

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 7501/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

Mr. Farhad Khan, Ex-District Comptroller of Accounts, Bannu resident of village Basia Khel Surani, Post Office Toorka District Bannu. .... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar..... (Respondents)

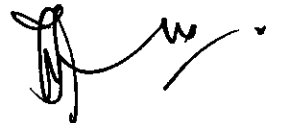
Mr. Masood Khan,  
Advocate ... For appellant

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

Date of Institution.....30.09.2021  
Date of Hearing.....18.04.2023  
Date of Decision..... 18.04.2023

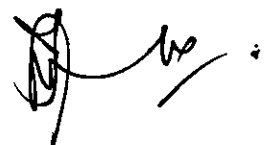
**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the notification dated 21.05.2021, whereby an officer junior to appellant was promoted as District Comptroller of Accounts, BPS-19, and the appellant being senior was ignored/deprived of such promotion.



It has been prayed that on acceptance of the service appeal the respondents might be directed that the appellant might be allowed the proforma promotion alongwith all back benefits from the date of entitlement/availability of higher post of District Comptroller of Accounts, BPS-19.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was a member of the service cadre of Treasuries and Accounts, Khyber Pakhtunkhwa, who was lastly holding the post of District Accounts Officer (BPS-18) and on the basis of seniority cum fitness, was due for promotion to the post of District Comptroller of Accounts, BPS-19. During August 2018, the appellant, instead of regular promotion against the vacant post, was posted as District Comptroller of Accounts (BPS-19) Bannu, in his own pay scale vide order dated 31.08.2018. He was at S. No. 3 of the seniority list of District Accounts Officer BS-18, as it stood on 31.12.2019 and 3 posts of District Comptroller of Accounts BS-19 were also vacant, as evident from the seniority list of District Comptroller of Accounts BPS-19, as it stood on 31.12.2020. In spite of eligibility of the appellant towards his promotion as DCA BS-19 against the vacant posts, no arrangement for holding meeting of the Provincial Selection Board was made. During July, 2020, the appellant preferred an application, requesting for convening meeting of the PSB for his regular promotion as District Comptroller of Accounts BPS-19, clearly mentioning that he was going to retire after 6 months on 01.02.2021 but inspite of that his case was not processed, resultantly he was deprived of his due right of promotion as District



to retirement of one Saeedur Rehman DCA on 10.01.2021. The appellant was at S.No. 3 of the seniority list of District Accounts Officers and was fully eligible for promotion to the post of District Comptroller of Accounts BPS-19. Instead of promotion against one of the said posts, the appellant was posted in his own pay scale vide order dated 31.08.2018. He further argued that the appellant could not be penalized for any delay caused due to any administrative or other reasons. According to Rule 17 of the Fundamental Rules, the retired Government savants, who were eligible for promotion prior to their retirement but could not avail the benefit, had specifically been provided the benefit of proforma promotion alongwith arrears of pay and allowances. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was posted as District Comptroller of Accounts (BS-19) in his own pay and scale owing to exigency of services as two officers of the cadre i.e. Mr. Said Akbar and Mr. Muhammad Aman were posted outside their cadre posts as Director, Treasuries & Accounts, Khyber Pakhtunkhwa and Provincial Coordinator, Finance Department, respectively. As far as the availability of three (03) vacant posts was concerned, one post became vacant due to premature retirement of Mr. Nawab Khan and remaining two posts fell vacant due to conditional retirement of Mr. Shahid Pervez Bhatti and Mr. Muhammad Aman in the light of Peshawar High Court judgment in Writ Petition No. 5673-P/2019 dated 19.02.2020. According to the promotion policy, one



regular vacant post was required to be left vacant for Mr. Amanullah, District Accounts Officer (BS-18), who was placed at S.No. 1 of the panel, who was facing disciplinary proceedings, as promotion could not be made against conditional vacancies and because a CPLA against the judgment of Peshawar High Court Peshawar was already filed in the august Supreme Court of Pakistan. He further argued that a working paper regarding promotion of District Accounts Officers to the post of District Comptroller of Accounts, including the name of the appellant, was forwarded to the Establishment Department for placement before the PSB on 05.01.2021 well before the date of retirement of the appellant, however, Establishment Department observed that only three posts of DCA were vacant out of which two were conditional and one was regular. During the meeting of PSB the appellant's name was not considered for promotion as the officers outside the cadre could be repatriated at any time to their parent department. According to the promotion policy, regular post was required to be left vacant for the officer at S.No. 1 of the panel facing disciplinary proceedings. Subsequently another working paper was forwarded to Establishment Department on 14.04.2021, however due to retirement of the appellant on 02.02.2021, his name was not included in the panel of officers for promotion as District Comptroller of Accounts. He further argued that contention about promotion of his junior was not correct as his successor was promoted as DCA after fulfilling all required formalities and recommendations of PSB. He requested that the appeal might be dismissed.



6. After hearing the arguments and going through the record presented before us, it is clear that the appellant was posted as District Comptroller of Accounts (BPS-19), Bannu in his own pay and scale on 31.08.2018. It is also evident that three posts of District Comptroller of Accounts (BS-19) were vacant according to the seniority list as on 31.12.2020. The appellant submitted application for his promotion to the post of DCA (BS-19) as he was eligible for the said promotion and brought it to the notice of his high-ups that he was going to retire on 01.02.2021. It is an admitted fact that as the appellant was eligible for promotion and hence a working paper in this regard was sent to the Establishment Department for placing before the Provincial Selection Board, but the case was not considered on the ground that one of the posts was required to be left vacant for an officer, Mr. Amanullah, who was facing a disciplinary action, as mentioned by the learned District Attorney, which is understandable. As far as the other two posts are concerned, they were kept vacant for two officers, Mr. Shahid Parvez Bhatti and Mr. Muhammad Aman, who were conditionally retired from service subject to the outcome of CPLA/appeal of the provincial government against the judgment of Peshawar High Court dated 19.02.2020 in Writ Petition No. 5673-P/2019 regarding the retirement age of provincial government servants. As a result of the judgment of the august Supreme Court of Pakistan, the retirement age on superannuation was reversed from 63 years to 60 years and the Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2021 (Act No. XI of 2021) was enforced from 31<sup>st</sup> July 2019. Now a point to be noted here is that the posts of DCA (BS-19) were



vacant from 31.12.2020 and the appellant was eligible for promotion at that time for which a case was forwarded also for placing before the PSB. Had the provincial government not amended the retirement age to 63 and the case would not have been subjudiced before the superior courts, the promotion case of the appellant would have been considered by the PSB. In this entire scenario, it is felt that there is no fault on the part of the appellant, then why should he suffer for a step that was taken by someone else. Moreover, he was already working as District Comptroller of Accounts (BS-19) in own pay and scale since 2018. Various judgments of the higher courts and this Tribunal are available which have allowed the benefit of promotion in favour of the appellant.

7. In view of the above discussion, the appeal in hand is allowed as prayed for and the respondents are directed to promote the appellant on the same analogy as his junior colleague Mr. Rab Nawaz was promoted and allow him all the pensionary benefits under the law. Costs to follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of April, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
CHAIRMAN

*\*Fazal Subhan PS\**