

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1463/2018

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

Iftikhar Ali presently serving as Tehsil Revenue Accountant (TRA)
Mandarn District Buner. ... (Appellant)

VERSUS

1. Deputy Commissioner Buner at Daggar.
2. Commissioner Malakand at Saidu Sharif Swat.
3. Senior Member Board of Revenue and Estate Department KP Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary Revenue and Estate Department at Peshawar.
5. Mohammad Irfan presently working as TRA, Daggar.

... (Respondents)

Mr. Mushtaq Ahmad Khan Alizai
Advocate

... For Appellant

Mr. Muhammad Jan
District Attorney

... For Respondents

Mr. Noor Mohammad Khan Khattak
Advocate

... For Private Respondent

Date of Institution.....05.12.2018
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 letter/list dated 19.03.2018 may kindly be set aside/modified and the name of the appellant may kindly be placed in the list of regular TRAs and consequently be declare entitled to the post of TRA and

DRA and directed to be appointed by promotion as DRA with all back benefits.”

2. Brief facts of the case are that the appellant was initially appointed as Patwari in Revenue Department and later on he was posted as TRA Mandanr vide order dated 26.12.2014. After completion of three year service as TRA which is prescribed for onward promotion to the post of DRA, private respondent No. 5 was shown the only TRA in District Buner through an impugned letter /list dated 19.03.2018 despite the fact that Muhammad Irfan was adjusted on the post of Tehsil Revenue Accountant on 15.02.2016 and is Junior to the appellant. Feeling aggrieved from the impugned list/letter dated 19.03.2018, appellant filed departmental appeal which was not responded to, 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 appellant has not been treated in accordance with law and rules. He further argued that the impugned letter/list is against the law, rules, natural justice and is in effective upon the accrued rights of the appellant. He further argued that the appellant has duly been appointed as TRA and is entitled for promotion to the post of DRA being senior most but non mentioning his name in the impugned list is malice on the part of respondents.

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 appellant was not appointed as Tehsil Revenue Accountant (BPS-07) rather he was posted as TRA and drawing salary of the post of Patwari. He further contended that the post of District Revenue



Accountant (BPS-14) is filled from the senior most TRAs of the district with at least three year service as the appellant is Patwari in (BPS-09) by designation and not the Tehsil Revenue Accountant, his case could not be proceeded for promotion to the post of DRA.

6. Perusal of record reveals that appellant was appointed as Patwari and after serving for some time, he was posted as Tehsil Revenue Accountant (BSP-07) vide order dated 26.12.2014 and since then appellant was serving as TRA. Appellant contended that after completion of three year service as Tehsil Revenue Accountant appellant is entitled to be promoted as District Revenue Accountant BPS-14 in District Buner, which was laying vacant but respondent vide impugned letter dated 19.03.2018 show private respondent No. 5 Muhammad Irfan as the only Tehsil Revenue Accountant of the District Buner despite the fact that Muhammad Irfan was adjusted on the post of Tehsil Revenue Accountant on 15.02.2016 and is Junior to the appellant. Appellant further contended that respondent No. 5 was initially appointed as Patwari Halqa on 28.09.2009 and served as Patwari till 01.12.2014, upon which he was posted as Tehsil Revenue Accountant Daggar but he was again posted as Patwari Halqa vide order dated 13.08.2015 which order he challenged in service appeal on 31.01.2018 which was withdrawn by him on the basis of his adjustment order dated 15.02.2016 and it was not decided by the Service Tribunal on merit in favour of the appellant, so it create service break in the service of the respondent No 5 as Tehsil Revenue Accountant while appellant is serving continuously as TRA from 26.12.2014 till date. Therefore appellant is senior to respondent No 5 in accordance with Service Rules of 2008.

7. Appellant claim that he was appointed/posted as TRA on 26.02.2014 and he is serving as such since then. (Perusal of Government of NWFP Revenue and Estate Department Notification dated 26.12.2008 reveals that in



accordance with its method of recruitment, classification and other conditions 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 transferred to post of TRA being Patwari because order dated 26.12.2014 reveals and reads as:

“the following postings amongst the Patwaris are hereby ordered in the best public interest.”


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, seniority list and appellant's counsel also during course of arguments did not able to rebut these facts.



9. In our humble view appellant was not transfer by way of recruitment rather he was simply transfer in a capacity of Patwari vide order dated 26.12.2014 and not recruited by transfer as Tehsil Revenue Accountant in accordance with Rules of 2008. Therefore, he had no *locus standi* to challenge seniority list of the Tehsil Revenue Accountant.

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

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



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

*Kaleemullah