

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Irfan Saadat Khan

**Civil Appeal No.56-K/2021**

Against the judgment dated 02.10.2019  
passed by Federal Service Tribunal  
Islamabad (Karachi Bench) in Appeal  
No.410(K)CS/2015

...Appellant(s)

Siraj Nizam

**Versus**

...Respondent(s)

Federation of Pakistan and others

For the Appellant(s):                      Dr. Shah Nawaz, ASC  
Mrs. Abida Parveen Channar, AOR

For the Respondent(s):                      Mr.Ziaul Haq Makhdoom, Additional  
Attorney General for Respondent No.1 & 2

For Respondent No.3 to 5:                      Nemo

Date of Hearing:                                      02.4.2024

**Judgment**

**Muhammad Ali Mazhar, J.-** This appeal with leave of the Court, is directed against the judgment dated 02.10.2019 passed by the Federal Service Tribunal, Islamabad (Karachi Bench) ("**Tribunal**") in Appeal No. 410(K)CS/2015 whereby the appeal filed by the appellant was dismissed.

2. The transient facts of the case are that the appellant remained in the employment of National Highways & Motorways Police as a Senior Patrolling Officer (BS-16) with effect from 26.11.2001 to 01.03.2011. He applied for the post of Assistant Executive Engineer (BS-17) in Pakistan Public Works Department (PWD) through proper channel and pursuant to the recommendations of Federal Public Service Commission, the appellant was appointed in PWD on 02.03.2011. The bone of contention relates to the promotion from Assistant Executive Engineer BS-17 to Executive Engineer BS-18 in terms of the criteria of promotion as set out in SRO No. 897(1)/84

dated 11.10.1984, which was subsequently amended vide SRO No.855(1)/91 dated 25.07.1991 in which basic condition for promotion from Assistant Executive Engineer BPS-17 to Executive Engineer (BPS-18) was requirement of 05 years' service experience in BPS-17 with the qualification of passing Departmental Examination as well as the application of Statutory, Instruction (SI) No. 157. According to the appellant, he was eligible for promotion but was not considered so he filed departmental representation, which was not decided hence, he preferred appeal before the Tribunal, but appeal was dismissed by means of impugned judgment.

3. The leave to appeal was granted by this Court on 21.12.2021 in the following terms:

"Learned counsel for the petitioner submits that the petitioner was appointed as a Senior Patrolling Officer in BPS-16 on 26 November 2001 and applied for the position of Assistant Executive Engineer in BPS-17, having sought and obtained requisite permission, and successfully took the exam held by the Federal Public Service Commission on 2 March 2011. He submits that having been appointed in BPS-17, the petitioner was entitled to the one half of his service in BPS-16 for consideration towards his promotion in BPS-18 in terms of Rule 8-A of the Civil Service (Appointment, Promotion and Transfer) Rules, 1973 and Statutory Instruction No.157 issued thereunder. However, despite attaining the sufficient years for consideration for promotion to BPS-18, the petitioner was not considered. Therefore, he submitted a representation, which was not answered, which compelled him to approach the Federal Service Tribunal ("**Tribunal**"). The Tribunal held, through the impugned judgment, that service in another department cannot be taken into consideration. Learned counsel states that the stated observation of the Tribunal is not contained in Statutory, Instruction No. 157 and as such the learned Chairman and Member of the Tribunal had erred in law. He further states that though the petitioner was subsequently promoted in Grade 18 (without being granted the benefit of Statutory Instruction No.157) but the issue remains alive because he will be denied the benefit of Statutory Instruction No.157 when he is considered for promotion to Grade 19 in view of the said determination in the impugned decision.

2. The points raised require consideration and we grant leave to consider the same. Learned counsel states that the petitioner does not challenge the appointments/promotions of respondent Nos.3, 4 and 5. Therefore, notice be issued to the respondent Nos. 1 and 2. Copy of the order passed today to accompany the notices to enable the respondents to come prepared."

4. The learned counsel for the appellant argued that the appellant was relieved from previous service to join his new appointment as Assistant Executive Engineer BPS-17 and his previous service in National Highways & Motorways Police in BPS-16 was counted by the respondent No.2 but the learned Tribunal wrongly observed as if the appellant had resigned from previous service to join his new service, his previous service will not be counted. It was further argued that the appellant had already qualified Departmental Examination to meet the conditions of SRO No.855(1)/91 dated 25.7.1991 which is clearly transpiring from Office Order No.A-11-716/799(Col.58) dated 17.04.2014, wherein the name of appellant is mentioned at S.No.37. It was further averred that the learned Tribunal failed to consider the effect of Sl. No.157 of the Establishment Code (2013 Edition).

5. The Additional Attorney General argued that the record of the case demonstrates that the learned Tribunal failed to consider various crucial aspects as an appellate forum in this case which required proper consideration and application of mind to reach out the actual controversy.

6. Heard the arguments. In the plain sight, the findings of the learned Tribunal recorded in the impugned judgment depicts that the appellant failed to qualify the departmental examination since he was directly inducted by dint of recommendations forwarded by the Federal Public Service Commission for the recruitment as an Assistant Engineer in BS-17. At this juncture, it is quite pertinent to mention that according to Rule 8-A of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, it is clearly provided that no promotion on regular basis shall be made to posts in basic pay scales 17 to 22 and equivalent unless the officer concerned has completed such minimum length of service, attended such training, and passed such departmental examination, as may be prescribed from time to time. In actuality, it is not the appellant's case that he was not qualified but quite the reverse, the Office Order dated 17.04.2015, unambiguously demonstrates the names of persons who declared passed or failed in the Departmental Examination of Assistant Executive Engineer (Civil & E/M), wherein, the name of appellant is enumerated at Serial No. 37 (Karachi Center) as successful candidate. What's more, neither the learned Tribunal considered total length of service performed by the appellant in the different departments during government service for achieving the benefit of Sl.

No.157 of the Establishment Code (2013 Edition) nor virtually decided why the benefit of past length of service in the government department was not permissible to him, if the appellant joined another government service by sendoff his earlier employment through proper channel, which factual controversy could only be decided by the learned Tribunal being a fact-finding forum which is meant for civil servants and for the proper consideration and far-sightedness, the total length of service was required to be examined which the appellant had served out in the different departments during government service to actually understand whether Sl. No.157 of the Establishment Code applies to him or not? Seemingly, the learned Tribunal misconstrued the above provision and interpreted in the manner that the service of other than the department in which the appellant is currently serving cannot be taken into consideration for the promotion, more so, before joining the current department of PWD, he had to resign from the earlier department of National Highways & Motorway Police, therefore, the service rendered by the appellant in that department was ceased to exist and not countable. For the ease of reference, the relevant provision of Establishment Code is replicated as under: -

**"ESTACODE (Volume-1), Edition-2013**

**CHAPTER-2: Recruitment, Appointment, Seniority & Promotion**

**Sl.No.157:**

Minimum length of service for  
eligibility for promotion to  
posts in various Grades

In pursuance of rule 8-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (SL.No.1) and in supersession of the instructions laid down in the Establishment Division's O.M. No.1/9/80 R.II (A), dated the 12<sup>th</sup> January, 1981, (Annex), the President is pleased to decide that the minimum length of service for promotion to various grades shall be as follows:-

- |                |                                |
|----------------|--------------------------------|
| - For Grade 18 | 5 years in Grade 17            |
| - For Grade 19 | 12 years in Grade 17 and above |
| - For Grade 20 | 17 years in Grade 17 and above |
| - For Grade 21 | 22 years in Grade 17 and above |

Provided that: -

(i) Where initial appointment of a person not being a person in government service, takes place in a post in BPS 18,19 or 20, the length of service specified in this Office Memorandum shall be reduced by the following periods;

