

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Aqeel Ahmed Abbasi, JJ

ASAD HUSSAIN ---Petitioner

Versus

**The CONTROLLER GENERAL OF ACCOUNTS FEDERAL CO-OPERATIVE BUILDING,
SECTOR G-5/2, ISLAMABAD and another ---Respondents**

C.P.L.A. No. 2258 of 2023, decided on 19th May, 2025.

(Against the judgment dated 31.03.2002 passed by the Federal Service Tribunal, Islamabad in Appeal No.
1250(P)CS of 2018).

(a) Khyber Pakhtunkhwa Service Tribunals Act (I of 1974)---

---S.4---Promotion---Vacant post---Current charge---Administrative neglects---Civil servant was aggrieved of being assigned the post on current charge basis instead of being promoted in the said post being a vacant post--
-Validity---When the post in question fell vacant, the civil servant was the senior-most eligible officer at that time, who was entitled to be considered for promotion with effect from that date---Delay caused by authorities in convening DPC or in processing petitioner's case due to procedural irregularities such as issues with the author of his PERs could not be used to defeat his rightful claim---Competent authority was under a duty to act with a fine sense of judgment, which it had failed to do---The moment the post became vacant and civil servant met required qualifications, legitimate expectation arose in his favour that he would be considered for promotion in a fair and timely manner---Failure to fulfil such expectation, without lawful justification, amounted to arbitrariness and procedural unfairness---Such delay in promotion of civil servant stemmed not from personal shortcoming but from systemic inefficiencies and administrative neglect---Civil servant must not bear the consequences of internal procedural lapses---Supreme Court directed the authorities to promote the civil servant to post in question with effect from the date on which vacancy in his quota first became available---Supreme Court also directed the authorities that all consequential benefits, including seniority, arrears of pay and service entitlements would follow from backdated promotion---Supreme Court set aside judgment passed by Service Tribunal---Appeal was allowed.

Secretary, Government of Punjab v. Khalid Hussain Hamdani 2013 SCMR 817; Brean v. Amalgamated Engineering Union (1971) 2 QB 175; Messrs Gadoon Textil Mills v. WAPDA 1997 SCMR 641; Province of Sindh v. Ghulam Shabbir 2023 SCMR 686; Government of Khyber Pakhtunkhwa v. Fazli Ghufraan 2022 SCMR 1765; Dr. Yasmeen Zafar v. Dr. Shehla Sami 2019 SCMR 993; Khalid Mehmood v. Chief Secretary, Punjab 2013 SCMR 544; WAPDA v. Haji Abdul Aziz 2012 SCMR 965; Muhammad Siddique v. Director, Special Education 1998 SCMR 88; Narender Chadha v. Union of India AIR 1986 SC 638; A. Janardhana v. Union of India AIR 1983 SC 769; B.S Yadav v. State of Haryana AIR 1981 SC 561; Dr. Muhammad Amjad v. Dr. Israr Ahmed 2010 SCMR 1466; WAPDA v. Muhammad Nawaz Khan 1998 SCMR 640; S. Abu Saeed v. Government of N.W.F.P. 1990 SCMR 1623; Government of N.W.F.P. v. Buner Khan 1985 SCMR 1158; Federation of Pakistan v. Jahanzeb 2023 PLC (C.S.) 336; NADRA v. Jawad Khan 2023 SCMR 1381 and Bashir Ahmed Badini v. Hon'ble Chairman and Member of Administration Committee 2022 SCMR 448 rel.

(b) Civil service---

---Vacant post, filling of---Principle---Every sanctioned post within a government department or public institution exists to serve a defined functional need and must be filled promptly upon falling vacant---So long as the post continues to exist and has not been formally abolished or frozen pursuant to a lawful policy decision, such as due to budgetary constraints or other demonstrable administrative exigencies, it must be filled within a reasonable time---Unjustified delays in such regard not only disrupt efficient functioning of the institution but also weaken its service delivery capacity---Vacancies, when left unattended, often lead to informal arrangements and ad hoc delegations of authority that foster opacity, enable nepotism and corrode principles of merit and transparency.

Ms. Shireen Imran, Advocate Supreme Court for Petitioner.

Raja Muhammad Shafqat Abbasi, DAG, Riaz Hussain Azam, Advocate-on-Record along with Javed Iqbal, Additional Secretary, Finance and Fiaz Afridi, DAG, CGA Office and Abdullah A.A.O. for Respondents.

Assisted by: Umer A. Ranjha, Judicial Law Clerk, Supreme Court of Pakistan.

Date of hearing: 19th May, 2025.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The brief facts of the case are that the petitioner was serving as an Assistant Private Secretary (BS-16) in the office of the Accountant General, Khyber Pakhtunkhwa. During his service, he was assigned the current charge of the post of Private Secretary (BS-17). Despite being eligible, the petitioner was not promoted in the Departmental Promotion Committee ("DPC") meetings held on 27.09.2016, 03.08.2017, and 10.04.2018. He was finally promoted in the DPC meeting held on 03.10.2018 via notification dated 04.05.2018. Subsequently, he filed a departmental appeal challenging this notification contending that he ought to have been promoted with effect from 06.08.2015 when the post of Private Secretary (BS-17) initially fell vacant. The said departmental appeal was dismissed vide order dated 10.07.2018. Thereafter, he preferred a service appeal before the Federal Service Tribunal, Islamabad which was dismissed vide judgment dated 31.03.2023 ("impugned judgment"). Hence, the present appeal by leave of this Court.

2. Learned counsel for the petitioner submits that the petitioner fulfilled all the requisite criteria for promotion to BS-17 and was at the top of the seniority list following the promotion of Mr. Muhammad Yousaf. He argues that the petitioner was entitled to promotion with effect from 06.08.2015, and the denial thereof was based on arbitrary justifications and administrative inaction beyond the petitioner's control. Conversely, the learned Deputy Attorney General contends that promotion is not automatic upon the occurrence of a vacancy and must follow the recommendation of the DPC. He asserts that the petitioner's case was deferred due to deficiencies in his Performance Evaluation Reports ("PERs"). After rectification, his case was considered, and he was promoted in accordance with the rules.

3. We have heard the learned counsel for the parties at length and examined the impugned judgment of the Tribunal along with the record of the case.

4. It is an admitted position that the petitioner was the senior-most eligible officer in the relevant cadre and was performing the duties of the higher post in a current charge capacity. The justification for withholding his promotion appears to be based on alleged deficiencies in his PERs for the years 2014 to 2016, which, upon scrutiny, do not support the respondents' position. A review of the PER for the year 2014 reveals no adverse remarks. The 2015 and 2016 reports similarly describe his performance as "Good," and in the sections relating to suitability for promotion, the remarks are clearly favourable. Notably, the pen-picture in 2016 reads:

"The officer carries a lot of potential. He needs to improve his discipline and manners. He has a good command of rules and procedures."

This statement cannot, by any reasonable standard, be treated as adverse or disqualifying for promotion. The comments, if anything, reflect a routine suggestion for personal development, not professional incompetence.

5. Moreover, the record shows that the Accountant General i.e., the relevant authority did not write the PERs himself; instead, they were written by the Additional Accountant General, leading to questions about their procedural validity. These internal inconsistencies in the recording and assessment of the PERs ought not to have been held against the petitioner. It is also relevant that the petitioner's case was deferred multiple times without affording him an opportunity to respond or rectify any alleged shortcomings. This violates the principles of natural justice and procedural fairness, as required under the law governing civil servants and the broader principles of administrative justice.

6. When we examined the entire PER for the year 2016, we found nothing adverse that could lawfully justify withholding the petitioner's promotion. The report, on the whole, indicates a competent officer with a good command over rules and procedures, and no material deficiency that would disqualify him from advancement. The remarks concerning improvement in discipline and manners are suggestive at best and cannot be construed as adverse entries under the law. Most significantly, there appears to be no statutory rule, regulation, or promotion policy that authorized the DPC to withhold promotion of an eligible and senior officer solely on the basis of generalized or non-adverse remarks in PERs. In the absence of a clearly defined policy or objective

criteria to guide such discretion, the DPC's action amounted to an arbitrary exercise of authority. It is a settled principle that where discretion is granted, it must be exercised fairly, reasonably, and in accordance with law.¹ To make exercise of discretionary power valid, it is necessary that apart from being legal it is also reasonable.² Discretion unguided by policy opens the door to discrimination, favouritism, and administrative injustice. In such cases, the Court is empowered to step in and correct the arbitrary denial of a lawful right.

7. It is also a well-established principle, both in local and foreign jurisprudence, that a civil servant's promotion must be considered from the date a vacancy in their quota becomes available, provided they are otherwise eligible at that time.³ The competent authorities must apply their mind judiciously and cannot delay promotion on administrative pretexts once a substantive vacancy arises.⁴ In the instant case, the post of Private Secretary (BS-17) fell vacant on 06.08.2015. The petitioner, being the senior-most eligible officer at that time, was entitled to be considered for promotion with effect from that date. The delay caused by the department in convening the DPC or in processing the petitioner's case due to procedural irregularities such as issues with the author of his PERs cannot be used to defeat his rightful claim. The competent authority was under a duty to act with a fine sense of judgment, which it failed to do. The moment the post became vacant and the petitioner met the required qualifications, a legitimate expectation arose in his favour that he would be considered for promotion in a fair and timely manner.⁵ The failure to fulfil this expectation, without lawful justification, amounted to arbitrariness and procedural unfairness.

8. The delay in the petitioner's promotion, therefore, stems not from personal shortcoming but from systemic inefficiencies and administrative neglect. It is a firmly entrenched principle that a civil servant must not bear the consequences of internal procedural lapses.⁶ Accountability lies with the department, not the employee, for ensuring timely and lawful processing of promotion cases. The arbitrary delay in the petitioner's promotion also raises concerns under Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantee the right to be treated in accordance with law and equality before the law. Denying the petitioner timely promotion while others with comparable or lesser credentials advanced through the same system reflects unequal treatment. Administrative discretion, if exercised unequally or irrationally, becomes discriminatory in effect.

9. It is a settled principle of public administration that every sanctioned post within a government department or public institution exists to serve a defined functional need and must be filled promptly upon falling vacant. So long as the post continues to exist and has not been formally abolished or frozen pursuant to a lawful policy decision such as due to budgetary constraints or other demonstrable administrative exigencies, it must be filled within a reasonable time. Unjustified delays in this regard not only disrupt the efficient functioning of the institution but also weaken its service delivery capacity. Vacancies, when left unattended, often lead to informal arrangements and ad hoc delegations of authority that foster opacity, enable nepotism, and corrode the principles of merit and transparency.

10. Public institutions must operate at their optimal level, with all sanctioned posts filled in a timely and lawful manner. The performance and credibility of any department is directly correlated with the adequacy of its human resources. Timely recruitment is thus not merely an administrative formality but a requirement grounded in the larger public interest. Public sector institutions are not private domains to be governed by the whims of a few; they are public trusts, created and maintained to serve the people in accordance with constitutional principles, statutory rules, and the highest standards of transparency. Government officers, as trustees of the public good, must discharge their duties in a manner that upholds this trust. The failure to fill vacancies without a cogent and lawful justification constitutes an abdication of this responsibility and undermines both institutional efficiency and public confidence.

11. Accordingly, we hold that the petitioner's promotion to the post of Private Secretary (BS-17) was unjustifiably withheld in 2016 due to reasons entirely attributable to internal administrative mismanagement. The original promotion order issued vide notification dated 04.05.2018 is, therefore, liable to be modified.

12. In this background, the promotion order is modified, and the petitioner is directed to be promoted to the post of Private Secretary (BS-17) with effect from 06.08.2015 the date on which the vacancy in his quota first

became available. All consequential benefits, including seniority, arrears of pay, and service entitlements, shall follow from the backdated promotion. Resultantly, the impugned judgment is set aside.

13. The titled petition is converted into an appeal and allowed in the above terms. The respondents are directed to issue a fresh promotion notification and revise the petitioner's seniority and pay fixation within thirty (30) days from the date of this judgment. A compliance report shall be submitted to the Registrar within the stipulated period.

MH/A-34/SC Appeal allowed.

