

Service Appeal No. 11954/2020 titled "Dil Nawaz Khan Vs. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others"

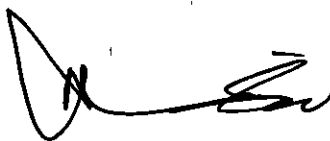
ORDER

19th Apr. 2024 **Kalim Arshad Khan, Chairman:** Through this single order this appeal and Service Appeal No.11955/2020 titled "Waqar Ahmad Vs. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" are being decided as both are of similar nature.

2. Learned counsel for the appellants present. Mr. Muhammad Jan, District Attorney alongwith Mr. Muhammad Yousaf, Assistant for the respondents present.

3. Learned counsel for the appellants produced copy of judgment of the Tribunal passed in Service Appeal No.11962/2020 titled "Zulfiqar Khan Vs. Government of Khyber Pakhtunkhwa" on 08.01.2024, whereby the appeal of the appellant with same subject matter was decided in the following manner:

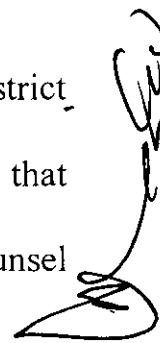
"7. From the arguments and record presented before us, it transpires that the appellant is an employee of the Board of Revenue and currently serving as Additional Assistant Commissioner (BS-17). Prior to his promotion, he was Tehsildar (BS-16) and at serial No. 49 of the seniority list. A meeting of Provincial Selection Board was scheduled to be held on 20.02.2020 for which a working paper was prepared for promotion of Tehsildars (BS-16) to the posts of Provincial Management Service (BS-17), which were 53 in number, and the name of the appellant was included in the panel for consideration of the Board. The Provincial Government, through an Act of the Provincial Assembly, had enhanced the age of superannuation of Civil Servants from 60 to 63, against which a writ petition was pending before the Honorable Peshawar High Court, and the same was decided on 19.02.2020 and the age of superannuation was again reverted to 60 years. The argument presented by the learned Deputy District Attorney and the respondents in their reply holds ground that as an aftermath of that judgment, a considerable



number of officers got retired after attaining the age of superannuation i.e 60 years, resulting in creation of vacancies which needed to be filled, either through initial recruitment or by promotion. In both the cases, fresh calculations were required and then fresh working papers had to be prepared, as the old ones had become redundant. Early months of the year 2020 was the period when the world was faced with the pandemic of Covid-19. In view of that most of the officers were either fully closed or were working with the minimum level of staff.

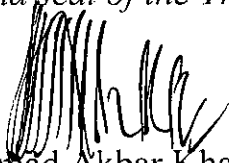
8. In the wake of the above mentioned two factors, meeting of PSB was postponed and it was later held in the month of June 2020. During that period, a batch of PMS Officers, whose case was under process in the Khyber Pakhtunkhwa Public Service Commission since 2017, was recommended on 28.02.2020 and notified by the provincial government on 29.05.2020. As far as the promotion of appellant is concerned, in the light of recommendation of the PSB in its meeting held on 09.06.2020, the notification was issued on 02.07.2020. Through his prayer in the instant service appeal the appellant has prayed to modify his promotion order dated 02.07.2020 and make it effective from the date when meeting of PSB was scheduled to be held for the first time i.e. 20.02.2020. Now a question here is that how can he be given promotion from a date on which no meeting of PSB was held? Moreover, the meeting of PSB scheduled for 20.02.2020 was postponed as a result of judgment of the Honorable Peshawar High Court where enhancement of age of superannuation was set aside, and resultantly number of positions of different scales in the provincial government became vacant, and those vacancies had also to be addressed by the forum of PSB for which revision in the working papers was required. Moreover, there is no dispute on the fact that the pandemic of COVID-19 disrupted the normal routine of life in its early months in the entire country. The provincial government was not an exception and no meeting of PSB could be convened till June 2020, and in that meeting, case of the appellant was considered and he was recommended for promotion. One must not forget that till that time, when the order of promotion of the appellant was issued, his writ petition was still pending before the Honorable Peshawar High Court for the sake of promotion, which was withdrawn by him vide the judgment dated 28.07.2020. It is worth to note that the PSB still considered his case of promotion and did not raise any observation regarding the case being subjudice before the court of law."

3. Learned counsel for the appellant as well as learned District Attorney both say that the instant cases are no different than that decided earlier by this Tribunal in the said case. Learned counsel


19/9/24

for the appellant requests that this appeal might be decided accordingly to which learned District Attorney showed no objection. Decided Accordingly. Costs shall follow the event. Copy of this order be placed on file of connected service appeal. Consign.

4. *Pronounced in open Court at Peshawar and given under my hand and seal of the Tribunal on this 19th day of April, 2024.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

Mutazem Shah