

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7960/2020

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Bilal Zia son of Shams-us-Din, House No. C-11, Pakistan Forest Institute, Peshawar University, Peshawar. Presently working as Forest Geneticist, BS-18 Pakistan Forest Institute, Peshawar.
..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Forestry, Environment and Wildlife, Civil Secretariat, Peshawar.
3. Director General, Pakistan Forest Institute, Peshawar.
4. Anwar Ali, Forest Mensuration Officer BS-18, Pakistan Forest Institute Peshawar University, Peshawar and 10 others. (Respondents)

Mr. Inayatullah Khan,
Advocate

... For appellant

Mr. Asad Ali Khan,
Assistant Advocate General

... For official respondents

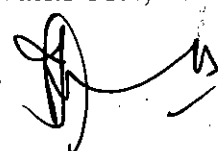
Mr. Adnan Aman,
Advocate

... For private respondents.

Date of Institution.....	14.07.2020
Date of Hearing.....	11.09.2023
Date of Decision.....	11.09.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the appeal, the Pakistan Forest Institute Recruitment and Promotion Rules, 2019 be declared as violative of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973,

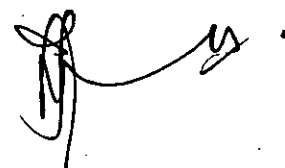


Section 17 (Amended) of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989, Rule 4-A of the Civil Servants (Seniority) Rules, 1993, judgment of Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar passed in Appeal No. 1146/2011 decided on 17.07.2012 in case titled Imran Ali, Research Officer ARI Tarnab Vs. Director General Agriculture Research Khyber Pakhtunkhwa Peshawar and others, and judgment of August Supreme Court in C.P Nos. 517-P, 551-P, 560-P of 2012 and 107-P/2013 whereby Civil Petitions filed against the judgment dated 17.07.2012 were dismissed. It has further been prayed that the official respondents might be directed to prepare a fresh joint/combined seniority list of the officers of Research Cadre irrespective of their functional groups/Research Divisions in question strictly in accordance with law, rules and judgments of honourable courts.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Forest Geneticist (BS-18) in Pakistan Forest Institute, Peshawar on 09.02.2010. According to combined seniority list of officers in BS-16 and above of Pakistan Forest Institute Peshawar, as on 31.12.2017, the appellant was at S.No. 11 while private respondents No. 4 to 14 were junior than the appellant. In pursuance of Section 11-B of Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVII of 1973), the devolved employees of the Federal Government, holding various posts in Federal Government entities, on regular basis, before commencement of the 18th Constitutional Amendment Act, 2010 should be deemed to be the civil servants of the province for all intents and purposes under that Act. According to the notification dated 09.01.2018, the appellant



was appearing at S.No. 13 while all the private respondents were appearing below in that list as per their combined seniority list. Prior to formulation of Pakistan Forest Institute Recruitment and Promotion Rules, 2019, the appellant made representation/review to Director General, Pakistan Forest Institute Peshawar through proper channel, against the proposed/draft Service Rules of Pakistan Forest Institute having serious reservations/objections but no response was provided to him. The appellant also made departmental representation, through proper channel, to the Secretary Forestry, Environment and Wildlife Department against the discriminatory, arbitrary and unfair proposed rules but the same was kept pending and the Recruitment and Promotion Rules, 2019 were formulated vide Endst. dated 16.04.2019. The appellant also filed another departmental representation dated 15.05.2019, after approval of the Recruitment and Promotion Rules, 2019, followed by a reminder dated 18.02.2020 to decide the earlier representation. The same was responded at a belated stage vide order dated 02.07.2020. The representations were turned down without assigning any reason. The appellant also preferred objection petition dated 03.03.2020, through proper channel, against the tentative seniority list as on 31.12.2019 of Range Management Officers (BS-18) and Forest Geneticists (BS-18) in Pakistan Forest Institute, Peshawar, but the same was not responded. Feeling aggrieved of the acts of respondents by non-consideration of his departmental representations dated 24.01.2019, 15.05.2019, reminder dated 20.02.2020 and objection petition dated 03.03.2020 against the tentative



seniority list dated 20.02.2020 viz-a-viz his seniority and promotion rights, he filed the instant service appeal.

3. Respondents were put on notice. Official respondents No. 1 to 3 submitted their joint written reply/comments on the appeal. Private respondents No. 4, 6, 7, 8, 10 and 11 submitted their written reply through counsel. We heard the learned counsel for the appellant, learned Assistant Advocate General for the official respondents as well as the learned counsel for private 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 Recruitment and Promotion Rules, 2019 had no legal sanctity in the eyes of law and were against the vested seniority and promotion rights of the appellant, otherwise available to him under Section 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973. He further argued that it was unknown that under what authority of law those rules had been made since there was no supportive Act which might be cited in reference to the rules. He further argued that it was also a settled law that self-made rules made by the department could not override the statutory provisions of Section 8 of Khyber Pakhtunkhwa Civil Servants Act 1973, Section 17 of (Appointment, Promotion and Transfer) Rules, 1989 and Rule 4-A of the Civil Servants (Seniority) Rules, 1993. He contended that according to the combined seniority list, as on 31.12.2017, the appellant had legitimate expectations to be promoted to the post of Director BS-19, upon promotion or retirement of Mr. Ayaz Khan, Director Forestry Research Division in 2021 but his



seniority/promotion had been adversely affected because of the group/division-wise seniority list made after promulgation of PFI Recruitment and Promotion Rules, 2019 as respondents No. 4 to 14, junior to the appellant, would get rapid promotion to the posts of Directors (BS-19) and Additional Director General (BS-20). He requested that the appeal might be accepted as prayed for.

