

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.1198/2022

Mr. Mukaram khan, Section Officer, Finance Department.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others.....Respondents

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Dated: 10-04-2023

Deponent

(Riaz Khan)

Superintendent (Lit-III)
Establishment Department
CNIC No. 17301-6272682-3
Contact: 0315-5737137

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No.1198/2022

Mukaram Khan, Section Officer, Finance Department
.....(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar
& others.....(Respondents)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth that the respondents submit as under:-

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
2. That the appeal is not maintainable.
3. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
4. That the appeal is barred by law and limitation.
5. That this Honourable Tribunal lacks jurisdiction in the matter under Section 4(b)(i) of the Service Tribunal Act, 1974.
6. That the appellant has suppressed material facts from the Tribunal.
7. That the appellant has not come to the Tribunal with clean hands.
8. That the appellant is estopped to file the instant appeal due to his own conduct.
9. That the appeal is bad for mis /non-joinder of necessary parties.
10. That the instant appeal is hit by Section 4 (b) (i) of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974.
11. That the appeal is not within statutory period. The appellant preferred departmental appeal, though barred by law/time, on 12.04.2022, (Annex-I) as is evident from the diary No. of Private Secretary to Chief Secretary, Khyber Pakhtunkhwa. Soon after elapsing the statutory period of ninety days (90), the appellant was required to file Service Appeal before the Hon'ble Tribunal, though barred by law, within the next thirty (30) days, under Section 4 (a) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 which states
“Where an appeal, review or representation to a departmental authority is provided under the [Khyber Pakhtunkhwa] Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred”.
12. That the departmental appeal, which is a first-hand remedy, filed by the appellant was barred by time/law as he filed the same after a lapse of more than four long years, which was hit by Section-22 of Civil Servants Act, 1973 (amended from time to time). Thus according to SCMR 2012 195, if an appeal filed in the department is time barred, then it would be time barred in the Hon'ble Tribunal as well, and the appellant has no right to agitate it in the Tribunal though after rejection of the appeal within stipulated time.

13. That the Hon'ble Tribunal while addressing a similar question of law as raised by the instant appellant, dismissed the **Service Appeal No.12449/2020, titled: Kifayat Ullah versus Government of Khyber Pakhtunkhwa**, being hit by Section 4 (b) (i) of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 vide judgment dated 25.02.2021 (**Annex-II**). The concluding para of the judgment is produced in verbatim:

“Without touching the facts, circumstances and merits of the case the question of jurisdiction comes in the way of adjudication under Section-4 (b)(i) which stipulates:-

(b) “no appeal shall lie to a tribunal against an order or decision of a departmental authority determining-----(i) the 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”.

We understand that the Provincial Selection Board met on 09.06.2020 to determine the fitness or otherwise of the officers on penal for consideration to be promoted to next higher scale i.e from BS-16 to BS-17 and scrutiny of the documents/service record was the prime and sole criteria before the PSB which the forum did take into consideration before making its recommendation to the competent authority for approval. **As this Tribunal is hit by the above mentioned provision of law, the service appeal in hand is therefore, dismissed.”**

REPLY TO FACTS:

1. **No Comment.**
2. **Correct to the extent** that in the Provincial Selection Board meeting held on 08.11.2017, seven vacant posts of PMS (BS-17) were available in promotion quota of Superintendents. As regards inclusion of the appellant in the panel of Superintendents placed before the PSB, as a rule of thumb, the list of panelists is usually more than double the vacant posts meant to be filled up by promotion. However, it does not, in any way, confer any right of promotion to the appellant as consideration and determination of the suitability of an officer for promotion to a particular post falls in the domain of PSB and as such the Service Tribunal has no jurisdiction on such issues to be adjudicated upon.
3. **Correct to the extent** that out of seven (07) vacant posts, PSB in its meeting 08.11.2017 cleared promotion of Mr. Taj Muhammad, Mr. Abdul Wahab Khalil, Syed Waqar Hussain and Mr. Saeed Ahmad Khan on the basis of seniority-cum-fitness and remaining 03 posts were kept pending for the panelist officers at Serial No.1, 3 & 4 (i.e Mr. Ajmal Khan, Moeen Ud Din, Mr. Abdul Awal) who were undergoing 9-week Mandatory Training Course, meant for Superintendents, Personal Assistants & Tehsildars, due for promotion to PMS (BS-17), conducted by the Staff Training Institute, Peshawar w.e.f. 11.09.2017 to 10.11.2017, while the appellant was at Serial No.10 of the panelist officers. As far as the objection of the appellant that if three vacancies were kept reserved for the under-training incumbents then there was also a fourth one namely Mr. Abid Hussain, who was also undergoing training, it is clarified that the Board calculates as to whether a post will be available for the officer who is being deferred till the reasons for deferment cease to exist, in the upcoming meeting or otherwise. In case, the Board is given firm and credible assurance that the post will be available, in such a case, the Board

does not reserve the post. Similarly, in case of Mr. Abid Hussain, the Board was apprised that the fourth post would fall vacant on **20.12.2017**, as admitted by the appellant vide para-4 of the appeal, due to retirement of Mr. Sabih Ur Rehman Jamil. Hence the appellant is misleading the Hon'ble Tribunal that post for promotion of the said incumbent was not reserved.

- 4. **Incorrect, misperceived and misinterpreted.** The Provincial Selection Board determines the fitness or otherwise of the officer(s) on panel for consideration to be promoted to next higher scale and for this purpose, scrutiny of the documents/service record, in light of PMS Rules and Promotion Policy, is carried out by the PSB, which is the prime and sole criteria the forum takes into consideration before making its recommendation to the competent authority. Likewise, for determination of the suitability of the incumbents (i.e Mr. Ajmal Khan, Moeen Ud Din, Mr. Abdul Awal and Mr. Abid Hussain etc.), the Board took stock of the documents/service record of the said incumbents and after being found eligible, they were promoted as PMS (BS-17).
- 5. **Incorrect, misperceived and misinterpreted.** In terms of sub-para (d) of Para-V of the Promotion Policy 2009 if an officer after he has been exonerated of the charges, is considered and declared fit for promotion to the next higher scale by the PSB; and as per promotion policy *ibid*, earning full PER is not mandatory requirement.
- 6. **Correct to the extent** that the appellant was promoted on his own turn on 18.05.2018 by the competent forum (PSB) upon availability of posts in the promotion share of Superintendents in PMS cadre. Part-VI of the Promotion Policy 2009 *ibid* states: **"Promotion will always be notified with immediate effect"**. Moreover, the departmental appeal was not within statutory period of thirty days (30). Aside from this, the appellant has made false assertion that he preferred departmental appeal (**which, in fact, was time barred for more than four years**) against his promotion notification 18.05.2018; rather, he filed a time barred appeal after four years on **16.06.2012**, and this fact is substantiated from the diary **No. 1575 (w/e) dated 12.04.2022** of Private Secretary to Chief Secretary, Khyber Pakhtunkhwa (**Annex-I *ibid***). Soon after elapsing the statutory period of ninety days (90), the appellant was required to file Service Appeal before the Hon'ble Tribunal, though barred by law, within the next thirty (30) days, under Section 4 (a) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 which states **"Where an appeal, review or representation to a departmental authority is provided under the [Khyber Pakhtunkhwa]Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred"** but he failed to do so.

7. The appellant is not aggrieved person in true sense, therefore, has got no valid locus standi and thus is not entitled for any relief. Hence, the instant appeal, being devoid of merit, is liable to be dismissed in limine.

REPLY TO GROUNDS:

- A. **Incorrect as laid.** The appellant was promoted on his own turn on 18.05.2018 by the competent forum (PSB) upon availability of posts in the promotion share of Superintendents in PMS (BS-17). Moreover, the departmental appeal, which is a first-hand remedy, filed by the appellant was barred by time/law as he filed the same after a lapse of more than four long years on 16.06.2022, which was hit by Section-22 of Civil Servants Act, 1973 (amended from time to time). Hence, the appellant has been treated in accordance with relevant law, rules and policy.
- B. **Incorrect, misperceived and misinterpreted.** The rest as already explained in the preceding para-F of the "Ground".
- C. **Incorrect and misleading** as the appellant has failed to lend any credence to his false assertion that he alongwith other civil servants was considered and cleared for promotion to PMS (BS-17) but during the course of preparation of minutes and subsequent process of finalization, the recommendations of PSB were changed.
- D. **Incorrect and misleading.** As per Rule-7 of PMS Rules, 2007, condition of graduation for promotion was not applicable in transitional period from 2007 to 2014; the same is produced in verbatim: "**Transitional:-** *The condition of graduation as laid down in para 2(a) and (b) of column-5 against serial No. 1 of Schedule-I shall not apply for a period of seven years from the date of coming into force of these rules to the existing incumbents for promotion against BS-17 posts.* The rest as already explained in the preceding paras of the "Facts".
- E. **Incorrect and misleading.** PSB is not an ordinary forum that can be called now and then for consideration of promotion cases when a post in promotion quota falls vacant. The composition of PSB includes the administrative chief of the province, Chief Secretary, Khyber Pakhtunkhwa, Additional Chief Secretary (P&D), SMBR etc. Holding of PSB meeting is a hill-climbing task and it is held as per convenience of forum because the Board considers promotion cases of all the administrative departments in it, and before that, working papers of all the departments are properly examined by the Regulation Wing of Establishment Department which is hectic exercise to be done. Moreover, sufficient time is required to be given to the administrative departments for working out panels and the corresponding quotas of promotion shares, occurring due to retirements/promotion/creation, which turns out to be a voluminous task for them. Hence, PSB meetings cannot be convened unabated in concurrence with their other administrative responsibilities.

- F. **Correct to the extent** that in the PSB meeting held on 19.05.2017, the incumbents (i.e Mr Abdul Shakoor, Mr. Anwar Akbar Khan & Inayat Ullah) being eligible in all respect and senior to the appellant were promoted but at that time the incumbents (i.e Mr. Ajmal Khan, Moeen Ud Din, Mr. Abdul Awal and Mr. Abid Hussain etc.) were neither nominated nor undergoing 9-week Mandatory Training Course at STI, meant for superintendents. Therefore, the Board, being competent forum, deemed it appropriate to fill the vacant posts in PMS (BS-17) falling in the promotion share of Superintendents by promoting suitable incumbents next in line of promotion. **With regard to remaining para, detail reply at para-3 of the "Facts" has been given.**
- G. **Incorrect and misleading.** The rest as already explained in the preceding para-3 of the "Facts".
- H. **Incorrect as laid.** As per Rule-7 of PMS Rules, 2007, condition of graduation for promotion was not applicable in transitional period from 2007 to 2014. However, acquiring graduation qualification after transitional period is not barred the PMS Rules *ibid*.
- I. **Incorrect and misleading.** The rest as already explained in the preceding para-F of the "Ground".
- J. **Incorrect.** The rest as already explained in the preceding para-6 of the "Facts".
- K. **Incorrect and misleading.** The rest as already explained in the preceding para-F of the "Ground".
- L. **Incorrect and misleading.** The rest as already explained in the preceding paras.
- M. **Incorrect and misleading.** The rest as already explained in the preceding paras.
- N. **Incorrect and misleading.** The rest as already explained in the preceding paras.
- O. **Incorrect, misperceived and misinterpreted.** The occurrence of vacancy is a primary requirement for promotion but not the sole and only one. There are certain other conditions prescribed in the Service Rules and Promotion policy, 2009 which are required to be met with by an incumbent prior to be considered for promotion by PSB/DPC. Aside from this, making necessary arrangement prior to holding of PSB requires a considerable time, as explained in Para-E of the "Facts". As regard reference to Apex Court verdict; every case has got its own peculiar facts and circumstances: consequences of a specific case cannot be generalized to all other cases.
- P. **Incorrect as laid.** The appellant has been treated fairly and in accordance with relevant rules and policy, rather the appellant, by filing the instant wants to be given ante dated promotion in utter violation of rules/policy and relocated to higher position in the seniority list of PMS (BS-17), thereby infringing the rights of duly promoted/appointed officers. In the whole super structure of the appeal, the appellant has no where indicated that in disregard of the seniority list his juniors have been given promotion to PMS (BS-17). The rest as explained in the preceding paras.
- Q. **Incorrect, misperceived and misinterpreted.** The appellant has been given promotion upon availability of post in the promotion share of Superintendents in PMS (BS-17).

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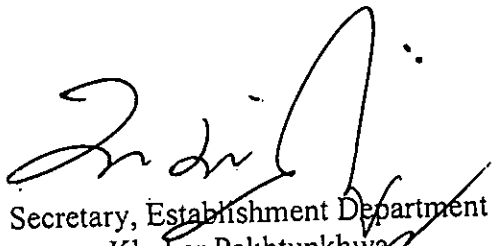
Moreover, every case has got its own peculiar facts and circumstances: consequences of a specific case cannot be generalized to all other cases.

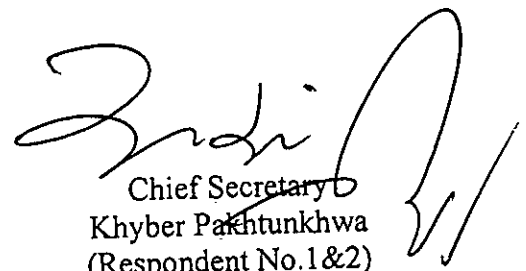
R. **Incorrect and misleading.** The rest as already explained in the preceding paras.

S. The appellant is not aggrieved person in true sense, therefore, has got no valid locus standi and thus is not entitled for any relief. Hence, the instant appeal, being devoid of merit, is liable to be dismissed in limine.

Prayer:

In view of the above submissions, It is, therefore, most humbly prayed that the instant appeal has no substance and bereft of any legal merit may very graciously be dismissed with cost.


Secretary, Establishment Department
Khyber Pakhtunkhwa
(Respondent No. 3)


Chief Secretary
Khyber Pakhtunkhwa
(Respondent No.1&2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.1198/2022

Mr. Mukaram khan, Section Officer, Finance Department.....Appellant


Versus

Govt. of Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, Riaz khan, Superintendent, Litigation-III, Establishment Department Govt. of Khyber Pakhtunkhwa do hereby solemnly declare that contents of the comments are correct to the best of my knowledge and record and nothing has been concealed from this Hon'ble Court.

Deponent



(Riaz Khan)

Superintendent (Lit-III)
Establishment Department
CNIC No. 17301-6272682-3
Contact: 0315-5737137

Identified By

Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

To

The Chief Secretary,
Khyber Pakhtunkhwa.

PS/Secy E&AD KP

PS/C.S Khyber Pakhtunkhwa

Diary No. 3131/1115

Diary No. 1575/1115

FTS No. _____

Date: 12-4-2022

Date: 12-4-22

Annex-I

Through:

Proper Channel.

Subject:

APPEAL AGAINST THE ORDER/ NOTIFICATION DATED 18.05.2018 WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF PMS OFFICER (BS-17) WITH IMMEDIATE EFFECT INSTEAD OF THE DATE OF ELIGIBILITY OR OCCURRENCE OF THE VACANCY ETC.

Prayer:

THAT ON ACCEPTANCE OF THIS DEPARTMENTAL APPEAL THE ORDER/ NOTIFICATION DATED 18.05.2018 MAY KINDLY BE PARTIALLY MODIFIED AND THE RESPONDENTS BE ASKED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF PMS OFFICER (BS-17) WITH EFFECT FROM THE DATE OF ELIGIBILITY I.E. 09.12.2016 AND/ OR THE DATE OF OCCURRENCE OF VACANCY I.E. 01.09.2017 ALONGWITH ALL BACK AND CONSEQUENTIAL BENEFITS ACCRUING THEREFROM.

Dear Sir,

FACTS:

1. That during the course of service, the appellant was appointed as Assistant on 21st March, 1998 through Khyber Pakhtunkhwa Public Service Commission vide Order No. SOS.IV(S&GAD)2-222/94 dated 28.05.1998 and ever since appointment the service record of the appellant has all along been good and unblemished throughout.
2. That in the PSB meeting held on 08.11.2017 (Minutes at Annex-I) seven (07) vacant posts of PMS Officers (BS-17) were available for promotion of Superintendents thereon. The panel placed before the PSB also included the appellant.
3. That out of the said 07 vacant posts 04 posts were filled by promotion of Mr. Taj Muhammad, Mr. Abdul Wahab Khalil, Mr. Syed Waqar Hussain and Mr. Saeed Ahmad Khan (Annex-II) while the remaining three (03) vacant posts were kept reserved for three (03) incumbents (i.e. Mr. Ajmal Khan, Moeen ud din & Abdul Awal) despite the fact that there was also a fourth one namely Mr. Abid Hussain who was also in attendance of the mandatory training at STI alongwith the incumbents mentioned hereinbefore but ironically no post was reserved for him. The posts were reserved for the said 03 incumbents perhaps on the presumption that they were senior to the appellant who was not promoted despite having eligibility for promotion ever since completion of mandatory training on 09.12.2016. In other words, the secondary issue of seniority was given preference over the primary issue of promotion notwithstanding the fact that the issue lying before the PSB was promotion not seniority.
4. That with a view to filling the aforementioned three reserved vacancies alongwith a fourth one falling vacant on 20.12.2017, the second PSB meeting was held on 28.12.2017. In the said meeting the three incumbents (i.e. Mr. Ajmal Khan, Moeen ud Din & Abdul Awal) alongwith the fourth one (Mr. Abid Hussain) were cleared for promotion (Annex-III) notwithstanding the fact that the Degree(s) acquired by the three incumbents (i.e. Mr. Ajmal Khan, Moeen ud Din & Abdul Awal) way after the lapse of 07 year grace period (2007 to 2014) were not formally verified.
5. That the fitness for promotion in respect of Mr. Abid Hussain, who after having been removed from service on 04.01.2016 in the wake of corruption case followed by his reinstatement on 10.08.2017 sequel to service tribunal's judgment, was determined in absence of latest

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Diary No. 1814/1622
S&GAD

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13/04
AJE 2/13/22

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SSG

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SJS 12/4

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Sey: Estb 12/4/22

Chief Secretary
Govt: of Khyber Pakhtunkhwa

Performance Evaluation Report (PER) as the period between his reinstatement into service i.e. 10.08.2017 and PSB meeting on 28.12.2017 hardly comes to four and half months. This period is insufficient even for earning a part let alone a full PER. The reason for making hurry in this case, is beyond comprehension and something indicative of malafide intent. 10

Hence, the present Departmental Appeal/ representation is inter alia made out on the following grounds:-

GROUND:

1. That promotion and seniority are two different phenomena governed under different provisions of law i.e. Sections 9 and 8 of the Civil Servant Act, 1973 and Rule-7 & 17 of the (Appointment, Promotion & Transfer) Rules, 1989 read with Promotion Policy, 2009.
2. That the appellant alongwith other Civil Servants was considered for promotion to the post of PMS (BS-17) and was duly cleared by the PSB but during the course of preparation of Minutes and subsequent process of finalization of the recommendations of PSB, the results/ decisions of the PSB were practically changed for reasons known to the then dealing hands and this practice ultimately ended up in reservation of certain posts for those Civil Servants who were still in the process of receiving 09 weeks mandatory training in STI and were thus ineligible for promotion.
3. That the whole process of promotion was deliberately dragged on to extend the undue benefit of promotion to those employees who had just obtained BA degrees way long after the grace period of 07 years (i.e. 2007 to 2014) provided by the PMS Rules and who remained ineligible due to non-attendance of 09 weeks Mandatory Training Course despite the fact that the posts for promotion (07 in number) had fallen vacant two to three months before the PSB meeting. The details of vacant posts are:-

Sr. N	Date of occurrence	Due to Retirement of
1	30.05.2017	Mr. Zahir Shah
2	17.07.2017	Mr. Meer Bashir
3	20.08.2017	Mr. Iqbal Ahmad
4	27.08.2017	Mr. Mufarrah Shah
5	01.09.2017	Muhammad Tayyab
6	07.09.2017	Mr. Alamgir
7	14.10.2017	Mr. Anwar Shah

4. That from perusal of the vacancy position, it is crystal clear that the vacancy at Sr. No. 05 had inter alia fallen vacant on 01.09.2017 and the process of promotion was deliberately dragged on and on to provide an undue opportunity to the non-eligible candidates to become duly eligible for promotion despite the fact that the appellant had already attended 09 week Advance Mandatory Training w.e.f 10.10.2016 to 09.12.2016 and was awaiting promotion for the last one year.
5. That the Appellant was not promoted notwithstanding the fact that the post(s) had fallen vacant much before the eligibility of the blue eyed persons. Ironically, certain juniors of the wrongly promoted persons namely Mr. Abdul Shakoor, Anwar Akbar and Inayat-Ullah Superintendents were promoted 04 months before promotion of the blue eyed (i.e. on May 31, 2017 copy enclosed as Annex-IV) but no such posts were reserved for the blue eyed officials then & there. This clearly shows double standard and malafide on the part of the then dealing hands associated with the process of promotion. So much so that the otherwise quick promotion-drive initiated by the then Chief Secretary, Mr. Azam Khan was slowed down by issuing fresh future schedules for PSB meetings due to internal pressures.
6. That reservation of posts for ineligible incumbents at the cost of eligible ones is a travesty of justice and is thus, a blatant violation of Law/ Rules on the subject. Section 9(1) of the Civil

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Servant Act, 1973 states, "A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for time being reserved under rule for departmental promotion in service or cadre to which he belongs". While in the instant case the said Civil Servants had not successfully completed their mandatory training thus they were ineligible for promotion and their consideration by the PSB and reservation of posts for them was not covered under the rules.

7. That the non-reservation of post for the fourth incumbent i.e. Mr. Abid Hussain in the said PSB meeting and the ensuing benefit of promotion to the next incumbent falling in the line of promotion clearly exposes non-observance of Law and mala fide intent.
8. That after the end of 07-year grace period (2007 to 2014) provided by the PMS Rules for acquiring Degree(s) by the willing incumbents to get promoted to the post(s) of PMS Officer(s), there is no formal policy in the field governing obtainability of such Degree(s) and subsequent issues relating to or arising out of Promotion/ Seniority etc. viz-a-viz other incumbents already holding the required Degrees. The dictate of common sense is that it is they who should be made to suffer for their personal failures, not others. The Appellant cannot be punished for individual's failures. The act of obtaining degrees on the part of the blue eyed for the sake of promotion at the verge of retirement should not be allowed to damage legitimate interests of the Appellant.
9. That three superintendents namely, Mr. Abdul Shakoor, Anwar Akbar Khan & Inayat Ullah, who had also received mandatory training with the appellant, have also been promoted in the PSB meeting(s) held earlier to the impugned one notwithstanding the fact that they all were junior to the wrongly promoted incumbents. But no posts whatsoever were reserved for the holders of impugned promotions in that PSB meeting(s) despite of their being seniors to the incumbents mentioned hereinbefore. This clearly points at a pick-and-choose approach.
10. That the Appellant was promoted to the post of PMS Officer BS-17 on 18.05.2018 with immediate effect (Annex-V) notwithstanding the fact that according to the Judgments of Superior Courts (cited as 1985 SCMR 1158, 2010 PLC C.S 760 and the Service Tribunal Judgment in Appeal No. 1564/2010) a civil servant should be promoted on regular basis from the date he becomes eligible, if vacancies are available in his quota of promotion.
11. That the appellant was eligible for promotion w.e.f 09.12.2016 alongwith his erstwhile colleagues and that the 05th vacancy occurred on 01.09.2017 due to retirement of Muhammad Tayyab, but the Appellant was not promoted w.e.f 17.11.2017 rather he was promoted 06 months later i.e. on 18.05.2018, one and half year after eligibility.
12. That the Appellant was punished for personal failures of others.

Hence, in light of above facts, it is humbly requested that the departmental appeal of the appellant may kindly be accepted and the impugned Notification dated 18.05.2018 may be modified by anti-dating the promotion of appellant to the post of PMS Officer (BS-17) w.e.f 17.11.2017 against the 05th vacancy occurring on 01.09.2017 due to retirement of Muhammad Tayyab, please.

Encls attached herewith.

Yours faithfully,


(MUKARAM KHAN)
Section Officer (Lit-I)
Establishment Department

11/04/22

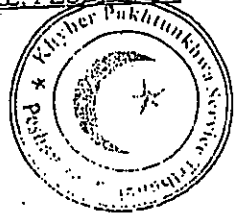
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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 12449/2020

Date of Institution ... 21.10.2020

Date of Decision ... 25.02.2021



Kifayatullah, Tehsildar, Peshawar. ... (Appellant)

VERSUSThe Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,
Peshawar and two others. ... (Respondents)Present:MR. KHALID REHMAN,
Advocate.

--- For Appellant.

MR. MUHAMMAD RASHEED,
Deputy District Attorney

--- For respondents.

MR. MIAN MUHAMMAD
MR. HAMID FAROOQ DURRANI,--- MEMBER (Executive)
--- CHAIRMANJUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, against the impugned notification dated 02.07.2020 whereby the appellant stands deferred for promotion to PMS (BS-17) and the impugned appellate order dated 22.09.2020 vide which departmental appeal of the appellant was turned down.

FACTS.

02. Brief facts leading to the service appeal are that the appellant was initially appointed as Naib Tehsildar (BS-14) through Public Service Commission in 2009

ATTESTED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

who was then promoted to the post of Tehsildar (BS-16) on 17.1.2019. The Provincial Selection Board in its meeting dated 09.06.2020 deferred the promotion case of the appellant on the ground that CPLA of the respondent departments was pending in the Apex court and his promotion will be decided after outcome of the CPLA. The appellant feeling aggrieved with the notification dated 02.07.2020, preferred departmental appeal which was rejected by the competent authority on 22.09.2020, hence, the instant service appeal before the Services Tribunal on 21.10.2020.

03. We have heard the arguments of learned counsel for the appellant as well as Deputy District Attorney for respondents and perused the record thoroughly.

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ARGUMENTS.

04. Learned counsel for the appellant contended that Provincial Selection Board has made CPLA as basis for deferral of the appellant's promotion to higher post in BS-17 (PMS). Background of the CPLA is that the appellant had been removed from service on disciplinary proceedings and the Khyber Pakhtunkhwa Services Tribunal reinstated him in service through its judgement dated 20.11.2015 in service appeal No. 1099/2014 against which the respondent-department subsequently filed CPLA in the august Supreme Court of Pakistan and which is still pending there. It was further argued that the PSB could not convene its scheduled meeting on 20.02.2020 when the appellant was on the panel of officers for consideration to be promoted to BS-17 in Provincial Management Service. It was therefore not his fault and as such was eligible for promotion from that date due to availability of vacancy falling in quota reserved for promotion at that very point of time. As a result of not

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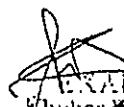
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 TRAINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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convening meeting of the PSB, 123 direct recruitees in BS-17 (PMS) recommended by the Public Service Commission were notified on 29.05.2020 rendering the appellant to become junior to them. He pleaded that as per principle, vacancy in a cadre or service group will have to be filled from promotion quota first and then in direct or initial quota. He quoted Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-7(3) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 as well as para-V(a) of the Promotion Policy and submitted that deferment is recommended when inter-seniority is disputed/subjudice, disciplinary/departmental proceedings are pending or PER dossier of an officer is incomplete. The appellant was not hit by any of the category of deficiency and as such he was by all means eligible for promotion to BS-17. More so even in subsequent PSB meeting held on 09.06.2020 he was deferred on the ground that CPLA was pending in the Apex court and his earlier promotion as Tehsildar on 17.01.2019 was also conditional subject to the said CPLA. This is again an illegal and illogical ground and the appellant has been condemned unheard because no case of litigation could be held as a Bar to deprive him of promotion which is a vested right of the appellant. He quoted some other officers such as Fazal Hussain, Ghulam Haq, Atta Ur Rehman and Habib Arif etc who were recommended by the PSB despite the fact that their CPLA was pending before the Apex court at relevant point of time. To strengthen his arguments the learned counsel for the appellant placed reliance on order No. XX of Supreme Court Rules 1980, 1993 SCMR 2258, 2006 SCMR 1938 and 2010 PLC (C.S) 760.

05. Learned Deputy District Attorney, contrary to the arguments of learned counsel for the appellant, raised preliminary objection on maintainability of the

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appeal under Section-4 (b)(i) and contended that determining the suitability of an officer for a particular post falls in the domain of DPC/PSB and as such the Services Tribunal has no jurisdiction on such issues to be adjudicated upon. It was further argued that the appellant has been promoted even to BS-16 as Tehsildar on 17.01.2019 on conditional basis because of pending CPLA in the august Supreme Court of Pakistan and second conditional promotion to BS-17 is not only unreasonable but also not covered under the relevant law, rules and promotion policy. He also raised objection on the contention of learned counsel for appellant with regard to the notification of direct recruitees dated 29.05.2020 mainly on the ground that it has neither been assailed nor impugned in the present memo of appeal. Similarly, 123 private respondents in notification dated 29.05.2020 have not been made party for the purpose of joinder and non-joinder and the service appeal has inner defects and liable to be dismissed even on ground of merits. Reliance was placed on case law reported as 2005 SCMR 1742, PLD 2008 Supreme Court 769.

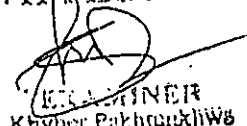
CONCLUSION.

06. Without touching the facts, circumstances and merits of the case the question of jurisdiction comes in the way of adjudication under Section-4 (b)(i) which stipulates that:-

(b) "no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining---
(i) the 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.

We understand that the Provincial Selection Board met on 09.06.2020 to determine the fitness or otherwise of the officers on penal for consideration to be promoted to next higher scale i.e from BS-16 to BS-17 and scrutiny of the documents/service

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record was the prime and sole criteria before the PSB which the forum did take into consideration before making its recommendations to the competent Authority for approval. As this Tribunal is hit by the above mentioned provision of law, the service Appeal in hand is therefore, dismissed. Parties are left to bear their respective costs. File be consigned to the record room.

ANNOUNCED
25.02.2021

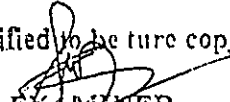


(MIAN MUHAMMAD)
MEMBER(E)



(HAMID FAROOQ DURRANI)
CHAIRMAN

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
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Date of Presentation of Application	25/02/2021
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Promotion Policy

In order to consolidate the existing Promotion Policy, which is embodied in several circular letters issued in piecemeal from time to time, and to facilitate the line departments at every level in prompt processing of promotion cases of Provincial civil servants, it has been decided to issue the "Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009" duly approved by the competent authority, for information and compliance by all concerned. This Policy will apply to promotions of all civil servants holding appointment on regular basis and will come into effect immediately. The Policy consists of the provisions given hereunder:-

I. Length of service.

(a) Minimum length of service for promotion to posts in various basic scales will be as under:

Basic Scale 18 :	5 years' service in BS-17
Basic Scale 19 :	12 years' service in BS-17 & above
Basic Scale 20 :	17 years' service in BS-17 & above

No proposal for promotion shall be entertained unless the condition of the prescribed length of service is fulfilled.

(b) Service in the lower pay scales for promotion to BP-18 shall be counted as follows:

- (i) Half of the service in BS-16 and one fourth in Basic Scales lower than 16, if any, shall be counted as service in Basic Scale 17.
- (ii) Where initial recruitment takes place in Basic Scale 18 and 19, the length of service prescribed for promotion to higher Basic Scales shall be reduced as indicated below:

Basic Scale 19 :	7 years' service in BS-18
Basic Scale 20 :	10 years' service in BS-18 and above. or 3 years' service in BS-19.

II. Linking of promotion with training:

(a) Successful completion of the following trainings is mandatory for promotions of officers of the Provincial Civil Service / Provincial Management Service to various Basic Scales:

- Mid-Career Management Course at National Institute of Management (NIM) for promotion to BS-19
- Senior Management Course at National Management College, Lahore for promotion to BS-20
- National Management Course at National Management College, Lahore for promotion to BS-21

(b) ²³⁵This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely

²³⁵ Para-II (b) substituted vide Notification No.SO(Policy)/E&AD/1-16/2017 dated 05.12.2017

(h) The performance of officers shall be evaluated in terms of the following grades and scores:

		Upto 11 th June, 2008	From 12 th June, 2008
1.	Outstanding	--	10 Marks
2.	Very Good	10 marks	8 marks
3.	Good	7 marks	7 marks
4.	Average	5 marks	5 marks
5.	Below Average	1 mark	1 mark

(i) The outstanding grading shall be awarded to officers showing exceptional performance but in no case should exceed 10% of the officers reported on. The grading is not to be printed in the PER form but the reporting officer while rating an officer as "outstanding" may draw another box in his own hand in the form, initial it and write outstanding on the descriptive side. Convincing justification for the award shall be recorded by the reporting /countersigning officer. The discretion of awarding "outstanding" is to be exercised extremely sparingly and the award must be merited.

(j) The quantification formula and instructions for working out quantified score are annexed.

(k) ²⁴⁰The officers who attained the age of 50 years or above on the scheduled date of commencement of the training of Mid Career Management Course (MCMC) shall be exempted from the said training. Similarly, the officers who attained the age of 58 years or above on the scheduled date of commencement of the training of Senior Management Course (SMC)/National Management Course (NMC) and National Defense Course (NDC) shall be exempted from respective mandatory training. The exemption already extended to professional and technical cadres will continue as the professionals/technocrats undertake their specialized training separately.

IV. Promotion of officers who are on deputation, long leave, foreign training:

- a) The civil servants who are on long leave i.e. one year or more, whether within or outside Pakistan, may be considered for promotion on their return from leave after earning one calendar PER. ²⁴¹The requirement of earning one calendar year report will start from the date the officer joins back and the training period will also be included for completion of the requirement of such PER. Their seniority shall, however, remain intact.
- b) The civil servants who are on deputation abroad or working with international agencies within Pakistan or abroad, will be asked to return before their cases come up for consideration. If they fail to return, they will not be considered for promotion. They will be considered for promotion after earning one calendar PER and their seniority shall remain intact.

²⁴⁰ In Para-III sub para(k) added vide Notification No.SO(Policy)/E&AD/I-16/2018 dated 14.11.2018

²⁴¹ In sub para(a) of para-IV after PER. some text added vide Notification No.SO(Policy)/E&AD/I-16/2017 dated 05.12.2017

- c) ²⁴²In case of projects partially or fully funded by the Federal or Provincial Government, where PERs are written by officers of Provincial Government, the condition of earning one calendar PER shall not be applicable. The officers on deputation to projects shall be considered for promotion. However, after promotion they will have to actualize their promotion within their cadre.
- d) The civil servants on deputation to Federal Government, Provincial Government, autonomous/semi-autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected.
- dd) ²⁴³*"If a civil servant is nominated by the Provincial Government for higher studies or training abroad, and his turn for promotion arrives in his parent department or cadre in Pakistan, he should be considered for promotion along with other officers, and if he is approved for promotion in accordance with the relevant rules, he should be appointed formally (not actually) to the post in the higher grade. This would enable him to occupy on his return to Pakistan the position which he would have occupied had he not gone abroad on training. No financial benefit of the next below rule should be allowed to him in respect of his promotion. He should be allowed to count seniority and increment from the date of such promotion, but the actual pay of the higher post should be given to him only when he resumes the duties of higher post on his return from training"*.
- e) The cases of promotion of civil servants who have not successfully completed the prescribed mandatory training (MCMC, SMC & NMC) or have not passed the departmental examination for reasons beyond control, shall be deferred.
- f) Promotion of officers still on probation after their promotion in their existing Basic Scales shall not be considered.
- g) A civil servant initially appointed to a post in a Government Department but retaining lien in a department shall not be considered for promotion in his parent department. However, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year.
- h) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted.
- i) ²⁴⁴The mere fact that the seniority is sub-judiced will not debar the competent forum to make recommendation. However, in such cases following shall be applicable:-
- i. All promotion based on sub-judice seniority will be conditional i.e. subject to final outcome of Court cases.
 - ii. An officer who gets his seniority restored and becomes senior to already promoted officers in the cadre will be considered for promotion by the relevant board from the date when his junior got promoted.

²⁴² para 1 (iv)(c) substituted vide circular letter No. SORIV/E&AD/I-16/2006, dated 19.4.2010???

²⁴³ No. SOR-VI/E&AD/I-16/2011 dated 07.03.2014

²⁴⁴ After sub para-h of Para-IV sub para (i) inserted vide Notification No.SO(Policy)/E&AD/I-16/2017 dated 05.12.2017

- iii. In case, the officer expires or retires from service and subsequent, his seniority is restored his case will be considered for proforma promotion alongwith all financial benefits.
- iv. Juniors promoted on sub-judice seniority list will be assigned seniority as per final Court Orders and will be reverted in case there is no vacancy.

245 Senior Management Course (SMC) will be mandatory for all those posts in BS-20 which require Managerial and Administrative Skills.

246 All kinds of exemptions from mandatory training on the basis of age are hereby withdrawn w.e.f 31.07.2016 viz (a) Mid Carrere Management Course (MCMC) (b) Senior Management Course (SMC) (c) National Management Course (NMC) (d) National Defense Course (NDC) to ensure merit based promotion in the best public interest. However, the exemption extended already to professional and technical cadres will continue as the professionals/technocrats undertake their specialized training separately.

247 The following changes were made in the Promotion Policy:-

- i. The PERs of regular BPS-18 officers for promotion to BS-19 will now have weightage of 0 marks.
- ii. MCMC is assigned 15 marks.
- iii. Evaluation by Departmental Selection Board will have 15 marks. The DSB will, however, continue to determine the fitness of a person for promotion from BS-18 to BS-19 on non-selection basis.
- iv. Exemtees from the mandatory training course of MCMC will be evaluated by the Provincial Selection Board against 30 marks (inclusive of 15 marks in lieu of training).

248 The promotion policy has been reviewed and the competent authority has been pleased to direct to add the following provision therein:-

"LPR is one of the types of leave to which a government servant is entitled. As he continues to be government servant and can be called even for duty, he can, therefore, be considered for promotion against a higher post during LPR".

These changes will take immediate effect and past cases under the existing policy shall not be re-opened.

245 No. SO-HRD-1/E&D/3-8/2014(A)SMC dated 13.02.2015

246 No. SOR-V/E&AD/1-16/2016 dated 11.03.2016

247 No. SOR-V/E&AD/1-16/2011/Vol-VI dated 13.08.2012

248 No. SOR-V/E&AD/1-16/2011 dated 17.03.2014

V. Deferment of Promotion: 03468563429

- (a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if
- ²⁴⁹Clause (i) [deleted]
- (i) Disciplinary or departmental proceedings are pending against him.
 - (ii) The PER dossier is incomplete or any other document/ information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control.
- (b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cease to exist. The cases falling under any of the above two categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.
- (c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake is noticed.
- (d) If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/ Departmental Promotion Committee and is declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.
- (e) If a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year.
- (f) If a civil servant is recommended for promotion to the higher basic scale/post by the PSB/DPC and the recommendations are not approved by the competent authority within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. Date of Promotion:

Promotion will always be notified with immediate effect.

²⁴⁹ Clause(i) of sub para-a of Para-V deleted and ii,iii re-numbered as i,ii as well as in sub para-b the word three substituted with the word two vide Notification No.SO(Policy)/E&AD/1-16/2017 dated 05.12.2017



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(JUDICIAL WING)

AUTHORITY LETTER

Mr. Riaz Khan, Superintendent (BS-17), Litigation-III Section, Establishment Department is hereby authorized to submit and attend the Khyber Pakhtunkhwa Service Tribunal in connection with all cases of Establishment Department on the behalf of the Secretary, Establishment Department.

Handwritten signature and date: 12/18

A handwritten signature in black ink, appearing to be 'S. W. S.', written over a circular stamp.

SECRETARY,
ESTABLISHMENT DEPARTMENT.