

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

**Service Appeal No. 1129/2022**

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

Raj Muhammad Khan S/O Taj Muhammad Khan, Retired Principal BS-19, Elementary & Secondary Education Department, resident of ASC Colony, House No. 93/1 Block 'A', Nowshera Cantt. Tehsil and District Nowshera. ....(Appellant)

**VERSUS**

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.....(Respondents)

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**Present:-**

 INAYAT ULLAH KHAN TAREEN,  
Advocate --- For Appellant

MUHAMMAD JAN,  
District Attorney --- For respondents.  
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Date of Institution.....07.07.2022

Date of Hearing.....12.12.2023


Date of Decision..... 12.12.2023

**CONSOLIDATED JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act, 1974 with the payer copies as under;

*“That on acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his*

*name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30.12.2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion for which he was entitled under the facts and law. So, a befitting direction may graciously be issued to the respondents to include the name of appellant in the seniority list dated 31.12.2021 and to grant notional promotion to his from 30.12.2020 with back and retiral benefits. Any other relief as deemed fit in favor of the appellant may also be granted to meet with the ends of justice.”*



02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeals bearing No. 1130/2022 titled “Sikandar Sher versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others”, service appeal bearing No. 1131/2022 titled “Muhammad Iqbal versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others”, service appeal bearing No. 1132/2022 titled “Muhammad Saleem versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others” & service appeal bearing No. 1133/2022 titled “Riasat Khan versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others as common question of law and facts are involved therein.

03. Brief facts of the case are that the appellant joined service in the respondent Department as Subject Specialist (BS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 17.02.1992 and got step by step promotion. The appellant while working against the post of Principals BS-19 retired from service on the attaining the age of Superannuation on 12.01.2022; that a final seniority list of Principal (BS-19) was issued vide Notification dated 08.12.2020 whereby the appellant was placed at serial No. 11; that the appellant was eligible for promotion to BS-20 and his name was included in the working paper placed before the PSB in its meeting held on 30.12.2020 but the PSB recommended only five officers from promotion and the remaining 10 posts were left to pending cases in the Supreme Court of Pakistan; that some juniors to the appellants in the seniority list of BS-19 Teaching Cadre as stood on 31.12.2019 challenged the said senior list through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 in the Khyber Pakhtunkhwa Service Tribunal and promotion on the basis of impugned seniority list of BS-20 were stayed, and the appellants themselves impleaded as private respondents in the said appeals which were dismissed on 09.11.2021; that the appellant was retired from service on 12.01.2022 and a meeting of PSB was held on 02.12.2021 but no working papers in respect of the appellants for consideration of PSB was submitted by respondent No. 2; that the appellants submitted application dated 27.12.2021 for promotion by circulation from BS-19 to BS-20 which was received in the office of respondent No. 1 vide daily diary No. 6885 dated 28.12.2021. Respondent No. 2 addressed a letter dated 23.12.2021 alongwith Working Paper to Section Officer (PSB) of the Establishment Department for promotion of appellants from BS-19 to BS-20

on regular basis which was returned to respondent No. 2 vide letter dated 12.01.2022 and the same was further transmitted to respondent No. 4 vide letter dated 12.01.2022; that when the working paper was again sent to respondent No. 3 in light of department's letter dated 12.01.2022 the appellant by then stood retired from service the name of the appellants from final seniority list as stood on 31.12.2021 was removed although it was there in the tentative seniority list. Feeling aggrieved, the appellant filed departmental appeal on 16.03.2022 before respondent No. 1 seeking notional promotion from BS-19 to BS-20, which was not responded within the statutory period, hence preferred the instant service appeal on 07.07.2022.

04. 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.

05. Learned counsel for the appellant contended that the name of the appellant is at serial No. 11 in the final seniority list of officers of Teaching Cadre in BS-19 as it stood on 31.12.2019. There were fifteen posts in BS-20 as officially indicated in the working paper sent for promotion of the officers including the name of the appellants as per their seniority positions; that the said working paper was taken up by PSB in its meeting held on 30.12.2020, but unreasonably refrained from making recommendation of promotion on ten posts out of 15 and the appellants are in the range for promotion on the basis of their seniority-cum-fitness were deprived from promotion to BS-20; that the appellants having entered within the zone of consideration for promotion from BS-19 to BS-20 on the basis of their seniority-cum-fitness, stood imbued with

reasonable expectation for such promotion since 30.12.2020 but their expectation remained fruitless due to acts and omissions of the respondents having no justification under the facts and law. That phenomenon of notional promotion gets nourishment from the principles of natural justice when a civil servant having rendered service is retired without fulfillment of his reasonable expectation for career progression due to sheer ignorance of his eligibility and seniority-cum-fitness by the departmental authorities, particularly when vacancies do exist for consideration of his promotion by PSB; that the case of the appellants fully attracts the principles of natural justice to grant him notional promotion after retirement when they left no stone unturned in their struggle during service for the right of their consideration for actual promotion before attaining the age of superannuation. Learned counsel for the appellant relied on 2020 PLC (C.S) 1226, 2021 SCMR 1226, 2022 PLC (C.S) 104, 2022 SCMR 1765 & 2023 PLC (C.S).

06. Learned District Attorney on the other hand contended that in the PSB meeting dated 30.12.2020 only top five in the panel were recommended for promotion from seniority list of BS-19 because of non-availability of further vacant posts; that there were no posts available for promotion during his service and likewise him many people retired and the other got promotion on availability of posts. The Government has its policies and make changes in it from time to time through legislations in which the respondents cannot interfere; that the amendment in superannuation period was the aim of Government and at that time it was legal for the respondent not to consider promotion due occupation of the post by the incumbents whose superannuation age was enhanced from 60 to 63 years through an act of the Provincial Assembly.

07. Perusal of record reveals that the appellant belonged to the Teaching Cadre in the respondent department. In the seniority list of Principal (BS-19) issued vide Notification dated 08.12.2020 he stood at serial No. 11 of the seniority list. A working paper for promotion of officers of BS-19 to BS-20 was placed before the PSB in its meeting held on 30.12.2020. In the working paper 15 number of vacant seats were shown to be filled on promotion but the PSB recommended only 05 officers for promotion and 10 vacancies were left due to the reason that conditional retirement of officers have been issued in wake of dispute about superannuation age being 60 to 63 years in the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019 which was set aside by the Peshawar High Court, Peshawar and the case was pending adjudication in the Supreme Court of Pakistan. Record also transpires that some junior to the appellant in the seniority list of (BS-19) Teaching Cadre as stood on 31.12.2019 had challenged the seniority list in the Khyber Pakhtunkhwa Service Tribunal, Peshawar through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 and got stay order against promotion to BS-20. However, the aforementioned 05 service appeals were dismissed on 19.11.2021. A meeting of PSB was held on 02.12.2021 but the respondent department did not include the name of the appellant in the working paper for consideration of the PSB. Vide letter dated 23.12.2021 respondent No. 2 submitted working paper to the Establishment department for promotion of the appellants from BS-19 to BS-20 on regular basis which was returned on 12.01.2022 with certain observations. When the working paper was again submitted, after addressing the observations the appellant by then stood retired from service on 12.01.2022. It is also evident from record

that the appellant submitted representation to the respondent for notional promotion but no response what-so-ever given by the respondents.

08. The appellant was in the promotion zone since 30.12.2020 and was eligible for promotion to BS-20 but he remained deprived of his promotion for no fault on his part. Despite availability of the vacancies and eligibility of the appellant his case for promotion to BS-20 remained under correspondence between the respondents from 13.12.2020 to 12.01.2022 (more than 01 years). The case of the appellants is attracted by rule 17 of the Fundamental Rules which is reproduced as under;

**Fundamental Rules:-** *if a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into filed for his rescue ---If he lost his promotion on account of any administrative oversight or delay in the meeting of Departmental Promotion Committee (DPC) or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits--- Unjustified delay in proforma promotion cases triggers severe hardship and difficulty for the civil servants and also creates multiplicity of litigation---Competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to*


*them in terms of applicable rules of service without protracted litigation or Court's intervention.*

We observe that the appellant lost his promotion despite having fitness, eligibility and seniority due to no fault on his part, therefore, he has legitimate expectation for proforma promotion with consequential benefits as enunciated in the rule quoted above.

09. In view of above discussion, the instant appeal as well as connected service appeals are remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12<sup>th</sup> day of December, 2023.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)



ORDER

12.12.2023

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 (08) pages, the instant appeal is remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellant from BS-19 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 12<sup>th</sup> day of December, 2023.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)