

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**Service Appeal No. 923/2018**

BEFORE: MRS RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Rasheed Khan S/O Mohabat Khan R/O Takia Afridi Abad,  
Shabqadar Road, Tehsil and District Peshawar..... (*Appellant*)

Versus

1. Inspector General of Police Khyber Pakhtunkhwa, Central Police Office, Peshawar.
2. Additional Inspector General (Establishment), Khyber Pakhtunkhwa, Central Police Office, Peshawar.
3. Superintendent Establishment, Central Police Office, Peshawar.
4. Director Educational Testing and Evaluation Agency (ETEA), Khyber Pakhtunkhwa, Sector E-8, Phase 7, Hayatabad, Peshawar.
5. Naveed Akhtar S/O Munir Khan, Junior Clerk, Central Police Office, Peshawar.
6. Ejaz Hussain S/O Muhammad Naseer, Junior Clerk Central Police Office, Peshawar.
7. Noor Islam Khan S/O Shams ur Rehman, Junior Clerk Central Police Office, Peshawar. .... (*Respondents*)

Mr. Muhammad Arsalan Afridi,  
Advocate

...

For appellant

Mr. Muhammad Jan  
District Attorney

...

For official respondents

Mr. Taimur Ali Khan,  
Advocate

...

For private respondents  
No. 5 to 7.

Date of Institution..... 23.07.2018

Date of Hearing..... 19.10.2023

Date of Decision..... 19.10.2023

**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 10.11.2017 of respondent No. 1 whereby the appellant was not promoted to the post of Junior Clerk (BPS-11) in disregard of the law by not awarding 04 additional marks of FA and Orphan.



It has been prayed that on acceptance of the appeal, the impugned order dated 10.11.2017 of respondent No. 1 might be set aside and the respondents might be directed to promote the appellant to the post of Junior Clerk (BPS-11) after awarding 04 marks of FA and Orphan.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Class-IV employee in the Frontier Reserve Police, Peshawar on 02.04.2011. Respondent No. 4 (ETEA) conducted selection/screening test for promotion of Class-IV employees to the post of Junior Clerk (BPS-11). Respondent No. 4 prepared the merit list dated 19.08.2017 by allocating test and academic marks to the candidates, except the appellant, who was deprived of 02 marks of FA and 02 marks of Orphan. Private respondents No. 5 to 7 were illegally promoted to the post of Junior Clerk (BPS-11) vide order dated 10.11.2017 by Respondent No. 1 as compared to the right of the appellant to be promoted and appointed on one of the Junior Clerks posts, if the requisite marks were granted to him. The appellant submitted application/representation to Respondent No. 4 on 24.08.2017 to grant him 04 marks to become eligible for promotion to the post of Junior Clerk but no reply was received by the appellant. Thereafter, he submitted two applications to Respondents No. 1 & 2 on 05.09.2017 and 22.11.2017 through Deputy Commandant FRP Peshawar for redressal of his grievance which were forwarded to Respondent No. 2 vide letter dated 05.09.2017 and 22.11.2017. The appellant also submitted application/representation to Respondent No. 2 on 15.12.2017 but no decision was taken. He then filed Writ Petition No. 5269-P/2017 in the Hon'ble Peshawar High Court, Peshawar which was dismissed on



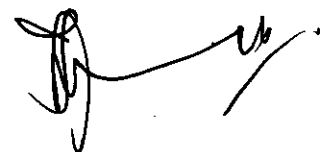
25.08.2018 with the observation that the matter was relating to the terms and conditions of a civil servant, for which proper forum was the Service Tribunal. The appellant then filed Review Petition No. 167-P/2018 for the grant of four marks i.e. 02 marks each of FA and Orphan. The review petition met the same fate and was dismissed with the same observations vide order dated 19.06.2018; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We 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 for the appellant, after presenting the case in detail, argued that the appellant was illegally deprived from promotion to the post of Junior Clerk (BPS-11) by not awarding him 04 additional marks of FA and Orphan to which he was entitled under the law as per the Standing Order No. 07/2014. He further argued that the respondents had not acted in accordance with law and had illegally not entertained the genuine request of the appellant. He requested that the appeal might be accepted as prayed.

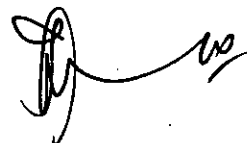
5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant had not claimed FA qualification in his form nor produced before the ETEA authority at the relevant time. Resultantly he was not allocated two additional marks of FA qualification.

6. Learned counsel for private respondents No. 5 to 7 relied on the arguments advanced by learned District Attorney and added that the



appellant submitted several applications/representations to the respondents but under the law/rules, there was no provision of successive departmental appeals. He requested that the appeal might be dismissed.

7. As contended by the appellant in his service appeal, he was not granted two marks each of his Intermediate qualification and he, being an orphan, by the ETEA authorities, due to which he was deprived of promotion to the rank of Junior Clerk (BPS-11). According to him, if those four marks were added, his seniority would have improved viz-a-viz private respondents No. 5, 6 and 7 and he would have become eligible for promotion. Merit list of passed candidates in the ETEA screening test for promotion/absorption of Class-IV employees as Junior Clerk in Khyber Pakhtunkhwa Police Department held on 19.08.2017 shows that the appellant obtained 27 marks in the test. His highest qualification is shown as Matric. The plea taken by the appellant that he was Intermediate qualified and an orphan and that he had shown it in the form that was submitted to the ETEA was negated by the respondents on the ground that ETEA was asked to clarify the position on which the authority said that there was no such mention of being intermediate qualified and orphan in the form of the appellant. During the course of arguments, respondents were asked to produce the application form of the appellant that was submitted by him to the ETEA, which was duly produced. Perusal of the form shows that the appellant had stated his Intermediate education acquired in 2016. As far as being an orphan is concerned, at Sr. No. 11 of that form, it was ticked as "No". The form was signed by the appellant and verified by the Commandant FRP dated 08.06.2017. The same documents, produced before us during the arguments,




were shown to the learned counsel for the appellant also and he did not put any further arguments on those, which shows that he was satisfied with whatever had been stated therein.

8. In view of the above discussion, it is evident that the appellant was Intermediate qualified and the same was mentioned in the ETEA application form also, but was not taken into account and thus the appellant was deprived of two marks. As far as he being an orphan is concerned, his application form does not support his claim.

9. The appeal in hand is, therefore, partially allowed and respondents are directed to add two marks of Intermediate qualification of the appellant and revise the merit list. They are further directed to consider the promotion of the appellant on the basis of the revised seniority list. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of October, 2023.*

  
(FAREEHA PAUL)  
Member (E)


  
(RASHIDA BANO)  
Member (J)

SA 923/2018

19<sup>th</sup> Oct. 2023 01. Muhammad Arsalan Afridi, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the official respondents and Mr. Taimur Ali Khan, Advocate for private respondents No. 5 to 7 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is allowed and respondents are directed to add two marks of Intermediate qualification of the appellant and revise the merit list. They are further directed to consider the promotion of the appellant on the basis of the revised seniority list. Cost shall follow the event. Consign. .

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of October, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Fazal Subhan PS\*