BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 813/2023

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

Muhammad Ghazanfarullah, Sub Divisional Officer (Mega Projects), Division-II, C&W Department, Peshawar. ..... (*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.**
2. **The Secretary, Government of Khyber Pakhtunkhwa Communication & Works Department, Civil Secretariat, Peshawar.**
3. **The Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.**
4. **The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar. ..... (Respondents)**

M/S Khalid Rehman & Zartaj Anwar, Advocates ... For appellants

Mr. Asad Ali Khan, Assistant Advocate General ... For respondents

Date of Institution..... 11.04.2023
Date of Hearing..... 14.09.2023
Date of Decision..... 15.09.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No. 812/2023 titled "Farhat Ali Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others", Service Appeal No. 867/2023 titled "Sher Wali Jhang Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others", Service Appeal No. 864/2023 titled "Muhammad Humayun Versus the Government of Khyber Pakhtunkhwa

through Chief Secretary, Civil Secretariat, Peshawar and others", Service Appeal No. 865/2023 titled "Aurangzeb Khan Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others, and Service Appeal No. 866/2023 titled "Azhar Ali Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others" as in all the appeals common questions of law and facts are involved.

2. 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 impugned notification dated 25.11.2022 might be struck down being ultra-vires, discriminatory and unreasonable and the respondents might be directed to act in the matter in accordance with law and to amend the impugned notification dated 25.11.2022 in line with the recommendations of the high level committee and reserve separate promotion quota of 20% to the B.Tech.(Hons) Degree holder SDOs/Assistant Engineers (BPS-17) to the post of Executive Engineer (BPS-18) in the C&W Department alongwith any other remedy, which the Tribunal deemed fit and appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the C&W Department as Sub Engineer (BPS-11) on 21.10.1986 and had got more than 37 years service at his credit. Due to poor service structure and non-existent chances of promotion, the appellant and his other similarly placed colleagues were deprived of their due career progression inspite of acquiring the higher qualification of B.Tech. (Hons)

Degree. The department, by means of notifications dated 14.10.2014 and 26.03.2016, allocated separate quota for B.Tech (Hons) Degree holder Sub-Engineers for promotion to the post of Sub Divisional Officer/Assistant Engineer (BPS-17) and in pursuance of that, the appellant got promoted to BPS-17 on 04.11.2016 after long 30 years of service. As no promotion quota to BPS-18 was reserved for B.Tech. (Hons) Degree holder SDOs/Assistant Engineers (BPS-17), therefore, the Provincial Government constituted a high level committee under the chairmanship of Additional Chief Secretary vide notification dated 07.09.2021 to resolve the issue. The Committee delayed the matter, therefore, the appellant alongwith other officers filed two Writ Petitions bearing No. 1539/2021 and 2707/2021 before the Hon'ble Peshawar High Court for directing the Committee to finalize the mater at the earliest in accordance with law. Both the Writ Petitions were heard together and disposed of vide judgment dated 24.03.2022. The Irrigation Department, Government of Khyber Pakhtunkhwa vide notification dated 24.08.2021 reserved 12% quota for promotion of SDOs (BPS-17) holding B.Tech. (Hons) Degrees to the post of Executive Engineer (BPS-18). Similarly, the Public Health Engineering Department vide notification dated 31.01.2022 substituted the quota from 03% to 8%. In the like manner, the Local Government & Rural Development Department also earmarked 20% quota vide notification dated 13.05.2016. The Energy & Power Department also separated the B.Tech. (Hons) Degree holders for the purpose of promotion to BPS-18 vide notification dated 14.09.2018. Other sister provinces also kept such quota. After the judgment of the Hon'ble Peshawar High Court, the high level committee, after threadbare discussion

submitted its report dated 10.06.2022 to the competent authority and made favourable recommendations in para-8 which were as follows:-

> ***"8. After threadbare discussion in light of the Supreme Court Judgment referred to above, the Khyber Pakhtunkhwa Civil Servants Act, 1973, APT Rules, 1989 and the Peshawar High Court judgment dated 24.03.2022 regarding convening of SSRC meeting, it was unanimously recommended that C&W Department may review its existing service rules by providing opportunities/chances of promotion to the B.Tech (Hons) degree holders and Diploma holders Assistant Engineers on the analogy of other technical departments i.e. Irrigation, E&P and PHE Department."***

The matter was referred to the Standing Service Rules Committee for framing/amending the existing service Rules. The C&W Department accordingly prepared Working Paper wherein, instead of following the recommendations of the high level committee, two proposals were submitted to the SSRC. Meeting of the SSRC was held on 16.09.2022 wherein it approved the proposal of the C&W Department. The appellant alongwith others meanwhile appealed on 15.09.2022 to the Secretary Establishment, Government of Khyber Pakhtunkhwa for reserving 20% quota instead and for stopping the promotion till then, but it was not responded. Finally the impugned notification dated 25.11.2022 was issued against which the appellant preferred a departmental appeal on 14.12.2022 which was not decided within the statutory period of 90 days, hence this appeal.

4. Respondents were put on notice. They submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, contended that the respondents had not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. He argued that the appellant had been meted out a discriminatory treatment in violation of Article 25 and 27 of the Constitution as other similarly placed officers/counterparts of the appellant serving in identical circumstances in other departments of the provincial government had been earmarked specific quota for their career progression. He further argued that inspite of clear recommendations, the SSRC was misled into concurring with the C&W Department's proposal and thus did not reserve separate quota as per recommendations of the high level committee. He requested that the appeal might be accepted as prayed for.

6. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the department had enhanced 3.5% quota to 10% for promotion of B.Tech (Hons) Sub Engineers to the rank of Assistant Engineer/SDO (BS-17) in the C&W Department through notification dated 26.03.2018. The department also considered the promotion of B.Tech (Hons) Assistant Engineers/SDOs (BS-17) to the rank of BS-18 in the light of court orders as well as high level

committee which was constituted under the chairmanship of Additional Chief Secretary P&D Department and a notification in that behalf was issued after fulfillment of all codal formalities. He argued that the promotion of Assistant Engineer/SDO (BS-17) C&W Department to the rank of BS-18 would be considered as per seniority list with at-least five (05) years service as such and who had passed the Professional Examination, as prescribed in West Pakistan Buildings & Roads Code, irrespective of any discipline. He further argued that the Government was empowered to frame or amend the service rules of any Department through Standing Service Rules Committee. He requested that the appeal might be dismissed.

7. Through the instant service appeal, the appellants have impugned the amendment in Service Rules. Through a notification dated 25.11.2022, the Government of Khyber Pakhtunkhwa, Communication and Works Department amended the Service Rules by substituting serial No. 3 of the head "Engineering Service" as follows:-

Sr. No.	*Nomenclature of the post*	*Method of Recruitment.*
1	*2*	*5*
3	*Executive Engineer/Design Engineer/Senior Engineer/ Research Officer/ Deputy Director Technical/ Senior Engineer (Survey/RMU) (BPS-18)*	*By promotion, on the basis of seniority-cum-fitness, from amongst the Sub Divisional Officer, Assistant Engineer, Junior Engineer and Assistant Reseárch Officers with at least 05 (five) years service as such and have passed the Professional Examination as prescribed in West Pakistan Buildings and Roads Code."*

8. The plea taken by the appellant is that no quota for promotion to BS-18 has been reserved for B.Tech (Hons.) Degree holder SDOs/Assistant

Engineers (BPS-17). He has given example of other works related departments of the provincial government where separate quota has been reserved for such category of engineers. Arguments and record presented before us show that prior to 2014, the employees in the C&W Department of provincial government, having B.Tech (Hons.) Degree, were deprived of any career progression. It was through a notification dated 14.10.2014 that an opportunity of promotion was afforded to different categories of engineers and they were promoted to the post of Sub-Divisional Officer/Assistant Engineer (BS-17) by assigning specific quota to every category. Initially 3.5% quota was reserved for employees holding degree of B.Tech (Hons.) but it was later on enhanced to 10% vide Notification dated 26.03.2018. Through the impugned notification, the provincial government has further provided an opportunity to the B.Tech (Hons) degree holders for their promotion to BS-18, which in our view is a positive step taken in the right direction.

9. It is an undisputed fact that making of rules for civil servants is an exclusive domain of the executive, which in the instant case is the Government of Khyber Pakhtunkhwa. In the light of the Constitution of Islamic Republic of Pakistan, there is trichotomy of powers; legislature has the power of making laws, executive is vested with the power of enforcing and implementing those laws whereas the judiciary interprets the laws. This trichotomy provides a balance in the affairs of the state. When the roles of every constituent are defined, then how can this Tribunal interfere in the domain of the provincial government?

10 In view of the above discussion, the appeal in hand as well as connected appeals are dismissed. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th of September, 2023.*

(FAREEHA PAUL)
Member (E)

(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

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15th Sept. 2023 01. Mr. Khalid Rehman, Advocate for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

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

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of September, 2023.*

(FAREEHA PAUL)
Member (E)

(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S