

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 10820/2020

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Imam Hussaian S/o Inzar Gul R/o Village Bori Saghari Post
Office Shakardara Tehsil Lachi District Kohat..... (*Appellant*)

VERSUS

1. Chief Secretary, Peshawar, Govt. of Khyber Pakhtunkhwa.
2. Inspector General of Prison Khyber Pakhtunkhwa Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department Peshawar.
4. Superintendent, Incharged Internment Central Laki Marwat.....(*Respondents*)

Present:

NASIR KHAN AFRIDI,
Advocate --- For Appellant.

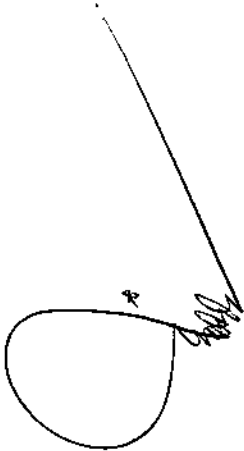
MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....11.09.2020
Date of Hearing.....08.12.2022
Date of Decision.....22.12.2022

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted with the prayer that "on acceptance of this appeal the impugned order dated 27.08.2020 may kindly be set aside being against the law, rules and appellant be profroma promoted with all back benefits from dated 11.06.2015 and any other remedy which deem proper may also be granted".

02. Brief facts, as averred in the memorandum of service appeal, are that the appellant had previously approached the Service Tribunal whereby his appeal was disposed of with the direction to respondents to consider the appellant for pro-forma promotion. This is the second round of litigation whereby, the appellant is aggrieved of the impugned order dated 25.09.2019 against which he filed departmental appeal 01.10.2019 but it was not responded within statutory period. Thereafter, the appellant approached the Honourable Peshawar High Court, Peshawar in Writ Petition No. 87-P/2020 which was also disposed of by sending it to the Chief Secretary to be treated as representation and pass an order within a period of 30 days. The respondent department rejected the representation vide order dated 27.08.2020, hence the appellant filed the instant service appeal on 11.09.2020.



03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant joined the respondent department in 1990 and was

working as Senior Clerk (BPS 14) at Interment Centre Lakki Marwat. He was at serial No. 6 of the final seniority list of Senior Clerks issued on 20.5.2014 and the appellant had good service record except he had adverse remarks in his ACR for the year 2014 which were also expunged by the competent authority. He next argued that this is the second round of litigation whereby the appellant has challenged the impugned order dated 25.09.2019 whereby he was promoted to the post of Assistant BPS-16 w.e.f 14.06.2016 i.e. from the date of his retirement. The appellant is aggrieved of the impugned order dated 25.09.2019 to the extent of not giving effect to his promotion from the date when the appellant was entitled i.e. w.e.f 11.06.2015 when his erstwhile juniors were promoted as Assistants. He next argued that the appellant has not been treated in accordance with law and rules and as such the appellant has been deprived of his legal right of pro forma promotion from the due date i.e. 11.06.2015. He further contended that as per law and rules, the appellant is entitled for proforma promotion to the post of Assistant BPS-16 w.e.f 11.06.2015. Moreover, the inaction of the respondents by not allowing/granting proforma promotion to the post of Assistant BPS-16 w.e.f from 11.06.2015 is against the law, facts, and norms of natural justice and violation of Article 4, 25 and 27 of the constitution. To strengthen his arguments he relied on 2016 SCMR 1784 and 2016 PLC (C.S) 408.



05. Learned District Attorney controverted the arguments of learned counsel for the appellant and contended that the promotion case of Senior Clerks including the appellant was placed before the DPC and after approval of the DPC meeting dated 02.06.2015, the appellant was superseded owing to adverse remarks in his ACR for the year 2014 and his colleagues were promoted to the post of Assistant BPS-16 vide order 11.06.2015. Adverse remarks in the ACR of appellant were expunged by the authority in November 2015 which was a subsequent development after the meeting of DPC. He further contended that promotion order of the appellant was issued by the competent authority as per law and rules and no discrimination has been made with the appellant. He next argued that it is the promotion policy of provincial government that promotion is always notified with immediate effect rather than retrospective effect. There is no provision in the promotion policy for antedated or proforma promotion. The appellant has therefore, been treated in accordance with law rules and promotion policy. The service appeal being devoid of merit, may be dismissed, he concluded.

06. Careful perusal of the record reveals that the appellant had previously filed service appeal No. 311/2016 before this Tribunal assailing the Notification of promotion dated 11.06.2015 with the prayer copied as below;

“On acceptance of this service appeal, this honourable Tribunal may graciously be pleased to declare the appellant senior to the respondents No. 5 to 10 and be promoted being senior and deserving with all back benefits from the date of promotion”.

07. The Service Tribunal disposed of his appeal vide judgement dated 18.02.2019 in the following manner;


“In view of the above, we dispose of instant appeal in terms that the case of appellant be considered for pro-forma promotion by the respondents, in case there are no legal or factual hurdles in the way”

08. In the light of the directions of this Tribunal, the respondent department promoted the appellant as Assistant (BS-16) w.e.f 14.04.2016 vide the impugned order dated 25.09.2019. Similarly, his writ petition No. 87-P/2020 converted by the honourable Peshawar High Court, Peshawar into his representation, was considered and rejected by the Chief Secretary through order dated 27.08.2020.

09. In view of the foregoing discussion, it is evident that the same prayer of the appellant has already been decided by this Tribunal vide its judgement dated 18.02.2019. In view of Rule 23 of

the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 the instant service appeal is hit by the principle of res judicata, hence dismissed. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 22nd day of December, 2022.*



(SALAH UD DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)

ORDER

22.12.2022

Mr. Nasir Khan Afridi, Advocate for the appellant present.

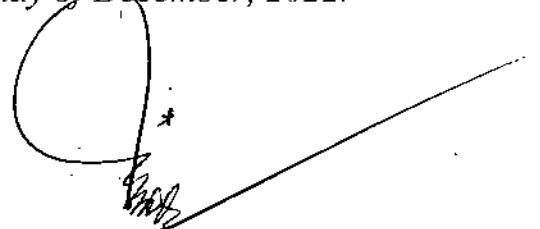
Mr. Muhammad Jan, District Attorney for the respondents present.

02. Vide our detailed judgement of today separately placed on file consisting of (06) pages, it is evident that the same prayer of the appellant has already been decided by this Tribunal vide its judgement dated 18.02.2019. In view of Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 the instant service appeal is hit by the principle of res judicata, hence dismissed. Parties are left to bear their own costs. File be consigned to the record room.

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MEMBER (J)



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