

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 8827/2020

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

Muhammad Aftab, Deputy Director I.T (BPS-18), Counter Terrorism  
Department, Peshawar.

.... (Appellant)

VERSUS

1. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The Additional Inspector General of Police(Establishment), Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Inspector General of Police, CTD, Peshawar.
5. Mr. Johar Ali, Deputy Director IT (BPS-18) Police Department, Peshawar.
6. Mr. Muhammad Ashfaq, Deputy Director IT (BP-18) Police Department, Peshawar.

.... (Respondents)

Mr.Noor Muhammad Khattak,  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For official respondents

Mr. Ali Azeem Afridi,  
Advocate

... For private respondents  
No. 5 & 6.

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Date of Institution..... 16.07.2020  
Date of Hearing..... 27.11.2023  
Date of Decision..... 27.11.2023

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 appellate order dated 29.06.2020 may kindly be set aside and the**



**impugned seniority list dated 27.04.2020 may kindly be modified/corrected to the extent of appellant by directing the respondents to place the appellant at the top of the seniority list dated 27.04.2020 being senior most employee of the respondent department OR the respondents may kindly be directed to issue/circulate separate seniority lists for the cadres of appellant and private respondents. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favour of the appellant.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Data Base Administrator (BPS-17) vide order dated 10.12.2010. Service Rules of the department as well as service structure was framed and published on 28.03.2014, and according to the appendix attached with the service structure, the scale for the post of Data Base Administrator/Deputy Director/System Analyst was declared as BPS-18. Initially the respondent department issued a joint seniority list of System Programmer, Data Processing Officer and Data Base Administrator on 11.06.2014 and later on 22.04.2015 again joint seniority list of Data Processing Officer, Data Base Administrator and Network Administrator was issued. Feeling aggrieved from the joint seniority list, the appellant preferred an application before the DIG Traffic Khyber Pakhtunkhwa which was forwarded vide letter dated 22.09.2015 to the Provincial Police Officer, Khyber Pakhtunkhwa. Private respondents No. 5 & 6 had been promoted to the post of Director Computer (BP-18) w.e.f 24.09.2014. On the advice of Finance Department, in the meeting of Upgradation Committee held on 21.09.2015, the post of Data Base Administrator was upgraded to BPS-18 and vide notification dated 02.12.2015, the appellant was promoted/upgraded to the same post in BPS- 18 on acting charge basis and later on vide order dated 06.08.2017, he was promoted on regular basis. A summary for upgrading the post



of Data Base Administrator w.e.f. 02.04.2014 was put before the Chief Minister which was approved on 15.02.2019. Private respondents feeling aggrieved from the notification dated 28.05.2019, preferred representation before the Provincial Police Officer Khyber Pakhtunkhwa on 10.07.2019 which were accepted on 15.11.2019 and again a joint seniority list was issued wherein the appellant was once again placed at the bottom. Feeling aggrieved, the appellant preferred a departmental appeal which was regretted vide order dated 29.06.2020; hence the instant service appeal.

3. Respondents were put on notice. Respondents No. 1 to 4 have submitted their joint written reply/comments on the appeal while private respondents No. 5 & 6 have submitted their reply through counsel. We have heard the learned counsel for the appellant, learned District Attorney for the official respondents and learned counsel for private respondents No. 5 & 6 and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned seniority list dated 27.04.2020 and the appellate order dated 29.06.2020 are against the law, facts, norms of natural justice and materials on the record hence not tenable. He further argued that the appellant has not been treated in accordance with law and rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the private respondents belonging to other group and the appellant had not concern with them but the department issued the impugned joint seniority list dated 27.04.2020 on malafide intention. According to him, the impugned seniority list was violative of Section 8 of the civil servants Act, 1973 read with rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. He requested that the appeal may be accepted as prayed for.



5. Learned District Attorney assisted by learned counsel for private respondents No.5 and 6, while rebutting the arguments of learned counsel for the appellant, contended that the Khyber Pakhtunkhwa Police Department notified the Khyber Pakhtunkhwa Police (Information Technology Group) Service Rules on 28.03.2014. The post of Database Administrator was shown in BPS- 18 in the said rules. He further contended that before promulgation of the said rules, posts of I.T cadres were created with different nomenclature but with same rank, therefore, the Police Department approached the Provincial Government that posts of same rank and various nomenclature be re-designated as per the nomenclature mentioned in the rules which also include the post of Database Administrator (BS-17). He further contended that joint seniority list of System Programmer, Data-Processing Officer, Database Administrator and Network Administrator was issued by the respondents department in accordance with the Service Rules of 2014. He further contended that vide notification dated 02.12.2015, the appellant was promoted to BS- 18 on acting charge basis while private respondents being senior were promoted to BS- 18 on regular basis through the same notification. They requested that the appeal might be dismissed.

6. Perusal of the record reveals that the posts of I.T cadre were created with different nomenclature but with same ranks; therefore, the Police Department approached the Provincial Government that posts of same rank and various nomenclature, created before the notification of the I.T Rules, be re-designated as per the nomenclature mentioned in the rules. The Khyber Pakhtunkhwa Police Department (Information Technology Group) Service Rules were framed and notified on 28.03.2014, on the basis of which a joint seniority list of Data Processing Officer, Data base Administrator and Network Administrators was circulated which has been challenged by the appellant through the instant service

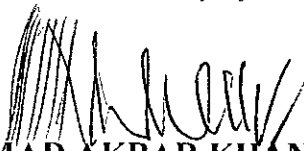


appeal. The Provincial Government is fully empowered to prescribe service rules and amend it in such a way that the rights of its employees are fully protected on one hand and they are given fair opportunity of career progression also. In the instant case, it has been found that all the positions are in BS- 18 and related to Information Technology Group, and hence clubbed together. Learned counsel for the appellant could not prove any malafide on the part of the respondents.

7. So far question of seniority of the appellant is concerned. Admittedly, appellant was appointed as Database Administrator (BPS-17) vide order dated 10.12.2010 while private respondent No.5 was appointed as System Programmer (BPS-17) vide order dated 29.08.1995 and private respondent No.6 was appointed on 20.10.2010 as Data Processing Officer (BPS-17). Private respondent No. 5 was promoted to BPS-18 vide notification dated 24.09.2019 and private respondent No. 6 promoted to BPS-18 on 02.12.2015. Appellant was promoted on acting charge basis on 02.12.2015, who was regularized on 06.09.2017. So both the private respondents are senior than appellant as seniority will have to be reckoned from the date of regular appointment. Moreover, upgradation of the post will not confer retrospective seniority to its increments. <sup>increments</sup> Therefore, impugned seniority list is in accordance with prevailing rules and policy.

8. For what has been discussed above, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27<sup>th</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member