

Cost of Rs. 2000/ received in Service Appeal No. 829/2023

Titled Zakaria Khan vs. PPO & others

in the office of Assistant Registrar, Vide Order supdt

Dated: 9 / 1 / 2024



Assistant Registrar

Khyber Pakhtunkhwa
Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. 829/2023

Zakaria Khan.....(Appellant)


VERSUS

Govt: of Khyber Pakhtunkhwa etc..... (Respondents)

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DEPONENT


DSP/ Legal,
CPO, Peshawar

30-1-24

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 829/2023

Zakaria Khan.....(Appellant)

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Govt: of Khyber Pakhtunkhwa etc..... (Respondents)

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 10446

Date 08-1-24

PARAWISE COMMENTS BY RESPONDENTS NO. 1 TO 3

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:-

- a) That the appellant has got no locus standi to file present appeal.
- b) That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- c) That the appellant is estopped by his own conduct to file the instant appeal.
- d) That the appellant has not come to this Hon'ble Tribunal with clean hands.
- e) That the appellant has got no cause of action to file the present appeal.
- f) That the appellant is concealing real facts from this Hon'ble Tribunal.
- g) That the appeal is barred by law and limitation.

FACTS:

1. Pertains to service record of the appellant.
2. Incorrect and misleading. The appellant was appointed as Junior Clerk vide Notification No. 15690/E-III dated 18.09.1990. Accordingly his name was added to the seniority list of Junior Clerk of that time. He was considered for promotion in DPC meeting held on 30.07.2009 and was deferred due to incomplete ACRs. The appellant was again considered for promotion in DPC meeting held on 28.11.2012 and was deferred due to adverse remarks and non availability of ACRs. It is pertinent to mention here that two ACRs i.e. of the year 2009 and 2010 were adverse however, the DPC minutes mentioned his name as 'deferred' instead of 'superseded' as per Rules. In next DPC held on 02.07.2015 he was again deferred due to adverse ACR of the year 2010 and incomplete ACRs for the year 2011,2012 and 2014. Also he was under enquiry at the time of DPC. It is pertinent to mention here that he needs to be superseded instead of deferment due to adverse ACR. Later on he was promoted to the rank of Senior Clerk in the DPC meeting held on 16.10.2019 when he fulfilled the required criteria of promotion. After promotion to the rank of Senior Clerk, his seniority was restored with his colleagues as per his date of appointment and was placed at Serial No. 35 of seniority list of Senior Clerks issued vide No. 3752-70/E-V dated 20.06.2020.
3. Incorrect and misleading. As per new seniority list, he was considered for promotion to the rank of Assistant Grade Clerk in the DPC meeting held on 04.03.2021. However, he was deferred from promotion because he had not completed three years service as Senior Clerk according to Khyber Pakhtunkhwa Police Ministerial Service Rules, 1974.
4. Incorrect and misleading. It is worth to add here that last DPC meeting for promotion to the rank of AGC was held on 04.03.2021 and from that time no new DPC has been conducted due to the

reason that a lot of court cases are pending adjudication against the existing seniority list of Senior Clerks and till disposal of these Court cases, new DPC cannot be conducted.

5. Correct to the extent of decision on representation of the appellant vide CPO No. CPO/CPB/03 dated whereby the appellant will be considered for promotion to next higher rank upon the availability of vacancy, completion of required criteria and seniority-cum-fitness.
6. Incorrect and misleading, as per Khyber Pakhtunkhwa Ministerial Service Rules, 1974, 50% vacancies of Assistant Grade Clerks are filled by initial recruitment therefore, 28 vacancies of Assistant Grade Clerks were left by the DPC meeting dated 04.03.2021 to be forwarded to Testing Agency for initial recruitment.
7. That the instant Service Appeal is not maintainable and is liable to be dismissed on the following Grounds.

