

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 5235/2021

BEFORE: **MR. KALIM ARSHAD KHAN** ... **CHAIRMAN**
MISS FAREEHA PAUL , ... **MEMBER (E)**

Tahir Zada S/O Haji Gulzada, Village Mohallah Muhammad Ali Khan, Ward No. 7, Takht Bhai, Tehsil & District Mardan. Presently posted as Planning & Monitory Officer, Wildlife Department Khyber Pakhtunkhwa Peshawar. (Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat, Peshawar.**
2. **Secretary to Government of Khyber Pakhtunkhwa, Planning & Development Department, Civil Secretariat, Peshawar.**
..... (Respondents)

Mr. Khalid Khan Mohmand,
Advocate

... For appellant

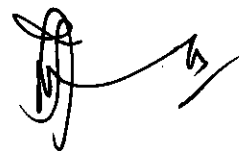
Mr. Fazal Shah Mohmand,
Addl. Advocate General

... For respondents

Date of Institution..... 24.05.2021
Date of Hearing..... 11.09.2023
Date of Decision..... 11.09.2023

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 10.03.2021 of respondent No. 2 communicated to the appellant on 26.04.2021, vide which departmental appeal dated 25.01.2021 of the appellant, for inclusion of his name in PPS Cadre, by way of modification/rectification of Schedule-1 of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018, to the extent of the post of Planning Officer (BPS-17), mentioned in column No. 5 at Serial No. 16, wherein single



post, instead of two posts of Planning Officer (BPS-17), has been mentioned. It has been prayed that on acceptance of the instant appeal, impugned order/decision dated 10.03.2021 of respondent No. 2 might be set aside and name of the appellant might be ordered to be included in PPS Cadre, by way of modification/ rectification/re-visiting Schedule-1 of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018, to the extent of Column No. 5 at Serial No. 16, wherein two posts were required to be mentioned, instead of one post of Planning Officer (BPS-17), so as to avoid discriminatory treatment and to secure the ends of justice.

2. Brief facts of the case, as given in the memorandum of appeal, are that the respondent department invited applications through advertisement No. 5/2014, dated 15.09.2014 for numerous posts of different categories, including a post of Planning & Monitoring Officer (BPS-17) in the office of Chief Administrator Wildlife. The appellant, being qualified, applied for the aforementioned post of Planning & Monitoring Officer (BPS-17). He went through the entire process of selection successfully and was recommended by the Khyber Pakhtunkhwa Public Service Commission to the Government of Khyber Pakhtunkhwa for appointment vide letter dated 14.10.2015. The competent authority appointed him as Planning & Monitoring Officer (BPS-17) vide notification dated 17.03.2016. The Government of Khyber Pakhtunkhwa/respondent No. 1, in exercise of powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (KP Act No. XVIII of 1973) made the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018, vide notification dated 22.02.2018. Schedule-1 issued under Rule 3 of



the rules *ibid*, consisted of the posts specified therein. Posts of other similarly placed employees were included therein however, appellant was unilaterally excluded. The appellant approached the competent authority through numerous departmental appeals/representations for inclusion of his name in the aforementioned PPS Cadre which were finally considered at appropriate level but rejected by respondent No. 2 vide order/decision dated 10.03.2021; hence the instant service appeal.

3. Respondents were put on notice. They submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Additional Advocate General 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 had a legal and vested right to be included in the PPS Cadre within the meaning of Rule 3 of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 which was denied to him. He further argued that similarly placed employees of attached formations were included in the PPS Cadre as was evident from Serial Nos. 1 and 18 of Schedule-1 of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 but the appellant was discriminated within the meaning of Article 25 of the Constitution of Islamic Republic of Pakistan. He further argued that the appellant was neither treated in accordance with law nor he was extended equal protection of law as enshrined in Articles 4 & 10-A of the Constitution of Islamic Republic of Pakistan. He requested that the appeal might be accepted as prayed for.



5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the Provincial Planning Service Cadre was established for professionals of Planning & Development Department and Planning Cells of Administrative Departments at Secretariat level only. The appellant was an employee of attached formation of Wildlife Department, therefore, he was not entitled for inclusion into PPS Cadre. He invited the attention to the Honourable Peshawar High Court's judgment dated 26.05.2021 in Writ Petition No. 2176-P/2020 vide which the petition of a similar placed person (an employee of attached formation of Livestock and Dairy Development Department) was dismissed being misconceived and without merits. Another Writ Petition No. 2971-P/2018 of the employees of Provincial Inspection Team was also mentioned by the learned AAG, which was dismissed on 08.07.2020. He further argued that no employee of attached formation had been included in the Schedule 1 of PPS Cadre rather the employees referred by the appellant were employees of Establishment of M&E which was an integral part of P&D Department at Secretariat level. He requested that the appeal might be dismissed.


6. In the light of record presented before us it is clear that the name/position of the appellant has not been mentioned in Schedule 1 attached with the Provincial Planning Service Rules, 2018. We are of opinion that making rules and specifying the position for which those rules are framed is the prerogative of the Provincial Government. It is up to the Provincial Government to include or delete any position in the rules without compromising the rights of others. This Tribunal cannot force the Provincial

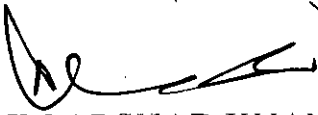


Government to include the name/position of the appellant in the Schedule-1 of the PPS Rules 2018. However, the department may, if it deems it apt, consider the request of the appellant at an appropriate time.

7. In view of the above, the appeal in hand is dismissed. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of September, 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


Fazle Subhan P.S

SA 5235/2021

11th Sept. 2023 01. Mr. Khalid Khan Mohmand, Advocate for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed. Costs shall follow the event..
Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of September, 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS