

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 Appeal No.40 of 2021

[Against the judgments dated 12.09.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.625/2018]

***Secretary Agriculture, Livestock &
Cooperation Department, Peshawar & others. ... Appellant(s)***

Versus

Anees Ahmad. ...Respondent(s)

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

For the Respondent(s) : Mr. Fazal Shah Mohmand, ASC

Date of Hearing : 08.06.2021

O R D E R

Gulzar Ahmed, CJ.— Facts of the matter are that the respondent was promoted to the post of Office Assistant (BPS-14) in the year 2004 and his post was up-graded to BPS-16 in the year 2014. The service rules were notified on 20.04.2012, providing 90% quota for promotion on seniority-cum-fitness basis among the holders of the posts of Assistant/Accountant, who have completed five years' service. In the year 2013, post of Superintendent became vacant. The working-paper for promotion of the respondent was prepared where his name appeared at Serial No.2. The

Departmental Promotion Committee (**the DPC**) was scheduled on 19.06.2017 but it was delayed to 19.10.2017. On 19.10.2017 the case of the respondent for promotion was not considered by the DPC for the reason that he had already retired on attaining the age of superannuation on 21.06.2017. The respondent filed service appeal in the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**), by the impugned judgment dated 12.09.2019, the service appeal of the respondent was allowed and the appellants were directed to consider the case of the respondent for *pro forma* promotion from the date of his retirement.

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

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

4. The Government of Khyber Pakhtunkhwa Agriculture, Livestock & Cooperation Department, Peshawar (**AL&C Department, KP**) issued Notification dated 20.04.2012 containing the rules of recruitment. Item No.36 of the rules is as follows: -

S.No.	Nomenclature of post	Qualification for appointment by initial recruitment.	Age limit	Method of recruitment.
1	2	3	4	5
PART-II MINISTERIAL STAFF				
36.	Superintendents (BPS-16).			a). Ninety percent by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Assistant/Accountants with five years service as such; and b). ten percent by promotion, on the basis of seniority-cum-fitness, from Senior Scale Stenographers with five years service as such.

5. Working-paper was prepared and the same was sent to the Secretary, AL&C Department, KP vide letter dated 26.05.2017. Model Working Paper, which is at Page-29 of the record shows that there were 08 posts of Superintendent (BPS-17) lying vacant in AE Department. Ninety percent of these posts were to be filled by promotion on the basis of seniority-cum-fitness from the post of Assistant/Accountant having five years' service. In para-5 of this Model Working Paper appears a chart containing names of 14 Office Assistants. At Serial No.1 is the name of Muhammad Alam, it is mentioned that he has opted to forgo his promotion. At Serial No.2 appears the name of respondent. In the last but one para of this very Model Working Paper, following has been certified by the Director General, AE Department: -

"It is certified that all the officials included in the panel for promotion:-

- i. Hold the lower post on regular basis and none of them is holding the post on adhoc basis.
- ii. No departmental examination has been prescribed for promotion to the post of Superintendent.
- iii. No disciplinary /Departmental proceeding/anti-corruption case /judicial inquiry are pending nor has any penalty been imposed during the last five years against any of the official of the panel.
- iv. The seniority list of the Office Assistant is final and un-disputed.

6. The very perusal of the Model Working Paper shows that the respondent has completed requisite five years' service provided by the rules and the Director General, AE Department, has also certified that there is no impediment in grant of promotion to the persons named in the Model Working Paper.

7. The DPC for considering the promotion was held on 19.06.2017 but was adjourned on the pretext that fresh option of officials forgoing their promotion be obtained. This is mentioned in the letter of the Director General, AE Department dated 28.11.2018 at page-31 of the record. After adjourning of this meeting by DPC, the next DPC meeting took place on 19.10.2017 and in the meantime, the respondent retired from service on 21.06.2017.

8. Learned Additional Advocate General has contended that promotion to the post of Superintendent (BPS-17) was to be made on seniority-cum-fitness basis and this very aspect was to be determined by the DPC and as the DPC having not determined the matter of seniority-cum-fitness, respondent, could not be granted *pro forma* promotion after his retirement. He has further contended that the case of promotion of Superintendent (BPS-17) was placed before the DPC on 19.10.2017, but it was not considered as respondent has retired on 21.06.2017 and no illegality was committed. He was of the view that only the DPC is competent to consider the grant of promotion and in case, it does not consider or grant promotion, no other forum is competent to decide the question of granting of promotion or *pro forma* promotion. As to the last submission with due respect, we tend to disagree with the learned AAG for the reason that no doubt it is a function of the DPC to consider the case of promotion of the government servant but where the DPC in violation of law and rules omits to consider or omits to grant promotion, the remedies before statutory Courts/Tribunals are provided by law and such remedies could be

availed by the aggrieved government servant and it is for the Courts/Tribunals to consider and decide whether the DPC has validly omitted to consider or omitted to grant promotion in accordance with law and rules.

9. In the present case the DPC has not considered the case for promotion of respondent and the reason assigned is that he has retired. This reason given by the DPC, apparently, is no reason in law, in that, once the Model Working Paper for promotion of respondent was placed before the DPC, it was incumbent upon it to have considered and decided the same, for that, though the law does not confer any vested right to a government servant to grant of promotion but the government servant surely has a right in law to be considered for grant of promotion. It is because of the department's own non-vigilance and the DPC being insensitive to the employees who were on the verge of retirement of which the employees could not be made responsible, cannot simply brush aside the case of an employee by merely saying that he has retired. Once the case of respondent has matured for promotion while in service and placed before the DPC before retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it does not grant promotion, to give reasons for the same. This was not done by the DPC and in our view such was a miscarriage of justice to respondent.

10. In view of the above, we find that the impugned judgment of the Tribunal, directing the appellants to consider the case of promotion of respondent, does not suffer from any illegality

and is maintained. The appeal is, therefore, dismissed. As the matter is quite old, we expect that the appellants will decide the question of promotion of respondent expeditiously, preferably within a period of three months from today.

CHIEF JUSTICE

JUDGE

Bench-I
Islamabad
08.06.2021
APPROVED FOR REPORTING
Rabbani*/

JUDGE