

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Musarrat Hilali

Justice Shakeel Ahmad

Civil Petitions for Leave to Appeal No.700-P & 701-P/2024

[Against the judgment/order dated 25.07.2024 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.1183 & 1184/2023]

***Secretary to Govt. of Khyber Pakhtunkhwa
Communication & Works Department, Civil
Secretariat, Peshawar, etc.*** (in both cases)
...Petitioner(s)

VERSUS

***Inayat Ullah
Sami Ud Din*** (in C.P.700-P/2024)
(in C.P.701-P/2024)
...Respondent(s)

For the Petitioner(s) : Mr. Bashar Naveed, Additional Advocate-General, Khyber Pakhtunkhwa

For the Respondent(s) : N.R.

Date of Hearing : 30th of July, 2025

ORDER

Musarrat Hilali, J.- These civil petitions for leave to appeal are directed against consolidated judgment dated 25.07.2024 passed by the learned Khyber Pakhtunkhwa Service Tribunal, Peshawar ("the Tribunal") in Service Appeals No.1183/2023 and 1184/2023, whereby the service appeals of the present respondents—Sub Engineers in the Communication & Works Department—were allowed, and they were held entitled to promotion to the post of Assistant Engineer (BPS-17) in accordance with the rules applicable at the time they became eligible.

2. The brief facts are that the respondents were appointed as Sub Engineers (BPS-12) in the year 1986 and were subsequently upgraded to BPS-16. At the relevant time, their working papers for promotion to the post of Assistant Engineer

(BPS-17) were prepared. However, meeting of the Departmental Promotion Committee (“**the DPC**”) was deferred by the department on the premise that new promotion rules were under consideration. Eventually, revised rules were notified on 20.01.2023, under which the respondents were no longer eligible for promotion. Their departmental appeals remained undecided, prompting filing of service appeals before the Tribunal.

3. The Tribunal, upon hearing both sides and examining the record, accepted the appeals which have been challenged by the petitioner before this Court.

4. The learned AAG for the petitioners argued that no vested right to promotion exists unless a formal promotion order is issued, and that the Tribunal erred in interfering with administrative discretion. It was further contended that the revised rules were applicable at the time of decision and thus rightly followed by the department.

5. The record of this case reveals that respondents had satisfied the eligibility criteria for promotion pursuant to the rules enforced at the time of their initial appointment. Consequently, their cases were fully ripe for consideration by the DPC. The subsequent delay in convening meeting of the DPC was an administrative failure attributable solely to the department and cannot be imputed to the respondents. The legal position in this regard is well settled. An employee, who fulfills the prescribed eligibility conditions acquires a legitimate expectation to be considered for promotion in accordance with the prevailing rules. The fundamental principle governing the application of amended rules is that such amendment operates prospectively unless a contrary intimation is manifestly evident from the statute. Specifically, where an amendment adversely effects the accrued substantive rights, such as those pertaining to seniority or eligibility for promotion, it cannot be applied retrospectively to the employees appointed prior to the amendment. Retrospective application is permissible only if the parent statute, which confers the rule making power, contain an express provision to that effect. In absence of such explicit legislative sanction applying amended rules retrospectively to the detriment of civil servants, who had

already accrued a right to be considered for promotion, is legally untenable. It constitutes a violation of the principle of legitimate expectation and renders departmental action arbitrary. Furthermore, the question of whether the amended rules are to be applied prospectively or retrospectively is beyond the scope of DPC's mandate. The Departmental Promotion Committee also does not have the authority to delay the meeting while waiting for amendment of the rules.

6. For these reasons, we affirm the findings of the Tribunal dated 25.07.2024.

Sd/- J
Sd/- J

Peshawar, the
30th of July, 2025
Syed Farhan Ali
Approved for reporting