

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.1085/2020**

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

Mr. Naik Muhammad PMS Officer (BS-17), Assistant Commissioner, Bara,  
District Khyber.

.... (Appellant)

**VERSUS**

1. The Provincial Government: through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
  2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
  3. The Secretary Establishment Department, Civil Secretariat, Peshawar.
- .... (Respondents)

Mr. Muhammad Asif Yousafzai  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....19.02.2020  
Date of Hearing.....17.04.2024  
Date of Decision.....17.04.2024

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):**The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:


**“That on acceptance of this appeal, the rejection order dated 22.01.2020 may be set-aside and impugned order dated 08.10.2019 may be modified to the extent of appellant and respondents may be directed to consider the appellant for ante-dated promotion from the date of deferment 30.01.2017, junior was promoted with all back and consequential benefits. Any other remedy which this august tribunal deems fit and proper that may also be granted in favor of the appellant.”**

2. Brief facts of the case are that appellant was then working as Tehsildar (now as Assistant Commissioner, Bara Dist. Khyber) was implicated in the case of Voluntary Return in National Accountability Bureau (NAB) on the basis of which he was departmentally proceeded by issuing a show cause to which he submitted reply. In the meantime, the Provincial Selection Board meetings were held 30.01.2017, 19.05.2017, 28.12.2017 & 03.05.2018 and appellant being senior eligible to be promoted as PMS officer against 20% quota was deferred due to pending inquiry. Lastly, he was promoted to the post of PMS (BPS-17) on regular basis with immediate effect vide order dated 08.10.2019. Feeling aggrieved, he filed departmental appeal on 12.11.2019, which was filed vide order dated 22.01.2020, hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules; that the orders dated 08.10.2019 and 22.01.2020 passed by the respondents are against the law, facts, norms of justice and material on record hence liable to be modified to the extent of the appellant; that the appellant was promoted to the post of PMS Officer vide order/notification dated 08.10.2019 with immediate effect and not from the date of deferment i.e when junior to him were promoted which is violation of the para V(d) of the Khyber Pakhtunkhwa Promotion Policy, 2009. He requested that instant appeal might be accepted as prayed for.


5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules; that the appellant was deferred for promotion by the Provincial Selection Board in its meeting dated 30.01.2017, 19.05.2017 and 28.12.2017 due to incomplete probation period alongwith disciplinary proceedings pending against him which makes him ineligible for



promotion. He further contended that para-vi of the Khyber Pakhtunkhwa, Promotion Policy, 2009 provides that promotion will always be notified with immediate effect and not with retrospective effect. Moreover, he was considered for promotion to the post of PMS BPS-17 by the Board in its meeting held on 23.09.2019 with immediate effect.

6. Perusal of record reveals that appellant was then working as Tehsildar and (now PMS Officer) performed his duty honestly. The appellant is senior and eligible to be promoted as PMS Officer against 20% quota fixed by the government in the rules. Appellant was falsely implicated in the case of voluntary return by NAB, on the basis of which the appellant was served with show cause notice on 30.10.2016 which was properly replied by the petitioner on 14.11.2016, but there was complete silence on the part of respondents for a long period of 2 years and after two years inquiry was done which report was pending for no reason. Appellant through instant appeal seek ante-dation of his promotion notification dated 08.10.2019 with 30.10.2017 when he was considered and deferred for the first time by PSB by promoting his Junior to the post of PMS BS-17.

7. Record reveals that appellant for the first considered by the PSB in its meeting held on 30.01.2017 and was deferred due to pendency of enquiry against the petitioner. Appellant was also considered by PSB for promotion to the post of PMS BS-17 in its meeting held on 19.05.2017, 28.12.2017 and 03.05.2018 but each time appellant was deferred due to pendency of inquiry. Appellant was exonerated from charge of involvement in voluntary return NAB case on the basis of which inquiry was initiated against him on 31.05.2019. When appellant was exonerated from the charges than department was required to consider him from the date when he was deferred for the first time as deficiency is no more in filed and the only hurdle in the way of promotion of the appellant at the time of PSB of on 30.01.2017 was removed.





8. Then case of the appellant covered under Rule-V (d) of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, which deals with deferment of promotion and determination of seniority of deferred employ/civil servant which read as:

*“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 come to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher scale, he shall be deemed to have been cleared for promotion alongwith 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 the proviso of Sub-section (4) of Section 8 of the Khyber Pakhtunkhwa 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-se-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 inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior”*

9. For what has been discussed above, we are unison to accept appeal in hand as prayed for. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17<sup>th</sup> day April, 2024.

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**


17.04.2024

1 Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney along with Naheed Gul, Assistant for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept appeal in hand as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17<sup>th</sup> day April, 2024.*

  
(FARZEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)