

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWA**

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN  
SALAH-UD-DIN ... MEMBER (Judicial)

*Service Appeal No. 7080/2021*

Iftikhar Iqbal, Naib Qasid, presently promoted to Junior Clerk  
(BPS-11) Office of Deputy Commissioner Karak, District Karak.  
(Appellant)

Versus

The Commissioner Kohat Division Kohat and 04 others.  
(Respondents)

Present:

Mr. Hidayat Ullah Khattak, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For official respondents


Date of presentation of Appeal.....18.06.2021  
Date of Hearing.....05.12.2023  
Date of Decision.....05.12.2023

**JUDGMENT**

**SALAH-UD-DIN, MEMBER:** Precise facts giving rise to filing of the instant appeal are that the appellant as well as private respondent No. 3 namely Sadiq Anwar and private respondent No. 4 namely Muhammad Hassan were serving as Class-IV employees. The meeting of Departmental Promotion/ Selection Committee was held on 17.11.2020 and upon its recommendation, the appellant and one Najam-ul-Hassan Chowkidar (BPS-3) were promoted as Junior Clerks on 02.12.2020. Aggrieved of the afore-mentioned order dated 02.12.2020, private respondents No. 3 & 4 filed departmental appeals before the Commissioner Kohat Division Kohat, which were allowed through a single order dated 04.02.2021 by setting-aside the promotion

order of the appellant and remitting the matter to Deputy Commissioner Karak for re-consideration of the promotion case of Class-IV employees as per prevailing procedure within a period of one month. Against the said order of Commissioner Kohat Division Kohat, the appellant filed departmental appeal before the Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar, which was dismissed vide order dated 21.05.2021, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, however they failed to submit reply/comments, therefore, their right of submission of reply/comments was struck off vide order dated 02<sup>nd</sup> December, 2022.

 3. Learned counsel for the appellant contended that private respondents No. 3 & 4 alongwith some other Class-IV employees had submitted an application to the Deputy Commissioner, requesting therein that they do not want their promotion, therefore, they were not considered for promotion. He next contended that private respondents did not appear before the Departmental Promotion/Selection Committee, which would show that they were not willing for their promotion. He further contended that the appellant was promoted in accordance with the relevant rules, therefore, the Commissioner Kohat Division Kohat was wrong in setting-aside the promotion order of the appellant. He also contended that no notice was issued to the appellant and the impugned order dated 04.02.2021 was passed by Commissioner

Kohat Division Kohat without providing an opportunity of hearing to the appellant. In the last he requested that the impugned orders may be set-aside and the promotion order of the appellant may be restored with all consequential benefits.

4. On the other hand, learned Deputy District Attorney while rebutting the arguments of learned counsel for the appellant argued that private respondents No. 3 and 4 were senior to the appellant but they were wrongly ignored while the appellant was promoted out of turn to the post of Junior Clerk. He next argued that the appellant was promoted in violation of the procedure laid down by the Provincial Government for promotion of Class-IV employees. He next contended that the appellant was admittedly junior to private respondents, therefore, his promotion order was rightly set-aside by Commissioner Kohat Division Kohat.



5. We have heard the arguments of learned counsel for the parties and have perused the record.


6. The seniority list of the Class-IV employees as it stood at the time of meeting of Departmental Promotion/Selection Committee on 17.11.2020 has been reflected in its minutes. According to the seniority list of Class-IV employees, the appellant was at serial No. 11 while private respondents namely Sadiq Anwar and Muhammad Hassan were at serial No. 3 & 7 respectively. The appellant was thus junior to private respondents No. 3 & 4. The minutes of Departmental Promotion Committee would show that nothing is mentioned therein that private respondents were not willing for their promotion as Junior Clerk or had forgone their

right of promotion. They have just been shown as absent on the date on which meeting of the Departmental Promotion/Selection Committee was held. Otherwise too, the contention of learned counsel for the appellant that private respondents as well as other Class-IV employees senior to the appellant had foregone their right of promotion is having no force for the reason that previously an employee was having such option in view of sub-rule 5 of Rule-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, however the same has been deleted vide Notification No. SO(Policy)E&AD/1-3/2020 dated 06.08.2020. In such a situation, the promotion order of the appellant was rightly set-aside by Commissioner Kohat Division Kohat vide the impugned order dated 04.02.2021.

7. Consequently, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
05.12.2023

  
(KALIM ARSHAD KHAN)  
CHAIRMAN

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

\*Naeem Amin\*

ORDER  
05.12.2023

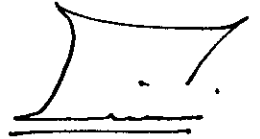
Appellant alongwith his counsel present. Mr. Ghulam Shabir, Assistant Secretary (Litigation) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being devoid of any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
05.12.2023



(Kalim Arshad Khan)  
Chairman



(Salah-Ud-Din)  
Member (Judicial)