

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

Service Appeal No. 7634/2021

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

Engr. Abdul Sattar S/O Khial Muhammad R/O Arbab Road Gulshan  
Abad, Peshawar. .... (Appellant)

Versus

1. Government through Chief Secretary Khyber Pakhtunkhwa,  
Peshawar.
  2. Secretary Communication and Works Khyber Pakhtunkhwa, Peshawar.
  3. Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
  4. Secretary Establishment & Admn Department, Khyber Pakhtunkhwa.
  5. Accountant General, Khyber Pakhtunkhwa, Peshawar.
- .....(Respondents)

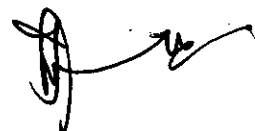
Mr. Gohar Rehman Khattak, ... For appellant  
Advocate

Mr. Muhammad Jan, ... For respondents  
District Attorney

Date of Institution.....	21.10.2021
Date of Hearing.....	28.03.2024
Date of Decision.....	28.03.2024

**CONSOLIDATED JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 7925/2021 titled “Muhammad Ayub Versus Government through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others”, and service appeal No. 931/2022, titled “Engineer Riaz Arshad Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others”, as in all the appeals, common questions of law and facts are involved.



2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the appeal, the impugned action of the respondents and order dated 13.04.2021 might be set aside/declared null & void and the respondents be directed to consider the appellant for proforma/antedated promotion as Chief Engineer BS- 20 from the date on which vacancy had become available/created alongwith all back benefits and any other remedy which the Tribunal deemed appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Assistant Engineer BS- 17 in the C&W Department on 26.05.1988 and was promoted from time to time on different posts and lastly as Superintending Engineer BS- 19 on 01.09.2016. Despite written request for promotion to the next higher grade, BPS- 20, before his retirement, no action was taken and the appellant retired on 31.03.2021. The Finance Department had created various posts, including 5 number posts of Chief Engineer BS- 20, on 17.02.2021. The posts in BS- 20 were to be filled by way of promotion from amongst the Superintending Engineers (BPS- 19). As per seniority list, appellant was at serial no. 2 and the C&W Department submitted a working paper, for his promotion, to the Establishment Department through letter dated 23.02.2021. Appellants in service appeals No. 7634/2021 and 7925/2021 submitted an application through proper channel to the Chief Minister Khyber Pakhtunkhwa for Special PSB for promotion to BS- 20. Respondent No. 4, through Section Officer (Regulation Wing), regretted the plea of the appellants vide order/letter



dated 13.04.2021. Feeling aggrieved, the appellants approached the Hon'ble Peshawar High Court Peshawar through Writ Petitions which were converted into appeals and transmitted to the Service Tribunal, which were admitted and the appellants were directed to file applications for amendment of appeals in accordance with law and subject to the limitation. The appellants accordingly, on permission by the Tribunal, filed amended memo and grounds of appeals.

4. Respondents were put on notice who submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellants as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellants, after presenting the case in detail, argued that the impugned order dated 13.04.2021 was illegal, unlawful and against the law. He argued that the respondents had violated Article 4, 8, 25, 27 and 30 of the Constitution of Islamic Republic of Pakistan 1973. He argued that the appellants had not been dealt with in accordance with law, rather discriminated and deprived from their legal right of promotion and that there was no reason for denial of their promotion despite the fact that they fulfilled all the prescribed criteria. He requested that the appeals might be accepted.

6. Through the service appeals preferred before us, all the three appellants have prayed to direct the respondents to consider them for promotion to BS- 20 from the date when the vacancies were available.

Two appellants, Mr. Abdul Sattar in Service Appeal No. 7634/2021 and



Mr. Muhammad Ayub in Service Appeal No. 7925/2021 have also impugned a letter dated 13.04.2021, which was forwarded by the Establishment Department in response to a letter dated 29.03.2021 of the Communication & Works Department. In the letter dated 29.03.2021, the C&W Department had referred to a request made by Mr. Muhammad Ayub and Mr. Adul Sattar, who were Superintending Engineers, BS- 19, at that time, for convening a special meeting of Provincial Selection Board for their promotion to the rank of Chief Engineer (BS- 20). The C&W Department, in their letter, referred to the restructuring and creation of five posts of Chief Engineer (BS- 20) to be filled by way of promotion and then the submission of a Working Paper on 23.02.2021 to be placed before the PSB. In the same letter, they referred to the reversion of retiring age of government employees from 63 years to 60 years and stated that both the officers had retired on attaining the age of superannuation on 03.02.2021 and 07.03.2021 respectively. Through their letter, they requested the Establishment Department for their proforma promotion with effect from the dates of their retirement, if the promotion policy permitted. The impugned letter dated 13.04.2021 of Establishment Department is a response to the letter of C&W Department wherein they clearly stated that proforma promotion is allowed only in such cases where seniority is disputed in the court of law and restored back on court's decision after the retirement of an employee. They further stated that as both the officers stood retired, therefore their promotion was not covered under the policy.




7. Arguments and record presented before us show that there was no dispute of seniority of both the officers. As far as the working paper for the PSB was concerned, record presented before us shows that the department submitted the working paper on 23.02.2021. Record further shows that a working paper was forwarded on 08.12.2020 also. It was after the submission of working paper on 23.02.2021 that they asked for the advice of Establishment Department on the application of Mr. Muhammad Ayub and Mr. Abdul Sattar, vide their letter dated 29.03.2021, and by that time the officers had attained the age of superannuation and retired from service. In case of Mr. Riaz Arshad, it was noted that he retired on 24.11.2020. He was allowed to hold the post of Chief Engineer on acting charge basis as the post fell vacant temporarily on the transfer of its incumbent as DG, PDA, Peshawar. Record shows that upon repatriation of the incumbent of that post, the appellant was reverted to his original post. In his case also, it was noted that the administrative department submitted a working paper on 08.10.2020. We were informed by the learned District Attorney that the provincial government had put a temporary hold on the meetings of PSB because the case of enhancement of age of superannuation to 63 years was subjudice in the Peshawar High Court. During the entire discussion, it was noted that the Establishment Department had never intimated about holding of any meeting of PSB and asked the administrative department i.e. the C&W Department, to submit any working paper. In case where no meeting of the competent forum was convened, mere vacant positions are not enough for the appellants to claim promotion. The case had to be




examined and discussed at the level of the PSB, but no such meeting was held during that period, as stated by the learned District Attorney. The appellants cannot ask for promotion as a right, as it is the exclusive domain of the competent executive authority. In case of the appellants, they had already retired, when the meeting of PSB was held, after the matter of age of superannuation was settled, hence they could not claim for any proforma promotion also.

8. In view of the above discussion, all the appeals are dismissed being groundless. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 28<sup>th</sup> day of March, 2024.*

  
(FARZEHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member (J)


*\*Fazle Subhan, P.S\**

SA 7634/2021

28<sup>th</sup> Mar. 2024 01. Mr. Gohar Rehman Khattak, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal is dismissed. 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 28<sup>th</sup> day of March, 2024.*

  
(FARZEEN PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*