

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT ABBOTTABAD

Service Appeal No. 1194/2022

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

Muhammad Javed, Inspector No.H/58, presently posted as Acting
 DSP, Investigation Wing, Haripur.....(*Appellant*)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Region Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Haripur.....(*Respondents*)

Present:-

MUHAMMAD ASALM TANOLI,
 Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
 Deputy District Attorney --- For respondents.

Date of Institution.....18.07.2022
 Date of Hearing..... 25.01.2024
 Date of Decision..... 25.01.2024

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;

*“On acceptance of the instant service appeal and after
 granting confirmation/seniority on promotion list-E of ASIs
 from 28.12.2006 and throughout subsequent seniority till to
 this days the impugned Notification dated 18.02.2022 may
 kindly be modified to the extent of petitioner’s right of*


promotion as D.S.P (BPS-17) from the date when his batch-mates recruited with him as PASIs and like Muhammad Sohail Inspector No.H/07 (Now DSP BPS-17) of Hazara Region Abbottabad and with all consequential service back benefits.”

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeal bearing No. 1195/2022 titled “Sajjad Muhammad” versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others, as common question of law and facts are involved therein.

03. Brief facts, as averred in the memorandum of service appeal, are that the appellant was recruited as Probationer Assistant Sub Inspector (BPS-09) alongwith his other colleagues/batch-mates through proper recommendation of Khyber Pakhtunkhwa Public Service Commission in the Police Department vide Notification dated 28.12.2006 and the appellant was at serial No. 7 in the said Notification; that on satisfactory completion of probation period of 03 years the appellant alongwith his colleagues/batch-mates was confirmed and brought on list-E w.e.f 08.01.2007 of Hazara Region vide order dated 25.03.2010; that Deputy Inspector General of Police Hazara Region Abbottabad issued Corrigendum dated 06.04.2010 counting seniority of the appellant as ASI w.e.f. 06.04.2010 instead of 28.12.2006; that the appellant alongwith 85 other Probationer ASIs (BPS-09) was recruited vide Notification dated 28.12.2006 and their seniority on list “E” is counted from 28.12.2006

while the seniority of the appellant was counted w.e.f 06.04.2010; that the petitioner is serving as Inspector (BPS-16) while his colleagues/batch-mates have been elevated to the rank of DSP (BPS-17). Even one of his colleagues/batch-mates namely Mr. Muhammad Sohail from Hazara Region, Abbottabad has been promoted to the rank of DSP (BPS-17) vide Notification dated 18.02.2022; that after fulfilling all the requirements for promotion he was not considered for promotion alongwith his batch-mates to the rank of DSP (BPS-17) by the competent authority while promotion of his batch-mate namely Muhammad Sohail as DSP was made vide Notification dated 18.02.2022. Feeling aggrieved from the impugned order dated 18.02.2022 the appellant filed departmental appeal on 17.03.2022 which was not responded within the statutory period, hence preferred the instant service appeal on 18.07.2022.

04. 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 and learned Deputy District Attorney and have gone through the record with their valuable assistance.



05. Learned counsel for the appellant contended that the impugned orders are illegal, unlawful, against the facts, departmental rules and regulation, Police Rules, 1934 and passed in a cursory whimsical and arbitrary manner, hence are liable to be set aside. No Show Cause Notice was issued to the appellants and no chance of personal hearing was provided to the appellants. He has, therefore, been condemned unheard. He submitted that

no regular inquiry has been conducted. Learned counsel for the appellant further contended that the appellate authority has failed to abide by the law and even did not take into consideration the grounds of appeal taken by the appellants in their departmental appeal, therefore, the impugned order of appellate authority is contrary to Khyber Pakhtunkhwa Civil Servants Act, 1973, Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, Police rules 1934 read with section 24-A of General Clauses Act, 1897 and Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; that there is nothing on record against the appellants to defer him from his right of confirmation, bringing on seniority/promotion Lists "E & F" at due course of time and he has been deprived of his legitimate services rights without any reason and justification.

06. On the other hand, learned Deputy District Attorney contended that the appellants were appointed as Probationer ASI and the impugned orders were issued as per Police Rules, 13-18 of 1934; that the seniority of the appellants have been fixed according to rules. No discrimination has been made in their case.

07. Scrutiny of record transpires that the appellants alongwith 85 others colleagues was appointed on the recommendation of Public Service Commission vide Notification dated 28.12.2006. Record further reveals that other colleagues of the appellants were confirmed and brought on list "E" w.e.f 28.12.2006 which is the date of their appointment. However, the appellant has been confirmed w.e.f 06.04.2010. The appellant agitated and

made a representation when his colleague namely Muhammad Sohail was promoted to the rank of DSP vide Notification dated 18.02.2022. His departmental appeal was not responded within the statutory period and he preferred the instant service appeal. The question before the Tribunal is determination of confirmation of the services of the appellant as ASIs in the Police Department. Police Rule, 12.2(3) provides as under;

All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

Seniority, in the case of upper subordinates, will be reckoned in the first instance from date of first appointments, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however be finally same date being that allotted to them on first appointment: Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-à-vis any officers promoted or confirmed before him during his deputation.


Similarly, Rule 12.8 of Police Rules, 1934 provides as under;


Probationary nature of appointment.—*Inspectors, sergeants, sub-inspectors and assistant sub-inspectors who are directly appointed will be considered to be on probation for three years and are liable to be discharged at any time within the period of their probation if they fail to pass the prescribed examination including the riding test, or are guilty of grave misconduct or are deemed for sufficient reasons, to be unsuitable for service in the*

Police. A probationary inspector shall be discharged by the Inspector-General and all other Upper Subordinates by Range Deputy Inspector General, Assistant Inspector-General, Government Railway Police, and Assistant and Assistant Inspector General, Provincial Additional Police (designated at Commandant, Provincial Additional Police). No appeal lies against an order of discharge.

08. The provision of the above quoted rules clearly states that the probationer ASIs directly appointed on the basis of recommendation of Public Service Commission on permanent posts after completion of 03 years probation periods are liable to be confirmed from the date of their appointment. As such seniority is to be reckoned from the date of appointment of the appellant. Since the appellant was appointed on 28.12.2006 and he has successfully completed his probation period, therefore, he is eligible in all respect to be confirmed and brought to the seniority list "E" w.e.f the date of his appointment. We, therefore, allow the instant appeal as well as connected service appeal on the aforementioned terms. Costs shall follow the event. Consign.

09. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 25th day of January, 2024.*


(Rashida Bano)
Member (J)
Camp Court Abbottabad


(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad

ORDER

25.01.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali

Shah, Deputy District Attorney for the respondents present.


Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, consisting of (06) pages, we allow the instant appeal. Costs shall follow the event. Consign.

3. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 25th day of January, 2024.*



(Rashida Bano)
Member (J)
Camp Court Abbottabad



(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad