

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1196/2022

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

Ghulam Habib son of Adul Ghafoor Shah resident of House No. 35, G-2,
Phase-II, Hayatabad, Peshawar.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. Secretary Law, Government of Khyber Pakhtunkhwa, Peshawar.
.....(Respondents)

Mr. Amanullah Marwat,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution..... 20.04.2018

Date of hearing 29.05.2024

Date of Decision..... 29..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 inaction on the departmental appeal of the appellant for promotion from BPS- 19 to BPS- 20, being eligible, since 30.12.2020. It has been prayed that on acceptance of the appeal, the respondents might be



directed to consider the appellant for antedated promotion from BPS- 19 to BPS- 20 from 30.12.2020 when his other colleagues were considered but were not promoted and their appeals were allowed by the Khyber Pakhtunkhwa Service Tribunal vide judgment dated 02.02.2022.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was promoted from Tehsildar (BPS-16) to PMS Officer (BPS- 17) on regular basis, after fulfillment of all codal formalities, vide notification dated 19.02.2008. He was again promoted to BPS- 18 vide notification dated 09.10.2012 and thereafter promoted to BPS- 19, on acting charge basis, till 06.09.2016. Later on, his services were regularized in BPS- 19 vide notification dated 15.05.2019, after fulfillment of mandatory requirements. According to rules for promotion from BPS- 19 to BPS- 20 the requirements were as follows:-

- i. BPS- 18: 5 years service in BPS- 17
- ii. BPS- 19: 12 years service in BPS- 17 & above
- iii. BPS- 20: 17 years service in BPS- 17 & above

Almost 06 posts of BPS- 20 were lying vacant in December 2020. The respondents considered the appellant in the meeting of Provincial Selection Board held on 30.12.2020 but he was not promoted due to pendency of the judgment of the august Supreme Court, not having prescribed length of service and deficient ACRs. PSB also observed that there was no concept of two consecutive promotions. The appellant was eligible for promotion to BPS- 20 and was at serial no. 6 of the seniority list. After the PSB meeting



held on 30.12.2020, several PSB meetings were held and the appellant was considered but not promoted. PSB meeting was scheduled to be held in the last week of March 2022, but the same was postponed due to absence of one of the members. The appellant reached the age of superannuation, on attaining the age of 60 years on 01.04.2022. The PSB was held on 06.04.2022 wherein he was not considered as he was already retired from service. Prior to that, he was directed vide letter dated 11.02.2022 to furnish the deficient ACRs for the period 2020 and 2021, which were furnished accordingly in time, but due to non-holding of PSB, the appellant was deprived of his promotion and the departmental appeal filed to this effect was not responded; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise reply 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, after presenting the case in detail, argued that the impugned decision of PSB dated 30.12.2020 and opinion of Advocate General Khyber Pakhtunkhwa were against the law, facts and norms of justice, hence not tenable and liable to be set aside. He argued that though the appellant had been exonerated from the charges but he was deprived from the right of promotion merely because of having his name in the list submitted by the Government in Suo Moto case No. 17/2016, thus he was made to suffer due to a case in which he was not a party. He further argued that conditional promotion to BPS- 19 was against the norms of



justice and denying the promotion to him on the basis of "Consecutive Conditional Promotions" was totally against the law. He argued that the decision of the PSB was coram-non-judice because the PSB could recommend promotion, recommend supersession from promotion or defer promotion, if the seniority was disputed, PERs were incomplete or inquiry was pending. He referred to a case reported as 2010-SCMR-1301 in which the august Supreme Court of Pakistan held that in the matter of promotions, rules were to be followed and where the discretion of authority was involved then that must be exercised with fairness. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that PSB in its meeting held on 30.12.2020 deferred promotion of the appellant due to non-completion of the required length of service and missing PERs as per law and policy. He argued that the name of the appellant was placed before the PSB from time to time before his retirement, however PSB deferred his promotion mainly due to non-completion of the mandatory required length of service for promotion to BS- 20. He argued that the appellant was promoted to PCS (Executive Group) BS- 17 on 16.02.2007 and he availed 03 years and 03 months extraordinary leave without pay w.e.f. 30.09.2016 to 15.10.2018. He further stated that 17 years service of the appellant was to be completed in 2026, but he got retired on superannuation on 31.03.2022. According to promotion policy of 2009, no proposal for promotion should be entertained unless the condition of the prescribed length of service was fulfilled. He argued that




the august Supreme Court of Pakistan vide judgment dated 24.10.2016 in Suo Moto case No. 17/2016, directed that voluntary return fell within the definition of misconduct. The appellant availed VR facility and in the light of judgment of the august Supreme Court, disciplinary proceedings against him were initiated and as result of that, he was exonerated subject to final decision of the Supreme Court in the Suo Moto case. The PSB, therefore, recommended conditional promotion of the appellant from BS- 18 to BS- 19 but his promotion to BS- 20 was deferred due to the reason that he had not completed the required length of service for such promotion. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was promoted from Tehsildar (BS- 16) to Provincial Management Service Officer (BS- 17) on regular basis on 19.02.2008. Later on, he was promoted to BS- 18 on 10.10.2012 on regular basis. On 06.09.2016, he was given acting charge of BS- 19 and regularly promoted to BS- 19 on 15.05.2019. For promotion to BS- 20, the required length of service, as per rules and promotion policy, was 17 years in BS- 17 and above. The appellant was promoted to BS- 17 on 19.02.2008 and the required length of 17 years service would complete on 19.02.2025, but prior to that, he got retired on attaining the age of superannuation on 31.03.2022, meaning thereby that by that time he was not eligible for promotion because he did not fulfill the mandatory requirement of 17 years length of service from the date when he was regularly promoted in BS- 17.



7. In view of the above discussion, the appeal in hand is dismissed being groundless. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)


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29th May, 2024 01. Mr. Amanullah Marwat, 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 appeal in hand is dismissed being groundless. 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 29th day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS