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**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 11964

Dated 28/2/24

**REGISTERED**

No. C.A. 119/2024 - SCJ

**SUPREME COURT OF PAKISTAN.**

Islamabad, dated 12/03, 2024.

From

The Registrar,  
Supreme Court of Pakistan,  
**Islamabad.**

To

✓ The Registrar,  
K.P.K., Service Tribunal,  
**Peshawar.**

**Subject: CIVIL APPEAL NO. 119 OF 2024.**  
**OUT OF**  
**CIVIL PETITION NO. 581-P OF 2023.**

Government of Khyber Pakhtunkhwa, through Chief Secretary,  
Peshawar and others.

Versus

Muhammad Karim.

On appeal from the Judgment/Order of the K.P.K., Service  
Tribunal, Peshawar dated 16.06.2023, in Appeal No.868/2022.

Dear Sir,

I am directed to forward herewith a certified copy of the  
Order/Judgment of this Court dated **15.02.2024**, converting into appeal  
the above cited civil petition and allowing the same, in the terms stated  
therein, for information and necessary action.

I am also to invite your attention to the directions of the Court  
contained in the enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its  
enclosure immediately.

**Encl: Judgment:**

Yours faithfully



(MUHAMMAD MUJAHID MEHMOOD)  
ASSISTANT REGISTRAR (IMP)  
FOR REGISTRAR

16/24

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Yahya Afridi  
Mr. Justice Amin-ud-Din Khan  
Mrs. Justice Ayesha A. Malik

**CIVIL PETITION NO.581-P OF 2023**

[Against judgment dated 16.06.2023 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.868 of 2022]

Govt. of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar and others

...**Petitioner(s)**

Versus

Muhammad Karim

...**Respondent(s)**

For the Petitioner(s) : Mr. Sultan Mazher Sher Khan,  
Additional Advocate General, KP

For the Respondent(s) : Mr. Muhammad Asif Yousafzai, ASC

Date of Hearing : 15.02.2024

**JUDGMENT**

**AYESHA A. MALIK, J.**- This Civil Petition is directed against judgment dated 16.06.2023 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**Tribunal**) whereby service appeal filed by the Respondent was allowed.

2. The basic dispute between the parties is that the Respondent seeks ante-dated promotion to BS-20 from 10.07.2017, being the date when he was deferred for the said promotion. As per the admitted position, the Respondent was considered six times (24.03.2017, 28.12.2017, 03.05.2018, 17.09.2018, 26.12.2018, 19.04.2019) for promotion and deferred each time and on the last date, being 23.09.2019, he was superseded. This matter was pursued by him at the departmental level and ultimately before the High Court through a writ petition wherein a direction was issued to the Provincial Selection Board (**competent authority**) on 03.11.2021 to consider his case for promotion to BS-20. Accordingly, he was promoted with immediate effect. This led to the second round of challenge by the Respondent, who now challenges the promotion on the issue of *with immediate effect* and sought ante-dated promotion with all back benefits. He filed an appeal before the Tribunal on 25.05.2020 which granted him the ante-dated promotion with effect from 10.07.2017 which is now under challenge.

3. The Additional Advocate General, KP states that the promotion granted by the Tribunal is not only against the law but is also

**ATTESTED**

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wrongful exercise of jurisdiction by the Tribunal. He has placed reliance on Section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act, 1973 (Act) to state that the matter of promotion to BS-20 is a *fitness* issue for which the competent authority considers all relevant factors and as such the Tribunal has no jurisdiction to pass an order related to *fitness*. He states that the issue between the department and the Respondent was not of seniority but was of ante-dated promotion from the date when the Respondent's case was first deferred and it also relates to his fitness.

4. We have heard the Additional Advocate General, KP as well as the counsel for the Respondent at length. Counsel for the Respondent has stressed mainly on the wrongful deferment of Respondent's promotion. The matter in issue is not of wrongful deferment but that of the Respondent's ante-dated promotion, that too, by the Tribunal. Section 4(b)(i) of the Act provides the remedy of appeal to the Tribunal, which reads as under:

**4. Appeal to Tribunals.**--- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal to the Tribunal having jurisdiction in the matter:

Provided that—

- (a) ...  
 (b) no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining--  
 (i) **the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade.**"

(emphasis added)

As per the said section, the Tribunal is barred from hearing fitness related matters. Promotion to BS-20 is admittedly based on the *fitness* of a candidate to a higher grade. In this case, the competent authority did not grant the Respondent ante-dated promotion, based on several factors including his fitness. In this regard, we have examined the orders of the competent authority, relevant portion whereof, are reproduced below:

24.03.2017	Mr. Muhammad Karim	... The Board was informed that an enquiry is pending against him and <u>his service record is also weak.</u>
28.12.2017	Mr. Muhammad Karim	... The Board in its meeting held on 24.03.2017 recommended to defer his promotion as the Board was informed that an enquiry was pending against him and <u>his service record was also weak.</u> Position is still the same. The Board directed to conclude the case as soon as possible.

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Court Associate  
 Supreme Court of Pakistan  
 Islamabad

03.05.2018	Mr. Muhammad Karim	... The Board in its meeting held on 24.03.2017 and 28.12.2017 recommended to defer his promotion as the Board was informed that an enquiry was pending against him and <u>his service record was also weak</u> . Position is still the same.
17.09.2018	Mr. Muhammad Karim	... The Board in its meeting held on 24.03.2017 and 28.12.2017 and 03.05.2018 recommended to defer his promotion as the Board was informed that an enquiry was pending against him. Position is still the same.
26.12.2018	Mr. Muhammad Karim	... The Board in its meeting held on 24.03.2017 and 28.12.2017 and 17.09.2018 recommended to defer his promotion as the Board was informed that an enquiry was pending against him. He has now been imposed a minor penalty of Censure. However, the Board observed that <u>his service is weak and desired to further watch his performance</u> .
19.04.2019	Mr. Muhammad Karim	... The Board in its meeting held on 24.03.2017 and 28.12.2017, 03.05.2018, 17.09.2018 and 26.12.2018 recommended to defer his promotion as the Board was informed that an enquiry was pending against him in which he has been awarded a penalty of censure and <u>his service record was also weak</u> . Hence, the Board <u>desired to further watch his performance</u> . Position is still the same.
23.09.2019	Mr. Muhammad Karim	... The Board in its meeting held on 24.03.2017 and 28.12.2017, 03.05.2018, 17.09.2018, 26.12.2018 and 19.04.2019 recommended to defer his promotion as the Board was informed that an enquiry was pending against him in which he has been subsequently awarded a penalty of censure and <u>his service record was also weak</u> . Hence, the Board <u>desired to further watch his performance</u> . Position is still the same.

5. A look at the findings of the competent authority, depicts that the Respondent's promotion was deferred not only on account of some pending inquiry but also on account of the fact that his service record was not considered satisfactory for the purposes of promotion.

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Court Associate  
Supreme Court of Pakistan

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This clearly brings the matter within the ambit of *fitness* and this aspect of the matter escaped notice of the Tribunal. This Court has already held in the case of Muhammad Anis<sup>1</sup> that fitness is a subjective evaluation on the basis of objective criteria where substitution for an option of the competent authority is not possible by that of a Tribunal or of a Court and, therefore, the Tribunal has no jurisdiction on the question of fitness. This Court has also held in the case of Bashir Ahmed Badini<sup>2</sup> that eligibility is not a benchmark for promotion rather the most vital yardstick is *fitness* which can be judged from service record that includes ACRs, qualification, length of service, integrity, knowledge, proficiency in work, etc. Hence, the Tribunal was not vested with the jurisdiction to promote the Respondent w.e.f. 10.07.2017. His promotion date will be effective with immediate effect from 18.01.2022.

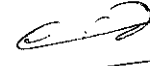
6. Under the circumstances, this Petition is converted into an appeal and allowed. The impugned judgment passed by the Tribunal is set aside.

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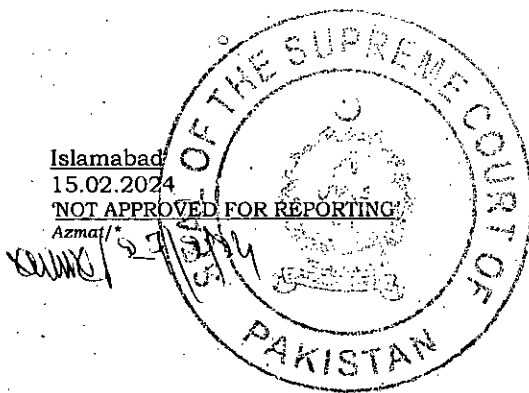
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Court Associate  
Supreme Court of Pakistan  
Islamabad



<sup>1</sup> Muhammad Anis and others v. Abdul Hasseeb and others (PLD 1994 SC 539)

<sup>2</sup> Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others v. Hon'ble Chairman and Member of Administration Committee and Promotion Committee of Hon'ble High Court of Balochistan and others (2022 SCMR 448)