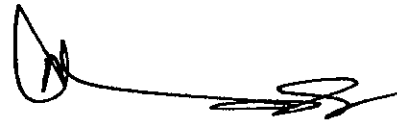


ORDER

23.05.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, the instant appeal stands dismissed. 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 23rd day of May, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN




(MUHAMMAD AKBAR KHAN)
MEMBER (E)

prove that his departmental appeal dated 16.05.2022 was received in the office of respondents. Even otherwise to the departmental appeal bear date 16.05.2022 whereas promotion of the appellant was notified on 26.10.2021 which is badly time barred and it has been consistently held by the Supreme Court of Pakistan that if the departmental appeal is time barred the appeal before the Tribunal would not be maintainable.

08. Foregoing in view the instant appeal stands dismissed. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 23rd day of May, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

petition of the appellant vide judgment dated 17.12.2020 with the following directions:

“We are inclined to interfere in the matter and thus accordingly direct the respondents to finalize the seniority of the BPS-19 and place the case of Principal Dental Surgeon (BPS-19) before forthcoming meeting of PSB subject to availability of vacant post of Chief Dental Surgeon (BPS-20) and obviously the eligibility of the candidates for the said post within a period of two months”

The appellant subsequently filed Contempt of Court Petition No. 07-P/2021 in the Peshawar High Court. During the pendency of the contempt proceedings the appellant was promoted to BS-20 vide Notification dated 26.02.2021. The High Court disposed of the petition vide judgment dated 19.04.2022 on the following terms:

“Since the respondents have practically complied with the judgment, under implementation, therefore, we understand that no case is made out for the initiation of the contempt of court proceedings against them. This petition is thus disposed off alongwith C.Ms. If the petitioner is still aggrieved in any manner, he may, if so advised, approach the proper forum for the redressal of his grievance.”

07. We believe that the case of the appellant has already been taken cognizance and adjudicated upon by a higher judicial forum, therefore, this Tribunal would not consider it appropriate to make further interference or elaboration in the matter as it comes well within the ambit of the principle of resjudicata. Moreover, the stance of the appellant regarding filing of departmental appeal has been vehemently denied by the respondents to have been received by them and the appellant could not produce any evidence to

04. Learned counsel for the appellant contended that the inaction of the respondents is against the law, capricious and arbitrary in nature, hence liable to the indulgence of the Hon'ble Tribunal; that the respondents have shown their malafide given the fact that since 18.01.2020 the post of BS-20 was vacant but despite that he was not promoted which is against the law; that it has been held by the superior courts that all the benefits regarding a post to which a civil servant is promoted will be from the date of occurrence of vacant post not from the date of notification of promotion; that the respondents have not dealt the appellant in accordance to Article 4 & 25 of the Constitution of Islamic Republic of Pakistan; that respondents have violated Article 10-A of the Constitution of Islamic Republic of Pakistan.

05. On the other hand, learned District Attorney contended that there was no vacant post of Chief Dental Surgeon (BS-20) available whereas the seniority list was not finalized and after finalization of the same he was promoted to the post of Chief Dental Surgeon (BS-20) vide Notification dated 26.10.2021 on the direction of Hon'ble Peshawar High Court, Peshawar; that senior to appellant were promoted after his promotion vide Notification dated 24.01.2022, therefore, the appellant has no right to claim further antedation of his promotion; that as per promotion Policy of 2009, the promotion shall be made with immediate effect hence, the promotion Notification of the appellant was issued in accordance with the *ibid* Policy 2009.

06. Scrutiny of the case reveals that the appellant approached Peshawar High Court, through Writ Petition No. 5049-P/2020 seeking direction for placing his case of promotion before the Provincial Selection Board for the post of Chief Dental Surgeon (BS-20). The High Court disposed of writ

02. Brief facts of the case are that the appellant joined the respondent department as Medical Officer/Dental Surgeon (BS-17) in the year 1989. He was promoted to BS-18 on 13.06.2009 and further promoted to BS-19 on 14.11.2017; that on 18.01.2020 there were sufficient vacancies of Chief Dental Surgeon (BS-20) lying vacant and the appellant was eligible for promotion from BS-19 to BS-20 but he was not promoted to the said post. Feeling aggrieved the appellant filed Writ Petition No. 5049-P/2020 before the Hon'ble Peshawar High Court which was "*disposed of with direction to the respondents finalize the seniority of the BPS-19 and place the case of Principal Dental Surgeon (BPS-19) before forthcoming meeting of PSB subject to availability of vacant post of Chief Dental Surgeon (BPS-20) and obviously the eligibility of the candidates for the said post within a period of two months*"; that during the pendency of the Contempt of Court Petition the appellant was promoted to the post of Chief Dental Surgeon (BS-20) with immediate effect vide Notification dated 26.10.2021. Feeling aggrieved from the impugned Notification dated 26.10.2021 the appellant filed departmental appeal for the grant of all accruing back benefits since 18.01.2020 which was not responded, hence preferred the instant service appeal on 05.09.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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

Service Appeal No. 1292/2022

Date of presentation of Appeal.....05.09.2022
Date of Hearing.....23.05.2024
Date of Decision.....23.05.2024

Dr. Tahir Farooq Nawaz Head of Department of Dental Surgery, Naseerullah Khan Babar Memorial Hospital Kohat Road, Peshawar.....(**Appellant**)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. Secretary Health, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director General, Health Services, Directorate of Health Services, Warsak Road, Peshawar.....(**Respondents**)

TAHIR FAROOQ,
Advocate

For appellant.

MUHAMMAD JAN,
District Attorney

For respondents

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 the instant appeal, the respondents may please be directed to pay all the accruing back benefits to the appellant since 18th January, 2020 till date with 15% interest till realization."