

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
AURANGZEB KHATTAK ... **MEMBER (Judicial)**

Service Appeal No.1183/2023

Date of presentation of Appeal.....26.05.2023

Date of Hearing.....25.07.2024

Date of Decision.....25.07.2024

Mayra Ullah SDO (OPS) Sub Engineer (BPS-16) C&W Department,
Peshawar.....(**Appellant**)

Versus

- The Secretary to Government of Khyber Pakhtunkhwa C&W Department, Civil Secretariat Peshawar.**
- The Chief Engineer (Center) Communication & Works Department, Khyber Pakhtunkhwa, Peshawar.....(Respondents)**

Service Appeal No.1184/2023

Date of presentation of Appeal.....26.05.2023

Date of Hearing.....25.07.2024

Date of Decision.....25.07.2024

Sami Ud Din Sub Engineer (BPS-16), Assistant Director (OPS),
C&W Department, Peshawar.....(**Appellant**)

Versus

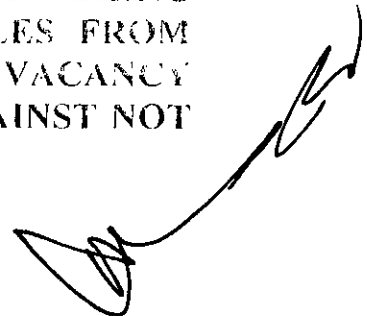
- The Secretary to Government of Khyber Pakhtunkhwa C&W Department, Civil Secretariat Peshawar:**
- The Chief Engineer (Center) Communication & Works Department, Khyber Pakhtunkhwa, Peshawar.....(Respondents)**

Present:

Mr. Muhammad Asif Yousafzai, Advocate.....For the appellants

Mr. Muhammad Jan, District Attorney.....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE LETTER DATED 05.12.2022
AND FOR NOT CONSIDERING THE
APPELLANTS FOR PROMOTION TO THE POST
OF (ASSISTANT ENGINEER) BPS-17 BEING
ELIGIBLE AS PER LAW AND RULES FROM
THE DATE I.E. THE EXISTENCE OF VACANCY
AND PROMOTION QUOTA AND AGAINST NOT



Service Appeal No 1193/2023 titled 'Amayot Ullah versus The Secretary to Government of Khyber Pakhtunkhwa C&W Department, Civil Secretariat Peshawar and others', and Service Appeal No 1194/2023 titled 'Same Ullah versus The Secretary to Government of Khyber Pakhtunkhwa C&W Department, Civil Secretariat Peshawar and others' decided on 25.9.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Anwaruz Zeb Lhotok, Member, Bench of Khyber Pakhtunkhwa Service Tribunal Peshawar

DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANTS WITHIN STATUTORY PERIOD OF NINETY DAYS.

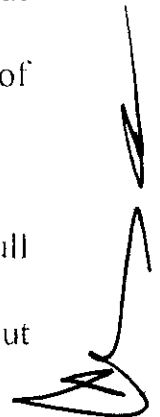
CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above two appeals, are jointly taken up, as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Brief facts of the cases as reflected from the record, are that the appellants were appointed as Sub Engineers (BPS-12) in the C&W Department in the year 1986; that the said post was upgraded to BPS-12; that as per old rules, the appellants were allegedly eligible for promotion to the post of Assistant Engineer (BPS-17), therefore, their working papers were prepared; that their promotions were delayed because of the reason that DPC be postponed till the finalization of new Rules; that after the Standing Service Rules Committee meeting, rules for promotion to the post of Assistant Engineer (BPS-17) were amended vide Notification dated 20.01.2023 and the appellants were not given promotions.

03. Feeling aggrieved, they filed departmental appeals but the same were not responded within the statutory period of ninety days, therefore, they filed the instant service appeals.

04. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put



appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

05. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

06. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

07. From the record, it is evident that the appellants were serving as Sub Engineers (BPS-16) and were eligible for promotion to the post of Assistant Engineer (BPS-17), however, they were denied promotion.

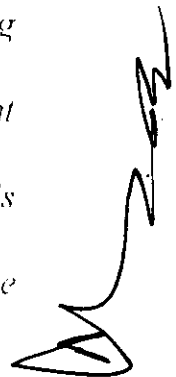
08. First of all, employees have a legitimate expectation to be considered for promotion based on the rules and conditions applicable at the time of their eligibility. Therefore, principle of legitimate expectation protects against arbitrary changes in rules that disadvantage employees who have met the eligibility criteria under the earlier rules.

09. Secondly administrative delays in processing promotions, such as postponements of the DPC, do not negate the employees' right to promotion under the existing rules at the time they were eligible. Such delays should not adversely affect the substantive rights of the employees.

10. Besides, if promotion rules are amended after the civil servant have become eligible for promotion, the new rules typically do not apply retrospectively unless explicitly stated. Changes in rules should not apply to individuals who were already in the pipeline for promotion based on the old rules.

11. Last, but not the least, the Apex Court has consistently held that amendments to promotion rules should not affect the rights of civil servants who have fulfilled the eligibility criteria as per the rules existing at the time of their eligibility. The principle of non-retrospectivity of rules supports the argument that the appellants should be considered for promotion under the old rules. In this regard, reliance is made on 2021 SCMR 1281 titled "Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Hizbullah Khan and another", wherein, the Supreme Court of Pakistan has held that:

"Once an employee case (for promotion) was put up before the DPC, the same had to be decided by the DPC fairly, justly and honestly, by either allowing the promotion or not allowing the same. In the latter case, the employees had to be informed by giving reasons for denial of promotion to him. When relevant promotion rules were in the field, a civil servant's case of promotion could not be kept pending by the




1. In the case of the appellants, the Tribunal has considered the provisions of the Civil Secretariat Peshawar and others v. Secretary, Government of Punjab, 2014 SCOR 1271 and the provisions of the Civil Secretariat Peshawar and others v. Secretary, Government of Punjab, 2014 SCOR 1271 and the provisions of the Civil Secretariat Peshawar and others v. Secretary, Government of Punjab, 2014 SCOR 1271.

DPC on the ground that new promotion rules were being finalized."

12. Therefore, the appellants were eligible for promotion under the old rules and as their working papers were prepared, they should have been considered for promotion to the post of Assistant Engineer (BPS-17) based on the rules in effect at the time of their eligibility. The delay caused by administrative processes or changes in rules should not be used to deny their rightful promotion.

13. In view of the above, instant service appeals are accepted and the appellants are held entitled to be promoted to the position of Assistant Engineer (BPS-17) as per the rules applicable when they were eligible. They should, therefore, be considered for promotion accordingly. Costs shall follow the event. Copy of this judgment be placed on file of the connected appeal. Consign.

14. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



AURANGZEB KHATTAR
Member (Judicial)

20th May, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. Learned counsel for the appellant seeks further time for preparation of brief. Granted. To come up for arguments on 25.07.2024 before the D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)
Member (Executive)



(Kalim Arshad Khan)
Chairman

S.A. *Naeem Amin*
17.1183/2023.

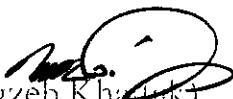
ORDER

25th July, 2024

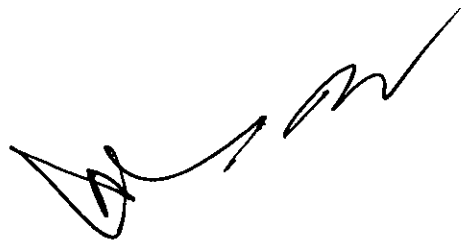
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Heard.

2. Vide our consolidated judgment of today placed on file, instant service appeal is ~~is~~ accepted and the appellant is held entitled to be promoted to the position of Assistant Engineer (BPS-17) as per the rules applicable when he was eligible. He should, therefore, be considered for promotion accordingly. Costs shall follow the event. Copy of the judgment be placed on file of the connected appeal. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of July, 2024.*



(Aurangzeb Khattak)
Member (J)



(Kalim Arshad Khan)
Chairman