24th June, 2022 Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Learned Addl: AG seeks time to contact the respondents for submission of proper implementation report. Respondents are directed to submit proper implementation report on the next date positively. To come up for implementation report on 17.08.2022 before S.B at Peshawar.

(Kalim Arshad Khan)
Chairman

17.08.2022 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Implementation report not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of implementation report on the next date. The request is acceded to but as a last chance and final/conclusive implementation report be ensured to be submitted on the next date positively, failing which coercive measures shall be initiated against the respondents. Adjourned. To come up for implementation report on 15.09.2022 before S.B.

(Mian Muhammad)
Member (E)

30.03.2022 Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

On previous date the case was adjourned on the strength of Reader note, therefore, notices be issued to the respondents for submission of implementation report. Adjourned. To come up for implementation report on 18.05.2022 before S.B.

(MIAN MUHAMMAD)
MEMBER(E)

18.05.2022 Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Mr. Waseem Ullah, Assistant for the respondents present.

In pursuance of the judgement of Service Tribunal dated 17.01.2020, the department has issued proforma promotion of the petitioner from the post of Assistant Engineer/SDO (BS-17) to the post of Executive Engineer (BS-18) w.e.f 06.09.2010, vide notification dated 05.08.2021. A written reply has also been submitted in the instant execution petition which is placed on file and a copy of thereof is provided to the learned counsel for the petitioner. To come up for further proceedings on 24.06.2021 before S.B.

(MIAN MUHAMMAD)
MEMBER (E)

01.11.2021 Petitioner alongwith counsel and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

In view of the particular observations in the judgment under execution, let the respondents come up with their version as to mode and manner of execution of the judgment which is not acceptable to the petitioner. The respondents are directed to file their objections, if any, on next date. Case to come up on 16.12.2021 before S.B.

Chairman

16.12.2021 Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Learned AAG requested for a adjournment to submit implementation report on the next date positively. Adjourned. To come up for further proceedings on 09.02.2021 before S.B.

(MIAN MUHAMMAD)
MEMBER (E)

10.02.2022 Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 30.03.2022 for the same as before.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 151 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.08.2021	The execution petition of Mr. Nazir Ahmad submitted today by Mr. Noor Mohammad Khattak Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-		This execution petition be put up before S. Bench at Peshawar on 24/09/21. CHAIRMAN
	24.09.2021	Counsel for the petitioner present. Notices be issued to the respondents. To come up for implementation report on 01.11.2021 before S.B. Chairman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 151 /2021

NAZIR AHMAD V/S C & W DEPARTMENT

INDEX

S.NO	DOCUMENTS	ANNEXURE	PAGE
1	Memo of implementation	.....	1 – 2
2	Affidavit	.....	3
3	Judgement dt: 17-01-2020	A	4-11
4	Notification dt: 05-08-2021	B	12
5	Wakalat Nama	.....	13

Dated: 23/08/2021

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE
FLATE NO. 04, 2ND FLOOR,
JUMA KHAN PLAZA, NEAR FATA SECRETARIAT,
WARSAK ROAD, PESHAWAR
0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation Petition No._____/2021
In
Appeal No.43/2018

Nazir Ahmad Khan, Deputy Director (Retired),
C&W Department, Khyber Pakhtunkhwa, Peshawar.
..... **PETITIONER**

VERSUS

1- The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3- The Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
4- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
..... **RESPONDENTS**

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO OBEY THE JUDGMENT DATED 17-1-2020 IN LETTER AND SPIRIT

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 43/2018 before this august Service Tribunal for his pro-forma promotion to the next higher grade of BPS-18 and BPS-19 with ancillary relief therein as well as with all back benefits.

2- That the appeal of the petitioner was heard and the appeal of the appellant was partially accept vide judgment dated 17-01-2020 and the operative part of the judgment is as under." ***This Tribunal partially accept the instant service appeal with the direction to respondent No.6 (Secretary C & W) to take up the case with respondent No.1 (Chief Secretary) for appointment of a scrutiny committee at the level of respondent No.2 (Additional Chief Secretary) with comprising of Secretary law, Secretary Finance and Secretary Establishment as respondent No.4 to consider the case of appellant for the purpose of pro-forma promotion in the light of the judgment of various judicial directions and in humanitarian grounds for making the***

recommendation to the PSB". Copy of the judgment dated 17-01-2020 is attached as annexure .....**A.**

3- That after obtaining copy of the judgment dated 17-01-2020 the petitioner submitted the judgment mention above for its implantation to the Department concerned but the respondent Department are not willing to obey the judgment dated 17-01-2020 in letter and spirit. That the respondents on their own whims and wishes issued the Notification dated 05-08-2021 whereby the petitioner has been granted pro-forma promotion from BPS-17 to BPS-18 w.e.f. 9.6.2010 instead of w-e-f 08-02-2003 and further promotion to BPS-19 has been denied to the petitioner without any reason and clear justification. Copy of the Notification is attached as annexure ..... **B.**

4- That the petitioner has no any other remedy but to file this implementation petition.

It is therefore, most humbly prayed that the respondents may be directed to implement the order dated 17.01.2020 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER

NAZIR AHMAD KHAN

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

NAZIR AHMAD VS C & W DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.

ATTESTED
Zahoor Khan Advocate
Oath Commissioner
Peshawar District & Session Court Peshawar

DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

CERTIFICATION

ANNEXURE "A" (4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa Service Tribunal
Diary No. 28
Dated 10-01-2018

S.A No. 43 /2018.

Nazir Ahmad Khan Deputy Director (Retired)
C & W Department District Chitral..... Appellant.

Versus

1. Chief Secretary Government of Khyber Pakhtunkhwa Peshawar.
2. Additional Chief Secretary Govt: of Khyber Pakhtunkhwa Peshawar.
3. Secretary S&GAD Govt: of Khyber Pakhtunkhwa Peshawar.
4. Secretary Establishment Govt: of Khyber Pakhtunkhwa Peshawar.
5. Senior Member Board of Revenue Govt: of Khyber Pakhtunkhwa Peshawar.
6. Secretary (C&W) Govt: of Khyber Pakhtunkhwa Peshawar..... Respondents

---

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 (AMENDED 2013) FOR PROFORMA PROMOTION OF THE APPELLANT IN THE NEXT HIGHER GRADE OF BPS-18 AND BPS-19 WITH ALL BACK BENEFITS

Filed to-day
Registrar
10/1/18

ATTESTED

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(5)

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 43/2018

Date of Institution ... 10.01.2018
Date of Decision ... 17.01.2020

Nazir Ahmed Khan Deputy Director (Retired) C&W Department District Chitral.
----------Appellant

Versus

Chief Secretary Government of Khyber Pakhtunkhwa Peshawar and five (05) others
----------Respondents

Muhammad Amin Khan Kundi.....Member(J)
Mr. Hussain Shah .....Member (E)

17.01.2020

JUDGMENT

Mr. HUSSAIN SHAH:-Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney for the respondents present.

2. It is the third round of litigation as the case came up before this Tribunal in appeal No.1758/2009 which was disposed of by accepting that appeal by this Tribunal in its order dated 19.01.2012 wherein the respondents were directed to considered the name of the appellant in PSB within three (03) months. That order was challenged by the respondents in the august Supreme Court of Pakistan vide C.P No. 170/2012 which was dismissed on 17.01.2013. Subsequently the name of the appellant was put before the PSB but the appellant was not found suitable for promotion which was communicated to the appellant on 11.09.2013. In the second round of litigation the appeal No. 1608/2013 was preferred which was decided on 19.10.2016 wherein it was observed by the Tribunal that the decision of the PSB in its impugned meeting held on 07.08.2013 appears not to be justify and the case of the appellant had not been legally and meaningfully considered as required. With the above observation the service Tribunal in the same judgment remitted again

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

(6)

appeal to the respondent department to be placed before the PSB and the decision of the PSB dated 07.08.2013 was set aside. Resultantly the PSB though considered the case of promotion of the appellant but did not found eligible for pro-forma promotion. Being aggrieved again, the appellant preferred departmental appeal on 02.11.2017 which was rejected vide letter dated 24.11.2017 but the rejection order was not communicated to the appellant. To pursue the outcome of his appeal the appellant got the copy of the rejection order dated 24.11.2017 as alleged in Para 6 of the appeal during his visit to the office of respondent No.6 on 05.10.2018. The appellant preferred the instant service appeal on 10.01.2018 with the prayer that according to the decisions of the service Tribunal dated 19.01.2012 & 19.10.2016 the appellant may be allowed pro-forma promotion from BPS-17 to 18 with effect from 08.02.2003 and promotion for BPS-18 to 19 with effect from 31.12.2008 with all back benefits.

3. The learned counsel for the appellant argued that the appellant was appointed on the recommendation of Public Service Commission as SDO in BPS-17 in the year 1978. The appellant was assigned the charge of Executive Engineer on 11.10.1999 against the vacant post and he work till 25.03.2000 as Design Engineer in Malakand Division. On 25.03.2000 he was posted as XEN in his own pay and scale in District Chitral wherein he performed his duties as XEN till 03.02.2002. He was retained at that status till June 2010 at intervals. He further argued that as a result of disciplinary proceedings minor penalty was imposed and due to the minor penalties his erstwhile juniors were promoted on regular basis to the higher post. Being aggrieved he preferred two (02) service appeals in the service Tribunal. Out of these two (02) one was against the minor penalties and another was against the promotion of his juniors.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

(7)

During the pendency of service appeals of the appellant was officially informed vide letter No. SOE-IW&S/1-6/78 dated 05.05.2005 that his appeal before the Chief Minister had been accepted on the condition that the appellant should withdraw the aforementioned appeal in the service Tribunal. The appellant submitted application accordingly before the service Tribunal on 07.05.2005 to withdraw both his appeal. This Tribunal accepted the application of the appellant vide order dated 31.05.2005. Furthermore, the minor penalties were withdrawn by the competent authority but his appeal for consideration the promotion to the higher post was not decided. He further argued regarding the seniority position of the appellant that according to the seniority list of Assistant Engineers on 01.06.2002 the appellant was at serial No.1. He further pointed out that vide notification No. SOE-I/W&S/4-5/75 dated 08.02.2003 twenty (20) officers, juniors to the appellant, were promoted from BPS-17 to BPS-18. Similarly vide another notification No. SOE-I/W&S/4-5/2004 dated 23.12.2004, thirty (30) more junior officers were promoted from BPS-17 to BPS-18 and the appellant remained in his substantive position of Assistant Engineer in BPS-17. Further mentioned that vide notification No. SOE-I/W&SD/4-53/70 dated 31.12.2008 his erstwhile junior in substantive grade to BPS-17 were promoted /moved-over from 18 to grade 19. Learned counsel for the appellant further stated that in March 2006 the appellant was removed from service and being aggrieved preferred service appeal before the service Tribunal and he was reinstated to his post with all back benefits in August 2008. Learned counsel for the appellant further contended that the fact sheets of the entire career of the appellant speaking loudly that he was subjected to consistent humiliation by the respondents and despite the repeated inquiries nothing substantially could be prove against him and

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

(8)

he remained in service till his superannuation despite the facts that he was consistent kept deprived for promotion to the higher grades and is erstwhile juniors were regularly promoted from BPS-17 up to BPS-19. Further contended that even despite the repeated direction of the service Tribunal and the Supreme court the respondents had not change their illegal and unjustifiable stance till the end of his career. He further alleged that in violation of the principal of justice and good governance the respondent department treated the appellant in a way which smells personal prejudice and grudges. He further referred to the points discus in the order of this Tribunal dated 19.01.2012 in the Service appeal No.1758/2009

> *"On the basis of judgments of the superior courts, the Lahore High Court held in the judgment reported as 2008 PLC (C.S) (Lahore High Court), that promotion could not be withheld on the ground either imposition of minor penalty or pendency of departmental inquiry proceedings against a civil servant. Ironically, on each occasion the appellant was denied promotion also on the ground that "his behavior with seniors was not desirable1" but on the other hand, the respondent had to admit that there was nothing adverse against him in his PERs, and that he has always been recommended to the PSB because his service record was generally good. It, therefore, appears to us that the appellant has been victimize, perhaps, because of having not so 'cordial' relations with his seniors. Last but not the least, despite admitting the fact in the letter of department dated 06.09.2011 that pending inquiry, if any, stood abated against a government servant after his retirement, the appellant was not promoted and he retired from service in the same pay scale in which he was inducted into service, even after rendering services for several decades; and a number of officers much junior to him were promoted. The grounds cited for his super session/ deferment are not sustainable in law as, pointed out above,*

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

(9)

pendency of inquiry or even imposition of minor penalties were not valid grounds for withholding promotion of a civil servant. The appellant was otherwise the senior most an there was nothing adverse in his service record, therefore, he was eligible for promotion during service, which right of him would continue even now for benefit in his pension."

4. The learned District Attorney contested the facts, grounds of the appeal and arguments of the learned counsel for the appellant and argued that in compliance of the orders of this Tribunal and August Supreme Court the promotion case were placed before the Provincial Selection Board for consideration but the PSB could not found him suitable for regular promotion nor for pro-forma promotion. He further argued that according to rule 7 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989 the concerned appointing authority, as in the instant case, the Chief Minister shall ordinarily appoint on promotion any officer on the recommendation of the Provincial Selection Board. He further explained that being the statutory power of the Provincial Selection Board to determine the suitability of an officer for appointment on promotion and made the recommendation to the appointing authority accordingly. He further contended that the PSB and exercise of statutory power did not recommend the appellant for promotion on the ground mentioned in the minutes of the various meeting whenever the case of promotion was placed before it for consideration hence the instant service appeal does not carry any merit nor is not based on any new facts are grounds, therefore, the same may be dismissed with costs.

5. Arguments heard. File perused.

6. After the detailed scrutiny of the documents record on file arguments and counter arguments of learned counsel for the appellant and learned District Attorney, this Tribunal is of the view that despite the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

(10)

detail judgment of this Tribunal dated 19.01.2012 in service Appeal No. 1758/2009 wherein this Tribunal explicitly referred to the appellant being victimized (Para 5 of the judgment) the appellant could not get his right of carrier progression during his active service as well as after post retirement and suffered heavy financial losses in term of salary and pension despite a long carrier he could not get the chance of promotion from the post against which he was appointed on the recommendation of the Public Service Commission. This recurring and repeated treatment of the concerned authorities in the department could definitely affect the mental psychological status of any person as it is a common human psychological principle. We understand the significance of the statutory capacity and power of Provincial Selection Board to the extent of making recommendations for appointment on the basis of promotion of a civil servant against a higher post are otherwise but we also appreciate that such powers are exercised in the light of yard sticks/criterion established in the relevant promotion policy in the context of the provision of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion Transfer) Rules 1989 and the provision of the Khyber Pakhtunkhwa Civil Servant Act, 1973 as well as in the broader context of the constitution of Islamic Republic of Pakistan.

7. As mention earlier that all relevant facts/grounds has been contested and adjudicated repeatedly through court proceedings and judicial scrutiny and at each time whenever the request of the appellant came before the court of laws the cases were decided on merit and direction were issued to the respondent department for placing before the competent forum which is the PSB in the instant case but still the appellant is kept deprived of his judicious service benefits specifically the financial benefits of promotion and resultant pension after retirement

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

(11)

equivalent to the position higher than his substantive post of Assistant Engineer in BPS-17.

8. This Tribunal partially accept the instant service appeal with direction to respondent No.6 to take up the case with respondent No.1 for appointment of a scrutiny committee at the level of respondent No.2 with comprising of Secretary law, Secretary Finance and Secretary Establishment as respondent No.4 to consider the case of appellant for the purpose of pro-forma promotion in the light of the judgment of various judicial directions and in humanitarian grounds for making the recommendation to the PSB. Parties are left to bear their own costs. File be consigned to the record rooms.

Muhammad Amin

(Muhammad Amin Khan Kundi)
Member

(Hussain Shah)
Member

ANNOUNCED
17.01.2020

Date of Presentation of Application 21-02-2020
Number of Words 3200
Copying Fee 34-00
Urgent —
Total 34-00
Name of Copyist
Date of Completion of Copy 04-06-2020
Date of Delivery of Copy 04-06-2020

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

B — (12)

GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the August 05, 2021

Notification

No.SOE/C&WD/13-2/2018: In light of the court decision dated 17.01.2020 and on the recommendations of the Provincial Selection Board (PSB), the Competent Authority is pleased to promote Engr. Nazir Ahmad Ex-Assistant Engineer/SDO BS-17 to the post of Executive Engineer (BS-18) of C&W Department for proforma promotion w.e.f. 09.06.2010 (one day before of his retirement).

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (North) C&W Swat stationed at Swat
3. Superintending Engineer C&W Circle Dir Lower
4. Executive Engineer C&W Division Chitral Lower/Upper
5. District Accounts Officer Chitral
6. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
7. PS to Secretary Establishment Deptt, Khyber Pakhtunkhwa, Peshawar
8. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
9. PS to Secretary C&W Department Peshawar
10. Engr. Nazir Ahmad Assistant Engineer (retired) C&W Department
11. Office order File/Personal File

05-8-2021

(ZAHOOR SHAH)
SECTION OFFICER (Estb)

ATTESTED

(13)

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO_____ OF 2021

Nazir Ahmad (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

C & W Department (RESPONDENT)
(DEFENDANT)

I/We Nazir Ahmad

Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK, Advocate, HIGH COURT, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated._____/_____/2021

CLIENT

ACCEPTED
NOOR MUHAMMAD KHATTAK
KAMRAN KHAN
SAID KHAN
UMAR FAROOQ MOHMAND
&
HAIDER KHAN
ADVOCATE

OFFICE:
Flat No.4, 2ND Floor,
Juma khan plaza near
FATA secretariat, warsak road
Peshawar City.
Mobile No.0345-9383141