

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

**Service Appeal No. 1116/2019**

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

**Aziz Ahmad S/O Sher Khan, R/O House No. 132, Street No. 68,  
Sector D-1, Phase-1, Hayatabad, Peshawar. .... (Appellant)**

Versus

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Khyber Pakhtunkhwa Communication & Works, Civil Secretariat, Peshawar.
3. The Secretary, Establishment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar. .... (Respondents)

Mr. Adnan Aman,  
Advocate

... For appellant

Mr. Muhammad Jan,  
District Attorney.

... For respondents

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Date of Institution.....02.09.2019  
Date of Hearing.....10.05.2023  
Date of Decision..... 10.05.2023

**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 orders of respondent No. 2, whereby he did not promote the appellant from his due date i.e 01.12.2018 and that of respondent No. 1 dated 07.08.2019, whereby he did not accede to the request of the appellant on the ground that he got retired on 21.03.2019. The appellant has prayed as follows:-



“By accepting this service appeal, the order of respondent No. 1 dated 28.05.2019 by not promoting the appellant from the post of Executive Engineer BPS-18 to that of Superintending Engineer BPS-19 and then the order of respondent No. 1 dated 07.08.2019 vide which the departmental appeal of appellant was filed/dismissed may please be set aside and consequently the appellant may be granted ante-date promotion/appointment on Acting Charge Basis from the post of Executive Engineer (BPS-18) to Superintendent Engineer (BPS-19) w.e.f. 01.11.2018”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was inducted in the respondent department as Temporary Assistant Engineer on ad hoc basis in the year 1987 and was regularized on 24.04.1988. On 30.04.2010, he was promoted as Executive Engineer (BPS-18). On 30.11.2018, he was posted as Superintending Engineer but instead of giving him promotion, he was directed to work in his own pay and scale. On the same date, his case was placed before the Provincial Selection Board for promotion to the post of Superintending Engineer (BPS-19), however, he was not promoted. Again in September 2018, the cases of other colleagues of the appellant were submitted by respondent No. 2 for placing before the PSB but his name was dropped on the ground that promotion could not be made on acting charge basis. Again on 4<sup>th</sup> March, 2019 his case was submitted for placing before the PSB, but he was not considered for promotion. In the meanwhile he got retired from service on 21.04.2019. Just after third day of his retirement, the cases of other colleagues of appellant were submitted by respondent No. 2 for placing before the PSB and accordingly his two junior colleagues, namely Mr. Yousaf Shah and Mr. Hamid Rauf Qureshi, were promoted as Superintending Engineers on acting



charge basis on 28.05.2019, whereas the appellant was not granted ante-date promotion. Feeling aggrieved, he submitted his departmental appeal on 24.06.2019 as the vacancies were available since 01.12.2018 but the appeal was filed/rejected on the ground that since he had retired from service on 21.04.2019, therefore, he could not be considered for promotion; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the appellant was performing his duty as Executive Engineer since 2010 and thus he was eligible for promotion to the post of Superintending Engineer in 2015 but instead of that in the year 2018, he was posted on the post of Superintending Engineer in his own pay and scale. According to him, the respondents were under legal obligation to promote the appellant to the post of Superintending Engineer on acting charge basis on the date when he was eligible and vacancy was available for him. He further argued that the appellant had 32 years of service at his credit and he was entitled for the ante-date promotion, which could be granted after retirement as it would definitely benefit him in terms of pensionary benefits. He argued that the appellant could not suffer for the inaction of the respondents. In support of his arguments, learned counsel for the appellant relied on the judgment of the august Supreme Court of Pakistan reported as



2011-SCMR-389 and 2016-SCMR-1784. 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 some senior Executive Engineers (BPS-18), including the appellant, were posted as Superintending Engineer in their own pay & scale purely as a stop gap arrangement so that the developmental projects could not suffer. At that time the appellant was at Sr. No. 7 of the seniority list of Executive Engineers. He informed that a proper working paper for promotion of 03 XENs (BS-18) to the rank of Superintending Engineer (BS-19) on regular basis, while the appointment of two XENs, including the appellant, against the post of S.E on acting charge basis was forwarded to the Establishment Department for placing before the PSB for consideration on 30.11.2018 which were returned with observations on 05.12.2018 to exclude the appointments against the post of S.E (BS-18) on acting charge basis. The department resubmitted the working paper on 07.12.2018. He further argued that a working paper was submitted to the Establishment Department on 04.03.2019 for filling up a post of S.E (BS-19) on regular basis but at that time, the appellant was at Sr. No. 2 and only one post was available at that time. He further argued that the appellant submitted an application before the respondent No. 1 for proforma promotion to the rank of S.E (BPS-19) on 24.06.2019, which was processed and rejected by the Establishment Department and the appellant was duly informed on 07.08.2019. He requested that the appeal might be dismissed.



6. Arguments and record presented before us shows that the appellant was an employee of the C&W Department. He joined the service as Assistant Engineer in 1987 and was promoted to the position of Executive Engineer (BS-18) in 2010. In 2018, he was posted as Superintending Engineer in his own pay and scale. According to the appellant, his case was placed before the Provincial Selection Board, but he was not considered for regular promotion. Based on the reply of the respondents and the working papers attached by the appellant himself with the appeal, it transpires that the number of clear vacancies was such that as per the panel of officers to be considered by the PSB, the name of the appellant did not come in that ambit, and, hence, he was not promoted on regular basis. As far as appointment on acting charge basis was concerned it is clearly elaborated in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, according to which appointment on acting charge is purely a discretion of the appointing authority, on the recommendation of the PSB, and that such an appointment shall not confer any vested right for regular promotion.

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

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10<sup>th</sup> day of May, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
CHAIRMAN