

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT

Service Appeal No. 469/2022

BEFORE: **MR. SALAH-UD-DIN** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Mr. Liaqat Ali son of Painsa Muhammad Resident of Saidu Sharif Tehsil Babozai District Swat (Sweeper/Class IV employee presently serving at ATC Court Daggar District Buner). (*Appellant*)

Versus

1. Judge Anti-Terrorism Court Buner at Daggar.
2. Peshawar High Court Peshawar through Registrar at Peshawar.
3. Muhammad Farooq, son of Naimat Khan, Mingora Tehsil Babozai District Swat, Junior Clerk ATC Court, Daggar District Buner. (Respondents)

Mr. Muhamad Javed,
Advocate ... For appellant

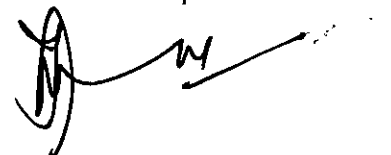
Mr. Muhammad Jan,
District Attorney. ... For official respondents

Private respondent No. 3. ... In person.

Date of Institution..... 04.04.2022
Date of Hearing..... 06.07.2023
Date of Decision..... 06.07.2023

JUDGEMENT

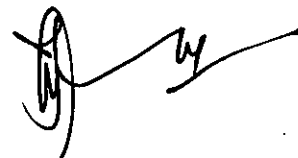
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 27.11.2021 passed by respondent No. 1, whereby private respondent No. 3 had been promoted to the post of Junior Clerk. It has been prayed that on acceptance of the appeal, the impugned order dated 27.11.2021 passed by respondent No. 1 might be set aside/modified and the appellant might be promoted to the post



of Junior Clerk BPS-11 on the basis of seniority list dated 06.11.2021 alongwith any other remedy, which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed in Judicial Department as Sweeper. His name was mentioned at Serial No. 1 in the seniority list dated 06.11.2021. Usually promotions to the post of Junior Clerk were made on the basis of seniority cum-fitness in different provinces. Promotion of Class-IV employees in different Anti Terrorism Courts of Malakand Division clearly shows that they were promoted on the basis of seniority-cum-fitness. The Honourable Peshawar High Court Peshawar had issued a letter dated 09.12.2017 to the effect that promotion of Class IV employees to the post of Junior Clerk should be made in accordance with the rules on the basis of Seniority-cum-fitness. On 17.11.2021 written test was conducted by respondent No. 1 in violation of Rules and precedents for promotion of Class-IV employees to the post of Junior Clerk BPS-11. After the written test, respondent No. 3 was promoted from the post of Naib Qasid BPS-3 to the post of Junior Clerk BPS-11 vide impugned office order dated 27.11.2021. Appellant being aggrieved, filed a departmental appeal before the respondent No. 2 on 04.12.2021 which was not decided till filing of the instant appeal

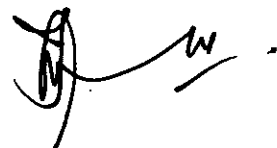
3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the



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 the appellant was senior than both the candidates namely Shamsher Ali and Muhammad Farooq. The name of the appellant was mentioned at Serial No. 1 of the seniority list dated 06.11.2021, therefore, he was entitled to promotion on that score alone. He further argued that the appellant appeared in the written test and secured 13 marks out of 25 marks, while Shamsher Ali got 10 marks whereas Muhammad Farooq (respondent No. 3) secured 17 marks. Respondent department considered only the score of written test, without allocating the marks to academics and interview. The appellant possessed more qualification than both the candidates and the letter dated 19.12.2017 issued by the Honourable Peshawar High Court, Peshawar also favoured the stance of the appellant for promotion to the post of Junior Clerk. He further argued that the impugned promotion had been made solely on the basis of written test result whereas seniority list as well as educational career and service record of the appellant had not been taken into consideration. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that a post of Junior Clerk became vacant due to the promotion of Qazi Bismillah to the post of Senior Clerk (BPS-14). A meeting of Departmental Promotion Committee was held on 17.11.2021 wherein the appellant and respondent No. 3 were considered for



promotion, besides Shamsher Ali Naib Qasid. A written test was conducted followed by interview of all the class-IV officials of the court. The committee also examined their service credentials and their PERs for the past three years. Respondent No. 03 scored the maximum marks amongst all the candidates. The committee properly adopted the prescribed procedure and respondent No. 3 was promoted to the post of Junior Clerk on the recommendations of the DPC. He requested that the appeal might be dismissed.


6. Arguments and record presented before us indicate that the appellant was in the panel of Class IV employees for promotion to the post of Junior Clerk. He was at Serial No. 1 of the seniority list issued by the respondent department. In its minutes dated 17.11.2021, the Departmental Promotion Committee has referred to a letter of Peshawar High Court dated 9.12.2017 which clearly stated that the promotion of Class-IV employees to the post of Junior Clerk should be made in accordance with rules on the basis of seniority-cum-fitness. It further stated that in order to sift the competent from incompetent employees, a test might be taken from them. The respondents in their reply clearly stated that they adhered to the directions of the Peshawar High Court and conducted a proper test and interview. Their reply further indicates that typing test was also conducted. As the documents of written test were provided with the reply, the representative of the respondents was asked to produce the result of typing test also but he categorically stated no such record was available. The respondents No. 1 & 2 have annexed with their parawise comments a copy of judgment dated




25.01.2021 passed in Writ Petition No. 1127-D/2017 of the Hon'ble Peshawar High Court, D.I.Khan Bench in a case of similar nature wherein it has been observed that in addition to minimum qualification for appointment or promotion to the post of Junior Clerk, a speed of 30 words per minute in typing is essential and *sine qua non*. It was alleged that on the basis of that observation, the respondent department conducted typing test, but the marks obtained by the candidates have not been shown. The Departmental Promotion Committee was required to have included the marks of typing test for preparation of the merit list for promotion of concerned class-IV employee to the post of Junior Clerk, however the same has not been done. The said fact has made questionable the entire process of promotion.

7. In view of above, the appeal is allowed and the matter is referred back to the respondent department to reconsider the promotion by strictly adhering to the rules and also the instructions of the Honourable Peshawar High Court. Costs shall follow the events. Consign.

8. *Pronounced in open court at Camp Court Swat and given under our hands and seal of the Tribunal this 06th day of July, 2023.*


(FARAHIA PAUL)
Member (E)
(Camp Court, Swat)


(SALAH-UD-DIN)
Member (J)
(Camp Court, Swat)

Fazle Subhan, P.S