

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1412/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Mr. Muhammad Ikram Khan, Instructor (BPS-17), Mines, Rescue, Safety & Training Centre, Jalozai, District Nowshera.....(*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Mines & Minerals Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar..
4. The Chief Inspector of Mines, Inspectorate of Mines, Khyber Pakhtunkhwa, Peshawar.
5. The Khyber Pakhtunkhwa Public Service Commission through Chairman, Fort Road, Peshawar Cantt.(*Respondents*)

Mr. Kamran Khan,
Advocate ... For appellant

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

Date of Institution.....	23.06.2023
Date of Hearing.....	20.02.2024
Date of Decision.....	20.02.2024

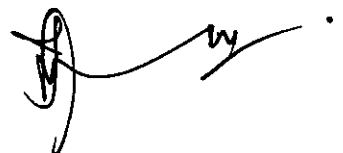
JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the appellate order dated 26.04.2023 communicated on 31.05.2023, whereby departmental appeal for counting service in lower scale for promotion to BPS-18 was regretted/disposed of. It has been prayed that on acceptance of the appeal, the order dated 26.04.2023 might be set aside and the service in lower scale for promotion to BPS-18 might be



counted for the purpose of promotion as well as the respondents might be directed to consider the appellant for promotion to the post of Senior Inspector of Mines (BPS-18) with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Village Secretary (BPS-07) vide order dated 04.02.2016. Vide advertisement No. 5/2018 certain posts were advertised including the post of Instructor in the respondent department. Being eligible and qualified he applied, through proper channel, and was duly recommended by the Khyber Pakhtunkhwa Public Service Commission for the subject post. Vide notification dated 18.03.2020 he was appointed as Instructor BPS-17 in the respondent department and vide letter dated 11.06.2020 he was relieved from the post of Village Secretary. According to notification dated 20.12.2022, the appellant was declared successful in the first class Mine Manager Certificate of Competency Examination 2022. The respondents circulated joint seniority list of the Inspector of Mines and Instructors as on 31.12.2022 vide letter dated 05.01.2023. According to the service rules/structure notified on 25.06.2018, the post of Senior Inspector of Mines (BPS-18) was to be filled by promotion on the basis of seniority cum fitness from amongst the Inspector of Mines and Instructor with at least five years service as such and having First Class Mine Manager Certificate of Competency. According to the promotion policy 2009 of the Provincial Government, service in lower pay scale for promotion to BPS-18 should be counted as: one fourth in basic scales lower than 16, should be



counted as service in Basis Scale-17. Respondents advertised the post of Senior Inspector of Mines (BPS-18), irrespective of that fact that such post ^{to} was/be filled by way of promotion and that the appellant was eligible and qualified for the subject post. Feeling aggrieved from the impugned inaction of the respondents by not promoting him and advertising the subject post through initial recruitment, the appellant preferred departmental appeal, which was forwarded through covering letter dated 26.12.2022. His departmental appeal was regretted vide appellate order dated 26.04.2023 and communicated to him vide letter dated 31.05.2023; hence the appellant preferred the instant service appeal.

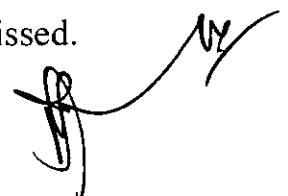
3. Respondents were put on notice. They submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned inaction of the respondents by not counting service in lower scale for promotion to BPS-18 and the appellate order dated 26.04.2023 were illegal, unlawful, void and against the norms of natural justice and law on the subject. He further argued that according to the Promotion Policy of the Provincial Government the appellant was entitled for counting of his service in lower post for the purpose of promotion to BS-18. He further argued that the respondents violated Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, read with Rule 7 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989 in an

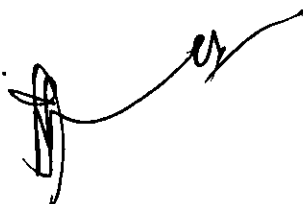


arbitrary manner and with malafide intention. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that Inspectorate of Mines circulated the joint seniority list of Inspector of Mines and Instructor as it stood on 31.12.2022, wherein name of the appellant was at serial no. 11. The said seniority list was issued under the provisions of Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, wherein it had been stipulated that seniority should be based in order of merit in case of recruitment on initial appointment basis. He informed that under the rules, recruitment to the post of Senior Inspector of Mines (BS-18) by promotion, on the basis of seniority-cum-fitness, from amongst the Inspectors of Mines and Instructors with at least five years service as such and having First Class Mine Manager Certificate of Competency^{was} granted under the provision of Mines Act 1923. The same rule provided that if no suitable person was available for promotion, then the post would be filled by transfer or initial recruitment. The Promotion Policy 2009, was not applicable in the case. The appellant would have to complete five years (05) service in his cadre in Inspectorate of Mines Khyber Pakhtunkhwa before he would be considered for promotion. The requisition for the post of Senior Inspector of Mines (BS-18) was sent to Khyber Pakhtunkhwa Public Service Commission in 2018 under the existing Service Rules, when there was shortage of competent Inspectors of Mines (BS-17) in the Inspectorate. He requested that the appeal might be dismissed.



6. The prayer of the appellant, through the instant service appeal, has two parts; first he has prayed to set aside the impugned order dated 26.04.2023 and count his service in lower scale for promotion to BS-18; and second to direct the respondents to consider him for promotion to the post of Senior Inspector of Mines (BS-18) with all back benefits. Arguments and record presented before us transpire that the appellant was appointed as Village Secretary in 2016 by the Deputy Commissioner Dir Lower. In 2018, certain posts in the Mines and Mineral Development Department of the provincial government, were advertised through the Khyber Pakhtunkhwa Public Service Commission. He applied for the post of Instructor (BS-17) in the Inspectorate of Mines and got selected in 2020. He qualified the Mine Manager Certificate of Competency Examination in 2022, which is a pre-requisite for promotion to BS-18. In the joint seniority list of Inspectors and Instructors as on 31.12.2022, he is placed at serial No. 11, on which he expressed no objection because the seniority list had been prepared on the basis of merit order assigned by the Public Service Commission. In the light of service rules of Mineral Development Department notified on 22.11.2017, read with the promotion policy of the provincial government, the appellant has prayed for his promotion by counting his previous service of Village Secretary BS- 7 also. According to him, a post of Senior Inspector of Mines is available to be filled in by promotion as per rules but the same has been referred to the Khyber Pakhtunkhwa Public Service Commission for fresh appointment. According to him, he fulfills the required criteria for promotion.



7. Coming to the first part of the prayer, it is a letter of the Mineral Development Department addressed to the Chief Inspector of Mines on the subject of counting of service in lower scale for promotion to BS-18. A letter of Establishment Department dated 13.04.2023 has been referred according to which it has been directed to dispose of the case in the light of Service Rules of the Inspectorate of Mines. Learned counsel for the appellant contends that it was issued in response to his appeal before departmental authority for promotion to the vacant post of Senior Inspector of Mines on Acting Change Basis. In this regard relevant Rule for Senior Inspector of Mines (BS-18) is reproduced as follows:-

“By promotion, on the basis of seniority-cum-fitness, from amongst the Inspectors of Mines and Instructors with at least five years services as such and having First Class Mine Manager Certificate of Competency granted under the provision of Mines Act 1923:

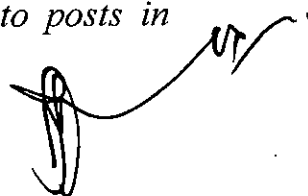
Provided that if no suitable person is available for promotion then by transfer or initial recruitment.

Note: A joint seniority list of Inspectors of Mines and Instructors shall be maintained for the purpose of promotion.”

According to the learned counsel for the appellant, if his service as Village Secretary is taken into account, the appellant qualifies for promotion and in this regard, he places his reliance on the promotion policy, relevant portion of which is as follows

“1. Length of service.

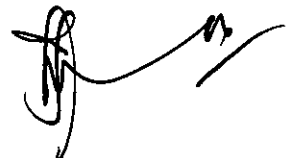
(a) Minimum length of service for promotion to posts in various basic scales will be as under:



- Basic Scale 18: 5 years service in BS-17*
- (b) Service in the lower pay scales for promotion to BS-18 shall be counted as follows:*
- (i) Half of the service in BS-16 and one fourth in Basic Scales lower than 16, if any, shall be counted as service in Basic Scale 17."*

In our opinion, the service in lower scales for promotion in BS-18 has to be counted in such a case where there is a continuous service and the official is promoted at various levels from lower scale to the upper level. In case of the appellant, his first appointment was as Village Secretary (BS-07). His second appointment as Inspector of Mines (BS-17) was an altogether fresh appointment. Had the appointment in BS-17 been a result of promotion from BS-7 onwards, he would have been entitled for counting that service to the extent of one fourth. As it was not the case, therefore, any claim of his previous service for the sake of calculation towards promotion to BS-18 is not justifiable, being not covered in any rule or policy of the provincial government. Moreover, as per service rules, he would be considered for promotion to Senior Inspector of Mines BS- 18 if he has five years service as such (emphasis added) in his present post of Instructor (BS-17).


8. As far as second part of his prayer is concerned, there is no other opinion that promotion is not a right of any civil servant. Any civil servant, who fulfills the criteria as laid down by the government in the rules governing his service, can be considered by his competent authority for promotion. This Tribunal has no power to issue any directions to the competent authority of the appellant for his promotion with all back benefits, if it is evident from the case that he does not qualify at the moment

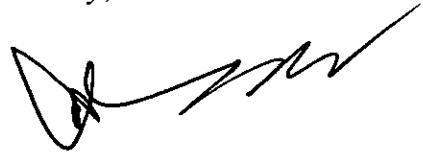


and is placed at serial no. 11 of the seniority list and ten officers are senior to him in merit order.

9. In view of the above discussion the service appeal in hand is dismissed. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 20th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


SA 1412/2023

Order

20th Feb. 2024 01. Kamran Khan, 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 08 pages, the service appeal in hand is dismissed. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 20th day of February, 2024.*


(FARZEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS