

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

**Service Appeal No. 81/2022**

BEFORE: **MR. SALAH-UD-DIN** ... **MEMBER (J)**  
**MISS FAREEHA PAUL** ... **MEMBER (E)**

**Syed Salamat Shah, Assistant Establishment Department (BPS-16),  
presently serving in the Agriculture Department, Khyber  
Pakhtunkhwa, Peshawar.**  
..... (*Appellant*)

Versus

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

Mr. Mir Zaman Safi,  
Advocate ... For appellant

Mr. Asad Ali Khan,  
Assistant Advocate General ... For respondents

Date of Institution..... 20.01.2022  
Date of Hearing..... 07.06.2023  
Date of Decision..... 07.06.2023

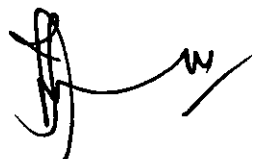
**JUDGEMENT**

**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 20.09.2021 whereby colleagues and junior colleagues of the appellant were promoted to the post of Superintendent (BPS-17) while he was deferred due to pendency of CPLA before the august Supreme Court of Pakistan and against no action



taken on his departmental appeal within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned notification might be modified/ rectified and the appellant be considered for promotion to the post of Superintendent (BPS-17) with effect from 20.09.2021 with all consequential benefits alongwith any other remedy which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was the employee of Establishment Department and was serving as Assistant (BPS-16) in the Agriculture Department, Khyber Pakhtunkhwa, Peshawar. He was removed from service on 26.04.2018 against which he preferred departmental appeal, followed by Service Appeal No. 1094/2018 before the Service Tribunal which was accepted vide judgment dated 23.10.2019 by setting aside the impugned order dated 26.04.2018. The respondent department implemented the judgment of the Tribunal and conditionally reinstated the appellant into service vide order dated 09.04.2020 till the final outcome of CPLA pending before the august Supreme Court of Pakistan against the judgment dated 23.10.2019 of the Service Tribunal. His name was also included at S.No. 15 in the final seniority list circulated on 17.05.2021. Departmental Promotion Committee meeting was held on 30.08.2021, whereby colleagues and junior colleagues of the appellant were promoted to the post of Superintendent (BS-17) while he was deferred due to pendency of CPLA before the august Supreme Court of Pakistan. Feeling aggrieved, the appellant preferred departmental appeal but no reply was received; hence the present appeal.



3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General 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, contended that despite having eligibility and seniority, the appellant was deferred from promotion to the post of Superintendent (BPS-17) and junior to him were promoted which was clear malafide on the part of the respondents, therefore, the impugned notification was liable to be modified to the extent of promotion of the appellant. He further contended that the respondent department discriminated the appellant as his junior colleagues had been promoted.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that the Departmental Promotion Committee deferred the promotion of the appellant on the ground that he was conditionally reinstated into service subject to the final outcome of CPLA filed in the august Supreme Court of Pakistan. He further contended that the appellant had already been conditionally promoted subject to the final outcome of CPLA with immediate effect vide Notification dated 27.05.2022 and hence treated as per law where it stated that appointment by promotion against the post might invariably be made with immediate effect in the prescribed manner in accordance with the



provisions of Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. He requested that the appeal might be dismissed.

6. Arguments and record presented before us reveal that the appellant was reinstated, conditionally, in service on 09.04.2020 in the light of judgment dated 23.10.2019 of this Tribunal, subject to the outcome of CPLA before the August Supreme Court of Pakistan. For the meeting of Departmental Promotion Committee to be held on 30.08.2021, his name was included in the panel of officials to be promoted to the position of Superintendent (BS-17), but he was deferred on the ground that there was a pending court case in the august Supreme Court of Pakistan. A notification dated 20.09.2021 was issued vide which his colleagues and juniors were promoted. The same has been impugned before us with the prayer to direct the respondents to modify it and include the name of the appellant in that notification. During the course of hearing, the learned Assistant Advocate General produced a copy of notification dated 27.05.2022 vide which the appellant had been promoted as Superintendent (BS-17), on regular basis, subject to the final outcome of CPLA before the august Supreme Court of Pakistan. When confronted, the learned counsel for the appellant informed that the notification under reference was issued during the pendency of the present Service Appeal and that he was seeking relief on the earlier notification where colleagues junior to him were promoted, and that is why he had not impugned the notification dated 27.05.2022. When the learned AAG as well as the departmental representative were confronted on the notification dated 27.05.2022 that the matter was still subjudiced before the





august Supreme Court of Pakistan when the appellant was promoted, then why he was not promoted on the earlier date when his junior colleagues were promoted as the conditions of pending CPLA were the same, they could not respond.

7. In view of the facts narrated above, it is clear that the CPLA was pending before the august Supreme Court of Pakistan at both the times when the name of the appellant was being considered for promotion. The question is why he was deferred in the meeting of DPC held on 30.08.2021 but considered and promoted in the meeting held on 20.05.2022, when the CPLA was still pending before the august Supreme Court of Pakistan?

8. In view of the foregoing, the appeal in hand is allowed with the directions to the respondents that the impugned notification be modified to the extent that the promotion of the appellant be considered w.e.f 20.09.2021, with consequential benefits. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 07<sup>th</sup> day of June, 2023.*

  
(FARIEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)