

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 482/2019

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

Neik Dullah Jan S/O Sher Hasan, R/O District Northf Waziristan,
Miranshah. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
2. District Education Officer, North Waziristan.
3. Assistant District Education Officer, North Waziristan.

.... (Respondents)

Mr. Muhammad Tariq
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

For respondents

Date of Institution.....26.03.2019
Date of Hearing.....12.10.2023
Date of Decision.....12.10.2023

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, appellant may be considered as appointed on the post of junior clerk from the date 17.08.2009 and appellant may be granted all back benefits w.e.f 17.08.2009 which were granted to other candidates/colleagues who have participated in the test and interview process alongwith appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that respondent department advertised different posts against which appellant applied for the post of Junior Clerk. After passing test and

interview, appellant was placed at serial No. 4 of the merit list. Appointment orders dated 17.08.2009, 28.09.2009 and 07.10.2009 of other candidates were issued but appellant was dropped being overage. Feeling aggrieved appellant filed writ petition which was decided on 15.12.2010 with direction to respondent to decide it on merit and in accordance with law. After that appellant was appointed on 25.01.2011 as Junior Clerk and was posted at Government High School, Shewa. Feeling aggrieved from appointment order, appellant preferred departmental appeal which was not responded to, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further contended that respondents violate Article 4 of the constitution of Islamic Republic of Pakistan. He submitted that appellant has participated in the process of test and interview alongwith others candidates who were appointed w.e.f 17.08.2009, 28.09.2009 and 07.10.2009 but appellant was appointed w.e.f 25.01.2011 after lapse of two years, which is against the principle of justice, hence not sustainable in the eyes of law.

5. The learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that appellant was dropped from the list of qualified candidates for the post of Junior Clerk, as the appellant was not fulfilling the required criteria of age limit. He argued that appellant is not entitled to get any kind of back



benefits as he neither aggrieved from the date of appointment on the basis of no work no pay. The appellant is entitled to get salary from the date when he take over the charge of the post.


6. Perusal of record reveals that appellant brought instant appeal for seeking direction to the respondent for grant of back benefits w.e.f 17.08.2009. Respondent No.3 advertised post of junior clerk in newspaper in response of which appellant alongwith others applied for the said post. Appellant alongwith eight other qualified the test and interview for the said post and was placed at Serial No.4 of the merit list. Respondent issued appointment orders dated 17.08.2009, 28.09.2009 and 07.10.2009 to other qualified candidates but appellant was dropped being overage by 29 days. Appellant requested respondents for age relaxation but in vain, therefore, he filed writ petition before Worthy Peshawar High Court, Peshawar wherein respondent vide order dated 15.12.2010 were directed to treat the writ petition as representation and remit it to respondent No.3 for disposal strictly on merit and in accordance with law/policy after receipt of the order. As a consequence appellant was appointed as Junior Clerk at GHS Shewa vide order dated 25.01.2011 by the respondents with immediate effect. Now appellant requested to antedate his appointment from 25.01.2011 to 17.08.2009 the date when his colleagues were appointed. Appellant was dropped due to being overage and age is one of the essential element and condition for appointment to a post. So appellant was not eligible for appointment at the time of submission of form/application who was given concession by the respondent by relaxing upper age limit for the appellant upon direction of High Court which appellant cannot otherwise claim as of right.




7. Otherwise too, appellant was not in service during the period of which he seek back benefits. For the sake of arguments if he was malafiedly ignored having no short coming/deficiency on the part of appellant then his case would be at different footing. Appellant become a civil servant on 25.01.2011. Therefore, from date of appointment he can be dealt with as a civil servant and he can brought his grievance to this Tribunal but he cannot agitate matter before his entry into service before this Tribunal i.e when he was not a civil servant before this Tribunal.

8. As a sequel to above discussion, we see no force in this appeal hence dismissed being devoid of merits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of October, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)

Kaleemullah


(RASHIDA BANO)
Member (J)

ORDER

12th Oct, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Muhammad Nisar, SCT for the respondents present.

2. Vide our detailed judgement of today placed on file, we see no force in this appeal, hence dismissed being devoid of merits. 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 12th day of October, 2023.*



(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)