


FORM OF ORDER SHEET

Court of _____

Appeal No. 543/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/04/2024	<p>The appeal of Mr. Assadullah Khan presented today by Mr. Amjid Ali Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on .Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 543 /2024

Asad Ullah KhanAppellant

VERSUS

Govt. of K.P through
Secretary Establishment and others.....Respondents

I N D E X

S.No.	Description of documents.	Annexure	Page
1.	Memo of appeal with affidavit.		1-7
2.	Addresses		8
3.	Notification dated 03.03.2009 vide which appellant was promoted to PMS (BS-17) on regular basis.	A	9
4.	Notification dated 17.06.2016 whereby juniors to appellant were promoted to PMS (BS-18) and promotion of appellant to BS-18 was deferred due to lack of training	B	10-13
5.	P.S.B meeting minutes dated 28.12.2016	C	14-15
6.	Notification dated 03.10.2019 vide which juniors to appellant were further appointed in BS-19 on acting charge basis and notification dated 04.08.2021 vide which they were further regularly promoted	D	16-18
7.	Notification dated 21.01.2021 vide which the appellant was promoted to PMS (BS-18) on regular basis	E	19-
8.	Seniority list	F	20-22
9.	Judgment of this hon'ble Tribunal dated 27.07.2021 vide which appellant was held entitled for proforma promotion w.e.f. 10.05.2016	G	23-29
10.	P.S.B meeting minutes dated 31.07.2021	H	30-31

S.No.	Description of documents.	Annexure	Page
11.	Letter dated 06.09.2021, vide which appellant was offered MCMC Training for promotion to BS-19 for the first time, which he successfully completed vide certificate dated 17.12.2021.	I	32-35
12.	Notification dated 15.04.2022 vide which appellant was promoted to PMS (BS-19) on regular basis, but with immediate effect	J	36-
13.	Judgment/ order dated 11.10.2023 of this hon'ble Tribunal, whereby respondents were directed to decide departmental appeal of the appellant as per law	K	37-40
14.	Letter dated 19.03.2024 received by the appellant on 02.04.2024 vide which the appeal of the appellant is regretted	L	41-
15.	Notification dated 12.01.2023	M	42
16.	Para 2(ii) of the notification dated 15.02.2017 and para-v (d) of the Promotion Policy, 2009	N	43-44
17.	Judgments/ verdicts of superior Courts on similar matter	O	45-74
18.	Wakalatnama		75

Dated: 16.04.2024


Appellant

Through


Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 543 /2024

Asad Ullah Khan, Additional Secretary
Board of Revenue Civil Secretariat, Peshawar.

.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Department, Civil Secretariat, Peshawar.
 2. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 3. Chief Minister Khyber Pakhtunkhwa/ Competent Authority, Chief Minister Secretariat, Peshawar.
through principal secretary.
-Respondents

**SERVICE APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST ORDER DATED
19.03.2024, WHEREIN, DEPARTMENTAL
APPEAL, INSPITE OF JUDGMENT DATED
11.10.2023 OF THIS HON'BLE TRIBUNAL
HAS BEEN REGRETTEED, WHEREIN,
APPELLANT HAS BEEN DECLINED
ACTING CHARGE APPOINTMENT AS PMS
(BPS-19) W.E.F. 03.10.2019 AND REGULAR
PROMOTION TO PMS (BPS-19) W.E.F.
04.08.2021, RESPECTIVELY, WHEN
JUNIORS TO APPELLANT LIKE JAVAID
ETC HAS BEEN APPOINTED/
PROMOTED.**

(2)

PRAYER

On acceptance of this appeal, the impugned order dated 19.03.2024 vide which appeal of the appellant is regretted may please be set-aside and the appellant may please be appointed in (BS-19) on acting charge basis w.e.f. 03.10.2019 and may please to grant regular promotion to PMS (BS-19) w.e.f. 04.08.2021 when his juniors like Javid Ali etc were first appointed in PMS (BS-19) on acting charge basis on 03.10.2019 and thereafter regular promotion to PMS (BS-19) on 04.08.2021 with all back service and monetary benefits.

Sir:-

Appellant humbly submits as under:-

- 1) That vide Notification dated 03.03.2009 the appellant was promoted to PMS (BS-17) on regular basis. **(Copy enclosed as Annexure "A")**
- 2) That vide notification dated 17.06.2016 juniors to appellant were promoted to PMS (BS-18) and promotion of appellant to BS-18 was deferred due to lack of training. **(Copy enclosed as Annexure "B")**
- 3) That after completion of appellant's training promotion of the appellant to BS-18 was again deferred due to pending inquiry against the appellant and further juniors to appellant, like Javid Ali etc were

(3)

recommended for promotion to BS-18 vide P.S.B meeting minutes dated 28.12.2016. **(Copy enclosed as Annexure "C")**

- 4) That during pendency of the inquiry juniors like Javid Ali etc to the appellant were further appointed in BS-19 on acting charge basis vide notification dated 03.10.2019 and were further regularly promoted vide notification dated 04.08.2021 in BS-19. **(Copies enclosed as Annexure "D")**
- 5) That after finalization of inquiry the appellant was promoted to PMS (BS-18) on regular basis vide notification dated 21.01.2021. **(Copy enclosed as Annexure "E")**
- 6) That vide notification dated 03.06.2021 appellant regained his seniority in BS-18 as visible from seniority list. **(Copy of seniority list is enclosed as Annexure "F")**
- 7) That vide judgment of this hon'ble Tribunal dated 27.07.2021 appellant was held entitled for proforma promotion w.e.f. 10.05.2016. **(Copy enclosed as Annexure "G")**
- 8) That vide P.S.B meeting minutes dated 31.07.2021, promotion of the appellant to P.M.S (BS-19) was deferred due to incompleteness of prescribed length of service for promotion and probation period and lack of mandatory training i.e. MCMC Training for promotion to BS-19. **(Copy enclosed as Annexure "H")**
- 9) That vide letter dated 06.09.2021, appellant was offered MCMC Training for promotion to BS-19 for the first

time, which he successfully completed vide certificate dated 17.12.2021. (Copies enclosed as Annexure "I")

- 10) That vide notification dated 15.04.2022 appellant was promoted to PMS (BS-19) on regular basis, but with immediate effect. (Copy enclosed as Annexure "J")
- 11) That appellant approaches this hon'ble Tribunal and vide judgment/ order dated 11.10.2023 of this hon'ble Tribunal, respondents were directed to decide departmental appeal of the appellant as per law. (Copy enclosed as Annexure "K")
- 12) That vide letter dated 19.03.2024 received by the appellant on 02.04.2024 appeal of the appellant is regretted, which is illegal, against law and facts. (Copy enclosed as Annexure "L")
- 13) That appellant approaches this hon'ble Tribunal on following grounds:-

GROUND.

- A. Because the respondents have malafidely and deliberately presented before the P.S .B the promotion date of appellant to BPS-17 as 25.01.2011 instead of correct date of promotion as 03.03.2009, thus appellant has 12 years length of service on 31.07.2021, thus the deferment reason of the appellant's promotion to BS-19 i.e. non-completion of prescribed length of service for promotion is totally fallacious, incorrect, fanciful and result of sheer malafide.
- B. Because vide judgment of this hon'ble Tribunal dated 27.07.2021, appellant has been held entitled to

(5)

proforma promotion to PMS (BS-18) w.e.f. 10.05.2016 and vide notification dated 12.01.2023, respondents have granted promotion from PMS (BS-17) to PMS (BS-18) to appellant w.e.f. 13.01.2017 instead of 10.05.2016, which is clear second malafide even on the part of respondents. In light of the notification dated 12.01.2023, the reason of appellant's deferment i.e. incompleteness of probation period is also illegal, unlawful, fallacious, non-maintainable. (Copy of notification dated 12.01.2023 is enclosed as Annexure "M")

- C. Because reason of deferment of appellant's promotion to PMS (BS-19) on the ground of lack of mandatory training is also illegal, unlawful and non-sustainable in the eyes of law, because on 31.07.2021 i.e. the date of which the Provincial Selection Board meeting was held, appellant was not offered MCMC Training rather it was offered to the appellant on 06.09.2021, after two months of deferment of promotion of the appellant.
- D. Because the above mentioned three reasons of deferment of the appellant's promotion are totally non-existent, misconceived, were creation of respondents for which appellant can't be punished in the shape of deferment of promotion, which is illegal, unlawful and un-Islamic.
- E. Because vide para-3 of the order of this hon'ble Tribunal dated 11.10.2023, the instant appeal involves the same grounds which were earlier decided by this

hon'ble Tribunal in favour of the appellant in the first round of litigation. (6)

- F. Because as per para 2(ii) of the notification dated 15.02.2017 and para-v (d) of the Promotion Policy, 2009, appellant is entitled to be appointed as P.M.S Officer (BS-19) w.e.f. 03.10.2019 on acting charge basis when his juniors like Javid Ali etc were appointed on ACB and is entitled to be promoted to PMS (BS-19) w.e.f. 04.08.2021, when his juniors like Javid Ali etc were promoted. **(Copies enclosed as Annexure "N")**
- G. Because appellant has not been dealt with in accordance with law as per Article 4 of the Constitution of Pakistan, 1973, thereby his fundamental rights are infringed.
- H. Because as per Article 25 of the Constitution of Pakistan, 1973 all citizens are equal before the law, however, appellant has been discriminated.
- I. Because as per Article 27 of the Constitution of Pakistan, 1973 discrimination in service is prohibited and falls within fundamental rights.
- J. Because as per 2007 SCMR 1355, 1997 SCMR 287, 1973 SCMR 304, 1998 SCMR 736, 2000 PLC (CS) 149 and 1995 PLC (CS) 151, appellant is entitled to be appointed as acting charge basis w.e.f. 03.10.2019 and promotion on regular basis w.e.f. 04.08.2021, when his juniors were appointed on acting charge basis and were promoted

on regular basis. (Copies are enclosed as Annexure "O")

PAYER

It is therefore, humbly prayed that on acceptance of this appeal, the impugned order dated 19.03.2024 vide which appeal of the appellant is regretted may please be set-aside and the appellant may please be appointed in (BS-19) on acting charge basis w.e.f. 03.10.2019 and may please to grant regular promotion to PMS (BS-19) w.e.f. 04.08.2021 when his juniors like Javid Ali etc were first appointed in PMS (BS-19) on acting charge basis on 03.10.2019 and thereafter regular promotion to PMS (BS-19) on 04.08.2021 with all back service and monetary benefits.

Any other relief which this hon'ble court deems appropriate in the circumstances of the case though not specifically asked for may kindly also be granted.

Dated: 16.04.2024


Appellant

Through

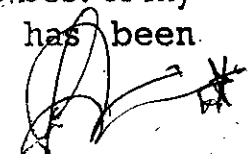

Amjad Ali (Madan)

Advocate

Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.


Deponent

(8)

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

Service Appeal No. _____/2024

Asad Ullah KhanAppellant

VERSUS

Govt. of K.P through
Secretary Establishment and others.....Respondents

ADDRESSES OF PARTIES

APPELLANT

Asad Ullah Khan, Additional Secretary
Board of Revenue Civil Secretariat, Peshawar

RESPONDENTS

1. Govt. of Khyber Pakhtunkhwa through Secretary
Establishment Department, Civil Secretariat,
Peshawar.
2. Chief Secretary, Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar.
3. Chief Minister Khyber Pakhtunkhwa/ Competent
Authority, Chief Minister Secretariat, Peshawar.
Through principal secretary

Appellant

Through


Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan



Annex - A

**GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT**

Dated Peshawar the 3rd March, 2009

NOTIFICATION:

No: SOE-II(ED)2(192)2009: The Competent Authority, in consultation with the Provincial Selection Board is pleased to order the promotion of the following Tehsildars, to Provincial Management Service (BS-17) on regular basis with immediate effect:-

Sr. #	NAME OF OFFICER
1	Mr. Shabbir Muhammad
2	Mr. Afsar Ali Shah
3	Mr. Maqsood Hassan
4	Mr. Muhammad Jamal Azmat
5	Mr. Abdul Hameed Khan
6	Mr. Asadullah
7	Mr. Javed Ali
8	Mr. Tariq Ali

2. On their promotion the above officers will be on probation for a period of one year in terms of section-6(2) of NWFP Civil Servants Act 1973 read with Rule-15(1) of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1982.

3. Posting / transfer orders of above named officers will be issued later on.

CHIEF SECRETARY, N.W.F.P.

ENDST: NO: SOE-II (ED)2(192) 2009

Dated Peshawar the 3rd March, 2009

A copy is forwarded to :-

1. Ser. Member Board of Revenue, NWFP.
2. Secretary to Governor, NWFP.
3. Principal Secretary to Chief Minister, NWFP.
4. Secretary (Admn & Coord) Civil Secretariat FATA.
5. District Coordination Officers, Swabi, Nowshera, Swat, & Dir Lower.
6. Political Agents, Mohmand Agency / S. Waziristan Agency / Kurram Agency.
7. Accounts General, NWFP, Peshawar.
8. District Accounts Officers, Swabi, Nowshera, Swat & Dir Lower.
9. Agency Accounts Officers, Mohmand Agency / S. Waziristan Agency / Kurram Agency.
10. S.O. (Secret)/(Admn)/E-IV/E.O/Programmer/Librarian, E&A Dept.
11. Officers concerned.
12. P.S. to Chief Secretary NWFP.
13. P.S. to Secretary Establishment NWFP.
14. PA to Addl. Secretary (E) / Dy. Secretary (E) Establishment Department.
15. Personal files of the officers concerned.
16. Office Order file.
17. Manager Govt Printing Press, Peshawar.

SEC



(11)

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

SR.#	NAMES OF OFFICERS	FROM	TO
4.	Mr. Abdul Malik (PMS BS-18)	PRO-cum- Protocol Officer, FATA Development Authority	Deputy Secretary, Population Welfare Department, against the vacant post.
5.	Syed Noor Ahmad Shah (PMS BS-18)	Section Officer, Finance Department	Deputy Secretary, Finance Department, against the vacant post.
6.	Mr. Misal Khan (PMS BS-18)	Section Officer, Irrigation Department.	Deputy Secretary, C&W Department, vice Sr. No. 7.
7.	Mr. Javed Akhter (PMS BS-18)	Deputy Secretary, C&W Department	Deputy Secretary in E&AD against the vacant post.
8.	Mr. Manzoor Elahi (PMS BS-18)	PS to Ikram Khan Gandapur	Deputy Secretary, E&SE Department, against the vacant post.
9.	Mr. Sardar Ali (PMS BS-18)	Section officer, IPC Department	Deputy Secretary, Chief- Minister's Secretariat, against the vacant post.
10.	Mr. Mirzali (PMS BS-18)	Section Officer, Environment Department	Deputy Secretary, LG&RD Department, against the vacant post.
11.	Mr. Muhammad Saeed Ullah (PMS BS-18)	Section Officer (Secret) E&A Department	Deputy Secretary (Reg. III), E&A Department, against the vacant post.
12.	Ms. Mussafat Ismail Bullt (PMS BS-18)	Section Officer, Cabinet Division, Islamabad (on deputation)	Repatriate to Establishment Department and further posted as Deputy Secretary, Finance Department, against the vacant post.
13.	Mr. Abdul Kabir Khan (PMS BS-18)	Adl AC Alpuri, Shangla.	Deputy Secretary (Policies), E&A Department, against the vacant post.
14.	Mr. Muhammad Rehman (PMS BS-18)	Monitoring officer, E&SE Department	Deputy Secretary, E&SE Department, against the vacant post.
15.	Mr. Fazad Khan, (PMS BS-18)	Section Officer, Agriculture Department.	Deputy Secretary, Governor's Secretariat, against the vacant post.
16.	Syed Abdul All Shah, (PMS BS-18)	Section Officer, IPC Department.	Deputy Secretary, Governor's Secretariat, against the vacant post.
17.	Mr. Muhammad Javed Siddiqi (PMS BS-18)	OMO, IMU, E&SE Deptt.	Deputy Secretary, Finance Department, against the vacant post.
18.	Mr. Javed Khan (PMS BS-18)	Section officer, Transport Deptt.	Deputy Secretary (Reg. IV) E&A Department, against the vacant post.
19.	Mr. Nabir Amen (PMS BS-18)	Section Officer, Finance Deptt.	Deputy Secretary (Reg. I) E&A Department, against the vacant post.



