

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 939/2022

BEFORE: MRS RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Sakhi Ur Rehman Off: Sub Inspector No. 60/K, Kohat Region.
..... (Appellant)

Versus

1. Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer Kohat Region, Kohat.
3. District Police Officer, Kohat.
4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
..... (Respondents)

Syed Roman Shah,
Advocate ... For appellant

Mr. Muhammad Jan ... For respondents
District Attorney

Date of Institution..... 22.06.2022
Date of Hearing..... 21.07.2023
Date of Decision..... 21.07.2023

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 20.01.2022 whereby the appellant being fit for confirmation and promotion was ignored and against the order dated 26.05.2022, whereby the representation preferred by him was rejected. It has been prayed that on acceptance of the appeal, both the impugned orders dated 20.01.2022 and 26.05.2022 might be set aside and the appellant might be confirmed in the substantive rank of Sub Inspector by counting his Officiating period towards the period of probation as well as he might be promoted to the

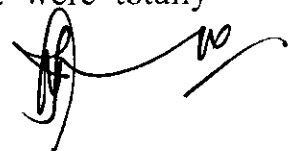


rank of Inspector and be adjusted in seniority with his colleagues/batch mates alongwith all other consequential relief.

2 Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as ASI on the basis of Shaheed son's quota in the Police Department in the year 2007. He was entered in list "B" on 01.07.2012 and afterwards promoted to Officiating Sub-Inspector on 15.03.2016. His confirmation for promotion was due, which was thoroughly discussed in Departmental Promotion Committee by Regional Police Officer, Kohat on 28.12.2021, but he was ignored for promotion due to the reason of Grade "C" in the ACR for the period of June 28, 2019 to December 30, 2019. The order was issued on 20.01.2022 wherein name of the appellant was not mentioned. The appellant came to know about the said order and filed appeal/representation before the respondent No. 1 on 31.12.2021 which was rejected vide order dated 26.05.2022; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We 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, after presenting the case in detail, argued that adverse remarks were not communicated to the appellant and hence he was not aware of the same but when he came to know about it, he challenged the same. He further argued that directives regarding confirmation status awarded to sub inspectors vide letter dated 28.02.2022 were totally



ignored and the appellant had mala fide been ignored in the DPC meeting held on 28.12.2021. He further argued that performance of the appellant was up to the mark which was evident from the commendation certificate issued to him by the respondent No. 2. He referred to the ACR for the period from 01.01.2018 to 31.12.2018 which clearly showed the professionalism of the appellant but despite that, adverse remarks in the following year had been given in the ACR of the appellant just to create a hurdle for his promotion. He further argued that despite the letter dated 03.03.2022 by the then RPO Kohat whereby he clearly stated that he had no objection if the ACR of the appellant was upgraded to "B", the departmental representation of the appellant was rejected. He argued that the appellant was not given any opportunity to be heard in person nor properly enquired as required under Khyber Pakhtunkhwa Police Rules, 1975. He requested that the appeal might be accepted.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the criteria for confirmation of officiating Sub Inspector to the rank of Sub Inspector was as described in Rules 13.10(2) and 19.25 A of Khyber Pakhtunkhwa Police Rules, amended in 2017, Standing Order No. 3/2015, quantification of Performance Evaluation Reports for the last 05 years and departmental inquiry clearance certificate from concerned unit/district etc. In order to confirm eligible officiating Sub Inspectors in their respective rank, a Departmental Promotion Committee meeting was held under the chairmanship of respondent No. 2, wherein the cases of officiating S.Is, including appellant, were discussed. He referred to Rule 19.25 A of Police Rules according to which no Assistant Sub Inspector or Sub Inspector, as the



case might be, should be promoted to the next higher rank unless he, in addition to other mandatory requirements, completed and qualified training courses and obtained a total of nine (09) marks from one or more of the prescribed schools, a criteria which the appellant did not fulfill. He further argued that the appellant had filed the instant service appeal for expunging the adverse remarks passed in his ACR for the period 2019 in view of his performance and that respondent No. 1 had correctly rejected his departmental appeal on merit. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it is found that the appellant was given adverse remarks in an ACR pertaining to the period from 28.06.2019 to 31.12.2019. In a meeting of Departmental Promotion Committee held on 28.12.2021, for confirmation of officiating Sub-Inspectors to their substantive rank of Sub Inspector, the appellant was not approved for the reason that he had earned "C" report in ACR for the year 2019 and also "01" mark less in specialized courses. Minutes of the meeting annexed with the reply indicate that the appellant was heard in person also by the DPC. When the appellant came to know about adverse remarks in his ACR, he preferred a departmental appeal before the Inspector General of Police on 31.12.2021 for reconsideration of ACR for the period from June 28, 2019 to December 30, 2019 and consequent modification of Grade "C" . His appeal was rejected vide order dated 26.05.2022 on the ground that the available material indicated that the officer was warned during the period and awarded penalties for misconduct and poor performance and therefore his ACR was downgraded. In the meantime, an order dated 20.1.2022 was issued by RPO Kohat vide which



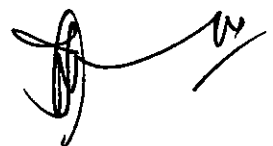
officiating Sub Inspectors were confirmed in their substantive rank of Sub Inspectors in the light of recommendation of DPC in its meeting held on 28.12.2021.

7. Through the instant service appeal, the appellant has impugned the minutes of DPC meeting held on 28.12.2021 and the confirmation/promotion order dated 20.01.2022. Record presented before us is silent about the departmental representation on the confirmation order dated 20.01.2022. We are of the view that the DPC is a recommendatory body and it is upto the competent authority to approve its recommendations, after which the order of confirmation is issued. When asked whether the appellant preferred any departmental appeal on the impugned confirmation order dated 20.01.2022, the learned counsel for the appellant replied in negative. In this regard Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act is very clear when it states as follows:-

“Appeal to Tribunals.... Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal of the Tribunal having jurisdiction in the matter.

Provided that-


(a) where an appeal, review or a representation to a departmental authority as provided under the Khyber Pakhtunkhwa Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal



or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred;”

8. In the light of above discussion it is evident that the departmental appeal was preferred by the appellant before his competent authority to expunge the adverse remarks in his ACR and not against the confirmation order dated 20.01.2022. Record is clear that the adverse remarks were not expunged and therefore the appellant was not qualified for confirmation as S.I. The appeal in hand is, therefore, groundless and is dismissed with cost. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 21st day of July, 2023.*


(FAREEHA PAUL)
Member (I)

Fazle Subhan, P.S


(RASHIDA BANO)
Member (J)