

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 507/2023

Date of Institution ... 07.03.2023

Date of Decision ... 26.10.2023

Dr. Noor-ul-Mabood, (Ex-Deputy Dean PGMI) R/O House No. 248, Street No. 1, Sector J-4, Phase-2, Hayatabad, Peshawar. ... (Appellant)

VERSUS

Chief Minister, Khyber Pakhtunkhwa through Principal Secretary and 08 others. ... (Respondents)

MR. RIZWANULLAH,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
District Attorney

--- For official respondents.

MR. SALAH-UD-DIN

--- MEMBER (JUDICIAL)

MR. MUHAMMAD AKBAR KHAN

--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments raised by

the appellant in his appeal are that he was serving in BPS-18 and

was at serial No. 4 of the seniority list, while private respondents

No. 4 to 9 were at serial No. 10, 11, 14, 15, 16 & 18 in the seniority

list respectively. The case of the appellant alongwith others were

placed before the Provincial Selection Board for their promotion to

BPS-19 on 14.12.2012, however the appellant was wrongly and

illegally superseded, while his juniors were promoted vide

Notification dated 06.03.2013. Nonetheless, in subsequent meeting

of the Provincial Selection Board, the appellant was also promoted

to BPS-19 on regular basis vide Notification dated 21.10.2013 but

with immediate effect. The appellant being aggrieved of the

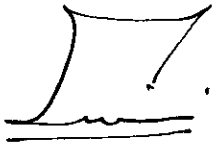
recommendations of the previous meeting of Provincial Selection

Board dated 14.12.2012; filed departmental appeal, which was rejected vide order dated 09.04.2014 constraining him to file Service Appeal No. 813/2014, which was disposed of vide judgment dated 28.10.2016 by remitting the case of the appellant to the respondents for placing it before Provincial Selection Board for consideration of antedation of his promotion. The judgment passed by this Tribunal was not implemented by the respondents constraining the appellant to file Execution Petition No. 63/2017 before this Tribunal. In the meanwhile, juniors of the appellant i.e private respondents No. 4 to 9 were further promoted to BPS-20 vide Notification dated 10.04.2017. The appellant was retired from service on reaching the age of superannuation on 13.11.2017, however his Execution Petition remained pending before this Tribunal and was ultimately implemented vide Notification dated 13.10.2022, whereby the promotion of the appellant from BPS-18 to BPS-19 was antedated. Juniors of the appellant were promoted to BPS-20 vide Notification dated 10.04.2017 and as the appellant was also legally entitled for consideration of his promotion to BPS-20 with effect from 10.04.2017 alongwith his juniors, therefore, he filed departmental appeal but the same was not responded within the statutory period, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as


factual objections, while private respondents No. 4 to 9 failed to appear and were thus placed ex-parte vide order dated 17.07.2023.

3. Learned counsel for the appellant contended that the appellant was illegally superseded in the meeting of Provincial Selection Board held on 14.12.2012 for promotion from the post of BPS-18 to BPS-19 and his supersession was set at naught by this Tribunal vide judgment dated 28.10.2016. He next contended that the respondents failed to timely implement the judgment dated 28.10.2016 passed by this Tribunal and the appellant was wrongly and illegally deprived from his promotion to the post of BPS-20. He further contended that vide Notification dated 10.04.2017, promotions were made to the post of BPS-20 and private respondents being juniors to the appellant were also promoted, however the appellant was wrongly and illegally deprived from such promotion due to lethargic attitude of the respondents. He next argued that had the appellant being not superseded wrongly and illegally and had the judgment dated 28.10.2016 passed by this Tribunal was timely implemented by the respondents, the appellant could have been promoted to the post of BPS-20 alongwith his juniors on 10.04.2017. He further argued that the appellant was not treated by the respondents in accordance with law, rules and policy on the subject and his rights guaranteed under Article-4 of the Constitution of Islamic Republic ofn Pakistan, 1973 were badly violated. Reliance was placed on 2003 SCMR 1140, 2006 SCMR 496, 2007 SCMR 554; PLD 2007 Supreme Court 472, 2007 SCMR 1256, 2012 SCMR 126, 2015 YLR 1733, 2016 SCMR



1784, 2018 PLC (C.S.) Note 49, 2021 SCMR 630 and 2022 SCMR 2020.

