KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.9995/2020

Date of presentation of Appeal.....27.08.2020
Date of Hearing.....11.07.2023
Date of Decision.....11.07.2023

Miraj Habib, ASI, Police Lines District Charsadda.....*Appellant*

Versus

1. **Deputy Inspector General of Police,** Mardan Region-I, Mardan.
2. **Regional Police Officer,** Mardan.
3. **District Police Officer,** Charsadda.....(*Respondents*)

Present:

Roeeda Khan, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney .....For respondents.

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE APPELLATE ORDER DATED 27.07.2020 WHEREBY THE DEPARTMENTAL APPEAL DATED 28.10.2019 OF THE APPELLANT FOR PROMOTION TO THE RANK OF SUB INSPECTOR IS REJECTED ON NO GOOD GROUNDS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that the appellant was initially appointed as Constable on 25.03.1994 in the Police Department; that according to the seniority list of 2012, name of the appellant was placed at serial No. 23, and his colleagues were placed from

serial No. 1 to serial No. 34 and were promoted to the rank of ASI on 06.11.2012 while the name of the appellant was ignored for promotion on the ground that his PER for the year 2011 was Grade-C; that the appellant filed service appeal No. 1266/2012 in this Tribunal against the adverse remarks which was accepted vide judgment dated 12.06.2018; that the respondent department promoted the appellant to the rank of ASI on 20.09.2019; that the other colleagues of the appellant were further promoted to the rank of Sub-Inspector on 06.11.2012; that feeling aggrieved, the appellant preferred departmental appeal for promotion to the rank of SI which was rejected on 27.07.2020, hence, the present service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

04. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

05. Learned counsel for the appellant referred to the impugned appellate order dated 27.07.2020 which reads as under:

> *"From the perusal of record it revealed that applicant while posted in CTD Khyber Pakhtunkhwa, Peshawar was granted adverse*

remarks in his ACR for the year 2011. On 18.1.2012 the case of the applicant was discussed in Departmental Promotion Committee Meeting held in this office on 08.11.2012 for promotion to the rank of Offg; ASI. But due to adverse remarks in his ACR for the year 2011 he was deferred. Feeling aggrieved, the applicant approached Khyber Pakhtunkhwa Service Tribunal through Service Appeal No.1266/2012 which accepted in the following terms:-

"In the instructions governing writing of PER, it is clearly laid down no adverse entry can be recorded without prior counseling. In the appeal in hand the instructions contained in para 3.7 pertaining to writing of PER were violated by the respondents, as such these remarks had no legal backing"

Later on, he was promoted as Offg: ASI in the DPC held in this office on 17.09.2019 according to which his probation period in the present rank is in progress. Besides, the applicant is not eligible for promotion to the rank of Sub Inspector as he has not yet fulfilled the requisite criteria in terms of confirmation in graded marks. Hence, at this stage plea of the applicant for promotion as Sub Inspector with his those colleagues, who were granted promotion in the year 2012, is premature for the above mentioned reasons.

Keeping in view the above, ***I, Sher Akbar, PSP S.St, Regional Police Officer, Mardan,*** *being the competent authority, find no substance in the application because the applicant has been treated in accordance with the canons of justice and settled principles. Therefore, the application in hand is filed, being devoid of merit.*

Order Announced."

06. It is evident from the above order that because of adverse ACR for the year 2011, the promotion of the appellant, to the rank of Officiating ASI, was deferred. It is further evident from the above appellate order that when the appellant was promoted as Officiating ASI, in the DPC held on 17.09.2019, his probation period was in progress, besides the appellant was

not eligible for promotion to the rank of Sub Inspector as he had not fulfilled the requisite criteria in terms of confirmation in the rank of ASI, admission of his name to promotion *"List-E"* and earning nine graded marks, therefore, his promotion was premature. The learned counsel produced some documents and contended that the hurdle in the way of appellant had been removed, as is evident from the documents produced by the learned counsel for the appellant, before the Tribunal. Therefore, he was entitled to the desired relief.

07. There is no denial of the fact that the appellant was deferred because of some hurdles in his way and according to him, the said hurdles have been removed, therefore, he prayed that this matter may be sent to the department for consideration in the light of documents produced by the learned counsel for the appellant. Order Accordingly. Consign.

08. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th day of July, 2023.

KALIM ARSHAD KHAN
Chairman

FAREEHA PAUL
Member (Executive)

Adnan Shah, P.A