

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 7026/2021

BEFORE: MRS. ROZINA REHMAN ... MEMBER(J)
 MISS FAREEHA PAUL ... MEMBER(E)

Usmani Gul SI/667/M Posted at Shangla Police R/O P.O Shah Pur
 Koz Kana Tehsil Alpuri District Shangla. (Appellant)

Versus

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. District Police Officer, Shangla.
3. Additional Inspector General, Establishment, Khyber Pakhtunkhwa,
Office at Central Police Office/Lane, Peshawar.
4. Regional Police Officer, Malakand office at Saidu Sharif, Swat.
5. Fazal Rahim No. 694 R/O Charbagh District Swat (Malakand).
6. Ahmad Ali No. 794 R/O R/O Village Dir Khas District Dir Upper.
7. Tahir Muhammad No. 739, presently posted at Police Lane, Shangla,
Darorar District Dir Upper. (Respondents)

Mr. Shams-ul-Hadi,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney.

... For respondents No. 1 to 4.

Date of Institution.....14.04.2021
 Date of Hearing.....04.05.2023
 Date of Decision..... 04.05.2023

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 impugned order dated 03.12.2020,



whereby juniors to the appellant i.e. respondents No. 5 to 7, were promoted/confirmed to List- F against the law and rules, by superseding the appellant without any legal justification. It has been prayed that on acceptance of the appeal, the impugned order dated 03.12.2020 might be set aside and the appellant might be promoted/confirmed to list- F with all back benefits according to law and rules.

2. Brief facts of the case, as given in the memorandum of appeal, are that initially the appellant was recommended/promoted to list-“D” as officiating Sub-Inspector, alongwith private respondent No. 5 to 7, on 04.08.2011 and later on through order dated 16.03.2015, he, alongwith respondents No. 5 to 7, was confirmed as ASI/PASI to list- E. Later on, on 09.02.2016, the appellant and respondents No. 5 to 7 were promoted on officiating basis to List- F, where-after the appellant, through written requests, approached the official respondents for recommending his name for various courses mandatory for promotion and confirmation of his name to list- F. The respondents, without considering the seniority of the appellant and that too without any fault on his part, deferred him for confirmation/promotion to list- F while juniors to him, i.e. respondents No. 5 to 7, were confirmed/promoted to list- F vide order dated 03.12.2020. Feeling aggrieved, he preferred departmental appeal to respondent No. 1 which was not decided within the statutory period; hence the instant appeal.



3. Respondents were put on notice. Official respondents No. 1 to 4 submitted their joint written reply/comments on the appeal. Respondents No. 5 to 7 did not submit reply/comments and were hence placed ex-parte. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the details of the case and contended that the impugned order dated 03.12.2020 was against the law, rules and seniority, and also against the principles of natural justice, hence liable to be set aside. He further argued that the appellant was condemned unheard as no opportunity of personal hearing and defence was provided to him. He further argued that appellant's promotion was deferred on the ground that he had not undergone the mandatory courses required for confirming his name in list- F and juniors to him were promoted, which was against the law, rules and norms of justice. He further argued that according to relevant rules, the courses were not mandatory for confirmation to list- F but the official respondents, with ill intention, promoted/confirmed their blue eyed i.e. respondents No. 5 to 7. He requested that the appeal might be accepted as prayed for.

5. The learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that Police Department was a



disciplined force having its rules and regulations which were being followed in letter and spirit. Promotion from one rank to another rank was being dealt with in accordance with seniority-cum-fitness as envisaged in Rule 13.1 of Police Rules. Similarly confirmation in the substantive rank was also governed by Police Rules which were being strictly adhered by the respondent department. Prior to confirmation in the rank of Sub Inspector one had to fulfill some criteria mentioned for confirmation in the rank of Sub-Inspector. The appellant was promoted to the rank of Sub-Inspector on 09.09.2016, however for the confirmation in the rank of Sub Inspector, he was required to fulfill certain criteria for the confirmation i.e. passing of Upper College Course and criteria mentioned in Rule 13.10(2) and 13.18 of Police Rules which was not completed at that time, therefore, the stance taken by the appellant for recommending his name to list- F was not prudent to the mind. So far as the confirmation of private respondents No. 5 to 7 was concerned, they had been confirmed in the rank of Sub Inspector on 20.02.2020, after fulfilling the requisite criteria for confirmation i.e. passing of upper college course and other mandatory provisions as envisaged in Police Rules, 1934. He further argued that name of the appellant was not recommended for inclusion in list- F because he did not pass the upper college course till 2020. He informed that name of the appellant was also sent for upper college course vide order dated 09.08.2018, however, he returned as unqualified on 25.09.2018 whereas his other colleagues, private respondents No. 5 to 7,



qualified the upper college course before the appellant. He requested that the appeal might be dismissed.

6. After hearing the arguments from both sides and going through the record presented before us, it is clear that there was no issue till 2015 when the appellant was confirmed, alongwith respondents No. 5 to 7, as ASI/PASI to list-E. Later on, on 09.09.2016, appellant, alongwith respondents No. 5 to 7, was approved for promotion as Officiating Sub Inspector, conditionally, subject to the production of satisfactory ACRs for the period and qualifying mandatory training/course according to Standing Order No. 3/2015. As their confirmation was linked with qualifying the mandatory training/course, the appellant was selected for the upper college course on 09.08.2018 but he could not complete and qualify the said course because of his illness. He was selected again for that course and qualified it in 2021. During that period, respondents No. 5 to 7 had already qualified the Upper College Course and they were, therefore, confirmed and included in List-F vide order dated 03.12.2020, that has been impugned before us.


7. Record produced before us by the learned counsel for appellant during the course of hearing indicates that various meetings of Departmental Promotion Committee were held after June 2021, the month the appellant qualified the Upper College Course, but his name was not considered for confirmation in list-F despite the fact that he had fulfilled




the criteria required for including his name in list-F and without giving any heed to the fact that his juniors were already included in list-F.

8. In view of the above discussion, the appeal in hand is allowed as prayed for and respondents are directed to promote and confirm the appellant to list-F from the date he qualified the Upper College Course with all back benefits. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court at camp court, Swat and given under our hands and seal of the Tribunal this 04th day of May, 2023.*


(FAREEHA PAUL)
Member (F)
(Camp Court, Swat)


(ROZINA REHMAN)
Member (J)
(Camp Court, Swat)

Fazle Subhan, P.S