

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

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

*Service Appeal No.1254/2016*

**Mr. Muhammad Bakhsh Malik, C/O Allah Bakhsh Malik, House No. 3, Street E-1, Khawaja Town, Pajaki Road, Bashir Abad, Peshawar.**

.....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Chief Secretary**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **The Secretary** Agriculture, Livestock & Coop: Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. **The Secretary**, Establishment Department, government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

.....(*Respondents*)

Present:

Syed Nauman Ali Bukhari,  
Advocate.....For appellant.

Syed Naseer Ud Din Shah,  
Assistant Advocate General.....For respondents.

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Date of Institution.....22.12.2016  
Dates of Hearing.....13.10.2022  
Date of Decision.....13.10.2022

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 19.09.2016 COMMUNICATED TO APPELLANT ON 24.11.2016 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT FOR NOTIONAL/PROFORMA PROMOTION TO BPS-20 HAS BEEN REJECTED FOR NO GOOD GROUNDS.**



## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that the appellant joined the Agriculture, Livestock Department in the year 1981 and with the passage of time he got promotion to BS-19; that as per notification dated 29.04.2014, the post of Director General On Farm Water Manager (BS-20) fell vacant and was to be filled in "by selection on merit from amongst the three senior most BS-19 officers of the On Farm Water Management, with at least five years service in BS-19 or 17 years service in BS-17 and above; that in utter violation of law and rules, a junior officer of BS-19 (Muhammad Khurshid Afridi) was given additional charge of the post with all financial administrative powers vide order dated 22.04.2015, against which the appellant filed writ petition No. 2094-P/2015 in the Hon'ble Peshawar High Court, which was decided on 28.01.2016 and the respondents were given two months time for completing the process of selection as per rules; that the respondents were not obeying the directions of Hon'ble Peshawar High Court, therefore, the appellant filed C.O.C No. 176/2016 which was decided on 16.06.2016; that the appellant then filed departmental appeal on 17.06.2016 which was rejected on 19.09.2016 and communicated to the appellant on 24.11.2016, hence, the instant service appeal in this Tribunal on 22.12.2016.



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

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

4. Learned counsel for the appellant contended that the appellant had not been treated in accordance with law and rules. That the concerned authority had written for termination of probation to the competent authority but despite that no proper orders were passed and the matter was intentionally delayed by the concerned authority for which the appellant could not be punished. He further argued that in many cases it was held by the august Supreme Court of Pakistan that the authorities were legally required to do their legal duties in time especially in cases of promotion, but despite that binding directions of the Apex Court, the appellant had been deprived from his legal rights, which also resulted in depriving him from the pensionary benefits of BPS-20. That the impugned order was against the spirit of Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rules-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, therefore, the impugned order



was in total violation of law and was not sustainable. That the respondents were legally bound to conduct proper Provincial Selection Board to fill the post of the Director General On Farm Water Management (BS-20) rather to extend favour to their blue eyed in an illegal manner. Learned counsel requested that the appeal might be accepted granting all back benefits to the appellant.

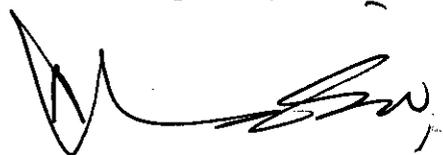
5. Learned Assistant Advocate General argued that order dated 22.04.2015 vide which Mr. Muhammad Khurshid Afridi, Director Headquarter was authorized to hold the additional charge of the vacant post of the Director General On Farm Water Manager, Khyber Pakhtunkhwa Peshawar was according to law and rules as the authorized officer was equally eligible like the appellant. He further argued that in light of the direction dated 16.06.2016 of Hon'ble Peshawar High Court, Peshawar, the promotion case of the appellant was reviewed by the competent authority who rejected the same due to the reason that "as the officer was under probation in BS-19 and during the period of probation no civil servant was eligible for promotion to higher post in terms of Para-IV (f) of Promotion Policy 2009. The decision of the competent authority was communicated to the appellant vide order dated 17.10.2016. He therefore, requested that the appeal might be dismissed.



6. The appellant had retired from the respondent department on 14.06.2016 on attaining the age of superannuation. On 15.04.2015 the incumbent Director General (On Farm Water Management) Mr. Fazal Rabi stood retired vacating the post, which was to be filled in as per prevalent rules notified on 29.04.2014 whereby the post of the DG was to be filled in by selection on merit from amongst the three senior most BPS-19 officers On Farm Water Management with at least five years service in BPS-19 or seventeen years service in BPS-17 and above. Instead of filling the vacancy under the rules the department gave additional charge of the post to one Mr. Muhammad Khurshid Afridi, Director HQ vide notification No. SOE(AD) 3(3) 5/2015/WM dated 22.04.2015. Aggrieved of the same the appellant preferred writ petition No.2094-P/2015 before the Hon'ble Peshawar High Court, Peshawar to get the above notification declared as unlawful, unconstitutional etc with a further prayer to direct the respondents to convene a Provincial Selection Board meeting for filling the post of DG On Farm Water management. The writ petition was decided vide order dated 28.01.2016 by the Hon'ble Peshawar High Court on the commitment of Syed Masood Shah, Section Officer Litigation, Agriculture Department; that the process of selection to the post of DG (BS-20) would be completed within a span of two months. When that was not so done the appellant resorted to C.O.C No. 176-P/2016 which was disposed on 16.06.2016 with a direction that the case of the appellant should be placed before the worthy Secretary Agriculture



Government of Khyber Pakhtunkhwa, who was to sympathetically review the matter and see what benefits could be granted to the appellant. The appellant was let at liberty to agitate the matter before the appropriate legal forum incase if the appellant could not be considered within sixty days. The said communication was made on 19.09.2016 regretting the request of the appellant on the ground that the appellant was on probation and was not found eligible for promotion to higher post. The department had reiterated such stance in the written reply/comments filed by them in this appeal. Thus the only ground which was the so called hurdle in the way of granting promotion to the post of Director General (BS-20) was that he was on probation in BPS-19 at the time when he had requested for seeking promotion. The seniority list annexed with the appeal shows that the appellant was at serial No.1 of the list and was promoted to Grade-19 on 14.10.2014 alongwith nine other officers shown junior to him in the list but vide Notification No.SOE(AD)V-7/2019/WM dated 14.10.2019 the appellant's promotion to BPS 19 was antedated and considered with effect from 12.12.2011 and by the time the post of DG BPS-20 fell vacant on 15.04.2015 on retirement of Fazal Rabbi and after the retirement of Fazal Rabbi on 15.04.2015, the appellant was admittedly the senior most officer and had also completed one probation on 13.10.2015, so he was eligible for promotion to the post of DG BPS-19 on 13.10.2015 i.e. much before his retirement and by that time he had undisputedly his credit more than 17 years service in



BPS 17 also. As aforesaid, the only ground which the respondents had taken for not holding the appellant eligible for promotion to higher post was the alleged fact that the appellant was on probation. This contention of the respondents is not true as vide letter No. 5840/DG/OFWM dated 01.10.2015, the Director General had written to the Government of Khyber Pakhtunkhwa for termination of probation period in BPS-19 by specifically naming the appellant at serial NO.1 of the letter and stating in clear terms that the officers, named in the letter including the name of the appellant, had almost successfully completed their probation in BPS-19, therefore, a request for termination of probation period of the officers including the appellant was made. This letter was followed by another letter of the department bearing No.SOE(AD)V-7/2014 dated 21.10.2015, whereby the department sought the performance and conduct reports of the employees given by the controlling authority. Vide letter No. 6160 dated 29.10.2015, DG again wrote a letter explaining that the officers named in the letter, had achieved the set targets/assignments well in time and their performance and conduct remained satisfactory. It was added that due to the extra-ordinary efforts and dedication of the officers, the department not only achieved rather exceeded the set targets within the stipulated time period. It was also stated that no complaint had so far been received/observed against any of the officer during the probation. Again a request was made that as upon successful completion of their probation period, probation termination



case might be processed on merit in the public interest. These documents are the concrete evidence of the fact that the probation period was not extended rather it was sought to be terminated and only formal notification/order in this respect was to be passed, which might have been passed but has not been annexed with this appeal by either side. So the only hurdle asserted by the department i.e. that the appellant was on probation and was thus not eligible to be considered for promotion in the next higher grade, is groundless and not tenable. When there was a clear vacancy in BPS 20 available before the retirement of the appellant, the department was bound to finalize the issue of promotion as expeditiously as possible or at least prior to the retirement of the appellant where the appellant had served for more than 35 years and he by all means was entitled to promotion especially when very clear directions were given by the Hon'ble Peshawar High Court in the writ petition filed by the appellant after making commitment/assurance by the departmental representative. Reliance is placed on 2022 SCMR 1546 titled "*Homeo Dr. Asma Noreen Syed-vs-Government of Punjab*" and 2022 SCMR 1765 titled "*Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others versus Fazali Ghufraan*".

7. Therefore, this appeal is allowed with the direction to the respondents to grant the appellant proforma promotion w.e.f. the date, the post of D.G (BPS-20) had fallen vacant with all consequential benefits. Costs shall follow the event. Consign.



*Service Appeal No.1254/2016 titled "Muhammad Bakhsh Malik-vs- Govt of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 13.10.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

**8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13<sup>rd</sup> day of October, 2022.**



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)