EP 103/2020

06.01.2022 Mr. Usama Anees, son of the petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned AAG produced copy of notification No. SOE(AD)V-8/DPC/EW/21/1634, dated 02.12.2021, whereby the petitioner has been promoted to the post of Superintendent (BPS-17) on notional basis w.e.f. 21.06.2017 (date of retirement of the petitioner). Copy placed on file. The petitioner is fully satisfied. Therefore, the execution petition in hand is consigned to the record room.

(Rozina Rehman)
Member (J)

20.10.2021 Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Mr. Asadud Din Asif Jah, Superintendent for the respondents present.

Representative of the department starts that due to deficiency of ACR for six months, jthe needful on kthe Working Paper was delayed but the deficiency has now been removed and the implementation is expected in few days. Case to come up on 18.11.2021 before S.B.

Chairman

18.11.2021 Mr. Osama Anees (son of the petitioner) present. Mr. Sardar Ali, Junior Clerk alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and sought time for implementation of the judgment. Adjourned. To come up for submission of implementation report before the S.B on 06.01.2022.

(Salah-Ud-Din)
Member (J)

EP 103/2020

16.08.2021 Counsel for the petitioner and Mr. Asif Masood Ali Shah, DDA alongwith Asadud Din, Asif Jah, Superintendent for the respondents present.

Representative of the department has produced copy of letter No. 17890/DGA(E) dated 16.08.2021, addressed to Section Officer (Estt) Government of Khyber Pakhtunkhwa Agriculture, Livestock and Cooperative Department, Peshawar on the subject of Working Paper for promotion of Mr. Anees Ahmad, Ex-Assistant (BS-16) to the post of Superintendent (BS-17). Copy of letter is placed on file. Although the step towards the progress for implementation is too late for the reason that direction was given on 06.07.2021 and the said letter has been written today. However, the department is expected for serious pursuit of the matter to enable the execution of judgment of this Tribunal to its logical ends. To come up for implementation report on 20.10.2021 before S.B.

Chairman

01.06.2021 Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG alongwith Asadud Din Asif Jah, Superintendent for the respondents present.

Representative of the respondents states that the department has filed CPLA against the judgment under implementation, wherein 08.06.2021 has been fixed for hearing. The respondents are required to implement judgment of the Tribunal conditionally, in case interim relief is not granted by the august Supreme Court of Pakistan. Adjourned to 06.07.2021 before S.B.

Chairman

06.07.2021 Son of the petitioner and Mr. Muhammad Adeel Butt, Addl. AG alongwith Assadud Din Asif Jah, Superintendent for the respondents present.

Office has placed, copy of judgment of August Supreme Court of Pakistan, on file. According to which the appeal filed by the department has been dismissed and the judgment of this Tribunal has got finality, leaving no room for further delay in implementation of the judgment. Learned AAG seeks time with assurance that the judgment will be implemented within two or three weeks. Request is accorded. To come up for implementation report on 16.08.2021 before S.B.

Chairman

27.01.2021

Mr. Osama Ali, son of the petitioner, on behalf of the petitioner is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Asad-ud-Din Asif Jehan, Superintendent, for the respondents are also present.

The learned Additional Advocate General submitted the judgment of Hon'ble Supreme Court of Pakistan passed on 13.01.2021 whereby CPLA has been admitted for regular hearing however, order passed by this Tribunal dated 12.09.2019 has neither been suspended nor set-aside which remained in the field at the moment, therefore, respondents are directed to submit implementation report by giving effect to the judgment according to its spirit. File to come up for implementation report on 29.03.2021 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

29.03.2021

Counsel for the petitioner and Addl. AG for the respondents present.

Learned AAG stated that no representative of the respondents is available today and requested for time to contact the respondents. Respondents are expected to implement the judgment in letter & spirit and submit implementation report on 01.06.2021 before the S.B.

(Atiq-ur-Rehman Wazir)
Member(E)

26.10.2020 Petitioner in person present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Respondents be put on notice with direction to submit implementation report on 07.12.2020 before S.B.

(Rozina Rehman)
Member (J)

07.12.2020 Petitioner present through his son, Osama Anees.

Kabir Ullah Khattak learned Additional Advocate General alongwith Asad ud Din Asif Jehan Superintendent for respondents present.

Reportedly, CPLA has been filed in the Apex Court. File to come up for further proceedings/implementation report/status-quo order on 27.01.2021 before S.B.

(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 103 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.07.2020	The execution petition of Mr. Anees Ahmad resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-		This execution petition be put up before S. Bench on 21/08/2020 CHAIRMAN
	21.08.2020	Due to public holiday on account of 1st Moharram, the case is adjourned to 26.10.2020 for the same as before. Reader

The execution petition of Mr. Anees Ahmad submitted today i.e. 04.05.2020 by Mr. Taimoor Ali Khan, Advocate is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

1- The execution petition not signed by the petitioner as well as his counsel which may be done.
2- Annexures of the petition may please be properly flagged.

No. 1094 /S.T,
Dt. 5-5 /2020

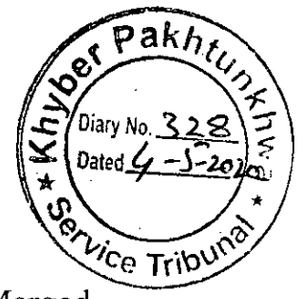
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimoor Ali Khan, Advocate Peshawar.

Respected Sir,
1- Removed
2- Removed

Resubmitted after Compliance

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.



Execution Petition No. 103 /2020
In Service Appeal No.625/2018

Anees Ahmad, Ex-Office Assistant (BPS-16)
Office of Deputy Director Agriculture Department (FATA now Merged Areas).

PETITIONER

VERSUS

1. The Secretary, Agriculture, Lives Stock & Co-Operation Department KPK, Peshawar
2. The Director General Agriculture (Extension) KPK, Peshawar.
3. The Director, Agriculture (FATA now Merged Areas) Peshawar.
4. The Deputy Director Agriculture (FATA now Merged Areas) Peshawar.

RESPONDENTS

.....

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 12.09.2019 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed an appeal bearing No. 625/2018 for directing the respondents to consider the appellant for proforma/notional promotion on the post of superintendent (BPS-17) under 90% quota fixed by the Government and against the order dated 20.08.2018, whereby the departmental appeal of the appellant for proforma/notional promotion has been rejected.

2. That the said appeal was finally heard by the Honourable Tribunal on 12.09.2019. The august Service Tribunal was kind enough to accept the appeal and the respondents were directed to consider the case of proforma/notional promotion of the petitioner from the date of retirement. **(Copy of judgment is attached as Annexure-A)**

3. That the petitioner also field application for implementation of judgment dated 12.09.2019 of this august Service Tribunal in true

letter and spirit. **(Copy of application is attached as Annexure-B)**

4. That since the announcement of the judgment, the petitioner waited for more than seven months to implement judgment dated 12.09.2019 of this Honourable Service Tribunal, but the respondent department did not implement the judgment of this Honourable Service Tribunal till date.

5. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.

6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to implement the judgment dated 12.09.2019 of this Honourable Tribunal in letter and spirit.

7. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the department may be directed to implement the judgment dated 12.09.2019 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

A. Ahmad.

PETITIONER

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT:

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

DEPONENT

ATTESTED
Taimur Khan Advocate

A

(3)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 625 /2018

Khyber Pakhtunkhwa Service Tribunal
Diary No. 588
Dated 17-4-2018

Anees Ahmad, Ex-Office Assistant (BPS-16),
Office of Deputy Director Agriculture Department (FATA).

(APPELLANT)

VERSUS

1. The Secretary Agriculture, Live Stock &Co-operation Department KPK, Peshawar.
2. The Director General Agriculture (Extension) KPK, Peshawar.
3. The Director Agriculture (FATA) Peshawar.
4. The Deputy Director Agriculture (FATA) Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 FOR DIRECTING THE RESPONDENTS TO CONSIDER THE APPELLANT FOR PROFORMA/NOTIONAL PROMOTION ON THE POST OF SUPERINTENDENT (BPS-17) W.E FROM 31.01.2013 UNDER 90% QUOTA FIXED BY THE GOVERNMENT AND AGAINST THE ORDER DATED 20.03.2018, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR PROFORMA/NOTIONAL PROMOTION HAS BEEN REJECTED.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Filed to-day

Registrar
17/4/18

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 20.03.2018 MAY BE SET ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROFORMA/ NOTIONAL PROMOTION TO THE POST OF SUPERINTENDENT (BPS-17) W.E.FROM 31.01.2013, UNDER 90% QUOTA FIXED BY THE GOVERNMENT WITH ALL BACK AND CONSEQUENTIAL BENEFITS. THE RESPONDENTS MAY ALSO BE DIRECTED TO INCLUDE THE PROMOTION BENEFITS IN THE PENSION FIXATION OF THE APPELLANT 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.

Re-submitted to-day and filed.

Registrar
17/4/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 625/2018

Date of Institution ... 17.04.2018

Date of Decision ... 12.09.2019

Anees Ahmad, Ex-Office Assistant (BPS-16),
Office of Deputy Director Agriculture Department (FATA).

... (Appellant)

VERSUS

The Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department, Civil Secretariat, Peshawar and three others.

... (Respondents)

MR. TAIMUR ALI KHAN, Advocate --- For appellant.

MR. ZIAULLAH, Deputy District Attorney --- For respondents.

MR. AHMAD HASSAN, --- MEMBER(Executive)
MR. M. AMIN KHAN KUNDI --- MEMBER(Judicial)

JUDGMENT

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

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ARGUMENTS

02. Learned counsel for the appellant argued that he joined the Agriculture Department ad Junior clerk in 1976 and thereafter promoted to the post of Office Assistant (BPS-14) in 2004, which was subsequently up-graded to BPS-16. In 2014 on attaining the age of superannuation, he stood retired from government service on 21.06.2017 notified vide order dated 01.08.2017. According to the service rules notified on 20.04.2012, the post of Superintendent was required to be filled on the basis of 90% quota of promotion on the basis of seniority-cum-fitness from amongst the holders of the post Assistant/Accountant with five years service as such. Name of the appellant

(5)

was placed at serial no.2 of the seniority list notified in 2013 and final list issued in 2017.

03. That in 2013 three posts of Superintendents became vacant and the respondents started necessary paper work for promotion against the said posts. The appellant vide letter dated 13.11.2013 and 20.11.2013 was asked to submit relevant papers for placement before the DPC. In between 2013 and 2016 due to promotion/retirement Eight posts of superintendents became available for promotion, out of which five officials were promoted. Similarly fifteen sanctioned posts of Superintendents were also available for promotion, out of which five officials were promoted, while eight posts were left vacant. The working paper prepared for promotion of Assistant to the post of Superintendent included the name of the appellant at serial no.2, as per communication dated 26.09.2017. The DPC was scheduled on 19.06.2017. Respondent no.1 wrote letter dated 19.06.2017 to get options from the concerned, as decided in the said meeting. Finally DPC, was held after retirement of the appellant on 19.10.2017 and promotion of five Superintendents was notified through notification dated 06.12.2017. He submitted a departmental appeal for proforma/notional promotion on 16.02.2018, which was rejected on 20.03.2018, hence, the present service appeal. Learned counsel for the appellant further contended that the respondents deliberately delayed the process of promotion, which deprived him of elevation to the post of Superintendent (BPS-17).

