

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 165/2018

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

Mir Faraz Khan, DSP, Legal, Anti Corruption Establishment Phasse #
5 Hayatabad Peshawar.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Establishment, Civil Secretariat Peshawar.
2. Provincial Police Officer, (IGP) Khyber Pakhtunkhwa, Peshawar.
3. Chairman Departmental Selection Committee (Additional IGP, HQ) CPO Peshawar.
4. Muhammad Ibrahim Azhar, DSP Legal, Anti-Corruption Establishment, Kohat.....(*Respondents*)

Present:-

SAAD UL KHAN MARWAT,
Advocate --- For Appellant

HABIB ANWAR,
Additional Advocate General --- For official respondents

MUDASSIR PIRZADA,
Advocate --- For private respondent No. 4

Date of Institution.....06.02.2018

Date of Hearing.....15.12.2023

Date of Decision..... 15.12.2023

CONSOLIDATED 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 instant Service Appeal, Notification No. 872/CPB, dated 12.10.2017 of DPC dated 09.08.2017 regarding

assignment of revised seniority to respondent No. 4 may be set aside and the appellant may be awarded full seniority before 09.08.2017 on the basis of confirmation/promotion to List F dated 12.01.1997.”

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeal bearing No. 335/2018 titled Muhammad Asif versus Government of Khyber Pakhtunkhwa through Secretary Establishment, Civil Secretariat, Peshawar and others”, as common question of law and facts are involved therein.

03. Brief facts of the case are that the appellant joined the Police Department as Sub Inspector (Legal) w.e.f. 17.04.1993 while Muhammad Ibrahim Azhar (respondent No. 4) on 08.10.1992. The appellant was promoted to the promotion List-F on 12.01.1997 while private respondent No. 4 on 30.07.2008; that the appellant was confirmed in the rank of Inspector on 31.10.2013 while private respondent No. 4 was not confirmed till 30.04.2016; that vide Notification dated 12.10.2017, the private respondent No. 4 was shown senior to the appellants; that the appellant remained senior to respondent No. 4 from the year 1997 till the issuance of impugned Notification dated 12.10.2017. Feeling aggrieved, the appellant filed departmental appeal to respondent No. 2 on 24.10.2017 which was not responded within the statutory period, hence preferred the instant service appeal on 06.02.2018.

04. 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, learned Additional

Advocate General and have gone through the record with their valuable assistance.

05. Learned counsel for the appellant contended that the impugned Notification dated 12.10.2017 of placing respondent No. 4 senior to the appellant is against the law and rules; that the appellant was confirmed in the rank of Inspector about several years prior to the respondents, therefore, placing of Mr. Muhammad Ibrahim Azhar (private respondent No. 4) senior to the appellant is against the settled principles of law; that the appellant was promoted to list F in the year 1997 and private respondent No. 4 was promoted to list F in the year 2008; that the appellant remained senior to private respondent No. 4 right from the year 1997 till the year 2016 and private respondent No. 4 is silent for about 19 years long period and was made senior to appellant on flimsy and whimsical ground; that it is settled principle of law that law helps those who are vigilant but not the indolent, therefore, the impugned Notification dated 12.10.2017 passed against the settled principles of law; that till passing the impugned Notification dated 12.10.2017, confirmation in the rank and promotion to prescribed promotion list was the sole criteria for fixation of seniority but all sudden the seniority of private respondent No. 4 was fixed according to the date of appointment which is not criteria for fixation seniority; that the seniority of a Police Officer is subject to qualifying certain promotion courses and unblemished service.

06. Learned Additional Advocate General on the other hand contended that the impugned Notification dated 12.10.2017 of private respondent No. 4 was issued by the competent authority on the recommendation of departmental promotion committee in accordance with initial date of appointment i.e.

08.10.1992 and revised confirmation in accordance with law and rules; that the appellant was promoted to the rank of Inspector in the year 1997 while private respondent No. 4 in the year 2008; that according to Police Rules 12.2(3) the seniority of the direct appointees shall be reckoned from the date of initial appointment and subsequently according to date of confirmation; that private respondent No. 4 is senior to the appellant in date of appointment and he was also granted revised confirmation by the competent authority, therefore, revised notification was issued by the competent authority in accordance with law and rules.

07. Learned counsel for private respondent No. 4 relied on the arguments advanced by learned Additional Advocate General for official respondents No. 1 to 3.

08. It is not disputed that private respondent No. 4 Mr. Ibrahim was appointed as Sub Inspector, legal on 08.10.1992 and the appellant joined service later on 07.04.1993. It is also not disputed that the appellant was confirmed several years before the confirmation of the private respondent No. 4. There is nothing on record that private respondent No. 4 has ever been superseded in the promotion by the appellants who are junior to him in the service. Police Rules, 12.2(3) provides as under;

All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

Seniority, in the case of upper subordinates, will be reckoned in the first instance from date of first appointments, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of


officers appointed direct on the same date being reckoned according to age. Seniority shall, however be finally same date being that allotted to them on first appointment: Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-à-vis any officers promoted or confirmed before him during his deputation.

The seniority of lower subordinate shall be reckoned from dates of appointment, subject to the conditions of rule 12.24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date

09. The above quoted rule clearly provides that seniority of the direct employees shall be counted from the date of their initial appointment and according to date of confirmation subsequently. Seniority of private respondent No. 4 has been fixed according to his date of appointment which is 08.10.1992 and his confirmation has been revised by the competent authority on the recommendation of proper forum w.e.f 31.10.2013, therefore, we find no illegality in the restoration of seniority of the private respondent No. 4 w.e.f his initial date of appointment i.e. 08.10.1992 and later his confirmation as Inspector w.e.f. 31.10.2013. As such the instant appeal being devoid of merit stand dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 15th day of December, 2023.*


(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)


ORDER

15.12.2023 01. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (05) pages, the instant appeal being devoid of merit stand dismissed. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 15th day of December, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)