

IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-1299 of 2022
(Muhammad Rafique Memon v Federation of Pakistan & others)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 23.05.2025

Mr. Ali Asadullah Bullo advocate for the petitioner.
Ms. Wajiha Mehdi, Assistant Attorney General.
Syed Meeral Shah, Special Prosecutor, NAB

ORDER

Adnan-ul-Karim Memon, J: The petitioner is asking this Court to:

Declare his deferment and supersession illegal and unconstitutional.

Order NAB to promote him to Director (BS-20), effective September 2019, including all associated benefits.

Issue a directive preventing NAB from taking any further coercive actions against him, ensuring they operate strictly within the law.

2. This petition challenges NAB's decision to defer and supersede the Petitioner's promotion from Additional Director (BS-19) to Director (BS-20), while simultaneously promoting his junior colleagues. The Petitioner, a senior Additional Director (seniority number 13), submitted that his September 2019 deferment was unjustified. He stated that he was exonerated from misconduct charges of censure in August 2019, before the NAB Selection Board meeting, rendering the pending proceedings an invalid reason for denial. He contends that the subsequent minor penalty of "Censure" in November 2019 should not have hindered his promotion. Based on such censure, his supersession in December 2021, attributed to a score below the 70-mark threshold, was/is also presented as a misrepresentation. He believed that his Performance Evaluation Report (PER) from January to July 2019 was not properly submitted and considered, potentially affecting his overall score. Additionally, he emphasized that the Selection Board (SB) may have misapplied promotion rules (Rule 18(3) (e) of the 2019 Civil Servants Promotion Rules) regarding mandatory training exemption, possibly depriving him of 12 vital marks. The Petitioner claimed that the Respondents' actions constituted an abuse of power, a violation of established legal principles, and a breach of his fundamental service rights to merit-based promotion and equality under the Constitution of Pakistan. He seeks judicial intervention to rectify this perceived injustice.

3. The petitioner's counsel contended that his client's promotion was unjustly obstructed twice. First, his September 2019 deferment was a "colorable exercise of power" because he had already been exonerated from disciplinary charges, on

vague charges, rendering the pending proceedings an invalid basis for denial of his promotion. Second, his December 2021 supersession, attributed to a score below 70, was/is challenged as a misrepresentation, but all were not considered. The counsel asserted that his Performance Evaluation Report (PER) for early 2019 was also mishandled, which affected his score. He further argued that the Selection Board misapplied promotion rules (Rule 18(3) (e) of the Civil Servants Promotion (BPS 18 to BPS 21) Rules, 2019, regarding mandatory training exemption, potentially costing him 12 crucial marks. Maintaining that his client had a "blotless career profile," the counsel argued that a fair assessment based on his record, PERs, and Training Evaluation Reports (TERs) would have easily secured his promotion. He emphasized that the Board members, lacking direct knowledge of the petitioner's work, should have relied solely on objective documentation, and their actions suggested a "whimsical" rather than objective assessment, which violated court decisions and constitutional rights. The petitioner's counsel asserted that NAB's discretionary power was exercised arbitrarily and with malice, contravening established legal principles and Supreme Court judgments that mandated fair, just, and honest discretion. He argued that these actions are unlawful, illegal, and infringe upon fundamental rights guaranteed by the Constitution of Pakistan, specifically Article 18 (freedom of profession), Article 4 (protection of law), and Article 25 (equality of citizens), which ensure the right to pursue a lawful profession, enjoy legal protection, and receive equal treatment. Therefore, the counsel urged this court to allow the petition.

4. The NAB's counsel argued that this petition is unmaintainable because the petitioner lacks vested rights or locus standi and is barred by laches, estoppel, acquiescence, and waiver for delaying challenges to past decisions. According to NAB counsel, their actions strictly adhere to the National Accountability Ordinance, 1999, and related service rules (NAB Employees TCS-2002 and MAQs), which are now amended and called the National Accountability Bureau's Employees (Service) 2025. He submitted that the petitioner's September 2019 promotion deferment was justified by pending disciplinary proceedings, a valid reason under NAB's prevailing rules 2002. Subsequently, a minor penalty of "Censure" was imposed in November 2019, which is a punishment under the service law. The counsel further stated that the December 2021 supersession was due to the petitioner's "Aggregate Marks of Efficiency Index" falling below the required 70-mark threshold, as stipulated by NAB and Civil Servants Promotion Rules. He clarified that the petitioner's Jan-Jul 2019 Performance Evaluation Report (PER) was not considered because it was not finalized by the Countersigning Officer thus he was left in the lurch. He added that the 12 marks for the Mid-Career Management Course (MCMC) were appropriately allocated to the Selection Board, which awarded marks out of a total of 42. Finally, NAB counsel emphasized that promotion is not a vested right and highlighted that the

rectification of the petitioner's 2008 promotion was done in compliance with a Supreme Court judgment. Therefore, NAB counsel concluded by stating that its actions were fair, lawful, and fully compliant with applicable rules, rendering the petition devoid of merit. He prayed for the dismissal of the petition.

5. Learned AAG is of the same view and prayed for dismissal of the petition.

6. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

7. To reach a just conclusion, this court needs to determine:

The legal implications of a minor censure on promotion eligibility.

The procedural fairness of the departmental inquiry regarding the petitioner's right to respond to charges.

Whether falling short of 70 aggregate marks can legally lead to an officer being passed over for promotion.

If the petitioner's length of service aligns with the legal requirements for a BS-20 promotion.

8. Before addressing these points directly, it is essential to elaborate on the facts of the case to reach a sound conclusion. The petitioner's promotion to Additional Director (BPS-19) in NAB is at the heart of this case, with several issues arising from NAB's promotion policies (NAB TCS-2002 and MAQ 2002). Initial Promotion Irregularity (2008) According to NAB's rules, promotion to a higher post requires specific minimum qualifications and length of service, with only NAB service counting towards promotion. For the Additional Director (BPS-19) position, seven years of service in BPS-18 were mandatory. However, the petitioner, appointed as Deputy Director (BPS-18) in June 2007, was promoted to Additional Director (BPS-19) on December 29, 2008. This promotion occurred without fulfilling the required seven years of NAB service. 2018 Promotion Consideration and Subsequent Supersession Despite the earlier irregular promotion, the petitioner was later considered for promotion to BPS-19 in 2018, with effect from March 5, 2015. In the interim, he received a show cause notice on July 2, 2019, alleging involvement in provincial food department transfer and posting matters. This resulted in a minor penalty of censure on November 11, 2019. This censure led to his supersession in the Selection Board (SB) meeting held on September 8, 2021, a decision communicated to him on December 27, 2021. Reasons for Supersession and Subsequent Petition, the petitioner's representation against the supersession was forwarded to the competent authority on January 14, 2022. The reasons for his supersession were finally communicated, stating that his aggregate efficiency marks from the SB's objective assessment criteria fell below 70. This decision was based on Section 3.24(3)(b) and 3.26(ii) of NAB TCS-2002, and Rule 18(3)(e) of the Civil Servants Promotion (BPS 18 to BPS 21) Rules, 2019. Despite repeated correspondence with the department, the

petitioner received no satisfactory resolution, prompting him to file the current petition before the court on March 2, 2022.

9. Rule 11.03 of NAB's Employees TCS-2002 explicitly lists censure as a minor penalty, raising the question of whether it can legitimately cause a promotion deferral. However, NAB applied the Civil Servants Promotion (BPS-18 to BPS-21) Rules 2019, which govern deferment and supersession. Rule 7(e) of these 2019 Rules permits deferment if disciplinary proceedings are pending. The petitioner submitted that since his show cause notice culminated in a censure on November 11, 2019, there were no pending proceedings to justify deferring his promotion. He cites Section 3.24(5) of TCS 2002, which states that a deferred employee should be considered for promotion once the deferral reason ceases to exist, with intervening vacancies reserved. Despite this, NAB regretted his appeal on December 12, 2019, leading to the promotion of his junior colleagues on December 8, 2021, and his eventual supersession on December 31, 2021. Regardless, promotion considerations by the Selection Board necessitate the conclusion of departmental proceedings. While minor penalties like withholding increments typically mean promotion only after the penalty period, the argument is that a mere censure, which is a formal penalty, should not impede promotion in the same way as a warning, especially since it is not a "strict punishment" and principles of natural justice were allegedly violated in the inquiry. Crucially, Supreme Court rulings in Abdul Majeed Versus Government of Pakistan (PLJ 2006 S.C. 1429) and Human Rights Case No. 5 of 2009 (dated April 7, 2009) established that censure is not a stigma that should bar an individual from career advancement or promotion.

10. In view of the above facts and circumstances of the case, we observed that the inquiry proceedings did not align with the law because the Petitioner was not allowed to cross-examine witnesses on the purported allegations as contained in the Show Cause notice, which culminated in a minor penalty of censure. Though the penalty of censure is not a stigma which ceased to exist, as it cannot continue for an indefinite period, and that cannot be a cause either of deferment or supersession. Therefore, we are of the view that NAB's suggested action violates principles of natural justice and is legally unsustainable. This view is supported by Supreme Court decisions in Jan Muhammad v. General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440) and Auditor General of Pakistan & others vs. Muhammad Ali & others (2006 SCMR 60).

11. Consequently, the censure orders and the associated mark deductions used by SB of NAB during the promotion process, though the respondent NAB admitted that the petitioner's Jan-Jul 2019 Performance Evaluation Report (PER) was not considered because it was not finalized by the Countersigning Officer, thus he was left in the lurch, leading to the petitioner's supersession on the

aforesaid analogy, are hereby declared unlawful, illegal, and contrary to the judgments of the Supreme Court of Pakistan.

12. Before parting with this order on the issue of “supersession”, the word “supersession” can denote only the selection of a junior in preference to a senior according to their rank in the civil service; a supersession is only involved if there takes place a comparative examination of service records of two or more individuals by an authority competent to appoint and determine whether the senior of the two should be ignored from promotion. This necessarily involves an examination of and a decision on the comparative merits of the service records of each individual, and without such comparison and ignoring of a senior officer, there can be no supersession. Such supersession would always imply punishment on account of allegations against the civil servant. On the aforesaid proposition, the decision rendered by the learned Division Bench of Peshawar High Court in the case of Saeed Muhammad Zai v. Secretary Government of Khyber Pakhtunkhwa (2017 PLC (C.S.) 738) is clear in its terms.

13. We have noticed that in service jurisprudence, the competent authority can take disciplinary action against the civil/public servant in the following cases:—

“(a) Where two or more penalties under the Government Servants (Efficiency & Discipline) Rules, 1973, have been imposed on a civil servant.

(b) Where overall grading of the ACRs is Average, and/or where adverse remarks in regard to acceptance of responsibility, integrity, reliability, output of work and behavior with the public were recorded in the ACRs (duly conveyed to the concerned civil servant and his representation against it finalized, as per rules).

(c) Where a civil servant is twice recommended for supersession by the Selection Board/DPC and the recommendation of the Selection Board/DPC is approved by the competent authority.

(d) Where other specific and cogent grounds, including the following, may warrant retirement of a civil servant:-

(i) persistent reputation of being corrupt;

(ii) possessing pecuniary resources and/or property etc., disproportionate to his known sources of income; and

(iii) frequent unauthorized absence from duty.”

14. Principally, in promotion matters to such post could not be made mechanically and a variety of factors, such as examination of service records, evaluation reports of training institutions, the record of disciplinary proceedings, reputation of integrity and efficiency, suitability for handling the particular assignment, etc. had to be taken into consideration. It is also a fact that a substantial amount of subjective evaluation of an officer's capabilities is involved. Therefore, normally questions of determination of fitness of a person to be promoted are not capable of being scrutinized based on judicially manageable standards. Nevertheless, such subjective evaluation is to be premised on an objective criterion with the object of evolving such objective criterion, the Government itself has been issuing promotion policy guidelines and developed

methods of quantifying confidential reports; which have been treated at par with statutory rules. It may be clarified that the assessment of an officer's performance during a year may completely depend on the subjective opinion of his Reporting Officer. The weightage required to be accorded to it to determine fitness for promotion entails an objective assessment. Indeed, the Courts will not sit in judgment over subjective evaluation but would indeed be competent to examine whether the required objective criterion was followed.

15. In our view, to qualify for the promotion, the least that is expected of an employee is to have an unblemished record. This is the minimum expectation to ensure a clean and efficient administration and to protect the public interest. An employee found guilty of misconduct cannot be placed at par with the other employees, and his / her case has to be treated differently. While considering an employee for promotion, his / her entire service record has to be taken into consideration, and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him / her promotion, such denial would not be illegal or unjustified under the service jurisprudence.

16. With the above observations, the petition stands disposed of with no order as to costs with direction to the competent authority of respondents to reconsider the case of promotion of the petitioner in BPS-20, within three months, in the light of dicta laid down by the Supreme Court in the case of Federation of Pakistan v. Dr. Muhammad Arif, **2017 SCMR 969**; and, his earlier supersession as recorded hereinabove will not come in his way, while considering his case for promotion in next rank with his batchmates, provided he is still in NAB service.

JUDGE

Head of the Const. Benches