

Service Appeal No.1052/2023 titled "Dr. Muhammad Amin Versus Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar and others" and Service Appeal No. 1053/2023 titled "Dr. Muhammad Shakeel Versus Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar and others, decided on 22.10.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**
FAREEHA PAUL ... **MEMBER (Executive)**

Service Appeal No. 1052/2023

Dr. Muhammad Amin, SS (Physic) GGHS No. 2 "Islamia" Dera Ismail Khan.Appellant

Service Appeal No. 1053/2023

Date of presentation of Appeal.....08.05.2023
Date of Hearing.....22.10.2024
Date of Decision.....22.10.2024

Dr. Muhammad Shakeel, SS (Chemistry) GGHS Muryali Dera Ismail Khan.Appellant

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary to Government of KPK Elementary & Secondary Education Department, Block-"A" opposite MPAs hostel, Civil Secretariat, Peshawar.
2. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Near Ferdos GHSS No. 1 Peshawar City.
3. District Education Officer (Male) Dera Ismail Khan.
.....(Respondents)

Present:

Mr. Muhammad Abdullah Baloch, AdvocateFor appellants
Mr. Muhammad Jan, District Attorney.....For respondents
.....

CONSOLIDATED JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): This consolidated judgment is directed to dispose of both the service appeals captioned above, as common questions of law and facts are involved in both the appeals.

2. The appellant, Dr. Muhammad Amin, holds a Ph.D. in Physics from UESTC China and is currently serving as SS Physics (BPS-18) at

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GHSS No.2 in Dera Ismail Khan. He joined government service as a Laboratory Assistant on April 6, 1999 and subsequently transitioned through proper channels to the Pakistan Meteorological Department and later to his current position in BPS-17 via KPK Public Service Commission. The appellant was granted study leave with full pay for Ph.D studies from August 28, 2014 to July 15, 2018. He resumed service on July 16, 2018, after completing his studies. Allegedly, despite the appellant's eligibility, his promotion was deferred during various Provincial Selection Board (PSB) meetings held on September 17, 2018, December 26, 2018, and May 17, 2019, due to alleged incomplete dossiers, while juniors were promoted. The appellant was finally promoted to BPS-18 with immediate effect. Feeling aggrieved, the appellant filed departmental appeal on January 10, 2023, which was not responded within the statutory period, prompting the present service appeal.

3. The appellant, Dr. Muhammad Shakeel, holds a Ph.D. in Chemistry from Beijing University of Chemical Technology, China. He was selected on a regular basis in BS-17 as Subject Specialist through the KPK Public Service Commission on August 16, 2010. He was granted study leave for higher education (Ph.D.) from September 1, 2016 to August 31, 2019, with full pay under a scholarship scheme. He resumed service on August 1, 2019, one month before the official end of his study leave. Multiple meetings of the Provincial Selection Board (PSB) were held during his leave, yet his promotion from BS-17 to BS-18 was deferred due to incomplete dossiers, while 170 junior

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colleagues were promoted. According to appellant his deferment affected his inter-se seniority, which should have been maintained as per KPK Public Service Commission rules. He was promoted to BS-18 on December 13, 2022, but the promotion was immediate rather than retroactive to when he rectified his deficiencies. He filed a departmental appeal against the promotion order on January 11, 2023, which went unanswered, paving the way for this service appeal.

4. The respondents were summoned, who contested the both the appeals by way of filing their respective written replies/comments.

5. The learned counsels for the appellants contended that the deferment of the appellants' promotions is arbitrary and discriminatory, violating Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan. He next contended that the failure to promote the appellants while promoting juniors infringes upon appellant fundamental rights and is a clear instance of unfair treatment. He further contended that the appellants' rights to promotion are supported by the Civil Servant Promotion Policy, which stipulates that officers who fulfill requirements should be considered for promotions alongside their juniors once deficiencies are addressed. He also contended that the omission to consider the appellants for promotion during several board meetings, despite clear eligibility and completion of required criteria, not only affects their careers but also disrupts their inter-se seniority established by the KPK Public Service Commission. He next argued that over 200 juniors were promoted during the deferment period; the appellants are entitled to regain their rightful seniority. He further argued that the

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authority to rectify the injustices and ensure that the appellants' promotions are antedated to the time when they became eligible effectively restores their positions among their cohorts. Lastly, he argued that both the appeals in hand may be accepted as prayed for.

6. On the other hand, the learned District Attorneys for the respondents contended that the appellants were appointed as Subject Specialists BS-17 in 2011 and 2010 and subsequently went on study leave during which time they were not entitled to consideration for promotion due to incomplete service records. He next contended that upon rejoining their positions, the appellants faced a backlog with the Provincial Selection Boards (PSBs) where their dossiers were deemed incomplete due to the lack of Annual Confidential Reports (ACRs) stemming from their long absence. He further contended that though meetings of the Provincial Selection Boards were held before their re-joining, these served as clear examples where their absences directly resulted in their non-eligibility for promotion. He also contended that according to Section IV(a) of the Promotion Policy 2009, civil servants on leave for one year or more must earn a full calendar year of Performance Evaluation Reports (PERs) upon their return before being considered for promotion. He next argued that the appellants rejoined their service in July 2019 and August, 2019, thus, they were required to complete a full academic year, which they only did by December 31, 2020; therefore, their dossiers were finalized on December 31, 2020, making any claims for promotion prior to that date unfounded. He further argued that the PSB meeting on December 13, 2022 and


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December 12, 2022, resulted in the appellants' promotion to BS-18 after fulfilling the necessary requirements. He also argued that assessments of the PSB in 2018 and 2019 confirmed that all other eligible officers were promoted based on seniority and completeness of their records; thus, it is evident that the appellants' case was not overlooked—their promotions were rightly deferred due to procedural adherence. In conclusion, the respondents acted in accordance with established laws, rules, and policies; therefore, both the appeals in hand being meritless may be dismissed with costs.

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

8. The record shows that the appellants, namely Dr. Muhammad Amin and Dr. Muhammad Shakeel, joined the service as Subject Specialists (BPS-17) in 2010 and 2011, respectively. They were granted study leave to pursue their Ph.D. studies until 2018 and 2019 and resumed their duties on July 16, 2018 and August 1, 2019. The crucial question in both appeals is whether their promotion to BPS-18 with immediate effect in 2022 is in accordance with the law or not?. However, the appellants contend that their juniors were promoted in 2018 and 2019 and they were illegally ignored. A crucial aspect of this case involves Rule IV (a) of the Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, which is pertinent for resolving the issues in hand. Rule IV (a) of the Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, is reproduced as below:-

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"IV. Promotion of officers who are on deputation, long leave, foreign training:

a) The civil servants who are on long leave i.e. one year or more, whether within or outside Pakistan, may be considered for promotion on their return from leave after earning one calendar PER. Their seniority shall, however, remain intact."

9. Civil servants who have taken an extended leave of absence, whether for personal, educational, or health reasons and whether within or outside of Pakistan, may face concerns regarding their career advancement. Recognizing this, the policy ensures that these individuals are given a fair opportunity to be considered for promotion upon their return. The key condition for eligibility is the requirement to earn one calendar Performance Evaluation Report (PER) after returning from leave. This ensures that the civil servant has an opportunity to demonstrate their capabilities and performance under the current work conditions before being assessed for promotion. The PER functions as a critical tool in assessing a civil servant's performance and potential for advancement. By mandating a complete calendar year of performance evaluation post-return, the policy ensures that promotions are based on current merit and performance rather than solely on past achievements. By allowing for promotions based on current performance after reintegration, the civil service can ensure that leadership and pivotal roles are filled by individuals exhibiting up-to-date competence and engagement. This policy reflects a balanced approach, considering both the needs of the civil servants who require time away and the organizational need for effective and fair evaluation of competence. It underscores the commitment to meritocracy while protecting the rights

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and status of civil servants who find themselves in need of a long leave.

The appellants' study leaves do not reflect full pay, however, since lengthy absences are on record, there are no bases for promotions during the periods of absence. The Provincial Selection Boards (PSBs) meetings held on 17.09.2018, 26.12.2018, 17.05.2019, and 23.09.2019 reviewed the appellants' cases. However, due to the incompleteness of the appellants' dossiers—specifically, the lack of Annual Confidential Reports (ACRs)—the appellants were found ineligible for promotions. The appellants rejoined the service in July 2018 and August 2019 respectively; hence, there were no Performance Evaluation Reports (PERs) filed for the years preceding their return. The required documentation for promotions only became complete after the relevant ACRs were completed on 31.12.2020. Since the appellants did not fulfill this requirement Rule IV(a) of the Promotion Policy 2009, the promotions to BS-18 were not granted until their cases were properly processed in the PSB meeting dated 13.12.2022. The PSBs' adherence to the Promotion Policy 2009 is evident. The policy clearly states that those on long leave are not eligible for promotions during their absences. As such, their absences till 2019 precluded them from being considered for promotions in the PSB meetings from 2018 to 2019. The appellants' situations followed the protocols laid out in the policy as they were duly placed before the PSB meetings and their promotions were only realized upon return and the completion of the required performance evaluations. The appellants filed representations against the promotion orders, claiming discrimination and unfair treatment. However, the merits of the


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promotions were in accordance with policy guidelines. Based on the submissions and the evidence, we conclude that the actions taken by the respondent departments were lawful, consistent with the established Promotion Policies and devoid of discrimination. The appellants' claims do not afford any rightful entitlements to promotions under the circumstances presented.

10. Consequently, both the above captioned service appeals being meritless are dismissed. Parties are left to bear their own costs. File be consigned to the record room.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of October, 2024.*


AURANGZEB KHATTAK *22/10/2024*
Member (Judicial)


FAREEHA PAUL
Member (Executive)


Naeem Amin

ORDER

22nd Oct, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our consolidated judgment of today placed on file, the appeal in hand being meritless is hereby 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 22nd day of October, 2024.*


(Fareeha Paul)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)
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