

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 601/2018

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MS. FAREEHA PAUL ... MEMBER (E)

Imran Ullah Sub-Inspector No. MR 253, District Police Mardan

.... (*Appellant*)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa
2. Regional Police Officer, Mardan.
3. District Police Officer, Mardan

.... (*Respondents*)

Mr. Fazal Shah Mohmand
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....18.04.2018
Date of Hearing.....22.12.2023
Date of Decision.....22.12.2023

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 order dated 02/11/2017 of respondent No.2 may kindly be set aside and the appellant may kindly be ordered to be confirmed as Sub-Inspector in his substantive rank with effect from 02/11/2017 with all back benefits.

2. Brief facts of case, as given in the memorandum of appeal, are that appellant

was appointed as Constable in March, 1986. That he was promoted as Head

Constable and accordingly, in the year 2009, he was promoted as Assistant Sub Inspector. That in the year 2014, appellant alongwith his other colleagues, was promoted as Officiating Sub Inspector. That he was performing his duties against the said post, and was expecting for promotion when in the meanwhile, his colleagues (including his juniors) were confirmed as Sub Inspectors vide order dated 02.11.2017 and the appellant was ignored on the reason that he had not served as Station House Officer (SHO). Feeling aggrieved, he filed departmental appeal on 22.12.2017 but fiasco, hence, the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that mandatory provisions of law and rules have been badly violated by the respondent and the appellant has not been treated in accordance with law and rules as the fundamental right guaranteed in the Constitution are badly violated. He submitted that appellant has served for more than the required length of service and was never posted as SHO which is within the sole authority of the respondents and the appellant has been punished for the fault of others which is violation of law and dictums of the superior courts.

5. Conversely, learned District Attorney for the respondents has contended that the impugned order is legal and accordance in with law and rules. He further contended that rule 2.3 of Policy Guidelines No. 1/2013 provided that an officer of the rank of Sub-Inspector/Inspector can apply to be placed on the pool of eligible officers and the appellant has never shown interest to be placed on the pool of eligible officers and the appellant has never sown interest to be placed in the same pool. He further contended that the policy guidelines also carry specific criteria for each officer to be placed in the SHO's pool which the appellant still



lacks due to his disinterest to be posted as SHO, hence, the appellant does not fulfill the criteria required for confirmation in the rank of Sub-Inspector.

6. Perusal of record reveals that appellant was appointed as Constable in March 1986, promoted as Head Constable and then ASI in year 2009 and lastly promoted as Sub-inspector in year 2014 and performing his duties honestly and with full devotion to the entire satisfaction of his high ups. Appellant was placed at serial No.78 of the seniority list of the Sub-Inspector pertaining to the year 2014 and he was hopeful for his confirmation as Sub-Inspector, having satisfactorily served for the required length and level of service and having good ACRs and unblemished service at his credit. Fifty Sub-Inspectors were confirmed vide order dated 02.11.2017 by ignoring the appellant. Even juniors to the appellant were confirmed. Order dated 02.11.2017 was communicated to the appellant on 02.12.2017 from which he came to know that he was not confirmed as he has not served as SHO which is mandatory for confirmation as Sub-Inspector. He was not confirmed as Sub-Inspector because he had not completed or fulfilled the requirement to serve as SHO for a period of one year which is prerequisite for confirmation as per Police Rules. He filed departmental appeal on 07.12.2017 which was not responded the appeal in hand.

7. It is admitted fact that appellant was promoted as ASI on 30.12.2008 and according to Rule 13-18 of Police Rules 1934, he was confirmed and his name was brought of list 'E'. Appellant was promoted as Sub-Inspector on officiating basis on 26.09.2014 where after he assumed the charge of the post of S.I. Appellant passed upper collage course in year 2016. It was prerogative/discretion of the authority /department to post the appellant as SHO for which he can't be held responsible and paralyzed by depriving him from confirmation as S.I. If the authority appointed/assigned him the task to serve as SHO and he refused to serve as such, then in such a situation the appellant will be responsible but when



he was not posted as SHO by the authority, then it is not his fault as he is not competent to post himself as SHO.

8. Respondent contended that since the appellant had not applied for his posting as SHO to authorities in accordance with guidelines No.1/2013, therefore, he is not entitled for confirmation as S.I. This guideline is very strange because it is the authority, who assessed the eligibility of a person to post him as SHO and not the choice of the police officer to be posted as SHO. If in fact such policy is in practice, then it is clog upon the discretion and prerogative of the authority for posting/transfer. Otherwise too in the presence of Rules, a policy has no importance and can't be followed.

9. For what has been discussed above, the appeal in hand is accepted as prayed for with direction to respondents to confirm the appellant as Sub-Inspector with effect from the date when his colleagues and juniors were confirmed i.e 02.11.2017. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22th day of December, 2023.*


(FAREEHA PAUL)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)

16.10.2023 1. Clerk of counsel for the appellant present. Mr. Muhammad Jan, Learned District Attorney alongwith Atta-ur-Rehman, S.I for the respondents present.

2. Lawyers are on general strike, therefore case is adjourned. To come up for arguments on 22.12.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(FAREEHA PAUL)
Member(E)


(RASHIDA BANO)
Member (J)


Kaleem Ullah


ORDER

22.12.2023 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Atta Ur Rehman, Inspector (Legal) for the respondents present..

2. Vide our detailed judgment of today placed on file, the appeal in hand is accepted as prayed for with direction to respondents to confirm the appellant as Sub-Inspector with effect from the date when his colleagues and juniors were confirmed i.e 02.11.2017. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22th day of December, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah