendum;
  - (f) **Variety of Experience – the Selection Board should give due consideration to the nature of duties, duration and location of posts previously held by the officer. Depending on the post to be filled, an officer possessing well rounded experience should normally be preferred particularly if he has served with distinction in unattractive areas. While some exposure to a corporation, autonomous body or an ex-cadre assignment may be considered a positive feature;** *(emphasis supplied)*
  - (g) Training.
- ix. Posts carrying BS-21 fall in senior management involving important policy-making or extensive administrative jurisdictions. **In addition to the circulation value and variety of experience the incumbents must possess proven analytical competence, breadth of vision, emotional maturity and such other qualities as determine the potential for successfully holding posts in top management. This potential cannot be judged by mathematical formula. The Selection Board will have to apply its collective wisdom to determine the same.** A civil servant must fulfill the following conditions for promotion to senior management post:-
- (a) Qualifying Service – Possessing 22 years service;
  - (b) Eligibility Threshold – attain a minimum score of 75 marks;
  - (c) Qualifications – as prescribed by relevant recruitment rules;

- (d) Relevance of Experience;
- (e) “Quality and Output of Work” and “Integrity” – marks calculated in accordance with the formula in the Addendum;
- (f) **Variety of Experience – the Selection Board should give careful consideration to the nature of duties, duration and location of posts previously held by the officer. At this level, a proper assessment under the criterion may require some distinction between hard or taxing assignments.....Depending on the post to be filled, an officer possessing well-rounded experience with adequate exposure to difficult assignments should normally be preferred;**
- (g) Training.
- (h) **Top Management Potential: since officers promoted to this level may be called upon to hold independent charge of a Ministry/Division or to head a major corporation, the Board should satisfy itself about the officer’s maturity, balance and ability to assume such top management positions even at short notice.**  
*(emphasis supplied)*

x. **Addendum** dealing with the quantifying the Confidential Reports,<sup>5</sup> deals with overall assessment, quality and output of work, as well as, integrity of the officer while quantifying the confidential reports. *(emphasis supplied)*

15. The dossiers of the petitioners carrying the PERs and the Training Evaluation Reports duly quantified as per formula provided in the Revised Promotion Policy were placed before the Central Selection Board in its meetings held on 23<sup>rd</sup> and 24<sup>th</sup> September, 2011

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<sup>5</sup> Serial No.163 Addendum, Esta Code (Federal Government).

and 3<sup>rd</sup> October, 2011. CSB referred to extracts of earlier meetings leading to the settlement of the final criteria for the grant of 15 marks to the petitioners. Relevant extracts of the minutes of the meetings of the CSB are reproduced hereunder:

Paragraph 6:

“It was informed that CSB in its meeting held in November, 2007 had decided to award its 15 marks on the basis of Members views on the officer about his integrity, performance and pen picture in synopsis of PERs for the last five years and the training evaluation reports.” *(emphasis supplied)*

Paragraph 8:

“In its meeting held in December 2009, the CSB had decided that the officers on the panel may fall in three categories i.e., top most being Category-I, the middle in Category-II and reminder in Category-III and CSB marks may be awarded on the basis of officer’s integrity, performance known to the Board’s Members and the pen picture contained in the performance evaluation reports and training evaluation reports. CSB decided to continue with the said process as well as the award marks as under:- *(emphasis supplied)*

Category	Marks
I	12-14
II	08-11
III	7 and below

Paragraph 9

“CSB agreed that the officers with very good record (even meeting the required threshold without marks allocated to the Board), **but with doubtful integrity,**

**poor/bad reputation, or reputed to be corrupt as known to the Chairman/Board's Members shall not be recommended for promotion.** (emphasis supplied)

16. From the above it is clear that the CSB consciously adopted a policy to place reliance on the personal views & impressions of the Members regarding the integrity and reputation of the officers under consideration. Extracts of the meetings show that the following has been consistently recorded by the CSB while discussing different panel of officers.

“The Board keeping in view the updated record position, integrity and performance of the officers known to the Board Members, as well as, the pen-picture of the officers contained in the PERs and Training Evaluation Reports evaluated each officer in order of seniority<sup>6</sup>.” (emphasis supplied)

The personal views or opinions of the Members regarding integrity and performance of the petitioners do not stem from the record i.e., the service dossier of the officers placed before them or arise from any tangible evidence tabled before the CSB. The REASONS like **“reputed to be known corrupt and dishonest.”** or **“known to be dead corrupt.”** or **“professionally not strong”** or **“incompetent.”** **“dead corrupt”** or **“corrupt”** do not correlate to the service dossier of the petitioners which was placed before the CSB and , which has been examined by this Court minutely. This fact has also been confirmed by the representatives of the respondents namely: M/s.

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<sup>6</sup> For example: Item No.12, Item No.28 of the Minutes of the Meetings held on 23<sup>rd</sup>, 24<sup>th</sup> September, and 3<sup>rd</sup> October, 2011.

Muhammad Awais Kundi, Joint Secretary, Establishment Division, Shamas-ud-Din Baloch, Section Officer, Establishment Division, Islamabad and Bilal Ahmad, Assistant Ministry of Railways. CSB had to meticulously review the service dossier of the officers under consideration and formulate a collective opinion. However, the reasons given were purely on the basis of the personal opinions of the Members and it appears that the service dossier was not considered, even to counter the verbal opinions expressed in the meetings by some of the Members. It is pertinent to refer to the constitution of the CSB which has been placed at **Schedule-B** of this judgment. Perusal of the composition of the CSB shows that CSB comprises 12 members belonging to different provinces. It is, therefore, difficult to imagine that all the Members knew about the inefficiency and performance of the petitioners, hence, personal opinion of some Members seems to have been casually adopted by the rest of the Members without independent application of mind and without carrying out a punctilious review of the service record of the petitioners. The process adopted by CSB negates the very purpose of a central selection board which is expected to form a collective view after independent application of mind to the facts and circumstances of each case.

17. CSB has failed to notice that the Revised Promotion Policy framed by the Federal Government (ESTA Code Enclosure at Sr. no. 163) which enjoys the force of law<sup>7</sup> provides for guidelines for the

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<sup>7</sup> Reliance is placed on PLD 2008 SC 769; 1991 SCMR 628 AND 1996 SCMR 1297.

CSB to follow. I reproduce the relevant portions for ready reference:

**For BS-20**

“Variety of Experience – the Selection Board should give due consideration to the nature of duties, duration and location of posts previously held by the officer. Depending on the post to be filled, an officer possessing well rounded experience should normally be preferred particularly if he has served with distinction in unattractive areas. While some exposure to a corporation, autonomous body of an ex-cadre assignment may be considered a positive feature; (emphasis supplied)

**For BS-21**

Variety of Experience – the Selection Board should give careful consideration to the nature of duties, duration and location of posts previously held by the officer. At this level, a proper assessment under the criterion may require some distinction between hard or taxing assignments. ....Depending on the post to be filled, an officer possessing well-rounded experience with adequate exposure to difficult assignments should normally be preferred; (emphasis supplied)

Top Management Potential: since officers promoted to this level may be called upon to hold independent charge of a Ministry/Division or to head a major corporation, the Board should satisfy itself about the officer’s maturity, balance and ability to assume such top management positions even at short notice. (emphasis supplied)

18. I also reproduce the preamble to the Policy, which besides being instructive, sets the mechanism and structure for subjective assessment by CSB:

“.....a comprehensive criteria for selection for promotion/deferment/supersession, which is measurable to the extent possible, comparable with regard to performance of each officer on the panel and is based on tangible record duly placed on the dossier and also re-defines discretion, of the members and the Boards and, to lay down as to how more objectivity can be brought in the recommendations of the Selection Board”.  
(emphasis supplied)

19. CSB instead of evolving a criteria for award of 15 marks on the basis of the Revised Promotion Policy placed reliance on the personal opinions of the Members and also went against the Policy in resolving that:

“CSB agreed that the officers with very good reports (even meeting the required threshold without marks allocated to the Board), but with doubtful integrity, poor/bad reputation, or reputed to be corrupt as known to the Chairman/Board’s Members shall not be recommended for promotion.”

20. The legal questions that arise in this case have been noted above. They relate to subjective objective criteria and the process of evaluation adopted by CSB. I take up the process of evaluation first.

21. CSB is free to formulate its opinion on the basis of the evidence before them which is the complete service dossier of the Officers which comprises PERs for the last over 15 years and Training Evaluation Reports. The said reports are also duly quantified through a meticulous mathematical process as narrated in the Addendum to the Promotion Policy. The said quantification fully covers overall assessment, quality and output of work, as well as, integrity of the officers under consideration.

22. In case, CSB relies on any other evidence collected through its own source (Promotion Policy does not specifically provides for this) in addition to the service dossier of the officers, CSB is bound to confront the same to the officer under consideration and only after granting an opportunity of defence to the said officer regarding the new evidence being introduced, place reliance on it and not otherwise.



This due process seems to be starkly missing in the present case.

23. Pakistan is a constitutional democracy which rests on rule of law which in turn is pillared on fairness and due process. Now with article 10A of the Constitution, it is a fundamental right of the petitioners that the process of determination of civil and criminal rights must at every step pass the test of fairness and procedural propriety. There is no room for CSB to blindly rely and pass an adverse order on the basis of impressions nurtured and opinions harboured by Member(s) of CSB. Without the Member(s) first tabling the tangible evidence against an officer before the Board and then confronting the said evidence to the officer under consideration, the Board cannot place reliance on the said evidence. Syed Jamshed Ali J (as he then was) speaking for the Division Bench of this Court in Muhammad Zafeer Abbasi, Deputy Secretary, Ministry of Kashmir Affairs and Northern Areas and Safron, Government of Pakistan, Pak Secretariat, Islamabad v. Government of Pakistan through its Secretary, Establishment Division (Cabinet Secretariat), Cabinet Block, Constitution Avenue, Islamabad and 4 others, [(2003 PLC (C.S.) 503)] held:

“A bare allegation of one of the members of the Selection Board, against whom there is an uncontroverted allegation of personal malice, not supported by any tangible material and not even justified when he was called upon to submit comments to this writ petition, could not, therefore, be accepted as a valid ground to supersede the petitioner. We are quite mindful that the Selection Board comprises of very high personage with variety of experience and wisdom yet they are

human beings and cannot be said to be infallible. Such a presumption is neither warranted by reality nor supported by the history. We are also mindful that we cannot substitute the opinion of the Selection Board with our own opinion yet we may observe here that if the opinion as to unsuitability of an officer for promotion is not based on any material, the decision based thereon is rendered arbitrary and open to correction by this Court in exercise of Constitutional jurisdiction.

12. No doubt, the petitioner had no right to be promoted yet in accordance with section 9 of the Civil Servants Act (No. LXXI), 1973 he was entitled to be considered for promotion. The right contemplated by section 9 aforesaid is neither illusory nor a perfunctory ritual. Withholding of promotion is a major penalty in accordance with the Government Servants (Efficiency and Discipline) Rules, 1973 and therefore, before a Civil Servant is condemned, he has a right to insist that the material on the basis of which he is being deprived of promotion should be disclosed to him and he should be allowed an opportunity to clear himself. The consideration of an officer for promotion is, therefore, to be based not only on the relevant law and the rules but also on some tangible material which could be lawfully taken into consideration. Therefore, unless the opinion of the Selection Board was backed by some tangible material, it could not be said that the case of the petitioner for promotion was considered in accordance with law. The expression "law" as employed in Article 4 of the Constitution is of wider import which includes the duty of every public functionary to act in the matter justly and fairly and in accordance with the principles of natural justice."

24. The Full Bench of this court in Tanvir Ashraf v. Riasat Ali & 5 others (2004 YLR 659) held:

“24. ....To arrive at a finding adverse to some person, not only cogent evidence is required but also that the affected person has to be confronted with the material sought to be used against him to fulfill the duty of “**adequate disclosure**” and the said person is also entitled to an opportunity of defense to rebut the material to satisfy the requirement of the principles of natural justice and fairness to obey the command of Article 4 of the Constitution of Islamic Republic of Pakistan , 1973.” (*emphasis supplied*)

25. Lord Denning in *Kanda v. Govt of Malaya (1962 AC 322)*<sup>8</sup>

observed:

“If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence is given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.”

26. Conjecture or suspicion can never take the place of proof of fact<sup>9</sup>” “If prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers....In order to protect his interests, the person must also be enabled to controvert, correct or comment on other evidence or information that may be relevant to the decision and influential material on which the decision maker intends to rely...If relevant evidential material is not disclosed at all to a

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<sup>8</sup> Also at (1962) 2 WLR 1153(PC).

<sup>9</sup> Para 8 – PLD 1989 SC 335

party who is potentially prejudiced by this, there is *prima facie* unfairness, irrespective of whether the material in question arose before, during or after the hearing.<sup>10</sup>”

27. Lord Denning in R v. Gaming Board<sup>11</sup> held: “But without disclosing every detail...the board ought in every case to be able to give to the applicant sufficient indication of the objections raised against him such as to enable him to answer them. That is only fair. And the board must at all cost be fair. If they are not, these courts will not hesitate to interfere.” Hamoodur Rahman J (as he then was) speaking for the Supreme Court of Pakistan in University of Dacca v. Zakir Ahmed (PLD 1965 SC 90) held that:

Nevertheless, the general consensus of judicial opinion seems to be that, in order to ensure the “elementary and essential principles of fairness” as a matter of necessary implication, the person sought to be affected must at least be made aware of the nature of the allegations against him, he should be given a fair opportunity to make any relevant statement putting forward his own case and ‘to correct or controvert any relevant statement brought forward to his prejudice.’”

28. Similarly, Lord Diplock in A.G. v. Ryan<sup>12</sup> held:

It has long been settled law that a decision affecting legal rights of an individual which is arrived at by a procedure which offends against the principles of natural justice is outside the jurisdiction of the decision-making authority.

29. Adequate disclosure is an essential ingredient of due process

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<sup>10</sup> DeSmith’s Judicial Review. 6<sup>th</sup> Edition. Pp 389-391

<sup>11</sup> (1970) 2 QB 417

<sup>12</sup> (1980) AC 718 – Reference Judicial Review of Public Actions by Mr. Justice (R) Fazal Karim

and now a fundamental right under article 10A of the Constitution. Reliance is also placed on Natwar Singh v. Director of Enforcement and Another [(2010) 13 Supreme Court Cases 255].

30. The process employed by CSB of placing reliance on the personal opinion of the Members of CSB in arriving at the impugned reasons leading to the supersession of the petitioners is an affront to fairness, due process and article 10A of the Constitution.

31. Another dimension of this case is that a senior officer in grade 20 or 21 is being labeled as “dead corrupt” or “incompetent” after more than 30 years of unblemished service according to his service record, without any tangible evidence and without affording the petitioners a right to defence. This insensitive abuse of due process resulting in the indecorous recommendations against the petitioners, lowers their self esteem and social reputation thereby affecting their dignity. In South Africa, common law dignity has been defined as “that valued and serene condition in his social and individual life which is violated when he is, rather publicly or privately, subjected by another to offensive and degrading treatment, or when he is exposed to ill-will, ridicule, disesteem or contempt.”<sup>13</sup> In Khumalo v Holomisa<sup>14</sup> the constitutional court of South Africa held: “The value of human dignity in our Constitution is not only concerned with an individual’s sense of self worth, but constitutes an affirmation of the worth of human beings in our society. It includes the intrinsic worth of human beings shared by all people as well as the individual

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<sup>13</sup> University of Pretoria v. Tommie Meyer Films (Edms) Bpk 1979 1 SA 441(A).

<sup>14</sup> 2002(5) SA 401

reputation of each person built upon his or her own individual achievements. The value of human dignity in our constitution therefore values both the personal sense of self worth as well as the public's estimation of the worth or value of an individual." The constitutional court of Seychelles defined Human Dignity in the following manner:-

"Dignity in humans involves the earning or the expectation of personal respect or of esteem. Human Dignity is something that is inherently a person's God-given inalienable right that deserves to be protected and promoted by the Government and the community. Human dignity is in itself enshrined as the corner stone of society from the very beginning of civilization. Thus all social institutions, governments, states, laws, human rights and respect for persons originate in the dignity of man or his personhood. It is even said that dignity is the foundation, the cause and end of all social institutions. Thus all social institutions, governments, states, laws, human rights and respect for persons originate from the concept of dignity of man or his personhood. In this context any attempt to undermine the dignity of a human being would also undermine the very foundation and support upon which an orderly society is structured<sup>15</sup>."

The impugned recommendations of the CSB are, therefore, offensive to Article 14 of the Constitution which provides that dignity of man is inviolable.

32. The other aspect of the case is whether CSB developed structured objective criteria for the award of 15 marks and whether collective discretion of CSB has been exercised lawfully. The facts

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<sup>15</sup> JEAN FREDERIC PONOO vs. ATTORNEY-GENERAL [2010] SCCC 4

narrated above paint a very sorry picture as the collective discretion of CSB has been pegged on personal opinions of some of the Members. Instead of relying on the criteria and factors mentioned in the Revised Promotion Policy (mentioned above) the CSB developed the following so called criteria:

Sr. #	Category of Officer	Marks to be awarded
01.	Outstanding	13-14
02.	Very Good	10-12
03.	Good	7-9
04.	Average	4-6
05.	Below Average	2-3

The above objective criteria, reproduced above, is not sufficiently structured or elaborately tailored to reflect thorough deliberation and proper analytical assessment of the officers to be promoted by the CSB. Slackness in the objective criteria, questions the transparency of the process and therefore weakens credibility of the selection by such a high powered Central Selection Board.

33. The above criteria does not set parameters or standards that can determine who is to be rated “outstanding” or “below average.” The key determining factors need to be spelled out in writing and corresponding weightage allocated from the very start. Discretion devoid of any prefixed evaluation structure results in an unguided and unfettered exercise of power which is facially discriminatory and hence bad in law. Discretion vested in a public authority is a sacred trust exercised by the public officers as trustees. “Public officials do not act for their own sake but rather for the sake of the public interest.

In this view, the role of the public official in a democracy, like the role of the state itself, is to serve the interest of the public and its members.’<sup>16</sup> Exercise of discretion is not a casual affair driven by personal likes or dislikes. Structuring of discretion means that the authority (in this case CSB) must first apply its mind to tailor an intelligent objective criteria that is best suited for the selection of the officers under consideration and then begin the process of selection. It must be based on relevant considerations required for selecting the best officer for the job.

34. Speaking for this court in *Imran Hussain’s case*,<sup>17</sup> I wrote:

“25. It is settled law that administrative discretion has to be structured, reasoned, rational, logical and objective. One of the ways to arrive at such a structured exercise of discretion is to fashion it on a well-thought out, carefully deliberated objective standard. This helps test various faculties of the interviewee especially those, which the institution concerned requires. The standard can, therefore, cover experience, alertness, initiative, general aptitude, behaviour, knowledge, dependability, etc which forms a uniform yardstick, gauge, scale or criteria for the exercise of discretion. Discretion without a uniform yardstick or a formula is a loose jumble of haphazard human subjectivity, which is inescapably susceptible to error and indubitably arbitrary, ex facie discriminatory, highly irrational and painfully illogical. The administrative compulsion and wisdom to structure discretion (in this case by providing a well thought out objective criteria/test or a score card) is to remove human

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<sup>16</sup> The Judge in a Democracy- Aharon Barack. p-220.

<sup>17</sup> PLD 2010 Lahore 546



subjectivity from exercise of discretion. In the present case, this was not done.

26. Good governance and institutional building requires that the requirements, demands and needs of the institution are tailored into the objective criteria/test so that the best suited human resource is selected for the post. The proposed criteria can sub-divide total marks into areas like; experience, skill, aptitude, educational background, intellect, extra-curricular, personality, ethics, etc so the interviewers have a prefixed format to apply their mind on and disallow unchecked subjectivity from clogging them the minds.”

35. On the concept of Institutional Discretion I observed in the same case:

“28. On an institutional level, structuring the discretion is to protect the institution and the public from the vice of arbitrariness. It is to filter whims, vagaries, caprice, surmises and volatility attached to human behaviour, translated into human dissection. These vices are a breeding ground for corruption, nepotism and favouritism. These vices are like termites and if permitted to exist, weaken the foundations of democratic public institutions. Reference at this stage is made to the case of Aman Ullah Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PLD 1990 SC 1092 at page 1147), relevant part of para 62 reads as under:-

“Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Text by Kenneth Culp Davis that the structuring of discretion only means

regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure. Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalize it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times”.

36. The above principles have been consistently reiterated in the cases of Chairman, Regional Transport Authority, Rawalpindi v. Pakistan Mutual Insurance Company Limited, Rawalpindi (PLD 1991 SC 14), Director Food, N.W.F.P. and another v. Messrs Madina Flour & General Mills (Pvt) Ltd. & 18 others, (PLD 2001 SC 1), Chief Secretary Punjab and others v. Abdul Raoof Dasti, (2006 SCMR 1876), Abdul Wahab and another v. Secretary, Government of Balochistan and another, (2009 SCMR 1354) and Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, (AIR 1991 SC 101).”

37. Another odd feature of the above criteria is that its lowest mark is 2 and highest 14, when the range is 0 to 15. Some of the petitioners

have been awarded one mark, which is even inconsistent to the formula developed by CSB itself.

38. For the above reasons, the selection process carried out by CSB in its meeting held on 23<sup>rd</sup>-24<sup>th</sup> September and 3<sup>rd</sup> October, 2011 is hereby declared unconstitutional and illegal and is therefore set aside. CSB is directed to formulate a well thought out OBJECTIVE CRITERIA in accordance with the Revised Promotion Policy (as discussed above) and consider the cases of the petitioners and the private respondents afresh.

39. This Writ Petition, as well as, connected Writ Petitions mentioned in **Schedule-A** are allowed.

(Syed Mansoor Ali Shah)  
Judge

*Iqbal/M.Tahir\**

**APPROVED FOR REPORTING**

**Schedule A**

<b>Sr No.</b>	<b>Number</b>	<b>Title</b>
1	W.P. No.25300/2011.	Syed Hassan v. Federation of Pakistan etc.
2	W.P. No.25299/2011.	Muhammad Nawaz v. Federation of Pakistan etc.
3	W.P. No.26541/2011.	Syed Imtiaz Hussain Rizvi v. Federation of Pakistan etc.
4	W.P. No.25302/2011.	Ahsan Mehmood Mian v. Federation of Pakistan etc.

**(Syed Mansoor Ali Shah)**  
Judge

*Iqbal/M. Tahir\**

**SCHEDULE-B****Annex-I****LIST OF PARTICIPANTS OF THE CSB'S MEETING HELD ON 23<sup>RD</sup>  
SEPTEMBER, 2011 IN THE ESTABLISHMENT DIVISION.**

1.	Former Justice Rana Bhagwandas, Chairman, FPSC/CSB, Islamabad	Chairman
2.	Mr. Aftab Shaban Mirani, Member National Assembly	Member
3.	Syed Nasir Ali Shah Member National Assembly	Member
4.	Mr. Khushnood Akhtar Lashari, Secretary, Establishment Division	Member
5.	Mrs. Nargis Sethi, Secretary, Cabinet Division, Islamabad.	Member.
6.	Mr. Nasir Mahmood Khan Khosa, Chief Secretary, Government of the Punjab, Lahore.	Member
7.	Mr. Muhammad Abbas, Chief Secretary, Government of Sindh, Karachi	Member.
8.	Ghulam Dastgir Akhtar, Capt. (R), Chief Secretary, Government of KPK, Peshawar.	Member
9.	Mr. Ahmed Bakhsh Lehri, Chief Secretary, Government of Balochistan, Quetta.	Member
10.	Mr. Javed Iqbal, Secretary, M/o Railways, Islamabad.	Member.
11.	Mr. Shahid Rashid, Secretary, Textile Division, Islamabad.	Member.
12.	Mrs. Batool Iqbal Qureshi, Secretary, M/o Human Rights, Islamabad.	Member.
13.	Mr. Taimur Azmat Usman, Acting Secretary, M/o Information & Broadcasting, Islamabad.	Co-opted Member (For Information Group Item only)
14.	Mr. Javed Noor, DG, Intelligence Bureau, Islamabad.	Co-opted Member (For Items of Intelligence Bureau only)
15.	Mr. Javed Mehmood, Secretary, Planning & Development Division, Islamabad.	Co-opted Member (For Items of Planning & Development Division only)
16.	Mr. Anwar Ahmad Khan, Secretary, M/o Communication, Islamabad.	Co-opted Member (For Items of M/o Communication only)
17.	Shahid Iqbal Lt. Gen. (R), Secretary, M/o Defence Production, Rawalpindi.	Co-opted Member (For Items of M/o Defence Production only)
18.	Raja Ikram-ul-Haq, Secretary, Ministry of Postal Services, Islamabad.	Co-opted Member (For Items of M/o Postal Services only)
19.	Mr. Junaid Iqbal Ch. Secretary, Capital Administration & Development Division, Islamabad.	Co-opted Member (For Items of Capital Administration & Development Division only)
20.	Mr. Qamar Zaman, Maj. (R) Secretary, M/o Professional and Technical Training, Islamabad.	Co-opted Member (For Items of M/o Professional and Technical Training only).

**Annex-I****LIST OF PARTICIPANTS OF THE CSB'S MEETING HELD ON 24<sup>th</sup> SEPTEMBER, 2011 IN THE ESTABLISHMENT DIVISION.**

1.	Former Justice Rana Bhagwandas, Chairman, FPSC/CSB, Islamabad	Chairman
2.	Mr. Aftab Shaban Mirani, Member National Assembly	Member
3.	Syed Nasir Ali Shah Member National Assembly	Member
4.	Mr. Khushnood Akhtar Lashari, Secretary, Establishment Division	Member
5.	Mrs. Nargis Sethi, Secretary, Cabinet Division, Islamabad.	Member.
6.	Mr. Nasir Mahmood Khan Khosa, Chief Secretary, Government of the Punjab, Lahore.	Member
7.	Mr. Muhammad Abbas, Chief Secretary, Government of Sindh, Karachi	Member.
8.	Ghulam Dastgir Akhtar, Capt. (R), Chief Secretary, Government of KPK, Peshawar.	Member
9.	Mr. Ahmed Bakhsh Lehri, Chief Secretary, Government of Balochistan, Quetta.	Member
10.	Mr. Javed Iqbal, Secretary, M/o Railways, Islamabad.	Member.
11.	Mr. Shahid Rashid, Secretary, Textile Division, Islamabad.	Member.
12.	Mrs. Batool Iqbal Qureshi, Secretary, M/o Human Rights, Islamabad.	Member.
13.	Syed Athar Ali, Lt. Gen. (R) Secretary, M/o Defence, Rawalpindi	Co-opted Member (For Items of M/o Defence only)
14.	Mr. Muhammad Saleem Khan, Secretary, M/o Ports & Shipping, Islamabad.	Co-opted Member (For Items of M/o Ports & Shipping only)
15.	Mr. Shafqat Hussain Naghmi, Secretary, Board of Investment, Islamabad.	Co-opted Member (For Items of Board of Investment only)
16.	Mr. Salman Bashir, Secretary, M/o Foreign Affairs, Islamabad.	Co-opted Member (For Items of M/o Foreign Affairs only)
17.	Khawaja Siddique Akbar, Secretary, M/o Interior, Islamabad.	Co-opted Member (For Items of M/o Interior & PSP only)
18.	Syed Shabbir Ahmed, Commandant, National Police Academy, Islamabad.	Co-opted Member (For PSP Items only)
19.	Dr. Wasim Kausar, Director General, National Police Bureau, Islamabad.	Co-opted Member (For PSP Items only)
20.	Mr. Fiaz Ahmad Khan, PPO/IGP, Govt. of Khyber Pakhtunkhwa, Peshawar.	Co-opted Member (For PSP Items only)
21.	Mr. Javed Iqbal, PPO/IGP Govt. of the Punjab, Lahore.	Co-opted Member (For PSP Items only).
22.	Rao Amin Hashim, PPO/IGP, Govt. of Balochistan, Quetta.	Co-opted Member (For PSP Items only).

**Annex-I****LIST OF PARTICIPANTS OF THE CSB'S MEETING HELD ON 3<sup>RD</sup>  
OCTOBER, 2011  
IN THE ESTABLISHMENT DIVISION.**

1.	Former Justice Rana Bhagwandas, Chairman, FPSC/CSB, Islamabad	Chairman
2.	Mr. Aftab Shaban Mirani, Member National Assembly	Member
3.	Syed Nasir Ali Shah Member National Assembly	Member
4.	Mr. Khushnood Akhtar Lashari, Secretary, Establishment Division	Member
5.	Mrs. Nargis Sethi, Secretary, Cabinet Division, Islamabad.	Member.
6.	Mr. Nasir Mahmood Khan Khosa, Chief Secretary, Government of the Punjab, Lahore.	Member
7.	Ghulam Dastgir Akhtar, Capt. (R), Chief Secretary, Government of KPK, Peshawar.	Member.
8.	Mr. Ahmed Bakhsh Lehri, Chief Secretary, Government of Balochistan, Quetta.	Member
9.	Mr. Javed Iqbal, Secretary, M/o Railways, Islamabad.	Member
10.	Mr. Shahid Rashid, Secretary, Textile Division, Islamabad.	Member.
11.	Mr. Abdul Wajid Rana, Secretary, Economic Affairs Division, Islamabad.	Member.
12.	Mr. Anisul Hassnain Musavi, Secretary, National Harmony Division, Islamabad.	Member.
13.	Mr. Salman Siddique Secretary, Revenue Division/Chairman, FBR, Islamabad.	Member Co-opted Member for Item of FBR
14.	Mr. Buland Akhtar Rana, Auditor General of Pakistan, Islamabad.	Co-opted Member (For Items of Pakistan Audit & Accounts only)

**(Syed Mansoor Ali Shah)**  
Judge

*Iqbal/M. Tahir\**