

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 16437/2020

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

Mr. Sajjad Ahmed, Sub Inspector (MTØ), District Police Sawabi.
.....(*Appellant*)

VERSUS

1. The Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. The Regional Police Officer, Mardan Region.
3. The District Police Officer District Sawabi.....(*Respondents*)

Present:-

AMIN-UR-REHMAN YOUSAFZAI, ---
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....16.12.2020

Date of Hearing.....07.11.2023

Date of Decision.....07.11.2023

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;

“That on acceptance of this appeal, the impugned orders dated 30.12.2019, 29.01.2020 and 17.11.2020 may kindly be set aside and the appellant may please be restored on his original post of Sub-Inspector with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

02. Brief facts of the case are that the appellant was serving as Sub-Inspector (MTO) in the respondent department; that the appellant was reverted from the post of Sub-Inspector to the post of C-II Head Constable on the ground that he has not qualified promotion courses vide impugned order dated 30.12.2019. Feeling aggrieved from the impugned order dated 30.12.2019, the appellant filed departmental appeal before respondent No. 2 which was rejected on 29.01.2020. Thereafter, the appellant filed revision petition under rule 11-A of the Police Rules, 1975 before respondent No. 1 which was also rejected on 17.11.2020, hence preferred the instant service appeal on 16.12.2020.

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 Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders dated 30.12.2019, 29.01.2020 & 17.11.2020 are against the law, facts and norms of natural justice, hence not tenable in the eyes of law and liable to be set aside; that the appellant has not been treated in accordance with law and rules and also violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. He has, therefore, been condemned unheard. He submitted that no regular inquiry has been conducted in the matter which is mandatory obligation on the part of competent authority; that the appellant has been promoted by the

competent authority on his own turn and not out of turn as alleged by the respondents.

05. Learned Deputy District Attorney on the other hand contended that the appellant could not qualified the requisite promotion courses and become overage, but due to his good performance, the name of the appellant was brought on promotion lists C-II and later on promoted to the post of C-II Head Constable; that respondent No. 3 examined the promotion case of the appellant from the rank of C-II Head Constable to the post of Sub-Inspector and found that the appellant has not qualified any promotion courses i.e. Lower School Courses & Intermediate College Course nor his name was brought on promotion lists D & E; that the promotion case of the appellant fall within the purview of out of turn promotion which has already been declared illegal and unconstitutional by the Apex Court and in compliance of the judgment of the Apex Court, the appellant was demoted from the rank of Sub-Inspector to his substantive rank of Head Constable; that the appellant was treated in accordance with the law and rules as well as ruling of the Apex Court.

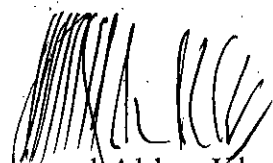
06. It is admitted fact that the appellant has not undergone promotion courses i.e. lower school course and intermediate college course to be placed in list D & E for the purpose of promotion to next higher grade but the record is silent as to whether the appellant was nominated for the said courses and he refused to undertake or failed to qualify/complete the courses. On the other hand he was promoted to the rank of Sub Inspector on the basis of his good performance in the respondent department and this fact stand admitted by the respondents. During course of arguments the

definition of the term "out of turn promotion" remained ambiguous so far as the case of the appellant is concerned as he was promoted in terms of his length of service and good performance. We also observe that the reversion to lower rank is a major penalty and before imposition of major penalty proper inquiry, serving show cause notice giving opportunity of defense and personal hearing to the accused is mandatory under the law. In the instant case no inquiry has been conducted, no show cause notice has been issued and no opportunity of defense has been granted to the appellant before his reversion from the rank of Sub Inspector to two steps down to Head Constable which is a major penalty. We feel it would be in the fitness of things to conduct proper inquiry to address the aforementioned lacunas and thereafter pass an appropriate order accordingly.

07. In view of the above findings the impugned orders dated 30.12.2019, 29.01.2020 and 17.11.2020 are set aside and the case of the appellant is remitted to the respondents to conduct proper inquiry. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 07th day of November, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)