BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 868/2022

BEFORE: **MR. KALIM ARSHAD KHAN ... CHAIRMAN**
MRS. RASHIDA BANO ... MEMBER(J)

Muhammad Karim, Associate Professor (Statistics), Government Post Graduate College, Kohat. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, Chief Secretary Civil Secretariat Peshawar.
2. Secretary Establishment Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Higher Education Department, Government of Khyber Pakhtunkhwa Peshawar.
4. Director Higher Education Peshawar.

... (Respondents)

Mr. Syed Noman Ali Bukhari
Advocate ... For Appellant

Mr. Muhammad Jan
District Attorney ... For Respondents

Date of Institution..... .25.05.2022
Date of Hearing.....16.06.2023
Date of Decision.....16.06.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, by the appellant for ante-dating his promotion to BPS-20 (Professor) from the date when he was first deferred by PSB i.e 10.07.2017 with all back benefits and also against not taking action on the departmental appeal of appellant within statutory period of 90 days.

2. Brief facts of the case are that appellant joined the respondent department in the year 1991 and was recruited through Khyber Pakhtunkhwa

16/6/23.

Public Service Commission in BPS-19 on 01.02.2011. A meeting of Provincial Selection Board (PSB) was convened on 24.03.2017 for considering the appellant's promotion to BPS-20 and the appellant was considered but deferred on the ground of pending inquiry and weak service record. Then again on 28.12.2017, 03.05.2018, 17.09.2018, 26.12.2018, 19.04.2019 and 23.09.2019 the appellant was considered for promotion but not promoted due to above mentioned two reasons and in the last meeting dated 23.09.2019 the appellant was superseded on the basis of censure awarded to the appellant as a result of pending inquiry's decision. The appellant filed review petition against censure and supersession wherein penalty of censure was side aside and the appellant was exonerated but the view of supersession was maintained. Thereafter the appellant filed Writ Petition No. 2670/2020 wherein the supersession of the appellant was converted into deferment by the Hon'ble Peshawar High Court vide order dated 03.11.2021 with direction to consider the petitioner for promotion to Professor (BPS-20) in the forthcoming meeting of the PSB and consider his case for promotion strictly in accordance with law. As a result of said verdict of the Hon'ble Peshawar High Court, Peshawar the appellant was promoted to the BPS-20 vide notification dated 18.01.2022 but with immediate effect. The appellant filed review petition/departmental appeal against the order 18.01.2022 for ante-dating immediate effect from 10.07.2017 and awaiting for 90 days but no response has been received from the respondents till the institution of 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.

10/6/23

4. Syed Noman Ali Bukhari Advocate learned counsel appearing on behalf of appellant argued that the promotion of appellant was deferred for seven times on flimsy grounds by ignoring prevailing rules and law on the subject and impugned order is not accordance with law, rules and principle of natural justice. He further argued that appellant deserved to be promoted from the date when for the first time his promotion was deferred.

5. Conversely, learned District Attorney argued that appellant was deferred six times due to pending inquiry and weak service record. He further contended that the appellant was rightly promoted in accordance with order passed by the Hon'ble Peshawar High Court, Peshawar on 18.01.2022 with immediate effect as per policy and review petition regarding antedate promotion is considered by the competent authority and the same has been regretted by letter dated 02.08.2022, therefore, he requested for dismissal of the instant service appeal.

6. Perusal of record would reveal that for the first time promotion of the appellant was deferred by PSB in its meeting held on 24.03.2017. The said decision was challenged by the appellant in service Appeal No. 520/2017 before service Tribunal wherein the appeal of the appellant was accepted vide order dated 16.02.2018 but in the meanwhile pending inquiry was concluded and penalty of censure was awarded to the appellant vide order dated 03.10.2018. Departmental review filed against the said order was rejected on 07.01.2019 by the competent authority. Feeling aggrieved the appellant filed S.A No. 221/2019 in this Tribunal which was decided on 29.11.2019, wherein order of awarding penalty of censure dated 03.10.2018 and order of departmental review petition dated 07.01.2019 were set aside. It is pertinent

16/6/23

to mention here that for the 7th time PSB in its meeting held on 23.09.2019 considered the appellant for promotion and recommended supersession because of penalty of censure awarded to the appellant as a result of conclusion of pending inquiry against the appellant. The appellant filed review petition against decision of PSB which was decided on 07.05.2020 wherein the penalty of censure was set aside and the appellant was exonerated but the view of the supersession was maintained. Said decision of supersession was converted into deferment vide order dated 03.11.2019, although the appellant was promoted to BPS-20 on 18.01.2022 but with immediate effect. When the Hon'ble Peshawar High Court, Peshawar vide order dated 03.11.2021 converted supersession into deferment. Then case of the appellant covered under Rule-V(d) of Promotion Policy of Khyber Pakhtunkhwa Laws (Amendment) Act, 2011, which deals with deferment of promotion and determination of seniority of deferred employ/civil servant which read as:

> *"If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion come to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance the proviso of Sub-section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of*

16/6/23.

continuous appointment of [illegible] officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior"

7. So according to above referred rule of promotion policy, appellant have fit case for antedated promotion. We allow the appeal of the appellant and direct the respondents to consider the appellant for antedated promotion with [illegible] effect from the date when his promotion was deferred for the first time i.e 10.07.2017 with all back benefits. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of June, 2023.*

(KALIM ARSHAD KHAN)
Chairman

16/6/23.

(RASHIDA BANO)
Member (J)

*Kaleemullah

ORDER

19th June, 2023 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we allow the appeal of the appellant and direct the respondents to consider the appellant for antedated promotion with effect from the date when his promotion was deferred for the first time i.e 10.07.2017 with all back benefits. Costs shall follow the event. Consign.

3. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of June, 2023.

(KALIM ARSHAD KHAN)
Chairman

16/6/23.

(RASHIDA BANO)
Member (J)

*Kaleemullah