

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 8825/2020

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Rehmat Wali Ex-SI S/O Muslim Khan R/O Village & P/O Azakhel
Bala, Tehsil and District, Peshawar. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through its Secretary Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
3. Addl. Inspector General of Police, Headquarters, Khyber Pakhtunkhwa, Peshawar.
4. Regional Police Officer/Capital City Police Officer, Police Department, Peshawar. (Respondents)

Mr. Muhammad Arif Jan,
Advocate ... For appellant

Mr. Nascrud Din Shah,
Assistant Advocate General ... For respondents

Date of Institution..... 28.07.2020
Date of Hearing..... 01.02.2023
Date of Decision..... 01.02.2023

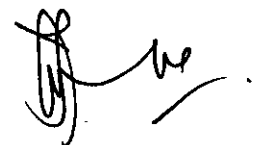
JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 09.07.2020 vide which departmental appeal of the appellant was dismissed. It has been prayed that on acceptance of instant appeal, the impugned order dated 09.07.2020 might be set aside



and the impugned Minutes of the 21st meeting of Police Policy Board held on 29.04.2016 at item No. 06 duly approved by the Provincial Police Officer/IGP, whereby request of the appellant for confirmation as Sub Inspector was rejected, might be declared illegal and void up to the extent of the appellant and he being eligible, trained and qualified might be ordered confirmed/promoted against the rank/post of Sub Inspector to enable him for the promotion as Inspector on retirement. It has been further prayed that the respondents might also be directed to honour the appellant by way of confirming and promoting as Proforma Inspector as he has been retired from his service to enjoy the financial benefits like others.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Constable in the Police Department on 17.05.1975. He was promoted to the rank of Head Constable in the year 1983 after passing his lower examination. He was selected for intermediate college course in the year 1996, which was successfully completed and he was promoted to the rank/post of ASI in the year 2003 and was allotted number 370-P. He was promoted to the rank of Sub Inspector after the DPC held in the year 2008, after completion of 05 years' service as ASI. He was also sent to attend the Upper Course held at PTC Hangu in the year 2015, which was successfully completed and passed. A meeting of DPC was held on 24.02.2016 in respect of the promotion/confirmation of eligible qualified officers for the rank of Sub-Inspectors but junior to the appellant were promoted/confirmed and he was deprived on the score of short period of



service/period at CTD which was one year and six months instead of the required three years. The respondents assured the appellant for his confirmation and the fact of the retirement from service was also in the knowledge of the respondents. He was retired from service on 13.04.2016. The appellant's case was sent for confirmation on the post of S.I and the same was included in the 21st meeting held on 19.04.2016 of Police Policy Board but his case was not considered for confirmation due to short length of service/experience. Feeling aggrieved, he preferred an appeal before respondent No. 1 on 18.05.2016, which was not responded. Being aggrieved, the appellant approached the Service Tribunal by filing Service Appeal No. 938/2016 which was disposed of with the direction to the respondents to decide the departmental appeal of the appellant within 60 days from the receipt of the judgment. Thereafter, the respondents failed to decide the departmental appeal of appellant within the stipulated time and finally just for no good reason on 09.07.2020, the departmental appeal of the appellant was dismissed by respondent No. 3; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that office order dated 09.07.2020 passed by respondent No. 3 and office order dated 29.04.2016 were illegal, unlawful, without lawful



authority and of no legal effect, He further contended that the appellant was promoted to the rank of Officiating S.I on 21.04.2008 and till retirement he performed his duties. He was verbally assured by the competent authorities but even then he was not confirmed for promotion. He further contended that the appellant was discriminated as many other similarly placed officials had been confirmed by the department but the appellant was deprived which was against the norms of justice. He informed that the appellant retired from service on 13.04.2016 but the proforma promotion would enable him for the pensionary benefits as well as for other immunities, privileges etc. He requested that the appeal might be accepted as prayed.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant that vide notification dated 19.02.2016 S.Is junior to him were confirmed, stated that such promotions were made subject to qualifying the prescribed criteria. He contended that confirmation to the rank of S.I required completion of eligibility criteria under rule 13-10(2) of Police Rules 1934 Amended in 2017, which provided that no sub inspector should be confirmed in a substantive vacancy unless he had been tested for at least a year as an officiating S.I in independent Incharge of PS, a notified post, or as in charge investigation of a PS or CTD. As such appellant was also confirmed in the rank of S.I on qualifying the said eligibility criteria. He further contended that the appellant filed service appeal before the Honourable Tribunal which was disposed of with the direction to decide his departmental appeal and in compliance with its order



dated 14.01.2020, case of appellant was examined and filed. The learned AAG informed the bench that the same issues were discussed in detail in the DPC meeting held on 30.06.2020 and the policy issued by the Police Policy Board regarding the notional promotion was withdrawn in that meeting on the grounds that no rules/policy regarding notional promotion were available in the prevailing special law/rules. Moreover, according to him, the policy was contrary to the decision of Apex Court wherein out of turn/notional promotion had been declared illegal and violation of vested right of senior officers. The decision of the Apex Court had been implemented in Pakistan and officers/officials of various ranks had been demoted to original ranks, the learned AAG informed. He further contended that in fact confirmation in the rank of S.I required completion of laid down criteria and those S.Is who fulfilled the said qualification were confirmed in the rank of S.I whereas the appellant did not fulfill the laid down criteria. He requested that the appeal might be dismissed with cost.

6. After hearing the arguments and going through the record presented before us, it transpires that the appellant was appointed in the provincial police in 1975 as Constable. After fulfilling the laid down criteria, he was promoted to the rank of Head Constable in 1983 and later on as ASI in the year 2003. In 2008, he was promoted as S.I but not confirmed at that position for further promotion. His request for confirmation and promotion as Inspector was placed before the Police Policy Board meeting held on 19.04.2016 but his plea was rejected on the ground that he was not a



confirmed Sub Inspector. By that time the appellant had retired from service on superannuation on 13.04.2016.


7. In an earlier service appeal in this regard his departmental appeal dated 18.05.2016 against the minutes of the meeting of Police Policy Board held on 19.04.2016 was referred by this Tribunal to his competent authority for appropriate decision vide its judgment dated 14.01.2020. That departmental appeal was rejected by his competent authority on 09.07.2020, on the grounds taken by the PPB as mentioned above, which has now been impugned before this bench.


8. Learned counsel for appellant produced additional documents before the bench at the time of hearing and argued that one Said Amin Jan, S.I, who was junior to the appellant, was promoted as Officiating Inspector in the DPC meeting held on 15.11.2016. Now the question is whether the appellant was in service at that time? If he had been in service on 15.11.2016, the arguments presented by the learned counsel would have been worth consideration, but it was not so. The appellant had retired on 13.04.2016 and was no more comparable with his in-service colleagues/juniors. The learned counsel himself admits that the appellant had been confirmed as S.I at the time of his retirement and that financial benefit had been allowed to him, therefore, there seems no further reason to argue that any discrimination had been meted out with him. It appears that the competent authority of the appellant did him a favour when they allowed him confirmation as S.I on his superannuation and gave him the attached financial benefit in his pension.



9. In the light of above discussion the appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1st day of February, 2023.*


(FARLEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)