

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

**Service Appeal No.7616/2021**

**BEFORE:** SALAH-UD-DIN --- MEMBER(J)  
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Dr. Bakht Zamin Khan (Rtd), Ex-Senior Medical Officer (SMO)  
BPS-18, previously working and posted as SMO at District  
Headquarter Hospital Swabi..... (*Appellant*)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary to the Government of Khyber Pakhtunkhwa, Health Department, Civil Secretariat, Peshawar.
3. The Director General Khyber Pakhtunkhwa, Health Services, Peshawar.
4. The Medical Superintendent District Headquarter Hospital Swabi.
5. The Executive District Officer (Health) Swabi.
6. The Chairman, Provincial Selection Board (PSB) Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat Peshawar..... (*Respondents*)

**Present:**

USMAN KHAN TURLANDI,  
Advocate --- For Appellant.

ASAD ALI KHAN,  
Assistant Advocate General --- For respondents

Date of Institution.....20.10.2021  
Date of Hearing.....09.05.2023  
Date of Decision.....09.05.2023

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** Brief fact of the case are that the appellant was serving as SMO (BS-18) at Swabi. He attained the age of superannuation on 07.12.2019 vide Notification

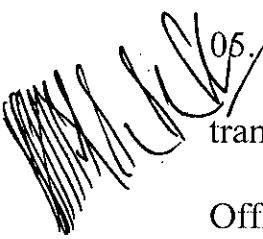
dated 31.03.2020. That on the recommendation of Provincial Selection Board, the respondent department issued Notification NO.SOH (I-V)4-22/2019 dated 31.05.2019 whereby his juniors colleagues were promoted from BPS-18 to BPS-19. Feeling aggrieved the appellant filed Writ Petition No.3865/2020 before the Hon'ble Peshawar High Court which was disposed of by treating the writ as service appeal before this Tribunal on 29.09.2021.

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have gone through the record with their valuable assistance.

03. Learned counsel for the appellant contended that the act of respondents by not promoting the appellant alongwith his juniors is wrong, illegal, unlawful, unconstitutional and against the fundamental rights as the appellant was asked to provide the ACR/PER for the years 2001 to 2004 and 2017 as per circular instructions circulated by the respondent No. 3 dated 13.11.2018. He submitted that the appellant has been discriminated by violating Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 as he has not been treated at par with his colleagues; that another Notification passed by the respondent No.2 regarding promotion of SMO (Senior Medical Officer) to the post of PMO (Principal Medical Officer) was accorded w.e.f the date of PSB

but in the case of appellant, the respondents were reluctant to give the appellant equal treatment despite the eligibility and entitlement for the said post of BPS-19 which shows the discriminatory treatment. Lastly, he submitted that the respondents were neglecting and refusing the right of notional promotion to BPS-19 which is against the natural rights as well as fundamental rights. Therefore, he requested for acceptance of the instant service appeal relying on PLD 1957 SC 46, 1991 SCMR 1041, 1993 PLD SC 341, PLD 2001 SC 340, 2002 PLC CS 57, 2004 CLC 1353, 2005 SCMR 2953 and 2011 SCMR 848.

04. Learned Assistant Advocate General controverted the arguments of learned counsel for the appellant and contended that the appellant was responsible for filling up the PERs first and submit to the reporting officer for further proceedings which has not been done. He argued that no discrimination has been done and the Constitution of Islamic Republic of Pakistan, 1973 has not been violated. Lastly, he submitted that at the time of promotion, neither required documents were completed in time, nor PER for the year 2018 were produced by the appellant in time, therefore, he was deferred and was not promoted.

 05. Perusal and scrutiny of record available in the case file transpire that the appellant joined government service as Medical Officer (BS-17) on 01.07.2001 and got one step promotion for Senior Medical Officer (BS-18) on 15.11.2017 and remained in BS-18 till his superannuation on 31.03.2020. At the time of processing of promotion case of the appellant and his colleagues to the BS-19 in the year 2018

appellant stood at serial No. 326 of the seniority list and was eligible for promotion to next higher scale in all respect. His case for promotion alongwith his other colleagues were prepared by the respondent department well before the ACRs for the year 2018 became due. However, the matter remained in the department for five months and by the time the working paper was placed before the PSB on 19.04.2019, the ACR for the year 2018 in respect of the appellant had also become due. In the meeting of PSB dated 19.04.2019 the appellant was deferred for promotion from BS-18 to BS-19 on account of deficiency of ACR for the year 2018. Nothing is available on record that the respondent department had asked the appellant for provision of ACR for the year 2018. There was no fault on part of the appellant for delay of his promotion case. He was eligible for promotion in terms of length of service, completion of service record including ACRs and availability of posts. The delay for placement of the promotion case of the appellant occurred on part of the respondent department. There are numerous judgments of the august Supreme Court of Pakistan as well as of this Tribunal allowing the aggrieved civil servant in such like cases for pro forma promotion on notional basis. Reliance is placed on 2012 SCMR 126, 2021 SCMR 1266 and the judgment of This Tribunal rendered in Service Appeal No.552/2015 titled "Mian Zaman Khan Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three others" Service Appeal No. 797/2018 titled "Muhammad Saeed Versus Government of

Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and 03 others” & Service Appeal No. 625/2018 titled “Anees Ahmed Versus The Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department, Civil Secretariat, Peshawar and three others.”

06. In view of the forgoing discussion, the instant appeal is allowed and the respondent department is directed to place promotion case of the appellant from BS-18 to BS-19 before PSB for consideration of promotion on notional basis from the date his junior/colleagues were promoted to BS-19 i.e. 31.05.2019. Costs shall follow the event. Consign.

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



(SALAH-UD-DIN)  
MEMBER (J)



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)