

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**Service Appeal No. 626/2019**

**BEFORE:** RASHIDA BANO --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Arshad Mughal, Deputy Director (Retired), R/o Fareed Manzil, Mohallah Bagh Mahi, Near Purana Government Abasya High School, Bahawalpur.....(**Appellant**)

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Inter-Provincial Co-ordination Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Secretary, Sports, Tourism, Archeology, Museums & Youth Affairs Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Director, Directorate of Archeology, Museums, Government of Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

**Present:-**

BILAL AHMAD KAKAZAI,  
Advocate

--- For Appellant

MUHAMMAD JAN,  
District Attorney

--- For respondents.

Date of Institution.....06.05.2019

Date of Hearing.....09.10.2023

Date of Decision..... 10.10.2023

**JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*“That on acceptance of this appeal the appellant may be considered and granted Notional/ Presumptive Promotion to the post of Director BS-19 from the date when post become*

*vacant or at least from the date when appellant fulfilled the requisite criteria and be allowed the retiring and pensionary benefits etc in BPS-19 with such other relief as may deem fit in the circumstances of the case may also be granted”.*

02. Brief facts of the case are that the appellant was inducted into Federal Government Service as Manuscript Assistant on 03.09.1981. He was initially a civil servant of Federal Government and after the Constitutional of 18<sup>th</sup> Amendment in the Constitution of Islamic Republic of Pakistan, 1973, the appellant alongwith others was devolved to Government of Khyber Pakhtunkhwa vide Notification dated 05.04.2011. That after the devolution from the Federal Government to the Provincial Government, a Departmental Selection Board was constituted for the purpose of promotion of the appellant from Deputy Director (BS-18) to Director (BS-19) but the same was not processed due to the 18<sup>th</sup> Constitutional Amendment and devolution process. He was retired from service on attaining the age of superannuation as Deputy Director (BS-18) on 17.03.2016. The appellant filed numerous applications for his promotion from Deputy Director (BS-18) to Director (BS-19) which was regretted vide order 18.08.2017 and communicated to the appellant on 04.04.2019, hence preferred the service appeal on 06.05.2019

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant was the senior most Deputy Director in the respondent department and he was competent, fit and eligible for the purpose of promotion to the post of Director BS-19. That the appellant has been devolved to the Provincial Government due to the 18<sup>th</sup> Constitutional Amendment, hence his previous service is intact and valid for counting for the purpose of promotion; that the respondents cannot deny the right of consideration for promotion to the appellant on the plea that his previous service was with Federal Government, therefore, he was required to perform duties as Deputy Director in Provincial government as per rules. He further contended that the services of the appellant has been secured and procured by the legislation of Federal Government as well as Provincial Government; that the meeting of DPC/PSB was malafidely convened after the retirement of the appellant despite the fact that the appellant agitated his grievance on many occasions in past in respect of promotion to the post of Director. Moreover, the required length of service in BPS-17 and above for the purpose of promotion was also as such the appellant fulfilled all the criteria laid down in the rules for promotion; that the appellant being retired civil servants, is only claiming the notional/presumptive promotion for the purpose of pensionary/monetary benefits; that the appellant has not been treated in accordance with law and rules; that the respondents violated Article 4, 25 & 27 of the constitution of Islamic Republic of Pakistan 1973.

05. Learned District Attorney on the other hand contended that the previous service can only be considered for pay, allowances & pensionary benefits and the provincial government has neither objected the same nor

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denied, that is why he received pay, allowances & pensionary benefits; that the appellant is claiming the benefits which were not allowed to him under the Rules, Regulations & Policy of the Provincial Government; that the case of the appellant was decided in light of Provincial Government Policy Rules & Regulations, therefore, no violation of any article and constitution of Islamic Republic of Pakistan has been violated; that the appellant is not entitled to any promotion, therefore, he cannot justify his claim under the umbrella of orders passed by superior courts.


06. It is admitted fact that the appellant joined the service in the Federal Government on 03.09.1981. After 18<sup>th</sup> amendment his services were placed at the disposal of Provincial Government of Khyber Pakhtunkhwa vide Notification dated 05.04.2011. He was then serving as Deputy Director in the Federal Government in BS-18. He stood retired from service on the age of superannuation on 17.03.2016. The transfer order of the appellant dated 05.04.2011 to the department of Sports, Tourism, Archeology, Museums & Youth Affairs Government of Khyber Pakhtunkhwa reveals that his services were placed at the disposal of Provincial Government under Section 10 of the Civil Servants Act, 1973. Since the post of Deputy Director was not existing in the Sports, Tourism, Archeology, Museums & Youth Affairs Government of Khyber Pakhtunkhwa, the appellant was adjusted in the department through special dispensation under Section 11-B of the Khyber Pakhtunkhwa Civil Servants, Act, 1973 vide order dated 31.01.2017. The service rules in-vogue in the department for method of appointment of Director BS-19 in the Directorate of Archeology and Museum provide under;

S.No.	Nomenclature of posts	Minimum qualification for appointment by initial recruitment or by transfer	Age Limit	Method of Recruitment
1.	2.	3.	4.	5.
01	Director B-19	-----	---	i. By selection on merit from amongst the curators having 7 years as such or 12 years service in BPS-17 and above: Or ii. If no suitable person is available for promotion then by transfer/deputation

The appellant submitted numerous applications for his promotion to the post of Director BS-19 which were rejected by the department on the ground that the post of Deputy Director, which the appellant was basically holding was not available in the relevant service rules for promotion. Infact the nomenclature of the post of Deputy Director BS-18 was changed to curator BS-18 in order to bring it in conformity with the service rules vide order dated 09.09.2022. As such the appellant became eligible for promotion to the post of Director BS-19 on 09.09.2022. However, he had retired from service after reaching the age of superannuation on 17.03.2016. As such there was no provision in the law for promotion of the appellant before his retirement date i.e. 17.03.2016. We, therefore, find the instant appeal devoid of legal cover and dismiss it accordingly. Costs shall follow the event. Consign.

*07. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of October, 2023.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)