

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1513/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

HafeezUllah, Work Supervisor, XEN High Ways Division Peshawar.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa Secretary Communication & Works Department, Civil Secretariat Peshawar.
2. Secretary Establishment Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Finance Department, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. Chief Engineer Centre, C & W Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Ahmad Sultan Tareen
Advocate

... For Appellant

Mr. Muhammad Jan
District Attorney

... For Respondents

Date of Institution..... 18.10.2023

Date of Hearing.....13.10.2023

Date of Decision.....13.10.2023

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 appeal, it may graciously be held that on the basis of 5% exclusive quota allocated for work Superintendent/Work Supervisors/Surveys possessing Diploma of Associate Engineering (DAE) in Civil Technology for promotion to the post of Sub Engineer, a separate final seniority list of the said category as issued by the Respondent No.4 on 01.04.2021 vide his office order No. 52-E/791/CE/C&W of even date, is in place prior on Notification of the C&W Department dated 26.01.2022 bearing No.

SOE/C&WD/8-12/2022 of even date. The said 5% exclusive quota for category of the appellant based on a reasonable classification has been taken away and merged in 15% quota of the category designed jointly for works Superintendent, Work Supervisor, Surveyors and Road Inspector possessing DAE irrespective of distinction in technology by the amendment in the C&W Department Notification No. SOEC&W/8-12/2009 dated 25.03.2010 and its merger in aforementioned 15% quota. If spate seniority list of the category of appellant circulated on 01.04.2021 is abandoned and a joint seniority list of incumbents allotted 15% quota by the Notification dated 26.01.2022 is prepared with determinative factor as the date of appointment for their inter se seniority, it is all likely that appellant will lose his original seniority position available to him in the seniority list dated 01.04.2021 to his utter prejudice resulting from aforementioned amendment made to take away the lawful exclusive quota of appellant's category, based on a reasonable classification. Therefore, the amendment introduced through the impugned notification meant to take away 5% exclusive quota for category of the appellant and its merger in the 15% quota by substitution irrespective of the kind of technology in DAE is ultra vires, unjust, perverse, arbitrary, perfunctory, unfair, contrary to the principles of natural justice, imbued with malice of fact and law, against the principle of reasonable classification, against the fact and law and necessitates annulment to the extent of abolition of 5% quota of appellant's category. Consequently, the 5% quota for Works Supervisor, Work Supervisors and Surveyors possessing DAE in Civil Technology, being must on the basis of reasonable classification, necessities restoration and in the furtherance, seniority list dated 01.04.2021 of the incumbents of said category if abandoned due to impugned amendment also necessitates to be brought in place by its revival and the respondents are bound to do the needful under the facts and law.

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (i) Service Appeal No. 1514/2022 titled "Sardar Muhammad Naqash Aksar Vs .Government of Khyber Pakhtunkhwa Secretary

C&W Department and others”(ii) Service Appeal No. 1515/2022 titled “Naqash Ahmad Vs. Government of Khyber Pakhtunkhwa Secretary C&W Department and others” as in these appeals common question of law and facts are involved.

3. Brief facts of the case are that appellants are working as Work Supervisor, Work Superintendent and Surveyor in the respondent department. Appellants were inducted into service when Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989 was in vogue and in accordance with which maintenance of seniority and fixation of *inter se* seniority amongst person holding the same post/rank is the requirement of said law and rules governing the service of appellant. Prescribed method of recruitment to the post of Sub-Engineer was given in appendix of C&W Department notification bearing No. SOE/C&W 8-12/2009 dated 25.03.2010. There was quota for direct recruitment and promotion from lower posts carry different pay scales. So 25% quota reserved for promotion has been further meted out for its allocation to various lower posts with different conditions and different ratio. According to it 5% quota was fixed for category of work superintendent, work supervisors and surveyors as a class having the qualification of DAE in civil technology. Tentative seniority list was issued by respondents on 01.04.2021 wherein name of the appellants were at serial No.12 where from official at serial No. 1 to 5 and *7 to 9 (8 out of total 14) had been promoted as Sub Engineer vide order dated 30.04.2021. It was on 26.01.2022 when 5% quota reserved for the category of superintendent/work supervisor/surveyors had been taken away by amendment in rules and merged in 15% quota allocated for a single category comprising work superintendent/work supervisors/road inspectors irrespective of distinction in technology of DAE and after amendment in the rules seniority position of the appellants was changed and



in near future there will be no chance of promotion to the appellant. Feeling aggrieved he preferred departmental appeal which was not responded to, hence the instant service appeal.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued provision of 5% quota for Work Superintendent, Work Supervisors and Surveyors having DAE in Civil Technology was based on reasonable classification and its merger in 15% joint quota by creating a category with addition of Road Inspectors and doing away with distinction of technologies is highly unreasonable, perverse and unjustified under the facts and law. He submitted that act of the respondents by issuing amendment notification dated 26.01.2022 that has disturbed not only the promotion quota of the appellant but also disturbed the seniority which is against the Article 38-e of the Constitution of Pakistan.

5. Conversely, learned District Attorney contended that the Government has vested powers to amend and make rules/regulations when felt necessary, so it is impossible for the authority to take steps on the whim and wishes of subordinates. He further contended that appellant and his other similarly placed official despite having higher pay scales will be placed in the seniority at the given position due to their date of appointment on the post as Work Superintendent /Work Supervisor/Surveyors and Road Inspectors.

6. Perusal of record reveals that appellant along with two others are working as Work Supervisor, Work Superintendent and Surveyor in respondent department who inducted into service when Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989 was in vogue and in accordance with which maintenance of seniority and fixation of inter-se-seniority amongst person holding the same post/rank was the requirement and rules governing the service of

appellants, prescribed method of recruitment to the post of Sub-Engineer was given in appendix of C&W Department notification bearing No. SOE /C&W 8-12/2009 dated 25.03.2010. There was quota for direct recruitment and promotion from lower posts carry different pay scales. The breakup of quota is given as under:

- a. 75% by initial recruitment;
- b. 5% by promotion, on the basis of seniority cum fitness, from Work Supervisors/Work Superintendents/Surveyors, with five year service as such having three years Diploma of Associate Engineering in civil technology, from a recognized board;
- c. 5% by promotion, on the basis of seniority cum fitness, from Road Inspector, with seven year service as such having three years Diploma of Associate Engineering in Civil Technology, from a recognized board;
- d. 5% by promotion, on the basis of seniority cum fitness, from Work Supervisors/Work Superintendents/Surveyors, with seven year service as such having three years Diploma in Electrical/Mechanical Technology, from a recognized board;
- e. 2.5% by transfer, from amongst Draftsman with seven year service as such had Diploma in Civil/Electrical/Mechanical Technology, from a recognized board;
- f. 2.5% by promotion, on the basis of seniority cum fitness from Tracer with ten year service as such having Diploma in Civil/Electrical/Mechanical Technology, from a recognized board; and
- g. 5% by promotion from amongst the Work Superintendent/Road Inspectors, who have passed B Grade departmental examination, with seven year service.

So, 25% quota was reserved for promotion has been further meted out for its allocation to various lower posts with different conditions and different ratio. According to it, 5% quota was fixed for category of work superintendent, work supervisors and surveyors as a class having the qualification of DAE in civil technology. Last seniority of this category was circulated by respondents No.4 on 01.04.2021 wherein name of the appellants were at serial No.12 where from

official at serial No. 1 to 5 and 7 to 9 (total 8 out of 14) had been promoted vide order dated 30.04.2021. It was on 26.01.2022 when 5% quota reserved for this category of superintendent/work supervisor/surveyors had been taken away by amendment in rules and merged in 15% quota allocated for a single category comprising work superintendent/work supervisors/road inspectors irrespective of distinction in technology of DAE is given as under:

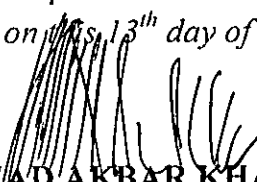
- a. 15% by promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Work/Superintendents/Work Supervisors/Surveyors/Road Inspectors with at least five years service as such, having three years Diploma in Civil/Electrical/Mechanical Technology from a recognized board;
- b. 5% by promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Work/Superintendents/Work Supervisors/Surveyors/Road Inspectors who have passed B Grade Departmental Examination with seven year.
- c. 2.5% by promotion on the basis of seniority-cum-fitness from amongst the holders of the post of Draftsman with at least seven years service as such having three years Diploma in Civil/Electrical/Mechanical Technology from a recognized board;
- d. 2.5% by promotion on the basis of seniority-cum-fitness from amongst the holders of the post of Tracer with at least seven year service as such having three years Diploma in Civil/Electrical/Mechanical Technology from a recognized board;
- e. 75% by initial recruitment.

Now after amendment in the rules, seniority position of the appellant changed and his name figured at serial no. 45 instead of 12. Now if promotion to the post of Sub-Engineer take place on the basis new seniority list issued in light of amended rules, then there will be no chance of promotion to the appellant in near future who due to being senior is holding the said post of Sub-Engineer in his own pay scale. It is also important to mention here that impugned seniority will be fixed from the date of regular appointment which means that if Road Inspectors (BPS-7) was appointed earlier in time, he will be senior to Work

Superintendent/Work Supervisor BPS-12, 11 and 10 which is not equal treatment and it also create anomaly in the service rules. How a officer having higher pay scale will be junior to officer whose pay scale is lower than him. In our humble view department will have to give transaction/cushion period to meet this situation as only six out of fourteen official of this category is left for promotion.

7. In view of the above discussion, we are unanimous to refer the matter back to the respondents to look into the anomaly highlighted above and address it in a such a way that no one right are violated and the issue resolved amicably. It would be in fitness of matter to refer these impugned service rules to committee in order to come up with just and equitable solution by removing anomaly created by the impugned service rules with direction to decide it within sixty days after receipt of this judgment. In the meantime no promotion be made till decision of anomalies. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of October, 2023.*

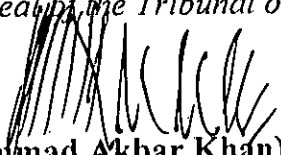

(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

ORDER

13th Oct, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Zahid Habib. Admin Officer for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unanimous to refer the matter back to the respondents to look into the anomaly highlighted and address it in a such a way that no one right are violated and the issue resolved amicably. It would be in fitness of matter to refer these impugned service rules to committee in order to come up with just and equitable solution by removing anomaly created by the impugned service rules with direction to decide it within sixty days after receipt of this judgment. In the meantime no promotion be made till decision of anomalies. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of October, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)