

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

**Service Appeal No. 12217/2020**

BEFORE: **MRS RASHIDA BANO** ... **MEMBER (J)**  
**MISS FAREEHA PAUL** ... **MEMBER (E)**

Muhammad Arshad Rushdi S/O Abdul Hameed R/O Akhunzada Colony  
Janazgah Road Pabbi, Tehsil and District Nowshera..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary C&W, Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Establishment, Civil Secretariat, Peshawar.
4. Chief Engineer (Centre) Communication and Works Department Peshawar. ... ..(*Respondents*)

Mr. Zartaj Anwar,  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

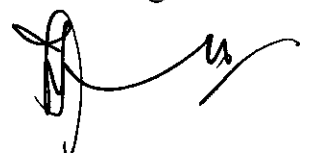
Date of Institution..... 19.10.2020

Date of Hearing..... 19.10.2023

Date of Decision..... 19.10.2023

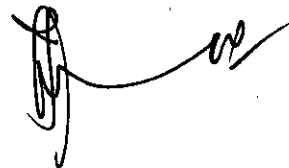
**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against non-consideration of the appellant for promotion and in the meanwhile he retired from service vide order dated 14.09.2020. His departmental appeal was not responded within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the appellant might be considered for promotion to the post of Superintendent BPS-17 alongwith arrears and back benefits from the date when he became eligible for



promotion alongwith any other remedy which the Tribunal deemed fit and appropriate.

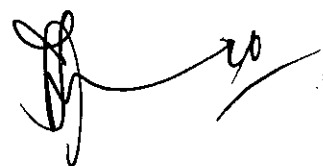
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed by C&W Department and served the department for 41 years. He was promoted to the post of Assistant BPS-14 in the year 2013, later on upgraded to BPS-16. While serving the Department in the said capacity, the respondents directed the eligible employees to submit their bio data including the ACRs by the office of respondent No.3 i.e Chief Engineer to process their cases for promotion to the post of Superintendent under the rules. The department circulated the seniority list of all the Assistants/Senior Scale Stenographers on 30.04.2020 wherein name of the appellant was reflected at serial No. 4. There were total 07 vacant posts of Superintendent and the name of the appellant was within the promotion quota. The respondent department circulated letter through which relevant record was sought, in response to which the appellant, alongwith his colleagues, submitted their ACRs alongwith relevant documents. The appellant, time and again, requested the competent authority to process his case for promotion before his retirement and in the meanwhile, he got retired from service vide order dated 10.07.2020. He submitted his departmental appeal to the respondent department on 10.07.2020 for his proforma promotion but in vain; hence the instant service appeal.



3. Respondents were put on notice who submitted written replies/ comments on the appeal. We heard the learned counsel for the appellant as well as the learned 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 the appellant was not treated in accordance with law and rules. He further argued that case of the appellant for promotion was not timely presented to the competent promotion committee. According to him, in the seniority list of Assistant BPS-16, circulated in 2019 and 2020, name of the appellant appeared at S.No. 4 and there were total 07 vacant posts of Superintendent and if his case was timely processed, he could have been promoted but the respondent department delayed the process and he was deprived of his legal right of promotion to the post of Superintendent. He requested that the appeal might be accepted as prayed.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was inducted as Junior Clerk in C&W Department on 15.02.1979 and subsequently promoted to the post of Assistant (BPS-16) on 01.10.2013. He further argued that 05 posts of Superintendent (BS-17) were lying vacant due to retirement of officials on attaining the age of 60, years subject to final orders of the august Supreme Court of Pakistan in the case of enhancement of retiring age from 60 years to 63 years. However, out of five, three Superintendents opted through stamp papers, that their pension cases might be processed as they were not interested in further employment, therefore, the ACRs were sought from the



officials for consideration of their promotion cases under the rules and policy. The learned DDA informed that in the meanwhile a similar promotion case of an incumbent was referred to the Establishment Department for placing before the Provincial Selection Board for consideration but it was not considered by the PSB, on the grounds that the matter of retirement age was sub-judice in the Apex Court. According to him the meeting of the Departmental Promotion Committee could not be held in view of the same situation. He further stated that the appellant was not entitled for promotion to the post of Superintendent in the light of Government of Khyber Pakhtunkhwa Establishment Department notification dated 16.03.2020. He requested that the appeal might be dismissed.

6. Through the instant service appeal, the appellant has prayed for proforma promotion to the post of Superintendent (BS-17). Record and arguments presented before us show that the appellant retired on attaining the age of superannuation on 14.09.2020. Prior to that, he requested his high-ups on 10.07.2020 for promotion to the post of Superintendent on the ground that he was qualified for the said promotion and that he was about to retire. It is also evident from the record that necessary instructions and directions were issued by the administrative department to its attached formations to get the ACRs/PERs of the Assistants and Stenographers completed for consideration of Departmental Promotion Committee. However, the matter of holding the meeting of DPC was halted when the administrative department came to know about the fate of promotion cases forwarded to the Establishment Department for placing before the Provincial Selection Board, which were kept pending for the reason that the matter of enhancement of



retirement age to 63 years was sub-judice before the apex court. When asked whether any working paper was prepared for the meeting of DPC, the learned District Attorney replied that no such working paper was prepared. Learned counsel for the appellant also confirmed that no working paper had been prepared.

7. After going through the details of the entire case, it can safely be said that promotion cannot be claimed by any civil servant as his right. In the case in hand, no doubt the appellant was at Sr. No. 4 of the seniority list and he was qualified to be promoted, but till the date he retired, no meeting of DPC was held. As stated by the learned District Attorney and confirmed by the learned counsel for the appellant, even a working paper had not been prepared for the meeting. The administrative department was just in the process of completing the documents required for the meeting of DPC.

8. In the light of above discussion, we are unison in saying that the appellant retired before the meeting of DPC was held and hence he could not claim for proforma promotion. The appeal in hand is, therefore, dismissed. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of October, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)


SA 12217/2020


19<sup>th</sup> Oct. 2023

01. Mr. Zartaj Anwar, Advocate for the appellant present.  
Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, we are unison in saying that the appellant retired before the meeting of DPC was held and hence he could not claim for proforma promotion. The appeal in hand is, therefore, dismissed. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of October, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Fazal Subhan PS\*