

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER(Executive)**

Service Appeal No.11950/2020

Date of presentation of Appeal.....22.09.2020
Date of Hearing.....02.10.2024
Date of Decision.....02.10.2024

Mr. Bashir Gul Ex-Assistant Sub Inspector, office of the Deputy Inspector General of Police, Telecommunication, Khyber Pakhtunkhwa, Peshawar.....(***Appellant***)

Versus

- 1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**
- 2. The Deputy Inspector General of Police, Telecommunications, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)**

Present:

Mr. Umar Farooq Mohmand, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

APPEAL UNDER SECTION OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17.1.2019 WHEREBY JUNIOR TO THE APPELLANT HAS BEEN PROMOTED TO THE RANK OF OFFICIATING SUB INSPECTOR WHILE THE APPELLANT HAS BEEN IGNORED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that the appellant was appointed as Constable on 01.06.1997 in the Police Department: that he was promoted to Officiating Head Constable on 08.08.2020 and was confirmed on 18.05.2010

w.e.f 06.05.2010; that lastly, he was promoted to the post of Assistant Sub Inspector on 31.03.2016 and was retired from service on 10.05.2018; that allegedly, there were vacancies of Sub Inspectors but the respondents did not promote the appellant to the said post and his juniors were promoted to the said post of SI vide order dated 17.01.2019, after the retirement of appellant; that for granting pro-forma promotion, he filed departmental appeal but the same was not responded, hence, the instant service appeal.

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

3. We have heard counsel for the appellant and learned District Attorney for respondents.

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

5. The appellant's case is characterized by a series of promotions within the Police Department, starting with his initial appointment as Constable on June 1, 1997. He was promoted to Officiating Head Constable on August 8, 2020, and confirmed in this role on May 18, 2010, retroactive to May 6, 2010. His final promotion to Assistant Sub Inspector occurred on March 31, 2016, prior to his

retirement on May 10, 2018. Despite there being vacancies for Sub Inspectors, the appellant alleges that his juniors were promoted to this position on January 17, 2019, following his retirement, which he claims was unjust. In pursuit of a pro-forma promotion, he submitted a departmental appeal, which was not addressed, leading to the current service appeal as he seeks to contest the lack of promotion and recognition of his seniority.

6. This Tribunal in a similar nature case vide its consolidated judgment dated 03.05.2024 passed in Service Appeal No.660/2019 titled "Habib Ur Rehman & others versus Police Department" has held that:

"6. The appellants were not confirmed to the ranks of Sub Inspectors because of pendency of inquiry. The record reflects that the appellants had moved application for confirmation as ASI and promotion to the rank of SI, which applications were processed as is evident from the note sheet annexed with the appeal. SP/MT had made recommendation to the DIG Telecommunications to approve confirmation of the appellants to the rank of ASI and promotion to the higher ranks of SIs, because they were senior-most in the seniority list. The DIG, in turn, put a note with the words "**next DPC**". This note was put on 04.03.2019, but before the case of promotion of the appellants could be placed in the next DPC, the appellants had retired from service vide order dated 30.04.2019 w.e.f 04.05.2019. The next DPC was held on 23.05.2019, wherein, other officials were promoted.

7. The Supreme Court of Pakistan in 2022 SCMR 1546 has held that:

"A retired civil servant shall not be eligible for grant of promotion; provided that he may be considered for grant of pro forma promotion as may be prescribed"



8. Besides, the Lahore High Court has held in 2023 PLC (CS) 431 titled "Ijaz Akhtar versus Secretary to Government of Punjab and others" also held that:

"The concept of proforma promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his right for such promotion or a legal restraint was posed against his claim owing to any departmental proceedings inquiry etc. against him and the said obstacle is done away with ultimately then in such a situation, his monetary loss and loss of rank is remedied through proforma promotion. A civil servant has a fundamental right to be promoted even after his retirement through awarding pro forma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and he is retired on attaining the age of superannuation without any shortcoming on his part pertaining to deficiency in the length of service or in the form of inquiry and departmental action taken against his right of promotion. It is fundamental right of a civil servant to be promoted even after his retirement by awarding pro forma promotion provided such right accrued during his service and his case could not be considered for no fault of his own and that he should not be penalized for lapses and negligence on part of the department."

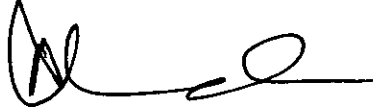
9. In view of the above, instant service appeals are accepted. The impugned order dated 17.01.2019 is modified to the extent of appellants by directing the respondents to confirm the appellants in the rank of Assistant Sub Inspector w.e.f 01.09.2016 instead of 31.08.2018 and grant proforma promotion to the appellants to the ranks of Officiating Sub Inspector w.e.f 17.01.2019 with all monetary benefits. Costs shall follow the event. Copy of this judgment be placed in the file of the connected service appeal. Consign."

7. Being similar in nature, instant service appeal is also liable to be accepted by setting aside the impugned order dated 17.01.2019 for granting pro-forma promotion to the appellant to the rank of SI


Service Appeal No. 11950/2020 titled "Bashir Gul versus Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and another" declared on 02.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

w.e.f 17.01.2019 with all monetary benefits. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 2nd day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)


Mutazem Shah


S.A #.11950/2020

ORDER

2nd Oct. 2024

1. Learned counsel for the appellant and Mr. Muhammad Jan, District Attorney for respondents present. Heard.
2. Vide our detailed judgment of today placed on file, instant service appeal is liable to be accepted by setting aside the impugned order dated 17.01.2019 for granting pro-forma promotion to the appellant to the rank of SI w.e.f 17.01.2019 with all monetary benefits. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 2nd day of October, 2024.*


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah