

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**
Service Appeal No.505/2019

Date of presentation of Appeal.....01.08.2022
Date of Hearing.....20.09.2023
Date of Decision.....20.09.2023

SCANNED
KPST
Peshawar

Haider Ali S/O Fazali Wadood, R/O Viage and P.O Cheena, tehsi and District Charsadda, posted as Assistant in the office of Director General (Research) Livestock & Dairy Development Department...Appellant

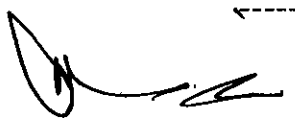
Versus

1. **Director General (Research) Livestock and Dairy Development Department** Khyber Pakhtunkhwa Peshawar.
2. **Secretary Agriculture Livestock and Cooperatives Department,** Khyber Pakhtunkhwa, Peshawar.
3. **Government of Pakistan** through Chief Secretary Khyber Pakhtunkhwa Peshawar.
4. **Secretary Finance,** Khyber Pakhtunkhwa, Peshawar.
5. **Muhammad Ikram, Assistant** in the office of Director General (Research) Livestock and Dairy Development Department Khyber Pakhtunkhwa, Peshawar now promoted as Superintendent in the same office.
6. **Shamshad Ali, Assistant** in the office of Director General (Research) Livestock and Dairy Development Department Khyber Pakhtunkhwa, Peshawar now promoted as Superintendent in the same office.....(**Respondents**)

Present:

Mr. Gohar Ali Khweshgi, Advocate.....For the appellant
Mr. Fazal Shah Mohmand, Additional Advocate General ...For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 CONSIDERING THE APPELANT FOR PROMOTION TO THE POST OF SUPERNTENDENT ON THE BASIS OF SENIOIRTY LIST AND ELIGIBILITY AND SETTING ASIDE THE IMPUGNEED ORDER DATED 14.11.2018 OF THE PROMOTION OF RSEPONDENTS NO.5 AND 6 WHICH IS WRONG AND ILLEGAL.

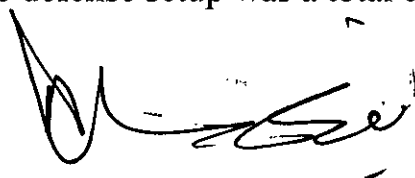
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JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts leading to filing of the instant appeal are that appellant was appointed as Junior Clerk on 21.04.1984. Later on, he was promoted to the post of Senior Clerk and then as Assistant; that final seniority list of the Assistants as by promotion and initial appointment was circulated in which the appellant stood at Serial No.2 while respondent No.5 at Serial No.4, due to removal of Serial No.4 of the list, the respondent No.6 at Serial No.3 of the list; that the process for promotion of Assistants was initiated and in this respect, a seniority list was prepared in which, the appellant was placed at Serial No.2 and the private respondents were placed at Serial No.3 & 4. But when the notification of promotion was issued, the name of appellant was not listed for promotion to the post of Superintendent (BPS-17), rather the private respondents were promoted. The reason for not considering his promotion was missing of PERs for 18 years.

02. Feeling aggrieved, the appellant filed departmental appeal, which was rejected on 07.09.2021, therefore, the appellant filed the instant service appeal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.



04. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

06. Perusal of record reveals that the appellant was serving as Assistant and was eligible for promotion, however, he was deferred and admittedly, his juniors i.e. Muhammad Ikram and Shamshad Ali were promoted as Superintendent (BPS-17) vide Notification dated 14th November, 2018. In the said Notification of promotion, the name of the appellant was not included on the ground that his PERs for 18 years are missing. In this regard, correspondence had also been made in shape of letter dated 26.01.2018 addressed to the Director by the Director General (Research), the content of the letter is reproduced below:

"In this regard it is stated that promotion case of Superintendent/Accounts Officer/Estate Manager is under process for which PERs of Mr. Haider Ali, Assistant, Livestock Research & Development, Peshawar included in the panel are required. During preparation of synopsis, it was noted that PERs of the official concerned for the following period are not available/missing.



1. PERs for the year from 1984 to 1994 (10 years)
2. PERs for the year from 2002 to 2009 (08 years).

You are therefore, requested to provide the PERs of the official concerned for the above mentioned missing period for further necessary action please."

In this letter, the respondents have admitted missing of PERs , which was made a reason for deferment of the appellant for promotion. Besides, deferment is neither a punishment nor a final order; as and when the reasons for deferment cease to exist, the employee is to be promoted from the date when his juniors were promoted.

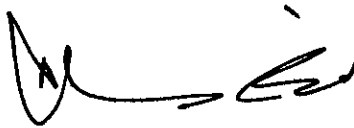
07. Explanation-III of Rule-17 of the Khyber Pakhtunkhwa Civil Servants (APT) Rules, 1989, also strengthens the case of the appellant. The said explanation of Rule-17 is reproduced below:

"If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit."



08. This Tribunal in Service Appeal No.1397/2019 titled "Muhammad Arshad Khan VS. The Secretary Education & others" decided on 7th March, 2023, while dealing with almost similar case, has found as under:

"5. *It is undisputed that deferment is not a punishment rather a temporary halt because of some deficiency. The deficiency may be because of the employee and it may be because of the department. In either case when the deficiency is removed the employee had to get his due from the date of entitlement along with the resultant benefits. This is admittedly a case of deferment and the deficiency was said to be non-production of service book, which the appellant claims to have produced but some entries therein were doubted by the DPC and an enquiry was conducted to verify the doubted signatures, which enquiry ended in favour of the appellant as he was declared innocent and was accordingly exonerated. The respondents admit the factum of entitlement of the appellant for promotion from 25.07.2017 when his other colleagues/juniors were promoted but contend that because of non-production of the service book, he could not get promotion on the due date; they further admit that, when the deficiency was removed, the appellant was promoted. The above state of affairs shows and proves that the appellant was not treated in accordance with law and he was made to suffer for none of his fault. In a case titled "Capt. Zahoor Ahmad Khalil versus Government of Pakistan through Secretary*



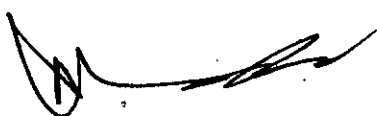
Establishment Division Islamabad and another" reported as 2018

PLC (CS) N 170, the honourable Peshawar High Court was

pleased to have found as under:

"13. Thus, the deferment by itself refers to certain shortcomings, which, in due course of time when fulfilled, the officer is re-considered for promotion and is allowed promotion with effect from the date when he was deferred. To the misfortune of the officer he stood retired from service w.e.f. 14.01.2015 and thus, remained deprived of the promotion to BS-22. The august Supreme Court of Pakistan, in the case of Orya Maabool Abbasi v. Federation of Pakistan through Secretary Establishment and others (2014 SCMR 817), held that "Although promotion was not a right but a civil servant fully qualified for promotion, has a right to claim that his case may be considered for promotion strictly following the eligibility criteria laid down by the authority, and that "though the officer not meeting eligibility criteria for promotion, could be deferred but the deferment could not be arbitrary and not supported by the service record. In this case, the apex Court further held that "Board failed to take into consideration the PER Reports for the reasons not tenable under the law and their such findings were clear violation and departure from the promotion policy because once the officer have fulfilled the criteria, their cases have to be considered to assess the fitness and suitability to share higher responsibility mostly based on subjective criteria instead of denying promotion to them for the subjective consideration".

14. It merit mention that the High Powered Selection Board remained stuck up with some report in the National Management Course (NMC), held from 3rd March, 2008 to 24th March, 2008. Though thereafter, the petitioner was promoted to BPS-21 in the year 2010, and those were considered and ignored, it seems that the High Powered Selection Board has not conducted itself in the manner required under the law. We are thus, fortified in our view by the judgments of the apex Court in Tariq Aziz-ud-Din (2010 SCMR 1301), Muhammad Rahim Khan v. The Chief Secretary, N.-W.F.P. and 4 others (1999 SCMR 1605), Orya Maqbool Abbasi v. Federation of Pakistan through Secretary



Establishment and others (2014 SCMR 817), 2017 SCMR 969 Federation of Pakistan through Secretary, Establishment Division and others v. Dr. Muhammad Arif and others."

6. In 2020 PLC (CS) 826 titled "Liaquat Ali Khan versus Federation of Pakistan through Secretary Establishment Division Islamabad and two others", the honourable Islamabad High Court has held that:

"6(sic) In both petitions, the petitioners are civil servants and were not promoted due to non-availability of their Performance Evaluation Reports. The contention of the learned Deputy Attorney General was it is the obligation of the employee/civil servant to provide Performance Evaluation Reports or at least he is jointly responsible with the employer, is not tenable. Reliance is placed on Pervaiz Akhtar v. Federal Government [2014 PLC (C.S.) 326] where the Honourable Lahore High Court observed that non-availability of record for promotion including Annual Confidential Report by the concerned department was not the fault of the civil servant for which he could be made to suffer. Similarly, the Honourable Lahore High Court in case reported as Mirza Lutuf Muhammad Khan v. Government of Pakistan [2006 PLC (C.S.) 85] Honourable Lahore High Court though did not interfere in the matter but directed the respondent to complete the PER of civil servants. In Secretary, Revenue Division and others v. Muhammad Saleem (2008 SCMR 948) the Honourable Supreme Court of Pakistan held that law provided that it is the duty of the respondent department to prepare the Performance Evaluation Reports of officer to keep and maintain the same so that it could be used for the prescribed purposes at the time of promotion of the concerned official. It was further observed that as the department has neglected in its duty to complete all the PERs of the civil servants, therefore, he had no alternate remedy except to approach the High Court for relief."

7. In another case reported as 2018 PLC (CS) Note 126 titled "Aurangzeb Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary and two others", the honourable Peshawar High Court found that:



"6.....According to the law of the land, deferment is neither a punishment nor a final order, as and when reasons for deferment cease to exist the officer is promoted from the date, when his juniors were promoted and to be considered for promotion is the job of the Service Tribunal under section 4 of the Tribunal Act, 1974...."

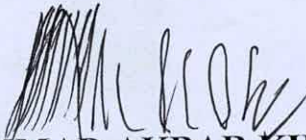
7. The upshot of the above discussion is that we allow this appeal directing the respondents to give effect to the promotion of the appellant to the post of SST BPS-16 (General) from 25.07.2017 that is the date of his deferment when his colleagues/juniors were promoted and he was not. We direct that the costs of the appeal shall follow the result. Consign."

09. In the absence of any solid reason and convincing response by the respondents, the claim of the appellant is bonafide and just and he is held entitled for promotion to the post of Superintendent (BPS-17) w.e.f 14.11.2018 i.e. the date his juniors were promoted. With the observations herein-above, the appeal in hand is accepted as prayed for. Consign.

10. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th day of September, 2023.



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Judicial)