

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL.

Service Appeal No. 1416/2022

Muhammad Rasheed.....Appellant.

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary and
others.....Respondents.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3656

Dated 17/2/2023

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MUHAMMAD ISMAIL
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NIC No. 17301-0876331-9
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IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1416/2022.

Muhammad Rasheed District Attorney, Mohmand.

.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa through the Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar & others.

.....Respondents.

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.01-03.

Respectfully Sheweth.

PRELIMINARY OBJECTIONS:

1. That no cause of action or locus standi lies with appellant for filing of the Appeal, therefore, appeal may be dismissed.
2. That the instant appeal is not maintainable in its present form.
3. That the present appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
4. That the appellant has concealed the material facts from this Hon'ble Tribunal.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the instant appeal.
6. That the appellant is estopped by his own conduct to file the subject service appeal.
7. The appeal of the appellant is barred by time.
8. That the representation being inconsistent with provisio given under section 22 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, therefore, was filed.

On facts:

1. Pertains to record. Needs no comments.
2. Pertains to record. Needs no comments.
3. Pertains to record. Needs no comments.
4. Pertains to record. Needs no comments.
5. Pertains to record. Needs no comments.
6. Para-6 is not admitted as correct.
7. Pertains to record, hence, no comments.
8. Para-8 is not admitted as correct.
9. Incorrect, the Notification dated 19.04.2022 has been issued with immediate effect as promotion is always with immediate effect under the Promotion Policy of Provincial Government in vogue. As per para-VI of Promotion Policy, "Promotion" will always be notified with immediate effect (**Annex-A**).
10. Pertains to record. That the representation being inconsistent with provisio given under section 22 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, therefore, was filed.
11. Pertains to record. That the representation being inconsistent with provisio given under section 22 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, therefore, was filed.


(2)


Grounds:


- A) Denied. The respondents have not violated the rule of equity.
- B) Denied. No discrimination or injustice has been done against the appellant nor any provision of constitution has been violated.
- C) Incorrect, hence, denied. The respondents have acted in accordance with law.
- D) Incorrect, hence, denied. The respondents have followed the promotion policy in accordance with law.
- E) Incorrect, hence, denied. The promotion is always with immediate effect under the Promotion Policy of Provincial Government in vogue.
- F) Incorrect. As discussed above.
- G) Incorrect. No injustice has been committed by the respondents.
- H) Denied. This Hon'ble Tribunal has got no jurisdiction to entertain the instant appeal.
- I) Denied. The appellant has no solid ground to agitate before the Hon'ble Tribunal in support of his claim.

Prayer:

It is, therefore, most humbly prayed that on acceptance of this parawise comments, the Appeal being devoid of legal footings and merits, may graciously be dismissed with cost.


Chief Secretary
Khyber Pakhtunkhwa
Respondent No.01


Secretary to Govt. of Khyber Pakhtunkhwa
Establishment Department.
Respondent No.02


Secretary to Govt. of Khyber Pakhtunkhwa
Law Department.
Respondents No.03



ESTA CODE

ESTABLISHMENT CODE KHYBER PAKHTUNKHWA (REVISED EDITION) 2019

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

COMPILED BY:

**(O&M) SECTION
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

V. Deferment of Promotion: 03468563429

- (a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if
- ²²⁴Clause (i) [deleted]
- (i) Disciplinary or departmental proceedings are pending against him.
 - (ii) The PER dossier is incomplete or any other document/ information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control.
- (b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cease to exist. The cases falling under any of the above two categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.
- (c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake is noticed.
- (d) If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/ Departmental Promotion Committee and is declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.
- (e) If a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year.
- (f) If a civil servant is recommended for promotion to the higher basic scale/post by the PSB/DPC and the recommendations are not approved by the competent authority within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. Date of Promotion:

Promotion will always be notified with immediate effect:

²²⁴ Clause(i) of sub para-a of Para-V deleted and ii,iii re-numbered as i,ii as well as in sub para-b the word three substituted with the word two vide Notification No.SO(Policy)/E&AD/1-16/2017 dated 05.12.2017

- (5)
- c) ²¹⁷In case of projects partially or fully funded by the Federal or Provincial Government, where PERs are written by officers of Provincial Government, the condition of earning one calendar PER shall not be applicable. The officers on deputation to projects shall be considered for promotion. However, after promotion they will have to actualize their promotion within their cadre.
- d) The civil servants on deputation to Federal Government, Provincial Government, autonomous/semi-autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected.
- dd) ²¹⁸*"If a civil servant is nominated by the Provincial Government for higher studies or training abroad, and his turn for promotion arrives in his parent department or cadre in Pakistan, he should be considered for promotion along with other officers, and if he is approved for promotion in accordance with the relevant rules, he should be appointed formally (not actually) to the post in the higher grade. This would enable him to occupy on his return to Pakistan the position which he would have occupied had he not gone abroad on training. No financial benefit of the next below rule should be allowed to him in respect of his promotion. He should be allowed to count seniority and increment from the date of such promotion, but the actual pay of the higher post should be given to him only when he resumes the duties of higher post on his return from training".*
- e) The cases of promotion of civil servants who have not successfully completed the prescribed mandatory training (MCMC, SMC & NMC) or have not passed the departmental examination for reasons beyond control, shall be deferred.
- f) Promotion of officers still on probation after their promotion in their existing Basic Scales shall not be considered.
- g) A civil servant initially appointed to a post in a Government Department but retaining lien in a department shall not be considered for promotion in his parent department. However, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year.
- h) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted.
- i) ²¹⁹The mere fact that the seniority is sub-judiced will not debar the competent forum to make recommendation. However, in such cases following shall be applicable:-
- i. All promotion based on sub-judice seniority will be conditional i.e. subject to final outcome of Court cases.
 - ii. An officer who gets his seniority restored and becomes senior to already promoted officers in the cadre will be considered for promotion by the relevant board from the date when his junior got promoted.

²¹⁷ para 1 (iv)(c) substituted vide circular letter No. SORIV/E&AD/1-16/2006, dated 19.4.2010???

²¹⁸ No. SOR-VI/E&AD/1-16/2011 dated 07.03.2014

²¹⁹ After sub para-h of Para-IV sub para (i) inserted vide Notification No.SO(Policy)/E&AD/1-16/2017 dated 05.12.2017

(B)

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Versus

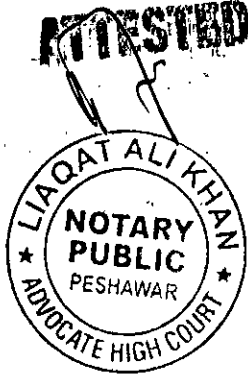
Government of Khyber Pakhtunkhwa through Chief Secretary and
others.....Respondents.

AFFIDAVIT

I, Muhammad Ismail Khalil, Superintendent (Lit) (BPS-17), Law Department, do hereby solemnly affirm and declare on oath that contents of Parawise Comments on behalf of Respondents No. 1-3 are true to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Tribunal.



Deponent



17 FEB 2023

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