

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

**Bench:**

Mr. Justice Amin-Ud-Din Khan  
Mr. Justice Jamal Khan Mandokhail

**Civil Appeal No. 40-Q of 2018**

*(On appeal from the judgment of the Balochistan Service Tribunal, Quetta dated 25.02.2015 passed in S.A. No. 394 of 2013)*

Chief Secretary, Govt. of Balochistan and others

**.....Appellant(s)**

**Versus**

Masood Ahmed and another

**....Respondent(s)**

For the Appellant(s):     Mr. Muhammad Ali Rakhsahani, Addl. AG  
   Mr. Gohar Yaqoob Yousafzai, ASC

For the Respondent(s):   *Ex. Parte*

Date of hearing:             26.07.2023

**JUDGMENT**

**Jamal Khan Mandokhail, J.-** Respondent No.1 was an officer in BS-20 of the Government of Balochistan and was serving in the Federal Government on deputation w.e.f. 01.01.2001 to 31.12.2013. The Provincial Selection Board (the "**Board**") convened a meeting for promotion of officers. The case of Respondent No.1 for promotion was not considered for the reasons that he was on deputation, did not re-join his parent department, nor submitted his ACRs during the said period. Consequently, his promotion was deferred and instead Respondent No.2, who was junior to him, was promoted. Respondent No.1, feeling aggrieved, filed an appeal before the Balochistan Service Tribunal (the "**Tribunal**"). The Tribunal agreed with the findings of the competent authority regarding promotion of Respondent No.2, however, in paragraph 10 of the impugned judgment, the Tribunal held as under:

*"However, we also direct the department to allow proforma promotion to the appellant. In view of the above discussion, we accept the appeal to the extent that the respondent No.2 (Secretary S&GAD) grant*

*proforma promotion to the appellant in BS-21 as personal by creating a post through Finance Department after fulfilment of all the formalities by the appellant through Provincial Selection Board. The appeal is disposed of accordingly with no order as to costs."*

2. Respondent No.1 did not challenge the impugned judgment of the Tribunal, instead it was challenged by the Government of Balochistan through its Chief Secretary, wherein leave to appeal was granted on 13.12.2018 as under:

*"2. Learned counsel contends that the post in BPS-21 is a selection grade post; therefore, no such direction could have been issued in the light of the judgment rendered by this Court in the case of Government of Pakistan versus Hameed Akhtar Niazi (PLD 2003 Supreme Court 110). The point noted above does call for examination, therefore, leave to appeal is granted."*

3. Despite service of notice, Respondent No.1 did not appear before this Court, as such, he was proceeded against *ex parte* on 28.02.2020.

4. Arguments heard and have perused the record. The Government of Balochistan has framed the Balochistan Province Civil Servants Deputation Policy ("**Deputation Policy**"), Para 4(iii) whereof stipulates that "*a deputationist shall not be promoted in absentia in his parent department, if he becomes due during the period of his deputation unless he rejoins.*" As per the Deputation Policy, re-joining the department is a condition precedent for a deputationist for his consideration for promotion by the Board. Admittedly, Respondent No.1 was serving in the Federal Government on deputation for almost 13 years, contrary to the period fixed by the Deputation Policy. In order to consider his case for promotion, he was required to report to his parent department and submit his ACRs, but he failed to do so as required. Since Respondent No.1 was not entitled to be considered for promotion, the Board was right in not considering his case.

5. The Tribunal while deciding Respondent No.1's appeal, endorsed the decision of the Government regarding his non-promotion. The said decision of the Tribunal was not challenged by Respondent No.1, rather the Government feeling aggrieved by the above-reproduced paragraph of the impugned judgment filed this appeal. The only issue in the instant appeal is with regard to the direction of the Tribunal to the Government for creation of a new post and promoting the Respondent No.1 against it. Under section 5(1) of the Service Tribunals Act, 1973 (the "**Act**"), the Tribunal on an appeal of an aggrieved person, is empowered to confirm, set aside, vary, or modify the order appealed against.<sup>1</sup> The power of the Tribunal has been enshrined in the Act; thus, it cannot go beyond what the law states. Creation of a post is a policy decision, based upon the requirements of a department and involves economic factors, which is the sole discretion and executive authority to be exercised by the Government alone. The Tribunal cannot assign to itself such executive function, nor can it grant relief not provided under the law.<sup>2</sup> It is supposed to apply the law in its true letter and spirit, but through the impugned judgment the Tribunal has entered into the domain of the Executive. Exercising such power beyond its mandate is a dangerous trend, which must be discouraged.

6. Even otherwise, promotion of an officer in selection grades is based upon the principle of fitness-cum-seniority, which depends upon multiple factors, as per the service rules based upon the service record of the incumbent. These factors can only be determined by the Board and upon its recommendations, it is the prerogative of the Government to agree or disagree with such recommendations. However, in case of disagreement, reasons must be assigned by the competent authority. Consequently, directing the Government to create a new post and grant proforma promotion to Respondent No.1 amounts to exercise of power in excess of the Tribunal's authority, which is without jurisdiction.

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<sup>1</sup> PLD 2003 SC 724

<sup>2</sup> 2023 SCMR 803; (2008) 1 SCC 683

Thus, in view of above, the appeal is allowed. The impugned judgment of the Tribunal to the extent of the directions in paragraph 10 is hereby set aside.

Judge

Judge

Quetta,  
26.07.2023  
K.Anees/Ammar, LC  
APPROVED FOR REPORTING