

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 5/2023

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

Mr. Safdar Ali Shah, Chief Conservator Wildlife, Khyber Pakhtunkhwa/
Additional Director General (Education), PFI, Peshawar.

.....(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary Forestry, Environment & Wildlife Department to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Establishment Department, Civil Secretariat, Peshawar.
4. The Provincial Selection Board (PSB) through its Chairman/Convener, Civil Secretariat, Peshawar.
5. Dr. Mohsin Farooq, Chief Conservator Wildlife Department, government of Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Adnan Aman
Advocate

... For appellant

Mr. Aman Ullah Khan Marwat
Advocate

... For private respondent

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For official respondents

Date of Institution.....19.12.2022

Date of Hearing.....04.04.2024

Date of Decision.....04.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J):The service appeal in hand, has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

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“By accepting this appeal, the impugned decision made in the PSB meeting dated 26.12.2018 and the impugned notification dated 17.01.2019 and order of the departmental appellate authority may please be set aside and consequently the respondents may please be directed to consider the appellant for his regular promotion BPS-20 and thereafter to appoint the appellant as Chief Conservator BPS-20 Khyber Pakhtunkhwa Wildlife with all back benefits including seniority (when his predecessor was retired from service upon reaching the age of superannuation).”

2. Brief facts of the case, as given in the memorandum of appeal are that, the appellant was initially appointed as Assistant Conservator Wildlife BPS-17 w.e.f. 16.10.1993 in the Khyber Pakhtunkhwa Wildlife Department and private respondent No.6 was also appointed as Assistant Conservator Wildlife BPS-17 on 10.03.1996. Appellant was then promoted to the post of BPS-18 and BPS-19. On 30.06.2016 seniority list of Conservators Wildlife Department BPS-19 was initiated, wherein the appellant was placed at serial No.1 and private respondent No. 6 was at Sr. No.2. Later on the appellant was again posted as Chief Conservator wildlife Khyber Pakhtunkhwa, vide order dated 21.09.2017 till 13.06.2019 in his own pay scale upon the retirement of Syed Mubarak Ali Shah. The appellant was transferred and posted as Additional Director General (ex-cadre post) at Pakistan Forest Institute, Peshawar. During tenure as Chief Conservator Wildlife Khyber Pakhtunkhwa, the respondent department submitted his case for promotion to the rank of Chief Conservator Wildlife (BPS-20) vide letter dated 31.07.2018. However, Establishment Department vide letter dated 10.08.2018 opined that;



"the case has been examined in Regulation Wing and it is observed that an enquiry against the officer as S.No.1 of the panel is pending. According to promotion policy, his promotion will be deferred and a post will be reserved for him. Hence there will be no post against which the officer at S.No.2 can be considered."

An inquiry committee was constituted which exonerated the appellant from all charges vide letter dated 30.05.2018 and respondent No.3 submitted case for approval of the competent authority (Chief Minister) and notifying exoneration of the appellant. Show cause notice was issued to the appellant and opportunity of personal hearing was afforded to the appellant on 24.10.2018. The exoneration of the appellant was notified on 21.03.2019. In the meanwhile respondent No.6 approached the worthy Peshawar High Court, Peshawar through W.P No.4765/2018 by filing a writ of Quo-Warranto against the appellant. The Peshawar High Court, granted interim relief to respondent No.6 on 29.11.2018; promotion case of respondent No.6 was placed before PSB on 25.12.2018; wherein promotion of the appellant was deferred; respondent No.6 was promoted against the single cadre post of the Chief Conservator Wildlife Khyber Pakhtunkhwa (BS-20) on regular basis vide notification dated 17.01.2019. The appellant also assailed his deferment of promotion and promotion followed by posting of respondent No.6 as Chief Conservator Wildlife before worthy Peshawar High Court, Peshawar through W.P No.317-P/2019. The promotion case of the appellant was also placed before the PSB, wherein he was recommended for promotion to the rank of Chief Conservator Wildlife (BS-20) on "Acting Charge Basis" as the single cadre post was already occupied by respondent No.6 on regular basis.

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The respondent No.6 did not stop here and filed two other writ petitions bearing No.5692-P/2019 and W.P No.1816-P/2020 against the appellant. The writ petition filed by the appellant i.e. W.P No.317-P/2019 was dismissed on the ground of jurisdiction and the appellant was advised to seek his remedy before the competent court of law. After the judgment of the apex court, the appellant preferred departmental representation/appeal to the competent authority (respondent No.2) which was not responded. Hence, the instant appeal,

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant, learned counsel for private respondent as well as learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has been treated against the law and rules. He further argued that the promotion order of respondent No.6 as Chief Conservator Wildlife was issued in violation of law hence liable to be set aside. He further argued that appellant has been exonerated from all the departmental proceedings but notifying exoneration of the appellant was purposely delayed and he was deprived from his due right of promotion.

5. Conversely, learned Deputy District Attorney assisted by learned counsel for private respondents contended that promotion of private respondent was made on the recommendation of PSB being competent forum and after the approval of competent authority. He further contended that appellant held the post of Chief Conservator Wildlife till 13.06.2019 on OPS. He submitted that



although appellant was senior to private respondent but he was deferred by the PSB for promotion due to his involvement in VR case with NAB of an amount of Rs.3829842/- and non-availability of PERs for the year 2017, hence private respondent No.6 was promoted against the single cadre post of Chief Conservator Wildlife, Khyber Pakhtunkhwa on regular basis.

6. Perusal of record reveals that the appellant was appointed as Assistant Conservator Wildlife, BPS-17 in the Khyber Pakhtunkhwa, Wildlife Department who was later on promoted to BPS-18 and BPS-19. He was posted as Chief Conservator Wildlife, Khyber Pakhtunkhwa and later as Additional Director General at Pakistan Forest Institute, Peshawar. Respondent/department submitted his case for promotion to the post of Chief Conservator BS-20. However, an inquiry committee was constituted which exonerated the appellant from all charges. The exoneration was notified on 21.03.2019. The respondent No.6 filed a writ of Quo-Warranto against the appellant, wherein interim relief was granted to the respondent No.6. The appellant then assailed his deferment of promotion, and was recommended for promotion to the rank of Chief Conservator Wildlife (BS-20) on an "Acting Charge Basis". The writ petition of the appellant was dismissed on jurisdiction grounds. After the judgment of apex court, appellant preferred departmental appeal to the competent authority, which was not responded till date.

7. Promotion of the appellant was deferred in the meeting of PSB held on 26/12/2018 with the remarks that;

"His date of birth is 24.06.1965. He joined government service on 16.10.1993 in BS-17. He was promoted as Conservator Wildlife BS-19 on 13.02.2010. He has passed the prescribed departmental examination. However, he is involved in Voluntary Return (VR) case with NAB. His PER for the year 2017 (P) is also not available."




Reason for deferment of his promotion to BPS-20 post was involvement of the appellant's Voluntary Return (VR) case with NAB and non-availability of his PER for the year 2017. Appellant approached worthy Peshawar High Court, Peshawar by filing writ petition, wherein on 8/4/2019 worthy Peshawar High Court directed respondent to place the promotion case before PSB for consideration within the rules at their own end. The occupant of the post Mr. Mohsin Farooq respondent no. 6 has been posted against the post of Director General in Pakistan Forest Institute, which post is not likely to be filled in near future. Therefore, at the time of meeting of PSB i.e. 19/4/2019 post of Chief Conservator Wildlife BPS-20 was vacant, wherein PSB held that;

"His date of birth is 24.06.1965. He joined government service on 16.10.1993 in BS-17. He was promoted as Conservator Wildlife BS-19 on 13.02.2010. He has passed the prescribed departmental examination. The Secretary informed the Board that he has been exonerated in the VR case. It was brought into the notice of the Board that the Peshawar High Court, Mingora Bench in VR cases in Writ Petitions No.1145-M of 2018 & 1247-M of 2018 dated 26.03.2019 directed that the respondents shall first finalize the enquiries, if any against the petitioners and thereafter reconstitute Departmental Promotion Committees by placing the names of the petitioners in-accordance with their seniority list in the working paper of the officials who are to be promoted or have been promoted out of turn against the seniority order. However, the promotion orders of the petitioners, so passed shall be subject to final decision of the august Supreme Court of Pakistan in Suo Motu case No.17 of 2016. No enquiry is pending against him. He has been exonerated from the disciplinary proceedings in VR case. His PER for the year 2018 (P) has not yet been countersigned. His service record up to 2018 is generally good. He has secured 60 marks against the required threshold of 70.

The Board recommended the officer for appointment to the post of Chief Conservator Wildlife BS-20 on acting charge basis subject to final decision of the Supreme Court of Pakistan in Suo Motu case No.17 of 2016."

8. Now, Suo Motu case No.17 of 2016 is finally decided by Supreme Court of Pakistan vide order dated 08/03/2023. Therefore, PSB is directed to consider his promotion case, keeping in view the decision of Supreme Court. However if department has initiated any proceeding against the appellant, then consideration of promotion case will be subject to the outcome of that proceeding. If the department considers that appellant is entitled for promotion in accordance with rules, then they should consider him from the date of first deferment i.e. 25.12.2018. Respondent are directed to decide the matter within 60 days after receipt of order of this Tribunal. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 4th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan