

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.14048/2020**

**BEFORE: MR. KALIM ARSHAD KHAH ... CHAIRMAN**  
**MRS. RASHIDA BANO ... MEMBER(J)**

**Mr. Ajmal Khan, Ex-Superintendent (BPS-16), C&W Department, Khyber Pakhtunkhwa, Peshawar.**

**... (Appellant)**

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.

**... (Respondents)**

Mr. Noor Muhammad Khattak  
Advocate ... For Appellant

Mr. Muhammad Jan  
District Attorney ... For Respondents

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Date of Institution.....09.10.2020  
Date of Hearing.....03.07.2024  
Date of Decision.....03.07.2024

**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 impugned PSB minutes dated 17.03.2020 may very kindly be modified to the extent of appellant by allowing him pro-forma promotion to the post of PMS-17 w.e.f. 03.04.2015 with all consequential benefits. Any other remedy which this**



**august Tribunal deems fit that may also be awarded in favor of the appellant.” reiterated**

2. Brief facts of the case are that appellant was appointed as Junior Clerk cadre of Ministerial Staff (Secretariat Group) in the year 1979 and had served the department honestly. He was further promoted to the post of Superintendent (BPS-16). The appellant while serving as Superintendent BPS-16 has participated in the mandatory training course in office procedure and management which is requisite training for promotion to Provincial Management Service (PMS) group (BPS-17). Appellant after undergone the said requisite course and being senior most superintendent amongst his colleagues was eligible for the post of PMS group in the year 2012. That in the year 2012 total 30 (thirty) posts of PMS group became vacant in the quota reserved for the Superintendents (BPS-16). Provincial Selection Board meeting was held in which astonishingly the case of the appellant for promotion to the post of PMS has been deferred on the reason that the appellant did not fulfill the requisite qualification for the post of PMS notified on 11.05.2007. That on 03.04.2015 private respondents who were juniors to the appellant were promoted to the post of PMS officer (BPS-17) and the appellant was deferred. Feeling aggrieved, he filed departmental appeal followed by service appeal No. 841/2015 which was accepted by this august Tribunal vide judgment dated 10.12.2018. In light of the judgment passed by this Tribunal meeting of PSB was held on 17.03.2020 the appellant was again ignored. Feeling aggrieved, he filed departmental appeal which was not responded, hence the present service appeal.



3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

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

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

6. Perusal of record reveals that appellant was appointed as Junior Clerk in ministerial staff cadre of secretariat group on 20.08.1979, who was ultimately promoted to the post of Superintendent (BPS-16) on 16.04.2010. Appellant passed training course in office procedure and management mandatory for promotion to the Provincial Management Service (PMS) Group (BPS-17) on 28.04.2017. Appellant being senior qualified Superintendent was eligible for promotion to the post of PMS (BPS-17) in year 2012 when 30 (thirty) vacant posts of PMS were falling in the quota reserved for the Superintendents appellant cadre. Appellant requested respondent department for his promotion to the post of PMS upon which ACRs was called by department in 2012 but respondent despite submitting of the ACRs by appellant kept pending the matter of promotion.

7. Respondent/department ignored/deferred the appellant from promotion in PSB meeting as consequence of which promotion notification

bearing No.SOE-11(ED)3(45)2012 dated 03.04.2015 issued after PSB, promoted juniors to the appellant and deferred the appellant on the ground of not having graduation degree and was F.A. Appellant was not promoted to the post of PMS (BPS-17) on the ground of not having graduation degree because as per Rules of the department notified on 11.05.2007 post of PMS (BPS-17) was required to be filled by;


*“Fifty percent by initial recruitment on the recommendations of the Commission based on the result of competitive examination to be conducted by it in accordance with the provisions contained in Schedule-VII.*

*(2)(b) Twenty percent from amongst superintendents/private secretaries on seniority cum fitness basis, who are graduate and have under gone a training course of 9-weeks at the Provincial Management Academy/Provincial Staff Training Institute. A joint seniority list of the Superintendents and Private Secretaries shall be maintained for the purpose of promotion on the basis of their continuous regular appointment to the respective posts.*

8. Minimum qualification for it is given in column No. 3 as 2<sup>nd</sup> Division Bachelor Degree from a recognized University. Appellant produced copy of notification/rules dated 11.05.2007 of Provincial Management Service Rules “transitional” which says that;

*“The condition of graduation as laid down in para 2(a) and (b) of column-5 against serial No.1 of Schedule-I shall not apply for a period of seven years from the date of coming into force of these rules to the existing incumbents for promotion against BPS-17 posts.”*

From which it is established that condition of graduation is not applicable to the appellant for promotion against the post of (BPS-17) as rules were



notified on 11.05.2007 and period of seven years was to expire on 10.05.2014 while PSB was conducted in March, 2015 as a consequence of which promotion notification of colleagues and juniors to appellant was issued on 03.04.2015, 26 (twenty six) Superintendents including 10 (ten) juniors to the appellant were promoted. Although respondent in their reply and PSB in its meeting held on 24.05.2020 mentioned that 17 (seventeen) posts fall in the quota of appellant till expiry of cushion period of seven years and after deducting of time/period of 7 (seven) months consumed in due to stay order of Peshawar High Court, but they failed to show that after November, 2014, 9 (nine) seats/posts were created or 9 (nine) PMS officers retired during November, 2014 till March, 2015, because 26 (twenty six) Superintendents were promoted during a short span of 3 months. Therefore, this explanation holds no field and cannot be relied upon, Bachelor Degree is not mandatory for promotion to the post of PMS (BPS-17) till November, 2014 and posts were available but respondent did not consider the appellant for promotion upon wrong promises and thus this inaction deprived appellant from his legitimate hope of promotion.

9. Therefore, respondents are directed to consider appellant for antedated promotion. 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 03<sup>th</sup> day of July, 2024.*

  
(KALIM ARSHAD KHAN)  
CHAIRMAN

  
(RASHIDA BANO)  
Member (J)

**ORDER**

03.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Muhammad Riaz, Superintendent for official respondents present.
2. Vide our detailed judgment of today placed on file, respondents are directed to consider appellant for antedated promotion. 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 03<sup>th</sup> day of July, 2024.*



**(KALIM ARSHAD KHAN)**  
**CHAIRMAN**



**(RASHIDA BANO)**  
**Member (J)**