

Rulings for Appellant Taj Noor (APPEAL: No.7593/2021)

A. W.P No.4505-P/2017 (Copy of the judgment attached)

1. Civil servants who crossed 59 years of age
2. Missing of PERs

Here by the learned Peshawar high court decided that the candidate who attained the age of 58 years are exempted from in service training, and also declared that providing the PERs of the petitioner / appellant to the promotion board was responsibility of the respondents. The petition/ appeal for **promotion was accepted.**

B. in case of civil servant who, for no fault of his own is wrongly prevented from rendering service to the state in the higher post to which he is entitled, should be given salaries for the higher post. Rulings referred

- (1) 1973 SCMR 304 (03 C P S L A have been decided by the same judgement)
- (2) 1985 SCMR 1394 Citation (b)

C. Benefits given to civil servants who retired on superannuation during litigation. Rulings referred

- (1). 1998 SCMR 736 Citation(b): - Civil servants would thus be entitled to financial benefits from the date when he should have been prompted.
- (2) 1995 SCMR 650 Citation (e). Order of the competent authority (not promoting civil servants) was arbitrary, unfair and devoid of good faith. Employee's right to promotion was accepted. Employee having **retired** meanwhile, he was entitled to all benefits which would have accrued to him in case he had been promoted in the relevant year on the recommendation of the promotion board. In the last two lines of the ruling respondent was **directed by Honorable Supreme Court "To compute all the benefits to which the appellant is entitled by virtue of the judgment and make payment to him with in a period of three months"**.
- (3) 1991 MLD 1834. The Civil Servant SA Rizvi was dismissed from service but he got reinstatement order form the court. The department went on appeal but due to proclamation of MLR 58 all the orders and proceeding stood abated. In the meanwhile, SA Rizvi went to High Court in the light of the PLD 1989 SC 26 the proceeding before the court was again started and the court decided in favor of SA Rizvi by re fixing his date of retirement on superannuation, not on the date of his dismissal form the service by the Government on 06-12-1969.
- (4) 1992 SCMR 1309. In the above case the department went on appeal against SA Rizvi, for the purpose of fixation of retirement benefits to be the date of dismissal i.e. 06-12-1969 but the appeal was dismissed and judgment of the high court was maintained by Honorable Supreme Court.
- (5) 1998 SCMR 91. Sheikh Abdul Aziz was dismissed from service under MLR 58 of 1969 (removal from service special provision regulation). In 1970 litigation was carried on by Sheikh Abdul Aziz compelled the Government, instead of dismissal form service of Sheikh Abdul Aziz, he was ordered to retired form 6th June 1970 with giving all back benefits but the supreme court decide to give him the arrears not till 6th June 1970 but upon the age of his retirement on superannuation.

DATE:21 January 2022

APPELLANT
TAJ NOOR

PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

<i>Date of Order or Proceedings</i>	<i>Order or others Proceedings with Signature of Judge</i>
1	2
19.03.2019	<p><u>W.P No.4505-P/2017</u></p> <p>Present: Mr. Saadullah Khan Marwat, Advocate, for the petitioner.</p> <p>Mr. Rab Nawaz Khan, AAG, for the respondents.</p> <p>*****</p> <p><u>MUSARRAT HILALI, J.-</u> The instant writ petition has been filed by the petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, wherein he has prayed to declare order dated 14.04.2017 of respondent No.1 as illegal, improper, unjust and of no legal effect. He has also prayed to direct the authority to award promotion proforma/notional to petitioner in BPS-20 for gaining of pensionary benefits of the grade.</p> <p>2. In essence, it is the petitioner's case that he served the Health Department in various</p>

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Health Management Cadre (BPS-19). It is averred in the petition that respondents initiated process of promotion of Management Cadre from BPS-19 to BPS-20 and the name of petitioner was included in the promotional panel for consideration to BPS-20. It is also averred in the petition that on 11.12.2008, the respondents issued Notification, vide which, method for promotion to BPS-20 was given which reads as under:-

- a. *By promotion, on the basis of selection on merit from amongst the members of service in (BS-19) with five years service as such or seventeen years service in BPS-17 and above; and*
- b. *Four months advance in-service training in Management from a recognized institution or Provincial Health Services Academy (PHSA) Khyber Pakhtunkhwa.*

It is further averred in the petition that the name of petitioner was dropped from promotion on the grounds of attaining the age of superannuation on 09.04.2017 and non-conducting of Management Promotion Training.

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Rules Committee was held to amend the Service Rules of Doctors of Management/General Cadre of Health Department. The following amendment was proposed:-

"After the full stop in the relevant qualification column (3), the following words shall be added, "however those who attains the age of fifty eight (58) years will be exempted from the said in-service training".

On 03.02.2014, respondent No.1 issued Notification inserting the said amendment in the Rules for promotion to BPS-20. Petitioner submitted representation to the Authority for grant of promotion to BPS-20 on the ground that he was exempted from conducting training due to attaining the age of superannuation, however, his request was regretted on 14.04.2017 without any reason and justification. Feeling aggrieved therefrom, petitioner, having no other alternate, adequate and efficacious remedy has approached this Court for redressal

3. Heard. There is no denial to the fact that though in the working paper the petitioner's name was included, however, he was held not eligible for promotion to BPS-20 on the grounds that he had not undergone mandatory training as well as deficiency of PERs for the years, 2013 & 2014. So far as the first ground is concerned, under the amended rule, those who attained the age of fifty eight years were to be exempted from the said service training. The petitioner at the time of selection board was of 59 years, therefore, denying promotion on this ground to the petitioner was unjustified. The second ground on which the petitioner was denied promotion, according to the respondents was deficiency of PERs for the years 2013-2014. The Personal Evaluation Report is initiated by next higher Officer and countersigned by an Officer higher in rank than

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administration, so, therefore, the petitioner cannot in any way be held responsible for such deficiency and was wrongly denied promotion as providing PERs of petitioner to the promotion board was the responsibility of respondents, hence, we see no reason why this petition should not be accepted.

4. With the above observation, this writ petition is allowed as prayed for with the directions to the respondents to consider the petitioner for grant of proforma promotion in BPS-20 within a period of two months positively from the date of receipt of this judgment.


JUDGE


JUDGE



**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

REGD

No. DR/ED 21115/734
Dated Peshawar 24/1/15
Office Phone # 091-9212559
Fax # 091-9212559
E-mail kpprosecution@yahoo.com

To

The District Public Prosecutor,
Malakand.

Subject: **SUBMISSION OF ACR/PERs Of THE JUNIOR CLERKS.**

Dear Sir,

I am directed to refer to the subject noted above and to inform you that the ACR/PERs of the following officials may kindly be furnished to this Directorate within **seven days** positively, so as to place their case for promotion before the Departmental Promotion Committee (DPC) please.

Name of official	Period
Hazarat Muhammad J/C	2013

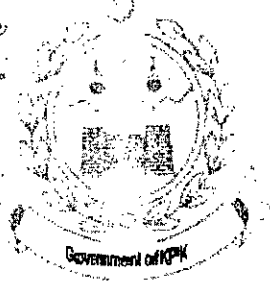
The case may please be treated as most urgent.

San Julo
DR/ED 21115/734

Yours Faithfully

(Liaqat Ali)

Deputy Director Admn. / Finance



DIRECTORATE OF PROSECUTION

KHYBER PAKHTUNKHWA.

NO.DP/E&A/1 (16)16/ 1313

Dated Peshawar the 08.2.2016

Diary

No. 23 / dated 13/2/16

Signature of clerk [Signature]

To

The District Public Prosecutor,
Malakand

Subject: - PERFORMANCE EVALUATION REPORTS.

I am directed to refer to the subject noted above and to enclose herewith the Performance Evaluation Report in respect of Imran Shah Dy: PP for completion of the following columns

It is therefore requested that the PERs of the officer may kindly be completed in all respect & to return to this office for onward process please.

[Signature] 08/02/16

(MUHAMMAD MUZAFAR)
Assistant Director Admn./Finance
Directorate of Prosecution.

Please to send 2-sets, one set for Aurangzeb & one
Shafiqullah sb please.

[Signature]
8-2-2016