

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 587/2018

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Gul Wahid (ASI) Retired, Head Quarter Police Line Peshawar.

.... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Telecommunication, Peshawar.

.... (Respondents)

Mr. Umar Zafran
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....19.04.2018
Date of Hearing..... 06.02.2024
Date of Decision..... 06.02.2024

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 this appeal, the respondents may be directed to consider the appellant for proforma/notional promotion on regular basis from the date vacancies were available with all back and consequential benefits. Any other remedy which this august Tribunal deems fit and proper that may also be granted in favour of the appellant.”

2. Brief facts of the case as given in the memorandum of appeal are that the appellant joined the Police Department as Constable in Police Telecommunication Wing on 12.02.1997. That he was adjusted/confirmed against the post of Head Constable on 20.12.2015 and was further promoted to post of ASI on 28.07.2015. Appellant was eligible to the post Sub-Inspector despite availability of vacant posts not promoted and was retired on 12.01.2018. Appellant filed departmental appeal, which was not responded, hence the instant service appeal.

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 Deputy District Attorney and perused the case file with connected documents in detail.

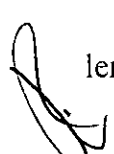
4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated the Article 2a, 4 & 25 of the Constitution of Islamic Republic of Pakistan. He further argued that not considering the appellant for promotion being eligible despite the availability of vacancies and appellant got retired, therefore, the inaction of the respondents is not tenable in the eyes of law. He further argued that retirement could not be made hurdle in the promotion which was already due before retirement of appellant. He argued that appellant was entitled for notional promotion. He submitted that appellant was kept away from promotion due without any order, which delay on the part of the department is without any legal justification then appellant will be entitled for promotion. He placed reliance on 1997 SCMR 515, 2009 PLC (CS) 229

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant was promoted as officiating ASI on 28.07.2015 and was not

eligible for further promotion to the rank of S.I at the time of his retirement. The appellant was not confirmed in the rank of ASI as confirmation in original rank is mandatory and pre-requisite for further promotion. He further contended that according to Police Rules 2017, criteria for filling post of Sub Inspector by promotion on the basis of seniority cum-fitness from amongst Assistant Sub-Inspector is with three year service, whereas the appellant was promoted as officiating ASI on 25.07.2015 and he was going to be confirmed on 28.07.2018, at the time of retirement the appellant did not possess the requisite length of service required for promotion, therefore, he requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant was enlisted in respondent department as Constable in Telecommunication wing vide order dated 12.02.1997 whose services were confirmed as Head Constable and he was promoted as ASI on 28.07.2015. Appellant alongwith others were proposed to be promoted as Sub Inspector firstly due to availability of vacancies and secondly appellant was going to be retired on 12.01.2018 through a note sheet and request was also made for formation of DPC by his wing. Appellant also through application requested his high ups by filing application for grant of promotion as he is going to be retired on 12.01.2018 and is eligible for promotion. The criteria for promotion to the post of Sub Inspector is seniority-cum-fitness from amongst Assistant Sub-Inspector Telecommunication with three year service which is given in Rule appendix 22.A.4.Telecommunication wing dated 16.03.2017.


7. Appellant was promoted as ASI on 28.07.2015 and his three year service as ASI will be completed on 27.07.2018 but he stood retired on 12.01.2018 before completion of his three years period which is required length of service as provided in the rules in vogue at the time of his



retirement. It is also pertinent to mention here that previously before amendment in the rules dated 16.03.2017, in accordance with police rule 13.18 probation period for promotion to the post of Sub Inspector from ASI was two years but in case of appellant before completion of that two year period on 27.07.2017 as appellant was promoted as ASI on 25.07.2015, amendments were introduced in the rules, therefore, after amended rules are in field which required three year length of service/probation period for promotion to the post of Sub Inspector. So appellant was not eligible for promotion before his retirement on 12.01.2018 as claimed by him as he was not confirmed as ASI due to short length of service.

8. For what has been discussed above, the appeal in hand is dismissed having no force in it. Costs shall follow the event. Consign.


9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of February, 2024:*



(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
06.02.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed having no force in it. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)