

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7051/2021

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

Saleem Khan, Sub-Inspector No. 786/P Capital City Police, Peshawar.

.... (Appellant)

VERSUS

1. Capital City Police Officer, Police Lines Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

....(Respondents)

Mr. Arbab Saiful Kamal  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....15.07.2021  
Date of Hearing.....10.10.2023  
Date of Decision.....10.10.2023

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, order dated 16.03.2021 of respondent No.1 be modified/reviewed and appellants be confirmed as Sub-Inspector from the date of promotion to the rank of officiating Sub-Inspector i.e 16.04.2014 with all service benefits instead of 21.01.2021.”**

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (1) Service Appeal No. 7052/2021 titled “Masood Khan Vs. Police Department” (2) Service Appeal No. 7053/2021 titled “Ayub Khan Vs. Police Department”(3) Service Appeal No. 7054/2021 titled “Laiq Zada Vs. Police Department” (4) Service Appeal

R.

No. 7055/2021 titled "Muhammad Arif Khan Vs. Police Department" (5) Service Appeal No. 7056/2021 titled "Muhammad Arshad Vs. Police Department" (6) Service Appeal No. 7057/2021 titled "Syed Asghar Khan Vs. Police Department" (7) Service Appeal No. 7058/2021 titled "Muhammad Waqas Yousaf Vs. Police Department" (8) Service Appeal No. 7059/2021 titled "Muhammad Rafiq Khan Vs. Police Department" (9) Service Appeal No. 7060/2021 titled "Tehseen Ullah Khan Vs. Police Department" (10) Service Appeal No. 7061/2021 titled "Akhtar Hussain Vs. Police Department" (11) Service Appeal No. 7062/2021 titled "Muhammad Ayaz Khan Vs. Police Department" (12) Service Appeal No. 7063/2021 titled "Adil Syed Vs. Police Department" (13) Service Appeal No. 7074/2021 titled "Muhammad Muhammad Mubarak Zeb Vs. Police Department" (14) Service Appeal No. 7083/2021 titled "Muhammad Tahir Khan Vs. Police Department" and (15) Service Appeal No. 7596/2021 titled "Manzoor Khan Vs. Police Department" as in all these appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memorandum of appeal, are that appellants were initially appointed as Probationer Assistant Sub-Inspector in the year 2010-11. On 13.08.2014 services of the appellants were regularized with immediate effect instead from the date of their initial appointment i.e 26.03.2011. Appellant along with others filed writ petition No. 3720-P/2018, which was allowed vide judgment dated 24.04.2019. On 05.06.2020 respondent No.1 in pursuance of court order issued "E" list of seniority of the appellants with effect from the date of their initial appointment. On 01.07.2020 subsequent notification of colleagues of appellants was issued who were regularized from the date of their initial appointment. Appellant along with others were promoted to the rank of Officiating Sub-Inspector w.e.f 16.04.2014. Vide notification dated



16.03.2021 appellants were confirmed in the rank S.I w.e.f 21.01.2021. Feeling aggrieved, he filed departmental appeal on 30.03.2021, which was not responded, hence the instant service appeal.

4. 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.

5. Learned counsel for the appellant argued that appellants were not treated in accordance with law and rules. He contended that appellants were deprived from confirmation as S.I for the on the ground that he has not gone through the mandatory period of SHO etc. which objection is incorrect and illegal. He further contended that appellant is entitled to be confirmed as S.I from the date of promotion to the rank of officiating Sub Inspector i.e. 16. 04.2014. He submitted that notification dated 16.03.2021 is liable to be modified with effect from 16.04.2014 instead of with immediate effect.

6. Learned District Attorney contended that the appellants have contended that confirmation in the rank of S.I is subject to fulfillment of rule 13.10(2) and standing order issued by the provincial police officer from time to time; that the appellant was required to qualify the requisite criteria for confirmation in the rank of S.I. He further contended that appellants were confirmed S.I, when they fulfilled the mandatory requirement and orders are issued with immediate effect and not with retrospective effect as per law and rules. He added that colleagues of the appellant were promoted after fulfilling the requisite criteria.

7. Perusal of record reveals that appellant alongwith others were appointed as ASI in Police Department on 26.03.2011. Services of the



appellants were regularized on 13.08.2014 with immediate effect instead of from the date of initial appointment i.e 26.03.2011. Appellant filed writ petition for giving direction to respondents to regularize services appellant with effect from the date of initial appointment which was allowed and respondents issued notification to this effect on 05.06.2020 and name of the appellant was figured at Sr. No. 13 of list E but on 01.07.2020 services of the colleagues of the appellant were confirmed by ignoring appellant. On 12.10.2020 seniority list of officiating Sub-Inspector upon respondent of DSC by keeping his name at serial No. 39 it was decided in DPC that ASI who completed their SHO period during acting charge basis was given favour by confirmation and those who had not completed mandatory SHO period they will complete it and after completion they will be assigned seniority with their batch mates. As a consequence respondent No.1 issued notification of appellant's services confirmation with effect from 21.01.2021, the date upon which appellant completed mandatory training i.e 21.01.2021. Appellant was never recommended by respondents for mandatory training of SHO period, so he was deprived from confirmation along with his other colleagues on 16.04.2014. Record reveals that only reason for non confirmation of the appellant as S.I from 16.04.2014 like other colleagues was that appellant had not completed mandatory SHO period in accordance with Police Rules 13.10(2) of Police Rules, 1934, which is reproduced as under:

*"No Sub-Inspector shall be confirmed in substantial vacancy unless he has been tested for a year of an officiating Sub-Inspector in independent charge of a Police Station, a notified police post, or as In-charge investigation of a police station or in counter terrorism."*


To this effect the worthy apex Court as well as this Tribunal, in numerous judgments have held that condition of posting as envisaged in the rule *ibid*,



as impediment in the way of confirmation as S.I was not attributable to the appellant because postings were beyond control of the appellants, which powers rests with the competent authority and subordinate officials cannot be punished for such administrative lapses on part of the relevant authority, hence depriving him from being confirmed in the rank of SI alongwith batch mates would tantamount to his deprivation from further progression, which was not justified. It was also noted that respondents totally ignored Rules 13.18 of Police Rules, 1934, wherein it is laid down that all police officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards a period of probation. On the conclusion of probation period a report shall be rendered to the authority empowered to confirm the promotion who shall confirm the officer or revert him.

8. In view of the forgoing discussion, we are of the considered opinion that case of the appellant is similar in nature with the cases already decided by this Tribunal as well as by the apex court, as referred to by counsel of the appellants. For the reasons, we are inclined to accept the present appeal with directions to the respondents to confirm the appellants as SI from the date when his other colleagues were confirmed, as well as place him in due place in the seniority list. The appellants are also held entitled to all consequential benefits, if any. 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 10<sup>th</sup> day of October, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)