

**KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL, PESHAWAR AT CAMP COURT, D.I. KHAN**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**SALAH-UD-DIN ... MEMBER (Judicial)**

*Service Appeal No.11946/2020*

Date of presentation of Appeal.....14.10.2020  
Date of Hearing.....17.07.2023  
Date of Decision.....17.07.2023

**Mr. Akhtar Zaman S/O Sultan Mehmood R/O Ranwal Tehsil and District Tank. Presently working in the office of Deputy Commissioner Tank against the post of Patwari/Darogha Irrigation, Tank.....(Appellant)**

Versus

1. **The Senior Member Board of Revenue & Estate Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Commissioner, Dera Ismail Khan, Division.**
3. **The Deputy Commissioner, District Tank.**
4. **The District Account Officer, Tank.**
5. **Mr. Zahid Nawaz S/O Haji Muhammad Nawaz, R/O Qutab Colony Municipal Committee, District Tank, presently as District Revenue Accountant Acting Charge Basis in Deputy Commissioner Office, Tank.....(Respondents)**

Present:

Mr. Muhammad Waqar Alam, Advocate ...For the appellant

Mr. Farhaj Sikandar, District Attorney .....For official respondents No.1 to 4

Mr. Muhammad Ismail Ali Zai, Advocate..For Private respondent No.5

.....

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACT OF OFFICIAL RESPONDENTS BY PROMOTING THE JUNIOR MOST EMPLOYEE OF THE DEPARTMENT AGAINST THE POST OF TEHSIL REVENUE ACCOUNTANT AND THEREAFTER ADJUSTED THE SAME AGAINST THE POST OF DISTRICT REVENUE ACCOUNTANT ACHING CHARGE BASIS BY IGNORING THE PROMOTION POLICY RULES AND REGULATIONS OF THE DEPARTMENT AND AGAINST THE OMISSION ON THE PART OF RESPONDENT NO.2 FOR INDECISION OF THE DEPARTMENTAL APPEAL WHICH IS AGAINST THE LAW AND VIOLATION OF SERVICES LAWS/ & RULES AND THE APPELLANT WAS CONDEMNED UNHEARD WITH MALAFIDE.**



## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant was appointed as Patwari on 22.8.2021 and was performing the duty in the Revenue Department. In the meantime, he was adjusted on the post of Naib Tehsil Accountant vide order dated 01.01.2014, and private respondent No.4 was adjusted on the post of Tehsil Revenue Accountant and the appellant was transferred from that very post of Tehsil Revenue Accountant; that later on, the private respondent was appointed/adjusted against the post of District Revenue Accountant on Acting Charge Basis vide order dated 12.02.2019; that feeling aggrieved, the appellant filed application/representation with the prayer that instead of private respondent No.4, he might be adjusted on the post of District Revenue Accountant, which was not decided, hence, this appeal.

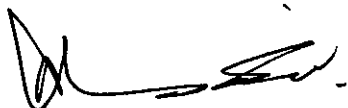
02. On receipt of the appeal and its admission to full hearing, the respondents were summoned, respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant, learned District Attorney for the official respondents No.1 to 4 and learned counsel for the private respondent No.5.

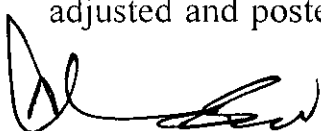
04. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District



05. The appellant has prayed that on acceptance of his appeal, the impugned order No.2457/BC dated 01.06.2017 and order dated 12.02.2019, passed in favor of private respondent No.5, might be reversed and the respondents might be directed to promote the appellant against the post of District Revenue Accountant by following the seniority, in accordance with law. The available record reflects that the appellant was appointed as Patwari (BPS-05) vide order bearing No.580/BC date 27.08.2011, while the private respondent No.5 was also appointed as Patwari on 23.01.2014, vide order bearing No.544/BC. The appellant remained posted as Naib Tehsil Revenue Accountant (BPS-05) in the office of the Deputy Commissioner, Tank w.e.f 01.01.2014 to 30.01.2018. Vide order dated 30.01.2018, the appellant was transferred and posted as Patwari Irrigation in the office of NaibTehsildar Irrigation, Tank and was working as Darogha in Head Zam Tank. As against the appellant, the private respondent, while working as Patwari Land Acquisition, made a request (giving that name of affidavit) to the Deputy Commissioner, Tank, that nobody was ready to be posted against the vacant post of Tehsil Accountant (BPS-07) while he (private respondent No.5) was willing to be posted against that. He showed his readiness to forego the right of seniority as Patwari (BPS-09) on his own will. It was then, he, vide order dated 01.06.2017, was adjusted/posted as Tehsil Revenue Accountant (BPS-07) on regular basis. Admittedly, the appellant has not challenged the order dated 01.06.2017 at the relevant point of time and has now agitated the same in this appeal. Similarly, vide order dated 12.02.2019, private respondent No.5 was appointed as District Revenue Accountant (BPS-14) on Acting Charge Basis, which order was also not challenged within time, rather, a



departmental representation was filed by the appellant against both the above orders on 24.06.2020. Admittedly, the appellant was appointed prior in time as Patwari (BPS-05), while the private respondent was appointed some more than two years later than the appellant. The official respondents contended in their written reply that the appellant had not remained posted as Tehsil Revenue Accountant as such there was no justification that he was senior most Tehsil Revenue Accountant till 30.01.2018. That private respondent No.5 (Zahid Nawaz) was regularly working as Tehsil Revenue Accountant in the Deputy Commissioner Office Tank vide order No.2457/BC dated 01.06.2017. True that the appellant had been working as Naib Tehsil Accountant till 30.01.2018 but he was never <sup>appointed by Q</sup> ~~transferred~~ <sub>Q</sub> under the relevant rules (as such) rather, it appears that, it was a transfer simpliciter. This would not mean that in the event of dismissal of this appeal that would be a decision in favour of private respondent nor would that justify the career progression of private respondent, if not made in accordance with the relevant rules. In view of the above the appellant could not make out his case. As to the case of the private respondent No.5, his adjustment and posting as Tehsil Revenue Accountant (BPS-7), on regular basis on his own request by the Deputy Commissioner, Tank vide order dated 01.06.2017 is not in accordance with the rules. Serial No.4 of the Appendix to the Notification No.1942/Estt/135/SSRC dated 23.01.2015 requires that the post of Tehsil Accountant has to be filled in by the District Collector by promotion on the basis of seniority-cum-fitness from amongst the Naib Tehsil Accountant, having three years' service as such. But in the case of private respondent No.5, he was adjusted and posted as Teshil Revenue Accountant on regular basis <sup>and</sup> was not



promoted in accordance with the above provision of rules because the post of Tehsil Revenue Accountant was to be filled in by promotion from amongst the Naib Tehsil Accountants, whereas the order dated 01.06.2017 does not show that any Departmental Promotion Committee was constituted and when was its meeting held, working paper made, minutes of the meeting of DPC and that the DPC found the private respondent was Naib Tehsil Accountant having three years' service as such, was thus eligible to be promoted to the post of Tehsil Accountant, therefore, the posting/adjustment (dated 01.06.2017) of the private respondent as Tehsil Accountant by the Deputy Commissioner, Tank, was also not rightful. We, therefore, dispose of this appeal with these observations. In the circumstances we direct that both the parties shall bear their respective costs. Consign.

***06. Pronounced in open Court at Camp Court, D.I.Khan and given under our hands and the seal of the Tribunal on this 17<sup>th</sup> day of July, 2023.***



**KALIM ARSHAD KHAN**  
Chairman



**SALAH UD DIN**  
Member (Judicial)

*\*Mutazem Shah\**