

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 126/2016

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KAHAN ... MEMBER (E)

Syed Azmat Ullah Shah, Assistant/Reader, District and Sessions Judge,  
Kohat. .... (Appellant)

VERSUS

1. The Hon'ble Chief Justice, Peshawar High Court, Peshawar through the Registrar.
2. The Registrar Peshawar High Court, Peshawar.
3. The Departmental Promotion Committee, Peshawar High Court, Peshawar through its Chairman.
4. The District & Sessions Judge, Kohat
5. Mr. Saeed Ahmad Khan, Assistant, District & Sessions Judge, D.I.Khan.
6. Mr. Shafqat Ullah Khan, Assistant, District & Sessions Judge, Bannu.
7. Mr. Siraj Hussain, Assistant, District & Sessions Judge, Hangu.

.... (Respondents)

Mr. Khushdil Khan  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....03.02.2016  
Date of Hearing.....13.12.2023  
Date of Decision.....13.12.2023

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 service appeal, the impugned notification dated 22.12.2015 thereby respondent No. 5 to 7 are illegally selected/promoted to the post of Superintendent BPS-17 and the order dated 23.01.2016




thereby review petition of appellant was rejected may kindly be set aside. The respondent No. 1 to 3 may graciously be directed to act in accordance with law and rules and consider the case of appellant for due promotion to the post of Superintendent BPS-17 on the basis of seniority-cum-fitness.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was initially appointed as Junior Clerk on 24.08.1981 and then he was promoted to the post of Senior Clerk on 07.09.1995 and was lastly promoted to the post of Assistant on 16.04.2003. Appellant was the senior most employee of District Kohat and was placed at the top of the seniority list of Assistants. Respondents vide notification 22.12.2015 promoted private respondent No. 5 to 7 to the post of Superintendent and appellant was ignored. Feeling aggrieved, he filed departmental appeal on 12.01.2016, which was filed on 23.01.2016, 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 appellant has not been treated in accordance with law and rules. He further argued that respondents acted in violation of rules and unlawfully promoted private respondent No. 5 to 7, which is illegal and having no legal sanctity, liable to be set aside. He further argued that promotion always made against the clear existing vacancy and not made against anticipated vacancy, which the respondent had done which is not warranted by law. He submitted that appellant is senior most Assistant with unblemished service record and fully eligible for promotion to the post of Superintendent BPS-17 due to which the legal rights



of the appellant was adversely affected and he was deprived of expected promotion without any cogent reason and cause. He, therefore, requested for acceptance of instant service appeal.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules and respondents correctly promoted private respondent No. 5 to 7 from the post of Assistant as Superintendent vide notification dated 22.12.2015. He further contended that post of the Superintendent is non-selection post under Peshawar High Court, Subordinate Court Staff Recruitment Rules, 2003 and post of Superintendent is to be filled by promotion on the basis of seniority-cum-fitness but the post of Superintendent is transferable in the whole province thus Superintendent promoted in one District can be transferred to another district for service and at present few of the superintendents are serving in their domicile district. He further contended that about seven districts got no representation in the service, therefore the Hon'ble Chief Justice approved Para No.15 and 16 of the summary dated 21.03.2015, according to which it was proposed that as a fair policy, equal representation to all the districts be given and the non-representative district will have the first right of promotion when a post of Superintendent became vacant in future. Consequent upon that decision a list of three senior Assistant of each non-representative district were called for to fill up the three vacancies through promotion and ultimately after conducting test and interview private respondent No. 5 to 7 were promoted who are domiciled of non -representative district. He further contended that Hon'ble Chief Justice being a competent authority have powers to make changes in the existing policy.



6. Perusal of record reveals that appellant was appointed as Junior Clerk on 24.08.1981 and promoted as Senior Clerk on 07.09.1995 and was lastly promoted as Assistant on 14.04.2003. Respondent vide notification dated 22.12.2015 issued on 02.01.2016 promoted respondent No. 5 to 7 to the post of Superintendent BPS-17 from amongst Assistants against two existing vacancies and one accruing vacancy at the event of retirement of Mian Aziz Uddin Superintendent of District & Sessions Court Kohat. Respondent No 5 to 7 were selected in view of order dated 15.12.2015 which is given as under:

*"In pursuance of the recommendation of Departmental Promotion Committee vide its meeting date 19.12.2015, the Competent authority is pleased to promote the following Assistants (BPS-16) as Superintendent (BPS-17), against the vacant posts in the establishment of District & Sessions Judges, with effect from assumption of charge against the two available and one accruing vacancy viz 02.02.2016".*

The post of the Superintendent is non-selection post and there is no concept of exam, test and interview of for the same as it will have to filled by promotion on the basis of seniority-cum-fitness which is provided in Subordinate court staff Rules 2003. Criteria for the Post of Superintendent is mentioned in Peshawar High Court (Subordinate Court Staff) Recruitment Rules 2003 issued on 26.03.2003 which read as:

Nomenclature	Method of Recruitment
Superintendent BPS-17	By promotion on the basis of seniority-cum-fitness, from amongst holder of the post of Assistant/Reader, Assistant/Clerk of Court, Assistant/Assistant Clerk of Court, Assistant /Assistant/Accountant and Assistant/Civil Nazir at Serial No.4 to 8 (all BPS-11) with all least five year service as such; Providing that a common seniority list holder of the posts at Serial No. 4 to 8 below shall be maintained for the purpose of promotion to the post Superintendent BPS-

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Appointing authorities constitution of Departmental Selection Committee and Departmental Promotion Committee is mentioned in C.No. 7(3-1) of the Ministerial Establishment of District Courts wherein for the post of Superintendent the appointing authority is:

S.No	POSTS	CHAIRMAN/MEMBERS OF DPC & DSC	APPOINTING AUTHORITY
1	Superintendent	1. Hon'ble Chief Justice-Chairman 2. Registrar- Member 3. District & Sessions Judge Concerned Member	Hon'ble Chief Justice

7. Admittedly post of the Superintendent in accordance with High Court, Subordinate Court Staff Recruitment Rules 2003 is non-selection post and it has to be filled by promotion on the basis of seniority cum fitness. When post was to be filled by promotion. Under the rules then it has to be filled on the basis of seniority-cum-fitness and not by selection. Respondent in their reply, taken the stance that Hon'ble Chief Justice approved para No. 15 and 16 of summary dated 21.03.2015 according to which it was proposed that as a fair policy equal representation to all the district be given and non representative district will have the first right of promotion when a post of Superintendent became vacant in future, consequent upon that decision a list of three senior Assistants of each non representative District were called for to fill up the three available vacancies for promotion and ultimately after conducting test and interview respondent No.5 to 7 were promoted who are domiciled of non-representative districts.

8. Perusal of para-16 dated 21.03.2015 reveals that it is admitted in that the post of Superintendent is District Post beside it this fact that post of the Superintendent is District Post is also clear that from column No.5 of

Recruitment Rules 2003 as it is mention that by promotion, on the basis of seniority cum fitness from amongst holders of the post of Assistant at serial No. 4 to 8 all BPS-16 with at least five year service as such. All posts mentioned at serial No. 4 to 8 of the recruitments rules 2003 are District cadre post from amongst which post of Superintendent will have to be filled by promotion. Moreover, this fact that post of Superintendent is a district cadre post is also clear from the DPC, composition constituted for promotion of the said post because one of the member of committee is District and Sessions Judge concerned which means District & Sessions Judge of the District where vacancy of the post of Superintendent occurred and it will have to be filled from amongst assistants of establishment of his district.


9. So it is clear that post of the Superintendent is district post and it will have to be filled from amongst the Assistants/Readers, Assistant/Clerks of court, Assistants/Assistant Clerk of court, Assistant/Accounts Assistant/ Civil Nazir of the District where post of Superintendent became vacant and not from the entire province by selection. If the post of Superintendent is not District cadre post then joint seniority list of Assistant of all the Districts of Province must be maintained by the High Court which is not maintained. Moreover test and interview was conducted which is requirement of selection post and not of the post which will have to be filled by promotion.


10. So in our humble view, post of Superintendent at District Kohat will have to be filled from amongst the Assistants mentioned in at serial No. 4 to 8 of the Recruitment Rules 2003 of District Kohat and not from the Assistant of other Districts. Appellant is admittedly senior most Assistant, which is evident from the seniority list annexed with the appeal and respondent also not denied from factum of seniority of appellant. Appellant was eligible for

promotion on the said post of Superintendent which became vacant on 02.02.2016 on the basis of seniority-cum-fitness but he was deprived from it in violation of Rules on the subject. Although appellant was later on promoted to the post of Superintendent BPS-17 vide notification dated 01.06.2019 issued on 03.06.2019 for which he was entitled on 02.02.2016 under the rules. Since the appellant stood retired on 10.06.2019 upon attaining age of superannuation, therefore, we hold that the appellant is entitled for proforma promotion from 02.02.2016 with all consequential benefits.

11. For what has been discussed above, we are unison to accept the appeal of the appellant for proforma promotion with effect from 02.02.2016. Costs shall follow the event. Consign.

12. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of December, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (M)

  
(RASHIDA BANO)  
Member (J)

**ORDER**

13.12.2023 1

Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Ayaz Ali Shah, Accountant for the official respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to accept the appeal of the appellant for proforma promotion with effect from 02.02.2016. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of December, 2023.*

**(Muhammad Akbar Khan)**  
Member (M)

  
**(Rashida Bano)**  
Member (J)