

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 683/2023

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

ANSAR NISAR, Superintendent, Directorate of Local Government & Rural  
Development, Peshawar. ... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa, Chief Secretary Civil Secretariat  
Peshawar.
2. Secretary Local Government, Election & Rural Development Department,  
Government of Khyber Pakhtunkhwa, Peshawar.
3. Director General, Local Government, Election & Rural Development  
Department, Government of Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Bilal Ahmad Kakazai  
Advocate

... For Appellant

Mr. Muhammad Jan  
District Attorney

... For Respondents

Date of Institution..... 29.03.2023  
Date of Hearing..... 12.10.2023  
Date of Decision..... 12.10.2023

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, by the appellant for granting ante-dated promotion or giving retrospective effect to the promotion of the appellant, from the date of eligibility or else from 12.12.2019 i.e the schedule date of meeting of Departmental Promotion Board/Committee, wherein the promotion of the appellant was deferred without any fault on his part.

2. Brief facts of the case are that appellant was appointed as Assistant (BPS-14) in the respondent department vide order dated 26.10.2012.

Previously the post of Assistant/Accountant was mentioned at Sr. No.7 of the service rules of 1978 amended in the year 1998 as a single cadre, however on 12.06.2018 both the cadres of Assistant and Accountant were bifurcated. In pursuance of bifurcation of cadres of Accountant and Assistant the appellant requested for placing him in cadre of Accountant instead of Assistant which was accepted. Next cadre of promotion from the post of Accountant is Superintendent BPS-17 for which appellant's working papers were sent for consideration to Departmental Selection Committee but he was deferred due to anonymous complaint. Later on he was promoted vide order notification dated 04.11.2021 with immediate effect. Feeling aggrieved appellant filed departmental appeal which was rejected, 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 for the respondents and perused the case file with connected documents in detail.

4. Learned counsel appearing on behalf of appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that appellant deserved to be promoted from the date when he became eligible or at least from the date when the meeting of the Departmental Promotion Board was scheduled to be held on 12.12.2019 however he has been deprived of his right due to no fault on his part.

5. Conversely, learned District Attorney argued that appellant has been treated in accordance with law and rules. He contended that appellant was deferred due to pending inquiry and after conclusion of enquiry he was given his due right of promotion as per policy in vogue.



6. Perusal of record would reveals that appellant brought this appeal for ante dating his promotion form 04.11.2021 to 12.12.2019. Appellant was appointed as Assistant and Accountant BPS-14 on 26.10.2012. Initially nomenclature of the post of Assistant and Accountant was same but later on both were bifurcated vide rules of 2018 and appellant opted the Accountant cadre accordingly as appointed as Accountant on 18.09.2018. Appellant was the only Accountant so he was placed at serial No.1 of seniority list. Promotion of the appellant was due and meeting was scheduled and held on 12.12.2019 but promotion of the appellant was deferred due to filing of a anonymous complaint against him alongwith others. Enquiry was conducted and appellant was given clean chit by the enquiry committee. Respondent then promoted appellant vide notification dated 04.11.2021 with immediate effect. It is admitted fact that appellant was considered in Departmental Promotion Committee on 12.12.2019 which is evident from meeting of DPC but was deferred due to some reasons, later on after removal of said deficiency, appellant was promoted Then case of the appellant covered under Rule-V(d) of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, which deals with deferment of promotion and determination of seniority of deferred employ/civil servant which read as:


*"If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion come to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance the proviso of Sub-section (4) of Section 8 of the*



*Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior”*

7. So according to above referred rule of promotion policy, appellant have a fit case for antedated promotion. We allow the appeal of the appellant and direct the respondents to consider him for antedated promotion with effect from the date when his promotion was deferred i.e 12.12.2019 with all back benefits. Parties are left to bear their own costs. Consign.

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

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**


12<sup>th</sup> Oct, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Aizal Ul Hasan, Assistant Director for the respondents present.

2. Vide our detailed judgement of today placed on file, we allow the appeal of the appellant and direct the respondents to consider him for antedated promotion with effect from the date when his promotion was deferred i.e 12.12.2019 with all back benefits. Parties are left to bear their own costs. Consign.

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

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah