

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 184/2018

Date of Institution... 22.01.2018

Date of Decision... 18.05.2023

Sheraz Ahmad, Assistant Director LG&RDD, Mohmand Agency.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and three others.

... (Respondents)

MR. KHALED RAHMAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney


--- For official respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through this single judgment we intend to dispose of instant as well as connected Service Appeal bearing No. 185/2018 titled "Abdul Rasheed Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 03 others", Service Appeal bearing No. 186/2018 titled "Fazlullah Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 03 others", Service Appeal bearing No. 187/2018 titled "Shibli Khan Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 03 others" and Service Appeal bearing No. 188/2018 titled "Shad Muhammad



Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 03 others”, as common questions of law and facts are involved in all the appeals.

2. Brief facts of the case are that the appellants were appointed as Progress Officers (BPS-16) in the Local Government and Rural Development Department on contract basis in the year 1988. They filed Writ Petition in the Hon'ble Peshawar High Court, Peshawar for regularization of their services, however the same was dismissed. Aggrieved of the decision of Hon'ble Peshawar High Court, Peshawar, the appellants filed Civil Appeals in the august Supreme Court of Pakistan, which were also dismissed with the observation that the appellants may approach Khyber Pakhtunkhwa Service Tribunal for redressal of their grievance. The appellants then filed appeals before this Tribunal but the same were dismissed, constraining the appellants to file Civil Appeals before the august Supreme Court of Pakistan, which were allowed vide judgment dated 25.08.2005 and they were reinstated in service with all back benefits. Vide Notifications dated 10.11.2005 and 16.12.2005, the appellants were reinstated in service from the date of their termination from service i.e 30.05.2003 with all back benefits and their services were regularized from the date of their initial appointment. The appellants were though reinstated in service, however as the office of Director General Local Government Elections and Rural Development Department and its allied offices had been abolished in the year 2001 in wake of devolution process, therefore, the appellants were placed in surplus pool as there



was no post of their cadre in the department for their adjustment. The appellants then filed Writ Petition No. 793/2007 in the Hon'ble Peshawar High Court, Peshawar seeking promotion to the post of Assistant Director in light of judgment of worthy apex court passed in their favour. The Writ Petition of the appellants was disposed of by Hon'ble Peshawar High Court, Peshawar vide judgment dated 18.10.2011 in the terms reproduced as below:-

“It is not clear from the available record that when the petitioners became eligible for being promoted to the next higher scale and what were the rules applicable thereto and what was the ratio of the vacancies to be filled through the promotion and what was the ratio of the vacancies to be filled by initial recruitment. All these questions are to be decided by the Department in the first instance, we, therefore, would not embark upon such exercise while hearing a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. We, therefore, while disposing of this writ petition direct the office to send it to the Departmental Authority to decide it in accordance with law as hinted to above within two months. This writ petitions, thus, stands disposed of.”



3. The appellants were not granted the desired promotion to the post of Assistant Director, therefore, they filed contempt of court petition in the Hon'ble Peshawar High Court, Peshawar, which was disposed of vide order dated 16.08.2012, whereby contempt of court notices issued to the respondents were recalled with the observations that the appellants may invoke their remedy before proper forum, if so advised. Subsequently, the appellants namely Shad Muhammad and Abdul Rashad were promoted to the post of Assistant Director (BPS-17) vide order dated 27.08.2012, while the appellants Sheraz Ahmad, Fazal Ullah and Shibli Khan were promoted as Assistant

Director (BPS-17) vide order dated 16.05.2013. The appellants were promoted with immediate effect, therefore, they challenged the same through filing of departmental appeals/representations on 10.06.2013 (as mentioned in memo of their appeals) before the Chief Secretary Khyber Pakhtunkhwa for grant of retrospective promotion with effect from 22.11.1991. Final seniority list of Assistant Directors/Planning Officers LG&RDD as it stood on 22.05.2014 was circulated by the department vide letter dated 28.05.2014. The appellants being aggrieved of the same, challenged the same through filing of departmental representations followed by service appeals before this Tribunal. In the meanwhile, tentative seniority list of Assistant Directors LG&RDD as stood on 30.09.2015 was circulated vide letter dated 27.10.2015. The appellants were of the view that they have been placed at due position in the aforementioned seniority list, therefore, they withdrew their services appeals, however submitted objections on the tentative seniority list dated 30.09.2015 by alleging that their promotion may be ante-dated with effect from 22.11.1991 instead of 16.05.2013 and 27.08.2012. Vide impugned Notification dated 22.08.2017, final seniority list of Assistant Directors (BPS-17) LG&RDD as it stood on 30.04.2017 was circulated, that the appellants were of the view that they have though been given due place in the seniority list but have not been granted ante-dated promotion with effect from 22.11.1991 as back benefits, therefore, they filed departmental representations but the same were not responded within the stipulated period, therefore, the

appellants then approached this Tribunal through filing of instant as well as connected service appeals for redressal of their grievance.

4. On admission of the appeals for regular hearing, notices were issued to the respondents. Official respondents contested the appeals by way of filing of replies, wherein they refuted the assertions raised by the appellants in their appeals. Private respondent No. 4 submitted comments, however none appeared on his behalf on 21.06.2021 and he was thus placed ex-parte.

5. Learned counsel for the appellants has addressed his arguments supporting the grounds agitated by the appellants in their service appeals. On the other hand, learned Deputy District Attorney for official respondents has controverted the arguments of learned counsel for the appellants and has supported the comments submitted by official respondents.

6. Arguments have already been heard and record perused.

7. A perusal of the record would show that vide Notification dated 22.08.2017, final seniority list of Assistant Directors (BPS-17) LG&RDD as it stood on 30.12.2016 was notified, whereby the appellants were granted seniority with retrospective effect. It is the contention of the appellants that after gaining seniority with retrospective effect, they are also entitled for ante-dation of their promotion with effect from 22.11.1991. The afore-mentioned Notification dated 22.08.2017 was challenged by one Akhtar Munir, Assistant Director (BPS-18) LG&RDD through filing of Service Appeal No. 1182/2017 before this Tribunal. The appellants

herein were also arrayed as respondents in the afore-mentioned service appeal, which was allowed by this Tribunal vide judgment dated 03.01.2019. The relevant Para-7 of the afore-mentioned judgment is reproduced as below:-

"7. The Tribunal examined the record on file and the arguments of the learned counsels for the parties. It is an admitted fact that the appellant was appointed as Assistant Director in the department on 09.09.1993 on the recommendation of Khyber Pakhtunkhwa Public Service Commission. It is also an admitted fact that the private respondents were initially appointed on contract as progress officers in a project and they were regularized in the light of the judgment of the Honorable Supreme Court of Pakistan. It is also admitted fact that the private respondents were promoted to the post of Assistant Director in the years 2012 and 2013. According to the relevant provision of the Section 8 (4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-7 of the KPK Civil Servant (Appointment, Promotion and Transfer) rules, 1989 the seniority in a cadre, post or service is reckoned from the date of regular appointment of a civil servant. Moreover Sub-rule 2 of Rule-17 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 provides that touch stone to resolve the instant dispute which is reproduced herein again, "Seniority in various cadres of Civil Servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment".

According to the facts as on file appellant was appointed on regular basis as Assistant Director in LGRRD Department on 09.09.1993 while the private respondents were appointed as Assistant Director in the year 2012 and 2013. As such on the basis of the date of regular appointment as Assistant Director the appellant is senior to the private respondents.

As regarding the regularization of the private respondents from the date of their initial appointment as progress officers in BPS-16 and counting of their subsequent from their initial appointment is concerned this tribunal is of the view that it cannot be counted for determining their seniority in the cadre or post of Assistant Directors. Their seniority as Assistant Directors in the department shall be determined from the date of their regularly appointed on promotion as Assistant Director and not from the date of their regularization of service as Progress Officer in BPS-16. In the presence of the explicit provisions of law no interpretation against the spirit of law through advices or consultation among the government department stands grounds."

8. This Tribunal in its judgment dated 03.01.2019 has categorically held that the seniority of the appellants as Assistant Director (BPS-17) shall be considered from the date of their regular promotion to the said post and not from the date of regularization of their service as Progress Officer in BPS-16. The very seniority granted to the appellants vide Notification dated 22.08.2017 was thus set at naught vide judgment dated 03.01.2019 passed by this Tribunal. Moreover, the appellants had challenged the judgment dated 03.01.2019 of this Tribunal by way of filing Civil Petition No. 1142 of 2019 before the august Supreme Court of Pakistan, which was dismissed vide order dated 14.04.2022 and leave to appeal was refused. The judgment dated 03.01.2019 passed by this Tribunal has thus attained finality. In this scenario, the contention of the appellants for ante-dation of their promotions with effect from 22.11.1991 is having no legal force.

9. The appellants namely Sheraz Ahmad, Fazal Ullah and Shibli Khan were promoted to the post of Assistant Director (BPS-17)

vide order dated 16.05.2013, while rest of the appellants were promoted vide order dated 27.08.2012 with immediate effect. The appellants have alleged in their appeals that as they were entitled for promotion with effect from 22.11.1991 with all consequential benefits, therefore, they had challenged the orders of their promotion through filing of departmental representations on 10.06.2013. According to the available record, the afore-mentioned departmental representations of the appellants were not decided by the appellate Authority one way or the other within the statutory period of 90 days, therefore, the appellants were required to have sought remedy by way of filing service appeals before this Tribunal, however the same has not been done. When the final seniority list of Assistant Directors (BPS-17) LG&RDD as it stood on 22.05.2014 was circulated vide letter dated 28.05.2014, the same was challenged by the appellants through filing of departmental representations followed by filing of Service Appeals before this Tribunal. The appellants in para-11 of facts of the appeals have mentioned that the afore-mentioned service appeals were then withdrawn by the appellants as their seniority was restored. Subsequently, impugned Notification dated 22.08.2017 was issued, whereby the appellants were granted seniority with effect from 22.11.1991. The appellants then challenged the Notification dated 22.08.2017 through filing of departmental representations followed by the present service appeals, seeking ante-dation of their promotions with effect from 22.11.1991, which is legally not possible for the reason that the impugned Notification dated





22.08.2017 is regarding final seniority list of Assistant Directors (BPS-17) LG&RDD and not any order regarding promotions of the appellants.

10. Consequently, the appeal in hand as well as connected Service Appeal bearing No. 185/2018 titled "Abdul Rasheed Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 03 others", Service Appeal bearing No. 186/2018 titled "Fazlullah Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 03 others", Service Appeal bearing No. 187/2018 titled "Shibli Khan Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 03 others" and Service Appeal bearing No. 188/2018 titled "Shad Muhammad Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 03 others" are hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

18.05.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)