

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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**E.P No. 238/2022 in S.A No. 946/2018**

Asad Ullah Khan.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa & Others.....Respondents

**IMPLEMENTATION REPORT ON BEHALF OF THE RESPONDENTS**

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Deponent

(2)

**REPORT ON IMPLEMENTATION OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
JUDGMENT DATED 27.07.2021**

Khyber Pakhtunkhwa  
Service Tribunal

**EXECUTION PETITION NO. 238/2022  
IN SERVICE APPEAL NO. 946/2018**

Diary No. 10644

Dated 18-1-2024

1) The Khyber Pakhtunkhwa Service Tribunal, Peshawar passed the following in Service Appeal No. 946/2018 on 27.07.2021 (**Annex-I**):-

*"Henceforth, the reason of pendency of inquiry, it was attributed to the appellant in deferment of his promotion on 28.12.2016, has now vanished. As cumulative effect of the said discussion, **the appellant is held entitled for proforma promotion from 10.05.2016** when his name reflected in the working paper for the first time came under consideration before PSB necessitating its actualization of his proforma promotion under due course. This Appeal stands disposed of in the given terms with direction to the respondents to issue necessary corrigendum of the notification dated 21.01.2021 accordingly".*

2) The Khyber Pakhtunkhwa Service Tribunal was already apprized about the view point of the Government of Khyber Pakhtunkhwa through para-wise comments submitted in the titled service appeal that the case of the Appellant for promotion from PMS BS-17 to PMS BS-18 was discussed in the following meetings of Provincial Selection Board, but the same was not considered: -

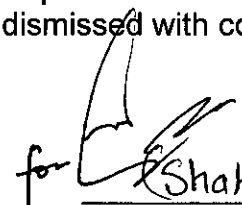
SR#	DATE OF PSB MEETINGS	DECISION OF PSB
1.	10.05.2016	PSB deferred his promotion as he was not undergone mandatory training. The name was placed between the names of Mr. Abdul Hameed Khan and Mr. Javed Ali.
2.	29.06.2016	
3.	27.07.2016	
4.	29.08.2016	
5.	28.12.2016	His name was at Sr. No. 12 between Mr. Abdul Hameed Khan and Mr. Javed Ali and the Board was informed that he <u>has now undergone mandatory training</u> , however an inquiry is pending against him, therefore, PSB deferred his promotion due to pendency of inquiry.  <b>Note: His colleagues i.e Mr. Abdul Hameed Khan and Mr. Javed Ali were recommended for promotion and their promotion Notification issued on 13.01.2017.</b>
6.	30.1.2017	PSB in its meetings deferred his promotion due to pendency of an inquiry against him regarding embezzlement in payment of mitigation package amounting to Rs. 43.44 million to the flood affected land/crop owners of district Malakand.
7.	19.05.2017	
8.	08.11.2017	
9.	15.05.2018	PSB deferred his promotion due to pendency of an inquiry against him and also a Show cause notice was issued to him in an embezzlement case.
10.	17.09.2018	
11.	26.12.2018	PSB was informed that a penalty of " <b>dismissal from services</b> " was imposed upon the officer and Peshawar High Court, Peshawar vide Order dated 11.04.2018 dismissed the Petition of officer and directed to act up as per law, therefore, Law Department was asked for opinion, which was awaited. However, PER of the officer for the <b>year 2018</b> is also not available.  PSB deferred his promotion.
12.	19.04.2019	
13.	17.05.2019	
14.	23.09.2019	

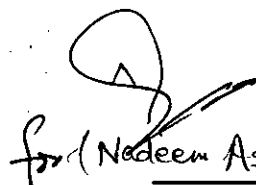
15.	09.06.2020	PSB was informed that he was appeared for personal hearing before Secretary, Administration Department, but the case is still under processed and not yet concluded.  PSB deferred his promotion.
16.	30.12.2020	PSB recommended him for promotion to BS-18, on regular basis, with one year probation period.

3) Establishment Department, being aggrieved to the above judgment dated 27.07.2021, filed CPLA before the Supreme Court of Pakistan against the said judgment.

4) However, the case for proforma promotion of the Appellant was also placed before the Provincial Selection Board in its meeting held on 18.11.2022 and the Board decided to recommend granting of proforma promotion to Mr. Asadullah Khan (PMS) to BS-18 w.e.f 13.01.2017, when his erstwhile juniors were promoted to BS-18, subject to final decision of the CPLA pending in the Supreme Court of Pakistan. Consequently, Establishment Department issued necessary notification on 12.01.2023 (Copy enclosed).

5) Since, compliance of the Khyber Pakhtunkhwa Service Tribunal Judgment dated 27.07.2021 has already been made, therefore, it is humbly requested to let the Supreme Court of Pakistan decide the case and the Execution Petition in hand may be dismissed with cost.

for  (Shahidullah)  
**SECRETARY ESTABLISHMENT**  
**KHYBER PAKHTUNKHWA**  
**(RESPONDENT No. 1)**

for  (Nadeem Aslam Chaudry)  
**CHIEF SECRETARY**  
**KHYBER PAKHTUNKHWA**  
**(RESPONDENT NO. 2)**

**E.P NO.238/22 in S.A No. 946/2018**

Mr. Asad Ullah Khan.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa & Others.....Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**AFFIDAVIT**

I Sultan Shah Superintendent (Litigation) Establishment Department do hereby solemnly declare that contents of Implementation Report are correct to the best of my knowledge and record and nothing has been concealed from this Honourable Tribunal.

**Deponent**



(Sultan Shah)


**Superintendent (Lit)  
E & A Department  
CNIC.17301-1286739-5  
Mobile No. 0333-9391493**


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**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

**AUTHORITY LETTER**

Mr. Sultan Shah, Superintendent Litigation Section-I, Establishment Department, Government of Khyber Pakhtunkhwa is hereby authorized to submit Implementation Report before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in connection with E.P No. 238/2022 in Service Appeal No. 946/2018 titled Asad Ullah Versus Govt. of Khyber Pakhtunkhwa & others, on behalf of Respondents.

for   
(**SHAHIDULLAH**)  
Secretary to Govt. of Khyber Pakhtunkhwa  
*Establishment Department*  
(Respondent No. 03)

for   
(**NADEEM ASLAM CHAUDRY**)  
*Chief Secretary*  
Govt. of Khyber Pakhtunkhwa  
(Respondent No. 02)

(6) (5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 946/2018

Date of Institution ... 31.07.2018

Date of Decision ... 27.07.2021



Asad Ullah Khan, Section Officer Home Department, Civil Secretariat, Peshawar.  
..... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Secretary Establishment  
Department, Civil Secretariat, Peshawar and two others.

..... (Respondents)

Present:

MR. AMJAD ALI,  
Advocate

--- For Appellant.

MUHAMMAD ADEEL BUTT,  
Additional Advocate General

--- For respondents.

AHMAD SULTAN TAREEN  
ROZINA REHMAN

--- CHAIRMAN  
--- MEMBER (Judicial)

JUDGEMENT

AHMAD SULTAN TAREEN, CHAIRMAN: The appellant named above

invoked the jurisdiction of this Tribunal through service appeal described above in  
the heading challenging thereby the recommendation of Provincial Selection Board  
(PSB) as to deferment of his promotion and purporting the same being against the  
facts and law on the subject.

02. The facts precisely include that appellant was serving as Section Officer (BS-  
17). The PSB met on 10.05.2016 and as result of this meeting, the promotion case  
of the appellant to the post of BS-18 was deferred due to lack of mandatory training.

The respondents offered 14 weeks training for promotion to BS-18 to the appellant  
which he successfully completed vide letter dated 06.12.2016. On 28.12.2016,  
meeting of PSB was held but again promotion of the appellant was deferred due to

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AHMAD SULTAN TAREEN  
CHAIRMAN  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar

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pending inquiry against him. Feeling aggrieved, he filed departmental appeal on 16.01.2017 which was rejected vide order dated 18.07.2018. As a matter of next remedy, present service appeal was preferred and admitted for full hearing with notice to the respondents. They on attending the proceedings have filed written reply/comments refuting the claim of appellant for the relief as sought by him in the memorandum of appeal.

03. We have heard the arguments and perused the record.

04. It was argued on behalf of the appellant that the facts and grounds brought to fore in the memorandum of appeal were sufficient for setting aside the recommendation of P.S.B as to deferment of appellant's promotion but in view of the changed circumstances, no need is left to argue the appeal on its facts and ground; when the appellant has been promoted during pendency of this appeal. The learned counsel for the appellant extended his arguments for amendment of the appeal. He argued that this Tribunal is competent to allow the amendment in appeal and in case of the particular amendment as sought for this appeal, it will shorten the course of litigation. However, learned A.A.G opposed the arguments of the appellant's counsel with submissions that the appeal has become infructuous when the main relief as sought has been granted to the appellant out of court. It was further submitted that the appellant is not entitled to press for proforma promotion by seeking amendment in present appeal.

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JUDGE  
SERVICES TRIBUNAL  
PUNJAB

05. In view of the facts noted herein above, it is an undeniable fact that name of the appellant was included in the working paper for promotion from BS-17 to BS-18 for consideration of PSB in its meeting held on 10.05.2016. His name is listed at serial No.12 of the table containing the recommendation of the PSB as part of the minutes of said meeting of PSB on the subject of promotion of PMS (BS-17) Officer to BS-18. Copy of the said minutes is available on file. According to

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recommendation of PSB against name of the appellant at serial No. 12 in the said table. It is there that the Board in its meeting held on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he had not undergone training mandatory for promotion. PSB further noted that he has now undergone mandatory training for promotion, however, an enquiry against him is pending. PSB recommended to defer his promotion. The appellant became aggrieved from the said recommendation and preferred departmental appeal obviously in vain and thereafter, he is here through service appeal at hand. During the course of pendency of this appeal, he submitted a civil miscellaneous application which was put up to the court with relevant appeal on 08.03.2021, as yet awaiting the formal order as to its fate. We have noticed that a copy of notification dated 21.01.2021 has been annexed with the said application as annexure-K at page 23. Accordingly, the appellant on recommendations of the PSB in its meeting held on 3.12.2020 has been promoted among others on regular basis with immediate effect. Certainly, this is a new event having taken place during pendency of this appeal, which by its impact has changed the course of Appellant impelling him to seek amendment in the memorandum of appeal. Therefore, it has become expedient to consider this changed situation for its fitness to application of molding relief principal to prevent the likelihood of multiplicity of proceedings. It The fitness for application of said principle dependent upon existing of certain prerequisites. Accordingly, if there is a subsequent occurrence of an event, which has the potential of impacting the relief sought by the parties to the suit, the court can take cognizant of this charge to mold the relief in the interest of justice even though it is not strictly in consonance with the relief sought by the parties. This approach adopted by the court is known as "molding relief". This principle is applicable in civil matters and if we go back to history of its application, the mother judgment on its application is in the case of *Mst. Amina Begum Vs. Meher Ghulam Dastagir* (PLD 1978 SC

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 EXAMINER  
 Sh. M. T. Pakhtoon  
 Service Tribunal  
 Peshawar

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220). Reliance upon the said judgment in the precedent law is quite constant, where the application of moulding of relief in view of changed circumstances is deemed necessary by the superior courts. However, application of this principle is subject to certain conditions as deducible from the jurisprudence having so far developed under the precedent law relating to the said principle and may be enumerated as follow:-

1. That the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted.
2. That taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and
3. That such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

06. Testing the case of the appellant on touchstone of the condition necessary for application of moulding relief, the relief as sought by the appellant originally in his present appeal has, by reason of his promotion through notification dated 21.01.2021, has become infructuous. On the other hand, the Appellant is still aggrieved believing that he should have been granted promotion from the date when his case was submitted to PSB for the first time and deferred.

07. Taking notice of Appellant's promotion by the said notification dated 21.01.2021 coupled with his grievance, we are constrained to observe that this subsequent event if taken in to account for the sake of justice, a question is made out whether the appellant was entitled for promotion from the date when his case for the first time was deferred by PSB or from the immediate effect as given to him vide notification dated 21.01.2021. If this question is left undetermined and the appellant appeal at hand is dismissed having become infructuous, it will result into

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 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

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multiplicity of proceedings including that the appellant has to file departmental appeal for seeking proforma promotion from the date of his first deferment, and if he fails to get redressal of his prayer in departmental appeal; he will have to file the service appeal which consequently will engage the department for written reply/comments and then it will engage this Tribunal to decide the said appeal ultimately by determination of the same question having no come up here before us. So, we are of the considered opinion that if the stated question is taken for determination here in this appeal, it will necessarily result in shortening of the litigation and enabling complete justice being done to the parties. Moreover, the respondents are also not being taken by the surprise for determination of the said question when the appellant has already moved civil miscellaneous application for amendment of the service appeal in pursuance to the subsequent event of promotion notification dated 21.01.2021 of the appellant. Again it will result in to multiplicity of the proceedings if we go after disposal of the said application asking the respondents to file their reply, hearing the arguments then passing the order certainly at risk of challenge by either party feeling aggrieved. Therefore, we deem it in interest of the parties and to avoid multiplicity of proceedings to restrain ourselves from disposal of the application for amendments of appeal albeit it will remain part of the main file; and we will prefer to take up the question formulated above for determination as to justifiable date of promotion of the appellant.

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08. It is an undeniable fact that the concerned department extended the benefit to the appellant by including his name firstly in the working paper presented before PSB on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 but his promotion was deferred mainly for the reason that he had not undergone training mandatory for promotion. However, the appellant was found fit for promotion in meeting of PSB held on 28.12.2016 after his having undergone the training which previously resulted in to deferment of his promotion but at this time, his promotion was again

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 EXAMINER  
 K. D. P. P. P.  
 Service Tribunal  
 Peshawar

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deferred due to pendency of an enquiry against him. The given account of deferment of appellant's promotion successively leads to an inference that the same in his case was owing to the circumstances beyond his control. However, when the circumstances changed, he now has been promoted to the higher post with immediate effect on 21.01.2021. It is a matter of law in light of second explanation to Rule-17 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules 1989 that the supersession of a senior person strips him off from the right of his seniority over a junior person promoted in consequence of supersession of the former notwithstanding the effect that he i.e. former was also subsequently promoted but there is a rider in the same explanation that the junior person have not been deem to have superseded a senior person, if the case of a senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributed to his fault or demerit. When juxtaposing case of the appellant to the said rider, the nomination of a government servant for mandatory training for promotion is a matter of discretion of the competent authority and a civil servant cannot compel the department for his nomination. In this eventuality, the reason of absence of the mandatory training is not attributable to the civil servant. However, there can be another eventuality that a civil servant is nominated for training but he fails to avail the chance; he in case of such eventuality is at risk of attribution of lacking of the necessary training for promotion and if in the matter of such eventuality, the promotion of a civil servant is deferred; he may not be able to claim proforma promotion. Anyhow, the case of appellant before us is one attracting the first eventuality that he was not nominated for training. Therefore, his deferment on such count is not workable to deprive him from the right of seniority at his right place with those colleagues who got promotion when the promotion of the appellant was for the first time deferred for want of his mandatory training. As far as the deferment of appellant promotion,

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 Service Tribunal  
 Peshawar



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linked with enquiry pending against him, is concerned; his exoneration from the same obviously paved the way for his promotion made vide notification dated 21.01.2021. Henceforth, the reason of pendency of enquiry, if was attributable to the appellant in deferment of his promotion on 28.12.2016., has now vanished. As cumulative effect of the said discussion, the appellant is held entitled for proforma promotion from 10.05.2016 when his name reflected in the working paper for the first time came under consideration before PSB necessitating its actualization of his proforma promotion under due course. This appeal stands disposed of in the given terms with direction to the respondents to issue necessary corrigendum of the notification dated 21.01.2021 accordingly. There is no order as to costs. File be consigned to the record room.

ANNOUNCED  
27.07.2021

*[Signature]*  
(ROZINA REHMAN)  
MEMBER(J)

*[Signature]*  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

*[Signature]*  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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