

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 65/2022

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

Umar Khitab, SDFO, Forest Department presently posted in Mingora, Swat.
..... (Appellant)

Versus

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Forest, Environment & Wildlife Department, Peshawar.
3. The Chief Conservator of Forests, Peshawar.
4. The Chief Conservator of Wildlife, Peshawar. (Respondents)

Syed Numan Ali Bukhari,
Advocate' ... For appellant

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

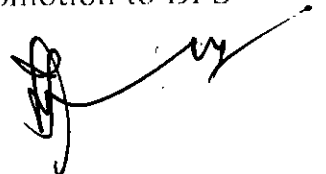
Date of Institution..... 18.01.2022

Date of Hearing..... 16.02.2024

Date of Decision..... 16.02.2024

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 14.01.2022, whereby the appeal of appellant for antedating of his promotion w.e.f availability of posts in promotion quota or 28.09.2021 by granting and counting previous service rendered in the same department for all purposes and other service benefits was refused. It has been prayed that on acceptance of the appeal, the impugned order dated 14.01.2022 might be set aside and the respondents might be directed to consider the appellant for antedated promotion to BPS-



17 w.e.f availability of posts/eligibility or 28.09.2021 by counting his previous service for all purposes, with all back and consequential benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Range Officer Wildlife BPS- 16 vide order dated 27.05.2016. He, while working as Range Officer Wildlife, was again appointed as Range Forest Officer BPS- 16, vide order dated 17.10.2017. He had more than 05 years service at his credit in BPS- 16 (27.05.2016 to 25.11.2021), and as per rules, he was entitled to be promoted to BPS- 17 after completion of 4-5 years of service, because posts in the promotion quota were available for him. According to the promotion rules, 75% of sanctioned strength was meant for promotion. Total strength of posts of SDFO was 82, amongst which 61 posts fell to the share of promotion quota. Thus, more than 40 posts were available in promotion quota because at the time of final seniority list of SDFOs dated 15.06.2021, only 12 persons were shown against the promotion quota of BPS-17. The appellant was promoted as SDFO BPS-17 vide order dated 25.11.2021 but with immediate effect, whereas, more than 40 posts in promotion quota were available. Since the appellant was eligible for promotion on completion of 05 years service on 27.05.2021, and the DPC/PSB meeting was held on 29.10.2021, he filed departmental appeal on 28.12.2021 for antedating his promotion to SDFO BPS-17 w.e.f. availability of posts or w.e.f. the date of DPC/PSB's meeting, but the same was regretted on 14.01.2022; hence the instant service appeal.



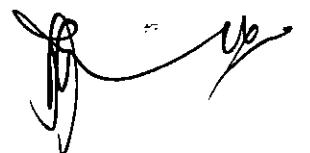
3. Respondents were put on notice who submitted written replies/ comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the respondents had delayed the promotion process for the reasons best known to them and appellant had been deprived from his legal rights of promotion in BPS- 17 from due date. He further argued that the impugned order was against the requirements of Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. He contended that as per verdict of the august Supreme Court of Pakistan, promotion should always be made from the date of availability of posts. 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 the Forest Department and Wildlife Department were separate entities, one headed by Chief Conservator of Forests Central Southern Forest Region-I Peshawar and the other by Chief Conservator Wildlife as both were having different nature of work. Being two different departments, the seniority lists, of both the Forest Ranger and Range Officer Wildlife, were separately maintained in Forest and Wildlife Departments. He further argued that the appellant was initially appointed as Range Officer Wildlife (BPS-16) in Wildlife Department and then was appointed as Forest Ranger in Forest Department. The learned




DDA informed that the period from 27.05.2016 to 16.10.2017 rendered by the appellant in the Wildlife Department had already been counted towards pension as per F.R 22 (b) of Fundamental Rules. The said service could not be counted towards his seniority in Forest Department as per rules. He further argued that the appellant had almost 4 years and one month length of service upto 25.11.2021 in Forest Department and the required length of service of 5 years was not complete, nor any vacant posts under promotion quota were available against which he could be considered for appointment in BPS- 17 on acting charge basis. Learned Deputy District Attorney further argued that the appellant concealed the facts from the court as at the time of placing the working paper for promotion of RFO BPS- 16 to the posts of SDFO BS- 17 before the DPC held on 01.02.2021, there were total 75 sanctioned posts of SDFO in Forest Department and under the rules in vogue at that time, 20% quota was reserved for promotion of RFO (BPS- 16) to the post of SDFO (BPS- 17). As per service rules, out of 75 sanctioned posts, 15 posts of SDFOs were falling under promotion quota and not 61 posts as claimed by the appellant. Against 15 posts , 11 SDFOs were working whereas only 04 posts were lying vacant under promotion quota. The DPC in its meeting held on 01.02.2021, deferred the promotion cases of three senior most RFOs due to pending inquiries against them and missing PERs whereas the RFO, Muhammad Zahir Shah, at serial no. 4 of that seniority list was recommended for promotion to the post of SDFO (BPS- 17) on regular basis. He argued that no regular post of SDFO, other than the referred 4 posts, were available under promotion quota and hence the RFOs at serial no. 5 to 12 of the working paper, including the appellant, could



not be considered for appointment on acting charges basis. Later on, the Finance Department accorded sanction for creation of seven posts of SDFO in Forest Department and revised service rules was notified on 30.09.2021 wherein the promotion quota was enhanced from 20% to 30% , working paper of the appellant was placed before the DPC and he was recommended to the post of SDFO (BPS- 17) on regular basis and was promoted vide notification dated 25.11.2021 with immediate effect. He requested that the appeal might be dismissed.

6. Through this service appeal, the appellant is seeking antedated promotion from the date when posts in promotion quota were available and considering his service rendered from the date of initial appointment, for the sake of calculating the required length of service for promotion. From the arguments and record presented before us, it transpires that the appellant was initially appointed on 27.05.2016 as Range Officer Wildlife (BS- 16). Later on, he was appointed as Range Forest Officer (BS- 16) on 17.10.2017. Both these appointments are apparently in the same department, which is the Forest, Environment and Wildlife Department of the provincial government, but it is dealing with three different subjects, therefore we can safely say that any appointment in the Wildlife Wing of the department is different from the Forest or Environment Wings, as all the three wings are dealing with different subjects, as narrated by the departmental representative. Separate seniority lists of officials of all the three wings are maintained. Hence, plea of the appellant for counting the period of service served in the



Wildlife Wing of the department for the sake of determining the qualifying service for promotion in the Forest Wing does not hold ground.

7. As far as the other prayer of the appellant, that he should be given promotion from the date when posts were available, is concerned, the appellant has placed his reliance on a list of staff working in the Forest Department of the province for calculating the sanctioned strength of posts, which is an unsigned, unauthentic data and hence cannot be relied upon. He further stated that 75% of sanctioned strength was meant for promotion, whereas as per service rules notified on 04.06.2021, 20% quota was meant for promotion which was enhanced to 30% vide rules notified on 30.09.2021. Both these rules have been attached by the appellant himself in his service appeal, and it could not be comprehended that why he is claiming the quota for promotion to be 75%. The respondents on the other hand, have attached the working paper for the Departmental Promotion Committee alongwith minutes of its meeting held on 1st February 2021, in which name of the appellant was put in the panel of officials for promotion/acting charge at serial no. 12 but the committee did not consider officials beyond serial no. 8 of the panel. Moreover, there were only four vacancies available under promotion quota and the appellant was at serial no. 12. In addition to that neither his length of service nor one of his ACRs was complete at that time. Minutes of another meeting of DPC held on 29.10.2021 are also annexed with the reply, according to which the appellant was promoted. By that time the service rules of 30.09.2021 were in place, according to which quota for promotion was enhanced from 20% to



30% and length of service was reduced from five years to four years. The appellant was thus found eligible for the said promotion.

8. In view of the above discussion, the prayer of the appellant does not hold ground and hence the service appeal is dismissed. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of February, 2024.*



(FAREEHA PAUL)
Member (I)

FazleSubhan, P.S




(RASHIDA BANO)
Member (J)

SA 65/2022

16th Feb. 2024 01. Syed Numan Ali Bukhari, 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 07 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 16th day of February, 2024.*


(FARLEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fuzal Subhan PS