

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (Judicial)

Service Appeal No.1395/2019

Date of presentation of appeal.....15.10.2019

Date of Hearing.....07.03.2023

Date of Decision.....07.03.2023

Muhammad Arshad Khan, SST BPS-16 (General), GMS, Choki Mamraiz, Nowshera.

.....*Appellant*

Versus


1. **The Secretary to the Government** of Khyber Pakhtunkhwa Education (E&SE) Department, Peshawar.
 2. **The Director Education (E&SE)**, Khyber Pakhtunkhwa, Peshawar.
 3. **The District Education Officer (M)**, Nowshera
-(*Respondents*)

Present:

Mr. Taimur Ali Khan, Advocate.....For the appellant.


Mr. Naseer Ud Din Shah,
Assistant Advocate GeneralFor respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 23.09.2019 WHEREBY THE DEPARTMENTAL APPEAL, OF THE APPELLANT FOR ANTEADATION OF HIS PROMOTION TO THE POST OF SST BPS-16 (GENERAL) FROM DUE DATE I.E. 25.07.2017, THE DATE WHEN HIS COLLEAGUES AND JUNIORS WERE PROMOTED TO THE POST OF SS BPS-16 (GENERAL) UNDER 20% QUOTA, FIXED FOR PST, SPST AND PSHT, HAS BEEN REJECTED AND AGAINST THE ORDER DATED 19.04.2018, WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF SST BPS-16 (GENERAL) UNDER 20% QUOTA FIXED FOR PST, SPST AND PSHT WITH IMMEDIATE EFFECT INSTEAD OF DUE DATE I.E. 25.07.2017.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The facts surrounding the appeal are that the appellant joined the Education Department as PST(PTC) and with the passage of time was promoted to PSHT (BPS-15); that different quotas had been fixed by the Education Department for promotion to the post of Secondary School Teacher (BPS-16) in which 20% quota had been given to the PSHT, SPST and PST; that meeting of the Departmental Promotion Committee (DPC) was held on 10.07.2017 for considering promotion cases of various cadres to the post of Secondary School Teacher (BPS-16), in which 11 officials were found eligible for promotion to the post of SST BPS-16 (General) under 20% quota fixed for PSHT, SPST & PST in which the name of the appellant was also present but he was deferred from promotion due to non-availability of his original service book, which the appellant had produced but that was doubted and on the recommendation of the DPC a notification dated 25.07.2017 was issued whereby 8 officials were promoted to the post of SST BPS-16 (General) under 20% quota reserved for PSHT, SPST & PST; that an enquiry was conducted on the observation on some signature accorded in the service book of the appellant, wherein the appellant was declared innocent and was exonerated and he was then promoted to SST BPS-16 (General) vide notification dated 19.04.2018 but with immediate effect and not from the date of deferment i.e. 25.07.2017; that the appellant filed departmental appeal for antedation of his promotion to the post of SST BPS-16 (General) with effect from 25.07.2017 with all back benefits but that was rejected without any reason, hence, this appeal.




2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant with no good reason. While admitting the fact that the appellant was deferred for promotion, it was mainly contended in the reply that owing non-production of service book the appellant was deferred.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order.

5. It is undisputed that deferment is not a punishment rather a temporary halt because of some deficiency. The deficiency may be because of the employee and it may be because of the department. In either case when the deficiency is removed the employee had to get his due from the date of entitlement along with the resultant benefits. This is admittedly a case of deferment and the deficiency was said to be non-production of service book, which the appellant claims to have produced but some entries therein were doubted by the DPC and an enquiry was conducted to verify the doubted signatures, which enquiry ended in favour of the appellant as he was declared innocent and was accordingly exonerated. The respondents admit the factum of entitlement of the appellant for promotion from 25.07.2017 when his other colleagues/juniors were promoted but contend that because



of non-production of the service book, he could not get promotion on the due date; they further admit that, when the deficiency was removed, the appellant was promoted. The above state of affairs shows and proves that the appellant was not treated in accordance with law and he was made to suffer for none of his fault. In case titled "*Capt. Zahoor Ahmad Khalil versus Government of Pakistan through Secretary Establishment Division Islamabad and another*" reported as 2018 PLC (CS) N 170, the honourable Peshawar High Court was pleased to have found as under:

"13. Thus, the deferment by itself refers to certain shortcomings, which, in due course of time when fulfilled, the officer is re-considered for promotion and is allowed promotion with effect from the date when he was deferred. To the misfortune of the officer he stood retired from service w.e.f. 14.01.2015 and thus, remained deprived of the promotion to BS-22. The august Supreme Court of Pakistan, in the case of Orya Maabool Abbasi v. Federation of Pakistan through Secretary Establishment and others (2014 SCMR 817), held that "Although promotion was not a right but a civil servant fully qualified for promotion, has a right to claim that his case may be considered for promotion strictly following the eligibility criteria laid down by the authority, and that "though the officer not meeting eligibility criteria for promotion, could be deferred but the deferment could not be arbitrary and not supported by the service record. In this case, the apex Court further held that "Board failed to take into consideration the PER Reports for the reasons not tenable under the law and their such findings were clear violation and departure from the promotion policy

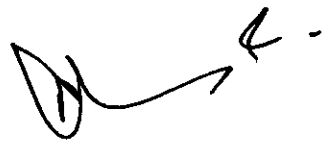


because once the officer have fulfilled the criteria, their cases have to be considered to assess the fitness and suitability to share higher responsibility mostly based on subjective criteria instead of denying promotion to them for the subjective consideration".

14. It merit mention that the High Powered Selection Board remained stuck up with some report in the National Management Course (NMC), held from 3rd March, 2008 to 24th March, 2008. Though thereafter, the petitioner was promoted to BPS-21 in the year 2010, and those were considered and ignored, it seems that the High Powered Selection Board has not conducted itself in the manner required under the law. We are thus, fortified in our view by the judgments of the apex Court in Tariq Aziz-ud-Din (2010 SCMR 1301), Muhammad Rahim Khan v. The Chief Secretary, N.-W.F.P. and 4 others (1999 SCMR 1605), Orya Maqbool Abbasi v. Federation of Pakistan through Secretary Establishment and others (2014 SCMR 817), 2017 SCMR 969 Federation of Pakistan through Secretary, Establishment Division and others v. Dr. Muhammad Arif and others."

6. In 2020 PLC (CS) 826 titled "Liaqat Ali Khan versus Federation of Pakistan through Secretary Establishment Division Islamabad and two others", the honourable Islamabad High Court has held that:

"6(sic) In both petitions, the petitioners are civil servants and were not promoted due to non-availability of their Performance Evaluation Reports. The contention of the learned Deputy Attorney General was it is the obligation of the employee/civil servant to provide Performance Evaluation Reports or at least he is jointly responsible with the




employer, is not tenable. Reliance is placed on *Pervaiz Akhtar v. Federal Government* [2014 PLC (C.S.) 326] where the Honourable Lahore High Court observed that non-availability of record for promotion including Annual Confidential Report by the concerned department was not the fault of the civil servant for which he could be made to suffer. Similarly, the Honourable Lahore High Court in case reported as *Mirza Lutuf Muhammad Khan v. Government of Pakistan* [2006 PLC (C.S.) 85] Honourable Lahore High Court though did not interfere in the matter but directed the respondent to complete the PER of civil servants. In *Secretary, Revenue Division and others v. Muhammad Saleem* (2008 SCMR 948) the Honourable Supreme Court of Pakistan held that law provided that it is the duty of the respondent department to prepare the Performance Evaluation Reports of officer to keep and maintain the same so that it could be used for the prescribed purposes at the time of promotion of the concerned official. It was further observed that as the department has neglected in its duty to complete all the PERs of the civil servants, therefore, he had no alternate remedy except to approach the High Court for relief."

7. In another case reported as 2018 PLC (CS) Note 126 titled "*Aurangzeb Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary and two others*", the honourable Peshawar High Court found that:

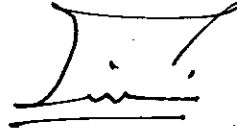
"6.....According to the law of the land, deferment is neither a punishment nor a final order, as and when reasons for deferment cease to exist the officer is promoted from the date, when his juniors were promoted and to be considered for promotion is the job of the Service Tribunal under section 4 of the Tribunal Act, 1974...."

8. The upshot of the above discussion is that we allow this appeal directing the respondents to give effect to the promotion of the appellant to the post of SST BPS-16 (General) from 25.07.2017 that is the date of his deferment when his colleagues/juniors were promoted and he was not. We direct that the costs of the appeal shall follow the result. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 7th day of March, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)

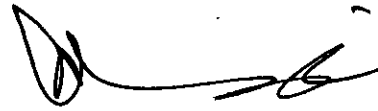
ORDER

7th Mar, 2023

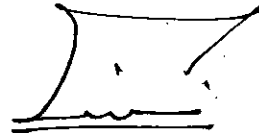
1. Appellant alongwith his counsel present. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present.

2. Vide our detailed judgement of today placed on file, we allow this appeal directing the respondents to give effect to the promotion of the appellant to the post of SST BPS-16 (General) from 25.07.2017 that is the date of his deferment when his colleagues/juniors were promoted and he was not. We direct that the costs of the appeal shall follow the result. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 7th day of March, 2023.*



(Kalim Arshad Khan)
Chairman



(Salah Ud Din)
Member(Judicial)