<u>First appointment in</u>	<u>Reduced by</u>
*Grade - 18	5 years
*Grade - 19	12 years
*Grade - 20	17 years

(ii) Where initial appointment of a person already in government service takes place, on recommendations of the Federal Public Service Commission, in a post in BPS 18, 19 or 20, the length of service specified in this Office Memorandum shall be reduced by the periods specified in proviso (i);

(iii) Where first appointment of a person other than a person covered by proviso (ii) was made to government service in BPS 16 or below, one-half of the service in BPS 16 and one fourth in BPS 15 and below may be counted as service in BPS 17 for computing length of service for the purpose of promotion only.

[Authority. Establishment Divisions O.M. No.1/9/80-R.2, dated 2<sup>nd</sup> June, 1983]”.

7. According to the appellant, though he was subsequently promoted in Grade 18 (without being granted the benefit of Statutory Instruction No.157) but insists that the issue is still alive because he was denied the benefit of S.I. No.157 and as a consequence thereof, if he is considered for promotion to Grade 19, the non-allowance of benefit of the above Statutory Instruction will seriously prejudice his promotion evaluation in future also. A right of appeal is most valuable right of every aggrieved person. It is also well-known edict that an appeal is a continuation of the original proceedings and the appellate jurisdiction is always obligated to delve into not only on the question of law but on facts also. The whole case reopens in the appellate jurisdiction to explore and consider all questions of fact and law whether rightly adjudicated by the lower fora or not? Therefore, the verdict of the appellate court either allowing or dismissing the appeal or modifying the order of lower fora, ought to bring to light conscious and proper application of mind. In the present perspective, the case relates to the appellate jurisdiction of learned Tribunal which an ultimate fact-finding forum is constituted to redress the lawful grievances of civil servants and ventilate their sufferings. So for all intent and purposes, the leaned Tribunal has exclusive jurisdiction in the matter relating to the terms and conditions of service of the Civil Servants and can go into all the facts of the case and the relevant law for just and proper decision with this clear distinction and sanguinity that under Article 212 (3) of the Constitution of Islamic Republic of Pakistan, an appeal lies to this Court against a judgment, decree, order or sentence of an Administrative Court or Tribunal only if this Court, being satisfied that the case involves a substantial

question of law of public importance and grants leave to appeal. In case of Usman Ghani vs. Chief Post Master, GPO, Karachi (2022 SCMR 745), this Court held that the wisdom of setting up Service Tribunal under Article 212 of the Constitution is to deal and decide the matters relating to the terms and conditions of service of Civil Servants. Under section 5(2) of the Services Tribunal Act, 1973, the Tribunal for the purposes of deciding any appeal be deemed to be a Civil Court and have the same powers as are vested in such court and even under Rule 18 of the Service Tribunals (procedure) Rules, 1974, framed by the Federal Government in exercise of powers conferred by section 8 of the Service Tribunals Act, 1973, the Tribunal may if it considers necessary, appoint an officer of the Tribunal to record evidence of a witness for and on behalf of the Tribunal and the parties and their Advocates may suggest any question to the witness and a Member may, besides such questions, put any other question to the witness. As a forum of exclusive jurisdiction, the Constitutional mandate as well as the provisions of Service Tribunals Act, 1973, articulates and commands to do the complete and substantial justice between the parties with a rational denouement of the case.

8. As result of above discussion, this appeal is allowed. As a consequence, thereof, the impugned judgment is set aside and the matter is remanded to the learned Tribunal to decide the appeal afresh strictly in accordance with law preferably within a period of three months. Since the leave granting order articulates the statement of learned counsel for the appellant not to challenge the appointments/promotions of respondent Nos.3,4 and 5, therefore, this statement shall also apply to the pending appeal before the learned Tribunal.

Judge

Judge

KARACHI  
02.4.2024  
Naseer  
Approved for reporting