S.A #.660/2019

ORDER

3rd May. 2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our consolidated judgment of today placed on file, instant service appeals is accepted. The impugned order dated 17.01.2019 is modified to the extent of appellant by directing the respondents to confirm the appellant in the rank of Assistant Sub Inspector w.e.f 01.09.2016 instead of 31.08.2018 and grant proforma promotion to the appellant to the ranks of Officiating Sub Inspector w.e.f 17.01.2019 with all monetary benefits. Costs shall follow the event. Copy of the judgment be placed in the file of the connected service appeal. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of May, 2024.*

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

Mutazem Shah

was posed against his claim owing to any departmental proceedings inquiry etc. against him and the said obstacle is done away with ultimately then in such a situation, his monetary loss and loss of rank is remedied through proforma promotion. A civil servant has a fundamental right to be promoted even after his retirement through awarding pro forma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and he is retired on attaining the age of superannuation without any shortcoming on his part pertaining to deficiency in the length of service or in the form of inquiry and departmental action taken against his right of promotion. It is fundamental right of a civil servant to be promoted even after his retirement by awarding pro forma promotion provided such right accrued during his service and his case could not be considered for no fault of his own and that he should not be penalized for lapses and negligence on part of the department."

9. In view of the above, instant service appeals are accepted. The impugned order dated 17.01.2019 is modified to the extent of appellants by directing the respondents to confirm the appellants in the rank of Assistant Sub Inspector w.e.f 01.09.2016 instead of 31.08.2018 and grant proforma promotion to the appellants to the ranks of Officiating Sub Inspector w.e.f 17.01.2019 with all monetary benefits. Costs shall follow the event. Copy of this judgment be placed in the file of the connected service appeal. Consign.

10. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of May, 2024.

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah

learned District Attorney controverted the same by supporting the impugned order(s).

6. The appellants were not confirmed to the ranks of Sub Inspectors because of pendency of inquiry. The record reflects that the appellants had moved application for confirmation as ASI and promotion to the rank of SI, which applications were processed as is evident from the note sheet annexed with the appeal. SP/MT had made recommendation to the DIG Telecommunications to approve confirmation of the appellants to the rank of ASI and promotion to the higher ranks of SIs, because they were senior-most in the seniority list. The DIG, in turn, put a note with the words **"next DPC"**. This note was put on 04.03.2019, but before the case of promotion of the appellants could be placed in the next DPC, the appellants had retired from service vide order dated 30.04.2019 w.e.f 04.05.2019. The next DPC was held on 2305.2019, wherein, other officials were promoted.

7. The Supreme Court of Pakistan in 2022 SCMR 1546 has held that:

> *"A retired civil servant shall not be eligible for grant of promotion; provided that he may be considered for grant of pro forma promotion as may be prescribed"*

8. Besides, the Lahore High Court has held in 2023 PLC (CS) 431 titled "Ijaz Akhtar versus Secretary to Government of Punjab and others" also held that:

> *"The concept of proforma promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his right for such promotion or a legal restraint*

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, both the appeals, are jointly taken up as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

2. The appellants' cases in brief are that they were serving in the Police Department. Vide impugned order dated 17.01.2019, alleged junior to the appellant was promoted to the rank of Officiating Sub Inspector while the appellants were not. Feeling aggrieved, they filed departmental appeals, during the pendency of which, they were confirmed in the rank of Assistant Sub Inspectors but w.e.f 31.08.2018 instead, w.e.f 01.09.2016. The appellants have been retired from service vide order dated 30.04.2019 w.e.f 04.05.2019, without availing promotion to the rank of Officiating Sub Inspectors w.e.f 17.01.2019. Therefore, they filed the instant service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER(Executive)

Service Appeal No.660/2019

Date of presentation of Appeal.....21.05.2019
Date of Hearing.....03.05.2024
Date of Decision.....03.05.2024

Mr. Habib Ur Rehman, Ex: Assistant Sub Inspector, O/O the Deputy Inspector General of Police, Telecommunication, Khyber Pakhtunkhwa, Peshawar.....***Appellant***

Versus

1. **The Inspector General of Police,** Khyber Pakhtunkhwa, Peshawar.
2. **The Deputy Inspector General of Police,** Telecommunications, Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

Service Appeal No.661/2019

Date of presentation of Appeal.....21.05.2019
Date of Hearing.....03.05.2024
Date of Decision.....03.05.2024

Mr. Shamsher Khan, Ex: Assistant Sub Inspector, O/O the Deputy Inspector General of Police, Telecommunication, Khyber Pakhtunkhwa, Peshawar .....***Appellant***

Versus

1. **The Inspector General of Police,** Khyber Pakhtunkhwa, Peshawar.
2. **The Deputy Inspector General of Police,** Telecommunications, Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants
Mr. Muhammad Jan, District Attorney .....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17.01.2019 WHEREBY JUNIORS TO THE APPELLANTS HAVE BEEN PROMOTED TO THE RANKS OF OFFICIATING SUB INSPECTORS WHILE THE APPELLANTS HAVE BEEN IGNORED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.