

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
SALAH-UD-DIN ...MEMBER (Judicial)

Service Appeal No.386/2023

Date of presentation of appeal.....24.07.2023
Dates of Hearing.....05.12.2023
Date of Decision.....05.12.2023

Mr. Bilal Mohyuddin, Regional Director Prosecution, (BPS-20)
Peshawar Division, Peshawar.....Appellant

Versus

1. **The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
4. **The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
5. **The Director General Prosecution, Directorate of Prosecution, Khyber Pakhtunkhwa, Peshawar.**
6. **The Provincial Selection Board, through its Chairman Chief Minister Khyber Pakhtunkhwa.....(Respondents)**

Present:

Mr. Taimur Ali Khan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

AMENDED APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 08.07.2020, WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF REGIONAL DIRECTOR PROSECUTION (BPS-20) WITH IMMEDIATE EFFECT INSTEAD OF 01.07.2014, THE DATE ON WHICH THE POSTS OF REGIONAL DIRECTOR PROSECUTION (BPS-20) WERE CREATED AND AVAILABLE FOR PROMOTION OR INSTEAD OF 11.01.2019, THE DATE ON WHICH HIS COLLEAGUES AND JUNIORS WERE PROMOTED TO THE POST OF REGIONAL DIRECTOR (BPS-20) AND THE APPELLANT WAS DEFERRED AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The facts surrounding the appeal are that the appellant joined the Prosecution Department as Additional Public Prosecutor/Additional Government Pleader and with the passage of time was promoted to the post of Public Prosecutor (BPS-18); that in the meanwhile, seven posts of Regional Director were created in the department; that on 17.01.2018, the rules were notified for filling of the said posts; that meeting of Provincial Selection Board was held on 26.12.2018, whereby, the appellant was deferred and his junior colleagues were promoted to the post of Regional Director Prosecution (BPS-20) vide Notification dated 11.01.2019; that after completion of the Senior Management Course (SMC) training in December, 2019, the appellant was promoted to the post of Regional Director Prosecution (BPS-20) on 08.07.2020 instead of 01.07.2014 or w.e.f 11.01.2019 when his junior colleagues were promoted. Feeling aggrieved, he filed departmental appeal, which was not responded, whereafter, he filed the instant service appeal. But as the appellant had not mentioned the date of PSB and promotion Notification dated 11.01.2019, therefore, he filed amended appeal.

2. 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 defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

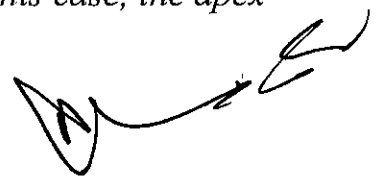


4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order.

5. This Tribunal in a similar matter in issue passed judgment in Service Appeal No.1395/2019 titled "Muhammad Arshad Khan Vs. Government of Khyber Pakhtunkhwa" and has held as that:

"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 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 "Liaqat 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...."

8. 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. "

06. The instant service appeal is also regarding deferment from promotion. The difference is that in this case, the ground for deferment is SMC Training while in the above-mentioned case, the entries in the service book were not made. As the fault was on behalf of the respondents as they had not nominated the appellant for the said training, in time. Therefore, he was wrongly deferred from the promotion.

7. In view of the above, the instant service appeal is accepted and respondents are directed to give effect to the promotion from 11.01.2019 when his junior colleagues were promoted. Consign.

8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of December, 2023.



KALIM ARSHAD KHAN
Chairman



SALAH-UD-DIN
Member (Judicial)


Mutazem Shah

S.A #. 386/2023

ORDER

5th Dec. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, instant service appeal is accepted and respondents are directed to give effect to the promotion from 11.01.2019 when his junior colleagues were promoted. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of December, 2023.*


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

Mutazem Shah