

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 163/2023

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

Mr. Muhammad Zubair, Electrician, Administration Department, Civil Secretariat Khyber Pakhtunkhwa, Peshawar.

..... (*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa through its Chief Secretary Civil Secretariat, Peshawar.**
2. **The Secretary Administration Civil Secretariat, Peshawar Khyber Pakhtunkhwa.**
3. **Secretary Establishment Civil Secretariat, Peshawar Khyber Pakhtunkhwa.....(*Respondents*)**

Mr.Asad Ullah,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution..... 20.06.2023
Date of Hearing..... 28.02.2024
Date of Decision..... 28.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the appeal, the respondents might be directed to place the name of appellant in the seniority list with that of employees taking benefit of notification dated 06.12.2012 and 17.04.2004 enabling him to be considered for promotion. It has also been prayed that the respondents might be directed to formulate service structure of the appellant's cadre aimed at extension of equal treatment.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Electrician (BPS-03) in the Establishment and Administration Department on 03.04.2008. He preferred departmental appeal on 24.08.2022, seeking insertion of his name in the seniority list entitling him to be considered for promotion by taking into account notification dated 17.04.2004, but of no avail. He was entitled to have a service structure like that of other employees serving in the Civil Secretariat but no such structure existed for the post of Electrician. He was, thus, left with no other option but to approach the Tribunal with the aim to place his name in the seniority list, like that of other employees, taking benefit of notification dated 06.12.2012 and 17.04.2004.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned 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 appellant was entitled to have his service structure enabling him for promotion. He argued that omission on the part of respondents spoke volumes of injustice, hence required interference of the Tribunal. He further argued that in the P&D Department, a class IV employee who was appointed on contract basis as Electrician (BPS-5) was later on promoted on regular basis to the post of Junior Clerk (BPS-11). He contended that the appellant had the same right in the light of rule of parity to be considered for promotion having



14 years service at his credit. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was serving against the technical post of Electrician G-II and he had to be promoted to the post of Electrician G-I on occurrence of vacancy as per service rules. He further argued that request of the appellant was not tenable as there was a separate criteria for Class-IV employees, which were non-technical posts, therefore, his application was regretted by the competent authority being devoid of merit. He requested that the appeal might be dismissed.

6. Arguments and record presented before us show that the appellant was appointed as Electrician (BS-3) in the Administration Department of the provincial government in 2008. After serving for more than fourteen years, he preferred an appeal before the departmental authority for including his name in the seniority list of Class-IV employees. His application was regretted on the ground that he was serving against a technical post and would be promoted to the post of electrician G-I on occurrence of vacancy in the light of service rules. The service rules attached with the reply of the respondents pertain to various posts in the Houses under the administrative control of the Administration Department but the appellant is an employee of the Administration Department at the level of the Secretariat, and not any House, as is clear from his appointment order, and confirmed by the learned District Attorney also. We are unable to understand that how the service rules pertaining to the employees of Houses are applicable on the appellant? Service



rules notified by Administration Department vide its notification dated 17.04.2004 have been annexed by the appellant in his appeal. Through that notification the rules pertaining to the post of Daftari have been amended as follows:-

*“By promotion on the basis of seniority-cum-fitness
from amongst the holders of posts of matriculate
Qasids, Naib Qasids, Farashs, Chowkidars, Malis,
Sweeper, Bahishtis and equivalent posts.*

7. In the above mentioned rules, posts of Qasids, Naib Qasids, Farashs, Chowkidars, Malis, Sweeper and Basheshhtis have been specifically mentioned, but the same rule states “equivalent posts” also, and it is construed that whoever Class-IV employee is left, he/she is covered in the term “equivalent posts.”

8. No specific rules for the post of electrician at the level of Administration Department were produced before us and the learned District Attorney confirmed that no such rules exist. In such a case, the rules for the post of Daftari are clear when they mention “equivalent posts”, which means that any other post, equivalent to the posts specifically mentioned in that rule, is also covered for promotion to the post of Daftari. It does not discriminate between technical and non-technical posts. For the purpose of promotion, a joint seniority list is required to be maintained by the department. In case of the appellant, there is no second opinion that he is a Class-IV employee and under the said rule, the respondent department is bound to include his name in the joint seniority list of Class-IV employees maintained at departmental level.



9. Another set of rules notified on 06.12.2012 is attached with the service appeal. Service rules of Junior Clerk are reproduced as follows:-

4	Junior Clerk.	<p>(i) Matriculation with second division or equivalent qualification from a recognized Board; and</p> <p>(ii) A speed of 30 words per minute in typing</p>	18 to 30 years	<p>a) Thirty-three per cent by promotion, on the basis of seniority-cum-fitness, from amongst Daftaris, Gestetner Operators, Qasids and Naib Qasids including holders of other equivalent posts in the Secretariat with two years service as such, who have passed S.S.C Examination; and</p> <p>b) Sixty-seven per cent by initial recruitment.</p> <p>Note: For the purpose of promotion, there shall be maintained a common seniority list of Daftaris, Gestetner Operators, Qasids, Naib Qasids etc. with reference to the dates of their acquiring the Secondary School Certificate.</p>
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In these rules also, all the Class-IV employees are covered for promotion to the post of Junior Clerk with a note that there shall be a common seniority list.

10. In the light of the above discussion, we come to a conclusion that the appellant is a Class- IV employec of Administration Department and his name has to be included in a joint seniority list of all the Class-IV employees maintained by the department and that he is eligible for further promotion in the light of rules notified on 17.04.2004 and 06.12.2012. We, therefore, allow this appeal as prayed for, with the direction to the administrative department to include the name of the appellant in the seniority list of class-IV employees at



the appropriate place, in the light of rules dated 17.04.2004 and 06.12.2012, and consider him for promotion under the said rules. Cost shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 28st day of February, 2024.


(FARNEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)


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28th Feb. 2024 01. Mr. Asad Ullah, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Azhar Khan, S.O for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, we allow the appeal as prayed for, with the direction to the administrative department to include the name of the appellant in the seniority list of class-IV employees at the appropriate place, in the light of rules dated 17.04.2004 and 06.12.2012, and consider him for promotion under the said rules. 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 28th day of February, 2024.*


(FARZEHA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS