

Service Appeal No. 1072/2019 titled "Engr. Kafeel Ahmad Chauhan Versus the Government of Khyber Pakhtunkhwa through Chief Secretary and others" decided on 15.05.2023 by the Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Miss Fareeha Paul, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar. Camp Court, D.I.Khan.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
CAMP COURT, D.I.KHAN.**

**Service Appeal No.1072/2019**

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

**Engr. Kafeel Ahmad Chauhan S/O Bashir-ud-Din Chauhan, resident jof  
Chauhan Manzil No. C/1887, Islamia Street Mohallah Farooq Shaheed,  
D.I.Khan. ....(Appellant).**

Versus

- 1. THE Government of Khyber Pakhtunkhwa through Chief Secretary,  
Government of Khyber Pakhtunkhwa,**
- 2. The Secretary, Establishment Department, Government of Khyber  
Pakhtunkhwa, Peshawar.**
- 3. The Secretary Industries, Commerce, Technical Education, Khyber  
Pakhtunkhwa, Peshawar.**
- 4. The Managing Director Khyber Pakhtunkhwa Technical Education  
& Vocational Training Authority, Peshawar.**
- 5. Engr. Jamila Gul, Principal, GPI (W) Hayatabad, Peshawar.**
- 6. Dr. Hazrat Hussain, Professor, GCT Timergara Dir Lower.**
- 7. Engr. Akbar Ali, Professor GPI Wari, Dir Upper.  
.....(Respondents).**

**Mr. Abdullah, Advocate .....For appellant.**

**Mr. Fazal Shah Mohmand**

**Addl. Advocate General ...,.....For respondents No. 1 to 4.**

Date of Institution.....15.07.2019

Dates of Hearing..... 15.05.2023

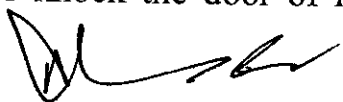
Date of Decision.....15.05.2023

**JUDGEMENT**

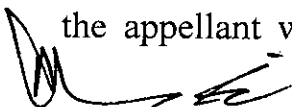
**KALIM ARSHAD KHAN CHAIRMAN.** This appeal has been filed by  
Engr. Kafeel Ahmad Chauhan against the notification bearing No. SO (E-

I)E&AD/9-93/2019, dated 25.02.2019 of respondent No. 1. It has been prayed in the appeal that on acceptance of the appeal, the impugned notification dated 25.02.2019 might be declared without lawful authority, arbitrary and discriminatory as the appellant was deprived of his right of promotion from BPS-19 to BPS-20.

2. Brief facts of the case, gathered from the memorandum and grounds of appeal, are that the appellant had joined the Technical Education Department as Trade Instructor (BPS-10) on 18.01.1982. During the service he qualified B.Sc Mech: Engg in the year 1991 from the University of Engineering & Technology, Peshawar. In the year 1992, he was selected as Senior Instructor (Auto Farm) in BPS-17. Vide notification dated 04.04.1996, he was promoted as Assistant Professor (BPS-18) on acting charge basis. Later on, his services alongwith six others were regularized vide notification dated 31.05.1999. In February 2007, promotion case of seven Assistant Professors (Technical Subjects), including the appellant, from BPS-18 to BPS-19 was submitted. The Hon'ble Chief Minister, Khyber Pakhtunkhwa accorded the approval for promotion of all seven officers but name of the appellant was withdrawn from the promotion notification dated 20.03.2018 issued by the Secretary, Industries, Khyber Pakhtunkhwa Peshawar. Feeling aggrieved, he preferred departmental appeal to the Chief Secretary Khyber Pakhtunkhwa, Peshawar through proper channel for consideration of his name for promotion. The appellant waited for the result but no response was received and he was constrained to knock the door of Hon'ble Peshawar High Court, D.I.Khan Bench by



filing Writ Petition No. 179/2009 to the extent that he was legally entitled to be promoted from BPS-18 to BPS-19 . When the Writ Petition came up for hearing , the learned Division Bench treated the writ petition as representation and sent it to the Chief Secretary Khyber Pakhtunkhwa, Peshawar with the directions to dispose of the same on merits strictly in accordance with law, positively within two months, after giving chance of hearing to the appellant and result be communicated to him with reasons. Later on, vide notification No. SOIII(IND)TE/1-4/2019, dated 04.08.2009, the appellant, alongwith 25 others, was promoted from BPS-18 to BPS-19 with immediate effect. Feeling aggrieved, he again submitted his departmental appeal/representation to the Chief Secretary Khyber Pakhtunkhwa that promotion be ordered w.e.f. 20.03.2008 which was not responded within the statutory period of 90 days, hence he filed service appeal No. 1912/2009 before the Hon'ble Service Tribunal. Vide judgment dated 24.01.2017, the case was remitted to the respondents with direction to decide the seniority issue in the light of Khyber P:akhtunkhwa Civil Servant Promotion Policy, 2009 under section-V, clause (d) which was with regard to deferment of promotion. A case for promotion of five Associate Professors (Technical Subject) from BPS-19 to BPS-20 was submitted in April 2018, wherein the name of appellant was included and according to seniority he was placed at S. No. 03 in the panel. On 03.09.2018, the Government of Khyber Pakhtunkhwa Establishment Department issued promotion order/notification wherein four officers were promoted while the appellant was deferred. Feeling aggrieved, he preferred departmental

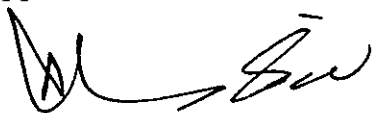


representation but no response was received. In the meanwhile another meeting of PSB was held on 26.12.2018 and consequently impugned notification dated 25.02.2019 was issued but the appellant was once again ignored from promotion to BPS-20. Feeling aggrieved, he once again submitted departmental appeal/representation, which was not responded within the statutory period of ninety day; hence the present appeal.

3. On receipt of the appeal, notices were issued to the respondents to file their written reply. The official respondents No. 1 to 4 submitted their joint parawise comments and contested the appeal. Private respondents No. 5, 6 and 7 have been placed ex-parte vide order dated 24.11.2021.

4. We have heard the learned counsel for the appellant and learned District Attorney for the official respondents and perused the record.


5. The appellant has impugned the notification No. SO(E-I)E&AD/9-93/2019, dated 25.02.2019 whereby three Associate Professors were promoted from the post of Associate Professor BPS-19 to Professor BPS-20, while he had allegedly been ignored despite the fact that he was senior to them. It appears from the minutes of the PSB, annexed with the reply of the respondents, that the Board, in its meetings, held on 03.05.2018 and 26.12.2018, had deferred the appellant from promotion as his service record was found to be weak and further found that the position was still the same at the time of 3<sup>rd</sup> PSB. Thus he was again deferred for the third time and private respondents were promoted. The learned counsel for the appellant submitted that on the basis of Promotion Policy of the

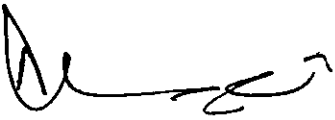


Government of Khyber Pakhtunkhwa notified vide Endst. No. SOE-III(E&AD)1-3/2008 dated 28.01.2009, the government introduced Development of Comparative Efficiency Index for promotion and the maximum of aggregate marks for promotion to BPS-20 were kept as 70. In case of the appellant, because of the entries in his PER, he could not meet the requirement as he was found as an average officer and such quantification became a hurdle in the way of his promotion. In order to remove this hurdle he had to challenge the PER to get the quantification as "good" so that he could be considered for promotion as well as the quantification criteria as given in the Promotion Policy, but he did not do so, therefore, the deficiency/hurdle continued. Thus, unless these remain in the field, the desired relief could not be granted to the appellant.

6. In view of the above discussion, the appeal in hand is dismissed. Costs shall follow the event. Consign.

7. *Pronounced in open court at Camp Court, D.I.Khan and given under our hands and seal of the Tribunal this 15<sup>th</sup> day of May, 2022.*

  
(FAREEHA PAUL)  
Member (E)  
Camp Court, D.I.Khan

  
(KALIM ARSHAD KHAN)  
Chairman  
Camp Court, D.I.Khan.