BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1386/2015

Date of Institution ... 14.12.2015

Date of Decision... 09.03.2023

Nazim Ud Din S/O Shahab Ud Din, Ex-Executive District Officer, Agriculture Extension Department, District Lower Dir. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and five others.

... (Respondents)

MR. MUHAMMAD ZAFAR TAHIRKHELI, Advocate --- For appellant.

MR. NASEER UD DIN SHAH, Assistant Advocate General --- For respondents.

MR. KALIM ARSHAD KHAN --- CHAIRMAN
MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

"(a) By accepting the present appeal, directing the respondent department to consider/grant ante-date promotion to the appellant from BPS-18 to BPS-19 w.e.f 15.10.2010 instead of 21.04.2012, as allowed to his colleague Mr. Fazli Rabbi, who was granted promotion with retrospective effect from 15.10.2010 vide order dated 25.08.2015, in view of the judgment of Supreme Court of Pakistan in CP No. 584-P/2013 and judgment of

Khyber Pakhtunkhwa Service Tribunal in execution petition no.47/2013 in appeal No. 386/2012.

(b) Directing the respondent department to extend the benefit of promotion to BPS-19 to the appellant w.e.f. 15.10.2010, in view of the dictum laid down in 1996 SCMR 1185.

(c) Further directing the respondent department to amend/modify the appellant's promotion order dated 21.04.2012, whereby he was promoted from BPS-18 to BPS-19, from immediate effect, and allow/consider him for promotion w.e.f 15.10.2010.

(d) Any other remedy deemed appropriate may also be granted in addition to the relief claimed above."

2. Precise averments as raised by the appellant in his appeal are that he was appointed as Agriculture Officer vide order dated 13.01.1977; that he was promoted to BPS-18 on 09.05.2009 and was then allowed promotion to BPS-19 vide order dated 21.04.2012 with immediate effect; that colleague of the appellant namely Fazli Rabbi, Ex-Director Co-ordination/Planning and Monitoring (BPS-19) HQ of Agriculture Extension Wing, who was promoted from BPS-18 to BPS-19 vide order dated 12.01.2012 with immediate effect, had approached this Tribunal through service appeal No. 386 of 2012, requesting therein for promotion w.e.f 15.10.2010 which was allowed vide judgment dated 31.12.2012; that the said judgment was challenged by the respondents through filing of Civil Petition No. 584-P of 2013 before

the august Supreme Court of Pakistan, which was dismissed vide judgment dated 18.04.2014; that the appellant having being similar case, preferred departmental appeal on 08.09.2015 for his ante-date promotion w.e.f 15.10.2010 instead of 21.04.2012 which was not responded within the statutory period of ninety days, hence the instant service appeal.

3. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing para-wise comments, wherein they raised certain legal as well as factual objections and denied the assertion raised by the appellant in his appeal.

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

5. Arguments have already been heard and record perused.

6. A perusal of the record would show that one Fazal Rabbi was promoted from BPS-18 to BPS-19 vide Notification dated 12.01.2012 with immediate effect, which was challenged by him through filing of Service Appeal No. 386/2012 before this Tribunal, seeking the relief that his promotion may be ante-dated with effect from 15.10.2010 instead of immediate effect. The appeal of Fazal Rabbi was accepted by this Tribunal vide judgment dated 31.12.2012. Para-5 of the said

judgment is relevant for decision of the instant appeal, therefore, the same is reproduced as below:-

> *"The Tribunal observes that the appellant while serving in BPS-18 in the respondent department was eligible for promotion to BPS-19. He was considered and found fit for promotion by the PSB in its meeting held on 15.10.2010. Due to status-quo order granted in Execution Petition No. 3/2010, he could not be promoted. On vacation of status quo order, the appellant alongwith others, was again considered and found fit for promotion. The appellant was entitled for promotion with effect from 15.10.2010 under the law and in light of judgments as referred to above but vide notification dated 12.1.2012, he has been promoted with immediate effect. The Tribunal agrees with the arguments advanced by the learned counsel for the appellant."*

7. The prayer sought by the appellant is to the effect that being similarly placed employee, he was also entitled to have been promoted to BPS-19 with effect from 15.10.2010 instead of 21.04.2012. The question requiring determination is that whether the appellant's case is at par with that of Fazli Rabbi or not? While going through the record, we have observed that the name of Fazli Rabbi alongwith two others namely Shafiq-ur-Rehman and Shadi Khan were for the first time reflected in the working paper for promotion of officers of BPS-18 to BPS-19, which was sent to the Secretary to Govt. of Khyber Pakhtunkhwa Agriculture, Livestock and Cooperation Department Peshawar vide letter dated 22.06.2010. The name of the

appellant was not at all included in the aforementioned working paper as he was at serial No. 4 of the seniority list at the time of sending of the above mentioned working paper for promotion of officers of BPS-18 to BPS-19. M/S Shafiq-ur-Rehman and Fazli Rabbi were going to retire from service on 27.12.2011 and 07.02.2012, therefore, they were recommended for promotion to BPS-19 by circulation in meeting of PSB held on 19.12.2011 and they were promoted as such vide Notification dated 12.01.2012. On the other hand, the appellant was promoted to BPS-19 vide Notification dated 21.04.2012. According to seniority list of BPS-18 officers of Agriculture (Extension) Department for the year 2011, the name of the appellant was mentioned at serial No. 4 of the same but he has wrongly mentioned in ground (d) of the appeal that he was senior to Mr. Fazli Rabbi, whose name was mentioned at serial No. 2 of the seniority list mentioned above. All these facts would lead us to the conclusion that the appellant is having no legal right for antedating of his promotion with effect from 15.10.2010.

8. In view of the above discussion, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.03.2023

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(KALIM ARSHAD KHAN)
CHAIRMAN

ORDER
09.03.2023

Appellant alongwith his counsel present. Mr. Asad-ud-Din Asif Jah, Superintendent alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.03.2023

(Kalim Arshad Khan)
Chairman

(Salah-Ud-Din)
Member (Judicial)