ATTESTED

Service Tribunal
Peshawar

04. Learned Deputy District Attorney argued that due to seniority dispute between various officials serving inthe respondent-department service appeals were filed by them for adjudication in this Tribunal. Due to litigation the process of preparation/finalization of seniority lists got delayed and in the meanwhile the appellant reached the age of superannuation and stood retired on 21.06.2017 vide order dated 01.08.2017. He conceded that working paper prepared for consideration

by DPC included the name of the appellant, however, respondent no.1 directed to get fresh options from the concerned and after doing the needful the matter was placed before the DPC for promotion against the post of Superintendent on 19.10.2017, as the appellant had retired from service thus his case was not considered. According to para-9 of the promotion policy case of the appellant was not worth consideration.

CONCLUSION

04. The following method of recruitment is laid down for filing the post of Superintendent (BPS-17):

> **"The post of superintendent is to be filled on 90% by promotion on the basis of seniority-cum-fitness from amongst the holders of the post *Assistants/Accountants with five years service as such".***

05. On the other hand name of the appellant was reflected at serial no.2 of the seniority list, which fact has not been disputed by the respondents. There is also no confusion about the availability of sufficient number of vacant posts of Superintendents in the respondent-department. It is further strengthened by the record that the appellant was asked by the respondents vide letter dated 20.11.2013 to complete his ACRs and other testimonials to be placed before the DPC meeting. We have minutely examined the record and reached the conclusion that the respondents deliberately delayed the promotion case of Superintendents, as a result of which the appellant stood retirement on 21.06.2017 and thus deprived of valuable rights accrued to him before retirement. Furthermore, a meeting of DPC was convened on 19.06.2017 and on the previous date of hearing vide order sheet dated 15.07.2019, the respondents were directed to furnish minutes of the DPC meeting alongwith working paper, however, learned Assistant Advocate General and departmental representative stated at the bar that no such meeting was held on the

Date of Payment: 01-10-18

Number of [illegible]: 2000

Copyright Fee: 24-00

Urgent: 4-00

Total: 28-00

Name of [illegible]

Date of Completion of [illegible]: 01-10-18

Date of Delivery of Copy: 01-10-18

بحضور جناب B

(7)

مضمون :- APPeal No- 625/2018 انیس احمد بنام حکومت -

جناب عالی :-

مودبانہ گذارش ہے - کہ سائل کا کیس مورخہ 12-9-2019 کو فیصلہ ہوا -
فیصلے کے رو سے سائل ماہانہ ترقی کا حقدار ٹھہرایا گیا -
عدالت کے فیصلے کی نقل درخواست کے ساتھ منسلک ہے -
لہذا آپ صاحبان سے التماس کی جاتی ہے - کہ سائل کو
عدالتی ہدایات کے مطابق اپنا حق دے دی جائے -

(مہربانی نوازش ہوگی -)

المرقوم :- 10/2019

محمد

آپ کا فرمانبردار انیس احمد سابقہ ویٹرنری اسسٹنٹ
دفتر ڈپٹی ڈائریکٹر محکمہ زراعت ضلع شدہ
محلہ قاضیات پشاور -

A. Ahmad
10/2019

VAKALAT NAMA

NO._____/2020

IN THE COURT OF KP Service Tribunal, Peshawar

Anees Ahmad (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Agriculture Deptt. (Respondent)
(Defendant)

I/We, Anees Ahmad

Do hereby appoint and constitute ***Taimur Ali Khan, Advocate High 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 _____/2020

(CLIENT)

Asad Mahmood
Advocate

ACCEPTED

TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5

OFFICE:
Room # Fr-08, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar.
Cell No. 0333-9390916

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO.677-P OF 2019
(Against the judgment dated 12.09.2019 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.625 of 2018).

Secretary Agriculture, Livestock and Cooperation Department, Peshawar and others. ...*Petitioner(s)*

Versus

Anees Ahmad. ...*Respondent(s)*

For the Petitioner(s): Mr. Zahid Yousaf Qureshi, Addl. A. G. KP.
Mr. Asad ud Din Asif Joli, Supdt. Agri & Livestock Department, KP.

