

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1177/2020

Date of Institution ... 06.02.2020

Date of Decision... 16.11.2022

Ms. Gulnaz Bibi, Associate Professor (BS-19) Government Girls Degree
College Ghazi District Haripur.

... (Appellant)

VERSUS

Chief Secretary to Government of Khyber Pakhtunkhwa Civil Secretariat
Peshawar and 05 others.

... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

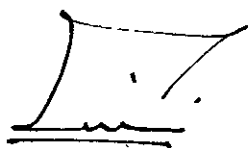
--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the
appellant has invoked jurisdiction of this Tribunal with the prayer
copied as below:-



*“on acceptance of the instant service appeal both
orders dated 14.05.2019 and 18.07.2017 to the extent
of appellant may graciously be modified & set-aside to
the extent of appellant and she may graciously be
granted promotion in BS-19 with effect from
18.03.2014 instead of 14.05.2019 as Associate
Professor and study leave on full pay be granted from
01.03.2013 to 31.03.2017 instead of (EOL) leave*

without pay with all consequential service back benefits on rendition of account."

2. Briefly stated the averments as raised by the appellant in her appeal are that she was appointed as Lecturer (BPS-17) vide appointment order dated 27.07.2002 and is having a meritorious service record at her credit; that the appellant was posted as Assistant Professor Chemistry in Government Girls Degree College Sarai Saleh Haripur, when Government of Khyber Pakhtunkhwa offered Ph.D Scholarship for Government Colleges Teachers, Khyber Pakhtunkhwa; that the appellant applied for Ph.D Scholarship in Chemistry through proper channel and upon recommendations of scrutiny, evaluation and selection committee, the competent Authority approved nomination of the appellant for award of overseas Ph.D Scholarship; that the appellant applied for admission in South Korea through proper channel, which was granted and she then applied for NOC, which was also granted vide order dated 05.03.2013 and a proper bond in this respect was obtained by the department from the appellant; that the appellant had submitted a proper application for study leave with pay, specifying due dates of leaving the country and joining study abroad by 04.03.2013 as the classes had already commenced on 28.02.2013; that the appellant returned back from South Korea in March 2017 and was initially adjusted temporarily and there-after she was permanently posted at Government Post Graduate College Haripur; that during her stay for studies abroad, the meeting of Provincial Selection Board for promotion of Female Assistant Professors (BS-18) to the post of Associate Professors (BS-19) of College Cadre was held in the month of March

2014 but the appellant was deferred on the ground that she was abroad for Ph.D degree and that her ex-Pakistan study leave case was under process; that as the appellant was abroad for higher studies, therefore, in view of amendment made in promotion policy 2009 vide Notification dated 07.03.2014, she was entitled to have been promoted being eligible for promotion as Associate Professor in the year 2014 but she was illegally ignored; that the appellant was having excellent record in the year 2017 and 2018 but she was deferred by Provincial Selection Board in its meetings held on 03.05.2018 and 17.09.2018 on the pretext that she was having a weak service record; that the appellant was promoted as Associate Professor vide Notification dated 14.05.2019 but with immediate effect and vide order dated 18.07.2017, she was granted extra-ordinary leave without pay instead of study leave on full pay, constraining her to file departmental appeal, which was not responded within the statutory period, hence the instant service appeal.

3. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions as raised by the appellant in her appeal.

4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in her service appeal. On the other hand, learned Additional Advocate General has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

5. A perusal of the record would show that the appellant had applied for the concerned Ph.D Scholarship through proper channel and

her nomination for award of the Scholarship was approved upon recommendations of scrutiny, evaluation and selection committee, which was communicated to the appellant vide letter dated 24.01.2012. The appellant then submitted an application for issuance of NOC through proper channel and the same was issued to her on 05.03.2013. The appellant had submitted an application to the concerned Principal for study leave with effect from 01.03.2013 to 28.02.2017 on the prescribed proforma, which was not processed timely without any plausible reason and remained undecided till arrival back of the appellant from abroad after successful completion of Ph.D Degree. A fact findings inquiry in this respect was also conducted and the inquiry report submitted by the inquiry officer is available on the record, wherein he has categorically mentioned that the appellant had applied for study leave on prescribed proforma and that the Principal could not satisfy the inquiry officer for not forwarding/processing the leave application. The inquiry officer has not given any findings in the inquiry report that the appellant was not entitled to study leave sought by her. Moreover, without waiting for the outcome of the inquiry proceedings, impugned Notification dated 18.07.2017 was issued by Secretary to Government of Khyber Pakhtunkhwa Higher Education Department, whereby ex-post facto sanction of grant of extra-ordinary leave without pay with effect from 01.03.2013 to 31.05.2017 was accorded in favour of the appellant. The aforementioned Notification dated 18.07.2017 was produced before the inquiry officer during the inquiry proceedings and the findings of the inquiry report are almost in line with the impugned notification. It is an admitted fact that the appellant had completed her Ph.D successfully and

