

05.05.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 24.06.2021 for the same as before.


Reader

24.06.2021

Counsel for the petitioner and Addl. AG alongwith Muhammad Numan, Litigation Assistant for the respondents present.

Counsel for the petitioner seeks time to contact the petitioner. To come up for implementation report on 14.07.2021 before the S.B.


Chairman

14.07.2021

Nemo for the petitioner. Mr. Muhammad Adeel Butt, Addl. AG alongwith Numan Khalil, Assistant for the respondents present.

On 24.06.2021, learned counsel for the petitioner was present and sought time to contact the petitioner. Representative of the respondents present before the court today, states that the promotion of the appellant has been ante-dated from the date, his case was first considered for promotion. Today neither the petitioner nor his counsel is present. It shows that the petitioner is not interested to pursue proceedings in instant execution petition.

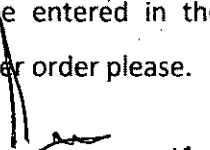
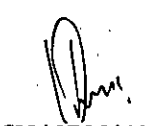
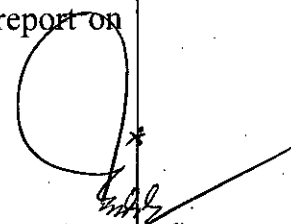
In view of the above, instant execution petition is filed and consigned to the record room.


Chairman

FORM OF ORDER SHEET

Court of _____

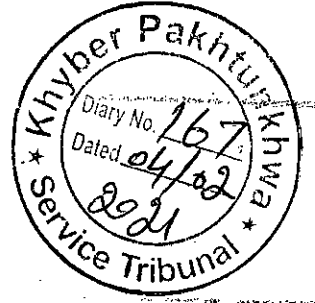
Execution Petition No. 48 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate.
1	2	3
1	04.02.2021	<p>The Execution Petition submitted by Mr. Hizbullah Khan through Mr. Taimur Ali Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This Execution Petition be put up before S. Bench on...<u>12/03/21</u>...</p> <p style="text-align: right;"> CHAIRMAN</p> <p>12.03.2021</p> <p>Counsel for the petitioner present. Addl: AG for respondent present.</p> <p>Implementation report not submitted. Notices be issued to the respondents for submission of Implementation report on 05.05.2021 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p>

①

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

Execution Petition No. 48 /2021
In Service Appeal No.880/2018



Hizbullah Khan, Retired Sr. Scale Stenographer (BPS-16),
Directorate of Agriculture (Extension) Wing,
Khyber Road Peshawar.

PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Agriculture, Civil Secretariat, Peshawar.
3. The Director General (Extension), Khyber Pakhtunkhwa Khyber Road, Peshawar.
4. Section Officer (Estt), Government of Khyber Pakhtunkhwa Agriculture, Live Stock & Cooperative Department, Peshawar.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 13.11.2020 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed Service Appeal No.880/2018 against the impugned order bearing December 14, 2017, whereby the departmental appeal of the petitioner was turned down and the appellant was denied his right of promotion besides other numerous orders ancillary, thereto which affected the petitioner's right of promotion.
2. The said appeal was finally heard by this Honourable Service Tribunal on 13.11.2020. The Honourable Service Tribunal accepted the appeal with the direction to respondents to process the case of the

petitioner for ante dated promotion from the date, his case was first considered for promotion with all benefits accrued to him. (Copy of judgment dated 13.11.2020 is attached as Annexure-A)

- 3. That since the announcement of the judgment, the petitioner has waited for about 03 months for implementation of the judgment dated 13.11.2020 of this august Tribunal, but the respondent department did not implemented the judgment dated 13.11.2020 till date.
- 4. That in-action and not fulfilling formal requirements by the department after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 5. 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 obey the judgment dated 13.11.2020 of this Honourable Service Tribunal in letter and spirit.
- 6. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 13.11.2020 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

Hizbullah
PETITIONER
Hizbullah

THROUGH:

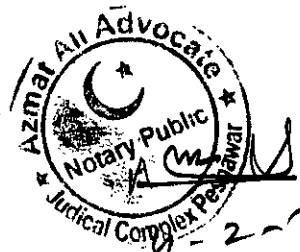
Taimur Ali Khan
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
&

(ASAD MAHMOOD)
ADVOCATE HIGH COURT

AFFIDAVIT:

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

ATTESTED



Asad Mahmood
DEPONENT

2-2-21

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(3)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No 880 /2018

Hizbullah Khan,
Sr. Scale Stenographer (BPS-16)
Directorate of Agriculture (Extension) wing,
Khyber Road, Peshawar.....

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 1146
Dated 11-7-2018
Appellant

Versus.

1. Government of Khyber Pakhtunkhwa,
Through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa,
Through Secretary Agriculture, Civil Secretariat, Peshawar.
3. The Director General (Extension),
Khyber Pakhtunkhwa, Khyber Road, Peshawar.
4. Section Officer (Estt.)
Government of Khyber Pakhtunkhwa,
Agriculture, Live Stock & Cooperative Department, Peshawar.
5. Abdul Sattar, Superintendent,
O/o Deputy District Agriculture District.Tank.



Filed to-day
Registrar
11/7/18

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER BEARING DECEMBER 14, 2017 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS TURNED DOWN AND THE APPELLANT WAS DENIED HIS RIGHT OF PROMOTION BESIDES OTHER NUMEROUS ORDERS INCILLARY THERETO WHICH AFFECTED THE APPELLANT'S RIGHT OF PROMOTION.


PRAYER IN APPEAL;

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED DECEMBER 14, 2017 PASSED BY GOVT: KPK, AGRICULTURE LIVESTOCK & COOPERATIVE DEPARTMENT MAY PLEASE BE SET ASIDE AND THE APPELLANT BE PROMOTED TO THE POST OF SUPERINTENDENT (BS-17) WITH ALL BACK BENEFITS.

RESPECTFULLY SHEWETH:-

FACTS:-

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.880/2018

Date of Institution: 11.07.2018

Date of Decision: 13.11.2020

Hizbullah Khan Sr Scale Stenographer (BPS-16) Directorate of Agriculture
(Extension) Wing Khyber Road Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and 4 others

... (Respondents)

Mr. Taimur Ali Khan
Advocate

... For Appellant

Mr. Muhammad Jan,
Deputy District Attorney

... For Official Respondents

Mr. MUHAMMAD JAMAL KHAN
Mr. ATIQ UR REHMAN WAZIR

...

MEMBER (J)

...

MEMBER (E)

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

JUDGEMENT: -.

Mr. ATIQ UR REHMAN WAZIR: - Appellant Mr. Hizbullah Khan, initially appointed as Steno typist on 25-08-1981 has assailed the impugned order dated 14-12-2017, whereby the departmental appeal of the appellant was turned down and the appellant was denied his right of promotion besides other numerous orders ancillary thereto which affected the appellants right of promotion.


2. Brief facts of the case are that the appellant Mr. Hizbullah Khan was initially appointed as steno typist on 25-07-1981 and promoted to the post of Senior Scale Stenographer (BPS-16) on 25-05-2009. That until 2018 he stood first in the seniority list of Senior Scale Stenographers (BPS-16) of Agriculture Department (Extension Wing). That his case for promotion to the post of Superintendent (BPS-17) was twice submitted by respondent No. 3 to respondent No. 2 along with working papers, but was not considered by respondent No. 2. The appellant preferred departmental appeal on 26-10-2017, which was responded to with observations that his case is kept pending till finalization of new service rules, but at the same time, promoted other officers of the Department without waiting for new service rules. The appellant went in WP No 2268-P/2018, which was disposed of on 05-06-2018 on the grounds of jurisdiction, but with liberty to the appellant to approach the proper forum, hence the instant service appeal with prayers that the impugned order dated 14-12-2017 may be set aside and the appellant be promoted to the post of Superintendent (BPS-17) with all back benefits.

3. Written reply/comments were submitted by respondents.

4. Arguments heard and record perused.

5. Learned counsel for the appellant contended that until 2018 the appellant stood at serial No. 1 of the seniority list of Senior Scale Stenographers of Agriculture Department (extension wing) and his case for promotion to the post of Superintendent(BPS-17) was twice submitted by respondent No. 3 to respondent No. 2, but respondent No. 2 intentionally ignored his case for promotion without any valid reason. That in response

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

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to the departmental appeal of the appellant, the respondent observed that the case of appellant is kept pending till finalization of new service rules, while ignoring the existing rules of 1983. That the appellant was fit for promotion in all respect as well as vacant posts were also available, as is evident from the working papers submitted for his promotion to the competent forum. That the respondent kept the case of the appellant pending for want of new service rules, but simultaneously promoted other employees under the existing rules, who were junior to the appellant. That the promotion case of the appellant was kept pending with malafide intention by the respondent No 2, thereby committed gross illegality and irregularity by violating rules and regulations, as such the appellant was deprived of his valuable rights. That stance of the appellant has already been conceded to by the respondents in their comments, which is available on record. On the question of limitation, the learned counsel referred to

Section 23 of Limitation Act, 1908, where, in case of a continuing breach of contract and in case of continuing wrong, independent of contract, a fresh period of limitation begins to run at every moment of the time, during which the breach or the wrong, as the case may be, continues. Reliance: 2009 P L C (C.S) 178 and 2002 P L C (C.S) 1388. Further argued that the time consumed pursuing remedy before a wrong forum in appropriate cases could always be condoned. Reliance: 2017 P L C (C.S) 692. Moreover decision of cases on merit always to be encouraged instead of non-suiting the litigants for technical reasons including on limitation. Reliance: P. L D

2003 SC 7244 Citation K and 1999 S C M R 880. That the appellant had no adverse entries in his PER, nor any other visible reason available to stop his further promotion except malafide of respondent No. 2, hence he was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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entitled to be promoted at that particular time as well as entitled even now for ante dated promotion from the date he was first considered for promotion. Reliance: 2002 P L C (CS) 1388, SA No 625/2018, SA No 1294/2017 and 2016 S C M R 1784. That respondent No 5 was illegally promoted without any law and rule and this fact has already been admitted by respondents in their comments placed on record. That the appellant stood retired from service on 15-08-2018, but till the date of his retirement, he strived for his promotion but the respondent deliberately delayed his promotion every time with malafide intension without any reason, thus deprived him of valuable rights accrued to him before retirement. The learned counsel prayed that on acceptance of this appeal, the appellant may be promoted from the date, he was first considered for promotion, so that he may avail the rights of promotion accrued to him at that particular time.

W/h

ATTESTED

EXAMINER
 Keyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

The learned Deputy District Attorney appeared on behalf of official respondents opposed the contention of learned counsel for appellant and referred to Section 4 of the Service Tribunal Act, where the appellant was not aggrieved by any final order of the competent authority, to which he preferred departmental appeal and which was responded to by the respondent dated 14-12-2017 and which cannot be made a reason for filing appeal before this Tribunal. The learned Deputy District Attorney also referred to Section 3 of Appeal rules 1986, emphasizing the time limitation. The learned Deputy District Attorney further argued that the appellant spoiled much of his time in selecting wrong forum to redress his grievances and spent his time in High Court in writ petition and ultimately approached

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this Tribunal, which is time barred. Reliance: Service Appeal No. 1294/2017, Service Appeal No. 189/2015. On the question of ante dated/notional promotion, the learned Deputy District Attorney argued that ante dated promotion is not allowed as per rule, especially when the civil servant retires from service. Reliance: CA No. 195/2020 and CA No. 16/2020. On the question of merit of the case, the respondent did not furnish satisfactory reply, when he was confronted with the comments furnished by respondents, where the respondents have conceded to almost all the stances of the appellant in their comments.

7. We have heard learned counsels for the parties and perused the record. This Tribunal first examined the issues, which are not disputed amongst the parties. The appellant stood first at the seniority list and was found fit for further promotion on the basis of seniority cum fitness and availability of vacant post, as is evident from the working papers submitted to Respondent No. 2 on 16-08-2016 and 30-12-2016 as well as affirmation in the comments of the respondents. Service rules 1983 for his promotion were already in field and other employees of the same cadre were promoted under the said rules, but his case was ignored without assigning any reason, hence he agitated the issue and preferred departmental appeal on 26-10-2017, which was responded to with observations that his case was kept pending till finalization of new service rules.

8. Knowing the facts that respondent No. 2 is deliberately delaying his promotion, the appellant approached the honorable High Court in writ petition on 28-04-2018, which was disposed of on 05-06-2018 on the

ground of jurisdiction, but with liberty to the appellant to approach the


ATTESTED


Attestor
Ayte Pakhankwa
Service Tribunal
Peshawar

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proper forum for redressal of his grievances. Ultimately, the appellant knocked the door of Service Tribunal. Keeping in view the facts mentioned above and perusal of record, we have reached to the conclusion that respondent No. 2 deliberately delayed his promotion case for reasons best known to them, because of which the appellant stood retired on 15-08-2018 and thus deprived him of valuable rights accrued to him before retirement. The case laws referred to by the learned counsel for the appellant on the question of limitation are very relevant after confirmation of the fact that the appellant has been deprived of valuable rights accrued to him at that point of time, hence limitation would not foreclose his rights accrued to him and it would be unjust to set aside genuine findings of the case on technical ground alone. It was observed that the appellant struggled unabated for his rights till his retirement seeking promotion to the next grade, but he did not succeed till his retirement, hence his prayers also changed with the change in situation now seeking ante dated promotion. To this effect, the case law referred to by counsel of the appellant in Service Appeal No. 625/2018 is very relevant as similar question of law and facts are involved therein, where proforma/notional promotion have been allowed in similar circumstances, where malafide established in depriving a government servant of his due right of promotion and that too at the last leg of his service. In the instant case too, it would have definitely benefited him in not only getting higher post but also pension and other monetary benefits. The appellant in the instant case has a strong case for the benefits of ante dated promotion.



ATTESTED


EXAMINER,
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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9. In view of the situation, the instant appeal is accepted with direction to respondents to process the case of the appellant for ante dated promotion from the date; his case was first considered for promotion with all benefits accrued to him. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
13.11.2020

(MUHAMMAD JAMAL KHAN)
MEMBER (J)



(ATIQU UR REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 04/02/2021
Number of Words 2800
Copying Fee 30/-
Urgent 7
Total 30/-
Name of Copyist _____
Date of Completion of Copy 04/2/21
Date of Delivery of Copy 04/2/21

بعدالت

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

مورخہ
مقدمہ
دعویٰ
جرم

حزب التوحید و منجانب
حزب الاسلام بنام

بابت تخریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام کئی اور کیلئے دسموہ علی خان اور اسد محمد اور اسد علی

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

Accepted
Attested
Signature

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المرقوم

العبد العبد العبد

کے لئے منظور ہے۔

مقام