

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

Civil Petition No.18-P of 2021

[Against the judgments dated 13.11.2020, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.880/2018]

***Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar and others.*** ... *Petitioner(s)*

Versus

Hizbullah Khan and another. ... *Respondent(s)*

For the Petitioner(s) : Mr. Zahid Yousaf Qureshi, Additional
Advocate General, KP
Asad ud Din, Asif Jan,
Superintendents
Javaid Maqbool Butt, Incharge
Litigation, Agriculture Department, KP

For Respondent No.1 : Mr. Mukhtar Ahmed Maneri, ASC

Date of Hearing : 08.06.2021

ORDER

Gulzar Ahmed, CJ.— Facts of the matter are that respondent No.1 (**the respondent**) was promoted to the post of Senior Scale Stenographer (BPS-16) on 25.05.2009 and his name appeared at Serial No.1 of the seniority list. The case of the respondent was twice submitted for promotion to the post of Superintendent (BPS-17) but he was not considered for promotion. The respondent filed departmental appeal, which was responded that his case is kept pending till finalization of new service rules, however, at the same time junior officials of the department were promoted to the post of Superintendent (BPS-17). The respondent filed service appeal before the Khyber Pakhtunkhwa Service

Tribunal, Peshawar **(the Tribunal)**, which by the impugned judgment dated 13.11.2020 was allowed and the petitioners were directed to process the case of the respondent for ante-dated promotion from the date when his case was first considered for promotion with all back benefits accrued to him.

2. We have heard the learned Additional Advocate General, KP **(AAG)** and have gone through the record of the case.

4. Learned counsel appearing for the respondent has supported the impugned judgment.

5. It is admitted that the respondent-Hizbullah's case for promotion to the post of Superintendent (BPS-17) was put up twice through working-papers dated 16.08.2016 and 30.12.2016. In both the working-papers the name of respondent appeared at Serial No.1 on the basis of the final seniority list dated 06.01.2016 of Senior Scale Stenographers (BPS-16), where his name appeared at Serial No.1. What we note is that respondent was not informed about the fate of his promotion by the department. It was only after he filed the departmental appeal dated 26.10.2017, which was replied vide letter dated 14.12.2017, the reason was given that his case has been kept pending till finalization of the new rules.

6. In our view, this reason could not have been a valid and legal reason for not considering the case of promotion of respondent, for that, once an employee's case is put up before the DPC, the same has to be decided by the DPC, either of allowing the promotion or not allowing the promotion and in the last mentioned eventuality, the employee has to be informed by giving reason of denial of promotion to him. Admittedly, the rules for promotion

dated 20.04.2012 were in the field and the method of promotion provided in the said rules for promotion of Senior Scale Stenographers (BPS-16) to the post of Superintendent (BPS-17) was 10% by promotion on the basis of seniority-cum-fitness from Senior Scale Stenographers with five years' service as such. These rules were very much in force when the case of respondent was put up before the DPC.

7. In presence of the rules, the department's response that his case has been kept pending till finalization of new service rules, was *ex facie* illegal and also unjustified. When matter of promotion is placed before the DPC, the DPC is required by law to consider the case of the employee put up for promotion and in doing so, it has to consider the case of employee for promotion fairly, justly and honestly.

8. The DPC's action of not considering or taking decision for promotion of respondent was, thus, not sustainable in law. The Tribunal in the impugned judgment while accepting the service appeal of respondent has given direction to the petitioners to process the case of respondent for ante-dated promotion from the date when his case was first considered for promotion with all back benefits accrued to him.

9. In our view, the using of the word process by the Tribunal in the impugned judgment was not justified as well as legal, in that, while considering the case of promotion on seniority-cum-fitness, the question of eligibility and fitness has to be determined. While eligibility can be determined on the basis of terms and conditions of service, the question of fitness is always

based upon subjective evaluation on objective criteria, and such exercise has been left to be conducted by the competent authority in the department. It is, however, always expected that the competent authority while exercising its discretion in determining the case of fitness or otherwise of a government servant for being promoted to hold higher post shall not conduct itself arbitrarily or in colourable exercise but consider the question of fitness based upon reasons, fairly and justly. Therefore, the direction of the Tribunal of processing the case of respondent for ante-dated promotion from the date when his case was first considered for promotion with all back benefits accrued to him, appears to be an excess of jurisdiction and thus, is not sustainable.

10. As two working-papers of respondent for his promotion to the post of Superintendent (BPS-17) have already been put up before the DPC, in our view, it will be just and fair to direct the DPC to consider the case of respondent for promotion to the post of Superintendent (BPS-17) and decide the same expeditiously, preferably, within a period of three months from today.

11. In view of the above, the petition is converted into an appeal and is partly allowed to the extent noted above.

CHIEF JUSTICE

JUDGE

JUDGE

Bench-I
Islamabad
08.06.2021
APPROVED FOR REPORTING
Rabbani*/

