

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT ABBOTTABAD.

Service Appeal No. 1237/2022

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
 MISS FAREEHA PAUL ... MEMBER (E)

Ahsan Hussan Khan son of Santaraz, resident of Mian Abad Baffa, Tehsil and District Mansehra. (Appellant)

Versus

1. Chairman, Khyber Pakhtunkhwa Environmental Protection Tribunal, Peshawar. (Respondent)

Mr. Muhammad Anwar Khan Lughmani,
 Advocate ... For appellant

Mr. Asif Masood Ali Shah,
 Deputy District Attorney ... For respondents

Date of Institution..... 22.08.2022
 Date of Hearing..... 13.12.2023
 Date of Decision..... 13.12.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected Service Appeal No. 1304/2022 titled "Basharat Qayyum Versus Chairman Environmental Protection Tribunal, Khyber Pakhtunkhwa, Peshawar and others", as in both the appeals common questions of law and facts are involved.

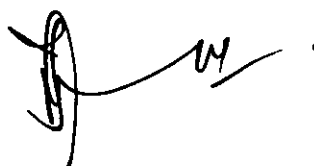
2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 11.05.2022, whereby the appellant was removed from service. It has been prayed that on acceptance of the appeal, the impugned order dated



11.05.2022 might be set aside and the appellant to be reinstated into service with all back benefits.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant applied for the post of Naib Qasid against a vacant post advertised in daily newspaper Mashriq on 03.08.2018. After codal formalities, he was short listed and was called for interview before the Selection Committee on 31.10.2018. In pursuance of the recommendation of Departmental Selection Committee vide its meeting dated 28.10.2018, the competent authority appointed the appellant, alongwith others. He assumed the charge on 13.05.2019 and started performing his duties. After three years, a newly appointed Chairman issued a show cause notice to the appellant on 01.03.2022 with the allegation that his appointment was as a result of nepotism and favoritism. The appellant replied the same within the specified time and denied the allegations but the respondents without considering his reply and citing any reason, straightaway imposed major penalty of removal from service on him vide order dated 11.05.2022. Feeling aggrieved, the appellant filed a departmental appeal which was kept pending till filing of the instant service appeal on 22.08.2022.

4. Respondent was put on notice who submitted his reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondent and perused the case file with connected documents in detail.



5. Learned counsel for the appellant, after presenting the case in detail, argued that before passing the impugned order, it was incumbent upon the respondent to appoint the inquiry officer to probe into the allegations but no such inquiry was conducted and the appellant was penalized for the fault which was not attributable to him. He further argued that final show cause notice was not issued to the appellant which was mandatory under the law. He further argued that the impugned order was illegal, unlawful, without jurisdiction, based on malafide and having no legal effect and hence was liable to be set aside. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was the co-villager of the appointing authority and his appointment was the outcome of favoritism, nepotism and conflict of interest. He further argued that due process of law and codal formalities were not fulfilled in his appointment. According to him, the Environmental Protection Tribunal was permanently at Peshawar and Naib Qasid should have been a local while the appellant belonged to District Mansehra. He requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it transpires that the Khyber Pakhtunkhwa Environmental Protection Tribunal advertised various posts in daily Mashriq, which interalia included the post of Naib Qasid also. Applications were invited from candidates from the Khyber Pakhtunkhwa and qualification for the post was mentioned as literate in the



advertisement. The appellant applied for the post of Naib Qasid and, after fulfilling the required process, was selected and appointed vide an order dated 30.04.2019. On 01.03.2022, he was served with a show cause notice, serial No. 5, 6 & 7 of which is reproduced as follows:-

“5) AND WHEREAS you being class-iv employee your appointment is against the provisions of section 12(3) Civil Servants (Appointment, Promotion & Transfer) Rules 1989, as you are non local and no reasons have been given as to why locals were rejected.

6) AND WHEREAS the post of Naib Qasid in the EPT Peshawar is not transferable.

7) AND WHEREAS in addition to the above you are close co-villager rather living in the neighborhood of the authority under whose signature being Chairman of the DSC, you were appointed and thus your very appointment is the result of favoritism and nepotism which is gross violation of the service & appointment Rules.”

8. First of all, we take up serial No. 5 of the showcause notice according to which appointment of the appellant is against the provisions of Section 12 (3) of Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and that he is a non-local. If we look at the advertisement, there is no mention of the district of candidates who should apply for the post of Naib Qasid, rather applications have been invited from the entire province of Khyber Pakhtunkhwa. Secondly, when we go through Rule 12(3), it appears that it is meant for recruitment to the posts in Basic Pay Scales 1 and 2 or equivalent to be made on local basis. In this case, the post



of Naib Qasid is in BS- 3 and hence this rule does not apply on the appellant. As far as serial No. 7 of the showcause notice is concerned, it has been stated that the appellant belongs to the same village to which the Chairman of the DSC belongs and that his appointment is a result of favoritism and nepotism which is a gross violation of service and appointment rules. A question that arises here is whether the appellant got selected by himself and issued his appointment order or it was done by the authority competent to select and issue such an order, and the answer to that is very simple that he was selected by a Departmental Selection Committee and accordingly his appointment order was issued by the Chairman Khyber Pakhtunkhwa Environment Protection Tribunal, Peshawar. We fail to understand the charge of gross violation of service and appointment rule committed by the appellant. It was the Chairman who committed this violation, if any, and he should have been asked to explain his position. When confronted whether any disciplinary action was taken against the Departmental Selection Committee who recommended the appellant and the Chairman who issued the appointment order, the learned Deputy District Attorney as well as the departmental representative clearly stated that no such action had been taken against them.

9. After going through the details of the case, we arrive at a conclusion that the appellant could not be penalized for any wrong that has not been done by him. Moreover, he has been in receipt of salaries for three years and has safely completed his probation period also and hence his right to appointment on that position has been established.





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13th Dec . 2023 01. Mr. Muhammad Anwar Khan Lughmani, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 13th day of December, 2023.*



(FAREEHA PAUL)
Member (E)
Camp Court, Abbottabad


(SALAH-UD-DIN)
Member (J)
Camp Court, Abbottabad

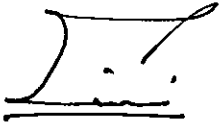
Fazle Subhan, P.S

10. In view of the above, the service appeal in hand, as well as connected Service Appeal No. 1304/2022, is allowed as prayed for. Cost shall follow the event. Consign.

11. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 13th of December, 2023.*


(FAREEHA PAUL)
Member (E)

Camp Court, Abbottabad


(SALAH-UD-DIN)
Member (J)

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Fazle Subhan, P.S