

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PE; SHAWAR
AT CAMP COURT SWAT

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

Service Appeal No.1177/2023

Date of presentation of Appeal.....24.05.2023
Date of Hearing.....07.12.2023
Date of Decision.....07.12.2023

Ghani Ur Rahman Mohallah Shababnagar Pananar Mingora
Swat.....(*Appellant*)

Versus

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police CTD Khyber Pakhtunkhwa.
3. Regional Police Officer Malakand Range Saidu Sharif Swat.
4. District Police Officer Gulkada Swat.
5. Tamiz Ud Din D.S.P Latkoo Lower Chitral.
6. Aqeel Shah D.S.P C/O District Police Office Mardan....(*Respondents*)

Present:

UMAR KHITAB,
Advocate ----- For appellant

MUHAMMAD JAN,
District Attorney ----- For respondents.

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;


"That on acceptance of this Service appeal the impugned order passed by respondent No.1 dated 01/03/2023 may kindly be set aside and the appellant may kindly be promoted to the

post of DSP (BPS-17) with all back benefits Any other relief deem fit in the circumstances may also be awarded in favours of appellant against respondent.”

02 Brief facts of the case are that the appellant was initially appointed in the police department vide order dated 30.04.1981. He was promoted to the post of Inspector (BPS-16) vide order dated 05.11.2016; that the respondent No. 2 Submitted the ACRs of the appellant to respondent No.1 for the period w.e.f 01.01.2021 to 02.09.2021 vide letter date 30.11.2022 and respondent No.3 Submitted ACR,s of the appellant for the period of w.e.f 03.09.2021 to 31.21.2021 to respondent No. 1 vide letter dated : 15.03.2023; that the DPC meeting was held on 08.12.2022; that the appellant retired from service on attaining the age of superannuation on 08.04.2023 vide order dated 01.03.2023; that the respondent department issued impugned Notification whereby junior to the appellants were promoted to the rank of DSP. Feeling aggrieved from the impugned Notification dated 01.03.2023 the appellant filed departmental appeal on 09.05.2023 which was rejected vide order dated 19.05.2023, hence preferred the instant Service appeal on 24.05.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned Notification dated 01.03.2023 is against the law facts, hence liable to be set aside; that the appellant has not been treated in accordance with the law, rules as well as constitution of the Islamic Republic of Pakistan 1973; that the respondents have not promoted the appellant to the post of DSP (BPS-17) despite having eligibility and seniority which is against the law, facts, illegal, unlawful unconstitutional and based on malafide and norms of natural justice; that the respondent No.1 acted in arbitrary and malafide manner by not promoting the appellant to the post of DSP (BPS-17) that the entire proceedings have been conducted in derogation of law and rules: that the Notification dated: 01.03.2023 of respondents No.1 is whimsical, capricious and founded on surmises and conjectures.

 05. Learned District Attorney on behalf of official respondents contended that the orders passed by the respondents are quite legal and in accordance with law and rules; that the case of the appellant was considered in the Departmental Promotion Committee held on 08.12.2022 however, due to his missing ACR for the period from 03.01.2021 to 31.12.2021 the appellant was recommended to be deferred from the promotion to the rank of DSP (BPS-17); that the appellant was not promoted to the rank of DSP (BPS-17) because of his incomplete ACR; that the appellant has been treated in accordance with the law and no illegality has been done to the appellant. No violation of law and rules has been committed by the respondents.

06. Scrutiny of record reveals that the appellant was promoted as officiating Inspector on 05.11.2014 and confirmed as Inspector on

05.11.2016. At the time of placement of his promotion case before the DSC on 08.12.2022 he was eligible in all respect for promotion to the rank of DSP (BS-17). However, due to shortage of ACR for the period 03.09.2021 to 31.12.2021 his promotion was deferred by the DSC. Recommendees of the DSC including juniors of the appellant were notified on 01.03.2023. The appellant stood retired from service on 08.04.2023 after less than a month of promotion order of his colleagues. Interestingly the date of order of retirement on superannuation issued on 01.03.2023 coincides with the date of promotion of the colleagues including his juniors. We observe that at the time of consideration of promotion of the appellant it was in the knowledge of DPC that the appellant was at the verge of superannuation and as such he deserved priority treatment. The only reason for deferment of promotion of the appellant was non-availability of ACR for the period 03.09.2021 to 31.12.2021 otherwise he was eligible for promotion in terms of length of service completion of mandatory training and good service record. From the letter of Regional Police Officer addressed to the Registrar CPO Peshawar dated 15.03.2023 it is quite clear that the issue of missing ACR of the appellant remained under correspondence since 02.01.2023 and finally original copy of ACR in respect of the appellant for the missing period was submitted on 15.03.2023 after 15 days of issuance of Notification of promotion of the colleagues of the appellant. No fault seems on part of the appellant with regard to making available of the missing ACR for the period which actually comes to 03 months and 19 days only. We also observe that the appellant has not been treated at par with his other 04 colleagues who were promoted on notional basis as they stood retired on superannuation in

between the date of DSC meeting and issuance of promotion Notification. Keeping in view the due date of superannuation of the appellant i.e. 08.04.2023, he could have been cleared/recommended for promotion subject to availability of ACR for the short period of less than four months.

07. In view of foregoing discussion we are inclined to accept the appeal in hand and direct the respondents to prepare case for proforma promotion of the appellant and place it before the DPC for consideration. Wisdom is derived from 2012 SCMR 126 of Supreme Court of Pakistan. Costs shall follow the event. Consign.

08. *Pronounced in open Court at camp court Swat and given under our hands and the seal of the Tribunal on this 07th day of December, 2023.*



RASHIDA BANO
Member (J)
Camp Court Swat



MUHAMMAD AKBAR KHAN
Member (E)
Camp Court Swat

ORDER

07.12.2023

01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today, separately placed on file, consisting of (05) pages, we are inclined to accept the appeal in hand and direct the respondents to prepare case for promotion of the appellant and place it before the DPC for consideration. Wisdom is derived from 2012 SCMR 126 of Supreme Court of Pakistan. Costs shall follow the event. Consign.

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