

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 576/2022

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Shabab Hussain S/o Ikhtiar Ali, Junior Clerk, Office of District Officer, Soil Conservation Kohat.....(*Appellant*)

VERSUS

1. Director General, Soil & Water Conservation, Khyber Pakhtunkhwa, Peshawar, Agriculture Services Academy Campus, Opposite Islamia College, Peshawar.
2. Deputy Director, Soil Conservation, Tarnab, Peshawar.
3. District Officer, Soil Conservation, District Kohat.
4. District Comptroller of Accounts, Kohat.....(*Respondents*)

Present:-

TAJDAR FAISAL KHAN MARWAT,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....19.04.2022
Date of Hearing..... 10.10.2023
Date of Decision..... 10.10.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“On acceptance of this appeal, the impugned letter dated 26.07.2008 containing objections over the appointment order/letter of appellant may kindly be set aside and the salary of the appellant may be fixed as Junior Clerk and he may be allowed to work as Junior Clerk.”

02. Brief facts of the case are that, the appellant was appointed as Filed Watcher BPS-01 on retired son quota vide order dated 30.06.2006; that after appointment, the appellant submitted his arrival report to respondent No. 2 on 07.07.2006 and started his duty; that some posts of Junior Clerk become vacant and the appellant applied to the respondent No. 3 for his adjustment against the post of Junior Clerk, who recommended the appellant and issued appointment order dated 30.06.2008; that appointment order of the appellant was sent to respondent No. 4 for release of salary and respondent No. 4 raised observations over appointment order and pay bill with directions to send the relevant record for verification vide impugned letter dated 26.07.2008. The appellant is waiting for reply of respondent No. 3 to be sent to the respondent No. 4 to resolve the issue of pay fixation of appellant and to allow him to work as Junior Clerk but to no avail. Feeling aggrieved from the impugned letter dated 26.07.2008, the appellant moved several application to the high-ups for resolving the pay fixation issue and lastly on 12.01.2021 the appellant filed departmental appeal to respondent No. 1 which was not responded, hence preferred the instant service appeal on 19.04.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the action and inaction of the respondents for not deciding the pay fixation issue is

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against law, facts and in utter disregard of the material available on record, hence the same is untenable; that the respondents No. 1 & 3, never raised any objection on the appellant nor they have ever stopped the appellant from working as Junior Clerk in written form; that after issuance of appointment letter dated 30.06.2008 the appellant is entitled to be allowed to sit and work as Junior Clerk and to draw salary of Junior Clerk, but to the utmost shock, he is drawing salary as Field Watcher, which is against the law; that the respondents are not only bound under the law to fix the salary of the appellant as Junior Clerk but to give due seniority to the appellant as Junior Clerk, because the appellant has been prevented by the respondent from being working as Junior Clerk; that no explanation what so ever has been given by the respondents that why the requisite record has not been sent to respondent No. 4 despite his clear request in writing and that's why the appellant has not been given his due right. Learned counsel for the appellant relied on 2009 PLC (C.S) 925, 2010 PLC (C.S) 1427, 2011 PLC (C.S) 331, 2011 SCMR 1581, 2013 SCMR 1053, 2015 SCMR 1418, 2015 SCMR 74, 2022 SCMR 1583 & PLD 2023 Supreme Court 371.

05. Learned District Attorney for the respondents contended that the there is no issue of pay fixation as the impugned order dated 30.06.2008 was against the rules; that the impugned order dated 30.06.2008 issued by the Deputy Director Soil Conservation Khyber Pakhtunkhwa a provincial office is invalid as according to the Schedule-iv of District Rules of Business (Rules-25) 2001, Executive District Officer was declared as appointing authority for BPS-16 and below of the concerned

devolved department; that the appellant has neither assumed the charge of Junior Clerk nor marked attendance against the said post, rather working as Filed Watcher till date; that the impugned order dated 30.06.2008 was against the rules, therefore, the appellant cannot be allowed to work as Junior Clerk.

06. Although the case is badly hit by limitation but we deemed it appropriate to look into the merit of the case as well in order to meet the end of justice. Rules-11 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 provides that initial appointment to posts in BPS-1 to 15 shall be made on the recommendations of the Departmental Selection Committee after the vacancies have been advertised in newspapers. For posts in BS-5 and above proper criteria for selection has been prescribed allocating total 100 marks as per distribution given below;

(a)	Prescribed qualification-----	70
(b)	Higher qualification-----	12
(c)	Experience-----	10
(d)	Interview-----	08

07. According to schedule given in the District Government Rules of Business 2001, Executive District Officer was the appointing authority for the post of Junior Clerk BS-7 in case of the appellant. Moreover, the appointment order of the appellant as Junior Clerk (BS-07) derives authority from the provision of Rule 10 (4) of the (Appointment, Promotion & Transfer) Rules, 1989 which is reproduced as under;

“Where a civil servant dies or is rendered incapacitated or invalidated permanently during service or retired on

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medical board, notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant or if the child has not attained the age prescribed for appointment in Government service, the widow or wife as the case may be, of such civil servant, to a posts in any of the basic pay scales 3 to 11 in Provincial cadre post and basic pay scales 3 to 12 in District Cadre posts:

08. Scrutiny of the appellant case on the above legal parameters would reveal that post of Junior Clerk was never advertised in the newspapers nor considered/recommended by the Departmental Selection Committee. The Deputy Director Social Conservation Tarnab, Khyber Pakhtunkhwa was not appointing authority in case of District Cadre Posts including the post of Junior Clerk. Similarly the provision of Rule (4) of (Appointment, Promotion & Transfer) Rules, 1989 is not applicable in the case of appellant. In fact the appellant is the son of retired Class-IV employee and as per policy instructions of the Provincial Government relating to 25% quota in Class-IV category reserved for the children of retired Class-IV employees the appellant has already availed the same quota by getting appointment as Filed Watcher (BS-1) vide order dated 30.06.2006 and still working as such. The appointment order of the appellant as Junior Clerk dated 30.06.2008 was never actualized being an illegal order. It is evident from the attendance register and salary record that he is working as Field Watcher and the appointment order of the appellant


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as Junior Clerk dated 30.06.2008 is no more in the field being illegal order.

09. In view of foregoing discussion/legal findings we dismiss the appeal in hand. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 30th day of October, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)


ORDER

10.10.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (06) pages, we dismiss the appeal in hand. Parties are left to bear their own costs. File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10th day of October, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)