BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SA No. 1306 /2023

Muhammad Asad Ullah, Ex- Naib Tehsildar, Revenue Department..... .....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa, through Chief Secretary & others.....Respondents

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Assistant Secretary Lit-II
Board of Revenue

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AFFIDAVIT

I, Abdul Rasheed, Superintendant, Litigation-II Section, Revenue and Estate Department, Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm and declare that the contents of the parawise comments provided by Assistant Secretary Establishment, Section of Board of Revenue, Khyber Pakhtunkhwa, are correct and submitted in the subject Service Appeal noted above, which are true and found correct in light of the available record and that nothing has been concealed from this Honorable Service Tribunal.

DEPONENT

It is further stated on oath in this appeal, the answering respondents have neither been placed Ex-Parte nor their defense has been struck off. Cost.

16 OCT 2023
ATTESTED
Hafiz Muhammad Sajid Durrani
Commissioner
Advocate High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1306/2023.

Muhammad Asad Ullah S/o Muhammad Yar, Ex-Naib Tehsildar, Revenue Department , ...Appellant.

Versus

The Government of Khyber Pakhtunkhwa through Chief Secretary , Khyber Pakhtunkhwa, Peshawar and others.....Respondents.

PARAWISE COMMENTS ON BEHALF OF RESPONDENT No.1,2 and 3

RESPECTFULL SHEWETH.

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appellant is estopped by his own conduct to institute the instant appeal.
3. That the appellant has not come to the Tribunal with clean hands.
4. That the appeal is barred by law and limitation.
5. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

FACTS:-

1. Pertains to record.
2. Pertains to record.
3. Incorrect. The appellant was not promoted due to deficient ACRs. (Copy enclosed).
4. Incorrect. The respondent No. 3 was promoted to the post of Tehsildar as per his seniority and law/rule
5. The department after consultation with Law department filed CPLA against the judgment dated 24.09.2019 passed by Service Tribunal Khyber Pakhtunkhwa **(Annex-I).**
6. Incorrect. The judgment of Service Tribunal has already been implemented vide order dated 10.03.2022 **(Annex-II).**wherein the applicant was promoted to the post of Naib Tehsildar (BS-14) w.e.f . 25.4.2009 **(Annex-III).**.
7. Incorrect. The departmental appeal of the appellant was filed being illegal/un lawful.

Grounds

A. Pertains to record.

B. Incorrect.

C. Incorrect. The promotion orders was made as per Seniority list and prevailing law/rules.

D. Incorrect. As mentioned in para-6 of the facts.

E. Incorrect. The appellant has already been promoted to the post of Naib Tehsildar (BS-14) vide order dated 10.03.2022 w.e.f . 25.4.2009.

F. Incorrect. All the proceeding were carried out as per law/rules.

Keeping in view of above, the service appeal of the appellant having no legal grounds may graciously be dismissed with costs.

Senior Member
Board of Revenue
(Respondent No.1 &2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT D.I.KHAN.

Appeal No. 382/2010

Date of Institution ... 25.01.2010

Date of Decision ... 24.09.2019

Muhammad Asadullah S/O Muhammad Yar, R/O Mohallah Gosayanwala, Tehsil and District, D.I.Khan. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Senior Member Board of Revenue, Peshawar and five others. ... (Respondents)

MR. ABDULLAH BALOCH, Advocate --- For appellant.

MR. FARHAJ SIKANDAR, Deputy District Attorney --- For respondents

MR. MUHAMMAD ISMAIL ALIZAI, Advocate --- For respondents no. 3 to 6.

MR. AHMAD HASSAN, --- MEMBER(Executive)
MR. MUHAMAD HAMID MUGHAL --- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he was appointed as Junior Scale Stenographer (BPS-12) vide order dated 21.05.1992. That as per seniority list, despite being senior most official, he was waiting for promotion for the last twenty eight years. The respondents vide order dated 18.07.2009 promoted/appointed

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EXAMINER
Khyber Pakhtunkhwa

private respondent no.3 as Naib Tehsildar on Acting Charge Basis in a non-transparent manner. That through order dated 02.05.2009 private respondent no. 4 and 5 were promoted as Naib Tehsildar on regular basis with immediate effect. When the appellant got knowledge of the same, he filed departmental appeal on 03.10.2009, against order dated 18.07.2009, which remained un-answered. Those promoted through order referred to above were previously in the surplus pool thus their seniority was required to be determined in accordance with the letter dated 08.06.2001 and 05.07.2003. Moreover, they were not confirmed employees, working under the administrative control of the respondents. Valuable rights accrued to the appellant were usurped by the respondents by adopting arbitrary, whimsical and unlawful procedure.

03. Learned DDA argued that under Tehsiladri/Naib Tehsildari Service Rules, 2008, the ministerial staff of the office of DCO, District Officer (R&E)/collector and EDO (E&P) were not eligible for promotion to the post of Tehsildar. Respondents no.3 to 6 were promoted as Naib Tehsildar after getting approval from the Departmental Promotion Committee. Moreover, the departmental, appeal filed by the appellant was barred by time and his service record was also not satisfactory.

04. Learned DDA further contended that case of the appellant was placed before the DPC to consider him for promotion against the post of Naib Tehsildar on 24.04.2009 but deferred for want of ACR. He also provided a copy of minutes of the DPC meeting referred to above, which was placed on the file. He further added that amendments were brought in Service Rules in 2011 and the post of Junior Scale Stenographer was excluded from the category of officials eligible for promotion as

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Service Tribunal
Peshawar

Attested

Naib Tehsildar. Again in Service Rules of 2015 12% quota were reserved for Junior Scale Stenographer for promotion as Naib Tehsildar on the basis of joined seniority list of Junior Scale Stenographer and Senior Clerks of the office of Commissioner and Deputy Commissioner and also assured that his case would be considered for promotion on his turn.

05. Learned counsel for private respondents no. 3 to 6 relied on the arguments advanced by the learned Deputy District Attorney.

CONCLUSION:

06. The appellant joined the respondent-department as Junior Scale Stenographer on 21.05.1992 and this fact has not been disputed/contested by officials/private respondents thus there is no ambiguity/confusion so far as eligibility of the appellant for promotion to the post of Naib Tehsildar is concerned. Our view point is further validated by the minutes of the meeting of the DPC held under the Chairmanship of Senior Member Board of Revenue on 25.04.2009, in which case of the appellant was deferred for want of service record/ACRs. It merits to mention here that as per working paper available on record his name appeared at serial no.2 of the panel proposed for promotion as Naib Tehsildar. Perusal of these minutes further revealed that those belonging to ministerial staff were eligible for promotion to the post of Naib Tehsildar. In addition to above private respondent no.4 and 5 were cleared for promotion as Naib Tehsildar on regular basis in the same meeting. After minute examination of the case, we observed that the appellant could not be held responsible for deficiency if any in his service record /ACRs. It was the sole responsibility of the respondents to have ensured availability of the same well

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

Attested

before the holding the meeting of the DPC referred to above. Moreover, the respondents with the help of relevant record were not able to attribute the delay in completion of service record/ACRs to the appellant. Whenever, a civil servant is deferred from promotion a post is invariably reserved for him to be considered in future after meeting deficiencies on the basis of which his case was earlier deferred by the forum concerned. Our view is also confirmed by the perusal of the above referred minutes out of five vacant posts, only two officials were promoted as Naib Tehsildar through order dated 02.05.2009.

07. The plea by the learned DDA that amendments in Service Rules were brought in 2011 was nothing more than a lame excuse. To our counter argument about deliberate delay on the part of the respondents between 24.05.2009 to 2011, he was simply clueless. He could not offer any valid reason why his case was not placed before the DPC during the aforementioned period? It truly exhibited inefficiency, incompetence, lethargy and insensitivity of the respondents in deciding the case of the appellant on merit. The principle of legitimate expectancy as held by the august Supreme Court of Pakistan2010 PLC (C.S) 760 can be easily attracted in this case, alongwith dicta contained in (1998 PLC (C.S) 980 and 2017 SCMR 399).

08. Again after introduction of new Service Rules of 2015 12% quota was reserved for promotion to the post of Naib Tehsildar from amongst Junior Scale Stenographers and Senior Clerks but even then his case was not considered by the respondents though by now almost four years have elapsed. A person having rendered 28 years satisfactory is still waiting for one step promotion which is highly regrettable and speaks of criminal negligence on the part of respondents. Those at

Attested

6

the helm of affairs are expected to bring to justice those responsible for causing undue hardships to the appellant and bringing bad name for the department.

09. As a sequel to above, the appeal is accepted and the respondents are directed to consider the case of the appellant for promotion to the post of Naib Tehsildar from the date his erstwhile juniors were promoted. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN

(MUHAMMAD HAMID MUGAHL)
MEMBER

ANNOUNCED
24.09.2019

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 26-9-19
Number of Words 2000
Copying Fee 24-00
Urgent
Total 24-00
Name of Copyist
Date of Completion of Copy 16-10-19
Date of Delivery of Copy 16-10-19

Attested

(39) 7

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT.

105

091-9213989 | Peshawar Dated the 10 /03 /2022 | 091-9214208

ORDER

No. Estt:V/M.Asadullah/JSS/DIK/2022/_____ In light of Service Tribunal order dated 24.09.20219 and dated 24.11.2021 the Competent Authority on the recommendation of Departmental Promotion Committee meeting held on 24.01.2022 Muhammad Asadullah Junior scale Stenographer is hereby prompted as Naib Tehsildar with effect from 25.11.2009 till 04.04.2021 i.e date of his retirement from service. 25.4.2021.

His dated of birth is 05.04.1961

By order of
Competent Authority

No. Estt:V/M.Asadullah/JSS/DIK/2022/ 7585-7588

Copy forwarded to the:-

1. Registrar Service Tribunal Khyber Pakhtunkhwa.
2. Commissioner DIKhan Division.
3. Deputy commissioner concerned.
4. District Accountant Officer, Southwaziristant.

Assistant Secretary (Estt:)

Attested

520 Estt: V/Note Sheet & Letters

MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING REGARDING PROMOTION OF MINISTERIAL STAFF OF THE OFFICE OF REVENUE DIVISION DIKHAN TO THE VACANT POST OF NAIB TEHSILDAR (BPS – 14) HELD ON 25.04.2009 AT 11:30 P.M IN THE OFFICE OF SENIOR MEMBER BOARD OF REVENUE NWFP.

A meeting of the Departmental Promotion Committee was held on 25.04.2009 at 11:30 AM under the Chairmanship of Senior Member Board of Revenue NWFP in his office to consider the promotion of Ministerial Staff of the Revenue Division DIKhan. The following attended:-

i. Ahsanullah Khan ,
Senior Member Board of Revenue NWFP .....in Chair

ii. Mubashir Hussain Shah
Secretary Board of Revenue NWFP .....Member

iii. Ghulam Jellani
Assistant Secretary (Admn) .....Member

There are total 35 sanction posts of regular Naib Tehsildars, out of which 30% share falls to Kanungo as 11 which have already been filled, where as according to 20% quota, the share for Ministerial Staff comes to 7, out of which two posts have already been filled, thus five posts are required to be filled from them. The Committee therefore recommends the following eligible Ministerial staff for promotion as Naib Tehsildar on regular basis.

S.No	Name	District	Date of regular appointment as JSS/ Assistant	Remarks
1.	Muhammad Shafqat Awan Assistant	DIKhan	22.10.1992	Deferred for want of service record / ACRs
2.	Mr. Asad Ullah JSS	Tank	20.05.1992	Deferred for want of service record / ACRs
3.	Mr. Sher Bahadar Assistant	Tank	10.10.1992	Cleared as NT on regular basis
4.	Mr.Zain-ul-Abiden Assistant	Tank	10.10.1992	Deferred for want of service record / ACRs
5.	Mr. Shaukat Iqbal JSS	DIKhan	21.10.1992	Cleared as NT on regular basis

Mubashir Hussain Shah
Secretary – I
Board of Revenue NWFP
Member

Ghulam Jellani
Assistant Secretary (Admn)BOR
Member

Attested

Ahsanullah Khan
Senior Member