For the Respondent(s): N.R.

Date of Hearing: 13.01.2021.

ORDER

GULZAR AHMED, CJ.- The learned Additional Advocate General, Khyber Pakhtunkhwa contends that the post of Superintendent was required to be filled by promotion on 90% quota on the basis of seniority cum fitness from amongst the holders of the posts of Assistants/Accountants with five years service. He further contends that though the Respondent did have five years service to his credit, but the question of seniority cum fitness was to be considered by the Tribunal which did not advert to this very aspect of the matter while deciding the Service Appeal filed by the Respondent. He adds that para 7 of the Promotion Policy prescribes that proforma promotion shall be given only to

Certified
Senior
Supreme

those who are recommendees of the KP Public Service Commission or Departmental Promotion Committee which in the present case is not there.

2. Submissions made by the learned Additional Advocate General, Khyber Pakhtunkhwa need consideration. Leave to appeal is therefore granted to consider *inter alia* the same. Appeal stage paper books be prepared on the available record. However, the parties are at liberty to file additional documents, if any within a period of one month. As the matter relates to service, the Office is directed to fix the same for hearing in Court expeditiously, preferably after three months.

Sd/CJ

Sd/J

THE SUPREME COURT OF PAKISTAN
ISLAMABAD.
13.01.2021.

'Not Approved For Reporting'

Certified to be True Cop

Senior Court Associat
Supreme Court of Pakista
Islamabad

SUPREME COURT MATTER

OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 5013-19/A.G. Dated 3-5-/2021

Address: High Court Building, Peshawar. Tel: No. 091-9210119, 9210312,
Fax No. 091-9210270, Exchange No. 091-9213833

To

1- The Secretary to Govt. of Khyber Pakhtunkhwa,
Agriculture Livestock & Cooperative Department, Peshawar.

2- The Director General Agriculture (Extension)
Khyber Pakhtunkhwa, Peshawar

3- The Director Agriculture (FATA)
Merged Areas, Peshawar.

4- The Deputy Director Agriculture (FATA)
Merged Areas, Peshawar.

SUBJECT: **CA NO.40/21.GOVT OF KPK-VS-ANEES AHMAD**
CP NO.18-P/21.GOVT OF KPK-VS-HIZBULLAH

Sir,

The above noted case is fixed for hearing before the Supreme Court of Pakistan at Islamabad/ Peshawar on 05-05-2021.

An officer not below the rank of Grade-17 and fully conversant with the facts of the subject case, may kindly be deputed alongwith complete record to discuss with the Additional Advocate General, Khyber Pakhtunkhwa at Islamabad / Peshawar on 04-05-2021 and attend the Supreme Court of Pakistan at Islamabad / Peshawar on 05-05-2021

Next Date: 8/06/2021

ADVOCATE ON RECORD,
KHYBER PAKHTUNKHWA,
PESHAWAR.

GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK FISHERIES &
COOPERATIVE DEPARTMENT

Dated Peshawar the 2nd December, 2021

NOTIFICATION

No. SOE(AD)V-8/DPC/EW/21/1634 In light of the Khyber Pakhtunkhwa Service Tribunal Peshawar Judgement dated 12.09.2019, Supreme Court of Pakistan Judgment dated 08.06 2021 and on the recommendations of Departmental Promotion Committee meeting held on 01.10.2021, the Competent Authority is pleased to promote Mr. Anees Ahmad, Ex-office Assistant (BS-16) to the post of Superintendent (BS-17) on notional basis w.e.f 21.06.2017 (date of retirement) in the Directorate of Agriculture (Extension), Khyber Pakhtunkhwa.

Sd/-
SECRETARY AGRICULTURE

Endst. No. & Date Even:
Copy for forwarded to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, Agriculture (Extension), Khyber Pakhtunkhwa, Peshawar.
3. The Section Officer (Litigation) Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
4. P.S. to Secretary Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
5. P.A to Deputy Secretary (Admn), Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
6. Ex-officer concerned.
7. Master File.

7876
07/12/21

SECTION OFFICER-ESTT:
AGRICULTURE DEPARTMENT

7/12/21

7/12/21

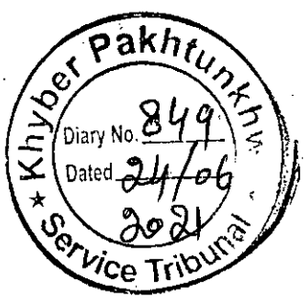
971
7/12/21

Noted.
7/12/21.
Fill

Ph: 9214461
Fax: 9220406

REGISTERED
No. C.A. 40/2021 - SCJ
SUPREME COURT OF PAKISTAN

Islamabad, dated 19.06.2021



From The Registrar,
Supreme Court of Pakistan,
Islamabad.

To The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Subject: **CIVIL APPEAL NO. 40 OF 2021**

Secretary Agriculture, Livestock & Cooperation Department, Peshawar & others

Versus

Anees Ahmad

On appeal from the Order/Judgment of the Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 12/09/2019 in Appeal.625/2018.

Dear Sir,

In continuation of this Court's letter of even number dated 13-04-2021, I am directed to enclose herewith a certified copy of the Order of this Court dated 08/06/2021 dismissing the above cited cases in the terms stated therein for information and further necessary action.

The operative part of the order is as under:-

> **"....10.... As the matter is quite old, we expect that the appellants will decide the question of promotion of respondent expeditiously, preferably within a period of three months from today."**

I am further directed to return herewith the original record of the Service Tribunal, received under the cover of your letter No.745 dated 21/04/2021.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order:
2. O/Record:

Yours faithfully,

(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Scan. Place on EP, if pending

Chairman.

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

AFR
Civil Appeal No.40 of 2021

[Against the judgments dated 12.09.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.625/2018]

Secretary Agriculture, Livestock & Cooperation Department, Peshawar & others. *... Appellant(s)*

Versus

Anees Ahmad. *...Respondent(s)*

For the Appellant(s)	:	Mr. Zahid Yousaf Qureshi, Additional Advocate General, KP Asad ud Din, Asif Jan, Superintendents Javaid Maqbool Butt, Incharge Litigation, Agriculture Department, KP
For the Respondent(s)	:	Mr. Fazal Shah Mohmand, ASC
Date of Hearing	:	08.06.2021

O R D E R

Gulzar Ahmed, CJ.— Facts of the matter are that the respondent was promoted to the post of Office Assistant (BPS-14) in the year 2004 and his post was up-graded to BPS-16 in the year 2014. The service rules were notified on 20.04.2012, providing 90% quota for promotion on seniority-cum-fitness basis among the holders of the posts of Assistant/Accountant, who have completed five years' service. In the year 2013, post of Superintendent became vacant. The working-paper for promotion of the respondent was prepared where his name appeared at Serial No.2. The

ATTESTED
Court Associate
Supreme Court of Pakistan
Islamabad

Departmental Promotion Committee **(the DPC)** was scheduled on 19.06.2017 but it was delayed to 19.10.2017. On 19.10.2017 the case of the respondent for promotion was not considered by the DPC for the reason that he had already retired on attaining the age of superannuation on 21.06.2017. The respondent filed service appeal in the Khyber Pakhtunkhwa Service Tribunal, Peshawar **(the Tribunal)**, by the impugned judgment dated 12.09.2019, the service appeal of the respondent was allowed and the appellants were directed to consider the case of the respondent for *pro forma* promotion from the date of his retirement.

2. We have heard the learned Additional Advocate General, KP **(AAG)** and have also gone through the record of the case.

3. Learned counsel appearing for the respondent has supported the impugned judgment.

4. The Government of Khyber Pakhtunkhwa Agriculture, Livestock & Cooperation Department, Peshawar **(AL&C Department, KP)** issued Notification dated 20.04.2012 containing the rules of recruitment. Item No.36 of the rules is as follows: -

S.No.	Nomenclature of post	Qualification for appointment by initial recruitment.	Age limit	Method of recruitment.
1	2	3	4	5
PART-II MINISTERIAL STAFF				
36.	Superintendents (BPS-16).			a). Ninety percent by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Assistant/Accountants with five years service as such; and b). ten percent by promotion, on the basis of seniority-cum-fitness, from Senior Scale Stenographers with five years service as such.

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Court Associate
Supreme Court of Pakistan
Islamabad

5. Working-paper was prepared and the same was sent to the Secretary, AL&C Department, KP vide letter dated 26.05.2017. Model Working Paper, which is at Page-29 of the record shows that there were 08 posts of Superintendent (BPS-17) lying vacant in AE Department. Ninety percent of these posts were to be filled by promotion on the basis of seniority-cum-fitness from the post of Assistant/Accountant having five years' service. In para-5 of this Model Working Paper appears a chart containing names of 14 Office Assistants. At Serial No.1 is the name of Muhammad Alam, it is mentioned that he has opted to forgo his promotion. At Serial No.2 appears the name of respondent. In the last but one para of this very Model Working Paper, following has been certified by the Director General, AE Department: -

> "It is certified that all the officials included in the panel for promotion:-
>
> i. Hold the lower post on regular basis and none of them is holding the post on adhoc basis.
> ii. No departmental examination has been prescribed for promotion to the post of Superintendent.
> iii. No disciplinary /Departmental proceeding/anti-corruption case /judicial inquiry are pending nor has any penalty been imposed during the last five years against any of the official of the penal.
> iv. The seniority list of the Office Assistant is final and un-disputed.

6. The very perusal of the Model Working Paper shows that the respondent has completed requisite five years' service provided by the rules and the Director General, AE Department, has also certified that there is no impediment in grant of promotion to the persons named in the Model Working Paper.

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7. The DPC for considering the promotion was held on 19.06.2017 but was adjourned on the pretext that fresh option of officials forgoing their promotion be obtained. This is mentioned in the letter of the Director General, AE Department dated 28.11.2018 at page-31 of the record. After adjourning of this meeting by DPC, the next DPC meeting took place on 19.10.2017 and in the meantime, the respondent retired from service on 21.06.2017.

8. Learned Additional Advocate General has contended that promotion to the post of Superintendent (BPS-17) was to be made on seniority-cum-fitness basis and this very aspect was to be determined by the DPC and as the DPC having not determined the matter of seniority-cum-fitness, respondent, could not be granted *pro forma* promotion after his retirement. He has further contended that the case of promotion of Superintendent (BPS-17) was placed before the DPC on 19.10.2017, but it was not considered as respondent has retired on 21.06.2017 and no illegality was committed. He was of the view that only the DPC is competent to consider the grant of promotion and in case, it does not consider or grant promotion, no other forum is competent to decide the question of granting of promotion or *pro forma* promotion. As to the last submission with due respect, we tend to disagree with the learned AAG for the reason that no doubt it is a function of the DPC to consider the case of promotion of the government servant but where the DPC in violation of law and rules omits to consider or omits to grant promotion, the remedies before statutory Courts/Tribunals are provided by law and such remedies could be

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Supreme Court of Pakistan
Islamabad

availed by the aggrieved government servant and it is for the Courts/Tribunals to consider and decide whether the DPC has validly omitted to consider or omitted to grant promotion in accordance with law and rules.

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.

10. In view of the above, we find that the impugned judgment of the Tribunal, directing the appellants to consider the case of promotion of respondent, does not suffer from any illegality

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and is maintained. The appeal is, therefore, dismissed. As the matter is quite old, we expect that the appellants will decide the question of promotion of respondent expeditiously, preferably within a period of three months from today.

Bench-I
Islamabad
08.06.2021
APPROVED FOR REPORTING
Rabbani*

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad