

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1288/2020

BEFORE: **MR. SALAH-UD-DIN** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Hamid S/O Khair Gul R/O MR&PHC Pajagai Road, Bashir Abad, Peshawar.
..... **(Appellant)**

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Social Welfare, Special Education and Women Empowerment, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. Director Social Welfare, Special Education and Women Empowerment Khyber Pakhtunkhwa.
4. Secretary Establishment, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. Secretary Finance Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
.....**(Respondents)**

Mr. Athar Abbas,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

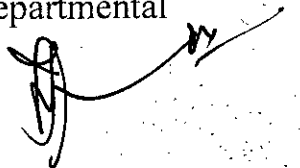
Date of Institution.....	03.03.2020
Date of Hearing.....	20.11.2023
Date of Decision.....	20.11.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for issuing an appropriate order to the respondents to consider the appellant for promotion to the next higher post amongst any of the three i.e Social Welfare Officer, Manager and Superintendent Welfare Home (BPS-17,) w.e.f. 03.07.2018 upon successful and satisfactory

completion of his five year service as Field Officer (BPS-16) in Directorate of Social Welfare, Peshawar, alongwith all back benefits of the higher post (BPS-17) as cited above and declaring the act of the respondents for not entertaining his departmental appeal within the statutory time as nul & void and any order passed by the respondents subsequently in the departmental appeal or any adverse action taken by them against the appellant during pendency of the service appeal to be set aside.

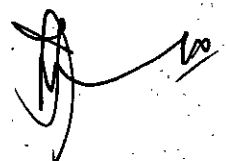
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed on 03.07.2013 against the vacant post of Field Officer (BPS-16) in Directorate of Social Welfare, Special Education & Women Empowerment Department, Khyber Pakhtunkhwa on the recommenddation of Khyber Pakhtunkhwa Public Service Commission. After assuming the charge as Field Officer (BPS-16), the appellant performed his duties and successfully completed 05 years tenure and became eligible for promotion to the next available higher post under the prevailing law and rules. As soon as the appellant became eligible for promotion under the law, he submitted applications to the Director Social Welfare, Khyber Pakhtunkhwa, Peshawar on 18.05.2018, 11.07.2018 and 17.10.2018 but no positive response was given. On 16.11.2018, with the approval of respondent No. 3, Assistant Director (Establishment) Directorate of Social Welfare, Peshawar issued a working paper for promotion vide letter dated 16.11.2018 wherein the position of the appellant was apparent and he was fit for promotion to the next higher post under the rules. The respondents never conducted a meeting of Departmental



Promotion Committee and the appellant, alongwith other colleagues, once again moved an application in the name of respondent No. 2 on 14.01.2019 under covering letter dated 23.01.2019. Vide order dated 19.03.2019, the respondent No. 3 issued the tentative seniority list of the appellant in which he was at serial no. 2 and under the rules was eligible for promotion, but even then he was deprived from his right of promotion despite the fact that number of vacant posts were available. The appellant again moved an application to the Deputy Secretary Social Welfare and Director Social Welfare in the month of November and December 2019 respectively but no positive response was given by the respondents. He filed Writ Petition No. 3743-P/2019 before the Peshawar High Court, Peshawar which was decided on 09.10.2019 with the direction that the said writ petition might be considered as departmental appeal. The appellant communicated the order of the Peshawar High Court to the respondents vide his application dated 15.10.2019 but no response was received; hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/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.

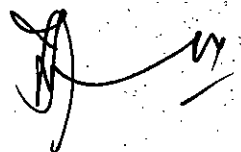
4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was not treated in accordance with law and that the respondents had acted in violation of Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan. He further argued that negligence on the part



of the respondents could damage the career of the appellant. He further argued that the respondents had no cogent reason to delay the promotion of the appellant and that number of posts of Social Welfare Officer, Manager and Superintendent Welfare Home were also vacant before 03.07.2018. He requested that the appeal might be accepted as prayed.

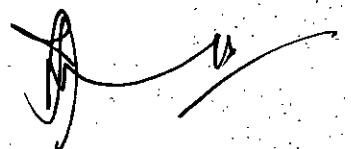
5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the delay in conducting the meeting of Departmental Promotion Committee was due to re-structuring of the department and amending the service rules accordingly. He informed that the department initiated the process of amending the service rules and after its completion, notified the rules on 25.09.2019, however the Service Tribunal issued stay order in Service Appeal No. 666/2020 and the matter of promotion had to be kept pending. He further argued that respondent No. 3 issued the tentative seniority list and the appellant was promoted vide order dated 29.10.2020 as Social Welfare Officer (BPS-17) therefore, the instant appeal had become infructuous and was liable to be dismissed on that score alone. He further argued that the respondents granted the appellant his due right after completing all codal formalities and following the rules and regulations as mentioned in the Esta Code that promotion would always be notified with immediate effect. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was appointed as Field Officer (BS-16) in the Social Welfare



Department in the year 2013. According to him, in the light of Service Rules under which his service is governed, after completing five years service, he was eligible for promotion in 2018. Accordingly he requested the departmental authorities time and again for his promotion, but he was not given any positive response. However during the pendency of his service appeal, he was promoted to the post of Social Welfare Officer (BS-17) on 29.10.2020. As stated by the respondent department, they were in the process of restructuring the Directorate and amending the Service Rules accordingly. Moreover this Tribunal had granted a stay order in Service Appeal No. 666/2020 titled "Jamal Shah Vs. Government of Khyber Pakhtunkhwa and others", vide order dated 28.07.2020 according to which no promotions at the level of Directorate of Social Welfare could be finalized. As soon as the stay was vacated, the promotions were processed and the appellant got promoted.


7. When we talk of eligibility of the appellant for promotion as per service rules, whether they are the amended rules or the ones prior to amendment, there is no doubt that after five years of service, he was eligible for promotion, but an important factor to be kept in mind here is whether any meeting of Departmental Promotion Committee was held at that time? Whether the name of the appellant was considered and whether some junior officer was promoted ignoring his name? It has been clarified by the learned District Attorney, as well as the departmental representative, that no meeting of DPC could be convened because the Service Rules were being amended and further that as soon as the amended rules were notified and the stay




granted in case of Jamal Shah Vs. Government of Khyber Pakhtunkhwa and others was vacated, the name of the appellant was cleared for promotion. It is further extremely clear that no civil servant can claim promotion as his right and the same has been clearly stated by the august Supreme Court of Pakistan also in 2003-PI.C(C.S) 212 and PLD 2008 Supreme Court 395.

8. In view of the above discussion, the appeal in hand is dismissed, being groundless. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 20th day of November, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan. P.S

S.A 1288/2020

20th Nov. 2023 01. Mr. Athar Abbas, Advocate for the appellant present. Mr.

Muhammad Jan, District Attorney for the respondents present.

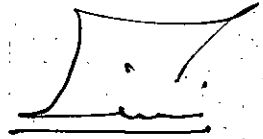
Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 20th day of November, 2023.*



(FAREEHA PAUL)
Member (E)




(SALAH-UD-DIN)
Member (J)


Fazle Subhan, P.S

15th Nov, 2023

1. Learned counsel for the appellant present: Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Shoukat Ali, Superintendent for the respondents present.

2. Representative of the respondent namely Mr. Fazle Khaliq, ADO is directed to appear in person and assist the Court on the next date of hearing. Adjourned. To come up for arguments on 20.11.2023 before D.B. P.P given to the parties.


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

kamranullah