

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 205/2017

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

Jehan zeb S/O Fazal Wadood, Ex-Medical Technologist (BPS- 17) HMC
Peshawar.(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. The Secretary Health, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. The Secretary Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.(Respondents)

Mr. Anwar Shah,
Advocate ... For appellant

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

Date of Institution..... 28.02.2017
Date of Hearing..... 04.04.2024
Date of Decision..... 04.04.2024

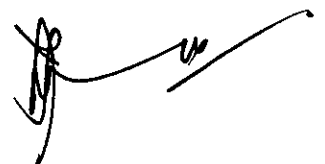
JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 203/2017 titled “Muhammad Farid Khattak Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others” and service appeal No. 206/2017 titled “Abdul Munaf Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others” as in all the appeals, common questions of law and facts are involved.

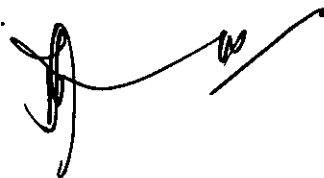


2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents for not promoting the appellant in the light of notifications dated 10.05.2006 and 25.08.2006 and non-action of the respondents on the departmental appeal dated 10.09.2011. It has been prayed that on acceptance of the appeal, the respondents might be directed to implement the notifications dated 10.05.2006 and 25.08.2006 in their true spirit and the appellant be promoted from BPS- 17 to BPS- 18, BPS- 19 and BPS- 20 from the date when his right of promotion accrued from the date of notifications as referred above, alongwith all back benefits of service and pay etc.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was holding the degree of B.Sc Medical Technology and served as Technologist BPS-17. In pursuance of a decision taken by the Provincial Cabinet in its meeting held on 27th December, 2005, the Health Department, in consultation with the Finance Department and Establishment Department, formulated a new service structure for Paramedics serving in the Health Department and the competent authority notified the same vide notification dated 10.05.2006. In the light of the said notification, 57 different categories of paramedics had been restructured into 14 cadres and the posts in various pay scales were integrated/categorized and re-named into 08 stages. Three new vacancies for paramedics i.e. Senior Technologist (BPS- 18), Chief Technologist (BPS- 19) and Principal Technologist (BPS- 20) were created with endorsement and directions to the Director General Health to communicate the same to all concerned and to initiate implementation of



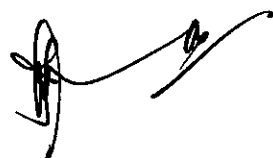
Service Structure, completing all promotion cases by 30th June 2006. As per Para- 6 of the notification, promotion in the post in BPS- 18 (Senior Technologist), BPS- 19 (Chief Technologist) and BPS- 20 (Principal Technologist) were to be made on the basis of joint seniority list. The joint seniority list of all the 14 cadres was to be caused at BPS- 17 level, keeping in view the principle laid down in Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, read with Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Later on, in supersession of the notification dated 10th May, 2006, a new and fresh notification dated 25th August 2006 was promulgated/notified, wherein Paras No. 5, 7, 8 and notes endorsed at the foot note of the previous notification were deleted, whereas all other terms and conditions remained the same. The appellant was eligible and qualified as per terms of the notification for the post of Senior Technologist (BPS- 18) Chief Technologist (BPS- 19) and Principal Technologist (BPS- 20) at the relevant time. Respondents No. 1 & 2 were under legal obligation to initiate the process of promotion as per rules and promote the appellant against the said posts as the same were not only created and sanctioned but also brought on the budget book for the year 2006-07, but they failed to do so. Feeling aggrieved, the appellant, alongwith others, submitted representation/appeal but no heed was paid. Being aggrieved of the acts and actions of respondents, appellant, alongwith others, filed Writ Petition No. 182/2012 but the same was sent to the Service Tribunal for proper adjudication; hence the instant service appeal.



4. Respondents were put on notice who submitted written replies/ comments on the appeal. We heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

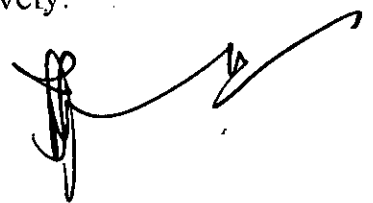
5. Learned counsel for the appellant, after presenting the case in detail, argued that the respondents had not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution. He argued that every civil servant had legitimate right of rising up in government hierarchy by means of promotion. Appellant had rendered more than 20 years service on the post of Technologist (BPS- 17) and the respondents were under legal obligation to initiate the process of promotion in the light of Service Structure notified in the year 2006 but they deprived him of its benefits. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the Government of Khyber Pakhtunkhwa, Health Department notified the approved Service Structure vide notification dated 10.05.2006 wherein 57 cadres of Paramedics were restructured into 14 cadres for one time up-gradation/promotion as mentioned in sub-para-05 of the service structure. The notification of 10.05.2006 was subsequently superseded by a notification dated 25.08.2006, wherein sub-para 05, regarding one time upgradation/promotion of Paramedics, was deleted. He further argued that anomaly committee was constituted by the Health Department wherein the promotion case of the appellant was discussed and rejected as it was not covered under the policy. He further argued that as per



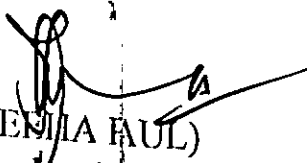
Service Structure, the posts of BPS- 18, BPS- 19 and BPS- 20 were required to be filled in on the basis of joint seniority-cum-fitness from amongst all the Clinical Technologists (BPS- 17). The Service Rules were further amended and notified in 2016 and during that time, the appellant had already retired from government service. He requested that the appeal might be dismissed.

7. Arguments and record presented before us shows that the appellant was serving as Medical Technologist (BS- 17) in the Health Department of provincial government. In May 2006, the department approved a service structure and 57 cadres of Paramedics were restructured into 14 cadres and there was a one time upgradation/promotion in the light of Para 5 of the notification which was later on deleted vide another notification in August 2006. An appeal submitted by the appellant before the departmental authority for consideration of his promotion in the light of those notifications was rejected after being considered by the anomaly committee constituted for that purpose. This means that any subsequent promotions were to be made on the basis of service rules framed after the restructuring of paramedics. When asked about the service rules, the departmental representative stated that the service rules, after restructuring, were issued in 2016 and by that time the appellant had retired from service and hence could not be considered for promotion. When further inquired, learned counsel for the appellant confirmed that appellant retired from service on 20.01.2013 whereas the other two appellants in service appeal no. 206/2017 (Mr. Abdul Manaf) and 203/2017 (Mr. Farid Khattak) retired on 13.02.2012 and 30.04.2008 respectively.




8. From the above discussion, one can safely conclude that service rules are mandatory for governing the service of a civil servant at any post. In this case, after restructuring, the service rules were finalized in 2016 and before any meeting of promotion committee could be convened under the newly notified service rules, the appellants got retired from service at different times in 2008, 2012 and 2013, and hence their promotion could not be considered. The appeal in hand, as well as the connected service appeals, are therefore, dismissed. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 04th day of April, 2024.*


(FAREEHA FAUL)
Member (B)

Fareeha Subhan P.S.



(RASHIDA BANO)
Member(J)


SA 205/2017

04th Apr. 2024 01. Mr. Anwar Shah, 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 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 04th day of April,
2024.*


(FARUKH PAUL)
Member (I)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS