
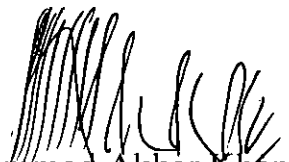


ORDER

- 06.02.2024
1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
 2. Vide our detailed judgment of today separately placed on file, the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.
 3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 06th day of February, 2024.*


(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)


Kamranullah

be mandatory. The said provision of the promotion policy of the Provincial Government was conveyed accordingly to the appellant vide letter dated 16.01.2018. We observe that for promotion of any post service rules prescribing criteria for filling the post is required. Since at the relevant point in time no service rules for promotion to the post of Director General Soil Conservation were in the field nor the appellant was eligible for promotion to the post of Director General (BS-20) because of deficiency of Senior Management Course. The respondents in their reply and during the course of arguments as well repeatedly pointed out that for initiation of case for framing of service rules for the post of Director General (BS-20) Soil Conservation was responsibility of the appellant being holder of the post of Director General on additional charge basis but he remained unable to do so.

07. In view of the above discussion the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 06th day of February, 2024.*


(Rashida Bano)
Member (J)


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Member (E)

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Lastly, he submitted that appellant had rightly been treated and his case be dismissed.

06. Scrutiny of record available on file reveal that the appellant while serving in Soil Conservation wing of Agriculture & Live Stock Department was promoted to the post of Director BS-19 on 08.09.2011. A post of Director General Soil Conservation (BS-20) in the said department was created in the year 2013. The appellant was assigned additional charge of the new post of Director General. The post of Director General remained un-filled because of not framing service rules for the same. Nothing is available on record that speak about the efforts of the appellant for initiation of case for framing of service rules for the post of Director General Soil Conservation being holder of the said post. He held additional charge of the post of Director General till 01.03.2017 when he himself expressed his inability to hold additional charge of the post of Director General citing health reasons. Record further reveals that the appellant submitted application for exemption from Senior Management Course for his promotion to the post of Director General, Soil Conservation Agriculture Department dated 12.12.2007 requesting therein that he may be exempted from the said course as he was retiring on 15.02.2018. The application of the appellant was processed and taken up with the Establishment Department for advising in the matter. Establishment department in their response referred to the amendment in the promotion policy of 2009 made vide Notification dated 05.12.2017 which clearly states that promotion against technical post in BS-20 which required managerial and administrative skill, the Senior Management Course shall

Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order is illegal and void abinitio; that mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated in accordance with law and rules; that appellant had never been selected for the Senior Management Course by the high-ups and it was not his fault; that the Notification dated 05.12.2017 was not applicable with retrospective effect, therefore, appellant was entitled for promotion; that the respondents had promoted Zulfiqar Ahmad to BPS-20 who was of the same department and had not undergone the SMC; that the appellant was entitled for pro-forma promotion as other employees of the same batch had been given promotions by the Peshawar High Court. Lastly, he submitted that the fundamental rights of the appellant had been violated by the respondents, therefore, he requested for acceptance of the instant service appeal.

05. On the other hand, learned Deputy District Attorney contended that the appellant had never submitted any promotion case for his promotion to the post of Director General (BPS-20) and was not promoted due to delay in framing of Service Rules for the said post. He submitted that Senior Management Course was mandatory at that time for promotion to BPS-20; that his case for promotion was not materialized due to non-framing of Service Rules for the post of Director General Soil Conservation (BPS-20).

may kindly be ordered to be granted proforma promotion to (BPS-20), form the date as per rules/policy with all back benefits.”

02. Brief facts of the case are that appellant was appointed as Soil Conservation Assistant (BPS-17) vide order dated 07.12.1982. He was promoted to (BPS-18) on 19.03.2009 and further promoted to (BPS-19) on 08.09.2021. The appellant was at the top of Seniority list of BPS-19 officers of 15.01.2018; that vide circular letter dated 11.03.2016 all kinds of exemptions from mandatory training was withdrawn however exception extended already to professional and technical cadres was to continue and vide Notification dated 05.12.2017, the Senior Management Course was made mandatory for promotion against technical post in (BPS-20). The appellant filed departmental appeal on 12.12.2017 for exemption from Senior Management Course for promotion to (BPS-20) which was regretted vide letter dated 16.01.2018. He was retired from service on the age of superannuation on 14.02.2018. The appellant filed Writ Petition No. 1064-P/2018 before the Hon'ble Peshawar High Court, Peshawar which was withdrawn with the permission to approach proper forum vide order dated 21.03.2018. Thereafter he filed the instant service appeal on 06.04.2018.

03. Notices were issued to the respondents, who submit their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned

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

Service Appeal No. 492/2018

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Shaukat Ullah Khan, Ex-Director Soil Conservation (Head Quarters),
Agriculture, Live Stock and Co-Operative Department Government of
Khyber Pakhtunkhwa, Peshawar..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Agriculture,
Live Stock and Co-Operative Department, Civil Secretariat Peshawar.
2. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat
Peshawar.
3. Director General, Soil Conservation, Government of Khyber
Pakhtunkhwa, Peshawar.
4. Secretary Establishment Department, Government of Khyber
Pakhtunkhwa, Civil Secretariat, Peshawar..... (*Respondents*)

Present:-

FAZAL SHAH MOHMAND,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....06.04.2018
Date of Hearing..... 06.02.2024
Date of Decision.....06.02.2024

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service
appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa
Service Tribunal, Act 1974 with the prayer copied as under;

*“On acceptance of this appeal the impugned letter/order
dated 16.01.2018 may kindly be set aside and the appellant*