

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 1174/2020

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)
MRS. RASHIDA BANO ... MEMBER (Judicial)

Sher Ali Khan, Inspector (No. 110M) posted of Police Line, District Swat.

.... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa at Peshawar.
2. Regional Police Officer Malakand Range-III at Saidu Sharif, District Swat.
3. District Police Officer, District Dir Lower.
4. Muhammad Khalid now currently posted as S.P Investigation at Chitral.

.... (Respondents)

Mr. Shabir Ahmad Khan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....24.02.2020

Date of Hearing.....02.10.2023

Date of Decision.....03.10.2023

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 instant appeal, the impugned orders dated 29.07.2019 and 30.10.2019 may kindly be set aside



and the respondents may be directed to confirmed the appellant as Sub-Inspector from 01.12.2003 as Sub-Inspector but confirmed from 30.04.2007.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was inducted in police department as constable in year 1977 and after qualifying various courses promoted to Head Constable in 1989 and after that promoted to the rank of ASI in the year 1994. On 13.10.2001 respondent No.3 consequent upon issuance of the revised seniority dated 18.09.2001 confirmation and promotion of appellant has been cancelled vide order dated 10.10.2001. The Worthy Peshawar High Court in writ petition stayed the aforementioned order due to which appellant was ignored and junior to the appellant was promoted. The provincial Assembly duly passed the NWFP validation of Standing Order Act, 2005 as a result the original seniority of the appellant was restored w.e.f 01.12.2001. The appellant was at serial No. 50 and private respondent No.4 was at serial No. 51 having date of promotion of officiating S.I as 16.04.2005. On 29.07.2019 respondent No. 2 issued provisional merit list against which appellant filed representation but no opportunity was given to the appellant and respondent No.2 restored the seniority of appellant vide order dated 30.10.2019 by placing his date of promotion as officiating S.I as 01.12.2003 and seniority of the appellant restored was confirmed from 16.04.2007 instead of 16.04.2008 but originally the respondent No. 2 required to confirm the appellant from 01.12.2003. Feeling aggrieved appellant departmental appeal on 01.11.2019 which was not responded, hence the instant service appeal.

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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 was not treated in accordance with law and illegally and unlawfully not confirmed as S.I from the date 01.12.2003. He further contended that no proper opportunity was of hearing afforded to the appellant and he was condemned unheard. He argued that in accordance with rule 18.13 of Police Rules 1934 appellant will have to confirmed with effect from 01.12.2003 as policy/condition of five years service as S.I for confirmation is against the law.

5. Conversely, learned District Attorney for the respondents contended that the appellant was confirmed S.I vide order dated 21.06.2008 with immediate effect. He further contended that representation of appellant was properly examined in light of his service record and rules 13-18 of Police Rules 1934. He has given seniority in list E w.e.f 01.12.2001 and his representation was found groundless, rightly filed by the competent authority. He submitted that notification dated 30.10.2019 was issued as per Police Rules 13-11, 13-12 and 13-13 and revised confirmation as ASI, admission to list E and confirmation as S.I were made in accordance with rules 12-8, 13-18, 19-25 (5) and various judgments passed in by Service Tribunal. He further submitted that respondent No. 4 was directly recruited as ASI therefore, he was confirmed as SI on 01.12.2003. As no illegality has been done in revised seniority list and all these processes were conducted on the principle of natural justice.

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6. Perusal of record reveals that appellant was appointed as constable in year 1977 and qualified various courses. That District Police Officer, Dir-Lower issued revised seniority list in accordance with confirmation and promotion to list E of the appellant alongwith others has been cancelled vide order dated 13.10.2001 on the basis of order of DIG Malakand Range dated 10.10.2001. That one Sanober Khan alongwith others filed writ petition before Worthy Peshawar High Court challenging validity of said order wherein status quo was issued by Worthy Peshawar High Court due to which appellant was ignored from promotion on 01.12.2001. Original seniority of the appellant was restored by the NWFP validation of standing order 2005 vide memo dated 09.02.2005 appellant was senior from respondent No.4 as appellant was at serial No. 50 while private respondent No. 4 at serial No. 51. Respondents issued provisional seniority list on 29.07.200 upon which appellant filed objection on 03.08.2019. Although appellant seniority was restored and reckoned from 01.12.2000 but appellant was not confirmed as S.I from 01.12.2003. Appellant filed departmental appeal on 01.11.2019 which was not responded within statutory period of ninety days. hence the instant service appeal.

7. It is admitted fact on record that respondent No.4 is the directly inductee as ASI on 25.01.1995 while appellant was promoted as officiating ASI on 11.05.1994 who was confirmed as ASI on 11.05.1997. So in this scenario respondent No.4 being direct inductee as ASI on 25.10.1995 is senior to the appellant. Appellant was confirmed as S.I on 16.04.2005 while respondent No. 4 was on 01.12.2001. Appellant challenged date of his officiating S.I which corrected by the respondents as 01.12.2001 like

respondent No.4 which is evident from seniority list. Issue arises there when date of both the appellant and of respondent No.4 are same i.e 11.02.2001 then appellant seeks his confirmation as S.I within two years of his date of officiating S.I and claimed it to be 01.12.2003 instead of 16.04.2008. It is also pertinent to mentioned that respondent No. 4 was confirmed as ASI on 30.06.2006 and not from 01.12.2008. This issue is solved by the respondent themselves while deciding representation appeal of the appellant and many other who challenged seniority list issued on 05.02.2018 vide order dated 16.11.2017 wherein it is held that in Malakand region policy of five years had been applied to Malakand Region to confirm following officer. Name of the appellant is mentioned at serial No. 124 and his date of confirmation as S.I is mentioned as 21.06.2008 while that of respondent no. 4 mentioned at serial No. 111 with date of confirmation as 30.06.2006. The most important fact about the appellant is that he actually took over charge of higher responsibility of S.I on 16.04.2005. So it is admitted fact on record that appellant had not completed five years service as Sub Inspector. Rule 13.10 to 13.14 of police rules 1934 are regarding the promotion to the higher grade of S.I eight years service with one year service as S.I with capability for posting to a first class police station the criteria for promotion to the special grade of S.I promotion to special grade against the post of S.I. Confirmation against the post is always related to availability of a permanent post for civil servant according to his seniority and turn. The appellant could not show that he was senior to respondent No.4 in the rank of S.I and was entitled to be confirmed as S.I on preference to or with respondent No. 4 on the same date. According to existing rules, as practiced in this regard. Appellant was rightly confirmed on

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11.04.2008 the date when he completed his five years service as S.I from his actual assuming charge of this post i.e 16.04.2005. Otherwise too, it is not logical that a civil servant be confirmed from the date when he had actually not taken charge of it i.e 01.12.2003. It is also pertinent to mention here that appellant had also applied for said relief in service appeal No. 5631/208 but same was denied vide order dated 29.05.2009 by this Tribunal. Therefore, this case is also hit by the principle of resjudicata. Rule 23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974.

8. As sequel to above discussion, appeal in hand is devoid of merits, hence dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 3rd day of October, 2023.*



(SALAH UD DIN)
Member (J)
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat

ORDER
3rd Oct. 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Zahir Shah, S.I (Legal) for the respondents present.

2. Vide our detailed judgement of today placed on file, appeal in hand is devoid of merits, hence dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 3rd day of October, 2023.*



(SALAH UD DIN)
Member (J)
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat

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