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the June 17, 2016

NOTIFICATION

NO:SO(E-I)E&AD/5-1/2016. Government of Khyber Pakhtunkhwa on the recommendations of the Provincial Selection Board is pleased to promote the following officers of Provincial Management Service (PMS) from BS-17 to BS-18, on regular basis with effect from 27.5.2016:-

S.#	NAMES OF OFFICERS
1.	Mr. Mansoor Qaiser
2.	Mr. Muhammad Asghar Khan
3.	Mr. Abdul Hadi
4.	Mr. Abdul Malik
5.	Syed Noor Ahmad Shah
6.	Mr. Misal Khan
7.	Mr. Manzoor Elahi
8.	Mr. Sardar Ali
9.	Mr. Mirzali
10.	Mr. Muhammad Saeed Ullah
11.	Ms. Mussarrat Ismail Butt
12.	Mr. Abdul Kabir Khan
13.	Mr. Muhammad Rehman
14.	Mr. Fazad Khan
15.	Syed Abdul Ali Shah
16.	Mr. Muhammad Javed Siddiqi
17.	Mr. Javed Khan
18.	Mr. Nasir Aman
19.	Mr. Sakhi-ur-Rehman

Juniors

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 or till their retirement, whichever is earlier, as the case may be.

3. Consequent upon the above, the officers will remain posted as under:-

SR.#	NAMES OF OFFICERS	FROM	TO
1.	Mr. Mansoor Qaiser (PMS BS-18)	Secretary to Commissioner, D.I.Khan	Secretary to Commissioner, D.I.Khan
2.	Mr. Muhammad Asghar Khan (PMS BS-18)	ACR Bannu	Deputy Secretary, Zakat, Ushr, Social Welfare and Women Empowerment Department, against the vacant post.
3.	Mr. Abdul Hadi (PMS BS-18)	Section Officer, Zakat, Ushr Department.	Deputy Secretary, Chief Minister's Secretariat, against the vacant post.

(B)

19



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

PAGE-3

SR.#	NAMES OF OFFICERS	FROM	TO
20.	Mr. Sakhi-ur-Rehman (PMS BS-18)	Section Officer, Mineral Dev. Deptt.	Deputy Secretary, Higher Education, against the vacant post.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

ENDST. OF EVEN NO. & DATE


Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary (FATA), FATA Secretariat.
4. All Administrative Secretaries in Khyber Pakhtunkhwa.
5. Principal Secretary to Governor, Khyber Pakhtunkhwa.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. Project Director, IMU Project, E&SE Department.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretary Establishment, E&A Department.
12. PS to Secretary Establishment/PS to SS(E)/SS (Reg)/PA/AS(HRD)/AS(E)/ DS(E)/
SO(E.II)/SO(E.V)
13. PS to Secretary (Admn.)/D.S(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy Director
(IT) and Director Protocol Administration Department.
14. Officers concerned.
15. Controller, Govt. Printing Press, Peshawar.

(KASHIF IQBAL JILANI)
SECTION OFFICER (ESYT, I)
PHONE & FAX # 091-9210629

21A-UL-HAD

(13)



(13)

ITEM NO (7)

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 10.05.2016)

SUBJECT: - PROMOTION OF PMS BS-17 OFFICERS TO BS-18.

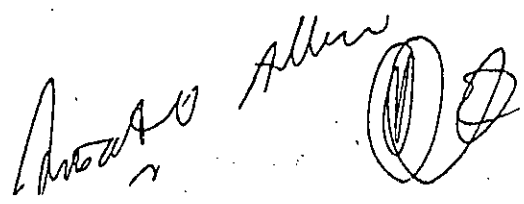
Secretary Establishment apprised the Board that number of schedule posts in BS-18 falling to the share of PCS (EG)/PCS (SG) and PMS are one hundred and twenty seven (127) where one hundred and six (106) officers are already working. Hence twenty one (21) posts of BS-18 are lying vacant.

According to Service Rules of PMS, the post in BS-18 is required to be filled as under:-

- i. By promotion, on seniority-cum-fitness basis, from amongst the officers of PMS in BS-17 having at least five years service and have passed the prescribed Departmental Training or Departmental Examination.
- ii. Under the policy of Provincial Government, eighteen (18) months training is mandatory for promotion to BS-18. However the officers who attained the age of 50 years or above on 1st July of the year in which the training is scheduled or promotion is being considered shall be exempted from training.

The service record of the officers included in the panel was discussed one by one as under: -

S No	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Jehanzeb Khan	His date of birth is 12.04.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 and 30.11.2015 recommended to defer his promotion as he had not undergone training mandatory for promotion. Position is still the same. The Board recommended to defer his promotion
2.	Mr. Mansoor Qaiser	His date of birth is 30.03.1966. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 and 30.11.2015 recommended to defer his promotion as he had not undergone training mandatory for promotion. He is now exempted from training mandatory for promotion due to age factor. No enquiry is pending against him. His service record upto 2015 is generally good.



8

24.	Ms. Mussarrat Ismail Butt	<p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation till retirement.</p> <p>Her date of birth is 01.01.1962. She joined government service on 13.12.1982. She was promoted to BS-17 on 03.03.2009. She is exempted from training mandatory for promotion due to age factor. No enquiry is pending against her. Her service record upto 2015 is generally good. Presently she is on deputation to Cabinet Division Islamabad.</p>
25.	Mr. Abdul Kabir Khan	<p>The Board recommended the officer for promotion to BS-18 on regular basis. She will be on probation for a period of one year. She will actualize promotion in her own cadre.</p> <p>His date of birth is 25.04.1965. He joined government service on 29.04.1998. He was promoted to BS-17 on 21.12.2011. He is exempted from training mandatory for promotion due to age factor. No enquiry is pending against him. His service record upto 2015 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.</p>
26.	Mr. Abdul Hameed Khan	<p>His date of birth is 09.02.1972. He joined government service on 29.04.1998. He was promoted to BS-17 on 03.03.2009. He has not undergone training mandatory for promotion</p> <p>The Board recommended to defer his promotion.</p>
27.	Mr. Asadullah Khan	<p>His date of birth is 02.03.1969. He joined government service on 14.07.1998. He was promoted to BS-17 on 03.03.2009. He has not undergone training mandatory for promotion</p> <p>The Board recommended to defer his promotion.</p>
28.	Mr. Javed Ali	<p>His date of birth is 15.08.1969. He joined government service on 15.07.1998. He was promoted to BS-17 on 03.03.2009. He has not undergone training mandatory for promotion</p> <p>The Board recommended to defer his promotion.</p>
29.	Mr. Tariq Ali Khan	<p>His date of birth is 14.12.1970. He joined government service on 14.07.1998. He was promoted to BS-17 on 03.03.2009. He has not undergone training mandatory for promotion</p>

14

And-c

MEM NO (1)

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 28.12.2016)

SUBJECT: PROMOTION OF PMS BS-17 OFFICERS TO BS-18.

(17)

Secretary Establishment apprised the Board that number of schedule posts in BS-18 falling to the share of PCS (EG)/PCS (SG) and PMS are one hundred and thirty three (133) where one hundred and sixteen (116) Officers are already working. Hence seventeen (17) posts are lying vacant. Moreover the Secretary further apprised the Board that these posts were reserved for those Officers who were undergoing mandatory training for promotion. They have now completed the requisite training and eligible to be considered for promotion.

2. According to Service Rules of PMS, the post in BS-18 is required to be filled as under:-

"By promotion, on seniority-cum-fitness basis, from amongst the officers of PMS in BS-17 having at least five years service and have passed the prescribed Departmental Training or Departmental Examination"

3. The service record of the officers included in the panel was discussed one by one as under:-

S. #	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1	Mr. Jehanzeb Khan	His date of birth is 12.04.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015, 30.11.2015, 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he had not undergone training mandatory for promotion. He has now undergone mandatory training. No enquiry is pending against him. His service record upto 2015 is generally good. The Board recommended the officer for promotion to ES-18 on regular basis. He will be on probation for a period of one year.
2	Mr. Maqsood Hassan	His date of birth is 10.03.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015, 30.11.2015, 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as the Board was informed that he was involved in a NAB case and had also not undergone mandatory training. He has now undergone mandatory training. However the NAB case is still pending against him.

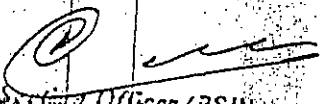
Officer (PMS)
Govt. of Khyber Pakhtunkhwa
Establishment Department

Handwritten marks

Handwritten signature and initials

15

11. Mr. Abdul Hameed Khan	<p>His date of birth is 09.02.1972. He joined government service on 29.04.1998. He was promoted to BS-17 on 03.03.2009. The Board in its meeting held on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he had not undergone training mandatory for promotion. He has now undergone mandatory training. No enquiry is pending against him. His service record upto 2015 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.</p>
12. Mr. Asadullah Khan	<p>His date of birth is 02.03.1969. He joined government service on 14.07.1998. He was promoted to BS-17 on 03.03.2009. The Board in its meeting held on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he had not undergone training mandatory for promotion. He has now undergone mandatory training for promotion, however an enquiry is pending against him.</p> <p>The Board recommended to defer his promotion.</p>
13. Mr. Javed Ali	<p>His date of birth is 15.08.1969. He joined government service on 15.07.1998. He was promoted to BS-17 on 03.03.2009. The Board in its meeting held on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he had not undergone training mandatory for promotion. He has now undergone mandatory training. No enquiry is pending against him. His service record upto 2015 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.</p>
14. Mr. Tariq Ali Khan	<p>His date of birth is 14.12.1970. He joined government service on 14.07.1998. He was promoted to BS-17 on 03.03.2009. The Board in its meeting held on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he had not undergone training mandatory for promotion. He has now undergone mandatory training. No enquiry is pending against him. His service record upto 2015 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.</p>
15. Mr. Muhammad Yaqub Barki	<p>His date of birth is 02.02.1967. He joined government service on 01.07.1995. He was promoted to BS-17 on 25.03.2010. The Board in its meeting held on 29.06.2016, 27.07.2016 and</p>


 Officer (PSB)
 of Ishtyari Pakhtunkhwa
 Establishment Department



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Am - D

Case File Number October 9, 2019

18

NOTIFICATION

NO. SO. 549/S&A/10019
 (Subject: Advertisement for recruitment of 10 posts of Assistant Secretary (General Administration) in the Government of Punjab, Punjab, Pakistan. The posts are to be filled on a temporary basis for a period of 12 months from the date of advertisement. The posts are to be filled on a temporary basis for a period of 12 months from the date of advertisement.)

S.N.	NAME OF CANDIDATE	PRESENT POSTING
1	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
2	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
3	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
4	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
5	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
6	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
7	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
8	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
9	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
10	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
11	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
12	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
13	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
14	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
15	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
16	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
17	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
18	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
19	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan
20	Muhammad Iqbal	Assistant Deputy Commissioner, Feroz Khan

January

2. This advertisement is published in the Punjab Gazette No. 113, 16 and 17, 2019, dated 16/10/2019, and is available for perusal at the office of the Secretary, Government of Punjab, Lahore. The posts are to be filled on a temporary basis for a period of 12 months from the date of advertisement.

GOVERNMENT OF KHYBER PAKHTUNKHWA
 ESTABLISHMENT DEPARTMENT

1. Assistant Secretary (General Administration) - 10 posts
1. Assistant Secretary (General Administration) - 10 posts
 2. Assistant Secretary (General Administration) - 10 posts
 3. Assistant Secretary (General Administration) - 10 posts
 4. Assistant Secretary (General Administration) - 10 posts
 5. Assistant Secretary (General Administration) - 10 posts
 6. Assistant Secretary (General Administration) - 10 posts
 7. Assistant Secretary (General Administration) - 10 posts
 8. Assistant Secretary (General Administration) - 10 posts
 9. Assistant Secretary (General Administration) - 10 posts
 10. Assistant Secretary (General Administration) - 10 posts
 11. Assistant Secretary (General Administration) - 10 posts
 12. Assistant Secretary (General Administration) - 10 posts
 13. Assistant Secretary (General Administration) - 10 posts
 14. Assistant Secretary (General Administration) - 10 posts
 15. Assistant Secretary (General Administration) - 10 posts
 16. Assistant Secretary (General Administration) - 10 posts
 17. Assistant Secretary (General Administration) - 10 posts
 18. Assistant Secretary (General Administration) - 10 posts
 19. Assistant Secretary (General Administration) - 10 posts
 20. Assistant Secretary (General Administration) - 10 posts

SECTION OFFICER (ESTD)

18



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the August 04, 2021

NOTIFICATION

NO. SO(E-I)E&AD/5-1/2021. The Competent Authority, on the recommendations of the Provincial Selection Board, in its meeting held on 31.07.2021, is pleased to promote the following officers from PMS BS-18 to PMS BS-19, on regular basis with immediate effect:-

S. #.	NAMES OF OFFICERS	PRESENT POSTING
1.	Syed Muhammad Suhail	Project Director, Swabi Development Authority, Swabi
2.	Mr. Muhammad Saeedullah	Additional Secretary (Reg-II), Establishment & Administration Department
3.	Ms. Mussarrat Ismail Butt	Awaiting posting in Establishment Department.
4.	Mr. Abdul Kabir Khan	Additional Commissioner, Malakand
5.	Mr. Abdul Hameed Khan	Director Civil Defence, Peshawar
6.	Mr. Javed Ali	Registrar, Khyber Pakhtunkhwa Appellate Tribunal for Sales Tax on Services, Peshawar
7.	Mr. Tariq Ail Khan	Additional Secretary, Transport & Mass Transit Department

2. The officers on promotion will remain on probation for a period of one year, in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. However, the officer at Sr. No. 3 will remain on probation till her retirement.

3. Consequent upon above, the officers mentioned at Sr. No. 1, 2 and 4 to 7 are allowed to actualize their acting charge appointment in BS-19, against their already occupied posts. However, posting/transfer of the officer mentioned at Sr. No. 3 will be issued later on.

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

ENDST. OF EVEN NO. & DATE

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Administrative Secretaries in Khyber Pakhtunkhwa.
6. All Divisional Commissioners in Khyber Pakhtunkhwa.
7. Accountant General, Khyber Pakhtunkhwa.
8. All Deputy Commissioners in Khyber Pakhtunkhwa.

CONTINUED AT PAGE-02

(H)



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

18



(PAGE-02)

10. Director Information & P.R. Department.
11. District Accounts Officer concerned.
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary (Estt) /SS(E)/SS(Reg)/
AS(HRD)/AS(E)/DS(E) SO(E.II)/SO(E.V) Establishment
Department.
14. PS to Secretary (Admn.)/D.S(A)/SO(Secret)/Estate Officer/ACSO
Cypher/Dy Director (IT) and Director Protocol Administration
Department.
15. Officers concerned.
16. Controller, Govt. Printing Press, Peshawar.

Zia-ul-Haq
(ZIA UL HAQ)

SECTION OFFICER (E.I)

PH: # 091-9210529

IMDAD KHAN



(19)

Ann-E

46

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

Dated Peshawar, the January 21, 2021

NOTIFICATION

NO. SOIE-DE&AD/6-12021.

The Competent Authority, on the recommendations of the Provincial Selection Board, in its meeting held on 30.12.2020, is pleased to promote the following officers from PMS BS-17 to PMS BS-18, on regular basis with immediate effect:-

S. #	NAMES OF OFFICERS	PRESENT POSTING
1.	Mr. Asadullah Khan	Additional Deputy Commissioner (F&P), Shangla
2.	Mr. Abdul Mateen Khan Qasura	Additional Deputy Commissioner (General), Tank
3.	Mr. Saleem Jan	Deputy Secretary, Sports, Culture & Tourism Department.
4.	Mr. Irfan Ali	Additional Deputy Commissioner (F&P), Swat
5.	Mr. Gohar Ali	Additional Deputy Commissioner (General), Swabi

2. The officers on promotion will remain on probation for a period of one year, in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon above, all the officers mentioned in Para-01 are allowed to actualize their promotion against their already occupied posts.

CHIEF SECRETARY

GOVERNMENT OF KHYBER PAKHTUNKHWA

ENDST. OF EVEN NO. & DATE

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Administrative Secretaries in Khyber Pakhtunkhwa.
6. All Divisional Commissioners in Khyber Pakhtunkhwa.
7. Accountant General, Khyber Pakhtunkhwa.
8. All Deputy Commissioners in Khyber Pakhtunkhwa.
9. Director Information & P.R Department.
10. District Accounts Officer concerned.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. PS to Secretaries, Establishment & Administration Department.
13. PS SS(E)/SS(Reg)/AS(HRD)/AS(E)/DS(E)/SO(E.II)/SO(E.V)/ESAD.
14. PA to DS(A)/SO(Secret)/Estate Officer/AGSO Cyber/Dy. Director (IT) and Director Protocol Administration Department.
15. Officers concerned.
16. Controller, Govt. Printing Press, Peshawar.

ZIA UL HAQ
SECTION OFFICER (E.I)

PH: # 091-9210529

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

NOTIFICATION

Dated Peshawar the June 03, 2021

NO. SO(E-I)E&AD/6-25/2021. In pursuance of Section-8(1) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, final Seniority list of Officers of Provincial Management Service BS-18, as it stood on 03.06.2021 is notified/circulated:-

S. #	Name of the Officer	Date of birth and Domicile	Date of 1 st entry into Govt Service	Regular appointment/Promotion/Absorption to present post			Present Posting
				Date	BPS	Method of Recruitment	
1	2	3	4	5	6	7	8
1.	Syed Muhammad Sohail	29.10.67 Peshawar	19.11.1990 27.5.2008	13.5.2019	19 acb	By promotion	Project Director, Swabi Dev. Authority
2.	Mr. Mehsood Javedullah	15.10.1967 SWA	1.7.1995 7.11.2008	3.10.2019	19 acb	-do-	Additional Secretary, LG&RD
3.	Mr. Habibullah-I	9.9.1966 Peshawar	1.1.1985 3.3.2009	3.10.2019	19 acb	-do-	AS-CUM-PS TO Khyber Pakhtunkhwa (personally upgraded)
4.	Mr. Mirzali Khan	11.2.1966 Bannu	5.8.1989 3.3.2009	3.10.2019	19 acb	-do-	Director (A/F) Provincial Services Academy
5.	Mr. Muhammad Saeedullah	1.3.1966 Chitral	7.11.90 3.3.2009	3.10.2019	19 acb	-do-	Additional Secretary (Reg-II), E&AD
6.	Ms. Mussarrat Ismail Butt	1.1.1962 Peshawar	13.12.83 3.3.2009	3.10.2019	19 acb	-do-	on deputation to Federal Government
7.	Mr. Abdul Kabir Khan	25.4.1965 Swat	29.04.98 3.3.2009	3.10.2019	19 acb	-do-	Additional Commissioner, Malakand
8.	Mr. Abdul Hameed Khan	9.2.1972 Malakand	29.4.1998 3.3.2009	7.7.2020	19 acb	-do-	Deputy Commissioner, Battagram
9.	Mr. Asadullah Khan (Regain Seniority)	02.03.1969 Malakand	14.07.1998	21.01.2021	18	-do-	Additional Deputy Commissioner (F&P) Shangla
10.	Mr. Javed Ali (Chitrali)	15.8.1969 Chitral	15.7.1998 3.3.2009	3.10.2019	19 acb	-do-	Registrar, Khyber Pakhtunkhwa Appellate Tribunal Sales Tax on Services

S. #	Name of the Officer	Date of birth and Domicile	Date of 1 st entry into Govt Service	Regular appointment/Promotion/Absorption to present post:			Present Posting
				Date	BPS	Method of Recruitment	
1	2	3	4	5	6	7	8
11.	Mr. Tariq Ali Khan	14.12.1970 Malakand	14.7.1998 3.3.2009	7.7.2020	19 acb	By promotion	Additional Secretary, Transport Department.
12.	Mr. Muhammad Rehman	5.2.1965 Mohmand	13.1.87 25.1.2010	3.10.2019	19 Acb	-do-	OSD, E&AD
13.	Syed Masood Shah	1.1.1963 Peshawar	10.10.1986 25.3.2010	13.5.2019	18	-do-	Additional Commissioner Bannu
14.	Mr. Muhammad Yaqoob Barki	2.2.1967 SWA	1.7.1995 25.3.2010	3.10.2019	19 acb	-do-	Project Director, Karak Dev. Authority
15.	Mr. Muhammad Kashif Nadeem	11.9.1970 DIK	1.7.1995 25.3.2010	13.1.2017	18	-do-	Project Director, Bannu Development Authority
16.	Mr. Ghazi Nawaz	3.3.1967 FR DIK	22.3.1985 25.3.2010	7.7.2020	19 acb	-do-	Project Director Estt. of Housing Foundation for Govt. Servants
17.	Mr. Muhammad Nasir Khan	20.3.1966 Dir Lower	29.04.98 25.3.2010	7.7.2020	19 acb	-do-	Additional Secretary Population
18.	Mr. Hidayatullah Khan	15.4.1971 Dir Lower	29.04.98 25.3.2010	7.7.2020	19 acb	-do-	Director, PMU HED.
19.	Syed Kazim Hussain Shah	20.3.1969 Chitral	29.4.98 25.3.2010	7.7.2020	19 acb	-do-	Additional Commissioner, Peshawar
20.	Mr. Fazal Hussain	18.2.71 Nowshera	29.4.1998 25.3.2010	13.5.2019	18	-do-	Secretary-II, BoR.
21.	Mr. Muhammad Irshad-I	25.12.68 Dir Upper	29.4.1998 25.3.2010	15.1.2019	18	-do-	Additional Secretary, Housing
22.	Mr. Habib Ullah Arif	1.4.1967 Swat	29.4.1998 25.3.2010	13.5.2019	18	-do-	Deputy Commissioner, Mardan
23.	Mr. Naeem Akhtar	11.6.68 Swat	29.4.1998 25.3.2010	13.5.2019	18	-do-	Additional Commissioner, Mardan
24.	Mr. Niaz Muhammad Khan	15.1.1970 Swat	29.4.98 25.3.2010	21.1.2021	19 acb	-do-	Additional Secretary, LG&RD
25.	Mr. Muhammad Irfanullah	1.1.1981 South Waziristan	9.5.2010	21.1.2021	19 acb	-do-	OSD, E&AD
26.	Mr. Muhammad Fayaz Khan	16.3.1986 Charsadda	9.5.2010	5.8.2016	18	-do-	Deputy Commissioner, T.D Bajaur

S. #	Name of the Officer	Date of birth and Domicile	Date of 1 st entry into Govt Service	Regular appointment/Promotion/Absorption to present post			Present Posting
				Date	BPS	Method of Recruitment	
1	2	3	4	5	6	7	8
250.	Mr. Masaud Jan	22.12.1985 Dir Lower/3	27.05.2012	2.7.2020	18	By promotion	Additional Deputy Commissioner (F&P) Dir Upper
251.	Mr. Umar Arshad Khan	13.3.1988 Mansehra/5	27.05.2012	2.7.2020	18	-do-	Deputy Director, KP-PSRA
252.	Mr. Shakeel Ahmad Jan	1.10.1985 Lakki Marwat/4	27.05.2012	2.7.2020	18	-do-	Secretary, RTA Malakand
253.	Mr. Abdul Mateen Khan Qasuria	22.12.1966 D.I.Khan	24.06.2000	21.01.2021	18	-do-	Additional Deputy Commissioner (G) Tank
254.	Mr. Saleem Jan	07.06.1975 Lakki Marwat	07.01.2002	21.01.2021	18	-do-	Director Youth Affairs, Khyber Pakhtunkhwa
255.	Mr. Irfan Ali	12.04.1976 Mohmand Agency	02.02.2009	21.01.2021	18	-do-	Additional Deputy Commissioner (F&P) Swat
256.	Mr. Gohar Ali	03.02.1979 Mohmand	02.02.2009	21.01.2021	18	-do-	Additional Deputy Commissioner (G), Swabi

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

EnDeputy Secretary: No. & date even

Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt of Khyber Pakhtunkhwa.
4. All Divisional Commissioners/All Deputy Commissioners in Khyber Pakhtunkhwa.
5. PSO to Chief Secretary, Khyber Pakhtunkhwa.
6. PS to Chief Secretary, Khyber Pakhtunkhwa.
7. PS To Secretary Establishment/Administration Department's, Khyber Pakhtunkhwa.
8. Officers concerned/Manager, Govt Printing Press Peshawar.

Sulaiman Shah

Zia-ul-Haq
(ZIA-UL-HAQ)
SECTION OFFICER (ESTT-I)

(23) Ans G

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.



Service Appeal No. 946/2018

Date of Institution 31.07.2018

Date of Decision 27.07.2021

AsadUllah Khan, Section Officer Home Department, Civil Secretariat, Peshawar.
(Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Secretary Establishment Department, Civil Secretariat, Peshawar and two others.
(Respondents)

Present:

MR. AMJAD ALI,
Advocate --- For Appellant.

MUHAMMAD ADEEL BUTT,
Additional Advocate General --- For respondents.

AHMAD SULTAN TAREEN --- CHAIRMAN
ROZINA REHMAN --- MEMBER(Judicial)

JUDGEMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above

invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby the recommendation of Provincial Selection Board (PSB) as to deferment of his promotion and purporting the same being against the facts and law on the subject.

02. The facts precisely include that appellant was serving as Section Officer (BS-17). The PSB met on 10.05.2016 and as result of this meeting, the promotion case of the appellant to the post of BS-18 was deferred due to lack of mandatory training. The respondents offered 14 weeks training for promotion to BS-18 to the appellant which he successfully completed vide letter dated 06.12.2016. On 28.12.2016, meeting of PSB was held but again promotion of the appellant was deferred due to

RECEIVED

Signature of Ahmad Sultan Tareen

(G) (G)

pending inquiry against him. Feeling aggrieved, he filed departmental appeal on 16.01.2017 which was rejected vide order dated 18.07.2018. As a matter of next remedy, present service appeal was preferred and admitted for full hearing with notice to the respondents. They on attending the proceedings have filed written reply/comments refuting the claim of appellant for the relief as sought by him in the memorandum of appeal.

03. We have heard the arguments and perused the record.

04. It was argued on behalf of the appellant that the facts and grounds brought to fore in the memorandum of appeal were sufficient for setting aside the recommendation of P.S.B as to deferment of appellant's promotion but in view of the changed circumstances, no need is left to argue the appeal on its facts and ground; when the appellant has been promoted during pendency of this appeal. The learned counsel for the appellant extended his arguments for amendment of the appeal. He argued that this Tribunal is competent to allow the amendment in appeal and in case of the particular amendment as sought for this appeal, it will shorten the course of litigation. However, learned A.A.G opposed the arguments of the appellant's counsel with submissions that the appeal has become infructuous when the main relief as sought has been granted to the appellant out of court. It was further submitted that the appellant is not entitled to press for proforma promotion by seeking amendment in present appeal.

05. In view of the facts noted herein above, it is an undeniable fact that name of the appellant was included in the working paper for promotion from BS-17 to BS-18 for consideration of PSB in its meeting held on 10.05.2016. His name is listed at serial No.12 of the table containing the recommendation of the PSB as part of the minutes of said meeting of PSB on the subject of promotion of PMS (BS-17) Officer to BS-18. Copy of the said minutes is available on file. According to

ATTESTED

IN AMOUNT
Cashier Pakhtrah
Peshawar Tribunal

25

~~25~~

recommendation of PSB against name of the appellant at serial No. 12 in the said table. It is there that the Board in its meeting held on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he had not undergone training mandatory for promotion. PSB further noted that he has now undergone mandatory training for promotion; however, an enquiry against him is pending. PSB recommended to defer his promotion. The appellant became aggrieved from the said recommendation and preferred departmental appeal obviously in vain and thereafter, he is here through service appeal at hand. During the course of pendency of this appeal, he submitted a civil miscellaneous application which was put up to the court with relevant appeal on 08.03.2021, as yet awaiting the formal order as to its fate. We have noticed that a copy of notification dated 21.01.2021 has been annexed with the said application as annexure-K at page 23. Accordingly, the appellant on recommendations of the PSB in its meeting held on 3.12.2020 has been promoted among others on regular basis with immediate effect. Certainly, this is a new event having taken place during pendency of this appeal, which by its impact has changed the course of Appellant impelling him to seek amendment in the memorandum of appeal. Therefore, it has become expedient to consider this changed situation for its fitness to application of molding relief principal to prevent the likelihood of multiplicity of proceedings. It The fitness for application of said principle dependent upon existing of certain prerequisites. Accordingly, if there is a subsequent occurrence of an event, which has the potential of impacting the relief sought by the parties to the suit, the court can take cognizant of this charge to mold the relief in the interest of justice even though it is not strictly in consonance with the relief sought by the parties. This approach adopted by the court is known as "molding relief". This principle is applicable in civil matters and if we go back to history of its application, the mother judgment on its application is

in the case of *Mst. Amina Begum Vs. Meher Ghulam Dastagir* (PLD 1978 SC

220). Reliance upon the said judgment in the precedent law is quite constant, where the application of moulding of relief in view of changed circumstances is deemed necessary by the superior courts. However, application of this principle is subject to certain conditions as deducible from the jurisprudence having so far developed under the precedent law relating to the said principle and may be enumerated as follow:-

1. That the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted.
2. That taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and
3. That such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

06. Testing the case of the appellant on touchstone of the condition necessary for application of moulding relief, the relief as sought by the appellant originally in his present appeal has, by reason of his promotion through notification dated 21.01.2021, has become infructuous. On the other hand, the Appellant is still aggrieved believing that he should have been granted promotion from the date when his case was submitted to PSB for the first time and deferred.

07. Taking notice of Appellant's promotion by the said notification dated 21.01.2021 coupled with his grievance, we are constrained to observe that this subsequent event if taken in to account for the sake of justice, a question is made out whether the appellant was entitled for promotion from the date when his case for the first time was deferred by PSB or from the immediate effect as given to him vide notification dated 21.01.2021. If this question is left undetermined and the appellant appeal at hand is dismissed having become infructuous, it will result into

97

20

multiplicity of proceedings including that the appellant has to file departmental appeal for seeking proforma promotion from the date of his first deferment, and if he fails to get redressal of his prayer in departmental appeal; he will have to file the service appeal which consequently will engage the department for written reply/comments and then it will engage this Tribunal to decide the said appeal ultimately by determination of the same question having no come up here before us. So, we are of the considered opinion that if the stated question is taken for determination here in this appeal, it will necessarily result in shortening of the litigation and enabling complete justice being done to the parties. Moreover, the respondents are also not being taken by the surprise for determination of the said question when the appellant has already moved civil miscellaneous application for amendment of the service appeal in pursuance to the subsequent event of promotion notification dated 21.01.2021 of the appellant. Again it will result in to multiplicity of the proceedings if we go after disposal of the said application asking the respondents to file their reply, hearing the arguments then passing the order certainly at risk of challenge by either party feeling aggrieved. Therefore, we deem it in interest of the parties and to avoid multiplicity of proceedings to restrain ourselves from disposal of the application for amendments of appeal albeit it will remain part of the main file; and we will prefer to take up the question formulated above for determination as to justifiable date of promotion of the appellant.

[Handwritten signature]

08. It is an undeniable fact that the concerned department extended the benefit to the appellant by including his name firstly in the working paper presented before PSB on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 but his promotion was deferred mainly for the reason that he had not undergone training mandatory for promotion. However, the appellant was found fit for promotion in meeting of PSB held on 28.12.2016 after his having undergone the training which previously resulted in to deferment of his promotion but at this time, his promotion was again

INVESTIGATIVE
 SERVICE UNIT
 ESTABLISHED
 1964

ATTENTION

28

28

deferred due to pendency of an enquiry against him. The given account of deferment of appellant's promotion successively leads to an inference that the same in his case was owing to the circumstances beyond his control. However, when the circumstances changed, he now has been promoted to the higher post with immediate effect on 21.01.2021. It is a matter of law in light of second explanation to Rule-17 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules 1989 that the supersession of a senior person strips him off from the right of his seniority over a junior person promoted in consequence of supersession of the former notwithstanding the effect that he i.e. former was also subsequently promoted but there is a rider in the same explanation that the junior person have not been deem to have superseded a senior person, if the case of a senior person is deferred for the time being for want of certain information or for incompleton of record or for any other reason not attributed to his fault or demerit. When juxtaposing case of the appellant to the said rider, the nomination of a government servant for mandatory training for promotion is a matter of discretion of the competent authority and a civil servant cannot compel the department for his nomination. In this eventuality, the reason of absence of the mandatory training is not attributable to the civil servant. However, there can be another eventuality that a civil servant is nominated for training but he fails to avail the chance; he in case of such eventuality is at risk of attribution of lacking of the necessary training for promotion and if in the matter of such eventuality, the promotion of a civil servant is deferred; he may not be able to claim proforma promotion. Anyhow, the case of appellant before us is one attracting the first eventuality that he was not nominated for training. Therefore, his deferment on such count is not workable to deprive him from the right of seniority at his right place with those colleagues who got promotion when the promotion of the appellant was for the first time deferred for want of his mandatory training. As far as the deferment of appellant promotion,

Handwritten signature/initials on the left margin.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Commission

10/1/2021

29

29

linked with enquiry pending against him, is concerned; his exoneration from the same obviously paved the way for his promotion made vide notification dated 21.01.2021. Henceforth, the reason of pendency of enquiry, if was attributable to the appellant in deferment of his promotion on 28.12.2016., has now vanished. As cumulative effect of the said discussion, the appellant is held entitled for proforma promotion from 10.05.2016 when his name reflected in the working paper for the first time came under consideration before PSB necessitating its actualization of this proforma promotion under due course. This appeal stands disposed of in the given terms with direction to the respondents to issue necessary corrigendum of the notification dated 21.01.2021 accordingly. There is no order as to costs. File be consigned to the record room.

ANNOUNCED
27.07.2021

[Signature]
(ROZINA REHMAN)
MEMBER(J)

[Signature]
(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified
copy
K...
S...
P...

Date of Presentation of Application 27/8/21
 Number 3200
 Copies 33
 Urgent 45
 Total 37
 Name of [Signature]
 Date of Completion of Copy 27/8/21
 Date of Delivery of Copy 27/8/21

Ann - H (30)

PSB meeting held on 31.07.2021

ITEM NO. (03)

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 31.07.2021)

SUBJECT: PROMOTION OF PCS (PMS) OFFICERS FROM BS-18 TO BS-19

Secretary Establishment apprised the Board that number of scheduled posts in BS-19 falling to the share of PMS are One Hundred and Twelve (112) against which Ninety Five (95) officers are already working. Thus, seventeen (17) posts in BS-19 are lying vacant due to retirement, creation and promotion. Seventeen (17) officers have been recommended for promotion to BS-20. Total clear vacancies for promotion are thirty four (34).

2. According to the Provincial Management Service Rules, 2007, the posts of PMS in BS-19 are required to be filled as under:-

"By promotion on the basis of seniority cum fitness from amongst PMS officers holding posts in BS-18 and having at least 12 years service against posts in BS-17 and above and have passed the prescribed Departmental Training/Examination".
However, exemption from training is allowed to officers who is likely to retire within two years from service on attaining the age of superannuation.

3. The service record of the officers included in the panel were discussed as follows:-

S.#	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Syed Muhammad Suhail. <i>For Court proceedings</i> <i>Attestd</i> <i>Rijullah</i> <i>Special Officer (PSB)</i> Govt. of Punjab Pakistunkhwa Establishment Department	His date of birth is 29.10.1967. He joined government service on 19.11.1990 and was promoted to BS-17 on 27.05.2008. He has already been appointed to BS-19 on acting charge basis since 13.05.2019. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2020 is generally good. His quantified score is 63 and the Board awarded him 9 out of 15 marks. The Board recommended the officer for promotion to BS-19 on regular basis. He will be on probation for a period of one year.
2.	Mr. Javedullah Mehsood.	His date of birth is 15.10.1967. He joined government service on 01.07.1995 and was promoted to BS-17 on 07.11.2008. He has already been appointed to BS-19 on acting charge basis since 03.10.2019. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete except PER for the year 2020 which is in process. His service record upto 2020 is generally good. His quantified score is 64 and the Board awarded him 5 out of 15 marks. The Board recommended the officer for promotion to BS-19 on

(4)



<p>superannuation on the scheduled date of commencement of training shall be exempted from MCMC. The officer has attained 58 years, therefore, she is exempted from mandatory training. No enquiry is pending against her. Her PER dossier is complete. Her service record upto 2020 is generally good. Her quantified score is 73 and the Board awarded her 9 out of 15 marks.</p> <p>The Board recommended the officer for promotion to BS-19 on regular basis. She will be on probation till her retirement.</p>			
<p>His date of birth is 25.04.1965. He joined government service on 29.04.1998 and was promoted to BS-17 on 03.03.2009. He has already been appointed to BS-19 on acting charge basis on 03.10.2019. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2020 is generally good. His quantified score is 64 and the Board awarded him 9 out of 15 marks.</p> <p>The Board recommended the officer for promotion to BS-19 on regular basis. He will be on probation for a period of one year.</p>		<p>Mr. Abdul Kabir Khan</p>	
<p>His date of birth is 09.02.1972. He joined government service on 29.04.1998 and was promoted to BS-17 on 03.03.2009. He has already been appointed to BS-19 on acting charge basis since 07.07.2020. He has completed prescribed length of service for promotion. He has undergone mandatory training for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2020 is generally good. His quantified score is 65 and the Board awarded him 9 out of 15 marks.</p> <p>The Board recommended the officer for promotion to BS-19 on regular basis. He will be on probation for a period of one year.</p>		<p>Mr. Abdul Hameed Khan</p> <p><i>For com proceedings</i></p> <p><i>Attest</i></p> <p><i>P. J. S. S.</i></p> <p>Secretary (PSB) Govt. Office for Pakistan Establishment Department</p>	<p>8. Mr. Abdul Hameed Khan</p>
<p>His date of birth is 12.03.1969. He joined government service on 14.07.1998 and was promoted to BS-17 on 25.01.2011. He was promoted to BS-18 on 21.01.2021. He has not yet completed prescribed length of service for promotion and probation period. He has also not undergone mandatory training for promotion.</p> <p>The Board did not consider his promotion.</p>		<p>Mr. Asadullah</p>	<p>9. Mr. Asadullah</p>
<p>His date of birth is 15.08.1969. He joined government service on 15.07.1998 and was promoted to BS-17 on 03.03.2009. He has already been appointed to BS-19 on acting charge basis since 03.10.2019. He has completed prescribed length of service for promotion. He has undergone mandatory training for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2020 is generally good. His quantified score is 65 and the Board awarded him 9 out of 15 marks.</p>		<p>Mr. Javed Ali</p>	<p>10. Mr. Javed Ali</p>

PSB meeting held on 31.07.2021

31

MOST IMMEDIATE
BY SPL MESSENGER/U.M.S

Ann-I

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

F. No. 8/6/2021-T-VI

Islamabad, the 06th September, 2021

321

The Rector,
National School of Public Policy,
Lahore.

Subject: **NOMINATIONS OF BS-18 OR EQUIVALENT OFFICERS FOR 32nd MID CAREER MANAGEMENT COURSE (MCMC) AT NIMS KARACHI, LAHORE, PESHAWAR, ISLAMABAD AND QUETTA FROM 27-09-2021 TO 03-12-2021**

Dear Sir,

I am directed to refer to this Division's O.M of even number dated 17-06-2021 on the subject noted above and to say that the competent authority has been pleased to approve nominations of the following BS-18/equivalent officers for the forthcoming 32nd Mid-Career Management Course (MCMC):-

S. No.	Name of Officers / Place of Posting	Name of Institution (NIMS)
PAKISTAN ADMINISTRATIVE SERVICE (PAS)		
1.	Mr. Muhammad Umar Masud, Urban Sector Planning and Management Services Unit (Private) Limited (on deputation) Government of Punjab	Lahore
2.	Ikram-ul-Haq Capt (R), disposal of Government of Punjab	Lahore
3.	Ali Shahezad, Deputy Commissioner, Multan, Government of Punjab.	Lahore
4.	Adnan Mahmood Awan, Additional Secretary, Home Department, Government of Punjab.	Lahore
5.	Babar Bashir, Deputy Commissioner, Sahiwal, Government of Punjab.	Peshawar
6.	Ms. Maria Tariq, Additional Secretary, Youth Affairs Sports Department, Government of Punjab.	Lahore
7.	Anwar Ali Shar, Secretary, Chief Minister's Inspection, Enquires & Implementation Team, Government of Sindh.	Karachi
8.	Muhammad Wasif Saeed, Additional Secretary Elementary & Secondary Education Department, Government of KPK.	Peshawar
9.	Akmal Khan, Additional Secretary, Labour Department, Government of KPK.	Peshawar
10.	Muhammad Qaiser Khan, Director, Tourism Department, Government of Balochistan, Quetta.	Quetta

33

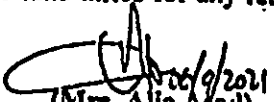
Deputy Conservator (W.I)		
148.	Mr. Muhammad Samar Hussain Khnn, Deputy Conservator (Wildlife Inventory), M/o Climate Change	Karachi
MINISTRY OF HOUSING & WORKS (Page-248 & 257-259/C)		
E/M Side		
149.	Abdul Raziq, Project E/M Division, Pak.PWD, Islamabad.	Lahore
Architect		
150.	Khurshid-ul-Hassan, C.E's Office (South), Pak.PWD, Karachi.	Karachi
Pakistan Housing Authority Foundation		
151.	Mr. Abdul Qayyum, Deputy Director, PHA-F, Ministry of Housing & Works	Peshawar
152.	Mr. Abbas Ali Khan, Deputy Director, PHA-F, Ministry of Housing & Works	Peshawar
153.	Mr. Fatch Ali Khnn, Deputy Director, PHA-F, Ministry of Housing & Works	Karachi
154.	Mr. Abdul Shiraz, Deputy Director, PHA-F, Ministry of Housing & Works.	Quetta
155.	Mr. Mahendar Kumar, Deputy Director, PHA-F, Ministry of Housing & Works.	Quetta
INTELLIGENCE BUREAU (IB)		
Deputy Director		
156.	Mr. Muhammad Faisal, Deputy Director, IB HQ, Islamabad	Peshawar
157.	Syed Ali Ammar Kausar, Deputy Director, PPHQ, IB, Lahore	Lahore
158.	Mr. Muhammad Asif Malik, Deputy Director, CR HQ, Islamabad	Islamabad
159.	Mr. Wasim Ahmad, Deputy Director, KP PHQ, IB, Peshawar	Peshawar
Deputy Manager IT		
160.	Mr. Muhammad Farrukh Zamir, Deputy Manager IT, IB HQ, Islamabad.	Karachi
NATIONAL ACCOUNTABILITY BUREAU (NAB)		
161.	Mr. Muhammad Imran Akhter Majeed, Deputy Director, NAB (Karachi).	Karachi
162.	Mr. Saeed Iqbal Khan, Deputy Director, NAB (HQ), Islamabad.	Islamabad
163.	Mr. Muhammad Ghazanfar Ali, Deputy Director, NAB (HQ), Islamabad.	Lahore
164.	Mr. Saeed Akhtar, Deputy Director, NAB (Rawalpindi)	Peshawar
ESTABLISHMENT DIVISION		
STAFF WELFARE ORGANIZATION		
165.	Mrs. Mamina Arshad, Chief Welfare Officer	Islamabad
NATIONAL ASSEMBLY SECRETARIAT		
166.	Mr. Aamir Hussain, Section Officer, National Assembly Secretariat.	Lahore
167.	Mr. Walayat Khan, Section Officer, National Assembly Secretariat.	Peshawar
FEDERAL PUBLIC SERVICE COMMISSION (FPSC)		
168.	Mr. Muhammad Zubair Hayat, Deputy Director, Federal Public Service commission, Islamabad.	Islamabad
GOVERNMENT OF KHYBER PAKHTUNKHWA		
PMS		
169.	Mr. Asadullah Khan, Deputy Commissioner, (F&P) Shangla	Peshawar
170.	Mr. Habibullah Arif, Deputy Commissioner Mardan.	Peshawar
171.	Mr. Muhammad Sher, Addl: Deputy Commissioner (G), Shangla.	Peshawar

195.	Mr. Kamal Khan, DMS, Deputy Secretary, Works Department, Government of Gilgit-Baltistan	Karachi
ONS		
196.	Mr. Muhammad Ali Khan, Deputy Secretary, Agriculture, Government of Gilgit-Baltistan.	Peshawar
Police Service		
197.	Mr. Mirza Hassan, SSP, Gilgit	Islamabad
LAS		
198.	Mr. Shafiq Ahmed, Deputy Secretary, Law Department, Works Department, Government of Gilgit-Baltistan.	Lahore

2. The course will be commencing from 27-09-2021. The nominated officers may report to NIMs Karachi, Lahore, Peshawar, Islamabad and Quetta on 24-09-2021. The above nominations are subject to provision of latest Annual Medical Examination Reports to be submitted to respective NIMs. NSPP has also requested that all participants may kindly be directed to report for the course with Covid vaccination certificate and fresh PCR tests.

3. The course fee for each participant is Rs. 225,000/-, at NIMs, Karachi Lahore, Peshawar and Quetta, except NIM Islamabad having course fee of Rs 200,000/-. It is also pertinent to mention here that after the split of MCMC, into 10 weeks at NIM & 4 weeks at STI in accordance with the decision of Federal Cabinet, the course fee for each participant has been divided between the respective NIM and the Specialized Training Institutes, which amounts to Rs.160,714/- per participant, at NIMs, Karachi Lahore, Peshawar and Quetta. (10 weeks) and Rs.142,857/- per participant, at NIM, Islamabad (10 Weeks) and Rs.64,286/- per participant (4 Weeks) for Specialized Training Institutes. The payment of course fee in respect of officers of occupational groups and Ex-cadre officers of all Ministries/ Divisions and their attached departments will be made by the Establishment Division while in case of officers of the Provincial Governments and autonomous bodies/organizations etc. nominated for the course shall be arranged by their respective departments/governments etc., and to this effect payment shall be remitted to the respective Director General, NIM, through bank draft/cross cheque/pay order at the time of joining the course by the officer concerned or as early as possible.

4. As per the Prime Minister's directive, issued vide this Division's DO letter No. 5/11/2000-T-II/T-I dated 10-06-2014 all Ministries/Divisions/ Departments are bound to relieve the officers on their selection for training course without fail. The Ministries/Divisions/ Departments shall make stop-gap arrangements, as the nominated officers are not required to attend their offices while undergoing training. Non-compliance of the directions of the Prime Minister shall tantamount disciplinary proceedings under the Government Servants (E&D) Rules, 1973. Further, according to Rule 8 (b) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019, if the officer fails thrice for any reason to attend the mandatory training will be recommended for supersession.


 (Mrs. Alia Asad)
 Deputy Secretary (T-I)
 Tele: 9207034

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

National Institute of Management



(Chartered Unit of National School of Public Policy)

This is to certify that

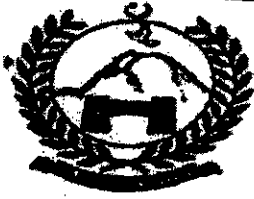
MR. ASADULLAH KHAN

has participated in the
32nd Mid Career Management Course
at the National Institute of Management, Islamabad
from 11th October 2021 to 17th December, 2021.

17th December, 2021
Islamabad

Deamon Singh
Capt. (Retd) Armaan Gul
Director General

35



GOVERNMENT OF
KHYBER PAKHTUNKHWA *Annex J*
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the April 15, 2022

NOTIFICATION

36

NO.SO(E-I)E&AD/5-1/2022. On the recommendations of the Provincial Selection Board, in its meeting held on 07.04.2022, Mr. Asadullah Khan (PMS BS-18), Deputy Secretary, Agriculture Department is hereby promoted to PMS BS-19, on regular basis, with immediate effect.

2. The officer, on promotion, will remain on probation for a period of one year, in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Posting/transfer order in respect of officer will be issued, later on.

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

ENDST. OF EVEN NO. & DATE

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Administrative Secretaries in Khyber Pakhtunkhwa.
6. All Divisional Commissioners in Khyber Pakhtunkhwa.
7. Accountant General, Khyber Pakhtunkhwa
8. All Deputy Commissioners in Khyber Pakhtunkhwa.
9. Director General, Information & PRS Department.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretaries, Establishment & Administration Department.
12. PS SS(E)/SS(Reg)/AS(HRD)/AS(E)/ DS(E.)/SO(E.II)/SO(E.V) E&AD.
13. PA to DS(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy. Director (IT) and Director Protocol Administration Department.
14. Officer concerned.
15. Controller, Govt. Printing Press, Peshawar.

Zia-ul-Haq
(ZIA.ULHAQ) 15/4/22
SECTION OFFICER (E.I)
PH: No # 091-9210529

4) That during pendency of my departmental inquiry my juniors were appointed/promoted to PMS (BS-19) on acting charge basis vide order dated 3/10/2019 (copy enclosed)

3) That after completion of my training my promotion to (BS-18) was again deferred due to pending inquiry against me and my juniors were promoted vide P.S.B meeting minutes dated 28/12/2016 (copy enclosed)

2) That vide order dated 17/6/2016 my juniors were promoted to PMS (BS-18) and my promotion to (BS-18) was deferred due to lack of training. (copy enclosed)

1) That vide order dated 3/3/2009 I was promoted to PMS (BS-17) (copy enclosed)

as under with due respect I submit

R/Sir

Subject

Departmental Appeal

The Chief Minister K.P.K. Peshawar

Amir - K

(25) That after finalisation of my inquiry I was promoted to PMS (BS-18) on regular basis with order dated 21/01/2021.

(6) That I appeared for restoration of my Seniority in (BS-18) which was accepted and I regained Seniority with notification dated 2/6/2021.

(7) That with KPR Service Tribunal judgment dated 27/7/2021 I was held entitled for programme promotion w.e.f. 10/5/2016. (Copy enclosed)

(8) That with Notification dated 4/8/2021 my numbers were regularised/promoted to PMS (BS-19) and my promotion was deferred. (Copy enclosed)

I, therefore, humbly request that I may be promoted from (BS-18) to PMS (BS-19) on regular basis w.e.f. 03/10/2019 when my numbers were promoted with all back benefits please.

Yours faithfully

Atul Kumar Khan
PMS (BS-18)

Dated 30/8/2021

ADC (F&P) Shanga

No. 1559

For Insu. RGL58149889

Rs.

39

Stamps affixed on insured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

50

Received a registered letter addressed to [Signature]

Date-Stamp

Initials of Receiving Officer [Signature] *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) 200 (in words) Two hundred

If insured. Insurance fee Rs. 0 Ps. 0 (in words) Weight 30/8 Kilo Grams Name and address of sender [Signature]

No. 1560

RGL58149890

Rs.

Ps.

For Insu. details see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

50

Received a registered letter addressed to [Signature]

Date-Stamp

Initials of Receiving Officer [Signature] *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) 100 (in words) One hundred

If insured. Insurance fee Rs. 0 Ps. 0 (in words) Weight 30/8 Kilo Grams Name and address of sender [Signature]

Service Appeal No. 7890/2021 titled "Asad Ullah Khan Versus Government of Khyber Pakhtunkhwa through Establishment department, Civil Secretariat Peshawar and others"



ORDER
11.10.2023

MUHAMMAD AKBAR KHAN, MEMBER (E):- Mr. Amjid Ali, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

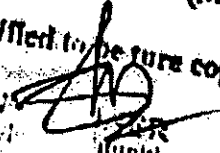
02. The appeal in hand is the second round of litigation by the appellant regarding his promotion from BS-18 to BS-19. His promotion to BS-18 earlier was made on the basis of judgment of this Tribunal delivered in service appeal No. 946/2016 dated 27.07.2021.

03. The appeal in hand also involve the same grounds which were earlier decided by the Tribunal in the first round of litigation. During the course of arguments respondents department produced copy of Notification dated 15th April, 2022 vide which the appellant has been promoted from BS-18 to BS-19 on regular basis, during the pendency of the instant appeal in the Tribunal. We, therefore, convert the instant appeal in to departmental representation and remit the case back to the respondents for disposal in light of relevant law and rules. The appellant would be at liberty to approach the competent forum, if he is not satisfied with the outcome of his departmental appeal. Disposed off accordingly. Consign.

04. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 11th day of October, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Ann-L

41

MOST IMMEDIATE

No. SO(E-1)/E&AD/6-354/2024
Dated Peshawar the March 19, 2024

To

Mr. Asadullah Khan (PMS BS-19),
Additional Secretary/Secretary NMAs,
Board of Revenue, Revenue & Estate Department.

General Diary
Dy: No. 2190
Date. 21/3/24
Revenue & Estate
Khyber Pakhtunkhwa

**SUBJECT: SERVICE APPEAL NO. 7890/2021-ASAD ULLAH KHAN VS
GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF
SECRETARY, KHYBER PAKHTUNKHWA & OTHERS.**

Dear Sir,

I am directed to refer to the subject noted above and to inform that in pursuance of Order dated 11.10.2023, passed by the Khyber Pakhtunkhwa Service Tribunal in Service Appeal No. 7890/2021, Establishment Department processed your Departmental Appeal and the Chief Minister, Khyber Pakhtunkhwa (being Competent Authority) regretted the same, being not covered under the rules/policy, please.

Yours faithfully,

(ZIA-UDDIN HAQ)
SECTION OFFICER (ESTT. II)
PH No. 091-9210529

19/3/2024

(L)



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the January 12, 2023

NOTIFICATION

NO.SO(E-I)E&AD/5-1/2023. In pursuance of the Judgment passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in a Service Appeal No. 946/2018 dated 27.07.2021 and on the recommendations of the Provincial Selection Board, in its meeting held on 18.11.2022, proforma promotion is hereby granted to Mr. Asadullah Khan (PMS), Additional Secretary/Secretary (NMAs), Board of Revenue, Khyber Pakhtunkhwa, from PMS BS-17 to PMS BS-18 w.e.f 13.01.2017, subject to final decision of the CPLA pending in the Supreme Court of Pakistan.

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

ENDST. OF EVEN NO. & DATE

Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. Additional Chief Secretary, P&D Department
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Administrative Secretaries in Khyber Pakhtunkhwa (concerned).
6. Accountant General, Khyber Pakhtunkhwa
7. Director General, Information & PRS Department.
8. PS to Chief Secretary, Khyber Pakhtunkhwa.
9. PS to Secretaries, Establishment & Administration Department.
10. PS SS(E)/SS(Reg)/AS(HRD)/AS(E)/ DS(E.)/SO(E.II)/SO(E.V) E&AD.
11. PA to DS(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy. Director (IT) and Director Protocol Administration Department.
12. Officer concerned. *Additional Secretary (NMAs) BOR.*
13. Controller, Govt. Printing Press, Peshawar.

Zia ul Haq
(ZIA UL HAQ)
SECTION OFFICER (E.I)
PH: No # 091-9210529

THAR KHAN/22

(M)

No. SOI(POLICY)/EAD/1-16/2017. The Competent Authority is pleased to direct that in the "Khyber Pakhtunkhwa Promotion Policy, 2009" circulated vide this department letter No. SOE-III(EAD)1-3/2008 dated 28.01.2009, the following amendments shall be made, namely :-

AMENDMENTS

1. The following words (in italic form) shall be added after the word and dot "PER." Appearing in the 3rd line of sub-para (a) of para IV:

"The requirement of earning one calendar year report will start from the date of officer joins back and the training period will also be included for completion of the requirement of such PER."

2. After sub-para (n) of para IV the following sub-para (i) shall be inserted:

"the mere fact that the seniority is sub-judiced will not debar the competent forum to make recommendation. However, in such cases following shall be applicable:

(i) All promotion based on sub-judice seniority will be conditional i.e. subject to final outcome of Court cases.

(ii) An officer who gets his seniority restored and becomes senior to already promoted officers in the cadre will be considered for promotion by the relevant board from the date when his junior got promoted.

(iii) In case, the officer expires or retires from service and subsequently, his seniority is restored his case will be considered for proforma promotion alongwith all financial benefits.

(iv) Juniors promoted on sub-judice seniority list will be assigned seniority as per final Court Orders and will be reverted in case there is no vacancy".

Para II (b) shall be substituted as follow:

"(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing promotion policy. However, for promotion against

Amendments in Khyber Pakhtunkhwa Promotion Policy, 2009

NOTIFICATION

Dated: 05.12.2017

Amx N

43

If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion along with the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (1) of Section 8 of the North-West Frontier Province Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their

(d)

If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake is noticed.

(c)

The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferral cease to exist. The cases falling under any of the above three categories do not warrant promissa promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.

(b)

The PER dossier is incomplete or any other document/information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control.

(iii)

Disciplinary or departmental proceedings are pending against him.

(ii)

His inter-se-seniority is disputed/sub-judice.

(i)

Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if

(a)

Deferment of Promotion:

A civil servant who has resigned shall not be considered for promotion, no matter the resignation has yet to be accepted, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year.

(h)

44

2007 SCMR 1355 ✓

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan, Falak Sher and Raja Fayyaz Ahmad, JJ

CHIEF SECRETARY, GOVERNMENT OF THE PUNJAB and others----Petitioners

Versus

MUHAMMAD ARSHAD KHAN NIAZI----Respondent

Civil Petition No.788-L of 2006, decided on 20th December, 2006.

(On appeal from the judgment, dated 28-2-2006 of the Punjab Service Tribunal, Lahore passed in Appeal No.2182 of 2005).

Civil Service---

---Promotion---Pendency of inquiry against civil servant---Selection Board deferred case of civil servant till finalization of inquiry--Promotion of junior officers on officiating basis in BS-19---Civil servant was exonerated from charges in inquiry, which lasted for 4/5 years, during which period he reached maximum stage of BS-19---Civil servant in such circumstances was entitled to pro forma promotion---Juniors to civil servant were allowed move-over to BS-20 and their pays were fixed at higher stage---Civil servant had been deprived of such benefits---Civil servant prevented to perform duties in higher post to which he was entitled---Civil servant had to be paid salary for higher post for the period he was not allowed to perform duties of such higher post---Department should have completed inquiry within prescribed period---Delay in concluding inquiry could not be attributed to civil servant nor could legitimately be made to suffer for lapses on the part of department--Held, civil servant, in circumstances, was entitled to promotion from the date his juniors were promoted.

The Province of Punjab through the Secretary, Services and General Administration, Lahore v. Syed Muhammad Ashraf and others 1973 SCMR 304 rel.

Muhammad Hanif Khatana, Additional Advocate-General, Punjab for Petitioners.

Nemo for Respondent.

ORDER

RAJA FAYYAZ AHMAD, J.--- Respondent Muhammad Arshad Khan Niazi was considered for promotion as Superintending Engineer (B-19) by the Provincial Selection Board in its meeting held on 28/29 March, 1999 but his case was deferred till finalization of the inquiry pending against him, however; three junior Executive Engineers were then

promoted on officiating basis. The respondent reached to the maximum stage of BS-19 before 1-12-1995 and his case was that had he been promoted as Superintending Engineer in time he would have been allowed move-over to BS-20 w.e.f. 1-12-1995, as officers junior to him had been allowed these benefits and their pays were accordingly fixed at higher stage.

2. Before us, it has been admitted by the learned Additional Advocate-General that the inquiry pending against the said respondent lasted for about 4/5 years and eventually, he was exonerated of the charges and also it could not be denied that said respondent had suffered recurring financial loss, who was promoted on regular basis as Superintending Engineer on 22-5-2000 after having been found innocent and exonerated of the charges vide order dated 9-2-2000. It is also not denied that in certain circumstances and eventualities, the civil servants are entitled to pro forma promotion but as the case of the respondent was then pending he could not be considered under the new Pro forma Promotion Policy, which even in a fit case could not be made applicable effective from the back date except under the policy then in vogue.

In view of the circular dated 16-10-1973 regulating the of pro forma promotion entitles a civil servant to claim for pro forma promotion if he had been facing a departmental enquiry at the relevant time as in the instant case. Therefore, the matter regarding his promotion was deferred but finally as abovesaid he was exonerated and declared innocent. The relevant extract of the abovesaid circular letter has been reproduced in the judgment impugned herein.

3. It is not disputed that juniors to the respondent were allowed move-over to BS-20 and their pays had been fixed at higher stage, whereas; the respondent as above mentioned deprived of these benefits. In view of the law laid down by this Court in the case of The Province of Punjab through the Secretary, Services and General Administration, Lahore v. Syed Muhammad Ashraf and others 1973 SCMR 304 when a civil servant is prevented to perform duties in the higher post to which he was entitled he had to be paid salary for the higher post for the period he was not allowed to perform duties of that post has correctly been followed by the learned Tribunal in the instant case. The contention of the learned Additional Advocate-General that since during such period the petitioner did not perform the duties of the higher post he could not be found entitled to such benefits is absolutely without any substance; rather, misconceived in view of the ruled laid down by this Court being consistently followed.

4. The domestic inquiry initiated against the respondent should have been completed within the prescribed period, as envisaged under E&D Rules, which the Department had failed to conclude within the permissible span of time and the delay in concluding the same could not be attributed to the respondent nor could he legitimately be made to suffer for the lapses on the part of the Department, which eventually precluded him to further promotion and to the benefits of BS-20 granted to the officers junior to him, hence; in such circumstances, it was rightly concluded by the learned Service Tribunal that the respondent was entitled to promotion from the date his juniors were promoted. The learned Additional Advocate-General failed to dislodge the law applied to the case of the respondent in the given undisputed facts and circumstances of the case to which no exception could be taken. No substantial question of law of public importance could be raised so as to call for any interference in the impugned judgment by this Court within the meaning of Article, 212(3) of

47

the Constitution of Islamic Republic of Pakistan, 1973.

5. Consequently, this petition is dismissed. Leave refused.

S.A.K./C-1/SC

SD

Leave refused.

1997 SCMR 287 ✓

[[Supreme Court of Pakistan]

Present: Saiduzzaman Siddiqui and Muhammad Bashir
Khan Jehangiri, JJ

MUHAMMAD JAN MARWAT and another---Petitioners

versus

NAZIR MUHAMMAD and 17 others---Respondents

Civil Petition No. 76-P of 1996, decided on 15th December, 1996.

(On appeal from the judgment of N.-W.F.P. Service Tribunal, Peshawar, dated 10-1-1996 passed in Appeal No. 123/94).

(a) North-West Frontier Province Civil Servants Act (XVIII of 1973)---

----Ss. 8 & 9---Constitution of Pakistan (1973), Art.212(3)---Promotion--Seniority---Civil servant's case was deferred by Departmental Promotion Committee while his juniors were promoted---Civil servant was subsequently promoted with effect from the date when his juniors were promoted---Civil servant's claim to seniority was accepted by Service Tribunal and he was assigned seniority to his juniors---Validity---Nothing was on record to indicate that civil servant was superseded when his juniors were promoted to Grade-18--Civil servant's case having been deferred when his juniors were promoted and he having been subsequently promoted, he would rank senior to all those persons who were promoted earlier to him but ranked junior to him in lower grade when they were promoted---Service Tribunal had, thus, rightly found civil servant to be senior to petitioners who were admittedly junior to him in Grade-17.

(b) North-West Frontier Province Service Tribunals Act (XVIII of 1973)---

----S. 4---Constitution of Pakistan (1973), Art.212(3)---Appeal before Service Tribunal---Competency---Departmental representation/appeal filed by civil servant remained un-disposed of for a long time---Secretary of concerned department, however, informed Head of civil servant's department through letter, that representation/appeal of civil servant had been turned down---Copy of such letter was endorsed to civil servant, who admittedly filed appeal before Service Tribunal, within 30 days from the date of such letter---Appeal filed before Service Tribunal was, thus, within time---Departmental appeal of civil servant having not been dismissed on ground of limitation, Service Tribunal could not have dismissed such appeal was not competent---No exception could be taken to order of Service Tribunal deciding appeal of civil servant on merits---Leave to appeal was refused in circumstances.

Zafar Iqbal v. WAPDA 1995 SCMR 16 and Anwar Muhammad v. General Manager, Pakistan Railways 1995 SCMR 950 ref.

Qazi Attiqur Rehman, Advocate Supreme Court and Abdul Hamid Qureshi, Advocate-on-Record for Petitioners.

M. Sardar Khan, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent No. 1.

Date of hearing: 15th December, 1996.

JUDGMENT

SAIDUZZAMAN SIDDIQUI, J.--- The petitioners are seeking leave to appeal against the judgment of N.-W.F.P. Service Tribunal dated 10-1-1996 whereby the learned Tribunal accepted service appeal filed by respondent No.1 against the departmental authority and held respondent No.1 eligible for pro forma promotion w.e.f. 15-9-1985 and also declared him senior to respondents Nos.5 to 18.

2. The admitted position in the case is that respondent No. 1 was senior to the petitioners in the lower grade namely, grade-17. The respondent No.1 was considered for promotion alongwith the petitioners and others but his case was deferred by the Departmental Promotion Committee (DPC) while his juniors were promoted to the next grade on 15-9-1985. The respondent No.1 was also subsequently promoted to grade-18 w.e.f. 26-3-1987 vide notification dated 26-10-1987. The respondent No.1 made a representation to the departmental authority to give effect to his promotion to grade-18 either from 10-8-1982 or 15-9-1985, the dates on which persons junior to him were promoted to grade-18. The departmental authority finally communicated respondent No.1 on 6-2-1994 that his representation for ante-dating his promotion has not been accepted where after respondent No.1 preferred appeal before the Service Tribunal which has been accepted.

3. In seeking leave to appeal, the learned counsel for the petitioners raised two-fold contentions. It is firstly, contended that respondent No.1 was considered by the D.P.C. and he was superseded when his juniors were promoted to next grade namely grade-18. The second contention of the learned counsel for the petitioners is that respondent No. 1 failed to prefer service appeal before the Service Tribunal within limitation prescribed for filing of appeal as he could at the most wait only for 120 days after filing departmental representation for submitting his service appeal before the Service Tribunal. The contentions raised by the learned counsel for the petitioners have not impressed us.

4. The learned Tribunal categorically held in the impugned judgment after perusing the minutes of Provincial Selection Board held on 3-8-1985 which were summoned in the case, that the case of respondent No.1 for promotion to grade-18 was deferred. The learned counsel for the caveator has also drawn our attention to the parawise comments filed by the department before the learned Tribunal wherein the allegation of respondent No. 1 that his case for promotion to grade-18 was only deferred by the Provincial Selection Board was not denied. There is nothing on record before us to show that respondent No.1 was superseded when his juniors were promoted to grade-18. As the case of respondent No.1 was deferred by D.P.C. and he was subsequently promoted, according to

well-settled principles of seniority, respondent No. 1 would rank senior to all those persons who were promoted earlier to him but ranked junior to him in the lower grade from where they were promoted. We, therefore, do not find any error in the order of Tribunal in declaring respondent No.1 senior to the petitioners and other private respondents as admittedly respondent No. 1 was senior to them in the next lower grade namely, grade-17. The second contention of the learned counsel for the petitioners is that the appeal before the learned Tribunal was incompetent as it was filed long after making the representation to departmental authority by the respondent No.1. It is contended that under the law, respondent No.1 should have approached the Service Tribunal within 30 days of the expiry of the period of 90 days from the date of filing of the departmental representation/appeal, if the same was not decided. The record produced before us indicates that the departmental representation/appeal filed by respondent No. 1 remained un-disposed of for a long time. However, in reply to a letter sent by the Chief Conservator of Forests, N.-W.F.P. to the Secretary, Forestry, Fisheries and Wildlife Department, Government of N.-W.F.P. on 6-2-1994, the latter informed the Chief Conservator of Forests that the appeal /representation of respondent No.1 has been turned down. The copy of this letter was endorsed to respondent No. 1 on 29-3-1994. It is not disputed that from the date of this letter the appeal filed by respondent No. 1 before the Tribunal, was within time. In the case of Zafar Iqbal v. WAPDA (1995 SCMR 16), this Court while considering the period of limitation within which an aggrieved civil servant could file appeal before the Service Tribunal observed as follows:-

"3. It seems that section 4, Service Tribunals Act, prescribes two periods of limitation for preferring appeals to the Tribunal. An aggrieved civil servant can come to the Tribunal after his appeal for representation before the department has been disposed of, or, he can wait for the decision on his departmental appeal for 90 days and then file an appeal before the Tribunal without waiting any further; in this case the appellant chose to wait for the final decision on his departmental appeal and he filed the appeal before the Tribunal within 30 days of the communication of the order of the rejection of his appeal. It is to be noticed that even though his appeal was rejected on 30-9-1986 the order of rejection was not communicated to him till 21-11-1986 and he preferred the appeal before the Tribunal on 4-12-1986. In the circumstances his appeal could not be dismissed on the ground of limitation. Accordingly, we accept this appeal, set aside the judgment of the learned Tribunal and direct that the appellant's appeal should be disposed of in accordance with law.

Similarly, as the departmental authority has not dismissed the representation/appeal of respondent No. 1 on the ground of limitation, the Tribunal could not dismiss the appeal of respondent No. 1 as not competent, see Anwar Muhammad v. General Manager, Pakistan Railways (1995 SCMR 950). Therefore, no exception could be taken to the order of Tribunal deciding the appeal of respondent No. 1 on merits."

5. No case is made out for interference with the order of Service Tribunal.

The petition is, accordingly, dismissed and leave is refused.

A.A./M-3342/S

Leave refused.

1973 S C M R 304 ✓

Present : Muhammad Yaqub Ali and Waheeduddin Ahmad, JJ

C. P. S. L. A. No. 366 of 1972

THE PROVINCE OF THE PUNJAB THROUGH THE
SECRETARY, SERVICES AND GENERAL ADMINISTRATION,
LAHORE---Petitioner

versus

Syed MUHAMMAD ASHRAF----Respondent

C. P. S. L. A. No. 367 of 1972

THE PROVINCE OF THE PUNJAB THROUGH THE
SECRETARY, SERVICES AND GENERAL ADMINISTRATION,
LAHORE-Petitioner

versus

Syed MAZHAR HUSSAIN RIZVI AND 2 OTHERS-Respondents

C. P. S. L. A. No. 79 of 1973

THE SECRETARY TO THE GOVERNMENT OF WEST
PAKISTAN (NOW PUNJAB PROVINCE), IRRIGATION AND
POWER DEPARTMENT, LAHORE--Petitioner

versus

MUHAMMAD SHAFIQ-Respondent

Civil Petitions for Special Leave to Appeal Nos. 366, 367 of 1972 and 79 of 1973, decided on 25th April 1973.

(On appeal from the judgment and orders of the Lahore High Court, dated the 12th May 1972 in L. P. As. Nos. 68 and 67 of 1972 and W. P. No. 1691-S of 1968).

Civil services-Arrears of salary-Civil servant for no fault of his own, wrongly prevented from rendering service to State to higher post to which he was admittedly entitled-Should be given salary for the higher post.

Kamal Mustafa Bokhary, Assistant Advocate-General Punjab (Mohammad Ashraf, Advocate with him) instructed by Sh. Ijaz Ali, Advocate-on-Record for Petitioners (In all the Cases).

Nemo for Respondents.

Date of hearing: 25th April 1973.

ORDER

52
WAHEEDUDDIN AHMAD, J.---This order will dispose of Civil Petitions Nos. 366 and 367 of 1972 and 79 of 1973, in which common question of law is involved.

The respondents are members of the Ministerial Services of the Punjab Province who had rendered war service during the Second World War. On their representations, the seniority and other benefits under the rules relating to concession of war service to ex-servicemen was made. It was ordered that respondent in Civil Petition No. 366 of 1972 will be treated as substantive permanent senior clerk from the 14th October 1955 and as Assistant from the 3rd of August, 1960 respectively. His salary as Senior Clerk and as an Assistant will be fixed from the date of his promotion and he shall also be entitled to the arrears of pay on this account.

In Civil Petition No. 367 of 1972, the respondents were found by the petitioner to have been deemed to be appointed against reserved vacancies and thus eligible to the benefit of their seniority on account of their war service in accordance with the provisions of the Punjab Government Service (War) Amendment Rules, 1943, read with the Punjab Government Service (War) Amendment Rules (West Pakistan Repeal) Ordinance, 1963 and an order was passed on the 27th June 1968, wherein the dates on which they would have been promoted to higher ranks, if their war service had been counted towards the seniority from the very beginning, were indicated and the dates of pro forma promotion on that basis were also mentioned.

In Civil Petition No. 79 of 1973, the respondent claimed that he was employed as a temporary Clerk with the Controller of Military Accounts on the 12th November 1941 and was relieved on the 26th November 1946 for taking up appointment as Second Grade Clerk on the 27th November 1946 in the Irrigation Department of the Punjab Government. He made a representation to the Departmental Authorities for the grant of war service benefit to him. During the pendency of the writ petition, an order was passed by the Secretary, Irrigation and Power Department in March 1969, allowing the respondent the benefit of war service from 12th November 1941 to 15th August 1945 assigning him seniority in accordance with such benefit as also allowing him pro forma dates of promotion with the direction that his pay in the grade of Assistant and Superintendent will be fixed with reference to the assumed dates of his promotion to the said grades.

In all the petitions, the petitioners allowed the arrears of pay for the period for which the respondents actually performed the duties of the respective posts from the assumed dates of appointments. The respondents challenged this order in Writ Petitions Nos. 129 of 1967, 716 of 1967 and 1691-S of 1968 respectively. They claimed arrears of pay on the basis of assumed dates of promotions. In Civil Petition No. 366 of 1972, the order dated the 7th August, 1965 was amended by another order passed on the 26th March 1966. The effect of the last mentioned order was that the respondent was held entitled to the arrears of pay only for the actual period of duty performed on the higher posts. In Writ Petition No. 129 of 1967, it was held that the respondent was entitled to receive Rs. 11,671.78 minus the amount already paid to him towards the arrears of salary. Writ Petition No. 716 of 1967 was also allowed on the 11th February 1971. It was held that the respondents were entitled to arrears of pay as claimed by them. Writ Petition No. 1691-S of 1968 was accepted on the 12th December 1972.

The respondent was directed to rectify the mistake in assumed dates of his promotions and also allowing him the benefit of salary for the posts to which he is presumed to have been promoted under these assumed dates taking the 31st March 1946 as the terminal date of war service.

The petitioners challenged the first two orders in Letters Patent Appeals Nos. 67 and 68 of 1972 and both of them were dismissed by order dated the 12th May 1972. The petitioners seek permission to file an appeal against the said order passed in the above-mentioned appeals and Writ Petition No. 1691-S of 1968.

Mr. Kamal Mustafa Bokhary, learned Assistant Advocate General for the petitioners, has contended that the High Court has not properly appreciated the points involved in these cases and the respondents were not entitled to the arrears of salary in the grade against which they have never worked and that they were only entitled to the arrears of pay to which actually they performed the duties in all posts. In Civil Petition No. 366 of 1972, the learned Assistant Advocate-General, admitted that the first order was modified by another order passed on the 26th March 1968 without any show-cause notice to the respondent. This order, therefore is a nullity in the eye of law. In view of this the Department was bound to pay him salary as Senior Clerk and as an Assistant to be fixed from the date of his promotion in view of the order dated the 7th August 1965.

In Civil Petition No. 367 of 1972, we agree with the High Court that in the case of a servant who, for no fault of his own, is wrongly prevented from rendering service to the State in the higher post to which he is admittedly entitled he should be given salary for the higher post.

In Civil Petition No. 79 of 1973, we agree with the High Court that by a subsequent notification under the India and Burma (Termination of Emergency) Order, 1946 the termination of the Emergency was fixed on the 1st April 1946 and the petitioner was entitled to claim benefit of war service from the 12th November 1941 to the 31st March 1946 and the order denying him the benefit of service beyond 15th August 1945 up to 31st March 1946 is without lawful authority.

After hearing the learned counsel for the petitioners, we are satisfied that the judgments of the High Court in all the three matters are correct and no exception can be taken to it. Accordingly, the petitions are dismissed.

Leave refused.

1998 S C M R 736 ✓

[Supreme Court of Pakistan]

Present: Ajmal Mian, Abdul Hafeez Memon and Mulhtar Ahmad Juenjo, JJ

IFTIKHARULLAH MALHI---Appellant

versus

CHIEF SECRETARY and another---Respondents

Civil Appeal No. 834 of 1993. decided on 23rd April, 1997.

(On appeal from the judgment dated 12-4-1993 of the Sindh Service Tribunal, Karachi, passed in Appeal No. 35 of 1992).

(a) Sindh Civil Servants Act (XIV of 1973)--

----Ss. 8 & 9---Constitution of Pakistan (1973), Art.212(3)---Seniority--Promotion---Denial of seniority/promotion---Civil servant's Departmental appeal relating to his seniority/promotion was accepted after his retirement---Civil servant claiming back benefits---Entitlement---Leave to appeal was granted to consider as to whether civil servant was entitled to any financial benefits flowing from notification assigning his seniority in absence of retrospective promotion.

(b) Sindh Civil Servants Act (XIV of 1973)---

----Ss. 8 & 9---Civil servant---Denial of seniority---Promotion---Issuance of notification in pursuance of civil servant's Departmental appeal whereby his entitlement to seniority /promotion was accepted---Civil servant having retired by then, claimed financial benefits flowing from notification assigning him seniority in absence of retrospective promotion---Relevant notification would indicate that civil servant would be deemed to have been promoted when his junior was promoted---Civil servant would, thus, be entitled to financial benefits from the date when he should have been promoted up to the date when he was actually promoted---Civil servant having unblemished record of service and his ACRs. being good, he should have been selected for higher post on account of his seniority-cum-fitness---Department concerned was directed by Supreme Court to place civil servant's case before Departmental Promotion Committee with all relevant ACRs., which would consider civil servant's case for promotion and, if found fit, he would be entitled to financial benefits arising therefrom.

Province of the Punjab through the Secretary, Services and General Administration, Lahore v. Syed Muhammad Ashraf 1973 SCMR 304; Syed Sultan Shah v. Government of Baluchistan and another 1985 SCMR 1394; Mrs. Aqeela Asghar Ali and others v. Miss Khalida Khatoon Malik and others PLD 1991 SC 1118 and Abdul Jabbar Khan v. Government of Sindh through Chief Secretary, Karachi and 5 others 1996 SCMR 850 rel.

M.M. Aqil, Advocate Supreme Court and N.C. Motiani, Advocate-on-Record for Appellant.

Munib Ahmad Khan, Addl. A.-G., Sindh and S.M. Abbas, Advocate-on-Record for Respondents.

Date of hearing: 23rd April, 1997.

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment, dated 12-4-1993, passed by the Sindh Service Tribunal,

Karachi, hereinafter referred to as the Tribunal, in Appeal No.35 of 1992, filed by the appellant for claiming back benefits, dismissing the same.

2. Leave to appeal was granted to consider, as to whether the appellant is entitled to any financial benefits flowing from the notification dated 29-9-1991 assigning him seniority in the absence of retrospective promotion.

3. The brief facts are that the appellant held three years' Diploma in Civil Engineering. He joined the Provincial Service as an Overseer on 8-11-1952. He was promoted as a Sub-Divisional Officer on 18-5-1954. On a reference from the then Provincial Government of West Pakistan, the West Pakistan Public Service Commission had agreed to the appellant's promotion to the unclassified gazetted post of Sub-Divisional Officer up to 16-8-1964 and Class II post (temporary) from 17-8-1964. It was the grievance of the appellant that his correct seniority was never determined. He continued to make efforts for getting his seniority over all those persons who at the time of their appointment as well as confirmation in service did not possess the prescribed qualification. It seems that in May, 1990, the appellant came to know that his appeal dated 27-1-1981 had been accepted by the Chief Secretary, the decision in respect of which was conveyed to the appellant through Memo. dated 1-10-1990 by the Secretary, Communication and Works Department. By the aforesaid Memo, S & GAD's advice dated 14-4-1990 was forwarded to him indicating that his appeal had been allowed and he was assigned seniority over all those Assistant Engineers who acquired the prescribed qualification of Diploma after his appointment. Pursuant to the above advice of S & GAD, the appellant was assigned seniority immediately above Mr. Dattar Dino Shaikh, XEN through Notification dated 29-9-1991. The aforementioned notification was issued after the appellant had already retired from service on 16-12-1990 on reaching the age of superannuation.

4. Upon receipt of a copy of the above notification, the appellant made an application dated 12-10-1991 to the Secretary, Communication and Works Department, praying for allowing the benefits accrued to him from the said Notification. However, his request was not acceded to and he was accordingly informed by the Communication and Works Department's Memo. dated 23-12-1991. After that the appellant preferred a departmental appeal without any success as the same was rejected, on 24-3-1992. He filed the aforesaid service appeal on or about 25-4-1992 in the Tribunal. However, the same was dismissed for the following reasons:--

"On its perusal, it was revealed that apart from fixation of his seniority, the appellant had prayed for retrospective promotion also. In this connection the relevant portion of the appeal is reproduced as under:--

"18. The following relief may be granted to me:--

1.

2.

3. That the appellant be given promotion to BS-18 as Executive Engineer and promoted retrospectively with effect from the date when all the abovenamed his other juniors were promoted in BS-18.

4.

Despite his specific request for retrospective promotion to BS-18, the order passed on the appellant's appeal was silent in this regard, and sum omission amounted to rejection of his request for the said promotion. This being the position, the appellant should have preferred departmental appeal against the order dated 14-4-1990 relating to retrospective promotion. But he chose to ignore that aspect of the said order. Having adopted such attitude the appellant was not entitled to agitate for his retrospective promotions in his subsequent departmental appeal filed after about two years, on 22-1-1992. Because it was also barred by the principle of res judicata. For these reasons we find some force in the argument that the appeal was time-barred.

The upshot of the above discussion is that appeal must fail. Accordingly it is dismissed with no order as to costs."

Thereupon, the appellant filed a petition for leave to appeal which was granted to consider the above question:

5. In support of the above appeal Mr. M.M. Aqil, learned Advocate Supreme Court for the appellant, has vehemently contended that since the department rectified its legal error in not assigning proper seniority for no fault of the appellant by issuing the aforesaid notification dated 29-9-1991 whereby the appellant was given seniority immediately above Mr. Dattar Dino Shaikh, XEN, he was entitled to all the financial benefits which would have accrued to him if he would have been assigned correct seniority at the proper time. To reinforce the above submission, Mr. M.M. Aqil has also urged that a civil servant cannot be made to suffer on account of inaction, omission or error on the part of the department concerned. According to him, the appellant would have been promoted as XEN before Mr. Dattar Dino Shaikh, XEN over whom the appellant was given seniority by the aforementioned notification and that the appellant would have also been entitled to have been considered for promotion as Superintending Engineer prior to his juniors as his A.C.Rs. were unblemished.

