

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT D.I.KHAN

Service Appeal No. 923/2016

Date of Institution ... 01.08.2016

Date of Decision ... 29.09.2022

SCANNED
KPST
Peshawar

Malik Muhammad Irfan S/O Malik Ghulam Qasim, Ex-Sub-Engineer
L.G.R.D.D Khyber Pakhtunkhwa Peshawar now S.D.O Public Health
Engineering Department Tank.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Local Government
and Rural Development Peshawar and 05 others.

... (Respondents)

MR. ZIA-UR-REHMAN TAJIK,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service
appeal, the appellant has invoked jurisdiction of this Tribunal with
the prayer copied as below:-

*“to please take cognizance of the case and while
accepting this service appeal the respondents No. 1
& 2 be directed to promote the appellant as
S.D.O/AE in G-17 with retrospective effect from the
date of creation of posts/falling vacant posts of
S.D.O/AE during his service in L.G & R.D.D and*



Public Health Engineering Department with "all back benefits" and against 10% promotion quota reserved for Engineers graduates as per judgment of Apex Court of Pakistan dated 25.08.2005 and Notification SO(LG-1)2-188/93-Vol:II dated 14.04.1998 respectively.

2. According to averments of the appellant raised in his appeal, he was Degree holder in Civil Engineering and was appointed as Sub-Engineer in Local Government Department on contract basis vide appointment letter dated 22.11.1988. The services of the appellant as well as others were terminated with effect from 04.03.2003 vide letter dated 30.05.2003, therefore, they approached this Tribunal through filing of service appeals, however their appeals were dismissed vide judgment dated 07.02.2004 on the ground that as they were not civil servants, therefore, this Tribunal lacked jurisdiction in the matter. The aforementioned judgment dated 07.02.2004 was challenged before the august Supreme Court of Pakistan and through a single judgment dated 25.08.2005, civil appeals of the appellant as well as his colleagues were allowed and he was reinstated in service with all back benefits. In consequence of the judgment of worthy apex court, Notification dated 10.11.2005 was issued by Secretary Local Government and Rural Development Department, whereby the appellant was reinstated in service with all back benefits and his service was regularized with effect from the date of his initial appointment, however he alongwith his colleagues were placed in surplus pool of Local Government and Rural Development Department till creation of posts by Finance



Department. The Local Government Department issued final seniority list of Sub-Engineers as it stood on 31.05.2006, according to which the appellant was senior most graduate Sub-Engineer and was thus entitled for promotion to the post of S.D.O/Assistant Sub-Engineer (BPS-17) on the strength of 10% quota reserved for promotion of degree holder Sub-Engineers, however he was ignored despite availability of post. The departmental appeal of the appellant was not responded, constraining the appellant to file Service Appeal No. 773/2007 before this Tribunal, which was disposed of vide judgment/order dated 30.12.2013 with the observations that the case is referred to the Authority i.e Secretary Local Government Elections and Rural Development Department KPK Peshawar for consideration on sympathetic and humanitarian grounds by taking into consideration the development taking place in the aftermath of devolution policy and judgment of the august Supreme Court of Pakistan dated 25.08.2005. Receiving no fruitful response from the department regarding implementation of the aforementioned judgment/order dated 30.12.2013 passed by this Tribunal, the appellant filed Execution Petition No. 09/2014 before this Tribunal, which was decided vide order dated 27.11.2015 with the observations that as note was submitted to Secretary Local Government for sympathetic consideration of promotion case of the appellant on humanitarian ground but due to non-availability of the post, the appellant could not be accommodated, therefore, the implementation petition stands disposed of, however the petitioner may re-agitate the matter in the prescribed manner if aggrieved of the



departmental order. The said order dated 27.11.2015 of this Tribunal was challenged through filing of Civil Petition No. 139 of 2016 before august Supreme Court of Pakistan, which was dismissed as not pressed. The appellant then preferred departmental appeal on 04.04.2016, which was not responded within the statutory period, hence the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that he appellant had previously filed Service Appeal No. 773/2007 for the desired relief, which was disposed of vide order dated 30.12.2013, whereby the case of the appellant was referred to Secretary Local Government Elections and Rural Development Department Khyber Pakhtunkhwa Peshawar for sympathetic consideration on humanitarian grounds. The appellant was not granted the desired promotion, therefore, he then filed Execution Petition No. 09/2014, which was disposed of by this Tribunal vide order dated 27.11.2015 with the observations reproduced as below:-

“Since the commitment of the representative of respondents was to the effect that a non-binding office note to be submitted to the Secretary Local Government for sympathetic consideration of long standing case of the petitioner for promotion on humanitarian grounds and the said commitment was complied with but due to non-availability of the post

the petitioner could not be accommodated as such the order of the Tribunal referred to above stood complied with and, therefore, the implementation petition is disposed of without any further action.

The petitioner may, if so advised, re-agitate the matter in the prescribed manners if aggrieved of the said departmental order."

6. The above mentioned order dated 27.11.2015 passed by this Tribunal in the execution petition filed by the appellant, was challenged by the appellant before august Supreme Court of Pakistan, however his civil petition No. 139 of 2016 was dismissed being not pressed.



7. While disposing of the execution petition of the appellant vide order dated 27.11.2015, this Tribunal had observed that the petitioner may, if so advised, re-agitate the matter in the prescribed manners if aggrieved of the said departmental order. In view of the said observations the appellant again filed departmental appeal dated 04.06.2016, however the same does not show as to which order of the Authority was challenged by the appellant in his departmental appeal. Moreover, in compliance of the judgment dated 25.08.2005 passed by august Supreme Court of Pakistan, the appellant alongwith his colleagues were though reinstated in service with all back benefits but in wake of devolution policy, they were placed in surplus pool of Local Government and Rural Development Department vide the Notification dated 10.11.2005. Vide order dated 13.03.2008, the appellant was absorbed/adjusted as Sub-Engineer (BPS-11) in Public Health Engineering, Works and Services

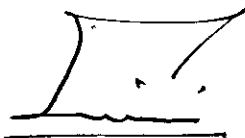
Department. The appellant then performed his duties in the said department and was promoted as Assistant Design Engineer (BPS-17) vide Notification dated 13.02.2015. Learned counsel for the appellant was unable to lay hand on any law/rule, which could entitle the appellant for his promotion as SDO/Assistant Engineer in the Local Government and Rural Development Department, when he was already placed in surplus pool vide Notification dated 10.11.2005 and was absorbed/adjusted as Sub-Engineer (BPS-11) in Public Health Engineering Works and Services Department.

8. In view of the above discussion, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.09.2022



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN