


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...."

6. This is also a case of deferment and has to be decided in the above manner.

7. Therefore, we allow this appeal directing the respondents to consider promotion of the appellant to the post Girdawar with effect from the date of his first deferment as the deficiency, which made basis of his deferment, has now been removed. We direct that the costs of the appeal shall follow the result. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 14th day of March, 2023.*


KALIM ARSHAD KHAN
Chairman


SALAH UD DIN
Member (Judicial)

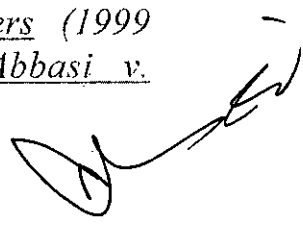
Federation of Pakistan through Secretary Establishment and others (2014 SCMR 817), 2017 SCMR 969 Federation of Pakistan through Secretary, Establishment Division and others v. Dr. Muhammad Arif and others."

6. In 2020 PLC (CS) 826 titled "Liaquat 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."

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.



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. In a recent judgment in service appeal No.1395/2019 titled "Muhammad Arshad Khan versus Secretary Education and others" decided on 07.03.2023, this bench has held as under:

"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 a 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

departmental appeal before respondent No.2, which was dismissed on 24.11.2017, 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. It was contended by the official respondents that the main things in promotion of a government servant were "fitness" and "complete ACRs", while the appellant had no ACRs of his service; that the appellant was deferred in 2015, as his ACRs were not complete; that the appellant had plenty of time to complete the ACRs in those two years but he produced ACRs with bogus signatures of officers, which were subsequently sent to the concerned officers, who denied the same; that the departmental appeal was dismissed on merits; that the name of the appellant was included in the list of Patwaris to be promoted to the post of Girdawar in 2015 but he was deferred due to non-production of ACRs, while he was deferred in 2017 by producing ACRs with bogus signatures; that the committee was unable to promote him with such documents, therefore, he was not treated with malafide.

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



**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE APPELLATE ORDER DATED 24.11.2017
OF RESPONDENT NO.2 WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT WAS
DISMISSED AGAINST THE INITIAL IMPUGNED
ORDER DATED 29.09.2017 OF RESPONDENT NO.3 FOR
NOT PROMOTING THE APPELLANT WHILE JUNIORS
TO THE APPELLANT WERE PROMOTED**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The facts surrounding the appeal are that the appellant joined the Revenue Department as Patwari BPS-09 vide order dated 18.05.2002; that the appellant was at serial No.17 of the seniority list; that the candidates at serial No.2, 4, 7, 8, 9 and 12 were retired from service while those serial No.1, 3, 5, 6, 10, 11, 13, 14, 18, 24 and 25 were disqualified for promotion as they had not passed Qanungo examination; that if the retired and unqualified candidates were excluded from the seniority list, the appellant would become entitled for promotion and his name would list at serial No.2 of the 8 candidates for promotion because the candidates at serial No.15, 16 & 17 had been appointed on the same date i.e. 06.05.2002 while the candidate at serial No.16 was junior in age than the appellant; that the departmental promotion committee had, malafide and for ulterior motive, ignored the appellant for promotion to the post of Girdawar BPS-11, while juniors to the appellant had been so promoted without any cogent reason, therefore, the appellant filed



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.1404/2017

Date of presentation of appeal.....20.12.2017
Dates of Hearing.....14.03.2023
Date of Decision.....14.03.2023

Kiram Shah son of Tawab Shah resident of Prang, Tehsil & District Charsadda, Presently Patwari Halqa/Mauza Shekho, Charsadda.

.....*Appellant*

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary revenue Secretariat, Peshawar.**
2. **Commissioner Peshawar Division, Peshawar.**
3. **Deputy Commissioner Charsadda.**
4. **Tahir Ahmad S/o Shahjehan (Posted at office Qanoongo Shabqadar District Charsadda).**
5. **Mohammad Amin S/O Nawab Khan (Posted at Civil Kanal Shabqadar District Charsadda).**
6. **Mushtaq Ahmed S/O Sher Afzal (Posted at Civil Kanal Shabqadar District Charsadda).**
7. **Haroon Jamal S/O Siraj Mohammad (Posted at field Qanoongo Circle Boada, District Charsadda).**
8. **Mohammad Rangeen Iqbal S/O Abdul Ghafoor (Posted at Civil Kanal Shabqadar District Charsadda).**
9. **Anwar Ul Haq S/O Habib Ul Haq (posted at office Qanoongo District Charsadda).**
10. **Khurshid Ullah S/O Tehseen Ullah (posted at Office Qanoongo district Charsadda).**
11. **Atta Ul Haq S/O Sabih Ullah (ADK Charsadda).**
12. **Abdul Shakoor Dawar Ex-DOR Charsadda.**
13. **Mian Asfanyar Ex-Tehsildar.**

.....*(Respondents)*

Present:

Ms. Naila Jan,
Advocate.....For the appellant.

Muhammad Jan,
District Attorney.....For official respondents

