

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.1254/2016

Mr. Muhammad Bakhsh Malik, C/O Allah Bakhsh Malik, House No. 3, Street E-1, Khawaja Town, Pajaki Road, Bashir Abad, Peshawar.

.....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Chief Secretary**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **The Secretary** Agriculture, Livestock & Coop: Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. **The Secretary**, Establishment Department, government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

.....(*Respondents*)

Present:

Syed Nauman Ali Bukhari,
Advocate.....For appellant.

Syed Naseer Ud Din Shah,
Assistant Advocate General.....For respondents.

Date of Institution.....22.12.2016
Dates of Hearing.....13.10.2022
Date of Decision.....13.10.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 19.09.2016 COMMUNICATED TO APPELLANT ON 24.11.2016 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT FOR NOTIONAL/PROFORMA PROMOTION TO BPS-20 HAS BEEN REJECTED FOR NO GOOD GROUNDS.



JUDGMENT

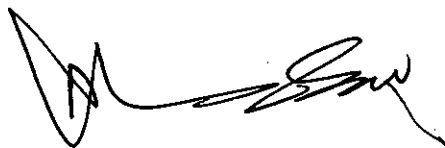
KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that the appellant joined the Agriculture, Livestock Department in the year 1981 and with the passage of time he got promotion to BS-19; that as per notification dated 29.04.2014, the post of Director General On Farm Water Manager (BS-20) fell vacant and was to be filled in "by selection on merit from amongst the three senior most BS-19 officers of the On Farm Water Management, with at least five years service in BS-19 or 17 years service in BS-17 and above; that in utter violation of law and rules, a junior officer of BS-19 (Muhammad Khurshid Afridi) was given additional charge of the post with all financial administrative powers vide order dated 22.04.2015, against which the appellant filed writ petition No. 2094-P/2015 in the Hon'ble Peshawar High Court, which was decided on 28.01.2016 and the respondents were given two months time for completing the process of selection as per rules; that the respondents were not obeying the directions of Hon'ble Peshawar High Court, therefore, the appellant filed C.O.C No. 176/2016 which was decided on 16.06.2016; that the appellant then filed departmental appeal on 17.06.2016 which was rejected on 19.09.2016 and communicated to the appellant on 24.11.2016, hence, the instant service appeal in this Tribunal on 22.12.2016.



2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

4. Learned counsel for the appellant contended that the appellant had not been treated in accordance with law and rules. That the concerned authority had written for termination of probation to the competent authority but despite that no proper orders were passed and the matter was intentionally delayed by the concerned authority for which the appellant could not be punished. He further argued that in many cases it was held by the august Supreme Court of Pakistan that the authorities were legally required to do their legal duties in time especially in cases of promotion, but despite that binding directions of the Apex Court, the appellant had been deprived from his legal rights, which also resulted in depriving him from the pensionary benefits of BPS-20. That the impugned order was against the spirit of Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rules-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, therefore, the impugned order

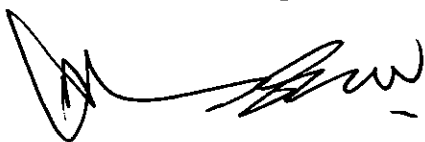


was in total violation of law and was not sustainable. That the respondents were legally bound to conduct proper Provincial Selection Board to fill the post of the Director General On Farm Water Management (BS-20) rather to extend favour to their blue eyed in an illegal manner. Learned counsel requested that the appeal might be accepted granting all back benefits to the appellant.

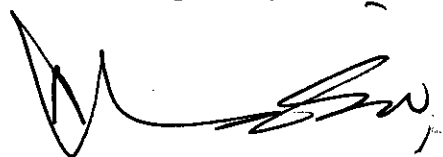
5. Learned Assistant Advocate General argued that order dated 22.04.2015 vide which Mr. Muhammad Khurshid Afridi, Director Headquarter was authorized to hold the additional charge of the vacant post of the Director General On Farm Water Manager, Khyber Pakhtunkhwa Peshawar was according to law and rules as the authorized officer was equally eligible like the appellant. He further argued that in light of the direction dated 16.06.2016 of Hon'ble Peshawar High Court, Peshawar, the promotion case of the appellant was reviewed by the competent authority who rejected the same due to the reason that "as the officer was under probation in BS-19 and during the period of probation no civil servant was eligible for promotion to higher post in terms of Para-IV (f) of Promotion Policy 2009. The decision of the competent authority was communicated to the appellant vide order dated 17.10.2016. He therefore, requested that the appeal might be dismissed.



6. The appellant had retired from the respondent department on 14.06.2016 on attaining the age of superannuation. On 15.04.2015 the incumbent Director General (On Farm Water Management) Mr. Fazal Rabi stood retired vacating the post, which was to be filled in as per prevalent rules notified on 29.04.2014 whereby the post of the DG was to be filled in by selection on merit from amongst the three senior most BPS-19 officers On Farm Water Management with at least five years service in BPS-19 or seventeen years service in BPS-17 and above. Instead of filling the vacancy under the rules the department gave additional charge of the post to one Mr. Muhammad Khurshid Afridi, Director HQ vide notification No. SOE(AD) 3(3) 5/2015/WM dated 22.04.2015. Aggrieved of the same the appellant preferred writ petition No.2094-P/2015 before the Hon'ble Peshawar High Court, Peshawar to get the above notification declared as unlawful, unconstitutional etc with a further prayer to direct the respondents to convene a Provincial Selection Board meeting for filling the post of DG On Farm Water management. The writ petition was decided vide order dated 28.01.2016 by the Hon'ble Peshawar High Court on the commitment of Syed Masood Shah, Section Officer Litigation, Agriculture Department; that the process of selection to the post of DG (BS-20) would be completed within a span of two months. When that was not so done the appellant resorted to C.O.C No. 176-P/2016 which was disposed on 16.06.2016 with a direction that the case of the appellant should be placed before the worthy Secretary Agriculture



Government of Khyber Pakhtunkhwa, who was to sympathetically review the matter and see what benefits could be granted to the appellant. The appellant was let at liberty to agitate the matter before the appropriate legal forum incase if the appellant could not be considered within sixty days. The said communication was made on 19.09.2016 regretting the request of the appellant on the ground that the appellant was on probation and was not found eligible for promotion to higher post. The department had reiterated such stance in the written reply/comments filed by them in this appeal. Thus the only ground which was the so called hurdle in the way of granting promotion to the post of Director General (BS-20) was that he was on probation in BPS-19 at the time when he had requested for seeking promotion. The seniority list annexed with the appeal shows that the appellant was at serial No.1 of the list and was promoted to Grade-19 on 14.10.2014 alongwith nine other officers shown junior to him in the list but vide Notification No.SOE(AD)V-7/2019/WM dated 14.10.2019 the appellant's promotion to BPS 19 was antedated and considered with effect from 12.12.2011 and by the time the post of DG BPS-20 fell vacant on 15.04.2015 on retirement of Fazal Rabbi and after the retirement of Fazal Rabbi on 15.04.2015, the appellant was admittedly the senior most officer and had also completed one probation on 13.10.2015, so he was eligible for promotion to the post of DG BPS-19 on 13.10.2015 i.e. much before his retirement and by that time he had undisputedly his credit more than 17 years service in



BPS 17 also. As aforesaid, the only ground which the respondents had taken for not holding the appellant eligible for promotion to higher post was the alleged fact that the appellant was on probation. This contention of the respondents is not true as vide letter No. 5840/DG/OFWM dated 01.10.2015, the Director General had written to the Government of Khyber Pakhtunkhwa for termination of probation period in BPS-19 by specifically naming the appellant at serial NO.1 of the letter and stating in clear terms that the officers, named in the letter including the name of the appellant, had almost successfully completed their probation in BPS-19, therefore, a request for termination of probation period of the officers including the appellant was made. This letter was followed by another letter of the department bearing No.SOE(AD)V-7/2014 dated 21.10.2015, whereby the department sought the performance and conduct reports of the employees given by the controlling authority. Vide letter No. 6160 dated 29.10.2015, DG again wrote a letter explaining that the officers named in the letter, had achieved the set targets/assignments well in time and their performance and conduct remained satisfactory. It was added that due to the extra-ordinary efforts and dedication of the officers, the department not only achieved rather exceeded the set targets within the stipulated time period. It was also stated that no complaint had so far been received/observed against any of the officer during the probation. Again a request was made that as upon successful completion of their probation period, probation termination



case might be processed on merit in the public interest. These documents are the concrete evidence of the fact that the probation period was not extended rather it was sought to be terminated and only formal notification/order in this respect was to be passed, which might have been passed but has not been annexed with this appeal by either side. So the only hurdle asserted by the department i.e. that the appellant was on probation and was thus not eligible to be considered for promotion in the next higher grade, is groundless and not tenable. When there was a clear vacancy in BPS 20 available before the retirement of the appellant, the department was bound to finalize the issue of promotion as expeditiously as possible or at least prior to the retirement of the appellant where the appellant had served for more than 35 years and he by all means was entitled to promotion especially when very clear directions were given by the Hon'ble Peshawar High Court in the writ petition filed by the appellant after making commitment/assurance by the departmental representative. Reliance is placed on 2022 SCMR 1546 titled "*Homeo Dr. Asma Noreen Syed-vs-Government of Punjab*" and 2022 SCMR 1765 titled "*Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others versus Fazali Ghufraan*".

7. Therefore, this appeal is allowed with the direction to the respondents to grant the appellant proforma promotion w.e.f. the date, the post of D.G (BPS-20) had fallen vacant with all consequential benefits. Costs shall follow the event. Consign.



Service Appeal No.1254/2016 titled "Muhammad Bakhsh Malik-vs- Govt of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 13.10.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13rd day of October, 2022.



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

ORDER

13th Oct, 2022

1. Learned counsel for the appellant present. Syed Naseer Ud Din Shah, Asst: AG alongwith Tayyab Gul, Superintendent for respondents present.

2. Vide our detailed judgement of today placed on file (containing 09 pages), this appeal is allowed with the direction to the respondents to grant the appellant proforma promotion w.e.f. the date, the post of D.G (BPS-20) had fallen vacant with all consequential benefits. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13th day of October, 2022.*



(Kalim Arshad Khan)
Chairman



(Eareeha Paul)
Member(Executive)



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the 14th October, 2019

NOTIFICATION.

NO. SOE (AD) V-7/2019/WM:-

In pursuance of Service Tribunal Judgment dated 15.03.2019, and recommendation of the Provincial Selection Board (PSB) meeting held on 23.09.2019, the Competent Authority is pleased to order antedated promotion of Mr. Muhammad Bakhsh Malik the then Director IIRD On Farm Water Management Training Centre D.I.Khan to BPS-19 w.e.f 12.12. 2011.

SD/-
SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE, L/STOCK AND COOP. DEPTT:

Indst. of even No. & Date.

Copy forwarded for information and necessary action to the: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, On Farm Water Management, Khyber Pakhtunkhwa Peshawar.
3. The District Accounts Officer, D.I.Khan.
4. PS to Minister for Agriculture, Khyber Pakhtunkhwa.
5. PS to Chief Secretary, Khyber Pakhtunkhwa.
6. PS to Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
7. PS to Secretary Agriculture, Khyber Pakhtunkhwa.
8. Officers concerned.
9. Personal file.

(SBAMS-UL-ISLAM)
SECTION OFFICER-ESTT

4/10/19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 485/2016

Date of Institution ... 26.04.2016

Date of Decision ... 15.03.2019



Muhammad Bakhsh Malik, C/O Allah Bakhsh Malik, House No.3, street E-1,
Khawaja Town, Pajagi Road, Bashirabad, Peshawar. ... (Appellant)

VERSUS

The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,
Peshawar and two others. ... (Respondents)

MR. M. ASIF YOUSAFZAI,
Advocate

--- For appellant.

MR. MUHAMMAD JAN
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER(Executive)
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER. - Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS

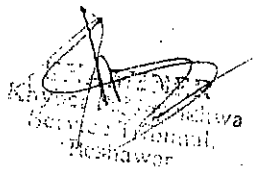
2. Learned Counsel for the appellant argued that he joined the Agriculture Department in 1981. In the seniority list notified on 30.04.2014, his name was reflected at sr. no.1. While serving in BPS- 18 the appellant was placed under suspension on 01.7.2011. Due to pending disciplinary proceedings juniors to the appellant were promoted to BPS-19 on 12.12.2011, whereas his case was deferred. After winding up of departmental proceedings penalty of withholding of promotion for one year was awarded vide order dated 26.09.2012. After exhausting departmental remedies, he filed service appeal no 519/2013 and the Tribunal in its

FILED
15/03/2019
PESHAWAR

judgment dated 02.06.2014 remitted the case to the respondents to pass speaking order on his departmental appeal. Subsequently, the appellant was promoted to BPS-19 vide notification dated 14.10.2014. He filed a departmental appeal on 5.11.2014 but the same failed to evoke any response from the respondents. It was followed by a writ petition no. 1942-P/2015 filed in the Peshawar High Court, Peshawar, which was decided vide order dated 15.9.2015. The respondents were directed to decide his departmental appeal in accordance with law, which was rejected on 25.3.2016, hence, the present service appeal. The appellant was deprived of promotion from the date on which his juniors were promoted without any justification as the appellant has retired from service, so it will have serious repercussions on his pension/allied benefits. No speaking order was passed on his departmental appeal and provisions of section 24-A of General Clauses Act 1897 was violated. Since appeal no. 1084/2015 filed by the appellant on 21.09.2015 was accepted by this Tribunal vide judgment dated 14.12.2018.

3. On the other hand learned Deputy District Attorney argued that the promotion of the appellant was deferred due to an inquiry pending against him. He was granted promotion to BPS-19 vide notification dated 14.10.2014. His request for grant of antedated promotion being not covered under the rules was regretted by the respondents vide order dated 27.8.2015. He stood retired from government service vide order dated 14.6.2016 and his case for antedation of promotion cannot be considered at this stage.

ATTESTED



 Deputy District Attorney
 Peshawar

CONCLUSION

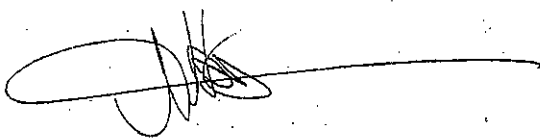
4 It is not disputed that the appellant an officer of BPS-18 was serving under the administrative control of the respondents. On certain allegations leveled against him, disciplinary proceedings were conducted and thereafter penalty of withholding of promotion for one year was imposed on him vide order dated 26.9.2012. On the other hand a case of promotion of BPS-18 officers of On Form Water Management Wing to the post of Executive District Officer BPS-19 was processed. As the appellant was under suspension, hence, his case for promotion was deferred. Three officers junior to the appellant were promoted vide order dated 12.12.2011. For the redressal of his grievances, he invoked the jurisdiction of this Tribunal by way of filing service appeal which was remitted to the respondents for disposal vide order dated 02.06.2014. Later on he got promotion to BPS-19 vide notification dated 14.10.2014. Thereafter, he knocked the door of Peshawar High Court, Peshawar by way of filing writ petition. It was decided vide order dated 15.09.2015. After rejection of departmental appeal, he filed the present service appeal.

5. Previously service appeal no. 1084 was filed by the appellant in this Tribunal. Through the said appeal he had challenged order dated 26.09.2012 whereby penalty of withholding of promotion for one year was imposed on him. This Tribunal vide judgment dated 14.12.2018 accepted the appeal and the said order was set aside. The order through which the appellant was penalized lost its utility. The cause of deferment of his promotion to BPS-19 is no more in the field. He deserves to be promoted to BPS-19 from the date his juniors were promoted.

ATTESTED


Khyal-ud-Din
Secretary, Tribunal
Peshawar

As a sequel to above, the appeal is accepted and impugned order dated 25.03.2016 is set aside. Parties are left to bear their own costs. File be consigned to the record room.

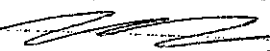


(AHMAD HASSAN)
MEMBER



(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
15.03.2019

Page No.	08-04-18
Number of Pages	2000
Copying Fee	12-00
Urgent	2-00
Total	14-00
Name of Clerk	
Date of Completion of Work	08-04-18
Date of Return of Copy	08-04-18

20.07.2022


Learned counsel for appellant present.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General alongwith with Mr. Tayyab Gul, Superintendent for respondents present.

Former made a request for adjournment as he has not prepared the brief. Adjourned. To come up for arguments on 15.09.2022 before D.B.



(Fareeha Paul)
Member(E)



(Rozina Rehman)
Member (J)

15.09.2022

Appellant alongwith counsel present.

Muhammad Adeel, learned Additional Advocate General alongwith Tayyab Gul, Superintendent for respondents present.

Former requested for adjournment as he has not prepared the brief. Adjourned. To come up for arguments on 13.10.2022 before D.B.



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

21.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 24.05.2022 for the same as before.


Reader

24th May, 2022

Junior to counsel for the appellant present. Mr. Nasirud Din Shah, Asstt. AG alongwith Tayyab Gul, Superintendent for the respondents present.

Former seeks adjournment due to engagement of learned senior counsel for the appellant before the Hon'ble High Court. Last opportunity is granted for argument, failing which the case will be decided on the basis of available record without the arguments. To come up for arguments on 20.07.2022 before the D.B.


(Fareeha Paul)
Member (E)

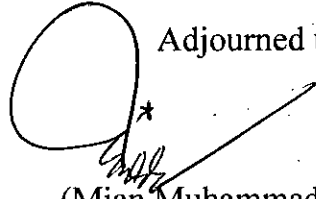

(Kalim Arshad Khan)
Chairman

27.11.2020

Appellant in person present. Additional: AG alongwith Mr. Rahat Shah, Account Officer for respondents present.


Former requests for adjournment as his learned counsel is engaged before the apex court today.

Adjourned to 18.02. 2021 for arguments before D.B.


(Mian Muhammad)
Member (E)


Chairman

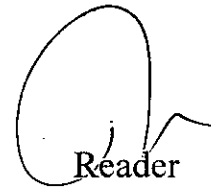
Due to pandemic of covid-19,
the case is adjourned to 16-04-2021


Reader

16.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 10.08.2021 for the same as before.




Reader

10.08.2021

Since, 1st Moharram has been declared as public holiday, therefore, case is adjourned to 27/12/2021 for the same as before.


Reader

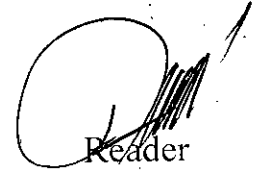
27/12/2021

Due to ~~winter vacation~~
The case is adjourned to come up for the same as before on 21-02-2022


Reader.

25.03.2020

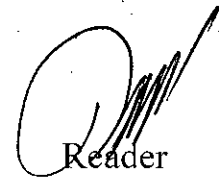
Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 09.06.2020 before D.B.



Reader

09.06.2020

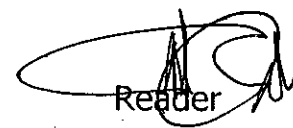
Bench is incomplete as one learned Member (J) is on leave. Therefore, the case is adjourned. To come up for the same on 21.08.2020 before D.B.



Reader

21.08.2020

Due to summer vacation case to come up for the same on 23.10.2020 before D.B.



Reader

23.10.2020

Junior to counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 27.11.2020 for hearing before the D.B.



(Mian Muhammad)
Member



Chairman

10.10.2019

Due to official tour of Hon'ble Members to Camp Court Swat, the instant matter is adjourned to 23.12.2019 for the same.



Reader

23.12.2019 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Rahat Shah Accounts Officer present. Learned counsel for the appellant seeks adjournment to furnish Notification of Antedation of Promotion of the appellant to BS-19. Adjourn. To come up for additional documents and arguments on 31.01.2020 before D.B.



Member



Member

31.01.2020 Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Sana Ullah Admin Officer present. Appellant seeks adjournment as learned counsel is not available. Adjourn. To come up for arguments on 25.03.2020 before D.B.



Member



Member

15.03.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Sanaullah, Admn. Officer for the respondents present.

Learned counsel for the appellant requests for adjournment due to over occupation before the Honourable High Court.

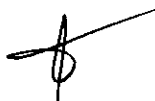
Adjourned to ~~28.05~~ 28.05.2019 before the D.B.


Member


Chairman

28.05.2019

Appellant in person present. Mr. Muhammad Jan, DDA alongwith Mr. Sana Ullah, Admin Officer for respondents present. Appellant seeks adjournment as his counsel was busy before the august Peshawar High Court, Peshawar. Adjourned. Case to come up for arguments on 02.08.2019 before D.B.


Member


Member

02.08.2019

Appellant in person present. Mr. Zia Ullah learned DDA present. Appellant submitted application for adjournment. Application allowed. Adjourn. To come up for arguments on 10.10.2019 before D.B.


Member


Member

17.09.2018

Appellant in person present, Mr. Kabirullah Khattak Learned Additional AG for the respondent alongwith Mr. Tayyab Gul Assistant for the respondents present. Due to General Strike of the Bar, arguments could not be heard. To come up for arguments on 01.11.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Kundi)
Member

01.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 20.12.2018 before D.B.

20.12.2018

Appellant in person present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Tayyab Gul, Assistant for the respondents present. Appellant requested for adjournment on account of the non-availability of his counsel. Adjourned. To come up for arguments on 07.02.2019 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Khan Kundi)
Member

07.02.2019

Appellant alongwith his counsel present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Tayyab Gul, Assistant for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 15.03.2019 for arguments before D.B-I.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

11.01.2018

Appellant in person and Asst: AG alongwith Mr. Tayyab Gul, Assistant for respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 09.03.2018 before D.B.


(Ahmad Hassan)
Member(E)


(M. Hamid Mughal)
Member (J)

09.03.2018

Junior counsel for the appellant and Mr. Riaz Ahmed Painsa Kheil, Assistant AG alongwith Rahat Shah, Accounts Officer for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 09.05.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

09.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 24.07.2018.


Reader

24.07.2018

Junior to counsel for the appellant and Mr. Sardar Shaukat Hayat learned Additional Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 17.09.2018 before D.B.

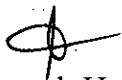

Member


Member

30.03.2017 Counsel for the appellant and Mr. Tayab Gul, Assistant alongwith Addl: AG for the respondents present. Written reply not submitted. Requested for further adjournment. To come up for written reply/comments on 25.04.2017 before S.B.



Chairman

25.04.2017 Counsel for the appellant and Addl: AG for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 09.08.2017 before D.B.


(Ahmad Hassan)
Member

09.08.2017 Appellant in person present. Mr. Muhammad, Deputy District Attorney for the respondents present. Appellant submitted rejoinder and seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 24.11.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member (J)


(Muhammad Hamid Mughal)
Member (J)

24.11.2017 Appellant in person present. Mr. Muhammad Jan, Deputy District Attorney alongwith Rahat Shah Account Officer for the respondents present. Appellant requested for adjournment as his counsel is not available. Adjourned. To come up for arguments on 11.01.2018 before D.B.


(Gul Zeb)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

02.02.2017

Counsel for the appellant seeks adjournment. Adjourned for preliminary hearing to 23.02.2017 before S.B..


Chairman

23.02.2017

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 19.09.2016, wherein his appeal for proforma promotion to (BPS-20) was rejected. The appellant was working in (BPS-19) in the Agriculture, Livestock Department. The appellant was not considered for promotion against the post D.G found Water Management (BPS-20). A junior officer was given of the said post, he filed writ petition No. 2094/2015 in Peshawar High Court and the August Court directed to complete the process of selection strictly in accordance with the rules. He preferred departmental appeal on 17.06.2016 which was rejected on 19.09.2016, hence the instant service appeal.

Appellant Deposited
Security & Process Fee


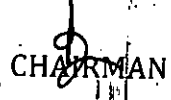
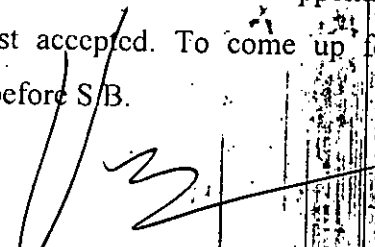
Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 30.03.2017 before S.B.


(AHMAD HASSAN)
MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1254/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/12/2016	<p style="text-align: center;">The appeal of Mr. Muhammad Bakhsh Malik resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR.</p>
2-	27/12/2016	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05-01-2017</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	05.01.2017	<p style="text-align: center;">Counsel for the appellant present. Counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 02.02.2017 before S/B.</p> <p style="text-align: right;"> (MUHAMMAD AAMIR NAZIR) MEMBER</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1254 /2016

Mr. Muhammad Bakhsh Malik

V/S

Govt. of KPK & Others.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of appeal.	----	01-05
2.	Seniority list.	A	6 - 7
3.	Rules. 29.04.2014	B	8 - 9
4.	Order of Khurshid.	C	10
5.	W.P NO. 2094/2016	D	11 - 14
6.	Order of PHC 28.01.2016	E	15
7.	Order on COC No. 176/2016	F	16 - 18
8.	Appeal. 17.06.2016	G	19 - 21
9.	Rejection order.19.09.2016	H	22 - 23
10.	Letter dt. 1.10.2015	I	24
11.	Letter dt. 21.10.2015	J	25
12.	Letter dt. 29.10.2015	K	26
13.	Vakalat nama	---	27.

APPELLANT

THROUGH:



(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT
PESHAWAR.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1254 /2016

Mr. Muhammad Bakhsh Malik,
C/O Allah Bakhsh Malik,
House No.3, Street E-1,
\Khawaja Town, Pajaki Road,
Bashir Abad, Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1308

Date: 22-12-2016

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Agriculture, Livestock & Coop; Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary, Establishment Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE ORDER DATED .19.09.2016 COMMUNICATED TO APPELLANT ON 24.11.2016 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT FOR NOTIONAL/PROFORMA PROMOTION TO BPS-20 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

Filed to-day
Sandesh
Registrar

PRAYER: *That on acceptance of this appeal the order dated. 19.09.2016 communicated to appellant on 24.11.2016 may be set-aside and the respondents may be directed to consider the appellant for notional/proforma*

promotion to BPS- 20 w.e.from 13.10.2015 with all back and consequential benefits including pensionary benefits in BPS-20 being senior most/eligible but malafidely not considered by the respondents. Any other remedy which this august Tribunal deems fit and proper that may also be awarded in favour of appellant.

RESPECTFULLY SHEWETH:

1. That the petitioner joined the Agriculture, Livestock Department in the year 1981 and with the passage of time the petitioner got promotion to BPS-19. The petitioner presently is on the top of seniority list at S.No.1. Copy of Seniority list is attached as Annexure-A.
2. That as per notification dated 29.4.2014, the post of DG On Farm Water Management (BPS-20 is to be filled in "by selection on merit from amongst the three senior most BPS-19 officers of On Farm Water Management with at least 5 year service in BPS-19 or 17 years service in BPS-17. There are no other methods prescribed in the said notification / rules for the filling of post of DG On farm Water Management. Copy of the Notification / Rules is attached as Annexure-B.
3. That the respondents in utter violation of law and rules passed an order dated 22.4.2015 wherein a junior official of BPS-19 (Muhammad Khurshid Afridi) given additional charge of the post with all financial and administrative powers. The senior most BPS-19 official has been made subordinate to a junior officer. Copy of Order is attached as Annexure-C.
4. That against that order the appellant filed a writ petition NO. 2094/2015 in the Peshawar High Court which was decided on 28.1.2016 and the respondents were given 2 months for completing the process of selection as per rules. Copy of the W.P and order of PHC are attached as Annexure – D&E.
5. That as the respondents were not obeying the directions of august Peshawar High Court, therefore, the appellant filed COC NO.176/2016 in the High Court, which was

decided on 16.06.2016. The august High Court was kind enough to pass the order, " *The case of the petitioner be placed before the worthy Secretary Agriculture Govt: of KPK who is to sympathetically review the matter and see what benefits can be granted to the petitioner. In case, the case of the petitioner cannot be considered positively, he is to give reasons for the same in writing which shall be communicated to the petitioner so he may agitate the same before appropriate legal forum. The needful be done in 60 days.*" Copy of order on COC is attached as Annexure – F.

6. That keeping in view the directions of the High Court, the appellant also filed an appeal on 17.06.2016 which was regretted on 19.09.2016 and communicated to appellant on 24.11.2016. Copies of the appeal and rejection order are attached as Annexure – G & H.
7. That having no other appropriate remedy against such illegal and unlawful action of the respondents, the appellant is constrained to file the present appeal on the following grounds amongst others:

GROUND:

- A) That the order dated. 19.09.2016 and communicated to appellant on 24.11.2016. is against the law, rules norms of justice and fair play, without lawful authority, unlawful and against the service rights of the senior BPS-19 officers. Therefore liable to be set aside.
- B) That it is also worth to mention here that the concerned authority in time had written for termination of probation to the competent authority but despite that no proper orders were passed and the matter was delayed by the concerned authority for which the appellant cannot be punished. Copies of application and letter are attached as Annexure – I, J&K.
- C) That in many cases it is held by the august Supreme Court of Pakistan that the authorities are legally required to do their legal duties in time especially in cases of promotion, but despite that binding directions of the Apex Court, the appellant has been deprived from his legal

rights which also resulted in depriving him from the pensionary benefits of BPS-20.

- D) That the respondents have not fulfilled their legal duties in time for which the appellant cannot be punished, especially in the given circumstances.
- E) That the act of the respondents is also based on malafide because they want to give benefits to their blue eyed persons and to knockout the appellant on technicalities.
- F) That the appellant is legally entitled to his claim which cannot be denied on flimsy grounds.
- G) That the appellant has not been treated as per law, rules, fairly and justly. Thus such inaction on the part of respondents is not tenable.
- H) That the impugned order is against the spirit of Section-9 of the KPK Civil Servant Act 1973 read with Rules -7 of the APT Rules, 1989. Therefore, the impugned order is in total violation of law and not sustainable.
- I) That even such practice of allowing/giving higher grade posts to juniors has also condemned by the Hon'ble Supreme Court of Pakistan in the case of Qazi Abdul Karim, where after the control as well as Provincial Government issued various instructions and directed that in future higher posts should be filled in as provided in the rules, otherwise, the same would amount to out of turn promotion in violation of law and rules.
- J) That the respondent are legally bound to conduct proper PSB to fill the post of Director General, On-Farm Water Management (BPS-20) rather to extend favour to blue eyed persons in an illegal manner. This aspect also proves that the respondents are not fulfilling their legal responsibility which are necessary under the law to do.
- K) That there are many examples are existed where the competent authority has either condoned the probation period or terminated the probation period in time and granted the promotions. But same benefits are not extended to the appellant

That the impugned order is against the Articles 2-A, 4, 9, 25 of the Constitution.

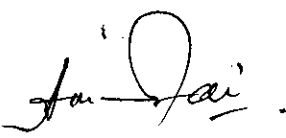
M) That the appellant seeks permission to advance other grounds and proofs the time of hearing.

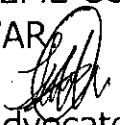
It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.


APPELLANT

Muhammad Bakhsh Malik

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT
PESHAWAR


Taimur Ali Khan advocate
&

Syed Numan Bulkhari Advocate.

A 6

DIRECTORATE GENERAL ON FARM WATER MANAGEMENT KHYBER PAKHTUNKHWA PESHAWAR
SENIORITY LIST OF BS-19 OFFICERS (as stood on 15-04-2015)

S.No	Name of officer with academic qualification	Date of Birth and domicile	Date of 1st entry into Govt. Service	Regular appointment/promotion to the present post			Present posting	Date of Retirement
				Date	BPS	Methods of recruitment		
1	2	3	4	5	6	7	8	9
1	Muhammad Bakhsh Malik M.Sc.(Hons) Agriculture	15/6/1956 Dikhan	07/03/1981	14/10/2014	19	By Promotion	Director HRD (BS-19) OFWM Training Centre Dikhan	14-06-2016
2	Muhammad Ismail M.Sc.(Hons) Agriculture	28/10/1958 Bannu	05/09/1983	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Lakki Marwat	27-10-2018
3	Muhammad Khurshid Afridi B.Sc. Agriculture Engineering	1/5/1960 Khyber Agency	25/08/1986	14/10/2014	19	By Promotion	Director HQ (BS-19) o/o DG OFWM Khyber Pakhtunkhwa Peshawar	30-04-2020
4	Sahibzada Alamgir B.Sc. Agriculture Engineering	27/3/1959 Swabi	26/08/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Peshawar	26-03-2019
5	Mr. Sherzada M.Sc.(Hons) Agriculture	19/12/1960 Malakand Agency	26/08/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Swat	18-12-2020
6	Mr. Shamshad Hussain B.Sc. Agriculture Engineering	3/5/1959 Nowshera	27/8/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Mansehra	2/5/2019
7	Muhammad Azeem B.Sc Agriculture Engineering	2/8/1959 Peshawar	27/08/1986	14/10/2014	19	By Promotion	Director Planning (BS-19) o/o DG OFWM Khyber Pakhtunkhwa Peshawar	1/8/2019

ATTESTED

S.No	Name of officer with academic qualification	Date of Birth and domicile	Date of 1st entry into Govt. Service	Regular appointment/promotion to the present post			Present posting	Date of Retirement
				Date	BPS	Methods of recruitment		
8	Dr. Allah Bakhsh Malak Ph.D Agriculture (United Kingdom)	24/4/1961 D.I.Khan	27/08/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM D.I.Khan	23-04-2021
9	Mr. Muhammad Afzal B.Sc. Agriculture Engineering	1/1/1963 Mansehra	27/08/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Haripur	31-12-2022
10	Mr. Behram Jan M.Sc. Agriculture Engineering	8/8/1961 Karak	30/08/1986	14/10/2014	19	By Promotion	Director Field Operation (BS-19) o/o DG OFWM Khyber Pakhtunkhwa Peshawar	7/8/2021

ATTESTED



Annex-11 B 8

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT**

Peshawar, dated the April 29, 2014

NOTIFICATION

No.SOE(AD)2(2)429/2011.- In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all notifications issued in this behalf, the Agriculture, Livestock and Cooperation Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualifications and other conditions specified in column 3 to 5 of the appendix to this Notification, which shall be applicable to the posts mentioned in column 2 of the said Appendix in the On Farm Water Management Wing of the Agriculture Department.

S.#	Nomenclature	Minimum Qualification for Initial Recruitment	Age for Initial Recruitment	Method of Recruitment
1	Director General On Farm Water Management (BPS-20)			By selection on merit from amongst the three senior most BPS-19 officers of On Farm Water Management with at least five years service in BPS-19 or seventeen years service in BPS-17 and above.
2	Director/ District Director (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy Director & District Officers with seven years service as such or at least twelve years service in BPS-17 and above in On Farm Water Management.
3	Deputy Director/ District Officer (BPS-18)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Directors & Water Management Officers with at least five years service as such.
4	Assistant Director/ Water Management Officer (BPS-17)	i) At least 2 nd class B.Sc Agriculture Engineering Degree from a recognized university or ii) at least 2 nd class B.Sc (Hons) Agriculture Degree with specialization in Water Management or Water Resource Management, from a recognized university	21-32 ears	(a) Twenty percent by promotion on the basis of seniority-cum-fitness, from amongst the Sub Engineers with at least ten (10) years service as such; and (b) eight percent by initial recruitment.

ATTESTED

9

		(ii) With two years experience in Tractor driving, having a valid tractor driving license.		
24	Vehicle Driver (BPS-04)	At least Middle in 2 nd division	18-40 years	By Initial recruitment
25	Daftari (BPS-02)			By promotion, on the basis of seniority-cum-fitness, from amongst the Naib Qasid, Rodman, Helper, Tractor Cleaner, Chowkidar & Mali having Secondary School Certificate with five years service as such
26	Naib Qasid (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
27	Rodman (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
28	Helper (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
29	Tractor Cleaner (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
30	Chowkidar (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
31	Mali (BPS-01)	Literate	18-30 years	By Initial recruitment
32	Swceper (BPS-01)	Literate	18-30 years	By Initial recruitment

SD/-
**SECRETARY TO
 GOVERNMENT OF KHYBER PAKHTUNKHWA,
 AGRICULTURE LIVESTOCK AND COOPERATIVE
 DEPARTMENT**

Copy forwarded for information and necessary action to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa Law Department.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Director General, On Farm Water Management, Khyber Pakhtunkhwa.
6. The Secretary to Governor, Khyber Pakhtunkhwa.
7. The PSO to Chief Minister, Khyber Pakhtunkhwa.
8. The PSO to Chief Secretary, Khyber Pakhtunkhwa.
9. The PS to Additional Chief Secretary, FATA, Warsak Road, Peshawar.
10. The PS to Minister for Agriculture, Khyber Pakhtunkhwa.
11. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar. He is requested that printed (preferable gazette) copies of the notification as and when published may be furnished to this Department, E&A and Law Department along with details of gazette in which is published.
13. P.S to Secretary Agriculture.
14. P.A to Deputy Secretary-Admn: Agriculture Department.


(DAULAT KHAN)
 SECTION OFFICER-ESTT:

5



GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the April 22, 2015

NOTIFICATION.

NO. SOE (AD)3(3)5/2015/WM.- Mr. Muhammad Khurshid Afridi, Director HQ is hereby authorized to hold additional charge of the vacant post of Director General, On Farm Water Management, Khyber Pakhtunkhwa Peshawar in addition to his own duties, in the interest of public service with effect from 15/4/2015, till further orders.

2. He will also exercise all financial as well as administrative powers vested in Director General, On Farm Water Management, Khyber Pakhtunkhwa Peshawar.

Sd/-XX
SECRETARY AGRICULTURE

1. The Director General, OFWM, Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa Peshawar.
3. The Director HQ, OFWM, Khyber Pakhtunkhwa Peshawar.
4. PS to Minister Agriculture, Khyber Pakhtunkhwa.
5. PS to Secretary Agriculture, Khyber Pakhtunkhwa.
6. PS to Special Secretary, Agriculture.
7. PS to Additional Secretary, Agriculture.
8. PA to Deputy Secretary-Admn: Agriculture Department.
9. Officer concerned.

(Signature)
(DILAWAR KHAN)
SECTION OFFICER-ESTT:

ATTESTED

15/4/15
15
15/4/15



D (11)

Writ Petition No. 2094-P /2015

D. 194/16

Mr. Muhammad Bakhsh Malik,
C/O Allah Bakhsh Malik,
House No.3, Street E-1,
Khawaja Town, Pajaki Road,
Bashir Abad, Peshawar.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Agriculture, Livestock & Coop; Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary, Establishment Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. Mr. Muhammad Khurshid Afridi, Director HQ Office of the Director General, On-Farm Water Management, Peshawar. *opposite*
Islamia College Gate, Peshawar

RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF PAKISTAN TO THE EFFECT THAT THE ORDER DATED 22.4.2015 MAY BE DECLARED ILLEGAL, UNLAWFUL, UNCONSTITUTIONAL, VIOLATION OF NOTIFICATION DATED 29.4.2014, SECTION-9 OF KPK CIVIL SERVANTS ACT, 1973 READ WITH RULES-7 OF THE KPK APT RULES, 1989, WITH FURTHER DIRECTIONS TO THE RESPONDENTS TO ACT AS PER LAW AND RULES AND TO FILL THE POST OF DG, ON FARM WATER MANAGEMENT BY PROPER PSB'S RECOMMENDATIONS AND THE ORDER DATED 22.4.2015 MAY ALSO BE SET ASIDE.

FILED TODAY
Deputy Registrar
02 JUN 2015

ATTESTED

EXAMINER
Peshawar High Court

11 FEB 2016

ATTESTED

RESPECTFULLY SHEWETH:

12

Brief facts giving rise to present petition are as under:-

1. That the petitioner joined the Agriculture, Livestock Department in the year 1981 and with the passage of time the petitioner got promotion to BPS-19. The petitioner presently is on the top of seniority list at S.No.1. Copy of Seniority list is attached as Annexure-A.
2. That as per notification dated 29.4.2014, the post of DG On Farm Water Management (BPS-20 is to be filled in "by selection on merit from amongst the three senior most BPS-19 officers of On Farm Water Management with at least 5 year service in BPS-19 or 17 years service in BPS-17. There are no other methods prescribed in the said notification / rules for the filling of post of DG On farm Water Management. Copy of the Notification / Rules is attached as Annexure-B.
3. That the DG On Farm Water Management (Mr. Fazal Rabbi) stood retired on 15.4.2015 and now the post of DG On Farm Water Management is vacant which is to be filled in as per Notification / Rules dated 29.4.2014. Copy of Order is attached as Annexure-B).
4. That the respondent No.3 in utter violation of law and rules passed an order dated 22.4.2015 wherein a junior official of BPS-19 (respondent NO.5) has been given additional charge of the post with all financial and administrative powers. The senior most BPS-19 official has been made subordinate to a junior officer. Copy of Order is attached as Annexure-C.
5. That having no other appropriate remedy against such illegal and unlawful action of the respondents, the petitioner is constrained to file the present Writ Petition on the following grounds amongst others:

GROUND:

A)

That the order dated 22.4.2015 is against the law, rules norms of justice and fair play, without lawful authority, unlawful and against the service rights of the senior BPS-

FILED TODAY
Deputy Registrar
03 FEB 2016

ATTESTED

EXAMINER
Peshawar High Court

11 FEB 2016

ATTESTED

11 FEB 2016

19 officers including the petitioner. Therefore liable to be set aside.

13

- B) That the impugned order dated 22.4.2015 amounts to giving unlawful promotion to respondent No:1 without the recommendation of any DPC/PSB. Such action is not permissible under the relevant rules and law.
- C) That by passing such order, the senior most BPS-19 officer have been made subordinate to a junior BPS-19 officer, which not only causes heart burning and desperation amongst the senior officers, but the same is also against the principle of equity, fair play.
- D) That the impugned order dated 22.4.2015 is against the spirit of Section-9 of the KPK Civil Servant Act 1973 read with Rules -7 of the APT Rules, 1989 where in higher post is to be filled in after the recommendations of PSB/DPC but in the instant case no such DPC/PSB conducted nor there is any recommendation of PSB/DPC in this respect. Therefore, the impugned order is in total violation of law and not sustainable.
- E) That even such practice was condemned by the Hon'ble Supreme Court of Pakistan in the case of Qazi Abdul Karim, where after the control as well as Provincial Government issued various instructions and directed that in future higher posts should be filled in as provided in the rules, otherwise, the same would amounts to out of turn promotion in violation of law and rules. Copies of Circular are attached as Annexure-D and E.
- F) That the respondent are legally bound to conduct proper PSB to fill the post of Director General, On-Farm Water Management (BPS-20) rather to extend favour to blue eyed persons in an illegal manner. This aspect also proves that the respondents are not fulfilling their legal responsibility which are necessary under the law to do.
- G) That the impugned order dated 22.4.2015 is against the Articles 2-A, 4, 9, 25 of the Constitution.
- H) That the petitioner seeks permission to advance other grounds and proofs the time of hearing.

FILED TODAY
Deputy Registrar
02 JUN 2015

ATTESTED

ATTESTED

EXAMINER
Peshawar High Court

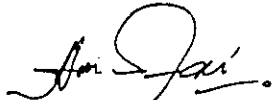
11 FEB 2016

(14)

It is, therefore, most humbly prayed that on acceptance of this Writ Petition, the order dated 22.4.2015 may be set aside by declaring the same as unlawful, without lawful authority, unconstitutional, violation of Notification / Rules, 29.4.2014 and Section-9 of KPK Civil Servants Act 1973 read with rules-7 of KPK APT Rules, 1989. The respondents may further please be directed to convene a PSB meeting forthwith for filling the post of Director General, On-Farm Water Management (BPS-20) rather to make senior officers subordinate to junior officer. Any other remedy which this august Court that may also be awarded in favour of the petitioner.

PETITIONER
Muhammad Bakhsh Malik

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

VERIFICATION:

It is verified that no other similar Writ Petition earlier has been filed between the present parties, except the present one.

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. KPK Civil Servants Act 1973.
3. APT Rules 1989
4. Any other case law as per need.

ATTESTED


ATTESTED

EXAMINER
Peshawar High Court

11 FEB 2016

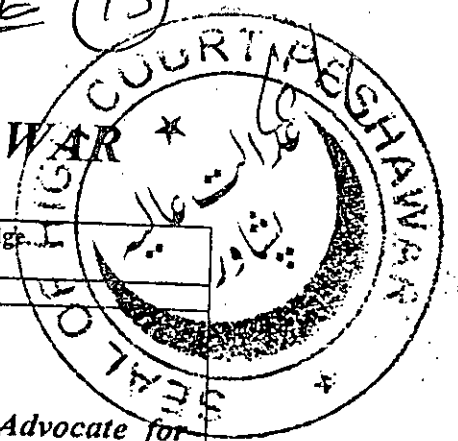
FILED TODAY

Deputy Registrar

02 JUN 2015

E 15

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET



Date of Order or Proceedings 1 Order of other Proceedings with Signature of Judge 2

28.01.2016 WP No. 2094-P/2015.

Present: Mr. Muhammad Asif Yousafzai, Advocate for the petitioner.

Mr. Muhammad Sohail AAG alongwith Syed Masood Shah S.O Litigation Agriculture Department.

QAISER RASHID KHAN, J. Having argued the matter at a considerable length, when the learned AAG came alongwith Syed Masood Shah S.O Litigation Agriculture Department, the learned counsel for the petitioner stated that he would be satisfied if directions are given to the respondents to complete the selection process for the post of Director General (BPS-20) within a span of two months. The learned AAG held out a commitment that the needful would be done positively within the said period.

Petition stands disposed of in the above terms.

Qaiser Rashid Khan J
Syed Masood Qaiser J

JUDGE

JUDGE

Qasem

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorised Under Act No. 1 of 1984
The Courts Act, 1984

11 FEB 2016

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

COC No.176-P/2016
in Writ Petition No.2094-P/2015(D)

JUDGMENT

Date of hearing.....16-06-2016.....

Petitioner(s) *(Muhamma d. Bakhsh Malik)* by *Mr Muhammad Asif Yousafzai, Advocate*
Respondent(s) *(Amjad Ali Khan)* by *Syed Masood Shah, AAG*
Mr Zahir Rehman Tajik, Advocate

YAHYA AFRIDI, J.- Through the instant petition,
Muhammad Bakhsh Malik, petitioner, seeks the
following prayer:-

"It is, therefore, most humbly prayed that the Contempt of Court proceedings may be initiated against the respondents for not obeying the Honourable Court's directions dated 28.1.2016. The respondent's further please be directed to complete the selection process for the post of Director General (BPS-20) as early as possible to meet the ends of justice. Any other remedy which this august Court deems fit and appropriate that may also be awarded in favour of the petitioner."

2. On 28.01.2016, this Court, while disposing of writ petition No.2094-P/2015 of the present petitioner, has passed the following order:-

"Having argued the matter at a considerable length, when the learned AAG came along with Syed Masood Shah S.O Litigation Agriculture Department

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ATTESTED
EXAMINER
Peshawar High Court
20 JUN 2016

ATTESTED

the learned counsel for the petitioner stated that he would be satisfied if directions are given to the respondents to complete the selection process for the post of Director General (BPS-20) within a span of two months. The learned AAG held out a commitment that the needful would be done positively within the said period.

Petition stands disposed of in the above terms."

3. The respondents were put to notice.

The worthy AAG alongwith the representative of the respondents stated that the case of the petitioner cannot be placed before the Promotion Board as undertaken before the Court as he was then on probation. It was further brought to the attention of the Court that the petitioner has now retired.

4. The position of the petitioner is rather precarious and requires some attention by the concerned authority in view of the undertaking rendered by the respondents and the worthy AAG before this Court.

5. The case of the petitioner be placed before the worthy Secretary Agriculture, Government of Khyber Pakhtunkhwa who is sympathetically review the matter and see what benefits can be granted to the petitioner. In case, the case of the petitioner cannot be considered positively, he is to give reason for the same in

ATTESTED

EXAMINER
Peshawar High Court

30 JUL 2016

ATTESTED

18

writing which shall be communicated to the petitioner so he may agitate the same before the appropriate legal forum. The needful be done in 60 days.

This petition is disposed of in the above terms.

Dt.16-06-2016.

sd/- Yaqub Aftab
sd/- Syed Aftab Aftab

E. Jant*

J
J

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY
Exhibit No. 1
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order No. 100
16 JUL 2016

1303 30-07-16

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1400 30-07-16
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Received By: [Signature]

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A

9 (19)

NO. 416 /D (HRD) WMTC Dated D.I.Khan the 17/06/2016

To

The Director General
On-Farm Water Management
Khyber Pakhtunkhwa, Peshawar

Subject: Appeal for proforma promotion to BPS-20

Memo,

I enclose herewith the appeal of Mr. Muhammad Bakhsh Malik EX-Director (HRD) On Farm Water Management Training Centre D.I.Khan which is self-explanatory in its contents for favour of information and further necessary action please.

Director (HRD)
Water Management
Training Centre D.I.Khan

CC:

Muhammad Bakhsh Malik EX-Director (HRD) Water Management Training Centre D.I.Khan.

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Director
Human Resource Development
On-Farm Water Management
Training Centre D.I.Khan

To

The Secretary Agriculture
Govt of Khyber Pakhtunkhwa
Peshawar

20

Through: **Proper Channel**
Subject: **Appeal for Proforma Promotion to BPS-20**

Respected Sir,

It is stated that I, Muhammad Bakhsh Malik, served as Director (HRD) BS-19 Water Management Training Centre D.I.Khan before my retirement on attaining the age of superannuation.

Upon the retirement of Haji Fazal e Rabi DG Water Management, I being the senior most officer of the Deptt had the right to be promoted as Director General but an officer on third position was given the additional charge of DG Water Management KPK Peshawar(**Annex A**).

It is further added that my promotion to BS-19 was not made in due course of time i.e 2011 while I was serving as EDO Agriculture. However, I was promoted on 14.10.2014 with one year probation period along with 10 other officers.

On completion of the probation period i.e 13.10.2015, I submitted a request for issuing the notification for termination of probation period. The case was processed but the Establishment Deptt: asked for Performance report of the probation period. Though Director General Water Management requested for satisfactory performance but they did not agree & stressed for evaluation reports (**Annex B**).

Consequently, performance reports for 2014 & then for 2015 were submitted. Although these reports were submitted in time but the Deptt: used the delaying tacts and the case was kept linger on (**Annex C**).

Meanwhile, I being the senior most officer of the Deptt:, challenged the additional charge of DG Water Management and submitted a writ petition in the Honorable High Court Peshawar, seeking the post of Director General BS-20. The Honorable Court asked the Govt to process the case within two month before the PSB for promotion to BS-20 (**Annex D**).

However, The Govt on one side used the delaying tacts for termination of probation period & on the other side taken the plea that until & unless the probation is terminated, the case for promotion may not be processed.

It is further added that I was fulfilling the requirement of promotion to BS-20 "With at least 5 year service in BS-19 or 17 year service in BS-17 and above" as per Govt service rule notification NO SO (AD) 2(2)429/2011 dated 29.4.2014. The probation period in BS-19 was also satisfactorily completed on 13.10.2015 (**Annex E**).


I have been retired from my service on 14.6.2016 and Govt has not shown any interest in my promotion. This unjust disgraced my dignity and made me mentally tensed.

ATTESTED
to

(2)

As the Govt deprived me from the honor of DG post as well as financial loss of BS-20, hence it is requested that I may please be granted a proforma promotion to BS-20 to overcome the financial loss and mitigate mental stress.

Your's sincerely,


(MUHAMMAD BAKHSH MALIK)
EX-Director (HRD)
Water Management
Training Centre D.I.Khan

ATTESTED



H 22



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

NO.SOE(AD)20-77/2011
Dated Peshawar, the October 17, 2016

To

Muhammad Bakhsh Malik,
Ex-Director (HRD) OFWM,
Training Center, DIKhan

SUBJECT:- COC NO.176-P/2016 IN WRIT PETITION NO.2094-P/2015
MUHAMMAD BAKHSH MALIK VS GOVERNMENT OF KHYBER
PAKHTUNKHWA AGRICULTURE DEPARTMENT

I am directed to the subject noted above and to enclose herewith copy of Government of Khyber Pakhtunkhwa, Establishment Department letter No.SOR.III(E&AD)1-2/2014(Vol-VIX) dated 19/9/2016 which is self-explicit for information.

Encl: As Above

(Dr.Mir Ahmad Khan)
SECTION OFFICER-ESTT:

Endst. of even No. & Date.

1. DG OFWM, Khyber Pakhtunkhwa Peshawar w/r to his letter No.3210 dated 12/7/2016 for information.
2. P.S to Secretary Agriculture department.

SECTION OFFICER-ESTT:

No. 1005 1D(HRD) dlu 24/11 2016

Copy to
Mr Muhammad Bakhsh Malik Ex-Director
(HRD) OFWM (TC) DIKhan for information.

ATTESTED
★

[Handwritten Signature]

Director
Human Resource Development
On-Farm Water Management
Training Centre D.I.Khan

(23)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NO. SOR.III (E&AD)1-2/2014(Vol-VIX)
Dated Peshawar the 19th September 2016

To

The Secretary Govt. of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperative Department

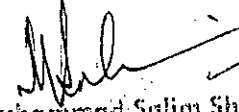
Subject: - COC NO. 176-P/2016 IN WRIT PETITION NO. 2094-P/2015 MUHAMMAD
BAKHS MALIK-VS-GOVT. OF KHYBER PAKHTUNKHWA AGRICULTURE
DEPARTMENT P-225/L

Dear Sir,

I am directed to refer to the Agriculture Department letter NO.SOE (AD) 20-77/2011 dated 8th September 2016 on the subject cited above and to say that the Peshawar High Court, Peshawar Judgment dated 16.06.2016 has given mandate to the Secretary Agriculture to see the case sympathetically, review the matter that what benefits can be granted to him. However, it is quite clear that the officer was under probation in (BS-19) and during the period of probation no civil servant is eligible for promotion to higher post in terms of Para-IV (f) of Promotion Policy 2008.

Yours faithfully,

ATTESTED
★


(Muhammad Salim Shah)
SECTION OFFICER(R-III)
Phone # 9211793

19/9/16

I (24)
2015

**DIRECTORATE GENERAL ON FARM WATER MANAGEMENT
KHYBER PAKHTUNKHWA, PESHAWAR**

No. 5840 /DG/OFWM dated Peshawar the, 1/10 /2015.
To,

The Section Officer (Estt:)
Govt. of Khyber Pakhtunkhwa
Agriculture, L/Stock & Coop: Department
Peshawar

Subject: - **ISSUANCE OF NOTIFICATION FOR TERMINATION OF PROBATION PERIOD
IN BS-19**

Memo,

The following officers of On Farm Water Management department were promoted from BS-18 to BS-19 on regular basis vide Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department Notification No. SOE(AD)V-7/2011 dated 14-10-2014 (Annex-A), the officers were on probation for a period of one year with effect from 14-10-2014 to 13-10-2015.

1. Malik Muhammad Bakhsh
2. Mr. Muhammad Ismail Khan
3. Mr. Muhammad Khurshid Afridi
4. Sahibzada Alamgir
5. Mr. Sherzada
6. Mr. Shamshad Hussain
7. Mr. Muhammad Azeem
8. Mr. Allah Bakhsh Malik
9. Mr. Muhammad Afzal
10. Mr. Behram Jan

The above named officers have almost successfully completed their probation period in ES 19.

It is therefore, requested that termination of probation period in respect of the above named officers may please be notified by specific order of the competent authority.

ATTESTED
*

M. Afzal
Director General
On Farm Water Management
Khyber Pakhtunkhwa, Peshawar

J (25)



GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE DEPARTMENT

NO.SOE(AD)V-7/2014
Dated Peshawar, the 21-10-2015

To

The Director General,
On-Farm Water Management,
Khyber Pakhtunkhwa, Peshawar.

SUBJECT:- ISSUANCE OF NOTIFICATION FOR TERMINATION OF PROBATION PERIOD.

I am directed to refer to your memo: No. 5840 dated 1/10/2015 on the subject cited above and to state that, Termination of probation is processed to the competent authority (appointing authority) on the basis of the performance and conduct reports of the employees given by the controlling officers.

2. You are, therefore, requested to submit performance evaluation reports of the officers and also a report of their conduct during the year after promotion to proceed further in the matter.

SECTION OFFICER-ESTT:

CC:-

PS to Secretary Agriculture.

Received on dt 27/10/2015 1

A O for matters
[Signature]

27/10/2015

SECTION OFFICER-ESTT:

ATTESTED
[Signature]

K (26)

**DIRECTORATE GENERAL ON FARM WATER MANAGEMENT
KHYBER PAKHTUNKHWA, PESHAWAR**

No. 6160 /DG/OFWM Dated Peshawar the 29/10 /2015

To

The Section Officer (Estt)
Govt. of Khyber Pakhtunkhwa
Agriculture, Livestock & Cooperatives Department
Peshawar

Subject: ISSUENCE OF NOTIFICATION FOR TERMINATION OF PROBATION

Memo:

Kindly refer to your letter No. SOE(AD)V-7/2-14 dated 21.10.2015 on the subject cited above and to submit that all the officers were promoted through a single notification No. SOE(AD)V-7/2011 dated 14.10.2015 and due to sort period, the officers have not earned any PER during their probation period.

It is further submitted that all the officers including the undersigned have achieved the set targets / assignments well in time and their performance and conduct remained satisfactory. Due to the extraordinary efforts and dedication of the officers, the department not only achieved rather exceeded the set targets within the stipulated time period. Moreover, no complaint has so far been received / observed against any of the officer during the probation period.

It is therefore requested that upon successful completion of their probation period, probation termination case may please be processed on merit in the public interest.

ATTESTED
★

[Signature]
Director General

...

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Muhammad Bakhsh Malik. (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt. of KPK. (Respondent)
(Defendant)

I/We, Muhammad Bakhsh Malik.

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

M. Asif Yousafzai
(CLIENT)

ACCEPTED

M. Asif Yousafzai

M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.

Taimur Ali Khan
Advocate

Syed Nauman Ali Bukhari
Advocate

OFFICE:
Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

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BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 1254/2016

Mr. Muhammad Bakhsh Malik

APPELLANT

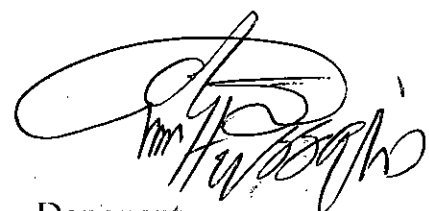
VERSUS

1. Secretary,
Government of Khyber Pakhtunkhwa,
Agriculture, Livestock & Coop: Deptt:
Peshawar
2. Chief Secretary,
Govt. of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar
3. Secretary Agriculture, Livestock & Coop: Deptt:
Civil Secretariat, Peshawar
4. The Secretary Establishment Department,
Govt. of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar

RESPONDENTS

INDEX

S.No.	Description of Documents	Annexure	Page
	Comments	-	1-3
	Affidavit	-	4
1	Retirement Notification dated 14-6-2016	A	5
2	Service Rules of OFWM Department	B	6-7
3	Order dated 22-04-2015	C	8
4	Seniority List	D	9-10
5	Notification No. dated 17-10-2016	E	11-12
6	Order dated 13-06-2016	F	13



Deponent

Director General,
Farm Water Management,
Khyber Pakhtunkhwa, Peshawar.

(1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. 1254/2016

Mr. Muhammad Bakhsh Malik
C/O Allah Bakhsh Malik,
House No. 3, Street E-I,
/Khawaha Town, Pajaki Road,
Bashir Abad, Peshawar

.....PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Agriculture, Livestock & Coop: Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary, Establishment Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

.....RESPONDENTS

Reply/Comments on behalf of Respondents

Preliminary objection

1. That the appellant has no cause of action.
2. That the appellant has no locus standi to file the appeal.
3. This Tribunal has no jurisdiction to entertain the appeal.
4. The appeal is bared by time.
5. That the appeal is liable to be dismissed on the ground of non joinder and misjoinder of unnecessary parties.
6. That the appeal is not maintainable in its present form.

Respectfully Sheweth

1. Correct to the extent that the appellant joined the Agriculture department in the year 1981 and with the passage of time got promotion to BS-19 and retired from service on 14-06-2016 on attaining the age of superannuation (copy of retirement notification attached Annex-A).
2. Correct to the extent that as per existing service rules of the department, the method of recruitment to the post of Director General (BS-20) On Farm Water Management is prescribed as **"By selection on merit from amongst the three senior most BPS-19 officers of On Farm Water Management with at least five years service in BPS-19 or seventeen years in BPS-17 and above"** (Annex-B).

(2)

3. Incorrect, the order dated 22-04-2015: vide which Mr. Muhammad Khurshid Afridi Director HQ was authorized to hold the additional charge of the vacant post of the Director General On Farm Water Management Khyber Pakhtunkhwa Peshawar is according to law and rules as the authorized officer is equally eligible like the appellant and in line for selection on merit for the post of Director General OFWM and it not made the appellant subordinate to a junior officer as per existing service rules of the department explained in Para-2 above (copy of order and seniority list attached Annex-C&D).
4. Pertains to record hence need no comments.
5. In light of the direction dated 16-06-2016 of Honourable Peshawar High Court Peshawar, the promotion case of the appellant was reviewed by the competent authority and reject the same due to the reason that "as the officer was under probation in BS-19 and during the period of probation no civil servant is eligible for promotion to higher post in terms of Para-IV (f) of Promotion Policy 2009". The decision of the competent authority was communicated to the appellant vide letter No. SOE(AD)20-77/2011 dated 17/10/2016 (Annex-E).
6. As explained in Para-5 above.
7. No comments.


- 10/11/2014
2014, 22-4-
2015
24.08.16


Grounds

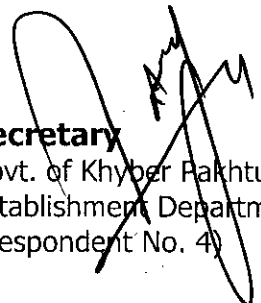
- A. In correct, the order dated 19-09-2016 is according to law, rules and not against the service rights of the appellant as the officer was on probation and retired from service on 14-06-2016.
- B. The plea of the appellant that respondents intentionally delayed the process of termination of probation is not based on facts and out of place as the competent authority in time passed the order regarding the matter (copy of order dated 13-06-2016 attached Annex-F).
- C. The plea of the appellant is incorrect as the concerned authorities in time performed their duties.
- D. The plea of the appellant that the respondents have not fulfilled their legal duties is not based on facts as the concerned authorities in time performed their duties as explained in Para-B above.
- E. Incorrect, the act of respondents were according to law, rules and materials on record.
- F. Incorrect, the appellant is not entitled to his claim in light of the explanation given in Para-5 above.
- G. Incorrect, the appellant is treated as per law, rules and not discriminated in any way.

- H. Incorrect, the order dated 19-09-2016 is a speaking order as the competent authority has considered all the aspects of the case in light of the promotion policy of the government.
- I. The order dated 22-04-2015 is not in violation of law and rules as the officer who was authorized to hold the additional charge of the vacant post of the DG OFWM is in line for selection on merit to the post of DG OFWM as per rules.
- J. The appellant along with other officers were on probation, therefore, the plea of the appellant that the respondents are legally bound to conduct proper PSB to fill the post of Director General OFWM BS-20 is out of place.
- K. Needs no comments.
- L. The order of the competent authority is according to law, rules and policy of the government.
- M. That Respondents also seek permission of this Tribunal to advance further grounds during arguments.

In light of the above facts, it is prayed that appeal of the appellant may please be dismissed with cost.


Chief Secretary
Government of Khyber Pakhtunkhwa
Peshawar
(Respondent No. 2)


Secretary,
Government of Khyber Pakhtunkhwa
Agriculture, Livestock & Coop: Deptt:
Peshawar
(Respondent No. 3)


Secretary
Govt. of Khyber Pakhtunkhwa
Establishment Department Peshawar
(Respondent No. 4)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR (4)

Appeal No. 1254/2016

Mr. Muhammad Bakhsh Malik

APPELLANT

VERSUS

1. Secretary,
Government of Khyber Pakhtunkhwa,
Agriculture, Livestock & Coop: Deptt:
Peshawar
2. Chief Secretary,
Govt. of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar
3. Secretary Agriculture, Livestock & Coop: Deptt:
Civil Secretariat, Peshawar
4. The Secretary Establishment Department,
Govt. of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar

RESPONDENTS

AFFIDAVIT

I Mr. Shamshad Hussain Director General On farm Water Management Khyber Pakhtunkhwa, Peshawar do hereby solemnly declare and affirm that the respondents have not suppressed the facts and actual position of the case from this Tribunal. The Parawsie comments submitted by the respondents are true and correct according to my knowledge, belief and nothing has been concealed from this Tribunal.



Deponent

NIC No. 15306-2010980-7



GOVERNMENT OF KHYBER PAKHTUNKHWA
DEPARTMENT OF LIVESTOCK & COOPERATIVE
DEVELOPMENT

(5)

Dated Peshawar, the 26th, 2016

NOTIFICATION

NO. JOE/AD/20-77/2016/WM:- In terms of Rule-23 of the Khyber Pakhtunkhwa Civil Servant Revised Leave Rules 1981 as amended with Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) notification No. SO(FR)S-92/2005/Vol.V dated 12-12-2012, sanction is hereby accorded to the encashment of leave equal to 365-days pay in lieu of leave unavailed at Retirement in favour of Mr. Muhammad Bashir Malik Director HRD (S-19), Dr. Farid Water Management Training Center, D.I.Khan

In terms of section-13 of the Khyber Pakhtunkhwa Civil Servants Act 1974 the officer has been relieved from service with effect from 14-05-2016 (A.N) on attaining the age of superannuation.

Sd/-X
SECRETARY AGRICULTURE

Dist. Peshawar, 26/5/2016

For information of the Secretary Agriculture:-

- 1) For the D.O, P.W.D., Khyber Pakhtunkhwa, Peshawar with his letter No. 240 dated 26/5/2016.
- 2) For the Director, Agriculture, D.I.Khan
- 3) For the concerned.
- 4) For the Secretary Agriculture, Peshawar.
- 5) Office concerned.
- 6) Master file.

AD: Engr. P. A. / 21 /

Dr. Amir Ahmad Khan
SECRETARY AGRICULTURE

330
2016/05/26



GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Peshawar, dated the April 29, 2014

Annex-11

B (6)

NOTIFICATION

No. SOE(AD)2(2)429/2011.- In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all notifications issued in this behalf, the Agriculture, Livestock and Cooperation Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualifications and other conditions specified in column 3 to 5 of the appendix to this Notification, which shall be applicable to the posts mentioned in column 2 of the said Appendix in the On Farm Water Management Wing of the Agriculture Department.

S. #	Nomenclature	Minimum Qualification for Initial Recruitment	Age for Initial Recruitment	Method of Recruitment
1	2	3	4	5
1	Director General On Farm Water Management (BPS-20)			By selection on merit from amongst the three senior most BPS-19 officers of On Farm Water Management with at least five years service in BPS-19 or seventeen years service in BPS-17 and above.
2	Director/ District Director (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy Director & District Officers with seven years service as such or at least twelve years service in BPS-17 and above in On Farm Water Management.
3	Deputy Director/ District Officer (BPS-18)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Directors & Water Management Officers with at least five years service as such.
4	Assistant Director/ Water Management Officer (BPS-17)	i). At least 2 nd class B.Sc Agriculture Engineering Degree from a recognized university or ii) at least 2 nd class B.Sc (Hons) Agriculture Degree with specialization in Water Management or Water Resource Management, from a recognized university	21-32 ears	(a) Twenty percent by promotion on the basis of seniority-cum-fitness, from amongst the Sub Engineers with at least ten (10) years service as such; and (b) eight percent by initial recruitment.

(1)

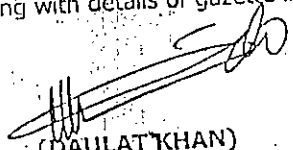
77 (2)

		(ii) With two years experience in Tractor driving, having a valid tractor driving license.		
21	Vehicle Driver (BPS-04)	At least Middle in 2 nd division	18-40 years	By Initial recruitment
25	Daftari (BPS-02)	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the Naib Qasid, Rodman, Helper, Tractor Cleaner, Chowkidar & Mali having Secondary School Certificate with five years service as such
26	Naib Qasid (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
27	Rodman (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
28	Helper (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
29	Tractor Cleaner (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
30	Chowkidar (BPS-01)	At least Middle in 2 nd division	18-30 years	By Initial recruitment
31	Mali (BPS-01)	Literate	18-30 years	By Initial recruitment
32	Sweeper (BPS-01)	Literate	18-30 years	By Initial recruitment

SD/-
**SECRETARY TO
 GOVERNMENT OF KHYBER PAKHTUNKHWA,
 AGRICULTURE LIVESTOCK AND COOPERATIVE
 DEPARTMENT**

Copy forwarded for information and necessary action to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa Law Department.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Director General, On Farm Water Management, Khyber Pakhtunkhwa.
6. The Secretary to Governor, Khyber Pakhtunkhwa.
7. The PSO to Chief Minister, Khyber Pakhtunkhwa.
8. The PSO to Chief Secretary, Khyber Pakhtunkhwa.
9. The PS to Additional Chief Secretary, FATA, Warsak Road, Peshawar.
10. The PS to Minister for Agriculture, Khyber Pakhtunkhwa.
11. The Manager Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar. He is requested that printed (preferable gazette) copies of the notification as and when published may be furnished to this Department, E&A and Law Department along with details of gazette in which is published.
12. P.S to Secretary Agriculture.
13. P.A to Deputy Secretary-Admin: Agriculture Department.


(DAULAT KHAN)
 SECTION OFFICER-ESTT:



GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the April 22, 2015

NOTIFICATION.

NO. SOE (AD)3(3)5/2015/WM.-

Mr. Muhammad Khurshid Afridi, Director HQ is hereby authorized to hold additional charge of the vacant post of Director General, On Farm Water Management, Khyber Pakhtunkhwa Peshawar in addition to his own duties, in the interest of public service with effect from 15/4/2015, till further orders.

2. He will also exercise all financial as well as administrative powers vested in Director General, On Farm Water Management, Khyber Pakhtunkhwa Peshawar.

Sd/-XX
SECRETARY AGRICULTURE

1. The Director General, OFWM, Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa Peshawar.
3. The Director HQ, OFWM, Khyber Pakhtunkhwa Peshawar.
4. PS to Minister Agriculture, Khyber Pakhtunkhwa.
5. PS to Secretary Agriculture, Khyber Pakhtunkhwa.
6. PS to Special Secretary, Agriculture.
7. PS to Additional Secretary, Agriculture.
8. PA to Deputy Secretary-Admn: Agriculture Department.
9. Officer concerned.

(DILAWAR KHAN)
SECTION OFFICER-ESTD:

15/4/15
15/4/15
15/4/15

DIRECTORATE GENERAL ON FARM WATER MANAGEMENT KHYBER PAKHTUNKHWA PESHAWAR
SENIORITY LIST OF BS-19 OFFICERS (as stood on 15-04-2015)

1	Name of officer with academic qualification	Date of Birth and domicile	Date of 1st entry into Govt. Service	Regular appointment/promotion to the present post			Present posting	Date of Retirement
				Date	BPS	Methods of recruitment		
1	2	3	4	5	6	7	8	9
1	Muhammad Bakhsh Malik M.Sc.(Hons) Agriculture	15/6/1956 Dikhan	07/03/1981	14/10/2014	19	By Promotion	Director HRD (BS-19) OFWM Training Centre Dikhan	14-06-2016
2	Muhammad Ismail M.Sc.(Hons) Agriculture	28/10/1958 Bannu	05/09/1983	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Lakki Marwat	27-10-2018
3	Muhammad Khurshid Afridi B.Sc. Agriculture Engineering	1/5/1960 Khyber Agency	25/08/1986	14/10/2014	19	By Promotion	Director HQ (BS-19) o/o DG OFWM Khyber Pakhtunkhwa Peshawar	30-04-2020
4	Sahibzada Alamgir B.Sc. Agriculture Engineering	27/3/1959 Swabi	26/08/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Peshawar	26-03-2019
5	Mr. Sherzada M.Sc.(Hons) Agriculture	19/12/1960 Malakand Agency	26/08/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Swat	18-12-2020
6	Mr. Shamshad Hussain B.Sc. Agriculture Engineering	3/5/1959 Nowshera	27/8/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Mansehra	2/5/2019
7	Muhammad Azeem B.Sc. Agriculture Engineering	2/8/1959 Peshawar	27/08/1986	14/10/2014	19	By Promotion	Director Planning (BS-19) o/o DG OFWM Khyber Pakhtunkhwa Peshawar	1/8/2019

S.No	Name of officer with academic qualification	Date of Birth and domicile	Date of 1st entry into Govt. Service	Regular appointment/promotion to the present post			Present posting	Date of Retirement
				Date	BPS	Methods of recruitment		
8	Dr. Allah Bakhsh Malak Ph.D Agriculture (United Kingdom)	24/4/1961 D.I.Khan	27/08/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM D.I.Khan	23-04-2021
9	Mr. Muhammad Afzal B.Sc. Agriculture Engineering	1/1/1963 Mansehra	27/08/1986	14/10/2014	19	By Promotion	District Director (BS-19) OFWM Haripur	31-12-2022
10	Mr. Behram Jan M.Sc. Agriculture Engineering	8/8/1961 Karak	30/08/1986	14/10/2014	19	By Promotion	Director Field Operation (BS-19) o/o DG OFWM Khyber Pakhtunkhwa Peshawar	7/3/2021

H (62)
(11)



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

NO.SOE(AD)20-77/2011
Dated Peshawar, the October 17, 2016

To.

Muhammad Bakhsh Malik,
Ex-Director (HRD) OFWM,
Training Center, DIKhan

SUBJECT:- COC NO.176-P/2016 IN WRIT PETITION NO.2094-P/2015
MUHAMMAD BAKHSH MALIK VS GOVERNMENT OF KHYBER
PAKHTUNKHWA AGRICULTURE DEPARTMENT

I am directed to the subject noted above and to enclose herewith copy of
Government of Khyber Pakhtunkhwa, Establishment Department letter
No.SOR.III(E&AD)1-2/2014(Vol-VIX) dated 19/9/2016 which is self-explicit for
information.

Encl: As Above

(Dr. Mir Ahmad Khan)
SECTION OFFICER-ESTT

Enclst. of even No. & Date.

1. DG OFWM, Khyber Pakhtunkhwa Peshawar w/r to his letter No.3210 dated 12/7/2016 for information.
2. P.S to Secretary Agriculture department.

SECTION OFFICER-ESTT

No. 1025 1D (HRD) dtu 24/11 2016
Copy to: Mr. Muhammad Bakhsh Malik Ex-Director
(HRD) OFWM (TC) DIKhan for information

Director
Human Resource Development
On-Farm Water Management
Training Centre

(23)

L12)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

NO. SOR.III (E&AD)1-2/2014(Vol-VIX)
Dated Peshawar the 19th September 2016



To

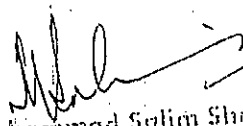
The Secretary Govt. of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperative Department

Subject: - COC NO. 176-P/2016 IN WRIT PETITION NO. 2094-P/2015 MUHAMMAD
BAKISH MALIK-VS.GOV. OF KHYBER PAKHTUNKHWA AGRICULTURE
DEPARTMENT P-225/

Dear Sir,

I am directed to refer to the Agriculture Department letter NO.SOE (AD) 20-77/2011 dated 8th September 2016 on the subject cited above and to say that the Peshawar High Court, Peshawar Judgment dated 16.06.2016 has given mandate to the Secretary Agriculture to see the case sympathetically, review the matter that what benefits can be granted to him. However, it is quite clear that the officer was under probation in (BS-19) and during the period of probation no civil servant is eligible for promotion to higher post in terms of Para-IV (f) of Promotion Policy 2008.

Yours faithfully,


(Muhammad Salim Shah)
SECTION OFFICER(R-III)
Phone # 9211793
19/9/16



(13)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK & COOPERATIVES
DEPARTMENT**

No. SOE (AD) VI-106/2016
Dated Peshawar the 13th June, 2016

To:

The Director General,
On Farm Water Management, Khyber Pakhtunkhwa.

Subject: **TERMINATION OF PROBATION IN RESPECT OF THE PROMOTED OFFICERS OF BS-19.**

I am directed to refer to your letter No. dated on the above cited subject and to state that in terms of Rule-15 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1939, the probation period should be terminated through specific orders of the competent authority within the period of two months of the completion of the first year of probation otherwise, it is automatically extended to the second year. As the probation period of the 10 promotees, promoted on 14/10/2014 could not be terminated within a period of two months on completion of the first year of probation due to nonavailability of their performance/ conduct reports, so their probation stands automatically extended to the second year.

Endst.No. & date even:

SECTION OFFICER (ESTT.)

Copy forwarded to:

1. Registrar Peshawar High Court Peshawar for information in reference to the COC NO.176-P/2016 in WP No20945-P/2015.
2. Section Officer (Li) for information please.
3. PS to Secretary Agriculture Livestock & Cooperatives Department.
4. Master file.

A.O. for me
[Signature]
14/6/2016

SECTION OFFICER (ESTT.)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1254/2016

Muhammad Bakhsh Malik

VS

Govt: of KPK.

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct. Hence no comments.
2. Admitted correct. Hence no comments.
3. Incorrect. While para 3 of the appeal is correct.
4. Not specifically denied by the respondent which means that para 1 of the appeal is correct.
5. Incorrect. The concerned authority in time had written for termination of probation to the competent authority but despite that no proper orders were passed and the matter was delayed by the concerned authority for which the appellant cannot be punished. Moreover Khurshid Afridi has given additional charge of the post with all financial and administrative powers who was junior to and was promoted to BS-19 in the same order.
6. Not replied according to para 6 of the appeal. Moreover para 6 of the appeal is correct.
7. No comments, endorsed by the department that para 7 of the appeal is correct.

GROUND:

- A) Incorrect. The order dated 19.9.2016 is not according to law, rules and against the service rights of the appellant. Therefore the order is liable to be set aside.
- B) Incorrect. While para B of the appeal is correct.
- C) Incorrect. The plea of the appellant is correct as the concerned authorities did not perform their duties and delayed the due right of promotion of the appellant for no fault on his part.
- D) Incorrect. While para D of the appeal is correct.
- E) Incorrect. The acts of the respondents were not according to law, rules and material on record because they want to give benefits to their blue eyed persons and to knockout the appellant on technicalities.
- F) Incorrect. While para F of the appeal is correct.
- G) Incorrect. While para G of the appeal is correct.
- H) Incorrect. While para H of the appeal is correct.
- I) Incorrect. The appellant was senior to officer ~~et~~ who has given additional charge of the vacant post of DG OFWM, which means that junior to the appellant has given promotion and the appellant was deprived from his due right of promotion in arbitrary manner such acts of the department were condemned by the Apex Court of Pakistan in the case of Qazi Abdul Karim.
- J) Incorrect. The concerned authority in time had written for termination of probation to the competent authority but despite that no proper orders were passed and the matter was delayed by the concerned authority for which the appellant cannot be punished. Moreover Khurshid Afridi has given additional charge of the post with all financial and administrative powers who was junior to and was promoted to BS-19 in the same order.
- K) No comments, endorsed by the department that para K of the appeal is correct.
- L) Incorrect. While para L of the appeal is correct.
- M) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,

&


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT

~~ATTESTED~~

~~Oath Commission
Zahoor ul Haque
Distt. Courts~~

~~9 AUG 2017~~

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1254/2016

Muhammad Bakhsh Malik

VS

Govt: of KPK.

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct. Hence no comments.
2. Admitted correct. Hence no comments.
3. Incorrect. While para 3 of the appeal is correct.
4. Not specifically denied by the respondent which means that para 1 of the appeal is correct.
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6. Not replied according to para 6 of the appeal. Moreover para 6 of the appeal is correct.
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GROUND:

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- B) Incorrect. While para B of the appeal is correct.
- C) Incorrect. The plea of the appellant is correct as the concerned authorities did not perform their duties and delayed the due right of promotion of the appellant for no fault on his part.
- D) Incorrect. While para D of the appeal is correct.
- E) Incorrect. The act of the respondents were not according to law, rules and material on record because they want to give benefits to their blue eyed persons and to knockout the appellant on technicalities.
- F) Incorrect. While para F of the appeal is correct.
- G) Incorrect. While para G of the appeal is correct.
- H) Incorrect. While para H of the appeal is correct.
- I) Incorrect. The appellant was senior to officer ~~et~~ who has given additional charge of the vacant post of DG OFWM, which means that junior to the appellant has given promotion and the appellant was deprived from his due right of promotion in arbitrary manner such acts of the department was condemned by the Apex Court of Pakistan in the case of Qazi Abdul Karim.
- J) Incorrect. The concerned authority in time had written for termination of probation to the competent authority but despite that no proper orders were passed and the matter was delayed by the concerned authority for which the appellant cannot be punished. Moreover Khurshid Afridi has given additional charge of the post with all financial and administrative powers who was junior to and was promoted to BS-19 in the same order.
- K) No comments, endorsed by the department that para K of the appeal is correct.
- L) Incorrect. While para L of the appeal is correct.
- M) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,

&

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

DEPONENT

Before the KOP Service Tribunal, Feshawo -
Appeal No 1254/2016.

Muhammad Baksh Malik

vs

Agriculture Dept

Subject Application for adjournment in above captioned
Appeal No 1254/2016.

Respectfully sheweth:

1. That the above mentioned appeal is fixed for Arguments on today.
2. That the Counsel for the appellant move to his native village and cannot attend the Court.
3. That due to above mentioned reasons the case might be adjourned.

It is therefore most humbly Requested on acceptance of this application, the appeal may be adjourned.

Appellant.

Muhammad Baksh Malik.

By _____ at

Date. 2-8-19.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.



APPEAL NO. 485/2016

**N.W.F. Province
Service Tribunal**

Diary No 481

Dated 26-4-2016

Muhammad Bakhsh Malik,
C/O Allah Bakhsh Malik,
House No 3, street E-1, Khawaja Town, Pajaki Road,
Bashir Abad, Peshawar.

(APPELLANT)

VERSUS

Chief

1. The Govt: of KPK, Through Secretary, Govt: of KPK, Civil Secretariat, Peshawar.
2. The Chief Secretary, Govt: of KPK, Civil Secretariat, Peshawar.
3. The Secretary Agriculture, Livestock & Coop; Department Govt: of KPK, Civil Secretariat, Peshawar.


(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 25.03.2016 COMMUNICATED TO THE APPELLANT ON 01.04.2016. WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR ANTI-DATED PROMOTION ON REGULAR BASIS W.E.FROM 12.12.2011 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENT MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR ANTI-DATE PROMOTION W.E.FROM 12.12.2011, WHEN HIS JUNIORS WERE GIVEN PROMOTION OR FROM ANY OF THE DUE DATE AS SPECIFIED BY AUGUST TRIBUNAL WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED


Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Filed to-day
[Signature]
24/4/16

submitted to-day
filed:
[Signature]
10/5/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No: 485/2016

Date of Institution ... 26.04.2016

Date of Decision ... 15.03.2019



Muhammad Bakhsh Malik, C/O Allah Bakhsh Malik, House No.3, street E-1,
Khawaja Town, Pajagi Road, Bashirabad, Peshawar. ... (Appellant)

VERSUS

The Govt: of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,
Peshawar and two others. ... (Respondents)

MR. M. ASIF YOUSAFZAI,
Advocate

--- For appellant.

MR. MUHAMMAD JAN
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER(Executive)
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

2. Learned Counsel for the appellant argued that he joined the Agriculture Department in 1981. In the seniority list notified on 30.04.2014, his name was reflected at sr. no.1. While serving in BPS- 18 the appellant was placed under suspension on 01.7.2011. Due to pending disciplinary proceedings juniors to the appellant were promoted to BPS-19 on 12.12.2011, whereas his case was deferred. After winding up of departmental proceedings penalty of withholding of promotion for one year was awarded vide order dated 26.09.2012. After exhausting departmental remedies, he filed service appeal no 519/2013 and the Tribunal in its

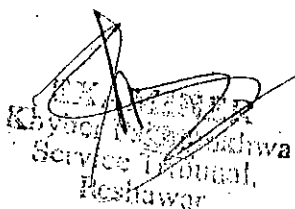
ATTESTED

Signature of the official attesting the document.

judgment dated 02.06.2014 remitted the case to the respondents to pass speaking order on his departmental appeal. Subsequently, the appellant was promoted to BPS-19 vide notification dated 14.10.2014. He filed a departmental appeal on 5.11.2014 but the same failed to evoke any response from the respondents. It was followed by a writ petition no. 1942-P/2015 filed in the Peshawar High Court, Peshawar, which was decided vide order dated 15.9.2015. The respondents were directed to decide his departmental appeal in accordance with law, which was rejected on 25.3.2016, hence, the present service appeal. The appellant was deprived of promotion from the date on which his juniors were promoted without any justification as the appellant has retired from service, so it will have serious repercussions on his pension/allied benefits. No speaking order was passed on his departmental appeal and provisions of section 24-A of General Clauses Act 1897 was violated. Since appeal no. 1084/2015 filed by the appellant on 21.09.2015 was accepted by this Tribunal vide judgment dated 14.12.2018.

3. On the other hand learned Deputy District Attorney argued that the promotion of the appellant was deferred due to an inquiry pending against him. He was granted promotion to BPS-19 vide notification dated 14.10.2014. His request for grant of antedated promotion being not covered under the rules was regretted by the respondents vide order dated 27.8.2015. He stood retired from government service vide order dated 14.6.2016 and his case for antedation of promotion cannot be considered at this stage.

ATTESTED



 Khayal Ahmad
 Service Tribunal,
 Peshawar

CONCLUSION

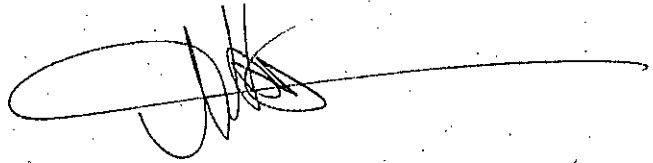
4. It is not disputed that the appellant an officer of BPS-18 was serving under the administrative control of the respondents. On certain allegations leveled against him, disciplinary proceedings were conducted and thereafter penalty of withholding of promotion for one year was imposed on him vide order dated 26.9.2012. On the other hand a case of promotion of BPS-18 officers of On Form Water Management Wing to the post of Executive District Officer BPS-19 was processed. As the appellant was under suspension, hence, his case for promotion was deferred. Three officers junior to the appellant were promoted vide order dated 12.12.2011. For the redressal of his grievances, he invoked the jurisdiction of this Tribunal by way of filing service appeal which was remitted to the respondents for disposal vide order dated 02.06.2014. Later on he got promotion to BPS-19 vide notification dated 14.10.2014. Thereafter, he knocked the door of Peshawar High Court, Peshawar by way of filing writ petition. It was decided vide order dated 15.09.2015. After rejection of departmental appeal, he filed the present service appeal.

5. Previously service appeal no. 1084 was filed by the appellant in this Tribunal. Through the said appeal he had challenged order dated 26.09.2012 whereby penalty of withholding of promotion for one year was imposed on him. This Tribunal vide judgment dated 14.12.2018 accepted the appeal and the said order was set aside. The order through which the appellant was penalized lost its utility. The cause of deferment of his promotion to BPS-19 is no more in the field. He deserves to be promoted to BPS-19 from the date his juniors were promoted.

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

6. As a sequel to above, the appeal is accepted and impugned order dated 25.03.2016 is set aside. Parties are left to bear their own costs. File be consigned to the record room.

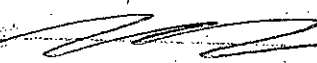


(AHMAD HASSAN)
MEMBER



(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
15.03.2019

Page No. of Petition or Application	08-04-18
Number of Words	2000
Copying Fee	12-00
Urgent	2-00
Total	14-00
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