has returned back timely for joining her duty in the Department. In these circumstances, the respondents were required to have granted her study leave with effect from 01.03.2013 to 31.03.2017 on half average pay.

6. When the appellant was abroad in connection with her study, certain posts of Associate Professors (BS-19) became vacant, hence PSB for filling of the same was convened on 27.12.2013 in which certain senior as well as junior colleagues of the appellant were also promoted on acting charge basis, however the appellant was not considered for promotion with the observations that her study leave case from 01.03.2013 to 28.02.2017 was under process and that she had left the department without approval of her leave. According to the available record, the next meeting of the PSB for promotion to the post of Associate Professor (BS-19) was held on 30.06.2014 in which the name of the appellant was placed before the PSB for promotion, however the same was deferred with the observations that the board in its meeting held on 27.12.2013 had not considered her promotion as her study leave case from 01.03.2013 to 28.02.2017 was under process and that she had left the department without approval of her leave. Certain senior as well as junior colleagues of the appellant were promoted to the post of Associate Professor (BPS-19) on regular basis. The appellant at the time of meeting of PSB on 30.06.2014 was abroad in connection with her study. In view of sub-clause (dd) added by SOR-VI/E&AD/1-16/2011 dated 07.03.2014 through amendment in clause-IV of the Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, the promotion of the appellant was due at the time of PSB held on 30.06.2014. The

relevant sub-clause (dd) of clause-IV of the Promotion Policy, 2009 is reproduced as below:-

“If a civil servant is nominated by the Provincial Government for higher studies or training abroad and his turn for promotion arrives in his parent department or cadre in Pakistan, he should be considered for promotion alongwith other officers, and if he is approved for promotion in accordance with the relevant rules, he should be appointed formally (not actually) to the post in the higher grade. This could enable him to occupy on his return to Pakistan the position which he would have occupied had he not gone abroad on training. No financial benefits of the next below rule should be allowed to him in respect of his promotion. He should be allowed to count seniority and increment from the date of such promotion, but the actual pay of the higher post should be given to him only when he resumes the duties of higher post on his return from training.”

7. Admittedly, promotion of the appellant was deferred and she was not superseded. A deferment case came up before the honourable Peshawar High Court reported as 2018 PLC (CS) N 126 titled *“Aurangzeb Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary and two others”* and the honourable Court was pleased to have found as under:

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

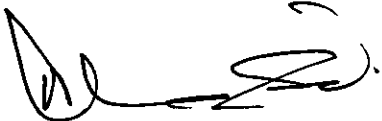
The Government of Khyber Pakhtunkhwa introduced promotion policy, 2009 and under the policy clause-v deferment of promotion reads as under:--


- (a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if:-
- (i) His inter-se-seniority is disputed / sub judice.
 - (ii) Disciplinary or departmental proceedings are pending against him.
 - (iii) The PER dossier is incomplete or any other document/ information document/information required by the PSC/DPC for determining his suitability for promotion is not available for reasons beyond his control.
- (b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cases to exist. The cases falling under any of the above three categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.
- (c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake, is noticed.
- (d) If and when officer, after his seniority has been correctly determined or after he has been exonerated of the charge or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declare fit for promotion to the next higher basic scales he shall be deemed to have been cleared for promotion along with the offices junior to him who were considered in the earlier meeting of the Provincial Selection Board/ Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with proviso of subjection (4) of section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower

post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.”

8. In view of the above discussion, the appeal in hand is allowed and it is directed that the appellant shall be considered to have been promoted to the post of Associate Professor (BPS-19) from the date of her first consideration or when her junior (s) was/were promoted on regular basis and the period with effect from 01.03.2013 to 31.03.2017 shall be treated as study leave on half average pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.11.2022


KALIM ARSHAD KHAN
CHAIRMAN
CAMP COURT ABBOTTABAD


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD