

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.1083/2020**

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

**Muhammad Irfan**, District Revenue Accountant BPS-14, O/O the Deputy  
Commissioner Buner, DistrictBuner. ... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through ChiefSecretary Khyber  
Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Revenue and  
Estate Department at Peshawar.
3. Senior Member Board of Revenue and Estate Department KP Peshawar.
4. Commissioner Malakand at Saidu Sharif Swat.
5. Deputy Commissioner Buner at Daggar.
6. Iftikhar Ali, TRAMandanr.

... (Respondents)

Mr. Noor Mohammad Khan Khattak  
Advocate

... For Appellant

Mr. Muhammad Jan  
District Attorney

... For Respondents

Mr. Mushtaq Ahmad Khan Alizai  
Advocate

... For Private Respondent

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Date of Institution.....18.02.2020  
Date of Hearing.....10.11.2023  
Date of Decision.....10.11.2023

**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, the impugned order dated  
17.12.2019and appellate order dated 17.02.2020 may kindly be



**set aside and the appellant be retained as District Revenue Accountant (BPS-14) with all back benefits.”**

2. Brief facts of the case are that the appellant was appointed as Patwari in the respondent department and later on he was transferred to the post of Tehsil Revenue Accountant vide order dated 01.12.2014. The appellant was regularly adjusted against the post of TRA on 15.02.2016. He was further promoted to the post of District Revenue Accountant vide order dated 21.08.2019. Promotion order of the appellant was withdrawn by the appellate authority vide order dated 17.12.2019. Feeling aggrieved, he filed review petition before the Worthy Chief Secretary, Khyber Pakhtunkhwa, which was regretted vide order dated 17.02.2020, hence the instant service appeal.
3. 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 for the respondents and perused the case file with connected documents in detail.
4. Learned counsel for the appellant argued that the impugned order dated 17.12.2020 issued by the respondents is against the law, facts, norms of natural justice and materials on the record, hence liable to be set aside. He further argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan. He further argued that the impugned that while issuing the impugned orders no legal formalities has been adopted by the respondents as no right of personal hearing and personal defense had been given to the appellant.
5. Learned counsel for private respondent assisted by learned District Attorney argued that appellant has been treated in accordance with law and rules. He contended that recruitment rules of revenue department notified on 23.01.2015, Patwari is appointed by transfer to the post of Naib Tehsil



Accountant and after serving three year as Naib Tehsil Accountant next promotion is made to the post of Tehsil Accountant. The appellant was directly elevated from the post of Patwari to Tehsil Revenue Accountant without first promoting him as Naib Tehsil Accountant. He further contended that appointment/adjustment of the appellant as TRA made without observing the relevant recruitment rules was illegal. Based on such an illegal appointment, his seniority for the said post and promotion to the post of DRA was also illegal. Perpetual rights cannot be gained on the basis of an illegal order. Therefore, promotion of the appellant as DRA was rightly set aside.

6. Perusal of record reveals that appellant was appointed as Patwari vide order dated 28.09.2009 and was transferred and posted as Tehsil Revenue Accountant vide order dated 01.12.2014. Appellant was regularity adjusted against the post of Tehsil Revenue Accountant vide order 15.02.2016. Appellant was promoted to post of District Revenue Accountant on the basis of seniority-cum-fitness vide order dated 21.08.2019. One Sarbali Khan, Patwari submitted application to the authority with regard to the ineligibility of the appellant for promotion wherein Deputy Commissioner Buner opined that appellant is the only Tehsil Revenue Accountant and his case is fit for promotion to post of District Revenue Accountant. Therefore, name of the appellant was rightly sent to SMBR as per rules and law on the subject. Now promotion order of the appellant to the post of DRA was illegally withdrawn by the Chief Secretary being appellate authority on 17.12.2019 upon appeal filed by Sarbali Khan. Main contention of the appellant is that appellant is the senior most suitable TRA, who is performing his duties from 01.12.2014 and was later on regularly adjusted as Tehsil Revenue Accountant vide order dated 15.02.2016 and he was rightly promoted to the post of DRA by the authority.



7. Appellant firstly contended that he was appointed/posted by transfer from the post of Patwari to the post Tehsil Revenue Accountant vide order dated 01.12.2014.in accordance with Rules of 2008. Perusal of Government of NWFP Revenue and Estate Department Notification dated 26.12.2008 reveals that in accordance with method of recruitment, classification and other condition for the post of Tehsildar, Naib Tehsildar, District Kanungo, District Revenue Accountant and Junior Tehsil Revenue Accountant Wasil Baqi Nawis/Additional Wasil Baqi Nawis was determined, the method of recruitment for the post of TRA is by transfer from amongst the Patwari.

8. Transfer and recruitments by transfer are entirely two different concepts; transfer can be made from one category to another category or within the class if the rule permits interchangeability of the category within a class but any other transfer both intra category and inter category are in fact, under the law in a selection and appointment by way of a transfer from one category to another category or from one class to another class or from service to another service. Transfer in relation to service simply means a change of a place of employment within organization. In the instant case, appellant was simply transfer to post of TRA being Patwari because order dated 01.12.2014 reveals and reads as;

“In pursuance of Government kp, Board of Revenue, Revenue and Estate Departments letter No. Estt: VI/General File/21358-90 dated 28.10.2014 Following postings amongst the Patwaris of this district are hereby ordered with immediate effect in the best interest public service.”

9. For recruitment by transfer there must be Departmental Selection Committee, who after considering all the aspects recommended recruitment by transfer of the appellant as Tehsil Revenue Accountant but neither any such recommendation of DSC or its minutes of the meeting is there on record nor



this fact is mentioned in the order dated 01.12.2014. Moreover, appellant is still on the seniority list of Patwari and is obtaining his salary as Patwari, which is evident from salary slip, and seniority list available on record. Appellant's counsel also during course of arguments did not able to rebut these facts.

10. So appellant first posting as TRA was in a capacity of Patwari and is not recruitment by transfer. Now come towards adjustment of appellant on regular basis as Tehsil Revenue Accountant vide order dated 15.02.2016. Admittedly on 15.02.2016 new Rules of 2015 were in filed as same was notified on 23.01.2015 and in accordance with which the post of Tehsil Revenue Accountant was to be filled by promotion on the basis of seniority cum fitness from amongst the Nab Tehsil Revenue Accountant having three year service as such.


11. For promotion of the appellant as Tehsil Revenue Accountant there must be departmental promotion committee recommendation but same is not available on record in fact no such meeting was convened wherein promotion/adjustment of the appellant to post of Tehsil Revenue Accountant was recommended. Appellant was Patwari on 15.02.2016 and in accordance with service rules of 2015, Naib Tehsil Accountant will be promoted to the post of Tehsil Revenue Accountant and not Patwari. First Patwari will have to be recruited by transfer to the post of Naib Tehsil Accountant and after serving at least for three year, he will have to be appointed as Tehsil Revenue Accountant on basis of seniority cum fitness. So the very adjustment of appellant in capacity of Patwari as Tehsil Revenue Accountant vide order dated 15.02.2016 was not in accordance with rules as no DPC was called for the purpose of considering appellant to the post of Naib Tehsil Accountant or Tehsil Revenue Accountant. Admittedly, service cadre of the appellant is Patwari, therefore, he



is drawing his salary as Patwari even after his adjustment as TRA vide order dated 15.02.2016. When the very foundation upon which appellant stand for his promotion as District Revenue Accountant is not in accordance with rules and law on the subject, then in such a situation, automatically his promotion will have to be withdrawn by the authority i.e Chief Secretary who had given valid reason for setting aside the promotion order of appellant vide impugned order.

12. For what has been discussed above, the appeal in hand is hereby dismissed. Parties are left to bear their own costs. Consign.


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

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**  
10.11.2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney alongwith Mr. Ghulam Shabir, Assistant Secretary for official respondent present. Counsel for private respondent present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is hereby dismissed. Parties are left to bear their own costs. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah