

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KPK, PESHAWAR

Service Appeal No 1276 /2022

Farhaj Sikander Yar Khan..... (Appellant)

Versus

Govt of Khyber Pakhtun Khwa through PS to Chief Minister etc (Respondents)

REJOINDER ON BEHALF OF APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7092

Dated 18/8/2023

Respectfully Sheweth,

The Parawise Comments filed by the Respondents are replied as under:-

REPLY TO THE PRELIMINARY OBJECTIONS

1. Incorrect. The record shows that the Appellant has valid cause of action and locus standi against the "Fauxpas" of his employer to file present appeal, hence the averment made by Respondents is misleading, thus denied.
2. Incorrect, hence not admitted. The appeal is competent, well maintainable and deserves acceptance.
3. Incorrect. All necessary parties are arrayed. The description of mis-joinder and non-joinder is not clearly spelt out through averment of respondents, hence, mis-constructed. Besides, it does not defeat the cause and right of appellant in light of the settled principles of codified as well as natural justice.
4. Incorrect thus not admitted. Appellant has placed all necessary facts before the Honourable Tribunal through his petition of appeal and has approached this forum on the basis of a genuine cause of action as well as locus standi.
5. Incorrect being misperceived thus denied. The appeal is filed with proper forum. This Honourable Tribunal has got ample powers and jurisdiction to entertain and decide the matter in instant case.
6. Incorrect rather misconceived. Estoppel lies at the part of Respondents. The Appellant cannot be made to suffer for the discriminatory act of Respondents.
7. Incorrect thus denied. The appeal is well within statutory period of limitation.
8. Incorrect, hence vigorously resisted. The petition of appeal is complete in all respects and it fulfils the legal requirements. The Appellant being eligible civil servant deserves promotion in accordance with the law, rules and sans discrimination.

BRIEF FACTS

1. The averment of the Respondents amounts to admission. Thus needs no response.
2. The averment of the Respondents amounts to admission. Thus needs no response.
3. This para is incorrect, thus not admitted. The Annual PER from 16/05/2011 to 31/12/2011 was submitted but was not considered by the Provincial Selection Board while determining the case of petitioner for promotion to BPS-18. This period ought to have been considered for issuing of PER because the period during which the Appellant did not perform the duty was less than the period during which he performed the duty under the respondents and may not be deemed as adverse.
4. Incorrect, hence not admitted. Appellant being senior ought to have been placed in BS-18 along with his colleagues/Batch mates and above the junior. The Appellant had readily submitted a representation in accordance with rules which was filed without further action by respondents, though for no good legal reasons.
5. The averment of the Respondents amounts to admission. Thus needs no response.
6. The averment of the Respondents amounts to admission. Due to ipse-jure up-gradation of various posts, the Petitioner besides a number of his colleagues was benefited to the extent of up gradation from BS-17 to BS-18. However, on the said account his colleagues and even juniors' secured up-gradation to BS-19 on Acting Charge basis while the Appellant remained bereft of the real benefit of up-gradation, yet for no good legal reasons.
7. This para is incorrect, thus not admitted. More so, the relaxation in length of service was also impliedly granted to his junior batch mates as they also had deficiency of service for promotion to BS-19 on Acting Charge basis, thus principle of "Equal Treatment" ought to have been extended to the Petitioner as well.
8. The averment of the Respondents amounts to admission. Thus needs no response.
9. This admission of the official respondents in the above para regarding non framing of the rules is an instance of indifference to the predicament of the Appellant, for which appellant ought not to suffer.
10. Incorrect and strongly denied. The seniority of the Appellant stood disturbed vide Seniority list issued on 28/02/14. The Appellant filed Objection petition and departmental appeal which was not decided within statutory period, therefore, the appellant has a right and cause of action to file mentioned service appeal before this Honourable Tribunal being an aggrieved civil servant

