

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
 RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 301/2023

Date of presentation of Appeal.....10.02.2023
Date of Hearing.....24.09.2024
Date of Decision.....24.09.2024

Amir Muhammad S/o Sher Muhammad, R/o Badhber Peshawar.
Ex-Chief Draftsman Irrigation Department, Peshawar.
.....*Appellant*

Versus

1. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. Secretary Irrigation, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 3. Secretary Finance, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 4. Secretary Establishment, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
-(*Respondents*)

Present:

Mr. Amjad Ali Afridi, Advocate.....For appellant
Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): Facts of the case as alleged by the appellant in his memorandum of the appeal are that, he was appointed as a Draftsman in 1985 and later on promoted to Head Draftsman in 2003. In the same year, he was entrusted with additional duties as the Chief Draftsman, until his official promotion to Chief Draftsman (BPS 17) in 2010. As per appellant, despite his diligent service, he did not receive the additional charge allowance of 20% of his basic pay, capped at

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Rs 6000/- per month, as stipulated in the Revised Basic Pay Scales, Allowances and Pension guidelines for Civil Employees (BPS 1-22) issued by the NWFP Government. Throughout his career, he persistently filed representations to his department, seeking rightful recognition and compliance with promotion protocols, yet his requests remained largely ignored until his retirement on January 11, 2023. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the appellant was unjustly denied the Additional Charge Allowance as stipulated in the Revised Basic Pay Scales, Allowances, and Pension of Civil Servants, despite fulfilling the necessary roles. He next contended that the appellant was eligible for the selection grade BPS-16 as of 1996 and should have been considered for a promotion to BPS-17 by 2006 as per established rules and procedures but his case was illegally and unlawfully not forward for consideration. The counsel stressed the principle of equality before the law, drawing attention to the fact that other employees had received similar promotions and allowances under comparable circumstances. He next argued that multiple representations made to the department concerning his promotion and allowance, indicating a pattern of disregard toward his legitimate requests. He further argued that the appellant requests retrospective proforma promotion to BPS-16 and

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BPS-17, along with back benefits, including payment of arrears, on the basis that he was eligible and qualified but wrongfully prevented from receiving. In the last, he argued that the appeal in hand may be accepted as prayed for.

4. On the other hand, the learned Assistant Advocate General for the respondents opposed the contention of the learned counsel for the appellant and contended the appellant never applied for the Additional Charge Allowance during the period when performing additional duties and clarified that such an allowance is not applicable when the status and scale do not match. He next contended that the Selection Grade had been discontinued as of December 1, 2001, thereby nullifying the appellant's eligibility for this benefit during the time period in question. He further contended that the promotion policies state that notifications must be made immediately, yet the appellant failed to adhere to this regarding his personal upgrades. He next argued that there was no scheme of pick and choose regarding promotions. He further argued that there exist no proforma promotion policies under the Khyber Pakhtunkhwa Government. In the last, he argued that the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The record shows that the appellant was appointed as a Draftsman in 1985 and subsequently promoted to the post of Head Draftsman (BPS-14) in 2003. In addition to this role, he was

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assigned the additional responsibilities of Chief Draftsman within the same year and later received a formal promotion to Chief Draftsman (BPS-17) on 20.10.2010. The appellant asserts that he was eligible for selection grade in BPS-16 in 1996 and for a promotion to BPS-17 in 2006, however, these were allegedly denied to him without justification. The appellant was obligated to challenge any violations pertaining to his service terms and conditions within the stipulated time frame as defined in Section-4 of the Khyber Pakhtunkhwa Service Tribunal, 1974. Rather than adhering to the timeline, the appellant chose not to pursue a formal appeal when he first noticed an oversight but instead continued to engage with the department through multiple representations. The law dictates that the appellant should have submitted an appeal to the Tribunal upon filing his initial representation if it was not addressed within the statutory period of 90 days. Instead, the appellant engaged in prolonged correspondence with the department, which ultimately delayed his appeal. The appellant did not provide substantial documentary evidence to substantiate his claims regarding his alleged applications for selection grade BPS-16 in 1996 and promotion to BPS-17 in 2006. Additionally, there is a complete absence of documents such as, seniority lists demonstrating his position within the cadre, documentation of vacant posts that may have entitled him to consideration for promotion, any other relevant documentation that could establish his entitlements and claims. Without credible evidence demonstrating that the appellant was at the top of the


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Service Appeal No.301/2023 titled "Amir Muhammad versus Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 24.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

seniority list or that there were vacant vacancies falling within his promotion quota during the claimed periods, his assertions regarding eligibility are unsubstantiated. Based on the presented facts and the lack of supporting documentation, we find that the appellant's claims regarding his entitlement for selection grade BPS-16 in 1996 and promotion to BPS-17 in 2006 are not sufficiently evidenced. Furthermore, the procedural failure to timely challenge these issues as mandated by law bars the appellant from succeeding in his appeal post-retirement.

7. Consequently, the appeal in hand stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)



RASHIDA BANO
Member (Judicial)

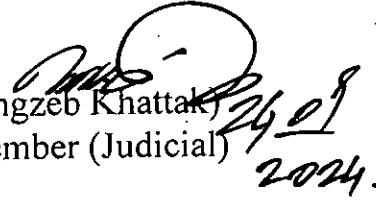
Naeem Amin

ORDER

24th Sept, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Talha, Senior Clerk alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of September, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial)
26/09
2024.