

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT SWAT

Service Appeal No: 99/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Dr. Pir Qajir Gul, Ex. Senior Medical Officer (BPS-18), Category-C Hospital
Dargai, District Malakand.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
5. The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Umar Farooq
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....21.01.2019
Date of Hearing.....03.06.2024
Date of Decision..... 03.06.2024

JUDGMENT

Rashida Bano, Member (J): The instant service appeals have been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

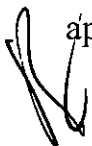
“On acceptance of the instant appeal the impugned order dated 14.11.2017 issued by the respondent No.2 may kindly be modified/corrected to the extent of petitioner and the petitioner



may be granted/allowed proforma promotion to the post of Principal Medical Officer (BPS-19) w.e.f 14.11.2017 with all consequential benefits. Any other remedy which this court deems fit and that may also be awarded in favour of the petitioner.”

2. Brief facts leading to filing of the instant appeal are that the appellant was appointed as medical officer BPS-17 on contract basis in the respondent department vide order dated 18.12.1995. He was appointed as medical officer on regular basis vide notification dated 15.09.1997 and was further posted as BHU Narai Ubo, District Malakand vide order dated 21.10.1997. He was further promoted to the post of Senior Medical Officer (BPS-18) vide notification dated 06.04.2015. Respondents vide circular dated 09.08.2017 directed the appellant alongwith his colleagues to furnish their PERs alongwith requisite documents for promotion to the post of Principle Medical Officer (BPS-19) and name of the appellant was placed at Serial No. 293 of the proposed list. In the meanwhile, the appellant was retired from service upon attaining the age of superannuation on 20.09.2017. Respondents send the said proposal to PSB on 23.09.2017 and vide impugned order dated 14.11.2017 colleagues and junior to the appellant are promoted and appellant was ignored. Feeling aggrieved, he filed preferred departmental appeal, which was not responded, hence the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We have heard learned counsel for the appellants and Mr. Muhammad Jan, District Attorney for the respondents



and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that impugned order dated 14.11.2017 issued by the respondents is against the law, facts and norms of natural justice, hence not tenable and liable to be modified. He further argued that respondents malafidely delayed the promotion process for the post of (BPS-19) though the petitioner time and again requested the respondents to expedite the process as retirement of the appellant was due on 11.06.2016. He submitted that not considering the appellant to the post of PMO (BPS-19) in spite of eligibility and seniority the respondents violated the Section 7 of the Civil Servant Act read with (Appointment, Promotion & Transfer) Rules, 1989. He also argued that respondents discriminated the appellant by not considering him for promotion.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that working paper for promotion of the SMO BPS-18 to the post of PMO BPS-19 were submitted by the Health Department to the PSB for its consideration in the month of August, 2017 wherein name of the appellant was reflected at Serial NO. 309 of the seniority list of SMO BPS-18 as stood on 01.01.2017, while the vacant positions of PMO BPS-19 at that time was 259 and thus the PSB in its meeting held on 23.09,2017 recommended 132 SMO (BPS-18) to the post of PMO (BPS-19).



6. Perusal of record reveals that initially appellant was appointed as Medical Officer BPS-17 on contract basis in the respondent department vide order dated 18.12.1995, where after vide notification dated 15.09.1997 the appellant was appointed as Medical Officer on regular basis and was further posted at Basic Health Unit Narai Ubo, District Malakand, vide office order dated 21.10.1997. During service the appellant was promoted to the post of Senior Medical Officer (BPS-18) on seniority cum fitness basis and on the proper recommendation of Departmental Promotion Committee vide notification dated 06.04.2015. The petitioner was transferred to Category-C Hospital Dargai from District Headquarter Hospital, Dir Upper vide notification dated 29.07.2015.

7. Respondent No.5 vide notification dated 09.08.2017 directed the appellant, his colleagues to furnish their PER's along with requisite documents for promotion to the post of Principal Medical Officer (BS-19). The name of the appellant has appeared at Serial No.293 of the proposed list prepared by the competent authority. The appellant informed the respondents about his date of retirement on superannuation basis and requested for issuance of sending proposal at earliest to establishment department, which was not consider. Appellant retired from service on 20.09.2017 without availing promotion to BS-19. The health department after the retirement of the appellant sent the said proposal to the Provincial Selection Board on 23.09.2017 as such vide impugned order dated 14.11.2017 colleagues and junior to the appellant has been promoted to the



post of Principal Medical Officer (BS-19) while the petitioner was ignored with malafide and arbitrary intention.

8. Learned District Attorney raised preliminary objection about maintainability of appeal in hand on the ground that no departmental appeal was preferred against impugned promotion order dated 14.11.2017 by the appellant. Therefore, he argued that this appeal is not maintainable.

9. Perusal of record reveals that appellant in the instant appeal challenged promotion of medical officer BPS-18 to the post of principal medical officer BPS-19 issued on 14.11.2017, prayer of the appellant in instant appeal;

“On acceptance of this writ petition the impugned order dated 14.11.2017 issued by the respondent No.2 may kindly be modified/corrected to the extent of petitioner and the petitioner may be granted/allowed pro forma promotion to the post of Principal Medical Officer (BPS-19) w.e.f. 14.11.2017 with all consequential benefits.”

10. Appellant annexed departmental appeal as annexure “H” perusal of which reveals that in said departmental appeal appellant impugned promotion order dated 26.09.2017 not order dated 14.11.2017. Appellant preferred said departmental appeal on 10.10.2017 before issue of impugned order dated 14.11.2017. It means that appellant had not challenged impugned order in departmental appeal which is prerequisite for approaching this Tribunal in accordance with Section-4 of the Khyber


Pakhtunkhwa Service Tribunal 1974, which read as;

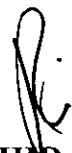
“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the appeal having jurisdiction in the matter.”

So, in accordance with it any aggrieved civil servant is required to challenge any order from which he is aggrieved before departmental appellate authority within 30 days of its passing and wait for 90 days, if his departmental appeal was not decided then after expiry of 90 days period will have to file service appeal within next 30 days to this Tribunal. Appellant in the instant appeal had not challenged impugned order dated 14.11.2017 therefore, his appeal is not maintainable in accordance with Section-4 of the Act 1974.

11. For what has been discussed above, we are unison to dismiss the appeal in hand being not maintainable. Costs shall follow the event. Consign.

12. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 3rd day of June, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat


(RASHIDA BANO)
Member (J)
Camp Court Swat


ORDER

03.06.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney along with Safi Ullah, Focal Person for respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal in hand being not maintainable. Costs shall follow the event. Consign.
3. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 3rd day of June, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat



(RASHIDA BANO)
Member (J)
Camp Court Swat

*M.Khan