

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 797/2018

Date of Institution ... 05.06.2018

Date of Decision... 20.12.2022

Muhammad Saeed, (Retired), Senior PHC Technician (BPS-14), R/O Shah Nawaz Town, Near Mufti Madrassa Pajagi Road, Basheer Abad.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through the Chief Secretary Khyber Pakhtunkhwa Peshawar and 03 others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

For appellant.

MR. MUHAMMAD JAN,
District Attorney

For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

"That on acceptance of this appeal, the respondents may be directed to consider the appellant for proforma/notional promotion as PHC Technologist (BPS-17) from his due date with all back and consequential benefits. Any other

remedy, which this tribunal deems fit and appropriate that may also be awarded in favour of appellant."

2. Precise averments as raised by the appellant in his appeal, are that he was appointed as Technician in Health Department on 11.12.1985 and was retried as Senior PHC Technician (BS-14) on attaining the age of superannuation on 02.01.2018. Rules for Paramedical posts of Government of Khyber Pakhtunkhwa in Health Department were promulgated on 10th May 2016 vide Notification dated 10.05.2016. Several posts of Senior PHC Technologist (BS-17) were vacant in promotion quota and the appellant was also eligible for promotion, therefore, working paper including name of the appellant was prepared and was sent for promotion to the post of Senior PHC Technologist (BS-17) but the meeting of Departmental Promotion Committee was delayed and the appellant could not be promoted due to his retirement on 02.01.2018. The meeting of the Departmental Promotion Committee was then held on 30.01.2018, wherein colleagues of the appellant as well as his juniors were promoted to the post of Senior PHC Technologist (BS-17). The name of the appellant was though considered in the meeting of DPC held on 30.01.2018 but he was not promoted on the ground that he stood retired on 02.01.2018. Notification regarding promotion of Paramedics to the post of Technologist (BS-17) was issued on 01.02.2018, wherein the name of the appellant was not included, constraining him to file departmental appeal for his

notional promotion, however the same was not responded, hence the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal.

4. We have heard the arguments of learned counsel for both the sides and have perused the record with their valuable assistance.

5. A perusal of the record would show that the appellant was serving as Senior PHC Technician (BS-14), when working paper for promotion to the post of PHC Technologist (MP) (BS-17) was prepared and sent to the Departmental Promotion Committee. The same is available on the record and is bearing the name of the appellant reflected at serial No. 09. According to the working paper, there was no legal impediment in the way of the appellant for his promotion to the post of Senior PHC Technologist (MP) (BS-17), however the meeting of Departmental Promotion Committee was delayed and was held on 30.01.2018. According to the minutes of meeting of Departmental Promotion Committee held on 30.01.2018, the appellant was not considered for promotion for the only reason that he had retired on 02.01.2018. Vide Notification dated 01.02.2018, issued upon recommendations of the Departmental Promotion Committee, even juniors of the appellant were promoted to the post of PHC Technologist (MP) (BS-17). August Supreme

Court of Pakistan in its judgment reported as 2021 SCMR 1266 has held as below:-

“9. In the present case the DPC has not considered the case for promotion of respondent and the reason assigned is that he has retired. This reason given by the DPC, apparently, is no reason in law, in that, once the Model Working Paper for promotion of respondent was placed before the DPC, it was incumbent upon it to have considered and decided the same, for that, though the law does not confer any vested right to a government servant to grant of promotion but the government servant surely has a right in law to be considered for grant of promotion. It is because of the department's own non-vigilance and the DPC being insensitive to the employees who were on the verge of retirement of which the employees could not be made responsible, cannot simply brush aside the case of an employee by merely saying that he has retired. Once the case of respondent has matured for promotion while in service and placed before the DPC before retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it does not grant promotion, to give reasons for the same. This was not done by the DPC and in our view such was a miscarriage of justice to respondent.”

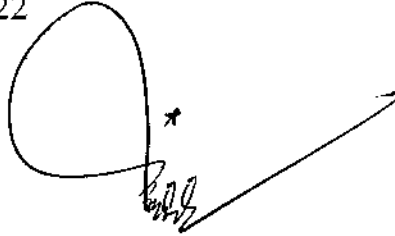
6. Similar in case of *“Secretary School of Education and others Versus Rana Arshad Khan and others”* (2012 SCMR 126), august apex court has held that denial of promotion to a civil servant due to retirement on account of delay occasioned in the Provincial Selection Board meeting, without any justifiable reasons, a civil servant could not be held to suffer for inaction of the concerned Authority.”

7. According to the working paper submitted to Departmental Promotion Committee for promotion to the post of Senior PHC Technologist (MP) (BS-17), the appellant was eligible to be considered for promotion in accordance with law, therefore, a legal

vested right to be considered for promotion had accrued in favour of the appellant but he was wrongly and illegally deprived of the same.

8. In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Departmental Promotion Committee for consideration for pro-forma/notional promotion to the post of PHC Technologist (MP) (BS-17) from the due date within a period of 03 months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.12.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
20.12.2022

Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Departmental Promotion Committee for consideration for pro-forma/notional promotion to the post of PHC Technologist (MP) (BS-17) from the due date within a period of 03 months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

20.12.2022



(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)