

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1216/2016

Date of Institution ... 06.12.2016

Date of Decision ... 24.01.2022

Syed Mir Laiq Shah, Tehsildar Khyber Pakhtunkhwa Peshawar.

... (Appellant)

**VERSUS**

Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar and others.

... (Respondents)

Amjid Ali,  
Advocate

... For Appellant

Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

**AHMAD SULTAN TAREEN**  
**ATIQU-UR-REHMAN WAZIR**

...  
...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQU-UR-REHMAN WAZIR MEMBER (E):-**

Brief facts of the

case are that the appellant while serving as Naib Tehsildar BPS-14, was posted as Tehsildar BPS-16 in his own pay & scale vide order dated 31-05-2008, subsequently was appointed as Tehsildar on acting charge basis vide order dated 04-10-2020. The appellant was regularly promoted as Tehsildar vide order dated 06-04-2015. Tentative seniority list of Tehsildars was circulated as stood on 31-12-2015, which was objected by the appellant vide his letter dated 20-05-2016, but his contention was not considered and final seniority list was issued vide order dated 22-07-2016. Feeling aggrieved, the appellant filed departmental appeal, which was filed vide order dated 11-11-2016, hence the instant service appeal with prayers that the impugned order dated 11-11-2016 may be set aside and the

appellant may be given proper place in seniority list by counting his service with effect from 31-05-2008.

02. Learned counsel for the appellant has contended that the appellant was assigned charge of Tehsildar BPS-16 vide order dated 31-05-2008 in own pay & scale; that the appellant was otherwise fit for regular promotion to the post of Tehsildar and vacancies were also available but the appellant could not be promoted due to the reason that meeting of promotion board could not be convened during the period from 2008 until 2015, when he was regularly promoted vide order dated 06-04-2015; that august Supreme Court of Pakistan in its judgment reported as 2006 SCMR 1938 has held that when there is no fault of civil servant and promotion of civil servant is delayed due to non-convening of promotion board timely, then regular promotion is to be counted from the dated of promotion on acting/officiating basis; that the appellant is entitled for the benefits of salary attaching to such post but also to all consequential benefits from that very date from which he had put on the said post on officiating or acting charge basis.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was posted as Tehsildar vide order dated 31-05-2008 in his own pay & scale due to non-availability of regular Tehsildars; that upon availability of regular post, the appellant was promoted to the post of Tehsildar on regular basis with immediate effect vide order dated 06-04-2015; that under Rule-8(4) of Civil Servant Act, 1973, seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post; that request of the appellant for seniority for the period of his posting in own pay & scale does not cover the rules and needs no consideration; that as per Rule-9(6) of Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, acting charge appointment shall not confer any vested right for regular promotion to the post

held on acting charge basis, therefore, the request of the appellant does not hold the support of any law or rule.

04. We have heard learned counsel for the parties and have perused the record.

05. The appellant was promoted as Tehsildar in own pay & scale/acting charge basis vide order dated 31-05-2008 and was regularly promoted to the post of Tehsildar vide order dated 06-04-2015. The appellant preferred departmental appeal for counting his seniority from the date, when he took over the charge of the post on acting/officiating basis. His case was examined under Rule-8(4) of the Civil Servant Act, 1973 but the rule *ibid* was not relevant in case of the appellant as Rule-8 provides for determination of seniority for initial entry into service, whereas the issue of the appellant was *inter se* seniority, for which the relevant rule is Rule-17 of Civil Servant (appointment, promotion & transfer) Rules, 1989, relevant provision of the rules *ibid* is reproduced as under:

*Seniority: - (1) the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined:-*

*(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission or as the case may be, the Departmental Selection Committee; provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and*

*(b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.*

In light of the rules *ibid*, the appellant shall hold the same seniority amongst his colleagues, which he was holding in the lower post i.e. Naib

Tehsildar irrespective of the fact, if his junior was promoted earlier and promotion of the appellant was deferred for want of certain deficiencies and upon promotion to higher post shall retain inter se seniority as in the lower post, hence the appellant is entitled to retain his inter se seniority amongst his colleagues as was in the lower post, so the question of seniority is disposed of on the terms as discussed. So far as the second portion of his prayers regarding financial benefits attached to acting/officiating promotion is concerned, to this effect the supreme court of Pakistan in its judgment reported as 2006 SCMR 1938 has held that *"where a post was available against which a civil servant could be promoted; where such civil servant was qualified to be promoted to such a higher post; where he was put on such higher post on officiating or acting charge basis only because requisite exercise of allowing regular promotion to such post was being delayed by competent authority and where he was subsequently found fit for such promotion and was so promoted on regular basis, then the civil servant was entitled not only to the salary attaching to such post but also to all consequential benefits from that very date from which he had put on the said post on officiating or acting charge basis."*

06. Record would suggest that the appellant was entitled for promotion at that particular time and vacant posts were also available but regular promotion could not be made, as meeting of promotion board could not be held from 2008 until 2015, which was not fault of the appellant and for which the appellant must not suffer. We are of the considered opinion that the appellant is entitled to the salary as well as to all consequential benefits attached to the post from the date, when he took over on officiating/acting charge basis.

07. In view of the foregoing discussion, the instant appeal is accepted in terms that his seniority shall be dealt with under Rule-17 (b) of Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. The appellant is held entitled to financial benefits of salary as well as all consequential benefits attached to the

post from the date he took over its charge on officiating/acting charge basis i.e.

~~31-5-2008~~: Parties are left to bear their own costs. File be consigned to record  
04-10-2010  
room.

(Correction made as per order dated 28-11-2023

ANNOUNCED  
24.01.2022

in Misc. Application No. 640/2023).



(AHMAD SULTAN TAREEN)  
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

ORDER

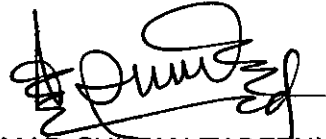
24.01.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted in terms that his seniority shall be dealt with under Rule-17 (b) of Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. The appellant is held entitled to financial benefits of salary as well as all consequential benefits attached to the post from the date he took over its charge on officiating/acting charge basis i.e. 31-5-2008. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

24.01.2022



(AHMAD SULTAN TAREEN)  
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