4. On the other hand, learned District Attorney for official respondents contended that the judgment dated 28.10.2016 passed by this Tribunal was implemented by giving antedated effect to the promotion of the appellant to BPS-19. He next contended that the promotion to BPS-20 is being made on the basis of selection on merit alongwith 04 months advance training in management from a recognized institutions or PHSA and as the appellant did not meet the required criteria, therefore, he could not be promoted to BPS-20. He further contended that the appellant was treated in accordance with law and none of his rights guaranteed under the Constitution of Islamic Republic of Pakistan were violated.



5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the official respondents and have perused the record.


6. The appellant started his service career in the year 1987 being appointed as Medical Officer, who was promoted to BPS-18 on 03.09.1995. He was at serial No. 04 of the list of Officer of BPS-18 and his case alongwith others was placed before the Provincial Selection Board in its meeting held on 14.12.2012, however he was superseded on the ground of low efficiency index and poor performance. It is, however astonishing that in the very next meeting held on 06.03.2013, the appellant was recommended for promotion to BPS-19 and he was so promoted

vide Notification dated 21.10.2013. The appellant challenged his previous supersession in the meeting of PSB held on 14.12.2012 before this Tribunal by way of filing Service Appeal No. 813/2014, which was disposed of by this Tribunal vide judgment dated 28.10.2016 by remitting the case of the appellant to the respondents for placing it before Provincial Selection Board for consideration of antedation of his promotion. The judgment dated 28.10.2016 so passed by this Tribunal was required to have been timely implemented by the respondents, however they failed to do so, constraining the appellant to approach this Tribunal by way of filing Execution Petition No. 63/2017. In the meanwhile, certain doctors including juniors of the appellant i.e private respondent No. 4 to 9 were further promoted to BPS-20 vide Notification dated 10.04.2017 but the appellant remained deprived of such promotion due to lethargic attitude of the respondents in implementation of the judgment dated 28.10.2016 passed by this Tribunal in favour of the appellant. The agony of the appellant was prolonged by the respondents due to non-implementation of the judgment passed in his favour and this Tribunal had to pass order dated 20.10.2021 in the Execution Petition for the purpose of clarification and enabling the respondents to implement the said judgment. The aforementioned order dated 20.10.2021 is reproduced as below:-

*“Petitioner in person and Mr. Muhammad Adeel Butt,
Addl. AG for the respondents present.*

It is a matter of fact that the petitioner was one among the panelist officers who were considered in PSB meeting held on 14.12.2012 ad the PSB had

recommended his supersession. However, in a subsequent meeting of PSB held on 07.08.2013, the petitioner was again included in the panelist officers for consideration and was considered and recommended for promotion to BPS-19 on regular basis; and vide notification dated 21.10.2013, he was promoted with immediate effect. The petitioner challenged his supersession recommended by the PSB in its meeting held on 14.12.2012 and his service appeal No. 813/2014 was yet filed before this Tribunal which later on was filed and accepted vide judgment dated 28.10.2016 presently under implementation. According to the spirit of the judgment, the suppression of the petitioner was converted into deferment on the basis of precedent of the case of Dr. Muhammad Ali Chohan decided on 26.12.2012. The implementation of the judgment at credit of the petitioner is so far awaited mainly for the reason of miscomprehension of the operative part of the judgment. Therefore, it is clarified that the judgment under implementation is meant to undo the recommendations of supersession of the petitioner by PSB in its meeting held on 14.12.2012 and it operates for conversion of the recommendation from supersession into deferment of promotion. Accordingly, the petitioner is deemed to be deferred for promotion on 14.12.2012. When the petitioner was promoted in view of the recommendations of PSB made on 06.03.2013, the present judgment was not in field and this judgment has been passed on 28.10.2016 for conversion of the supersession of the petitioner for promotion into deferment of his promotion, therefore, there is need for issuance of corrigendum of the order dated 21.10.2013 to antedate the promotion of the petitioner from 14.12.2012. The respondents are directed to issue the necessary corrigendum in the light



of given observations without further delay. (Emphasis supplied). Copy of this order be sent to the respondents. Learned AAG shall also take the respondents on board for compliance of this order. Case to come up on 18.11.2021 before S.B.

7. The judgment dated 28.10.2016 passed by this Tribunal in favour of the appellant was ultimately implemented by the respondents after considerable delay on 13.10.2022 i.e after a delay of about 06 years. It is evident from the record that had the appellant not been wrongly superseded in the meeting of Provincial Selection Board held on 14.12.2012 for promotion to BPS-19 and later on, had the judgment dated 28.10.2016 passed by this Tribunal being timely implemented, the case of the appellant could have also been placed before the Provincial Selection Board for his promotion to the post of BPS-20 alongwith the respondents, who were admittedly junior to the appellant and were promoted to BPS-20 vide Notification dated 10.04.2017.

8. During the pendency of his Execution Petition, the appellant reached the age of superannuation on 13.11.2017 and stood retired vide Notification dated 02.03.2017 issued by the competent Authority. One of the contention raised by the respondents in their comments is to the effect that as the appellant was promoted to BPS-19 after his retirement, therefore, he is not entitled for further promotion under the rules. The afore-mentioned contention of the respondents is having no force for the reason that it was due to wrong supersession of the appellant in the meeting of Provincial Selection Board held on 14.12.2012 for promotion to BPS-19 and

then non-implementation of the judgment of this Tribunal by the respondents in due time that the case of the appellant could not be placed before the Provincial Selection Board for his further promotion to BPS-20. The other contention of the respondents is that according to Schedule-II clause 2 of the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, promotion to BPS-20 is being made on merit alongwith 04 months advance training in management from a recognized institutions or PHSA, which training has not been acquired by the appellant. The requirement of 04 months Management Training could not be imposed in case of proforma promotion of the appellant to BPS-20 for the reason that it was due to fault of the respondents that the appellant could not be promoted timely to BPS-19 and was thus deprived from attaining the required Management Training. It is by now well settled that if a person is not considered due to any administrative slip, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches the age of superannuation before the promotion, then the avenue or pathway of proforma promotion comes into field for his rescue. Supreme Court of Pakistan in its judgment reported as 2012 SCMR 126 has held as below:-

“6. A perusal of the afore-referred amended provision would indicate that it was not retrospective in effect as it was specifically stipulated that “it shall come into force at once”. The question of its retrospectivity or otherwise was a moot point before this Court in Muhammad Amjad v. Israr Ahmed (2010

SCMR 1466) and this Court candidly held that the amended provision could not be given retrospective effect. That being so, the arguments of Learned Law Officer with reference to subsection (5) of section 8 referred to in the preceding paragraph would be of no avail to him. Coming to the facts of this, we find that it has not been disputed before this Court that much before the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason and in the meanwhile respondents attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse. The arguments of learned Law Officer that the respondents were not entitled at the relevant time to be granted promotion for one reason or the other is rather misconceived as the operative part of the impugned judgment has candidly directed that the working paper of the respondents shall be prepared and they will be considered for grant of next grade notwithstanding their retirement, if they are even otherwise found entitled thereto. This in fact would now be proforma promotion.”

9. Similarly, Supreme Court of Pakistan in its judgment reported as 2022 SCMR 2020 has held as below:-

“6. If a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the venue or pathway of proforma promotion comes into field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of DPC or Selection Board

despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits. The provision for proforma promotion is not alien or unfamiliar to the civil servant service structure but it is already embedded in Fundamental Rule 17, wherein it is lucidly enumerated that the appointing authority may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault on his own wrongfully prevented from rendering service to the Federation in the higher post, directs that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the antedated fixation of his seniority. We often noted that unjustified delay in proforma cases trigger severe hardship and difficulty for the civil servant and also create multiplicity of litigation it would be in the fitness of things that the competent authority should fix a time line with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention."

10. In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Provincial Selection Board for consideration of his pro-forma promotion to BPS-20 with effect from 10.04.2017 within a period of 03 months of receipt of copy of this

judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
26.10.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


Naeem Amin


ORDER
26.10.2023

Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for official respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Provincial Selection Board for consideration of his pro-forma promotion to BPS-20 with effect from 10.04.2017 within a period of 03 months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
26.10.2023


(Muhammad Akbar Khan)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)