

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

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Ijaz ul Ahsan  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

**CIVIL APPEAL NO.931 OF 2020**

[Against the judgment dated 8.9.2015, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, in Appeal No.1681 of 2011]

***Wali Jan.***

*...Appellant*

***Versus***

***Government of Khyber Pakhtunkhwa  
through Secretary Agriculture, Livestock  
Cooperative Department, Peshawar and  
others.***

*...Respondents*

For the Appellant : Mr. Amjad Ali (Mardan), ASC  
(via video link from Peshawar)  
Haji Muhammad Zahir,  
AOR (absent)

Respondents : Mr. Zahid Yousaf Qureshi,  
Addl. A.G., KPK

Date of Hearing : 01.02.2021

**ORDER**

**GULZAR AHMED, CJ.-** The service appeal filed by the appellant in the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**) was dismissed by the impugned judgment dated 08.09.2015. The operative part of which is as follows:

“7. From perusal of the record it transpired that at the time of consideration for promotion anti-corruption proceedings for two different cases No.191 of 2001 and 29 of 2002 were pending adjudication in the Court of Special Judge Anti-corruption

which were decided on 14.10.2003 and 26.02.2004 respectively and appellant was acquitted on the benefit of doubt. The deferment of the appellant on the relevant time was thus in accordance with the provision as contained in the promotion policy of the Provincial Government. Moreso, the appellant failed to agitate his deferment in time but took up the matter on 12.05.2011 after abnormal delay of almost 9 years. It is also ironical to observe that assessment of suitability and fitness for the higher post is a pre-requisite for promotion, it entails assumption of higher responsibilities and actualization of charge in the higher post which is not possible under the existing law/rules on promotion. The prayer of the appellant for promotion to the higher post after a long time of his retirement carries no weight and cannot be entertained. The cases cited by the appellant were also not identical, hence no discrimination against him. For these reasons the appeal being devoid of any merits is dismissed. ..."

2. The learned counsel for the appellant contends that the last acquittal of the appellant took place on 15.04.2011, which the Tribunal did not take into consideration.

3. We have asked the learned counsel for the appellant to show from the Memo of Appeal filed before the Tribunal about the appellant's acquittal on 15.04.2011, the learned counsel was unable to show that any such acquittal was relied upon by the appellant in the service appeal filed before the Tribunal.

4. We have also asked the learned counsel to show from the very departmental appeal as to whether the acquittal on 15.04.2011 was mentioned in it. No such mention was found even in the departmental appeal filed by the appellant.

5. It is settled law that a party has no right to raise an absolutely new plea before this Court and seek a decision on it, nor could such plea be allowed to be raised as a matter of course or right on the pretext of doing complete justice. Besides, this Court in its appellate jurisdiction will not generally determine a question of fact that has not been pleaded or raised by the party in the lower forum. Reliance in this regard may be made to the case of Sarhad development Authority N.W.F.P. (Now KPK) v. Nawab Ali Khan (2020 SCMR 265).

6. The Tribunal has already dealt with the matter and no illegality has been pointed out in the impugned judgment. The same is, therefore, maintained. The appeal is dismissed.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**