

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 43/2018
EXECUTION PETITION NO .151/2021


NAZIR AHMAD

V/S

P.S.B KHYBER PAKHTUNKHWA PESHAWAR

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Appellant
Through
Noor Muhammad Khattak
Advocate

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 151/2021
In Service Appeal No. 43/2018

Nazir Ahmad
D/D (Retired)
C&W Depptt:

Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa
Through Chief Secretary & Others.

2. Provincial Selection Board (PSB)
Khyber Pakhtunkhwa Peshawar.

Respondents

**REJOINDER BY THE APPELLANT TO
THE REPLICATION OF THE RESPONDENTS**

Respectfully Sheweth,

1. That this honourable Service Tribunal while announcing the decision of the case on 17.01.2020 had told that at Present it is being accepted partially while partially it was left on the committee that if the committee solves the problems of the appellant then well and good, if the committee not agreed, the case will be reconsidered in the Tribunal.

In its 1st decision dated 19.01.2012 and in its 2nd decision dated 19.10.2016, this honourable Tribunal has accepted the appeal fully. It is principal that when in previous decisions if a matter is partially been approved, on the humble request of any applicant the court gracefully reconsiders the case for granting in full but in the case of the appellant it is opposite as in previous two decisions appeal is accepted in full but in 3rd as partial without any new arguments / counter arguments, which is against jurisprudence and

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humanitarianism. The 3rd decision as mentioned above is not cancelling the 1st & the 2nd decisions but says that **“the matter may be considered by the committee / PSB in the lights of the previous two decisions”**

The honourable Ex-Member (J) Muhammad Amin Khan Kundi and the honourabel Ex-Member (E) Hussain Shah may please be asked / requested to take their consent on the 3rd decision by them that on one side they say / order to consider the 1st and 2nd decisions where appeal has been accepted fully while on the other side they in their decision say that appeal is accepted partially. Also if the said honourable members who have given the 3rd decision of the case had the intention of bringing the previously two decisions (been fully accepted) to half (now the view point of the respondents) than the honourable members had not to give reference to previous decisions in which appeal of the appellant has fully been accepted. Also the members of the 3rd decision would had given reasons that due to such and such reasons they do not agree with 1st and 2nd decisions and are constrained to accept the appeal partially, but it is not there in their decision (3rd decision).

Therefore it is clear that in 1st & 2nd decisions appeal acceptance is in full but how in 3rd without cancelling the 1st & 2nd, without any objections on 1st & 2nd decisions appeal is being accepted in partial in the 3rd while in this 3rd decision reference has been given to consider /take action in the case according to 1st & 2nd decisions. Therefore the Ex-honourable members who have given the 3rd decision may graciously be asked / requested for their consent regarding the points raised above. The 3rd decision however mentions that appeal is for promotion to BS 18 w.e.f 08.02.2003 , BS 19 w.e.f 31.12.2008 with all back benefits (Page 2 para 2 end). If however the committee and the PSB not considering the 1st and 2nd decisions of the case, only insist on partial

acceptance of the 3rd decision than also out of two i.e promotion from 17 to 18 w.e.f 08.02.2003 & 18 to 19 w.e.f 31.12.2008, one i.e 17 to 18 w.e.f 08.02.2003 as a whole had to be implemented but PSB have implemented it from 09.06.2010 (One day before retirement) instead of 08.02.2003 which becomes a useless paper for the appellant after adjudication of about twenty years as without back benefits what remains there for the appellant to become joyful.

2. That the discussion by the PSB as available in written shape **“ the board while considering his proforma promotion had observed that an inquiry proceeding against him was not finalized and decided on merit but the inquiry was abated due to his retirement on attaining the age of superannuation, therefore he was not eligible for Proforma promotion”** is not correct as the matter was raised in the tribunal by the respondents during the hearings of the case in Year 2011. The Tribunal ordered to submit all the record of the expected inquiry against the appellant (if was not retired due to age of superannuation). The record was submitted by the department arguments from both side were heard during a few hearing but the honourable Tribunal did not agree with the respondents view of point to dismiss the appeal of the appellant for the sake of the pending inquiry due to the fact that the pending inquiry was not about any serious nature matter. As such in its 1st decision dated 19.01.2012 accepted the appeal for both BS 17 to BS 18, BS 18 to BS 19 promotions.

Again in its 2nd decision dated 19.10.2016 the honourable service Tribunal has given remarks about the above mentioned pending inquiry when was raised by the respondents that **“ also evident from record that by that time the allegations against the appellant had already come in the daily surkhab, hence despite these allegations when once the Tribunal in its**

judgement dated 19.01.2012 which was also not interfered with by the august Supreme Court of Pakistan in its order dated 17.01.2013, directed that his case may be placed before PSB it was evident that the said transaction became closed transaction which could not be reopened by PSB by its impugned meeting held on 07.08.2013 ” (Page 5 / Pare 6th end).

Therefore, while the respondents took the pending inquiry case in the Tribunal in the year 2011 with full record, with arguments and counter arguments as explained above in detail than why and how again and again this matter is being discussed by the respondents even recently in 2022.

3. That the appellant was posted / worked on higher grade posts of BS 18 from year 2000 to 2010 with an additional charge of the post of BS 19 and worked on this post of BS 19 from April 30, 2009 to June 10, 2010 but keeping on own pay scale i.e BS17.

The said Committee & PSB has discussed that performance is required to be evaluated for promotion to next grade. PER reports i.e performance evaluation reports had been given for the performance of working / duty on higher posts as mentioned above. In the working paper of PSB meeting held on 31.07.2021 it is admitted by the respondents that **“The pen picture recorded by various reporting and counter signing officers during his service highlighted his qualities as hardworking Engineer, technically sound, intelligent, laborious and a honest person. Moreover, the reporting and countersigning Officers also marked him as fit for promotion”**

While working on the higher posts of 18 & 19 in own pay Scale of 17 for 10 years as mentioned above, performance evaluation reports had been given to the appellant on the basis of satisfactory working on higher posts of 18 & 19 which have also been admitted by the respondents in

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written in working paper of PSB meeting dated 31.07.2021 as mentioned above in inverted commas. As discussed above performance evaluation reports of the appellant for working on higher posts of 18 & 19 are available with the respondents given to the appellant for experience of working on the higher posts. Therefore the excuse of the respondents/PSB saying that performance evaluation, of the appellant are required for promotions, but the appellant is retired, is baseless.

4. That on 01.06.2002 and on 30.06.2004 the appellant was at serial No.1 of the seniority list but on 08.02.2003 and on 23.12.2004, 20(+) 30 = 50 Juniors were promoted from BS 17 to BS 18 leaving the appellant unpromoted just making the excuse of minor Penalties and pending enquiry while the Superior Courts (2000 SCMR 645),(2008 PLC (C.S)1019) orders not to deprive any one for the given minor penalties and pending inquiries. Since 2002-2003 the appellant is in this honourable Tribunal for promotions. In spite of (3) decisions dated 19.01.2012 dated 19.10.2016 dated 17.01.2020 in favour of the appellant by this honourable tribunal, the PSB has given promotion to the appellant from BS 17 to BS 18 w.e.f 09.06.2010 (one day before retirement) instead of w.e.f 08.02.2003 (vide order dated 05.08.2021) while promotion to BS 19 from 31.12.2008 (Juniors were moved to one more high step)has been denied by the PSB, which are unjustified and against the (3) decisions of this honourable Tribunal as mentioned above.
5. That the following is the detail of the PSB meetings, in every of these meetings the appellant has been kept deprived of promotion from BS 17 to BS 18 due to minor penalties and pending inquiries while the Superior Courts orders say that promotions cannot be refused due to minor penalty / penalties and pending inquiry / inquiries. (2000 SCMR 645), 2008 PLC (C.S) 1019

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Detail of PSB Meetings:

1	28.11.2002	The appellant was not promoted with the plea of minor, penalties and pending inquiries.
2	08.11.2004	- do -
3	12.07.2005	- do -
4	12.11.2009	- do -
5	29.12.2009	- do -
6	25.03.2010 / 05.04.2010	- do -

All the three decisions of this honourable tribunal dated 19.01.2012 dated 19.10.2016 dated 17.01.2020 have been decided in favour of the appellant after discussing all the relevant facts in detail including the above mentioned point of PSB meetings in which unjustified decisions by PSB in respect of the appellant have been made.

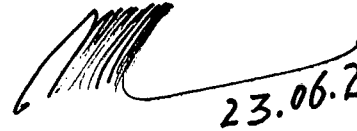
6. That though the 3rd decision of this tribunal dated 17.01.2020 has been accepted in partial (as raised by the respondents) but this 3rd decision contains the direction that the 1st decision of this tribunal dated 19.01.2012 and the 2nd decision of this tribunal dated 19.10.2016 are to be considered, both these decisions contain acceptance of appeal in full. In the foregoing paras of this rejoinder, the partial acceptance point in 3rd decision has been discussed in detail as para No. (1), many graciously again be perused to finalize any conclusion.

Therefore, it is humbly prayed that this honourable Tribunal besides its 3rd decision dated 17.01.2020 (which says the previous decisions should also be considered) graciously should also consider its 1st decision dated 19.01.2012 & the 2nd decision dated 19.10.2016 in which appeal of the appellant has been accepted in full, while the respondents are considering the said 3rd decision

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only as clear from their replication submitted in the Tribunal on 18.05.2022.

Therefore according to all the facts explained above in detail as Paras (1) to (6), Order may graciously be passed to promote the appellant from BS 17 to BS 18 w.e.f 08.02.2003 and BS 18 to BS 19 w.e.f 31.12.2008 with all back benefits.

 23.06.2022

APPELLANT

Through:


NOOR MUHAMMAD KHAN

ADVOCATE

03459383141

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**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.


DEPONENT

CERTIFICATE:

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


CERTIFICATION



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

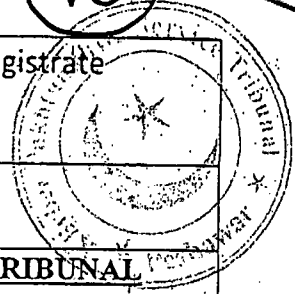
Copy is forwarded to the:-

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

Zahoor Shah
05-8-2021

(ZAHOOR SHAH)
SECTION OFFICER (Estb)

Sl. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	17.01.2020	<p style="text-align: center;">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</p> <p style="text-align: center;"><u>Appeal No. 43/2018</u></p> <p>Date of Institution ... 10.01.2018 Date of Decision ... 17.01.2020</p> <p style="text-align: center;">-----</p> <p>Nazir Ahmed Khan Deputy Director (Retired) C&W Department District Chitral. -----Appellant</p> <p style="text-align: center;"><u>Versus</u></p> <p>Chief Secretary Government of Khyber Pakhtunkhwa Peshawar and five (05) others -----Respondents</p> <p>Muhammad Amin Khan Kundi.....Member(J) Mr. Hussain ShahMember (E)</p> <p>JUDGMENT</p> <p><u>Mr. HUSSAIN SHAH</u>:-Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney for the respondents present.</p> <p>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</p>



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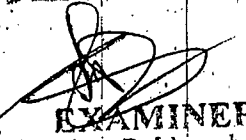
ATTESTED

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MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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.

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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

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EXAMINER
 Cyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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 discuss 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 desirable" 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,

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 M. Yousaf Pakhtunkhwa
 Service Tribunal,
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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 and 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

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Service Tribunal,
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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

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EXAMINER
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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

(Hussain Shah)
Member

ANNOUNCED
17.01.2020

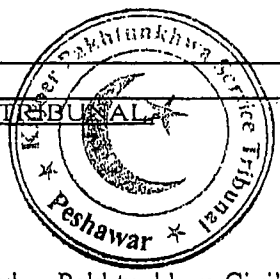
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Total 34-00
Name of Copyist [Signature]
Date of Completion of Copy 04-06-2020
Date of Delivery of Copy 04-06-2020


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Khyber Pakhtunkhwa
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Peshawar

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S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	19.10.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO. 1608/2013 (Nazir Ahamd Khan-vs- Chief Secretary Govt: of Khyber Pakhtunkhwa Civil Secretariat Peshawar, and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Appellant with counsel (Mr. Ijaz Anwar and Mr. Sajid Amin, Advocates) and Mr. Muhammad Jan, GP for respondents present.</p> <p>2. Nazir Ahmad Khan, the appellant herein was appointed as Assistant Engineer in BPS-17 through Public Service Commission on 22.11.1978 and retired in the same scale (BPS-17) on 10.06.2010 on attaining the age of superannuation. For his promotion (proforma) in the next higher grade BPS-18 (and above) with all back benefits, he instituted service appeal No. 1758/2009 in this Tribunal which was allowed vide judgment dated 19.01.2012 in the following terms:-</p> <p style="padding-left: 40px;">“Consequently, on the acceptance of the appeal, the concerned authorities in the respondent-department are directed to place case of the appellant for promotion to the next higher pay scales before Provincial Selection Board (PSB) within a period of three months under intimation to the Registrar of this Tribunal. There shall, however, be no order as to costs”.</p>



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Against this judgment, the august Supreme Court of Pakistan also declined leave to appeal vide its order dated 17.01.2013 and directed the respondents that order of the Tribunal be implemented. Resultantly proforma promotion case of the appellant was put before PSB. The PSB in its meeting held on 07.08.2013 regretted his case for the reason given below:-

“Before retirement a reference was received from CE(North) C&W Peshawar regarding tender of the works shown as advertised in daily Surkhab dated 21.01.2010 which on verification was found fake hence his promotion was deferred in PSB meeting held on 05.04.2010 in the meanwhile he stands retired from service on 10.06.2010 on attaining the age of superannuation and the enquiry proceedings was stopped in light of FR-54(A). The Board observed that if he was not retired from service due to attaining the age of superannuation enquiry proceedings would have initiated against him and he would not have been recommended for deferment. Flexibility of stopping departmental proceeding in the light of FR-54(A) is allowed due to attaining the age of superannuation by the officer/official. It does not mean that there is no pending enquiry against him. His PER for the period from 01.01.2006 to 28.02.2009 are not available as he was remained under suspension/dismissed from service and waiting for posting. The Board considered his proforma promotion to the post of Executive Engineer BPS-18 in pursuance of Service Tribunal Khyber Pakhtunkhwa judgment dated 19.01.2012 and august Supreme Court of Pakistan judgment dated 17.01.2013 and did not find him suitable for promotion due to his chequered service

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record".

This decision was conveyed to the appellant vide impugned order dated 11.09.2013, hence this service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, for the following:-

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 above with all back benefits while setting aside the impugned order dated 11.09.2013 whereby the PSB not found the appellant suitable, without any reason, for proforma promotions communicated to this Hon'able Tribunal vide letter No. SOE/C&WD/13-5/2009 dated September 11,2013.

3. Arguments heard and record perused.

4. Learned counsel for the appellant expressed with a heavy-heart that decision dated 07.08.2013 of the PSB was unlawful, whimsical, based on arrogance shown to the decisions of highest forums of the country dispensing justice to the aggrieved civil servants, was a lame excuse, was contrary to the facts on record, was discriminatory and against the spirit of justice. He argued that proforma promotion could not be refused to the appellant for the reason of a so called allegations of irregularity published in the Daily local news paper Surkhab. He argued that promotion could not be refused to a civil servant even on the ground of award of minor penalty, much-less on the ground of pending of any disciplinary proceedings or allegations in the newspaper. In support of his contention he placed reliance on 2000 SCMR 645, 2008 PLC(C.S)1019 and 2007 SCMR 682. He prayed that the instant appeal was competent as an unprecedented treatment had been meted out to the appellant the appeal may be accepted so that his grievances was redressed and the ends of justice were met. He rebutted the view that the instant appeal was hit by the principle of res-judicata.

ATTESTED

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


5. Learned G.P resisted the appeal by submitting that in compliance with the judgment of this Tribunal dated 19.01.2012 and order of the august Supreme Court of Pakistan dated 17.01.2013 case of the appellant for proforma promotion was duly considered by PSB on its meeting on 07.08.2013 and it was not found a suitable case for promotion. He argued that the instant appeal was not maintainable and was hit by the principle of res-judicata. He submitted that the appeal may be dismissed.

6. We have gone through the record with the able assistance of learned counsel for the appellant and learned GP for the respondents and have given our anxious consideration to the arguments advanced for the parties. It was observed that prior to the impugned PSB meeting held on 07.08.2013 a working paper for promotion of the appellant was prepared on 25.03.2010 for an earlier PSB meeting and the following remarks were recorded regarding the appellant in the said working paper:-

“The PSB in its meeting held on 29.12.2009 recommended to defer his promotion on the basis of pending inquiry regarding irregularities in the construction/repair of roads in district Chitral(Annex-I). Now the officer has been exonerated from the charges leveled against him (annex-III) and is retiring from Govt. service w.e.f 11.06.2010. The officer has passed the Departmental Professional Exam and his PERs for the period 2009 area available. He got 68.57 score out of quantification of PERS”.

It further revealed from record that promotion case of the appellant was lastly considered in the PSB meeting held on 05.04.2010 and his case was deferred as some enquiry was pending against him. The above situation shows that prior to his retirement the appellant case for promotion was deferred and not ejected (superseded) in the PSB meeting on 29.12.2009 and meeting on 05.04.2010. It is

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EXAMINER
Khyber Pakhtunkhwa
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also evident from record that by that time the allegations against the appellant had already come in the Daily Surkhab; hence despite these allegations when once the Tribunal in its judgment dated 19.01.2012 which was also not interfered with by the august Supreme Court of Pakistan in its order dated 17.01.2013 directed that his case may be placed before PSB, it was evident that the said transaction became closed transaction which could not be reopened by PSB in its impugned meeting held on 07.08.2013. It is also evident that promotion case of the appellant was not rejected in the PSB meeting held on 29.12.2009 and 05.04.2010 and his case was only deferred meaning whereby that with the removal of the shortcomings lacuna appellant would be entitled for promotion. We are, therefore led to the considered view that decision of PSB in its impugned meeting held on 07.08.2013 in the above circumstances of the case, appears not to be justified and case of the appellant had not been legally and meaningfully considered as required. As a result of the fore-going, we are constrained to remit the case again to the respondent-department to be placed before PSB. Needless to mention that the PSB decision of 07.08.2013 stands set aside. Parties are however, left to bear their own costs. File be consigned to the record room.

Announced
19.10.2016 *Sd/- Pir Bakht Shah, Member*
Sd/- Abdul Latif, Member

Certified to be true copy

ANN
19.10

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 11-11-2016
Number of Words 2400
Copying Fee 14-00
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Total 16-00
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Date of Completion of Copy 11-11-2016
Date of Delivery of Copy 11-11-2016

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Nasir-ul-Mulk
Mr. Justice Tariq Parvez

Civil Petition No.170-P of 2012

(On appeal from the judgment dated 19.01.2012 passed by the KPK Service Tribunal, Peshawar in Service Appeal No.1758 of 2009.)

Govt. of KPK thr. Chief Secretary Works & Services Department & another
... Petitioners

Vs.

Nazir Ahmad Khan

... Respondent

For the petitioners : Mr. Laljan Khattak, AAG.


For the respondent : Mr. Ghulam Nabi, ASC.

Date of hearing : 17.01.2013.

ORDER

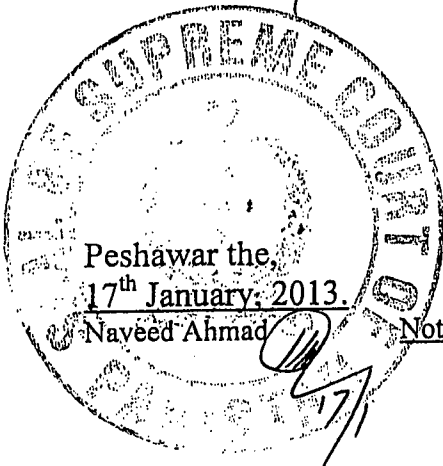
NASIR-UL-MULK, J. – The respondent who was appointed as Assistant Engineer in BS-17 on 23rd October, 1978 and retired in the same scale on 10th June, 2010. However, before his retirement he has filed Service Appeal on 7th October, 2009 for his promotion and by the impugned judgment dated 19th January, 2012, the KPK Service Tribunal allowed the appeal of the respondent and directed that his case for promotion to the next higher pay scale be placed before the Provincial Selection Board within a period of three months under intimation of the Registrar of the Tribunal. We are now informed that the case has not yet been placed before the Provincial Selection Board.

2. Learned Additional Advocate General states that the respondent's case for promotion was not earlier considered on account of six penalties imposed upon him from time to time since the year 2002. He however clarified that the respondent stood exonerated from those penalties on appeal either by the Department or Tribunal. This petition is liable to be

ATTESTED

Nazir Ahmad Khan,
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

dismissed on two grounds. Firstly that the Tribunal has not directed the promotion of the respondent but had only ordered that his case for promotion be placed before the Provincial Selection Board and secondly, that the order of the Tribunal for placing the respondent's case before the Provincial Selection Board within a period of three months has not been complied with. Leave to appeal is therefore declined and the petition dismissed, with the direction that the order of the Tribunal shall be implemented. /

sd/- Nasir-ul-Mulk, J.
sd/- Tariq Parvez, J.



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[Signature]
19.01.2013
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1758/2009

Date of institution 07.10.2009
Date of judgment 19.01.2012



Nazir Ahmad Khan,
Deputy Director Works and Services, Chitral (Appellant)

VERSUS

1. Government of NWFP (Khyber Pakhtunkhwa) through Secretary Works and Services Department, Peshawar.
2. Provincial Selection Board, NWFP (KPK), Peshawar.
3. Attaullah Khan, (retired) and 41 others. (Respondents)

APPEAL U/S 4 OF THE NWFP (KHYBER PAKHTUNKHWA) SERVICE TRIBUNALS ACT, 1974 FOR PROMOTION OF THE APPELLANT IN THE NEXT HIGHER GRADE OF BPS-18 AND ABOVE WITH ALL BACK BENEFITS.

Mr. Javed A. Khan, Advocate For appellant.

Mr. Arshad Alam,
Additional Govt. Pleader. For official respondents.

Private respondents No. 3 to 44 deleted/placed ex-parte.

Mr. Qalandar Ali Khan Chairman
Mr. Khalid Hussain Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:- Nazir Ahmad Khan, the then

Deputy Director Works and Services, Chitral (appellant) had lodged this appeal against the Government of NWFP (Khyber Pakhtunkhwa) through Secretary Works and Services Department, Peshawar and 43 others (respondents) for promotion in the next higher grade (BPS-18) and above with all back benefits.

2. In his appeal, the appellant contended that having joined the then B&R and now C & W Department through Public Service Commission as SDO in grade 17 in the year 1978, he was temporarily promoted as XEN (Designing Engineer) in Malakand Division in the office of Director on 11.10.1999 till 25.3.2000, on the basis of his unblemished service record and being recommended for promotion in each and every ACR. The temporary promotion was further maintained w.e.f 25.3.2000 till

EXAMINERS
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

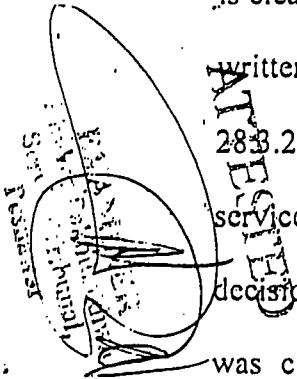
3.2.2002 as XEN Chitral in his original pay and scale. The same position was maintained and from February 2003 he was posted as Designing Engineer (XEN) in the office of Chief Engineer Peshawar and lastly posted as XEN C & W Chitral. However, in 2002 the appellant had to face departmental proceedings/inquiry, against which he filed appeals before this Tribunal which were pending adjudication against minor penalties imposed upon him on the ground of irregularities in the scheme "Feasibility study and construction of RCC Bridge over Yarkhun at Mastuj with co-alignment of Parwak Mastuj Road (11 KM)". In the process, the appellant was deprived of his due promotion in normal course. The appellant also filed another appeal in the Tribunal, and during pendency of the mentioned appeals before the Tribunal, he was informed that the appeal already submitted to the Chief Minister has been accepted subject to the condition that he should withdraw his appeal from the Service Tribunal. The appeals were accordingly withdrawn vide order dated 31.5.2005, where-upon the case of alleged irregularities and penalty imposed upon the appellant was withdrawn by the Chief Minister. However, the matter of promotion to the higher grade remained pending, and though the appellant was on the top of the seniority list i.e at S.No. 1 of the seniority list of Assistant Engineers, he was not promoted and a number of officers junior to him were promoted from BPS-17 to BPS-18. The promotion of junior officers from BPS-17 to 18 and then move-over from BPS-18 to 19 continued un-abated, while the appellant was ignored. The appellant disclosed that because of the official fraction, he was once removed from service on a frivolous charge in March 2006 but was later on reinstated on the acceptance of his appeal by this Tribunal. The appellant, therefore, challenged promotion of his juniors and prayed for his promotion being the senior most and having nothing adverse against him, through departmental appeal, which was responded to on 30.9.2009 with the remarks that the appeal has been kept pending, hence the present appeal on 7.10.2009.

3. The main ground on which the official respondent i.e Secretary to Government of NWFP (Khyber Pakhtunkhwa) Communication and Works Department

EX-AMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTENDED

(respondent No. 1) resisted appeal of the appellant was that the appellant was given higher post in his pay and scale due to dispute over seniority amongst officers of defunct Works and Services department. The respondent disputed this claim of the appellant that his positing on the higher post was a promotion, and, on the other hand, alleged, that the promotion could only take place when the incumbent official/officer came within promotion zone on the basis of seniority-cum-fitness and that too through Provincial Selection Board (PSB). The respondent, however, had to admit that there were no adverse remarks in the Performance Evaluation Reports (PERs) of the appellant. Respondent alleged that there were, however, certain reports by DCO Chitral about poor performance of the appellant, and that he was awarded the penalty of 'censure' on 2.4.1994 and also another penalty of 'censure' on 4.9.2002 and on 16.5.2003 his three increments were also withheld; but later on both the orders dated 4.9.2002 and 16.5.2003 were set-aside vide order dated 9.6.2005. The penalty of 'censure' on 15.01.2007 was also later on withdrawn on 16.3.2007. The respondent alleged that even at the time of filing of reply/comments, the appellant was facing inquiry, which was completed and was in the final stage, where-after, as and when he is cleared, his promotion will be considered through PSB. It was further alleged in the written reply/comments that the appellant was suspended from service w.e.f 28.3.2006 to 17.01.2007 vide order dated 28.3.2006 and there-after dismissed from service vide order dated 12.6.2007, but the penalty was withdrawn pursuant to the decision of this Tribunal in the service appeal of the appellant bearing No.971/2007. It was clearly stated in the written reply/comments that case of the appellant for promotion to BPS-18 remained under consideration of the PSB time and again but his case was deferred due to his involvement in irregularities. The respondent claimed that the appellant was superseded/his case deferred due to pending disciplinary proceedings/inquiry and his juniors having sound record were promoted. The respondent under-took to place case of the appellant for promotion to BPS-18 as well as to BPS-19 before the competent forum i.e. PSB for consideration as and when the appellant is exonerated from the charges. It may be mentioned here that out of 42



private respondents, only private respondent No.40, namely, Syed Sajid Hussain, contested appeal and filed his written reply, but he also later on opted out of contest and his name was deleted from the panel of respondents on the application of the appellant.

4. The appellant also filed rejoinder in rebuttal to the allegations contained in the written reply/comments of the official respondent, where-after, written arguments were filed by the parties, and arguments of the learned counsel for the appellant and learned AGP also heard, and record perused.

5. In short, the claim of the appellant is that though being senior most and on top of the seniority list, he was not promoted from BPS-17 to BPS-18 and then to BPS-19, while a number of officers much junior to him were promoted from BPS-17 to BPS-18 and then moved over to BPS-19. The respondent disputed this claim of the appellant on the only ground that though having no adverse entry in his PERs, the appellant remained under departmental proceedings/inquiry, rather through out his service, whenever his case for promotion came up for consideration before the competent forum i.e. PSB, and even minor penalties, like 'censure' and 'withholding of increments' as well as major penalty of dismissal from service were imposed upon him. To say the least, the record speaks otherwise. The minor penalty of 'censure' and 'withholding of three increments for three years' vide orders dated 16.5.2003 and 4.9.2002 were withdrawn by the appellate authority vide order dated 9.4.2005, after the condition of withdrawal of the appeals before the Tribunal of the appellate authority i.e. Chief Minister was met by the appellant. Another minor penalty of 'censure' imposed upon the appellant by the competent authority vide order dated 15.01.2007 was also subsequently withdrawn by the same authority i.e. Secretary to Government of NWFP (Khyber Pakhtunkhwa) Works & Services Department, vide his order dated 16.3.2007. The appellant was further exonerated of the charges of alleged irregularities in the construction/repair of roads in District Chitral on the recommendation of the Inquiry Committee by the competent authority vide his order dated 16.2.2010. The dismissal order against the appellant dated 12.6.2007 was

ATTESTED
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 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL
 HAWAI

withdrawn in pursuance of the decision of this Tribunal dated 2.6.2008, by the competent authority vide order dated 8.8.2008. In other words, the appellant came out clear from all departmental proceedings, but he was never promoted from BPS-17, in which he joined service, and each time his case for promotion came up for consideration before PSB, he was superseded/his case deferred on the ground of pendency of some departmental proceedings/inquiry against him. On the basis of judgments of the superior courts, the Lahore High Court held in the judgment reported as 2008 PLC (C.S) 1019 (Lahore High Court), that promotion could not be withheld on the ground of 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 behaviour with seniors was not desirable'; 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 victimized, 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 6.9.2011 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 supersession/deferment are not sustainable in law, as, pointed out above, 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 and 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.

6. Consequently, on the acceptance of the appeal, the concerned authorities in the respondent-department are directed to place case of the appellant for promotion to the next higher pay scales before Provincial Selection Board (PSB) within a period of


ATTESTED
 KHYBER PAKHTUNKHWA
 Provincial Selection Board

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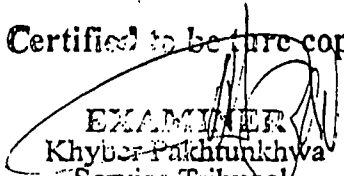
three months, under intimation to the Registrar of this Tribunal. There shall, however, be no order as to costs.

ANNOUNCED
19.01.2012


(KHALID HUSSAIN)
MEMBER


(QALANDAR ALI KHAN)
CHAIRMAN

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22.5.2012
 Number of Words 2400
 Copying Fee 14
 Urgent 2
 Total 16
 Name of Copyist [Signature]
 Date of Completion of Copy 22.5.2012
 Date of Delivery of Copy 29.5.2012

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~~105~~

MOST IMMEDIATE
Court case



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/13-5/2009
Dated Peshawar, the Oct 25, 2011

TO

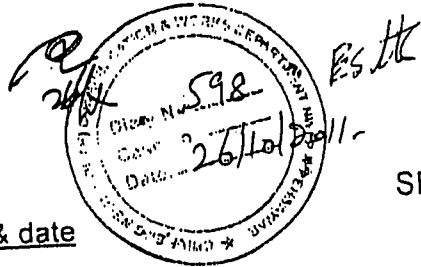
The Chief Engineer (North) ✓
C&W, Peshawar

Subject:

Appeal No.1758/2009 Nazir Ahmad VS Secretary C&W & others

I am directed to refer to the subject noted above and to state that the subject service appeal was fixed for hearing before the Services Tribunal on 21.10.2011. During the course of arguments, the Hon'able Chairman Services Tribunal has directed to provide the inquiry record from Chief Engineer (North) C&W, Peshawar regarding "fake/bogus NIT advertisement in C&W Division Chitral.

2. It is, therefore, requested to furnish the aforementioned inquiry record/file within a week time positively for onward submission to Services Tribunal on the next date of hearing i.e. 14.11.2011.



[Signature]
(RAHIM BADSHAH)
SECTION OFFICER (ESTT)

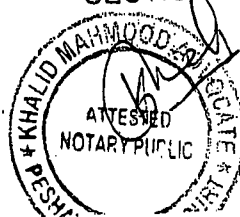
Endst even No. & date

Copy forwarded to the:

1. Registrar Khyber Pakhtunkhwa Services Tribunal Peshawar
2. PS to Secretary C&W Department

Urgent
Court case 6

SECTION OFFICER (ESTT)





(31) ~~106~~

COMMUNICATION & WORKS DEPARTMENT (NORTH WING)
KHYBER PAKHTUNKHWA PESHAWAR
Block-C 3rd Floor, Attached Department Complex Khyber Road Peshawar
091-9210456 FAX 091-9210478

No. 825/75-E

Dated 11/11/2011


To
The Section Officer (E),
Communication and Works Department
Peshawar

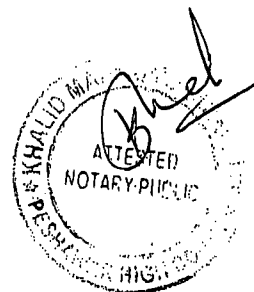
Subject: APPEAL NO. 1758/2009 NAZIR AHMAD VS SECRETARY C&W AND OTHERS

Reference: Your letter No. SOE/C&WD/3-5/2009 dated October 25, 2011

I am directed to refer to the subject noted above and to enclose herewith the requisite inquiry record/File containing (Thirty Nine pages) for favour of further necessary action as desired.

DA: As above


(Abdul Majid)
Administrative Officer



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2000]

Ziaul Hassan v. Naseem Chaudhry
(Irshad Hasan Khan, J).

645

without pay. Since no question of public importance has been raised in these petitions, therefore, we do not find any merit and dismiss the same. Leave to appeal is refused in both the petitions.

H.B.T./D-23/S

Leave refused.

2000 S C M R 645

[Supreme Court of Pakistan]

Present: *Irshad Hasan Khan, Munawar Ahmed Mirza
and Ch. Muhammad Arif, JJ*

Maj. ZIAUL HASSAN, HOME SECRETARY
and others---Petitioners

versus

Mrs. NASEEM CHAUDHRY---Respondent

Criminal Petition No.510-L of 1999, decided on 20th October, 1999.

(On appeal from the judgment, dated 27-9-1999 of the Lahore High Court, Lahore in Cr.Org.No.279-W of 1999).

Civil service---

---Promotion---Supreme Court had found that civil servant had not been promoted by superseding any officer senior to her; she was entitled to be promoted from the date her juniors were promoted and there was no valid reason not to consider her for the promotion---Mere fact that some disciplinary proceedings were pending against the civil servant was not a sufficient ground to disregard the order passed by the Supreme Court---Promotion of civil servant, however, would not debar the Authorities to continue with the disciplinary proceedings against the civil servant, if any, justly, fairly and in accordance with law. [pp. 646, 647] A & B ..

Inspector-General of Police, Punjab, Lahore and others v. Mrs. Naseem Chaudhry and others C.P.L.A. No.1617-L of 1997 ref:

Ghulam Haider Alghazali, Additional Advocate-General, Punjab and Rao Muhammad Yusuf, Advocate-on-Record for Petitioners.
Respondent in person.

Date of hearing: 20th October, 1999.

SCHR

JUDGMENT

IRSHAD HASAN KHAN, J.---This petition is directed against the judgment, dated 27-9-1999 passed by the Lahore High Court in Crl. Original No.279-W of 1999.

2. The dispute herein relates to the promotion of the respondent as Deputy Superintendent of Police:-

3. This Court through judgment, dated 15-4-1999 passed in C.P.L.A. No.1617-L of 1997 entitled The Inspector General of Police, Punjab, Lahore etc. v. Mrs. Naseem Chaudhry, etc., while dismissing the appeal of the Inspector-General of Police against the order of the Punjab Service Tribunal, Lahore in Appeal No.3097 of 1997, made the following observation:-

"5. We have heard the learned counsel for the petitioner Dr. A. Basit learned senior counsel for the respondent/caveator and perused the available material on record. The Tribunal was right in holding that the respondent had not been promoted by superseding any officer senior to her. She was entitled to be promoted from the date her juniors were promoted. There was no valid reason not to consider her case for promotion as DSP as above. The impugned order appears to be just, fair and equitable. Mr. Ghuman was unable to substantiate his plea that the impugned order suffers from any illegality. Be that as it may, no substantial question of public importance is involved to warrant interference in these proceedings."

4. The petitioner not implemented the above order passed by this Court. The respondent therefore, approached the High Court for redress of her grievance. The contempt application was also filed on 25-1-1999 wherein notice was issued to the petitioner, who took the plea that the respondent could not be promoted as some disciplinary proceedings had been initiated against her. The contention was repelled by the learned Judge in Chamber, vide the impugned order, dated 27-9-1999, which is to the following effect:-

"The learned Advocate-General says that the petitioner has been suspended from service and as such the question of her promotion does not arise. The learned counsel for the petitioner has, however, placed on record, a copy of the order, passed by the Punjab Service Tribunal on 30-8-1999, whereby the order of suspension of the petitioner has been suspended. That being so, there is no hurdle left in the way the respondent for implementation of the orders passed by this Court. The needful shall now be done within one week from today failing which coercive process shall be issued against the respondents."

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2000]

Ahmed Din v. Ghulam Muhammad
(Irshad Hasan Khan, Actg. CJ)

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5. The learned Additional Advocate-General, Punjab submitted that the High Court fell into error by not considering in true perspective that the disciplinary proceedings have been initiated against the respondent and, therefore, there was genuine hurdle in the way of petitioner to promote her in accordance with the orders passed by the Supreme Court as well as the High Court.

6. We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the order passed by this Court. However, we may clarify that promotion of the respondent as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law.

7. With the above observation, the petition is dismissed and leave to appeal declined.

M.B.A./Z-33/S

Petition dismissed.

2000 S C M R 647

[Supreme Court of Pakistan]

Present: Irshad Hasan Khan, Actg. C.J. and Sh. Ijaz Nisar, J.

AHMED DIN---Petitioner

versus

GHULAM MUHAMMAD through Legal Heirs
and others---Respondents

Civil Petition for Leave to Appeal No.675-L of 1999, decided on 10th September, 1999.

(On appeal from the judgment/order dated 17-11-1998 passed by the Lahore High Court, Lahore in R.S.A. No.170/88).

Supreme Court Rules, 1980—

---O. XIII, R. 1---Constitution of Pakistan (1973), Art. 185(3)---Petition for leave to appeal---Delay in filing such petition---Condonation---Delay of one hundred and twenty-three days in filing petition for leave to appeal was sought to be condoned by petitioner on ground that petitioner who was living in far off village could not receive letter from his counsel regarding dismissal of his appeal by High Court---Matter purely being between client and his counsel, opposite-party could not be penalized for alleged negligence of the counsel who allegedly could not inform petitioner in time---In absence of

S.C.R.

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convenience of the candidates. The petitioner cannot be said to have been deprived of from any vested right. As observed above, neither there is any recommendation of the Selection Board nor the policy-maker could be directed to change the policies. The enhanced criteria was within the jurisdiction of the competent authority prescribed. The other points raised by learned counsel for the respondents need not to discuss. The result of this discussion and order may not affect on the revision filed to the Chancellor. This petition has no legal force. Therefore, the same is dismissed.

M.H./O-2/L

Petition dismissed.

2008 P L C (C.S.) 1019

[Lahore High Court]

Before Hafiz Tariq Nasim, J

Mrs. SANJIDA IRSHAD, ASSISTANT DIRECTOR,
NURSING, BAHAWALPUR

versus

SECRETARY TO GOVERNMENT OF THE PUNJAB
HEALTH DEPARTMENT, LAHORE and others

Writ Petition No.2573 of 2008, decided on 24th April, 2008.

Punjab Civil Servants Act (VIII of 1974)---

—S. 8—Constitution of Pakistan (1973), Art.199—Constitutional petition—Promotion---Entitlement---Petitioner while serving in BS-17 became eligible for promotion to BS-18 in the year 1997, but she was promoted on officiating basis in BS-18 in 1998 instead of regular promotion, whereas one of her juniors was promoted in BS-18 on regular basis in 1997—Reasons for non-promotion of petitioner, firstly was pendency of enquiry against her and secondly minor penalty of censure imposed on her---Petitioner, who had become eligible for regular promotion in the year 1997 when her junior was promoted, was made a subject of repeated enquiries---One minor penalty of censure as well as the pendency of enquiry, could not be treated a hurdle for regular promotion of the petitioner as on the minor penalty civil servant could not be ignored and could not be refused a regular promotion---So far as the pendency of enquiry against the petitioner was concerned; record had revealed that petitioner was being made subject of repeated enquiry proceedings, which otherwise did not seem fair, particularly, when the proceedings of the enquiry were going on and on for a number of years---

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-During the pendency of enquiry against the petitioner she could not be deprived of her lawful right for her consideration for promotion-- Withholding of petitioner's promotion on regular basis from the date when she became eligible, was practically an outcome of colourable exercise of power and that action of Departmental Authorities could not sustain in the eye of law---Authorities were directed to place petitioner's case for promotion before Departmental Promotion Committee within specified period. [pp. 1020, 1021, 1022] A, B, C, D, E, F, G & H

Captain Sarfaraz Ahmad Mufti v. Government of the Punjab and others 1991 SCMR 1637; Mian Ali Muhammad v. Secretary, Establishment Division, Government of Pakistan and 3 others 2003 PLC (C.S.) 1425; Deputy Inspector-General of Police, Gujranwala and others v. Anwar Saeed, Inspector Police and others 1998 SCMR 552 and Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry 2000 SCMR 645 ref.

Asif Nazir Awan for Petitioner.

Naeem Masood, Asstt. A.-G., Punjab with Hamid Yaquub Sheikh, Additional Secretary for Respondents.

ORDER

HAFIZ TARIQ NASIM, J.--- Facts relating to this writ petition are that the petitioner while serving in the Health Department in BS-17 became eligible for promotion to BS-18 in the year 1997 but she was promoted on officiating basis in BS-18 on 22-6-1998 instead of regular promotion, whereas one of the juniors namely Mst. Malika Shaheen was promoted in BS-18 on regular basis vide order dated 18-2-1997. Petitioner filed Service Appeal No.2592 of 1997 before the Punjab Service Tribunal against the order dated 18-2-1997, whereby the junior was promoted and she was ignored, the said appeal was accepted through judgment dated 30-9-1998, directing the Departmental Authorities to re-consider the matter and re-decide the question of promotion afresh keeping in view the seniority of the petitioner. This judgment was even confirmed by the Honourable Supreme Court of Pakistan. According to the learned counsel for the petitioner that despite clear finding and direction of the learned Punjab Service Tribunal, the petitioner is being victimized since 1998 by way of non-promotion and that too on extraneous consideration, whereas the petitioner is still working against BS-18 without any break. Further submits that the case of the petitioner was placed before the D.P.C. but it was deferred on the ground of pendency of certain enquiries. The learned counsel submits that the pendency of enquiry and even the minor penalty cannot come in the way of promotion, whereas the respondent was adamant not to promote the petitioner at any costs due to ulterior motive.

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2. Learned A.A.-G. submits that the promotion cannot be asked as a matter of right and even the petitioner is not superseded so there is no question of any grievance, which could entitle her for invocation the jurisdiction of this Court.

3. The Additional Secretary Health, who is present in court along with the record submits that the reasons of non-promotion of the petitioner is pendency of enquiry against the petitioner as well as the minor penalty of censure, however, after the finding of the enquiry her case shall be submitted before the D.P.C. for reconsideration. B

4. Argument heard. Record perused.

5. The record reflects that the petitioner is made a subject of repeated enquiries, became eligible for regular promotion in the year 1997 but instead of promoting her on regular basis, she was promoted on officiating basis, whereas her junior was promoted on regular basis, which matter was also adjudicated upon by the learned Punjab Service Tribunal long long ago. C

6. It is also confirmed from the record that one minor penalty of censure is available in her record but the minor penalty as well as the pendency of enquiry cannot be treated a hurdle for the regular promotion of the petitioner as the Honourable Supreme Court of Pakistan once for all resolved the matter in a case reported as Captain Sarfaraz Ahmad Mufti v. Government of the Punjab and others 1991 SCMR 1637, wherein it is held that on all the minor penalties civil servant cannot be ignored and cannot be refused to grant promotion. D

7. It is to be noted that the words used by the Honourable Supreme Court of Pakistan in respect of minor penalty is plural i.e. minor penalties. In the present case only one minor penalty of censure is available in the record. In another judgment reported as Mina Ali Muhammad vs. Secretary. Establishment Divisions, Government of Pakistan and 3 others 2003 PLC (C.S.) 1425, this court followed the law laid down by the Honourable Supreme Court of Pakistan referred above holding:-- E

“Promotion could not have been withheld on the ground that minor penalty was imposed upon him”.

8. So far the pendency of enquiry against the petitioner is concerned, record reveals that the petitioner is being made a subject of repeated enquiry, which otherwise does not seem fair, particularly, when the proceedings of the enquiry are going on and on for a number of years. F

9. During the pendency of enquiry against the petitioner, she

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cannot be deprived of her lawful right for his consideration for promotion as held by the Honourable Supreme Court of Pakistan in cases reported as Deputy Inspector-General of Police, Gujranwala and others v. Anwar Saeed, Inspector Police and others 1998 SCMR 552 and Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry 2000 SCMR 645.

10. After going through all aspects of the case, it is held that withholding of the petitioner's promotion on regular basis from the date when she became eligible is practically an outcome of colorable exercise of power and that action of the Departmental Authorities cannot sustain in the eye of law on two grounds:--

- (i) "Pendency of enquiry against a civil servant cannot be treated a bar for further promotion.
- (ii) Minor penalty of censure and even the minor penalties cannot become a hurdle in the promotion of any civil servant."

Accordingly the writ petition is allowed and respondent is directed to place the petitioner's promotion case for her regular promotion before the Departmental Promotion Committee within one month positively and the said Committee is directed to consider the petitioner for promotion fairly, justly and without being influenced of the pendency of any enquiry and the minor penalty.

The promotion case be considered from the date of petitioner's eligibility. The Additional Secretary, who is present in Court, shall ensure the compliance of the court's order and complete the process within one month under intimation to the Deputy Registrar (J.) of this Court.

H.B.T./S-16/L

Petition allowed.

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[Lahore High Court]

Before Saif-ur-Rehman, J

Ms. SHAZIA BASHIR and 2 others

versus

BAHAUDDIN ZAKARIYA UNIVERSITY, MULTAN
through Vice-Chancellor and 4 others

Writ Petition No.5467 of 2007, decided on 12th March, 2008.