

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1456/2022

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

Engr. Rafiullah Khan, Ex-Director Planning BPS-19, Directorate of Agriculture Engineering, Khyber Pakhtunkhwa. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Government of Khyber Pakhtunkhwa, Agriculture Livestock Fisheries & Cooperative Department, Peshawar.
..... (Respondents)

Mr. Ali Azeem Afridi
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....	07.10.2022
Date of Hearing.....	22.09.2023
Date of Decision.....	22.09.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for consideration/regularization of service of the appellant as Director w.e.f. 22.09.2020 or from the date when the office stood vacant for the purpose of ancillary-cum-back benefits. It has been prayed that on acceptance of the appeal, the respondents be directed to regularize the service of the appellant as Director BPS-19 w.e.f. 22.09.2020 or from the date when the office stood vacant for the purpose

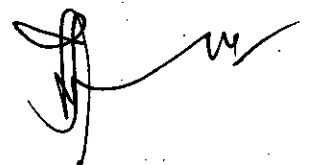


of ancillary-cum-back benefits with necessary adaptations, alongwith any other remedy which the Tribunal deemed fit and appropriate.

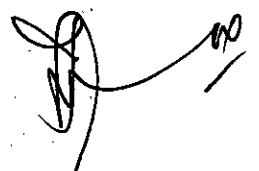
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Director Planning BS-19 in the Directorate of Agriculture, till his superannuation on 09.03.2022. The promotion of the appellant was due and for giving effect to the same, he succeeded in obtaining relief from the Honourable Peshawar High Court to the extent of filling up of vacant post of Director Agriculture vide order dated 22.09.2020. He preferred departmental appeal dated 28.06.2022 which remained unattended; hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the 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 non-consideration/regularization of service as Director w.e.f. 22.09.2020 or from the date when the office stood vacant for the purpose of ancillary-cum-back benefits, was uncalled for and against the law. He further argued that the purported omission on the part of respondents was detrimental to the rights of the appellant and was against the concept of good governance, hence required interference of the Tribunal. He requested that the appeal might be accepted as prayed for.



5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was promoted to the post of Director Planning (BPS-19) after fulfilling the prescribed procedure on 04.02.2022 through Provincial Selection Board. He further argued that the status of the post of Director, Agriculture Engineering BS-19 was not clear till April, 2021 as the provincial government was involved in litigation regarding the age of retirement of civil servants and had filed CPLA/appeal against the judgment of the Peshawar High Court dated 19.02.2020 in Writ Petition No. 5673-P/2019 on account of reinstating of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019. The said vacancy was reserved for the Ex-Director Engineering, who retired from service later on, vide Government of Khyber Pakhtunkhwa Agriculture, Livestock and Cooperative Department Notification dated 05.04.2021 in the light of Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance, 2021. He further argued that the appellant was also involved in a departmental inquiry which was finalized during the month of April, 2021 and that PFRs of the appellant for the period 19.03.2020 to 31.12.2020 were also pending for which he was already informed by Director, Agriculture Engineering Khyber Pakhtunkhwa vide letters dated 12.04.2021 and 08.06.2021. The learned District Attorney informed that the requisite PFRs were received on 09.08.2021 from the appellant and then the promotion case was processed by the administrative department vide letter dated 25.10.2021. He further informed that on the recommendations of the Provincial Selection Board, in its meeting held on



02.12.2021, the appellant was promoted/posted to the post of Director Planning vide notification dated 04.02.2022. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was serving as Deputy Director (BS-18) in the Agriculture Engineering Wing of the respondent department. He filed a Writ Petition No. 2150-P/2020 before the Honourable Peshawar High Court with the prayer as follows:-

“On acceptance of the instant writ petition the posting order/notification dated 18.03.2020, issued by the respondent No. 1 whereby the respondent No. 4 was authorized to hold the look-after/additional charge of the vacant post of Director, Agriculture Engineering Khyber Pakhtunkhwa, Peshawar (BPS-19) may kindly be declared as illegal, void against the rule regulations and policy and as such the same may graciously be set aside.

Further the respondents No. 1 & 2 may please be directed to withdraw/cancel the posting order of respondent No. 4 dated 18.03.2020, and to restore the order of petitioner to look-after/additional charge of the post of Director, Agriculture Engineering Khyber Pakhtunkhwa Peshawar (BS-19) as per rules, regulations and policy, being senior most officer of the department.

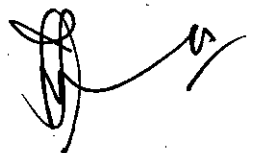
It is further prayed that respondents No. 1-3, may please be directed to issue the promotion order of the petitioner to BS-19 as per rules, regulations and policy, being senior most officer of the department and any other orders deem proper may also be passed in the matter.”



7. The writ petition was disposed of vide judgment dated 22.09.2020, para 5 of which is reproduced as follows:-

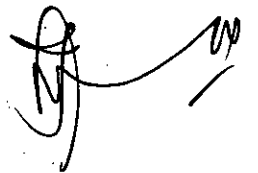
“This Court could not intervene, in such factual controversy, while writ jurisdiction could only be invoked, if the established right of a person is infringed. No any right of petitioner is taken away by the impugned look-after order, in favour of respondent No. 4, therefore, this petition being devoid of merit is disposed of in term that respondents shall fill up the vacant post on regular basis, in accordance with law and rules on the subject, within 60 days positively.”

8. Record shows that the appellant was promoted vide notification of the provincial government dated 04.02.2022 and posted as Director Planning (BS-19) in the Directorate of Agriculture Engineering. The appellant, through the instant service appeal, has prayed for regularization of his service as Director (BS-19) w.e.f. 22.09.2020, or from the date when the office stood vacant, for the purpose of back benefits. From the record presented by the respondents, it is clear that the post of Director, Agriculture Engineering was held by one Mr. Mahmood Jan and he occupied that post till 05.04.2021. The date of his retirement, on attaining the age of 60, was 11.09.2019, but as a result of an amendment in the Civil Servants Act when retirement age was enhanced to 63, he was not retired on 11.09.2019. Later on, in consequence of litigation before the Honourable Peshawar High Court and dismissal of CPLA filed by the provincial government before the august Supreme Court of Pakistan, the Civil Servants Act was amended again with 60 years as retirement age. The notification of amendment was issued on 26.03.2021. In pursuance of that



notification, retirement notification of Mr. Mahmood Jan was issued on 05.04.2021, w.e.f 11.09.2019, with a specific statement in the light of amendment ordinance dated 26.03.2021, that any salary, allowances and other ancillary benefits received or drawn by him on or after 11.09.2019 till the date of issuance of his retirement notification, shall be deemed to have been validly received and drawn. This indicates that the post fell vacant on 05.04.2021. Record further indicates that the appellant was under an inquiry which was concluded and vide notification dated 01.04.2021, he was exonerated from the charges leveled against him. The respondent department had already initiated a process for presenting the case of promotions before the Provincial Selection Board and hence had asked the officers to complete their ACRs, as is evident from a letter dated 12.04.2021 addressed to different Agricultural Engineers, including the appellant. Record further shows that the ACRs were sent to the Secretary Agriculture for countersignature on 08.06.2021. After completing all the formalities, the meeting of Provincial Selection Board was held and the appellant was promoted vide order dated 04.02.2022.


9. Keeping in view the above discussion, this bench is of the view that the plea of the appellant to regularize his service as Director from 22.09.2020 is not justified because the post was already occupied and it became vacant on 05.04.2021, after which promotion case was processed. In addition to that, the pending disciplinary proceedings against the appellant and his incomplete ACRs are also to be kept in view. As soon as

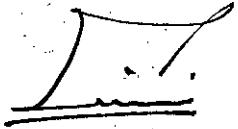


he was exonerated and his ACRs were completed, he was promoted to BS-19 and posted as Director, Agriculture Engineering on 04.02.2022.

10. In view of the foregoing, the service appeal in hand is dismissed, being devoid of merits. Costs shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 22nd day of September, 2023.


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

(FAREEHA PAUL)
Member (E)

(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

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22nd Sept. 2023 01. Mr. Ali Azeem Afridi, Advocate for the appellant present.

Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, the service appeal in hand is dismissed, being devoid of merits. Costs shall follow the evident. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 22nd day of September, 2023.*


(FARZEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S