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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 7757/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Hafeez Ullah Khan, Assistant Professor (Rtd.) Government College of Technology Bannu.

..... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa, through Secretary Industries, Commerce & Technical Education Department, Peshawar.
3. Khyber Pakhtunkhwa, Technical Education & Vocational Training Authority, H.No.5-771, Old Bara Road Town, Peshawar.

..... (*Respondents*)

Mr. Farman Ullah Khattak
Advocate

... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General

... For respondents

Date of Institution.....15.11.2021
Date of Hearing.....03.10.2024
Date of Decision.....03.10.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, this Tribunal may graciously please be allowed the service appeal by directing the respondents department to place the case of appellant before Provincial Selection Board for proforma promotion in the forthcoming

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Provincial Selection Board Meeting as per Khyber Pakhtunkhwa, Promotion Police, 2009 in which amendments has been brought, vide notification dated 05.12.2017 with corresponding pay and pension benefits. Any other relief which was not specifically asked would also be granted in the interest of justice.”

2. Brief facts of the case are that the appellant was appointed as an Instructor (Islamiyat) in the respondent department in 1983. He subsequently received promotions to the positions of Lecturer (BPS-17) and Assistant Professor (BPS-18) through orders dated 31.05.2002, and 18.10.2011, respectively. In the final seniority list for Assistant Professors (BPS-18), the appellant was ranked second for promotion to the vacant Associate Professor (BPS-19) positions in 2015. He submitted an application to respondent No. 3 to advance his promotion case to the Promotion Selection Board (PSB) and later filed a representation to respondent No. 2 on 23.12.2020, but received no response. Additionally, he lodged a representation/appeal with the Managing Director of TEVETA Khyber Pakhtunkhwa, and his promotion working paper was prepared. However, the appellant retired from service upon reaching the age of superannuation, effective on 24.01.2021, which has led to the present service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents 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.

4. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.



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5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

6. The perusal of the records reveals that the appellant in instant appeal requested for proforma promotion to the post of Associate Professor (BPS-19) on the ground that before his retirement upon attaining the age of superannuation on 24.01.2021, he through representation requested for promotion as a result of which respondent/department initiated process of promotion by writing letter dated 24.12.2020 vide which information regarding promotion to five posts of Associate Professor (BPS-19) was sought by the department. Appellant also requested through representation dated 04.01.2021 to MDTEVTA Khyber Pakhtunkhwa to place his promotion case before the PSB as all the requirements are completed and as he was going to be superannuated on 24.01.2021, upon which process of working paper preparation was started but during the preparation process of working paper appellant was superannuated on 24.01.2021 without getting promotion despite being eligible and availability of post in promotion quota, in which there is no fault at his part and it was due to delay caused respondents and their inaction.

7. Record further reveals that final seniority list of Assistant Professor (BPS-18) (Basic Science and Humanity Group) was finalized on 10.01.2021 after which respondent/department initiated process necessary for preparation of working paper alongwith other relevant documents with regard to the promotion of Assistant Professor to the post of Associate Professor (BPS-19)

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and letter dated 24.12.2020 was issued to all concerned who are in promotion zone including appellant for providing requisite documents and deficient PERs within 10 days for processing the working paper for onward submission to the administration department for scrutiny and placing before the PSB appellant during this process got superannuated on 23.01.2021.

8. We are of the view that no delay caused by the respondents in processing the case of promotion to post of Associate Professor (BPS-19), because after finalization of seniority list of Assistant Professor on 10.12.2020. There was only one and half month in which respondent quickly initiated the process by seeking information from all officers who are in promotion zone, which takes time as information also includes provision of deficient PERs of the officers, working paper was sent by the department after the retirement of appellant on 30.08.2021, which is evident from serial No.(vi) of Sub Clause (v) of Clause (4) in the Column of "How did the vacancy (lies) under the promotion quota accrue and same when?, because it is mentioned in reply that Mr. Malak Nawab Associate Professor (BPS-19) retired from Government Service on attaining the age of superannuation on 21.04.2021, while appellant was superannuated on 23.01.2021.

9. So, name of the appellant was not included in the panel of officers as he had already retired before sending of working paper during its preparation and completion process. Neither name of the appellant was sent nor considered by the PSB in meeting held on 02.12.2021, therefore, appellant is not entitled for the relief claimed by him in this appeal.

10. For what has been discussed above, we are unison to dismiss the instant service appeal being devoid of merits, hence, not maintainable in the eyes of



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law and the same is dismissed accordingly. Costs shall follow the event.
Consign.

11. *Pronounced in open court at Peshawar and given under our hands
and seal of the Tribunal on this 03rd day of October, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN

*M.KHAN



(RASHIDA BANO)
Member (J)

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ORDER

03.10.2024

1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General alongwith Shahab Khattak, Legal Advisor for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being devoid of merits, hence, not maintainable in the eyes of law and the same is dismissed accordingly. Costs shall follow the events. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 03rd day of October, 2024.*


(KALIM ARSHAD KHAN)
CHAIRMAN


(RASHIDA BANO)
Member (J)

*M.KHAN