11. This para is incorrect thus denied. The case of the Petitioner was not decided on merit rather it was dismissed for want of jurisdiction by the KP Service Tribunal, Peshawar. Therefore, there is no bar to file Petition on proper forum.
12. The averment of the Respondents amounts to admission. Thus needs no response.
13. This para is correct to the extent that the Appellate has filed Writ petition against the Junior Officers as private respondents receiving monetary benefits of higher post on acting charge basis since 09/08/2012.
14. The averment of the Respondents amounts to admission. Thus needs no response.
15. The averment of the Respondents amounts to admission. Thus needs no response.
16. The averment of the Respondents amounts to admission. The appellate is eligible from promotion from the date when his junior got promoted in light of Promotion Policy amended vide notification dated 05/12/2017'.
17. The averment of the Respondents amounts to admission. Thus needs no response.
18. The averment of the Respondents amounts to admission. The appellant has a right and cause of action to file instant appeal before this Honourable Tribunal being an aggrieved civil servant.

GROUNDS

- a) Denied being factually and legally incorrect. The relaxation in length of service was impliedly granted to the private respondents. Hence, the impugned orders are against equity and fair treatment and thus are ineffective on the rights of Appellant.
- b) Denied being factually and legally incorrect. The respondents acted in violation of law, rules and impugned orders are beyond any reasoning/ grounds as well as militate against law and rules.
- c) Denied being factually and legally incorrect. The Appellate was bereft from promotion due to the deliberate fault of Respondents regarding submission of unclear case to PSB despite that fact that Sixteen Post of BPS-19 is lying vacant. On this score alone the Service appeal is liable to be allowed.
- d) Denied being factually and legally incorrect. The detailed saga regarding Provincial Selection Boards are as under:
 - a. The case of the Appellant for promotion of Deputy District Attorney (BPS- 18) to the Post of District Attorney (BPS-19) was forwarded on 10/04/2018 by the Respondent 4 but the working paper was withdrawn for further examination and clarification of points raised by Respondent No 6 on 15/05/2018.

- b. The case for promotion of the Appellant was again forwarded by the Respondent No 4 to the Provincial Selection Board on 30/11/2018 wherein it was observed that the appointment of Junior officers from appellant on acting charge basis is irregular and not according to existing rules. The case was returned for resubmission after settlement of issue on 26/12/2018.
- c. Lastly, the working paper in respect of Petitioner promotion was placed at agenda of Provincial Selection Board on 30/07/2021 but again it was returned with the observation that Respondent No 4 has submitted the case without justifying the regular promotion of junior officers from Appellant in BS-19 on acting charge basis with authentic document.
- e) Denied being factually and legally incorrect. It is pertinent to mention that the Appellant is eligible for promotion to BPS 19 on acting charge from the date when his junior got promoted i.e 09/08/2012 in light of KP Promotion Policy, 2009 amended vide notification being No SO (Policy)/E & D/1-16/2017 dated 05-12-2017
- f) Denied being factually and legally incorrect.
- g) Denied being factually and legally incorrect.
- h) Denied being factually and legally incorrect. It is further clarified that in view of the Service Structure of the Appellant' Cadre the promotion from BPS-18 to BPS-19 on regular basis shall be made by promotion on the basis of seniority cum fitness having Twelve years' service in BS 17 and above with atleast three years in BPS-18.
- i) Incorrect hence denied. The Honourable Tribunal has ample powers and jurisdiction to entertain and decide the instant appeal.
- j) Denied being factually and legally incorrect. The writ petition has been written as a clerical mistake instead of a Service Appeal.

PRAYER

In wake of the above submissions, besides these contained in main petition, it is earnestly prayed that the service appeal filed by the present Appellant may please be allowed in his favour as against Respondents in terms of the prayers contained therein, with cost.

Dated: 18/08/2023

Your Numbler Appellant

(Farha Sikandar)

Through Counsel

(Muhammad Abdullah Baloch)

Advocate Supreme Court

Dera Ismail Khan

CERTIFICATE / AFFIDAVIT

I, Farhaj Sikandar, the appellant hereby, solemnly affirm and declare on oath that contents of the rejoinder are true and correct to the best of my knowledge, belief and per the official records, also, that nothing is will-fully kept or concealed from his Hon'ble Tribunal.

Farhaj
(Farhaj Sikandar)
Deponent

