

- 26.02.2024 1. Learned counsel for the appellant present. Mr. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Arguments heard. To come up for order on 28.02.2024 before D.B. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

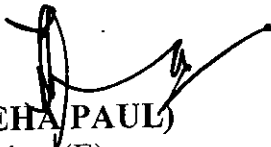

(Rashida Bano)
Member (J)

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ORDER

28.02.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Qaisro Khan, Inspector (Legal) for the respondents present.
2. Vide our detailed judgment of today placed on file, We allow the appeal of the appellant and direct the respondents to consider the appellant for antedated promotion with effect from the date when his promotion was deferred for the first time and his junior colleagues were promoted with all back benefits. Parties are left to bear their own costs. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 28th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 893/2023

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

Saif Ur Rehman, Sub Inspector, No.368/P, presently posted to FRP Peshawar Range, Peshawar.

.... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

.... (Respondents)

Mr. Hilal Zubair
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution..... 27.04.2023
Date of Hearing.....28.02.2024
Date of Decision.....28.02.2024

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 impugned notification dated 08.12.2022 to the extent of the appellant may kindly be modified thereby confirming the appellant as Sub Inspector w.e.f 22.09.2002 i.e. from the date when his other colleagues/juniors were confirmed with due place in



promotion/seniority lists from due date in all the seniority lists thereby placing the name of the appellant above the name of Nisar Ahmad No.27/P, with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant, alongwith others, was appointed as probationer Assistant Sub-Inspector through Khyber Pakhtunkhwa Public Service Commission. The appellant qualified lower school course on 20.09.1995 and underwent Inter School Course on 20.03.1996 from Police Training College, Hangu. He was confirmed as ASI from the date of initial appointment alongwith his colleagues vide notification dated 05.01.1998. He was promoted as officiating Sub Inspector w.e.f 22.09.2000 vide notification dated 27.09.2000. Junior/colleagues of the appellant were confirmed as Sub-Inspectors w.e.f 19.11.2003 vide order dated 07.03.2005, while the appellant was deferred and not recommended due to incomplete SHO period besides non availability of his ACRs. The appellant was not confirmed as Sub Inspector due to incomplete mandatory period till 2022. He was transferred to Frontier Reserve Police for one year mandatory period on 27.08.2021 and was confirmed Sub Inspector alongwith others vide notification dated 08.12.2022. Feeling aggrieved, he 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 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 rules, and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the impugned notification dated 08.12.2022 to the extent of not confirming the appellant as Sub Inspector from the date of his colleagues were confirmed and not promoting him is illegal, unlawful and void ab-initio. He further argued that the appellant has completed the mandatory period but he was not confirmed as Sub Inspector, Inspector, as DSP and as SP with his colleagues, which is discrimination.


5. Learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that confirmation in the rank of Sub-Inspector is subject to seniority cum-fitness basis and fulfilling the requisite criteria envisaged in Rule 13-10(2) of Police Rules 1934. Equal opportunities are available to all members of Police to undergo their mandatory courses or periods through proper channel application and if member of police is deficient in some mandatory period the same rules do not allow his confirmation or promotion in violation of that rule. He submitted that respondent department has made promotion purely on seniority-cum-fitness basis by adopting proper procedure and no one's rights have been violated.

6. Perusal of record reveals that the appellant was appointed through Khyber Pakhtunkhwa Public Service Commission as Probationer ASI including his juniors namely Nisar Ahmad Khan No.27/P, Tariq Iqbal No.31/P and Tariq Habib No.32/P on 21.12.1994. The appellant qualified Lower School Course on 20.09.1995 and underwent Inter School Course on



20.03.1996 from Police Training College, Hangu. The appellant was confirmed as ASI from the date of his initial appointment alongwith his stated colleagues vide notification dated 05.01.1998. As the appellant underwent Upper College Course on 10.10.1998 and was brought on promotion list "E" and was also promoted as ASI Selection Grade vide notification dated 14.12.1998 and was promoted as officiating Sub Inspector w.e.f. 22.09.2000 vide notification dated 27.09.2000. The colleagues/juniors of the appellant were confirmed as Sub Inspectors w.e.f 19.11.2003 vide order dated 07.03.2005, while the appellant was deferred and not recommended due to incomplete SHO period besides non availability of his ACRs which was already submitted by the appellant. The appellant was awarded the penalty of stoppage of two years annual increments vide order dated 24.09.2007, which increments were restored on appeal vide order dated 13.11.2007. The appellant was transferred to Frontier Reserve Police for one year mandatory period on 27.08.2021 and finally confirmed as Sub Inspector along with others vide notification dated 08.12.2022 with immediate effect. Appellant preferred departmental appeal which was duly forwarded however the same has not been responded so far.

7. Perusal of record further reveals that appellant through instant appeal seek antedation of his confirmation/promotion as Sub Inspector from 22.09.2002 instead of 08.12.2022 i.e. from the date when his colleagues and juniors were confirmed and promoted as Sub Inspector. Appellant was considered along with his colleagues and juniors on 22.09.2002 but he was not confirmed and promoted due to incomplete mandatory period for completion of which appellant was transferred to F.R.P for one year period vide order dated 27.08.2021 by the respondents which means that posting of



appellant for completion of mandatory period is within domain of the authority, and is out of control of appellant. So, there is no fault at his part due to which he was not promoted/confirmed. Hence appellant can't be penalized for an act which can't be attributed to him.


8. Moreover when on 22.09.2002 appellant was considered and was not confirmed, he was deferred then in such situation his case was covered under Rule-V (d) of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, which deals with deferment of promotion and determination of seniority of deferred employee/civil servant which reads as follows:

“If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion come to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance the proviso of Sub-section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior”



So, according to above referred rule of promotion policy, appellant have fit case for antedated promotion. We allow the appeal of the appellant and direct the respondents to consider the appellant for antedated promotion with effect from the date when his promotion was deferred for the first time and his junior colleagues were promoted with all back benefits. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 28th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan