

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 11962/2020

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

Mr. Zulfiqar Khan, Additional Assistant Commissioner (Revenue), District Bannu.....(*Appellant*)

Versus

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Senior Member Board of Revenue Khyber Pakhtunkhwa, Peshawar.
4. Mst. Tahreem Shah, (PMS Officer, BPS-17), and 123 others.
.....(*Respondents*)

Mr. Noor Muhammad
Advocate ... For appellant

Mr. Asif Masood Ali Shah ... For respondents
Deputy District Attorney

Date of Institution..... 30.09.2020
Date of Hearing..... 08.01.2024
Date of Decision..... 08.01.2024

JUDGEMENT

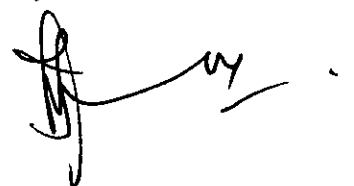
FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected Service Appeal No. 11963/2020 titled “ Syed Sultan Haider Versus the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others” and Service Appeal No.11964/2020 “Aftab Ahmad Versus the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others”, as in all the appeals common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned



notification dated 02.07.2020, whereby the appellant was promoted to the post of PMS Officer (BPS-17) with immediate effect instead of 20.02.2020 and against the appellate order dated 01.09.2020, whereby departmental appeal of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned appellate order dated 01.09.2020 might be set aside and the original impugned notification dated 02.07.2020 might be modified/rectified to the extent of ante-dating the promotion of the appellant as PMS Officer (BPS-17) w.e.f. 20.02.2020, with all back benefits including seniority, alongwith any other remedy which the Tribunal deemed appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Additional Assistant Commissioner (BPS-17) at Jamrud, District Khyber. While serving as Tehsildar (BPS-16) in the respondent department, a panel of Tehsildars for consideration to the next higher scale i.e. Provincial Management Service (BPS-17) was prepared wherein his name appeared at serial No.45. The meeting of the Provincial Selection Board (PSB) was scheduled on 20.02.2020 but it was postponed due to a judgment of Hon'ble Peshawar High Court through which the Act of Provincial Assembly enhancing the retirement to 63 years was set aside. Since the appellant apprehended that nominees of the Khyber Pakhtunkhwa Public Service Commission in the meanwhile would be appointed, therefore, a request was made by him to the Secretary Establishment Department to re-schedule the PSB. but the same could not be held. Feeling aggrieved, the appellant, along with his colleagues, knocked the door of the Hon'ble Peshawar High Court in Writ Petition No. 1861-P/2020. During pendency of the said writ



petition, the respondents appointed the private respondents as PMS Officers (BPS-17) vide notification dated 29.05.2020. The appellant and his colleagues filed two Civil Miscellaneous applications in the writ petition, one for suspension of operation of the notification dated 29.05.2020 and the other for impleadment. During pendency of the said writ petition, the respondents promoted the appellant and his colleagues to the post of PMS Officer (BPS-17) on regular basis vide notification dated 02.07.2020 with immediate effect. After that notification was issued, the writ petition was withdrawn by the appellant with the permission to approach the proper forum vide order and judgment dated 28.07.2020. The appellant filed departmental appeal against the notification dated 02.07.2020 but the same was regretted on 01.09.2020; hence the instant service appeal.

4. Respondents were put on notice. Official respondents submitted written replies/comments on the appeal while private respondents No. 4 to 126 were served but they did not appear nor their reply/comments were received, hence placed ex-parte vide order dated 16.12.2021. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned notification dated 02.07.2020, whereby the appellant was promoted to the post of PMS Officer with immediate effect instead of 20.02.2020, was against the law, facts and norms of natural justice. He was discriminated by the respondents by not promoting him from the date when his promotion was due i.e. w.e.f 20.02.2020. He further argued that the




respondents violated the provisions of Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-7 of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the meeting of PSB was scheduled on 20.02.2020 but was postponed due to judgment of Peshawar High Court Peshawar dated 19.02.2020 in Writ Petition No. 5673-P/2019. Resultantly, a considerable number of officers included in the panel of PSB got retired as they attained the age of superannuation i.e. 60 years, in the wake of the said judgment. Accordingly, the Provincial Government decided the retirement cases as per circular letter dated: 16.03.2020 and fresh working papers had therefore, to be prepared. The learned DDA contended that working out the new panels and the corresponding quotas of promotion due to retirements turned out to be a voluminous task. He informed that the PSB could not be scheduled again till 09.06.2020 as the Government of Khyber Pakhtunkhwa declared emergency in the wake of escalation in the transmission of COVID-19 and ordered closure of all departments except of few essential ones and hence the departments, being closed, could not prepare the working papers. The learned DDA further informed that the process of recruitment of PMS Officer (BS-17) through Khyber Pakhtunkhwa Public Service Commission was initiated on 20.10.2017 with the placement of requisition before the Commission and after completion of the whole recruitment process, Establishment Department issued their appointment notification dated



29.05.2020. He further argued that the appellant could not draw parallel between initial recruitment of the PMS officers and their promotion as both were two different phenomena. He requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it transpires that the appellant is an employee of the Board of Revenue and currently serving as Additional Assistant Commissioner (BS-17). Prior to his promotion, he was Tehsildar (BS-16) and at serial No. 49 of the seniority list. A meeting of Provincial Selection Board was scheduled to be held on 20.02.2020 for which a working paper was prepared for promotion of Tehsildars (BS-16) to the posts of Provincial Management Service (BS-17), which were 53 in number, and the name of the appellant was included in the panel for consideration of the Board. The Provincial Government, through an Act of the Provincial Assembly, had enhanced the age of superannuation of Civil Servants from 60 to 63, against which a writ petition was pending before the Honorable Peshawar High Court, and the same was decided on 19.02.2020 and the age of superannuation was again reverted to 60 years. The argument presented by the learned Deputy District Attorney and the respondents in their reply holds ground that as an aftermath of that judgment, a considerable number of officers got retired after attaining the age of superannuation i.e 60 years, resulting in creation of vacancies which needed to be filled, either through initial recruitment or by promotion. In both the cases, fresh calculations were required and then fresh working papers had to be prepared, as the old ones had become redundant. Early months of the year 2020 was the period when the world was faced with



the pandemic of Covid-19. In view of that most of the officers were either fully closed or were working with the minimum level of staff.


8. In the wake of the above mentioned two factors, meeting of PSB was postponed and it was later held in the month of June 2020. During that period, a batch of PMS Officers, whose case was under process in the Khyber Pakhtunkhwa Public Service Commission since 2017, was recommended on 28.02.2020 and notified by the provincial government on 29.05.2020. As far as the promotion of appellant is concerned, in the light of recommendation of the PSB in its meeting held on 09.06.2020, the notification was issued on 02.07.2020. Through his prayer in the instant service appeal the appellant has prayed to modify his promotion order dated 02.07.2020 and make it effective from the date when meeting of PSB was scheduled to be held for the first time i.e. 20.02.2020. Now a question here is that how can he be given promotion from a date on which no meeting of PSB was held? Moreover, the meeting of PSB scheduled for 20.02.2020 was postponed as a result of judgment of the Honorable Peshawar High Court where enhancement of age of superannuation was set aside, and resultantly number of positions of different scales in the provincial government became vacant, and those vacancies had also to be addressed by the forum of PSB for which revision in the working papers was required. Moreover, there is no dispute on the fact that the pandemic of COVID-19 disrupted the normal routine of life in its early months in the entire country. The provincial government was not an exception and no meeting of PSB could be convened till June 2020, and in that meeting, case of the appellant was considered and he was recommended for promotion. One must




not forget that till that time, when the order of promotion of the appellant was issued, his writ petition was still pending before the Honorable Peshawar High Court for the sake of promotion, which was withdrawn by him vide the judgment dated 28.07.2020. It is worth to note that the PSB still considered his case of promotion and did not raise any observation regarding the case being subjudice before the court of law.

9. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 08th day of January, 2024.*


(FAREEHA PAUL)
Member (E)


(SALIM-UD-DIN)
Member (J)

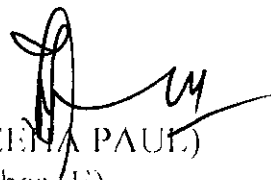
FazleSubhan, P.S


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08th Jan, 2024 01. Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 08th day of January, 2024.*


(FARREENA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazal Subhan PS