


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 451/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.06.2024	<p>The joint implementation petition of Mr. Raj Muhammad Khan and 4 others submitted today by Mr. Ahmad Sultan Tareen Advocate. It is fixed for implementation report before Single Bench at Peshawar on 10 .06.2024. Original file be requisitioned. AAG has noted the next date. Parcha peshi given to counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Raj Muhammad Khan

Versus

Govt of KPK and others

..... Appellant

..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Advocate</u> <u>Court.</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Ahmed Sultan Taseen

Signature: [Signature]

Dated:- 6/6/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

E.P. NO. 451 /2024

Raj Muhammad Khan and others

VERSUS


The Chief Secretary to the Government of Khyber
Pakhtunkhwa and others


INDEX

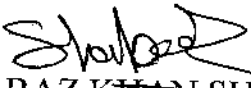
S#	Description of documents	Annexs	Pages
1.	Petition		
2.	Copy of the memo of appeal	A	7-15
3.	Copy of the judgment dated 12-12-2023	B	16-23
4.	Copy of the orders in appeal # 1130/2022 to 1133/202	C to F	24-64
5.	Copy of application in the name of respondent # 2	G	65
6.	Wakalatnama		

PETITIONERS

Through


AHMED SULTAN TAREEN,
ADVOCATE HIGH COURT,
PESHAWAR


MUDASSIR ALI,
ADVOCATE HIGH COURT,
PESHAWAR


SHABAZ KHAN SHINWARI,
ADVOCATE HIGH COURT,
PESHAWAR

Dated 06/06/2024

81

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

E.P. NO. 451 /2024

**Khyber Pakhtunkhwa
Service Tribunal**

DATED _____ /2024 Diary No. 13223

Dated 06-06-2024

1. Raj Muhammad Khan S/O Taj Muhammad Khan, Retired Principal BS-19, Elementary & Secondary Education Department, resident of ASC Colony, House No. 93/1 Block 'A', Nowshera Cantt, Tehsil and District Nowshera.
2. Sikandar Sher S/O Khursheed, Retired Principal BS-19, Elementary & Secondary Education Department, resident of Faujoon Abad, Post Office Khas, Charbagh, Tehsil Razarr, District Swabi
3. Muhammad Iqbal S/O Misri Khan, Retired Principal BS-19, Elementary & Secondary Education Department, resident of Mohallah Muslim Abad, Muhammad Khawaja, Tehsil and District Hangu.
4. Muhammad Saleem S/O Muhammad Noor, Retired Principal BS-19, Elementary & Secondary Education Department, resident of Farooq-i-Azam Town, Ratta Kulachi, Tehsil and District Dera Ismail Khan.
5. Riasat Khan S/O Sultan Khan, Retired Principal BS-19, Elementary & Secondary Education Department, resident of village Darbandaan Meelum, Tehsil and District Haripur

.....
PETITIONERS

VERSUS

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

..... **RESPONDENTS**

2

PETITION FOR IMPLEMENTATION OF THE JUDGMENT/ORDR DATED 12-12-2023 PASSED IN SERVICE APPEAL NO. 1129/2022 TITLED "RAH MUHAMMAD KHAN Vs. THE CHIEF SECRETARY TO THE GOVERNMENT OF KHYBER PAKHTUNKHWA AND OTHERS", THROUGH PROCEEDINGS UNDER THE ENABLING PROVISION OF CPC READ WITH RELEVANT PROVISIONS OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

Respectfully Sheweth,

1. That the petitioners filed service appeal No. 1129/2022, 1130/2022, 1131/2022, 1132/2022 and 1133/2022 separately before this Hon'ble Tribunal against the respondents with the common prayer in all the said appeals as copied below:-

"On acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30-12- 2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion for which he was entitled under the facts and law. So, a befitting direction may graciously be issued to the respondents to include the name of appellant in the seniority list dated 31-12-2021 and to grant notional promotion to him from 30-12-2020 with back and retiral benefits.

Any other relief as deemed fit in favor of the appellant may also be granted to meet with the ends of justice."

(Certified copy of memo of appeal No. 1129/2022 is Annexure "A")

2. That the respondents contested the service appeals by by their reply and after hearing under due course, all the afore-noted appeals were accepted by this Hon'ble Tribunal on the basis of the judgment dated 12-12-2023 passed in Service Appeal No. 1129/2022 belonging to the first petitioner. The executable part of the said judgment in relation to the present execution petition comes from Paragraph 08 and 09 as laid therein and copied below, respectively:-

"08. The appellant was in the promotion zone since 30.12.2020 and was eligible for promotion to PS-20 but he remained deprived of his [promotion for no fault on his part. Despite availability of the vacancies and eligibility of the appellant his case for promotion to BS-20 remained under correspondence between the respondents from 13.12.2020 to 12.01.2022 (more that 01 years). The case of the appellants is attracted by rule 17 of the Fundamental Rules which is reproduced as under;

-- text of the rule --

09. We observe that the appellant lost his promotion despite having fitness, eligibility and seniority due to no fault on his part, therefore, he has legitimate expectation for proforma promotion with consequential benefits as enunciated in the rule quoted above.

09. in view of above discussion, the instant appeal as well as connected service appeals are remitted to respondent department for placement fore the OSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign."

(Certified copy of the aforementioned judgment is Annexure "B" and of the orders passed in connected service appeals No. 1130/2022 to 1133/2022 are Annexure "C" "D" "E" & "F" respectively)

14

3. That it is clear from the operative part of the judgment that service appeals of the petitioners were remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants (present petitioners) but the department so far has shown no activity to do the needful as directed by this Hon'ble Tribunal in the judgment referred for execution proceedings under due course. One of the petitioners sensitized respondent No. 2 by moving an application but in vain. **(Copy of the application is Annexure "G")**
4. That the petitioners are impelled to seek execution of the said judgment in their favor through this petition, in alia, on the following grounds:-

GROUND

- A. That the judgment dated 12.12.2023 is in rem and is legally and factually workable for execution in favor of all the petitioners equally in view of the relief commonly granted to them through said judgment.
- B. That the petitioners believe that the judgment of this Hon'ble Tribunal in their favor is in field and has not been suspended by a higher forum, if any appeal was filed.
- C. That the petitioners are entitled under facts and law for accrued benefits through implementation of the judgment dated 12-12-2023 and as such, the present execution petition is maintainable under the facts and law.
- D. That other grounds having relevance to the matter will be raised through oral submissions at the time of arguments.

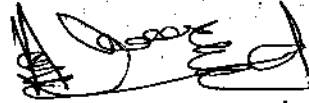
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PRAYER:

It is respectfully prayed that appropriate orders may be passed to compel the respondents for execution of the cited judgment in petitioners' favor for the sake of law and justice.

PETITIONERS

THROUGH:



AHMED SULTAN TAREEN,
ADVOCATE HIGH COURT,
PESHAWAR



MUDASSIR ALI,
ADVOCATE HIGH COURT,
PESHAWAR

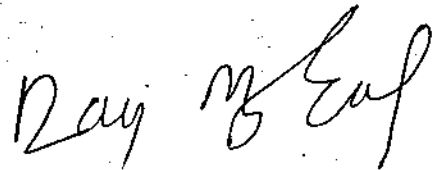


SHABAZ KHAN SHINWARI,
ADVOCATE HIGH COURT,
PESHAWAR

Dated 06/06/2024

Verification:

I, Raj Muhammad Khan, the above named petitioner do hereby verify that the contents of this petition are true to my knowledge and belief and nothing has been kept concealed.



Dated 06-06-2024

PETITIONER

6

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

E.P. NO. _____/2024

Raj Muhammad Khan and others

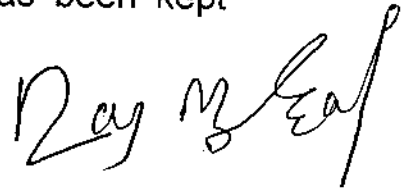
VERSUS

The Chief Secretary to the Government of Khyber Pakhtunkhwa
and others

AFFIDAVIT

I, Raj Muhammad Khan, the above named
appellant do hereby declare on solemn affirmation
that contents of the accompanying execution
petition are true and correct to the best of my
knowledge and belief and nothing has been kept
concealed.

Dated 06/06/2024



DEPONENT



(7)

Annex - A

(1)



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 1129 /2022

Raj Muhammad Khan S/O Taj Muhammad Khan, Retired
Principal BS-19, Elementary & Secondary Education
Department, resident of ASC Colony, House No. 93/1 Block
'A', Nowshera Cantt, Tehsil and District Nowshera.

(Appellant)

VERSUS


1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar..... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR PROMOTION FROM THE DATE WHEN THE APPELLANT CAME WITHIN THE ZONE OF CONSIDERATION ON THE BASIS OF HIS SENIORITY.

PRAYER

On acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30-12-2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion

ATTESTED


Official
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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for which he was entitled under the facts and law. So, a befitting direction may graciously be issued to the respondents to include the name of appellant in the seniority list dated 31-12-2021 and to grant notional promotion to him from 30-12-2020 with back and retiral benefits.

Any other relief as deemed fit in favor of the appellant may also be granted to meet with the ends of justice.


=====

Respectfully Sheweth,

The appellant seeks to make the following submissions:-

1. That appellant joined the government service under the respondent department on 17.02.1992 on his appointment in pursuance to his selection for the post of Subject Specialist BS-17 through competitive examination held by the Khyber Pakhtunkhwa Public Service Commission. Then in due course of time, he was promoted to the post of BS-18 and then of BS-19 and having served the department for a long time retired from service on 12-01-2022 by superannuation.
2. That the appellant having requisite length of service at his credit was eligible for promotion to the post in BS-20 since long but he entered within the zone of consideration for promotion on the basis of seniority in the year 2020 when his name was included in the panel of officers sent with the working paper taken up by PSB in its meeting held on 30-12-2020. Copy of Seniority list as stood on 31-12-2019 and of the said working paper are respectively Annexure "A" and "B".

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

9

5

3. That number of vacancies to be filled was shown as 15 in the working paper Annexure-B with a breakup of 05 and 10 vacancies. 10 vacancies were shown to have occurred due to conditional retirement of officers in BS-20 in wake of dispute about superannuation age being 60 years or 63 years because of the Khyber Pakhtunkhwa Civil Servant Act (Amendment) Act, 2019 and its annulment by the Peshawar High Court Peshawar. The name of the appellant appeared at Sr. No. 11 in the panel of officers prepared from the final seniority list as it stood on 31-12-2019. The PSB took up the case only for 05 vacancies where against first 05 panelists were recommended for promotion and 10 vacancies were left over may be because of said dispute. Had those ten posts were not left over, the appellant would have been promoted as he was in range of seniority among the empaneled officers.
4. That it is a matter of fact that the superannuation age of civil servants was enhanced from 60 years to 63 years by Khyber Pakhtunkhwa Civil Servant Act (Amendment) Act, 2019 but its *vires* were challenged before the Hon'ble Peshawar High Court, Peshawar through a writ petition. The said Act was declared *ultra vires* and the Government challenged the judgment of High Court before august Supreme Court of Pakistan. The case was remanded to the High Court from the august Supreme Court of Pakistan and thereafter the superannuation age was restored as 60 years by another

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

to

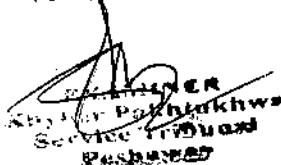
7

amending law i.e. Khyber Pakhtunkhwa Civil Servant Act (Amendment) Act, 2021 copy whereof is Annexure "C".

5. That on one hand the promotion on 10 posts of BS-20 falling vacant due to conditional retirement of incumbents was withheld and on the other hand, some officers junior to the appellant in seniority list of BS-19 Teaching Cadre as stood on 31-12-2019, challenged the said seniority list through service appeals No.16424/2020, 16425/2020, 16426/2020, 16427/2020 and 16428/2020 before the Khyber Pakhtunkhwa Service Tribunal and promotions on the basis of impugned seniority list in BS-20 were stayed. The appellant and others got themselves impleaded as private respondents in the said appeals which ultimately were dismissed by a single judgment dated 09-11-2021 passed in service appeal No. 16424/2020 titled "Abdul Hamid Butt Vs. Chief Secretary and others". Needless to say that after settlement of superannuation age as 60 years and dismissal of the said service appeals against seniority, both the hurdles in way of promotion of the appellant stood vanished. Copy of said judgment is Annexure "D".

6. That retirement of the appellant by superannuation was due on 12-01-2022 and prior thereto, a meeting of PSB was held on 02-12-2021 but no working paper in respect of the appellant for consideration of PSB was submitted by the respondents No. 2 and 4 albeit there was no impediment for submission of such working paper.

ATTESTED



Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(U)

(S)

7. That the appellant and other similarly placed officers, when expecting long due promotion against the regular vacancies existing since the year 2020, did not see any serious departmental effort to give them their due promotion in BS-20, they got the matter sensitized through request of the School Officers Association which caught the departmental attention as evident from the letter of respondent No. 4 addressed to the Section Officer (Schools Male) of the Office of Respondent No. 2. The appellant, in anticipation of his soon reaching retiral age, also submitted an application dated 27-12-2021 for promotion by circulation from BS-19 to BS-20 which was received in the office of respondent No. 1 vide Diary No. 6885 dated 28-12-2021. Copy of the letter of respondent No. 4 and of said application are respectively Annexure "E" and "F".

8. That may be in aftermath of letter Annexure-E, working paper was sent by the respondent No. 2 vide his department letter No. SO(SM) E&SED/3-3/2021/Promotion BS-19 to 20 TC dated 23-12-2021 to the Section Officer (PSB) of the Establishment Department. However, charging the said working paper with technicalities, the same was returned to the respondent No. 2 from the department of Respondent No. 3 vide letter No. SO (PSB) ED/1-4/2021/P-213 dated 12-01-2022 and the same was further transmitted to respondent No. 4 by letter No. SO(SM) E&SED/3-3/2021/Promotion BS-19 to 20 TC dated 12-01-2022. Copies of said letters one dated 23-

ATTESTED

EXAMINER
Teacher Education
Service Division
Peshawar

12

B

12-2021 and of two dated 12-01-2022 are respectively Annexure "G" "H" and "I".

9. That when the working paper was again sent to the department of respondent No.3 after doing the needful in light of his department's letter No. SO (PSB) ED/1-4/2021/P-213 dated 12-01-2022, the appellant by then stood retired from service but he was in service on 31-12-2021 when the seniority list required to be notified by said letter was prepared. Astonishingly, appellant's name from the final seniority list as stood on 31-12-2021 was removed although it was there in the tentative seniority list, as the appellant was in service by that time. Thus, the appellant was not treated in accordance with law. It may be submitted that not only name of the appellant should have been included in the said seniority list but he was supposed to be included in panel of officers notwithstanding his retirement. Anyhow, having been deprived from his due right of promotion before his retirement despite being within the zone of consideration since long, the appellant filed a departmental representation before the respondent No. 1 seeking notional promotion from BPS-19 to BPS-20 which was received in his office vide Diary No. 1375 W/E dated 17-03-2022. However, the appellant has not been communicated with any order in relation thereto till expiry of the waiting period of 90 days for further remedy. Copy of tentative seniority list, of final seniority list as stood on 31-12-2021, of the retirement

ATTESTED

EXAMINER
Kishor Kulkarni
Service Tribunal
Pune

13

7

order and of departmental representation are respectively Annexure "J", "K" "L" and "M".

10. That appellant is reasonably aggrieved from delaying of his due promotion since 30-12-2020 and from omission of the respondents to promote him before his retirement seeks to impugn their acts and omissions tantamount to denial of promotion to the appellant in BS-20, inter alia, on the grounds as follow hereinafter:-

GROUND

A. That the case of the appellant in nutshell is that his name appeared at Sr. No. 11 in the final seniority of officers of Teaching Cadre in BS-19 as it stood on 31-12-2019 (Annexure-A). There were fifteen vacant posts in BS-20 as officially indicated in the working paper sent for promotion of the panelist officers including the name of appellant as per his seniority position. The said working paper when taken up by PSB in its meeting held on 30-12-2020, PSB unreasonably refrained from making recommendation for promotion on ten posts out of 15 and as such the appellant despite being in range for promotion on the basis of his seniority-cum-fitness was deprived from promotion in BS-20 due to unwarranted refrain of PSB.

B. That the circumstances in furtherance of the refrain of PSB, which contributed into delay in sending up the case of

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

114

8

appellant and other similarly placed officers for consideration of PSB despite existing of the vacancies, are not attributable to the appellant and he has suffered for no fault of his.

C. That, the appellant having entered within the zone of consideration for promotion from BS-19 to BS-20 on the basis of his seniority-cum-fitness, stood imbued with reasonable expectation for such promotion since 30-12-2020 but his expectation remained fruitless due to acts and omissions of the respondents having no justification under the facts and law. So much so, the respondent department happened with unfair treatment with the appellant by removing his name from the seniority list as it stood on 31-12-2021 when he was in service. Thus, the said seniority list is liable to correction.

D. That phenomenon of notional promotion gets nourishment from the principles of natural justice when a civil servant having rendered a meritorious service is retired without fulfilment of his reasonable expectation for career progression due to sheer ignorance of his eligibility and seniority-cum-fitness by the departmental authorities, particularly, when vacancies do exist for consideration of his promotion by PSB. The case of the appellant fully attracts the principles of natural justice to grant him notional promotion after retirement when he left no stone unturned in his struggle during service for the right of his consideration for actual promotion before his attaining the retiral age.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Commission
Peshawar

15
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E. That in furtherance of his pre-retirement pursuit for his consideration for promotion under due course, the appellant was hopeful after filing representation before the respondent No. 1 that he may be kind enough to consider his case for notional promotion positively but in vain.

F. That the facts and grounds having foregone herein before fully justify the case of appellant for the relief as prayed for. Any other ground found necessary will be raised during the course of arguments with permission.

G. That this appeal is within time from the expiry of 90 days after filing of departmental appeal and this Honourable Tribunal has got jurisdiction to adjudicate upon the facts in issue and law stated herein above.

With the foregoing facts and grounds, it is requested that appellant's appeal may graciously be accepted as per prayer in the heading above.

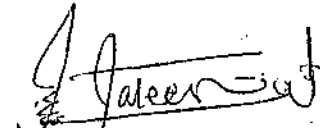
Dated 06/07/2022

APPELLANT

Certified  true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Through:


Inayatullah Khan Tareen
Advocate High Court,
At Peshawar
Cell Ph#03325700875

16

Amma "B"



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1129/2022

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

Raj Muhammad Khan S/O Taj Muhammad Khan, Retired Principal BS-19, Elementary & Secondary Education Department, resident of ASC Colony, House No. 93/1 Block 'A', Nowshera Cantt. Tehsil and District Nowshera.(Appellant)

VERSUS

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Present:-

INAYAT ULLAH KHAN TAREEN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....07.07.2022
Date of Hearing.....12.12.2023
Date of Decision..... 12.12.2023

CONSOLIDATED 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 payer copies as under;

"That on acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his

ATTESTED

Khyber Pakhtunkhwa Service Tribunal
Peshawar

name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30.12.2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion for which he was entitled under the facts and law. So, a befitting direction may graciously be issued to the respondents to include the name of appellant in the seniority list dated 31.12.2021 and to grant notional promotion to his from 30.12.2020 with back and retiral benefits. Any other relief as deemed fit in favor of the appellant may also be granted to meet with the ends of justice."

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeals bearing No. 1130/2022 titled "Sikandar Sher versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1131/2022 titled "Muhammad Iqbal versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1132/2022 titled "Muhammad Saleem versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" & service appeal bearing No. 1133/2022 titled "Riasat Khan versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others as common question of law and facts are involved therein. **ATTESTED**

03. Brief facts of the case are that the appellant joined service in the respondent Department as Subject Specialist (BS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 17.02.1992 and got step by step promotion. The appellant while working against the post of Principals BS-19 retired from service on the attaining the age of Superannuation on 12.01.2022; that a final seniority list of Principal (BS-19) was issued vide Notification dated 08.12.2020 whereby the appellant was placed at serial No. 11; that the appellant was eligible for promotion to BS-20 and his name was included in the working paper placed before the PSB in its meeting held on 30.12.2020 but the PSB recommended only five officers from promotion and the remaining 10 posts were left to pending cases in the Supreme Court of Pakistan; that some juniors to the appellants in the seniority list of BS-19 Teaching Cadre as stood on 31.12.2019 challenged the said senior list through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 in the Khyber Pakhtunkhwa Service Tribunal and promotion on the basis of impugned seniority list of BS-20 were stayed, and the appellants themselves impleaded as private respondents in the said appeals which were dismissed on 09.11.2021; that the appellant was retired from service on 12.01.2022 and a meeting of PSB was held on 02.12.2021 but no working papers in respect of the appellants for consideration of PSB was submitted by respondent No. 2; that the appellants submitted application dated 27.12.2021 for promotion by circulation from BS-19 to BS-20 which was received in the office of respondent No. 1 vide daily diary No. 6885 dated 28.12.2021. Respondent No. 2 addressed a letter dated 23.12.2021 alongwith Working Paper to Section Officer (PSB) of the

Establishment Department for promotion of appellants from BS-19 to BS-20

ATTESTED

12/5/23
Khyber Pakhtunkhwa
Service Tribunal

on regular basis which was returned to respondent No. 2 vide letter dated 12.01.2022 and the same was further transmitted to respondent No. 4 vide letter dated 12.01.2022; that when the working paper was again sent to respondent No. 3 in light of department's letter dated 12.01.2022 the appellant by then stood retired from service the name of the appellants from final seniority list as stood on 31.12.2021 was removed although it was there in the tentative seniority list. Feeling aggrieved, the appellant filed departmental appeal on 16.03.2022 before respondent No. 1 seeking notional promotion from BS-19 to BS-20, which was not responded within the statutory period, hence preferred the instant service appeal on 07.07.2022.

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney and have gone through the record with their valuable assistance.

05. Learned counsel for the appellant contended that the name of the appellant is at serial No. 11 in the final seniority list of officers of Teaching Cadre in BS-19 as it stood on 31.12.2019. There were fifteen posts in BS-20 as officially indicated in the working paper sent for promotion of the officers including the name of the appellants as per their seniority positions; that the said working paper was taken up by PSB in its meeting held on 30.12.2020, but unreasonably refrained from making recommendation of promotion on ten posts out of 15 and the appellant are in the range for promotion on the basis of their seniority-cum-fitness were deprived from promotion to BS-20; that the appellants having entered within the zone of consideration for promotion from

BS-19 to BS-20 on the basis of their seniority-cum-fitness, stood imbued with

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

17-8-23

reasonable expectation for such promotion since 30.12.2020 but their expectation remained fruitless due to acts and omissions of the respondents having no justification under the facts and law. That phenomenon of notional promotion gets nourishment from the principles of natural justice when a civil servants having rendered service is retired without fulfillment of his reasonable expectation for career progression due to sheer ignorance of his eligibility and seniority-cum-fitness by the departmental authorities, particularly when vacancies do exist for consideration of his promotion by PSB; that the case of the appellants fully attracts the principles of natural justice to grant him notional promotion after retirement when they left no stone unturned in their struggle during service for the right of their consideration for actual promotion before attaining the age of superannuation. Learned counsel for the appellant relied on 2020 PLC (C.S) 1226, 2021 SCMR 1226, 2022 PLC (C.S) 104, 2022 SCMR 1765 & 2023 PLC (C.S).

06. Learned District Attorney on the other hand contended that in the PSB meeting dated 30.12.2020 only top five in the panel were recommended for promotion from seniority list of BS-19 because of non-availability of further vacant posts; that there were no posts available for promotion during his service and likewise him many people retired and the other got promotion on availability of posts. The Government has its policies and make changes in it from time to time through legislations in which the respondents cannot interfere; that the amendment in superannuation period was the aim of Government and at that time it was legal for the respondent not to consider promotion due occupation of the post by the incumbents whose superannuation age was enhanced from 60 to 63 years through an act of the Provincial Assembly.

ATTESTED

ENAMINE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

07. Perusal of record reveals that the appellant belonged to the Teaching Cadre in the respondent department. In the seniority list of Principal (BS-19) issued vide Notification dated 08.12.2020 he stood at serial No. 11 of the seniority list. A working paper for promotion of officers of BS-19 to BS-20 was placed before the PSB in its meeting held on 30.12.2020. In the working paper 15 number of vacant seats were shown to be filled on promotion but the PSB recommended only 05 officers for promotion and 10 vacancies were left due to the reason that conditional retirement of officers have been issued in wake of dispute about superannuation age being 60 to 63 years in the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019 which was set aside by the Peshawar High Court, Peshawar and the case was pending adjudication in the Supreme Court of Pakistan. Record also transpires that some junior to the appellant in the seniority list of (BS-19) Teaching Cadre as stood on 31.12.2019 had challenged the seniority list in the Khyber Pakhtunkhwa Service Tribunal, Peshawar through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 and got stay order against promotion to BS-20. However, the aforementioned 05 service appeals were dismissed on 19.11.2021. A meeting of PSB was held on 02.12.2021 but the respondent department did not include the name of the appellant in the working paper for consideration of the PSB. Vide letter dated 23.12.2021 respondent No. 2 submitted working paper to the Establishment department for promotion of the appellants from BS-19 to BS-20 on regular basis which was returned on 12.01.2022 with certain observations. When the working paper was again submitted, after addressing the observations the appellant by then stood retired from service on 12.01.2022. It is also evident from record

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


15-5-23


them in terms of applicable rules of service without protracted litigation or Court's intervention.

We observe that the appellant lost his promotion despite having fitness, eligibility and seniority due to no fault on his part, therefore, he has legitimate expectation for proforma promotion with consequential benefits as enunciated in the rule quoted above.

09. In view of above discussion, the instant appeal as well as connected service appeals are remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

Konranullah

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
13-5-23

Date of Presentation of Application 14-5-24
Number of Pages 8
Copying Fee 40
Urgent 5/1
Total 45
Name of Copyist Shahjad
Date of Completion of Copy 14-5-24
Date of Delivery of Copy 14-5-24

(24)

Done - "C" 4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1130 /2022

Sikandar Sher S/O Khursheed, Retired Principal BS-19,
Elementary & Secondary Education Department, resident
of Faujoon Abad, Post Office Khas, Charbagh, Tehsil
Razarr, District Swabi

(Appellant)



VERSUS

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar..... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR PROMOTION FROM THE DATE WHEN THE APPELLANT CAME WITHIN THE ZONE OF CONSIDERATION ON THE BASIS OF HIS SENIORITY.

PRAYER

On acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30-12-2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(25)
A. No. 1130/2022
Sikander Shah vs Govt



ORDER

- 12.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
02. Vide our detailed judgment of today separately placed on file of service appeal bearing No. 1129/2022 titled "Raj Muhammad Khan Versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", this appeal is also remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellant from BS-19 to BS-20. Costs shall follow the event. Consign.
03. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

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HEAD OFFICE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14-5-2023
Number of Words page = 2
Copying Fee 10/-
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26

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



Service Appeal No. 1129/2022

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

Raj Muhammad Khan S/O Taj Muhammad Khan, Retired Principal BS-19, Elementary & Secondary Education Department, resident of ASC Colony, House No. 93/1 Block 'A', Nowshera Cantt. Tehsil and District Nowshera.(Appellant)

VERSUS

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Present:-

INAYAT ULLAH KHAN TAREEN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....07.07.2022
Date of Hearing.....12.12.2023
Date of Decision..... 12.12.2023

CONSOLIDATED 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 payer copies as under;

"That on acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
15/12/23

name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30.12.2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion for which he was entitled under the facts and law. So, a befitting direction may graciously be issued to the respondents to include the name of appellant in the seniority list dated 31.12.2021 and to grant notional promotion to his from 30.12.2020 with back and retiral benefits. Any other relief as deemed fit in favor of the appellant may also be granted to meet with the ends of justice."

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeals bearing No. 1130/2022 titled "Sikandar Sher versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1131/2022 titled "Muhammad Iqbal versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1132/2022 titled "Muhammad Saleem versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" & service appeal bearing No. 1133/2022 titled "Riasat Khan versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others as common question of law and facts are involved therein.

ATTESTED
 M. NIDER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

03. Brief facts of the case are that the appellant joined service in the respondent Department as Subject Specialist (BS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 17.02.1992 and got step by step promotion. The appellant while working against the post of Principals BS-19 retired from service on the attaining the age of Superannuation on 12.01.2022; that a final seniority list of Principal (BS-19) was issued vide Notification dated 08.12.2020 whereby the appellant was placed at serial No. 11; that the appellant was eligible for promotion to BS-20 and his name was included in the working paper placed before the PSB in its meeting held on 30.12.2020 but the PSB recommended only five officers from promotion and the remaining 10 posts were left to pending cases in the Supreme Court of Pakistan; that some juniors to the appellants in the seniority list of BS-19 Teaching Cadre as stood on 31.12.2019 challenged the said senior list through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 in the Khyber Pakhtunkhwa Service Tribunal and promotion on the basis of impugned seniority list of BS-20 were stayed, and the appellants themselves impleaded as private respondents in the said appeals which were dismissed on 09.11.2021; that the appellant was retired from service on 12.01.2022 and a meeting of PSB was held on 02.12.2021 but no working papers in respect of the appellants for consideration of PSB was submitted by respondent No. 2; that the appellants submitted application dated 27.12.2021 for promotion by circulation from BS-19 to BS-20 which was received in the office of respondent No. 1 vide daily diary No. 6885 dated 28.12.2021. Respondent No. 2 addressed a letter dated 23.12.2021 alongwith Working Paper to Section Officer (PSB) of the

ATTESTED
Establishment Department for promotion of appellants from BS-19 to BS-20

KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
14/12/21

(29)

on regular basis which was returned to respondent No. 2 vide letter dated 12.01.2022 and the same was further transmitted to respondent No. 4 vide letter dated 12.01.2022; that when the working paper was again sent to respondent No. 3 in light of department's letter dated 12.01.2022 the appellant by then stood retired from service the name of the appellants from final seniority list as stood on 31.12.2021 was removed although it was there in the tentative seniority list. Feeling aggrieved, the appellant filed departmental appeal on 16.03.2022 before respondent No. 1 seeking notional promotion from BS-19 to BS-20, which was not responded within the statutory period, hence preferred the instant service appeal on 07.07.2022.

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney and have gone through the record with their valuable assistance.

05. Learned counsel for the appellant contended that the name of the appellant is at serial No. 11 in the final seniority list of officers of Teaching Cadre in BS-19 as it stood on 31.12.2019. There were fifteen posts in BS-20 as officially indicated in the working paper sent for promotion of the officers including the name of the appellants as per their seniority positions; that the said working paper was taken up by PSB in its meeting held on 30.12.2020, but unreasonably refrained from making recommendation of promotion on ten posts out of 15 and the appellant are in the range for promotion on the basis of their seniority-cum-fitness were deprived from promotion to BS-20; that the appellants having entered within the zone of consideration for promotion from

ATTACHED

BS-19 to BS-20 on the basis of their seniority-cum-fitness, stood imbued with

[Handwritten signature]
Secretary
Public Service Commission
Kathmandu

reasonable expectation for such promotion since 30.12.2020 but their expectation remained fruitless due to acts and omissions of the respondents having no justification under the facts and law. That phenomenon of notional promotion gets nourishment from the principles of natural justice when a civil servants having rendered service is retired without fulfillment of his reasonable expectation for career progression due to sheer ignorance of his eligibility and seniority-cum-fitness by the departmental authorities, particularly when vacancies do exist for consideration of his promotion by PSB; that the case of the appellants fully attracts the principles of natural justice to grant him notional promotion after retirement when they left no stone unturned in their struggle during service for the right of their consideration for actual promotion before attaining the age of superannuation. Learned counsel for the appellant relied on 2020 PLC (C.S) 1226, 2021 SCMR 1226, 2022 PLC (C.S) 104, 2022 SCMR 1765 & 2023 PLC (C.S).

06. Learned District Attorney on the other hand contended that in the PSB meeting dated 30.12.2020 only top five in the panel were recommended for promotion from seniority list of BS-19 because of non-availability of further vacant posts; that there were no posts available for promotion during his service and likewise him many people retired and the other got promotion on availability of posts. The Government has its policies and make changes in it from time to time through legislations in which the respondents cannot interfere; that the amendment in superannuation period was the aim of Government and at that time it was legal for the respondent not to consider promotion due occupation of the post by the incumbents whose superannuation age was enhanced from 60 to 63 years through an act of the Provincial Assembly.

ATTESTED

ELAMINER
 Member Provincial
 Service Tribunal
 Peshawar

07. Perusal of record reveals that the appellant belonged to the Teaching Cadre in the respondent department. In the seniority list of Principal (BS-19) issued vide Notification dated 08.12.2020 he stood at serial No. 11 of the seniority list. A working paper for promotion of officers of BS-19 to BS-20 was placed before the PSB in its meeting held on 30.12.2020. In the working paper 15 number of vacant seats were shown to be filled on promotion but the PSB recommended only 05 officers for promotion and 10 vacancies were left due to the reason that conditional retirement of officers have been issued in wake of dispute about superannuation age being 60 to 63 years in the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019 which was set aside by the Peshawar High Court, Peshawar and the case was pending adjudication in the Supreme Court of Pakistan. Record also transpires that some junior to the appellant in the seniority list of (BS-19) Teaching Cadre as stood on 31.12.2019 had challenged the seniority list in the Khyber Pakhtunkhwa Service Tribunal, Peshawar through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 and got stay order against promotion to BS-20. However, the aforementioned 05 service appeals were dismissed on 19.11.2021. A meeting of PSB was held on 02.12.2021 but the respondent department did not include the name of the appellant in the working paper for consideration of the PSB. Vide letter dated 23.12.2021 respondent No. 2 submitted working paper to the Establishment department for promotion of the appellants from BS-19 to BS-20 on regular basis which was returned on 12.01.2022 with certain observations. When the working paper was again submitted, after addressing the observations the appellant by then stood retired from service on 12.01.2022. It is also evident from record

ATTESTED

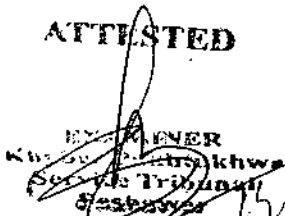
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

that the appellant submitted representation to the respondent for notional promotion but no response what-so-ever given by the respondents.

08. The appellant was in the promotion zone since 30.12.2020 and was eligible for promotion to BS-20 but he remained deprived of his promotion for no fault on his part. Despite availability of the vacancies and eligibility of the appellant his case for promotion to BS-20 remained under correspondence between the respondents from 13.12.2020 to 12.01.2022 (more than 01 years). The case of the appellants is attracted by rule 17 of the Fundamental Rules which is reproduced as under;

Fundamental Rules:- *if a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into filed for his rescue ---If he lost his promotion on account of any administrative oversight or delay in the meeting of Departmental Promotion Committee (DPC) or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits--- Unjustified delay in proforma promotion cases triggers severe hardship and difficulty for the civil servants and also creates multiplicity of litigation---Competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to*

ATTESTED

BY: 
 K. S. KHAN
 Secretary
 Public Tribunal
 Islamabad

(33)

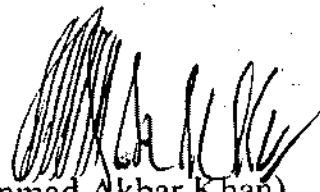
them in terms of applicable rules of service without protracted litigation or Court's intervention.

We observe that the appellant lost his promotion despite having fitness, eligibility and seniority due to no fault on his part, therefore, he has legitimate expectation for proforma promotion with consequential benefits as enunciated in the rule quoted above.

09. In view of above discussion, the instant appeal as well as connected service appeals are remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

kamramullah

Certified to be pure copy


Kamramullah
Khyber Pakhtunkhwa
Service Tribunal
Peshawar 14-5-24

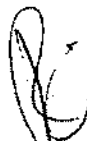
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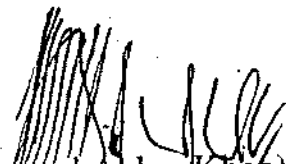
ORDER

12.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (08) pages, the instant appeal is remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellant from BS-19 to BS-20. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

(34)

Annex "D"



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

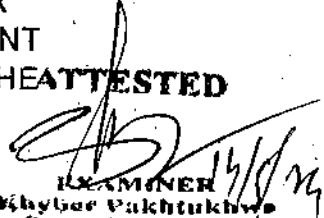
Service Appeal No. 1131 /2022

Muhammad Iqbal S/O Misri Khan, Retired Principal BS-19,
Elementary & Secondary Education Department, resident
of Mohallah Muslim Abad, Muhammad Khawaja, Tehsil and
District Hangu. (Appellant)

VERSUS

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
 3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
 4. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR PROMOTION FROM THE DATE WHEN THE APPELLANT CAME WITHIN THE ZONE OF CONSIDERATION ON THE **ATTESTED** BASIS OF HIS SENIORITY.


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

PRAYER

On acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30-12-2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion

(BS)

A. No. 1131/2022
M. Iqbal vs Govt




ORDER


12.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

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

02. Vide our detailed judgment of today separately placed on file of service appeal bearing No. 1129/2022 titled "Raj Muhammad Khan Versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", this appeal is also remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellant from BS-19 to BS-20. Costs shall follow the event. Consign.


03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

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KAMRANULLAH
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14-5-24
Number of Pages page 2
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Urgent 5/-
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Date of Completion of Copy 14-5-24
Date of Delivery of Copy 14-5-24

(36)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1129/2022

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

Raj Muhammad Khan S/O Taj Muhammad Khan, Retired Principal
BS-19, Elementary & Secondary Education Department, resident of
ASC Colony, House No. 93/1 Block 'A', Nowshera Cantt. Tehsil and
District Nowshera.(Appellant)

VERSUS

1. The Chief-Secretary to the Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary
& Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa,
Establishment Department, Civil Secretariat, Peshawar.
4. Director Elementary & Secondary Education Department Khyber
Pakhtunkhwa, Peshawar.....(Respondents)

Present:-

INAYAT ULLAH KHAN TAREEN,
Advocate

--- For Appellant

MUHAMMAD JAN,
District Attorney

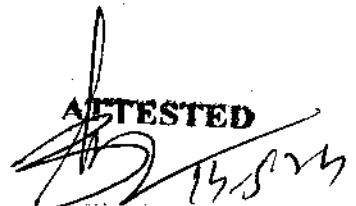
--- For respondents.

Date of Institution.....07.07.2022

Date of Hearing.....12.12.2023

Date of Decision..... 12.12.2023

CONSOLIDATED JUDGMENT.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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 payer copies as under;

*"That on acceptance of this appeal, it may graciously be
held that the appellant for the first time came within zone of
consideration for promotion from BS-19 to BS-20 when his*

(37)

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name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30.12.2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion for which he was entitled under the facts and law. So, a befitting direction may graciously be issued to the respondents to include the name of appellant in the seniority list dated 31.12.2021 and to grant notional promotion to his from 30.12.2020 with back and retiral benefits. Any other relief as deemed fit in favor of the appellant may also be granted to meet with the ends of justice."

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeals bearing No. 1130/2022 titled "Sikandar Sher versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1131/2022 titled "Muhammad Iqbal versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1132/2022 titled "Muhammad Saleem versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" & service appeal bearing No. 1133/2022 titled "Riasat Khan versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others as common question of law and facts are involved therein.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

38

03. Brief facts of the case are that the appellant joined service in the respondent Department as Subject Specialist (BS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 17.02.1992 and got step by step promotion. The appellant while working against the post of Principals BS-19 retired from service on the attaining the age of Superannuation on 12.01.2022; that a final seniority list of Principal (BS-19) was issued vide Notification dated 08.12.2020 whereby the appellant was placed at serial No. 11; that the appellant was eligible for promotion to BS-20 and his name was included in the working paper placed before the PSB in its meeting held on 30.12.2020 but the PSB recommended only five officers from promotion and the remaining 10 posts were left to pending cases in the Supreme Court of Pakistan; that some juniors to the appellants in the seniority list of BS-19 Teaching Cadre as stood on 31.12.2019 challenged the said senior list through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 in the Khyber Pakhtunkhwa Service Tribunal and promotion on the basis of impugned seniority list of BS-20 were stayed, and the appellants themselves impleaded as private respondents in the said appeals which were dismissed on 09.11.2021; that the appellant was retired from service on 12.01.2022 and a meeting of PSB was held on 02.12.2021 but no working papers in respect of the appellants for consideration of PSB was submitted by respondent No. 2; that the appellants submitted application dated 27.12.2021 for promotion by circulation from BS-19 to BS-20 which was received in the office of respondent No. 1 vide daily diary No. 6885 dated 28.12.2021. Respondent No. 2 addressed a letter dated 23.12.2021 alongwith Working Paper to Section Officer. (PSB) of the Establishment Department for promotion of appellants from BS-19 to BS-20

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TESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

on regular basis which was returned to respondent No. 2 vide letter dated 12.01.2022 and the same was further transmitted to respondent No. 4 vide letter dated 12.01.2022; that when the working paper was again sent to respondent No. 3 in light of department's letter dated 12.01.2022 the appellant by then stood retired from service the name of the appellants from final seniority list as stood on 31.12.2021 was removed although it was there in the tentative seniority list. Feeling aggrieved, the appellant filed departmental appeal on 16.03.2022 before respondent No. 1 seeking notional promotion from BS-19 to BS-20, which was not responded within the statutory period, hence preferred the instant service appeal on 07.07.2022.

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney and have gone through the record with their valuable assistance.

05. Learned counsel for the appellant contended that the name of the appellant is at serial No. 11 in the final seniority list of officers of Teaching Cadre in BS-19 as it stood on 31.12.2019. There were fifteen posts in BS-20 as officially indicated in the working paper sent for promotion of the officers including the name of the appellants as per their seniority positions; that the said working paper was taken up by PSB in its meeting held on 30.12.2020, but unreasonably refrained from making recommendation of promotion on ten posts out of 15 and the appellant are in the range for promotion on the basis of their seniority-cum-fitness were deprived from promotion to BS-20; that the appellants having entered within the zone of consideration for promotion from BS-19 to BS-20 on the basis of their seniority-cum-fitness, stood imbued with

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TESTED
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EXAMINER
 for Pakhtunkhwa
 Service Tribunal
 Peshawar

reasonable expectation for such promotion since 30.12.2020 but their expectation remained fruitless due to acts and omissions of the respondents having no justification under the facts and law. That phenomenon of notional promotion gets nourishment from the principles of natural justice when a civil servant having rendered service is retired without fulfillment of his reasonable expectation for career progression due to sheer ignorance of his eligibility and seniority-cum-fitness by the departmental authorities, particularly when vacancies do exist for consideration of his promotion by PSB; that the case of the appellants fully attracts the principles of natural justice to grant him notional promotion after retirement when they left no stone unturned in their struggle during service for the right of their consideration for actual promotion before attaining the age of superannuation. Learned counsel for the appellant relied on 2020 PLC (C.S) 1226, 2021 SCMR 1226, 2022 PLC (C.S) 104, 2022 SCMR 1765 & 2023 PLC (C.S).

06. Learned District Attorney on the other hand contended that in the PSB meeting dated 30.12.2020 only top five in the panel were recommended for promotion from seniority list of BS-19 because of non-availability of further vacant posts; that there were no posts available for promotion during his service and likewise him many people retired and the other got promotion on availability of posts. The Government has its policies and make changes in it from time to time through legislations in which the respondents cannot interfere; that the amendment in superannuation period was the aim of Government and at that time it was legal for the respondent not to consider promotion due occupation of the post by the incumbents whose superannuation age was enhanced from 60 to 63 years through an act of the Provincial Assembly.

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TESTED
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 EXAMINER
 of Pakhtunkhwa
 Service Tribunal
 Peshawar

41

07. Perusal of record reveals that the appellant belonged to the Teaching Cadre in the respondent department. In the seniority list of Principal (BS-19) issued vide Notification dated 08.12.2020 he stood at serial No. 11 of the seniority list. A working paper for promotion of officers of BS-19 to BS-20 was placed before the PSB in its meeting held on 30.12.2020. In the working paper 15 number of vacant seats were shown to be filled on promotion but the PSB recommended only 05 officers for promotion and 10 vacancies were left due to the reason that conditional retirement of officers have been issued in wake of dispute about superannuation age being 60 to 63 years in the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019 which was set aside by the Peshawar High Court, Peshawar and the case was pending adjudication in the Supreme Court of Pakistan. Record also transpires that some junior to the appellant in the seniority list of (BS-19) Teaching Cadre as stood on 31.12.2019 had challenged the seniority list in the Khyber Pakhtunkhwa Service Tribunal, Peshawar through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 and got stay order against promotion to BS-20. However, the aforementioned 05 service appeals were dismissed on 19.11.2021. A meeting of PSB was held on 02.12.2021 but the respondent department did not include the name of the appellant in the working paper for consideration of the PSB. Vide letter dated 23.12.2021 respondent No. 2 submitted working paper to the Establishment department for promotion of the appellants from BS-19 to BS-20 on regular basis which was returned on 12.01.2022 with certain observations. When the working paper was again submitted, after addressing the observations the appellant by then stood retired from service on 12.01.2022. It is also evident from record

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ATTESTED

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(42)

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that the appellant submitted representation to the respondent for notional promotion but no response what-so-ever given by the respondents.

08. The appellant was in the promotion zone since 30.12.2020 and was eligible for promotion to BS-20 but he remained deprived of his promotion for no fault on his part. Despite availability of the vacancies and eligibility of the appellant his case for promotion to BS-20 remained under correspondence between the respondents from 13.12.2020 to 12.01.2022 (more than 01 years). The case of the appellants is attracted by rule 17 of the Fundamental Rules which is reproduced as under;

Fundamental Rules:- *if a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into filed for his rescue ---If he lost his promotion on account of any administrative oversight or delay in the meeting of Departmental Promotion Committee (DPC) or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits--- Unjustified delay in proforma promotion cases triggers severe hardship and difficulty for the civil servants and also creates multiplicity of litigation---Competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to*

ATTESTED

EXAMINER
Cyber Pakhtunkhwa
Service Tribunal
Peshawar

43

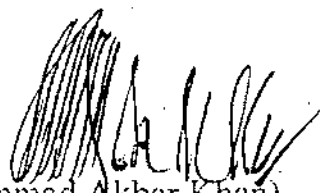
them in terms of applicable rules of service without protracted litigation or Court's intervention.

We observe that the appellant lost his promotion despite having fitness, eligibility and seniority due to no fault on his part, therefore, he has legitimate expectation for proforma promotion with consequential benefits as enunciated in the rule quoted above.

09. In view of above discussion, the instant appeal as well as connected service appeals are remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign.


10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

Kamranullah

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

14-5-23
Date of Presentation of Application 14-5-23
Number of Words 8 page
Copying Fee 40/-
Urgent 5/5
Total 45/-
Name of Copyist Shahjari
Date of Completion of Copy 14-5-23
Date of Delivery of Copy 14-5-23

(44)

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(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1132/2022

Muhammad Saleem S/O Muhammad Noor, Retired
Principal BS-19, Elementary & Secondary Education
Department, resident of Farooq-i-Azam Town, Ratta
Kulachi, Tehsil and District Dera Ismail Khan.

(Appellant)



VERSUS

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar..... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR
PROMOTION FROM THE DATE WHEN THE APPELLANT
CAME WITHIN THE ZONE OF CONSIDERATION ON THE
BASIS OF HIS SENIORITY.

PRAYER

ATTESTED
[Signature]
JUDGE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

On acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30-12-2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on

(45)

A. No. 1132/2022
Mr. Saleem vs Govt



ORDER

12.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

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

02. Vide our detailed judgment of today separately placed on file of service appeal bearing No. 1129/2022 titled "Raj Muhammad Khan Versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", this appeal is also remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign.

03. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.

(Rashida Bano)
Member (J)

(Muhammad Akbar Khan)
Member (E)

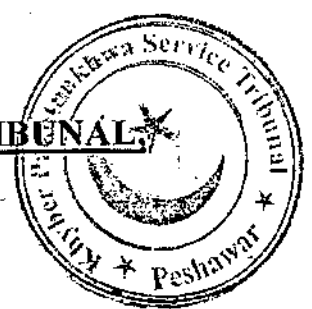
*kamranullah?

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14-5-24
Number of Pages page 2
Copying Fee 10/-
Urgent 5/-
Total 15/-
Name of Copy Shahzad
Date of Completion 14-5-24
Date of Delivery of Copy 14-5-24

(46)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1129/2022

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

Raj Muhammad Khan S/O Taj Muhammad Khan, Retired Principal BS-19, Elementary & Secondary Education Department, resident of ASC Colony, House No. 93/1 Block 'A', Nowshera Cantt. Tehsil and District Nowshera.(Appellant)

VERSUS

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Present:-

INAYAT ULLAH KHAN TAREEN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....07.07.2022
Date of Hearing.....12.12.2023
Date of Decision..... 12.12.2023

CONSOLIDATED 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 payer copies as under;

"That on acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30.12.2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion for which he was entitled under the facts and law. So, a befitting direction may graciously be issued to the respondents to include the name of appellant in the seniority list dated 31.12.2021 and to grant notional promotion to his from 30.12.2020 with back and retiral benefits. Any other relief as deemed fit in favor of the appellant may also be granted to meet with the ends of justice."

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeals bearing No. 1130/2022 titled "Sikandar Sher versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1131/2022 titled "Muhammad Iqbal versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1132/2022 titled "Muhammad Saleem versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" & service appeal bearing No. 1133/2022 titled "Riasat Khan versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others as common question of law and facts are involved therein.

ATTESTED

[Signature]
 CHIEF CLERK
 SERVICE TRIBUNAL
 PESHAWAR

03. Brief facts of the case are that the appellant joined service in the respondent Department as Subject Specialist (BS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 17.02.1992 and got step by step promotion. The appellant while working against the post of Principals BS-19 retired from service on the attaining the age of Superannuation on 12.01.2022; that a final seniority list of Principal (BS-19) was issued vide Notification dated 08.12.2020 whereby the appellant was placed at serial No. 11; that the appellant was eligible for promotion to BS-20 and his name was included in the working paper placed before the PSB in its meeting held on 30.12.2020 but the PSB recommended only five officers from promotion and the remaining 10 posts were left to pending cases in the Supreme Court of Pakistan; that some juniors to the appellants in the seniority list of BS-19 Teaching Cadre as stood on 31.12.2019 challenged the said senior list through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 in the Khyber Pakhtunkhwa Service Tribunal and promotion on the basis of impugned seniority list of BS-20 were stayed, and the appellants themselves impleaded as private respondents in the said appeals which were dismissed on 09.11.2021; that the appellant was retired from service on 12.01.2022 and a meeting of PSB was held on 02.12.2021 but no working papers in respect of the appellants for consideration of PSB was submitted by respondent No. 2; that the appellants submitted application dated 27.12.2021 for promotion by circulation from BS-19 to BS-20 which was received in the office of respondent No. 1 vide daily diary No. 6885 dated 28.12.2021. Respondent No. 2 addressed a letter dated 23.12.2021 alongwith Working Paper to Section Officer (PSB) of the Establishment Department for promotion of appellants from BS-19 to BS-20

TESTED

Section Officer
Khyber Pakhtunkhwa
Public Service Commission
Peshawar

on regular basis which was returned to respondent No. 2 vide letter dated 12.01.2022 and the same was further transmitted to respondent No. 4 vide letter dated 12.01.2022; that when the working paper was again sent to respondent No. 3 in light of department's letter dated 12.01.2022 the appellant by then stood retired from service the name of the appellants from final seniority list as stood on 31.12.2021 was removed although it was there in the tentative seniority list. Feeling aggrieved, the appellant filed departmental appeal on 16.03.2022 before respondent No. 1 seeking notional promotion from BS-19 to BS-20, which was not responded within the statutory period, hence preferred the instant service appeal on 07.07.2022.

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney and have gone through the record with their valuable assistance.

05. Learned counsel for the appellant contended that the name of the appellant is at serial No. 11 in the final seniority list of officers of Teaching Cadre in BS-19 as it stood on 31.12.2019. There were fifteen posts in BS-20 as officially indicated in the working paper sent for promotion of the officers including the name of the appellants as per their seniority positions; that the said working paper was taken up by PSB in its meeting held on 30.12.2020, but unreasonably refrained from making recommendation of promotion on ten posts out of 15 and the appellant are in the range for promotion on the basis of their seniority-cum-fitness were deprived from promotion to BS-20; that the appellants having entered within the zone of consideration for promotion from

BS-19 to BS-20 on the basis of their seniority-cum-fitness, stood imbued with

ATTESTED

FOR AND ON BEHALF OF
 THE APPELLANT
 Service Tribunal
 Bhopal

50

reasonable expectation for such promotion since 30.12.2020 but their expectation remained fruitless due to acts and omissions of the respondents having no justification under the facts and law. That phenomenon of notional promotion gets nourishment from the principles of natural justice when a civil servant having rendered service is retired without fulfillment of his reasonable expectation for career progression due to sheer ignorance of his eligibility and seniority-cum-fitness by the departmental authorities, particularly when vacancies do exist for consideration of his promotion by PSB; that the case of the appellants fully attracts the principles of natural justice to grant him notional promotion after retirement when they left no stone unturned in their struggle during service for the right of their consideration for actual promotion before attaining the age of superannuation. Learned counsel for the appellant relied on 2020 PLC (C.S) 1226, 2021 SCMR 1226, 2022 PLC (C.S) 104, 2022 SCMR 1765 & 2023 PLC (C.S).

06. Learned District Attorney on the other hand contended that in the PSB meeting dated 30.12.2020 only top five in the panel were recommended for promotion from seniority list of BS-19 because of non-availability of further vacant posts; that there were no posts available for promotion during his service and likewise him many people retired and the other got promotion on availability of posts. The Government has its policies and make changes in it from time to time through legislations in which the respondents cannot interfere; that the amendment in superannuation period was the aim of Government and at that time it was legal for the respondent not to consider promotion due occupation of the post by the incumbents whose superannuation age was enhanced from 60 to 63 years through an act of the Provincial Assembly.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

07. Perusal of record reveals that the appellant belonged to the Teaching Cadre in the respondent department. In the seniority list of Principal (BS-19) issued vide Notification dated 08.12.2020 he stood at serial No. 11 of the seniority list. A working paper for promotion of officers of BS-19 to BS-20 was placed before the PSB in its meeting held on 30.12.2020. In the working paper 15 number of vacant seats were shown to be filled on promotion but the PSB recommended only 05 officers for promotion and 10 vacancies were left due to the reason that conditional retirement of officers have been issued in wake of dispute about superannuation age being 60 to 63 years in the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019 which was set aside by the Peshawar High Court, Peshawar and the case was pending adjudication in the Supreme Court of Pakistan. Record also transpires that some junior to the appellant in the seniority list of (BS-19) Teaching Cadre as stood on 31.12.2019 had challenged the seniority list in the Khyber Pakhtunkhwa Service Tribunal, Peshawar through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 and got stay order against promotion to BS-20. However, the aforementioned 05 service appeals were dismissed on 19.11.2021. A meeting of PSB was held on 02.12.2021 but the respondent department did not include the name of the appellant in the working paper for consideration of the PSB. Vide letter dated 23.12.2021 respondent No. 2 submitted working paper to the Establishment department for promotion of the appellants from BS-19 to BS-20 on regular basis which was returned on 12.01.2022 with certain observations. When the working paper was again submitted, after addressing the observations the appellant by then stood retired from service on 12.01.2022. It is also evident from record

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

that the appellant submitted representation to the respondent for notional promotion but no response what-so-ever given by the respondents.

08. The appellant was in the promotion zone since 30.12.2020 and was eligible for promotion to BS-20 but he remained deprived of his promotion for no fault on his part. Despite availability of the vacancies and eligibility of the appellant his case for promotion to BS-20 remained under correspondence between the respondents from 13.12.2020 to 12.01.2022 (more than 01 years). The case of the appellants is attracted by rule 17 of the Fundamental Rules which is reproduced as under;

Fundamental Rules:- *if a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into filed for his rescue ---If he lost his promotion on account of any administrative oversight or delay in the meeting of Departmental Promotion Committee (DPC) or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits--- Unjustified delay in proforma promotion cases triggers severe hardship and difficulty for the civil servants and also creates multiplicity of litigation---Competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to*

ATTESTED

SECRETARY
 Civil Tribunal
 [Signature]

(53)

them in terms of applicable rules of service without protracted litigation or Court's intervention.

We observe that the appellant lost his promotion despite having fitness, eligibility and seniority due to no fault on his part, therefore, he has legitimate expectation for proforma promotion with consequential benefits as enunciated in the rule quoted above.

09. In view of above discussion, the instant appeal as well as connected service appeals are remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.

(Rashida Bano)
Member (J)

(Muhammad Akbar Khan)
Member (E)

kamranullah

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14-5-24
 Number of Words page 8
 Copying Fee 40/-
 Urgent 57/-
 Total 45/-
 Name of Copyist Shahzad
 Date of Completion of Copy 14-5-24
 Date of Delivery of Copy 14-5-24

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(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1/33/2022

Riasat Khan S/O Sultan Khan, Retired Principal BS-19,
Elementary & Secondary Education Department, resident
of village Darbandaan Meelum, Tehsil and District Haripur

(Appellant)



VERSUS

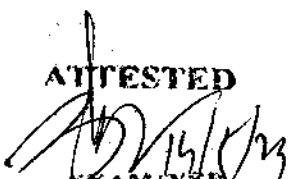
1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar..... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR PROMOTION FROM THE DATE WHEN THE APPELLANT CAME WITHIN THE ZONE OF CONSIDERATION ON THE BASIS OF HIS SENIORITY.

PRAYER

On acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30-12-2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(BS)

A. No. 1133/2022

Rasat Khan vs Govt



ORDER

12.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file of service appeal bearing No. 1129/2022 titled "Raj Muhammad Khan Versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", this appeal is also remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign.

03. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.

(Rashida Bano)
Member (J)

(Muhammad Akbar Khan)
Member (E)

Innamillah

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1129/2022

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

Raj Muhammad Khan S/O Taj Muhammad Khan, Retired Principal BS-19, Elementary & Secondary Education Department, resident of ASC Colony, House No. 93/1 Block 'A', Nowshera Cantt. Tehsil and District Nowshera.(Appellant)

VERSUS

1. The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Present:-

INAYAT ULLAH KHAN TAREEN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....07.07.2022
Date of Hearing.....12.12.2023
Date of Decision..... 12.12.2023

CONSOLIDATED 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 payer copies as under;

"That on acceptance of this appeal, it may graciously be held that the appellant for the first time came within zone of consideration for promotion from BS-19 to BS-20 when his

ATTESTED

Khyber Pakhtunkhwa Service Tribunal
Peshawar

name was included in the panel of officers sent with the working paper taken up in the meeting of PSB held on 30.12.2020 but his promotion was delayed for one or the other reason not attributable to him and ultimately he retired from service on attaining the age of superannuation without his actual promotion for which he was entitled under the facts and law. So, a befitting direction may graciously be issued to the respondents to include the name of appellant in the seniority list dated 31.12.2021 and to grant notional promotion to his from 30.12.2020 with back and retiral benefits. Any other relief as deemed fit in favor of the appellant may also be granted to meet with the ends of justice."

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeals bearing No. 1130/2022 titled "Sikandar Sher versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1131/2022 titled "Muhammad Iqbal versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", service appeal bearing No. 1132/2022 titled "Muhammad Saleem versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" & service appeal bearing No. 1133/2022 titled "Riasat Khan versus The Chief Secretary to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others as common question of law and facts are involved therein. **ATTESTED**

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar



03. Brief facts of the case are that the appellant joined service in the respondent Department as Subject Specialist (BS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 17.02.1992 and got step by step promotion. The appellant while working against the post of Principals BS-19 retired from service on the attaining the age of Superannuation on 12.01.2022; that a final seniority list of Principal (BS-19) was issued vide Notification dated 08.12.2020 whereby the appellant was placed at serial No. 11; that the appellant was eligible for promotion to BS-20 and his name was included in the working paper placed before the PSB in its meeting held on 30.12.2020 but the PSB recommended only five officers from promotion and the remaining 10 posts were left to pending cases in the Supreme Court of Pakistan; that some juniors to the appellants in the seniority list of BS-19 Teaching Cadre as stood on 31.12.2019 challenged the said senior list through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 in the Khyber Pakhtunkhwa Service Tribunal and promotion on the basis of impugned seniority list of BS-20 were stayed, and the appellants themselves impleaded as private respondents in the said appeals which were dismissed on 09.11.2021; that the appellant was retired from service on 12.01.2022 and a meeting of PSB was held on 02.12.2021 but no working papers in respect of the appellants for consideration of PSB was submitted by respondent No. 2; that the appellants submitted application dated 27.12.2021 for promotion by circulation from BS-19 to BS-20 which was received in the office of respondent No. 1 vide daily diary No. 6885 dated 28.12.2021. Respondent No. 2 addressed a letter dated 23.12.2021 alongwith Working Paper to Section Officer (PSB) of the

Establishment Department for promotion of appellants from BS-19 to BS-20

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17-5-21

(59)

on regular basis which was returned to respondent No. 2 vide letter dated 12.01.2022 and the same was further transmitted to respondent No. 4 vide letter dated 12.01.2022; that when the working paper was again sent to respondent No. 3 in light of department's letter dated 12.01.2022 the appellant by then stood retired from service the name of the appellants from final seniority list as stood on 31.12.2021 was removed although it was there in the tentative seniority list. Feeling aggrieved, the appellant filed departmental appeal on 16.03.2022 before respondent No. 1 seeking notional promotion from BS-19 to BS-20, which was not responded within the statutory period, hence preferred the instant service appeal on 07.07.2022.

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney and have gone through the record with their valuable assistance.

05. Learned counsel for the appellant contended that the name of the appellant is at serial No. 11 in the final seniority list of officers of Teaching Cadre in BS-19 as it stood on 31.12.2019. There were fifteen posts in BS-20 as officially indicated in the working paper sent for promotion of the officers including the name of the appellants as per their seniority positions; that the said working paper was taken up by PSB in its meeting held on 30.12.2020, but unreasonably refrained from making recommendation of promotion on ten posts out of 15 and the appellant are in the range for promotion on the basis of their seniority-cum-fitness were deprived from promotion to BS-20; that the appellants having entered within the zone of consideration for promotion from BS-19 to BS-20 on the basis of their seniority-cum-fitness, stood imbued with

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reasonable expectation for such promotion since 30.12.2020 but their expectation remained fruitless due to acts and omissions of the respondents having no justification under the facts and law. That phenomenon of notional promotion gets nourishment from the principles of natural justice when a civil servant having rendered service is retired without fulfillment of his reasonable expectation for career progression due to sheer ignorance of his eligibility and seniority-cum-fitness by the departmental authorities, particularly when vacancies do exist for consideration of his promotion by PSB; that the case of the appellants fully attracts the principles of natural justice to grant him notional promotion after retirement when they left no stone unturned in their struggle during service for the right of their consideration for actual promotion before attaining the age of superannuation. Learned counsel for the appellant relied on 2020 PLC (C.S) 1226, 2021 SCMR 1226, 2022 PLC (C.S) 104, 2022 SCMR 1765 & 2023 PLC (C.S).

06. Learned District Attorney on the other hand contended that in the PSB meeting dated 30.12.2020 only top five in the panel were recommended for promotion from seniority list of BS-19 because of non-availability of further vacant posts; that there were no posts available for promotion during his service and likewise him many people retired and the other got promotion on availability of posts. The Government has its policies and make changes in it from time to time through legislations in which the respondents cannot interfere; that the amendment in superannuation period was the aim of Government and at that time it was legal for the respondent not to consider promotion due occupation of the post by the incumbents whose superannuation age was enhanced from 60 to 63 years through an act of the Provincial Assembly.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(6)

07. Perusal of record reveals that the appellant belonged to the Teaching Cadre in the respondent department. In the seniority list of Principal (BS-19) issued vide Notification dated 08.12.2020 he stood at serial No. 11 of the seniority list. A working paper for promotion of officers of BS-19 to BS-20 was placed before the PSB in its meeting held on 30.12.2020. In the working paper 15 number of vacant seats were shown to be filled on promotion but the PSB recommended only 05 officers for promotion and 10 vacancies were left due to the reason that conditional retirement of officers have been issued in wake of dispute about superannuation age being 60 to 63 years in the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019 which was set aside by the Peshawar High Court, Peshawar and the case was pending adjudication in the Supreme Court of Pakistan. Record also transpires that some junior to the appellant in the seniority list of (BS-19) Teaching Cadre as stood on 31.12.2019 had challenged the seniority list in the Khyber Pakhtunkhwa Service Tribunal, Peshawar through Service Appeals No. 16424/2020, 16425/2020, 16426/2020, 16427/2020 & 16428/2020 and got stay order against promotion to BS-20. However, the aforementioned 05 service appeals were dismissed on 19.11.2021. A meeting of PSB was held on 02.12.2021 but the respondent department did not include the name of the appellant in the working paper for consideration of the PSB. Vide letter dated 23.12.2021 respondent No. 2 submitted working paper to the Establishment department for promotion of the appellants from BS-19 to BS-20 on regular basis which was returned on 12.01.2022 with certain observations. When the working paper was again submitted, after addressing the observations the appellant by then stood retired from service on 12.01.2022. It is also evident from record

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

that the appellant submitted representation to the respondent for notional promotion but no response what-so-ever given by the respondents.

08. The appellant was in the promotion zone since 30.12.2020 and was eligible for promotion to BS-20 but he remained deprived of his promotion for no fault on his part. Despite availability of the vacancies and eligibility of the appellant his case for promotion to BS-20 remained under correspondence between the respondents from 13.12.2020 to 12.01.2022 (more than 01 years). The case of the appellants is attracted by rule 17 of the Fundamental Rules which is reproduced as under;

Fundamental Rules:- *if a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into filed for his rescue ---If he lost his promotion on account of any administrative oversight or delay in the meeting of Departmental Promotion Committee (DPC) or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits--- Unjustified delay in proforma promotion cases triggers severe hardship and difficulty for the civil servants and also creates multiplicity of litigation---Competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to*

ATTESTED

ANIL K. SHARMA
Civil Tribunal
Shahwar

19-5-24

them in terms of applicable rules of service without protracted litigation or Court's intervention.

We observe that the appellant lost his promotion despite having fitness, eligibility and seniority due to no fault on his part, therefore, he has legitimate expectation for proforma promotion with consequential benefits as enunciated in the rule quoted above.

09. In view of above discussion, the instant appeal as well as connected service appeals are remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20. Costs shall follow the event. Consign.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.

(Rashida Bano)
Member (J)

(Muhammad Akbar Khan)
Member (E)

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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ORDER

12.12.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

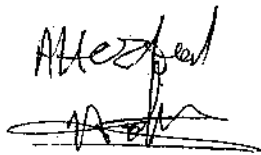
02. Vide our detailed judgment of today separately placed on file, consisting of (08) pages; the instant appeal is remitted to respondent department for placement before the PSB for consideration of proforma promotion of the appellant from BS-19 to BS-20. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of December, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

Kamranullah



The Worthy Secretary
Literary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar

Subject: Application for the implementation of consolidated judgment dated 12/12/2023 of the Honorable Service Tribunal rendered in service appeals No. 1129 to 1133 2023 under case titled Raj Muhammad Khan, etc Vs Govt. of Khyber Pakhtunkhwa & others in favor of the Applicant.

Respected Sir,

The applicant submits as under

1 That the titled service appeals were pending adjudication before the Honorable service tribunal on behalf of the appellants for the grant of proforma promotion against the principal in BS-20(1C) post w.e.f. 30-12-2020 along with consequential service benefits under section-4 of KP Service Tribunal Act 1974.

2 That the respondents were put on notice for submission of reply which was submitted accordingly and finally the titled appeals were decided vide consolidated judgment 12-12-2023 in favor of appellant with the direction to the respondent department vide operative part of the judgment attached as Annex-A which is reproduced for the ready reference as under-

"In view of the above discussion, the instant appeal as well as connected service appeals are remitted to respondent department for placement before PSB for consideration of proforma promotion of the appellants from BS-19 to BS-20"

Therefore, in view of the above made facts of the titled appeal it is humbly prayed that on the acceptance of this application, the judgment dated 12-12-2023 of the honorable service tribunal may kindly be implemented

Dated 13-2-2024

Applicant
Sikander Sher,

Principal (Rtd), BS-19 (TC)

Village Faujoon Abada, PO Charbagh,
Tehsil Rajar, District Swabi.

0331-9385360

WAKALATNAMA (Power of Attorney)

IN THE KP SERVICE TRIBUNAL, PESHAWAR

Raj Muhammad Khan *[Signature]*

(Petitioner)
(Plaintiff)
(Applicants)
(Appellant)
(Complainant)
(Decree Holder)

VERSUS

The Chief Secretary KP *[Signature]*

(Respondent)
(Defendants)
(Accused)
(Judgment Debtor)

I, **the undersigned** (*petitioner*) in the above noted (E.P / 2024), do hereby appoint and constitute **Ahmad Sultan Tareen, Mudassir Ali & Shabaz Khan** Advocates, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted.

[Signature]
Ahmad Sultan Tareen
[Signature]
Mudassir Ali
[Signature]
Shabaz Khan

Advocates, Peshawar
17-GF, Haroon Mansion, Khyber Bazar,
PESHAWAR.
Office: 091-2566969
Cell # 0333-9434837
BC No. 10-1583
CNIC: 13302-0450955-5

[Signature]
CLIENT

① *[Signature]* (وکیل محمد خان تارین)

② *[Signature]* (وکیل محمد اقبال نسیم)

③ *[Signature]* (وکیل محمد نسیم)

④ *[Signature]* (وکیل محمد خان)

⑤ *[Signature]* (وکیل محمد نسیم)