GROUND:

- A) Incorrect, the acts and omissions of the respondent department are in accordance with law/ rules hence no malafide exists on part of respondent department. Furthermore, the appellant will be considered for promotion to next higher rank on the basis of seniority-cum-fitness.
- B) Incorrect, as already explained above that as per Khyber Pakhtunkhwa Ministerial Service Rules, 1974, 50% vacancies of Assistant Grade Clerks are filled by initial recruitment therefore, 28 vacancies of Assistant Grade Clerks were left by the DPC meeting dated 04.03.2021 to be forwarded to Testing Agency for initial recruitment.
- C) Incorrect and misleading, the appellant is finding hole for his promotion. As already explained above in detail that as per Khyber Pakhtunkhwa Ministerial Service Rules, 1974, 50% vacancies of Assistant Grade Clerks are filled by initial recruitment therefore, 28 vacancies of Assistant Grade Clerks were left by the DPC meeting dated 04.03.2021 to be forwarded to Testing Agency for initial recruitment. Furthermore, the appellant will be considered for promotion on the basis of seniority-cum-fitness. It is again worth mentioning here that It is worth to add here that last DPC meeting for promotion to the rank of AGC was held on 04.03.2021 and from that time no new DPC has been conducted due to the reason that a lot of court cases are pending adjudication against the existing seniority list of Senior Clerks and till disposal of these Court cases, new DPC cannot be conducted.
- D) Correct to the extent that respondents are under obligation to implement law/ rules but the appellant cannot be promoted without fulfillment of criteria and seniority-cum-fitness basis. Hence, the stance of the appellant is totally devoid of law/ rules.
- E) Incorrect, as already explained above that appellant was considered for promotion to the rank of Assistant Grade Clerk in DPC meeting held on 04.03.2021 but he had deficiency of 3 years service as Senior Clerk according to Khyber Pakhtunkhwa Police Ministerial Service Rules, 1974 hence he was deferred on this reason.
- F) The respondent department may also be allowed to adduce additional grounds at the time of hearing before the Hon'ble Court.

PRAYERS

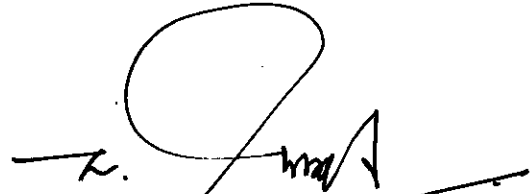
Keeping in view the above legal and factual circumstances, it is therefore humbly prayed that the appeal being devoid of merits, law/ rules and is not maintainable may kindly be dismissed with costs please.



(MUHAMMAD AZHAR) PSP
Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 3)



(AWAL KHAN) PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)



(DR. MUHAMMAD AKHTAR ABBAS) PSP
DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)

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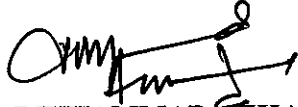
Zakaria Khan.....(Appellant)

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AUTHORITY LETTER

Mr. Faheem Khan DSP/ Legal, CPO, Peshawar is authorized to submit Para-wise comments/ reply in the instant Service Appeal in the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar and also to defend instant Service Appeal on behalf of respondents No. 1 to 3.



(MUHAMMAD AZHAR) PSP
Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 3)



(AWAL KHAN) PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)



(DR. MUHAMMAD AKHTAR ABBAS) PSP
DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)

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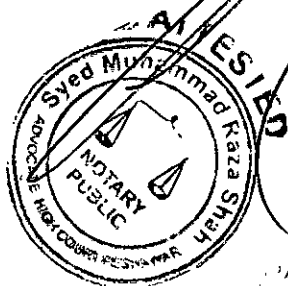
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AFFIDAVIT

I, Muhammad Azhar, Assistant Inspector General of Police, Establishment, Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm on oath that the contents of Para-wise comments on behalf of respondents No. 1 to 3 are correct to the best of my knowledge/ belief. Nothing has been concealed from this Hon'ble Service Tribunal.


(MUHAMMAD AZHAR) PSP
Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa,
Peshawar



9/1/2024