

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1333/2018

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

Muhammad Asif DSP Legal Special Branch Peshawar.
.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer Bannu.
4. Sohail Afzal DSP Legal Presently posted as Assistant Director Legal Anti-Corruption Establishment, Khyber Pakhtunkhwa, Peshawar.....(*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.....11.10.2018

Date of Hearing.....15.12.2023

Date of Decision..... 15.12.2023

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, the impugned Notification and order may be set aside and appellant may be

placed senior to private respondent No. 4 in the seniority list of DSPs Legal.”

02. Brief facts of the case are that the appellant and private respondent No. 4 joined the Police Department as Sub Inspector (Legal) w.e.f. 17.04.1993. The name of appellant and private respondent No.4 were existing at serial No. 2 & 3 in the merit list; that the appellant qualified the prescribed Sub-Inspector Course/training and completed the probation period but respondent No. 3 did not confirm the appellant from the date of appointment. The appellant filed service appeal No. 667/2009 for correctness of the date of confirmation in the rank of Sub-Inspector which was accepted vide judgment dated 12.01.2010 and accordingly appellant confirmed in the rank of Sub Inspector Legal was revised vide order dated 15.03.2012; that the appellant was placed senior to private respondent No. 4 as per merit list and judgment of this Tribunal; that private respondent No. 4 submitted representation for ante dated promotion which was turned down on 16.02.2015. Feeling aggrieved the private respondent No. 4, filed service appeal No. 320/2015 in this Tribunal which was *accepted and the impugned seniority list dated 20.11.2013 was set aside, order dated 16.02.2015 and ancillary matters be brought in conformity with law/rules*. That the respondent No. 2 without following the judgment of this Tribunal passed in service appeal No. 320/2015 in true perspective and associating the appellant, passed the impugned Notification dated 23.05.2018. Feeling aggrieved from the impugned Notification dated 23.05.2018, the appellant filed departmental appeal which was filed vide impugned order dated 13.08.2018, hence preferred the instant service appeal.

03. 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.

04. Learned counsel for the appellant contended that the impugned Notification dated 23.05.2018 and order dated 13.08.2018 of placing senior to the appellant is against the law and rules; that the name of the appellant was existing at serial No. 2 of the merit list and private respondent No. 4 was at serial No. 3, therefore, appellant is senior to private respondent No. 4; that respondent No. 1 issued the impugned Notification against the decision made during meeting held on 30.11.2016. That the department has completely misinterpreted the judgment of this Tribunal dated 28.02.2018 passed in service appeal No. 320/2015; that neither the matter was placed before the committee for proper decision nor the appellant was heard. That the appellant was senior to private respondent No. 4 as per merit of appointment; that no reasons and grounds have been advanced in the impugned Notification while making contrary decision to the approved decision of the CPO; that the impugned Notification was issued at the back of the appellant, therefore, the same may be set aside.


05. Learned Additional Advocate General on the other hand contended that the impugned Notification was issued by the authority in compliance with the judgment of this Tribunal dated 28.02.2018 passed in service appeal No. 320/2015, hence the appeal of the appellant is not maintainable; that the judgment of this Tribunal has been implemented in letter and spirit,



however, if all the appellant feeling aggrieved whereof, he has the remedy to challenge the judgment *ibid* as it was announced in his presence as he was placed as private respondent No. 6 in that appeal and contested through private counsel hence he is stopped by his own conduct. That private respondent No. 4 is senior to the appellant in accordance with Police Rules, 1934 read with 12.2(3) and further his seniority was revised in compliance with the judgment of this Tribunal.

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

07. Perusal of record reveals that private respondent No. 4 had earlier filed service appeal No. 320/2015 wherein the present appellant was private respondent No. 6 in the said appeal. The appellant contested the appeal through his counsel and vide judgment dated 28.02.2018 the appeal of (Mr. Sohail Afzal) who is private respondent No. 4 in the instant appeal was accepted. Para-7, 8 & 9 are reproduced below:-



7. Careful perusal of record would reveal that the appellant and private respondents no. 5 and 6 were appointed as PSI Legal in Police Department on 17.04.1993. The appellant was promoted as Inspector on 19.11.2007, while respondent no.5 on 08.10.2009 and respondent no.6 on 15.02.2008. That vide notification dated 20.01.1993 relating to the seniority of PSI's Legal as per list "F" firmed up under Rule 13-15(4) of Police Rules names of appellant and respondent no. 5 and 6 are appearing at sr. no. 17,19 and 20 respectively. Seniority lists as stood on 31.12.2006, 31.12.2007, 31.12.2008, 15.07.2009, 31.10.2010 and 31.12.2011 notified by the respondents appellant stood senior to private respondents no. 5 and 6. These seniority lists were never challenged by private respondents. Official respondents deliberately misinterpreted the judgment of this Tribunal dated 12.01.2010 and placed private respondents no. 5 and 6 senior to the appellant in the impugned seniority

list notified on 20.11.2013. The said seniority list is hit by Rule 12.2 (3) of Police Rules 1934. The appellant being older in age should be placed senior to private respondents. Case law reported as PLJ 2009 SC 125 refers. He filed departmental appeal but was not considered by the competent authority. Furthermore, the appellant was not arrayed as a necessary party in the service appeals filed in this Tribunal by private respondents. That no adverse order was passed against the appellant in those judgments. Operative part of judgment is reproduced below:-

“The Tribunal accepts the appeal to the extent that in case juniors to the appellant have been promoted/confirmed, in region, on the basis of seniority, maintained on provincial level or regional level, the appellant shall also be considered at par with his colleagues as per seniority and rules”.

No doubt private respondents were entitled to be assigned due place in the seniority list but not to the detriment of the appellant. On preference of departmental appeal the competent authority vide order dated 15.01.2014 followed by addendum date 17.01.2014 confirmed him as PSI Legal from the date of his appointment i.e. 17.04.1993 instead of 01.10.1997. As proper effect was not given to the aforementioned decision so he filed another representation on 14.07.2014, which was rejected by the Departmental Promotion Committee in its meeting held on 16.02.2015. Aforementioned decision of Departmental Promotion Committee is not in line with law/rules governing seniority.

8. Learned counsel for private respondents was beating around the bush and referring to instances which are least relevant in the instant appeal. However, he candidly conceded that the appellant was correctly confirmed as S.I w.e.f 17.04.1993. So far the issue of adoption of Police Rules is concerned those have been adopted by the Khyber Pakhtunkhwa Police as is evident from police order 2002 and Police Act 2017 etc. Learned counsel was repeatedly confronted through the aforementioned evidence but failed to come up with convincing arguments. He was also confronted that in the presence of Police Rules 1934, why Civil Servant Act, 1973 and APT Rules 1989 be followed, but did not have plausible explanation?. He has failed to made out a case having support of law/rules. We are of considered view that grievances of the appellant contained in the prayer of the appeal are genuine and should be addressed strictly according to law/rules.

9. *As a sequel to above, the appeal is accepted the impugned seniority list dated 20.11.2013 is set aside, order dated 16.02.2015 and ancillary matters be brought in conformity with law/rules. Parties are left to bear their own costs. File be consigned to the record room.*

08. Mr. Sohail Afzal was given his seniority position in light of judgment of this Tribunal passed in Service Appeal No. 320/2015. If the present appellant was aggrieved from the judgment dated 28.02.2018 of this Tribunal, he could have challenged the same before the august Supreme Court of Pakistan but he failed to do so. As such the instant appeal being devoid of any merit stand dismissed. Costs shall follow the event. Consign.

09. *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

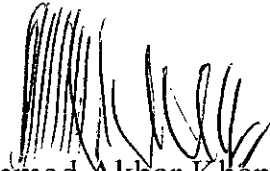
15.12.2023 01. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for official respondents present. Learned counsel for private respondent No. 4 present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file consisting of (06) pages, the instant appeal being devoid of any 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)