

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1307/2022

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Dr. Muhammad Ayub Ex-District Director Livestock at Haqdad Abad Moh, Hafiz Abad Lakki City District Lakki Marwat.....(*Appellant*)

VERSUS

1. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock, Fisheries and Cooperative Department Khyber Pakhtunkhwa, Peshawar.
3. Director General (Extension), Livestock and Dairy Development Department Khyber Pakhtunkhwa, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department Peshawar.....(*Respondents*)

Present:-

MUHAMMAD ARIF JAN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....06.09.2022
Date of Hearing.....11.12.2023
Date of Decision..... 11.12.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- Brief facts of the case are that the appellant was joined the service in the respondent Department as Veterinary Officer vide order dated 19.02.1987 and promoted to BPS-18 vide Notification dated 23.12.2009. He got promotion BPS-19 on regular basis vide Notification dated 03.01.2018; that a final seniority list of (BPS-19) officers of Livestock & Dairy Development (Extension Wing) Department Khyber Pakhtunkhwa was issued vide Notification dated

25.10.2021 whereby the appellant was placed at serial No. 4 despite the fact that other three officers were already been promoted to the post of (BPS-20); that respondent No. 4 addressed a letter dated 17.01.2022 to all the Administrative Secretaries to the Government of Khyber Pakhtunkhwa wherein the Provincial Selection Board was schedule for 1st week of March, 2022 but later on the date of PSB was postponed till 10th March, 2022; that the appellant was retired from service on 29.03.2022 on attaining the age of superannuation; that finally the Provincial Selection Board was scheduled for 06th and 07th April, 2022 wherein the appellant was not considered for promotion to BPS-20 being retired from service; that 04 posts of BPS-20 were lying vacant and the appellant was not considered for promotion to BPS-20. Feeling aggrieved the appellant filed departmental appeal on 11.05.2022 which was not responded within the statutory period, hence preferred the instant service appeal on 06.09.2022.

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney and have gone through the record with their valuable assistance.

03. Learned counsel for the appellant contended that the act of commission and omission of the respondents by not considered the appellant for promotion to BPS-20 in the PSB meeting held on 06th & 07th April, 2022 impugned to the extent of the appellant for which the appellant was entitled is illegal, unlawful, without lawful authority, hence the respondents be directed to promote the appellant to (BPS-20) from his due date without further delay, reasons and justification without all back benefits; that the government of Khyber

Pakhtunkhwa did not convene the PSB meeting timely despite the facts of availability of 04 vacant posts of (BPS-20) which were sanctioned since long and notified by the Finance Department but the appellant was kept deprived and junior to the appellant were promoted which was badly affected the privileges and pension of the appellant; that the act of non-consideration of the appellant to (BPS-20) by the respondents is violation of (Appointment Promotion & Transfer) Rules, 1989 as well as fundamental Rules-17; that the name of appellant was placed before the PSB but was deferred and not considered; that 04 posts were laying vacant since long and the appellant was retired from service after attaining the age of superannuation, therefore, the priority should be given to the appellant to be promoted to (BPS-20) but the respondent department intentionally ignored and deprived the appellant with their dishonest attitude; that the appellant served the respondent department with zeal & zest, with devotion, determination and outmost satisfaction of the superiors and have legal vested right to be treated in accordance with law and to be extended equal protection of law, enshrined in Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 alongwith all enabling laws however, the respondents have been denied the right of promotion of the appellant.

04. Learned District Attorney on the other hand contended that the PSB meeting was held on 06th & 07th April, 2022 and the appellant not in service and he was retired from service on 29th March, 2022, therefore, he was not considered by the PSB as per rules; that the respondent No. 4 is authorized to fix the meeting of PSB on any convenient date in the best public interest; that the meeting of PSB was delayed for the reason that more civil servants could be extended the benefits of promotion to higher scales; that the appellant has


been treated in accordance with the (Appointment Promotion & Transfer) Rules, 1989 and fundamental rules; that the previous PSB took place on 02.12.2021, wherein two senior most officers of Livestock (Extension) Directorate were promoted from BPS-19 to BPS-20. However, one of the officers namely Dr. Rafi Ullah was given promotion on notional bases w.e.f. 12.11.2021 (date of his retirement was 09.12.2021). Moreover, the stance of the appellant that 04 posts were vacant since long is baseless as the next PSB took place on 06th & 07th April, 2022 i.e. after 04 months, however, the appellant was not in service at that time; that the appellant has been treated in accordance with law & rules and the appellant has been treated in light of the guidelines and directives issued by the respondent No.4.

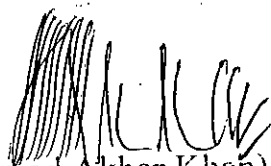
5 Perusal and scrutiny of record transpires that the appellant rendered service as Veterinary Officer since 19.02.1987 promoted to BPS-18 and further promoted to BPS-9 on regular basis. He retired from service on 29.03.2022 on attaining the age of superannuation. There were 04 posts available for promotion to BPS-20 at the time of placement of the promotion case before the PSB in March 2022. At the time of processing of promotion case of the appellant and his colleagues the appellant stood at serial No. 4 of the seniority list who was eligible for promotion to next higher scale in all respect. His case alongwith other colleagues for promotion to BPS-20 was forwarded to the Administrative/respondent department well before superannuation of the appellant, however, the matter remained in the department for considerable time and by the time working paper was placed before the PSB, the appellant had retired from service on superannuation. There was no fault on part of the appellant for delay of his promotion case. He

was eligible for promotion in terms of length of service, completion of service record including ACRs and availability of posts. The delay for placement of the promotion case of the appellant occurred on part of the dealing/Administrative department. There are numerous judgment of the august Supreme Court of Pakistan and this Tribunal allowing the aggrieved civil servant in such like cases for pro forma promotion on notional basis. Reliance is placed on 2012 SCMR 126, 2021 SCMR 1266 and the judgment of This Tribunal rendered in Service Appeal No.552/2015 titled "Mian Zaman Khan Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three others" Service Appeal No. 797/2018 titled "Muhammad Saeed Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and 03 others" & Service Appeal No. 625/2018 titled "Anees Ahmed Versus The Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department, Civil Secretariat, Peshawar and three others."

06. In view of the above discussion, the appeal is remitted back to the respondent department to consider the appellant for proforma promotion on notional basis from the date his colleagues were promoted to BS-20. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 11th day of December, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

ORDER

11.12.2023

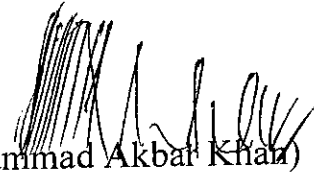
01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (05) pages, the appeal is remitted back to the respondent department to consider the appellant for proforma promotion on notional basis from the date his colleagues were promoted to BS-20. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 11th day of December, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)