

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

Service Appeal No.1040/2018

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Muhammad Tahir (Lecturer BPS-17) son of Luqman Shah R/o
Inakore (F.R) Tehsil and District Peshawar..... (*Appellant*)

VERSUS

1. Chief Secretary Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary Industries, Commerce & Technical Education Peshawar.
3. Secretary Finance, Government of Khyber Pakhtunkhwa, at Civil Secretariat Peshawar.....(*Respondents*)

Present:

TANVEER MINHAS,
Advocate

--- For Appellant.

ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents

Date of Institution.....06.08.2018

Date of Hearing.....03.04.2023

Date of Decision.....03.04.2023

JUDGEMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer as copied below;

“ That on acceptance of this service appeal the appellant may kindly be promoted to BPS-18 as proforma promotion, being entitled to such promotion as senior most and notification under SO 111 (IND) 1-1/2017 331-40



Peshawar dated 09th January 2018 may kindly be modified and the appellant may kindly be included in the said notification and obliged.”

02. Brief facts of the case are that the appellant was initially appointed as Trade Instructor on temporary basis for a period of 06 months vide order dated 22.05.1984. He was appointed as Junior Instructor (Electrical) vide order dated 20.09.1984 and promoted to BPS-16 on the basis of Selection Grade on 30.01.1991. He was again promoted to the post of Instructor (Electrical) BPS-17 on 22.05.1999. He remained in service up to 31.07.2017 and retired from service on 31.07.2017. That on the recommendation of Provincial Selection Board, the respondent department issued Notification No. SO 111 (IND) 1-1/2017/331-40 dated 09.01.2018 whereby juniors to him were promoted from BPS-17 to BPS-18 on seniority basis. Feeling aggrieved the appellant filed departmental representation on 06.04.2018 which was not decided within the statutory period, hence the appellant filed the instant service appeal on 06.08.2018.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant was initially appointed on 26.05.1984 and consequently

promoted to BPS-17 on 22.05.1999. That on the basis of promotion from BPS-16 to BPS-17 the appellant was entitled for further promotion because he was at serial No. 4. He further contended that junior employees were promoted and the appellant was not considered for promotion to BPS-18 which is violation of the relevant law as well as violation of the fundamental rights of the appellant. He submitted that law does support the version of the appellant for "Proforma Promotion" if a person is about to retire and is entitled in any way for the promotion. He further submitted that the recommendations of the Provincial Selection Board and promotion of the employees mentioned in the promotion list/Notification dated 09.01.2018 is against the settled principles of law and thus violative of the valuable rights of the appellant, therefore, the Notification is liable to be modified by including the name of appellant.

05. Learned Deputy District Attorney controverted the arguments of learned counsel for the appellant and contended that the recommendations made by PSB and promotion order of the employees are in accordance with law. The appellant retired from service on attaining the age of superannuation on 31.07.2017 while the case of promotion of the employees were forwarded to the quarter concerned on 25.09.2017 which shows that the appellant was retired even before meeting of PSB, therefore he was not entitled for the same. He further contended that as per promotion policy, appellant is not entitled for proforma promotion. Lastly submitted that the appellant retired from



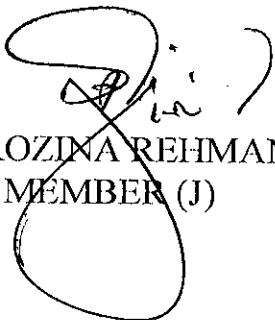
service at the time of promotion while juniors from appellant are still in service, thus no violation of any law, he concluded.


06. Perusal and scrutiny of record transpires that the appellant rendered service as Lecturer Technical Cadre (BS-17) since 22.05.1999 till his superannuation on 31.07.2017 i.e. more than 18 years in the same scale. There were 11 posts available in the promotion quota for promotion to BS-18 at the time of placement of the promotion case before the PSB in January 2018. The service Rules for filling the post of Assistant Professor (BS-18) inter-alia provide 10% quota for promotion of lecturers (Technical Cadre BS-17) for the post of Assistant Professor (Technical Cadre BS-18). At the time of processing of promotion case of the appellant and his colleagues the appellant stood at serial No. 4 of the seniority list who was eligible for promotion to next higher scale in all respect. His case alongwith other colleagues for promotion to the post of Assistant Professor (Technical Cadre BS-18) was forwarded to the Administrative/respondent department well before superannuation of the appellant, however, the matter remained in the department for considerable time and by the time the administrative department forwarded working paper placement before the PSB, the appellant retired from service on superannuation. There was no fault on part of the appellant for delay of his promotion case. He was eligible for promotion in terms of length of service, completion of service record including ACRs and availability of posts. The delay for placement of the promotion case of the appellant occurred on part of the dealing/Administrative department. There are numerous judgment of

the august Supreme Court of Pakistan and this Tribunal allowing the aggrieved civil servant in such like cases for pro forma promotion on notional basis. Reliance is placed on 2012 SCMR 126, 2021 SCMR 1266 and the judgment of This Tribunal rendered in Service Appeal No.552/2015 titled “Mian Zaman Khan Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three others” Service Appeal No. 797/2018 titled “Muhammad Saeed Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and 03 others” & Service Appeal No. 625/2018 titled “Anees Ahmed Versus The Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department, Civil Secretariat, Peshawar and three others.”

07. In view of the discussion in Para -6 above, we have arrived at the conclusion that the appellant has valid reasons based on facts, circumstances and material on record for profroma promotion on notional basis from the date his junior/colleagues were promoted to BS-18. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 03rd April, 2023.*


(ROZINA REHMAN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)