

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 357/2019

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mr. Muhammad Iqbal, Ex-Associate Professor (BPS-19), Government Degree College, Jamrud, Tribal District Khyber.

LEGAL HEIRS

1. Mst. Farzana Iqbal, Widow
2. Waqas Sannan, Son
3. Danyal Sannan, Son
4. Salal Ahmed, Son
5. Owais Sanan, Son..... (Appellants)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Higher Education, Archives & Library Department, Civil Secretariat, Khyber Pakhtunkhwa.
5. The Director, Higher Education, Archives & Library Department, Khyber Pakhtunkhwa, Peshawar..... (Respondents)

Present:-

WALEED ADNAN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....12.03.2019
Date of Hearing..... 26.06.2024
Date of Decision.....26.06.2024

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this service appeal the impugned Notification dated 28.02.2019 communicated to the appellant 13.12.2018 may very kindly be modified/rectified and the respondents may kindly be directed to allow/grant proforma promotion to appellant w.e.f. 28.02.2018 with all monetary benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

02. Brief facts of the case are that appellant was appointed as Lecturer of Political Science (BPS-17) vide order dated 01.02.1987. He was promoted to the post of Assistant Professor (BPS-18) and further promoted to the post of Associate Professor (BPS-19). The seniority list of Associate Professor (BPS-19) was circulated and the appellant was placed at serial No. 11 of the said seniority list. The appellant was retired from service on the age of superannuation vide order dated 04.12.2017 w.e.f 31.11.2017; that after retirement of the appellant the meeting of Provincial Selection Board was held on 28.12.2017 and minutes of the meeting was issued on 02.01.2018 followed by the impugned promotion Notification whereby the appellant was ignored from promotion to the post of Professor (BPS-20). Feeling aggrieved from the impugned Notification dated 28.02.2018, the appellant filed departmental appeal on 13.12.2018 which was not responded, hence preferred the instant service appeal on 12.03.2019.

03. Notices were issued to the respondents, who submit their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned

District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned promotion Notification dated 28.02.2018 is against the law, facts, norms of natural justice, hence not tenable in the eye of law; that the appellant has not been treated by the respondents in accordance with law, rules and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the act of respondents is highly discriminatory as junior colleagues have been allowed promotion to the post of Professor (BPS-20) while the appellant has been ignored inspite of eligibility and seniority; that inaction of the respondents by not allowing/granting the appellant proforma promotion is against Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973 which guarantees to "Reduce Disparity in the income and earning of the individual including persons in the service of Pakistan"; that the impugned promotion Notification dated 28.02.2018 is violative of Section-9 of the Civil Servant Act, 1973 read with Rule-7 of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, therefore, he requested for acceptance of the instant service appeal.


05. On the other hand, learned District Attorney contended that the promotion case of Associate Professor (BPS-19) to the post of Professor (BPS-20) was placed before the Provincial Selection Board in its meeting held on 28.12.2017, but at that time the appellant was retired from service on the age of superannuation on 30.11.2017, therefore, the case of the


appellant was not considered by Provincial Selection Board in its meeting held on 28.12.2017.

06. Perusal of record reveal that the appellant has challenged the impugned promotion Notification dated 28.02.2018 whereby junior colleagues of the appellant were promoted to the post of Associate Professor (BS-20) and the appellant was retired on 30.11.2017. It is admitted fact that the appellant was at serial No. 11 of the seniority list of Associate Professor (BS-19) but at the time when the PSB meeting was held he was no more in service and retired on the age of superannuation on 30.11.2017 and the PSB meeting was held on 28.12.2017. Nothing is available on record which shows that working paper for promotion of the appellant to BS-20 was sent to PSB and the same was on the agenda of meeting of PSB before his retirement. We hold that employees right to promotion is extinguished upon their retirement. The appellant's retirement on the age of superannuation renders him ineligible for promotion to BS-20 and civil servant cannot claim promotion as a right.

07. In view of the above discussion the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of June, 2024.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

ORDER


26.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad

Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of June, 2024.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

Kamranullah