

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15792/2020

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

Inayat Ullah, Senior Clerk, DPO Office, Bannu.

.... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region Bannu.
4. District Police Officer, Bannu.

.... (Respondents).

Ms. Naila Jan
 Advocate

For appellant

Mr. Fazal Shah Mohmand
 Additional Advocate General

For respondents

 Date of Institution.....23.11.2020
 Date of Hearing.....01.08.2023
 Date of Decision.....01.08.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this service appeal, the impugned order dated 07.11.2019 may kindly be modify to the extent that the same may be given effect from 27.03.2013 with all back benefits from the date when juniors to the appellant were promoted while the appellant has been illegally deprived from promotion thus subjected to discrimination and set aside the appellate order dated 27.10.2020 .”



2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was appointed as Junior Clerk vide order dated 11.06.2009. He was performing his official duty with zeal and zest. He was at Sr. No. 244 of the seniority list of Junior Clerk (BPS-7) as stood on 31.12.2011. However, Juniors to the appellant at Sr. No. 298, 300, 304, 304 and 307 were promoted vide order dated 27.03.2013 and the appellant was ignored. The appellant again was placed at Sr. No. 109 of the Seniority List as stood on 31.12.2013, however once again the appellant was discriminated and other officials placed at Sr. No. 148, 149 and 151 were promoted. Later on, he was promoted to the post of Senior Clerk (BPS-14) with immediate effect and not from the date when juniors to the appellant were promoted. Feeling aggrieved, he filed departmental appeal which was filed on 27.10.2020, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that that the appellant had been treated in accordance with law and rules. He further contended that in-action of the respondent is against the law, rules and principle of natural justice hence void ab-initio and not sustainable in the eyes of law. He argued that appellant has been subject to discrimination by promoting juniors to him and he was deprived from his due right of promotion which is violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.



5. The learned Assistant Advocate General contended that the appellant was treated in accordance with law and rules. He further contended that vide seniority list dated 31.12.2011, the appellant was deferred due to incomplete ACRs for the period 12.06.2009 to 31.12.2009, 2011 and 2012. He submitted that appellant was promoted vide notification dated 07.11.2019 in accordance with law/rules and policy as the promotion of the appellant was subject to the seniority-cum-fitness and competition of incomplete ACRs.

6. Perusal of record reveals that appellant was appointed in respondent department as Junior Clerk on 11.06.2009 and was performing his duties up to the entire satisfaction of his superiors. Appellant, with the passage of time, was placed at Serial No. 244 of the seniority list of junior clerks issued on 31.12.2011 but his promotion was deferred when vide notification dated 27.03.2013, juniors to him placed at serial No. 298, 300, 304, 305 and 307 were promoted. Appellant, then was placed at serial No. 109 of the seniority list issued on 31.12.2013 but he was again not promoted. He was promoted as Senior Clerk (BPS-14) vide notification dated 07.11.2019 but with immediate effect. Now appellant seeks his ante-dated promotion from the date when juniors to him was promoted i.e 27.03.2013.

7. Perusal of record further reveals that promotion of the appellant was deferred by the Departmental Promotion Committee upon the recommendation of which juniors to the appellant were promoted vide notification dated 27.03.2013. Respondents in their parawise comments admitted the fact of defferment of the appellant with contention that due to incomplete ACRs for the period 12.06.2009 to 31.12.2009 and for the year 2011 and 2012. Appellant was not promoted due to incomplete ACRs for periods mentioned above and - not due to some other reason which means he had a clean record. So the case




of the appellant is covered under Rule V(d) of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009 which deals with deferment of promotion and determination of seniority of deferred employee/civil servant which reads as follows:-

“If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion come to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance the proviso of Sub-section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior”

So according to above referred rule of promotion policy, appellant has a fit case for antedated promotion.

8. We allow the appeal of the appellant and direct the respondents to consider him for antedated promotion with effect from the date when his promotion was deferred for the first time i.e 27.03.2013 with all back benefits. Cost shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of August, 2023.


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)