

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.946/2019

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

Akhtar Hussain S/o Abdul Khaliq Khan R/o Regi Aftizai, Peshawar Ex-  
Look after Superintendent at Pakistan Forest Institute Peshawar.

.... (*Appellant*)

VERSUS

1. Government of K.P.K through Secretary Environment Peshawar.
2. Secretary to Govt of K.P.K, Establishment Department Civil Secretariat, Peshawar.
3. Director General, Pakistan Forest Institute Peshawar.

.... (*Respondents*)

Mr. Saifullah Khalil  
Advocate

.... For appellant

Mr. Muhammad Jan  
District Attorney

.... For respondents

-----  
Date of Institution..... 16.07.2019  
Date of Hearing..... 02.02.2024  
Date of Decision..... 02.02.2024

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 this service appeal both the impugned orders may very kindly be set-aside and the appellant may very kindly be ordered to be promoted to the post of Superintendent BPS-17 from Jan, 2015 along with all back benefits till 17.01.2019. (Date of his retirement).”**


2. Brief facts of the case as given in the memorandum of appeal are that appellant was appointed as Lower Division Clerk on 15.09.1998 and thereafter, the appellant was promoted to the post of Assistant on 25.01.2001.

The post of Assistant was upgraded from BPS-14 to BPS-16 vide order dated 28.09.2016. On 17.01.2019 the appellant filed writ petition No. 3982-P/2018 against the respondents to place his case for promotion before the DPC, which was accepted by the Hon'ble High Court Peshawar, vide order dated 11.12.2018. Upon the direction of court order promotion case of the appellant was put before the DPC who rejected the same vide order dated 15.05.2019 against which appellant filed departmental appeal on 30.05.2019 which was dismissed vide order dated 01.07.2019, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the appellant has a vested right to be promoted to the post of Superintendent BPS-17 from the year 2015 as the appellant is the senior most in the seniority list. That the appellant had already performed duty as Superintendent and also held entitled for the promotion of the said post. Lastly, he submitted that appellant was retired from service on 17.01.2019 as such he is entitled for promotion since 2015 till the retirement alongwith all back benefits.

5. Conversely, learned District Attorney contended that appellant had been treated in accordance with law and rules. He further contended that PFI was declared as attached department of Environment and on 09.01.2018 all the employees including the appellant were provincialized u/s 11-B of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2015. He further contended that due to devolution of PFI, all the appointments and promotion was become defunct to the extent of PFI, therefore, promotion case of the appellant could not be made. Appellant filed Writ petition which decided on 11.12.2018



wherein respondents were directed to place the promotion case of the appellant before DPC, if he otherwise deserved to be promoted. His case was placed before the DPC, wherein the committee considered his case and observed that all the employees of PFI including the appellant were on deputation to Khyber Pakhtunkhwa province u/s 10 of Civil Servants Act, 1973 as the appellant was retired from service as federal government employee on 17.01.2019 whereas service rules of PFI were notified on 16.04.2019, therefore, the DPC did not find him fit for promotion as Superintendent (BPS-17).

6. Perusal of record reveals that appellant was serving in respondent/department after his appointment as lower division clerk on 15.09.1998 who was firstly promoted as Assistant BPS-14 on 25.01.2001 whose post was upgraded in BPS-16 vide order dated 13.10.2016. Appellant was given look after charge of the post of superintendent BPS-17 on 06.4.2017. Appellant before his retirement on 17.01.2019 filed writ petition bearing No.3982-P/2018 for placing his case for promotion before DPC which was accepted vide order dated 11.12.2018 upon direction of High Court, case of the appellant was placed before DPC on 15.05.2019 which was rejected and appellant was not consider for promotion on the ground all employees of PFI were on deputation to Khyber Pakhutnkhwa Province under Section 10 of Civil servant Act, 1973. The appellant/official retired on 17.01.2019 on superannuation whereas service rules of PFI were notified on 16.04.2019 and these rules are not applicable to employees who retired before notification of the service rules of PFI.


7. It is admitted position that respondent/department devolved upon the province of Khyber Pakhtunkhwa, in the year 2011, but on account of none framing of service rules by the Province, the appellant case for promotion was not considered. However, it is admitted fact that before framing of Provincial



Rules, the services of the appellant was governed by the previous rules framed by the Federal Government. Under such circumstance, when the right of promotion has accrued to the appellant, when he was in service and that time, the rules framed by the Federal Government were in field. He applied for his promotion in terms of the rules applicable to him at that time, but with no response, despite directions of the High Court and stood retired from service on 17.01.2019.

8. The record reveals that appellant had already attained the status of a permanent employee, absorbed employee, on account of implication of law before order of Worthy Peshawar High Court, Peshawar dated 11.12.2018 and the Rules in vogue at the occasion of judgment of Worthy Peshawar High Court, Peshawar but the Departmental Promotion Committee did not consider the appellant's case in view of the same rules, which were the proper rules on the subject. Therefore, the appeal in hand is accepted by setting aside the impugned decision of the Departmental Promotion Committee (DPC) dated 27.05.2019 and remand the case to the DPC with direction to consider the case of notional promotion of the appellant under rules in vogue at the occasion before his retirement accordingly. Costs shall follow the event. Consign.


9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2<sup>nd</sup> day of February, 2024.*


  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

14.12.2023 1. Clerk of counsel for the appellant present. Mr. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Lawyers are on general strike, therefore, case is adjourned. To come for arguments on 02.02.2024 before D.B. P.P given to the parties. Shakil

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)

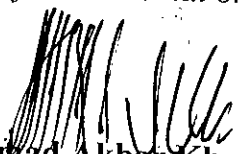
SCANNED  
BY  
Peshawar  
\*KaleemUllah


**ORDER**

02.02. 2024 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present..

2. Vide our detailed judgement of today placed on file, by setting aside the impugned decision of the Departmental Promotion Committee (DPC) dated 27.05.2019 and remand the case to the DPC with direction to consider the case of notional promotion of the appellant under rules in vogue at the occasion before his retirement accordingly. 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 2<sup>nd</sup> day of February, 2024.*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)