

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 537/2022

Nasrullah Khan.....Appellant

Versus

Speaker Provincial Assembly KP and Others.....Respondent(s)

INDEX

| Sr No | Particulars | Page No |
|-------|---|------------------------|
| 1. | Reply | 2-4 |
| 2. | Affidavit | 5 |
| 3. | Copy of the Judgment rendered in Service Appeal No. 952/2014 dated 14.09.2017; Judgment in Service Appeal No. 1324/2017 dated 10.12.2018; Judgment in Service Appeal No. 937/2022 dated 17.12.2020; is annexed as Annexure "A", "B" and "C" | 6-15 16-23 24-31 |
| 4. | Copy of the Judgment in Service Appeal No-4874/2021 dated 24-09-2021 & minutes of meeting dated 05.11.2021 are annexed as annexure "D" | 32-47 48-49 |
| 5. | Copy of the Notifications dated 05-11-2021 & rules of 1974 are annexed as Annexure "E" | 50 51-60 |
| 6. | Copy of the recruitment order, 2007 is annexed as Annexure "F" | 61-63 |
| 7. | Copy of the order dated 25.01.2023 along with relevant document(s) is annexed as Annexure "G" | 64-65 |

KIFAYATULLAH KHAN AFRIDI
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

Respondent

Through

Naeem Ahmad Khattak

Advocate High Court

Contact # 0345-5544461

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR
Service Appeal No. 537/2022

Nasrullah Khan.....Appellant

Versus

Speaker Provincial Assembly KP and Others.....Respondent(s)

REPLY ON BEHALF OF RESPONDENT NO. 2

Respectfully Sheweth,

PRELIMINARY OBJECTION(S)

1. That the appellant is estopped by his own conduct from instituting the present appeal.
2. That the appellant has not come to this Hon'ble Court with clean hands.
3. That the appellant has suppressed material facts from the Hon'ble Court and wants to gain undue benefit; hence the appeal is liable to be dismissed.

ON FACTS

1. Given the plea opted by the appellant in Para No. 1 to 7; It is pertinent to mention that respondent No. 2 has questioned the promotion of the present appellant time and again; wherefore Hon'ble the Service Tribunal has set aside the findings recorded in shape of minutes of the meeting premised upon wrong edifice which was bound to crumble down as noted by the Hon'ble Tribunal in its Judgments. **(Copy of the Judgment(s) in Service Appeal No. 952/2014 dated 14.09.2017; Judgment in Service Appeal No. 1324/2017 dated 10.12.2018; Judgment in Service Appeal No. 937/2022 dated 17.12.2020; is annexed as Annexure "A", "B" and "C")**

2. The plea opted by the appellant in Para No. 8 to 9 has adequately been dealt with by Hon'ble Tribunal in Service Appeal No. 4874/2021 vide judgment dated 24.09.2021 wherein necessary directions were issued as such Departmental Promotion Committee was constituted; which have rendered its findings on 05.11.2021. **(Copy of the Judgment in Service Appeal No-4874/2021 dated 24-09-2021 & minutes of meeting dated 05.11.2021 are annexed as annexure "D")**

The notification dated 05.11.2021 allowing the present respondent to act as Secretary Provincial Assembly was issued within the meaning of Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Recruitment Rules, 1974. **(Copy of the Notification dated 05-11-2021 & rules of 1974 are annexed as Annexure "E")**

The minutes of meeting provides for consideration of candidature(s) in line with Recruitment Order, 2007. **(Copy of the recruitment order, 2007 is annexed as Annexure "F")**

Admittedly, the respondent No. 2 is the most senior officer of the Provincial Assembly Khyber Pakhtunkhwa; whereas the present appellant stood junior to the than Additional Secretary Mr. Ghulam Sarwar let alone the present contesting respondent; made party in the controversy pending adjudication before the Tribunal. The plea opted by the appellant is erroneous and without any backing of law and jurisprudence.

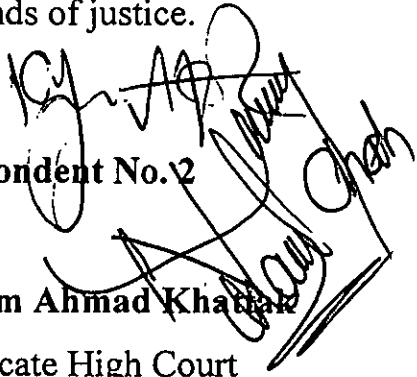
ON GROUNDS

The ground(s) raised does not meet the required threshold for making out a case of merits given the facts explained in paras mentioned hereinbefore and in addition thereto not only the proceedings initiated against the respondent No. 2 stands no more rather reliance placed on

W.P. No. 413-P/2022 and order dated 25.01.2022 along-with ancillary record; is appended for perusal of the Hon'ble Court; therefore ground (A) to (H) are unsustainable and beyond reach of precincts prescribed by law and jurisprudence. (Copy of the order dated 25.01.2023 along with relevant document(s) is annexed as Annexure "G")

Given the stated situation; it is therefore humbly requested that the appeal merits dismissal; for securing the ends of justice.

Through


Respondent No.2

Naeem Ahmad Khan

Advocate High Court

Contact # 0345-5544461

KIFAYATULLAH KHAN AFRIDI
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**PESHAWAR**

Service Appeal No. 537/2022

Nasrullah Khan.....Appellant

Versus

Speaker Provincial Assembly KP and Others.....Respondent(s)

AFFIDAVIT

I Kifayat Ullah Khan Afridi Secretary Provincial Assembly (Respondent No. 2), do hereby solemnly affirm that the contents of the reply are true and correct to the best of my knowledge, belief, ability and nothing has been concealed therein from the Hon'ble Court.


Deponent

KIFAYATULLAH KHAN AFRIDI
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

ATTESTED
EXAMINER
 Kyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Appellant has filed the present appeal under Section 4 of the
 Kyber Pakhtunkhwa Service Tribunal Act, 1974 against the
 notification dated 18.08.2007 whereby while superseding the
 appellant, his junior colleague Nasrullah Khan (respondent No. 3)
 was promoted as Additional Secretary Provincial Assembly and
 against the order dated 01.10.2009 whereby the appellant was
 allowed promotion as Additional Secretary but with immediate
 effect and against the order dated 25.06.2014 whereby the review

Present representative of officials respondents present.
 2. Appellant has filed the present appeal under Section 4 of the
 Kyber Pakhtunkhwa Service Tribunal Act, 1974 against the

MUHAMMAD HAMID MUJHTAB, MEMBER - Appellant

JUDGMENT

1. The Speaker Provincial Assembly of Kyber Pakhtunkhwa Peshawar
2. The Secretary Provincial Assembly Secretariat Kyber Pakhtunkhwa Peshawar
3. Mr. Nasrullah Khan, Additional Secretary, Provincial Assembly Kyber Pakhtunkhwa, Respondents

VERSUS

(Ihtam Sarwar, presently working as Additional Secretary, Provincial Assembly Secretariat, Kyber Pakhtunkhwa Peshawar, Appellant)

Service Appeal No. 952/2014
 Date of Institution ---14.07.2014
 Date of Decision ---14.09.2017

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL



Order or other proceedings with signature of Judge or Magistrate

Annexure - A (6)

14.09.2017

amir

proceeding

2

3

(Better Copy)

| S. No | Dated of order/ proceeding | Order or other proceedings with signature of Judge or Magistrate. |
|-------|----------------------------|--|
| 1 | 2 | 3 |
| | 14.09.2017 | <p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p align="center"><u>Service Appeal No.952/2014</u></p> <p align="center">Date of Institution---14.07.2014 Date of Decision -----14.09.2017</p> <p>Ghulam Sarwar , presently working as Additional Secretary, Provincial Assembly Secretariat, Khyber Pakhtunkhwa Peshawar. Appellant</p> <p align="center">VERSUS</p> <ol style="list-style-type: none"> 1. The Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar. 2. The Secretary Provincial Assembly Secretariat Khyber Pakhtunkhwa Peshawar. 3. Mr. Nasrullah Khan, Additional Secretary, Provincial Assembly Khyber Pakhtunkhwa.....Respondents <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>MUHAMMAD HAMID MUGHAL, MEMBER :- Appellant</u></p> <p>Present. Representative of officials respondents present.</p> <p>2. Appellant has filed the present appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the notification dated 18.08.2007 whereby while superseding the appellant, his junior colleague Nasrullah Khan (respondent No.3) was promoted as Additional Secretary Provincial Assembly and against the order dated 01.10.2009 whereby the appellant was allowed promotion as Additional Secretary but with immediate effect and against the order dated 25.06.2014 whereby the review</p> |

petition/appeal of the appellant was rejected.

3. Prayer of the appellant is that the order dated 25.06.2014 be set aside and the promotion order of the appellant be antedated w.e.f 18.08.2007 when his junior colleague (respondent No.3) was promoted as Additional Secretary and that the appellant may also be allowed seniority as well as consequential benefits.

4. Learned counsel for the appellant contented that the appellant as well as respondent No. 3 were initially appointed as Assistant Secretaries (BPS-17) in the year 1993. Further contented that originally the appellant is senior to the respondent No. 3 and this fact is evident from the appointment notification dated 11.03.1993 as well as notification dated 4.3.1997 wherein seniority wise the appellant has been placed at Sr. No. 1 while respondent No. 3 was placed at Sr. No. 2. Further argued that both the appellant and respondent No.3 were promoted as Deputy Secretaries BPS-18 vide notification dated 27.02.2003 and in the said notification the appellant was also placed senior to the respondent No. 3. Further argued that the appellant holding Master Degree in Public Administration and his experience in legislation and administration is much higher than respondent No. 3. Further argued that the performance of appellant as per ACR Dossiers is also up to the mark. Further argued that for filling of the vacancy of Additional Secretary (BPS-19) working paper was prepared by respondent No. 3 Nasrullah Khan wherein the respondent No.3 recommended his own promotion in supersession of the appellant despite fact that he

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Petition/appeal of the appellant was rejected.

3. Prayer of the appellant is that the order dated 25.06.2014 be set aside and the promotion order of the appellant be antedated w.e.f 18.08.2007 when his junior colleague (respondent No.3 was promoted as Additional Secretary and that the appellant may also be allowed seniority as well as consequential benefits.

4. Learned counsel for the appellant contented that the appellant as well as respondent No.3 were initially appointed as Assistant Secretaries (BPS-17) in the year 1993. Further contented that originally the appellant is senior to the respondent No.3 and this fact is evident from the appointment notification dated 11.03.1993 as well as notification dated 4.3.1997 wherein seniority wise the appellant has been placed at Sr.No.1 while respondent No.3 was placed at Sr. No.2. Further argued that both the appellant and respondent No.3 were promoted as Deputy Secretaries BPS-18 vide notification dated 27.02.2003 and in the said notification the appellant was also placed senior to the respondent No.3. Further argued that the appellant holding Master Degree in Public Administration and his experience in legislation and administration in much higher than respondent No.3. Further argued that the performance of Appellant as per ACR Dossiers is also up to the mark. Further argued that for filling of the vacancy of Additional Secretary (BPS-19) working paper was prepared by respondent No. 3. Nasrullah Khan wherein the respondent No.3 recommended his own promotion in supersession of the appellant despite fact that he

was not only the junior to the appellant but also earned adverse ACR in the year 1997 and was also belatedly granted selection grade in the year 2003 while the appellant was granted selection grade in the year 1998. Further argued that the appellant was fit for promotion to the post of Additional Secretary (BPS-19) in all respect on merit and on the basis of seniority cum-fitness criteria also mentioned in Notification bearing No. PA/NWFP/Admn:/2007/19866 dated 25.09.2007. Further argued the departmental promotion/selection Committee unlawfully and by having been influenced from the working paper prepared by the respondent No. 3 arbitrarily appointed respondent No. 3 as Additional Secretary in Supersession of appellant. Further argued that the Departmental Promotion Committee has not at all considered the factum of seniority of appellant and wrongly proceeded on the notion of equal length of service. Further argued that if in the ACR forms of the appellant training was recommended then in the ACRs forms of respondent No. 3 the same was also suggested. Further argued that the appellant received good ACRs wherein the reporting and the countersigning officers declared him fit for promotion. Further argued that the Speaker Provincial Assembly in reference to the order of the Honorable Peshawar High Court, Peshawar dated 19.12.2003 issued in writ petitioner bearing No. 963 of 2010 again passed non-speaking order dated 25.06.2014 and arbitrarily decided the matter of appointment of Additional Secretary as well as seniority against the appellant.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

was not only the junior to the appellant but also earned adverse ACR in the year 1997 and was also belatedly granted selection grade in the year 2003 while the appellant was granted selection grade in the year 1998. Further argued that the appellant was fit for promotion to the post of Additional Secretary (BPS-19) in all respect on merit and on the basis of seniority cum-fitness criteria also mentioned in Notification bearing No. PA/NWFP/Admn:/2007/19866 dated 25.09.2007. Further argued the departmental promotion/selection Committee unlawfully and by having been influenced from the working paper prepared by the respondent No.3 arbitrarily appointed respondent No. 3 as Additional Secretary in Supersession of appellant. Further argued that the Departmental Promotion Committee has not at all considered the factum of seniority of appellant and wrongly proceeded on the notion of equal length of service. Further argued that if in the ACR forms of the appellant training was recommended then in the ACRs forms of respondent No. 3 the same was also suggested. Further argued that the appellant received good ACRs wherein the reporting and the countersigning officers declared him fit for promotion. Further argued that the Speaker Provincial Assembly in reference to the order of the Honorable Peshawar High Court Peshawar dated 19.12.2003 issued in writ petitioner bearing No. 963 of 2010 again passed non-speaking order dated 25.06.2014 and arbitrarily decided the matter appointment of Additional Secretary as well as seniority against the appellant.

Further argued that the authority deprived the appellant of his legitimate right of promotion in an illegal manner and by improper exercise of discretion, hence this Tribunal has got the jurisdiction to grant relief of the appellant as prayed for. Further argued that the Departmental promotion Committee has not found the appellant unfit for promotion. In support of his case, the learned counsel for the appellant relied upon the judgments titled SARFRAZ ALI KHAN---Appellant Versus FEDERATION OF PAKISTAN and others---Respondents (PLD 2006 Supreme Court 246) titled MUHAMMAD RAHIM KHAN---Appellant Versus THE CHIEF SECRETARY, NWFP and others---Respondents (PLD 2004 Supreme Court 65) titled MUHAMMAD ZAHIR RAJA---Appellant Versus FEDERATION OF PAKISTAN and others---Respondents (2012 S C M R 971) titled MUHAMMAD AMJAD and others---Appellants Versus Dr. Israr Ahmad and others Respondents (2010 P I. C (C.S) 760) titled ABDUL GHIAFFAR MIAN Versus GOVERNMENT OF PAKISTAN, CABINET SECRETARIAT, ESTABLISHMENT DIVISION through Secretary to Government of Pakistan, Islamabad and 6 others---Respondents (2006 P I. C (C.S) 1081) titled AZHAR HASSAN NADEEM and others---Appellant Versus FEDERATION OF PAKISTAN through Secretary, Establishment Division, Islamabad and 6 others---Respondents (2007 P I. C(C.S)1246.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

5. Learned Additional Advocate General assisted by the learned counsel for respondent No.3 contented that by virtue of proviso (b)

Further argued that the authority deprived the appellant of his legitimate right of promotion in an illegal manner and by improper exercise of discretion, hence this Tribunal has got the jurisdiction to grant relief of the appellant as prayed for. Further argued that the Departmental promotion Committee has not found the appellant unfit for promotion. In support of his case, the learned counsel for the appellant relied upon the judgments titled SARFRAZALI KHAN---Appellant Versus FEDERATION OF PAKISTAN and others--- Respondents (PLD 2006 Supreme court 246) titled MUHAMMAD RAHIM KHAN---Appellant Versus THE CHIEF SECRETARY, NWFP and others---- Respondents (PLD 2004 Supreme Court 65) titled MUHAMMAD ZAHIR RAJA---- Appellant Versus FEDERATION OF PAKISTAN and others---- Respondents (2012 SCMR 971) titled MUHAMMAD AMJAD and others----Appellants Versus Dr. Israr Ahmed and others Respondents (2010 P L C (C.S) 760) titled ABDUL GHAFFAR MIAN Versus GOVERNMENT OF PAKISTAN, CABINET SECRETARIAT , ESTABLISHMENT DIVISION through Secretary to Government of Pakistan, Islamabad and 6 others----- Respondents (2006 P L C (C.S) 1081) titled AZHAR HUSSAIN NADEEM and others----Appellant Versus FEDERATION OF PAKISTAN through Secretary, Establishment Division , Islamabad and 6 others-----Respondents (2007 P L C (C.S) 1246).

5. Learned Additional Advocate General assisted by the learned counsel for respondent No.3 contented that by virtue of proviso (b)

of section-4 of Khyber Pakhtunkhwa Service Tribunal Act, the present appeal is not maintainable. Further argued that the present appeal is also barred by limitation. Further argued that the promotion of respondent No.3 to the post of Additional Secretary was strictly made on merits in accordance with the promotion policy. Further argued that the impugned orders do not warrant any interference.

6. Learned counsel for respondent No.3 is support of his arguments relied upon the judgments titled ABDUL HAMEED---Petitioner Versus MINISTRY OF HOUSING AND WORKS, GOVERNMENT OF PAKISTAN, ISLAMABAD through Secretary and others---Respondents (P L D 2008 Supreme Court 395) titled ABID HUSSAIN SHEERAZI---Petitioner Versus SECRETARY M/O INDUSTRIES AND PRODUCTION, GOVERNMENT OF PAKISTAN, ISLAMABAD---Respondents (2005 S C M R 1742) titled GOVERNMENT OF PAKISTAN through Establishment Division, Islamabad and 7 others---Appellants Versus HAMEED AKHTAR NIAZI, ACADEMY OF ADMINISTRATIVE, WALTON TRAINING, LAHORE and others---Respondents (P L D 2003 Supreme Court 110) Judgment of Honorable Peshawar High Court Peshawar titled Engineer Musharaf Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary and others (Writ Petition No. 2440-P/2012)

Arguments of learned counsel for appellant learned Additional Advocate General and learned counsel for respondent

ATTESTED

BY: MENER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Of section-4 of Khyber Pakhtunkhwa Service Tribunal Act, the present appeal is not maintainable. Further argued that the present appeal is also barred by limitation. Further argued that the promotion of respondent No.3 to the post of Additional Secretary was strictly made on merits in accordance with the promotion policy. Further argued that the impugned orders do not warrant any interference.

6. Learned counsel for respondent No.3 is support of his arguments relied upon the judgments titled ABDUL HAMEED----Petitioner Versus MINISTRY OF HOUSING AND WORKS, GOVERNMENT OF PAKISTAN, ISLAMABAD through Secretary and others----Respondents (P L D 2008 Supreme Court 395) titled ABID HUSSAIN SHERAZI----Petitioner Versus SECRETARY M/O INDUSTRIES AND PRODUCTION, GOVERNMENT OF PAKISTAN, ISLAMABAD---Respondents (2005 S C M R 1742) titled GOVERNMENT OF PAKISTAN through Establishment Division , Islamabad and 7 others----Appellants Versus HAMEED AKHTAR NIAZI, ACADEMY OF ADMINISTRATIVE, WALTON TRAINING, LAHORE and others--- Respondents (P L D 2003 Supreme Court 110) Judgment of Honorable Peshawar High Court Peshawar titled Enginner Musharaf Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary and others (Writ Petition No. 2440-P/2012)

7. Arguments of learned counsel for appellant learned Additional Advocate General and learned counsel for respondent

No. 3 heard. Filed perused.

8. Consequent upon the direction of the Honorable Peshawar High Court, Peshawar dated 19.12.2013 passed in writ petition No. 963 of 2010, the Speaker Khyber Pakhtunkhwa Provincial Assembly issued the impugned order dated 25.06.2014. The operative and concluding paras of the impugned order dated 25.06.2014 are reproduced as under

"An examination of the above facts, available on record, reveal to uncontroverted facts: (a) of Nasrullah Khan's promotion on merit on 18.08.2007 and (b) Ghulam Sarwar's promotion subsequently on 01.10.2009; both by the competent authority in accordance with the rules".

"Having gone through the record and having applied my mind, Mr. Ghulam Sarwar claim of seniority against Nasrullah Khan is baseless".

9. The present appeal having been filed within thirty days of the final/impugned order dated 25.06.2014 hence the present appeal cannot be termed as barred by limitation

10. It is not disputed that both the appellant and respondent No. 3 were initially appointed as Assistant Secretaries (BPS-17) of Khyber Pakhtunkhwa Provincial Assembly Secretariat vide notification dated 11.03.1993 and the appellant was placed at a senior position i.e Sr. No. 1 as compared to the respondent No. 3 who was placed at Sr. No. 2 of the appointment notification. Similarly, in the notification dated 1.03.1997 whereby numbers

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

No.3 heard. Filed perused.

8. Consequent upon the direction of the Honorable Peshawar High Court , Peshawar dated 19.12.2013 passed in writ petition No. 963 of 2010, the Speaker Khyber Pakhtunkhwa Provincial Assembly issued the impugned order dated 25.06.2014. The operative and concluding paras of the impugned order dated 25.06.2014 are reproduced as under.

"An examination of the above facts, available on record, reveal to uncontroverted facts: (a) of Nasrullah Khan's promotion on merit on 18.08.2007 and (b) Ghulam Sarwar's promotion subsequently on 01.10.20; both by the competent authority in accordance with the rules".

"Having gone through the record and having applied my mind. Mr. Ghulam Sarwar claim of seniority against Nasrullah Khan is baseless".

9. The present appeal having been filed within thirty days of the final/impugned order dated 25.06.2014 hence the present appeal cannot be termed as barred by limitation.

10. It is not disputed that both the appellant and respondent No.3 were initially appointed as Assistant Secretary (BPS-17) of Khyber Provincial Assembly Secretariat vide notification dated 11.03.1993 and the appellant was placed at a senior position i.e Sr. No.1 as compared to the respondent No. 3 who was placed at Sr. No. 2 of the appointment notification Similarly in the notification dated 04.03.1997 whereby numbers

were allotted to Assistant Secretaries of Khyber Pakhtunkhwa Provincial Assembly Secretariat on the basis of seniority, the name of the appellant was placed at Sr. No. 1 as Asstt: Secretary-I while the name of respondent No. 3 was placed at Sr. No. 2 as Asstt: Secretary-II, likewise the promotion notification dated 27.02.2003 to the post of Deputy Secretaries (BPS-18) the name of the appellant was placed at Sr. No. 1 and name of respondent No. 3 was placed at Sr. 2. Hence it is evident that the appellant was senior to the respondent No. 3 as Asstt: Secretary as well as Deputy Secretary of Khyber Pakhtunkhwa Provincial Assembly Secretariat. It is also pertinent mention that the name of the appellant is also at Sr. No. 1 while name of the respondent No. 3 is at Sr. No. 2 in the working paper prepared for filling up the post of Additional Secretary (BPS-19).

11. It is also settled principle that right to be considered for promotion is a vested right and such consideration has to be in accordance with rules and regulations.

12. Perusal of minutes of the meeting of the Departmental Promotion Committee would show that the committee has not considered the fact that the appellant is senior to the respondent No. 3 rather observed that both the officer have equal length of service similarly the Departmental Promotion Committee has not found the appellant unfit for promotion. Similarly the Department Promotion Committee did not observed that the appellant has not gone through any mandatory training or that the ACR dossiers of

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Were allotted to Assistant Secretaries of Khyber Pakhtunkhwa Provincial Assembly Secretariat on the basis of seniority, the name of the appellant was placed at Sr. No. 1 as Asstt: Secretary-I while the name of respondent No-3 was placed at Sr. No. 2 as Asst: Secretary-II, likewise the promotion notification dated 27.02.2003 to the post of Deputy Secretaries (BPS-18) the name of the appellant was placed at Sr. No. 1 and name of respondent No.3 was placed at Sr. 2. Hence it is evident that the appellant was senior to the respondent No. 3 as Asstt: Secretary as well as Deputy Secretary of Khyber Pakhtunkhwa Provincial Assembly Secretariat. It is also pertinent mention that the name of the appellant is also at Sr. No. 1 while name of the respondent No. 3 is at Sr. No. 2 in the working paper prepared for filling up the post of Additional Secretary (BPS-19).

11. It is also settled principle that right to be considered for promotion is a vested right and such consideration has to be in accordance with rules and regulations.

12. Perusal of minutes of the meeting of the Departmental Promotion Committee would show that the committee has not considered the fact that the appellant is senior to the respondent No. 3 rather observed that both the officer have equal length of service similarly the Departmental Promotion Committee has not found the appellant unfit for promotion. Similarly the Department Promotion Committee did not observed that the appellant has not gone through any mandatory training or that the ACR dossiers of

the appellant were not up to the mark or that he enjoyed bad reputation. Similarly the Departmental Promotion Committee did not observe that the appellant was not capable to shoulder higher responsibilities. Departmental Promotion Committee has not noticed that any adverse remarks or counselling ever communicated to the appellant about any lapse or deficiency in the performance of his duties. The reasons given by the Departmental Promotion Committee to promote respondent No. 3 in supersession of the appellant found utterly vague and the authority flouted the criteria of promotion on the basis of seniority cum-fitness. Even otherwise bald assertions given by the Departmental Promotion Committee were not sufficient to supersede the senior most Civil Servants on the basis of criteria of promotion on merit.

13. Interestingly after the out of turn promotion of respondent No. 3 in supersession of the appellant, the appellant was also promoted as Additional Secretary.

14. In the light of above this Tribunal is of the view that the authority deprived the appellant of his due right of promotion as senior most Deputy Secretary in an illegal manner and by improper exercise of discretion. Ironically the impugned order dated 25.06.2014 of the Speaker Khyber Pakhtunkhwa Provincial Assembly is also non speaking in as much as no cogent reason was assigned justifying the supersession of the senior most Deputy Secretary.

It is also settled principle of law that Service Tribunal is fully

ATTESTED
 BY
 JUDGE
 Service Tribunal
 Khyber Pakhtunkhwa
 Peshawar

13/10/14

13

101

the appellant were not up to the mark or that he enjoyed bad reputation. Similarly the Departmental Promotion Committee did not observe that the appellant was not capable to shoulder higher responsibilities. Departmental Promotion Committee has not noticed that any adverse remarks or counseling ever communicated to the appellant about any lapse or deficiency in the performance of his duties. The reasons given by the Departmental Promotion Committee to promote respondent No.3 in supersession of the appellant found utterly vague and the authority floated the criteria of promotion on the basis of seniority com-fitness. Even otherwise bald assertions given by the Departmental Promotion Committee were not sufficient to supersede the senior most Civil Servants on the basis of criteria of promotion on merit.

13. Interestingly after the out of turn promotion of respondent No 3 in supersession of the appellant, the appellant was also promoted as Additional Secretary.

14. In the light of above this Tribunal is of the view that the authority deprived the appellant of his due right of promotion as senior most Deputy Secretary in an illegal manner and by improper exercise of discretion. Ironically the impugned order dated 25.06.2014 of the Speaker Khyber Pakhtunkhwa Provincial Assembly is also non speaking in as much as no cogent reason was assigned justifying the supersession of the senior most Deputy Secretary.

15. It is also settled principle of law that Service Tribunal is fully

competent to examine the question of fitness for promotion, if it is alleged that the appellant has been by passed/superseded in violation of the criteria for promotion.

16. It may be mentioned that vide notification bearing No. P/A/NWF/P/Admn/2007/19866 dated 25, September, 2007 the method of recruitment of Additional Secretary (BPS-19) of Khyber Pakhtunkhwa Provincial Assembly Secretariat has been prescribed as follows:

..By promotion on the basis of seniority cum fitness amongst the Deputy Secretaries with five years service as such or 12 years service in BPS-17 and above.

17. In the light of above discussion the present appeal as prayed for is accepted and the appellant is promoted as Additional Secretary (BPS-19) Khyber Pakhtunkhwa Provincial Assembly from the date his junior colleague (respondent No. 3) was promoted as Additional Secretary with back benefits/consequential benefits. 18. Perusal of the notification bearing No. P/A/NWF/P/Admn/2007/19866 dated 25.09.2007 mentioned above would also reveal that criteria of promotion to the higher post of Senior Additional Secretary (BPS-20) and Secretary (BPS-21) Khyber Pakhtunkhwa Provincial Assembly Secretariat is also based on seniority cum-fitness as such subsequent promotions if any of junior colleagues of appellant to the higher post i.e the post of

ATTESTED
Secretary
Khyber Pakhtunkhwa
Provincial Assembly
Secretariat
Peshawar

14

1021

Competent to examine the question of fitness for promotion, if it is alleged that the appellant has been by passed/superseded in violation of the criteria for promotion.

16. It may be mentioned that vide notification bearing No. PA/NWFP/Admn:/2007/19866 dated 25, September, 2007 the method of recruitment of Additional Secretary (BPS-19) of Khyber Pakhtunkhwa Provincial Assembly Secretariat has been prescribed as follows:

"By promotion on the basis of seniority cum fitness amongst the Deputy Secretaries with five years service as such or 12-years service in BPS-17 and above"

17. In the light of above discussion the present appeal as prayed for is accepted and the appellant is promoted as Additional Secretary (BPS-19) Khyber Pakhtunkhwa Provincial Assembly from the date his junior colleague (respondent No. 3) was promoted as Additional Secretary with back benefits/consequential benefits.

18. Perusal of the notification bearing No. PA/NWFP/Admn:/2007/19866 dated 25.09.2007 mentioned above would also reveal that criteria of promotion to the higher post of Senior Additional Secretary (BPS-20) and Secretary is also based on seniority com-fitness as such subsequent promotion if any of junior colleagues of appellant to the higher post i.e the post of

senior Additional Secretary or Secretary, during the pendency present appeal, is also set aside as a consequential benefit. Parti are left to bear their own costs. File be consigned to the reco room.

M. Amin

(MUHAMMAD IAMID MUGHAL MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI) MEMBER

ANNOUNCED
14.09.2017

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 13-11-17
Number of Words 4000
Copying Fee 22
Urgent 2
Total 24
Name of Copyist [Signature]
Date of Completion of Copy 13-11-17
Date of Delivery of Copy 13-11-17

Senior Additional Secretary or Secretary, during the pendency of present appeal, is also set aside as a consequential benefit. Parties are left to bear their own costs. File be consigned to the record room.

Sd/-
(MUHAMMAD HAMID MUGHAL)
MEMBER

Sd/-
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
14.09.2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1324/2017

Date of Institution ... 28.11.2017

Date of Decision ... 10.12.2018



Kifayatullah Khan, Afridi presently serving as Senior Additional Secretary, Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

1. The Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar.
2. The Departmental Promotion Committee through its Secretary Provincial Assembly of Khyber Pakhtunkhwa, Peshawar.
3. Mr. Nasrullah Khan, presently serving as Secretary Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Respondents)

MR. ALI AZIM AFRIDI,
Advocate

--- For appellant.

MR. ZIA ULLAH,
Deputy District Attorney

--- For official respondents.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

--- For respondent no.3

MR. AHMAD HASSAN,

--- MEMBER(Executive)

MR. MUHAMMAD HAMID MUGHAL

--- MEMBER(Judicial)

MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Judicial)

JUDGMENT

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

FACTS

2. The appellant has impugned the decision of DPC dated 11.08.2017 and the notification dated 15.08.2017, whereby respondent no.3 despite being junior to the appellant was promoted as Secretary Provincial Assembly Khyber, Pakhtunkhwa.

ATTESTED

EXAMINER

ATTESTED

[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1324/2017

Date of institution ... 28.11.2017

Dated of Decision ... 10.12.2018

Kifayatullah Khan, Afridi presently serving as Senior Additional Secretary,
Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

1. The Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar.
2. The Departmental Promotion Committee through its Secretary Provincial Assembly of Khyber Pakhtunkhwa, Peshawar.
3. Mr. Nasrullah Khan, presently serving as Secretary Provincial Assembly Khyber Pakhtunkhwa, Peshawar ... (Respondents)

MR. ALI AZIM AFRIDI,
Advocate

... For appellant

MR. ZIA ULLAH,
Deputy District Attorney

... For official respondents.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

... For respondent no.3

MR. AHMAD HASSAN

... MEMBER (Executive)

MR. MUHAMMAD HAMID MUGHAL

... MEMBER (Judicial)

MR. MUHAMMAD AMIN KHAN KUNDI

... MEMBER (Judicial)

JUDGMENT

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

FACTS

2. The appellant has impugned the decision of DPC dated 11.08.2017 and the notification dated 15.08.2017, whereby respondent no.3 despite being junior to the appellant was promoted as Secretary Provincial Assembly Khyber Pakhtunkhwa.

Feeling aggrieved, he filed departmental appeal on 30.08.2017 which remained unanswered, hence, the instant service appeal on 28.11.2017.

ARGUMENTS

3. Learned counsel for the appellant argued that he was serving as Senior Additional Secretary (BPS-20) and on the directions of the respondents also shouldered responsibilities of Secretary Provincial Assembly from time to time. Upon retirement of Mr. Amanullah Khan the then Secretary Provincial Assembly on 14.08.2017, a slot became available for promotion. Working paper was prepared and placed before the DPC to consider one of the officer out of the panel for promotion to the post of Secretary Provincial Assembly. He further argued that he was the senior most officer in the panel and was fully eligible for promotion. According to notification dated 25.9.2007 the post of Secretary (BPS-21) was required filled in by promotion on the basis of seniority-cum-fitness from amongst the Sr. Addl: Secretary and Addl: Secretary with three years service or 22 years service in 17 and above. Mr. Nasurllah (respondent no.3) though junior to him was promoted to the post of Secretary in the meeting of the DPC held on 11.08.2017 and notified on 15.08.2017. Justification given for supersession of the appellant vividly exhibited malafide, favoritism, nepotism and undue favour extended to the handpicked officer by the respondents. Moreover, in service appeal no. 952/2014 titled "*Ghulam Sarwar Additional Secretary Provincial Assembly vs- The Speaker Provincial Assembly Khyber Pakhtunkhwa and others*" decided on 14.09.2017, notification dated 15.08.2017 through which promotion of respondent no.3 as Secretary Provincial Assembly during the pendency of the above appeal was also set aside.

ATTESTED

ATTESTED

Feeling aggrieved, he filed departmental appeal on 30.08.2017 which remained Unanswered, hence, the instant service appeal on 28.11.2017.

ARGUMENTS

3. Learned counsel for the appellant argued that he was serving as Senior Additional Secretary (BPS-20) and on the directions of the respondents also shouldered responsibilities of Secretary Provincial Assembly, from time to time upon retirement of Mr. Amanullah Khan the then Secretary Provincial Assembly on 14.08.2017, a slot became available for promotion. Working paper was prepared and placed before the DPC to consider one of the officer out of the panel for promotion to the post of Secretary Provincial Assembly. He further argued that he was the senior most officer in the panel and was fully eligible for promotion. According to notification dated 25.09.2007 the post of Secretary (BPS-21) was required filled in by promotion on the basis of seniority - com - fitness from amongst the Sr. Addl: Secretary and Addl: Secretary with three years service or 22 years service in 17 and above. Mr. Nasrullah (respondent no.3) though junior to him was promoted to the post of Secretary in the meeting of the DPC held on 11.08.2017 and notified on 15.08.2017. Justification given for supersession of the appellant vividly exhibited malafide, favoritism, nepotism and undue favour extended to the handpicked officer by the respondents. Moreover, in service appeal no.952/2014 titled "*Ghulam Sarwar Additional Secretary Provincial Assembly -vs-The Speaker Provincial Assembly Khyber Pakhtunkhwa and others*" decided on 14.09.2017, notification dated 15.08.2017 through which promotion of respondent no.3 as Secretary Provincial Assembly during the pendency of the above appeal was also set aside.

(7)
3

(18)

39

Resultantly, in order to implement the aforementioned judgment notification dated 15.08.2017 was withdrawn by the respondents on 07.09.2018.

4. Learned counsel for the appellant further contended that the respondents had audacity/temerity to trample court orders under their feet by again convening meeting of the DPC on 25.09.2018 and promoting Mr. Nasrullah Khan to the post of Secretary (BPS-21) bypassing the appellant without any solid justification/reasoning and notified promotion vide notification dated 25.09.2018. Reasons recorded by the DPC for supersession of the appellant were against the invogue rules and deliberate attempt on the in part to deprive him of right of promotion to next higher scale. Findings were also in line with the criteria laid down in the service rules for promotion. It may not be out of place to mention that the case of promotion of respondent no.3 was still subjudice in this Tribunal and respondents without waiting for the outcome/decision of the said appeal notified his promotion. Reliance was placed on case law reported as 2010 SCMR 1886, 1996 SCMR 218, 1999 SCMR 1605, 2005 SCMR 695, PLD 2004 (S.C)65, 2007 PLC(C.S) 1246, 2002 SCMR 1056 and 1996 SCMR 1185.

5. On the other hand learned counsel for private respondent no.3, while controverting the arguments of learned counsel for the appellant raised some preliminary objections on the maintainability of the present service appeal. He urged that no order for constitution of the present bench passed by the Chairman to hear this service appeal was available on case file. That in pursuance of judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 was withdrawn vide notification dated 07.09.2018. Subsequently, on the recommendations of DPC, he was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2018 against which departmental appeal filed by the appellant was pending.

ATTESTED

EXAMINER
Hyder Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

EXAMINER
Hyder Pakhtunkhwa
Service Tribunal,
Peshawar

Resultantly, in order to implement the aforementioned judgment notification dated 15.08.2017 was withdrawn by the respondents on 07.09.2018.

4. Learned counsel for the appellant further contended that the respondents had audacity/temerity to trample court orders under their feet by again convening meeting of the DPC on 25.09.2018 and promoting Mr. Nasrullah Khan to the post of Secretary (BPS-21) bypassing the appellant without any solid justification/reasoning and notified promotion vide notification dated 25.09.2018. Reasons recorded by the DPC for supersession of the appellant were against the invogue rules and deliberate attempt on the in part to deprive him of right of promotion to next higher scale Finding were also in line with the criteria laid down in the service rules for promotion . it may not be out of place to mention that the case of promotion of respondent no.3 was still subjudice in this Tribunal and respondents without waiting for the outcome/decision of the said appeal notified his promotion. Reliance was placed on case law reported as 2010 SCMR 1886, 1996 SCMR 218, 1999 SCMR 1605, 2005 SCMR 695, PLD 2004 (S.C) 65, 2007 PLC (C.S) 1246, 2002 SCMR 1056 and 1996 SCMR 1185.

5. On the other hand learned counsel for private respondent no.3, while controverting the arguments of learned counsel for the appellant raised some preliminary objections on the maintainability of the present service appeal. He urged that no order for constitution of the present bench passed by the Chairman to hear this service appeal was available on case file. That in pursuance of judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 was withdrawn vide notification dated 07.09.2018. Subsequently, on the recommendations of DPC, he was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2018 against which departmental appeal filed by the appellant was pending

4

19

40

before the competent authority for decision. In these circumstances the present appeal had become infructuous and was also hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974. In the light of proviso (b)(1) of Section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, this Tribunal lacks jurisdiction to adjudicate on issues of fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. He further contended that the appellant and private respondent no.3 were considered by the DPC in its meeting held on 25.09.2018 in which the former was not found fit for promotion to the post of Secretary (BPS-21). Reliance was placed on case law reported as PLD 2008 (SG)769, PLD 2008 (SC)395, 2014 PLC (C.S) 982 and 2015 PLC (C.S)215.

6. Learned Deputy District Attorney for official respondents concurred with the arguments advanced by the learned counsel for private respondent no.3.

CONCLUSION

7. The bone of contention in the present appeal is promotion of private respondent no.3 (Mr. Nasrullah Khan) to the post of Secretary Provincial Assembly (BPS-21), who was otherwise junior to the appellant but cleared/ recommended by the DPC in its meeting held on 11.08.2017 and notified on 15.08.2017. On perusal of minutes of the said meeting, it transpired that the appellant was ignored on flimsy, whimsical and nonsensical grounds and in utter disregard to the criteria for promotion laid down in Service Rules of the Provincial Assembly notified on 25.09.2007 and for ready reference is reproduced below:-

"By promotion on the basis of seniority cum fitness amongst the senior Additional Secretary and Additional Secretaries with three years service as such or 22 years service in BPS-17 and above"

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

X

before the competent authority for decision. In these circumstances the present appeal had become infructuous and was also hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974. In the light of proviso (b) (1) of Section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, this Tribunal lacks jurisdiction to adjudicate issues of fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. He further contended that the appellant and private respondent no.3 were considered by the DPC in its meeting held on 25.09.2018 in which the former was not found fit for promotion to the post of Secretary (BPS-21). Reliance was placed on case law reported as PLD 2008 (SC) 769, PLD 2008 (SC) 395, 2014 PLC (C.S) 982 and 2015 PLC (C.S) 215.

6. Learned Deputy District Attorney for official respondents concurred with the arguments advanced by the learned counsel for private respondent no.3.

CONCLUSION

7. The bone of contention in the present appeal is promotion of private respondent no.3 (Mr. Nasrullah Khan) to the post of Secretary Provincial Assembly (BPS-21), who was otherwise junior to the appellant but cleared/recommended by the DPC in its meeting held on 11.08.2017 and notified on 15.08.2017. On perusal of minutes of the said meeting, it transpired that the appellant was ignored on flimsy, whimsical and nonsensical grounds and in utter disregard to the criteria for promotion laid down in Service Rules of the Provincial Assembly notified on 25.09.2007 and for ready reference is reproduced below:-

"By promotion on the basis of seniority cum fitness amongst the senior Additional Secretary and Additional Secretaries with three years service as such or 22 years service in BPS-17 and above"

5

20

9

8. A plain reading of the said rule depicts that seniority cum fitness was the sole criteria/ principle for promotion to the post of Secretary Provincial Assembly (BPS-21). The appellant was senior most Additional Secretary fully eligible for promotion. Perusal of the minutes of the DPC revealed that during the course of consideration nothing adverse was found against the appellant. Reasons given by the DPC for supersession of the appellant were figment of imagination of the members and contrary to law and rules. Though promotion was not a vested right of the appellant, but meaningful consideration in accordance with law/rules was his vested right. Subsequently, as per judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 to the post of Secretary made during the pendency of the said appeal was also set aside. In pursuance of the said orders promotion order of respondent no.3 was withdrawn on 07.09.2018.

9. Subsequently, on the recommendations of Departmental Promotion Committee, Mr. Nasrullah Khan (respondent no.3) was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2017 against which departmental appeal of the appellant before the competent authority was still pending. Again the appellant became a victim of favoritism, nepotism and unholy alliance of DPC to accommodate their blue eyed chap by hook or crook. It was a deliberate attempt on the part of the respondents to frustrate the efforts of the appellant for his due right of promotion.

10. As regards objection of the learned counsel for respondent no.3 regarding specific order for constitution of larger bench was concerned, as per laid down procedure different cases are assigned to the concerned bench by the Registrar of this Tribunal after getting approval from the Chairman Service Tribunal. Now turning to the issue of maintainability of the present...

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

8. A plain reading of the said rule depicts that seniority cum fitness was the sole criteria/principle for promotion to the post of Secretary Provincial Assembly (BPS-21). The appellant was senior most Additional Secretary fully eligible for promotion. Perusal of the minutes of the DPC revealed that during the course of consideration nothing adverse was found against the appellant. Reasons given by the DPC for supersession of the appellant were figment of imagination of the members and contrary to law and rules. Though promotion was not a vested right of the appellant, but meaningful consideration in accordance with law/rules was his vested right. Subsequently, as per judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 to the post of Secretary made during the pendency of the said appeal was also set aside. In pursuance of the said orders promotion order of respondent no.3 was withdrawn on 07.09.2018.

9. Subsequently, on the recommendations of Departmental Promotion Committee . Mr. Nasrullah Khan (respondent no.3) was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2017 against which departmental appeal of the appellant before the competent authority was still pending. Again the appellant became a victim of favoritism, nepotism and unholy alliance of DPC to accommodate their blue eyed chap by hook or crook. It was a deliberate attempt on the part of the respondents to frustrate the efforts of the appellant for his due right of promotion.

10. As regards objection of the learned counsel for respondent no.3 regarding specific order for constitution of larger bench was concerned, as per laid down procedure different cases are assigned to the concerned bench by the Registrar of this Tribunal after getting approval from the Chairman Service Tribunal . Now turning to the issue of maintainability of the present appeal, it was exhaustively

10
6

21

42

argued by both the parties and vide order dated 11.10.2018, this Tribunal held that the present appeal was maintainable for regular hearing. Crux of the order was that appeal of the appellant against impugned order dated 15.08.2017 and for promotion as Secretary Provincial Assembly, Khyber Pakhtunkhwa was still subjudice in this Tribunal and respondents without waiting for decision promoted respondent no.3 to the post of Secretary, hence, their action was against the law/rules. View/stance of this Tribunal is affirmed by the case law reported as 2005 CLC 689 (AJ&K) in which the court held that:-

"Rules of procedure were meant for advancement of justice and parties could not be non-suited on technicalities when their valuable rights were subjudice before the court"

11. Attention is also invited to Para-V of the Khyber Pakhtunkhwa Civil Servant Promotion Policy pertaining to deferment of promotion. Para(a)(iii) of above para is worth perusal. It says that:-

"The PER dossier is incomplete or any other documents/information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control."

12. Deficiencies in A.C.R dossier pointed out above were on the one hand beyond the control of the appellant and on other hand spoke of malice, bias, prejudice and jaundiced eye view taken by the respondents. Strictly going by the rules as only one post was available and appellant was at sr. no.1 of the panel, so the saner course was defer the promotion case.

13. We are afraid that assertions of the learned counsel for private respondent no.3 that under Section-4(b)(i) of Khyber Pakhtunkhwa Service Tribunal Act, 1974 the question of fitness of a civil servant is outside the pale of jurisdiction of this Tribunal but directions of superior courts in PLD 2008 (SC) 769, PLD 2008 (SC) 395, 2014 PLC (C.S) 982 and 2015 PLC (C.S) 215 are not conclusive and against

ATTESTED

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

argued by both the parties and vide order dated 11.10.2018, this Tribunal held that the present appeal was maintainable for regular hearing. Crux of the order was that appeal of the appellant against impugned order dated 15.08.2017 and for promotion as Secretary Provincial Assembly, Khyber Pakhtunkhwa was still subjudice in this Tribunal and respondents without waiting for decision promoted respondent no.3 to the post of Secretary, hence, their action was against the law/rules. View/stance of this Tribunal is affirmed by the case law reported as 2005 CLC 689 (AJ&K) in which the court held that :-

"Rules of procedure were meant for advancement of justice and parties could not be non-suited on technicalities when their valuable rights were subjudice before the court"

11. Attention is also invited to Para-V of the Khyber Pakhtunkhwa Civil Servant Promotion Policy pertaining to deferment of promotion. Para(a)(iii) of above Para is worth perusal. It says that:

"The PER dossier is incomplete or any other Documents/information required, by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control"

12. Deficiencies in A.C.R dossier pointed out above were on the one hand beyond the control of the appellant and on other hand spoke of malice, bias, prejudice and jaundiced eye view taken by the respondents. Strictly going by the rules as only one post was available and appellant was at sr.no.1 of the panel, so the saner course was defer the promotion case.

13. We are afraid that assertions of the learned counsel for private respondent no.3 that under Section-4(b)(i) of Khyber Pakhtunkhwa Service Tribunal Act, 1974 the question of fitness of a civil servant is outside the pale of jurisdiction of this Tribunal but directions of superior courts in PLD 2008 (SC) 769, PLD 2008 (SC) 395, 2014 PLC (C.S) 982 and 2015 PLC (C.S) 215 are not conclusive and against

7

22

8

the consistent views expressed by the superior courts in numerous judgments relied upon by the learned counsel for the appellant. Similarly in PLC (C.S) 1161 (b) and 1999 SCMR 1605, issue of fitness and promotion has also been settled by the apex court in 2005 SCMR 695, PLD 2004 65, 2002 SCMR 1056, 1996 SCMR 1185. In 2002 SCMR (S.C) 1056, the august Supreme Court held that:-

"Where a right to consider the civil servant has been claimed on the ground that he has been bypassed in violation of the promotion policy, the Service Tribunal can examine the question of fitness of civil servant"

"Concept of absolute discretion does not exist in law as it was wholly incompatible with the guarantee provided by Article-4 of the Constitution of Pakistan, 1973. "Absolute discretion" was a ruthless master and unless it was structured, it was likely to be abused. Such a provision would be ex-facie discriminatory". (2007 PLC (C.S) 1246)

14. Before parting with the judgment, apprehensions are lurking in our mind that adverse findings of this Tribunal may pique the ego of respondents and inline with their tradition possibility of again violating the court/tribunal orders cannot be ruled out. Learned counsel for the appellant also brought to the notice of this Tribunal cases of illegal appointment of Special Secretary and Director (Automation & IT) Provincial Assembly were struck down by the Peshawar High Court, Peshawar vide judgment dated 13.11.2018 in writ petition no. 2512/2018 & 13.11.2018 in writ petition no. 3101-P/2018. By now it has been established beyond any shadow of doubt that the former and the present Speaker etc. have one point agenda to promote cronyism, nepotism and favoritism at the cost of merit, transparency, fairness, equality and justice. It amounts to misuse of official authority and is open to cognizance/ judicial scrutiny by the quarters concerned. In order to sensitize the concerned relevant excerpt of PLD 2014 SC 47 is reproduced below:-

ATTESTED

ATTESTED

the consistent views expressed by the superior courts in numerous judgments relied upon by the learned counsel for the appellant. Similarly in PLC (C.S) 1161 (b) and 1999 SCMR 1605, issue of fitness and promotion has also been settled by the apex court in 2005 SCMR 695, PLD 2004 65, 2002 SCMR 1056, 1996 SCMR 1185. In 2002 SCMR (S.C) 1056, the august Supreme Court held that:-

"Where a right to consider the civil servant has been claimed on the Ground that he has been bypassed in violation of the promotion policy, the Service Tribunal can examine the question of fitness of civil servant"

"Concept of absolute discretion does not exist in law as it was Wholly incompatible with the guarantee provided by Article-4 of the Constitution of Pakistan, 1973. "Absolute discretion" was a ruthless Master and unless it was structured, it was likely to be abused Such a provision would be ex-facie discriminator". (2007 PLC (C.S) 1246)"

14. Before parting with the judgment, apprehensions are lurking in our mind that adverse findings of this Tribunal may pique the ego of respondents and inline with their tradition possibility of again violating the court/tribunal orders cannot be ruled out. Learned counsel for the appellant also brought to the notice of this Tribunal cases of illegal appointment of Special Secretary and Director (Automation & IT) Provincial Assembly were struck down by the Peshawar High Court, Peshawar vide judgment dated 13.11.2018 in writ petition no. 2512/2018 & 13.11.2018 in writ petition no. 3101-P/2018. By now it has been established beyond any shadow of doubt that the former and the present Speaker etc: have one point agenda to promote cronyism, nepotism and favoritism at the cost of merit, transparency, fairness, equality and justice. It amounts to misuse of official authority and is open to cognizance/judicial scrutiny by the quarters concerned. In order to sensitize the concerned relevant excerpt of PLD 2014 SC 47 is reproduced below:-

12

#4

23

"It is now a well-settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by malafide without discrimination and in accordance with law, keeping in view the constitutional rights of the Citizens"

As a sequel to above the appeal is accepted, the impugned order alongwith successive order of promotion of respondent no.3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification no. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored. Parties are left to bear their own costs. File be consigned to the record room.

SD/-

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

SD/-

(MUHAMMAD HAMID MUGHAL)
MEMBER

Date of Presentation of Application 31-5-19

Number of Words 3600

SD/- Copying Fee 36/-

(AHMAD HASSAN)
MEMBER

Urgent 2/-

Total 38/-

Name of Copy 1 set

Date of Copy 31-5-19

Date of Delivery of Copy 31-5-19

ANNOUNCED
10.12.2018

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 31-12-18

Number of Words 3200

Copying Fee 18/-

Urgent 2/-

Total 20/-

Name of Copy [Signature]

Date of Completion of Copy 31-12-18

Date of Delivery of Copy 31-12-18

"It is now a well-settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just transparent and reasonable manner, untainted by malafide without discrimination and in accordance with law, keeping in view the constitutional rights of the Citizens"

15. As a sequel to above the appeal is accepted, the impugned order alongwith successive order of promotion of respondent no.3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification no. PA/KP/Admn/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored Parties are left to bear their own costs. File be consigned to the record room.

Sd/-
(MUHAMMAD HAMID MUGHAL)
MEMBER

Sd/-
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Sd/-
(AHMAD HASSAN)
MEMBER

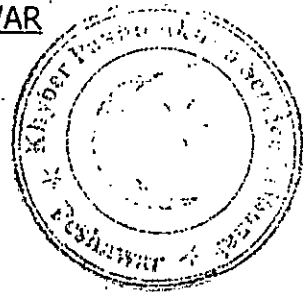
ANNOUNCED
10.12.2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 937/2020

Date of Institution ... 28.01.2020

Date of Decision ... 17.12.2020



Kifayatullah Khan Afridi, presently serving as Senior Additional Secretary Provincial Assembly, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

The Speaker Provincial Assembly of Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

Present.

Mr. Ali Azim Afridi,
Advocate.

... For appellant

Mr. Muhammad Riaz Khan Paindakhel,
Asstt. Advocate General

... For respondents
No. 1 & 2.

Qazi Muhammad Anwar
Advocate,

... For respondents
No. 1, 2 and 3.

MR. HAMID FAROOQ DURRANI,
MR. MIAN MUHAMMAD,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of notification dated 03.09.2019 issued by respondent No. 1, whereby, respondent No. 3 was promoted as Secretary (BPS-21), Khyber Pakhtunkhwa Provincial Assembly. The decision of Departmental Promotion Committee dated 02.09.2019, forming basis of the notification, has also been impugned. Declaration regarding promotion to the position of Secretary Provincial Assembly Khyber Pakhtunkhwa, in favour of the appellant, has also been made part of the prayer.

2. The facts, as laid in the memorandum of appeal, are to the effect that the appellant was appointed as Assistant Secretary (PAC) BPS-17 on 23.11.1992 in the Provincial Assembly Secretariat. On 11.02.1997 he was promoted as Deputy Secretary while on 12.03.2007 the appellant was granted promotion as Additional Secretary BPS-19. On 01.10.2009, he was recommended for promotion to the post of Senior Additional Secretary BPS-20, which was materialized. While posted as such, the appellant was required and authorized to look after the office of Secretary Provincial Assembly as well. The Additional responsibility was for 165 days altogether. On 01.08.2017, a notification was issued for constitution of DPC due to retirement of the incumbent. The name of respondent No. 3 was also included in the panel of officers to be considered for promotion against the post of Secretary. The DPC, with addition of the Deputy Secretary (Admn), was reconstituted. The added Member was subordinate to the respondent No. 3 at the relevant time, it is claimed.

The D.P.C recommended respondent No. 3, a junior to the appellant, for promotion who was accordingly promoted. The appellant questioned the promotion order/notification before this Tribunal through Service Appeal No. 1324/2017 (hereinafter referred to as previous appeal). The matter was laid before a Larger Bench comprising three Honourable Members and was decided on 10.12.2018. The appellant was granted relief by the Tribunal in terms that the order, impugned therein alongwith ensuing order of promotion of respondent No. 3 therein, was set aside and the notification dated 30.08.2018, assigning acting charge of the post of Secretary Provincial Assembly was restored in favour of the appellant. Pertinently, the

ATTORNEY GENERAL

Attorney General
Service Appeal No. 1324/2017

arrangement of parties in the previous appeal was the same as in the instant appeal.

The decision of Tribunal was impugned before the August Supreme Court of Pakistan which was pleased to, inter-alia, expunge remarks against respondent No. 1, as well as the erstwhile Speaker of Khyber Pakhtunkhwa Provincial Assembly. The Apex Court ordered for reconstitution of D.P.C to re-examine and decide the matter of disputed promotion. The reconstituted committee submitted its recommendations on 02.09.2019, whereupon, impugned notification dated 03.09.2019 was issued. The appellant submitted a departmental appeal which was not responded to, hence the appeal in hand.

3. The respondents, upon notice, appeared through counsel who submitted an application for deciding the question of limitation and competence of the instant appeal as preliminary issues first. The application was also accompanied by written statement of respondent No. 3. On 01.10.2020, learned counsel for the parties addressed their respective arguments regarding the preliminary objections. Remaining arguments were addressed on 30.11.2020.

4. We have heard learned counsel for the parties and with their valuable assistance gone through the available record. During the arguments both the learned counsel also repeatedly referred to the judgment in the previous appeal.

5. Agitating the preliminary objections, learned counsel for respondents argued that the appeal in hand was badly time barred as it was submitted on 12.02.2020. In that regard he referred to the calculation, as contained in the

written statement and contended that the impugned notification was issued on 03.09.2019, against which the appellant submitted appeal to the competent departmental authority on 30.09.2019. The period of ninety days wait for decision started from 01.10.2019. The period of ninety days was to expire on 29.12.2019, while the appeal in hand had to be filed within thirty days from 30.12.2019. The said period of thirty days expired on or before 28.01.2020. In his view, some fraud was committed in receipt of appeal on 28.01.2020, through diary No. 888. In support of his arguments, learned counsel referred to the judgments reported as 2017-SCMR-24, 2019-SCMR-663, 2011-SCMR-1111, PLD 1994-Supreme Court-539 and 2007-SCMR-682.

Arguing the second limb of objections regarding the competence of appeal, learned counsel referred to Section 4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974. He contended that the fitness of respondent No. 3 for impugned promotion was also an issue in the appeal in hand, therefore, it was not to be entertained in view of the provisions of law.

Learned counsel for the appellant refuted the objections and contended that the appeal was not only within time but also competent for the purpose of jurisdiction of this Tribunal. He made references to judgments in previous appeal and also relied on 2007-PLC(C.S)1246, 2002-SCMR-1056 and 1999-SCMR-1605.

Learned Asstt. A.G adopted the arguments of learned counsel for respondents.

6. It is a matter of record that the appeal in hand was initially submitted on 28.01.2020, through diary No. 888 which was returned to the appellant for removal of some deficiency. It was re-submitted, after doing the needful on

12.02.2020. As per the calculation provided in the written statement of respondent No. 3, the time for submission of appeal before this Tribunal was to end on 28.01.2020. In the stated backdrop, the objection regarding delay in submission of appeal is misconceived, therefore, is hereby overruled.

7. Adverting to the other objection regarding competence of appeal in hand, suffice it to note that the issue, also raised in previous appeal, was decided by a Larger Bench of the Tribunal in the following terms:-

"We are afraid that assertions of the learned counsel for private respondent No. 3 that under Section-4(b)(i) of Khuyber Pakhtunkhwa Service Tribunal Act, 1974 the question of fitness of a civil servant is outside the pale of jurisdiction of this Tribunal but directions of superior courts in PLD 2008(SC) 769, PLD 2008 (SC) 395, 2014 PLC(C.S) 892 and 2015 PLC(C.S)215 are not conclusive and against the consistent views expressed by the superior courts in numerous judgments relied upon by the learned counsel for the appellant. Similarly in PLC (C.S) 1161(b) and 1999-SCMR-1605, issue of fitness and promotion has also been settled by the apex court in 2005-SCMR-695, PLD 2004-65, 2002-SCMR1056, 1996-SCMR-1185. In 2002-SCMR-1056, the august Supreme Court held that:-

"Where a right to consider the civil servant has been claimed on the ground that he has been bypassed in violation of the promotion policy, the Service Tribunal can examine the question of fitness of civil servant."

The Tribunal consequently went on to decide the appeal on merits.


The above reproduced view of this Tribunal is respectfully followed in the appeal in hand, therefore, the objection is also overruled.

29

8. Looking into the merits of the case of appellant, one finds that the ground forming basis for recommendation was to the effect that for promotion against selection post, merit alone is to be considered. Paragraph 12 of the minutes of the meeting dated 02.09.2019 provides as follows:-

"In view of the legal position explained in Background section, seniority is not the crucial factor for promotion against selection posts and merit alone is to be considered for comparing officers. Hence, the comparative merit position of some of the relevant factors of panel officers is as under:-

| | <u>Mr. Kifayatullah Khan</u> | <u>Mr. Nasrullah Khan</u> | <u>Mr. Amjad Ali</u> |
|--|---|---|---|
| Academic level | B.A/LLB | MA (International Relations) | M.Sc (Chemistry) |
| Experience of assembly work | Worked in Legislation and PAC branches. | Worked in Legislation, administration, Finance & Accounts, PAC branches and round the clock security wing. | Worked in PA, Administration and Legislation. |
| Experience of acting as Secretary Assembly | 165 days | 657 days. | --- |
| Major Achievements | ---- | E-Parliament initiative Digital filing system Establishment of Media Centre, Women Caucus Resource Center Equalization of employees perks and privileges with parliament and other provincial assemblies Capacity building training of parliamentarians inland and abroad Construction of multipurpose underground exclusive parking for different stakeholders and a spacious cafeteria | Strengthening of PAC. |

ATTESTED

 Kifayatullah Khan
 Service Member
 Member

Learned counsel for appellant also grudged the correctness of contents noted under the name of respondent No. 3 which included the experience as acting Secretary Assembly. It was also maintained that the column of experience of Respondent No. 3 contained particulars not relevant for the post of Secretary Provincial Assembly.

It is important to note here that the appellant was senior most amongst the Additional Secretaries B.S-20, however, the said factor was ignored by the DPC. For the resolution of issue, we have to fallback upon judgment in the previous appeal. In para-8 thereof, it was laid down that seniority-cum-fitness was the sole criteria/principle for promotion to the post of Secretary (BPS-21) Khyber Pakhtunkhwa Provincial Assembly. Needless to reiterate, that in the previous appeal the parties were the same as arrayed in the appeal in hand. It would not be out of place to mention that Service Appeal No. 952/2014 was decided by this Tribunal on 14.09.2017 wherein the respondents No. 1 and 3 were also included in the panel of respondent. A Bench of this Tribunal was pleased to decide, inter-alia, that the criteria for promotion to the post of Secretary (BPS-21) Khyber Pakhtunkhwa Provincial Assembly Secretariat was also based on seniority-cum-fitness.

The minutes of DPC meeting reflect that the committee proceeded in line with the misconception in declaring the impugned promotion against selection post and kept in consideration the merit alone. The view of DPC was in disregard of the judgments by this Tribunal as well as those referred to in the decision of previous appeal. The finding and recommendation by the committee were based on wrong premises, therefore, the edifice built thereon

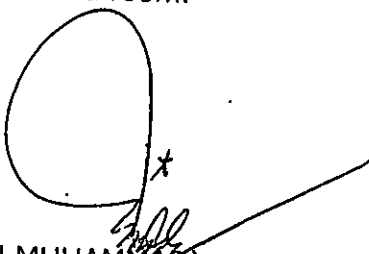
ATTEST

Khyber Pakhtunkhwa

was bound to collapse. The notification dated 03.09.2019, ensuing from the decision of DPC, is not sustainable for the stated reason.

9. Ex-consequencia, the appeal in hand is allowed and the impugned notification dated 03.09.2019 is set aside. The official respondents shall constitute the DPC in accordance with law. The DPC shall consider the matter of promotion to the post of Secretary Provincial Assembly in light of decision taken in previous appeal as well as the instant judgment strictly in accordance with law/rules. The denovo exercise shall be completed within three months of receipt of copy of instant judgment.

Parties are, however, left to bear their respective costs. File be consigned to the record room.




(MIAN MUHAMMAD)
MEMBER(E)



(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
17.12.2020

18/12/2020

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Number of Copies _____
Copying Fee 32.00
24.00
Urgent 4.00
Total 38.00
Name of Copyist _____
Date of Completion of Copy 18/12/2020
Date of Delivery of Copy 18/12/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 4874/2021

Date of Institution ... 14.04.2021

Date of Decision ... 24.09.2021



Kifayatullah Khan Afridi, presently serving as Senior Additional Secretary Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

The Speaker Provincial Assembly of Khyber Pakhtunkhwa, Peshawar and two others.

Present. ... (Respondents)

Mr. Ali Azim Afridi,
Advocate.

... For appellant

MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For official respondents.

M/S Muhammad Zafar Tahirkheli &
Ansarullah Khan Advocates

... For all respondents


AHMAD SULTAN TAREEN
ROZINA REHMAN

--- CHAIRMAN
--- MEMBER (Judicial)

JUDGEMENT.

AHMAD SULTAN TAREEN, CHAIRMAN. The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby his supersession from promotion and the promotion of respondent No. 3, purporting the same being against the facts and law on the subject.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. For the production of factual account, we have gone through certain judgments of this Tribunal copies whereof are annexed with


the memorandum of appeal, which were rendered in the case of none else but between the same parties and in the same matter as *subjudice* in the appeal at hand. Certainly, the facts as noted in the previous judgment are not disregardable but they are impelling us to see the chequered history of litigation in connection with promotion to the post of Secretary, Khyber Pakhtunkhwa Provincial Assembly (for short "Assembly"), particularly, the fate of the previous judgments passed by this Tribunal in the course of said litigation.

3. The appeal at hand is the third in continuation of the dispute related to promotion to the post of Secretary (BPS-21) in the Assembly. According to the facts evident from the record as available on file, the post of Secretary in the Assembly had become vacant on 14.08.2017 when the then incumbent of the post Mr. Amanullah Khan stood retired from service on superannuation. The Departmental Promotion Committee (DPC) as constituted by the Appointing Authority met on 11.08.2017 to consider the cases of panelists for promotion on the said vacant post. The DPC recommended the promotion of Mr. Nasrullah Khan at Sr. No. 3 in the following panel of officers:-

1. Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20).
2. Mr. Ghulam Sarwar, Additional Secretary-I (BPS-19)
3. Mr. Nasrullah Khan, Additional Secretary-II (BPS-19)

4. In pursuance of the recommendation of DPC, appointment of Mr. Nasrullah Khan (present respondent No. 3), as Secretary of

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Assembly, was notified vide notification dated 15.08.2017. Mr. Kifayatullah Khan Afridi the panelist at Sr. No. 1 above (present appellant) impugned the recommendation of DPC and notification of promotion of respondent No. 3 through Service Appeal No 1324/2017 preferred before this Tribunal on 28.11.2017. When said appeal was preferred, another service appeal No. 952/2014 was also pending in which Mr. Nasrullah Khan was also a respondent due to challenging of his promotion as Additional Secretary. The said appeal was decided vide judgment dated 14.09.2017, whereby not only the promotion of Mr. Nasrullah Khan as Additional Secretary but also his promotion as the Secretary made vide notification dated 15.08.2017 was set aside, obviously by application of the principle of *lis pendens*. In order to implement the aforementioned judgment, notification dated 15.08.2017 was withdrawn on 07.09.2018. However, Mr. Nasrullah Khan was, for the second time, promoted as Secretary of the Assembly during pendency of appeal No. 1324/2017 of the present appellant, which when accepted vide judgment dated 10.12.2018, it culminated with the operative part as copied below:-

"As a sequel to above, the appeal is accepted, the impugned order alongwith successive order of promotion of respondent No.3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification no. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored."

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

5. Notwithstanding the judgment dated 10.2.2018 in field, the Respondent No.1 again referred the matter of promotion on the post

of Secretary to a reconstituted DPC; which on 02.09.2019, for the third time, recommended present respondent No.3 for promotion and accordingly, his appointment was notified vide notification dated 03.09.2019. Ultimately, the matter of said promotion was again brought before this Tribunal through Service Appeal No.937/2020 by the present appellant and was decided vide judgment dated 17.12.2020. Some of the facts noted in the said judgment are reproduced herein below:-

"On 01.08.2017, a notification was issued for constitution of DPC due to retirement of the incumbent. The name of respondent No. 3 was also included in the panel of officers to be considered for promotion against the post of Secretary. The DPC, with addition of the Deputy Secretary (Admn), was reconstituted. The added Member was subordinate to the respondent No. 3 at the relevant time, it is claimed.

The D.P.C recommended respondent No. 3, a junior to the appellant, for promotion who was accordingly promoted. The appellant questioned the promotion order/notification before this Tribunal through Service Appeal No. 1324/2017 (hereinafter referred to as previous appeal). The matter was laid before a Larger Bench comprising three Honorable Members and was decided on 10.12.2018. The appellant was granted relief by the Tribunal in terms that the order, impugned therein alongwith ensuing order of promotion of respondent No. 3 therein, was set aside and the notification dated 30.08.2018, assigning acting charge of the post of Secretary Provincial Assembly was restored in favour of the appellant. Pertinently, the arrangement of parties in the previous appeal was the same as in the instant appeal.

The decision of Tribunal was impugned before the August Supreme Court of Pakistan which was pleased to, inter-alia, expunge remarks against respondent No. 1. as

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

well as the erstwhile Speaker of Khyber Pakhtunkhwa Provincial Assembly. The Apex Court ordered for reconstitution of D.P.C to re-examine and decide the matter of disputed promotion. The reconstituted committee submitted its recommendations on 02.09.2019, whereupon, impugned notification dated 03.09.2019 was issued. The appellant submitted a departmental appeal which was not responded to, hence the appeal in hand."

6. The judgment in Service Appeal No. 937/2020 ended with the operative part as reproduced below:-

"Ex-consequencia the appeal in hand is allowed and the impugned notification dated 03.09.2019 is set aside. The official respondents shall constitute the DPC in accordance with law. The DPC shall consider the matter of promotion to the post of Secretary Provincial Assembly in light of decision taken in previous appeal as well as the instant judgment strictly in accordance with law/rules. The denovo exercise shall be completed within three months of receipt of copy of instant judgment."

7. Now it is the third round of litigation in between the appellant and the respondents in the matter of same dispute previously decided by the above mentioned two judgments of this Tribunal dated 17.12.2020 and 10.12.2018 respectively passed in Service Appeals No. 1324/2017 and 937/2020. Most of the necessary facts in present memorandum of appeal precisely are not different from the factual position as already gone hereinabove except some new facts which hereinafter follow. DPC was constituted and its Chairman after deliberations resigned from the chairmanship of DPC. Resultantly, Mr. Lutf-ur-Rehman MPA was appointed as the new Chairman of DPC.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

had earlier offered to act as mediator in the process of promotion to the post of Secretary, which was flatly refused by the appellant at the relevant time since judgment rendered by Service Tribunal was in field. The said Chairman summoned the meeting of DPC on Sunday at Islamabad, purportedly with no time for the appellant to object over his appointment. It is there in the factual part that Respondent No.3 had not preferred any appeal against the judgment dated 17.12.2020 rendered by the Service Tribunal and the appellant was confident to be promoted to the post of Secretary but it happened otherwise. It was the fourth turn that DPC recommended Mr. Nasrullah Khan Respondent No. 3 for promotion after the previous three which were set aside by the Tribunal through different judgment discussed before. The respondent No.3 was appointed as Secretary on the basis of said recommendation of DPC vide notification No.PA/KP/Admn:2021/449 dated 11.01.2021. The appellant preferred departmental appeal/representation against the said notification and on its presumptive rejection due to lapse of 90 days, present appeal has been preferred with the prayer as noted below:-

"It is therefore humbly prayed that on acceptance of this Service Appeal; the impugned decision dated 10.01.2021 of Departmental Promotion Committee No.1 and the notification issued thereto on 11.01.2021; notifying respondent No.3 as Secretary Provincial Assembly Khyber Pakhtunkhwa be set at naught besides the same. the present appellant

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

declared as promoted to the position of Secretary of Provincial Assembly Khyber Pakhtunkhwa from such date as his junior was promoted along with back benefits/consequential benefits.

Any such other order be passed which this Tribunal deems fit and appropriate as the circumstances may require for determination of the subject at hand."

8. After admission of appeal for regular hearing, the respondents were put on notice who after attending the proceedings have filed their written reply with several legal and factual objections. Most pertinently, they submitted an application questioning the maintainability of present appeal with the reasons among other that the appellant was considered but superseded and has now challenged the matter pertaining to his fitness before the Service Tribunal; that the august Supreme Court of Pakistan in a recent judgment dated 01-07-2021 passed in CP No. 1097-L of 2020, titled "*Chief Secretary Govt. of Punjab Vs. Mst. Shamim Usman*" has categorically held: "*The scope of jurisdiction and powers of Tribunal are provided in sections 4 & 5 of the Act. The High Court therefore has no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which can be adjudicated upon before the Tribunal under the Act. It is only under Section 4 (b)(1) of the Act that no appeal can lie to a Tribunal against an order or decision determining the "fitness" of a person to be appointed or promoted and falls outside the purview of the jurisdiction of the Tribunal. In order to fall in the exception envisaged under section 4 (b)(1) of the Act, the order must determine "fitness" of a civil servant to an appointment or promotion.*" It was added there in the said application with reference to said reasons that the appellant was considered by the worthy authority and was not found fit for promotion; and that the matter to determine "fitness" is hit by section 4 (b)(i) of KP Service Tribunal Act 1974 and thus does not fall within the jurisdiction of this Tribunal. Consequently, it is ---

Shamim Usman

TESTED

[Signature]
 CHAIRMAN
 Khyber Pakhtunkhwa
 Service Tribunal


that the instant appeal being hit by section 4 (b)(i) of KP Service Tribunal Act, 1974 and in view of the recent judgment dated 01/07/2021 of august Supreme Court of Pakistan, is not maintainable and may be dismissed with cost throughout. The copy of the judgment dated 01-07-2021 is annexed with the application discussed before.

9. According to the proceedings reflected in the order sheet dated 13.09.2021, learned counsel for the appellant by his statement made at the bar did not opt for submission of written reply of the above mentioned application filed by the respondents; and on his request that he would meet out the question of maintainability during arguments on merits, he was for full arguments and heard. Arguments on behalf of the respondents restricted to the point of maintainability of appeal were heard on previous date i.e. 20.09.2021. We have perused the record.

10. Having given our anxious consideration to the arguments of the parties on point of maintainability of appeal in juxtaposition with the relevant record, we have concluded that objection raised by the respondents through their above mention application is not workable in light of the particular factual position noted from the disputed minutes of meeting of DPC held on 10-01-2021. The reasons for our said opinion hereinafter follow.

11. We are not forgetful that we are dealing with the point of maintainability of appeal on an objection that the appellant's fitness for promotion was determined by DPC and in turn, the jurisdiction of this Tribunal is barred to adjudicate upon the matter in appeal. Needless to say that if the "fitness" of a person to be appointed or promoted is determined by an order of the competent authority, the jurisdiction of Service Tribunal is barred within meaning of Section

ATTESTED


 MEMBER
 Service Tribunal
 Pakistan

4(b)(i) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. So, before heading to our findings on the said point, we are obliged to identify the *ratio decidendi* of the judgment of august Supreme Court of Pakistan cited as precedent with a particular description in the application of respondents discussed above. According to the facts of case noted in the said pronouncement of the august Supreme Court of Pakistan, the respondent at various occasions invoked the constitutional jurisdiction of the High Court in a service disputes instead of challenging the same before the Punjab Service Tribunal constituted under the Punjab Service Tribunal Act, 1974. The matter ultimately reached to the August Supreme Court of Pakistan which culminated into the ruling selectively relied upon by the respondents in their said application as well as during the arguments at the bar. The full view of the August Supreme Court of Pakistan in the said case as encapsulated at Para-5 of the judgment is copied below:-

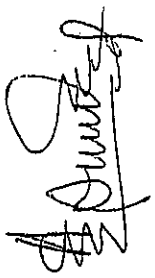
"5. We cannot lose sight of the fact that notwithstanding clauses of Articles 212(1) and (2) begin with "notwithstanding anything hereinbefore contained," thus overriding, *inter alia*, the constitutional jurisdiction of the High Court under Article 199, which is already "subject to the Constitution." Article 212(1)(a) provides that a Tribunal established under the law will enjoy exclusive jurisdiction in the matters relating to terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters. The term "terms and conditions" is clearly spelt out in Chapter II of the Punjab Civil Servants Act, 1974 and the rules there-under. Article 212(2) in unambiguous terms states that no other Court can grant injunction, make any order or entertain any proceedings in respect of any matter to which the



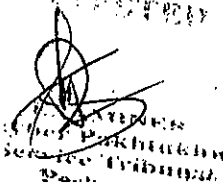
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

extends. Scope of jurisdiction and powers of the Tribunal are provided in sections 4 and 5 of the Act. The High Court, therefore, has no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which can be adjudicated upon by the Tribunal under the Act. It is only under section 4(1)(b) of the Act that no appeal can lie to a Tribunal against an order or decision determining the "fitness" of a person to be appointed or promoted and falls outside the purview of the jurisdiction of the Tribunal. In order to fall in the exception envisaged under section 4(1)(b) of the Act, the order must determine "fitness" of a civil servant to an appointment or promotion. In the instant case, the order under challenged before the High Court pertained to the eligibility of the petitioner to be even considered for proforma promotion due to the seniority of a large number of officers awaiting promotion before her and in no manner determined the "fitness" of the respondent. High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of this constitutional limitation will render the order of the High Court void and illegal. Therefore, unless the jurisdiction of the Tribunal is ousted under section 4(1)(b) of the Act, as described above, assumption of jurisdiction by the High Court in respect of matters of terms and conditions of a civil servant is unconstitutional and impermissible. Even the direction passed in the earlier constitutional petition, in this case, was impermissible under the Constitution."



12. Explicably, the above ruling in essence laid down the rule of exclusion of the constitutional jurisdiction of the High Court in service matters with an exception envisaged under Section 4(b)(i) of the Service Tribunal Act. However, it was emphasized that in order to fall in the exception under Section (b)(i) of the Act, the order must determine the fitness of a civil servant to an appointment or promotion. So, recourse to the



necessary to find out whether in view of the said findings in respect of the appellant, case at hand comes in purview of the exception of Section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, or because of failing of the said findings to determine the question of fitness of the appellant for promotion, this appeal is maintainable being not hit by the said exception. Copy of minutes of DPC meeting held on Sunday, 10th January, 2021 at Khyber Pakhtunkhwa House, Islamabad, has been annexed with memorandum of appeal at annexure "A-1". The relevant part of the findings of DPC in the said minutes about the appellant is reproduced below:-

1) Mr. KifayatUllahKhanAfridi

The Committee "unanimously" recommended supersession of the Officer for the following reasons:-

- a) Although, his PERs have been shown "Good" in the Working Paper, but, surprisingly, the PERs were not available in the dossier of the officer, Responding query posed by the Committee in this regard, the Secretary Committee clarified that Mr. KifayatUllah Khan had not submitted his PERs for the year 2017, 2018 and 2019 to the Reporting Officer for the reasons best known to him;
- b) The Committee observed that performance of the officer is not ascertainable due to non-availability of the latest PERs;
- c) It is settled rule that the Officer was required to submit his PER Forms to the Reporting Officer himself;
- d) The reasons for non-submission of PER Forms to the Reporting Officer were attributable to Mr. KifayatUllah Khan himself; and
- e) The Committee was of the unanimous view that examination

[Handwritten signature]

latest period is sine qua non for making appropriate recommendations.

13. At ending moments of his arguments on his application questioning the maintainability of appeal obviously with vigorous reliance upon judgment dated 01-07-2021 of august Supreme Court of Pakistan and in addition on the judgment dated 04/09.2014 of the Hon'ble Peshawar High Court, Peshawar in Writ Petition No. 2440-P/2012; it was deemed appropriate to draw attention of the learned counsel for respondents to the above noted findings of DPC about the Appellant to get his viewpoint whether those findings anywhere disclose a determination on the point of Appellant's fitness for promotion. Unsurprisingly, his answer was that DPC by those findings determined the question of fitness that the appellant was not fit for promotion and was superseded. We are afraid to concur with him. Undoubtedly, the DPC was unanimous in recommending the supersession of appellant but with the unsettled reasons revolving around one and the same lacuna i.e. absence of Appellant's PERs for the years 2017, 2018 and 2019. The over obsessiveness of DPC with the said omission on part of the appellant is beyond comprehension for the reason that the DPC after having discussed the entire history of litigation about promotion on post of the Secretary of Assembly was not supposed to be oblivious of the fact that the appellant and the respondent No. 3 were *inter se* locked into dispute about entitlement of promotion on the said post. However, the DPC remained indifferent to the account of such events and did not determine whether in view of the said litigation, was there any logic for the appellant to submit his PERs of the disputed period to his rivals in litigation. Anyhow, if the said PERs were not available and the DPC itself concluded with the last reason that it was of the unanimous view that examination of PERs for the latest period is *sine qua non* for making appropriate recommendations, how come it possible that the appellant was superseded and that too without holding him unfit for promotion. The observations of the DPC as copied herein above even do not include a word about

[Handwritten signature]

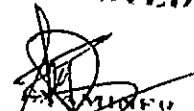
ATTESTED

[Handwritten signature]
EXAMINER
Mr. Bakhtulhaq
Vice Tribuna

are, therefore, clear in our mind that the findings of the DPC as enumerated in the minutes of meeting in respect of the appellant have nothing to deal with any other business except with the absence of the PERs of the appellant for a particular period including years 2017, 2018 and 2019. By virtue of the discussion in the minutes of meeting dated 10.01.2021 at Paragraphs 4 to 7 in the said minutes, the Committee was enlightened about litigation in between the appellant and respondent No. 3 which obviously started in the year 2017 when the respondent No. 3 was, for the first time, promoted as Secretary of the Assembly vide notification dated 15.08.2017. It is mentioned at Paragraph 8 of the minutes of meeting in question that after the above discussion pertaining to litigation, the Committee examined the Working Paper and service record of the officers mentioned therein including PERs (till the year 2019) of the three officers in the feeding cadre; who included the appellant, respondent No. 3 and one Mr. Amjad Ali Additional Secretary.

14. It is a matter of fact that the appellant in the previous litigation succeeded to get the promotion of the respondent No. 3 on the post of Secretary of the Assembly set aside through judicial evaluation resulting into reversion of respondent No. 3 to the post of Additional Secretary and assignment of the charge of the post of Secretary to the appellant awaiting next decision of the DPC. It would be amiss not to mention that the appellant had struggled and is struggling for his duly adjudged entitlement of promotion against the parties including Hon'ble Speaker of the Provincial Assembly at the top and the respondent No. 3 beneficiary of the disputed promotion on the post of Secretary. If there was no other reporting officer in the channel except respondent No.3, non-submission of PERs by the appellant to the respondent No. 3 as reporting officer is understandable as the latter holding the post of Secretary was a non-entity in the case of appellant due to their inter-se dispute on the promotion to the post of Secretary. Supposedly, had the appellant submitted PERs for the disputed period directly to the

ATTESTED


 Officer
 Public
 Service Tribunal

Speaker, would it not be counterproductive for him when Hon'ble Speaker was also party in the appeal as his orders were challenged in respect of disputed promotion of respondent No. 3. Consequently, it was not a fair approach on part of the DPC to consider the absence of PERs of the disputed period of three years for supersession of the appellant pending his fitness for promotion which could be otherwise resolved on the basis of other record not attended to despite its being workable. Moreover, the view taken by the DPC in case of appellant is not in conformity to the direction given in operative part of the last judgment of this Tribunal setting aside the promotion of respondent No. 3. It was directed thereby that the official respondents shall constitute the DPC in accordance with law. The DPC shall consider the matter of promotion to the post of Secretary Provincial Assembly in light of decision taken in previous appeal as well as the instant judgment strictly in accordance with law/rules.

15. We are mindful of the fact that we have heard the respondents only on the point of maintainability of appeal with reference to a particular proposition that the DPC has held the appellant not fit for promotion due to absence of his PERs and the question of fitness for promotion of a person falls outside the jurisdiction of this Tribunal under Section 4 (b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Having thrashed out the minutes of DPC albeit relating to the said point only, we may not be able to overlook the expediency of passing an order in exercise of enabling powers under Rule 27 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974, if deemed necessary for the ends of justice and to prevent abuse of the process of this Tribunal. We have already held that findings of DPC fully discussed hereinabove do not include the determination of question of fitness for promotion as far as they relate to the appellant. Having held so, we are constrained to contemplate that what purpose of keeping this appeal pending would be served when the findings of the DPC have been thrashed out judiciously for settlement of point of the maintainability of appeal certainly agitated by the respondent.

[Handwritten signature]

ATTESTED

[Handwritten signature]
 CLERK
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL

themselves followed by their failure to convince us that the DPC has determined the question of fitness baring jurisdiction of this Tribunal. Alternatively, we have come to the conclusion that the DPC despite discussing the chain of litigation between the same parties as to promotion on the post of Secretary for Assembly has recommended the supersession of the appellant merely for the reason that he did not submit his PERs for the three years i.e. the period during which the litigation was ongoing. We are also not unmindful of the facts that judgments of this Tribunal with reference to the previous litigation discussed herein above ended in favor of the appellant on merit. Rule 27 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 provides that nothing in these rules shall be deemed to limit or otherwise affect the powers of a Tribunal to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the Tribunal. It is an undeniable fact that the appellant has availed the opportunity of full hearing while the respondents have been heard on the point of maintainability of the appeal during which the material to be considered for disposal of this appeal will remain the same as now has been thrashed out with assistance of the parties. Therefore, it will result into abuse of process of this Tribunal to keep this appeal pending for no useful purpose when its decision will rest on the same material as argued before us and examined herein this judgment.

16. For what has gone above, the application filed by respondents questioning maintainability of this appeal is rejected and the appeal is held maintainable and accepted in the following terms, in order to prevent the abuse of the process of this Tribunal. The recommendations of DPC in respect of the appellant and respondent No. 3 are set aside and consequently, the impugned notification of promotion of latter is also set aside. The respondent No.1 shall constitute a new DPC and the panelist officers particularly the appellant will be given opportunity of objection on nominees of DPC, if so advised. The DPC so constituted after settlement of objections, if any, will consider the panelists for promotion in light of the directions given in the judgment dated 17.12.2020 of this Tribunal.

ACCEPTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

(47)

Appeal No. 937/2020 excluding the necessity of the PERs of appellant for the years 2017 and onward. There is no order as to cost. File be consigned to the record room.

ANNOUNCED.
24.09.2021

(ROZINA REHMAN)
MEMBER (J)

(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 28/9/2021
Number of Words 6400
Copying Fee 66.00
Urgent —
Total 66.00
Name of Copyist —
Date of Completion of Copy 04-10-2021
Date of Delivery of Copy 04-10-2021

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION/RECRUITMENT COMMITTEE NO. 1.

A meeting of Departmental Promotion/Recruitment Committee No.1 was held on 05-11-2021 at 10:00 am in the Conference Room of Assembly Secretariat, under the Chairmanship of Mr. Muhammad Abdul Salam, MPA, to consider the promotion case of Secretary (BPS-21) of the Provincial Assembly of Khyber Pakhtunkhwa.

The following attended the meeting: -

- | | | |
|----|---|----------------------------|
| 1. | Sardar Aurangzeb Nalotha, MPA. | Member |
| 2. | Ms. Nighat Yasmin Orakzia, MPA. | Member |
| 3. | Mr. Attaullah Khan, Special Secretary/Director-IT. | Secretary to the Committee |

Item No.1

PROMOTION TO THE POST OF SECRETARY (BPS-21)

The Committee was informed that after setting aside the promotion of Mr. Nasrullah Khan Khattak as Secretary by the Services Tribunal Khyber Pakhtunkhwa vide its decision dated 24-09-2021 in service appeal No.4874/2021, the post of Secretary has become vacant which will be filled in by way of promotion from amongst the senior officers of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa as provided in rule-6 of the Provincial Assembly Secretariat (Recruitment) Rules, 1974 read with sub rule (2) (a) of rule-5 of the rules ibid and this Secretariat Notification No.PA/NWFP/Admn:/2007/19866 dated 25-09-2007.

The Committee discussed the working paper, rules on the subject and ACRs of the officers in the panel thoroughly. It was observed by the Committee that the job of the officers of the Provincial Assembly Secretariat is purely of technical nature and pertains to the parliamentary affairs, therefore, it would be in the best interest of Secretariat that the post might be filled in by way of promotion from amongst the officers of the panel mentioned in working paper.

The Committee examined the decisions of Service Tribunal in detail. The Committee also examined thoroughly the eligibility of the officers in the panel, their ACRs and service record. It was found by the Committee that as per official record,

Attestal.
Son
Assistant Secretary (Admin)
Provincial Assembly of
Khyber Pakhtunkhwa.

(49)

(29/8)

(5)

Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20), was the most senior officer in the panel. Though his ACRs for the years 2017 and onward were not available but he has been exempted from same by the Services Tribunal in its recent judgment dated 24-09-2021.

The Committee after going through relevant official record of the panel, consideration of decisions of Services Tribunal & Supreme Court of Pakistan and examination of available ACRs, unanimously recommended Mr. Kifayatullah Khan Afridi, Senior Additional Secretary BPS-20 for promotion to the post of Secretary, Provincial Assembly of Khyber Pakhtunkhwa.



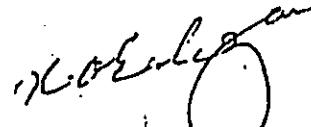
(MUHAMMAD ABDUL SALAM)
MPA/Chairman DPC-I
Provincial Assembly of Khyber Pakhtunkhwa



(SARDAR AURANGZEB NALOTHA)
MPA/Member DPC-I

Attested

Assistant Secretary (Admin.)
Provincial Assembly of
Khyber Pakhtunkhwa




(MS. NIGHAT YASMIN ORAKZAI)
MPA/Member DPC-I



(ATTAULLAH KHAN)
Secretary to the Committee
Provincial Assembly of Khyber Pakhtunkhwa

For approval please.

MR. SPEAKER

Approved


5/11/2021

Ammeaur, E (50)

(6)
PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated: Peshawar, the 05/11/2021.

No. PA./KP/Admn:/2021/ 7169 On the recommendation of Departmental Promotion Committee No.1 and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20) of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) on regular basis with immediate effect.

BY ORDER OF MR. SPEAKER

Sd/-
**ACTING SECRETARY
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

E.NO.PA/K.P/Admn:/2021/ 7170-80

Dated 05/11/2021.

Copy of the above is forwarded for information and necessary action to: -

- 1 All the Administrative Secretaries to Government of Khyber Pakhtunkhwa, Peshawar.
- 2 The officer concerned.
- 3 The Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 4 All Heads of Attached Departments, Khyber Pakhtunkhwa.
- 5 The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 6 The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
- 7 The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
- 8 The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 9 Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
- 10 Personal file of the officer concerned.

Attested.

[Signature]
Assistant Secretary (Admin)
Provincial Assembly of
Khyber Pakhtunkhwa.

[Signature]
**DEPUTY SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

51



**PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA**

www.pakp.gov.pk



**KHYBER PAKHTUNKHWA
PROVINCIAL ASSEMBLY SECRETARIAT
(RECRUITMENT) RULES, 1974**

(i)

TABLE OF CONTENTS

| <u>Rules</u> | | <u>Pages</u> |
|-----------------------------|---|--------------|
| PART-I PRELIMINARY | | |
| 1. | Short title and commencement | 1 |
| 2. | Definition | 1 |
| PART-II THE SECRETARIAT. | | |
| 3. | Secretariat | 2 |
| 4. | Strength and composition of the Secretariat | 2 |
| PART-III RECRUITMENT | | |
| 5. | Methods of recruitment | 2 |
| 6. | Recruitment by promotion | 3 |
| 7. | Recruitment by transfer | 3 |
| 8. | Appointment by direct recruitment | 4 |
| 9. | Qualification, etc. for appointment | 4 |
| 10. | Appointing authority | 4 |
| 11. | Probation | 4 |
| 11-A. | Termination of service | 5 |
| 11-B. | Reversion to a lower grade or service | 6 |
| 11-C. | Retirement from service | 6 |
| 12. | Matters not specifically provided for | 7 |
| 13. | Relaxation of rules | 7 |
| PART-IV RE-EMPLOYMENT | | |
| 14. | Re-employment | 7 |
| PART-V MISCELLANEOUS | | |
| 15. | Residuary powers | 8 |
| 16. | Interpretation | 8 |

53

THE NORTH-WEST FRONTIER PROVINCE
PROVINCIAL ASSEMBLY SECRETARIAT (RECRUITMENT) RULES.
1974

**PART-I
PRELIMINARY.**

1. **Short title and commencement.**-- (1) These rules may be called the North-West Frontier Province Provincial Assembly Secretariat (Recruitment) Rules, 1974.

(2) They shall come into force at once.

2. **Definition.**-- (1) In these rules, unless there is anything repugnant in the subject or context:-

- (a) "ad hoc appointment" means appointment of duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method;
- (b) "appointing authority" means the authority competent to make an appointment under rule 10;
- (c) "constitution" means the Constitution of the Islamic Republic of Pakistan;
- (d) "deputation" means the temporary transfer or loan of the services of an officer from or to the Secretariat to or from any office outside the Secretariat;
- * (e) "employee" means a person appointed to a post but does not include a person who is on deputation to the Secretariat;
- (f) "Finance Committee" means the Finance Committee of the Provincial Assembly constituted under Article 88, read with Article 127, of the Constitution;
- (g) "post" means a post in the Secretariat;
- (h) "Provincial Assembly" means the Provincial Assembly of the North-West Frontier Province;
- (i) "Provincial Secretariat" means the Secretariat Department of the Provincial Government when referred to collectively;
- (j) "Schedule" means Schedule appended to these rules;
- (k) "Secretary" means the Secretary of the Provincial Assembly and includes any person for the time being performing the duties of the Secretary; and
- (l) "Secretariat" means the North-West Frontier Province Provincial Assembly Secretariat.

* substituted vide Notification No.PA/NWFP/Admn:/75/4258 dated 23rd June, 1975 (Published in Extra ordinary gazette on 27th June, 1975).

D

(2) All words and expressions used but not defined in these rules shall unless the context otherwise requires, have the meanings assigned to them in Constitution.

**PART-II
THE SECRETARIAT**

3. **Secretariat.**-- There shall be a Secretariat headed by the Secretary.

4. **Strength and composition of the Secretariat.**--(1) The Secretariat shall consist of such permanent and temporary posts as are respectively specified in Schedule-I and Schedule-II and such other temporary posts as the Speaker may, from time to time, by order, sanction:

Provided that no order sanctioning the creation of a post in grade No.17 and above for a period exceeding six months, shall be made except after consultation with the Finance Committee.

(2) The Speaker may from time to time, amend Schedule I so as to increase or reduce the number of posts specified therein or to add there to any new category of post or posts:

Provided that where such amendment relates to a post in Grade No.17 and above it shall not be made except after consultation with the Finance Committee.

**PART-III
RECRUITMENT**

5. **Methods of Recruitment.**-- (1) Recruitment to a post or class of post may be made by one or more of the following methods, namely:-

- (a) By promotion of a person employed in the Secretariat;
- (b) By transfer on deputation of a person serving outside the Secretariat in connection with the affairs of the Federation or the Province; and
- (c) By direct recruitment.

(2) The Speaker may, from time to time by general or special order:-

- (a) specify the method or methods by which recruitment to a post or class of post shall be made; and

(b) fix the percentage of vacancies to be filled by each method.

(3) Where a percentage has been fixed under sub-rule(2), for departmental promotion and direct recruitment, promotion against the posts reserved for departmental promotion shall be made first and posts reserved for direct recruitment shall be filled later.

(4) Notwithstanding anything contained in these rules:-

- (a) short term vacancies reserved for the direct appointment may be filled by any other method of recruitment prescribed in these rules; and
- (b) if no suitable person is available for promotion or transfer, the vacancy may be filled by direct appointment.

6. **Recruitment by Promotion.**--(1) Promotion to a post may be made:-

- (a) in the case of selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority-cum-fitness.

(2) Appointment to posts from one grade to another and from one category to another within a grade shall be made on the recommendation of a Departmental Promotion Committee, consisting of not less than three members, to be constituted:-

- (a) in the case of posts in Grade No.17 and above by the Speaker; and
- (b) in the case of all other posts, by the Secretary.

(3) No employee shall have any claim for promotion as a matter of right.

7. **Recruitment by transfer.**--(1) Appointment of officers in Grade No.17 and above by transfer shall be made on a tenure basis for maximum period of three years which may, from time to time, be extended by appointing authority.

(2) In any exceptional case, the Secretariat may, after consultation with the Federal Government or, as the case may be, the Provincial Government, revert an officer to his parent Department to which he belongs or his original post before the expiry of the period of his tenure.

8. **Appointment by direct recruitment.**--(1) Appointment by direct recruitment to posts in Grade No.17 and above shall be made upon the recommendation of a Selection Committee, consisting of not less than three members, to be constituted by the Speaker.

(2) Appointment by direct recruitment to post other than those referred to in sub-rule (1) shall be made upon the recommendation of a Recruitment Committee, consisting of not less than three members, to be constituted by the Secretary.

9. **Qualification, etc. for Appointment.**-- The qualification, experience and age for appointment to various categories of posts by departmental promotion or otherwise shall be:-

- (a) the same as required for appointment to the corresponding posts in the Provincial Secretariat subject to such modifications, variations or exceptions as the Speaker may, from time to time, by order, specify; and
- (b) the qualifications, experience and age required for appointment to any post which has no corresponding post in the Provincial Secretariat shall be such as the Speaker may specify.

10. **Appointing Authority.**-- Appointment to all posts in Grade No.17 and above shall be made by the Speaker and appointment to all other posts shall be made by the Secretary or by any other officer of the Secretariat authorized by the Secretary in this behalf.

11. **Probation.**--(1) An initial appointment to a post, not being an ad hoc appointment, shall be on probation for a period of two years, or for such lesser period as may be determined by the appointing authority:

Provided that the appointing authority may, for good and sufficient reasons to be recorded in writing, extend the period of probation or terminate it before two years.

(2) If, in the opinion of the appointing authority, the work or conduct of an employee on probation is not satisfactory or shows that he is not likely to become efficient, such authority may order that:-

- (a) his probation be extended for such period not exceeding one year, as he may think fit; or
- (b) if he was appointed to such post by direct recruitment, be discharged; or

- (c) if he was appointed to such post by promotion or transfer, be reverted to the post from which he was promoted or transferred and against which he holds a lien; or
- (d) if there be no such post, be discharged.

(3) On satisfactory completion of the period of probation, the appointing authority may confirm a probationer in his appointment provided a clear vacancy exists.

(4) If no action is taken under sub-rule(2) or sub-rule(3), the period after the prescribed period of probation shall be treated as temporary engagement until further orders.

(5) Any person appointed to a post by promotion or transfer may also be placed on probation in accordance with the provisions of sub-rule (1).

(6) Where, in respect of any post, the satisfactory completion of the period of probation includes the passing of an examination, test or course, a person appointed on probation to such post who, before the expiry of the original or extended period of his probation, fails to pass such examination or test or to successfully complete the course, may:-

- (a) if he was appointed to such post by direct recruitment, be discharged; or
- (b) if he was appointed to such post by promotion or transfer, be reverted to the post from which he was promoted or transferred and against which he holds a lien; or
- (c) if there be no such post, be discharged:

Provided that, in the case of initial appointment to a post, an employee shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

***11-A. Termination of service.--** (1) The service of an employee may be terminated without notice:-

- (i) during the initial or extended period of his probation:-

* Added vide Notification No.PA/NWFP/Admn:/75/4258 dated 23rd June, 1975 (Published in extra ordinary gazette on 27th June,1975).

Provided that, where such employee is appointed by promotion on probation or, as the case may be is transferred from one grade, cadre or post to another grade, cadre or post, his service shall not be so terminated so long as he holds a lien against his former post in such grade or cadre, but he shall be reverted to his former grade, cadre or post, as the case may be;

(ii) on the expiry of the initial or extended period of his employment; or

(iii) if the appointment is made ad hoc terminable on the appointment of a person on the recommendation of the selection authority, on the appointment of such person.

(2) Where, on the abolition of a post or reduction in the number of posts in a cadre or grade, the services of an employee are required to be terminated, the person whose services are terminated shall ordinarily be the one who is the most junior in such cadre or grade.

(3) Notwithstanding the provisions of sub-rule (1) above, but subject to the provisions of sub-rule (2) above, the service of an employee in temporary employment or appointed on ad hoc shall be liable to termination on fourteen day's notice or pay in lieu thereof.

***11-B. Reversion to a lower grade or service:-** An employee appointed to a higher post or grade ad hoc or on temporary or officiating basis shall be liable to reversion to his lower post of grade without notice.

****11-C. Retirement from service:-** An employee shall retire from service:-

(i) on such date after he has completed twenty-five years of service qualifying for pension or other retirement benefits as the competent authority may, in the public interest, direct; or

(ii) where no direction is given under clause(i), on the completion of the Sixty years of his age.

* & ** Added vide Notification No.PA/NWFP/Admn:/75/4258 dated 23rd June, 1975 (Published in extra ordinary gazette on 27th June, 1975).

Explanation.-- In this section, "competent authority" means the appointing authority or a person duly authorized by the appointing authority in that behalf, not being a person lower in rank than the employee concerned.

12. Matters not specifically provided for.-- In respect of all other matters, including recruitment policy, eligibility for appointment to a post and the rank, status, seniority, prospects of promotion and privileges of the employees for which no provision has been made in these rules, the employees shall be governed by such rules and orders for the time being in force and applicable to the employees holding corresponding posts in the Provincial Secretariat, subject to such modifications, variations or exceptions, if any, in such rules and orders, as the Speaker may, from time to time, by order, specify.

13. Relaxation of rules.-- Where the Speaker is satisfied that the operation of any provision of these rules causes undue hardship in any particular case, he may, with the approval of the Finance Committee, by order, dispense with, or relax the requirements of that provision to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner.

**PART-IV
RE-EMPLOYMENT**

14. Re-employment.-- (1) A retired employee shall not ordinarily be re-employed in the Secretariat unless such re-employment is necessary in the public interest and is made with the prior approval of the authority next above the appointing authority:

Provided that, where the appointing authority is the Speaker, such re-employment may be ordered with the approval of Finance Committee.

(2) Subject to the provisions of sub-section (1) of Section 3 of Ex-Government Servants (Employment with Foreign Government) (Prohibition) Act, 1966, an employee may during leave preparatory to retirement, or after retirement from service, seek any private employment:

Provided that, where employment is sought by an employee on leave preparatory to retirement or within two years of the date of his retirement, he shall obtain the prior approval of the appointing authority for the post from which he retired from service.

PART-V
MISCELLANEOUS

15. **Residuary powers.**-- All matters not specifically provided for in these rules or in the rules and orders referred to in rule 12 shall be regulated in accordance with such orders as the Speaker may make.

16. **Interpretation.**-- All questions relating to the interpretation of these rules shall be referred to the Speaker whose decision thereon shall be final.



North-West Frontier Province

Published by Authority
PESHAWAR, MONDAY, 31ST DECEMBER, 2007.

PROVINCIAL ASSEMBLY SECRETARIAT.

NOTIFICATION

Dated Peshawar, the 25th September, 2007.

No. PA/NWFP/Admn:/2007/19866. - In exercise of the powers conferred on him under rule 5(2) of the North West Frontier Province, Provincial Assembly Secretariat Recruitment Rules, 1974, Speaker, Provincial Assembly of NWFP is pleased to make the following order namely:-

1. This order may be called the North West Frontier Province, Provincial Assembly Secretariat Recruitment Order, 2007.
2. It shall come into force at once.
3. The method of recruitment and minimum qualification for the posts of Secretary, Sr. Additional Secretary, Additional Secretaries, Deputy Secretaries, Assistant Secretaries, Secretary to Mr. Speaker, Chief Editor of Debates, Chief Reporter, Director Library and Research, Librarian and Assistant Librarian shall be as indicated in the schedule given hereunder:-

SCHEDULE

| S. No. | Name of Posts | Minimum qualification for appointment | | Method of Recruitment. |
|--------|------------------------------------|---------------------------------------|--------------|--|
| | | By direct recruitment | By Promotion | |
| 1 | Secretary BPS-21 | | By Promotion | By Promotion on the basis of seniority cum fitness amongst the senior Additional Secretaries with three years service as such or 22 years service in BPS-17 and above. |
| 2 | Senior Additional Secretary-BPS-20 | | By Promotion | By Promotion on the basis of seniority cum fitness amongst the Additional Secretaries with two years service as such or 17 years service in BPS-17 and above. |

411A

Alfred
Pratt

FAKIR-E-ALANI
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

(62)

(11)

| 1 | 2 | 3 | 4 | 5 |
|-----|--------------------------------------|--|---|--|
| 3. | Additional Secretary BPS-19 | | By Promotion | By Promotion on the basis of seniority cum fitness amongst the Deputy Secretaries with five years service as such or 12 years service in BPS-17 and above. |
| 4. | Deputy Secretary BPS-18 | | By Promotion | By Promotion on the basis of seniority cum fitness amongst the Assistant Secretaries with five years service in BPS-17. |
| 5. | Assistant Secretary-BPS-17 | BA/BSc from a recognized University preference be given to Master degree holder in social sciences with LLB (50% direct recruitment) | 50% By Promotion & 50% by direct recruitment. | By Promotion (50%) on the basis of seniority cum fitness amongst the Superintendents with 10 years service in BPS-16 and below. |
| 6. | Secretary to Mr. Speaker BPS-19 | | By Promotion | By Promotion on the basis of seniority cum-fitness amongst the private secretaries with 5 years service in BPS-18 or 12 years service in BPS-17 and above. |
| | Chief Editor of Debates BPS-19 | | By Promotion | By Promotion on the basis of seniority cum-fitness amongst the Editors with 7 years service in BPS-18 or 12 years service in BPS-17 and above. |
| 8. | Chief Reporter BPS-18 | | By Promotion | By Promotion on the basis of seniority cum-fitness amongst the Reporters with 5 years experience of service in BPS-17. |
| 9. | Director Library and Research BPS-19 | | By Promotion | By Promotion on the basis of seniority from Librarians with 7 years service as such or 12 years service as Librarian in BPS-17 and above. |
| 10. | Librarian BPS-18 | | By Promotion | By Promotion on the basis of seniority cum fitness from Assistant Librarians with 5 years service. |

Attested



FAKHR-E-ALAM

Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

63

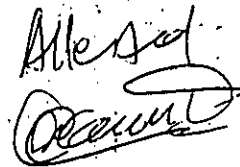
15

| 1 | 2 | 3 | 4 | 5 |
|-----|----------------------------|---|---|------|
| 11. | Assistant Librarian BPS 17 | Master in Library Science (second division) preference be given to Law graduates as additional qualification. | | -17- |

BY ORDER OF MR. SPEAKER



(AMANULLAH)
Acting Secretary,
Provincial Assembly of NWFP.

Printed and published by the Manager,
Sriy. & Ptg. Deptt., NWFP, Pesh



FAKHR-E-ALAM
Law Officer
Provincial Assembly
Khyber Pakhtunkhwa

PESHAWAR HIGH COURT PESHAWAR**ORDER SHEET**

| <i>Date of Order or Proceedings</i> | <i>Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary</i> |
|-------------------------------------|---|
| 2 | 3 |
| 25.1.2023 | <p><u>WP No.413-P/2022.</u></p> <p>Present:</p> <p>Mr. Mohammad Zafar Tahirkheli, Advocate for petitioner.</p> <p>Mr. Ali Azeem Afridi, Advocate for respondents.</p> <p>*****</p> <p><u>ROOH-UL-AMIN KHAN, J.-</u> Former wants to withdraw the instant writ petition. Allowed. Dismissed as withdrawn.</p> <p><i>Announced on;</i> <i>25th of January, 2023</i></p> <p> SENIOR PUISNE JUDGE</p> <p> JUDGE</p> |

NOTIFICATION

Dated Peshawar, the 01 /12/2021.

No.PA/KP/Admn:/2021/ 8607 The Honorable Speaker, Provincial Assembly of Khyber Pakhtunkhwa being the competent authority has been pleased to withdraw the Charge Sheet along with Statement of Allegations issued vide No.PA/KP/Admn:/2019/19494 dated 16-05-2019 in respect of Mr. Kifayatullah Khan Afridi, the then Senior Additional Secretary, Provincial Assembly of Khyber Pakhtunkhwa from the date of its issuance.

BY ORDER OF THE SPEAKER

Sd/-
**ADDITIONAL SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

Endt.No.PA/KP/Admn:/2021/ 8608-10 Dated 01 /12/2021.

Copy of the above is forwarded for information to: -

1. The Assistant Private Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
2. The PA to Secretary, Provincial Assembly of Khyber Pakhtunkhwa.
3. Personal file of the officer concerned.


**ASSISTANT SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**