6. In support of the above submissions, Mr. M.M. Aqil has referred to the case of The Province of the Punjab through the Secretary, Services and General Administration, Lahore v. Syed Muhammad

Ashraf (1973 SCMR 304), to the case of Syed Sultan Shah v. Government of Balochistan and another (1985 SCMR 1394), to the case of Mrs. Aqeela Asghar Ali and others v. Miss Khalida Khatoon Malik and others (PLD 1991 SC 1118) and to the case of Abdul Jabbar Khan v. Government of Sindh through Chief Secretary, Karachi and 5 others (1996 SCMR 850).

In the first case this Court, while declining leave against the judgment of the erstwhile High Court of West Pakistan (Lahore Bench), held that in the case of a civil servant who, for no fault of his own, is wrongly prevented from rendering service to the State in the higher post to which he is admittedly entitled, he should be given salary for the higher post.

In the second case, a Full Bench of this Court headed by the then Chief Justice, Muhammad Haleem, reiterated the above principle of law enunciated in the case of *The Province of the Punjab v. Syed Muhammad Ashraf* (supra) as under:--

"7. The law on the point has already been laid down by this Court in *The Province of Punjab v. Syed Muhammad Ashraf* 1973 SCMR 304 and other connected cases in which pro forma promotion had been ordered and the pay was being denied. The argument advanced by the Provincial Government- in those cases was also that the officials concerned were not entitled to arrears of salary in the grade against which they had never worked. This Court approved the view taken by the High Court that in case a civil servant, who for no fault of his own is wrongly prevented from rendering service to the State in the higher post. The decision fully governs the case in hand and the appellant was entitled to the salary in spite of Fundamental Rule 17."

In the third case it has been held by this Court that a pro forma promotion from a date in retrospect would entitle a civil servant to claim pay for the period he was improperly denied his legal right of promotion.

In the last case, which is one of the latest on the point in issue, this Court has held as under:--

"The aforesaid clause (iv) of rule 13 is the amended version, which was so amended by Notification No. SOIX-REG (S&GAD) 2/1/1-74 dated 9-9-1976. It clearly provides that a civil servant, who was not considered for promotion for any reason other than his unfitness for promotion, is subsequently promoted subject to any order made by the competent authority in this behalf for the purpose of inter se seniority in the higher grade, shall be deemed to have been promoted in the same batch as his juniors. If a civil servant, who has not been considered for promotion at a stage and is subsequently promoted and no order for inter se seniority has been passed by the competent authority, then such civil servant would be entitled to have been promoted in the same batch as his juniors, meaning thereby that he will maintain the seniority of his batchmates. Merely because of non-consideration for any reason, he will not be deprived of his seniority among the civil servants promoted in the same batch, who may even be junior to him. The appellant was not considered as it was alleged that there was an adverse remark in his ACR for the year 1972. The appellant challenged that this adverse ACR for the year 1972 was never communicated to him. The respondents have not brought anything on record at any stage to prove that such adverse remarks were duly communicated within the time contemplated by the Rules. Non-communication of adverse remarks makes the authenticity of such remarks completely ineffective. On the basis of such

581

un-communicated remarks, a civil servant cannot be subjected to any adverse order. Therefore, the entire ground for not considering the appellant while promoting respondents Nos.4 and 5 was completely without any basis and legal justification. Rule 13 (iv) of the aforesaid Rules is wide enough as it speaks of non-consideration due to any reason, which has not been specified at all. The only restriction is that the authority must pass an order for inter se seniority at the time of promoting out of turn while not considering a civil servant for any reason. The respondents have not passed any such order to comply with the provision of rule 13(iv) and were, therefore, not justified in not considering him alongwith respondents Nos.4 and 5. The appellant when considered and promoted in Grade-18, shall maintain his seniority as provided by rule 13(iv). To this extent the appeal is allowed."

7. All the above cases support the appellant's claim to the effect that he is entitled to the financial benefits on account of proper assigning of seniority to him through the above notification. It may be observed that prior to his retirement on 16-12-1990, the appellant had already been promoted as XEN. Since he was given seniority over Mr. Dattar Dino Shaikh, XEN, through the aforesaid notification dated 29-9-1991, it must, therefore, follow that the appellant would be deemed to have been promoted with Mr. Dattar Dino Shaikh as XEN. The appellant would, hence, be entitled to the financial benefits for the period commencing from the date when the appellant should have been promoted up to the date when he was actually promoted.

8. As regards his promotion as a Superintending Engineer, we may observe that we are conscious of the fact that it is a selection post but at the same time, we cannot overlook the fact that if a civil servant has unblemished record of service and his A.C.Rs. are good, he is normally selected for a higher post on account of his seniority-cum-fitness. The case of Abdul Jabbar Khan v. Government of Sindh (supra) on all fours is applicable to the case in hand. We would, therefore, direct the respondent department to place the appellant's case before the Departmental Promotion Committee with all the relevant A.C.Rs, which would consider the appellant's case for promotion as a Superintending Engineer. If it forms the view that in normal course the appellant would have been promoted as a Superintending Engineer if he would have been given his correct seniority at the relevant time, the department shall give him pro forma promotion as a Superintending Engineer with effect from the date when his junior was promoted as a Superintending Engineer before his retirement on 16-2-1990 and would cause the payment of the financial benefits arising therefrom. The department shall finalise the above matter within six months.

9. The appeal is, accordingly, allowed in the above terms, with no order as to costs.

A.A./I-13/S

Appeal accepted.

2000 P L C (C.S.) 149 ✓

591
149

[Federal Service Tribunal]

Before Gulbaz Khan, Chairman and Muhammad Ayub Khan, Member

M: SAFDAR KHATTAK

Versus

THE CHAIRMAN, PAKISTAN INTERNATIONAL AIRLINES, KARACHI and another

Appeal No: 331-P of 1997, decided on 12th March, 1999

(a) Civil service---

---- Pro forma promotion--- Meaning and scope--- Pro forma promotion was a defective promotion wherein an incumbent not for any fault on his part was denied promotion, inclusive of pending of departmental proceedings--- If, however, the incumbent was subsequently considered and found fit in all respects he was allowed pro forma promotion, seniority, etc with all benefits.

(b) Civil service---

---- Restoration of seniority as well as promotion--- Withholding of financial benefits--- Validity--- Civil servant was allowed seniority as well as higher pay group, but simultaneously he stood bereft of financial benefits --- Validity--- Theory and practice must go together, but civil servant was theoretically allowed facility but practically he was deprived of its benefits without which said benefits had become meaningless--- Civil servant was entitled to be allowed financial benefits in circumstances as his seniority and promotion had been restored.

A.V. Issa v. Federation of Pakistan PLD 1967 Lah: 159; PLD 1970 SC 415; PLD 1973 Lah. 56; 1973 SCMR 304; 1990 SCMR 1692; 1993 PLC (C.S.) 1057; 1985 SCMR 1394; 1998 SCMR 2237; 1998 PLC (C.S.) 980; 1985 SCMR 1158; 1993 PLC (C.S.) 1404; PLD 1991 SC 1118 and 1998 SCMR 736 ref.

Riaz Ahmed Khan for Appellant. Mushtaq Hussain Bhatti for Respondents.

Date of hearing: 2nd March, 1999.

JUDGMENT

MUHAMMAD AYUB KHAN (MEMBER). --- Arguments have been heard and record perused.

2. The question for consideration involved in this appeal is as to whether financial benefits can be allowed in a case wherein seniority as well as promotion has been restored but without financial benefits. It is a case of pro forma promotion. Before discussion of the factual and legal aspects it is advisable to reproduce below the impugned order dated 30-5-1997:--

"Subject: RESTORATION OF SENIORITY AND PLACEMENT IN PAY GROUP IX.

(1) We are pleased to inform you that Management has restored your seniority in pay group VIII effective 18th August, 1982 without financial benefits.

(2) By virtue of having restored your seniority as stated above, you are placed in pay group IX with effect from 23rd August, 1995 without financial benefits. You will, however, receive the financial benefits of pay group IX with effect from 17th November, 1996.

(3) Letter showing fixation of your salary in PG IX shall follow.

The Pakistan International Airlines Employees (Service and Discipline) Regulations, 1985, govern the terms and conditions of its employees inclusive of pay and allowances. Regulation 23 relates to pay and allowances. A scrutiny of this regulation does not cover the question under consideration. However, there is no such bar to allow pay and allowances or fringe benefits with retrospective effect. The Regulation 23(1) to 23(10) is silent over the issue. Ante-dation of promotion or other fringe benefits is governed not by any specific rules and regulations but the same is governed by a case law developed due to frequent pronouncements of the superior Courts specially the Honourable Supreme Court of Pakistan and now such pronouncement has assumed the status of law and wherever considered appropriate is readily adhered to due to Article 189 of the Constitution of the Islamic Republic of Pakistan which reads:--

"Decision of Supreme Court shall to the Court binding on other or is based

189. Any decision of the extent that it decides a question of law

Courts.
law be binding on

upon or enunciates a principle of
all other Courts in Pakistan."

(61)
(18)

3. The Respondent-Corporation has hotly contested the appeal and denied the averments made by the appellant in his appeal so much so that many preliminary objections have also been raised with respect to the maintainability etc. of the appeal. Most of these objections are devoid of substance/law and have been raised for the sake of objections. However, at para. 4, relating to pro forma promotion, it has been stated that:--

"the appeal is liable to be dismissed in the ex post facto promotion (pro forma) being subjective assessment of an individual by the Competent Authority does not create a vested right for past financial benefits."

Simultaneously it has also been averred at para. 5 of the comments that the appellant has got no right to file the appeal due to the fact that the relationship between P.I.A.C. and its employees, inclusive of the appellant, is governed by the law of "Master and Servant" in which case an aggrieved employee can sue for damages before a civil forum. It is not a case of reinstatement in service. It will not be out of place to state that Regulation 89 provides a right of appeal to the Service Tribunal by an aggrieved employee of the Corporation which reads:--

"An employee aggrieved by an order of retirement or removal or any other order passed by the competent Authority may prefer an appeal to the Service Tribunal established under the Service Tribunals Act, 1973 (Act No. 1XX of 1973)."

3-A. It is not for the first time that the question of pro forma promotion etc. has arisen but such matters have earlier also cropped up and adequately considered and disposed of. There exist rich case-law on the subject.

4. Payment of pay and allowances was considered to be bounty of the State which is no longer a case these days for the reason that much water has flown under the bridge due to enactment of the Service Tribunals Act, 1973, on the one hand, creating a competent forum for redressal of the grievances of the civil servants, and, simultaneously, barring jurisdiction of the civil forums under Article 212 of the Constitution of the Islamic Republic of Pakistan and also due to insertion of section 2-A in the Service Tribunals Act, 1973, with effect from 10th June, 1997, enabling all the employees of the State Corporations/Statutory Bodies etc. and declaring them "civil servants" for the purposes of availing remedies relating to terms and conditions of

their service. The most important factor in determination of these statutory rights is case-law developed/enunciated by the Honourable Supreme Court of Pakistan which get due authenticity/status of law under Article 189 of the Constitution. In other words, now every matter needs to be considered perfectly in accordance with the enactments/under the relevant law in light of the case law enunciated by the Honourable Supreme Court of Pakistan. It is an age of awareness and facility of even a small nature when allowed to one person, is taken notice of by similar other aggrieved persons, who claim the same before the competent forums. The principle that payment of pay and allowances was considered to be bounty of the State, as and when it was in vogue and arrears of pay were to be paid during the period when the incumbent actually held the post but this doctrine stood seriously affected by the decision of the Lahore High Court in the case of A.V. Issacs v. Federation of Pakistan (PLD 1967 Lah. 159) and upheld, on appeal, by the Honourable Supreme Court of Pakistan contained in PLD 1970 SC 415 wherein it was observed that:--

"if a person is kept out of service for a period of time, for no fault of his own, and he is prevented from serving the State he is nevertheless entitled to the salary for the said period in the same manner as if he was actually rendering service."

While following the said decision they Honourable Lahore High Court in the case reported as PLD 1973 Lah. 56 ruled:----

"Consequently the distinction made by the Respondent-Government in allowing the arrears of salary only for the period for which the petitioners actually performed duties in the higher post and disallowing arrears of salary for the remaining period runs counter to the enunciation of the law made by the Supreme Court of Pakistan.

The result will be that petitioners will be entitled to the full arrears of pay to which they were entitled under the orders of the Respondent-Government granting pro forma promotion to them and not merely to the arrears of pay only for the actual periods of duty performed by them, in all the higher posts."

In 1973 SCMR 304 it was held by the Honourable Supreme Court of Pakistan that a civil servant when for no fault of his own was wrongly prevented from rendering service to the State in higher post to which he was admittedly entitled, should be given arrears of pay of the higher post from the assumed date of appointment. In other words, the pro forma promotion was allowed while the earlier view for payment of pay against the higher post was from the date of assumption of the charge of the higher post but this judgment and the earlier one i.e. PLD 1973 Lah.

56 had exposed the hollowness of the theory regarding the payment of pay and allowances as bounty of the State. Similarly in 1990 SCMR 1692, authored by Mr. Justice Shafiur Rahman, then adorning the Supreme Court of Pakistan, had observed:--

"We find that on the findings of the Tribunal the respondent's case was handled perversely and mala fide in a manner to deprive him of N.P.S. 19 though his junior was allowed. On this finding of fact we would rather allow the principle of next below rule to be applied to the case of the appellant and grant him the entitlement of N.P.S. 19 pay as from 7th of April, 1979 till his junior enjoyed it or the respondent himself retired from service. The Government having itself granted him the benefit from 1-4-1979 to 13-11-1979, he will be further entitled to the same benefits as from 14-11-1979 till the date of his retirement or as long as his junior enjoyed it, whichever happened earlier."

In 1993 PLC (CS)-FST 1057 while placing reliance on the earlier judgments contained in 1985 SCMR 1394 and PLD 1973 Lah: 56, it was held by the then Chairman of this Tribunal, Mr. Justice (Retd.) Syed Ally Madad Shah, that:--

"Where a civil servant prevented from drawing pay consequent to an order of dismissal or removal from service or reduction in rank, will be entitled, on setting aside of that order, to such arrears of pay as the authority setting aside such order may determine, the appellant, who was denied promotion to higher post on account of late determination of his seniority and since his seniority was restored and he was allowed benefit of fixation of pay with increments for the intervening period, should not have been denied the benefit of arrears of pay and increments for the period he would have been entitled to consideration for promotion and earned promotion as claimed by him. The appellant's case, therefore, falls under the dictum laid down by the Supreme Court of Pakistan in the case of Syed Sultan Shah v. Government of Baluchistan, reported in 1985 SCMR 1394, that a civil servant, who for no fault of his own is wrongfully prevented from rendering service to State in higher post to which he is admittedly entitled, should be given salary for higher post and the civil servant was entitled to salary in spite of provision of FR-17."

Mr. Muhammad Akhtar, Solicitor, Ministry of Law and Justice Division, (1998 PLC (CS) FST 980) was allowed, pro forma promotion in B-20 from the date when the post was vacated by his predecessor with effect from 1-7-1991 as no further extension was granted to him. In this case,

relying on the judgments reported in 1973 SCMR 304, 1985 SCMR 1158 and 1993 PLC (CS) 1404, it was held that when a civil servant is prevented for no fault of his to work on a higher post he will be entitled to ante-dated promotion with retrospective effect. In 1998 SCMR 2237 it was held by the Honourable Supreme Court of Pakistan that:--

"after conversion of supersession into deferment the appellant's promotion may be strictly reconsidered on merits regarding ante-dation of his promotion alongwith other officers who were considered for promotion in February, 1995.

In the judgment reported in PLD 1991 SC 1118, which is a record judgment and wherein all the relevant factors have been discussed in minutest details by Honourable Mr. Justice Shafiur Rahman, by observing that:--

"There are three things to be seen while considering a case of promotion:--

First was the rule of promotion. Was it of selection or of seniority-cum-fitness or of seniority alone?

The second was where the promotion was to take place by seniority-cum-fitness, the question would necessarily be assignment of the correct seniority and proceedings to determine the entitlement of promotion on its basis.

The third question necessarily would be of fitness for promotion.

The first two questions, namely, the principle of promotion and the assignment of proper seniority for consideration for promotion were matters which did not stand excluded from the jurisdiction of the Service Tribunal because they did not involve the question of fitness which had been expressly reserved for the departmental authority and outside the jurisdiction of the Tribunal. The first two questions related to law and its application to the civil servants awaiting promotion. "

It was also observed that:

"Pro forma promotion from a date in retrospect entitles the civil servant to claim pay for the period that he was improperly denied his legal right of promotion."

Last but not the least in the series of judgments on the subject is contained in 1998 SCMR 736 wherein the Honourable Supreme Court

of Pakistan has ruled that ante-dation of promotion etc. is legal even after retirement of an incumbent from service with all back benefits and this is the latest judgment in the series of nature. What is pro forma promotion has not been defined in any rule or regulation. However, it is a defective promotion wherein an incumbent not for any default on his part is denied promotion, inclusive of pendency of departmental proceedings; but subsequently if he is considered and found fit in all respects, he is allowed pro forma promotion, seniority etc. with all back benefits for no fault on his part which perfectly is in accordance with the principle of natural justice/good governance. In most of the cases, as per experience, indifferent approach on the part of departmental authorities; multifarious activities and ever increasing volume of work cause frequently delays for which a civil servant should not suffer and as such the case-law pursuant to consistent pronouncements of the Honourable Supreme Court of Pakistan have been developed which needs to be followed having full protection of law under Article 189 of the Constitution of the Islamic Republic of Pakistan and any deviation therefrom renders the authority concerned liable to legal and disciplinary action.

5. A perusal of the impugned order to repeat again, shows that the appellant has been allowed seniority as well as higher Pay Group but simultaneously he stands bereft of the financial benefits which does not stand to reason for the reason that theoretically the facility was extended to him but practically he was deprived of its benefit without which the benefit becomes meaningless. Theory and practice must go together whereas in the instant appeal theoretically he was allowed the facility whereas he was denied when it comes to drawal of financial benefits.

6. Pursuant to the aforesaid discussion and the rich-case-law enunciated by the apex Court of the country getting due authenticity and rule of law under Article 189 of the Constitution of the Islamic Republic of Pakistan, we are inclined to accept the appeal as prayed for leaving the parties to bear their own costs. Parties to be informed accordingly.

H.B.T/327/FST (Trib)
Appeal accepted.

65

(Handwritten signature)

1995 P.L.C.(C.S.) 151 ✓

[Quetta High Court]

Before Amir-ul-Mulk Mengal and Iftikhar Muhammad Chaudhary, JJ

MUHAMMAD RAEESE (AZAM)

versus

GOVERNMENT OF BALOCHISTAN through Chief Secretary, S&GA Department

Civil Petition No. 305 of 1993, decided on 17th August, 1993.

(a) Constitution of Pakistan (1973)---

---Arts. 212 & 199---Jurisdiction of Tribunals constituted under provision of Art. 212 of the Constitution---Extent---Constitutional jurisdiction in matters relating to promotion of civil servant---Competency---Tribunal constituted under Art 212 of the Constitution have exclusive jurisdiction in respect of matters relating to terms and conditions of persons in the service of Pakistan---Jurisdiction of any other Court would be barred because of the exclusive jurisdiction of Tribunal---In matters relating to terms and conditions of civil servants no other Court except Tribunals would grant any injunction, make any order or entertain any proceedings in respect of any matter to which jurisdiction of such Administrative Tribunal or Court extends---Promotion of a civil servant falls under the terms and conditions of service---No right of appeal to the person aggrieved in respect of his promotion, has, however, been provided before such Tribunal---Aggrieved person having not been provided remedy of appeal in the matter relating to his promotion, only way out for him was to invoke Constitutional jurisdiction of High Court---Constitutional petition in matter relating to civil servant's promotion was, thus, competent.

1990 SCMR 790 rel.

PLD 1989 SC 508; 1990 SCMR 790 and PLD 1983 SC 100 ref.

(b) Constitution of Pakistan (1973)---

---Arts. 199 &

25---Promotion---Discrimination---Effect---Constitutional
 petition---Petitioner's promotion to B-21 Grade was considered and he was recommended for that grade---Petitioner also completed training and was recommended unconditionally for promotion by Special Selection Committee---Civil servant's colleague, (another civil servant), who had not even completed his training for such promotion was promoted, thus, causing discrimination in respect of civil servant's promotion---Civil servant however, having retired, Authority was directed to grant him pro-forma promotion in B-21 from specified date with all benefits under Services Rules.

Petitioner, in person.

Raja M. Afsar A. G. for Respondent.

Date of hearing: 8th July, 1993.

JUDGMENT

AMIRUL MULK MENGAL, J: --The petitioner was inducted in the defunct-Provincial Service (Executive Branch) on 16-6-1967 vide Government of West Pakistan Notification No. 51-8-1/64 (SO)IX, dated 5th June, 1967. Subsequently vide Notification No. SO-II-XII(6)/S&GAD-70, dated 1-1-1974 issued by Government of Balochistan he was confirmed in the said cadre on 10-6-1969. He has been in continuous service for more than 35 years as he was a confirmed Lecturer against permanent post from 10-3-1958.

2. The petitioner got promotion to Grade-20 and was posted as Secretary, Population Welfare Department vide Government of Balochistan Notification No. SO-II-1-1(13)/79-S&GAD, dated 4-11-1987. He held two other postings as Secretary, Livestock Department and Member, Balochistan Service Tribunal.

3. The Federal Government selected petitioner for a regular training of 5 months from 3-1-1990 to 3-6-1990 to qualify for Grade-21 vide Government of Pakistan letter No. 1/B/89-I-II, dated 2-12-1989. After successfully completing the training the petitioner's case for promotion to Grade-21 was duly considered and approved by the Promotion Committee in November, 1991 and the petitioner was unconditionally recommended to be confirmed in Grade-21 vide letter No. S-II-1(13)/92/S&GAD, date 23-4-1992.

4. It is the case of the petitioner that the Government of Balochistan

decided that two posts of Grade-21 exist for the Balochistan Civil Service Officers on which the petitioner as well as another officer namely Sardar Sultan Muhammad Nasir be considered and approved although latter had not passed the training as required for promotion to Grade-21. However, the petitioner was not promoted despite the fact that he successfully completed the Staff College Course.

5. The petitioner has alleged mala fides on account of the fact that while acting as Member of the Balochistan Services Tribunal he gave judgements independently some of which with strictures against the Government of Balochistan. Thus the S&GAD and Home Department became vindictive to the petitioner.

6. The grievance of petitioner was that though he was cleared unconditionally for promotion to Grade-21 yet he was not promoted till his retirement whereas Sardar Sultan Muhammad Nasir whose approval was conditional with passing of the training has been promoted to Grade-21 without successfully completing the training.

7. Heard Mr. Muhammad Rases in person and learned Advocate General for the official respondents.

8. Besides, we perused the comments filed by Chief Secretary, Balochistan, who admitted the fact that petitioner was considered and his case was forwarded to the Federal Government to which no reply has been received. It is further revealed from the said comments that the Provincial Special Selection Committee had recommended his case to B-21 which was forwarded to the Federal Government for consideration but the Establishment Division replied that his case would be considered for finalisation of the quota of APUG and BCS officers. It is also not denied that the petitioner was sent for Staff College Course at Lahore passed the said course.

9. The petitioner was heard in person. He emphatically urged that two posts of Grade B-21 were required to be filled by the Provincial Government. Two names i.e. name of petitioner and one Sardar Sultan Nasir were recommended against the two posts. It was submitted by the petitioner that he was recommended unconditionally because he had already completed the staff college training at Lahore which was a condition precedent for promotion. Thereafter the Provincial Special Selection Committee recommended his name. The Provincial Government had failed to produce any material on record indicating that the Establishment Division had any objection to the promotion of the petitioner. Thus there was absolutely no justification whatsoever for not promoting the petitioner. The second limb of argument as advanced by the petitioner was that although he is not aggrieved from

promotion of Sardar Sultan Nasir, to B-21 but at the same time the Provincial Government by not promoting him to B-21 in fact clearly made a discrimination as he was qualified by successfully completing the training of staff college but yet he was not promoted. This discrimination according to the petitioner was due to the fact that while Member of Balochistan Service Tribunal he had given independent decisions which annoyed the S&GAD. The third argument advanced by the petitioner was that the Balochistan Service Tribunal has no jurisdiction firstly because the right of promotion is the prerogative of the Government and no appeal lies under Balochistan Service Tribunals Act to the Balochistan Service Tribunal and secondly because the Provincial Special Selection Committee considered and recommended his name and the Government kept silent and did not take action nor passed any final order, therefore, the only remedy available to him was to file Constitutional petition.

10. As against this learned Advocate-General, Balochistan emphatically, argued that Constitutional petition is not maintainable and that the matter falls within the exclusive jurisdiction of Balochistan Services Tribunal as it relates to the terms and condition of services of the petitioner. Reliance was placed on (i) PLD 1989 SC 508, (ii) 1990 SCMR 70 and (iii) PLD 1983 SC 100.

11. Since the main thrust of argument is regarding maintainability of the petition, therefore, we would attend to this objection before deciding the remaining issues. Learned Advocate-General has referred to the case of Islamic Republic of Pakistan v. Dr. Safdar Mehmood PLD 1983 SC 100. The Hon'ble Supreme Court while interpreting Article 212 of Constitution of Islamic Republic of Pakistan read with section 12 of Services Tribunal Act surveyed the history of service matters and held that the Services Tribunal has exclusive jurisdiction regarding terms and conditions of appointment. This view was further confirmed in PLD 1989 SC 508 (ante), wherein it was held that the jurisdiction of the High Court is barred in service matters as contained in Article 212 of the Constitution. But a clear observation was made by Mr. Justice Muhammad Afzal Zullah (as he then was) in the following terms:-

"Even without such observation, the petitioner is entitled to seek remedy in accordance with law applicable to Tribunal concerned with regard to filing of appeal. The petitioner would have to satisfy all the conditions for filing such an appeal one of the conditions being that the order impugned before the Tribunal should be such which is appealable in accordance with relevant Service Tribunals Act."

The main legal questions arising out of the arguments advanced by learned Advocate-General as regards jurisdiction by this Court and

maintainability of the petition may be summed up as under:-

- (i) Whether promotion is covered under terms and conditions of service.
- (ii) If so whether the service tribunal has jurisdiction to entertain an appeal of an aggrieved civil servant in this regard.

Besides the aforementioned two questions Article 212 of Constitution of Islamic Republic of Pakistan as interpreted by Hon'ble Supreme Court in different cases, shall be kept in mind while disposing of the aforementioned two issues.

12. It would be beneficial and convenient to reproduce Article 212 of Constitution as follows:-

"212. (1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of:-

(a) matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters;

(b) matters relating to claims arising from tortious acts of Government or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or

(c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other Court shall grant an injunction, make any order to entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings on respect of any such matter which may be pending before such other Court immediately before the establishment of the Administrative Court or Tribunal other than an appeal pending before the Supreme Court shall abate on such establishment:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a

70

Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends to such a Court or Tribunal.

(3).....

From plain reading of the aforementioned Article it becomes abundantly clear that Tribunals constituted under aforesaid Article have exclusive jurisdiction in respect of matters relating to the terms and conditions of persons in the service of Pakistan and that the jurisdiction of any other Court shall be barred in matters within the exclusive jurisdiction of the Tribunal. This view is further supplemented by Hon'ble Supreme Court in 1990 SCMR 790. Thus it is almost settled that in matters relating to terms and conditions of civil servants except Tribunals no other Court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such administrative Tribunal or Court extends. Thus a Tribunal constituted under Article 212 of Constitution shall exercise exclusive jurisdiction in respect of matters relating to terms and conditions of persons in service of Pakistan. In pursuance of this Article the Balochistan Service Tribunal has been constituted which has exclusive jurisdiction in respect of matters relating to terms and conditions of service of persons in the service of Province.

In this regard Balochistan Civil Servants Act, 1974 and Balochistan Service Tribunals Act, 1974 have been enacted. It is to be seen whether terms and conditions include matters relating to promotion under the said Act or not. Chapter II of said Act relates to terms and conditions of Balochistan Civil Servants and section 9 relating to promotions is mentioned in said Chapter. Likewise section 4 of Balochistan Service Tribunal Act prescribes right to prefer appeal in respect of terms and conditions of service. Yet there is another section in Chapter II i.e. section 22 describing right of appeal or representation.

13. From the aforementioned discussion we have come to the conclusion that promotion falls under the terms and conditions of service, thus the first issue is answered in affirmative.

14. We now attend to the second proposition whether the Service Tribunal has been vested with jurisdiction to hear appeals as regards promotion? We have already referred to section 9 read with section 22 (2) of Balochistan Civil Servants Act 1974 read with section 4(b) of Balochistan Service Tribunals Act, 1974. This section is reproduced below for the sake of convenience:-

"4. Appeal to Tribunals.----Any Civil Servant aggrieved by any final

71

order, whether original or appellate, made by departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal to the Tribunal having jurisdiction in the matter:-

72

Provided that:-

- (a)
- (b) no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining:-
 - (i) The fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade; or
 - (ii)

Explanation

15. From bare perusal of the aforementioned sections it becomes crystal clear that the right of appeal has not been provided relating to matters of promotion under Balochistan Civil Servants Act or Balochistan Service Tribunals Act, both. Of course from plain reading of Article 212 of Constitution of Islamic Republic of Pakistan, the exclusive jurisdiction vests with the Tribunals constituted there under in respect of terms and conditions of any person in service of Pakistan or a Province but the legislature has not provided any right of appeal to the persons aggrieved in respect of his promotion. Here again we may take resort to the observations made by Hon'ble Supreme Court in case reported in PLD 1989 SC 508. It was observed therein that the petitioner would have to satisfy all the conditions for filing such an appeal. One of the conditions being that the order impugned before the Tribunal should be such which is appealable in accordance with the relevant Service Tribunals Act. As narrated hereinabove the legislature has not provided a right to prefer appeal to an aggrieved person against his promotion, thus an aggrieved person shall have no remedy under any law except a representation to be made within 30 days of the communication of such order, to the authority next above the authority which made the order. The petitioner has already made such representation but of no avail. Since right of appeal has not been provided in respect of matters of promotion and particularly in view of such circumstances of this case the Service Tribunal has no jurisdiction to entertain any appeal by the petitioner. In these circumstances it is to be determined whether the petitioner should be left with no remedy or that this Court in exercise of its writ jurisdiction under Article 199 of the Constitution may entertain the petition as

there can be no wrong without remedy (UBI JUS UBI REMIDIUM). As the petitioner has no other remedy under the Balochistan Service Tribunals Act or Balochistan Civil Servants Act, the only way out for him was to invoke the writ jurisdiction of this Court. Therefore, he has rightly invoked the jurisdiction of this Court and the petition cannot be held incompetent.

16. Adverting now to the merits of the case, the plea of the Government of Balochistan is manifest from the comments filed by the Chief Secretary that the Federal Government has submitted no reply to the case of promotion of petitioner. It is nowhere mentioned in the comments that the petitioner did not qualify for promotion to B-21.

Neither the learned Advocate-General nor the Chief Secretary in his comments have ever mentioned that Federal Government had given its consent for promotion of the other officer who has been promoted to B-21 on the recommendations of Provincial Special Selection Committee. These are the circumstances under which the plea of the petitioner that there was clear discrimination is to be determined. Undoubtedly the petitioner has successfully completed his training at Lahore. There is no dispute that his name was recommended for promotion. No letter has been placed before us that Federal Government has any objection to the promotion of petitioner to B-21. However it transpired from the comments that service record of the petitioner has not been good and in 1990 he was charge-sheeted on account of misappropriation of Government money but the inquiry could not be finalised for want of a Grade-21 DMG officer. In reply thereto the petitioner filed a rejoinder contending that his service record is good since 10-3-1958, and no inquiry was conducted against him. It is indeed strange that if that was the position why the case of petitioner for promotion to B-21 was considered and forwarded to the Federal Government by the Provincial Government. Not only that but the petitioner completed his training and was recommended by Special Selection Committee unconditionally for promotion. There is no mention whatsoever in the comments about the other officer who was promoted to Grade-21 without undergoing the Staff College training, nor any material was placed that the Federal Government had no objection to his promotion. In the circumstances the objection of the petitioner that there was a clear discrimination has substantial force.

Having said so we must mention that the petitioner has retired from service with effect from 4-6-1993. In view of this factual position he wants a pro forma promotion from the date when he was recommended till the date he retired and consequent emoluments. As is evident from the above discussion there was no justification or no

promoting the petitioner to Grade-21. We, therefore, direct the respondents to allow pro forma promotion to the petitioner from due date and further allowing all the resultant benefits under the service rules. The petition is thus disposed of in the aforementioned terms with no orders as to costs.

74

AA./500/Q

Petition accepted.

