

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT, D.I.KHAN**

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

*Service Appeal No.894/Neem of 2014*

Date of presentation of Appeal.....30.05.2014  
Date of Hearing.....20.12.2023  
Date of Decision.....20.12.2023

**Kashif Ur Rehman, DPE B-16 GHSS Lar D.I.Khan.....(Appellant)**

Versus

1. **Director, Elementary & Secondary Education Department, Peshawar.**
2. **District Education Officer Elementary & Secondary Education Department, D.I.Khan.**
3. **District Account Officer, Kachery Road Dera Ismail Khan.**
4. **Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Peshawar.....(Respondents)**

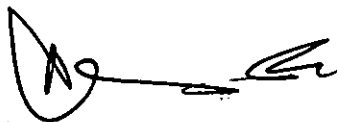
Present:

Mr. Muhammad Anwar Awan, Advocate.....For the appellant  
Mr. Muhammad Jan, District Attorney.....For respondents

.....  
**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Facts of the case of the appellant, gathered from the memorandum and grounds of appeal are that the appellant was appointed in the year 1994 as Physical Education Teacher (BPS-15). After taking over charge he started performing duty. While working as PET in BPS-15, promotion of the appellant was due in the year 2006, however, he was deferred by the Departmental Promotion Committee for want of his ACRs for the year 2005 and other colleagues of the appellant were promoted. That on 13.11.2007, the post of DPE (BPS-16) was



upgraded to BPS-17. That vide impugned order dated 07.03.2014, the appellant was promoted to the post of DPE (BPS-16) with immediate effect and not from the year 2006, when his junior colleagues were promoted to the said post. Feeling aggrieved, he filed departmental appeal, which was not responded, hence, he filed appeal before this Tribunal, which was dismissed. The appellant then approached the Supreme Court of Pakistan in Civil Appeal No.502/2023 and the Supreme Court allowed the appeal of the appellant vide order dated 05.05.2023 by remanding back the appeal to this Tribunal in the following manner:

*" In view of the afore-noted contention of the learned counsel for the petitioner, we asked for the response of the learned Addl. Advocate General, KPK, who acknowledges that the merits of the case have not been dealt with by the impugned order dated 25.03.2019 passed by KPK Service Tribunal ("Tribunal"). In the circumstances, we consider that to be fair and appropriate, the matter be remanded back to the learned Tribunal to examine the questions raised by the petitioner. The parties shall be at liberty to file further documents in aid of their respect please.*

*Accordingly by consent, this petition is allowed and converted into appeal and the matter is remanded to the Tribunal."*

02. We have heard learned counsel for the appellant and learned District Attorney for the respondents.



03. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

04. Perusal of record reveals that the appellant was admittedly eligible for promotion, however, he was deferred and admittedly, his juniors were promoted vide Notification issued in 2006. In the said Notification of promotion, the name of the appellant was not included on the ground that his PERs for the year 2005 are missing.

05. Deferment is neither a punishment nor a final order; as and when the reasons for deferment cease to exist, the employee is to be promoted from the date when his juniors were promoted.

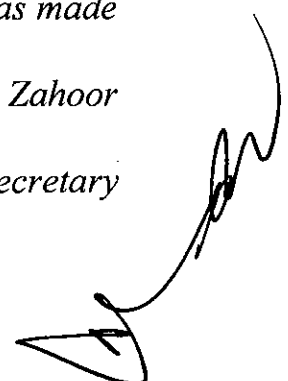
06. Explanation-III of Rule-17 of the Khyber Pakhtunkhwa Civil Servants (APT) Rules, 1989, also strengthens the case of the appellant. The said explanation of Rule-17 is reproduced below:

*"If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit."*



07. This Tribunal in Service Appeal No.1397/2019 titled "Muhammad Arshad Khan VS. The Secretary Education & others" decided on 7<sup>th</sup> March, 2023, while dealing with almost similar case, has found as under:

*"5. 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 a 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 "Liaquat 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....."

5. 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."

08. In the absence of any solid reason and convincing response by the respondents, the claim of the appellant is bonafide and just and he is held entitled for promotion to the post of DPE (BPS-16) w.e.f 21.10.2006 i.e. the date his juniors were promoted. With the observations herein-above, the appeal in hand is accepted as prayed for. Consign.

09. Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 20<sup>th</sup> day of December, 2023.

  
KALIM ARSHAD KHAN  
Chairman

  
SALAH-UD-DIN  
Member (Judicial)

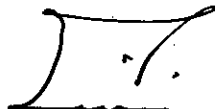
**ORDER**

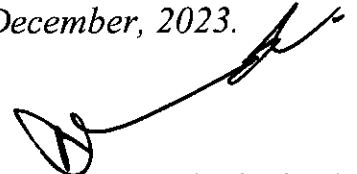
20<sup>th</sup> Dec. 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the claim of the appellant is bonafide and just and he is held entitled for promotion to the post of DPE (BPS-16) w.e.f 21.10.2006 i.e. the date his juniors were promoted. With the observations herein-above, the appeal in hand is accepted as prayed for. Consign.

3. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 20<sup>th</sup> day of December, 2023.*

  
(Salah-ud-Din)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*