

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.888/2018

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

Dr. ® Mubarak Khan S/O Haji Sardar Ali Khan R/O House No. 68, Street No. 4 Sector F-2, Phase-VI, Hayatabad, Peshawar.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
3. Director General Health Peshawar.
4. Account General, Peshawar.
5. District Accounts Officer, Hangu.(Respondents)

Mr. Hidayatullah Khattak,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

| | |
|--------------------------|------------|
| Date of Institution..... | 12.07.2018 |
| Date of Hearing..... | 03.05.2024 |
| Date of Decision..... | 03.05.2024 |

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned notification dated 04.08.2017 with the prayer that on acceptance of the appeal, the seniority of the appellant in the impugned seniority list dated 04.08.2017 might be ordered to be corrected and rectified and the appellant should be given his due seniority and all the consequential benefits.



SCANNED
KPST
Peshawar

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant approached the Honourable Peshawar High Court for redressal of his grievance but on 19.06.2018 the Honourable High Court asked verbally regarding their jurisdiction and counsel for the appellant sought withdrawal of the writ petition on 19.06.2018 to approach the Service Tribunal, which was allowed. Appellant was appointed as Medical Officer (BS- 17) in the Health Department on 23.04.1987 and was promoted as Senior Medical Officer in the year 1997. According to the notification dated 13.05.2016, he was promoted to Principal Medical Officer (BPS- 19) and the respondent No. 3 fixed one year probation period. Respondent No.3, on 04.08.2017, issued a seniority list of the doctors working in the Health Department as Principal Medical Officers (BPS- 19) for promotion to the post of Chief Medical Officer (BPS- 20) in which the appellant's name was mentioned at serial no. 96, much junior to his colleagues who were already junior to him. Appellant submitted an application/representation on 20.11.2017 regarding the seniority list for its rectification. When it was not responded, he once again submitted a representation to the respondent No. 1 for redressal of his grievance. Feeling aggrieved from the inaction of the respondents No. 1 and 3, he preferred the instant service appeal.

3. Respondents were put on notice. Despite repeated opportunities given to them, they did not submit written reply/comments. Vide order sheet dated 12.01.2022, last opportunity was given to them for the same purpose but with the observations that they should cease to have the right of submission of written reply/comments, if they failed to submit the same on or before the next



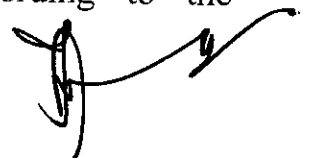
date i.e. 02.03.2022, and that the appeal should be heard on available record. Perusal of the record revealed that no such reply had been submitted. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case argued that the promotion order dated 04.08.2017 of the Principal Medical Officer to the Chief Medical Officer (BPS- 20) was violative of law and procedure, whereby the name of appellant was placed much junior to others. He argued that the appellant was not given an opportunity of personal hearing regarding his grievance, which was against the settled principle of law of natural justice. As per the condition of promotion in the notification dated 13.05.2016, the probation period was one year which was deliberately considered as two in the case of the appellant which was discrimination with him. He further argued that the appellant was deprived of his legal rights of promotion to CMO (BPS- 20) and he got retired and junior doctor at serial no. 154 was promoted to CMO (BPS- 20). He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was promoted as Principal Medical Officer BS- 19 on 13.05.1996 and was on probation for one year extendable to the next year, if no request was received from the officer on probation. Therefore, he was not entitled to be considered for promotion to the post of Chief Medical Officer (BS- 20). He requested that the appeal might be dismissed.



6. Arguments and record presented before us show that the appellant, alongwith others, was promoted from BS- 18 to BS- 19 on regular basis vide a notification dated 13.05.2016. The notification stated that all the promoted officers would remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servant Act 1973 read with Rule 15(1) of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989. After that, the respondent department processed the case of promotion of Principal Medical Officer (BS- 19) to the post of Chief Medical Officer (BS- 20) and vide a letter dated 04.08.2017, asked for furnishing the Performance Evaluation Report of different years, alongwith other documents, of various officers from their respective authorities. The name of the appellant was at serial no. 96 of that letter. On 26.09.2017, the provincial government promoted various doctors to BS- 20, but the appellant was ignored. Learned District Attorney as well as departmental representative were asked to produce the working paper, seniority list and minutes of the meeting of Provincial Selection Board in order to ascertain the facts why the appellant was ignored for promotion. No such document could be produced by them, however a letter No. 19963/AE-I dated 04.10.2017 of the Directorate General of Health Services, Peshawar was produced by the learned counsel for the appellant according to which "Dr. Mubarak Khan PMO BS- 19 was promoted to BS- 19 on 13.05.2016 and as such he was on probation for one year extendable to the next year, if no request is received from the officer on probation." The learned District Attorney and the departmental representative also supported the letter and presented the same point. A perusal of the promotion notification dated 13.05.2016 presents a different picture, altogether. According to the



notification, the probation was for one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act 1973 read with Rule 15(1) of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989. Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule 15(1) of Khyber Pakhtunkhwa (APT) Rules, 1989 is reproduced as follows:-

“6(2) Any appointment of a Civil servant by promotion or transfer to a service or post may also be made on probation as may be prescribed.”

“15(1) Persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year.”


7. After going through the above mentioned section and rule, one fails to understand how the Directorate General stated that the appellant was on probation for one year extendable to next year, when no order of extension in probation was issued. Here we refer to Rule 15(2) of the APT Rules where it is clearly mentioned that on the successful completion of probation period, prescribed in sub-rule (1), the appointing authority may extend the probation for another year by specific order within two months of the expiry of probation order. The same rule 15 in its sub-rule (3) states that if no specific order of extension of probation period under sub-rule (2) is issued, on expiry of one year within two months, the probation shall stand automatically terminated.

8. In the light of above discussion one can safely say that probation period of the appellant ended on 13.05.2017 and he was entitled to further promotion when his junior colleagues were promoted on 26.09.2017.



9. In view of the foregoing, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 03rd day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

FazleSubhan P.S

SCANNED
K.P.O.F.
Peshawar


SA 888/2018

03rd May, 2024 01. Mr. Hidayatullah Khattak, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of May, 2024.*

SCANNED
K...
Peshawar


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS