

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.537/2022**

**BEFORE: MRS. RASHIDA BANO ... MEMBER (J)**  
**MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)**

**Nasrullah Khan, Ex-Secretary (Presently Additional Secretary) Provincial Assembly Secretariat of Khyber Pakhtunkhwa, Presently Additional Secretary.**  
... (Appellant)

**VERSUS**

1. Speaker Provincial Assembly Khyber Pakhtunkhwa, Peshawar.
  2. Kifayatullah Khan Afridi, Secretary, Provincial Assembly Khyber Pakhtunkhwa, Peshawar.
  3. Departmental Promotion/ Recruitment Committee, through its Secretary Mr. Attaullah Khan Provincial Assembly of Khyber Pakhtunkhwa.
- ... (Respondents)

Mr. Muhammad Zafar Khan Tahirkheli  
Advocate ... For Appellant

Mr. Ali Azeem Afrid  
Advocate ... For Private Respondent

Mr. Muhammad Jan  
District Attorney ... For official Respondent

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Date of Institution..... 04.04.2022  
Date of Hearing.....31.10.2023  
Date of Decision.....31.10.2023

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“By accepting this appeal, the impugned orders dated 01.11.2021, 05.11.2021 and 07.03.2022 may kindly be set aside and the appellant may be reinstated as Secretary Provincial Assembly (BPS-21) (Now upgraded as BPS-22) with retrospective effect alongwith all the benefits of continuous service.”**



2. Perusal of record reveals that instant appeal is the fourth round of litigation between the same parties with the same relief. The only difference is that appellant was respondent in earlier three appeals while respondent No. 2 was appellant. This fourth round of litigation is in continuation of the dispute related to promotion to the post of Secretary BPS-21 in the Provincial Assembly of Khyber Pakhtunkhwa (Assembly). The post of Secretary in the Assembly had become vacant on 14.08.2017 on retirement of the incumbent Mr. Amanullah Khan. The DPC as constituted by the appointing authority met on 11.08.2017 to consider the case of senior official for promotion on the said vacant post. The DPC recommended promotion of Mr. Nasrullah Khan whose name was at Sr. No. 3 of the panel of the officers as listed below.

1. Mr. Kifayullah Khan Afridi, Senior Additional Secretary (BPS-20)
2. Mr. Ghulam Sarwar, Additional Secretary (BPS-19)
3. Mr. Nasrullah Khan, Additional Secretary (BPS-19)

As a result of the recommendation of the DPC, present appellant was appointed as Secretary Assembly vide notification dated 15.08.2017. Mr. Kifayatullah Khan Afridi, the panelist at Sr. No. 1 above the appellant was dropped, who impugned the recommendation of DPC and notification of promotion of the appellant in service appeal No. 1324/2017, preferred before this Tribunal on 28.11.2017. At the time of filing the above appeal, another service appeal No. 952/2014 was also pending before the Tribunal, in which not only appellant's promotion as Additional Secretary but also his promotion as Secretary made vide notification dated 15.08.2017 were set aside by the applying the principle of *lis pendens*. In order to implement the aforesaid judgment, the impugned notification dated 15.08.2017 was withdrawn on 07.09.2018. However, the appellant was again promoted as Secretary of the Provincial Assembly during pendency of appeal. The appeal was accepted vide judgment dated 10.12.2018, it culminated with the operative part as copied below:

*“As a sequel to above, the appeal is accepted, the impugned order alongwith successive order of promotion of respondent No.3 to the post*



*of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification No. PA/Khyber Pakhtunkhwa/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored."*

3. It is pertinent to mention here that despite the judgment of this Tribunal dated 10.12.2018 in field, Respondent No.1 again referred the matter of promotion to the post of Secretary to a constituted DPC, which, on 02.09.2019, for the third time, recommended the present appellant for promotion to the post of Secretary, which, too, was challenged by respondent No. 2 in service appeal No.937/20 and was decided vide judgment dated 17.12.2020 in the following manner.

*"Ex-consequential the appeal in hand is allowed and the impugned notification dated 03.09.2019 is set aside. The official respondents shall constitute the DPC in accordance with law. The DPC shall consider the matter of promotion to the post of Secretary Provincial Assembly in light of decision taken in previous appeal as well as the instant judgment strictly in accordance with law the denovo exercise shall be completed within three months of receipt of copy of instant judgment."*

4. Respondent, in light of judgment of this Tribunal in appeal No. 937/2020, constituted DPC, which for the fourth time recommended the appellant as Secretary Provincial Assembly, who was appointed as such vide notification dated 11.01.2021. Respondent No.2 again challenged it in service appeal No. 4874/2021, which was decided in the following manner by the Tribunal on 24.09.2021.

*"For what has gone above, the application filed by respondents questioning maintainability of this appeal is rejected and the appeal is held maintainable and accepted in the following terms, in order to prevent the abuse of the process of this Tribunal. The recommendations of DPC in respect of the appellant and respondent no.3 are set aside and consequently, the impugned notification of promotion of later is also set aside. The respondent No.1 shall constitute a new DPC and the panelist officers particularly the*



*appellant will be given opportunity of objection on nominees of DPC, if so advised. The DPC so constituted after settlement of objections if any, will consider the panelists for promotion in light of the directions given in the judgment dated 17.12.2020 of this Tribunal in Appeal No. 937/2020 excluding the necessity of the PERs of appellant for the years 2017 and onward litigation.”*

5. Most of the necessary facts in present memorandum of appeal precisely are not different from the factual position as gone here in above except some new facts which hereinafter follow.

*“By accepting this appeal, the impugned orders dated 01.11.2021, 05.11.2021 and 07.03.2022 may kindly be set aside and the appellant may be reinstated as Secretary Provincial Assembly BPS-21 (Now upgraded as BPS-22) with retrospective effect alongwith all the benefits of continuous service.”*

6. After receipt of judgment, respondent No. 1 constituted DPC vide order dated 01.11.2021, in the light of judgment passed by this Tribunal dated 29.04.2021, DPC meeting was convened on 05.11.2021, wherein panel of four officer consisting upon Mr. Kifayatullah Khan Afridi, Mr. Nasrullah Khan, Mr. Amjad Ali and Mr. Inamullah Khan was considered by the DPC and Departmental Promotion Committee unanimously agreed to promote Mr. Kifayatullah Khan Afridi respondent No.2 (BPS-20) being senior most officer in the panel and made recommendation accordingly. Though his ACRs for the year 207 and onward were not available but he has been exempted from same by the Service Tribunal. Undisputedly, the Appellant is junior to the private respondent No.2 and is in BPS-20 personal while respondent No.2 is in BPS-20 regular. So the private respondent could not be superseded. He could be superseded provided he had any blemished record, which is not found in this case. Moreover, length of service of respondent No.2 is more than appellant. DPC promoted



respondent No. 2 under Rule 6 of Khyber Pakhtunkhwa Provincial Recruitment Rules 1974 which read as:

Recruitment by promotion.—(1) Promotion to a post may be made:-

- (a) in the case of selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority cum fitness.

So the only criteria for promotion is seniority cum fitness. In accordance with schedule post of Secretary was required to filled in the following manner.

*“Secretary BPS-21 by promotion on the basis of seniority cum fitness from amongst the senior Additional Secretary and Additional Secretary with three year service as such or 22 years service in BPS-17 and above.”*

7. Admittedly respondent No.2 had 28 years, eleven months and 28 days service at his credit while appellant had 28 years, eight months and ten days service which means respondent No.2 had more service than appellant.

8. The DPC has thoroughly checked every aspect of the promotion after full deliberation. Moreover, respondent No.2 was promoted in accordance with rules and law on the subject. It is also important to note that respondent No.2 was promoted as Secretary after due consideration of seniority-cum-fitness and on merits. It is respondent no.2 who was neglected for four times, despite being senior most and eligible for promotion to the post of the Secretary Provincial Assembly and finally he was given his due right vide impugned notification dated 05.11.2021 for which he was eligible from 18.05.2017 when for the first time DPC rightly promoted him.

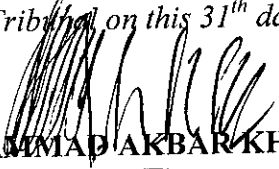
9. It is pertinent to mention here that CPLA filed in august Supreme Court of Pakistan was also disposed of. Respondent No.2 agony and misery came to an end




through impugned order because he was fairly dealt with in accordance with judgment and principle of natural justice.

10. As a sequel to above discussion, we find no merits in this appeal and would dismissit. Costs shall follow the events. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 31<sup>th</sup> day of October, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah