

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 3083/2021

Date of Institution ... 23.02.2021

Date of Decision... 09.05.2023

Akbar Ali Khan, Ex-Office Assistant (BPS-16), Office of the Directorate General,
on Farm Water Management, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

The Chief Secretary, Civil Secretariat Peshawar, Government of Khyber
Pakhtunkhwa and 04 others.

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise averments alleged by the
appellant in his appeal are that he was appointed as Junior Clerk in the
respondent-respondent on 18.12.1980 and was promoted to the post of
Assistant (BPS-16) on 01.02.2008; that final seniority list of Office
Assistants (BPS-16) as it stood on 31.12.2019 was notified vide
Notification dated 23.01.2020 wherein the name of the appellant was at
serial No. 2; that Office Assistant namely Abdul Mateen, who was at
serial No. 1 of the seniority list stood retired on 22.09.2020 and the

appellant became senior most Office Assistant; that posts of Amir Nawaz Superintendent (BPS-17) as well as Muhammad Ramazan Superintendent (BPS-17) became vacant on their retirement on 22.09.2020 and 12.10.2020 respectively; that they had submitted affidavits that they opt for full retirement/pensionary benefits on attaining the age of superannuation (60 years) and would not claim any right to continue their service in case of acceptance of CPLA filed against the judgment dated 19.02.2020 passed by Honourable Peshawar High Court, Peshawar, whereby Khyber Pakhtunkhwa Civil Servants Amendment Act, 2019 was declared ultra vires of the Constitution of Islamic Republic of Pakistan, 1973 and was set-aside; that the appellant before his retirement on 31.12.2020 had filed departmental appeal, whereby request was made for convening the meeting of Departmental Promotion Committee so that the appellant could be considered for promotion from BPS-16 to BPS-17, however the same was not responded within the statutory period, hence the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for the

respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. We have heard the arguments of learned counsel for the parties and have perused the record.

5. A perusal of the record would show that according to seniority list of Office Assistants (BPS-16) of on Farm and Water Management Department Khyber Pakhtunkhwa as it stood on 31.12.2019 and notified vide Notification dated 23.01.2020, the appellant was at serial No. 2 of the seniority list, while one Abdul Mateen was at serial No. 1. Vide office order dated 05.10.2020, the afore-mentioned Office Assistant namely Abdul Mateen stood retired with effect from 22.09.2020 on attaining the age of 60 years and thus the appellant became senior most Office Assistant (BPS-16). Through Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019 (Khyber Pakhtunkhwa Act No. XXX of 2019) published in the gazette dated 31.07.2019, the age of retirement of Civil Servants was increased from 60 years to 63 years. The same was challenged before the august Peshawar High Court, Peshawar through Writ Petition No. 5673-P/2019 as well as other Writ Petitions, which were allowed vide judgment dated 19.02.2020 and Act No. XXX of 2019 was declared as ultra vires of Constitution of Islamic Republic of Pakistan, 1973 and was thus set-aside. The afore-mentioned judgment of Hon'ble Peshawar High Court, Peshawar was challenged through filing of CPLAs before the worthy apex court, which were disposed of

vide order dated 07.01.2021 by setting-aside the judgment dated 19.02.2020 passed by the august Peshawar High Court, Peshawar and the matter was remitted back for its decision afresh in accordance with law through a reasoned judgment after giving opportunity of hearing to all the parties. In the meanwhile, Provincial Government passed Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance, 2021, whereby the issue of age of retirement was settled down.

6. It is an admitted fact that prior to the retirement of the appellant on 31.12.2020, 02 posts of Superintendents (BPS-17) were lying vacant due to retirement of Mr. Amir Nawaz and Muhammad Ramazan. It is also an admitted fact that the appellant was senior most Office Assistant due to retirement of Abdul Mateen Office Assistant (BPS-16) with effect from 22.09.2020. Available on the record are undertakings submitted by afore-mentioned Superintendents (retired) namely Amir Nawaz and Muhammad Ramazan as well as Office Assistant retired namely Abdul Mateen, wherein they had categorically mentioned that they opt for full retirement/pensionary benefits on attaining the age of superannuation (60 years) and that they shall not claim any benefits in case of acceptance of CPLA of the Provincial Government filed against the decision of the august Peshawar High Court, Peshawar rendered in Writ Petition No. 5673-P/2019 as well as other Writ Petitions. What could be gathered from the comments of the respondents, is that the only reason for not convening the meeting of Departmental Promotion Committee was that the issue of age of retirement of civil servants was


pending adjudication before the worthy apex court. The Notification regarding retirement of Superintendent namely Amir Nawaz and Muhammad Ramazan as well as Office Assistant namely Abdul Mateen would show that they stood retired on attaining the age of superannuation i.e 60 years. They had also submitted undertakings, wherein they had categorically mentioned that they shall not claim any benefits in case of decision of the worthy apex court in favour of the Provincial Government in CPLAs filed against the judgment dated 19.02.2020 of Writ Petition No. 5673-P/2019 as well as other connected Writ Petitions. In such a situation, the meeting of Departmental Promotion Committee was required to have been convened and if the appellant was found entitled to promotion to BPS-17, his promotion could have been made subject to outcome of concerned CPLA pending in the august Supreme Court of Pakistan. August Supreme Court of Pakistan in its judgment reported as 2023 PLC (C.S.) 336 has held as below:-


"6. If a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of DPC or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits. The provision for proforma promotion is not alien or unfamiliar to the civil servant structure but it is already embedded in Fundamental Rule 17, wherein it is lucidly enumerated that the appointing authority may, if satisfied that a civil servant who was entitled to be promoted from a particulate date was, for no

fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid to arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the antedated fixation of his seniority. We often noted that unjustified delay in proforma promotion cases trigger severe hardship and difficulty for the civil servants and also creates multiplicity of litigation. It would be in the fitness of things that the competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention."

7. In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Departmental Promotion Committee for consideration for pro-forma/notional promotion to the post of post of Superintendent (BS-17) from the due date within a period of 03 months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.05.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)