

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.1257/2022

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

**Muhammad Nawaz, Chief Engineer, Mega Project (retired), C&W  
Department, Government of Khyber Pakhtunkhwa, Peshawar.  
... (Appellant)**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary C&W Department, Civil Secretariat, Peshawar.
3. Secretary Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

**... (Respondents)**

Mr. Javed Ali Ghani  
Advocate

... For Appellant

Mr. Muhammad Jan  
District Attorney

... For Respondents

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Date of Institution.....25.08.2022  
Date of Hearing.....11.07.2024  
Date of Decision.....11.07.2024

**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:

**“It is therefore, prayed that on acceptance of this appeal, order/decision dated 02.12.2021 regarding the denial/refusal of promotion of the appellant on the basis of already promoted conditionally or having neither any ground nor justification for two consecutive conditional promotion be**



**declared as illegal, unlawful, unconstitutional promotion be declared as illegal, unlawful, unconstitutional, against the law and liable to be struck down being ineffective upon the rights of appellant. The respondents may kindly be directed to grant anti-date promotion from 02.12.2021 or from the date where the other incumbents of the department promoted to BPS-20 to the appellant with all consequential back benefits. Any other relief which this honorable court deems appropriate in the circumstances of the case and not specifically asked for may kindly also be granted.”**

2. Brief facts of the case are that the appellant was inducted in the respondent department as SDO vide notification dated 26.05.1988. He was promoted to BPS-18 in the year 2009 and to BPS-19 in the year 2021. Appellant alleged that he was eligible for promotion to BPS-20 being at serial No. 3 of the seniority list. On 02.12.2021 meeting of Provincial Selection Board was held wherein junior to the appellant were promoted and name of the appellant was deferred. On 14.02.2022 he was retired from service. Feeling aggrieved he filed departmental appeal, which was not responded to, 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 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 District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was appointed as SDO (BPS-17) vide order dated 26.05.1988 in respondent department, and was promoted to BPS-18 and lastly BPS-19 on 19.11.2019 subject to Suo Moto case No.17/2016 by Supreme Court. Appellant was considered for promotion to the post of Chief Engineer BPS-20 on 02.12.2021 by the PSB and it was observed by the PSB that;

*“His date of birth is 15.02.1962. He joined government service on 26.05.1988 in BPS-17. He was promoted to BPS-19 on 21.11.2019 subject to final decision of the Supreme Court of Pakistan in Suo Moto Case No.17 of 2016. He has completed prescribed length of service for promotion. He is exempted from mandatory training for promotion as he has crossed the age of 58 years. According to the decision of PSB Meeting held on 08.06.2020, officers already promoted conditionally are having neither any ground nor jurisdiction for two consecutive conditional promotion.”*

PSB recommended to defer promotion of the appellant on the ground that two consecutive conditional promotion is not possible under the rules.

7. It is important to note that Supreme Court in Suo Moto Case No.17/2016 that had noted that;

*“The august Supreme Court of Pakistan in Suo Moto Case No. 17/2016 had noticed that in terms of Section-25(a) of the NAB Ordinance, the NAB authorities after issuance of call up notices suggest to the accused that they may opt to come forward with the offer of voluntary return of the amount that have allegedly been acquired or earned Illegally by them.*

*R*

*such voluntary returns made by the accused persons; the amount is deposited with NAB in Installment at the discretion of the Chairman NAB. The Supreme Court also noticed that on payment of certain portion of the amount, such person is given clean chit by NAB to re-join his job. In view of the position, petition was instituted to examine the vires of Section-25(a) ibid vis a vis the un-bridled power of the Chairman NAB to accept the offer of voluntary return from a person regardless of the size of the amount by any mode adopted at his discretion, which falls within the domain of the judiciary, hence the matter was placed before the chief Justice of Pakistan, who directed to fix the matter in court, treating it as a petition under Article 184(3) of the Constitution.*

As initially voluntary return was not included in the definition of misconduct, which could disqualify civil servant for holding a public office. Therefore, all the officers agreed to return the amount for the sake of retention & continuation of their post/position and service. It will be not out of place to mention here that departmental inquiry initiated against the appellant on the charges of voluntary return was concluded and appellant was awarded minor penalty of censure vide order dated 31.10.2018.

The Suo Moto case No.17/2016 was decided by the Supreme Court vide order dated 08.03.2023 which read as;

*“2. From the fore going amendment in the law it is clear that the objection of the suo moto proceedings initiated vide our order dated 24.10.2016 has been addressed. Consequently, these proceedings have fructified and are disposed of accordingly. C.M.A No.6374 of 2014 for impleadment is also disposed of.*

CMA NO.7308 OF 2016 IN CRP NIL OF 2016, IN SMC NO.17 OF 2016, CMAs NO.7312, 7581, 7815, 7852, 7270, 7274, 7278 AND 7647 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CIVIL PETITION NO.1338 OF 2014 AND CMA NO.6210 OF 2014, CIVIL APPEALS NO.67 AND 150 OF 2015, CIVIL PETITIONS NO.4356 AND 5104 OF 2017, CIVIL APPEAL NO.24 OF 2018, CRIMINAL ORG. PETITION NO.123 OF 2018 IN SMC 17 OF 2016 AND CP NO.548-K OF 2018.”

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8. Although appellant was awarded minor punishment of censure but record of the inquiry and amount of voluntarily return and all other relevant documents are not available before us which is in possession of respondent/department. Therefore, we remit the matter to department for analyzing/deciding it after proper scrutiny of all the relevant factors in light of verdict of Supreme Court and decide it afresh. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11<sup>th</sup> day of July, 2024.*



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





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

16<sup>th</sup> May, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Learned counsel for the appellant seeks further time for preparation of brief. Granted. To come up for arguments on 11.07.2024 before the D.B. Parcha Peshi given to the parties.

  
(Rashida Bano)  
Member (Judicial)

  
(Kalim Arshad Khan)  
Chairman

\*Naeem Amin\*

**ORDER**

11.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Malik Arshad, A.D for official respondents present.

2. Vide our detailed judgement of today placed on file, we remit the matter to department for analyzing/deciding it after proper scrutiny of all the relevant factors in light of verdict of Supreme Court, and decide it afresh. 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 11<sup>th</sup> day of July, 2024.*

  
(KALIM ARSHAD KHAN)  
CHAIRMAN

  
(RASHIDA BANO)  
Member (J)

\*M.Khan