5. Learned counsel for private respondents contended that the service appeal preferred by the appellant was time barred as the rules which were challenged by him were notified on 16.04.2019 against which departmental appeal was preferred on 15.05.2019, whereas the service appeal was filed on 14.07.2020, which was barred by almost eleven months. He drew the attention to the fact that the appellant had degree in Agriculture and the rules under which he was appointed did not give any chance of promotion to him, rather only those employees were to be promoted who had a degree in Forestry. He argued that the rules impugned before the Tribunal opened a window of promotion for the appellant by creating a new division, the Biodiversity Division, and that he was in the promotion zone in the light of those rules. He requested that the appeal might be dismissed.

6. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, informed that the appellant, having a degree of M.Sc (Hons.) in Agriculture, was appointed as Forest Geneticist (BPS-18) in Pakistan Forest Institute (PFI) on 09.02.2010. He argued that the list attached with the appeal at annexure- B was not a seniority list, rather it was a gradation list and not meant for promotion. He informed that annexure-C of



the appeal was a list of devolved employees of PFI who were permanently absorbed into the Provincial Government of Khyber Pakhtunkhwa after devolution, and not a seniority list, as contended by the appellant. According to him, the appellant was appointed under Recruitment Rules of PFI 1984 as Forest Geneticist (BPS-18) on 09.02.2010 wherein he had no chance of further promotion, due to lack of Degree in Forestry, which was one of the basic requirements for promotion to the post of Director Forestry Research Division (BPS-19) or Director Forest Education Division of PFI (BPS-19). He informed that in order to provide him chance of promotion to BPS-19, he was placed in the newly created Biodiversity Research Division which suited his qualification and wherein he was at second position for promotion to the post of Director (BPS-19). Learned AAG further clarified that the appellant had never objected to the Division-wise seniority and eligibility of BPS-18 officers of PFI as that was in vogue even at the time of recruitment of the appellant and that he had raised his objections to shifting his post from the Forestry Research Division to Biodiversity Division but that shift was not based on any arbitrary or unilateral decision rather it was based on his qualification and to provide him ample opportunity of promotion to BPS-19. The learned AAG informed that the appellant's reservations were reviewed by the Anomaly Committee of PFI, constituted vide office order dated 14.06.2019, which found that the objections raised by the appellant were baseless and that he had got more opportunity of promotion in the new rules. His appeal was also considered by the Administrative Department i.e. Forestry, Environment and Wildlife Department, Government of Khyber



Pakhtunkhwa and rejected being not tenable and devoid of merit as conveyed vide letter dated 26.06.2020. Learned AAG requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it is found that the appellant was appointed as Forest Geneticist (BS-18) in Pakistan Forest Institute in 2010. At that time PFI was a federal institute and his appointment was made under Recruitment Rules of PFI 1984. After 18th Constitution amendment, the Institute was devolved to the Khyber Pakhtunkhwa government alongwith its employees, who were absorbed in the provincial government in pursuance of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2015, vide a notification dated 09.01.2018. The appellant holds a degree of M.Sc (Hons.) in Agriculture and under the rules of 1984, he had no opening for promotion to BS-19 and above in the given five divisions of the Institute. This fact was realized by the provincial government and while drafting the PFI Recruitment and Promotion Rules 2019, where strength was taken from the rules of 1984, a separate division of Biodiversity Research was created, which, according to the official respondents, suits the qualification of the appellant. They further informed that he was at second position for promotion to the post of Director. This bench fails to understand why the appellant never raised any objection on the Division-wise seniority lists at the very beginning when he joined the service? It has also been observed that he never raised any observation on the service rules of 1984 vide which he had no chance of getting promotion as he did not fulfill the required criteria under those rules.




8. This bench observes that the provincial government is empowered to make or amend the service rules as and when it feels appropriate. It is the sole domain of the executive to do so and this Tribunal cannot interfere in this authority. In the matter impugned before us, the provincial government drafted the PFI Recruitment and Promotion Rules 2019 in such a way that they opened an avenue for the promotion of the appellant and his similarly placed colleagues.

9. In view of the above discussion, the appeal in hand is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of September, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

S.A 7960/20


11th Sept. 2023 01. Mr. Inayatullah Khan, Advocate for the appellant present.

Mr. Asad Ali Khan, Assistant Advocate General for the official respondents and Mr. Adnan Aman, Advocate for the private respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 08 pages, the appeal in hand is dismissed. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of September, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S