

Service Appeal No.2093/2023 titled “Sherin Jan Vs. Government of Khyber Pakhtunkhwa” and another.

ORDER

11th June. 2024 **Kalim Arshad Khan, Chairman:** Through this single order, instant service appeal as well as Service Appeal No.2482/2022 titled “Alamzeb Khan Vs. Government of Khyber Pakhtunkhwa”, are jointly taken up as both are regarding proforma promotion and almost with the same contentions, therefore, can be conveniently decided together

2. Learned counsel for the appellants present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Nasir Ali, Additional Secretary for the respondents present.

3. The appellants’ cases in brief as stated in the memo and grounds of appeals are that their cases for promotion to the post of Executive Engineer (BPS-18) were to be considered by the Provincial Selection Board under the amended service rules notified on 28.04.2021. That in the meanwhile, the said amended rules were challenged before this Tribunal through Service Appeal No.7917/2021 by Engr. Imtiaz Khan. That in the said service appeal, operation of the amendment was suspended by the Tribunal, therefore, the appellants’ cases were not considered at that time. That the appeals of Engineer Imtiaz Khan and others were dismissed by the Tribunal on 13.07.2021, however, the appellants had already retired on attaining the age of superannuation before the decision. They filed departmental appeals for proforma promotion, but the same were not responded, hence, these service appeals.





SA 2093/2023

14.05.2024 01. Counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Rozamin, Superintendent for the respondents present.

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02. Learned counsel for the appellant stated that cases of similar nature in service appeal No. 2482/2023 were fixed for arguments on 11.06.2024 and requested that instant appeal may be clubbed with those appeals. Granted. To come up for arguments on 11.06.2024 alongwith service appeal No. 2482/2023 on 11.06.2024 before the D.B. PP given to the parties.


(Farceha Paul)
Member(E)


(Rashida Bano)
Member(J)

Fazle Subhan, P.S

consideration of the appellants for promotion in case they were otherwise eligible and fit besides availability of posts, if any. Copy of this order be placed on the files of connected cases. Costs shall follow the event. Consign.

7. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of June, 2024.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

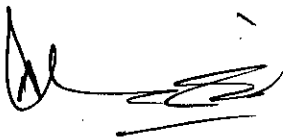
Mutazem Shah

4. Arguments heard. Record perused.

5. In the reply, in Para-05, the respondents have taken cases of the appellants in the following manner:

“5. That after issuance of the notification dated 24.08.2021, Engr. Imtiaz Khan, filed service appeal no.7917/2021 before the Service Tribunal Peshawar on 21.12.2021. The Tribunal vide order dated 31.01.2022 directed status quo in the instant appeal. The appeal remained pending before the Khyber Pakhtunkhwa Service Tribunal till 12.07.2017, when the learned Tribunal vide order dated 13.07.2023 dismissed the appeal. As the case was sub-judice before the Tribunal, therefore, no working paper for promotion of Assistant Engineer (BS-17) to the post of Executive Engineer (BS-18) was submitted to the PSB for consideration.”

6. The above para shows that the department had not submitted working paper because of pendency of Appeal No.7917/2021 titled “Engineer Imtiaz Khan Vs. Government of Khyber Pakhtunkhwa” and by the time, the above appeal was decided on 13.07.2021, the appellants had retired. This contention of the respondents does not tell us whether there were any vacancies in the promotion quota against which the appellants could be promoted or could be considered for promotion and what, if there had been no appeal pending? We summoned the Secretary to Government of Khyber Pakhtunkhwa, Irrigation Department but instead Mr. Nasir Ali, Additional Secretary put appearance who was confronted with the above situation, but he could not controvert the same. Therefore, in the absence of any clear stance of the respondents in their reply, we dispose of these service appeals by remanding the same to the respondent department for



11/06/24