

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 12100/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER(E)

Dr. Abdullah S/o Luqman Shah Ex-(PMO/SMO) Hayatabad Medical
Complex, Peshawar.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Health, Government of Khyber Pakhtunkhwa, Attached Department Complex, Khyber Road, Peshawar.
3. Director General Health Services, Khyber Road, Peshawar.
4. Medical Director, Hayatabad Medical Complex, Peshawar.

.... (Respondents)

Mr. Nasir Mehmood
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....15.10.2020
Date of Hearing.....12.12.2023
Date of Decision.....12.12.2023

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant appeal set aside notification dated 21.09.2020 passed by the respondent NO. 2 whereby appeal of the appellant regarding actualization of promotion to BPS-19 w.e.f 13.05.2016 i.e from the date of promotion to BPS-19 with all back benefits was filed/regretted.”

2. Brief facts of the case are that appellant was appointed as Medical Officer (BPS-17) through Khyber Pakhtunkhwa Public Service Commission vide order dated 02.08.1987 on adhoc basis and later on his services were regularized on 06.12.1987. That he was promoted to the post of Senior Medical Officer (BPS-18) on 21.09.1998 and was posted at LRH Peshawar. Afterwards, he was transferred to Hayatabad Medical Complex in the year 1999. That vide Notification dated 13.05.2019, he was promoted to BPS-19 as Principal Medical Officer and was adjusted/posted at District Headquarter Hospital Charsadda but the Medical Director, HMC (respondent No.4) had not relieved the appellant to join his new place of posting. That in the year 2017-18, so many doctors were adjusted in HMC but the appellant was not adjusted there. That again, when the appellant's case was going to be put before the PSB as PMO (BPS-19), the respondent No.4 again requested for retention of the appellant against the vacant post but the Secretary Health (respondent No.2) had not considered the request and again posted him in DHQ Hospital Charsadda after promotion. That after the transfer of appellant to DHQ Charsadda, the Secretary Health vide order dated 13.05.2019, transferred one Dr. Mukhlis Raza SMO HMC to DHQ Hospital Malakand but later on he was retained as PMO HMC while the said relief was not extended to the appellant. Feeling aggrieved, the appellant filed departmental appeal dated 09.03.2020 for actualization of his promotion, during the pendency of which, he filed writ petition No.2047/2020 before the Peshawar High Court and the Peshawar High Court vide order dated 21.04.2020, directed the respondent No.2 to decide the departmental appeal of the appellant within 30 days. Therefore, the respondent No.2 vide order dated 21.09.2020 regretted the same, hence, the instant service appeal.



3. 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 and learned District Attorney and have gone through the record with their valuable assistance.

4. Leaned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that Medical Director, HMC requested the Secretary Health Department Khyber Pakhtunkhwa for actualization of the promotion of the appellant through letter dated 10.09.2020 due to the reason that the Gastroenterology department was in dire need of the appellant services, therefore, he was not allowed to join his place of posting. He submitted that issuance of LPC by the relieving department was necessary to join new place of posting but appellant was not relieved by the Medical Director HMC, Peshawar, therefore, he cannot be punished for no fault of his own.

5. Conversely, learned District Attorney contended that appellant was treated in accordance with law and rules. He further contended that the appellant was promoted to the post of Principal Medical Officer (BPS-19) and was posted to DHQ Hospital Charsadda but he did not actualize his promotion and not reported over there. He further contended that appellant neither obey the order of the competent authority nor join duty at DHQ Hospital Charsadda after his promotion as PMO.

6. Perusal of record reveal that appellant was appointed as Medical Officer (BPS-17) upon recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 02/08/1987 and his services were regularized on 06/12/1987. Appellant was promoted as Senior Medial Officer (SMO) BPS-18

on 21/09/1998 and posted at Lady Reading Hospital, Peshawar who was

transferred to Hayatabad Medical Complex, Peshawar in year 1999 while serving there at HMC appellant was promoted as Principle Medical Officer BPS-19 vide order dated 13/05/2016. Medical Director HMC, Peshawar respondent No.4 requested respondent No.2 vide letter 07/05/2016 before notification of promotion of appellant, for adjusting and retaining appellant against vacant post of PMO BPS-19 at HMC. Appellant after promotion was posted at DHQ Charsadda as Principal Medical Officer vide order dated 13/05/2016 but respondent No.4 has not relieved appellant and again through another letter dated 29/11/2017 requested for adjustment of appellant at HMC, Peshawar being experienced Gastroenterologist and due to work load of patients on the hospital, which was not honored by respondent No.2. Respondent No.2 during 2017-18 adjusted and retained so many doctors in HMC against the vacant posts but same relief was denied to appellant which is discrimination. Case of the appellant was again going to be put for promotion to the post of PMO BPS-19 in year 2018. Then respondent 1 to 4 again requested respondent No.2 for retention of the appellant at HMC, Peshawar against the vacant post of PMO Gastroenterology through letter dated 10/05/2018.

7. Appellant was again promoted as PMO BPS-19 and again posted at DHQ Charsadda vide order dated 30/11/2018 by ignoring request of respondent No.4 at about retention of appellant at HMC. Although respondent No.2 had not adjusted the appellant but adjusted/retained one Dr. Mukhlis Raza SMO HMC under transfer to DHQ Hospital Malakand as PMO which is discrimination with the appellant. Appellant submitted application to respondent No.2 for actualization of his promotion on 09/03/2020, which was pending undecided. Appellant filed writ petition bearing No.2047/2020 which was decided vide order dated 21/04/2020 with direction to respondent No.2 to



decide appellant appeal with 30 days. Respondent No.2 did not decided appellant's application for actualization of his promotion to BPS-19 and during this period appellant by reaching to the age of superannuation retired from service on 01/04/2020.

8. Appellant contended that he was not relieved by respondent No.4 due to which he had not actualized his promotion and it is not his fault. Therefore he could not be penalized for fault of others. In this respect it is observed that appellant was civil servant and being a civil servant there are certain liabilities, duties and maintaining of service discipline upon the appellant but he upon his transfer to DHQ Charsadda twice did not bother to went there even for a few days in order to actualize his promotion which indicate/show appellant attitude/behavior and seriousness towards his duties. Appellant had not even file any application to his high ups against respondent No.4 who had not relieved him from the duties as SMO at HMC, Peshawar. When for first time, after expiry of six months of promotion of the appellant was not actualized by the appellant and notification of promotion cease its effect as per policy. Respondent again consider appellant for promotion to BPS-19 and again he was promoted as PMC BPS-19 vide order dated 30/11/2018 but appellant again did not opted to join his new place of posting on promoted position i.e. PMO till his retirement i.e. 01/04/2020. Appellant himself opted not to avail and actualize his promotion to post of PMO BPS-19 during subsistence of service period, therefore, now appellant cannot claim it after his retirement as he was promoted twice to the post of PMO other than MTI. Now appellant by his own conduct estopped to claim benefits of the service, which was not actualize during his service substance period.

9. So far as the question of discrimination is concerned, it is sweet will of the authority to consider each and every civil servant request having regard of their

service record and circumstance. Appellant being a civil servant bound to obey the order of his high ups and must went to his place of posting DHQ Charsadda.

10. For what has been discussed, we are unison to dismiss the appeal being devoid of merit. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

26.09.2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 12.12.2023 before D.B. P.P given to parties.

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

*KaleemUllah

ORDER

12.12.2023 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney Mr. Safi Ullah, Focal Person for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to dismiss the appeal being devoid of merit. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.*

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah