

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.  
PESHAWAR

Service Appeal No. 3192/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)  
MISS FAREEHA PAUL ... MEMBER(E)

Jamil-ur-Rehman, Ex-PIIC Technologist (BPS-17) (Rtd) O/O the District Health Officer, Kohat. .... (Appellant)

Versus

1. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
5. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
6. The District Health Officer, Kohat. .... (Respondents)

Mr. Noor Muhammad Khattak,  
Advocate ... For appellant

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

Date of Institution..... 15.04.2020  
Date of Hearing..... 14.02.2024  
Date of Decision..... 14.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of proforma promotion to the post of PIIC Technologist (MP) (BPS-17) w.e.f. 11.05.2012 instead of 21.07.2017 and against the appellate order dated 16.02.2020, communicated on 27.02.2020, whereby departmental appeal dated 06.02.2018 of the appellant was regretted. It has been prayed that on acceptance of the appeal, the order dated 16.02.2020



might be set aside and the appellant might be allowed proforma promotion to the post of PHC Technologist (MP) (BPS-17) w.e.f. 11.05.2012, instead of 21.07.2017, with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was the employee of the respondent department and got retired as Chief Clinical Technician (BPS-14) on attaining the age of superannuation (60 years). The Paramedic staff working in Health Department of Khyber Pakhtunkhwa was given upgradation and accordingly most of the colleagues of the appellant working in various districts were posted on the upgraded posts at their concerned station vide notification dated 29.08.2012. A meeting was held and accordingly the appellant, alongwith his other colleagues, was given promotion to BPS- 16 & 17 to one of them, as proforma promotion w.e.f. 11.05.2012 vide notification dated 29.08.2016. The appellant was given promotion from Chief Clinical Technician (BPS-16) to Clinical Technologist (BPS-17) vide notification dated 21.07.2017 and was accordingly posted under the control of respondent No. 6 vide notification dated 03.08.2017. Tentative seniority list of Clinical Technologists (BPS-17) in Health Department was issued and circulated on 21.12.2017 and accordingly name of the appellant stood at serial no. 80. Appellant, after receiving the final seniority list in January 2017, challenged the same by filing application/departmental appeal before the competent authority for correction in the seniority list prepared for Clinical Technologists (BPS-17) well in time with the request to place him at his right place, as at the time of promotion, his name was not included in



the seniority list of 2012 and hence he was not given promotion to the post of Clinical Technician BPS- 16 w.e.f. 11.07.2012. Correspondence started between the respondents, during which he attained the age of superannuation and got retired from service w.e.f 12.04.2019, vide notification dated 13.06.2019. The Director General Health Services, Khyber Pakhtunkhwa vide letter dated 26.03.2019, addressed to the Secretary to the Government Khyber Pakhtunkhwa Health Department, submitted a detailed report regarding the appellant, upon which vide letter dated 03.10.2019, it was directed that the appellant might be granted due seniority from the date where his erstwhile juniors were promoted and to make sure that no injustice was done to any official/officer. The Director Health Services vide letter dated 02.12.2019, clarified that the appellant had already retired from service w.e.f. 12.04.2019 and sought advice of the Government regarding his promotion from 2012. Vide letter dated 07.02.2020, the request was regretted on the ground that as per Policy, promotion was always granted with immediate effect; hence the instant service appeal.

3. Respondents were put on notice but they did not submit their written reply and were placed ex-parte vide order sheet dated 26.10.2021. However, the learned Deputy District Attorney was granted full opportunity to present, defend and argue the case which he availed and argued accordingly.

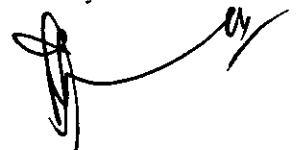
4. Learned counsel for the appellant presented the case in detail and argued that the respondents acted in an arbitrary manner and it was malafide on their part when they did not include the name of the appellant in the



seniority list prepared for Clinical Technicians (MP) BS- 16 in the year 2012 and despite the fact that his colleagues and juniors were promoted to the post of Clinical Technologist w.e.f. 2012, the appellant was deprived of the same. He requested that the appeal might be accepted as prayed for.

5. Through this service appeal, the appellant is seeking proforma promotion to the post of PHC Technologist (BS-17) w.e.f. 11.05.2012 instead of 21.07.2017. From the arguments and record presented before us, it transpires that the appellant was working as a paramedic in the Health Department of the provincial government. In 2012, the Chief Primary Health Care Technician (Multi Purpose) BS-16 and Senior Primary Health Care Technician (MP) BS- 14 were upgraded to the post of Primary Health Care Technologist (MP) BS- 17. In pursuance of that order, other colleagues of the appellant were upgraded but he was left out. His name was also deleted from the seniority list. In a provisional seniority list of 2017, attached with the service appeal, name of the appellant is appearing at serial no. 80. Perusal of that list shows that officials who were promoted on 25.08.2006 as PHC Tech BS- 12, were later promoted in 2010 as Sr. PHC Tech BS- 14 and then PHC Technologist (MP) BS- 17 in 2012, but the appellant who was promoted on 10.05.2006 as PHC Tech (BPS-12) was given promotion to Chief PHC Tech BS- 16 vide an order dated 29.08.2016 and made effective from 11.05.2012, the date on which his other colleagues were promoted to PHC Technologist (MP) BS- 17. He was then promoted to BS-17 on 21.07.2017.

5. An application was submitted by the appellant to the Director General Health Services, Khyber Pakhtunkhwa for correction of seniority list of



Technologists (BS-17), on which the Director General Health Services forwarded his request to the Secretary to Government of Khyber Pakhtunkhwa Health Services vide letter dated 26.03.2019. From a letter dated 03.10.2019 of the Health Department, annexed with the appeal it appears that the matter was examined and advice was given. The letter states as follows:-

*"I am directed to refer to your letter No. 4112/AE-VII dated 26.03.2019 in respect of Mr. Jamilur Rehman PHC Technologist BS- 17 and Mr. Kamal Zada PHC Technologist BS- 17 and to state that the response of the Director General Health Services reveals that the officers concerned were excluded from the seniority list due to oversight while their erstwhile juniors were promoted and placed above in terms of seniority.*

*I am therefore, directed that the above named officers may be granted due seniority from the date where their erstwhile juniors were promoted and make sure that no injustice is done to any official/officer please."*

Record presented before us shows that by the time the advice of the administrative department was processed and forwarded to the D.G Health, the appellant had already retired on 12.04.2019. Record is silent on any revision in the seniority list of the Technologists to adjust the name of the appellant at his right place. When enquired from the learned Deputy District Attorney and the departmental representative, both stated that no such revision took place. The request of the appellant for promotion from back




date was also regretted on the ground that promotion is always granted with immediate effect.

6. From the above discussion, a point is evident that the respondent department failed to include the name of the appellant in the seniority list at the right time. At a later stage when the mistake was realized, despite clear direction from the Health Department, the D.G Health again failed to include the name of the appellant in the seniority list. Had it been done at the appropriate time, the appellant would have been promoted alongwith his colleagues and juniors. It can rightly be said that it was not a fault of the appellant, rather a fault on the part of the respondent department and it has been admitted by them also. No effort was made by respondent No. 4 to revise the seniority list and the appellant got retired during the time when the correspondence between the D.G Health and Secretary Health was taking place. Moreover, regretting the promotion, by simply stating that as per policy, promotion is granted with immediate effect, does not hold ground in this case. Had the appellant been placed at his right position in the seniority list, he would have been promoted.

7. In view of the foregoing, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> day of February, 2024.*

  
(FAREEHA PAUL)  
Member (I)


  
(RASHIDA BANO)  
Member (J)

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14<sup>th</sup> Feb. 2024 01. Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Safiullah, Focal Person for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is allowed as prayed for. 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 14<sup>th</sup> day of February, 2024.*

  
(FANEETHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)

*\*Fazal Subhan PS\**