

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 442/2022

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

Dr. Rahim Ullah S/O Abdul Azim R/O Village Kerothangy P.O Shamshi
Khan Timergara, District Lower Dir..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Agriculture, Livestock and Cooperative Department, Peshawar.
3. Director General (Extension) Livestock & Dairy Development Department, Khyber Pakhtunkhwa, Peshawar..... (*Respondents*)

Mr. Zartaj Awar,
Advocate ... For appellant

Mr. Fazal Shah Mohmand,
Additional Advocate General ... For respondents

Date of Institution.....21.03.2022
Date of Hearing.....13.06.2023
Date of Decision..... 13.06.2023

JUDGEMENT

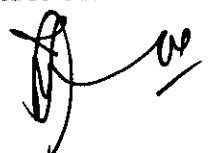
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the acts and omissions of the respondents by not allowing proforma promotion to the appellant, against which he filed a departmental appeal on 22.11.2021 which was not responded even after the lapse of statutory period of ninety days. It has been prayed that on acceptance of the appeal, the appellant might be considered for proforma promotion to BPS-



20, with arrears and back benefits, from the date when his colleague was promoted i.e. 08.07.2020.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was performing his duties on the post of Executive District Director (BPS-19) in the respondent department. While serving in the said capacity, two posts of BS- 20 became vacant, one post was vacated due to the retirement of Dr. Sher Muhammad, Ex-Director General (Extension) L&DD, Khyber Pakhtunkhwa, Peshawar on 02.11.2019 and the other became vacant due to the sudden death of Dr. Syed Jahangir Shah, Ex-Principal AHTT, Khyber Pakhtunkhwa, Peshawar. A working paper for the two senior most officers in BPS-19 was sent for their promotion to BPS-20 to be placed before the Provincial Selection Board which included the name Dr. Malik Ayaz Wazir, who stood at serial no. 1 in the seniority list, and the appellant, who was at serial no. 2. Dr. Malik Ayaz Wazir was promoted to BPS-20, vide office order dated 08.07.2020, but the appellant was malafidely deprived from his due right of promotion to BPS-20 despite the availability of the post. Being aggrieved, he submitted several applications but in vain. He stood retired in BPS- 19 on 11.07.2020 vide notification dated 28.07.2020. The appellant submitted departmental appeal/ representation to the respondent department for his proforma promotion to BPS- 20 on 22.11.2021, which was not responded within the statutory period of ninety days; hence the present appeal.

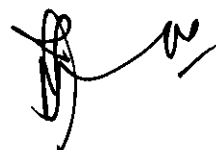
3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the



appellant as well as the learned Additional 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 argued that the appellant was not treated in accordance with law. Despite availability of two posts, Dr. Malik Ayaz Wazir was promoted to BPS-20 but the appellant was not considered for promotion to BPS-20 which was illegal, unlawful and without lawful authority. He further argued that on retirement from service, the appellant was entitled for proforma promotion for which he preferred departmental appeal on 22.11.2021 but the same was not responded within the statutory period of ninety days. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that two posts of BPS-20 were lying vacant in the Directorate General (Extension), Livestock & Dairy Development, Khyber Pakhtunkhwa, one post was vacated due to the retirement of Ex-Director General, Dr. Sher Muhammad (BPS-20) on 02.11.2019, but due to pending issue of 60/63 years age, the retirement was notified conditionally on 18.03.2020 after the issuance of notification dated 16.03.2020 of the Khyber Pakhtunkhwa Establishment Department. He further informed that the other post was vacated due to the death of Dr. Syed Jahangir Shah on 01.04.2020. He argued that for promotion a panel of three senior most officers, including the appellant at Sr. No. 2, was placed before the Provincial Selection Board, however, the PSB considered promotion against one post by excluding the other post vacated by Dr. Sher Muhammad



as he was retired from service conditionally subject to the fate of CPLA related to the age of retirement which was pending before the august Supreme Court of Pakistan. The learned AAG contended that Dr. Malik Ayaz Wazir was promoted to BS-20 on the recommendation of PSB, as per rules, against a clear vacancy, while appellant was not considered due to non-availability of clear vacancy. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant, while serving in the respondent department as Executive District Director (BS-19), became eligible for promotion to BS- 20, and therefore, a working paper for consideration of Provincial Selection Board was prepared for its meeting which was held on 12.06.2020. According to the working paper out of total three positions of Director General/Principal/Director (BS-20), one was occupied and two posts were vacant. One of the vacancies fell vacant as a result of death of one, Syed Jehangir Shah, and the other post was pending for the decision of the august Supreme Court of Pakistan regarding a CPLA against the judgment dated 19.02.2020 passed in Writ Petition No. 5673-P/2019 of the Peshawar High Court in a case of enhancement of retiring age of civil servants from 60 to 63 years. Dr. Sher Muhammad was to retire on 02.11.2019 after attaining the age of 60 years but he was conditionally retired from service subject to the outcome of the pending CPLA, which means that the post would have become vacant on that date. Later, the retiring age was reversed from 63 to 60 years and the Khyber Pakhtunkhwa Civil Servants (Amendment) Act 2021 (Act No. XI of 2021) was enforced from 31st July 2019.



7. From the above discussion, there is no doubt that the appellant was at Sr. No. 2 of the panel of officers for consideration of promotion to BS-20 and was eligible in all respects for that promotion but was not considered for want of a clear vacancy. In the light of amendment in the Khyber Pakhtunkhwa Civil Servants Act, Act No. XI of 2021, a clear vacancy became available on 02.11.2019. Had the Provincial Government not amended the retirement age to 63 and the case would not have been subjudice before the superior courts, the promotion of the appellant would have been considered by the PSB. In this entire scenario, it is felt that there was no fault or shortcoming on the part of the appellant, then why he should suffer for an action that was taken by someone else and which was later on undone, retrospectively?

8. In view of the foregoing, the appeal in hand is allowed and the respondents are directed to promote the appellant from the date when his other colleague was promoted based on the recommendation of PSB meeting dated 12.06.2020, in which name of the appellant was included at Sr. No. 2 of the panel of officers for consideration, and allow him all the pensionery benefits under the law. Costs to follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of June, 2023.*


(FAREEHA PAUL)
Member (E)

Fazal Subhan PS


(KALIM ARSHAD KHAN)
Chairman