

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.269/2020

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

Iftikhar Ali, presently serving as Tehsil Revenue Accountant (TRA) Mandanr 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. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
6. 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.....24.12.2019

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 promotion order of respondent No.6 dated 21.08.2019 may kindly be set aside and he name of the appellant may kindly be placed in the list of



regular TRAs and consequently be directed for considering him for promotion to the post of DRA with all back benefits.”

2. Brief facts of the case are that the appellant was initially appointed as Patwari in the Revenue Department. Later on, he was appointed/posted as Tehsil Revenue Accountant 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, Muhammad Irfan, private respondent No. 6 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 19.03.2018, he 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 appointment to the post of TRA of respondent No.6 was against the law, rules, natural justice and is in effective upon the accrued rights of the appellant because respondent No.6 is a Patwari. 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 of 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 (BPS-



09). He further contended that the post of District Revenue Accountant (BPS-14) is to be filled from the senior most TRAs of the district with at least three year service as the appellant is Patwari 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 contended that he was appointed/posted as TRA on 26.02.2014 and he is serving as such since then. Method of recruitment for the post of TRA and DRA is provided in Government of NWFP Revenue and Estate Department Notification dated 26.12.2008 in accordance with which the method of recruitment for the post of TRA is by transfer from amongst the Patwaris.

7. 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.”

8. 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 26.12.2014. 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. Appellant in the instant appeal challenged promotion order of respondent No. 6 as District Revenue Accountant dated 21.08.2019 on the ground that he is regular senior TRA of District Buner and eligible to be promoted to the post of TRA as he had already served more than three year and Respondent No. 6 was adjusted to the post of Tehsil Revenue Accountant order dated 15.02.2016 and he remain out of service as TRA from 13.08.2015 to 15.02.2016 which is his service break period. therefore, he is not qualified for TRA, because Service Rules of 2015 were in filed at the time of adjustment as respondent No. 6 as TRA, in accordance with which method of recruitment to the post of Tehsil Revenue Accountant is "by initial appointment is by promotion on the basis of seniority cum fitness from amongst the Naib Tehsil Accountant having three year service as such". Respondent No 6 was not promoted to the post TRA which is requirement of new rules and he was mere TRA from 13.08.2015 to 15.02.2016 hence he cannot be promoted as District Revenue Accountant and appellant on this score challenged promotion order of Respondent No. 6 on the post of DRA vide order dated 21.08.2019.

10. Perusal of the reply/comments reveals that promotion order dated 21.08.2019 was withdrawn/set aside by the appellate authority vide order dated 17.12.2019, the operative para of which is;

"Now, therefore, after a thorough perusal of the record and in light of the relevant law and rules, Chief Secretary, Khyber Pakhtunkhwa being appellate authority, in terms of rules 5 (1) of Khyber Pakhtunkhwa Civil Servant (Appeal) Rules, 1986, decides to set aside



the promotion order of Mr. Muhammad Irfan as District Revenue Accountant made on 21.08.2019”.

11. Review Petition preferred by respondent No 6 was also filed and rejected by the authority. Therefore, in our humble view, the appeal in hand become infructuous and appellant have no *locus standai* to challenge promotion order of respondent No. 6 as he himself was not appointed as Tehsil Revenue Accountant in accordance with Rules of 2008, who was transferred as TRA in capacity of Patwari vide order dated 26.12.2014.

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 11th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)